

SUBMISSION TO THE TASK FORCE
TO REVIEW COMPREHENSIVE CLAIMS POLICY

BY THE
TUNGAVIK FEDERATION OF NUNAVUT

September 27, 1985

L. O'Hara

TABLE OF CONTENTS

	<u>pg.</u>
1. Introduction	1
<u>Part I - Proposal</u>	
2. Basis of the Claim	
2.1 Legal and Political	4
2.2 Geographic	7
2.3 Economic	8
2.4 Ecological	10
2.5 Social and Political	11
3. Nunavut Today	13
4. Purpose of a Comprehensive Claim	18
5. Extinguishment of Rights	22
6. Wildlife	24
7. Land and Resource Development/Environmental Management	29
8. Offshore	33
9. Decision-Making Powers	37
10. Economic Aspects	44
10.1 The Value of Land Ownership	45
10.2 Compensation	51
10.3 Taxation	61
10.4 Economic Rents	70
10.5 Economic Policies and Programs	85
11. Social and Cultural Development	91
12. Aboriginal Matters	112
12.1 Overlap	112
12.2 Eligibility and Enrolment	114
13. The Relationship of Claims to Political Development in Nunavut	116
14. Managing the Settlement	
14.1 Training	123
14.2 Implementation	129
15. Process	134

TABLE OF CONTENTS (cont.)

	<u>pg.</u>
16. Separate Northern Policy	138
17. A New Policy	139

PART II - LIST OF RECOMMENDATIONS

18. Recommendations	142
Extinguishment	
Wildlife	
Offshore	
Decision-Making	
Land Selection	
Compensation	
Taxation	
Resource Revenue Sharing	
Government Economic Policies and Programs	
Social and Cultural Development	
Overlap	
Eligibility and Enrolment	
The Relationship of Claims to Political	
Development in Nunavut	
Training	
Implementation	
Effect of Agreements-in-Principle	
Communications Systems for Implementation	
Arbitration for Settling Disputes	
Federal Chief Negotiator	
Negotiations	
Special Northern Policy	
Final Recommendations	

Part III - Appendices - Supporting Documents on Specific Topics

A. Extinguishment	
A.1 TFN Policy on Extinguishment of Aboriginal	
Rights	155
A.2 Legal and Constitutional Issues Relating	
to Aboriginal Rights in Nunavut	165
B. Offshore	191
C. Federal Administrative Boards with Decision-Making	
Powers	208

1. INTRODUCTION

The Tungavik Federation of Nunavut (TFN) welcomes the opportunity to address the Task Force on the Comprehensive Claims Policy Review.

TFN represents approximately 17,000 Inuit of the Kitikmeot, Keewatin and Baffin Regions of Nunavut. It was formed in June of 1982 to take over the responsibilities for aboriginal claims negotiations and political development from the Nunavut Claims Executive Committee under Inuit Tapirisat of Canada (ITC). TFN is an independent, broadly based organization with a fourteen member Board of Directors representing all major Nunavut organizations, regional Inuit associations, and regional councils.

This submission is in three parts. Part I provides an overview of the claim and a discussion of a number of specific policy issues. Part II provides a summary of our policy recommendations. Part II contains further supporting documents in the areas of extinguishment, the offshore, and decision-making powers. Part III provides a summary of our policy recommendations.

Since TFN is close to an overall Agreement-in-Principle, this submission will focus on the specific elements, that

underlie most of the topics that remain to be negotiated.

These include:

- the problem of extinguishment of aboriginal rights and title;

- the sharing of management and decision-making powers;

- the sharing of resource revenues and the benefits of economic development;

- the relationship between aboriginal claims and political development;

- the inclusion of the offshore as a topic of negotiation.

It is important to note that some of our positions reflect a reaction to previous policy. Therefore some may appear to be inconsistent. For example, we discuss Inuit ownership of lands and the need for compensation monies but remain opposed to the concept of extinguishment. This reflects our uncertainty about what the new policy will be. We felt we would be doing ourselves an injustice if we failed to address these crucial matters simply because they appear contradictory. We want to maintain the flexibility to adapt to changes in federal policy.

PART I - PROPOSAL

2. BASIS OF THE CLAIM

2.1 Legal and Political

As is well-known, prior to 1973 the federal government had refused to deal with the political demands of aboriginal claimant groups who could not point to a treaty or some other form of officially recognized right that could be mobilized in the courts of law. It was stated that the demands of these people for protection of their cultural values were too vague to be capable of articulation. That policy of uncompromising hostility applied to all non-treaty Indians and to all Inuit in Nunavut, Labrador, and Northern Quebec.

Then in January 1973, all of the judges of the Supreme Court of Canada who dealt with the issue in the Nishga Case stated that these people who could claim an aboriginal title to their traditional territories had a legal basis for their political demands.

Thus, taking its cue from the judges, the federal government reversed its previous policy, and on 8 August 1973 announced that it would negotiate land claims settlements with those who could show a traditional interest in their lands. Legal developments suddenly altered the political framework of federal government

policy. The Supreme Court had delivered real negotiating power to the Inuit and other native groups who could demonstrate that they had an aboriginal title.

Despite this basic shift in government policy, we do not see our legal entitlement based on aboriginal title as the be-all and end-all of our political demands. Land claims are a vehicle for recovering control over our lives, which we were losing because of the nature and pace of economic development in Nunavut, and for determining a future which has room for an Inuit view of the world. Aboriginal title meant political leverage at the bargaining table. It did not limit the scope of Inuit demands nor control how those demands were fought for within the Canadian political processes.

For a long time, we could not persuade the federal government to view land claims essentially as an accommodation between the Inuit and the larger Canadian society -- a sort of Social Contract. However, after a painful learning process on the part of both the Inuit and the federal government, real progress began to be made in land claims negotiations. The federal government indicated a willingness to discuss issues that went beyond a "blanket-and-beads", land-and-cash transaction, under which Inuit values were not to be taken seriously. But eventually those negotiations broke down because the federal government did

not have a clearly articulated policy of its own to present to the Inuit, and so it could not adequately respond to our demands. The old policy is in shambles. It is unworkable. Hence this Task Force.

The central political fact is that before the Crown asserted the territorial sovereignty over Canada and its hinterland, the Inuit were organized in societies, using and occupying their lands as their forefathers had done for centuries. They therefore had and continue to have an aboriginal title.¹ Those aboriginal rights have also been recognized in the Consitution.

But whatever the legal implications and fine legal points that flow from this, Inuit aboriginal rights are collective rights. Inuit form a society, organized according to a set system of values and beliefs, and are bound together by a common language, culture, and way of life. Our rights encompass all aspects of society, culture, economy, and politics, and Inuit believe that the scope of a comprehensive claim should be equally as broad. These areas overlap and cannot be treated distinctly. Our cultural and economic attachment to the land cannot be separated from economic matters, nor socio-cultural or economic matters

1. See supporting Document No. 2, A Brief Statement of the Legal and Constitutional Issues Relating to Aboriginal Rights in Nunavut.

from political matters. They are all integrated components of the whole and as such must form an integral part of claims policy and negotiations.

Consequently, Inuit view the negotiations of land claims settlements as the beginning of a new, necessary, and appropriate relationship with the rest of Canada.

2.2 Geographic

The geographic basis for the Nunavut claim is documented in the 1976 Inuit Land Use and Occupancy Project (ILUOP). Contemporary and traditional use covers more than 1.1 million square miles of land, fresh water and sea. The Nunavut area extends east to west from the Beaufort Sea to Baffin Island, and south to north from the treeline to the High Arctic Islands. It includes the waters and some of the islands of Hudson Bay, James Bay and Hudson Strait. It also extends into the provinces of Manitoba and Quebec although a political decision was made by ITC at the time of the ILUOP not to document this in the study itself. The claim is of such enormous geographic scope that it overlaps with the Inuvialuit settlement region of the Beaufort Sea, the Dene/Metis claims area of the Northwest Territories, the Chipewyan region of Manitoba and Saskatchewan, and the Inuit settlement region of Northern Quebec and claims area of Labrador.

This geographic area is based on the traditional and contemporary range of the Inuit of Nunavut but archaeological records show the territorial range to be even more extensive. In the past, we have used most of the currently unoccupied lands and waters of the High Arctic Islands. And although the claim area does not extend into Alaska and Greenland, Inuit in Nunavut use marine resources from common stocks shared with Alaskan and Greenlandic Inuit.

2.3 Economic

The economy of the Inuit is based on the hunting, fishing and trapping of wildlife -- terrestrial and aquatic (freshwater and marine). The capture and use of wildlife pervades all aspects of our culture, society and economy. Patterns of distribution and the sharing of game ensure the economic survival of all. Status and prestige is accorded the successful hunter. The learning of land-based skills is an integral part of every young hunter's education. And the products of the hunt provide food, clothing, fuel, and materials required for transportation and other technologies.

The location, availability and abundance of wildlife is controlled by the seasons, the climate, environmental conditions and the instinctive behaviour of wildlife.

Although many species inhabit the same regions year after year, their migratory patterns and range can vary according to the availability of food and the nature of changes to their habitat.

Inuit are forced to adapt. They must go where the resources are and take what is available. Thus, it is important to remember that areas not used today are not necessarily permanently abandoned. Rather, they are areas that will be returned to when the resources are once again abundant. Similarly, wildlife species cannot be categorized according to whether or not they are traditional resources. All species are important but vary in economic importance due to their availability. Species not harvested today may become important resources in the future and species taken today may become scarce and unimportant in the future. Inuit have to be flexible and responsive in our use of resources.

2.4 Ecological

The ecological processes of the Arctic -- the balance between living organisms and their environment -- are so interrelated that distinctions between the importance of lands and the importance of waters cannot be made on a simple geographic basis. The survival of a species confined to a particular territory for physio-geographic or seasonal reasons, is affected by factors far beyond.

For example, relatively sedentary populations of ringed seals may, during the course of their life cycle, migrate into territories beyond their sedentary range. These distant territories are no less important to the seals or the Inuit than the home range. In the summer many marine mammals use the land, so an ecological distinction between land and sea cannot really be made. In fact, an ecological distinction between freshwater and the sea is also difficult. The health of the marine environment is contingent upon nutrients in freshwater discharge during run-off.

This complexity of relationships dictates that the area of the TFN claim cannot be limited simply to areas of current use or simply to land masses, but must include waters and marine areas as well.

2.5 Social and Political

Traditionally the Inuit were a communal society and remained so until after the Second World War when sustained contact with the outside world was established.

Each hunting camp was economically self-sufficient. Social order was flexible and informal, based primarily on the family and the kinship ties between families. Each camp was self-determining. The important figures in the community, usually the elders, were those with superior knowledge hunting skills, or the ability to communicate with the spirit world. They had a large degree of influence and decisions were made communally under their guidance.

Within each communal group a mutually supportive system of sharing and economic/social co-operation bound the people together and made survival possible. Wildlife captured for food was communal property, and the adoption process ensured that everyone had a young hunter to provide for them in their advanced years. On a seasonal basis, several groups would join together to socialize and to co-operate in food gathering. Hunting parties were led by proven hunters, ensuring that all could have some success and survive.

The relationship to the land and its harsh conditions affected all spheres of Inuit culture and patterns of social, economic and political behaviour. It formed the basis of survival and the reason for cohesion. But our culture and self-determination have been eroded through the years by increasing contact and integration with Euro-Canadian society.

We wish to regain responsibility for our future. The purpose of both the claim and the push for Nunavut as a separate territory is the same -- to regain the political responsibilities that we once had. A separate territorial government for Nunavut will benefit Inuit because we are a majority within the region. If there is a demographic shift and we are no longer in the majority then our rights in Nunavut will still be protected through our claims settlement.

The governments in Yellowknife and Ottawa are remote from the people of Nunavut physically and culturally. They promote the erosion of Inuit culture by creating a greater and greater dependency. We need a government closer to home in which we can again take responsibility for decisions that affect our way of life and our future.

3. NUNAVUT* TODAY

The administration and management of Nunavut today bears little resemblance to the way we view our culture, society, economy, politics and future. The main tenet of our 1976 Nunavut Proposal was the creation of a separate Nunavut Territory. It was seen as a necessary means of achieving a system of government more responsive to Inuit needs. A Nunavut Territory would reflect the cultural and geographic differences of the region and would remove the problems associated with being administered from a distant capital.

As it stands today the system of government ignores our rights to manage our own affairs and to determine the direction of our future. Administration of lands, resources and social institutions occurs almost haphazardly and disregards Inuit traditions, institutions, economy, and system of values and beliefs. Moreover, the deficiencies of the current system of administration have forced Inuit to demand, through negotiations, a level of services, programs and funding that most Canadians would regard as a basic public right.

*Nunavut ("Our Land") is the eastern territory which will come into existence when the Northwest Territories is divided into two territories.

The economy, which was once self-sufficient, no longer supports us in the manner it once did. It has been compromised by the move to settlement living, and the introduction of and reliance on new technologies. It has been tied into a larger cash economy which offers little means for Inuit to earn monies to reinvest in land-based activities. The lands, waters and wildlife are threatened by development and Inuit have little input into decisions regarding its planning and management. And we have no means to influence or set the economic policies that clearly affect our lives.

Inuit society and culture is governed by family and kinship networks, and is held together by a common language and a system of shared values and beliefs that have been passed down from generation to generation. However, In a rapidly changing world, Inuit are quickly losing control over the most fundamental aspects of society and culture.

Our language, the foundation of societal cohesion, is being lost through disuse and the pressure to learn English so as to survive in a changing environment. With it goes not only a fundamental means of communication but also a means of conceptualizing and expressing Inuit values and ideas.

Education, once the responsibility of the family and the larger society, is now under the direction of government and outsiders who may or may not appreciate and transmit Inuit values.

Traditional practices of marriage, adoption and child rearing are being influenced and constrained by an often insensitive set of foreign values and an unfamiliar system of administration.

Traditional means of social control are being taken over by a culturally insensitive system of justice and legal administration.

And traditional patterns of leadership that have kept Inuit together as a cohesive and functioning society are being lost. Many Inuit elders are prevented from maintaining their position in society as leaders because of a rapidly changing world requiring a formal education, facility in a foreign language, and understanding of an unfamiliar process of administration. Their exclusion from leadership positions means a loss of culture, societal cohesion and the wisdom that comes with age.

Inuit, although amongst the oldest inhabitants of Canada, are also amongst the newest Canadians. It has only been recently that Inuit have moved into settlements and have adopted many aspects of the larger society and economy. The process of adaptation is taking its toll. We are amongst the poorest people of the nation; we suffer from one of the highest incidents of suicide and drug and alcohol abuse; and on a per capita basis we are over-represented in the criminal justice system. We have one of the highest rates of unemployment in the country and, as a result, are compelled to be over-reliant on government welfare and social assistance. We lack responsible government and have little or no control over most aspects of our lives. We look to the settlement of claims as a means of rectifying the social, economic and political inequities of our lives and regaining control that has been lost.

Inuit are not adverse to participating in Canadian society and in fact we welcome the more positive benefits that the south can provide. However, contact is painful and culturally disruptive. We need a measured pace of adaptation - one which we set, according to our own values, our own views of our needs, and on our own terms.

Nunavut is vast and rich. There is room there for many people and many interests. Inuit are prepared to share

Nunavut's future but only if we are full participants in its management and only if we share in benefits from its development.

4. PURPOSE OF A COMPREHENSIVE CLAIM

The purpose of a comprehensive claim should be to provide for the social, economic and political future of Inuit. But a long, sad history of treaty-making in this country clearly shows the failure of past claims settlements to provide for the future of other aboriginal peoples.

The cornerstone of any comprehensive claim must be the recognition of aboriginal political needs. We are not prepared to settle our claim unless our political aspirations are met. This requires the creation of a Nunavut Territory, through which we expect to gain meaningful control over our lives. Constitutional recognition of the aboriginal right to self-government is also essential so that rights acquired outside the claims process will be protected.

The settlement itself must provide, through an affirmation of our rights, a means of putting us on an "equal footing" with other Canadians. This requires the acceptance of guaranteed participation by Inuit in the development of social institutions and programs; in the management of the resource base, lands and waters including the offshore; and in the formation and direction of responsible government. Such a system of social, economic and political management and administration will be able to

integrate our traditional values with the design and delivery of contemporary programs and services. It will also allow for the social, economical and political evolution of our society.

The settlement should provide us with a "freedom of choice" as to our future, while providing a system of land and resource planning and management that ensures a healthy renewable resource base. It should also provide us with a means of participating in and benefitting from the development of non-renewable resources. Inuit who wish to continue the traditional pursuits of hunting, trapping, and fishing should be guaranteed the ability to continue this vocation. Inuit who wish to pursue a career in business, industry, or the public sector should also be given the opportunity to do so.

The agreement must provide for the development of a strong Nunavut economy in which Inuit are able to participate as full partners. This means not only to own lands and resources, but also to have a meaningful role in economic policy development and to have the economic means with which to participate. The settlement should thus provide employment and stimulate growth in the economy. Hundreds of jobs could be created directly through the management of the claim itself, and we would receive other indirect

economic benefits through the exercise of specific rights under the agreement. The creation of a strong Nunavut economy is in the best interests of the federal government as well the Inuit. A healthy self-sustaining economy means a reduced dependence on federal programs and services, and a strong contribution to the Canadian economy as a whole.

The agreement should not be "frozen in time" but should be responsive and adaptable as needs and circumstances change. The rights of Inuit will not change over time, but our priorities and the types of programs and services we need will change. Hence management boards must be able to make decisions that will reflect the circumstances of the day; social institutions and programs must be able to evolve in order to accommodate changing needs; and economic benefits must flow over time rather than being received only as a finite lump sum of money.

To be effective, management bodies created by the agreement must have decision-making responsibilities. Advisory roles are unacceptable. Joint management bodies with decision-making powers that operate within the framework of a rational, planned approach to development are both appropriate and necessary. Without them, our involvement in planning our future is meaningless, and a satisfactory settlement of the claim impossible.

