Implementing Land, Resource and Environmental Regimes Under the Inuvialuit Final Agreement

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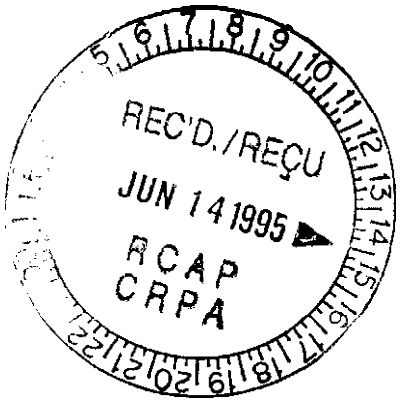

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EXECUTIVE SUMMARY

In 1984, the Committee for Original Peoples' Entitlement on behalf of 2500 Inuvialuit agreed to a settlement of their claims against Canada for selected lands, certain rights, and financial compensation in exchange for the extinguishment of their aboriginal title and all other aboriginal claims, rights and interests in the Northwest Territories, the Yukon and the adjacent offshore areas. Known as the Inuvialuit Final Agreement, this comprehensive claims settlement was the first of its kind in the Northwest Territories and the only one signed under the federal government's *In All Fairness* claims policy - a policy that explicitly required extinguishment of aboriginal title and rights as a fundamental element of the settlement. It established many new arrangements that changed the face and improved the practice of wildlife management in the Western Arctic. The Agreement introduced a number of innovative measures and institutions, some of which were duplicated in other comprehensive claims agreements that followed, and others that today remain unique and exclusive to the Inuvialuit.

The purpose of this study is twofold. The first is to determine whether the wildlife, environment and resource management provisions of the Inuvialuit Final Agreement (IFA) have supported or enhanced the basic goals of the Agreement. These goals, expressed by the Inuvialuit and recognized by Canada in the IFA, encompass the preservation of Inuvialuit cultural identity and values within a changing northern society, the meaningful participation of the Inuvialuit in northern and national social and economic life, and the protection and preservation of Arctic wildlife, environment and biological productivity.

The second purpose of the study is to identify lessons that can be drawn from the implementation of the IFA and to consider their significance more generally as they relate to the establishment of land, resource and environmental regimes affecting aboriginal people.

In this context, the study considers the institutional arrangements created under the IFA and how they affect Inuvialuit harvesting rights, the management of wildlife and habitat, wildlife research and the assessment of environmental impacts of development. It examines the role of government and aboriginal institutions in these areas, and gives special attention to the experience of co-management institutions representing the combined interests of both government and the Inuvialuit in wildlife management.

The IFA introduced sweeping changes to the way in which wildlife, resources and the environment are managed in the Western Arctic. It can be viewed as establishing a variety of mechanisms for accomplishing the following:

- the integration of the interests of harvesters and government in wildlife, habitat and protected area management,
- the integration of wildlife management jurisdictions,

- the integration of wildlife and habitat management,
- the integration of traditional and scientific knowledge in wildlife management,
- the balancing of wildlife conservation and environmental protections interests with development interests,
- the compensation of harvesters for actual harvest loss or future harvest loss from development, and
- the self-management and self-regulation of harvesters, enforceable by government regulation.

The Agreement established important recognition of and protection for Inuvialuit harvesting rights. But the broader management regime in which this protection is achieved is a critical factor in the practical effect that is given to the harvesting rights themselves. It is this regime that is the central focus of this study. Importantly, however, this regime cannot and should not be considered independently of the rights that it seeks to protect and the utilization of wildlife that it seeks to conserve.

The Inuvialuit have a strong role in the wildlife and environmental regime established under their land claim agreement. This was achieved not solely to protect Inuvialuit harvesting rights, but equally and importantly to improve significantly the protection of Arctic wildlife, environment and biological productivity. The IFA established subsistence and commercial use of wildlife as a cornerstone of the Agreement and twinned this with a wildlife and environmental management regime far more comprehensive and intensive than what normally applies in many other parts of Canada. The extensive nature of Inuvialuit harvesting rights can be viewed as both the cause and effect of such a rigorous management regime and the high level of Inuvialuit interest and participation in management-related responsibilities.

Generally the implementation of the IFA's wildlife and environmental management regime can be viewed as a significant success by many tests, including some of the high standards established by the IFA itself. Inuvialuit harvesting rights have enjoyed full effect. The Inuvialuit have taken effective advantage of the participation they are entitled to in all matters related to wildlife management, including policy, regulation and legislation, as well as international agreements. The level of wildlife management in the region and the research supporting it has improved dramatically since the signing of the Agreement, as has the involvement of the Inuvialuit in the management regime itself.

Nonetheless, approaching the tenth anniversary of the signing of the IFA into federal law, areas of significant and ongoing concern are apparent. Implementation of the IFA demonstrates that the legal and constitutional status of the Agreement has conferred on it no special status or brought no unique commitment of political will to see the Agreement's provisions realized. Many of the most basic consequential amendments in policy, regulation and legislation have not been enacted almost 10 years after the Agreement was written and passed into federal law. As a consequence government agencies and officials with significant responsibilities and obligations under the IFA are

woefully unaware of them in many areas. Jurisdictional differences between governments continue to impede cooperative and more integrated approaches to wildlife and environmental management in spite of the cooperation intended by the Agreement.

Under the IFA the Inuvialuit received title to about 91,000 square kilometres of land. A tenure system based on fee simple absolute ownership of surface and subsurface lands, and large and contiguous land selections combined with an Inuvialuit-based land administration regime for these lands have provided significant control over the nature and impact of development on these private lands as well as over how they are affected by development on neighbouring lands. The protection of wildlife and the environment through Inuvialuit ownership of the lands they most value, however, has not precluded government and industry developers trespassing on these private lands without notice or penalty.

A joint Inuvialuit/government environmental impact screening and review process was established under the IFA to determine the significance of environmental impacts from development, and to determine on what basis developments should or should not proceed. This process has reviewed several major development proposals and the preparedness of government regulatory agencies to manage these developments in an environmentally responsible manner. The largely positive and constructive treatment of recommendations arising from this process provides important insights into the nature, authority, and jurisdiction of decision-making carried out by claims-based bodies and how they are regarded by government. As a joint government/Inuvialuit screening and review process it clearly serves as another important institutional mechanism for protecting Inuvialuit harvesting rights and interests, beyond what is available to them through government-based screening and review processes.

The IFA offers much to consider and recommend with respect to how lands are selected, land quantum justified, subsistence harvesting requirements and levels established. The IFA is also instructive with respect to determining the form and level of compensation payable by developers for loss of wildlife and damage to the environment, and the limit of government's financial liability beyond the ability of developers to pay.

The practice of self-regulation by Inuvialuit harvesters independent of government intervention or direction is also a success story. But it also raises questions about the enforceability of Inuvialuit-made harvesting regulations and the desirability and challenges of accomplishing this with the support of government regulation.

The IFA established new protected areas for wildlife and habitat and provided the means for identifying and establishing additional ones as required. The implementation of the Agreement provides insights into the challenge for government of managing these areas under dual legislative authorities - claims legislation on the one hand and protected areas legislation on the other.

The Inuvialuit have had an active interest in international issues affecting wildlife management in the Western Arctic, most notably with respect to caribou, migratory birds and international whaling. They have entered into international agreements for these species with other aboriginal harvesters, which are models for international cooperative wildlife management. There has been cause for far greater concern when dealing with national governments on international wildlife management issues. Issues in this area have not been resolved to the extent that protection of Inuvialuit rights to harvest these migratory species is fully assured. These issues raise serious questions for governments and aboriginal people with respect to how legislated, constitutionally entrenched land claim agreements are regarded, the standing they hold in the broader field of domestic legislation and international agreements, and the nature and level of political will and institutional commitment that they compel to meet claims-based legal obligations, responsibilities and rights.

The experience of IFA implementation reveals much about the challenge of giving practical effect to legal obligation. It demonstrates clearly how fragile are the understandings reached at the negotiating table and how quickly they can be eroded. It indicates that the greatest burden and impetus for claims implementation lies with the beneficiaries of the agreement.

The IFA can be viewed as the means by which the Inuvialuit of the Western Arctic preserved their traditional hunting territory in the face of proposals for massive hydrocarbon development. They did this through the negotiation of certain harvesting rights and the establishment of a new wildlife and environmental management regime across the area. Experience to date suggests that establishing the new Inuvialuit and co-management institutions has not been nearly as difficult as reforming existing government administrative and management practices and policies. The most significant challenges that remain concern the accomplishment of these government reforms as required under the Inuvialuit agreement.

CHAPTER ONE

INTRODUCTION

In 1984 approximately 2500 Inuvialuit lived in the six communities of Aklavik, Inuvik, Tuktoyaktuk, Paulatuk, Sachs Harbour and Holman Island in the Western Arctic region of the Northwest Territories. In that year, the Committee for Original Peoples' Entitlement on behalf of all Inuvialuit agreed to a settlement of their claims against Canada for selected lands, certain rights and financial compensation in exchange for the extinguishment of their aboriginal title and all other aboriginal claims, rights and interests in the Northwest Territories, the Yukon and the adjacent offshore areas. Known as the Inuvialuit Final Agreement, this comprehensive settlement was the first of its kind in the Northwest Territories. It established many new arrangements that changed the face and improved the practice of wildlife management in the Western Arctic. The Agreement introduced a number of innovative measures and institutions, some of which were duplicated in other comprehensive claims agreements that followed, and others that today remain unique and exclusive to the Inuvialuit.

1.1 Objectives

The purpose of this study is twofold. The first is to determine whether the wildlife, environment and resource management provisions of the Inuvialuit Final Agreement (IFA) have supported or enhanced the basic goals of the Agreement. These goals, expressed by the Inuvialuit and recognized by Canada in the IFA, encompass the preservation of Inuvialuit cultural identity and values within a changing northern society, the meaningful participation of the Inuvialuit in northern and national social and economic life, and the protection and preservation of Arctic wildlife, environment and biological productivity (IFA, s.1).

The second purpose of the study is to identify lessons that can be drawn from the implementation of the IFA and to consider their significance more generally as they relate to the establishment of land, resource and environmental regimes affecting aboriginal people.

In this context, the study considers the institutional arrangements created under the IFA and how they affect Inuvialuit harvesting rights, the management of wildlife and habitat, wildlife research and the assessment of environmental impacts of development. It examines the role of government and aboriginal institutions in these areas, and gives special attention to the experience of co-management institutions representing the combined interests of both government and the Inuvialuit in wildlife management.

The IFA introduced sweeping changes to the way in which wildlife, resources and the environment are managed in the Western Arctic. Negotiated between the Committee for Original Peoples' Entitlement (COPE), representing the Inuvialuit of the Western

Arctic and the governments of Canada, the Northwest Territories and the Yukon, and proclaimed as the Western Arctic (Inuvialuit) Claims Settlement Act on July 25, 1984, the Agreement can be viewed as establishing a variety of mechanisms for accomplishing the following:

- the integration of the interests of harvesters and government in wildlife, habitat and protected area management,
- the integration of wildlife management jurisdictions,
- the integration of wildlife and habitat management,
- the integration of traditional and scientific knowledge in wildlife management,
- the balancing of wildlife conservation and environmental protection interests with development interests,
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The Agreement established important recognition of and protection for Inuvialuit harvesting rights. But the broader management regime in which this protection is achieved is a critical factor in the practical effect that is given to the harvesting rights themselves. It is this regime that is the central focus of this study. Importantly, however, this regime cannot and should not be considered independently of the rights that it seeks to protect and the utilization of wildlife that it seeks to conserve.

The Inuvialuit have a strong role in the wildlife and environmental regime established under their land claim agreement. This was achieved not solely to protect Inuvialuit harvesting rights, but equally and importantly to improve significantly the protection of Arctic wildlife, environment and biological productivity. The IFA established subsistence and commercial use of wildlife as a cornerstone of the Agreement and twinned this with a wildlife and environmental management regime far more comprehensive and intensive than what normally applies in many other parts of Canada.

To some observers the high management standards established by the IFA and the financial resources required to meet them may appear excessive for a remote Arctic area that continues to appear largely undeveloped. Some public officials hold to the view that the conservation of wildlife and habitat should be readily achievable in such an area with a minimal commitment of resources and effort. This view ignores the legal rights held by the Inuvialuit for the subsistence and commercial use of wildlife, what is required to protect them and the use that flows from them, both in times of low industrial activity and in times when industrial development projects are being actively pursued and the potential impacts associated with them are assessed as significant. The IFA established harvesting rights and a management regime that sought to ensure the certain, long-term, sustainable use of wildlife by the Inuvialuit in the face of major

industrial development (such as hydrocarbon exploration and development) that is precipitous and neither long-term nor sustainable.

From our vantage point today, the signing of the IFA almost 10 years ago appears distant. Our memories are short, our attention preoccupied with the event and issue of the moment. It is difficult to recollect from the present the intentions and expectations born of another time, that fundamentally shaped the provisions of the IFA. One of the greatest challenges for the Inuvialuit in negotiating their land claim agreement, like many of the aboriginal people who signed treaties before them, was to achieve a lasting agreement that would protect their use of wildlife into a future that they could not fully anticipate. The challenge for government negotiators was to accept the practical implications of such a broad and far-reaching perspective. The challenge in implementing the IFA today remains the same for both governments and the Inuvialuit, notwithstanding the fact that the provisions of the IFA are established under federal law and entrenched in section 35 of the Canadian Constitution.

Following the James Bay and Northern Quebec Agreement (signed in 1975), the IFA was the second modern-day treaty to be signed in Canada and the first to be signed in the Northwest Territories. The implementation of the Agreement provides us with an opportunity to review the adequacy of the standards established for wildlife and environmental management and the effectiveness of the mechanisms and institutional arrangements that were provided to achieve them. Many of these arrangements rest on the idea of cooperation between government and the Inuvialuit. While cooperative wildlife management institutions are not new in Canada, the establishment of these arrangements, also known as joint management and joint stewardship arrangements, has rapidly increased in recent years as governments across the country have sought ways to better recognize aboriginal interests in the management of wildlife, land and resources. Few of them, however, enjoy any legal basis. Most stand essentially as expressions of voluntary collective good will between government, resource users and aboriginal people with a traditional interest in land and resources, evidence of an intent to cooperate in addressing wildlife and resource issues of mutual concern.

The IFA offers an interesting comparison to consider how these legally established arrangements stand up in practice as central elements of a negotiated land claim agreement. What arrangements were achieved and how well they have worked is the subject of this paper.

1.2 Approach

A significant portion of the body of writing on co-management and aboriginal wildlife management regimes concerns itself primarily with the analysis of organizational models and institutional structures and processes, and offers only secondary consideration of or completely excludes the rights and interests that aboriginal people hold in land, wildlife and resources. This is also true of most commentaries and

reports on the IFA's regime (Binder 1991; Winn 1991; Robinson 1992; Rohman 1992; Swerdfager 1992).

In the case of the general co-management literature, this approach is understandable given that in many jurisdictions these rights remain poorly defined. The historic treaties often make only broad assertions about aboriginal rights and interests, and the courts have tended to offer only general opinions (characterizing these rights, as distinct from defining them). Governments have only recently begun to negotiate modern treaties or comprehensive claims agreements based on a recognition of aboriginal title and the inherent right to self-government (again, characterized more than defined).

With respect to commentaries on the IFA's regime, this neglect of aboriginal rights and interests is more surprising in that the harvesting, land and other rights of the Inuvialuit were given explicit recognition in the Agreement and are closely tied to the management system it established for the Inuvialuit Settlement Region (ISR). Tied to the Inuvialuit rights in land, wildlife harvesting and wildlife compensation are specific management responsibilities for the Inuvialuit and government. The relationship between the two is critical to the full exercising of these rights and the effective implementation of the corresponding management responsibilities. Fundamentally, rights are only meaningful if they are enforceable, and the Inuvialuit institutions, co-management bodies and broad environmental and wildlife regime established under the IFA are the mechanisms by which these rights are given practical effect. To consider either Inuvialuit rights or IFA institutional arrangements in isolation is to treat both as abstractions. The implementation of the IFA is the fit that is achieved between these rights and the institutions created to support them.

It is ironic that so many of those commenting on or analyzing the performance and experience of the IFA's wildlife and environmental management regime pass over the Agreement itself so quickly, assigning it only a face value based on the simple fact of the legal foundation that these management structures enjoy. It is doubly ironic in that the IFA is the defining event and reference for most Inuvialuit in the Western Arctic today, whether they are hunting, trapping or fishing, managing wildlife, or pursuing a range of local, regional, national and international economic development opportunities. The Inuvialuit are proud of their Agreement and the difficult negotiations that achieved it. They know they must live with its possibilities and consequences. Their preoccupation with it is understandable.

This paper grounds its approach to the analysis of the IFA's management regime in the IFA itself, and not in the broader literature on co-management or common property management that has come to serve for many as the analytical ground for evaluation of the IFA and other comparable models of aboriginal wildlife management.[1] It takes as

[1] For instance, Winn's (1991), Rohman's (1992) and Swerdfager's (1992) treatment and assessment of IFA co-management institutions are heavily influenced by a broader and extensive academic literature.

its point of departure the harvesting rights of the Inuvialuit and the obligations and responsibilities of the Inuvialuit and government as set out in the Agreement. It is in this context as well that the implementation of the IFA's wildlife and environmental provisions are considered and the general experience evaluated.

The IFA of course does not speak for itself. Nor does the experience of implementing it. Both are subject to a high degree of interpretation, which by definition is always re-interpretation. My reading of the IFA is informed and coloured by my role as chairperson to the Wildlife Management Advisory Council (North Slope) - one of the wildlife co-management bodies established under the IFA. My knowledge of the IFA is not complete, nor is my grasp of its nuances and subtleties. This speaks both to my own limitations as well as to the challenge of grasping the intent and meaning of a negotiated land claim agreement like the IFA. At the same time, my experience in implementing the IFA has given me certain insights that are rarely available to outside researchers.

I have reviewed files, reports and studies associated with many of the organizations established under the IFA. I have also benefited from many hours of formal and informal discussion, both in carrying out this research and in implementing the Agreement, with representatives of Inuvialuit organizations and government agencies participating in various capacities in the implementation of the IFA's wildlife and environmental management provisions. None of these discussions is referenced primarily because the observations in this study result more from a series of conversations over time than from the event of a specific interview. I am at the same time especially indebted to the views of the Inuvialuit Game Council and its chair Andy Carpenter, Dr. Norm Snow, the Executive Director of the Joint Secretariat, the chairpersons of the IFA's co-management bodies, and some of those persons involved in negotiations for Canada and the Inuvialuit, most notably Bob Delury, the Chief Negotiator for the Inuvialuit. Notwithstanding all of this support and assistance, I assume full and sole responsibility for the views that are conveyed in this report.

At the end of the day, however, this form of mild reassurance may not be enough to subdue the anxieties of those involved in implementing the IFA, be they government officials or Inuvialuit beneficiaries. The study and analysis of comprehensive claims agreements is a growth industry in the academic world. Even more so is the study of "co-management" institutions and practices.

The danger in this approach is the tendency to gross generalization whereby all co-management management institutions and processes appear as variations on one another. The IFA's legal foundation of specific rights and responsibilities, which has profound implications for government and the Inuvialuit in the areas of policy-making, management, regulation and research affecting land, wildlife and the environment, is ignored and trivialized.

1.3 Research Concerns

Since the IFA was signed, the institutions and arrangements it established have been the subject of considerable academic interest. From the standpoint of the Inuvialuit beneficiaries, however, one may ask: what has this work accomplished or contributed?

One answer might be the basic recognition that the motivations of the researcher and the interests of the Inuvialuit are not necessarily the same and rarely appear to be evident. Nor is there an obvious recognition that the study of a land claim agreement and its implementation might in fact contribute to certain confusions and reinforce certain misunderstandings and misconceptions that further impede the work of implementing the agreement. To borrow a notion and a concern from the field of environmental assessment, little attention has been given to the cumulative effects of incremental and seemingly benign research activities on the implementation of the IFA and the Inuvialuit beneficiaries themselves.

The IFA introduced through legislation a new approach to the management of wildlife and the environment. It turned the existing institutional regime on its head - not by replacing or counterposing it with an "indigenous" system of management, but by establishing strong Inuvialuit institutions alongside new cooperative management arrangements between the Inuvialuit and government, with responsibilities closely tied to Inuvialuit harvesting and land rights. The IFA can and should be seen as establishing a new institutional culture for wildlife and environmental management. Adapting to this institutional culture has been extremely challenging for government, since in a number of respects it has required fundamental reforms to the way wildlife management has been understood and practiced historically in the Yukon and the Northwest Territories.

It has also been extremely challenging for the Inuvialuit, who, within a single generation, have made the transition from a way of life largely characterized by traditional hunting, fishing and trapping activities to a way of life in which their involvement in these activities now coexists alongside their responsibilities for actively working with government in many areas of wildlife and environmental management, including matters related to policy, legislation, regulation and international agreement. The consequences of any failure of government or the Inuvialuit to make this transition and to fully implement the provisions of the IFA will most seriously and negatively affect the Inuvialuit themselves.

For researchers the cultural leap, which is more institutional than racial, into a world defined by a land claims agreement is poorly understood. To reach across this gap researchers must of necessity pay it more heed, suspending, at least for their period of inquiry, their narrow fidelities to the institutional requirements of the academic world and the university. Such methodological challenges are not new. Regardless, the failure of researchers to consider such issues carries a heavy price for the Inuvialuit, whose future rests on the success of implementing the arrangements and measures

established in their agreement. If future research contributes little more than the obstacle of innocent confusion to this implementation, it is doubtful that there will much support for it.

If the IFA is the point of departure for future research into wildlife and environmental management in the Western Arctic, we might all best be guided by the general observation of the chief Inuvialuit negotiator commenting on the interpretation of the Agreement:

> The Agreement is a very straightforward but subtle document with many layers of thought and innovation. It does not have to be read by a lawyer. It was intentionally written not to require lawyers to interpret its meaning. However, for the Agreement to be meaningful, useful and understood, it does have to be read by people who are broadly based in practical matters affecting the Western Arctic. In addition, for those who have a substantial stake in implementation, a good knowledge of the 1977 Inuvialuit Nunangat proposal and the relevant history and documentation produced during the negotiations and afterwards will prove extremely valuable....Reliable sources are available and should be utilized. Hopefully, increased understanding of the Agreement among a larger group of individuals will reduce the likelihood that bizarre interpretations will be easily accepted (Delury 1993: 3).

This study does not present a definitive history of the negotiations of the IFA. It begins with COPE's proposal on behalf of the Inuvialuit for a land claim settlement. In spite of those who suggest a history of the negotiations is of no practical benefit in implementing a land claim agreement, there is a compelling reason to carry out such a task. With the exception of the James Bay and Northern Quebec Agreement (JBNQA) and the Inuvialuit Final Agreement, which were negotiated in less than 10 years, the other modern-day comprehensive claims negotiations in Canada have taken more than twenty years to reach a final settlement. Since the IFA was signed, the costs, in every respect, of such lengthy negotiations have been enormous.

What is achieved in these comprehensive claims agreements is an important but not exclusive function of both the circumstances and manner in which they were negotiated. How the beneficiaries are represented in the negotiations, the standing of third party interests and how they are represented, the status of the negotiators vis-a-vis the parties they are negotiating on behalf of - these are significant factors to be considered in evaluating what negotiations achieved in the past and what they might achieve in the future.[2] For those aboriginal peoples and governments that look

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[2] The IFA negotiations can be characterized as "government to government" with third party interests represented through federal and territorial negotiators. No third party interests participated directly in the negotiations. In contrast, these interests as represented by the James Bay Energy Corporation, the

forward to negotiating modern-day treaties and reaching a final settlement of outstanding claims, this history and what it teaches could be invaluable. It may offer some explanation of how land claims agreements can best be characterized (as aboriginal rights agreements, development agreements, or a hybrid) in casting the certain rights of aboriginal people against the certainty of rights held by developers and other third party interests.

James Bay Development Corporation and Hydro Quebec were actual parties to the negotiation and signing of the JBNQA.

CHAPTER TWO

THE POLITICAL, LEGAL AND INSTITUTIONAL CONTEXT

2.1 The Context of Negotiating the IFA

Land claim agreements are political and legal agreements between aboriginal people and governments and they are shaped by the circumstances and the attendant social, economic and political conditions in which they are settled. The Inuvialuit Final Agreement, like the James Bay and Northern Quebec Agreement before it, and the Alaska Native Claims Settlement Act before that, was negotiated under the threat of a massive development project. Unlike the settlement in Alaska, which was legislated, the Inuvialuit agreement was a negotiated one. Unlike the JBNQA, a final settlement was reached without the proposed development having proceeded.

The Inuvialuit[3] proposal for a land rights settlement in the Western Arctic was clearly affected from the outset by the prospect of large-scale developments. In May 1977, in submitting their proposal for an Agreement-In-Principle, *Inuvialuit Nunungat*, the Inuvialuit in a letter to the Prime Minister of Canada and the Minister of Indian and

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[3] Throughout this report references to the views, intentions and expectations of the Inuvialuit are confined to those that have been articulated by their representative organizations, most notably the Committee for Original Peoples' Entitlement. The collective interest of the Inuvialuit in negotiating a land claim settlement with Canada was represented by the Committee for Original Peoples' Entitlement (COPE). By way of a capsule history, several key points should be noted: Founded in January 1970, with strong representation in the Mackenzie Delta, COPE was the first Canadian Arctic Aboriginal organization established, representing Inuit, Indians and Metis. A year later Inuit Tapirisat of Canada was established and based in Ottawa to represent all Canadian Inuit. COPE's Eastern Arctic membership was transfered to ITC with COPE retaining membership and representation for the Inuvialuit of the Western Arctic. Subsequently the Northwest Territories Indians (Dene) and Metis established their own organizations. In 1973, following the release of the federal claims policy, ITC undertook to negotiate a comprehensive claims settlement with Canada on behalf of all Inuit. In 1976, ITC submitted its claim proposal to the federal cabinet, but later withdrew it. Following the withdrawal of the ITC proposal, in October 1976 COPE sought and received a mandate from the Inuvialuit to pursue a regional claims settlement and to represent the Inuvialuit in the claims negotiations. In December 1976, COPE reached agreement with ITC to pursue a regional claim. In May 1977, after a massive field work effort, the COPE proposal for a land claims settlement received the endorsement of its Board of Directors and was submitted to the federal cabinet. Throughout the negotiations that followed, the six Inuvialuit communities were directly involved in the negotiating effort through the participation of community negotiators and field workers on the negotiating team. In 1978, COPE asked for and received from the Inuvialuit people endorsement for the Agreement-in-Principle. A change in the federal government broke the momentum of negotiations, and in 1980 negotiations broke down. In October 1982 the federal government appointed Simon Reisman as the federal negotiator. In 1984, COPE asked for and received from the Inuvialuit people endorsement of the Final Agreement. The Agreement was signed between Canada and the Inuvialuit, along with the governments of the Northwest Territories and the Yukon. It was confirmed by federal legislation as The Western Arctic (Inuvialuit) Claims Settlement Act and proclaimed on July 25, 1984.

Northern Affairs were unequivocal in their concern over these developments and in their expectations for their land claim:

> Mr. Prime Minister, we all know that your Cabinet will be making a decision in respect to a Mackenzie Valley gas pipeline shortly. Quite frankly, we believe that your Government will approve the Mackenzie Valley route.
>
> Let us say clearly and unequivocally to you what our position is about a pipeline. We do not want it. We, as Inuvialuit and as Canadians, do not think it is worth the social, environmental and financial costs. However, we have had to prepare our land rights proposal with the threat of an affirmative pipeline decision, because for us to do otherwise would be to gamble with our future.
>
> Clearly, it is imperative that there be a land rights settlement before any pipeline is started, for the consequence of a pipeline will be a tremendous acceleration of destructive social and environmental impacts that will be borne by the Inuvialuit for generations. These adverse impacts will be felt more severely by the original peoples because our future, like our past, will be in the Canadian Arctic.
>
> Regardless of whether a Mackenzie Valley gas pipeline is approved, we think an early settlement of Inuvialuit land rights is in the Canadian public interest. Northern society is changing rapidly and therefore a settlement in respect to our land rights should be accomplished without delay...
>
> Let us, the Inuvialuit, state to you a simple truth. First, there is no coherent policy for northern development in Canada, nor has there ever been one; second, the interests of non-renewable resource development have always been given priority; third, the planning of public policy relevant to northern Canada is woefully lacking as compared with every other circumpolar jurisdiction; and fourth, the situation is out of control. We have no hope for basic change, because we do not believe your Government wishes to effect change if to do so means restricting non-renewable resource development.
>
> Therefore, Mr. Prime Minister and Mr. Minister, all the Inuvialuit can try to do is to plead with your Government not to destroy us and our lands. This land rights settlement proposal does not preclude oil and gas development nor a pipeline in the Western Arctic Region. It does afford Inuvialuit some protection of Inuit cultural identity and values within a changing Northern society, enables the Inuvialuit to be equal and meaningful participants in that society, provides fair benefits to the

> Inuvialuit in exchange for the extinguishment of our land rights as original people, and provides a means to better protect the Arctic wildlife and environment (COPE 1977a).

The closing sentence in this letter indicated clearly what the Inuvialuit expected from their land claim in a general sense. This expectation remained unaltered over the next seven years that it took to reach a final settlement. Although the proposed pipeline project did not proceed and the pipeline was not built, the expectations set out here were largely incorporated verbatim into section 1 of the IFA as the statement of goals for the Agreement. Only the statement of benefits in exchange for extinguishment was removed. The IFA did, however, extinguish Inuvialuit land rights, and the range of benefits received and rights established in the exchange became the substance of the Agreement.

Inuvialuit expectations of their land claim agreement centred on achieving measures for the protection of land and wildlife that would, in the very first instance, satisfy their requirements for the sustainable use of wildlife at a level and in a manner to meet all of their needs. At the same time, the Agreement would recognize the development prospects and proposals in the Western Arctic and the potential significant environmental impacts that would accompany them. The Inuvialuit determined early on in developing their approach to negotiations and the contents of a final settlement that the regime that they required to protect wildlife and the Arctic environment would have to be far more rigorous and comprehensive than anything that had existed previously. This requirement was firmly attached to their rights to land and wildlife. In a background document to their land claims proposal, the Inuvialuit viewed their situation this way:

> The detailed land rights proposal was prepared by the Inuvialuit to make sure the government had the chance to settle the Inuvialuit land rights fairly and without court action. If the government allowed a pipeline to be built before the land rights agreement was made between the government and the Inuvialuit it would mean the government was trespassing on Inuvialuit lands and breaking the law. It would mean the Inuvialuit would have to take the government and the pipeline companies to court. The Inuvialuit wanted the government to have a fair and reasonable proposal to settle the land rights question out of court and before a pipeline was built. COPE prepared this proposal knowing what the oil and gas interests were in the land and knowing what the needs of the Inuvialuit were. In this proposal neither the government, the oil companies, nor the Inuvialuit get everything that each wants; everyone has to give up something. The Inuvialuit are giving up two-thirds of the land and 97% of the oil and gas in the Western Arctic to government....
>
> Traditionally, the Inuvialuit occupy 165,000 square miles in the Western Arctic Region. Their relationship with the land is very close. In fact it

> can be said that the hunting, trapping and fishing of the Inuvialuit on their land is essential for the survival of their culture....The Inuvialuit need this land in its totality and giving up ownership of any part of it is a direct loss to the communities for which there is no substitute. Giving up ownership is particularly damaging if these lands are going to be used for petroleum development.
>
> In particular the environmental effects of building a pipeline across the northern Yukon and the Mackenzie Delta are such that the construction of such a line cannot be recommended. It could mean the gradual disappearance of the largest remaining caribou herd in North America and many other forms of wildlife.
>
> Offshore oil and gas developments in the Beaufort Sea may result in accidents which could eliminate life in this sea for many years and could lead to the permanent loss of the white whales and seals and possibly even changes in the Arctic climate...
>
> If the resources in the Beaufort Sea are indeed as large as estimated...then it is obvious that the environmental and social impact on the Western Arctic Region and Inuvialuit will be an order of magnitude larger than any other developments in the North on other native people.
>
> Measures to protect the environment and the Inuvialuit would therefore have to be more stringent and extensive than any other previous land settlement (COPE 1977b: 1,11-12).

These expectations gave rise to proposals and later provisions in the IFA that established Inuvialuit land ownership, harvesting rights and the management of wildlife, resources and the environment as the foundation of the IFA. Importantly, they did more than bring new financial resources to support an increased level of land and wildlife management in the Western Arctic. They also established a new approach to wildlife management in the region.

This latter point has often been ignored or misunderstood by government agencies implementing the IFA and by many of those who have written on the subject of IFA implementation. But it is a critical one in understanding the IFA's management regime. The IFA is often viewed and portrayed as having created new institutions to fill a management vacuum. In turn, its co-management institutions are viewed as filling an intermediate and mediating role between government and aboriginal management institutions. The IFA did much more than this: in establishing specific harvesting rights for the Inuvialuit it altered the context of wildlife management and of

necessity established a new approach for wildlife management to support and respect the use of wildlife that flowed from these rights.[4]

The IFA represents a turning point in wildlife management in the Western Arctic, not the mere extension of past practices and improvement of effort. A significant challenge in implementing the Agreement has been recognizing this fact and meeting the management and legal obligations and requirements that derive from it.

The expectations of the Inuvialuit for more "extensive and stringent" measures to protect the environment and their traditional use of land and wildlife gave rise in their land claims proposal to the early identification of several important elements of a land and wildlife regime for the Western Arctic. These included the following (COPE 1977a):

- clearly recognized hunting, trapping and fishing rights together with strong management control over these activities,
- fee simple ownership absolute over minimum areas of land necessary for either harvesting wildlife or the production of wildlife,
- better wildlife management and research to protect traditional activities and the subsistence way of life, and
- better planning and management for use of all lands and the offshore sea in the Western Arctic.

In addition, the Inuvialuit identified the need for a strong voice in decision-making and forums outside of the Western Arctic that affected the management of migratory wildlife populations that they relied upon. This especially applied to the affect of international agreements on Inuvialuit harvesting activities in the Western Arctic.

> With respect to hunting rights, international agreements on wildlife management present the greatest potential problem for the Inuvialuit. They are also problematic in terms of gaining access to decision-making (COPE 1977b: 20).

It is a significant feature of the Inuvialuit land claims experience that these basic elements of the proposed framework for a management regime over land, wildlife and resources remained largely intact seven years later in the IFA. The expectations that the Inuvialuit had of this regime and the priority they assigned it were made very clear from the beginning:

> The Inuvialuit see their security for the present and for the future as being vested in the preservation of the wildlife populations. In the face of increased threats to the wildlife and wildlife habitat, the Inuvialuit see

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[4] For general comparisons with the affect of *R. v Sparrow* on wildlife harvesting and wildlife management and enforcement see 2.3.5 and 2.7.1 below.

> the means to achieve conservation as being through adequate wildlife research, management and enforcement. This is a priority of the Inuvialuit, but has not yet been a priority of government (COPE 1977a: 28).

The clarity and coherence of these initial expectations as articulated by COPE on behalf of the Inuvialuit are important to a reading of the IFA in order to understand the intention of its provisions. This is an important and much debated consideration associated with the implementation of the IFA by a range of government agencies and the Inuvialuit. Unfortunately, and perhaps inevitably, the views of government have often been less accessible in attempting to grasp the intentions of specific IFA provisions, largely because the corporate memory and articulation of these views are less clear, less consistent, less coherent, less evident and less accessible. This has made implementation of the IFA's wildlife and environmental regime considerably more difficult.

2.2 The Context of Implementing the Settlement

In comparison to the comprehensive claims agreements that followed it, the IFA was negotiated in record time. Nonetheless, in spite of the clear sense of purpose with which the Inuvialuit pursued their land claim, there was much to compromise and obscure their intentions over the seven years of negotiations: governments and government negotiators changed, negotiating mandates and positions altered, and the 1978 Agreement-In-Principle was rejected by Canada. The negotiation of the IFA was at times highly adversarial, both between the Inuvialuit and government and between and within the three governments (Canada, Northwest Territories and Yukon) that were party to the Agreement. Government positions were often advanced without a full appreciation by the agencies affected of the practical implications and costs associated with the implementation of various provisions. Competing interpretations of obligations and responsibilities established under the Agreement were not fully addressed, while each party managed to find some degree of comfort in its own view without insisting on collective agreement as to the meaning of specific provisions. The small teams of negotiators representing each party to the Agreement, for the most part, moved on to other assignments after the signing of the Agreement.

The difficulty of the transition from the negotiation of land claim agreements to effective implementation was acknowledged in the report of the Federal Task Force to Review Comprehensive Claims Policy. It noted:

> Once the negotiations are completed and agreements have been signed, the real challenge begins - the implementation of the agreement. After the signing of treaties or recent land claim agreements, the federal government, lacking a strategy or structure for implementing the terms, often has failed to meet either the spirit or the letter of its commitments.