The agreement must recognize that these rights to management as well as the economic benefits from land apply equally in form, intent and content to the offshore. The Inuit claim to the offshore is in principle no different than it is to the land.

The settlement must not be aimed at extinguishing rights and achieving finality. Rather it should be seen as the beginning of a new future - a new relationship with Canada. The goal should not be the death of Inuit society, but rather its rebirth. Inuit rights should be living rights, and must be enhanced and protected for all time.

5. EXTINGUISHMENT OF RIGHTS

Current government policy requiring the extinguishment of aboriginal rights is offensive and unacceptable. We do not believe it necessary to extinguish our title and other rights in order to give government the legal certainty over lands and resources it believes it requires. Nor do we accept the concept of finality. Although we want a final agreement with government that does not mean it should be a static agreement, forever frozen in time.

Inuit also want certainty -- certainty in the manner and means through which we control our lives. We are prepared to explore with government various ways and means of giving government the legal certainty it requires without the need to surrender our title. We are prepared to strike a final agreement only if it is flexible enough to provide for the future as well as the present.

Aboriginal rights are matters of socio-cultural concern as well as legal matters relating to title. Socio-cultural rights are the foundation of Inuit society. Their protection in the claim is critical for the survival and advancement of Inuit as a people. Extinguishment of rights is simply a legal term for assimilation. Inuit are not prepared to extinguish their undefined rights enshrined in the Constitution.

Nonetheless, Inuit remain optimistic and welcome the opportunity to discuss these matters with government and to explore different avenues to achieve a form of certainty that is acceptable to both parties. The solutions to resolve the problems of legal certainty may vary from claimant to claimant. Thus the policy should be flexible enough to accommodate the specific needs and aspirations of the various claimant groups

The concept of finality is another which Inuit do not accept. Although the agreement must be final, it must also be appropriate over time. This may be achieved in two ways:

- 1) through the establishment of joint management bodies responsible for making decisions.

- 2) through the perpetual sharing of economic rents giving Inuit an income flow over time.

An agreement that provides such flexibility and ensures a perpetual income would overcome many of the problems of finality and at the same time would provide for a "final" Agreement.

Recommendation:

- 1) The federal government should no longer insist on extinguishment as a pre-condition for a settlement.

6. WILDLIFE

Inuit society, culture and economy are based on wildlife. The hunting of wildlife and the cultural attachment to the land is fundamental to all aspects of Inuit life. It determines the Inuit worldview and cements social and economic relationships. The importance of wildlife to Inuit cannot be overstated. And because it is fundamental to our existence, it deserves special consideration in the provision of rights.

As the primary resource-users and as the people most dependent upon the continued existence of wildlife, we believe we have an important role, indeed a right to participate in wildlife management. Government is fooling itself if it believes it can manage wildlife use in such a vast territory as Nunavut without our participation and co-operation.

In 1981, TFN negotiated a Wildlife Agreement-in-Principle which government intialled but continues to refuse to endorse. The stumbling block has been the powers of decision-making accorded to the Wildlife Management Board. The approach to decision-making in the agreement is rational. Decisions are based on factual evidence and economic need.

Inuit believe the rights to wildlife and the management roles contained in the Agreement are appropriate and necessary. The Agreement provides for a system of management that requires the cooperation and participation of both government and Inuit managers. It brings together both parties, and all government departments responsible for wildlife. This means it provides for a comprehensive and ecological approach rather than a species-by-species or department-by-department approach to wildlife management. The Agreement provides Inuit with rights to all flora and fauna in all areas of Nunavut including all lands covered by water or ice in both the onshore and offshore. Because there are many economic, environmental and ecological factors, our rights should not be limited by a geographical definition. In the interests of sound management, our rights should apply throughout all waters north of 60 under federal jurisdiction and throughout Hudson Bay. We believe government should make good its initial commitment to the Wildlife Agreement and begin its immediate implementation. The economic circumstances of the renewable resource industry are becoming worse - not better.

Beyond the initialled Agreement-in-Principle, there are four major areas that have yet to be negotiated:

1. the definition of the principles of conservation;
2. a five year harvest study;

3. the economic support programs required for a revitalized renewable resource economy; and
4. compensation for loss of wildlife harvesting opportunities

The Agreement-in-Principle states that all management decisions are subject to the principles of conservation. What the purpose of conservation and the principles of conservation are have not yet been agreed upon. It is unlikely Inuit and non-hunter government managers will share the same objectives. We view wildlife as resources and see caribou, seals, fish, etc. in much the same fashion as farmers, cattlemen and poultry producers see domestic stocks -- in economic terms. Wildlife resources are necessary for food and economic development. We must be able to hunt freely and turn wildlife products into cash. This is not to say Inuit are advocates of unrestrained harvesting. On the contrary, we are concerned about conservation because we are the people who will benefit or suffer from the effects of wildlife management. Our views of conservation may differ from the views of those unfamiliar with the realities of northern living. It is therefore important that the principles of conservation reflect and support the economic importance of wildlife in the Nunavut area.

The second topic to be negotiated is the conducting of a five-year harvest study. We believe the study should be designed to provide resource information that will help with wildlife management decisions. It should also be used as a means of getting harvest information to help establish the Inuit "basic need" level. Government, however, seems to believe it is enough to simply count animals killed. This is unfortunate and somewhat short-sighted, given that a study slightly expanded in scope could provide for the collection of additional information valuable for wildlife managers in developing economic programs. Efforts at revitalizing the renewable resource sector through the development of culturally acceptable economic programs are badly needed.

Provisions in the Wildlife Agreement for economic support programs for hunters are critical. Hunting is expensive and without a means of earning cash through hunting, Inuit cannot continue to exploit the food sources at hand. These programs would contribute directly to the revitalization of the whole hunting economy by increasing the local cash flow, supporting local businesses and permitting greater access to wildlife which would result in improved diets, better health and reduced health care costs.

A major concern of Inuit is the consequences of any loss of wildlife harvesting opportunities due to development.

Since Inuit do not have a proprietary interest in wildlife, neither the common law nor existing legislation would provide adequate redress for Inuit hunters in the event of environmental damage caused by development. This shortcoming in the law could be corrected by providing Inuit with a proprietary interest in wildlife, or by establishing a compensation scheme for losses caused by development.

Recommendations:

1. Inuit's right to hunt, trap and fish, throughout the Nunavut area should not be limited.
2. The principles of conservation should recognize that wildlife is a resource which can provide economic opportunities.
3. Inuit should be compensated for any loss of harvesting opportunities caused by development.
4. Government should recognize the importance of harvesting studies and commit monies to fund them.
5. Government should recognize the economic and cultural importance of harvesting activities and should negotiate programs to support and promote the renewable resource sector.

7. LAND AND RESOURCE DEVELOPMENT/ENVIRONMENTAL MANAGEMENT

A land and resource package was tabled by TFN in September of 1982. It formed the basis of nearly three years of negotiations. It is close to completion with only a few topics outstanding.

The proposed package provides for a system of land ownership that distinguishes between Inuit Lands, Municipal Lands and lands to be administered by a Nunavut Lands Authority. It provides for a rational approach to land, water, resource and environmental management. It ensures the involvement and decision-making powers of Inuit at all levels of management. And it provides for a system of resource revenue sharing that includes not only Inuit but also the Nunavut government.

Wildlife, the underlying basis of Inuit society and economy, requires special consideration and so was negotiated as a separate agreement. Its successful management also requires a complementary system of environmental and resource planning in which the Inuit role is clearly defined. Essential to this system are land use planning and a development impact review process.

Government has agreed to the inclusion of these topics for negotiation but has been unwilling to provide the responsible management boards with adequate powers of

decision-making. There is little point in establishing a system of resource management and environmental protection in which decisions can be simply overridden at will. The system we propose is not aimed at prohibiting development but rather at guiding it so the environment is protected and the residents share in the benefits. The future of the Inuit lies in a diversified Nunavut economy.

The management approach begins with the development of land use plans. The primary purpose of land use planning is to protect and promote the existing and future well-being of the residents of Nunavut, taking into account the interest of all Canadians. Planning goals and objectives are to be set by a Nunavut Planning Policy Advisory Committee. Inuit would participate on the Committee along with senior level federal and territorial officials. The plans would be developed by a Nunavut Planning Commission through consultation with the residents of the regions and other interested parties. The plans, which are subject to the approval of both the federal and territorial governments, would then be implemented by the departments responsible. They would form the basis by which to gauge the appropriateness of developers' proposals.

If a proposal was found in conformity with the plans, it would then be subject to scrutiny by a Nunavut Impact Review Board. The Board would look at information contained

in the developer's Impact Statement, such as ecosystemic and socio-economic benefits and consequences of the project. After also gathering opinions from residents through public hearings, the Board would render a decision determining the acceptability of the project. If necessary, the Board would attach certain terms and conditions. These terms and conditions would include the negotiation of Inuit Impact and Benefit Agreements aimed at providing Inuit with training and employment opportunities.

In the case of water management, after ensuring conformity with the plans a similar review would be conducted by a Nunavut Water Board. If the project contained a land based component, a joint review would be conducted by the Nunavut Water Board and Nunavut Impact Review Board, to ensure that both terrestrial and aquatic management concerns are met.

The administration of projects; the leasing and licensing of projects; and the collection and sharing of economic rents would be handled by a Nunavut Lands Authority (NLA). This tripartite body would be composed of federal, territorial and Inuit appointees. Assuming a division of land ownership, it would be responsible for development on federal Crown lands, and for oil and gas under Inuit and municipal lands.

Fears have been expressed by government that Inuit might

insist on terms and conditions of project approval so stringent that it will make development uneconomic. Such fears are unfounded. The proposed Boards are independent administrative bodies with equal Inuit and government representation. Their decisions will be impartial because the terms and conditions they impose will be based on factual evidence and community concerns. Since we are likely to be the major recipients of employment and other benefits, it would not be in our own interests to be unrealistic in our demands. If Inuit have been perceived as anti-development in the past, it has been for the simple reason that we have not wanted development to proceed prior to the settlement of our claim. It has been government policy that third party interests created before the settlement will be protected. Therefore, the more interests created prior to settlement, the greater our economic and management losses.

This system of development management would have the support and confidence of Inuit. The revenues generated and shared with Inuit would support the overall economy and would benefit government because Inuit would be further down the road to self-sufficiency and less reliant on current forms of government support.

8. OFFSHORE

The offshore is a topic so far excluded from negotiations by government policy. It is a topic of critical importance to Inuit. Our rights to offshore management and economic benefits are no different in principle than our rights to land. Moreover, the offshore is also an environment that cannot be managed independently of land.

Most of the food and cash-generating activities associated with wildlife come from the marine environment. All but one of the Nunavut communities are located on the coast and more than one half of the total area of our use and occupancy is located in the offshore. Inuit use the offshore in much the same fashion as they use the land.

TFN's constituents have advised us that the absence of an offshore component in the claim is unacceptable and that an agreement will not be ratified without its inclusion.

Government has previously recognized the importance of marine resources to Inuit in the management provisions of the Wildlife Agreement-in-Principle. It agreed to the application of our wildlife harvesting rights to marine areas and marine resources. As with land, however, a complementary system of marine planning and management is necessary to ensure that wildlife is protected and that our rights under the Wildlife Agreement are meaningful. A

planning and management system similar to that for land is both appropriate and necessary. It is within the capacity of government to establish such a system, without violating rules of international law. Rights regarding economic benefits from offshore development are also crucial and should be extended to Inuit in the same fashion as they are on land. Canada has the ability to commit itself to this because the Law of the Sea recognizes Canadian jurisdiction over seabed resources within the 200 mile Exclusive Economic Zone (EEZ). Resource revenue sharing and equity participation by aboriginal peoples in offshore development is as appropriate and necessary as in the case of land-based development. Moreover, since most of the oil and gas discovered to date lies in the offshore, we would be badly shortchanged if resource revenue were limited to land-based activities.

There is no reason why the Nunavut Lands Authority could not also apply to the offshore. The overtures by the current Minister of Indian and Northern Affairs to aboriginal peoples to share in resource revenues should be adopted and expanded upon to explicitly include revenues from offshore development. The federal government has already recognized the rights of aboriginal people to equity participation in oil and gas development on Canada Lands under the Canada Oil and Gas Act. Under this Act, Canada Lands are already defined to include the seabed of the EEZ.

The dumping of wastes and "the out of sight, out of mind" approach to ocean pollution is not appropriate for any marine areas, least of all in the arctic where the ecosystem is considerably less resilient than that of warmer, more productive ocean environments. Cold arctic waters reduce the rate of biodegradation of pollutants. Ice can trap and hold pollution in important near-shore areas, destroying wildlife resources and affecting climatic conditions. It takes a considerable period of time to recover. Thus a co-ordinated system of resource management and environmental protection for the offshore is required.

In fact it would be a simple matter to apply the terrestrially-based management systems to the offshore by making some modifications. This management system would be particularly appropriate for the near-shore or fast ice areas which blanket the coastal and internal waters of the Arctic Islands for the better part of the year.

The sea cannot be managed independently of land. Most marine-related activities have land-based components and the relationship of the land to the sea is one of interdependence. Impacts from land-based development (eg. pollution) will eventually reach the marine environment. And the health of the marine environment is in many ways dependent upon land-based nutrients that enter the sea through freshwater discharge during runoff.

Negotiating offshore rights with Inuit would benefit Canada, as it would contribute to Canada's claim to sovereignty over the Arctic waters. The Canadian approach over the last 15 years has been to "layer" functional jurisdiction over time, with a view to establishing an undisputed claim to historic title. Additional layers of jurisdiction could be imposed on the offshore through the settlement of claims. Inuit are Canadians, and the waters in which planning and management would occur are internal Canadian waters. The federal government, then, in negotiating offshore rights, would be merely fulfilling its obligations to Inuit and to Canada as a whole.

Recommendations:

- 1) The federal policy should specifically include the offshore as a topic for negotiation.
- 2) The policy should also expressly include the recognition of Inuit rights to offshore resources, to their management, and to resource revenues.

9. DECISION-MAKING POWERS

To be meaningful participants in the evolution and development of Nunavut, it is essential that Inuit are involved in all aspects of decision-making. Presently, most decisions are made in either Ottawa or Yellowknife by bureaucrats with little understanding of our culture or the fragile northern environment. .

Many of these decisions are made on an ad hoc basis without any overall plan for a northern policy. Therefore it is necessary to develop a coordinated management system for the Arctic which would allow for development to proceed in an efficient and responsible manner, while taking into consideration the fragile eco-system. Who understands the Arctic environment better than the Inuit?

We lived a peaceful existence and managed our affairs long before the Europeans arrived. We know how to manage wildlife and how to protect the special eco-system. Our knowledge must be recognized and we must be given responsibility for decision-making in Nunavut.

Our approach in TFN negotiations has been to establish independent administrative bodies -- with guaranteed 50% Inuit representation -- which deal with land use planning,

wildlife management, impact review and water use. We also foresee administrative boards being created under our economic and social provisions. These impartial bodies will provide the basis for a practical system of planning. However for Inuit to believe in the effectiveness of these bodies, they must have more than just advisory powers. Our experience, and the experience of other native groups in Canada, has shown that advisory powers are ineffectual. These boards and any others which are established through the TFN negotiations must have decision making powers.

The Federal Government has consistently stated that it is not prepared to negotiate agreements in which ministerial or governmental powers are fettered. We find this position unacceptable and untenable. There is no legal impediment to prevent the government from delegating, by statute, the ability to make decisions to independent administrative bodies.

We are not proposing anything foreign or revolutionary to the Canadian administrative system. There are numerous government agencies which make their own regulations and decisions without Ministerial review, or with only a limited review by the Minister. Some agencies are subject only to cabinet review, or judicial review by the Federal Court. For example the CRTC regulates broadcasting and

the issuance of licenses with only a limited review by the Governor in Council.

Many of the independent agencies are marketing boards which regulate and stabilize prices. For example, The Agricultural Products Board, Agricultural Products Marketing Boards, Agricultural Stabilization Board, Freshwater Fish Marketing Corporation. Others govern the licensing of development of power sources -- the Atomic Energy Control Board, National Energy Board. The Canadian Transport Commission regulates all aspects of transportation which are within Federal jurisdiction. The Northwest Territories Water Board is responsible for the conservation development and utilization of water resources.

The Atlantic Accord signed in February, 1985, between the Canadian and Newfoundland Governments provides for the establishment of the Canada Newfoundland Offshore Petroleum Board. This will be a joint management board composed of three federal and three provincial representatives and an independent chairman. This Board is similar to that which we are trying to achieve, however we would not want the Minister to have the final say with respect to fundamental decisions.

We are enclosing a summary of the various Boards' powers, and excerpts of the legislation from which they derive their decision-making powers (See Appendix C).

A further aspect of decision making is the capability of administrative boards to issue licenses. In our negotiations to date, the government has agreed that the Nunavut Water Board may issue licenses, however it has refused to allow the Nunavut Impact Review Board this same power. The granting of a license by an administrative board is not new. Many of the boards discussed in this paper issue licenses (NWT Water Board, CTC, N.E.B., CRTC, AECEB). We recommend that all independent Boards created through land claims negotiations be given this power.

To make informed decisions, the Boards must have the ability to conduct their own investigations and to compel witnesses or parties to their proceedings to provide the necessary evidence. This could be achieved by granting to all of these Boards the powers of a Commissioner under Part I of the Inquiries Act.¹ The Federal Government has agreed that the Nunavut Wildlife Management Board and Water Board can have these powers, but has refused with respect to the Nunavut Impact Review Board (NIRB). This

1) R.S.C. 1970, c.I-13

seems arbitrary and illogical. The NIRB is an integral part of our proposed TEN management system and is extremely important for the protection of the fragile Arctic eco-system. How can we be expected to have confidence in a Board which may not have all the information necessary to make an informed decision? There are many Boards or advisory agencies which have powers of a Commissioner pursuant to Part I of The Inquiries Act or similar investigatory powers.²

A further problem we have encountered with respect to these independent boards is the status that will be accorded to Inuit participation in Board hearings or in the judicial review of Board decisions. For the Nunavut Wildlife Management Board, we believe it appropriate that any beneficiary be accorded standing because an interest in harvesting of wildlife is a very personal one. To have a decision of the NIRB reviewed, we believe it is more appropriate that a Designated Inuit Organization (DIO) be accorded status, as in this case it is a collective right being affected.

2. See attached list (Appendix C)
Note: Because of its length, this list was only enclosed with copies submitted to the Task Force.

We have received a great deal of opposition from the government in according us special standing. The government negotiators have argued that we have 50% Inuit representation on the Board and that these Inuit members can protect our interests. This is incorrect, since the Inuit members are not controlled by us, but are independent. There may be decisions which will require judicial review by the courts. We want the review to involve substantive issues, not whether we have the proper standing to appear before the court. There have been numerous cases which have gone to the Supreme Court of Canada³ on the issue of standing and it is costly to do so. We therefore recommend that Inuit be granted standing before the Boards and have status to have the Board's decisions are judicially reviewed.

Recommendation:

1. All administrative Boards created through the comprehensive claims process should have:
 - i) the power to make decisions;
 - 2) the powers of a Commissioner under Part I of the Inquiries Act;
 - 3) the ability to issue licenses.

3) Thorson v. A.G. Can [1975] 1 S.C.R. 138
N.S. Bd of Censors v. McNeil [1976] 2 S.C.R. 265
Minister of Justice v. Borowski [1981] 2 S.C.R. 575

2. Inuit beneficiaries, where appropriate, or a Designated Inuit Organization should have the status to appear before an administrative board and the status to have the Board's decisions judicially reviewed.

10. ECONOMIC ASPECTS

The economic aspects of the Inuit claim are clearly of great significance. Without income generated over time or an initial sum of money with which to participate in development, considerable economic opportunities will be lost. The pace of northern development and the forms it takes are largely tied to the development of economic policies and associated economic programs and services. Without access to resources over time or inclusion in the development of economic policy, Inuit will be hard pressed to achieve any measure of economic self-sufficiency.

By virtue of Inuit aboriginal title Inuit claim a variety of economic rights related to the use and development of lands, waters and other resources in Nunavut. In practical terms, these rights translate into ownership of certain lands and the subsurface; rights to revenues including royalties; rights to equity participation in development of oil and gas, minerals, coal, quarrying and hydro operations; rights to negotiate contractual benefit packages between Inuit and developers; and rights to participate in economic policy development. Much of Inuit acceptance of development is dependent not only on the manner in which it is planned and managed but also the level of economic benefit that Inuit will receive. It is only fair and just that those expected to bear the impact should also share in the benefit.

10.1 The Value of Land Ownership

It has been a major tenet of past federal policy that most of the economic benefits aboriginal peoples will receive through their claims settlement will come through land ownership. The expectation has been that land ownership will provide aboriginal peoples with sufficient resources to establish an economic base. The trade off has been ownership of certain areas for extinguished title in other areas.

The concept of land ownership is, or at least was, foreign to us. "No one owns the land" was a frequent remark heard by fieldworkers on the Inuit Land Use and Occupancy Project. The land and wildlife are for everyone to use, and no one had any particular territorial claim. The economy and environment required people to follow the resources, which varied in abundance, location and according to the season.

Land ownership could be a means of taking control and a means for deriving economic benefits if we have title to all lands in the entire claim area, but past settlements have proven this is not acceptable to government. A very small percentage of the claim areas of the James Bay and COPE settlements is held by Inuit with fee simple absolute, title. Past federal policy has been to give claimants surface title to fairly extensive areas, but subsurface title to only limited areas in exchange for extinguishment of title on Crown lands.

This is hardly a fair exchange. It assumes that we will relinquish all interest in lands we do not own and confine our economic activities to the areas we hold. This does not reflect reality. The nature of our society and the economy requires continued use of all lands in the claim area, regardless of who owns them. Inuit should have rights to resources in the entire claim area and not just to those in land over which they hold title.

It has been a federal notion under past policy that lands owned by Inuit should be for wildlife and conservation purposes. This assumes that wildlife populations will remain in the same areas forever, and that the integrity of the environment will never be compromised by development impacts outside the boundaries. Nothing could be further from the truth. Wildlife populations migrate, the environment and climate changes and the quality of habitat and food supplies vary. Development impacts are not always limited to the development site itself but spill over into other areas. This is particularly true of marine areas where oil spills can easily cross artificial administrative lines. Having title to some land in order to have access to wildlife can be valueless.

Another misguided notion of past policy is the idea that the Inuit economy will remain static over time and that all our economic needs will be met through wildlife harvesting. Past policy concedes that we need subsurface title to certain areas but only so that so we can prohibit development there. This assumes we are not interested in development. But if the ownership of lands is to have any value at all, we must be able to own lands that can give us economic self-sufficiency over time. This means we need to hold lands for a variety of uses -- for non-renewable resource, industrial, and commercial development, as well as for wildlife harvesting, conservation and cultural reasons. Only a mix of these criteria will give us an economic future worth looking forward to.

The growing Inuit population and a shift in the economic interests of Inuit requires a more far-sighted approach to economic self-sufficiency. It cannot be expected that Inuit land holdings will meet all our economic needs over time. The failure of Indian treaties bear witness to this. A much more enlightened approach is to ensure that we benefit from the use and development of all lands, waters and resources in the claim area. After all, we will continue to use the areas we always have, regardless of whether we own them or not. Even if the new policy forces Inuit to share or extinguish our title to lands, it is not

necessary to require us to forego all the beneficial interests. If it is the expectation of government, and it is certainly the expectation of Inuit, that a claims settlement will set us on the road to economic self-sufficiency, then simple land ownership will not do. We must be able to benefit from resource use regardless of where it occurs. Resource revenues must be shared.

Inuit themselves must be able to identify the lands they wish to hold as "Inuit land". Negotiations must be conducted in each community since each will have its own perception of its economic needs. It is not enough for negotiators in Ottawa to decide on boundaries. Nunavut's environment varies tremendously across the Arctic. In some instances very small communities use considerably larger areas than large communities do. The land identification process must therefore take place community by community, with an overall claim being the total.

Once Inuit lands are selected, they should never be subject to expropriation. It is highly immoral for the government to force the Inuit to select lands and then at a future date expropriate these lands. This is contrary to the Inuit goal of certainty. We must know what our rights and benefits pursuant to the agreement will be.

Third Party Interests

Inuit should be able to choose lands anywhere in Nunavut notwithstanding any third party interests. Interests which have been alienated to third parties without regard for the aboriginal title should not prevent the selection of those lands. These grants were illegal and immoral. Both the government and the grantees were aware that there might have been an aboriginal interest in the land, however they chose to ignore it. They were taking a risk and this should be acknowledged.

TFN refuses to be pre-empted by the existence of third party interests, and believes that third party interests must be dealt with in such a manner as to promote the Inuit interest. We realize that in certain instances this will mean that the government must compensate the third party interest holder. In other cases it may be necessary for the government to subrogate to the Inuit their interest vis a vis the third party or transfer the reversionary interest to the Inuit. In certain circumstance it may be just for the government to immediately extinguish the third party interest without compensation. Therefore, we recommend that third party interests be dealt with on a case by case basis. Any compensation paid to a third party interest holder should not be costed against the settlement.

Finally no new third party interests should be created prior to the settlement of land claims.

Recommendations:

1. The purpose of Inuit land title shall be for economic self-sufficiency of Inuit, for purposes of wildlife conservation, and for cultural purposes.
2. Land selection should be permitted anywhere in the claim area notwithstanding third party interests. Third party interest holders should be compensated by the government.
3. No new third party interests should be created prior to the settlement of claims.
4. All land title should be fee simple absolute including all minerals whether solid, liquid or gaseous and all granular materials.
5. Land selection should be done on a community by community basis taking into account each community's needs.
6. Government should fund the land identification process and it should not be costed against the settlement.
7. Once selected, Inuit lands should not be subject to expropriation.

10.2 Compensation

Compensation has been a central element of past government policy towards the settlement of aboriginal claims.

Because the traditional approach of government has been based on absolute extinguishment and finality, this approach of necessity placed primary emphasis on the question of how much a specific aboriginal group would accept in exchange for their rights and title to the land. This resulted firstly in pressure to confine claims negotiations within a mould of a land and cash deal, and secondly in the large lump-sum payments that have been characteristic of claims settled to date.

These compensation payments from settlements have given the groups the capital urgently needed for participation in economic and social development. They have also placed a burden on these groups in the management of these funds to try to satisfy the competing demands on the one hand of current economic development and the social and political functions arising from the settlements, and on the other of future generations to a proper share of benefits. Some very serious problems in this regard are now becoming recognized and documented in the experience of native groups in Alaska.

This approach has not been an unmixed blessing for government. On the one hand they have apparently achieved the finality desired. On the other, however, the narrowness of the approach has resulted in subsequent demands for extensions to or renegotiation of parts of the agreements. The government has also become increasingly concerned over the financial burden to the government in the near future of large-scale payments for all the numerous upcoming settlements. The present Minister has suggested more than once that the government will be unwilling to create the massive financial obligations necessary for settling outstanding claims under the traditional approach.

Tungavik Federation has been attempting through its negotiation of the Nunavut claim to take land claims away from the old land and cash mentality. There is evidence that the government view is also changing, and we believe that it is necessary now to re-examine the nature of and approach to compensation.

The Nunavut Claim

The thrust of the TFN claim has always been towards shared responsibility and shared benefits. In the agreements in-principle negotiated to date a comprehensive system of joint management of the land and its resources, and a comprehensive system of joint benefits between the Inuit

and governments are being developed. Inuit have the right to benefits from the development of Nunavut, and it is also necessary to ensure that Inuit are participants and not just spectators on the sidelines in the development of their own land.

Our stated goal underlying the economic benefits in the agreements is self-sufficiency for the Inuit of Nunavut. The settlement is intended to promote a diversified Nunavut economy that allows Inuit to meet our own economic needs as full participants, in the present and in the future, with a real choice of livelihood and lifestyle. The settlement should provide Inuit with adequate revenues over time so that we will be able to shape, through various institutions, our communities and our lives as we see fit. To achieve this, we have negotiated a number of specific rights, such as rights to harvest wildlife, to obtain public service employment, to have priority on specific business opportunities, etc. Likewise a range of specific financial benefits are being developed, such as royalties and equity participation, that will provide benefits to Inuit as resources are developed.

There are two important points to note in this regard. First, Inuit as a group are desperately lacking in the capital necessary to participate in business development and to take advantage of the negotiated rights such as

business opportunities. The financial benefits from non-renewable resource development will hopefully become significant and help in the long-term, but certainly will not provide the monies needed by the Inuit in the short-term. Thus, Inuit need capital resources immediately to complement and make meaningful these economic rights and longer-term benefits.

The second point is that the traditional idea of compensation advocated by the government fits awkwardly into this scheme. The traditional approach to compensation, that there is a total value within which cash can be traded off for rights, equity participation, or other types of benefits, is misconceived. Rather, each of these elements - rights, benefits and opportunities from development, and capital - has an essential role to play in a comprehensive settlement, the goal of which is to achieve meaningful economic participation by and economic self-sufficiency for Inuit.

Inuit have always looked at cash compensation in this way. Compensation monies provide a financial vehicle totally under Inuit ownership and control, to help build the economic, social, and cultural foundations of Inuit society. They are the capital resources component of the overall settlement necessary for the success of the whole.

Alternative Approaches

TFN would like to propose alternatives to the traditional approach that may be in the interests both of the federal government and of the Inuit.

Such alternatives must be based on the clear understanding that the claims process does not have to be viewed as a mechanism for determining the right price for a sale. Comprehensive claims negotiations must be viewed as the means to develop a system of shared responsibility and shared benefits based on the needs of government, and on the needs and aspirations of the Inuit. To ensure real participation by Inuit in the economic and social development of Nunavut, there is an urgent need for a capital funds.

We believe that government should now move away from the concept of cash compensation to a recognition that capital funds for economic and social development are essential elements of a comprehensive settlement.

However, the problem facing the federal government is the total cost of possible capital transfers under all the various claims still to be settled. Their concern, which has been emphasized by the current Minister on several occasions, is the effect this will have in increasing

the federal deficit and thus in increasing the annual cost of servicing the federal debt. In the last fiscal year, the public debt servicing charges totalled \$22.5 billion.

A possible solution to this problem is suggested by the fact that the handling of large, lump-sum payments also presents some potential difficulties for Inuit. TFN has taken the position that benefits from a settlement are in the interest of all Inuit of the present and of future generations. Large cash transfers place on the Inuit at the outset of the settlement the burden of large-scale investment management both to protect the capital in the long-term and to generate the funds for present business and social development. However, evidence from previous settlements demonstrates that the possibility of serious depletion of the original capital is not to be taken lightly.

The concerns of the Inuit are to protect the real value of the capital funds, and at the same time to generate adequate yearly income to satisfy the urgent economic and social needs of Inuit in Nunavut. There has to be a stream of income sufficient to meet current needs.

This then suggests a number of possible options for dealing with the transfer of capital funds. Obviously, the first would be simply to transfer, over some period of time, the

entire capital funds to the Inuit as has been done in previous settlements. We recognize, however, that the government may be reluctant to negotiate these large-scale cash transfers.

A second option would be for the two parties to agree on the specific amounts of capital, and then have the government retain a major portion of the capital sums and pay Inuit yearly interest on it. One way of handling this would be for the government to cover the capital amount by issuing inflation-indexed bonds paying perhaps 3-4% above the rate of inflation.

Such an annual indemnity should have an appeal to both parties. For the federal government this would have a double advantage : there would be no large lump-sum capital transfer, and there would be a considerable saving over the regular cost of public debt servicing through the lower interest rate. Politically this would be much more acceptable for the government.

From the Inuit point of view, there would be a reduced burden of large-scale investment management and reduced risk of depleting the capital funds themselves. Instead the management group would be primarily required to make decisions on the distribution and use of funds. This arrangement would yield a guaranteed yearly income for

Inuit economic and social development that would be automatically indexed to inflation. The user organizations would thus have the same amount available in real terms every year. At the same time, the real value of the capital funds would also be protected from inflation. If larger amounts of capital were required at any time for investment in especially large-scale developments, there could be a provision for drawing on some portion of the capital fund. This would likely never be necessary, since a guaranteed yearly indemnity from the government is the safest form of collateral, and therefore there should be no problem gaining capital financing from any commercial source when such larger amounts of capital are required.

Moreover, it would be possible to negotiate the capital transfers as an advance on resource royalties. There is a discussion of the need and justification for royalties in a separate section. Let us note here that the present Minister of Indian and Northern Affairs has made the suggestion that compensation monies could be exchanged for royalties. On this narrow basis, it would be a poor exchange for the Inuit since significant non-renewable resource development is probably a number of years away, and there would certainly be no significant royalty payments in the short term to cover the urgent capital needs. The Inuit would thus be left with insufficient capital resources for economic and social development, particularly at the start when they are most needed.

If a sizeable advance on royalties (non-repayable) were granted, and then retained by the federal government, a considerable guaranteed stream of income could be produced to meet the capital needs of the Inuit development organizations. This would be more satisfactory politically for the government. There would be no massive capital transfer, government debt servicing costs would be reduced, and ultimately, when significant non-renewable resource development does occur, the capital transfer would be paid not by the federal government, but out of resource revenues.

In the past, the policy on monetary compensation that "amounts negotiated must be specific and finite" has prevented the government from even considering the issue of royalties, and might also conceivably have prevented the consideration of capital transfers negotiated as a stream of income. However, a stream of income does have a capital value, and a settlement using this approach can still be costed. The new policy on the transfer of capital funds should be flexible enough to allow for the consideration of alternatives such as these. They may be greatly to the advantage of the government as well as the Inuit, and may overcome the current contradiction between the government's necessity to avoid large capital transfers and the Inuit's need for immediate and ongoing capital resources.

Recommendations for Federal Policies:

- 1) The government should no longer view capital transfers under the settlement as cash compensation for the sale of rights and title.
- 2) The government should recognize the need to negotiate significant capital funds for economic and social development under Inuit control.
- 3) Expenses incurred by government in other parts of the settlement should not be written off against the capital funds.
- 4) The government's need to cost the total settlement should not take away the flexibility necessary to negotiate vehicles for capital transfers that may be to the benefit of both parties.

10.3 Taxation

While practical areas such as taxation are often pushed into the background by other apparently more significant areas and little thought given to them, they can ultimately have a major effect on the success of the settlement and the achievement of its goals.

TEN recognizes the importance of an adequate tax base to governments, and in particular to a future Nunavut government. We believe, however, that federal policy should allow for the negotiation of taxation provisions that will assist in the achievement of the economic goals of the settlement and make more effective the vehicles negotiated in other provisions for the achievement of these goals.

..

Previous Government Policy

Government policy, as stated in the document "In All Fairness", has been as follows:

All compensation monies to be paid under proposed settlements will be regarded as capital transfers and will be exempt from all taxation.

However, incomes derived from such compensation shall be subject to the usual provisions of the Income Tax Act.

Except in relation to municipal services, unimproved lands may also be protected from property taxation.

The policy that compensation monies are to be free of taxation.

would presumably apply to the capital funds discussed in the section of this submission on Compensation. While it does not hurt to have this statement, this policy does not represent any real concession since this situation would almost certainly result under current tax laws in any case.

However, the question of whether "incomes" from capital transfers should be taxed raises a number of important issues.

TFN believes that capital funds for development transferred from the federal government under the land claims are the property of all Inuit. As such they should be managed on a permanent basis so that the capital itself is retained and augmented, at least to the rate of inflation. Yearly income above this level would provide the capital funds for Inuit development organizations.

Thus, the investment income from the capital would not be for profit by one business organization, but would be the means of maintaining the value of the fund, and of providing the capital monies needed by the Inuit development and other user organizations. However, under the previous government policy, this income would be taxable, even though it is essential for preservation of the fund and for contributing the capital available for distribution each year.