> Little consideration has been given to the administrative and other costs of implementation. Some of the problems of implementation would be overcome if government were to consider, before the completion of negotiations, how and when implementation would take place. The key question of "who will be responsible for implementation?" along with the mechanism for implementation, should be considered before negotiations are completed (Task Force 1985: 94, 95).

The absence of a formal implementation plan for the IFA was noted by the Auditor General in his 1990 report as contributing to many of the problems associated with implementation, including *ad hoc* planning and delays in releasing implementation funds (Auditor General of Canada: 1990: 461). While an implementation plan might have addressed certain difficulties related to the allocation of financial resources to support the establishment of the IFA's wildlife and environment regime, it does not necessarily produce an understanding of the agreement by those holding responsibilities for implementing it.[5]

The limited and narrow working understanding of the Agreement by the parties has represented one of the greatest challenges in implementing the IFA's wildlife and environment provisions. Many of those who negotiated these provisions either did not or could not convey to those with responsibilities for implementation their understanding of what they had negotiated. For Inuvialuit negotiators this was less of a problem in that they continued to play an important role in the development of institutions established under the IFA. But, again, the challenge for them has been one of conveying the intent of the IFA's provisions to those involved in implementation, be they other Inuvialuit, staff working for Inuvialuit institutions, or government officials.

For government negotiators, maintaining an involvement with the Agreement from negotiation through implementation has been virtually impossible with several notable exceptions. In these instances, their direct participation in negotiations on behalf of government agencies that later received significant implementation responsibilities has produced notable progress based on a solid and shared understanding with the Inuvialuit of the intent of the provisions to be implemented. More generally, however, government agencies have had too few individuals with a corporate knowledge based on understandings reached in negotiations to seek their advice and guidance on matters related to implementation.

Much of the IFA's wildlife management regime assumes and requires a high degree of collaboration and cooperation between the Inuvialuit and government to be successful. Differences between the parties in interpretation of the IFA's provisions, differences in assigning priority to implementation tasks and concerns, and differing levels of

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[5] The recent CYI, Gwich'in, Sahtu and Nunavut claims agreements have been appended with implementation plans or contracts. The effectiveness of these plans in facilitating implementation has yet to be determined.

commitment to developing new institutional arrangements have been apparent in implementing the Agreement. This is not surprising given the diverse circumstances and concerns of those involved in implementation. The Inuvialuit and those who work closely with them in IFA-based institutions (including consultants, resource persons and government officials) and on IFA-funded wildlife research programs in the Western Arctic share a greater convergence of views on the IFA's management regime and a greater familiarity with and knowledge of the provisions of the Agreement than those representatives of territorial and federal governments living outside the Inuvialuit Settlement Region (ISR). For the former, the IFA is the central legal and institutional framework from which they work. For the latter, competing national and regional priorities, agency responsibilities and legal obligations often compromise their familiarity with the Agreement and their commitment to its implementation. Interestingly, it can be argued that the commitment of some government agencies both inside and outside the region to implementing the IFA's provisions is directly proportional to the net additional funding that they have received for meeting their statutory obligations and responsibilities. In other cases, even the receipt of implementation funds has not been sufficient for some agencies to pursue their IFA obligations and responsibilities with any level of commitment and effort beyond what is required for periodic "issue management" and token appearances. This raises interesting questions with regard to the standing of legal obligation as a factor in motivating implementation of responsibilities and related measures. Is legal and constitutional obligation adequate incentive for government to make the Agreement work? It also begs the question of whether the goals of the Agreement and the intent of specific provisions are being achieved.

It is apparent that, in the context of implementation and in spite of repeated protestations from many quarters of government to the contrary, the IFA cannot speak for itself. It is not transparent and does not provide a self-evident display of its intentions and purposes. This is not a failure of the IFA. It is a feature of all that is written. The slippage from the high mark of the collective understandings reached between the Inuvialuit and government of the rationale and purpose behind many of the provisions of the IFA was both immediate and rapid. The significance of these understandings is apparent in considering the high value that is placed on the views of a few widely respected members of the Inuvialuit and government negotiating teams by the parties when asked to recall the intent of particular provisions so as to clarify what was meant. The value of building and maintaining a common and shared understanding of the meaning of these provisions is well appreciated in considering the costs of arbitrating differences.

For some in government the implementation of the IFA appears to have provided an opportunity to regain ground that was viewed as lost in the negotiations. For some Inuvialuit the frustrations of implementation have produced knee-jerk desires to amend

their Agreement. Proposals[6] by external researchers, evaluators and management consultants to alter or overhaul the wildlife and environmental management institutions negotiated under the IFA tend to either diminish or grossly distort the meaning and significance of the agreement that created them. They ignore the hard fact that the Agreement represents a political settlement between the Inuvialuit and three governments whereby the former accepted the extinguishment of their aboriginal title in exchange for certain harvesting rights, ownership of surface and subsurface lands, and institutional arrangements that would allow them to manage the wildlife, resources and the environment of the Western Arctic. The protection of the IFA's provisions remains an important consideration and challenge for the Inuvialuit. The IFA can be viewed as the Inuvialuit constitution[7] and, as with any constitution, amendments should be treated with great caution and careful scrutiny. This view is closely held by those directly involved in the negotiations, especially the Inuvialuit.

Proposals for amendment have generally been treated with great caution by most Inuvialuit. While difficult to document, this may stem from the belief that proposals for amendment should be based on a full and demonstrated understanding of the existing provisions for rights, obligations and responsibilities. Nine years after the signing of the IFA, implementation has demonstrated that considerably more work is required between the Inuvialuit and government if a common working understanding of its provisions and their practical effect is to be achieved.

The Agreement was amended for the first time in 1987, largely to clarify minor instances of confusing or inappropriate language. Future amendments are contemplated and carry with them the cautions mentioned.

The Supreme Court of Canada has also determined that treaties and statutes relating to aboriginal peoples must be liberally and generously construed.[8] The Federal Court of Appeal has confirmed that a liberal and generous interpretation must be given to

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[6] For instance, Peat Marwick (1987: III.5) refers to suggestions for the operational merging of the Wildlife Management Advisory Councils (Northwest Territories and North Slope) and the Fisheries Joint Management Committee, the screening and review boards and the different secretariats. Robinson (1992) suggests the establishment of an elders' council to mediate disputes. Winn (1991) recommends transfering control of the Joint Secretariat to the Inuvialuit Game Council, a suggestion completely contrary to suggestions by others that the two bodies should be operationally more independent.

[7] "The Agreement is the Inuvialuit's constitution. It defines who they are and what institutions represent them. It defines their relationship as a distinct people with others in Canada and defines the relationship of their institutions with those of governments. The Agreement supersedes all other laws and enjoys protection under the Canadian constitution as an existing Aboriginal right. It, therefore, will persist for a very long time as the authoritative touchstone for the comprehensive range of subjects it covers" (Delury 1993: 1).

[8] See *A.G. (Quebec) v. Eastmain Band et al.*, F.C.A., C.F. No. A-1071-91 (Decary, J.A.); *Sparrow v. The Queen*, (1990) 1 S.C.R 1075; *R. v. Horseman*, (1990) 1 S.C.R. 901; *Mitchell v. Peguis Indian Band*, (1990) 2 S.C.R. 85; *Simon v. The Queen*, (1985) 2 S.C.R.387; *Nowegijick v. The Queen*, (1983) 1 S.C.R. 29.

modern treaties as well.[9] Section 35(3) of the Constitution Act (1982) defines modern land claim agreements as "treaty rights" and the argument is made that "this status may also mean that the Inuvialuit will gain the benefit of a 'fair, large and liberal construction' of the provisions of the IFA in their favour" (Thompson 1991: 139).

These judgments and arguments, and the constitutional status the IFA enjoys, have not always ensured a constructive and generous interpretation of the IFA by government in the eyes of the Inuvialuit. On two occasions since the signing of their Agreement, the Inuvialuit have pursued arbitration provided for under the IFA (s. 18) on matters related to the interpretation and application of certain provisions and the failure of government to live up to assigned legal obligations. In the one case that resulted in a formal arbitration hearing, Canada argued that the IFA "must be given a narrow construction, " while the Arbitration Board itself ruled that "there is considerable legal jurisprudence to the effect that treaties and statutes relating to aboriginal peoples must be liberally and generously construed" (Arbitration Board 1994: 8). With respect to the broader ruling of the Arbitration Board, Canada has filed notice reserving the right to appeal to the Federal Court. Whether the ruling on this particular issue will be appealed is not presently known. Although the IFA itself does not contain any provisions or conditions limiting the interpretation of its provisions, more troubling is a provision of the CYI Umbrella Final Agreement that may be more representative of the federal view on the subject of interpretation:

> There shall not be any presumption that doubtful expressions in a Settlement Agreement by resolved in favour of any party to a Settlement Agreement or any beneficiary of a Settlement Agreement (s.2.6.3).

The arbitration process is an expensive and time-consuming one, and is a mechanism of last resort. In the simplest of terms it can be treated as a basic indicator of the relative satisfaction that the Inuvialuit hold with regard to the implementation of their claim. The more it is invoked for the settlement of outstanding differences, the more it demonstrates that understandings reached through negotiations must be carried forward in an atmosphere of cooperation, good will and firm commitment, otherwise the negotiations themselves will have achieved only a fleeting success and foundered on some of the very issues where certainty and resolution were most desired by the government and the Inuvialuit alike.

It is clear from the expectations attached to their land claims proposal that the Inuvialuit have the most to lose if implementation fails to meet the goals and intentions of the Agreement's wildlife and environment provisions. Ultimately, it is the Inuvialuit who have had to work hardest to establish the meaning and practical effect of their Agreement in order to realize its benefits. The success of the government agencies and Inuvialuit and co-management bodies with implementation responsibilities in meeting

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[9] See *A.G. (Quebec) v. Eastmain Band et al.*, F.C.A., C.F. No. A-1071-91 (Decary, J.A.).

the Agreement's wildlife management objectives and in fulfilling the harvesting rights established there will best be determined by the Inuvialuit beneficiaries themselves.

2.3 Definitions and Their Significance

Several definitions in the IFA[10] are central and critical to shaping the implementation of the Agreement's wildlife and environmental provisions and the approach to wildlife management in the ISR. In a number of instances their meaning and their effect have been either a source of debate between the parties or ignored and forgotten by government officials working with competing interpretations or definitions from other legislation and policies. Nonetheless they do represent important legal features of the overall wildlife and environmental regime and establish some special guidelines for wildlife managers to follow.

2.3.1 Conservation

The IFA leaves no doubt as to the standing of wildlife and the environment in the Agreement. As one of three basic goals of the Agreement, Canada and the Inuvialuit agreed "to protect and preserve the Arctic wildlife, environment and biological productivity" (s.1 (c)). Following from this, the IFA defined "conservation" as "the management of the wildlife populations and habitat to ensure the maintenance of the quality, including the long-term optimum productivity, of these resources and to ensure the efficient utilization of the available harvest" (s.2).

This definition is important in several ways.[11] First, the Inuvialuit right to harvest is subject to the principle of conservation. As defined under the IFA, this requires consideration of the goals of "quality" and "optimum productivity" in the management of each population of wildlife. Since these terms are not defined in the IFA or fixed in their meaning, it falls on the Inuvialuit, government and co-management bodies to explicitly address them and factors related to them. Until such time as harvest levels of a species of wildlife have a significant impact on the overall population, these definitions will have little practical effect for harvesters. At that time, however, they will require full attention in the development of wildlife population management strategies in determining harvesting quotas and longer-term guidelines that would apply to Inuvialuit harvesting rights. Additionally, they could be a consideration in assessing the potential impacts of commercial developments on wildlife populations.

In the meantime, the IFA provides the various management agencies, and most notably the co-management institutions it established, with the opportunity and the flexibility to

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[10] All of the IFA's definitions are set out in section 1 of the Agreement.

[11] The implications of the IFA's definition of conservation are complex and have rarely been fully appreciated. I am indebted to Bob Delury and Gerald Yaremchuck for their insights on this discussion.

consider how these terms will apply in various wildlife management strategies and to determine what wildlife and habitat are being managed for and according to what priorities, given changing environmental circumstances, development prospects and Inuvialuit harvesting preferences.

The definition of conservation is also important in recognizing harvesting activities as an essential element of conservation. By ensuring the "efficient utilization of the available harvest" the IFA's wildlife management regime is also required to regulate harvesting on the basis that the available harvest is utilized and not wasted or limited by other considerations such as a lack of knowledge or information about the available resources or the advocacy of animal rights activists.

Through its definition of conservation the IFA established a clear link between the management of wildlife and habitat, requiring that wildlife habitat be managed with wildlife on equal and integrated basis.[12] The Agreement recognized and sought to overcome the historic difficulties associated with divided jurisdictional responsibilities between the management of wildlife and habitat. Short of achieving the consolidation of wildlife and habitat management responsibilities under one jurisdictional authority, the Agreement requires a concerted effort to integrate them across government agencies. Again, the co-management institutions established under the IFA have an obvious and important role to play in this regard.

2.3.2 Wildlife

"Wildlife" in the IFA refers to "all fauna in a wild state other than reindeer" (s.2). According to this definition fisheries management is explicitly integrated with and subject to the general provisions of wildlife management as set out in the Agreement, notwithstanding a separate management institution and specific provisions relating to fisheries.

2.3.3 Subsistence Usage

As defined in the IFA "subsistence usage" encompasses both the harvesting of wildlife for personal use as food and clothing as well as for trade, barter and sale, subject to the prohibitions of the Migratory Birds Convention Act, international conventions and other provisions in the Agreement (s.2). In doing so it introduces a means for wildlife management to overcome a traditionally narrow and inconsistent management approach employed historically by government, which attempted to strictly segregate aboriginal harvesting for domestic consumption from harvesting for trade, sale and barter.

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[12] In 1990, the *Wildlife Policy for Canada* gave formal recognition federally, provincially and territorially to the requirement for wildlife policy to include by definition the consideration of wildlife and habitat.

Historically, while governments on the basis of their jurisdictional authority sought with very mixed results to regulate aboriginal harvesting activities related to commercial transactions, they inevitably interfered with domestic harvesting activities outside of government's jurisdiction to regulate. The systems of production and consumption that characterize aboriginal subsistence have resisted and not lent themselves to management under such an approach. Subsistence usage as defined under the IFA, along with other provisions under the Agreement, attempts to provide a more coherent and comprehensive approach to the regulation of Inuvialuit use specifically and the management of wildlife generally.

2.3.4 Exclusive Harvesting Rights

Under the Agreement, the "exclusive right to harvest" is held by the Inuvialuit for many species of wildlife. It is defined so as to give them the sole right to harvest wildlife species so designated in the IFA and subject to other provisions modifying that right in the Agreement (s. 2). Importantly it also gives the Inuvialuit the right to the entire total allowable harvest and to permit non-Inuvialuit to harvest the wildlife so designated. The extent of this right, the provision that subjects Inuvialuit harvesting to conservation, and the right to suballocate wildlife for which they have exclusive rights to non-Inuvialuit, together gave the Inuvialuit a powerful means for regulating and managing the use of wildlife in the ISR.

2.3.5 Preferential Harvesting Rights

The "preferential right to harvest" wildlife includes the right to harvest wildlife for subsistence usage, and, subject to conservation, to allocate wildlife adequate for Inuvialuit subsistence usage before it is allocated for other purposes in areas where the Inuvialuit have harvesting rights (s. 2). This definition confirmed the priority of subsistence usage over other uses and ensured that Inuvialuit subsistence requirements were fully met before other uses and other users would have access to wildlife.

Explicit definitions of exclusive and preferred harvesting rights are unique to the IFA, although other comprehensive claims agreements employ these terms. Inuvialuit preferential harvesting rights meet a minimum standard that is consistent with *R. v. Sparrow,* which makes available any wildlife beyond what is required for the purposes of conservation and within the total allowable harvest entirely available in the first instance for subsistence purposes.[13] Together with the provision of exclusive harvesting rights to the Inuvialuit for certain wildlife species both on Inuvialuit private lands as well as on Crown lands throughout the ISR, the IFA goes well beyond the minimum entitlements to subsistence wildlife harvesting allowed through the aboriginal

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[13] See *R. v Sparrow, Canadian Native Law Reporter* (1990), 3 C.N.L. R., p. 185: "If .... there were still fish after the Indian food requirements were met, then the brunt of conservation measures would be borne by the practices of sport fishing and commercial fishing."

rights recognized in *Sparrow*. This may be due in part to the lack of competition and pressure from other third party users of wildlife resources in the ISR.

In other regions and jurisdictions where political pressures from commercial, sport and non-aboriginal interests are more pronounced, comprehensive claims agreements have not always been as generous with respect both to achieving the minimum standard for subsistence requirements established by *Sparrow* and to guaranteeing full access to some species of wildlife for non-subsistence (commercial) purposes by aboriginal people, not just before the needs of non-aboriginal people are met, but exclusive of their interest as well.[14] Nor does the IFA by definition restrict Inuvialuit preferential harvesting rights to subsistence use only, but allows for the preferential harvesting of wildlife species so designated for sport and commercial purposes as well, provided that subsistence requirements are met first.

The IFA is particularly noteworthy with regard to the latitude of uses permitted by Inuvialuit harvesting rights, the large areas of both Crown and private Inuvialuit lands over which these rights apply and the flexibility in defining management outcomes.

2.4 Land Selections, Quantum and Management

As with wildlife, the land rights and land management provisions of the IFA are the foremost features of the Agreement. The financial compensation paid under the Agreement, while significant, does not occupy the same standing as the land and

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[14] The Council for Yukon Indians agreement is suggestive of the strong political influence of third party interests on negotiations not simply with respect to the limited opportunities for commercial harvesting, but with respect to meeting subsistence needs as well: "When opportunities to harvest Freshwater Fish or Wildlife are limited for Conservation, public health or public safety, the Total Allowable Harvest shall be allocated to give priority to the Subsistence needs of Yukon Indian people *while providing for the reasonable needs of other harvesters*" [emphasis added] (Indian and Northern Affairs Canada 1993c: s.16.9.1.1).

Treaty negotiations in British Columbia, which are subject to third party scrutiny and political pressure far beyond anything witnessed in the northern claims negotiations, offer strong evidence that the ambit of aboriginal harvesting rights could be considerably narrower than what has been achieved previously. In the Nisga'a negotiations recognition of a commercial harvesting right for fish is under serious attack by third parties who fear constitutional entrenchment of such a right. While British Columbia and Canada have yet to take a final stance on the issue, it is clear that the provision of such rights in the northern land claim agreements is not regarded as binding or precedent-setting. This is a compelling reminder that land claims negotiations are fundamentally political negotiations. Appeals to legal and moral obligations have far less effect than the political circumstance in which any negotiations occur. Treaty negotiations in British Columbia will make this abundantly clear, especially where a provincial government is influenced by political constituencies which have no attachment to what has been negotiated previously and elsewhere.

wildlife provisions. Again, these are unique features of the IFA, which dominate the Agreement as they dominated the negotiations.

The extent of Inuvialuit land use and occupancy was well established when the Inuvialuit tabled their own land claims proposal with the federal government in 1977. Four years earlier, in 1973, in the same year that Canada released its federal claims policy, *In All Fairness*, and in the year that Inuit Tapirisat of Canada (ITC) undertook to negotiate a comprehensive claims settlement with Canada on behalf of all Inuit, ITC also proposed to the Minister of Indian and Northern Affairs that:

> research be undertaken to produce a comprehensive and verifiable record of Inuit land use and occupancy in the Northwest Territories of Canada. The record so obtained would delimit the present and past use and occupation of the land and marine environment and would categorize the uses which any particular area served. In view of the continuing role which land plays in defining the cultural and ecological circumstances of Inuit society, the research was also to provide an explicit statement - *by the Inuit* - of their perception of the man-land relationship (Freeman 1976:19).

The research was conducted under the scrutiny of a steering committee which met to oversee the interests of the federal government and ITC in the project. The results were published in three volumes as the Inuit Land Use and Occupancy Project under the authority of the Minister of Indian and Northern Affairs (Freeman 1976). Along with the other Inuit regions, this information provided a detailed and extensive account of the extent and nature of Inuvialuit land use in the Western Arctic over a period of approximately seventy years. It became the basis for legally defining the area that is recognized and described in the IFA as the Inuvialuit Settlement Region.

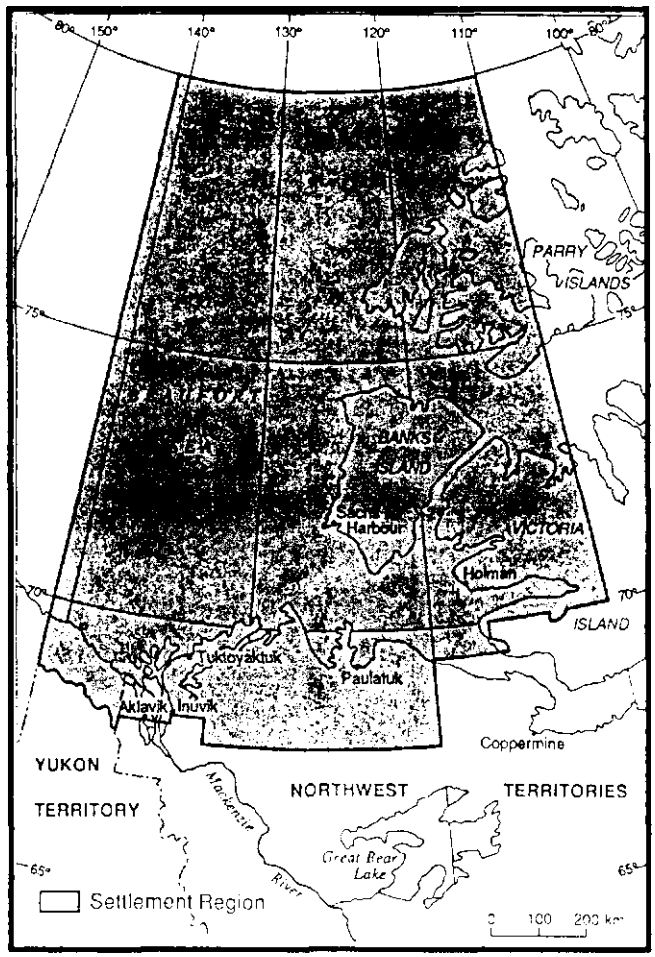

Figure 1 Inuvialuit Settlement Region

What was articularl noteworth about this work was its emphasis on verification of land use and

occupancy, and the fact that it was carried out under the auspices of a joint Inuit-government steering committee. These features were helpful in negotiating the land selections that were ultimately retained by the Inuvialuit as private lands, and in establishing the extensive area of Crown lands over which Inuvialuit harvesting and wildlife management interests were recognized as applying.

The Inuvialuit Settlement Region (ISR) encompasses an area representing most of the lands traditionally used and occupied by the Inuvialuit. It encompasses the Western Arctic Region of the Northwest Territories and the North Slope of the Yukon - an area extending from the Alaska-Yukon border across the coastal plain and near and offshore waters, including the offshore islands, crossing the Mackenzie Delta and reaching eastward to Victoria Island. Traditionally, the Inuvialuit used and occupied an area of about 435,000 square kilometres (Indian and Northern Affairs Canada 1984b: 4).

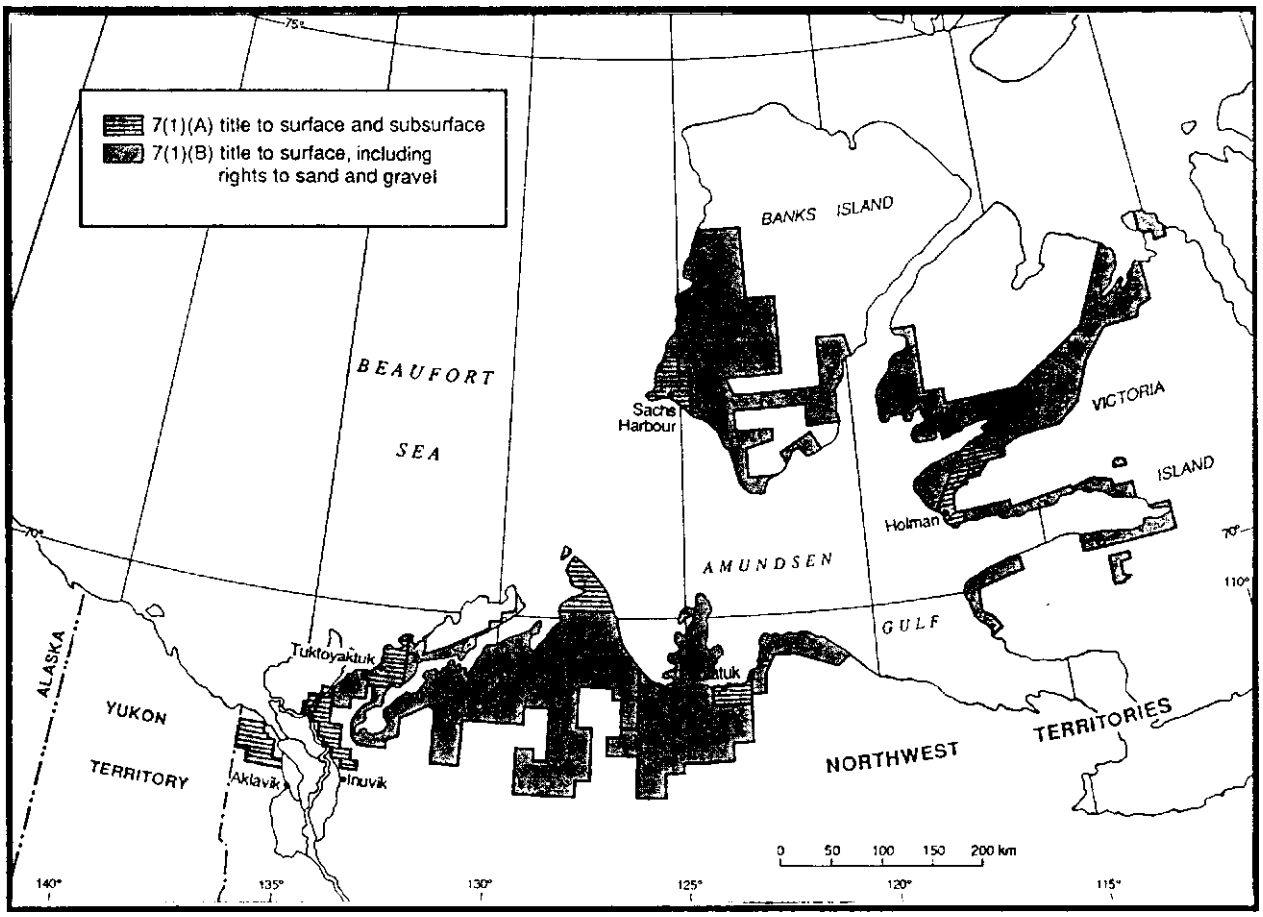

Figure 2 Inuvialuit Lands - 7(1)(a) and 7(1)(b)

Under the IFA they received title to about 91,000 square kilometres of land, holding full surface and subsurface rights to almost 12,800 square kilometres,[15] and surface

[15] Known as the 7(1)(a) lands according to that section of the IFA granting rights to these lands.

and subsurface rights to sand and gravel over another 78,200 square kilometres[16] with the Crown retaining rights to oil and gas. This represents about 20 percent of the ISR. Lands selected by the Inuvialuit represent a series of continuous blocks generally running the length of the mainland coast from Tuktoyaktuk eastward to Paulatuk, and along significant portions of the coastlines of Banks and Victoria Islands, with Inuvialuit communities as their focal point. From these long shoreline strips, someland selections extend far inland.[17]

Title to these Inuvialuit lands is held in fee simple absolute by the Inuvialuit Land Corporation, which is owned and controlled by the Inuvialuit beneficiaries to the Agreement. Settlement lands can be leased, but they can only be sold to other Inuvialuit or to the Crown. As with all private lands, the laws of general application continue to apply and the Crown retains ultimate jurisdictional authority for environmental management.

In contemporary discussions of aboriginal land ownership criticism has been leveled at those claims that extinguished aboriginal title. Notwithstanding the fact that those aboriginal people that chose to settle their claims before 1986 had no other choice under federal claims policy other than to accept extinguishment, this discussion often tends to overlook, at least in the case of the Inuvialuit settlement, what was achieved.[18] It is remarkably significant that even in the policy context of those claims settled after 1986 where extinguishment on designated settlement (private) lands was not required, the Inuvialuit retained extensive preferential and exclusive harvesting rights, not just on their private lands but throughout the remaining 344,000 square kilometres or almost 80 percent of their traditional territory composed of Crown land. It is equally noteworthy that the Inuvialuit assumed sole responsibility for regulating their own harvesting activities over this entire area.

What is significant about the selections of continuous blocks of private land across the ISR is that they stand in marked contrast to the checkerboard-like selections that characterize the Alaska claims settlement area to the east. This approach to land selection accomplished two things from the perspective of Inuvialuit land management: first, it reduced the potential negative impacts of future public easements and access on Inuvialuit lands by limiting the Crown lands bisecting Inuvialuit lands. Unlike the historic approach of government to land management where small parcels were

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16 Known as the 7(1)(b) lands according to that section of the IFA granting rights to these lands.

17 See Fisheries Joint Management Committee, n.d., *Inuvialuit Settlement Region: Boundary and Private Lands Within.* Map. Inuvik, N.W.T.

18 The Inuvialuit Final Agreement was the only comprehensive claim signed under the 1981 federal claims policy called *In All Fairness*. This policy was a more explicit restatement of the 1973 federal policy that required extinguishment of Aboriginal title and rights. In 1986, federal policy was changed again, and this condition modified to allow Aboriginal title to continue on designated settlement land.

allocated for development or townships established with public easements every mile or at regular intervals, [19] the extensive and continuous tracts of private lands held by the Inuvialuit accommodated only existing easements and reservations. Secondly, and by virtue of this geographical arrangement, developers (commercial and government) were required to deal directly with the Inuvialuit if they required access across their lands or alienations in support of future activities.

While the ownership of Inuvialuit lands is subject to existing alienations, rights of way, and easements, in the event that lands are required for public purposes, these lands can only be acquired if government offers suitable alternative lands or as a last resort financial compensation that reflects the value of the land for hunting, trapping and fishing. On Inuvialuit lands where hydrocarbon or mineral rights existed and Inuvialuit held only surface rights, access for development of these resources was guaranteed, as was access for developers across Inuvialuit lands, subject, however, to an important requirement. Under section 10 of the IFA, the Inuvialuit hold the right and developers are obligated to negotiate "participation agreements" that would include rents for surface use, wildlife compensation, restoration and mitigation, and special arrangements for employment and training programs and other participation benefits.

The use of an Inuvialuit body, the Inuvialuit Land Administration, and the use of participation agreements to negotiate with developers terms and conditions of public and commercial access across Inuvialuit private lands stands in contrast to the public surface rights boards established under some other comprehensive claims agreements. For instance, under the Council for Yukon Indians (CYI), Gwich'in, Sahtu and Nunavut agreements, membership on these bodies[20] is shared between representatives of the Crown and the designated aboriginal organizations, whose responsibility it is to establish the terms and conditions for rights of access on both settlement (private) and non-settlement (public) lands. The terms and conditions of access are generally limited under these agreements to those related to impacts on wildlife, habitat, and harvesting and compensation for damages.[21] The Nunavut agreement is an exception (s.26.2.1) in that it also requires the negotiation of an Inuit Impact and Benefits Agreement between a developer and the designated Inuit organization on Inuit-owned lands for the provision of benefits (approximating those in the Inuvialuit Participation Agreements).

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[19] This approach is, perhaps, best represented in the lands selected under the Alaska Native Claims Settlement. In the Nunavut area to the east, smaller parcels of land were selected to ensure that sites with established wildlife, habitat, cultural and harvest values were retained by the Inuit, along with areas of associated mineral and development potential. Under the Yukon Indian claim, the selection of relatively small parcels of land was negotiated on a similar basis, as well as to ensure that settlement lands would not represent a barrier to existing and future public and commercial access for development.

[20] Under the Nunavut agreement it is referred to as a "surface rights tribunal" (s.21.8.1).

[21] For the types of terms and conditions contemplated under the Sahtu agreement see Indian and Northern Affairs Canada 1993b: 21.1.7; for the Gwich'in agreement see Indian and Northern Affairs Canada 1992: 20.1.7; for the CYI agreement see Indian and Northern Affairs Canada 1993c: s.6.6.0.

Much of the strength of the IFA's land management regime, then, can be viewed as resting on four main elements:

- the contiguous extent and quantum of its private land selections,
- the establishment of an Inuvialuit body to negotiate terms and conditions with developers for right of access,
- the requirement of a participation agreement as a condition of access with provision for a range of benefits including social and economic benefits as well as wildlife compensation, restoration and mitigation, and
- the requirement that development proposals for Inuvialuit lands are subject to environmental screening and review.

Where rights of access are required across Crown lands lying outside the large blocks of Inuvialuit lands, they are acquired through the established government agencies of the Crown. The Inuvialuit interest in proposed development activities on Crown lands in the ISR is conveyed through Inuvialuit participation in the Environmental Impact Screening Committee (EISC) and Environmental Impact Review Board (EIRB) established under the IFA. These bodies assess proposed development activities throughout the ISR to determine the significance of impacts on wildlife and the environment, recommend terms and conditions relating to mitigative and remedial measures necessary to minimize any negative impact on wildlife harvesting, and estimate the potential liability of a developer under a worst-case scenario for the loss of wildlife and habitat, damage to property and interference in harvesting activities resulting from development activities. The EISC and EIRB are important tools of land and resource management throughout the ISR. They are treated more extensively below.[22]

The land quantum negotiated under the IFA as Inuvialuit lands included the surface area of water bodies found on these lands. The Crown retained ownership of the water (s.7(3)) and the right to control water and water beds for the primary purpose of managing fish and migratory birds (s.7(85)). But under the IFA, the beds of lakes, rivers and other water bodies on Inuvialuit lands belong to the Inuvialuit (s.7(2)), subject to a narrow access strip around the seacoast and shorelines for travel, recreation and emergency purposes (s.7(13)).

The question has been raised as to whether the IFA grants the Inuvialuit ownership of riparian lands and, as a consequence, riparian rights over water flowing on Inuvialuit lands (Muir 1991). It is enough to observe here that practically this provision enabled the Inuvialuit to maintain a consistent, continuous and extensive form of ownership and management over different types of land including fee simple absolute ownership of "surface" lands and the beds of water bodies. It also ensured Inuvialuit management responsibility over new surface areas that emerged with the lowering of water levels

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[22] See 3.4.3

and the drying of creek and stream beds and reinforced strong Inuvialuit control over access across Inuvialuit lands by governments and third parties.

Inuvialuit rights arising from their ownership of the beds of water bodies are consistent with their rights of land ownership. To date, the Inuvialuit have had no reason to assert the existence of riparian rights on their lands - rights that, among other entitlements, would give them the exclusive right to fish and the right to receive waters flowing through or by their lands in a state where the quantity and quality was not negatively affected by upstream riparian owners through reasonable and normal use.

With respect to fishing, the IFA clearly asserts that:

> Inuvialuit ownership of the beds of rivers, lakes and other water bodies does not provide the Inuvialuit with a proprietary interest in fish nor give them exclusive right to harvest fish (s. 7(90)).

However, the IFA assigns the Fisheries Joint Management Committee the responsibility for establishing a public registration system for fishing on Inuvialuit lands and for regulating the public access for the purpose of fishing.[23]

In providing the Inuvialuit with ownership to lands - largely uninterrupted by alienations - completely surrounding many important water bodies used by the Inuvialuit, land-based developments either affecting or requiring access to them were controlled under the IFA's land management regime.

With respect to water, land and other elements of the environment potentially affected by a "development of consequence" outside of the ISR, the IFA enabled the Environmental Impact Screening Committee to consider these as well to determine whether the development would significantly and negatively affect present or future wildlife harvesting within the ISR (s.13(7)). To date no screenings have been carried out pursuant to this provision, although the provision has been cited to indicate and add legitimacy to Inuvialuit interest and concern over potential developments outside Canada that could negatively affect migratory wildlife harvested in the ISR.[24]

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[23] Section 14(64)(d) requires the FJMC to establish and maintain a public registration system on all Inuvialuit lands; Section 14(64)(e) requires the FJMC to "restrict and regulate the public right to enter on Section 7(1)(b) lands [primarily characterized by surface title holdings] for the purpose of fishing where such restriction and regulation is required for the conservation of a stock, to prevent serious conflict with Inuvialuit activities, to prevent interference with other Inuvialuit use of the land to which they have title or to prevent unreasonable interference with Inuvialuit use and enjoyment of the land."

[24] The Wildlife Management Advisory Council (North Slope) has cited this and related provisions to indicate the interest of the Inuvialuit, Canada and the Yukon in the potential negative impacts resulting from proposals for oil and gas exploration on the calving grounds of the Porcupine Caribou herd in the Arctic National Wildlife Refuge in Alaska.