The problem is even more clearly defined when we look at the option discussed in the section of this submission on Compensation whereby the government would retain the capital funds, and pay out an annual interest indexed to the rate of inflation. While in one sense this would be a stream of "income", it is easy to see that these payments constitute the capital resources of the Inuit for participation in development. It is a mechanism for preserving the original capital while making available the necessary capital resources for development. In function this is not a business venture, yet this income would be taxable under current policy.

A third example of this would be resource royalties. Royalties are paid as a stream of income. Yet their purpose for the Inuit would again be to provide them as a group with the capital resources necessary for participation in development in the long run. This function is exemplified by the suggestion made in the section on Compensation that capital funds transferred could be arranged as an advance on royalties. Once again, however, we find that royalties are normally taxable.

More generally, under the settlement the various administrative, political, and non-profit bodies will be receiving, dispensing, and possibly investing funds at

least on a short-term basis. Many of these organizations would be performing strictly non-profit, social functions. However, under present tax law, there is a distinct possibility that, in cases where the amounts of money involved are large enough, Revenue Canada could take the position that such investment is not a passive and secondary activity but has become a business. The only distinction under current federal policy is that between capital and income, and there is no recognition of the need to confer special tax status on some land claims organizations based on their overall nature and function.

In regard to land selected by the Inuit under the land claims settlement, current federal policy states that "unimproved lands may also be protected from property taxation". While this again is all right as far as it goes, it fails to recognize that Inuit have many reasons for land ownership - economic, ecological, cultural, psychological. The Inuit lands will represent an important heritage, resource, and base for all Inuit of all generations.

Although government policy recognizes that Inuit lands are not normal commercial properties, they are ultimately subject to regular property taxation if improved. In Alaska, property taxation is posing an extremely serious threat to the continued ownership of native lands, one of

the primary benefits which Alaska natives received under that claim. Previous federal policy does not recognize the very special nature of native-owned lands, or the necessity to prevent a similar problem arising in Canada in the future.

New Policies

In formulating a new approach to taxation policies, the first point to note is that the previous distinction between "capital" and "income" is not very productive one. Government should recognize that capital funds are essential to Inuit participation in economic and social development, and that these funds are regarded as the collective possession of all the Inuit of all generations. As discussed in the section on compensation, these funds could result from various possible arrangements - direct capital transfer, stream of income through investment in the federal government, royalties, etc. Strictly speaking, some of these are capital transfers and some of these are transfers of income. However the function of all of them would be to contribute to the capital base required by Inuit for development. In this situation, we believe that these transfers of "income" should in reality be classified as transfers of capital.

In some other land claims settlements the collective capital of the settlement has been severely depleted. We believe it is very important that federal policies, in this case taxation policies, should support efforts to preserve and enhance the collective capital which will generate the funds needed by Inuit economic or social development organizations now and in the future.

Thus a far more productive and useful distinction would be a functional one between any organization responsible for receiving and managing capital funds, and organizations - particularly business organizations - who are the users of the funds generated on a yearly basis. If the former is organized on a non-profit basis, federal policy should clearly allow the negotiation of tax-free status. Any user organization that is a profit-making business using capital from land claims would be taxable under the normal provisions of the Income Tax Act based on their operations.

In short, it should be possible under federal policy to negotiate special tax status for organizations and agencies in the land claims settlement, the specific status of each dependent on its nature and function.

This would also deal with the problem faced by administrative or social bodies set up under the settlement

where the sums of money they are handling might be quite large and might be invested at least in the short-term. The particular tax status of such organizations would be related to their nature and function, not dependent on what is in this case a more arbitrary distinction between income and capital.

Turning our attention to another issue, in the various areas of the land claims settlement, there will be provisions designed in light of and using the particular tax laws prevailing at the time of the agreement. Subsequent changes in the Income Tax Act might very well affect the settlement, indeed possibly change the overall package substantially. One example of this occurs in the discussion paper between TFN and the federal government of July, 1984 on equity participation in onshore oil. These provisions were clearly formulated in light of the benefits obtainable under the Petroleum Incentive Payments (PIP) program. To be eligible for such grants the organization designated under the settlement has to be a taxable corporation.

Since the negotiation of these provisions, however, PIP grants have been phased out. If this had occurred after the final agreement, the Inuit might have found that in order to obtain specific benefits had chosen taxable status or other features for an organization in order to obtain

specific benefits that subsequently disappeared. This is certainly a normal risk for taxpayers, but in a land claims settlement that is attempting to set up a framework relevant for all time, this causes legitimate and quite significant problems. The settlement must have the flexibility to evolve as tax laws change.

In light of this, we believe that federal policy should recognize that situations will arise where new tax laws are introduced or old statutes revised after a final settlement has been signed. In such cases, any bodies created by the settlement and affected by the changes should be able to choose which statute will apply to them - the old law prevailing at the time of signing, or the new statute.

Finally, in regard to taxation of land, the key question pertains to the tax status of Inuit land under a settlement. As noted above, these lands provide not only an economic base, but also a cultural and psychological base. They are part of the Inuit heritage. As such, we believe that Inuit land should have a tax-free status in regard to all property taxation. Recognizing the future Nunavut government's need for an adequate tax base, it is possible for Inuit organizations administering the lands to agree to voluntary arrangements for property taxation in specific situations. We believe strongly, however, that in order to give protection in perpetuity to Inuit lands, the

federal policy should recognize the need for tax-free status in regard to property taxation for all Inuit lands.

Recommendations:

- 1) Government should recognize that certain ongoing investment, interest, royalty, and other payments are in certain circumstances providing capital to Inuit rather than income and should not be taxable.
- 2) It should be possible to negotiate special tax status for organizations and agencies under the land claims settlement, the specific status of each to be dependent on its nature and function.
- 3) When tax laws applying to organizations set up under the final settlement change, these organizations should be allowed to choose whether they are subject to application of the previous law or of the new law.
- 4) Inuit lands identified under the land claims settlement should be granted tax-free status with regard to all property taxation.

10.4 Economic Rents

If, after the final settlement, Inuit hold title to certain lands, this will not mean that we will relinquish our interests in other areas or confine our land based activities to Inuit lands. On the contrary, all lands we have used will continue to be important. All development, regardless of where it occurs, will continue to be of concern and interest to us.

This has been recognized by government in the initialled Wildlife Agreement-in-Principle which recognizes Inuit rights to wildlife and wildlife management in the entire claim area. Government has also recognized that the planning and management provisions of the overall agreement must apply to the entire claim area. A logical extension of this is that the economic rights must apply to the entire claim area as well. Management and economic rights go hand in hand. Moreover, a share of all economic rents and a shared title affirming beneficial rights throughout the claim area would allow both parties to overcome some of the problems associated with the need for legal certainty.

We have proposed the creation of a Nunavut Lands Authority (NLA), a joint Federal/Nunavut/Inuit body, to issue out the necessary development certificates after approval is given under the Impact Review System. The NLA would collect and

share the economic rents amongst the parties. This proposal is not unlike the Canada/Newfoundland Offshore Petroleum Board established under the Atlantic Accord which is responsible for issuing the development approval and collecting the rents. Under the current policy, however, the federal government has refused to accept this proposal.

Recently, the Minister of Indian and Northern Affairs Canada suggested the idea of sharing revenues with both the territorial government and aboriginal peoples. Claims policy should provide Inuit and a Nunavut government with a share of economic rents. It is in the interests of Inuit, as residents of Nunavut, to have a strong government and a self-sustaining economy that is capable of supporting its residents. It is in everyone's interest to have a strong Nunavut economy that contributes to the larger Canadian economy and reduces the need for federal assistance.

In this section of the submission we confine ourselves to government policy on resource revenue sharing between Inuit and the federal government of Canada. We are only concerned here with water and non-renewable resource revenues (coal, minerals, quarrying materials and oil and gas). We are not concerned with the possibilities of more broadly based schemes for revenue sharing which have been proposed founded upon analogies with federal-provincial

revenue sharing schemes,¹ nor do we propose to discuss revenue sharing between the federal government and the existing territorial government.

Importance of Non-Renewable Resources to the Territorial Economy

The exploration for and exploitation of minerals and oil and gas currently forms an important part of the northern economy and is likely to continue to do so in the future. At present oil and gas production is limited to the Norman Wells area and to the small annual trial production from the Bent Horn fields. Nevertheless exploration activities are resulting in a significant injection of capital into the region, and, depending upon factors such as exploration success and world oil prices, further production must be anticipated in the future. Quarrying is important locally throughout the territories and although mineral activity in the north is currently at a low ebb, activity can be expected to pick up with improved world commodity prices. Even at present price levels there are a number of eastern arctic mines which continue to operate such as Cominco's Arvik mine. All of these operations in the eastern arctic are currently being conducted in areas where there is an unextinguished Inuit aboriginal title.

1. We refer here for example to the proposals discussed by the parliamentary task force on federal-provincial fiscal arrangements in their report, Fiscal Federalism in Canada, 1981 at 188 to 189.

Non-renewable resource development in the eastern arctic offers several direct and indirect benefits to Inuit depending upon how it is managed. At the same time of course there are negative implications for Inuit which flow from environmental damage and social disruption. Benefits might include such things as employment, small business development, opportunities for participation and direct shares of the revenues flowing from development. Benefits might be freely negotiated based upon an Inuit ownership position or imposed as part of a legislated settlement.

A TFN Resources Claim

To date TFN has brought to the negotiating table various proposals designed to ensure that Inuit benefit from non-renewable resource developments in the Nunavut area. These proposals have been as follows:

- a) A proposal for an agreement in principle on "Inuit Impact and Benefit Agreements". Under this proposal developers would be required to negotiate with Inuit concerning such matters as employment and small business opportunities. At present, while the federal government has negotiated on this subject, there is no agreement as to what will happen if Inuit and a developer are unable to agree on a suitable package to mitigate impacts and enhance the benefits to Inuit from a proposed development.

- b) TFN has proposed that certain tracts of land, yet to be selected, should be owned absolutely by Inuit. An agreement-in-principle has been negotiated on the principles to guide land selection. TFN has proposed that title to these lands shall include the mineral and quarrying rights but not oil and gas. TFN regard the latter as a major concession for which they expect significant concessions in the area of resource revenue sharing. If concessions are not forthcoming TFN will consider claiming the oil and gas rights to these lands. The status of title to Inuit lands has not yet been negotiated and selections have not yet been made.
- c) TFN has tabled proposals which provide for the sharing of revenues which flow directly to government from resource developments. The revenues referred to here would include such things as fees, rentals, bonus payments and royalties, and it was anticipated that these provisions would apply to all minerals, oil and gas and water. TFN has discussed these proposals at the table (August 1983) but matters were not pursued further when the government position on revenue capping became entrenched. This important issue will be discussed further and present government policy critiqued, but for the moment it is important to emphasize that TFN has not dropped its position on revenue sharing, it has merely deferred negotiations.

d) TFN has tabled and negotiated papers on equity participation in oil and gas, minerals and quarrying materials. Unlike other agreements however, these agreements are subject to ratification by both the federal government and the TFN Board of Directors. It should be noted that the TFN position includes a claim for both resource revenue sharing and equity participation in resource development. This two-fold claim has been developed because each element is designed to fulfill a different purpose. The revenue sharing proposals are designed to provide revenues for Inuit economic development and compensate the Inuit for the exploitation of their lands. However, a revenue sharing interest is generally a passive interest, it will not result in Inuit participation in the development. On the other hand the equity participation provisions which have been negotiated are designed to provide Inuit with a right to be involved and participate and, it may be added, at little or no cost to government.

The Basis for the TFN Claim on Revenue Sharing

The TFN claim to revenue sharing is based, like other elements of the claim, upon an unextinguished title, and also upon the obligation of the Government of Canada to provide a viable basis for the development of an indigenous Inuit economy.

The aboriginal interest is a proprietary interest in land² which extends throughout the lands to which the Inuit can establish use and occupancy. The scope of that interest includes the right to exclude other parties and is not to be determined by reference solely to the use made of the lands in prehistorical times or at the time of contact.³ Rather the scope of the claim is to be determined by reference to modern possibilities of exploitation of the lands, and the customary law right to exclude unwanted parties from the lands used and occupied by Inuit.

The right to share resource revenues, while perhaps perceived as an economic right, can also be seen in legal terms as an interest in land in the same way as the aboriginal interest itself. The interest on which revenue sharing would be based could be seen as either:

- (a) an undivided interest in the corporeal mineral, and oil and gas estate

2. Guerin v. R., [1984] 6 W.W.R. 481 (S.C.C.).

3. It follows that TFN rejects the interpretation of the content of aboriginal title advanced by the trial judge in the Bear Island case. A.G. Ontario v. Bear Island Foundations et al. (1985), 15 D.L.R. (4th) 321 at 354 to 361, at 355. "I conclude that the Royal Proclamation gave to the Indians only the right to continue using the lands for the purposes and in the manner enjoyed in 1773."

(b) a royalty interest.

Each of these interests is an interest in the land which entitles the owner to a share of production and therefore the revenues. It is therefore a particularly appropriate way of interpreting the aboriginal interest in common law terms.

In economic terms a royalty or undivided interest in the mineral and oil and gas estates will also provide a source of revenues for economic development in a way which is peculiarly related to the ownership of land, and the intensity of development in the Nunavut area. From the Inuit perspective, a royalty or undivided interest position throughout Nunavut would have an advantage which is not shared by an exclusive ownership position in a smaller area. The main advantage of course is a spreading of the risk and the opportunity to benefit from developments wherever they occur within Nunavut.

Critique of Previous Government Policy

There are two sections of the 1981 policy document "In All Fairness" which have some bearing on the question of revenue sharing. First, the section on subsurface rights which provides that:

The federal government is prepared to include subsurface rights in comprehensive land claim settlements in certain areas. The motive for granting such rights is to provide Native people with the opportunity and the incentive to participate in resource development.

Second there is the section which deals with monetary compensation. This provides that the compensation can take various forms including cash, government bonds and other forms of debentures but "no matter how these capital transfers take place, the amounts negotiated must be specific and finite." It is this latter part of the policy which has caused the greatest concern to TFN because it has been interpreted by the federal negotiators as precluding any discussion of a royalty interest or other revenue interests unless that interest was subject to being "capped". By "capping" the federal government means one of two things: either that the royalty interest would be terminated after a particular level of capitalization had been reached, or that the royalty fund would be closed after a particular period of time. No doubt the federal government might also be prepared to suggest some combination of the two capping techniques.

As far as one can ascertain there is only one rationale which has been advanced to justify this position and that is that the federal government must be able to quantify, with relatively certainty, the costs of the settlement when it signs. This in turn appears to be based on the

view that it is possible to cost out, in current dollars, all elements of the package and that comprehensive claimant groups ought to be treated approximately equally so as to avoid allegations of disproportionate treatment.

A number of criticisms can be and have been made of the federal government negotiating stance.

The federal negotiators use the "specific and finite" language of the monetary compensation section of the policy to deny TFN claims to an open-ended royalty interest. TFN argues that this is to misinterpret the policy. It is clear that "specific and finite" refers to "capital" transfers and forms of compensation such as those enumerated in the policy. It therefore does not apply to either a royalty interest or an undivided interest in the mineral estate since these are both proprietary interests in land or the subsurface and not forms of capital payments.

Even if it were to be conceded that this part of the policy were applicable to the TFN proposals, these proposals do not necessarily violate the requirement that capital transfers must be specific and finite. After all when it comes to evaluating the costs of government commitments what is the difference between the costing of land rights and the costing of mineral interests? No doubt government has developed some form of costing technique for northern

tundra lands. Furthermore in theory it ought to be possible to ascertain a market value for, say, a 10% TFN royalty interest or a 40% undivided TFN interest in the corporeal mineral estate. The fact that such an exercise might be difficult does not mean to say that it is impossible to come up with a specific and finite valuation of such property interest.

We have suggested elsewhere that both a TFN royalty or a TFN undivided interest in the mineral estate can be considered to be an interest in land.⁴ It therefore follows that this portion of the TFN claim ought to be dealt with under that portion of the policy headed "subsurface rights". A royalty or undivided interest is undoubtedly a "sub-surface" right such as is expressly contemplated by the policy. It is nothing short of inconsistent and duplicitous for the federal government to offer to negotiate on subsurface rights in one paragraph and in the interpretation of the very next paragraph, deny the possibility outright.

4. There can surely be absolutely no doubt about this despite the uncertainty which surrounds the status of royalties carved out of the land by lessees. It hardly seems appropriate to argue the point here but further documentation could be provided upon request.

In fact the present policy of offering to negotiate a capped royalty is nothing less than an insult to the intelligence of the comprehensive claimant groups. The current negotiating position is based upon the assumption that \$x are available for the compensation element of a claim. How the \$x are to be taken is a matter for negotiation: \$y may be taken in year one, \$z in year five and \$p by means of a royalty, provided that the royalty fund should close in year 20. Alternatively, instead of a royalty \$p-s may be taken in year five.

Now the question is what aboriginal group with an iota of intelligence would elect to take a royalty under these conditions. It has no advantages over a lump-sum whatsoever and it has two major disadvantages. In the first place the fund may never be capitalized at \$p whether the fund is open for an infinite period of time or not. If the fund closes after a fixed period of time the odds of ever reaching the capitalized figure must be reduced still further. Under the capping system there is no compensating possibility that the fund may be over-capitalized. Second, even if the fund is successfully capitalized by year 20 the present value of that fund would vary depending upon when it was capitalized; year 10 or year 19. Hence it is the TFN view that the current federal position is no negotiating position at all, since government holds all the cards it is pointless to negotiate.

Other Comments

The current federal position seems, as much as anything, to be based upon the view that TFN and Inuit have no special interest in the area of the claim, and that Inuit have no special entitlement to become wealthy (or even comfortable) as a result of mineral and oil and gas exploration. Any windfall profits that are to be made (if any) are to be shared amongst the general public of Canada. Inuit cannot be trusted to expend such monies responsibly (or within the jurisdiction) and the overall benefits to Canadians resulting from generally applicable taxes and circulation of monies within the Canadian economy are, of themselves, insufficient. If this indeed be the basis of the federal position, then TFN would argue that it is entirely misconceived. The Inuit do have a special interest in the area, they have an aboriginal title - Inuit own the land until title is extinguished.

But not only would such a basis for the position be misconceived, it would also have an inconsistent effect. The inconsistency of effect would arise from two sources. First, the claims policy itself "In All Fairness" clearly contemplates the chance of windfall profits by acknowledging that aboriginal groups will end up owning outright, blocks of mineralized land which may subsequently be profitably exploited. Second, the possibility of windfall profits is always a possibility

when the Crown alienates land or interests in land. Windfall profits accrued to the railway companies as a result of the alienation of Crown lands by the Dominion, and windfall profits also accrued to those prairie Indian bands fortunate enough to have reserves located over oil and gas reserves.⁵ Even straightforward revenue sharing agreements which result in "windfall profits" to Indian bands are not unknown south of 60°N if one takes the example of the arrangements made for the Fort Nelson Band in British Columbia.⁶ Hence there is nothing unusual about a windfall interest flowing to a specific group a corporation within society; the only difference with respect to aboriginal groups is that any windfall which may occur is more readily justifiable because of their aboriginal interest in the area.

Conclusion

We hope to have shown in the above that the current federal policy as enunciated in "In All Fairness" and at

5. Total royalties to Indian bands from oil and gas revenues on reserves in the 10 provinces were: 1983-84 - \$310,000,000
1982-83 - \$408,000,000
1981-82 - \$242,000,000

(Figures from INAC)

We are not using the term "windfall profits" in a derogatory way. We use it to refer to monies which flow to the owner or interest holder of a resource merely because of his ownership or interest and not because of any capital outlay on his behalf.

6. Fort Nelson Indian Reserve Minerals Revenue Sharing Act, S.C. 1980-81-82-83, c.38 and S.B.C. 1980, c.16.

the negotiating table is unworkable, untenable and inconsistent. Therefore we present recommendations for an alternative policy. These should be read in the context of the preceding criticism of the present policy and of our economic goals and objectives for the settlement.

Recommendations:

- 1) The federal government should include subsurface rights in comprehensive claim settlements. These subsurface rights may take a variety of forms depending upon the circumstances of the individual claim. Hence government should be prepared to entertain the possibility of royalty interests, and proportional shares of the mineral interests as well as outright ownership of the subsurface estate.
- 2) Policies applying to capital transfers should make clear that they do not apply to transfers of land or interests in land.

10.5 Economic Policies and Programs

One of the major concerns addressed by land claims is what part Inuit will play in the economy of Nunavut in the future. Inuit wish to have a part in determining the choices available and in determining the overall directions of economic development in the Nunavut territory.

In the past Inuit were economically self-sufficient, not necessarily living in isolation, but meeting our own economic needs through the resources available. In the more recent past, however, the economy has essentially been out of our control; that is, as much as it is possible for man to directly influence the economy through economic policies, control over these policies has been in the hands of others.

Inuit must be full participants in the economic development of Nunavut, and this means participants also in determining the direction, priorities, and pace of economic development.

The economy involves human interaction with the land and resources, and thus economic planning and management is an aspect and extension of land and resource management. The way in which government tries to influence the development of the economy and to influence how people benefit from the economy is through their economic policies and programs.

Therefore it is a consistent and integral part of the TFN approach that Inuit must be involved in economic planning and in the delivery of government economic programs.

Inuit have special problems in relation to the economy not shared by non-Inuit in Nunavut, including high unemployment rates, very low levels of education and training for wage employment, and lack of suitable income or capital for traditional harvesting activities. Inuit also have special needs not shared by non-Inuit. These include a special interest in the renewable resource sector, particularly wildlife; a special need to create our own economic institutions to provide a basic economic infrastructure; and a special concern with the communities, with their long-term viability and health, and with the effect of economic development on their social and cultural life.

Inuit have always taken an approach of co-operation. Both Inuit and the government require a viable economy in Nunavut, which in turn requires the joint planning and rational use of physical, human and financial resources. Inuit wish to have recognized our right to meaningful participation in the planning and management of economic development programs.

Proposed Government Policies

Currently, there is participation by Inuit and other native groups in some government economic programs. However, this is totally at the whim of the government: in some cases there are native seats, say on a program advisory board, in other cases there are not. As well, programs themselves come and go: old ones are ended and new ones are started. Special ARDA currently has solid native representation on its committee, but what will happen if or when Special ARDA ends or is replaced by another program?

As another example, the Economic Development Agreements (EDAs) between the federal and territorial governments are extremely important for economic development in the north, providing a framework for a whole series of economic development programs. Yet the planning and development process for the EDAs was a highly secretive procedure involving only top members of the two governments and with literally no involvement by native groups. The result was a series of programs that in their design were unresponsive to the needs of native groups in the north, and in their delivery overly bureaucratic. This led to pressure from northern native groups for large-scale changes in the programs, and this resulted in the creation of a policy advisory committee with native involvement.

Currently, Inuit have no guarantee that they will be consulted in the development of major economic programs, nor that they will have any part in the delivery of such key programs.

The federal government has already recognized through agreements-in-principle negotiated with TFN the necessity for Inuit to be involved in the management of land and resource development. The time has come for the government to also recognize the necessity for Inuit to be involved with government in economic planning and in the development and delivery of economic programs.

This involvement can have a number of aspects -- in overall economic planning and determination of economic priorities; co-ordination of government, land claims and private resources to make most effective use of all of them; review of new economic programs; and determination of the specific nature of Inuit participation in particular government programs where appropriate.

It is important that the land claims agreement itself not try to determine specific programs, or to determine participation by Inuit in specific programs. Rather, negotiations should create a flexible mechanism that will attempt to deal with economic priorities and programs in appropriate ways as they change over time. What is

required now is recognition by the government in its land claims policies that this is a valid and necessary subject for negotiations.

We also believe that government economic programs oriented strictly towards Inuit should be administered and delivered by an suitable Inuit organization. One example of such a program might be the federal Inuit Economic Development Program. The current process of devolution of federal powers to the Government of the Northwest Territories should not include the transfer of federal economic programs such as these, since this will prejudice future negotiations on this topic in the land claims arena between TFN and the federal government.

Finally, we feel it is very important that the provisions of a land claims settlement in no way hinder beneficiaries from being eligible for the full range of normal government programs. It should not be necessary for native peoples to use their claims and the benefits therefrom as a substitute for programs to which all Canadians have access as citizens. Moreover, for many economic development programs giving grants and loans for business, land claims provisions such as that for a capital fund for economic development (discussed in a separate section) will in many cases finally give Inuit business organizations the capital necessary to meet the criteria for such programs.

Recommended Policies

- 1) The new policy should recognize that Inuit have the right to negotiate meaningful participation in planning and delivery of government economic programs.
- 2) The federal government should not devolve, without the consent of the Inuit, major economic programs to the Government of the Northwest Territories until completion of land claims negotiations.
- 3) Unless agreed to by the parties, proposed settlements should not diminish the eligibility of beneficiaries to current and future government economic programs.

11. SOCIAL AND CULTURAL DEVELOPMENT

Introduction

Concerns regarding resource development have often overshadowed equally important concerns regarding social and cultural development. But the quality of our life in the communities is greatly affected by the quality and suitability of social programs and services. Government has spent considerable sums of money in the North on services such as health care, education, justice, housing, and social assistance, and must continue to do so.

While some improvements have been made, Inuit still suffer from the poor quality of social programs and services, and certainly do not enjoy the same standards in these programs and services accorded most Canadians as a basic right. Moreover, the social institutions that control the lives of Inuit are based on the values, norms and practices of Euro-Canadians, many of which are irrelevant or at odds with Inuit culture. The application of externally controlled and unsuitable responses to social needs and problems is in part responsible for social pathology in the North. It has resulted in a growing sense of powerlessness and dependence among Inuit.

There is sufficient evidence to suggest that the attempts to adapt Inuit to an alien culture have had very negative impacts on the social fabric of Inuit society. It is time

for a change in perspective: Inuit must be able to adapt the system to Inuit culture at a controlled and measured pace, one which Inuit determine. We must be guaranteed an active and significant role in the development, design, and delivery of programs and services in such areas as language, education, social control, health care, housing, social assistance, and communications. In this way Inuit values and perceptions will form a more significant part of the basis on which social and cultural institutions function.

Inuit must be able to negotiate the right to adequate and culturally appropriate social programs and services as part of our claim. The right to and means of participation by Inuit in the development, design, and delivery of programs and services should be negotiable, along with a system of periodic reviews of their effectiveness and delivery to ensure that national standards are achieved and maintained. We believe that it would be shortsighted, costly, and unproductive to negotiate specific, and therefore static and inflexible programs. In addition, since social programs are a public right, expenses in this area should never have to be paid with Inuit monies from the settlement.

In order for negotiations to properly address this issue, comprehensive claims policy must be changed in regard to

its concept of aboriginal cultures. Underlying the Euro-Canadian socio-cultural domination in the Inuit homeland has been the perception of Inuit culture as a static and ancient culture, of which only arts, crafts and a stubborn insistence on hunting have survived. However, it is much more than that:

[Inuit] Culture must be seen as an integrated system for dealing with the physical and social environment....Culture is what Inuit know, and how we know it. It is a way of understanding, and that way of understanding is accepted as true and valuable. (Inuit Cultural Institute)

Language

Inuit are committed to the survival of Inuktitut as a modern language in all spheres of life. In the Baffin region, 98% of those whose mother tongue is a native language speak that language in the home; in the Keewatin, the figure is 94%.¹

However, continuous pressure from the dominant Anglo-Canadian institutions is having its impact. One way in which English pressure is keenly felt is through employment requirements:

Although many native northerners are not bilingual, employment statistics indicate that native people who are not fluent in English

1. Northwest Territories, Executive Council, Enhancement of GNWT Native Language Services (GNWT proposal submitted to the Federal Government), Yellowknife, May 1984, Appendix A, Table 4.

have very little² chance of securing employment with the GNWT.² The gradual erosion of Inuktitut is becoming apparent in all regions. In 1981, Igalaag conducted a survey of student expectation with respect to the survival of their language and culture. While eighty-seven percent of respondents in the NWT felt that it is important to learn Inuktitut, only 13% preferred reading Inuktitut to reading English³:

Students have to cope with dichotomized environments where English is spoken in school and Inuktitut at home...[and]...the nature of the curriculum and teacher's attitudes impart to students a value for English that is greater than that for Inuktitut.⁴

Inuktitut carries much of the Inuit worldview and knowledge through its specialized vocabulary. One example is the many Inuktitut place names that are locations of myths and historical events, and are thus indispensable to Inuit identity and relationship to the land. But most official place names in the North today commemorate European and Canadian explorers.

2. Northwest Territories, Enhancement of GNWT Native Language Services, p.3

3. J. Iain Prattis, Minority Language Bilingualism, p.26-27

4. Ibid., p.27

We wish to maintain the integrity of our language as a vehicle for the transmission of our culture to future generations. Through our claims negotiations we must be able to address the legal and practical measures necessary to guarantee official status for Inuktitut in Nunavut.

Education

The goal of education is to perpetuate a people's knowledge, and to prepare the young for a meaningful role in society. For Inuit, the education system has failed to meet these goals.

Very few Inuit graduate from high school. Many Inuit achieve an educational level that will prepare them only for unskilled and semi-skilled labour, or welfare subsistence.

In 1981, only 44% of Inuit in the 15-19 age group had grade 9 or more. In the general Canadian population, 80% of those 15 years and over had at least grade 9. Only 26% of Inuit in the 20-25 age group had graduated from high school, while the figure for the general Canadian population 15 years and over was 52%.⁵ Although these

5. Norbert Robitaille and Robert Choiniere, An Overview of Demographic and Socio-economic Conditions of the Inuit in Canada, for Indian and Northern Affairs Canada, Ottawa, 1985, Tables 2.4, 2.6.

groups are not directly comparable, the figures do suggest that Canadian Inuit are well below the national average.

In the Baffin Region, Northwest Territories, 4 Inuit graduated from high school in 1981-82; 9 in 1982-83; and 7 in 1983-84;⁶ for a total of 20 high school graduates over a three-year period. Population figures indicate that there were 890 Inuit between the ages of 15 and 19 in the Baffin Region, in 1981.⁷ Thus, there appears to be serious deficiencies in the education system as it is applied to Inuit in Nunavut.

In the past we educated our own children. We transmitted a system of cultural values and beliefs that pervaded all aspects of our existence -- from the teaching of land based skills to the formation of social and economic behaviour. The passing down of information and cultural values from generation to generation, in Inuktitut, allowed us to maintain ourselves as a distinct people.

Today, the educational process has become formalized. It has been taken over by government and is administered mainly by non-Inuit. Inuit knowledge is not perpetuated

6. Celia Sarte, Financial & Management Services, Department of Education, Government of the Northwest Territories, Yellowknife, Telephone Conversation, August 19, 1985.

7. Northwest Territories, Bureau of Statistics, "Population by Ethnic Origin, Age and Sex, Baffin Region, June 1981" Yellowknife, 1983.

through education. The influence of new ideas and values, and education in a foreign language have resulted in a weakening of the fabric of Inuit society.

At present, curriculum for kindergarten to grade 9 is developed within the Department of Education in Yellowknife. The school program for grades 10, 11 and 12 is borrowed from the Alberta Department of Education. Cultural Inclusion Programs, the "Inuit content", are apart from the basic instructional program and do not have accreditation. Divisional boards of education,⁸ community education societies and community education committees have the power to develop cultural inclusion programs and append them onto the basic instructional program,⁹ which has first priority.

This three-tiered system of delivering educational services is resulting in low educational achievement levels and erosion of Inuit culture.

Currently, Inuit language and culture studies are included in a token way as something added to the regular curriculum. The Inuit insights on the nature of language, science, numbers, society, art, games, and other subjects are not integrated into the curriculum. Inuit ways seem different, therefore, even strange, "outside", when compared with the curriculum that is being

8. Northwest Territories, Office Consolidation, April 12, 1984, Education Ordinance, Yellowknife, 1984.

9. Northwest Territories, Justice and Public Services, Consolidation of Education Ordinance, Yellowknife, 1983, s.17(d) and 22(a).

used. The danger is that soon Inuit ways will
feel alien to their children.¹⁰

Education in Nunavut must be improved, and the education levels of Inuit raised. The education system needs to be adapted to a greater extent to our knowledge, values, and priorities, which will in turn improve the success of education programs. But the adaptation of education to Inuit culture can only be accomplished by Inuit through our involvement at the policy level and in program development and delivery. We must be able to address this involvement through negotiations, as well as our right and need for a similar level of quality in education as that considered standard in the rest of Canada.

Justice

In 1982-83 the NWT had the highest crime rate in Canada. Most of the crimes tend to be of a minor nature, committed against Territorial Ordinances, Municipal By-laws, or property. The result, however, is that a large proportion of Inuit become involved with the criminal justice system as offenders.¹¹

Furthermore, the statistics on admissions to NWT correctional institutions reveal that in 62.7% of all

10. Inuit Cultural Institute, op.cit., p.6

11. Outcrop Ltd., NWT Data Book 1984-85, Yellowknife, May 1984.

offences committed between 1968 and 1980 (committed by people who were sentenced to an NWT Correctional institution), alcohol was a factor.¹² This suggests that most offenses in the N.W.T. should be viewed as symptoms of underlying social and cultural stress. Poor economic opportunities, financial hardship and acculturation/deculturation are all contributors to high levels of alcohol abuse.

Inuit face many problems of inadequate legal and correctional services that result in poor access to the law. The Territorial Court visits large communities like Frobisher Bay once a month, and smaller communities only once every few months. The long waiting period for a trial can cause considerable stress. Legal aid lawyers have heavy workloads during circuits and have very little time to acquaint themselves thoroughly with all aspects of their clients' cases.

Justices of the Peace (JPs) hear, try, and judge non-indictible offences. There are 58 native JPs among the 110 in the N.W.T. However the JPs in most Nunavut communities do not receive sufficient training and are unfamiliar with the law. Aside from an annual workshop, there are no formal ongoing training programs for Justices

12. Harold Finkler, Baffin Correctional Centre, p. 52 & 57

of the Peace. This puts the Justice of the Peace and the accused at a serious disadvantage.

Beyond these problems of access, there are also cultural difficulties with the legal system:

The main problem with the justice system being imposed on Inuit is that it is based on different values than those universally understood by Inuit. Obvious examples are the emphasis on individualism in our justice system: one man (a judge) sitting in judgment on others, instead of a group decision, and the consideration of an accused person or a party to a family dispute individually instead of the community or family as a whole; also the emphasis on confrontation and litigation which our adversary system of justice promotes as opposed to peaceful settlement by consensus and agreement, which characterizes the Inuit approach to conflict.¹³

In the past we handled anti-social behaviour through our own system of social sanctions, or "customary law". Our customary law was informal, supported by clearly defined values which guided all aspects of social behaviour, political relations and economic activity. The values that guided our social behaviour have remained intact although settlement living has required some modification in their expression and application. This adaptation, though, has not made the customs any less valid or meaningful.

13. Dennis Patterson, Director, Maliiganik Tukisiiniakvik, to John Amagoalik, 11 May 1978.6.

But our system for dealing with anti-social behaviour has been replaced by an outside system of justice based on English Common Law, a system which is not always consistent with Inuit values. It has neglected Inuit cultural expression and disregarded the importance of community sanctions. It relies entirely on courts for the issuing of sanctions instead of on the community itself. Furthermore, recidivism rates indicate that the existing system is not effecting positive change. Since many of the problems are social, not criminal, they could perhaps be appropriately and adequately handled by community-based courts. Domestic disputes, charges against young offenders, and drug and alcohol problems are matters that could possibly be handled by community-based system.

Comprehensive claims negotiations in the area of justice, policing, and corrections must be based on the premise that the legal system needs to be adapted to the Inuit. This approach would be more effective than trying to adapt the Inuit entirely to the system (as has been unsuccessfully attempted already). Federal policy should ensure that this will be possible.