Lands were selected by the Inuvialuit on the basis of certain criteria, which included (s.9(2)):

- lands that were important because of biological productivity or hunting, trapping and fishing activities,
- lands that offered other economic opportunities,
- lands that were important because of the production of wildlife and the protection of the habitat, and
- lands that represented historic sites, cultural features and burial sites.

In selecting their lands and the quantum they required, the Inuvialuit assigned priority to the criteria of the land's productivity and two important features of it: areas that were important to producing wildlife and areas that were important for harvesting wildlife. With respect to the first the Inuvialuit argued that the lands and waters in the Western Arctic Region were characterized by biologists as being low productivity areas compared with other parts of Canada as a result of a short growing season, low temperature, low sunlight levels, and low nutrient levels. In addition, biological productivity was subject to a high degree of geographical, seasonal and yearly variation (COPE 1977c: 1).

With respect to the second, they argued that areas of relatively greater biological productivity were not necessarily areas of high harvest potential given other non-biological considerations such as accessibility and the adequacy of the site for food caches and camps. Additionally, they argued from a management perspective that for the purposes of conservation, the requirements of the general ecosystem, and the needs of harvesters in other regions dependent on the same species population, the total harvest potential for an area could not and should not ever be equated with the total biological production for the area (COPE 1977c: 7).

On these grounds the Inuvialuit argued that the per unit value of their land could not be compared with southern Canadian or subarctic circumstances. The factors of low biological productivity and their harvesting requirements based on principles of conservation and resource sharing necessitated their ownership of and access to large areas of land, larger for instance than the areal extent of land previously negotiated under the James Bay and Northern Quebec Agreement.

Many of their land selections were based on Inuvialuit knowledge of areas that needed protection to maintain biological productivity and a good range of harvesting opportunities. Some of these protected areas were given special designation in the IFA, most notably the area known as the Yukon North Slope, extending across the Yukon coastal plain from the Northwest Territories to the Alaska border. Others were chosen for protection under fee simple ownership and subject to a management regime grounded in special principles of conservation, which linked the management of

wildlife, habitat and harvesting with Inuvialuit participation in that regime and certain Inuvialuit harvesting rights.

2.5 Inuvialuit Harvesting and Related Rights to Wildlife

The Inuvialuit hold many rights with respect to wildlife in the IFA. They include provisions that establish the following for Inuvialuit harvesters:

- the exclusive and preferential harvest of certain species of wildlife throughout the Inuvialuit Settlement Region (ISR) (s.14(6)(a),(b), (c),(d)),
- the right to harvest by any method not conflicting with public safety or conservation (s.12(36),(37),(38)),
- the right to travel anywhere in the ISR and the right to build cabins for hunting, trapping and fishing (s.12(36)),
- the right to possess and transport harvested wildlife across jurisdictional boundaries (s.12(36)),
- the right to trade, barter and sell harvested wildlife (s.14(11)(12)(27)), and
- compensation for actual or future wildlife harvest losses (s.13(1)).

More specifically the IFA provides the Inuvialuit with exclusive harvesting rights for game on all Inuvialuit lands and for furbearers, including black bears, grizzly bears, polar bears and muskox, throughout the Western Arctic Region (that portion of the ISR lying in the Northwest Territories). It also provides the Inuvialuit with preferential rights to harvest all species of wildlife (including marine mammals and fish) throughout the Western Arctic, except migratory non-game birds and migratory insectivorous birds.

In the North Slope of the Yukon inside Ivvavik National Park and Herschel Island Territorial Park, the Inuvialuit hold certain exclusive harvesting rights subject to other provisions of the Agreement, and certain exclusive and preferential rights to harvest wildlife in the North Slope outside of the two parks.

The Agreement also provided for reciprocal arrangements between Inuvialuit beneficiaries and beneficiaries in adjacent land claim areas with respect to harvesting and wildlife management rights in areas of overlapping interest. These rights were subject to mutual agreement and limited to species and areas traditionally used by each. In the ISR other native groups were limited by the same restrictions that Inuvialuit harvesting rights were subject to, including conservation. In extending harvesting rights to beneficiaries of other claims, the subsistence requirements of these native groups were to be reflected in any subsistence quotas in the ISR and both were to be limited by conservation.

The IFA, in formally recognizing the identity of the Inuvialuit as aboriginal people of Canada, confirmed "their ability to participate in or benefit from any future

constitutional rights that may be applicable to them (s.3(6))" outside of their land claim agreement, for instance, recognition of an inherent right to self-government. It also ensured through s.3(12)[25] that neither the Northwest Territories nor the Yukon could assume new powers for game management that were inconsistent with the Agreement. This would include lifting existing restrictions (other than for conservation) on the territorial governments' ability to regulate aboriginal subsistence harvesting on unoccupied Crown lands outside of the ISR.[26] These provisions can be considered a form of guarantee or "legal backstop" that the most basic rights of the Inuvialuit as aboriginal people to hunt for subsistence purposes would not be diminished or lost.

The determination of Inuvialuit subsistence quotas and subsistence requirements in the IFA (s.14(36)(ii)) is notably different from that of other comprehensive claims agreements which established subsistence requirements as a "basic needs level" or a minimum harvest level tied to specific wildlife populations on the basis of current or recent harvests and current personal consumption.[27] The IFA does not cast Inuvialuit subsistence requirements in terms of fixed "floor level" needs for each species of wildlife, but in terms that optimize the flexibility of the Inuvialuit to meet their domestic and dietary requirements from different wildlife species and populations. This flexibility is achieved by setting subsistence requirements for specific wildlife species, populations and subgroups alongside three other important considerations:

- Inuvialuit usage patterns and levels of harvest of all wildlife (s.14(36)(ii)(b)),
- the availability of wildlife populations to meet subsistence usage requirement, including the availability of species from time to time (s.14(36)(ii)(d)), and
- projections for change in wildlife populations (s.14(36)(ii)(e)).

Together these criteria provide both the co-management bodies determining subsistence quotas and the Inuvialuit harvesters with the flexibility to distribute the Inuvialuit harvest selectively across different species or populations depending on the availability of wildlife populations and how different species respond to harvest pressures given the

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[25] S. 3(12) states: "Subject to the provisions of this Agreement and the Settlement Legislation, the governments of the Northwest Territories and Yukon Territory will continue to have the jurisdiction they have had with respect to game management and may continue to pass legislation with respect to game management that is not inconsistent with this Agreement and the Settlement Legislation."

[26] Under s. 18.3 of the *Northwest Territories Act* and under s. 19.3 of the *Yukon Act* the respective territorial governments are restricted from regulating Aboriginal subsistence hunting on unoccupied Crown lands except for conservation.

[27] The CYI, Gwich'in and Sahtu settlement agreements all utilize the notion of a basic needs level for establishing a minimum harvest allocation to the beneficiaries. The criteria referenced here are in the CYI agreement (Indian and Northern Affairs Canada 1993c: s.16.9.6). See also the Gwich'in agreement (Indian and Northern Affairs Canada 1992: s.12.5), the Sahtu agreement (Indian and Northern Affairs Canada 1993b: s.13.5), and the Nunavut agreement (Indian and Northern Affairs Canada 1993d: s.5.6.19).

time needed for population recovery.[28] This flexibility in defining and achieving management outcomes is a powerful tool that the IFA provides the co-management bodies to meet the harvesting requirements of the Inuvialuit.

As discussed above, these harvesting rights provided the Inuvialuit with a powerful tool of conservation by virtue of how these rights were defined and the extensive control of harvesting that was assigned the Inuvialuit for many species of wildlife. From the outset of their negotiations they were of the view that the health of wildlife, habitat and the environment that they depended on best rested with themselves:

> The link between the well-being of the wildlife and the well-being of the Inuvialuit cannot be overemphasized. The Inuvialuit are residents and the users of the renewable resources and therefore have a future stake in the well-being of those resources. They are closer to the resource thus able to maintain the resource better by responding to fluctuations in the resource faster and in appropriate manners (COPE 1977c: 1).

Through their ownership of land and through their harvesting rights, the IFA provided the Inuvialuit with new means for better protecting wildlife and habitat. Where the effect of these mechanisms was limited, they sought to establish additional mechanisms and institutions that would improve their participation in wildlife management across the ISR, shift certain responsibilities for management and make government jurisdictional authority over wildlife, environmental and resource management substantially accountable to them.[29]

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[28] For instance, subsistence quotas for fish and muskox might be adjusted upward to enable a higher harvest and to offset a lower subsistence quota on caribou allowing for a reduced recovery time for a depressed population. In the absence of established minimum harvest levels for each species, the Inuvialuit retained maximum flexibility for the distribution of their harvest across species, populations and subgroups, and significant upward or downward adjustments of subsistence or other harvestable quotas wherever they apply.

[29] The extent of Inuvialuit harvesting rights for the exclusive and preferential use of wildlife on private and Crown lands is exceptional when compared to other comprehensive claims agreements in Alaska and further south in the Yukon and Northwest Territories. As noted earlier this is in no small measure due to the limited influence of third party (non-native) hunting and fishing interests in the ISR. The extent of these rights is better appreciated when contrasted with the views of the Canadian Wildlife Federation - a body representative of these interests - on the subject of Aboriginal use and cooperative management: "... if Aboriginal people, living in a remote area of Canada have harvested a given wildlife resource for food, shelter or clothing since before the European settlers arrived in North America, they must continue to have the first allocation to this resource, as long as the resource can support the harvest and is still being used for these purposes only...No person should be granted exclusive rights to harvest or manage wildlife based on their aboriginal status, except on native reserves or other lands owned exclusively by aboriginal persons" (Canadian Wildlife Federation 1992: 2, 3). These views convey the most limited interpretation of *Sparrow* with regard to the recognition of an Aboriginal subsistence priority in "remote areas." More troubling is the absence of any recognition that *Sparrow* places the burden of proof on the Crown to justify any limitation on an existing Aboriginal right that is unreasonable, imposes undue

2.6 IFA-Based Institutions for Wildlife and Environmental Management

The IFA legally established a number of institutions to implement the wildlife and environmental provisions of the IFA and to assist in managing the resources of the region.[30] These institutions include Inuvialuit bodies (the Inuvialuit Game Council and Hunters and Trappers committees), five joint government/Inuvialuit bodies (Fisheries Joint Management Committee, Wildlife Management Advisory Council (NWT), Wildlife Management Advisory Council (North Slope), Environmental Impact Screening Committee, and Environmental Impact Review Board) and an Arbitration Board.[31] The joint bodies are composed of equal numbers of government and Inuvialuit representatives. All of the members of all of these IFA institutions serve in a part-time capacity. The role and function of each of these bodies is briefly described below as is the secretariat support to them.

Hunters and Trappers Committees (HTCs)

A Hunters and Trappers Committee is based in each of the six Inuvialuit communities. Its members are Inuvialuit beneficiaries who have applied to and been accepted by the

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hardship or denies those holding the right their preferred means of exercising the right. For instance: "It is imperative that Canadian governments, whether federal, provincial or territorial, should retain the ultimate control over wildlife management in the country. They must maintain the authority to regulate and restrict harvests and the harvesting methods used. Any splintering of this authority would be detrimental to the health of wildlife resources. The success of wildlife management and conservation efforts in Canada also depend on this" (Canadian Wildlife Federation 1992: 3). Somewhat akin to *Sparrow*, but more far-reaching, the IFA clearly places the burden of proof on the Crown for justifying restrictions on any Inuvialuit harvesting rights (be they exclusive or preferential), and limits these restrictions to conservation and public safety, consistent with the IFA's definition of conservation. Importantly, the IFA works from the basic principle that successful wildlife management and conservation rests on the extensive integration of the Inuvialuit into all "bodies, functions and decisions pertaining to wildlife management and land management in the Inuvialuit Settlement Region" s.14(4)). It is the "twinning" of Inuvialuit harvesting rights and the participation of the Inuvialuit in management institutions that has been fundamental to the improvement of wildlife and environmental management in the ISR. There has been no "splintering" of management authority. Rather than marginalizing Inuvialuit harvesters from the management institutions established to give effect to Inuvialuit harvesting rights, their participation has been an important feature in improving the management decisions that are made and the cooperation necessary to implement them.

[30] Parallel to these Inuvialuit institutions established to assume responsibilities for the wildlife and environmental provisions of the IFA are other Inuvialuit institutions established to carry out certain social, cultural and economic development responsibilities assigned under the claim. The Inuvialuit Regional Corporation assumes an umbrella-like responsibility for general matters related to claims implementation as well as an overriding responsibility to Inuvialuit beneficiaries for the activities and performance of the development-oriented Inuvialuit organizations For comments on the institutional relationship between conservation and development interests within the Inuvialuit corporate structure, see section 3.1.3 below.

[31] See appendix one for a diagram of these organizations.

HTC and registered on a master list. Its directors are HTC members elected by the general membership to represent them and provide advice to the Inuvialuit Game Council on issues of local concern (s.14(76)), including their requirements for wildlife and the suballocation of the various quotas that the IGC has allocated to that community. In addition they establish by-laws that regulate the exercising of Inuvialuit harvesting rights in their area, collect harvest data, and generally advise on and promote Inuvialuit participation in research, management, enforcement and the utilization of wildlife resources in the ISR. They have been active in the preparation of Community Conservation plans,[32] and assist the Wildlife Management Advisory councils and the Fisheries Joint Management Committee in carrying out their duties when requested.

Inuvialuit Game Council (IGC)

The Inuvialuit Game Council represents the collective Inuvialuit interests in wildlife (s.14(74)). First established in 1979, it is one of the two major "umbrella" organizations charged with implementing the IFA. (The other is the Inuvialuit Regional Corporation.) The Council consists of twelve representatives - two from each of the six Hunters and Trappers Committees - plus a chairman, selected by these representatives. It appoints Inuvialuit members to all joint government/Inuvialuit bodies with an interest in wildlife, advises the appropriate governments about legislation, regulations, policies and administration involving wildlife conservation, research, management and enforcement, and assigns community hunting and trapping areas and allocates harvesting quotas among the communities. It represents Inuvialuit interests in any other Canadian or international groups concerned with wildlife issues in the ISR. It also assists the Wildlife Management Advisory councils when requested on matters for which the latter are responsible.

Fisheries Joint Management Committee (FJMC)

The Fisheries Joint Management Committee consists of five members: two appointed by the IGC, two appointed by the federal government and an independent chair appointed by the committee. It was established to assist the Inuvialuit and the federal government administer and carry out their respective obligations relating to fisheries management under the IFA (s.14(61)). It reviews information on the state of fishing in any waters in the ISR where the Inuvialuit have an interest. It also determines current harvest levels, maintains a registration system for and regulates general public fishing in waters on land owned by the Inuvialuit, allocates subsistence fishing quotas among the Inuvialuit communities, recommends quotas for marine mammals and fish to the

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[32] Community conservation plans have been prepared by Inuvialuit communities in association with the Wildlife Management Advisory Council (NWT) and Fisheries Joint Management Committee to supplement a regional wildlife conservation and management plan for the ISR (WMAC (NWT) 1989) required under the IFA (s.14(60(b)). See Community of Paulatuk 1990, Community of Sachs Harbour 1992, Community of Tuktoyaktuk 1993, Community of Aklavik 1993, Community of Inuvik 1993.

federal Minister of Fisheries and Oceans, and advises the minister on matters regarding regulations, policy and administration of fisheries and fisheries research within the ISR.

Wildlife Management Advisory Council (NWT)

The Wildlife Management Advisory Council (NWT) consists of seven members: three members appointed by the Inuvialuit Game Council, two appointed by the government of the Northwest Territories, one appointed by the Minister of the Environment of Canada, and a chair appointed by the government of the Northwest Territories with the consent of the Inuvialuit and the government of Canada. The Council is responsible for addressing matters related to wildlife in the ISR that fall within the Northwest Territories (s.14(47)). The Council provides advice to the appropriate ministers, the Inuvialuit Game Council, the Screening Committee and Review Board and any other appropriate bodies on all matters relating to wildlife policy and the administration of wildlife, habitat and harvesting. It also determines and recommends appropriate Inuvialuit harvesting quotas and reviews and advises on any proposed Canadian position for international purposes that affects wildlife in the ISR. In addition, the Council is responsible for the preparation of a wildlife conservation and management plan for the Western Arctic Region, that portion of the ISR laying within the Northwest Territories..

Wildlife Management Advisory Council (North Slope)

The Wildlife Management Advisory Council (North Slope) consists of five members: two appointed by the Inuvialuit Game Council, one appointed by the Yukon government, one appointed by the Minister of the Environment of Canada, and a chair appointed with the consent of the Inuvialuit members and Canada. The Council is responsible for that portion of the ISR falling within the Yukon - an area known as the Yukon North Slope, which is assigned special conservation status in the IFA (s.12 (46)). The responsibilities of the Council largely parallel those of its NWT counterpart with additional responsibilities for advising the appropriate minister on the planning and management of Ivvavik National Park and Herschel Island Territorial Park, and preparing a wildlife conservation and management plan for the entire Yukon North Slope.

Environmental Impact Screening Committee (EISC)

The Environmental Impact Screening Committee consists of seven members: three appointed by the Inuvialuit Game Council, one member each appointed by the federal, Northwest Territories and Yukon governments, and a chair appointed by Canada with the consent of the Inuvialuit. The Screening Committee examines all development proposals in the ISR to determine whether or not they could have significant negative environmental impact or a potential impact on present or future wildlife harvesting (s.11, s.12(20-23) and s.13(7-12). Proposals deemed too deficient for the purposes of making an assessment are rejected. Proposals considered to have a significant impact

are referred to the Review Board or another appropriate body for public review. This determination of the appropriate referral body for the review is based on the opinion of the Screening Committee as to the adequacy of other public bodies and the willingness of those bodies to assess and review the development proposal.

Environmental Impact Review Board (EIRB)

The Environmental Impact Review Board consists of seven members: a chairperson appointed by the federal government, with the consent of the Inuvialuit, three members appointed by the Inuvialuit Game Council, and three by the federal government, including at least one member designated by the territorial government in whose jurisdiction the development is proposed to take place. The Review Board conducts public reviews of development projects referred to it by the Screening Committee (s.11, s.12(3)(d), s.12 (21&23)). It recommends to the appropriate government authority whether or not the project should proceed and, if so, under what conditions. Where projects are found to affect wildlife harvesting, the Board is required to provide an estimate of the potential liability of the developer determined under a worst case scenario for compensation to harvesters for actual and future harvest loss and for the restoration of wildlife and habitat as far as practical to its original state (s.13(11)(b)).

Joint Secretariat

The Joint Secretariat serves all of the IFA's joint bodies with the exception of the Wildlife Management Advisory Council (North Slope).[33] It was established under the Territorial Societies Ordinance in 1986 by agreement between the Inuvialuit and the governments of Canada and the Northwest Territories to provide administrative and technical support services. It is administered by an Executive Director accountable to a board of directors consisting of the chairpersons of the bodies it serves. In addition to administering implementation funding for these bodies, it provides them with full-time staff support to assist them in responding to issues, carrying out their activities and sharing information in a coordinated manner. It also provides the staff support for the Inuvialuit Harvest Study.

2.7 The IFA's Approach to Wildlife Management

Section 14 of the IFA establishes the fundamental principles for wildlife management across the ISR. They are cited in full below:

Principles:

> 14.(1) A basic goal of the Inuvialuit Land Rights Settlement is to protect and preserve the Arctic wildlife, environment and biological

[33] The secretariat for the Wildlife Management Advisory Council (North Slope) is based in Whitehorse.

productivity through the application of conservation principles and practices.

14.(2) In order to achieve effective protection of the ecosystems in the Inuvialuit Settlement Region, there should be an integrated wildlife and land management regime, to be attained through various means, including the coordination of legislative authorities.

14.(3) It is recognized that in the future it may be desirable to apply special protective measures under laws, from time to time in force, to lands determined to be important from the standpoint of wildlife, research or harvesting. The appropriate ministers shall consult with the Inuvialuit Game Council from time to time on the application of such legislation.

14.(4) It is recognized that one of the means of protecting and preserving the Arctic wildlife, environment and biological productivity is to ensure the effective integration of the Inuvialuit into all bodies, functions and decisions pertaining to wildlife management and land management in the Inuvialuit Settlement Region.

14.(5) The relevant knowledge and experience of both the Inuvialuit and the scientific communities should be employed in order to achieve conservation.

These principles collectively represented an important cornerstone of the new approach to wildlife management established under the IFA.

Key among them is the "effective integration of the Inuvialuit into all bodies, functions and decisions pertaining to wildlife management and land management in the Inuvialuit Settlement Region"(s.14(5)). This principle gave rise to a second important cornerstone established under the IFA: the creation of Inuvialuit and government/Inuvialuit bodies to assume significant responsibilities for wildlife management in the ISR. Although government retained significant jurisdictional authorities and management responsibilities, these bodies can be viewed as the institutional linchpins of the overall management regime established under the IFA.

A third cornerstone of the new foundation was the definition of conservation introduced by the IFA and discussed above.[35] Key to this definition is the linking of wildlife

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[34] The IFA was amended in 1987 for the first time and with the full concurrence of the parties to accomplish a number of "housekeeping" amendments related to establishing greater certainty in language.

management to the goals of the "long-term optimum productivity" of resources and the "efficient utilization of the available harvest." In twinning an undefined "state" of conservation with the harvest that is made available by it, management was directed toward supporting the "efficient" utilization of wildlife to the limits of the sustainable yield that it was called upon to determine and justify, without imposing other restrictions on harvesting, including a lack of scientific knowledge about the resources available.

The fourth cornerstone was the establishment of certain defined rights for the Inuvialuit to harvest wildlife, but again with provisions throughout the IFA restricting Inuvialuit harvesting under principles of conservation:

> Within their respective jurisdictions, governments shall determine the harvestable quotas for wildlife species based on the principles of conservation... (s.12(41)).[36]
>
> ... harvestable quotas for marine mammals shall be set jointly by the Inuvialuit and the Government according to the principles of conservation (s.14(29)).
>
> ... all harvesting of fish is subject to the principles of conservation and the harvestable quotas set in accordance with those principles (s.14(30)).
>
> ... in determining the total allowable harvest, conservation shall be the only consideration (s.14(36)(b)).

More than half of the IFA is devoted to establishing a management regime that will conserve wildlife and habitat and maintain the traditional use of it by the Inuvialuit. This can be viewed as a significant investment by the Inuvialuit in their land claim agreement. It stems from the view with which the Inuvialuit entered negotiations, that an improvement in the management of wildlife in the Western Arctic Region would be of direct material benefit to them through their use of the available harvest.

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[35] See 2.3.1.

[36] In determining harvestable quotas, government is compelled under s.12(41) and s.14(36) to follow specified procedures that fundamentally delegate the responsibility for the determination and recommendation of quotas to the joint Inuvialuit-government bodies (in this instance, the Wildlife Management Advisory councils). These bodies make their recommendations for a total allowable harvest (TAH) and a harvestable quota, based on the principles of conservation and acceptable research findings, to the appropriate minister who is effectively requested to confirm their recommendations or, in failing to do so provide reasons in writing and the opportunity for the joint body to reconsider its recommendations. The Fisheries Joint Management Committee carries similar responsibilities for determining harvestable quotas for fish and marine mammals.

The elements mentioned above allowed both the Inuvialuit and government to gain a new footing for an approach that was cooperative and comprehensive. They were a marked departure from wildlife management as it had historically been exercised in the Western Arctic Region.

Prior to the signing of the IFA all Inuvialuit subsistence harvesting activities were exempt from government regulation unless a species was in danger of becoming extinct.[37] Not withstanding this exemption, government wildlife agencies maintained a traditional and highly discretionary authority to regulate in certain areas that were often a source of conflict, such as the transportation of wildlife, methods of harvesting and the sale of wildlife.[38] The IFA replaced this exemption from regulation and the use of highly discretionary enforcement practices with a new comprehensive management approach applying to all Inuvialuit wildlife harvesting based on conservation. For the first time, Inuvialuit institutions legally established by the IFA - Hunters and Trappers committees and the Inuvialuit Game Council - were provided the right to regulate the Inuvialuit harvest themselves, and governments were required to enforce their rules. The IFA removed any restrictions that interfered with the use of traditional and current methods of harvesting and the use of equipment to carry out Inuvialuit harvesting rights. It provided the Inuvialuit with the right to travel and to establish camps wherever necessary to exercise their harvesting rights. It also lifted many limitations on the trade, barter, sale and transportation of wildlife within the ISR and across the territorial borders of the Yukon and Northwest Territories.

Prior to IFA, one of the greatest sources of frustration threatening the access of Inuvialuit harvesters to resources, more than competition from other resource users, was the highly arbitrary manner in which government wildlife managers established quotas or restrictions on harvesting activities. Wildlife managers were often seen by Inuvialuit harvesters as setting total allowable harvest levels for fish and other wildlife populations that were excessively conservative, low and unjustified from the vantage point of harvester knowledge of these same populations. The determination of these sustainable harvest levels was seen as not only lacking in scientific rigour, but inconsistent with the traditional knowledge held by Inuvialuit harvesters of certain wildlife populations. The IFA dramatically changed this management circumstance by clearly placing the onus of responsibility on governments and wildlife managers to establish the validity of their wildlife population models and their research data before harvests could be regulated by government for the purposes of conservation.

At the same time as the IFA limited some responsibilities and authorities and shifted others to Inuvialuit and co-management institutions, it also expanded the role and

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[37] See Yukon Act. S.19.3; Northwest Territories Act. S.18.3. Wildlife species are declared endangered by federal order-in-council.

[38] I am especially indebted to Bob Delury for some of the ideas that inform this discussion.

function of government in some areas. In clearly placing the management and harvesting of all wildlife firmly on the footing of conservation (as defined in the IFA) new responsibilities were established for government agencies. The requirement under the IFA to set a total allowable harvest according to conservation and, for species where the Inuvialuit did not hold exclusive harvesting rights, to allocate the available harvest first to the Inuvialuit to meet their subsistence needs and only then to allocate any remaining available harvest to others within the limits of conservation (s.2, "preferential right to harvest"; s.14(6),(7)), placed a new burden of responsibility on wildlife managers to justify harvest limits and created new opportunities to improve research and to acquire new knowledge.

The new duty of government to manage wildlife comprehensively so as to optimize the productivity of ecosystems and the benefits associated with the use of wildlife resources, including the identification of the available harvest, builds on the traditional research function of government with a new emphasis to develop or improve species population models and to establish reliable population monitoring methods. Similarly, the equal consideration that the IFA extends to wildlife habitat requires that wildlife management agencies move beyond their traditional emphasis on wildlife research to pursue habitat research and research into ecosystem relationships and dynamics.

Recognizing as well that many species of wildlife in the ISR migrate across provincial, national and international borders, the IFA also requires government to enter into cooperative wildlife management agreements with jurisdictions that share wildlife populations with the region to facilitate more effective population management (s.14(39)).

Together, these requirements are viewed as necessitating an increased level of wildlife management activities in the ISR and increased funding to support them. The IFA assumes that they will be carried out by existing government agencies. In turn the Inuvialuit and those agencies with responsibilities to carry out these activities have argued that the conventional standards for determining the adequacy of wildlife programs in an area and the funding required to support them no longer apply. They assert that the IFA imposes new legal obligations on government, which require additional resources. The extent of these obligations and the level of programs and services required to meet them have made funding one of the most difficult and enduring subjects of discussion in implementing the wildlife and environmental provisions of the IFA.[39]

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[39] See section 3.1.7 below.

2.7.1 Effects of *Sparrow*

In 1984, the same year the IFA was signed, Ronald Sparrow, a member of the Musqueam Indian Band, was charged under the federal Fisheries Act with using a drift net longer than permitted under the band's Indian food fishing license. Six years later the Supreme Court of Canada decided in favour of Sparrow's aboriginal right to fish, as guaranteed by the Canadian constitution and declared the net restriction invalid. This decision profoundly altered governments' recognition and treatment of aboriginal harvesting rights for subsistence in many parts of Canada (Usher 1991: 20-21).

It is not apparent that the *Sparrow* decision has to date had any visible or significant impact on government's implementation of the IFA's wildlife provisions or altered the management climate in the ISR. There may be several reasons for this. The IFA's recognition of Inuvialuit harvesting rights is much broader and more explicit than what *Sparrow* provides with respect to aboriginal subsistence rights generally.

Prior to the signing of the IFA, territorial governments had no jurisdiction over aboriginal subsistence harvesting on unoccupied Crown lands (the vast majority of land in the territories) and the federal government could only restrict aboriginal subsistence harvests if a wildlife species was declared endangered by federal Order in Council. Most aboriginal subsistence harvesting was viewed by territorial governments as outside of their jurisdiction. (Trapping was the single largest exception. Some harvesting activities that were carried out for both subsistence and commercial purposes were the subject of confused restrictions and inconsistent treatment by enforcement officials.) Under the IFA, federal and territorial governments can only restrict Inuvialuit harvesting of wildlife where conservation and public safety are considerations, and, with respect to conservation (as defined by the IFA), the "burden of proof" is on government to justify the conservation restriction. Most importantly, in any other areas where conflicts exist between the provisions and rights established in the IFA and any other legislation, the former are clearly paramount to the extent of the conflict (s.3(3)). The "tests" established by the courts in *Sparrow* for determining infringements on an existing aboriginal right and justifying limitations on aboriginal harvesting are confined in application to subsistence harvesting and address a circumstance where rights are only vaguely and generally defined. The certainty and specificity of the harvesting rights established in the IFA and the management regime that supports them are much more forcefully restrictive of government's right to interfere with the harvesting activities of the Inuvialuit than the tests that *Sparrow* establishes as a check against the state's infringement on aboriginal harvesting rights elsewhere.

Equally important differences pertain with respect to the implementation of the IFA and *Sparrow*. Implementation of the IFA is fundamentally a collaborative approach between the Inuvialuit and government. Co-management bodies established through the negotiation of the Agreement provide a means for achieving working understandings between the parties of the Agreement's provisions; an arbitration process provides a means for reaching more formal agreement and resolution on the

meaning of provisions that remain under dispute. In contrast, the implementation of *Sparrow* has tended to be a unilateral undertaking by government as has the determination of the operating regime for wildlife management and enforcement that it has given rise to. Recourse on disagreements over the interpretation of *Sparrow* is largely confined to the courts.

CHAPTER THREE

PRACTICES AND ISSUES

The land, wildlife and environmental regime established under the IFA is comprehensive in scope and far-reaching in practical effect. This chapter examines some of the practical features and issues of the regime that are particularly noteworthy and, in certain instances, of outstanding concern from the standpoint of implementation.

Over the nine years of implementation, what has been achieved under the IFA regime is impressive, and it is important not to lose this perspective. Notwithstanding certain issues that are a source of deep and ongoing frustration or disappointment, on balance it is reasonable to say that a great deal of progress has been made towards achieving the IFA's general goals and specific objectives. The participation of the Inuvialuit in the IFA's management regime is both extensive and substantive, and has had a significant influence on government decision making. The level of management and research activity related to fish, other wildlife and the environment has risen dramatically since the IFA was signed. The effectiveness of this activity and the research associated with it has contributed substantially to an improved understanding of wildlife populations, habitat and the Inuvialuit harvest of wildlife in the Western Arctic. The harvesting rights established for the Inuvialuit under the IFA and the authority held by Inuvialuit institutions to regulate Inuvialuit harvesting have generally created a climate of confidence, certainty and control for the Inuvialuit with regard to the protection of wildlife, habitat and traditional harvesting. The co-management institutions created under the IFA continue to be regarded by the parties to the IFA as important mechanisms for implementing areas of shared Inuvialuit and government responsibilities and assisting each party to the IFA in the implementation of certain responsibilities for which they hold exclusive responsibility.

Some of the areas of concern identified are related to the growing pains of new institutions. Others are more profound and raise serious questions for governments and aboriginal people with respect to how legislated, constitutionally entrenched land claim agreements are regarded, the standing they hold in the broader field of domestic legislation and international agreements, and the nature and level of political will and institutional commitment that they compel to meet claims-based legal obligations, responsibilities and rights.

3.1 Institutional Arrangements

3.1.1 Implementing Mandates of IFA Institutions

The IFA established new Inuvialuit and co-management institutions with legislated mandates for wildlife and environmental management and altered the role and practices of a number of existing government agencies. The challenges for both in implementing these new arrangements have been extreme. Force of circumstance has produced a steep learning curve for the IFA-based Inuvialuit and co-management institutions, and the ISR-based government agencies.

The Inuvialuit Game Council

The mandate of the Inuvialuit Game Council (IGC) is a broad one and encompasses a full range of domestic policy, legislative, regulatory and administrative matters related to wildlife conservation, research, management and enforcement (s.14(74)) in the ISR. In addition, the IGC has responsibilities to advise government on any proposed Canadian position for international purposes affecting wildlife in the ISR, as well as appointing representatives to international delegations where the Inuvialuit interest in wildlife is affected. Since the signing of the Agreement the IGC has been vigorous and active in all areas of its mandate, occupying the field where it has a mandate to do so.

A representative survey of the IGC's activities (Inuvialuit Game Council 1988-1992) and the extent of its interest includes the following:

- appointments to regional and domestic bodies including the Arctic Waters Advisory Committee, the Porcupine Caribou Management Board, the Inuvialuit-GNWT Working Group on Legislative Overhaul, the Inuvialuit Harvest Study Working Group, the Arctic Regional Environmental Emergency Team, the Beaufort Regional Environmental Assessment and Monitoring Program, the Mackenzie River Basin Committee, the Ivvavik National Park Advisory Committee, the Herschel Island Technical Committee, the Beaufort Sea Steering Committee, and IFA co-management bodies;

- appointments to international bodies including the Alaska-Inuvialuit Beluga Whale Technical Committee, the Inuvialuit-Inupiat Polar Bear Joint Commission, the North Slope Borough-Inuvialuit Game Council Polar Bear Technical Committee, the Canada-U.S. Hydrocarbon Review; and participation in meetings of the International Whaling Commission, the Inuit Circumpolar Conference, the Alaska Eskimo Whaling Commission, the North American Wildlife Conference, World Wilderness Congress, and the North Atlantic Marine Mammal Commission;

- interventions before the National Energy Board, the Public Review Panel on Tanker Safety and Marine Spills Response Capability, the Environmental

Impact Review Board (EIRB) hearing on the Esso Chevron et al. Isserk I-15 Drilling Program, the EIRB hearing on Kulluk drilling program;

- negotiation of a wildlife compensation agreement between Esso and IGC for the Isserk I-15 well and a wildlife compensation agreement with the Department of National Defence, a polar bear management agreement with the Inupiat for the southern Beaufort Sea, an overlap agreement on wildlife harvesting and management with the Tetlit Gwich'in.

Its mandate to act in these areas has not been challenged by government, and it is reasonable to represent the relations between the IGC and government as "government to government." The IGC's stature is enhanced in these areas because it is a fully and democratically representative body of the Inuvialuit harvesters. It has strong ties to the Hunters and Trappers committees, and there are few, if any, better illustrations in the ISR and elsewhere of a regional aboriginal organization that is as well integrated with local ones. By virtue of its mandate, *de facto* the IGC carries the responsibility for conveying to government Inuvialuit expectations associated with the various wildlife and environmental provisions of the IFA and is the guardian for the Inuvialuit interest in ensuring that these provisions are implemented according to what they understand to be their intent.

This responsibility is an onerous one, and it is to the IGC that government, other Inuvialuit organizations and the co-management bodies often turn to seek direction or agreement on the practical effect of the IFA's wildlife provisions according to Inuvialuit intentions. In some instances, the co-management bodies and their chairpersons have assisted the IGC in reaching understandings on implementation matters and requirements. But on matters where there are outstanding differences of view and interpretation it falls to the IGC to deal directly with the government parties.

At times, this role in implementation has been a difficult one for the IGC to pursue as a result of an overlapping responsibility with the Inuvialuit Regional Corporation (IRC) in the area of implementation. The IRC has a broad responsibility for representing the Inuvialuit on general matters related to implementation and conveying the Inuvialuit interest to government. This general responsibility of the IRC and the more specific responsibilities of the IGC pertaining to the IFA's wildlife and environmental provisions have periodically produced concerns, differences of opinion and tensions with respect to mandate and "turf." At the same time there is nothing to suggest that these differences are dissimilar from those that often arise and in some cases typically characterize relations between many government agencies.

Suggestions for amending the IFA and merging the IRC and the IGC to create a monolithic structure have been floated out of existing tensions and frustrations. They are usually dismissed quickly. If anything, they speak to the utility in considering means by which improved coordination and direction can be achieved in the area of

IFA implementation, not just between the IRC and the IGC, but between the parties and across the IFA-based organizations.

The IGC has the responsibility for allocating harvestable quotas of shared wildlife populations between HTCs and assigning community harvesting areas. While the issues associated with these responsibilities are often difficult ones, the IGC has been very successful at resolving them and in a manner that has allowed it to continue to enjoy broad support from all HTCs. In its direct dealings with government, the IGC has established itself as a credible and powerful authority representing Inuvialuit interests. At the same time IGC efforts to achieve amendments to federal and territorial legislation pursuant to the IFA have been long frustrated by a lack of government commitment, attention and experience in dealing with the issue. Indeed, the 10 year implementation period that has lapsed since the signing of the IFA, represents a significant lost opportunity for accomplishing these amendments. The challenge of amending policy and legislation to reflect the provisions of the IFA is now all the more difficult and complex for both the Inuvialuit and government with the Gwich'in, Nunavut and Yukon agreements all making their own unique demands for changes to existing federal and territorial policy and legislation.