Health

Health indicators for Inuit are below national standards in several areas. For example, the infant-mortality rate

among Canadian Inuit is 5 times higher than that of the general Canadian population.¹⁴ Medical statistics show that the Inuit infant-mortality rate was at 44.74 (per 1,000 live births) in 1973, 21.00 in 1978, and up to 29.50 in 1983.¹⁵ In addition, dental health, nutrition, and hearing are serious health problems.

Any attempt to improve the level of health among Inuit must recognize that it is not enough to treat symptoms and diseases. If circumstances surrounding the treatment result in disorientation, loneliness, and feelings of powerlessness, treatment will be ineffective. These conditions occur when unilingual Inuit are hospitalized for long periods of time, separated from family and community, without adequate translation services. Even within the communities, treatment can appear beyond the comprehension and control of patients because the entire system has been designed to fit southern concepts of health care.

...the Western model under which health care functions [is] discontinuous, i.e.....a system which seeks to separate the patient (the sick one) from his environment, including family and society. In contrast, the Inuit approach is more an associative one in that it seeks causation of illness in the

14. Norbert Robitaille and Robert Choiniere, An Overview of Demographic and Socio-economic Conditions of the Inuit in Canada, for Indian and Northern Affairs Canada, Ottawa, 1985, p.19.

15. Canada, National Health and Welfare Medical Services, NWT Region, Report on Health Conditions in the Northwest Territories, Yellowknife, n.d., p.26.

context of the individual's environmental and cultural relationships.¹⁶

There are many changes that can be made to improve service and decrease the alienating effects on Inuit of the health care system. Inuit must be able to address through our claims negotiations standards of health care in Nunavut, as well as Inuit input in the design and operation of Nunavut health care systems. Only in this way can our needs and our culture be sufficiently taken into account.

Housing

Housing remains a chronic problem in Nunavut. Solutions are needed urgently. Inuit were moved from camps where we provided our own shelter. Now we live in communities where camp-style shelters are impractical. With few naturally-occurring building materials and with the high cost of importing such materials, we have been forced to accept what housing government has made available to us.

Housing has often been substandard and inadequate in the harsh northern climate. New houses are not built fast

16. George Wenzel, "Inuit Health and the Health Care System: Change and Status Quo", Etudes/Inuit/Studies, 1981, Vol.5, No.1, p.7-15.

enough to accommodate the growing population so public housing is overcrowded. Many people wait a long time before they have the opportunity to rent a home. People sleep on cold floors, young and old are forced to share a room, and often no-one gets enough rest. For children, this means they do poorly at school. Rental scales used by the Housing Corporation are in many cases inappropriate. Local people have not been benefitting from the employment opportunities in house construction. These and other problems were clearly documented last year in hearings of the Special Committee on Housing of the N.W.T. Legislative Assembly.

Although most Inuit live in public housing, and public housing is for the most part occupied by Inuit, we have had little or no control over housing priorities and policies. This is not only reflected in the severe problems relating to quality and quantity of housing, but also in the lack of consideration for Inuit culture in its design, allocation, and tenancy rules. Inuit have definite ideas concerning how modern housing could accommodate a hunting lifestyle, and how it could better reflect Inuit family organization. Tenancy rules and rent schedules often seem inappropriate. They should be arranged so as to recognize our seasonal occupation of homes, our family obligations, and the special burdens on our income.

Organizational changes are needed to allow Inuit greater control over the development, design and delivery of housing programs. Only by having such control can Inuit hope to improve housing conditions in Nunavut. The settlement should therefore be able to guarantee Inuit significant input at all levels of housing policy, and program development and delivery.

Social Assistance and Welfare

In 1980, 13% of Inuit in the N.W.T. and Yukon who have some form of income were dependent on government transfer payments as their major source of income, compared to 6% of the general Canadian population.¹⁷ The average income of those Inuit who have an income in the N.W.T. and Yukon is \$7,792, compared to \$12,993 for the general Canadian population.¹⁸ Other social health and well-being indicators are also startling: over one-third of deaths in the Inuit population of the N.W.T. between 1975 and 1981 were caused by accidents (injuries or poisonings), compared to 9% in the general Canadian population.¹⁹

Inuit need the resources of social assistance and welfare

17. Robitaille and Choiniere, An Overview of Demographic and Socio-economic Conditions of the Inuit in Canada, table 2.9. Note: Yukon Inuit represented only .6% (or 95 Inuit) of the total N.W.T./Yukon Inuit population.

18. Ibid., table 2.8.

19. Ibid., table 1.4.

services, but in order for these resources to be used effectively in the elimination of poverty and social problems in Nunavut, they must be handled differently than in the South.

There are many instances where our culture clashes with the the approach taken in the social services sector. For example, our sense of sharing and our economic organization are such that family and community needs often take precedence over individual needs and require the sharing of incomes. But Inuit who share their benefits are penalized under the current system and are ineligible for more.

Regulations often make it difficult for a person to help themselves - if someone on assistance works for a while in order to buy a skidoo for hunting, their assistance is lowered and they must spend their earnings instead on basic necessities. The regulations also seem inappropriate to Inuit as they treat young and old alike, whereas Inuit would prefer to encourage younger people to become self-sufficient by living off the land or finding gainful employment.

Our cultural methods of social caring are not the same as those of non-Inuit. Existing child welfare legislation is insensitive to Inuit ways and inconsistent with traditional child raising customs. For example, while having gained

acceptance throughout the north, customary adoption has not yet been explicitly recognized in territorial statutes.

The provision of a government counselling service by social workers is another example of a clash. It overlooks and weakens the role of elders who give counsel based on life experience.

In Euro-Canadian society, the infrastructure of social assistance consists of taxation and welfare institutions, while among Inuit social networks of support were created by means of kinship, adoption, friendship, and partnership. Social support among the Inuit was always the direct responsibility of the community.

When native people in the North object to the white man's services, when they tell us they want to control their own services, they are really telling us, I think, that our...system is destroying or interfering with their relationship-based system of caring.²⁰

In Nunavut today the two systems must be integrated if the goals of social assistance are ever to be met. Inuit must be able to address means of achieving such integration through our comprehensive claims negotiations.

20. Mike Bell, "A Northern Perspective on Social Caring: The Role of Local Residents". Talk to the Northwest Territories Mental Health Association 13th Annual General Meeting, May 8, 1985, p.11.

Communications

Communications issues are of primary importance to Inuit for a variety of reasons. Communications can impoverish or reinforce our identity. Communications is essential in order for us to cooperate, to survive, and to evolve.

The physical factors of our northern environment make us particularly dependent on communications technology. For example, a recent report done for us has pointed out that the size of Nunavut results in a much greater demand for telecommunications, since alternatives such as mail and transportation are more costly and less efficient than in the south.

The Canadian Radio-Television and Telecommunications Commission has already recognized the need for a truly northern television service. Thus in 1974 it recommended the establishment of a dedicated northern satellite channel to be reserved specifically for programs relevant to the native peoples. In 1979 it supported CBC in its request for special and separate budgetary appropriations from Parliament for the Northern Service. But as of last year these special appropriations had not materialized.

Communications can reinforce the Inuit collective identity only if we have control over the way in which it is used. Inuit must gain full participation in the various aspects

of all forms of communication. In 1977, Doug Ward, Director of CBC Northern Service said that the southern controlled media are "largely a gross cultural intrusion on the people who were, in fact, the founding races of this country -- the Indians and the Inuit." Then CRTC Commissioner, R. Irwing, agreed. He said that as a result of "the garbage that we are shipping up there" a generation is lost, a culture is lost. He felt it should be a crime.

But these strong words have not resulted in any regulatory protection of Inuit culture. We still cannot determine the amount and content of southern television in Nunavut.

The new claims policy must recognize the uniqueness and importance of Inuit culture. Negotiations must be able to establish the means of ensuring Inuit participation in the regulation of communications such as print media, broadcasting, film, and telecommunications. Furthermore Inuit must have greater involvement in actual production. Negotiations must ensure that Inuit will have access to modern communications technologies, and proper training in their use. Public funding must be assured so that the high cost will not be an obstacle to Inuit involvement. We will thus be able to maintain our cultural identity and at the same time be full participants in Canadian society.

Archeology

In the "Archeology Provisions of an Agreement-in-Principle" initialled July 23, 1983, Inuit are guaranteed the right to participate in the study and management of the archeological and ethnographic record and the right to regulate the identification, protection and conservation of archeological sites and specimens of ethnographic objects and archival materials. However the government did not agree that we have title to these items.

This archeological and ethnographic record of Nunavut is our cultural property. It provides the historic link with our ancestors. We have an unextinguished aboriginal right to this material and the government must recognize this.

Recommendations:

1) The federal government should recognize the right of Inuit to participate in the adaptation of the social and cultural institutions of Nunavut so that they are compatible with Inuit culture. Inuit should be able to negotiate meaningful participation in policy formulation, decision-making, and program development and delivery in the following areas:

- i) language
- ii) education
- iii) justice
- iv) health and medical services
- v) housing

- vi) social assistance and welfare services
- vii) communications

3) Federal policy should allow Inuit to negotiate the right to a level and quality of services in the social and cultural areas comparable to national standards.

4) Federal policy should ensure that adequate and appropriate social and cultural services will be financed from the public purse, not from capital funds acquired from claims negotiations.

5) Federal policy should recognize the right of Inuit to negotiate official language status for Inuktitut in Nunavut.

6) The new policy should affirm that the archeological and ethnographic record of Nunavut comprises an essential element of the Inuit cultural heritage, and should recognize Inuit title to the artifacts and materials that comprise this record.

12. ABORIGINAL MATTERS

There are two matters that are solely of Inuit concern -- the settlement of overlapping claims with other aboriginal claimants, and the development of criteria for and the process of enrolment of the beneficiaries of the settlement. We alone are best able to handle these matters.

12.1 Overlap

Inuit use lands, waters and resources that overlap with six other aboriginal peoples. An overlap agreement has been reached with the Inuvialuit of the Beaufort Sea region and it is expected that an overlap agreement with the Dene/Metis of the NWT will be reached in the fall of 1985. Other overlap agreements must be reached with the Chipewyan of Manitoba and Saskatchewan, the Inuit of Northern Quebec, and the Inuit of Labrador.

An unfortunate aspect of the claims process is that it requires the establishment of artificial geopolitical boundaries. Nonetheless Inuit recognize the need to define the area over which their rights will apply, and their management institutions will have jurisdiction. These overlap matters are best left to aboriginal peoples to resolve amongst themselves without government involvement unless requested by the claimants.

Recommendations:

1. Any dispute about overlapping claims should be resolved by the native claimants.
2. Negotiations between a claimant group and the government may proceed even though there may be an overlap dispute.
3. Government should not interfere with the resolution of overlapping claims unless requested to do so by one of the parties.
4. Any overlap agreement made between the claimants groups should be incorporated into the final agreement between the Government and the claimant group.
5. The government should provide funding for overlap negotiations.

12.2 Eligibility and Enrolment

A second matter that is solely the concern of Inuit is the process of determining eligibility and enrolling the beneficiaries of the settlement. Deciding what criteria and processes are most suitable for determining who will benefit from the agreement, and the actual enrolment of beneficiaries should be the responsibility of Inuit. A "hands-off" approach for government is important. A Land claims settlement is not just another government program and should not appear to be so. It is an agreement between two parties - the one party (the government) should not be able to tell the other party (a land claims group) who it represents. The group must determine this for itself, through a mutually agreed upon process.

The social and historical circumstances of each aboriginal group are unique. Government policy must be flexible enough to accommodate the differences. For example, in Nunavut an important matter will be the treatment of Inuit who have moved from other regions. TFN believes that each claimant group must identify its own members, without unnecessary interference from government. In the past government imposed unreasonable limitations and insisted that it take part in the actual enrolment of beneficiaries. Through negotiations, government can be assured that the process will be fair, complete, and accurate; but the group itself must provide the cultural

criteria for membership in the group and determine suitable procedures. It should also be up to the claims groups themselves to work out a means of "transferring" beneficiaries who meet eligibility requirements under another claim.

As in the past, the Government of Canada should fund the initial land claims enrolment process, but should also meet the continuing administrative costs as determined by the enrolment body. This ongoing funding would help ensure the continuing accuracy and validity of beneficiary lists. Governments should not, however, participate directly in the actual enrolment of beneficiaries, except by request of the native group concerned.

Recommendations:

- 1) Inuit should determine the criteria for enrolment under the settlement and how the enrolment will be conducted.
- 2) The question of whether a particular claim should include as beneficiaries those who may have enrolled under a previous settlement should be decided by the claimant groups involved.
- 3) Government should not be involved in the enrolment of beneficiaries except at the request of the claimant group.
- 4) Government should meet the costs of both initial and ongoing enrolment, as determined by the enrolment body.

13. THE RELATIONSHIP OF CLAIMS TO POLITICAL DEVELOPMENT IN
NUNAVUT

The achievement of Inuit political aspirations has been one of the main goals of our claim negotiations. Without this, Inuit are not prepared to settle. The continuous erosion of our culture, society, economy and system of political expression has created a situation of anger and despair. Once independent and responsible for all aspects of our lives, we have been rendered powerless.

Through the claims process, Inuit are working to regain what has been lost -- a measure of political control and the responsibility for making decisions that affect our lives. This, however, has been unacceptable to government. Government has steadfastly refused to negotiate political elements in the claims process.

Instead government has advocated a land and cash settlement with powerless advisory bodies. None of this can satisfy the social, economic or political aspirations of Inuit. Inuit lands are not for sale nor can Inuit political needs be met through advisory roles. In reality, no element of the claim can be satisfactorily negotiated without touching on political matters. Society, culture and economy are all affected by the outcome of political decisions; so unless Inuit are able to exercise some degree of political control we will have lost all opportunity to control our lives. Thus our steadfast rejection of the government position.

The central element the 1976 Nunavut Proposal developed by the Inuit Tapirisat of Canada, the body at that time responsible for the negotiation of the Inuit claim, was the creation of a separate Nunavut Territory with a separate system of government administration. The cultural and geographical distinctiveness of the region and the problems of administering it from a distant capital required a separate system of government administration to better reflect Inuit needs.

Nunavut was to give northerners a system of public government. Inuit, as a majority, would have a major say in Nunavut's administration. This goal has never been lost sight of, and has been inextricably linked to every Inuit claims position developed since. Government has at last recognized the need to create a new territory and has committed itself to division of the NWT by 1987. But its commitment does not supplant the need to negotiate Inuit aboriginal rights in the system of public administration.

It is simplistic to say that once Inuit achieve their political goal of Nunavut there will be no need to settle claims. Inuit have aboriginal rights and title to the land. We will always be committed to the settlement of our claims. Just because Nunavut will be created does not mean that Inuit will then be satisfied with a simple deal. There is too much at stake, and our position would be precarious.

For example, a shift in the demographics of Nunavut may one day make us a minority. We cannot trust entirely the process of political development.

We look to our claim to protect our aboriginal interests by gaining a certain measure of political control. This will be achieved in two ways. First, we need a systematic and rational approach to development - the establishment of management boards making decisions regarding wildlife, land use, water use, environmental impacts, and economic development. The jurisdiction of these administrative boards, which will have representatives appointed by Inuit, federal government, and territorial government, will be the entire Nunavut Territory.

Secondly, we need guarantees that Inuit will always have a significant say in lands and resources management systems, and in social and economic institutions.

TFN prepared a Land and Resources document outlining a system that would ensure our rights in management. Although Inuit and government have been negotiating various provisions of this document for the past three years, there is still a reluctance on the part of government to change the current system or guarantee Inuit a meaningful role in management.

The administrative bodies established by the settlement of our claim must be decision-making bodies, not advisory. Inuit will not settle for advisory roles. Thus, the successful completion of claims negotiations requires explicit recognition in the new federal policy of the necessity to include political matters in comprehensive claims negotiations.

Some measures of self-government would then be achieved in the claims process, and thereby be protected under Section 35 of the Constitution. However, other aspects of aboriginal self-government may only be achieved through the creation of Nunavut. We believe it is essential that the Constitution be amended, through the First Minister's Conferences, to explicitly recognize the aboriginal right of self-government in order to give protection to those aboriginal components of Nunavut.

Political development and claims matters also come together in another area -- that of determining a boundary for a Nunavut Territory. Although a claims boundary and a Nunavut boundary are to be negotiated under two separate processes, it makes sense that the political boundary be the same as the claims boundary.

The claims boundary is to be based on the land use of the native claimants. It is required to define the

geographical extent of jurisdiction of the administrative institutions established under each settlement. Since all boards established under the Inuit claim are to have jurisdiction throughout the claim area and are geared to a Nunavut system of public administration, it only makes sense that the geographical scope of Nunavut and the claim area be one and the same. It would be an administrative nightmare to manage a claims settlement area under two separate systems of territorial administration, since many of the rights of the settlement will be participation in various administrative boards.

The jurisdiction of the administrative boards we propose is the entire Nunavut Territory. Through Inuit representation on the Boards and our participation in their management we are tied directly into the process of Nunavut public administration. From the practical point of view, then, the political boundary must be consistent with the claims boundary.

Another major concern of ours is the present policy of devolving federal powers to the Government of the Northwest Territories. We firmly believe in self-determination for northern peoples. However, we are concerned that if the powers of the current territorial government are greatly expanded, it will lose its commitment to division of the

Territories. Moreover, many of the areas that are currently being devolved without consultation with us are topics where an agreement-in-principle has been reached between TFN and the federal government, or which are subjects for future negotiations. We recommend that there be no more devolution of powers to the GNWT without our consent until division occurs.

Recommendations:

1. Given the interdependence of political matters with claims topics, the federal government should recognize the necessity of including political matters in the negotiations of land claims settlements.
2. Since the political development appropriate for each claimant group will vary, claimants should be permitted to design systems relevant to their own individual needs through the process of negotiations.
3. Federal policy should recognize and support the creation of Nunavut through division of the Northwest Territories.
4. The government should make its best efforts to amend the Constitution to explicitly recognize the aboriginal right to self-government.
5. Federal policy should recognize the principle that the political boundary for division of the Northwest Territories should be consistent with the claims boundary.

6. There should not be any more devolution of federal powers to the Government of the Northwest Territories without our consent until division occurs.

14. MANAGING THE SETTLEMENT

14.1 Training

As the prospects for a final agreement become greater, the issue of training becomes of more critical importance to the Inuit. The prospect of entering the implementation phase of the settlement without an adequate pool of qualified personnel is not a heartening one.

It is a rather absurd proposition to provide Inuit with a claims settlement without also providing us with the skills to manage it. The overriding purpose of a comprehensive land claims settlement is to provide Inuit in Nunavut with the means to achieve greater self-determination. To achieve this goal, a variety of new institutional mechanisms will be created to ensure Inuit have a role in decision-making on matters affecting them. In order to function effectively, these new institutions are going to require personnel who are trained in a wide variety of knowledge and skill areas, such as financial administration, human resource management, communications, policy analysis, and program planning and evaluation. Each organization will also require staff with specific technical knowledge and skills in accordance with its specialized function -- archaeologists, zoologists, economists, planners.

There are, at present, very few Inuit with the knowledge and skills needed to qualify for the kind of positions

described above. This is especially the case in the critical areas of senior and middle management. The vast majority of Inuit currently employed in the N.W.T. public service are in the support sector, i.e., clerical and maintenance. While Inuit will retain guaranteed positions on the boards created by the settlement the most influential positions will continue to be those held by the senior administrative and technical staff. Without access to these positions, the effectiveness of the new institutions as vehicles for greater Inuit participation will be compromised.

Inuit should fill the jobs created by the new structures. It would appear to be in the government's own best interest to see that they are fully qualified to do the job. Government will want to assume that these bodies are managed in accordance with its own established administrative standards, and will be relying on these agencies to work smoothly. But with untrained personnel, the organizations proposed would simply not function.

If, on the other hand, the lack of qualifications were to preclude Inuit from assuming positions of responsibility in many of the new institutions created on their behalf, then the vacuum would undoubtedly have to be filled by an army of southern "experts" and "technicians". Reliance on such "experts" would seriously undermine the success of the land

claims settlement.

In order to avoid these eventualities, a major new training effort must be undertaken before a settlement is finalized. Neither the government nor the Inuit can afford to wait until a Final Agreement before taking action. TFN has tried, with little success, to convince government to provide appropriate training programs prior to finalization. Our requests for monies have been met with a flat "No". Although TFN was successful in getting some monies for a fieldworker training program through existing funding sources, the monies and the program fell well short of meeting longer term needs. TFN, although clearly concerned about the need for training, does not have the budget or the personnel to carry out such a task itself.

Government has long accepted the financial responsibility for training the workforce for the private and public sectors in the South. In this context, it would be unreasonable and even discriminatory for it to expect the Inuit to assume responsibility for their own extensive training needs, i.e. through the use of settlement monies. Training must be publicly funded. Existing government programs should be utilized to the greatest extent possible, but those programs should be made adaptable to the particular needs of Inuit preparing for the implementation of a land claims settlement. The

co-ordination of existing programs should be pursued in conjunction with the Task Force on Inuit Management Development.

One necessary condition is that training should be conducted in the North, to the greatest extent possible. As well as reducing the costs and the eventual attrition rates, this would significantly enhance the opportunities for women to take advantage of career possibilities.

Allowance should also be made to enable TFN to conduct in-house training programs as the need arises. This requires that funding sources be easily accessible, with programs designed with Inuit needs in mind. While in-house programs can never be expected to deal with all the training needs of Inuit, they do offer the advantage of flexibility and efficiency i.e., they allow specific training needs to be met until formal institutional programs are established.

Time is running out, but it is not yet too late to commence training programs if the political and financial commitments are made. Government seems prepared to establish independent administrative bodies that will share the responsibilities for resource management, and also seems prepared to share resource revenues with native peoples. In the interests of sound public government and

the welfare of native peoples, it should also ensure that they have the skills to manage them.

A political and financial commitment to train Inuit before the final settlement would go a long way to ensure effective implementation and administration. Without the commitment, management will be extremely difficult and ultimately we will be forced into hiring skilled non-Inuit, thereby denying ourselves the much needed employment opportunities associated with a settlement. By not providing adequate training for Inuit now, government would be missing a significant opportunity to alleviate some of the widespread unemployment facing Inuit in the future. by not providing adequate training for Inuit now.

Recommendations:

1. Training for positions created by the claims agreement should be undertaken as soon as possible, and should not wait until after a final agreement is concluded.
2. Such training should be conducted in the North, to the greatest extent possible.
3. Training should be publicly funded.
4. Existing government programs should be adapted to the special needs of Inuit preparing for the implementation of a claims settlement.

5. Funding sources should be easily accessible for TFN to be able to conduct in-house training programs where the need arises.

14.2 Implementation

It is likely that at the time of our final settlement, the problems of implementation will be no different from those experienced by the Inuvialuit or the James Bay Inuit and Cree. Differences in the interpretation of the settlement provisions, financial restraints, and in some cases the lack of political will to implement the settlement, will create headaches for bureaucrats and Inuit. As well, given the size of the Nunavut claim area and the wide distribution of communities, the cost of implementation will be high.

Implementation requires careful long-term planning, proper financial backing, and agreement by both parties as to what the settlement is intended to do and how it is expected to do it. A narrow interpretation of the intent of the settlement, and a parsimonious funding of boards and staff is in neither parties' interest. An implementation time table is necessary.

Members of boards and bodies will incur transportation and accommodation costs as they travel to meetings from remote communities over great distances. In the COPE Settlement region, an estimated 1/3 of the implementation cost was attributable to transportation associated with meetings. In Nunavut, an area four times the size with more than four times as many communities and five times the population, it

can be expected that the implementation cost will be much greater. Transportation and accommodation costs will remain a constant expense over time. This is not only of concern from a financial point of view but also in costs of time. Many managers and administrators will be expected to spend frequent and extended periods of time away from their families and communities. Given the close family ties and nature of our society, constant worry about family and friends and the longing to be home will detract from the ability of many Inuit managers to focus on their tasks.

These problems relating to time and money can be overcome for the most part. As part of the settlement, Inuit need access to an up-to-date system of data and audio-visual communication. Such technology would allow many business and management functions to be carried on from isolated communities without the need to travel or the associated costs. Data transmission through the use of computers, telecommunication and satellite technology is becoming more diversified, effective and cost efficient. The placement of appropriate technology in each community with properly trained specialists to operate it would permit an effective and less costly system of settlement administration. It is not just Inuit who require access to modern communications technologies. Government at the community, regional, territorial and federal levels needs to communicate, too. Appropriate communications facilities in each community,

with guaranteed Inuit access, will reduce costs in the short and long term.

Once agreements-in-principle have been initialled it may be appropriate to have some of them implemented immediately. For example, if the TFN Wildlife Agreement-in-Principle were to be implemented, continuous requests for funding to establish interim wildlife management boards, harvest studies, and the ongoing problems associated with wildlife quotas and regulation would be unnecessary. Other agreements in principle may not be appropriate for immediate implementation. Therefore the policy should allow for the implementation of individual agreements in principle prior to the signing of a final agreement.

A particular problem we encountered was with respect to the Land Use Planning Provisions of an Agreement-in-Principle which was initialled July 24, 1984. The government initialled those provisions on the assumption that the planning process would come into effect only upon the establishment of a Nunavut territory. TFN's assumption is that these provisions will be implemented at the time settlement legislation is proclaimed. Both parties agreed to re-evaluate these provisions at the Final Agreement stage. Though all of our management bodies are geared towards the creation of a Nunavut Territory, we believe that all provisions for management can be implemented to

cover our claim area even if Nunavut is not in existence. Therefore the provisions of a final agreement should be implemented and monies transferred upon the signing of the final agreement without waiting for the passing of legislation.

We are also concerned that once a final agreement is signed the government may decide to ignore some of its commitments made under the agreement. Therefore we recommend that an independent body be established which can arbitrate disputes which arise between the parties. This body would be composed of an equal number of appointees from the government and native groups. This independent body should have the power to force either party to perform any of the conditions which it is not complying with and to award compensation if necessary.

Recommendations on Implementation

1. A timetable should be established to ensure timely implementation of the agreements.
2. Where appropriate individual agreements in principle may be implemented prior to a final agreement.
3. Once a final agreement has been signed it should be implemented immediately even if settlement legislation has not been passed.
4. The implementation process should be funded by government.

Recommendations on Effect of Agreements-in-Principle

1. The intent of all Agreements-in-Principles should be binding unless both parties agree to renegotiate the provisions.

Recommendations on Communications Systems for Implementation

1. Due to the vast area of the TFN claim, the Inuit of each community should be provided with an up-to-date system of data and audio-visual communication.
2. Government should provide training to Inuit on how to use these systems.

Recommendations on Arbitration for Settling Disputes:

1. An independent tribunal should be established for each claim to monitor and enforce the settlement.
2. This tribunal should be composed of an equal number of appointees from the government and the native group.
3. This tribunal should have the power to order either party to meet any of the conditions which it is not complying with.

15. PROCESS

Settling claims through the process of negotiations is as a general principle, a sound approach. But, there are problems with the process. TFN, having been involved in negotiations for four years, is in a position to make some positive recommendations.

The Federal Chief Negotiator must have the confidence and respect of both parties. Unilateral appointment by government without consultation is not the way to create a reasonable atmosphere for negotiations. Inuit have a lot at stake and must be consulted on the appointment. They must be able to veto individuals who may be entirely unsuitable.

The Federal Chief Negotiator should be appointed by the whole Cabinet. In this way, he or she will have the confidence of the entire government. Individual government departments would be less likely to block progress in particular negotiations, as has occurred with our Wildlife Agreement-in-Principle.

The Federal Chief Negotiator should have his or her own budget and staff. At present, these are provided through the Office of Native Claims. Although highly competent and dedicated people, their ability to provide independent advice is compromised by the fact they are part of the

government bureaucracy. Although their knowledge of the bureaucracy, its workings and political machinations, is important it should not overshadow the need for independent advice -- something that can best be achieved through independent funding and staffing.

The process of negotiation is lengthy for two reasons: the subject being discussed is sometimes outside the mandate of the Federal Chief Negotiator; or, secondly, government does not have a policy on the matter being discussed and the federal side must wait for an answer from the bureaucracy.

The first problem could be solved if the claims policy was broader in scope. This requires a forthright recognition of the political elements of a claim: the need to negotiate management boards with decision-making powers; the need to negotiate uncapped resource revenue sharing agreements; and need to negotiate provisions dealing with the offshore.

The second problem could be solved if the Federal Chief Negotiator had direct access to both politicians and senior level bureaucrats to ensure that their directives are compatible. This could take the form of high level meetings in which Inuit may be present to state their case.

We believe that the GNWT may continue to be present at the

negotiating table, but only with our consent. Ultimate responsibility should never be divided: the federal chief negotiator must negotiate on behalf of Canada and the GNWT at all times.

Another problem with the process of negotiations relates to the subsequent status of initialled documents. Government is apparently reneging on the Wildlife Agreement-in-Principle initialled four years ago. Not only is it immoral to break a deal, it also makes the process of bargaining in good faith impossible. Once initialled, an agreement should stand unless both parties agree otherwise.

As evidence of its good faith in conducting negotiations to resolve claims, the government should agree not to rely on the Statute of Limitations, if legal action is commenced. If negotiations break down and our claim is litigated, we should not be threatened by the technical defence of the Statute of Limitations.

Recommendations on the Federal Chief Negotiator.

1. The Federal Chief Negotiator should be independent of the government bureaucracy.
2. The Federal Chief Negotiator should be appointed by Cabinet after consultation with the claimant group.

3. The Federal Chief Negotiator should be given a budget so that he/she may hire staff who are independent of the civil service.

4. The Federal Chief Negotiator should have direct access to cabinet to receive direction on difficulties which arise in negotiation.

Recommendations on Negotiations:

1. The negotiation process is sacrosanct.
2. There should not be a legislated process.
3. The government should agree not to rely on the Statute of Limitations if a claim based on aboriginal rights goes to court.

16. SEPARATE NORTHERN POLICY

Inuit believe that the new policy should meet the specific needs of each claimant group. What is appropriate in British Columbia might not be appropriate in Quebec, nor north of 60.⁰ Therefore if what Inuit require is different than claimant groups situated in the provinces, we submit that a special northern policy is justifiable. There are numerous reasons. First, we are the majority in the Nunavut region. Second, the Nunavut region is administered only by the federal government, so provincial claims to the lands and resources are inconsequential. Third, the government commitment to division of the NWT offers a wider range of possibilities for political development than those available from the provinces.

Recommendations:

1. We recommend that the new policy recognize the diverse nature of each native group's particular situation and accommodate these diverse interests, and if necessary the Federal Government may establish a separate northern policy for claims in the Territories which is not unnecessarily constrained by provincial considerations.

17. A New Policy

Throughout this submission we have touched on a number of specific topics and made recommendations that we feel are essential for the successful negotiation of our claims settlement. We have not dealt with all subjects relevant to the claim. It can be assumed there is no serious problem with federal policies in regard to the subjects omitted. The omissions do not imply any lack of importance for these subjects.

The new federal comprehensive claims policy which emerges as a result of this Task Force must be clear. It should recognize the legal basis for land claims, and should set out clearly the framework within which the federal negotiating team will work. However, it should not be so specific that the negotiators will not be able to deal with the particularities and individual needs of each claimant group.

If the new policy is to be successful it must allow for a claims settlement that will deliver to Inuit the control over our lives, social customs, and economic resources that will be necessary in the future.

Recommendations:

1. The new policy must recognize that the negotiation process is based on legal rights as well as moral obligations.
2. The new policy must be clear but flexible enough to meet the particular needs of each claimant group.

PART II - RECOMMENDATIONS

8. RECOMMENDATIONS

Extinguishment

1) The federal government policy should no longer insist on extinguishment as a pre-condition for a settlement.

Wildlife

1. Inuit's right to hunt, trap and fish, throughout the Nunavut area should not be limited.

2. The principles of conservation should recognize that wildlife is a resource which can provide economic opportunities.

3. Inuit should be compensated for any loss of harvesting opportunities caused by development.

4. Government should recognize the importance of harvesting studies and commit monies to fund them.

5. Government should recognize the economic and cultural importance of harvesting activities and should negotiate programs to support and promote the renewable resource sector.

Offshore

- 1) The federal policy should specifically include the offshore as a topic for negotiation.
- 2) The policy should also expressly include the recognition of Inuit rights to offshore resources, to their management, and to resource revenues.

Decision-Making

1. All administrative Boards created through the comprehensive claims process have:
 - i) the power to make decisions;
 - 2) the powers of a Commissioner under Part I of the Inquiries Act;
 - 3) the ability to issue licenses.
2. Inuit beneficiaries, where appropriate, or a Designated Inuit Organization should have the status to appear before an administrative board and the status to have the Board's decisions judicially reviewed.

Land Selection

1. The purpose of Inuit land title shall be for economic self-sufficiency of Inuit, for purposes of wildlife conservation, and for cultural purposes.

2. Land selection should be permitted anywhere in the claim area notwithstanding third party interests. Third party interest holders should be compensated by the government.
3. No new third party interests should be created prior to the settlement of claims.
4. All land title should be fee simple absolute including all minerals whether solid, liquid or gaseous and all granular materials.
5. Land selection should be done on a community by community basis taking into account each community's needs.
6. Government should fund the land identification process and it should not be costed against the settlement.
7. Once selected, Inuit lands should not be subject to expropriation.

Compensation

- 1) The government should no longer view capital transfers under the settlement as cash compensation for the sale of rights and title.
- 2) The government should recognize the need to negotiate significant capital funds for economic and social development under Inuit control.
- 3) Expenses incurred by government in other parts of the settlement should not be written off against the capital funds.

4) The government's need to cost the total settlement should not take away the flexibility necessary to negotiate vehicles for capital transfers that may be to the benefit of both parties.

Taxation

- 1) Government should recognize that certain ongoing investment, interest, royalty, and other payments are in certain circumstances providing capital to Inuit rather than income and should not be taxable.
- 2) It should be possible to negotiate special tax status for organizations and agencies under the land claims settlement, the specific status of each to be dependent on its nature and function.
- 3) When tax laws applying to organizations set up under the final settlement change, these organizations should be allowed to choose whether they are subject to application of the previous law or of the new law.
- 4) Inuit lands identified under the land claims settlement should be granted tax-free status with regard to all property taxation.

Resource Revenue Sharing

- 1) The federal government should include subsurface rights in comprehensive claim settlements. These subsurface rights may take a variety of forms depending upon the circumstances of the individual claim. Hence government should be prepared to entertain the possibility of royalty interests, and proportional shares of the mineral interests as well as outright ownership of the subsurface estate.
- 2) Policies applying to capital transfers should make clear that they do not apply to transfers of land or interests in land.

Government Economic Policies and Programs

- 1) The new policy should recognize that Inuit have the right to negotiate meaningful participation in planning and delivery of government economic programs.
- 2) The federal government should not devolve, without the consent of the Inuit, major economic programs to the Government of the Northwest Territories until completion of land claims negotiations.
- 3) Unless agreed to by the parties, proposed settlements should not diminish the eligibility of beneficiaries to current and future government economic programs.

Social and Cultural Development

1) The federal government should recognize the right of Inuit to participate in the adaptation of the social and cultural institutions of Nunavut so that they are compatible with Inuit culture. Inuit should be able to negotiate meaningful participation in policy formulation, decision-making, and program development and delivery in the following areas:

- i) language
- ii) education
- iii) justice
- iv) health and medical services
- v) housing
- vi) social assistance and welfare services
- vii) communications

3) Federal policy should allow Inuit to negotiate the right to a level and quality of services in the social and cultural areas comparable to national standards.

4) Federal policy should ensure that adequate and appropriate social and cultural services will be financed from the public purse, not from capital funds acquired from claims negotiations.

5) Federal policy should recognize the right of Inuit to negotiate official language status for Inuktitut in Nunavut.