With respect to certain international issues that affect wildlife management in the ISR, the IGC has established itself as a significant presence in international forums. Over the short term this has been important in establishing the recognition in federal government circles as well as in the international community that Inuvialuit rights must be respected and domestic obligations following from the IFA must not be compromised by international agreements and commitments.[40] The IGC has been especially active and successful in achieving international cooperation agreements and understandings with the Inupiat of Alaska for the management, research and harvesting of polar bear and beluga whales (Inuvialuit Game Council and the North Slope Borough Fish and Game Management Committee 1988; Adams et al. 1993). These arrangements are a good indicator of the broad cooperation that the IGC has attempted to build and encourage for migratory wildlife populations that they share with other users.

The IGC relies on the dedicated support of a full-time resource person, as well as general technical and administrative support from the Joint Secretariat, the body established to provide secretariat support to the Inuvik-based co-management bodies. This arrangement appears to have worked well for the IGC and has contributed significantly to the substantial and competent level of participation the IGC brings to the forums it participates in and the issues it addresses.

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[40] See section 3.3 for a more extensive treatment of the IGC's involvement in international issues.

The Hunters and Trappers Committees

The Hunters and Trappers committees established under the IFA grew out of the Hunters and Trappers associations established by the Government of the Northwest Territories to facilitate communication and cooperation between local harvesters and government on wildlife management issues. With the signing of the IFA, the HTCs in each of the six Inuvialuit communities have assumed considerable responsibilities under the IFA's wildlife management regime, most notably with respect to the establishment of by-laws to regulate Inuvialuit harvesting activity, as well as in dealing directly with government and industry on local wildlife and environmental issues, raising concerns and providing advice to the IGC and the co-management bodies, representing local harvesters in resource planning initiatives, collecting and reviewing harvest data for the Inuvialuit Harvest Study, and assisting in or implementing research projects in the vicinity of their community.

The HTCs are an important means by which Inuvialuit traditional knowledge of wildlife and the environment is incorporated into the IFA's wildlife management regime. The role of the HTCs in various forms of harvest reporting, in establishing research priorities and in reviewing research proposals is a significant one in applying this knowledge. The HTCs also play an important role in reviewing development applications for various forms of land use on Crown lands and Inuvialuit private lands. They act in an advisory capacity to the Environmental Impact Screening Committee and the Inuvialuit Land Administration in identifying land use concerns related to impacts on wildlife, habitat, the environment and harvesters. In many instances harvesters through their HTCs have raised concerns about fluctuating wildlife populations or threats to habitat which not only preceded supporting research findings, but indeed, in the first instance, directed the application of research efforts towards these issues. The traditional knowledge of wildlife and the land that Inuvialuit harvesters hold continues to be viewed as a vital and cost-effective source of information by all wildlife management agencies in the region. The development of Geographic Information Systems (GIS) has not diminished its significance and has in fact incorporated it for use in wildlife management and environmental impact assessment in the ISR.

The HTCs are much more than the "eyes" and "ears" of the IFA's wildlife management regime. The extent of their activities makes this abundantly clear. With respect to wildlife management issues of local concern directly affecting hunters and trappers, their authority has never been questioned. Of greater concern to virtually all observers, including HTC directors, is the capacity of the HTCs to meet the demands that have been placed upon them. With only modest financial resources allocated for their activities, most HTCs have been forced to operate on a part-time basis while dealing with issues requiring full-time attention. In 1993 a proposal for increased funding for all HTCs to better enable them to function on a full-time basis was supported by all government agencies, co-management bodies and the IGC. This proposal was accepted by Canada, and it is expected that with additional funds, it will be easier for some HTCs to reduce the high staff turn-over they experience. Unlike the co-management

bodies and the IGC, the HTCs have not had ready access to the same form and level of technical and administrative support, while the issues they have faced, in many instances, require it .

The HTCs have benefited from the general support services of the Joint Secretariat but are limited by their distance from Inuvik. In park planning initiatives, community conservation planning, wildlife research and the drafting of by-laws, the HTCs have worked closely with the co-management bodies and had the benefit of the resources they can provide, in particular through some of the government agencies represented.

The Co-Management Bodies

The responsibilities of the IFA's co-management bodies are broad in scope. In the case of several co-management bodies, the extent of their mandates and responsibilities has been an issue of concern for some government officials. Much of this discussion rests on the interpretation of what was intended by the IFA. It is important to note that none of the government members sitting on co-management bodies has raised this concern, nor have government officials in the ISR. These comments tend to be limited to government observers outside of the ISR. Notwithstanding the concerns that have been raised, no government has pursued them or sought to restrict the activities of the co-management bodies.

In addition to the responsibilities assigned to them in the IFA, the co-management bodies are involved in the work of implementing the wildlife and environmental provisions of the Agreement in a fundamental way: they represent the central forums, by virtue of their Inuvialuit and government membership, where converging and diverging interests, interpretations and understandings of the parties to the IFA come most visibly and literally face to face. As a result it is not surprising that working understandings and agreements reached between the members are not always shared by those agencies and governments represented, who are preoccupied with matters other than the implementation of the IFA.

One of the greatest challenges for the co-management bodies has been establishing institutional practices between the Inuvialuit and government that are consistent with what is intended and required by the Agreement. This has been a time-consuming exercise and one that in some instances has placed co-management bodies in a position of having to obtain the understanding and support of government agencies long after it has been achieved amongst the members. In this context, questions that have arisen with respect to the mandate of the co-management bodies usually have less to do with the scope of their responsibilities and more to do with how they have interpreted the implementation of certain IFA provisions and the resulting practical effects.

For example, in the case of the Wildlife Management Advisory Council (North Slope) some mild concern has been raised by the Yukon Government, Environment Canada

and Indian and Northern Affairs with respect to how broadly the Council has interpreted its responsibility to prepare a wildlife conservation and management plan for the Yukon North Slope and the resources it has required to carry out this task. Much of this concern appears to rest with the broad scope that the Council has assigned to the plan and its inclusion and treatment of resource development issues alongside wildlife conservation issues and management issues. Some agencies have questioned whether it is appropriate for the Council to be assigning responsibilities for actions recommended under the plan to these and other agencies. Others have raised concerns over the costs associated with implementing their assigned responsibilities.

In the case of the Fisheries Joint Management Committee, both the Inuvialuit and the Department of Fisheries and Oceans supported the expansion of the committee's mandate to include the protection of fish habitat.

With regard to the mandate of the Environmental Impact Screening Committee, concerns have been raised with respect to its authority to screen development proposals on Inuvialuit private lands, and with regard to the Environmental Impact Review Board, its authority to conduct environmental impact assessments of offshore developments.

Generally, however, concerns over the mandates of the co-management bodies are muted at best. The co-management bodies generally enjoy broad support from the Inuvialuit Game Council and the government agencies directly represented on them. The co-management bodies represent perhaps the best opportunities for the Inuvialuit and governments to achieve the cooperative working understandings and relationships that are necessary to successful implementation of the IFA. Their failures and limitations in this regard affect all of the parties directly, and ultimately require, as a last resort, the Inuvialuit Game Council and the representatives of the various governments to address these differences and failures themselves.

All of the co-management bodies have met with measurable and varying degrees of success in implementing their mandates, but a number of challenging issues prevail, most notably achieving amendments to wildlife (including fisheries) legislation, regulations and administrative arrangements to ensure consistency with the provisions of the IFA, especially those establishing certain Inuvialuit harvesting rights.

Select activities of three of these bodies - the Wildlife Management Advisory councils and the Fisheries Joint Management Committee - are briefly examined below to illustrate the practical effect they have for the implementation of Inuvialuit harvesting rights and management objectives established under the IFA. The mandate and activities of the Environmental Impact Screening Committee and Environmental Impact Review Board are addressed in 3.4.3 below.

Wildlife Management Advisory Council (Northwest Territories)

Under the IFA wildlife conservation and management plans are viewed as important instruments for protecting Inuvialuit harvesting rights and fulfilling Inuvialuit harvesting requirements. The IFA assigns the WMAC(NWT) the responsibility of preparing such a plan for the Western Arctic Region of the ISR. In association with the FJMC, the WMAC(NWT) approached this responsibility by developing the *Inuvialuit Renewable Resource Conservation and Management Plan* - a broad plan establishing a set of general principles and goals for wildlife conservation and management across this area (Wildlife Management Advisory Council (NWT) and Fisheries Joint Management Committee 1988). In effect, this plan consolidates and applies the relevant principles and goals of the IFA to guide decision-making by the Inuvialuit, government and the co-management bodies (Bailey et al. 1993: 9). Within this framework, the Council has worked closely with local HTCs to develop community conservation plans for five of the six Inuvialuit communities.[41] The development of the final community plan is pending.

These plans provide guidelines for land use practices by designating land use categories that recognize priority land uses and activities and areas of special ecological and cultural importance. They establish a community-based process for land use decision making and for conveying these decisions to the Inuvialuit Land Administration for proposed developments on private lands and the Environmental Impact Screening Committee for proposed developments on Crown lands. The plans also establish guidelines for wildlife management and priorities for research in the vicinity of the associated community. Conservation measures are identified for wildlife populations and habitat of significance to each community. Perhaps most notably, these plans incorporate the most recent wildlife research where it exists, but rely heavily on local Inuvialuit knowledge of wildlife and habitat in the area. Both Inuvialuit and non-Inuvialuit organizations with an interest in the area are consulted in the development of the plans.

The plans represent strong statements of local interest in wildlife management and conservation issues by the Inuvialuit communities and HTCs. They have been formally endorsed by the relevant co-management bodies, community corporations, education committees and elders committees, and the Inuvialuit Game Council. They stand as an important frame of reference to guide land use decision-making and environmental impact screening in the ISR. A workshop is planned with all of those organizations and agencies with responsibilities affected by the plan and its recommended actions to determine the level of support and responsibility they are prepared to assume. It remains to be determined how effective the plans will be in guiding the practices of government wildlife management and environment agencies throughout the ISR.

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[41] See Community of Paulatuk 1990, Community of Sachs Harbour 1992, Community of Tuktoyaktuk 1993, Community of Aklavik 1993, Community of Inuvik 1993.

With respect to the sensitive issue of establishing community harvest quotas and the introduction of self-restrictions by the Inuvialuit on their own harvesting activities, the WMAC(NWT) has demonstrated the central role assigned to co-management bodies in the ISR by the IFA and the important relationship they have to HTCs and government agencies. In 1987, a concern was brought forward to the IGC by the Tuktoyaktuk HTC that grizzly bears were being over-harvested in the area (Carpenter et al. n.d.: 4). The HTC suggested a quota restricting the harvest to 10 bears. The Game Council referred the matter to the WMAC(NWT) to consider the request by the HTC and to recommend the appropriate quota. In considering the concerns of the HTC and in reviewing information provided both by the HTC and government biologists, the Council recommended a quota of seven bears to the Northwest Territories Minister of Renewable Resources.[42] With the acceptance of the recommended quota by the minister, the IGC designated the area as the "Tuktoyaktuk Grizzly Bear Hunting Area" and allocated the entire quota to the community. Subsequently, the HTC passed a by-law establishing the tag system, methods and seasons governing Inuvialuit hunters. As required under the IFA (s. 14(77)), the Government of the Northwest Territories passed a regulation to make the by-law enforceable under the Northwest Territories Wildlife Act.

Since the passage of this by-law, quotas and community hunting areas and management zones have been established, and by-laws have been passed covering most of the range of grizzly bears in the ISR. In addition a grizzly bear management plan has been prepared establishing management objectives and actions for this species. Quotas have also been established through similar processes for caribou and muskoxen. In the case of the latter, quotas have ranged as high as 5000 animals (Wildlife Management Advisory Council (NWT) 1990/91: 5). In all cases the quotas recommended have been accepted by the responsible minister.

The WMAC (NWT) has also played a lead role with respect to improving the management of polar bears between the Inuvialuit of the ISR and the Inuit of Nunavut - the adjacent claims settlement area to the east. In response to a request by the Department of Renewable Resources for the Northwest Territories, the WMAC(NWT) facilitated the development of management agreements between six Inuvialuit communities and two Inuit communities for the sharing of three polar bear populations. In less than six months, the combined efforts of community and HTC representatives and polar bear researchers produced agreements that provided the basis for the establishment of management zones, increased protection of female bears and the development of HTC by-laws to regulate the method and timing of harvest by Inuvialuit hunters (Bailey et al. 1993: 10). Subsequently the agreements have been incorporated into HTC by-laws and government regulations.

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[42] It is interesting to note that government representative to the Council initially suggested a quota of six bears (Bailey et al 1993: 11).

Wildlife Management Advisory Council (North Slope)

The WMAC(NS) has responsibilities that largely mirror those of the WMAC(NWT). What is very different is its management circumstance as it affects Inuvialuit harvesting rights and wildlife management objectives. Much of the Council's work has been directed at giving practical effect to these rights and these objectives in a circumstance that is jurisdictionally complex and where the IFA established higher standards for the conservation of wildlife and habitat.

The Yukon North Slope is part of a broad coastal plain bordering the Beaufort Sea, extending into Alaska and falling within the Arctic National Wildlife Refuge. It includes the adjacent offshore islands and waters. It was an area of intense political debate for almost twenty years, prior to the signing of the IFA. Proposals for protection of the entire area from development have stood alongside proposals for massive oil and gas pipeline projects, and port and mining developments in the same area. In association with these developments, the Yukon North Slope has been the subject of intense scrutiny by a Royal Commission, the National Energy Board, numerous public reviews and an intense research effort. It is also the land used and occupied by many Inuvialuit for hundreds if not thousands of years.

The settlement of the IFA produced a negotiated agreement between Canada, Yukon and the Inuvialuit as to how this area was to be used and the harvesting rights and other benefits that the Inuvialuit were to enjoy.[43] It established a national park over the western half of the area to be managed to the highest wilderness standards and excluding development, and a territorial park covering Herschel Island - a large offshore island of great cultural and historic significance - that was to be managed to the same standard. The remaining eastern half the North Slope was designated as an area of controlled development, where development is accommodated if it meets the test of the conservation of wildlife, habitat and traditional native use.[44] It also established Inuvialuit exclusive harvesting rights in these parks, for some species of wildlife in the remaining area, and preferential harvesting rights for others.

Much of the work of the Council has been dedicated to implementing the broad conservation regime that is outlined in the IFA for this entire area.

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[43] S.12(2) states: "The Yukon North Slope shall fall under a special conservation regime whose dominant purpose is the conservation of wildlife, habitat and traditional native use."

[44] See s.12(3). Only one exception is made to the requirement that development meet the test of conservation: "other uses within the Yukon North Slope that may have a significant negative impact on wildlife, habitat or native harvesting shall be permitted if it is decided that public convenience and necessity outweigh conservation or native harvesting interests in the area" (s.1212(3)(d)).

The IFA requires the Council to prepare a wildlife conservation and management plan for the entire area (s. 12(56)(b)). The Council is developing a comprehensive plan that attempts to incorporate, consolidate and apply all of the provisions of the IFA that affect the management of wildlife, habitat and Inuvialuit harvesting on the Yukon North Slope and the conditions for development. This has involved extensive consultations with traditional users of wildlife in the area, other co-management bodies like the Porcupine Caribou Management Board and the FJMC, industry and government agencies with an interest in the area. The draft plan identifies specific objectives and recommends actions for the management of wildlife and the environment, the identification of special conservation areas, the involvement of traditional users in wildlife management and research, and improved interjurisdictional cooperation between governments and agencies (Wildlife Management Advisory Council (NS) 1992). Importantly, it also attempts to define a standard and a test to be applied to proposed development activities in the area.

The Council has viewed the IFA-based environmental impact screening and review process as an important tool for determining if development is meeting the conservation requirements of the area. Both in the plan, through recommendation, and outside of the plan, by way of comment on the operating procedures of the EISC and the EIRB, the Council has provided extensive advice to both of these bodies as to how this process should apply on the North Slope.

The Council has played a significant role in reviewing and recommending management plans for both parks to the appropriate ministers. In the case of the management plan for Ivvavik National Park, the Council's comments produced final revisions that gave stronger recognition to Inuvialuit harvesting rights in the park. The Council also functions in an advisory capacity to Parks Canada in the ongoing management of the park.

The IFA established a unique conservation tool for the area through a requirement for a conference to be held periodically "to promote public discussion among natives governments, and the private sector with respect to management co-ordination for the Yukon North Slope" (s.12(57)). The conference chairperson is chosen on an alternating basis between the Yukon and native groups with an interest in the area. Support from the Yukon and the IGC has enabled the Council to assume an influential and leading role in determining the specific objectives of each of the first three conferences, the chairpersons for the conferences, and the issues to be addressed. The conference has been incorporated into the wildlife conservation and management plan as an important instrument for publicly reviewing its implementation, suggesting amendments to it, and identifying implementation priorities.

The coordination of legislative authorities and administrative procedures between management agencies, and ensuring their consistency with the IFA has been particularly challenging for the Council. This coordination is an important objective of the IFA in establishing a coherent approach to management across the area and

eliminating confusion that might arise for harvesters in the face of conflicting legal and administrative requirements.

Most of the Inuvialuit who use the Yukon North Slope for hunting and fishing and who have established camps there, today have their place of residency outside of the Yukon in Aklavik, Northwest Territories. Some were born at camps on the Yukon North Slope; all have a strong attachment to it. Political borders within hunting territories have always been boundaries that traditional users have had difficulty recognizing and acknowledging, since they do not contain wildlife. This is equally true on the North Slope where territorial boundaries between the Yukon and the Northwest Territories, and park boundaries exist. It is an objective of the IFA to make the hunting territory of the Inuvialuit as "seamless" as possible, notwithstanding these borders.

In the Northwest Territories and Ivvavik National Park the Inuvialuit hold exclusive rights for grizzly bear and muskox; in the Yukon they hold preferential rights to these species, admitting a third party interest for resident Yukoners (albeit one that has not been exercised to date given the remoteness of the area and the high cost of gaining access to it). Under the IFA, preferential harvesting rights include but are not limited to subsistence harvesting, whereas under the Yukon's Umbrella Final Agreement they are. Harvestable quotas can be set under the IFA permitting unspecified subsistence or commercial harvests, whereas under the Yukon Umbrella Final Agreement and under the Yukon Wildlife Act these distinctions are specified. Under the IFA, the GNWT is required to enforce HTC by-laws (s.14(77)); no similar provision explicitly applies for the Yukon or Canada. These and other differences have been confusing for government officials, the HTC and Inuvialuit harvesters alike, and have made implementation of the IFA in the Yukon particularly challenging, particularly when the regulations and administrative procedures under the National Parks Act are included. Progress has been extremely slow to date in overcoming these differences and inconsistencies, although common game management zones on the Yukon North Slope have been agreed to by the IGC, Yukon and Canada and established.

The congruence between HTC by-laws and government regulations as instruments for the regulation of Inuvialuit harvesting activities will be critical, as will the integration of administrative procedures between government agencies. The Council remains one of the few forums for effectively achieving the coherence and coordination that wildlife management on the North Slope requires and the IFA calls for. The participation, commitment and cooperation of the IGC, Aklavik HTC, Canada, and the Yukon in this forum will be critical to the common understandings that are reached on the full practical effect of Inuvialuit harvesting rights and how they are best accommodated by wildlife management.

Fisheries Joint Management Committee

The FJMC since its establishment in 1986 has made a visible contribution to improving fisheries management in the ISR and to providing the optimum sustainable harvest of

fisheries resources by the Inuvialuit. It has done so by serving as an effective vehicle for cooperation between the Department of Fisheries and Oceans (DFO) and the Inuvialuit.

The IFA established a new regime for fisheries management in the ISR, and the FJMC has been instrumental in accomplishing a transition whereby responsibilities for fisheries management traditionally held by DFO are now shared with the Inuvialuit through the FJMC. Most notably this includes responsibilities for monitoring harvest levels, determining harvest reporting requirements and the role of HTCs, determining and recommending harvestable quotas to the minister, and the allocation of subsistence quotas among Inuvialuit communities (s.14(64)). DFO continues to undertake fisheries and marine mammal research and retains formal responsibility for establishing sustainable harvest levels, but the FJMC and the Inuvialuit are active participants in this area as well.

The *Beaufort Sea Beluga Management Plan* (Fisheries Joint Management Committee 1991) was an important initial step for both the Inuvialuit and Canada in accomplishing the transition from the management regime for beluga in the Western Arctic that preceded the IFA to the management arrangements established under the IFA.[45] Prepared by the FJMC, together with DFO, and the Inuvik, Aklavik and Tuktoyaktuk HTCs, the plan was developed according to the goals and principles established in the *Inuvialuit Renewable Resource Conservation and Management Plan* (Wildlife Management Advisory Council (NWT) and the Fisheries Joint Management Committee 1988) for the ISR. The Plan established two goals for beluga management reflecting the IFA's definition of conservation linking the maintenance of the quality and productivity of resources with the efficient utilization of them. The goals of the plan were:

- To maintain a thriving population of beluga in the Beaufort Sea
- To provide for optimal harvest of beluga by Inuvialuit

To achieve these goals the plan established an approach for determining and establishing sustainable harvest levels under a total allowable catch (TAC) and the allocation of harvestable quotas between communities with the priority assigned to subsistence use.[46] Importantly, the plan established that the TAC was to include all removals from the population including landed whales, lost whales and those taken for scientific purposes. It also established that if research determined that the beluga of the

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[45] Prior to the IFA, beluga management was based on a number of federal acts and regulations. They include the *Fisheries Act*, the *Beluga Protection Regulations*, the *Oil and Gas Production and Conservation Act*, the *Canadian Environmental Protection Act*, and the *Arctic Waters Pollution Prevention Act* (Fisheries Joint Management Committee 1991) . The IFA has required legislative and regulatory changes to some of these instruments to ensure consistency reflective of the new management arrangements and harvesting rights established for the Inuvialuit in the IFA.

[46] Presently commercial use of beluga is not permitted in Canada.

Beaufort Sea harvested by the Inuvialuit and the Inupiat to the west were not discrete stocks then the Inupiat harvest would be included in the TAC as well.

The plan also established 4 management zones of the Beaufort Sea with guidelines for each zone to guide decision-makers, co-management bodies, government agencies and the environmental screening and review bodies in evaluating the impacts of proposed developments that might affect the well-being of the beluga population, beluga habitat or the harvesting of the beluga resource (Fisheries Joint Management Committee 1991:10). Additionally, the plan addressed the need for the development of the appropriate by-laws by HTCs, regulations by government and enforcement mechanisms for each. Recognizing the weaknesses and gaps of baseline data for Beaufort Sea beluga, the plan placed a priority harvest monitoring and stock research. The plan also supported the development of education programs to ensure that traditional skills and knowledge of beluga harvesting were passed along to younger hunters.

Following the adoption of the plan in 1991, a workshop was convened by the FJMC to address information gaps on stock status and other issues that posed problems for implementation of certain aspects of the plan (Duval 1993: iv). Working on the assumption that the Beaufort beluga were a transboundary stock shared by Inuvialuit and Inupiat harvesters, participants included both user groups, along with representatives of government management agencies and technical advisors. This group met to review stock status based on the available information, methods for continued monitoring of the stock, and to identify research priorities. What emerged from the meeting was a strong endorsement of harvest monitoring programs conducted by harvesters with the support of government as the primary management tool for the cooperative and effective management of the population:

> The assessment of present status has indicated that the provisional Beaufort Sea beluga stock is currently healthy. Future factors that could influence the status of the stock include human activity that displaces beluga from favoured habitats (e.g., industry, fishing and unregulated tourism), major environmental changes (e.g. global warming) and harvesting in excess of sustainable levels. The harvest provides a unique opportunity to monitor the population on a continuing, cost-effective basis.
>
> The harvest can provide accurate, long-term data on numbers and location of animals taken, hunting loss rates, age and size structure of the harvest, female reproductive history, and individual condition indices such as blubber thickness. This approach of continuing assessment is preferred for the following reasons: such data have tracked changes in other marine mammal populations (e.g., seals and walrus); there is a high probability of acquiring these data each year; this data set is less vulnerable to vagaries of funding; and the primary management tool becomes a cooperative venture with users (Duval 1993: v).

One year after it was established, the FJMC assumed responsibility from DFO for monitoring the harvest of beluga whales. Harvest monitoring has assumed an increasing importance since that time. Currently, Inuvialuit hunters from Tuktoyaktuk, coastal hunting camps in the Mackenzie River estuary, and Paulatuk are hired as whale monitors to record the number of animals struck and landed, and the sex and size of the landed whales. Biological samples are also collected. At the end of each whaling season reports are made to the respective HTCs and the FJMC.

This project offers a strong and compelling example of how Inuvialuit harvesters are participating in a management regime that blends scientific and traditional knowledge and places value on each. Along with beluga by-laws that have been passed by HTCs to regulate harvest activities, both have brought greater attention to the problem of lost Beluga and have contributed to a loss rate that it is now under 10 percent.[47]

The FJMC working closely with the IGC has also been very active in international forums to ensure that Inuvialuit harvesting rights are not compromised or undermined by international interests particularly as they affect whaling and related Canadian domestic policy. The FJMC has played an important role in this area as illustrated in an initiative by the Inuvialuit to harvest one bowhead whale.

The IFA legally established the right for the Inuvialuit to hunt all marine mammals for subsistence purposes subject to the principle of conservation (s.14(29)). It also established as a basic goal of the Agreement "to preserve Inuvialuit cultural identity and values within a changing northern society" (s.1(a)). The proposal submitted from the Aklavik HTC to the IGC in 1988 to harvest one bowhead whale was largely born out of a desire to realize this goal.

Although the Inuvialuit of Aklavik had not hunted bowhead for more than half a century, traditional interest in the whale and the hunt remained high as result of contact with Alaskan relatives who continued to hunt bowhead, and frequent sightings of the whale by Inuvialuit travelling or camping along the Beaufort coast. A host of social, economic and political problems over much of this time made it impractical to hunt bowhead (Freemen et al. 1992: 3). In the 1960s an active interest in resuming a bowhead hunt arose and licenses were issued to Aklavik, Tuktoyaktuk and Sachs Harbour in 1965. Several bowhead hunts were attempted in 1965, 1975 and 1979 without success, but for most of the 1970s, the Inuvialuit voluntarily refrained from hunting to facilitate government bowhead population studies (Freeman et al. 1992: 4).

The 1988 proposal of the Aklavik HTC for the harvest of one bowhead was refered from the IGC to the FJMC for presentation to the Minister of DFO. The proposal was also presented by the IGC to the Canadian Commission on Whales and Whaling (COWW) which recommended to the Minister that the Aklavik HTC be granted a

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[47] Personal communication, Bob Bell, Chairman, FJMC.

license for one bowhead. Unanimous support from the FJMC also produced a similar recommendation on the basis that under the IFA the Inuvialuit had a legal right within the limits of conservation and public safety to harvest marine mammals for subsistence (s.14(29)) and the minister had a legal obligation to issue the license.

A letter from the chairman of the FJMC to the Minister of DFO clearly states the grounds for the request and the legal obligation to honour it:

> ... bowhead population data to date continue to confirm that Aklavik's harvest, even if it were added to the other bowhead harvests on the North Slope, would still result in a total take of bowheads that would be well within the limits of conservation as defined by the Inuvialuit Final Agreement... [and] would pose no concern with respect to public safety. Thus we have concluded that your officials are now legally obliged to issues the license as requested by the Aklavik HTC... [FJMC] recognizes that the existence of the IWC subsistence allocation for bowhead... is often recognized by other nations as a conservation quota, which it is not ... and Inuvialuit harvest of bowhead will not result in the total annual harvest of bowheads on the North Slope exceeding the International Whaling Commission's subsistence allocation. This guarantee is provided by the Inuvialuit with full recognition of their responsibilities under the Inuvialuit Final Agreement as co-managers of this internationally important resource (Freeman et al. 1992: 26).

Although conservation and public safety were not at issue with regard to the harvest of one bowhead, and a license not required, out of sensitivity for Canada's dilemma between honouring its domestic obligations and concern over its international standing the Inuvialuit requested a license. The application for a license provided the Minister with the opportunity to clearly establish that conservation of this bowhead stock was not at issue. It was well understood by the Inuvialuit that Canada would be under intense international pressure to not permit a harvest from a stock still declared endangered by an international body of which Canada was not a member.[48]

Support for an Inuvialuit bowhead harvest was also obtained from the Alaska Eskimo Whaling Commission (AEWC) to enable the Inuvialuit to hunt within the quota established by the IWC. The AEWC in addition to providing advice on harvest techniques and humane killing, also offered the Inuvialuit the unused part of the Alaskan quota that might remain from the previous year's bowhead hunt. This arrangement was confirmed in a memorandum of understanding between the IGC and the AEWC, along with the recognition that it was within the limits of conservation for the stock. Because the AEWC held observer status on the delegation that represented

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[48] Canada holds observer status only on the IWC.

the United States as a member country of the IWC, the offer was contingent on approval from the U.S. government or the IWC.[49]

In spite of a presentation of the Aklavik proposal by Aklavik hunters and federal government representatives to U.S. officials in Washington, no approvals were offered either by the IWC or U.S. Government. Nonetheless, over the express opposition of the IWC and following the receipt of information from U.S. authorities that a significant portion of the Alaskan quota remained unfilled, the Minister of DFO issued a license in 1991 for the Inuvialuit to take one bowhead. The hunt that followed was a success, and accompanied by related biological research conducted by DFO and subsistence studies (Freeman et al 1992, Wein et al 1992).

This hunt represented both fulfillment of an important Inuvialuit cultural need, but also the fulfillment of an important provision of their land claims agreement. In light of the intense international pressure to ban all whaling and the scrutiny under which Canada was placed in considering the harvest of one bowhead for subsistence purposes, notwithstanding the fact that conservation was at not an issue, it is clear that Inuvialuit harvesting rights alone enabled the bowhead harvest to proceed. Even with rights that are fully protected under the Canadian constitution, this was still not possible without a great deal of effort.

Throughout this endeavour, the FJMC served as the central forum for the Inuvialuit and Canada to achieve a cooperative approach to the resolution of this difficult political international issue.

3.1.2 Decision Making and Authority

The IFA assigns each of the co-management bodies voting powers with the chairman casting a vote in the event of a deadlock among the members. All of the IFA's co-management bodies convey their decisions on harvest quotas, conservation levels (total allowable harvest), development proposals and other issues related to their mandate by way of recommendations to the appropriate federal and territorial ministers or government authorities. The authority and decision-making responsibilities of the IFA's co-management bodies are not defined in the IFA as ultimate or final. These bodies report to the appropriate ministers and their relationship can be characterized as an advisory one.

To date no formal recommendations from these bodies have been rejected or ignored, including those dealing with financial matters or carrying financial implications for

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[49] The Inupiat also offered to send some of their whalers from Alaska to teach the Inuvialuit harvesting techniques appropriate for bowhead. This offer later had to be withdrawn as a result of restrictions placed on the AEWC by virtue of their membership as observers on the U.S. delegation to the IWC.

government. This record is an interesting one in light of the attention and weight given in claims negotiations to the authority and decision-making responsibilities of wildlife and environmental management bodies. "Advisory bodies" have often been characterized as the weak sister to "public government" bodies which are viewed as holding delegated jurisdictional authority. In both instances the minister retains full jurisdictional authority for management of wildlife and the environment, and the difference is more one of characterization than practical. Most of these bodies either make recommendations to the minister or competent government authority or inform them of their decisions. The same provisions usually apply to each whereby a response is required within a specified time period, and if the recommendation is found to be unacceptable, reasons are presented in writing along with the opportunity to reconsider the matter.

The experience of the IFA's co-management bodies to date suggests how wildlife and environmental management decisions are arrived at, how these decisions affect and are affected by aboriginal harvesting rights, and how they are treated by those holding legislative authority, are as significant for the interest of aboriginal people as the debate over whether decision-making powers are ultimate and final and who they should properly reside with.

Although not required to do so, the IFA-based co-management bodies have chosen to operate by consensus decision-making as an alternative to voting by members. This approach reinforces a feature of co-management that is fundamental to its effectiveness: cooperation. Inuvialuit and government members on these bodies recognized the opportunity to convey the strength of consensus-based decisions into effective and timely implementation. Operating in this fashion, potential problems with a decision or its implementation by either party are addressed by all of the members before the decision is made. This approach to decision-making has provided a level of comfort for both ministers as well as the members of the co-management bodies that has allowed the parties to address difficult issues in a pragmatic and mutually supportive fashion.

It has lead to the recognition that a majority vote for any party produces only the most temporary of resolutions, and that any party forced to implement a decision against its will or desire is less than committed to carrying it forward, even when called upon or required to do so. It has allowed the chairpersons of these bodies to be more effective in facilitating cooperation between the government and the Inuvialuit members, rather than compromising this role by siding with one party to cast a vote and break a split vote on a contentious or difficult issue.

While it may be argued that more time is required to make a decision based on consensus, it is also evident that the decisions arrived at are more durable and long-lasting. From the standpoint of "life-cycle costing," consensus-based decisions can be viewed as a wise investment of additional time and money, if they preclude ongoing

debate and the need to frequently revisit them as a result of pressures from disaffected parties and interests.

3.1.3 Functional Integration and Coordination

The IFA created three co-management bodies to explicitly assist in wildlife management across the ISR. Some have suggested, following the Nunavut model, that one consolidated wildlife management body would be more acceptable. At the same time it is recognized that this model has not been tested.

The IFA's co-management institutions are creatures of negotiation. Strong jurisdictional and political differences between governments and agencies shaped the negotiations. Often refered to as "cooperative management institutions" they nonetheless were born of conflict and reflect these differences. The establishment of separate wildlife co-management bodies for the Yukon and the Northwest Territories and a body for fish as distinct from other wildlife in the ISR can be viewed as serving in a dedicated manner specific government and agency interests with less likelihood of compromise between them. Indeed, it can be said that differences in character between the Fisheries Joint Management Committee, the Wildlife Management Advisory Council (NWT) and the Wildlife Management Advisory Council (North Slope) are very indicative of the differences in policy and practices amongst the agencies they represent.

From the standpoint of management consultants and textbook public administration these organizational arrangements may appear overly complicated and prone to duplication and overlap. The practice has been quite the opposite, largely as a result of cooperation and formal and informal understandings reached between the co-management bodies.

For instance, the Wildlife Management Advisory councils for the Northwest Territories and Yukon North Slope achieve a modest level of functional integration through their chairpersons, their secretariats and by convening joint sessions periodically as a part of their regularly scheduled meetings to address issues of mutual interest and concern. The WMAC(NWT), FJMC, EISC, EIRB and IGC achieve good coordination and cooperation through the full-time resource support provided to these groups by the Joint Secretariat in Inuvik. In this respect WMAC(NS) is at a serious disadvantage, since it is supported by a part-time secretariat in Whitehorse.

Under the IFA, the WMAC(NS) is responsible for all matters related to wildlife on the Yukon North Slope. By definition, the North Slope includes the nearshore and offshore waters off the Yukon coast as well as the coastal plain. Through agreement with the WMAC(NS), the FJMC has assumed fisheries management responsibilities across the entire area.

Cooperation and integration with the Hunters and Trappers committees is achieved through the direct representation of all HTCs on the Inuvialuit Game Council and through the representation of some HTCs on the five joint bodies as Inuvialuit members appointed by the IGC. The working relationship established within and between secretariats and between the chairpersons of the co-management bodies and the IGC has also enabled a strong relationship with the HTCs. The strongest features of the relationship between the HTC and the FJMC and WMACs are largely a result of functional necessity: the HTCs assist these co-management bodies in providing local advice on regional issues, and the co-management bodies provide HTCs with a "one window" approach to government on harvesting or management issues that cut across more than one jurisdiction. This single-window approach also provides an alternative for those HTCs, that for a variety of reasons, often logistical, cannot or prefer not to deal with government directly.

The IGC's integration with the co-management bodies through the Joint Secretariat has led some government officials (outside of these bodies) to suggest that as an Inuvialuit body the IGC is in a situation that assumes the appearance of a conflict of interest. They and a few outside observers and analysts of co-management argue that this arrangement compromises the standing of the IGC as an Inuvialuit body, the standing of the co-management bodies that are joint government-Inuvialuit bodies, and the standing of the Joint Secretariat as an impartial secretariat. The Inuvialuit do not hold this view nor share these concerns. It is argued that on balance the resources and support available to the IGC are far greater than what they could expect or benefit from with an independent secretariat and, compared to the resources available to governments, both through their general operating funds and through IFA funds, this arrangement and this appearance is a small price to pay to facilitate cooperation and a more level playing field for government/Inuvialuit co-management in the ISR.

3.1.4 Corporate Balance of Development and Conservation Interests

Both the Inuvialuit Regional Corporation (IRC) and the Inuvialuit Game Council represent the collective interests of the Inuvialuit. The former is the recipient of both the title to settlement lands and the cash compensation and through its economic subsidiaries has a strong development interest. The latter has a strong conservation interest. These differing interests from time to time have produced diverging views on the acceptability of certain environmental standards and the desirability of certain development projects. The institutional tensions produced by these differences from time to time have lead some individuals within Inuvialuit organizations and outside observers to propose some institutional solutions out of concern that these tensions may lead to more destructive institutional results.

Some of the instances cited include the refusal of the IRC to endorse the regional land use plan for the Mackenzie Delta-Beaufort Sea Region (Mackenzie Delta-Beaufort Sea Regional Land Use Planning Commission 1991) as recommended by the IGC because

of the plan's designation of certain special protected areas, and the IRC's criticism of some environmental screening and review processes along with the scope of their authority. Some have suggested merging the two bodies (Peat Marwick 1987; S. Winn 1991); others have suggested annual performance review conferences of beneficiaries, elders councils (Robinson, M. and L. Binder 1992), or other dispute resolution mechanisms to overcome these differences and the tensions they produce.

On balance, however, it is difficult to identify any instance where these tensions have lead to a diminished management outcome for wildlife or the environment when set against the relevant goals and principles of the IFA. To a considerable extent this can be attributed to the success of the IFA's co-management bodies in achieving a high practical and effective level of wildlife management in the ISR. They could be said to be institutions that are extremely resilient to compromise and interference from outside interests. Much of the strength of these co-management bodies appears to lie in the changes that the IFA introduced into government wildlife management generally and the strong participation of the Inuvialuit in this management regime.

3.1.5 Inuvialuit Participation and Integration

One of the key elements of the IFA's wildlife management regime is the integration of the Inuvialuit into all bodies, functions and decisions affecting wildlife and land management in the ISR. Considerable progress has been made in this regard with active Inuvialuit participation in most aspects of wildlife and environmental management including conservation, resource use and land use planning, environmental screening and review, harvest allocation, regulation and reporting, research planning and review, consequential legislative amendments, funding discussions, contingency planning and review, environmental monitoring, and advocacy on international issues affecting Inuvialuit harvesting rights.

The high degree of Inuvialuit integration into these bodies can be attributed to a number of factors. Facility in spoken and written English, cultural comfort in working with non-Inuvialuit, the combination of Inuvialuit young people who have a formal education with older Inuvialuit who have extensive experience on the land, trust in the advice of their technical resource people and the chairpersons of the co-management bodies, and confidence in the strength of the provisions of the IFA have all contributed to this significant level of integration and active participation.

Within the IFA's co-management bodies and the other bodies and forums in which the Inuvialuit have participated, they have maintained a standing at least equal to that of government. As individuals the Inuvialuit are increasingly certain in their knowledge of both their harvesting rights and the burden of proof that the IFA places on government to justify restrictions of these rights for purposes of conservation. Collectively, they have a strong voice through their elected representatives on the Inuvialuit Game Council and through the critical role and responsibilities that the IGC

carries in its dealings with government on all matters related to wildlife and wildlife management in the ISR. Within the co-management bodies, the Inuvialuit members appointed by the IGC enjoy the strong moral and political support of the IGC, a fact that is not lost on government members.

The frequent participation of the Inuvialuit in international wildlife conferences, their willingness to present papers on their management experience and concerns in these forums is a good indication of their comfort in and willingness to work with government management institutions. It has also provided them with the opportunity to learn more about these institutions, how they work and what knowledge and research that management is based upon.

The IFA provided for a co-management model that reduced the possibility of government wildlife management overwhelming Inuvialuit management practices, based on traditional knowledge, by altering the approach and foundation of government management in the ISR. Generally, government agencies operating in the region have made many of the necessary changes to adopt this approach; indeed, most have seen it as advantageous to do so. These include involving Inuvialuit representatives directly in land use, parks and protected areas management or planning committees such as those established for Ivvavik National Park, Herschel Island Territorial Park and the Beaufort Mackenzie Land Use Plan. In addition, Inuvialuit harvesters have been involved directly in an advisory and support capacity to wildlife research projects. The co-management bodies themselves have been actively involved in the development of management plans for a number of wildlife populations in the ISR.

Outside the ISR, these changes have been more difficult to accomplish, but this has not deterred the Inuvialuit from questioning and challenging status quo approaches and arrangements. Nonetheless, it has placed the burden on the Inuvialuit (and the co-management bodies) to pursue and achieve the necessary institutional reforms. This has been both time-consuming and expensive. Most notably amendments to federal and territorial legislation, regulations and administrative procedures affected by Inuvialuit harvesting rights have been particularly difficult to achieve. Almost 10 years after the signing of the IFA very few amendments have actually been accomplished. The result is confusion for some in government agencies and in Inuvialuit organizations with regard to how Inuvialuit harvesting rights should be treated. This confusion has lead to uncertainty for some harvesters as to what there harvesting rights actually allow for.

3.1.6 Government Participation and Integration

With some notable exceptions, the commitment of government officials and agencies to implementing the IFA's wildlife and environmental provisions appears directly proportional to their proximity to the Settlement Region. The familiarity and knowledge that managers and policy officials in Yellowknife, Whitehorse and Ottawa hold of the IFA has often been vague at best, although 10 years after the signing of the

Agreement, and with the signing of other northern agreements, more attention is being given to claims implementation in general. Whether this results in increased attention to the requirements of the IFA remains to be seen.

There is a general appreciation that in the ISR things "must be done differently" but few are capable of explaining substantively what this means as it relates to their mandate and responsibilities. Knowledge and commitment from many of these officials tends to be ad hoc and limited to the issue or crisis of the moment. Across government and in headquarters in Ottawa, Yellowknife and Whitehorse, few changes in policy and administrative practice are made without need for strong interventions by the Inuvialuit, co-management bodies and government officials working directly on IFA implementation.

This circumstance has made it difficult for some government members of the co-management bodies to adequately represent their agency, their department and their government. In some cases their advice, views and support are constrained by the uncertainty they experience corporately. Asked to live a double life between the requirements of the IFA and giving practical effect to them on the one hand and the dictates of corporate behaviour largely uninformed by the IFA on the other, their effectiveness in implementing decisions is often limited.

3.1.7 Implementation Funding

For the initial 10-year funding period, ending March 31, 1994, Canada provided $66.154 million to cover the costs of one-time and ongoing implementation costs (INAC 1994). This budget covered 28 implementation tasks agreed to by the parties as well as an allocation for funding Inuvialuit participation in activities associated with the undertakings of the joint wildlife and environment committees. Overall about $5.3 million was allocated for the implementation of 15 tasks and Inuvialuit participation costs associated with the IFA's wildlife and environmental regime in fiscal year 1992-93. Actual expenditures were about $4.7 million, with the underexpenditure due largely to a lower level of activity associated with the environmental screening and review of development activities in the ISR (INAC 1994).[50] Beginning in fiscal year 1995, and covering a five year period, federal Treasury Board allocated $5.85 million annually for these ongoing tasks largely for the purposes of supporting the IFA's wildlife and environmental regime (NAC 1994).

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[50] As they are driven by largely development activities, the expenditures of the ESIC and the EIRB can vary signifiicantly from year to year. Treasury Board authorization was obtained to roll over unspent EIRB funds, with the recognition that a major public review in any given year could easily exceed the EIRB's annual funding allocation. Allowing the EIRB some flexibility to accumlulate a year over year surplus ensures that funds are not lapsed and are accumulated to build a base reserve for reviews when required.

This level of funding has supported meetings as frequent as monthly for the EISC and some of the HTCs, and four to six times a year for the IGC, WMACs and FJMC. It has also covered the costs associated with all of the work of these bodies, wildlife research in the ISR, salaries for agency biologists and the Inuvialuit Harvest Study, the operation of the two wilderness parks and the supporting functions of the secretariats, conferences and workshops. For the purposes of illustrating the relative level of funding allocated for the implementation of the IFA's wildlife and environmental management provisions, table one below sets out expenditures by task.

Table One

IFA Implementation Expenditures for Selected Tasks
1992-93

Organization/Activity	Expenditure
Environmental Impact Screening Committee	$46,244
Environmental Impact Review Board	$82,997
Wildlife Management Advisory Council (NS)	$200,340
Wildlife Management Advisory Council (NWT)	$92,594
Fisheries Joint Management Committee	$247,300
Inuvialuit Game Council	$344,670
Hunters and Trappers Committees (6)	$268,200
Wildlife Studies Program	$1,718,308
Joint Secretariat	$852,762
WMAC(NS) Secretariat	$64,101
Herschel Island Park	$226,931
Ivvavik National Park	$530,000

Source: INAC 1994
Note: These figures should be treated with great caution. In a number of instances, they do not represent the ongoing costs of an organization, but may include one-time projects, purchases or studies, special one-time personnel costs, etc. Line-by-line representations and comparisons can be highly misleading.

With the passage of the IFA into law in 1984, no formal implementation plan and associated budget was prepared. Rather the parties and their agencies with legal obligations and financial requirements under the Agreement met subsequently to negotiate the appropriate budget levels for federal Treasury Board approval to carry out their responsibilities. These discussions were extremely difficult. While they resulted in a Treasury Board appropriation for a 10 year period, they also produced an ongoing debate between the parties and between agencies over this period which was divisive, time consuming, costly and rancorous. Much of this difficulty was produced by different understandings between the parties and agencies as to financial resources required to implement their legal obligations. In light of the sweeping institutional

changes introduced by the IFA, and in the absence of any close comparisons from which to work some of this could be reasonably expected.[51] What proved to be most disturbing, however, was the lack of flexibility for budgetary adjustments in implementing a new piece of federal legislation which established unique institutional responsibilities and arrangements.

For some period of time the adequacy of the overall "cap" or allotment for the initial 10 year implementation period was the subject of discussion and debate. Following the signing into law of the IFA, the assumptions hastily arrived at to appropriate the necessary funding required by the new legislation were frequently revisited and their rationale questioned. This debate, however, slowly gave way to a more pressing set of concerns focusing on the lack of flexibility to move funding between tasks and agencies and across fiscal years. This appeared to be based on the creeping recognition that the terms and conditions of how funding was to be spent were more of a detriment to implementing the Agreement than the amount of overall funding allotted. The strict and narrow conditions attached to IFA implementation funding proved to be highly unsuitable to the requirements of building new institutions and institutional relationships from the ground up and altering existing ones. Delays in appointing members to committees, the time required to plan, and build support and capacity, the challenge of developing a working knowledge of a new piece of legislation with wide and dramatic effect, the uncertainties associated with the development of formal mandates - these were just some of the realities of implementation that made precise budgetary estimates and narrow controls difficult to maintain.

Concern over funding lost and lapsed in a given fiscal year ("use it or lose it"), the potential cumulative effect of these losses, funding responsibilities and the eligibility of implementation activities for funding preoccupied most of the implementation funding discussions between 1984 and 1994. While measures for reallocating much of the accumulated surplus, largely to wildlife research, were finally put in place for the final two years of the initial implementation period, new and improved terms and conditions for more flexible funding arrangements were not negotiated and agreed to until the end of the period, when they were not as urgently required. These terms and conditions apply to the next five year implementation period, effective April 1, 1995. Their adequacy has yet to be determined.

One significant and long-standing area of debate with regard to implementation funding has been the issue of Inuvialuit participation costs. Over the past seven years, the Inuvialuit Game Council, the Government of the Northwest Territories (GNWT) and Canada have debated the eligibility of and responsibility for costs associated with the payment and travel of Inuvialuit appointees to the WMAC(NWT), WMAC(NS), EISC

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[51] The James Bay and Northern Quebec Agreement, which preceded the IFA, offered no guidance or point of referrence in this regard as the adequacy and nature of implementation funding remained a difficult and highly contentious issue between the parties here as well.

and EIRB.[52] Disagreements between the parties as to what the IFA intended were not put aside with acceptance by Treasury Board in 1987 that these were eligible costs to be borne by government. The GNWT and Canada have been unable to agree on which government is responsible for them.

Inuvialuit participation in the IFA joint committees represent an agreed upon on-going cost of $186,000 per annum. The federal government has insisted that these funds can only be distributed through the GNWT and only following an amendment to the IFA attaching the legal responsibility for Inuvialuit participation costs upon the GNWT. The GNWT has resisted this view, and paid the costs without reimbursement from the federal government. The GNWT concern arises in part from accepting a legal responsibility for funding when no legal guarantee exists that Canada will provide the GNWT with the level of funding that is required to meet this legal obligation. In 1993 and 1994 the GNWT indicated that it would no longer fund these costs, but in an effort to allow a negotiated resolution of the dispute it has paid these costs through to March 31, 1995. With the failure to resolve the dispute, the GNWT refused payment to cover these costs in April 1995. As of May 1995, the issue had not been resolved, with the result that the joint management committees affected had not met in the new fiscal year. The effect has been significant: decisions required to recommend wildlife regulations have not been made, research proposal have not been approved, development applications for the ISR have not been screened. The consequences for development and conservation interests alike are potentially profound: a field season for wildlife research and mineral exploration could be lost at a time when funds for the former are declining and capital for the latter is fragile, fleeting and not easily acquired. Ironically, perhaps, no other single event in the 10 year history of IFA implementation has so visibly demonstrated what co-management has achieved, the certainty and stability it provides to all resource users and developers, and what can be lost without it.

The Auditor General of Canada in his 1990 report gave special attention and criticism to the absence of a formal implementation plan for the IFA (Auditor General of Canada 1990). This criticism along with the experience of the implementing both the IFA and the JBNQA, has given rise to the federal requirement that prior to the signing of a final claims agreement, the parties must negotiate and reach agreement on an implementation plan. The implementation plans that have been negotiated in other parts of Canada subsequent to the signing of the IFA are contained in agreements which stand apart from the formal claims agreements themselves. Unlike them, they are not legislated or constitutionally entrenched. As with IFA implementation funding, there are no final guarantees as to how these funding levels will be protected, and what the federal government is prepared to live up to and provide in the face of the competing forces of deficit and debt reduction initiatives on the one hand and constitutionally entrenched legal obligations on the other. The effectiveness and adequacy of the recently signed implementation agreements in overcoming many of the funding difficulties which have

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[52] The FJMC is the exception as Inuvialuit participation costs on this body are borne directly by DFO.

characterized IFA implementation have yet to be determined. Until these determinations can be made with assurance, and the implementation record of the recently signed claims agreements evaluated, it would be premature to present them as a panacea to all implementation funding problems.

3.2 Research

Wildlife research is an important part of the wildlife management regime established under the IFA. Over the initial 10 year period since the IFA was signed, wildlife research has been an important and significant implementation activity. Alongside the IFA-funded wildlife research program, the Inuvialuit Harvest Study (IHS) has also made a substantial contribution to wildlife management in the ISR. From a management perspective, the IHS plays a complementary role to much of the wildlife population research carried out in the ISR. The IHS is now the longest-running harvest study still operating in northern Canada.

This section briefly reviews the state of research in the ISR, how it is managed and what it has contributed. It also examines the unique role established for the Inuvialuit Harvest Study in the IFA and considers its past contribution and future prospects.

3.2.1 Government Research

The IFA makes it necessary for governments to dramatically improve their state of knowledge of wildlife and habitat in the ISR in order to meet their obligations for conservation, including the identification of the wildlife resources available for harvesting and management that is directed at the long-term optimum productivity of wildlife and habitat resources (s.2, "conservation"). This follows in part from the establishment of Inuvialuit harvesting rights that were subject to restriction only for the purposes of conservation and public safety. With respect to harvest restrictions for the purpose of conservation, the IFA placed the burden clearly on government to justify such restrictions by demonstrating the health and quality of wildlife populations as they affected and were affected by wildlife harvesting. Both the Inuvialuit and the government agencies involved saw an increased level of wildlife and habitat research as fundamental in meeting these legal obligations and the requirements of the new wildlife management regime for the ISR. Along with these new obligations was the requirement for additional funding to support them.

Calculated as "net additional costs" to the agencies with responsibilities for wildlife management, implementation funding was provided to the Canadian Wildlife Service, the Department of Renewable Resources (GNWT) and the Department of Renewable Resources (YTG) to meet their research requirements. In the Treasury Board allocations for the initial 10 year period identified to implement the IFA, approximately $18.25 million was earmarked for wildlife management research (Indian and Northern

Affairs Canada 1991). This represents almost 28 percent of the total funds available for IFA implementation over this period. For the five year funding period beginning April 1, 1994, and ending March 31, 1999, ongoing annual funding of approximately $1.5 million has been proposed for wildlife research (Indian and Northern Affairs Canada 1993a). This represents approximately 25 percent of ongoing annual IFA program funding.

Prior to the signing of the IFA, the bulk of the research efforts throughout the Western Arctic were development-driven and sponsored either by government or industry to consider the environmental effects associated with oil and gas exploration activity. The Mackenzie Valley Pipeline Inquiry and the National Energy Board hearings into proposals for gas pipelines across the Yukon North Slope, across the Mackenzie Delta and down the Mackenzie Valley, along with related public environmental assessments and regulatory board hearings related to oil and gas exploration and development drove a great deal of the early wildlife research efforts in the area. Routine government research efforts were modest at best and consistent with the limited management presence throughout the region.

The IFA implementation funds for wildlife research represent the most marked research effort since the project driven initiatives of the 1970s and early 1980s, and the most significant level of ongoing research activities ever undertaken in the Western Arctic. Of the total allocation of $18.25 million for wildlife research over the initial 10 year implementation period, almost $5.7 million was earmarked for "one time" wildlife studies - studies that would provide for a concentrated research effort to more quickly establish wildlife population and habitat baseline data required by the new wildlife management regime. Of the approximately $12.5 million that was allocated for wildlife research programs, additional funding was obtained from other government programs to cost-share a number of research studies.

Wildlife research has concentrated on studies related to establishing baseline data and stock assessments for wildlife populations (population delineation and number, sex, size, age) as well as the following:

- range, distribution and migration pattern studies,
- predation, mortality and productivity studies,
- species genetics, disease research, body condition studies,
- vegetation and habitat mapping research, and
- preferred and critical habitat identification and use studies: delineation of breeding and calving ground studies, denning ecology studies, range condition studies.

Much of this research is directed towards providing wildlife managers with a better understanding of wildlife populations and the diverse factors affecting population dynamics in order to meet the IFA's conservation objectives of maintaining the quality and optimum productivity of wildlife without resorting to harvest restrictions as the

narrow and exclusive means for doing so. The IFA's research program[53] can be viewed in this regard as removing the imposition of restrictions on Inuvialuit harvesters as the management solution for maintaining wildlife populations of which little is known.

The "need to know" requirement imposed by the IFA on wildlife management as the precondition for harvest restriction set the long-term research agenda in the ISR. At the same time research has also been driven by short-term requirements, largely at the request of local HTCs. Research projects have been initiated out of more immediate local concerns over the health and stability of fish and other wildlife populations, and concerns over habitat conditions.[54] Others projects have been initiated in response to requests to evaluate game populations and fish stocks for the purposes of determining the feasibility of commercial and sport harvesting opportunities.

While the IFA provided a new and significant source of funding for wildlife research in the ISR, it would be misleading to suggest that these funds have given government agencies free license to pursue their own research interests and priorities. The HTC, IGC and co-management bodies have played a highly influential role in setting the priorities for wildlife research, approving research projects and allocating funds.

The Wildlife Management Advisory councils (WMACs) and the Fisheries Joint Management Committee (FJMC) play a central role in serving as a forum for the development of research agendas based on identified needs, assigning priority to

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[53] A partial list of species and populations studied includes the following:
Banks Island Caribou, Bluenose Caribou, Victoria Island Caribou, Porcupine Caribou, Banks Island Muskox, Victoria Island Muskox, Wolf, Moose, Anderson/Horton River Grizzly Bear, Richardson Mountain Grizzly Bear, Polar Bear, Dall's Sheep, Wolverine, Gyrfalcon, Snow Goose, Black Brant, King Eider, Migratory Birds, Beluga, Bowhead, Arctic Charr, Broad Whitefish, Arctic Cisco, Ringed Seal

[54] There are many examples of IFA-funded research that have been initiated in response to pressing local management concerns. For example, in 1991, a suspected over-harvest of grizzly bear in the Richardson Mountains prompted the Aklavik HTC to declare a moratorium on the harvest of grizzly bears by Inuvialuit until such time as a study of the population had been conducted and research findings supported the re-opening of the harvest on a limited quota basis. An IFA-funded study was immediately carried out and two years later a quota recommended.

In another example of research driven locally to address a local management interest, the Paulatuk HTC identified stock assessment of Arctic charr in the Hornaday River as a research priority. The Hornaday was the site of a commercial charr fishery that was regulated by a Department of Fisheries and Oceans (DFO) quota since 1968 and the community was interested in determining the potential of the commercial fishery. Stock assessments were conducted between 1986 and 1988, and the first test fishery to evaluate stock status was conducted in 1986. Based on the test fishery results, it was recommended that the commercial fishery be closed to allow stock recovery. On the recommendation of the Paulatuk HTC, DFO discontinued the issue of commercial fishing licenses for the river, although a subsistence fishery was maintained. In association with the subsistence fishery, further assessments have been conducted to examine trends in size of the harvest, catch-per-unit-effort, and size and age of harvested fish (Fisheries Joint Management Committee 1992: 12).

research projects, and monitoring research activity. The WMACs and the FJMC take the regional research priorities of the IGC and the local research priorities of the HTCs as their guiding influence. On the basis of these priorities, the government agencies sitting on the co-management bodies and charged with research responsibilities in the ISR develop proposals for review and approval. The co-management bodies have tended to adopt multi-year research plans while leaving some opportunity for annual adjustments to meet unanticipated research needs typically tied to wildlife management issues that have arisen unexpectedly. Having developed a research plan that ranks projects and suggests funding allocations across projects, the co-management bodies present the proposed plan to the IGC for its endorsement before adoption. This arrangement speaks to the strong interest that the Inuvialuit hold in the expenditure of research funds. It is highly unlikely that any research proposal would receive funding over the objections of the IGC. Perhaps it can be taken as an indicator of the success of the co-management bodies in developing research plans that accommodate the interests of the Inuvialuit and the interests and legal obligations of government to conduct research in support of the conservation and management requirements of the IFA, that this possible consequence has never been tested.

Inuvialuit participation directly in research work has also been significant. A number of projects have been specifically designed either to utilize Inuvialuit as field researchers or to provide them with learning or training opportunities related to wildlife research. Government agencies have made notable contributions in this regard, but the most significant arrangements have probably been achieved by the FJMC. Unlike the two WMACs, which oversee fieldwork exclusively sponsored by government agencies, the FJMC assumes direct sponsorship of some research projects that tend to be either community-based or have a strong community focus. Local HTCs have been either actively involved in or assumed field responsibilities for test fishery projects, stock enumeration, habitat restoration and beluga harvest monitoring projects, to name a few.

Research initiatives have also focused on or utilized traditional Inuvialuit knowledge of wildlife populations, wildlife behaviour, habitat preferences and changing habitat and environmental conditions. One of the strengths of the active role of the co-management bodies in the determination of wildlife research plans is the consideration that is given to traditional knowledge in identifying research needs and in research design and methodology.

This role has also fostered an improved level of cooperation in wildlife research between agencies with management responsibilities over shared populations. Through the IFA requirement that wildlife be managed on the basis of population, along with multi-agency participation on co-management bodies and the generally close working relationship between co-management bodies, these legal and practical means have contributed to the reduction, if not elimination of narrow jurisdictional differences between governments and agencies, especially in the areas of wildlife and habitat research. In turn, this has lead to improvements in the sharing of information between agencies and the development and integration of data bases. It has also lead to the

improved sharing of resources between agencies allowing them to collaborate on new initiatives in the areas of ecosystem research and monitoring where narrow agency-specific mandates make work that is broad and comprehensive in scope difficult to carry.

3.2.2 Inuvialuit Harvest Study

An important element of the IFA's wildlife management regime is the requirement to collect harvest information through the local Hunters and Trappers committees and the Inuvialuit Game Council (s.12(41)(c)(ii); s.14(60)(h); s. 14(64)(c); s.14.(64)(h); s.14(78)). Just as this regime and the definition of conservation that it rests on requires a higher level of research activity to establish wildlife population levels and an improved understanding of population dynamics for assisting in the determination of a total allowable harvest and harvestable quotas, so it requires an improved state of knowledge of Inuvialuit harvesting activity to understand its impact on wildlife productivity.

Unlike other comprehensive claims agreements that limit harvest studies to the determination of "basic needs levels" for establishing minimum subsistence requirements, the IFA established a broader role for the Inuvialuit Harvest Study. It is an important one with strong links to the responsibilities assigned to Inuvialuit organizations, government and co-management bodies under the IFA.

The Inuvialuit Harvest Study (IHS) is a research tool with broad application to the work of the co-management bodies, the IGC, the HTCs and government agencies. For instance, harvest study data assists the Wildlife Management Advisory councils and the Fisheries Joint Management Committee in the determination of subsistence requirements as they relate to usage patterns and levels of harvest, and in the determination of the total allowable harvest, harvest quotas and the development of species population management strategies. Harvest study data are useful to the IGC in determining how harvest quotas can be allocated across different community harvesting areas. Data are useful to the HTCs in sub-allocating quotas and distributing the harvest across sub-areas within the community harvesting area and in regulating local harvest activity.[55]

For government wildlife agencies, the harvest study contributes to the understanding of how certain features of the harvest (sex, age, location, distribution, season) affect wildlife population dynamics and the productivity of species populations. IHS harvest estimates for some populations have also prompted government agencies to reconsider imputed population estimates and to undertake population research to improve on poor

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[55] For example, the Paulatuk HTC has used IHS Arctic charr data (harvest numbers by month) to better manage the timing and level the of community's charr harvest on the Hornaday River.

baseline data.[56] In documenting the level and location of harvest activity the IHS assists the Environmental Impact Screening Committee in determining the significance of the impacts associated with development applications in the ISR on present and future wildlife harvesting. Harvest study data is basic to the Environmental Impact Review Board in the same way, but of additional importance, it also provides data for the determination of compensation for actual and future wildlife harvest loss resulting from possible negative environmental impacts of major developments (s.13(2); s.13(3); s.13(4); s.13(7); s.13(8); s.13(11); s.13(12); s.13(18)).

The IHS was formally established in 1987-88 with the hiring of staff - a study coordinator and field workers - community consultations, the completion of study design and the initiation of data collection. A working group oversees the study and represents the interests of the Inuvialuit, the Canadian Wildlife Service, the Department of Renewable Resources (Government of the Northwest Territories) and the Department of Fisheries and Oceans.[57] The chairs of the co-management bodies have more recently been participants in the working group as well.

This IHS is a harvester recall survey. Harvest data have been collected through monthly individual hunter recall surveys in each community in the ISR and harvest study data reports have been produced covering the period from July 1986 to December 1992 (Fabijan 1987; Fabijan, Snow, Nagy and Ferguson 1993; Fabijan 1993a; Fabijan 1993b). When annual reports have not been available, tabular data summaries have been. The study attempts to cover the entire hunter population in the ISR. Harvest information is collected for sixty-one wildlife species including five species of marine mammals, nineteen species of terrestrial mammals, thirteen species of fish, and twenty-four species of birds (Fabijan 1993b). Hunters are asked to recall what species were harvested, when and where, as well as the sex and maturity of the animals.[58] Field workers record harvest information on data sheets and harvest locations on topographic maps (1:250,000). Hunters are assisted in recalling their harvests by the Inuvialuit

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[56] In one instance, caribou population estimates for Victoria Island were not compatible with harvest data, suggesting that at the level of harvest recorded the population should be approaching extinction. This prompted further studies to establish new population levels and to consider the possibility of two distinct and segregated populations of caribou where previously there was thought to be only one on the island.

[57] The Department of Renewable Resources (Yukon Government) is not represented on the IHS working group, even though the Yukon North Slope falls within the ISR and Inuvialuit harvesters are active in the area. Unlike the other working group members, the Yukon chose not to contribute IFA implementation funding to the study on the grounds that the contribution ($25,000) requested to support the study was not justified by the Yukon's limited management interest in the study and the limited harvest occurring in the area. The Yukon has been asked to reconsider this position by the Inuvialuit Game Council.

[58] Sex and age data has been collected for caribou, muskox, polar bear, grizzly bear and beluga since the inception of the IHS. More recently, hunters have been voluntarily providing sex and age data for wolf and wolverine, and some fox. (M. Fabijan, per. comm.)

Harvest Calendar, a twelve month calendar distributed annually and containing a description of the study and its objectives, instructions for using the calendar, local pictures, a photograph of each of the fish and other wildlife species included in the study along with common and Inuvialuktun names, and a space for hunters to record their harvest on a daily basis.

Hunters are provided with a copy of the information given at the end of each interview. They also receive a summary of their community's harvest data including monthly species harvest levels for the current and previous calendar year. Every three months, summary information for all six communities in the ISR is provided. The annual report is distributed to Inuvialuit organizations, government agencies, researchers, and industry. Monthly data tabulations are available on request and typically provided to the sponsoring agencies, the co-management bodies, HTCs and the IGC.

Digitizing of mapped harvest location data began in 1993 and has produced maps indicating individual species harvest locations from July 1986 to December 1992 (Fabijan, M., N. Snow, J. Nagy, L. Graf. 1993).[59] It is planned that data collection and the annual publication of harvest levels and locations will continue (Fabijan 1993b). An early interest in collecting hunter effort data was deferred for five years so as not to compromise or confuse efforts to collect species and location data (Fabijan 1993b). In 1989 a pilot project to collect effort data in one community was initiated as a part of the monthly hunter interviews. The collection of effort data in the remaining communities was initiated in 1992.

The level of participation of Inuvialuit harvesters over the life of the IHS has been impressive, especially given the extensive survey response burden. Over the life of the IHS 899 different harvesters have been involved in the study with 797 harvesters participating in 1992 (Fabijan, per. comm.). The monthly percentage of the hunter population interviewed was approximately 75 percent for the first two years of the study, and consistently 90 percent or better for the last four years of the study (Fabijan, Snow, Nagy and Ferguson 1993: Table 2). The level of participation of the field workers has also remained high with four of the original six community workers recruited in 1987 still working on the IHS. Additionally the level of support for IHS from HTCs has remained high in the study over its life span.

In reporting six years of Inuvialuit harvest data, the IHS has generally improved the information available for all species on harvest locations around each community. For some species, especially caribou, moose, fish, waterfowl and locally used furbearers (wolverine and wolves), a better estimate of the Inuvialuit harvest is now available.

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[59] Harvest maps are currently generated by QUICKMAP. Plot points represent the UTM coordinates of the reported kill site location. It is anticipated that the system will be converted for use under SPANS allowing more flexibility in plotting configurations. In addition to the mapping of harvest sites, consideration is also being given to the mapping of actual harvest numbers to represent harvest density.

For waterfowl, where virtually no harvest data existed previously, the IHS has provided an estimate of the total harvest, species composition, distribution of the harvest across the ISR's six communities, and the year-to-year variation in the harvest. For caribou a better estimate exists of the Inuvialuit harvest of these migratory populations, as well as the age and sex of the harvest by month. For virtually all fish species, harvest estimates exist with monthly and annual variations where no information was available previously.

Notwithstanding questions that have been raised by some of the agencies supporting the study about the reliability of some of the harvest data, it is well appreciated by most agencies and Inuvialuit organizations that the harvest estimates generated by the IHS cast considerable new light on Inuvialuit harvesting activities as they affect specific wildlife populations.

The IHS can be viewed as a "state of the art" hunter recall survey. At the same time it is potentially vulnerable to many of the liabilities that characterize recall surveys - most notably potential response bias, response burden, and the limitations of memory. The IFA's wildlife provisions and the management regime that they support have generally reduced some of these liabilities. Most notably they have contributed to a generally neutral political climate for wildlife management in the ISR. This climate of neutrality has benefited the IHS and overcome any motivation of harvesters to bias their responses out of fear and anxiety over how their reported harvest would affect their future harvesting opportunities. The IFA can be viewed as accomplishing this in several ways:

- it provided certain harvesting rights that could only be restricted by conservation as defined in the Agreement,
- it placed the burden of proof on government to justify restrictions on Inuvialuit harvesting for the purposes of conservation,
- it established a subsistence priority for the Inuvialuit over all other users of wildlife, with the right to fully meet their subsistence requirements subject to conservation requirements and the equitable sharing of the harvest with other native people in the vicinity of the ISR who traditionally depended on the population for food and clothing,
- it required greater wildlife and habitat research efforts by government agencies to document wildlife population levels, better understand population dynamics, and improve the state of knowledge of habitats critical to biological productivity, thereby ensuring consideration of other factors in addition to harvesting that affected the sustainability and enhancement of wildlife populations,
- it established a strong role for local HTCs and the IGC in the management and regulation of Inuvialuit harvesting activities, and
- it placed the Inuvialuit on a relatively level footing with government in wildlife management and wildlife research across the ISR, although government retains final authority for decision making and funding matters.

Another important feature of the IFA in this regard is that it did not direct nor restrict the IHS to the determination of a "basic needs level" or minimum subsistence quota, but tied it to a broader set of criteria for determining subsistence requirements that allowed the Inuvialuit the flexibility to adjust these subsistence requirements across species as dietary requirements permitted and harvesting opportunities changed. This is an important consideration, and one that put the IHS and Inuvialuit harvesters on a substantially different footing from many of the harvest studies established under other claims agreements in that it did not tie the response of harvesters to a known outcome, that is the establishment of minimum harvest levels. In freeing the response of the harvesters from an outcome that is designed to define the lower limits on harvesting opportunities subject to conservation requirements, harvesters are free of the associated motivation to bias their reported harvest upwards.

Together these provisions, along with the strong involvement of the HTCs and the IGC in the harvest study, have created conditions that inspire the confidence of Inuvialuit harvesters in the study and contribute to the sustained levels of high hunter response.

In 1993, the IHS was subject to the first modest assessment of its performance, reliability and methodology since its inception (Fabijan, Snow, Nagy and Ferguson 1993). Interview success was assessed, summaries and comparisons of annual report and estimated total harvests of each species harvested by each community were prepared, and comparisons of harvest data for furbearers and polar bears and grizzly bears in each community between the IHS records and GNWT harvest records, and for beluga whales between the IHS and FJMC records were made. While the dual reporting of harvest data for these species has fallen under some criticism over the duplication of effort, it has also provided a comparative means for establishing the reliability of the harvest data for certain species.

The IHS and GNWT harvest data indicate some significant discrepancies with respect to high value and high profile species that are harvested in low numbers, namely polar bears and grizzly bears (Fabijan, Snow, Nagy and Ferguson 1993: Table 17). In the case of these species, the IHS-reported harvest based on hunter recall was well below that of government harvest data based on the return of the tag and identifying features or parts of the animal harvested by the hunter as required under HTC bylaws. For the small number of animals harvested these discrepancies potentially raise questions about the reliability of the IHS data for the higher-volume species harvests. Comparisons between the IHS reported harvest for furbearers and GNWT fur sale records also indicate some significant differences in the number of animals reported (Fabijan, Snow, Nagy and Ferguson 1993: Table 31). Given that the latter is limited to a record of pelts sold commercially, a discrepancy could be anticipated. What is surprising is that for some species of furbearers, IHS records were lower even though they should represent a complete record of all animals harvested, not just those that are sold.

Discrepancies also exist for beluga whales between the IHS and FJMC data where the latter was collected in hunting camps at the time of the harvests (Fabijan, Snow, Nagy and Ferguson 1993: Table 33, 34). In this instance, these discrepancies may be due in part to differences in the length of the reporting period and the definition applied to the harvest.[60] With respect to waterfowl discrepancies existed between IHS data and GNWT data. In this instance, these discrepancies may be due in part to differences and inconsistencies with respect to how hunters are defined.

These various discrepancies are currently being examined by IHS personnel to account for the divergence in reported harvest data between various sources and to suggest solutions. The data discrepancies represent some troubling problems to be addressed in light of the high requirements for reliable harvest data placed on the IHS by Inuvialuit and co-management organizations and government agencies, given the use to which this data is put in wildlife management in the ISR. At the same time, it appears to be generally recognized by these same organizations and agencies that these problems do not belong to the IHS alone and typify hunter recall surveys. The opportunity to address discrepancies between various sources of harvest data holds out the prospect of gaining a better appreciation of the strengths and weaknesses of each reporting system and the reliability and confidence that can be placed in each, relative to the type of species data being collected, the use to which it is put and the cost associated with its collection.

The IFA is not restrictive of the methods employed in collecting harvest data nor of the role assigned to harvesters in its collection. In this respect other methods of collecting certain species-specific harvest data may in the future have more merit depending on the level of reliability sought, the costs involved, and the information desired. The IHS is currently an expensive way to collect certain types of harvest data,[61] and, for some species, has not added any new information to what is currently collected by some government agencies. For now this duplication may be justified for the purposes of enabling comparative evaluations between different methods for collecting harvest data, but over the longer term, it will be difficult to support overlapping reporting systems once the relative merits of different approaches are fully considered.

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[60] The traditional harvest of beluga whales in the Mackenzie estuary was monitored by DFO from 1983 to 1986. The FJMC assumed responsibility for the program in 1987 and has coordinated the program since. The FJMC's annual beluga harvest monitoring program collects data on numbers harvested, size and sex, and biological samples (e.g. aging teeth, skin and liver samples for a study of stock discreteness). The FJMC harvest report period for beluga is shorter than that covered by the IHS. Under the IHS, "harvest" refers to whales killed and landed, whereas under the FJMC reporting system "harvest" refers to whales killed, struck, lost and landed.

[61] The annual budget for the IHS has risen from $195,000 to $242,000 over the last six years of the study (Fabijan, per. comm.). Proposed annual expenditures for the next five years of the study are approximately $297,000 (Fabijan 1993b). Most of these funds are assigned to field workers.

Additionally, it may be useful to abandon recall surveys for some species where additional information besides harvest data can be obtained through other means such as on-site monitoring and tag requirements. For instance ecosystem monitoring, state of the environment reporting, contaminant monitoring, and health advisory monitoring of key food species may make it more attractive to routinely collect information on harvested wildlife through the collection of biological samples (e.g. animal tissues, skulls, jawbones, other animal parts) supplied by harvesters. These are possibilities that the IFA permits the IHS to consider and adopt in the future depending on the interests of the harvesters themselves and the changing requirements for wildlife management in the ISR.

Two other areas will require attention by the IHS in the future. The first is with respect to the ownership of the data, the means by which it is made available and the terms and conditions of its use. As more data has become available, especially mapped data, the IHS recognizes that clearly defined administrative procedures and guidelines for information sharing, both between the Inuvialuit and government agencies as well as with third parties, will require careful and close attention. Cost recovery as well could become as significant an issue for the IHS as it is for Statistics Canada.

With respect to the second area, questions about the legal validity and evidentiary status of harvest data will need to be carefully considered as they bear on issues of wildlife compensation. Notwithstanding the compensation agreements that have been reached in the past between the Inuvialuit and oil and gas companies recognizing the harvest study as the legal record for the determination of actual harvest loss, the legal certainty of these arrangements and the adequacy of the information to meet the evidentiary standards of the courts have not been tested nor determined. Legal proceedings and class action suits filed by fishermen and harvesters in Alaska arising out of damages suffered from the *Exxon Valdez* oil spill suggest caution and prudence before making claims regarding the adequacy of IHS data in determining and settling wildlife compensation claims.

As more harvest data becomes available its reliability will be subject to greater scrutiny. In this regard the HTCs play a powerful role in checking and validating the data. If the IHS underestimates the harvest on key species this could have significant financial implications in the determination of wildlife compensation. If the harvest data is viewed as unreliable it could weaken the position of Inuvialuit harvesters in international forums in stating their case for a certain level of harvest of migratory birds, whale populations and caribou populations in support of their right to harvest these populations. This is one of the greatest challenges faced by the IHS. Over the longer run it will not be enough that the Inuvialuit are confident in the reliability of their harvest data, but others must be as well, at least to the extent that sound methodology, good science and reason prevail. In some of these instances, it may well be that IHS data will serve a political purpose, long after it has satisfied the requirements of good wildlife management. It may simply provide a level of comfort to other interests, both in Canada and around the world, that the Inuvialuit are good

managers and responsible users of the populations they rely upon and, in some cases, share with others.[62] With respect to those interests that historically have indulged in wild speculation about the over-harvesting of wildlife by aboriginal people, the IHS may represent a credible and forceful response to such assertions.

The IHS evaluation will continue into 1994 and a possible outcome of this work is some recommendations for a more integrated approach to harvest reporting across agencies. Indeed, it is possible that in the future the IHS could be the mechanism for achieving a truly integrated system of harvest data collection across the ISR through the use of multiple sources. This could include hunter recall for some species, on-site harvest monitoring for others where species-specific harvests are concentrated in location and time, and tag returns and other reporting requirements for species populations subject to HTC bylaws for others. If the IHS accomplished this it would achieve a level of cooperation, consistency, coverage and reliability across government wildlife management agencies, aboriginal harvesters, aboriginal organizations and co-management bodies that has not existed previously anywhere.

3.3 Interjurisdictional Issues

A number of the wildlife species that the Inuvialuit most depend upon for food are migratory with ranges extending, in the case of waterfowl and beluga and bowhead whales, far beyond the ISR. The migratory wildlife populations that the Inuvialuit hunt are also harvested by others and hold a high level of international interest for many non-consumptive users of wildlife and animal rights groups as well. In the negotiation and implementation of the IFA, the Inuvialuit recognized that interests and activities outside of the ISR could seriously compromise the effectiveness of their wildlife and environmental regime, their rights to harvest wildlife, and the health and abundance of the wildlife populations on which they depended. In their land claims proposal, COPE asserted:

> With respect to hunting rights, international agreements on wildlife management present the greatest potential problem for the Inuvialuit. They are also problematic in terms of gaining access to decision-making (COPE 1977b: 20).

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[62] While the waterfowl harvest data is now considered adequate for management purposes in the ISR and need no longer be collected for some period of time, other reasons for continuing with the collection of this data prevail. The IHS data collected to date has strongly supported the Canadian position in the negotiations with the United States to amend the Migratory Birds Convention that current harvest levels by Aboriginal people in northern Canada are not excessive. Until such time as legislation is passed, and possibly for a few years thereafter, it is believed that continuing the collection of waterfowl data would be helpful in allaying fears held by some U.S. interests of a potential dramatic increase in harvesting activity with the passage of proposed amendments.

Recognizing the need to secure a means for influencing interjurisdictional interests and issues that affect the productivity, use and management of wildlife in the ISR, the Inuvialuit negotiated several provisions in the IFA toward this end. For example, in general terms:

> 14.(38) Canada undertakes to endeavour to obtain changes to other international conventions and arrangements and to explore other alternatives in order to achieve greater flexibility in the use of wildlife resources by the Inuvialuit. Canada undertakes to consult the Inuvialuit Game Council prior to any new international agreements that might affect the harvesting of wildlife in the Inuvialuit Settlement Region.
>
> 14.(39) Canada undertakes to ensure that wildlife management and habitat management produce an integrated result with respect to migratory species within the Yukon Territory, the Northwest Territories and the adjacent offshore. In respect of migratory species that cross international boundaries, such as the Porcupine Caribou herd, Canada shall endeavour to include the countries concerned in cooperative management agreements and arrangements designed to maintain acceptable wildlife populations in all jurisdictions affected, including safe harvesting levels within each jurisdiction. Canada shall endeavour to have included in any such agreements provisions respecting joint research objectives and related matters respecting the control of access to wildlife populations.

These and other provisions related to interjurisdictional issues affecting the management of wildlife and habitat and the harvesting of wildlife in the ISR placed on the federal government the obligation to ensure an integrated "result" across the relevant jurisdictions. With respect to international issues, they provided the IGC with the opportunity to influence the negotiation of agreements with potential impacts on Inuvialuit harvesters. The following discussion briefly examines how some of these provisions have been implemented, the types of issues they are addressing and the concerns that they raise.

3.3.1 National and International Issues

The Canadian and International Porcupine Caribou Herd Agreements

Among the general provisions in the IFA addressing the requirements for integrated management of migratory species across jurisdictions, those applying to the Porcupine Caribou herd stand out. A barrenground population of 160,000 animals (1992 census), which ranges from northeastern Alaska across the north Yukon to the Mackenzie Delta in the Northwest Territories, Porcupine caribou are hunted by Gwich'in, Inupiat and

Inuvialuit in thirteen different communities, as well as by non-native hunters (International Porcupine Caribou Management Board 1992: 6).

The IFA recognized the requirements of the herd in two ways: first, the IFA considered habitat requirements. It established Ivvavik National Park to protect important calving grounds for the herd (s.12(5)) and established a special conservation regime for the entire Yukon North Slope (s. 12(2)). In this way, the IFA established a higher degree of habitat protection for an important part of the herd's range. In doing so, it also linked for management purposes the important coastal plain of the Yukon with that of Alaska and the conservation regime established there - the Arctic National Wildlife Refuge (ANWR) created in 1980 to protect the calving grounds of the herd in Alaska and much of the historic winter range.

Secondly, the IFA addressed the unique management requirements of the herd through the following provisions:

> 14.(40) The principles of caribou herd management, as generally expressed in Inuvialuit Nunangat, are accepted and in furtherance of those principles Canada shall endeavour to enter into agreements with all jurisdictions where lands support the herds and the caribou are harvested for subsistence. Canada shall endeavour to involve the native people who traditionally harvest caribou for subsistence in the formulation of such agreements and in the management of the caribou.
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> 14.(41) Canada shall, in cooperation with other jurisdictions, implement the Porcupine Caribou Management Agreement set out in Annex L.

When the IFA was signed in 1984, negotiations towards a Porcupine Caribou management agreement had not been completed. One of the most immediate consequences of the enactment of the IFA into law was a renewed commitment to reach an agreement. One year later, the IGC, along with the governments of Canada, Yukon and the Northwest Territories, and representatives of the Council for Yukon Indians and the Dene Nation signed a management cooperation agreement covering the Canadian users of the herd. As required under s.14(41) of the IFA, the Porcupine Caribou Management Agreement was appended to the IFA as Annex L and given legislative and constitutional protection under the IFA. As provided for in Annex L of the IFA,[63] the Management Agreement has been incorporated into the claims agreements of the other native users of the herd as they have been settled.

The Porcupine Caribou Management Agreement establishes a regime for the cooperative management of the herd and its habitat between governments and users so

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[63] "The Porcupine Caribou Management Agreement, when complete, will be incorporated by reference into the completed or ongoing COPE, CYI and Dene/Metis Settlement agreements respectively." (IFA, Annex L)

as to ensure the conservation of the herd and to provide for the subsistence requirements of the native users (Government of Canada 1985). In addition, the agreement recognizes and protects certain priority harvesting rights for native users.

The Porcupine Caribou Management Board (PCMB) was established pursuant to the agreement as a co-management body of representatives for government and harvesters to implement these general provisions. The board was assigned the broad responsibilities for making recommendations to the Minister on any matters, including policy, legislation and regulation, affecting the herd and its habitat. A list of Board responsibilities includes:

- developing management strategies and a management plan for the herd,
- advising on research priorities and requirements,
- identifying critical habitat areas requiring special protection and advising on the means for achieving such protection,
- recommending measures to the Minister to ensure conservation and protection of habitat, including measures related to specific development plans, projects and activities that may disrupt, delay or impede Porcupine Caribou movements, affect behavioural patterns, reduce productivity, or affect interactions between native users and Porcupine Caribou, and
- recommending training required to enable native users to participate in the management of the herd and the conservation of its habitat.

The IFA anticipated the creation of the PCMB and requires the Board, in determining the subsistence quotas for the Inuvialuit harvest of Porcupine Caribou, to take into account the criteria set out in the IFA (s.12(41)(c)(ii); s.14(36)(ii)). The IFA also requires the Wildlife Management Advisory Council (North Slope) to advise the Board on issues pertaining to the North Slope (s.12(56)(a)). The IGC has the responsibility of appointing an Inuvialuit representative to the Board - one of four members representing users of the herd - in addition to one member each for the governments of Canada, Yukon and the Northwest Territories and a chairperson.

Two years after the signing of the Canada agreement, Canada and the United States signed an international conservation agreement for the Porcupine Caribou herd (Government of Canada 1987). This agreement established the International Porcupine Caribou Board representing government and user interests in both Canada and the United States. The Board is assigned responsibilities for cooperative management and research efforts between the parties including (International Porcupine Caribou Board 1992):

- making recommendations and providing advice on matters and measures relating to the conservation of the herd and its habitat requiring international attention,
- undertaking cooperative conservation planning for the herd throughout its range,
- making recommendations on overall harvest and appropriate harvest limits for Canada and the United States, and

- identifying sensitive habitat.

The international agreement lacks the strength and weight that the Canadian agreement assigns to the conservation of caribou habitat and its treatment of development that might affect caribou, habitat and users of the herd.[64] Nonetheless, it represents a marked step forward for cooperative wildlife management on an international level with active user involvement. Giving effect to the international agreement has been more problematic as a result of the lengthy delays introduced by the United States in appointing their representatives to the Board. There is no small coincidence that these delays occurred at a time when proposals were being advanced for hydrocarbon exploration in areas of the Arctic National Wildlife Refuge (ANWR) critical to caribou calving. The United States and Alaska state administrations of the day were strongly supportive of these proposals and contributed to the fierce battles in Congress on the issue.

In the absence of the International Board to comment on these proposals, the Canadian Board advocated strongly in Ottawa and in Washington against proposed bills supporting the opening up of the Refuge for this purpose. The IGC was actively involved in these international efforts. Its standing in the international discussions debating the bills was assured in two ways: the first followed from the requirement under the international agreement "...that the Porcupine Caribou herd, its habitat and the interests of users of Porcupine Caribou are given effective consideration in evaluating proposed activities within the range of the Herd" (Government of Canada 1987: s.3(b)), and "where an activity in one country is determined to be likely to cause significant long-term adverse impact on the Porcupine Caribou or its habitat, the other Party will be notified and given an opportunity to consult prior to final decision" (s.3(d)).

The second condition ensuring Inuvialuit standing in the international discussions on the proposed bill and lobby by the Canadian government was established in the IFA under the mandate of the IGC to:

> review and advise the government on any proposed Canadian position for international purposes that affects wildlife in the Inuvialuit Settlement Region (s.14(74)(e)).

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[64] The international agreement makes no statement of priority or preference for the conservation of the herd vis a vis other interests. At best it asserts that the herd, its habitat and the interests of the users will not be ignored. Nor does it make any reference to the harvesting rights of any of the traditional users of the herd established through land claims agreements. For example, the parties agree to "ensure that the Porcupine Caribou herd, its habitat and the interests of the users of Porcupine Caribou are given effective consideration in evaluating proposed activities within the range of the herd" (s.3(b)); and, they recognize that "activities requiring a Party's approval having a potential significant impact on the conservation of use of the Porcupine Caribou herd or its habitat may require mitigation"(s.3(e); for greater certainty, it is "understood that the advice and recommendations of the Board are not binding on the Parties" (s.4(e)).

The bills to open up calving grounds of the Porcupine Caribou herd to development in ANWR were ultimately defeated through the combined efforts of government and non-government interests. Under a new U.S. administration new bills are proposed that would provide additional protection for the caribou calving grounds in ANWR. Proposals for "twinning" ANWR with Ivvavik National Park are under discussion so as to better integrate the wildlife management regimes for the Yukon and Alaska North Slope - an area largely representing the spring and summer range of the herd.

In 1989 the International Porcupine Caribou Board convened its first meeting with a full complement of members. In 1993 the Board adopted a management plan for the international conservation of the herd, formally creating a joint technical committee to coordinate and report on research and monitoring (Porcupine Caribou Board 1993). At the same time the Board adopted a report prepared by the Technical Committee (Porcupine Caribou Technical Committee 1993) on the identification of sensitive habitats of the Porcupine caribou deserving of special consideration - a research task required under the international agreement (s.4(5)). The report has been made available to U.S. congressional members considering proposals for increased protection of critical habitat areas in ANWR.

What is so notable in light of these events is the suitability and effectiveness of the measures that the IFA established to protect the Porcupine Caribou herd and its habitat and safeguard the interests of the Inuvialuit and other traditional users of Porcupine Caribou in the face of proposed developments far beyond the ISR and the Canadian range of the herd.

The IGC and International Whaling Commission

The IFA assigned the IGC some specific responsibilities for representing Inuvialuit interests with respect to international issues affecting wildlife in the ISR. Under the Agreement the IGC is required to:

> 14(74)(g) appoint members whenever possible or appropriate for any Canadian delegation that deals with international matters affecting wildlife harvesting by the Inuvialuit;

Since 1989 the IGC has participated as an observer on Canada's delegation to the International Whaling Commission motivated by a concern over how the IWC might influence subsistence whale harvesting of non-member nations like Canada.[65] Under the IFA the Inuvialuit have the legal right to hunt all marine mammals for subsistence purposes subject to the principle of conservation (s.14(29)). This has enabled them to hunt beluga. It also provided the legal means for them to pursue the resumption of a bowhead harvest in 1988. At about this time the issue emerged of how an international

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[65] I am particularly indebted to Norm Snow for this discussion.

body responsible for setting international whaling quotas might affect the implementation of these rights through political pressure.

The issue is not a new one. The Inuvialuit have witnessed how the international animal rights movement has effectively mobilized public and political opinion against the Canadian seal and fur industry. The total collapse of the seal economy and the dramatic declines in the North American and European fur market are ample evidence. The response to the challenge of these international campaigns has too often been too little too late. There is ample reason to be concerned about how international bodies like the IWC respond to this form of public and political pressure. Known in some quarters as "charismatic megafauna," these species along with others like elephants and rhinoceros are typically the focus of high media scrutiny and public attention, especially in areas where they are subject to any form of consumptive use. The issue of how Canada responds to and is affected by these pressures and the impacts they might have on Inuvialuit harvesting rights has made the IGC, along with the FJMC, active observers in international forums of the IWC where scientific research, harvesting quotas, and aboriginal subsistence are under discussion.

The attention to this issue appears to be fully justified. First, the Inupiat of Alaska have strongly asserted that the IWC has no scientific basis for its subsistence quota on grounds of conservation. Secondly, although the scientific committee of the IWC has recommended resource management procedures for setting sustainable quotas, the IWC has yet to adopt such procedures even though requested by the committee to do so. Thirdly, the IWC has given no recognition to the harvesting rights of aboriginal subsistence harvesters or any indication that it is prepared to do so. Fourthly, the IWC appears to be tacitly assuming competence to manage small cetaceans, thereby extending its authority and political influence over belugas.

From both the IWC and its member nations, Canada is under pressure to join the Commission. The question for the Inuvialuit and for Canada is of whether it is at all desirable to have an international forum debating Canada's constitutional and legal obligations to the Inuvialuit. If Canada joins the IWC, the federal government will have a difficult time satisfying its IFA obligations without being cited as a member state with infractions under the international convention. Outside of the IWC, the international pressures on Canada over its tolerance of subsistence whaling and the threat of trade sanctions will continue to raise serious questions about how domestic harvesting rights and practices will be respected and supported in such a political climate. This is one of the most challenging issues facing Inuvialuit organizations and co-management bodies. Their attention to matters such as these, which are far beyond the borders of the ISR, is obviously critical. The IFA with good reason legitimizes their interest and activity in these international issues. The international forums that debate these issues may well provide the most severe tests of co-management and Inuvialuit-government cooperation at work.

Alaska and Inuvialuit Beluga Whale Committee

The Alaska and Inuvialuit Beluga Whale Committee was established in 1988 to "facilitate and promote the wise conservation, use and management of beluga whales in Alaska and the western Canadian Arctic (Adams et al. 1993: 1). The creation of this committee was a response to several practical concerns held by Inuvialuit and Inupiat harvesters.

It became evident to both the IGC and the North Slope Borough (NSB) Fish and Game Management Committee, representing the Inupiat, in discussions considering an international agreement between the users for the shared management of beluga whales, that baseline data was lacking for good management of this transboundary resource. The development of the Beaufort Sea Beluga Management Plan (FJMC 1991) for the ISR had made this abundantly clear. Special interest between these groups and the scientific researchers and technical advisors who participated in the discussions for improved management of the beluga consistently focused on the need to improve harvest and biological information. The creation of an international committee representing these interests was viewed as a means to address this need.

The composition of the AIBWC is viewed by all of its members as critical to its success. Beluga whale hunters are directly represented through members appointed by the IGC, FJMC and NSB Fish and Game Management Committee. They bring a wealth of traditional and local knowledge about beluga movements and biology and the health of the population. Their involvement in discussions on proposed management actions is critical, given the weight that is attached to the collection of harvest data and biological samples by the harvesters themselves. The importance of their role in the AIBWC is obvious in the fact of their predominance on the committee. Management concerns and strategies that directly affect hunting are voted on exclusively by the representatives from the beluga hunting communities (Adams et al. 1991: 3).

The participation of government representatives, scientists, researchers, and technical advisors is also viewed as fundamental to the deliberations of the AIBWC. Many of these representatives also live and work in the region and they provide strong technical support for the programs and research projects that are undertaken by the AIBWC, oversee the collection, compilation, and analysis of harvest and biological data, raise funds for AIBWC operations and participate in international forums. Most importantly their involvement maintains a close and ongoing working relationship with the harvesters while ensuring that their agencies are well informed about the activities of the AIBWC.

Like the IFA's co-management bodies, the members of the AIBWC work on a consensus basis, ensuring that its recommendations are viewed less as advocacy and more as informed and cooperative resource management. This is an important feature in the management of a species that is the subject of considerable public attention and debate.

The AIBWC is working toward the establishment of an international agreement for beluga of the Beaufort Sea. This agreement would provide for the sharing of information and data, coordination of harvest and research activities, and the determination of a conservation limit for the harvesting of the stock between the two user groups in Canada and the United States. In the meantime, the AIBWC has assisted in the planning of research and harvest monitoring programs, the preparation of a beluga management plan for Alaskan communities (which, alongside the ISR beluga management plan, would form the basis for a joint Alaska-Inuvialuit whale management plan), reviewed development activities that could affect beluga whales and their habitat, and been involved in the IWC discussions.

The AIBWC represents an important initiative by the harvesters and supporting government agencies to demonstrate the soundness and effectiveness of responsible "home management" (Adams et al. 1993: 4). In the face of incremental encroachments by the IWC into the management of small cetaceans, including belugas, the AIBWC represents an important response for the protection of subsistence use and rights in the Beaufort sea.

It also carries its own challenges, given significant differences between the legislated and negotiated land claims agreements affecting the Inupiat and the Inuvialuit. The Alaska Native Claims Settlement Act (ANCSA) extinguished aboriginal hunting and fishing rights. While the Act recognized the native interest in subsistence, unlike the IFA, this interest was not grounded in legally defined and constitutionally protected harvesting rights. Rather, the Act recognized the native subsistence interest as an important feature of a way of life that could best be protected through governments' management of the wildlife resources upon which subsistence depended.[66] This relationship between subsistence and wildlife management places the Inupiat on a very different and more restrictive footing vis-a-vis government than is the case for the Inuvialuit. Accordingly their perceptions and expectations of how their interests and rights are recognized and treated by government will vary as well.

Cooperative management between the Inupiat and government is a voluntary act not a legal obligation. Inupiat subsistence activities are subject to a high level of interference by government policy and regulation affecting wildlife management.[67] Under the IFA,

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[66] Thomas Berger writes: "[In ANCSA] congress assumed that the protection of wildlife resources used for subsistence would be a joint federal and state responsibility. It set the stage for large-scale state and federal intervention in Native subsistence activities. In practice, state and federal policy have provided little protection for Native subsistence activities. Restrictions on such activities were justified on the grounds of biological necessity, convenience of management, and increasing demands by non-Natives for wildlife resources that historically have been committed to Native use for subsistence" (Berger 1985: 63).

[67] The notable exception is the Marine Mammals Protection Act of 1972, which recognized the right of Alaska Natives to hunt walrus, polar bear, sea otter, beluga, sea lion, and five species of seal for

any restrictions placed on Inuvialuit harvesting activities are limited to conservation and public safety, and a clear legal priority has been established for Inuvialuit subsistence over that of non-native hunters. Given these differences, special effort will be required by the Inuvialuit and the Inupiat to ensure that joint management plans and agreements serve their respective interests. This will be extremely challenging with respect to the different standing they hold in the IWC and the actions and interventions they may pursue to protect their respective interests and rights in subsistence whaling.

Inuvialuit - Inupiat Polar Bear Agreement

The signing of the Polar Bear Management Agreement for the Southern Beaufort Sea in 1988 represented the first international agreement signed by the Inuvialuit. The agreement covering a sub-population of bears in the southern Beaufort Sea, was initiated and agreed to by the IGC and the North Slope Borough Fish and Game Management Committee. Fundamentally, it recognizes the important role that the users of the resource have in its management. It also gave recognition beyond the IFA to provisions regarding cooperative management of wildlife populations shared between jurisdictions, in citing the International Agreement on the Conservation of Polar Bears, specifically Article VII that the parties shall "consult with other Parties on the management of migrating polar bear populations, and exchange information on research and management programs, research results and data on bears taken," and Article II that the parties shall "take appropriate actions to protect the ecosystems of which polar bears are a part" (IGC et al. 1988: 1).

The agreement established objectives and regulations under which the Inuvialuit and the Inupiat will manage polar bears in the southern Beaufort Sea. Objectives of the agreement include maintaining a healthy, viable population of bears, minimizing the detrimental effects of human activities on polar bear habitat, managing polar bear on a sustained-yield basis, encouraging the collection of adequate technical information including harvest data, refining the boundaries of polar bear populations, encouraging the wise use of polar bear products, facilitating the exchange of polar bear meat and products between traditional users, legalizing the sale of polar bear hides and by-products, and considering a limited legalized Alaskan sport harvest of bears. The agreement also established a number of regulations to conserve the population of bears, including the protection of all bears in dens and family groups of females and cubs of the year or yearlings, defined hunting seasons in Canada and Alaska, and a procedure for determining the annual sustainable harvest through a Technical Advisory Committee in consultation with a Joint Commission.

Since the agreement was signed a great deal of progress has been made in its implementation. The Polar Bear Joint Commission, consisting of Inuvialuit and Inupiat

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subsistence purposes without restrictions. This places Inupiat and Inuvialuit subsistence practices for polar bear on a more comparable legal footing than is the case for whales.

representatives, and the Technical Committee have both met and agreed on programs to implement the agreement, including information and education programs targeted at the users and programs to monitor and mitigate conflicts between polar bears and human activity, established guideline harvest levels for Canada and Alaska, and recommended measures to reduce the proportion of females in the harvest.

Amending the Migratory Bird Convention

Under the IFA Canada is obligated to seek amendment of the Migratory Birds Convention Act (MBCA) to decriminalize the Inuvialuit hunting of migratory game birds in the spring, consistent with the harvesting rights held by the Inuvialuit:

> 14.(37) Recognizing the present restrictions of the Migratory Birds Convention Act, Canada undertakes to explore means to permit the Inuvialuit to legally hunt migratory game birds in the spring. Canada undertakes, if and when implementing any amendments to that Act, to develop in consultation with the Inuvialuit through the Wildlife Management Advisory Council (NWT) appropriate subsistence harvest regulations.
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> 14.(38) Canada undertakes to endeavour to obtain changes to other international conventions and arrangements and to explore other alternatives in order to achieve greater flexibility in the use of wildlife resources by the Inuvialuit. Canada undertakes to consult the Inuvialuit Game Council prior to any new international agreements that might affect the harvesting of wildlife in the Inuvialuit Settlement Region.

Since 1991, the WMAC (NWT) and the IGC have been proactive in pursuing changes to the MBCA to allow the spring hunting of migratory birds as permitted by IFA. The Council has participated in public meetings with the Canadian Wildlife Service to define a Canadian position for negotiations with the United States. The Council has also consulted with Inuvialuit communities and organizations on the development of by-laws for the ISR as well as each community, which would regulate the Inuvialuit spring harvest. The Council seeks to have both government regulations and HTC by-laws enacted at the same time. This would enable the Inuvialuit to regulate their own harvest through their by-laws with the legal "backstopping" of federal regulations. It will be the responsibility of the WMAC (NWT) to determine and recommend subsistence quotas for migratory game birds, as well as ensure that by-laws and regulations are fully consistent with one another.

Representatives from the IGC and WMAC (NWT) have participated in a working group of the International Association of Fish and Wildlife Agencies (IAFWA) to advise the Canadian and United States governments on negotiating mandates for amending the MBCA. The IAFWA is an international body of state, provincial, and

federal wildlife agencies, which in 1979 played an influential role in killing a protocol between Canada and the United State to negotiate an amendment to the MBCA. This opposition was based in part on the provision to better enable the spring hunting of migratory birds in northern Canada and Alaska through adjustments to seasonal restrictions, and a related concern over the lack of information about the potential impacts associated with such an amendment.[68]

The involvement of the IGC and WMAC (NWT) representatives on the IAFWA working group has contributed to an improved understanding by U.S. representatives of claims-based harvesting rights and claims-based wildlife management regimes as they affect management issues related to the spring harvest of migratory birds by the Inuvialuit and other aboriginal peoples in Canada and Alaska. This participation has been important not simply in protecting Inuvialuit harvesting rights, but in demonstrating the sound and comprehensive basis on which the Inuvialuit harvest is managed. Knowledge of the status and use of migratory bird species in the ISR, based on population and habitat research and harvesting studies, and the involvement of Inuvialuit harvesters in the management regime have together offered a compelling illustration to federal, state and provincial management agencies. Indeed it can be argued that there are few comparable examples in North America where the management of migratory birds can be characterized by such extensive regional conservation measures and thorough scientific information.

Based on the discussions to date, the IAFWA is recommending a removal of restrictions on aboriginal hunting of migratory birds in northern Canada. This will assist both Canada and the United States in ensuring that the Convention is consistent with aboriginal treaty rights and land claim agreements in Canada. These discussions have also illustrated how the different harvesting interests and rights of aboriginal people have in themselves produced different views on the relationship between harvesting and management.

Under the IFA, Inuvialuit harvesting rights and the conservation of wildlife and habitat are fully integrated. Protection of these rights is a fundamental part of the management regime established by the IFA. In areas, like Alaska, where comparable rights do not exist, and in other parts of Canada where their legal recognition is more limited, either through treaties or court decisions, the related government management regime is rarely integrated with aboriginal subsistence interests and rights. In many instances government wildlife management merely confounds the practical effect of aboriginal subsistence interests and rights. In others, the opportunity to negotiate new management regimes to better conform with existing aboriginal rights and interests has

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[68] Canada and the U.S. agreed in the protocol to amend the subsistence hunting provisions of the 1916 Convention. However, because the protocol was not ratified by both countries, it was not implemented. In Canada and the U.S. concerns from interest groups about how the protocol would be interpreted and implemented led to its demise. Treatment of the issue was delayed further in Canada as a result of unresolved questions about Aboriginal hunting and fishing rights.

lead some aboriginal groups to use the negotiations as a means for expanding the recognition given to their rights.

This motivation is hardly surprising given the inequitable recognition and treatment of aboriginal rights and interests, particularly in evidence in discussions around the legal effect of international agreements like the Migratory Birds Convention. At the same time, attempting to expand recognition for certain aboriginal rights in these forums runs the risk of sacrificing the very agreement between governments and parties that is to ensure the conservation of the resources upon which aboriginal subsistence rights and interests depend if they are to be meaningful.

The challenge for the Inuvialuit has been that of maintaining the basic elements of the MBCA that are vital to the international conservation of migratory birds while ensuring that the overall Act is consistent with their legally protected harvesting rights. This is not easily accomplished given the more limited recognition that is given to aboriginal subsistence interests and rights in Alaska and some other parts of Canada. Such a circumstance potentially leads to a trade-off of either harvesting rights for conservation measures or the converse - an arrangement that is completely at odds with the most fundamental principles of the IFA. In the case of the MBCA, the burden will be on government to achieve amendments that are generous in their treatment of aboriginal rights, if they are not to be restrictive of the rights held by aboriginal people like the Inuvialuit. If they prove to be unreasonably restrictive, the very constitutionality of the MBCA may be in question, along with the future of the Convention itself.

3.3.2 Federal - Territorial Issues

The ISR is divided by political boundaries that separate the jurisdictions of Canada, the Yukon and the Northwest Territories, and management areas that separate the departmental responsibilities of DIAND, Parks Canada, DFO, and the territorial departments of Renewable Resources. These boundaries individually and collectively are an impediment to ecosystem management in the ISR. To promote the effective protection of ecosystems, the IFA established as a basic principle that there should be an integrated wildlife and land management regime, including the coordination of legislative authorities (s.14(2)). Little progress has been made in implementing this provision at the federal and territorial level, with long-standing jurisdictional differences between governments and agencies impeding even certain forms of administrative cooperation. Although cooperation has been demonstrated between the territorial and federal governments in the areas of wildlife research and enforcement, this is generally not the case in ecosystem management to date.

The co-management bodies themselves will likely be the ones most capable of encouraging and achieving better integration in this area, within the limits of their own membership. Outside of their membership, this will require a more concerted effort between the FJMC, WMAC (NWT), WMAC (NS) and EISC, if a higher level of

collaboration between DIAND, DFO, Parks Canada, the Canadian Wildlife Service, and the departments of Renewable Resources for the Yukon and the Northwest Territories is to be achieved. Even at that, this level of cooperation ultimately depends on the commitment and interest of the agencies themselves.

3.3.3 Harvesting Areas and Claims Overlap

The IFA established a number of measures for dealing with the overlapping interests of native harvesters in adjacent claims areas. The Inuvialuit share overlapping harvesting interests in and outside of the ISR with the Inuit of Nunavut to the east and the Tetlit Gwich'in and Vuntut Gwich'in to the south. With the signing of the Nunavut, CYI and Gwich'in agreements, these provisions will require more attention than has been the case to date.

In particular, provisions for membership on IFA co-management boards are based largely on the principle of reciprocity whereby cross-appointments are made between management boards of neighbouring claimant groups. Fulfilling these provisions will be a pressing challenge for all of the groups affected, given the different make-up and mandates of their boards and organizations. Implementing them will have significant implications for how they operate mindful of the interest of "outsiders" and how these additional operating costs are covered.

3.4 Resource Management and Development

The IFA establishes a number of mechanisms for controlling development that could have a negative impact on wildlife, habitat, or native harvesting. This section briefly examines some of those mechanisms, how they apply, and how effective they have been.

With some limitations, all developments proposed for the ISR or which may cause a negative environmental impact on it are subject to environmental screening and review (s. 11(1), 11(2), 13(7)). "Development" in the IFA includes most commercial and non-commercial undertakings occurring in whole or in part in the ISR. In section 2 of the IFA, the ambit of events and activities falling under environmental screening and review is described as follows:

> "developer" means a person, the government or any other legal entity owning, operating or causing to be operated any development in whole or in part in the Inuvialuit Settlement Region, and includes any co-contractant of such owner or operator. For greater certainty, "developer" includes any Inuvialuit developer;

"development" means:

(a) any commercial or industrial undertaking or venture, including support and transportation facilities related to the extraction of non-renewable resources from the Beaufort Sea, other than commercial wildlife harvesting; or

(b) any government project, undertaking or construction whether federal, territorial, provincial, municipal, local or by any Crown agency or corporation, except government projects within the limits of Inuvialuit communities not directly affecting wildlife resources outside those limits and except government wildlife enhancement projects;

3.4.1 Areas Protected from Development

The IFA established a national park (s.12(5)), a territorial park (s.12(16)), and other specially protected areas in the ISR (s.7(70), s.7(77)) for areas of special wildlife, habitat, geographical, and cultural significance. The Agreement also provided for the use of special protective measures whose significance might be determined in the future:

14.(3) It is recognized that in the future it may be desirable to apply special protective measures under laws, from time to time in force, to lands determined to be important from the standpoint of wildlife, research or harvesting. The appropriate ministers shall consult with the Inuvialuit Game Council from time to time on the application of such legislation.

As amended January 15, 1987

The IFA was the first land claim agreement in Canada to establish a national park. Ivvavik National Park on the Yukon's North Slope was established largely to protect the calving grounds of the Porcupine Caribou herd from all possible development. It also enabled the Inuvialuit to achieve the maximum level of legislative protection for wildlife and habitat on Crown lands, beyond their private lands, while still maintaining exclusive harvesting rights to wildlife comparable to their rights on private lands.

The regime created to manage the parks requires a high level of cooperation between the Inuvialuit and government, and a willingness to incorporate new management practices in recognition of general IFA provisions for environmental management and specific Inuvialuit harvesting rights. These arrangements are unique for agencies like Parks Canada. Although claims agreements like the IFA have provided government agencies and aboriginal people with a new mechanism for establishing protected areas for wildlife and habitat, their implementation requires government to ensure that no

conflicts exist between the dual legislative authorities that they must manage under - claims legislation on the one hand and protected areas legislation on the other. Where conflicts exist, for example with respect to harvesting rights and practices and the establishment of camps, government has a responsibility to pursue the necessary amendments to policies, regulations and legislation to ensure that they are consistent with the provisions of the claims agreement. In another instance, where the IFA established the use of wildlife for Inuvialuit subsistence harvesting and non-Inuvialuit sport fishing in parks, a potential conflict exists with respect to the practical effect of federal parks policy - a policy that is increasingly influenced by interests in other parts of Canada promoting the exclusive non-consumptive use of wildlife in parks (for example, catch and release programs). Put another way: a federal parks policy that reflects what is good for Banff will in many respects be inconsistent with what is required under the IFA.

In the case of the parks established by the IFA, the Inuvialuit have played a special role in the development of management plans, and the WMAC (NS) a special role in the review of management plans and park management operations. In the area known as the Yukon North Slope, the IFA established a special conservation regime "whose dominant purpose is the conservation of wildlife, habitat and traditional native use" (s.12(2)). In addition to establishing a national park over half of the area, the Agreement also maintains a federal Cabinet order withdrawing the eastern half of the Yukon North Slope for conservation purposes from disposal for staking and prospecting and from any interests in mines, minerals (solid, liquid or gaseous), easements, servitudes or real property (s.12(4)). This conservation instrument is supplemented with the provision that all developments, without exception, that are proposed for the area are subject to environmental screening (s.12(3)(a)). Any that may have a significant negative impact shall be subject to a public environmental impact assessment and review process (s.12(3)(d)).

The Agreement also required that "any development activities inconsistent with the purposes of the National Park shall be prohibited, and any change in the character of the National Park shall require the consent of the Inuvialuit "(s.12(8)). A proposal by the Department of National Defence to upgrade two existing DEW-line radar sites in the National Park prompted a public review by the Inuvialuit to determine conditions for Inuvialuit consent. The conditions established pursuant to this review stipulated a variety of measures for mitigating the impacts of construction and maintenance on wildlife and the environment, and the requirements for future abandonment of the site.

Another proposal to locate a new radar site in Herschel Island Territorial Park was rejected on the grounds that the development was inconsistent with the wilderness character of the park and the management regime established there under the IFA. In these and other matters, the Inuvialuit Game Council, the Aklavik HTC, the WMAC(NS), the FJMC and the EISC have all been involved in implementing the conservation regime established for Yukon North Slope.

Another unique conservation instrument established under the IFA was the requirement for three annual conferences "to promote public discussion among natives, governments, and the private sector with respect to management co-ordination for the Yukon North Slope" (s.12(57)). Each conference was to be attended by at least one senior official from each appropriate government department as well as representatives of native groups, industry and special interest groups. Three conferences were held from 1989 through 1991 with chair persons appointed on an alternating basis by the Yukon and the IGC, as required under the IFA (s.12(59)). Each of these conferences, in addition to promoting discussion between the various interests and parties regarding the management regime for the area, established management and conservation issues which the participants viewed as essential for conservation planning in the area. A review at the third annual conference was required under the IFA to determine whether a continuation of the conferences was desirable based on past results and objectives. The parties to the IFA and the participants at the conference all endorsed their continuation no less than every three years, or sooner if required. In the future the conferences are viewed as a means for publicly reviewing the progress that has been made in implementing park management plans, the Yukon North Slope Wildlife Conservation and Management Plan, and related conservation plans, and identifying priorities for management actions in the area.

In addition to these conservation instruments, new areas have been identified for the possible application of special conservation measures through Community Conservation plans, the Beluga Management Plan and the Yukon North Slope Wildlife Conservation and Management Plan. In these initiatives, local and traditional Inuvialuit knowledge has been important to the identification of sites of special significance according to harvesting, wildlife, habitat and cultural considerations. How and which special protection mechanisms will be applied to these sites will be addressed as part of the implementation of these plans.

Inuvialuit HTCs and the IGC have also played a significant role in establishing new national parks through direction negotiations with Parks Canada. An agreement to establish a national park on Banks Island was signed in 1992, consistent with the Inuvialuit harvesting rights, economic opportunities, and management role established for Ivvavik National Park. Discussions to establish another national park south of Paulatuk have been underway for several years to provide better protection for range important to the Bluenose Caribou herd.

Each of these initiatives clearly demonstrates that the Inuvialuit continue to work from one of the most basic tenets that shaped the IFA. It holds that beyond the legal recognition and constitutional protection their harvesting rights enjoy, a powerful means for protecting them and ensuring their full practical application is Inuvialuit participation in all aspects of the management of wildlife and habitat in the ISR. This involvement has ensured that the Inuvialuit have a direct role in how the wildlife resources they rely upon are managed, and how government regulations, policies and administrative procedures are applied consistent with Inuvialuit rights.

3.4.2 Development on Private Lands

All private Inuvialuit lands are managed by the Inuvialuit Land Administration (ILA). Any application for land access or use required on these lands is subject to review by the Inuvialuit Land Administration Commission (ILAC), a subsidiary of the Inuvialuit Regional Corporation. This includes existing rights holders whose rights are protected under the Agreement, and whose access is guaranteed subject to their obtaining authorization from the ILA.

The ILA is located in Tuktoyaktuk largely because most of the major developments that were anticipated or active at the time the Agreement was signed were related to hydrocarbon exploration and development in the area. The ILA compiles all submitted rights applications for the review of the ILAC, and inspects authorized projects to ensure compliance. The ILAC is comprised of three Inuvialuit commissioners who meet once a month or as required to review the applications submitted to the ILA. It is the ILAC that decides to accept, reject or take some other action on the applications submitted - including recommending a referral of development proposals to the EISC.

Other than routine applications for small-scale research, where expedited procedures apply, notice of all applications is sent to the appropriate Community Corporation and HTC affected by the development for their comments and decision prior to a decision by the ILAC.[69] The IGC has also been invited to respond, although currently this is not routine.

The IFA also permits the Inuvialuit through their organizations - the ILA, the HTCs, the Community Corporations, and the IGC - to request screening by the EISC of developments (s. 11(1)(c)). To date this has not occurred on private lands given the small scale of the developments and the requirements to address environmental impacts along with social and economic considerations in Participation Agreements with developers.

Generally the process appears to have worked well for those applications that are screened. What is more problematic are the activities of the federal and territorial governments and private developers that have occurred on Inuvialuit and Crown lands and by-passed the screening and review process. Mineral staking and the issuance of prospecting permits, the removal of granular materials by government, construction activities associated with the upgrading of the DEW line - these are some examples of trespass without penalty that have occurred on Inuvialuit private lands and that remain an ongoing problem and concern.

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[69] See appendix three on ILA rights approval process.

Clearly the review process for Inuvialuit private lands requires both the compliance and the cooperation of government for it to be effective, and for the rights of the Inuvialuit as private land owners to be respected. In particular the onus is on DIAND as the permitting agency for land use on Crown lands to ensure that other federal agencies and private developers are well aware of their obligations and responsibilities under the IFA. This would include ensuring that law enforcement agencies like the Royal Canadian Mounted Police (and officers stationed in local communities) are sufficiently familiar with the IFA and its legal standing to bring charges when laws prohibiting trespass on private lands are broken. This is difficult to accomplish when the government agency issuing the authorization or permit of entry is in violation of the IFA.

In instances where the Inuvialuit hold only surface title on private lands, a legal obligation remains with DIAND to ensure that the surface rights are respected and those requiring access to the subsurface abide by legal due process as established in the IFA. In cases where DIAND has issued prospecting permits under the Canada Mining Regulations to developers for activities and mineral rights on Crown and Inuvialuit 7(1)(b) lands, this has been accomplished without reference to the IFA. Such cases demonstrate the practical limitations of the IFA's legal paramountcy where it is inconsistent with other legislation. They also serve to justify and rationalize the strong Inuvialuit interest in and participation in the wildlife and environmental management institutions and decisions affecting the ISR, notwithstanding the harvesting rights that they hold.

In one of its own publications, DIAND recognizes the following:

> "All developers must provide the Inuvialuit Land Administrator with prior notice of their intent to enter Inuvialuit lands...
>
> Developments of all scales require access authorization from the Inuvialuit in a form such as: participation agreement; access agreement; temporary or permanent right-of-way agreement; and/or land use permit...
>
> Without such an [participation] agreement, the Inuvialuit may withhold surface access to a developer's mineral rights on Inuvialuit lands" (INAC 1988: 5).

The fact that the due process required in the IFA and clearly referred to in these statements is overlooked speaks to the broader challenge of implementing a land claim agreement, notwithstanding the legal paramountcy it enjoys over other federal and territorial statutes. It underlines the constant appeal by the Inuvialuit, since the Agreement was signed, for government to carry out the necessary legislative, regulatory and administrative amendments and reforms to ensure that competing authorities and practices are rationalized, integrated and consistent with the IFA. Even as the holders of title to private lands, it is clear this ownership affords the Inuvialuit

little control over development if the government agencies responsible for upholding these property rights overlook the due process that has been established to protect them.

3.4.3 Development on Crown Lands - Environmental Impact Screening and Review

The process for the environmental screening and review of proposed developments on Crown lands and the offshore is an important feature of the IFA's wildlife and environmental management regime. It is the responsibility of two joint Inuvialuit-government bodies: the Environmental Impact Screening Committee (EISC) and the Environmental Impact Review Board (EIRB). Like the other co-management bodies they are an important management instrument for protecting and giving effect to Inuvialuit harvesting rights.

Environmental screening and review is a fundamental step that all development proposals on Crown lands in the ISR or causing environmental impacts on these lands are subject to before the appropriate federal authority may issue authorizations (s.13(7), 11(31)). This process ensures the Inuvialuit a strong voice in the review of proposed developments before developments are authorized or opposed by the federal government. As a joint body of Inuvialuit - government members, the process enables the parties to reach a decision on proposed developments through a decision-making process that need not be adversarial. Indeed the recommendations of these bodies to date are based on consensus. This enables both the EISC and the EIRB to render decisions with the assurance that their recommendations will be forceful ones since they reflect agreement among members appointed by the key parties to be affected by any decision.

The primary purpose of environmental screening under the IFA is to determine if development could have a significant negative impact on the "environment" (s. 11(13)), or on "present or future wildlife harvesting" throughout the ISR (s. 13(7)), or more specifically, on "wildlife, habitat or the ability of the natives to harvest wildlife" on the Yukon North Slope (s. 12(3)(a)).

If the EISC, in conducting the screening, determines that the development could have a significant negative impact and refers it to the EIRB, then the EIRB is required to determine "whether or not, on the basis of environmental impact considerations, the development should proceed and, if so, on what terms and conditions, including mitigative and remedial measures," (s. 11(28)). In addition the EIRB is required to recommend to the authorizing agency:

> (a) terms and conditions relating to the mitigative and remedial measures that it considers necessary to minimize any negative impact on wildlife harvesting; and

> (b) an estimate of the potential liability of the developer, determined on a worst case scenario, taking into consideration the balance between economic factors, including the ability of the developer to pay, and environmental factors.

The ambit of the definition of "development" and the range of developments subject to screening have been tested by the EISC in establishing the scope of its mandate. Beyond the application to physical events and activities, the EISC sought to determine if development also encompassed government policy and development plans with potential impacts on the environment and wildlife. It did so by suggesting to the Canadian Oil and Gas Lands Administration that issuance of oil and gas leases could be considered a development, as defined in the IFA, as the leases required all the holders to carry out specified work within a specified period of time. This approach was justified by the EISC on the grounds that it allowed early public input while a broad range of development and conservation options were still available, ensured consistency of treatment for all operators and allowed a review of oil spill contingency plans on an industry-wide basis. To this end the EISC passed the following resolution:

> That the Chairman will write to the Canada Oil and Gas Lands Administration to request that project descriptions be required on work programs accepted for the Beaufort Sea leases, and that said leases not be issued until the Screening and Review Process is complete.[70]

This interpretation and approach was rejected summarily by COGLA and the matter has not been raised since.

The mandate of the EIRB and the scope of its authority to conduct hearings has also been the subject of discussion between the IGC, government and industry. Under the IFA (s.11(2)), the scope of screening and review is generally limited to onshore development. An exception is made in the offshore where the scope of screening and review is limited in its review of developments to the consideration of issues related to wildlife compensation. Such limitations can been viewed as troubling in a region where most of the oil and gas development of consequence has occurred in the offshore. To address this problem, the Inuvialuit Game Council has taken the view that in order to determine the level of compensation payable by a developer, the full range of potential impacts on wildlife from a proposed development must be examined, thereby making it necessary to conduct a comprehensive environmental impact assessment of the project. To support this view the IGC invoked section 11(1)(c)[71] of the IFA enabling the Inuvialuit to refer all projects, both offshore and onshore, on

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[70] Environmental Impact Screening Committee, Meeting Minutes, June 15, 1989.

[71] Developments subject to environmental screening include: "development in the Inuvialuit Settlement Region in respect of which the Inuvialuit request environmental impact screening" (s.11(1)(c)).

Crown lands in the ISR to the EISC. Industry and government accepted both the argument and the blanket referral by the IGC. Effectively then, the EIRB is now viewed as having the mandate to conduct a comprehensive environmental assessment both on land and in the offshore.

The authority of the EIRB appears to have become more of an issue when the decisions of the Board have been contrary to the expectations of government and industry. Of the two hearings that the Board has held since its inception, the first, an application to drill an offshore well from an artificial island in landfast ice, was granted quickly and with widespread support for the process (EIRB 1989). The second, an application for a multi-year drilling program from a floating platform in shear zone between land-fast ice and the polar pack, produced an outcry of concern over the scope of the hearings and the outcome. The EIRB rejected the application on the basis of a lack of preparedness on the part of government and industry to deal effectively with a major blowout, and because it was unable to determine the company's liability in the event of a worst-case blowout (EIRB 1990). As provided for under the IFA (s.11(29)), the Minister had 30 days to reject or alter the decision of the EIRB. In spite of intense pressure from the Canadian Oil and Gas Lands Administration (COGLA) to accept the application, the Minister chose not to respond to the Board's decision, allowing it to stand.[72]

The effect of the Board's decision was to raise questions over the authority of the EISC to refer a project to the Review Board for public review when other processes deemed to be "adequate" existed. It also prompted the Minister to establish the Beaufort Sea Steering Committee to conduct a comprehensive review of the EIRB's concerns regarding government preparedness for an oil spill resulting from a blowout in the Beaufort Sea. Seven task groups were established with the participation of representatives from the Inuvialuit, the petroleum industry, the territorial and federal governments and all the parties with a direct interest in the management of exploration activity in the area. These task groups examined areas that included government contingency plans, Inuvialuit involvement in contingency planning and cleanup operations, the costing of countermeasures and the development of a worst-case scenario, compensation and financial liability, the nature and cost of remedial and mitigative measures possible in the Beaufort Sea, post-spill scientific research, assessment methodology and databases. The Steering Committee's report (Beaufort Sea Steering Committee 1991) was accepted by the Minister and the department has issued two reports to date on the progress that has been made on implementing its recommendations.

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[72] This may be indicative of the reluctance of any government authority to reject the recommendations of a body that has carried out a comprehensive public review.

Both the EISC and the EIRB have adopted operating procedures[73] that give practical effect to the IFA's screening and review provisions that developers and developments must comply with in the ISR before any project authorization is issued. Each body has amended its procedures once since they were first drafted. In each case these amendments further define and clarify the scope and mandate of the EISC and EIRB, information requirements facing developers, conditions for exclusion from screening, responsibilities of developers in preparing submissions, conditions for referral to the EIRB, and other factors affecting decisions by the EISC and EIRB. The amended operating procedures of both the EISC and the EIRB reflect the experience which both bodies have gained through the screening and review process to date and practical insights into how some of the general provisions of the IFA apply in the assessment of development in the ISR.

For example in its operating procedures, the EIRB has placed great emphasis on matters related to procedural fairness and public scrutiny. This is not at all surprising in light of the magnitude of the developments reviewed by the EIRB in its two hearings, and the heightened public sensitivities and expectations regarding the management and regulation of offshore oil and gas development following the catastrophic oil spill in Prince William Sound, Alaska associated with the *Exxon Valdez* in 1989.

With respect to the scope of its review activities as they apply to onshore and offshore developments, the Board has made clear its understanding of how it intends to approach them:

> Section 11(2) of the IFA distinguishes between onshore and offshore development for the purposes of environmental impact screening and review. Ecosystems, however, do not recognize such boundaries. Since the EIRB is required to consider offshore development proposals if there may an impact on wildlife harvesting activities, and because such potential impacts would involve wildlife, wildlife habitat and other integral environmental elements, it is difficult to distinguish between the onshore and the offshore in an environmental impact assessment (EIRB 1992: 3-4).

The EIRB has used it operating procedures to clarify differing interpretations of the IFA provision establishing the government's obligation to respond to Board recommendations. Under the IFA, the government authority competent to authorize the development retains the responsibility for making the ultimate decision on whether the proposed development should proceed and according to what terms and conditions. But this decision must be consistent with the provisions of the IFA, and particularly the due process for screening and review set out in the Agreement. If the government authority is unwilling or unable to accept, or wishes to modify, any of the recommendations contained in a decision of the EIRB, it must provide written reasons

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[73] Cf. Environmental Impact Review Board 1992b; Environmental Impact Screening Committee 1994.

within 30 days (s.11(29)). The IFA is silent on the legal consequences of not issuing reasons within 30 days.

This provision became an issue with the Board's recommendations to government arising from the Kulluk review. The Canadian Oil and Gas Land's Administration (COGLA) in response to the recommendations it received indicated that it would not issue a response for six months. The Board responded in turn by stating that silence beyond the 30-day response period would be treated by the Board as acceptance of the recommendations. In this instance, the Minister of DIAND allowed this view to stand without challenge.

Subsequent to this event, in amendments to its operating procedures the EIRB made explicit its interpretation of this provision:

> The EIRB has interpreted section 11(29) to mean that the thirty (30) day response restriction only applies when the competent government authority decides to reject or modify any of the recommendations in the EIRB decision. That thirty (30) day period begins when the EIRB decision is delivered to the government authority. This interpretation does not mean that the final government decision to approve or reject the proposed development must occur within the thirty (30) day limit (EIRB 1992b: 6).

Although the EIRB has drawn the distinction between time allowed for a decision on the Board's recommendation and the time required by government to make a decision on the proposed development, practically speaking this distinction may not be easily respected. It is likely, given the substantive and sweeping nature of the EIRB recommendations to date on the developments it has reviewed, that a public response to these recommendations within 30 days will have a significant impact on the timeliness of the overall project decision. Rejection of EIRB recommendations by government, for example, would likely be treated as an early indication of a final decision and call into immediate public question the anticipated government position on the project and the rationale for it.

In its operating procedures, the EIRB has set out its expectations for the role and participation of government agencies and officials in public reviews. This in part stems from the EIRB's interest, as evidenced in the Kulluk hearings, in government's preparedness and ability to manage proposed developments and the identified impacts on wildlife, habitat and harvesting associated with them. The Board has also set out expedited procedures and information requirements for the review of what are defined as "small scale developments" as distinct from its standard public review procedures that apply for all other developments.

The operating procedures of the EISC also reflect progress that has been made in implementing the IFA's provisions affecting environmental screening and review.

With regard to the scope and mandate of the EISC, the Committee has taken a broad view that it has a legislated responsibility "to screen all proposed activities inside and outside the ISR which may negatively impact ecosystems and/or Inuvialuit wildlife harvesting[74] ...It is the basic premise of the EISC that all proposed developments for the ISR, both onshore and offshore, are likely to have some negative effect on the environment and so are potentially screenable" (EISC 1994: 2).[75] The procedures explicitly recognize projects with transboundary affects on the ISR and the legal obligations of such projects to comply with the IFA's screening and review process.

In its procedures the EISC has identified specific considerations that will affect its determination of the potential for significant negative impact. These include the following (EISC 1994: 24):

1. Conflict with Inuvialuit Community Conservation Plans where such conflict has not been waived by the affected HTC;

2. Potential to exceed territorial and/or federal air and water quality standards;

3. Proposed development in land use category C, D, or E lands[76] (as identified in Inuvialuit Community Conservation Plans or the draft Regional Land Use Plan for the Mackenzie Delta-Beaufort Sea Region;

4. Unresolved environmental issues in the opinion of the HTC;

5. Potential significant habitat loss, disturbance, or population decline for any species with special conservation status, keystone species or species harvested by the Inuvialuit, as determined by the WMAC (NWT and/or North Slope) and/or FJMC;

6. Encroachment on area with particularly high biodiversity potential;

7. Conflict with traditional Inuvialuit harvesting where this has not been waived by the affected HTCs;

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[74] "Examples of activity categories which are considered include commercial tourism proposals; granting of water rights; energy, mineral and aggregate exploration and extraction; commercial transportation projects (air, land and water); water withdrawals; industrial waste disposal, research camps, scheduled military activities and commercial harvesting of plant resources" (EISC 1994: 2).

[75] Like the EIRB, the EISC has made explicit its interest in offshore development: "Although the IFA implies screening of offshore development, on April 10, 1987, the Inuvialuit Game Council has, for greater certainty, formally requested screening of all development and other activity proposed for the Beaufort Sea" (EISC 1994: 22).

[76] These categories refer to lands where cultural or renewable resources are of particular significance and sensitivity during specific periods or throughout the year and requiring varying levels of guaranteed conservation and protection, short of legal designation.

8. EISC lack of confidence in mitigation proposed;

9. Exceeds activity thresholds in an area where these thresholds have been established.

These considerations are important in formally establishing the EISC's institutional linkages with the other co-management bodies and local HTCs and in giving effect to their management plans and recommendations. The EISC utilizes these bodies along with their management interests and knowledge to assist in establishing the "test" for determining the potential significance of negative impacts on wildlife, habitat and Inuvialuit harvesting associated with any development.

In addition, the EISC's procedures direct project proponents to utilize the relevant conservation and management plans that apply in the ISR. Local Inuvialuit knowledge and the views of the HTCs are given central recognition in the screening of any development proposals. The procedures demand that:

> "developers must confer with, at the very least, the Hunters and Trappers Committees whose members may be affected by the proposal. If a Hunters and Trappers Committee requires additional time to examine a project description sent to them by a developer, they may ask the EISC to delay the screening of any project description until the next regular meeting of the EISC...Except under extraordinary circumstances, the EISC will not screen project descriptions until after community consultation has been done and the results are made available to the EISC for examination (EISC 1994: 10).

The procedures of the EISC also provide for an expedited treatment of certain developments by listing activities normally excluded from screening. These include emergency responses, certain low-frequency, short-duration and/or small-scale monitoring and research programs, routine supply and servicing operations where the operating permit has been previously subject to screening, and annual work programs on multi-year projects that have previously been screened and have a good record of performance (EISC 1994: 23). The EISC reserves the right to screen submissions on the exclusion list if considered necessary.

The EISC functions largely independent of government assessment processes, and while it is required under the IFA (s.11(14)) to consider the findings of any prior development screenings and reviews, it is not bound by them. In other words, duplication of screening and review is permissible, if in the view of the EISC it is warranted to provide greater certainty in meeting the requirements of the IFA. This provision has been an important means for ensuring that Inuvialuit harvesting interests, as articulated by the HTCs, and wildlife

conservation and management plans are incorporated into the screening of all development proposals in the ISR. It is made all the more significant in comparison with other established government environmental screening and review process where there is little evidence to suggest that such considerations are included in the evaluation of proposed developments for the ISR.

If the EISC determines that a project may have a significant negative environmental impact, the IFA provides the Committee with the discretion to refer the project to the EIRB or any other review process that in its opinion will adequately encompass the necessary assessment and review function (s.11(15), 11(16)). In its operating procedures the EISC has explicitly stated the criteria that must be met if review processes other than that of the EIRB are to be deemed adequate. They include the following (EISC 1994: 17-18):

1. The interests of the Inuvialuit must be represented within the process. In this regard 50% representation by Inuvialuit on the Board, Panel, Committee or Tribunal will be considered desirable but not essential.

2. The process must have terms of reference consistent with the objectives and requirements of the IFA.

3. There must be certain provision that Government approvals or licenses relating to the review will not be, or cannot be, issued prior to the completion of the review.

4. There must be assurance that a satisfactory response to the recommendations of the process will be provided prior to the issuance of approvals or licenses.

5. It must be public.

These and other elements of the EISC's operating procedures have gone a long way in establishing the EISC as an important co-management instrument for protecting Inuvialuit interests in wildlife, habitat and harvesting. They have provided explicit recognition of the important role and contribution that other IFA co-management bodies and Inuvialuit organizations can make to the screening and review of development proposals potentially affecting the ISR. In doing so, the EISC has taken a large step in the evaluation of project proposals beyond the traditional reliance on chosen expert opinion - a prospect that is often cause for concern given that there is much evidence of experts disagreeing with one another, and that the work of screening is largely hidden from public scrutiny. In relying on the views of the HTCs and the co-management bodies and the species management plans, land use plans, and conservation plans that they have produced, the EISC has been able to utilize certain established conservation limits and measures of sustainability against which predicted impacts can be compared. As these groups further influence the direction of wildlife

research in the ISR, baseline data will continue to improve to the benefit of wildlife management and the evaluation of impacts on wildlife and habitat.

Until such time as established government environmental screening and review processes are more inclusive of these interests, plans and research as a matter of routine in their assessment of development applications and proposals in the ISR, it is likely that the EISC will continue to exercise its broad discretion in the screening and referral of development projects in a manner that provides comfort to the Inuvialuit. To ensure that Inuvialuit harvesting rights and the conservation and wildlife management requirements established under the IFA are fully respected, the right to duplicate government screening and review processes will be viewed as necessary and essential.

In the last few years, the EISC has screened approximately 30 submissions per year, about half of which are related to government initiatives and the remainder to industrial and commercial ones (EISC 1992b). In all cases the burden is on the developer to comply with the screening and review process established in the IFA before a development can proceed. A mechanism for enforcing this legal obligation is provided in s.11(31), which states:

> No license or approval shall be issued [by government] that would have the effect of permitting any proposed development to proceed unless the provisions of this section have been complied with.

In effect this provision "operates like an injunction," placing the development on "hold" until such time as it has been fully complied with (Thompson 1991: 131).[77] This may include a full public review by the EIRB.

The effectiveness of this mechanism as a sanction against developers who choose to ignore the IFA screening and review process rests on the willingness of federal authorities, following their legal obligation under the IFA, to make it enforceable. As discussed above, this has often not been the case.[78] Land use permits and rights have been issued and lands disposed of under the Territorial Lands Act, and prospecting permits issued under the Canada Mining Regulations allowing development activities to proceed in violation of s.11(31). This raises questions as to whether the government's authority is open to challenge. As Thompson has observed: "Who may challenge and what grounds may be invoked? For example, could the Inuvialuit apply in the Federal Court to quash the issue of the license or approval on the basis of a breach in the terms of the IFA?" (Thompson 1991: 132)

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[77] Thompson draws the contrast with the federal EARP guidelines noting that the latter "do automatically stay a project pending the public review" (Thompson 1991: 131).

[78] See 3.4.2.

Equally troubling are mineral staking activities, which are unregulated by federal legislation on Crown lands. While these activities fall within the IFA's definition of development and the provisions of the IFA that require these activities to be screened, they have occurred within the ISR outside of the legal process established there. In the absence of any legislation requiring permits for mineral staking on Crown lands, no legal sanction exists to prohibit these types of developments if they have not complied with the IFA screening and review processes as provided for in s.11(31). Such cases offer a compelling example of the serious conflicts and inconsistencies that continue to exist in law between the requirements and obligations of the IFA on the one hand and the most basic federal legislation for controlling development on Crown lands.[79] In such instances it is not at all clear what legal recourse the Inuvialuit have to prevent such activity from occurring or through what means an injunction could be obtained from the federal court, notwithstanding the legal paramountcy of the IFA (s.3(3)) over legislation that is inconsistent with it. Nor is it clear how Canada will amend federal legislation to address the most serious deficiencies that allow this type of development to operate fully outside the IFA's comprehensive environmental management regime and all of the institutions it established to conserve wildlife, habitat and traditional Inuvialuit harvesting. Currently, the resolution of the issue remains outstanding with the Minister of DIAND.

3.4.3 Wildlife Compensation

The IFA established a wildlife compensation and liability regime for damages resulting from development. The objectives of this regime are twofold:

> S.13(1)(a) to prevent damage to wildlife and its habitat and to avoid disruption of Inuvialuit harvesting activities by reason of development; and
>
> (b) if damage occurs, to restore wildlife and its habitat as far as is practicable to its original state and to compensate Inuvialuit hunters, trappers and fishermen for the loss of their subsistence or commercial harvesting opportunities.

The IFA imposes liability on developers in several ways. First it imposes a liability to compensate Inuvialuit for "actual wildlife harvest loss" defined in the Agreement as "...provable loss or diminution of wildlife harvesting or damage to property used in harvesting wildlife, or both...(s.13(2). Secondly, it extends this liability to "future harvest loss" defined as "provable damage to habitat or disruption of harvestable wildlife having a foreseeable negative impact on future wildlife harvesting" (s.13(2)).

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[79] This situation does not apply on the Yukon North Slope where the area has been withdrawn from disposal, and entry for the "purpose of locating a claim or prospecting for gold or other precious minerals and stones" is prohibited (IFA, Annex E-1).

Thirdly, and importantly, following from this definition and other provisions, it obligates the developer to take remedial and mitigative measures to restore damaged habitat as nearly as practicable to its original state (s.13(4), 13(15), 13(16) and 13(8)(c)).

Section 13(15) offers a good illustration of the broad liability imposed on a developer:

> 13(15) Where it is established that actual wildlife harvest loss or future harvest loss was caused by development, the liability of the developer shall be absolute and he shall be liable without proof of fault or negligence for compensation to the Inuvialuit and for the cost of mitigative and remedial measures as follows:
>
> > (a) where the loss was caused by one developer, that developer shall be liable;
> >
> > (b) where the loss was caused by more than one developer, those developers shall be jointly and severally liable; and
> >
> > (c) where the loss was caused by development generally, but is not attributable to any specific developer, the developers whose activities were of such nature and extent that they could reasonably be implicated in the loss shall be jointly and severally liable.

If a developer cannot meet its liability as established in this section, the obligation for meeting it shifts to Canada (s.13(16)). The IFA recognizes that in some circumstances the liability of some developers could exceed their ability to pay, and requires them to prove financial responsibility and permits the government authority to "ensure" such financial responsibility through some form of financial instrument, such as a letter of credit, guarantee or indemnity bond (s.13(13), 13(14)).

These compensation provisions are an important feature of the overall wildlife and environmental management regime established by the Agreement. They were negotiated in an environment in which the prospect of large-scale oil and gas developments in the Beaufort Sea loomed large. Notwithstanding the various mechanisms provided by the IFA to control development in the ISR and its impacts on wildlife, habitat and harvesting, the wildlife compensation regime is a "safety net" of last resort to provide some level of comfort and protection to the Inuvialuit in an area where development proposals are often greeted by many Inuvialuit in a manner ranging from caution and circumspection to quiet anxiety. Inuvialuit organizations like the IRC, IGC and HTCs, as well as the co-management bodies hold high expectations for this regime and the security it is to provide, both with respect to direct financial compensation payable to Inuvialuit harvesters and the restoration of habitat as near as

practicable to its original state. Recent events have continued to make the IFA's compensation provisions a subject of ongoing discussion and debate.

The first wildlife compensation agreement was signed in 1987 between Gulf Canada and the IGC in response to a project for extended formation testing at its Amauligak site. This was followed by a similar agreement between Esso and the IGC. Both agreements are viewed as consistent with the provisions of the IFA, but also include "a process for direct dealings between [the company] and the affected harvester; expedited timing for mediation and awarding of claims; and the form of the award as either cash or non-monetary payment" (INAC 1990: 5). The agreements are viewed as not prejudicing the ability of a harvester to claim compensation under the IFA's section 13 provisions.

Since these early agreements were signed, increasing attention has been given to the IFA's wildlife compensation regime as a result of the findings of the federal panel on tanker safety and the costs of clean-up activities and compensation claims arising from the *Exxon Valdez* oil spill in Alaska's Prince William Sound. Most notably, however, it was the findings and recommendations of the EIRB arising from the public reviews of Esso's proposed Isserk I-15 drilling program in 1989 and Gulf's proposed Kulluk drilling program in 1990 that focused attention and concern on the issue of wildlife compensation and the differing interpretations held by the Inuvialuit and Canada.

In addition to raising a concern over the legislative overlap of the IFA, the Arctic Waters Pollution Prevention Act (AWPPA), and the Oil and Gas Production and Conservation Act, how this overlap affects the IFA's liability and financial instruments provisions, and the need to consider changes in legislation and policy (EIRB 1989: 24), the EIRB also raised the following (Beaufort Sea Steering Committee 1991b: 4):

- whether the IFA can be used to limit the absolute liability of a developer;
- if so, whether DIAND's present $40 million limit on the absolute liability of the developer is adequate;
- whether Canada's obligation to assume the liability of the developer is therefore also limited;
- whether financial instruments accepted by Canada are adequate for exploration and drilling activities in the Beaufort Sea.

In response to these and other concerns raised by the EIRB regarding government's preparedness to manage offshore oil and gas development in the Beaufort Sea, the Beaufort Sea Steering Committee (BSSC) was established by the Minister of DIAND. A task group was created explicitly to deal with issues related to compensation.[80] The report of the task group (BSSC 1991b) provides a good illustration of the difficulties

[80] Members were appointed to the task force on compensation from the IGC, IRC, DIAND, COGLA, Government of Yukon, Government of Northwest Territories, and the Canadian Petroleum Association.

arising from different interpretations of the IFA's compensation provisions and the issues at stake in their resolution.

The financial liability imposed on the developer beyond responsibility for direct costs associated with present and future harvest loss, and covering mitigation and restoration of habitat is unique in the IFA. The limit of this liability has been an issue of extensive debate between Canada and the Inuvialuit, particularly in light of clean-up costs in excess of U.S. $1 billion associated with the *Exxon Valdez* spill.

> DIAND has not claimed that the total liability of the developer can be limited, and suggests that a developer may be liable for the totality of the costs of taking remedial and mitigative steps under the common law. However, to prevent further cumulative liability under the IFA and AWPPA, DIAND has permitted the $40 million instrument to satisfy the financial instruments provisions of both the IFA and the AWPPA. DIAND has also required developers to post a $5 million security under the IFA for the costs of compensating Inuvialuit for actual harvest loss.
>
> If a developer's liability under the IFA can be limited, Canada's obligations to "backstop" the developer's liability for taking remedial and mitigative steps may be similarly limited. The Inuvialuit have taken exception to the concepts that the developer's liability can be limited under the IFA and that Canada's "backstop" liability can be similarly limited (BSSC 1991b: 8).

The issue of financial limits was left and remains unresolved. As a result the development of guidelines for the application of the appropriate financial instruments was not completed either. However, the task force did consider various financial instruments suitable and available to industry for demonstrating financial responsibility in the event of default by a developer. These instruments included insurance policies, corporate guarantees, letter of credit and indemnity bonds (BSSC 1991b: 10).

While the industry preferred that financial instruments required by government cost as little as possible to purchase, minimize the impact on the developer's balance sheet, and not unduly restrict the developer's ability to borrow, the Inuvialuit preferred instruments that met the following criteria:

- quick access to funds immediately after an incident to compensate for actual wildlife harvest loss;
- longer term compensation for actual wildlife harvest loss;
- assurances that damaged habitats within the ISR are repaired to the extent practicable (BSSC 1991b: 9).

In addition, the Inuvialuit sought the assurance that in the event of a default on obligations by a developer, the financial instrument established for income and subsistence loss not require financial ability on their part or produce length delays, such as through litigation. Similarly, "Canada must be able to immediately access funds secured for taking remedial and mitigative steps, which should again be earmarked for those purposes only" (BSSC 1991b: 9).

Until such time as Canada and the Inuvialuit resolve their differences on the interpretation and scope of the IFA's wildlife compensation provisions, the level and extent of financial responsibility for which the developer and ultimately Canada is liable will be in dispute. Concurrence on the most desirable application of financial instruments required by government as security against a developer's default will also require further discussion, but again this hinges on the parties reaching agreement on the meaning of Section 13 of the IFA.

3.5 Legislation, Regulation and Enforcement

3.5.1 Consequential Legislation

The effectiveness of co-management in the ISR rests to a large extent on the willingness and ability of governments to incorporate the approach to wildlife management established in the IFA and the provisions that support it into their relevant legislation, policies and administrative procedures. As long as governments fail to do so, traditional approaches to wildlife management will continue as obstacles and irritants to effective implementation of the IFA's wildlife management regime. They will also make it difficult for co-management institutions to achieve the level of mutually supportive decision-making envisaged in the IFA and constrain the ability of co-management bodies to implement fully the responsibilities they have been assigned. IFA implementation will continue to be *ad hoc* and rely almost entirely on the ability and activity of individuals in Inuvialuit and co-management institutions, and those in government with specific responsibilities attached to IFA implementation.

To date, almost 10 years after the IFA was given legal force, little progress has been made on legislative overhaul. A number of regulatory amendments to the NWT Fishery Regulations, the Yukon Fishery Regulations, the Walrus Protection Regulations and Beluga Protection Regulation (all under federal jurisdiction) came into effect in 1991, six and a half years after the IFA came into force. The governments of the Northwest Territories and the Yukon have not significantly modified their legislation or formally modified their department policies to reflect the fundamental changes the IFA has brought to their legislation and mandate.

There are some in government who argue that such changes are unnecessary and possibly not desirable given the increasingly complex legal obligations facing government with the settlement of comprehensive claims in other areas. Such a view is

often held by those who are remote from the activities and concern of managers and harvesters in the ISR. They support their view with the argument that section 3(3) of the IFA establishes that the IFA will supersede any other federal or territorial law if there is a conflict. This position holds validity to the extent that its application is limited to the courts where charges that have been laid under sections of federal or territorial legislation are rendered *ultra vires* by the IFA. However, this view fails to recognize that co-management is not principally about success in prosecutions. It also fails to recognize that effective co-management requires that government support and act on its responsibilities and obligations, and work actively to implement the intent and principles of the IFA. Most significantly, perhaps, it fails to recognize that government management and enforcement agencies are conventionally organized around and oriented to their own legislation and the policies, programs and procedures that derive from it, not around legislation or agreements relating to land claims settlements.

To address this problem in future settlements, consideration should be given to including as a provision of claims agreements a law list of consequential and enabling legislation with sunset provisions indicating the date by which the necessary policy and legislative changes must be accomplished.

Chapter 4 - Conclusions

Section 14 of the IFA established 5 principles for wildlife management:

- the protection and preservation of Arctic wildlife, environment and biological productivity through the application of conservation principles and practices
- the integration of wildlife and land management regimes and the coordination of legislative authorities
- the application of special protective measures to lands determined to be important for wildlife, research or harvesting
- the effective integration of the Inuvialuit into all bodies, functions and decisions pertaining to wildlife management and land management in the Inuvialuit Settlement Region
- the application of the relevant knowledge and experience of both the Inuvialuit an the scientific communities

This review of the IFA's wildlife and environmental management regime suggests that all of these principles are being implemented. While progress on each varies according to government, agency and organization, wildlife and environmental management in the ISR is far different today than it was over 10 years ago before the IFA was signed. To have applied the management circumstance of a decade ago in the Western Arctic to these principles would have found that management regime extremely wanting.

The effectiveness of the IFA's management regime can be measured to some extent against the practical effects of Inuvialuit harvesting rights that have been achieved through implementation. Inuvialuit harvesters have clearly assumed an important and broad level of authority over their hunting activities and the uses of wildlife they choose to pursue. Harvesting levels for some populations of wildlife are higher and occurring on a commercial basis as a result of improved wildlife research and management. All discretionary restrictions imposed by government that have limited Inuvialuit access to wildlife in the past have been removed. The activities of Inuvialuit organizations and co-management bodies have played a significant role in achieving this practical outcome.

There are many areas where improvements are needed, and progress to date falls below the expectations of many Inuvialuit. Not withstanding this, the net benefits for conservation of wildlife, habitat and Inuvialuit harvesters are significant. Many features of the Agreement that still carry untapped opportunities await full implementation. The value of some of these have become all the more apparent as management problems and harvesting issues have arisen .

The IFA provides the Inuvialuit and government with considerable flexibility for achieving a range of outcomes for wildlife management. For this flexibility to be effective and useful it assumes cooperation between the Inuvialuit and government. Without it an important feature of the Agreement is seriously diminished.

Having reviewed the significance of many features of the wildlife and environmental management regime established by the IFA and how they have been implemented, the following conclusions have been drawn:

- Effective implementation of the IFA is fundamentally tied to its ongoing interpretation and a common and shared understanding between the parties of the purpose and meaning of its wildlife and environmental provisions. The ultimate burden of responsibility for reaching a shared understanding with government of these provisions has fallen to the Inuvialuit. It is they who have the most to lose if implementation is not effective and the most to gain if its promises are fully realized. At the same time, without a generous, constructive and cooperative approach to implementation of the Agreement by government, progress will likely be slow and painfully frustrating for the beneficiaries. Status quo arrangements for wildlife and environmental management pre-dating claims settlement may be a source of comfort and represent familiar ground for many government agencies. For the Inuvialuit, anxiety and concern over these very arrangements and circumstances and a desire to replace them with new ones were what motivated their desire to pursue and settle their comprehensive claims with Canada in the first place. This tension between governments' institutional and policy attachments to old status quo arrangements pre-dating claims settlement and the strong Inuvialuit desire to realize the new management approaches and arrangements established in their land claim agreement are a significant feature of the first 10 years of IFA implementation. It is the most basic of tensions between old and new, stasis and change, conflict and cooperation. Notwithstanding the financial compensation received by the Inuvialuit with the settlement of their claim, their resources and those of government are far from equal in addressing and overcoming these differences. The weight of established government practices, policies and legislation far exceeds the capacity and experience of fledgling IFA-based institutions to effect real change. The experience of IFA implementation suggests that where government efforts have been most cooperative and constructive significant progress has been made in giving effect to the IFA's provisions. Where they have been absent and where government has ignored its new obligations and responsibilities, the effect of the Agreement has been seriously limited.

- An improved and early understanding of the significance and meaning of many of the Agreement's provisions by those involved in implementing the Agreement would have facilitated the introduction of new wildlife and environmental management practices. The IFA experience indicates that the slippage from the understanding that is reached at the negotiating table is rapid. Annual workshops sponsored by the parties to the Agreement for all individuals, organizations and

agencies involved in implementation would be helpful in promoting a common working understanding of the Agreement.

- Implementation of the IFA indicates that the legal and constitutional status of the Agreement has conferred on it limited special status and brought no unique commitment of political will by many government agencies to see the Agreement's provisions realized and basic administrative reforms carried out. Many of the most basic consequential amendments in policy, regulation and legislation have not been enacted almost 10 years after the Agreement was written and passed into federal law. To address this problem in future settlements, consideration should be given to including as a provision of claims agreements a law list of consequential and enabling legislation with sunset provisions indicating the date by which the necessary policy and legislative changes must be accomplished.

- IFA implementation has made it abundantly clear that consequential changes to government administrative practices are as important as amending legislation and policy. Legislative amendments that merely incorporate verbatim provisions of the IFA and eliminate conflicts with it provide no guarantee that their practical effect is fully realized. They do not in themselves provide clear guidance to the enforcement activities of wildlife officers and their treatment of Inuvialuit harvesters, and the decisions of wildlife and land use managers that affect the rights of Inuvialuit harvesters and Inuvialuit land ownership. Notwithstanding the new institutions established by the IFA almost 10 years ago that are fully functional today, little progress has been made in accomplishing the institutional and administrative reforms required of government. This has hindered the effectiveness of Inuvialuit and co-management bodies in their dealings with government, constrained progress towards the achievement of some of the Agreement's wildlife management objectives, and bred confusion in government and among the Inuvialuit over the administrative and management practices in the face of competing and differing administrative understandings .

- Two arbitrations have been initiated by the Inuvialuit pursuant to the IFA. In each instance, the arbitration has addressed some of the most basic provisions of the Agreement and their meaning. Unless other less costly and less formal mechanisms are found to achieve working understandings between the parties to effect implementation, progress will be difficult and slow. One possible mechanism, established following the signing of the IFA but not given full effect, is an implementation coordinating committee, consisting of members representing the parties to the Agreement, that would monitor implementation, address matters of outstanding concern and develop working understandings between the Inuvialuit and government of the Agreement's provisions.

- The IFA should be read liberally with a generosity in interpretation. In addition to the case law that supports this approach and the finding of an arbitration panel established pursuant to the IFA, from a practical standpoint it is sensible as well.

An agreement like the IFA has been written with many provisions broadly stated. While establishing the basic foundation for new institutional arrangements, the parties have been delegated the responsibility and provided the latitude to accomplish implementation tasks in a manner that is best suited to the unique and changing character of diverse circumstances. This approach assumes good faith and a commitment based on cooperation. The record to date with this approach is a mixed one. Its single largest failing results from those who read the provisions of the IFA narrowly, failing to link them to the broader objectives of the Agreement and other sections that give individual provisions added meaning and purpose.

- The commitment of government to IFA implementation has been uneven at best, hollow at worst. Achieving a coherent level of corporate commitment to claim implementation across government remains a significant challenge for all government, notwithstanding the dedicated support that has been demonstrated by some agencies. There is a clear relationship between the familiarity of government agencies with the IFA and their active commitment to its implementation on the one hand, and their proximity to the Inuvialuit Settlement Region on the other. Regional government officials typically have a close and highly constructive working relationship with the Inuvialuit on matters related to implementation. Consequently, those officials who are most informed about the IFA and its requirements and tend to share a working understanding with the Inuvialuit of the Agreement's provisions, often enjoy little support from senior government officials in headquarters outside of the region. This is one of the greatest constraints affecting the performance and effectiveness of these government officials. It is also indicative of the often tense relationship between management practice and policy, where the former as it is carried out in the region may lead policy as it is formulated in headquarters. In the absence of a uniform and integrated commitment across government, implementation efforts are seriously compromised.

- Definitions are important in the IFA, "conservation" and "development" being the most notable. "Conservation" explicitly defines both the goals of wildlife and environmental management in the ISR and the nature of the greatest restrictive measure on Inuvialuit harvesting rights. "Development" defines the ambit of the environmental screening and review process and the range of activity that is subject to environmental management under the Agreement. The full effect of these terms is still being understood almost 10 years after the signing of the Agreement.

- The principle of conservation in the IFA achieved two important objectives under the IFA: improved harvesting opportunities for the Inuvialuit free from restrictive government regulations and discretionary policies, and improved wildlife management in the ISR. With respect to the first, it required government to justify limitations on Inuvialuit harvesters according to conservation (as defined in the IFA). With respect to the second, in legally obligating government to justify harvest restrictions, it provided government wildlife managers and researchers with more funding to improve their knowledge of wildlife populations and the levels at

which they could be harvested on a sustainable basis. This is one of the greatest contributions of the IFA: it not only provided the Inuvialuit with extensive harvesting rights, but also dramatically improved the state of wildlife management in the region. The link between the two is fundamental in the IFA: the wildlife management and environmental regime established through the Agreement make enforceable the harvesting rights it recognizes.

- An important and basic difference exists between claims-based management institutions, like those established in the IFA, and those that are created through other forms of agreement (legislated or voluntary) between government and aboriginal people. The IFA's wildlife and environmental management regime and the research program that supports it are shaped and determined by the extensive and specific Inuvialuit harvesting rights that it gives effect to. At the same time this management regime and its performance have direct and immediate implications for Inuvialuit harvesters and how their rights are made enforceable. The participation of the Inuvialuit in this regime, its direct accountability to Inuvialuit harvesters themselves, and the existence of Inuvialuit management bodies with defined powers and responsibilities for the regulation of Inuvialuit harvesters alongside of Inuvialuit/government co-management bodies are reflective of the powerful and extensive harvesting rights the Inuvialuit hold in the ISR. Government/aboriginal co-management regimes that are not claims-based may seek to better serve the interests and general subsistence harvesting rights of aboriginal people, as recognized by case law or government good will in the wildlife and resources that aboriginal people have traditionally harvested and relied upon, but they are seriously constrained by the poorly defined nature of the rights themselves. Notwithstanding the changes to wildlife management and co-management introduced by Supreme Court decisions like *Sparrow*, these management initiatives tend to be extremely narrow in application with respect to their responsibilities, governing either select species or discrete resources or geographical areas, and limited in the authority and standing they are assigned by government. These distinctions between claims-based and non-claims-based co-management regimes are important and suggest that a significant condition of their performance is the nature and extent of the rights held by the aboriginal people who participate in them.

- The IFA requires that wildlife be managed on the basis of population, not solely on the basis of jurisdiction. This requirement has prompted greater cooperation between government agencies in managing migratory or transboundary populations. The Inuvialuit have demonstrated considerable success in achieving cooperative approaches to wildlife management with other aboriginal people in the Northwest Territories, Alaska and Yukon with whom they share the same wildlife populations. For example, the Inuvialuit and the Inupiat of Alaska have achieved cooperative management agreements for shared populations of polar bears and beluga whales. Under these agreements joint management bodies representing both groups of harvesters share responsibilities for improving harvest information and research, and determining acceptable quotas between their jurisdictions.

- The Inuvialuit have had an active interest in international issues affecting wildlife management in the ISR, most notably with respect to migratory birds, international whaling and the Porcupine Caribou herd. Issues in these areas have not been resolved to the extent that protection of Inuvialuit harvesting rights of these migratory species is fully assured; hence the advocacy of the Inuvialuit and IFA co-management bodies in these areas. These issues raise serious questions for governments and aboriginal people with respect to how legislated, constitutionally entrenched land claim agreements are regarded, the standing they hold in the broader field of domestic legislation and international agreements, and the nature and level of political will and government commitment that they compel to meet claims-based legal obligations, responsibilities and rights.

- The wildlife and environmental management institutions established under the IFA are largely fulfilling the principles for wildlife management stated in the Agreement. The co-management bodies have generally established strong cooperative approaches between the Inuvialuit and government. Inuvialuit participation on these bodies and throughout the IFA's wildlife and environmental management regime is generally full and effective. A major influence shaping the effectiveness of the Inuvialuit on these co-management bodies is the strength and standing of the Inuvialuit Game Council. The IGC provides much of the basis for establishing government-Inuvialuit relations both generally and on co-management committees as a "government to government" one.

- All of the IFA's co-management bodies convey their decisions on harvest quotas and conservation levels (total allowable harvest) by way of recommendations to the appropriate federal and territorial ministers. To date, no recommendation has been overturned or rejected by a minister, even in areas of considerable controversy. This record is an interesting one in light of the attention and weight given in claims negotiations to the authority and decision-making responsibilities of wildlife and environmental management bodies. The authority and decision-making responsibilities of the IFA's co-management bodies are not defined in the IFA as ultimate or final. These bodies report to the appropriate ministers and their relationship can be characterized as an advisory one. The experience of the IFA's co-management bodies to date suggests how wildlife and environmental management decisions are arrived at, how these decisions affect and are affected by aboriginal harvesting rights, and how they are treated by those holding legislative authority, are as significant for the interest of aboriginal people as the debate over whether decision-making powers are ultimate and final and who they should properly reside with.

- The IFA provides the members of government/Inuvialuit co-management bodies with voting powers for the resolution of management issues and reaching decisions. In practice these powers are not exercised, nor are issues and decisions put to a vote. All bodies have routinely reached agreement and decision by consensus.

This approach to decision-making contributes substantially to more effective and cooperative implementation by the parties. It precludes the emergence of majority and minority interests in co-management bodies, and the lapsing of government or Inuvialuit members into the perceived roles of those who manage and those who cooperate.

- Under the IFA the Inuvialuit have the right to regulate their own harvest of wildlife. The record of local Hunters and Trappers committees (HTCs) in regulating the harvest of wildlife is a highly successful one, and has demonstrated a willingness to establish quotas restricting harvests for conservation purposes independent of any requests or actions from government.

- Self-regulation under the IFA is accomplished in part with the support of government regulation. The IFA provides for enforceability of HTC bylaws by government legislation as an additional safeguard for Inuvialuit Hunters and Trappers committees to ensure that the quotas and harvesting restrictions they establish will be fully respected by Inuvialuit harvesters. Currently, this provision is limited in its application to the Northwest Territories Wildlife Act. The legal effect on Inuvialuit harvesters of regulations passed under the Act has never been tested nor have charges ever been laid. Enforceability of HTC bylaws through government regulation continues to be strongly supported by Inuvialuit management bodies in establishing the authority their bylaws. Full enforceability of HTC bylaws will require amendments to existing wildlife legislation and additional legislative and regulatory changes to federal fisheries and Yukon wildlife legislation, which currently provide no adequate mechanism for bylaw enforcement.

- The IFA's approach to land selections and land tenure has been an effective tool for land management. First, it reduced the potential negative impacts of future public easements and access on Inuvialuit lands by limiting the Crown lands bisecting Inuvialuit lands. Second, by choosing contiguous blocks of land, developers (commercial and government) have been required to deal directly with the Inuvialuit if they need access across Inuvialuit lands or alienations in support of future activities. Thirdly, with respect to a formula for land quantum, the Inuvialuit successfully made the case that where land was required to support the productivity of wildlife populations, not all land was comparable on an area-unit basis. Some lands were lower in biological productivity than others and larger areas were required to support similar wildlife populations.

- A tenure system based on fee simple absolute ownership of surface and subsurface lands, and large and contiguous land selections combined with an Inuvialuit-based land administration regime for these lands have provided significant control over the nature and impact of development on these private lands as well as how they are affected by development on neighbouring lands. The protection of wildlife and the environment through Inuvialuit ownership of the lands they most value, however,

has not precluded government and industry developers trespassing on these private lands without notice or penalty.

- The IFA also demonstrates that the nature of the rights acquired by aboriginal people is an important consideration in land claims negotiations. In the case of the Inuvialuit, their harvesting rights have been recognized in a way that allows them to maintain subsistence practices and domestic production that are unaltered by many regulation and licensing requirements under the laws of general application. Notable features include the exclusive and preferential harvest of certain species of wildlife, the right to harvest by any method not conflicting with public safety or conservation, the right to travel anywhere in the ISR, the right to build cabins for hunting, trapping and fishing, the right to possess and transport harvested wildlife across jurisdictional boundaries, the right to trade, barter and sell harvested wildlife

- The IFA also raises questions about the requirement in some claims agreements for aboriginal harvesters to establish basic needs levels for subsistence harvests. The determination of Inuvialuit subsistence quotas and subsistence requirements in the IFA is notably different from that of other comprehensive claims agreements, which established subsistence requirements as a "basic needs level" (BNL) or a minimum harvest level tied to specific wildlife populations on the basis of current or recent harvests and current personal consumption. The IFA does not cast Inuvialuit subsistence requirements in terms of fixed "floor" level needs for each species of wildlife, but in terms that optimize the flexibility of the Inuvialuit to meet their domestic and dietary requirements from different wildlife species and populations. The suitability of the BNL approach for guaranteeing that aboriginal subsistence requirements will be met should be carefully and closely considered. In a circumstance of changing demographic requirements, and heightened political sensitivity by government to increasing public demands for scarce fish and other wildlife resources, it may accomplish quite the opposite. Notwithstanding mechanisms for adjustment of BNLs upwards, this may be difficult to accomplish in such a climate and the BNL may come to represent an absolute maximum or "ceiling" for aboriginal subsistence requirements, rather than a relative minimum requirement. Mechanisms like the BNL are a reminder of the critical relationship between management tools and harvesting rights in the negotiation of claims agreements and the need to scrutinize carefully whether the rights that are recognized are well served by the management arrangements that are established.

- The collection of Inuvialuit harvesting data is another important feature of the IFA's wildlife management regime. One approach in collecting this type of information is a state-of-the-art hunter recall survey. This approach raises and confirms concerns about the adequacy and reliability of this method for collecting hunter harvest data for wildlife management and compensation purposes. Notwithstanding these concerns and shortcomings, it is also viewed by wildlife managers and harvesters as having provided an important and comprehensive "snapshot" of the extent and level of Inuvialuit harvesting activities for many

species and areas where little or nothing was known previously other than individual anecdotal information. In reporting six years of Inuvialuit harvest data, the Inuvialuit Harvest Study (IHS) has generally improved the information available for all species on harvest locations around each community. For some species, especially caribou, moose, fish, waterfowl and locally used furbearers (wolverine and wolves), a better estimate of the Inuvialuit harvest is now available. For waterfowl, where virtually no harvest data existed previously, the IHS has provided an estimate of the total harvest, species composition, distribution of the harvest across the ISR's six communities, and the year-to-year variation in the harvest. For caribou a better estimate exists of the Inuvialuit harvest of these migratory populations, as well as the age and sex of the harvest by month. For virtually all fish species, harvest estimates exist with monthly and annual variations where no information was available previously. The information collected by the IHS provides the basis for a comprehensive evaluation of this method for collecting harvest data. At the same time, other approaches to the collection of harvest information are permitted by the IFA and have also been pursued. On-site monitoring of spring waterfowl and summer beluga whale harvesting have been carried out, again providing a basis for considering other approaches to harvester recall surveys. The collection of Inuvialuit harvest data to date has clearly demonstrated the importance of this data and this activity in support of the regional management of migratory wildlife populations and in conveying to other regional, national and international interests with whom these population are shared the extent of the Inuvialuit use of these populations. New approaches to the gathering of harvester data could accomplish this and more, including the training and participation of harvesters in collecting biological samples for scientific information on selected populations, monitoring of Arctic contaminants and state of environment reporting. Along with the collection of traditional knowledge of Arctic ecosystems, harvesters could assume an enhanced role in wildlife research and wildlife and environmental management.

- Under the IFA wildlife research performs a critical role in meeting the management and conservation objectives of the Agreement. Just as the IFA's wildlife management regime is closely tied to Inuvialuit harvesting rights, the implementation monies provided with the signing of the IFA have produced an ambitious wildlife research program across the ISR, highly influenced by the interests of Inuvialuit harvesters. The Inuvialuit have played an important role in approving the expenditure of these monies, as well as in identifying research needs and priorities, and in contributing to research design and review. Generally, the research program has demonstrated an improved level of cooperation between government agencies in pooling research efforts and funds towards the study and monitoring of migratory wildlife populations.

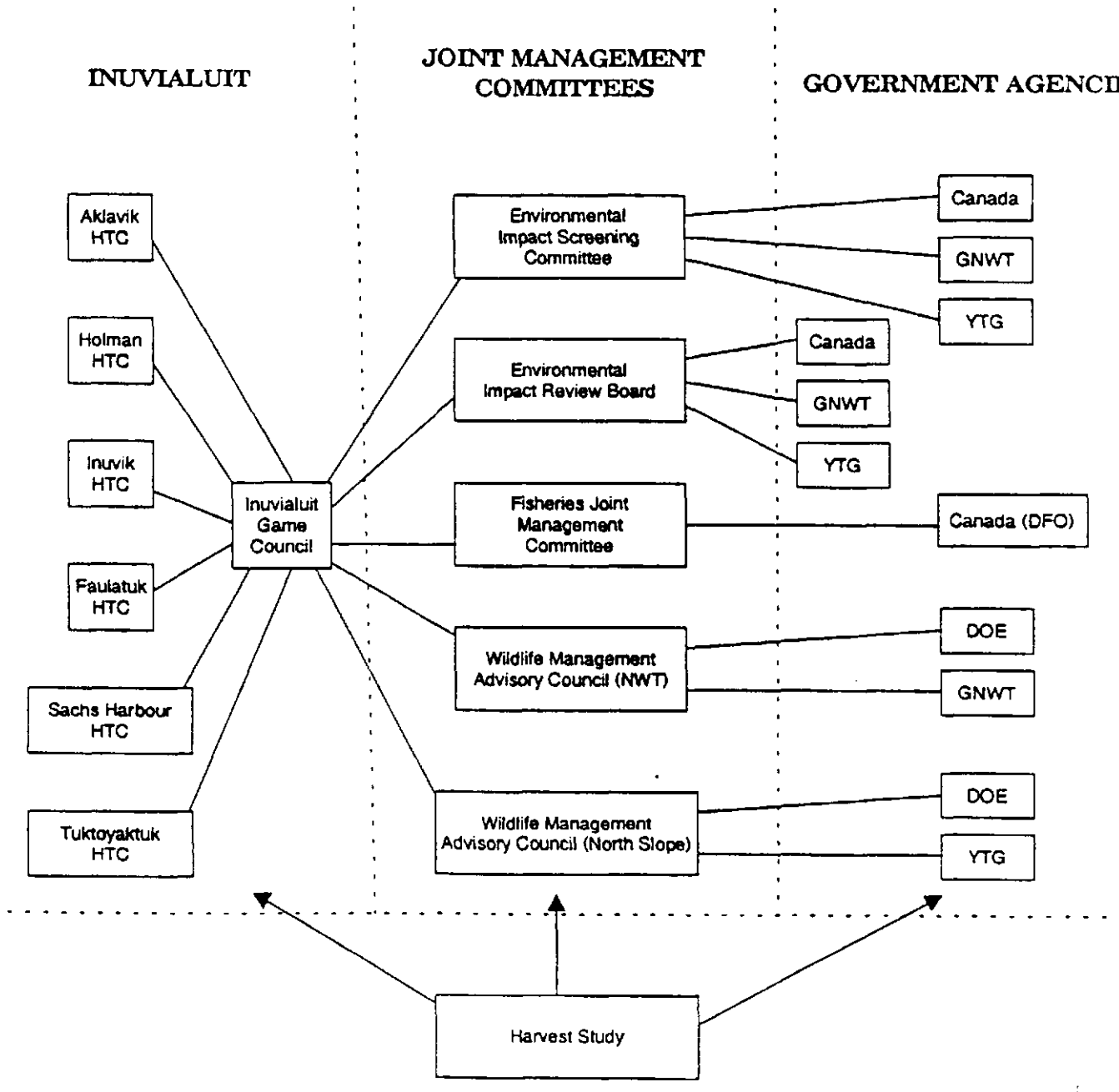
- The IFA established a national park and several other protected areas, while creating mechanisms to identify other areas of environmental significance requiring higher levels of protection. The regime created to manage these special areas

requires a high level of cooperation between the Inuvialuit and government, and a willingness to incorporate new management practices in recognition of general IFA provisions for environmental management and specific Inuvialuit harvesting rights. These arrangements are unique for agencies like Parks Canada. Although claims agreements like the IFA have provided government agencies and aboriginal people with a new mechanism for establishing protected areas for wildlife and habitat, their implementation requires government to ensure that no conflicts exist between the dual legislative authorities that they must manage under - claims legislation on the one hand and protected areas legislation on the other. Where conflicts exist, the responsibility is on government to pursue the necessary amendments to policy, regulation and legislation to ensure that they are consistent with the provisions of the claims agreement.

- A joint Inuvialuit/government environmental impact screening and review process was established under the IFA to determine the significance of environmental impacts from development, and to determine on what basis developments should or should not proceed. This process has reviewed several major development proposals and the preparedness of government regulatory agencies to manage these developments in an environmentally responsible manner. The largely positive and constructive treatment of recommendations arising from this process provides important insights into the nature, authority, and jurisdiction of decision-making carried out by claims-based bodies and how they are regarded by government. As a joint government/Inuvialuit screening and review process it clearly serves as another important institutional mechanism for protecting Inuvialuit harvesting rights and interests, beyond what is available to them through government-based screening and review processes.

Appendix One

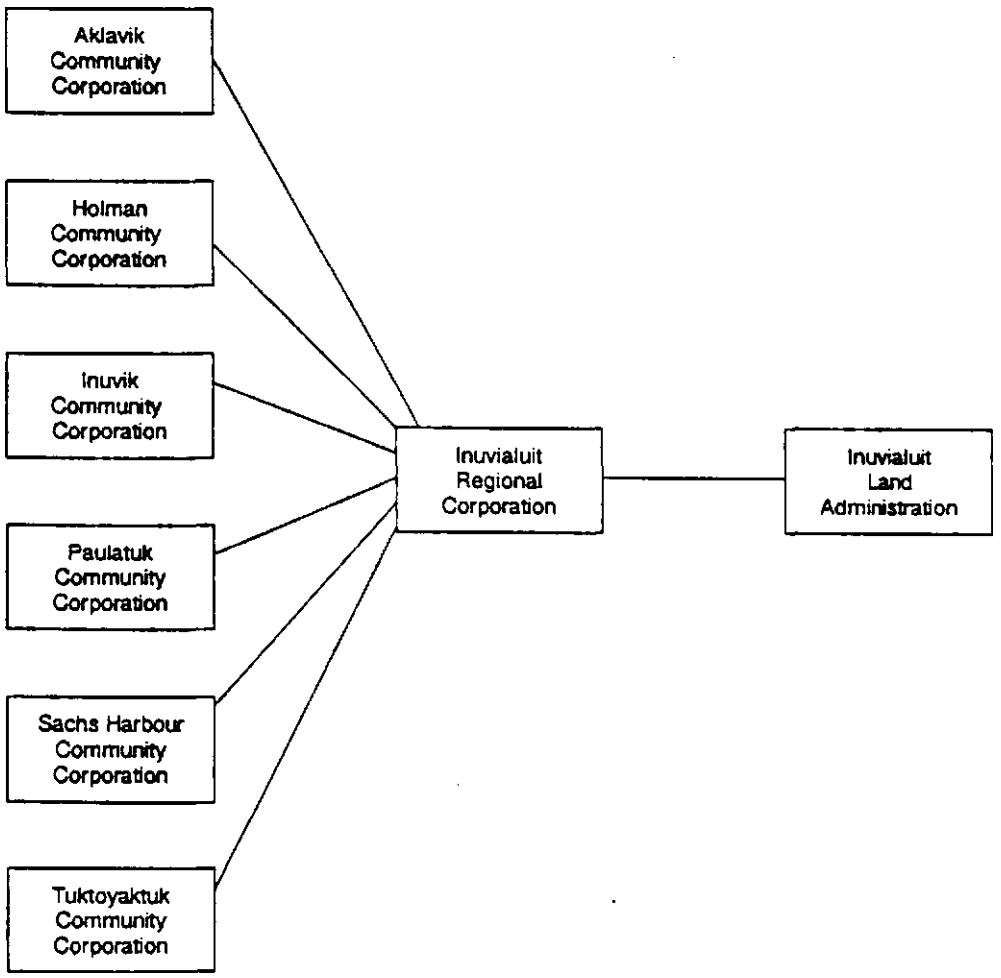
Organizational Structure of the Wildlife and Environmental Management Regime Established Under the Inuvialuit Final Agreement



*GNWT= Government of the Northwest Territories;
YTG=Yukon Territorial Government
DFC=Department of Fisheries & Oceans
DOE=Department of Environment

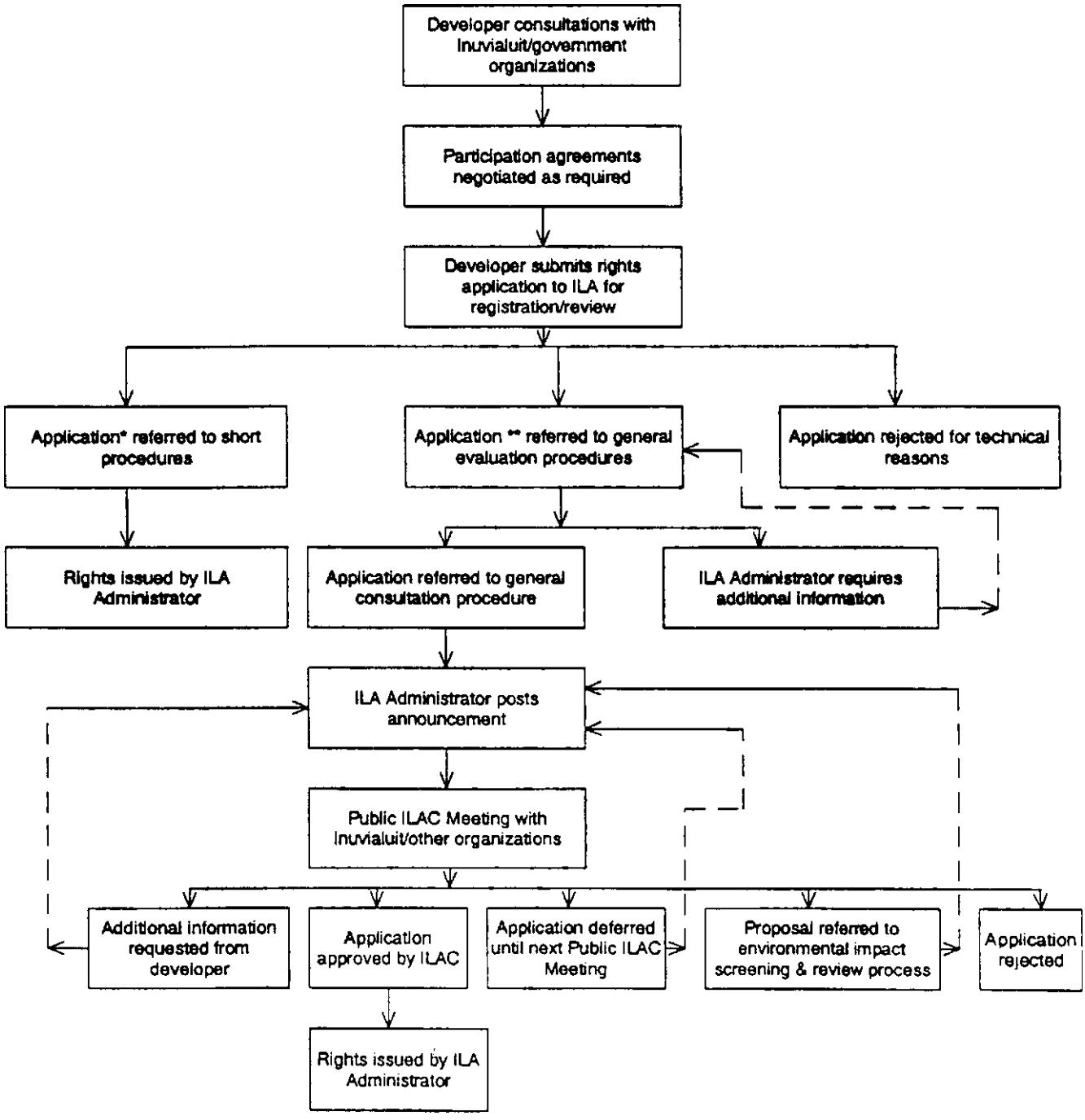
Appendix Two

Organizational Structure of Private Land Management Established Under the Inuvialuit Final Agreement



Appendix Three

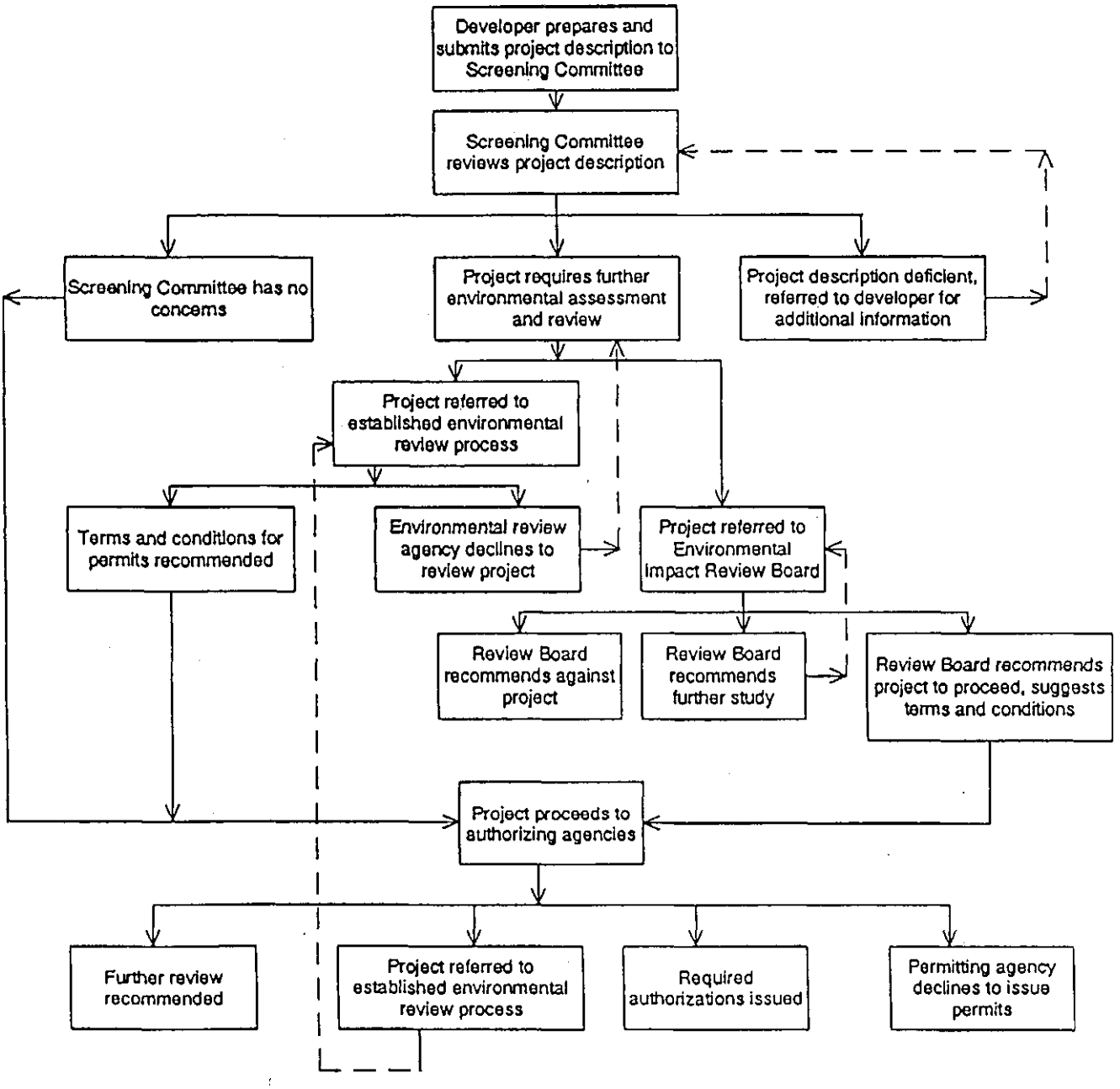
Inuvialuit Land Administration Application Review Process



* Application for Land Use Licence for small scale research (non-commercial).
**All other applications

Appendix Four

Environmental Impact Screening and Review Process for the Inuvialuit Settlement Region



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