6) The new policy should affirm that the archeological and ethnographic record of Nunavut comprises an essential element of the Inuit cultural heritage, and should recognize Inuit title to the artifacts and materials that comprise this record.

Overlap

1. Any dispute about overlapping claims should be resolved by the native claimants.
2. Negotiations between a claimant group and the government should proceed even though there may be an overlap dispute.
3. Government should not interfere with the resolution of overlapping claims unless requested to do so by one of the parties.
4. Any overlap agreement made between the claimant groups should be incorporated into the final agreement between the Government and the claimant group.
5. The government should provide funding for overlap negotiations.

Eligibility and Enrolment

- 1) Inuit should determine the criteria for enrolment under the settlement and how the enrolment will be conducted
- 2) The question of whether a particular claim should include as beneficiaries those who may have enrolled under a previous settlement should be decided by the claimant groups involved.
- 3) Government should not be involved in the enrolment of beneficiaries except at the request of the claimant group.
- 4) Government should meet the costs of both initial and ongoing enrolment, as determined by the enrolment body.

The Relationship of Claims to Political Development in
Nunavut

1. Given the interdependence of political matters with claims topics, the federal government should recognize the necessity of including political matters in the negotiations of land claims settlements.
2. Since the political development appropriate for each claimant group will vary, claimants should be permitted to design systems relevant to their own individual needs through the process of negotiations.
3. Federal policy should recognize and support the creation of Nunavut through division of the Northwest Territories.
4. The government should make its best efforts to amend the Constitution to explicitly recognize the aboriginal right to self-government.
5. Federal policy should recognize the principle that the political boundary for division of the Northwest Territories should be consistent with the claims boundary.
6. There should not be any more devolution of federal powers to the Government of the Northwest Territories without our consent until division occurs.

Training

1. Training for positions created by the claims agreement should be undertaken as soon as possible, and should not wait until after a final agreement is concluded.
2. Such training should be conducted in the North, to the greatest extent possible.
3. Training should be publicly funded.
4. Existing government programs should be adapted to the special needs of Inuit preparing for the implementation of a claims settlement.
5. Funding sources should be easily accessible for TFN to be able to conduct in-house training programs where the need arises.

Implementation

1. A timetable should be established to ensure timely implementation of the agreements.
2. Where appropriate individual agreements in principle may be implemented prior to a final agreement.
3. Once a final agreement has been signed it should be implemented immediately even if settlement legislation has not been passed.
4. The implementation process should be funded by government.

Effect of Agreements-in-Principle

1. The intent of all Agreements-in-Principles should be binding unless both parties agree to renegotiate the provisions.

Communications Systems for Implementation

1. Due to the vast area of the TFN claim, the Inuit of each community should be provided with an up-to-date system of data and audio-visual communication.
2. Government should provide training to Inuit on how to use these systems.

Arbitration for Settling Disputes

1. An independent tribunal should be established for each claim to monitor and enforce the settlement.
2. This tribunal should be composed of an equal number of appointees from the government and the native group.
3. This tribunal should have the power to order either party to meet any of the conditions which it is not complying with.

Effect of Agreements-in-Principle

1. The intent of all Agreements-in-Principles should be binding unless both parties agree to renegotiate the provisions.

Communications Systems for Implementation

1. Due to the vast area of the TFN claim, the Inuit of each community should be provided with an up-to-date system of data and audio-visual communication.
2. Government should provide training to Inuit on how to use these systems.

Arbitration for Settling Disputes

1. An independent tribunal should be established for each claim to monitor and enforce the settlement.
2. This tribunal should be composed of an equal number of appointees from the government and the native group.
3. This tribunal should have the power to order either party to meet any of the conditions which it is not complying with.

Federal Chief Negotiator

1. The Federal Chief Negotiator should be independent of the government bureaucracy.
2. The Federal Chief Negotiator should be appointed by Cabinet after consultation with the claimant group.
3. The Federal Chief Negotiator should be given a budget so that he/she may hire staff who are independent of the civil service.
4. The Federal Chief Negotiator should have direct access to Cabinet to receive direction on difficulties which arise in negotiation.

Negotiations

1. The negotiation process is sacrosanct.
2. There should not be a legislated process.
3. The government should agree not to rely on the Statute of Limitations if a claim based on aboriginal rights goes to court.

Separate Northern Policy

1. We recommend that the new policy recognize the diverse nature of each native group's particular situation and accommodate these diverse interests, and if necessary the Federal Government may establish a separate northern policy for claims in the Territories which is not unnecessarily constrained by provincial considerations.

Final Recommendations:

1. The new policy must recognize that the negotiation process is based on legal rights as well as moral obligations.
2. The new policy must be clear but flexible enough to meet the particular needs of each claimant group.

PART III - APPENDICES:

SUPPORTING DOCUMENTS ON SPECIFIC TOPICS

A. EXTINGUISHMENT

A.1 POLICY ON EXTINGUISHMENT OF ABORIGINAL RIGHTS

The Inuit of Nunavut accept that, whether we like it or not, the gradual annexation of Nunavut to the southern Canadian economy and social and political institutions is irreversible.

The only question is: on whose terms is that annexation to be carried out, and who will benefit?

The Federal Government has repeatedly stated publicly that as a pre-condition to settling land claims based on aboriginal title, title must be extinguished in return for the benefits that will accrue to the Inuit under the Land Claims Settlement.¹

TFN's policy on extinguishment is clear: That the Federal Government no longer insist on extinguishment of the Inuit's aboriginal title as a pre-condition for a land claims settlement.

1. Communique, Minister of Indian Affairs & Northern Development, the Hon. Jean Chretien 8 August, 1973; Hon. John C. Munro, In All Fairness: A Native Claims Policy-Comprehensive Claims (Ottawa: Supply & Services, 1981).

A Critique of Federal Policy

Federal Government policy on extinguishment rest on two basic concepts -- certainty, and finality.

TFN understands the concept of certainty to mean that clear rights will emerge and benefit both sides, and present doubts as to aboriginal title, and Federal Government legal capability of implementing its resource development policies, will be overcome.

The concept of finality means a once-and-for-all deal. The Inuit must now determine the lives of future generations.

The Federal position amounts to this: no-one knows what aboriginal rights are. They are vague and uncertain. Therefore, by extinguishing aboriginal rights in return for a set of clear rights under a settlement, everyone will know the rules.

TFN rejects the concepts of certainty and finality on several grounds.

Even if it be admitted, for the sake of argument, that Inuit territorial rights are vague and uncertain because their precise incidents cannot be exhaustively defined,

that is the best reason for not having them extinguished. Inuit would not know what they were giving up if they agreed to extinguishment.

While it is obviously in everyone's interest to know the rules, any rules proposed within the framework of the present Federal Government policy are far too narrow and restrictive. They do not deliver sufficient political and decision-making power to the Inuit.

Experience at the negotiating table, particularly the Federal Government's refusal to adopt the Agreement-in-Principle on wildlife management reached in Frobisher Bay in October 1981, means to us that an exchange of undefined aboriginal land rights for concrete rights and benefits is simply not worth it.

Further, the Federal Government policy on finality goes only one way. A once-and-for-all settlement means that it is the Inuit who have to take all of the risks. The James Bay settlement is a good example. Defective drafting, important omissions, and hostile administrative and political policies on the part of the federal and provincial governments have all undermined the Inuit's efforts to make that settlement work.

Designing a land claims settlement on paper is one thing.

Implementing it is something quite different. Meanwhile, the government benefits from a certain set of rules. Inuit plainly suffer.

The only justification for the concept of finality that TFN can understand is that the Canadian taxpayer will want to know how much the Nunavut land claims settlement will cost.

In fact, the financial aspect of a comprehensive claims settlement can be addressed as an issue quite separate from extinguishment. Insofar as the cash component might consist of capital transfers to the beneficiaries, these can be easily quantified. But limiting the compensation component of a land claims settlement to capital transfers, and not allowing equity participation, a share of royalties, and other mechanisms where the benefits might be uncertain and fluctuating, must lead to the eventual impoverishment of the Inuit. It is practically impossible to predict in advance what the financial needs of the Inuit, defined as a group of people with a set of private rights based on aboriginal territorial entitlement, will need in the unpredictable future.

Accordingly, mechanisms for financing those bodies that will be put in place to promote and protect the Inuit's private and proprietary interests will have to be

developed. Thus it is vital that, whatever the overall cost of a TFN land claim settlement, Inuit beneficiaries not be forced to spend their compensation money to finance the institutions agreed to under the settlement. Those institutions must be funded from the public purse.

The Inuit of Nunavut have a deep sense of insecurity over the impact of industrial development in the north, and how it will affect our native economy and therefore social and cultural fabric.

We cannot predict the future. But we do know that the present Federal Government policy on extinguishment and the benefits it will grant in return require Inuit to take risks that the Government is not required to take. Once having extinguished our aboriginal territorial title, the federal government could subvert and sabotage the land claims settlement through inertia, if not through deliberate ill-will.

Therefore, while there may be a case for certainty and finality, it remains true to say that for the Inuit to obtain reasonable and enduring benefits, there must be a degree of flexibility in the land claims settlement. This can be done either by developing institutional power bases in which the Inuit have a real say, so that day-to-day and middle and long term problems can be dealt with at the

political level by these institutions; or by making sure the settlement can be reviewed periodically in the event that it does not work out to the Inuit's satisfaction.

For these reasons, then, TFN's policy on extinguishment remains as follows: for the Federal Government to insist on extinguishment of the Inuit's aboriginal title as a pre-condition to a land claims settlement is to load the dice against the Inuit, and to rob the negotiating process of the flexibility that is necessary to arrive at a settlement that properly protects the legitimate interests of the Inuit. Therefore, TFN submits that the Federal Government should no longer insist on extinguishment of the Inuit's aboriginal title as a pre-condition for a land claims settlement.

Some Other Concerns of TFN

Notwithstanding the policy and reasons supporting it, TFN recognizes that other comprehensive claimant groups may well desire a degree of flexibility on the problem of extinguishment, and may make recommendations to the Task Force with which TFN does not agree. Those groups are the best judges of their own interests, and TFN adopts a neutral position in that regard.

However, TFN believes that whatever the outcome of the

debate on extinguishment, and no matter what the details of the various policy positions advocated by other claimant groups are, there are several issues that must be regarded as being beyond argument.

Accordingly, without in any way derogating from the basic policy previously explained, TFN wants to draw the Task Force's attention to the following matters.

There is no need for Extinguishment North of 60

TFN believes there is no legal or constitutional impediment to the Federal Government adopting a policy on extinguishment that applies differently in Nunavut compared to the Provinces.

TFN recognises that Canada is a Federation, and that a Province has a legitimate interest in federal policy towards the Indians and Inuit in a province.

Also, because an aboriginal title appears to be only alienable to the Crown, when that title is conveyed to the Crown by the title-holders, the benefit of that conveyance enures to the Crown which can lay claim to what is said to be the title underlying the aboriginal title.²

2. See the accompanying document, "A Brief Statement on the Legal and Constitutional Issues relating to Aboriginal rights in Nunavut", n.20.

Accordingly, provincial co-operation in land claim settlements appears to be necessary not only to the federal government, but also to the native parties involved.

That legal position, however, simply does not prevail within Nunavut. If the Inuit need to convey their aboriginal title to the Federal Government, it is the Crown in right of Canada that benefits from that conveyance. Within Nunavut, the federal government therefore has a free hand. There is no legal difficulty in adopting a non-extinguishment policy north of 60°. It is merely a question of political will.

There can be no Extinguishment without the Consent of the Inuit

Finally, there can be little argument that the Federal Government cannot unilaterally and without the Inuit's consent extinguish the Inuit's aboriginal rights of whatever sort, territorial or other.³ For those rights are entrenched in the Constitution Act 1982, which is the supreme law of Canada and beyond the reach of a simple Act of Parliament.

3. Ibid.

Accordingly, if the Federal Government insists on maintaining the requirement of extinguishment in order to sub-serve the principles of certainty and finality, that federal policy can only be implemented with the consent of the Inuit of Nunavut.

The past policy of extinguishment achieved the government's goal of certainty and finality. However, the method was excessive. The clause in the COPE Final Agreement is a good example. The Western Arctic (Inuvialut) Claims Settlement Act enacts that "All native claims, rights, title and interests, whatever they may be, in and to the Territory, of all Inuvialut, wherever they may be, are hereby extinguished,"

That clause goes far beyond what is necessary. TFN sees absolutely no reason why the Inuvialuit were required to extinguish aboriginal rights such as customary marriages, adoption and divorce, testamentary succession, transmission of goods inter vivos or by contract generally relating to the personal property and civil rights of the Inuvialuit arising under their own local customary law.

TFN is adamant on this issue, and says it is oppressive in the extreme for the Government to intrude so deeply into the Inuit's view of the world as to require an extinguishment clause as wide as that in the COPE

Agreement. TFN denounces that clause as a gross form of colonialism and paternalism.

A.2 LEGAL AND CONSTITUTIONAL ISSUES RELATING TO ABORIGINAL
RIGHTS IN NUNAVUT

The Federal Government claims the legal right within Nunavut to grant away the land from under the feet of the Inuit without having first obtained a surrender of the land from them. These grants inevitably undermine the Inuit's capability of continuing to live as they want to, and to promote their own view of the world. The Federal Government's claim amounts to nothing less than a denial to the Inuit of access to their own resources.

The Inuit oppose federal government policy on a number of grounds, one of them being that it is subversive of their aboriginal territorial rights. This opposition immediately throws into question the validity of the Crown's claim to own the land so that it can do what it likes with it. What is the basis of the Inuit case?

THE TRADITIONAL VIEW : A MERE LICENCE TO OCCUPY

The traditional view of the legal rights of the aboriginal inhabitants of North America, as expounded by the American Courts, is that the simple fact that these inhabitants were in possession before their territories were claimed by the English King by discovery is irrelevant. It certainly does not mean that they have enforceable rights

against the Crown. Rather, although they are not trespassers on the Crown's land, they are licensees, with mere rights of occupancy at the sufferance of the sovereign. Furthermore, the Crown as discoverer has an absolute power to extinguish that licence to occupy, either by purchase or by conquest.¹

Enforceable Rights Arise only where the Crown Has
Recognised Them

Thus the only way in which the aboriginal peoples can acquire legal rights is for the Crown to grant them to the Inuit. But in that case, the right is derived not from the fact of the aboriginal people being in possession before the assertion of territorial sovereignty over their homelands, but because the Crown has given away the land to the Inuit, just the same way as it can give away the land of Ontario to a farmer or a mining company. In law, the source of the right is the same, and that source is the Crown.

In sum, if the Crown has not recognised their territorial rights in some way there is nothing to prevent the Crown from granting away the land and ignoring the Inuit interest.² It can make a blanket grant of land, because the Inuit have no legal rights simply because they are aboriginal people.

THE DIFFICULTY WITH THE TRADITIONAL VIEW

While there is much that is defensible in this explanation of the relationship between the legal rights of the Crown and the rights of the aboriginal inhabitants, there is also a great deal which is demonstrably wrong in law, and also as a matter of historical fact. There is absolutely no reason why the Canadian Courts should uncritically follow American doctrine. This was understood as long ago as 1839 by James Stephen, permanent Under-Secretary to the Colonial Office. Speaking in relation to Johnson v M'Intosh, a leading case decided by Chief Justice John Marshall in 1823, Stephen said that the effect of that decision was that "the whole territories over which those Tribes wandered was to be regarded as the property of the British Crown in right of discovery and conquest -- and the Indians were mere possessors of the soil on sufferance." But, he added : "Such is American law. The British Law in Canada is far more humane, for there the Crown purchases of the Indians before it grants to its own subjects."³ And the seeds of this idea bore fruit in the dissenting judgment of Hall, Spence and Laskin JJ. in Calder's Case, where their Lordships held that the Nishga Indians of British Columbia had a legally enforceable right against the Crown without that right having first been recognised.⁴

The Problem of the Constitutional Status of Nunavut

The key to understanding the fate of antecedent private rights of the inhabitants of territory beyond the realm of England, and which has been acquired by the English sovereign, lies in the constitutional status of that territory or, in other words, in the way it was acquired in law.

Acquisition by Inheritance and Conquest

In this regard, when English territorial claims in the New World were first being articulated during the Age of Discovery, there were only two ways in which an English sovereign could acquire a valid legal title to territory beyond the kingdom -- by inheritance, or by conquest.

Both of these modes of acquisition had one thing in common: they involved what is called a "derivative" title. That is, because the whole world was at that time supposed to be "owned" by someone, there could be no original acquisition of title. Title had to be won from someone else. This could be done either by inheriting a kingdom, such as James VI of Scotland inheriting England and becoming James I King of England. Or, alternatively, by seizing territory from someone else, usually as a result of armed conflict and possibly followed by articles

of capitulation and a treaty of cession. Thus during this crucial and formative period of English law, English lawyers were prisoners of the medieval assumption that the whole world was in tenure, and so while territory could be acquired peacefully by inheritance, or forcibly by conquest, in each case the new sovereign derived his title from someone else. It was never a new title acquired originally.

But while inheritance and conquest were based on this common postulate, they nonetheless had crucially different consequences when it came to deciding the fate of the antecedent rights of the inhabitants of any particular territory. In an inherited acquisition, the rights of the people under their own legal system or *lex loci* survived the acquisition as a matter of law. The new King was bound by that system, and he did not import into the new kingdom his own system of law. For instance, Scot's law was not imported into England in 1603 when James VI became James I of England. The English retained their own rights under English common law.

The reason for this is simply that the new King inherited by the laws of England, not of Scotland. Thus he could not blow hot and cold, he could not take by English law, and then suddenly abolish it by processes foreign to that law. He was himself bound by the law of the new

territory.

But in a conquest, things were fundamentally different. In a territory acquired by conquest, there was a presumption that the private rights of the conquered inhabitants under their own *lex loci* survived the conquest. The simple fact of conquest did not extinguish those rights. This rule can be called for convenience "the Doctrine of Continuity". Additionally, just as in an inheritance, the conqueror did not automatically import his own law into the newly-acquired territory. English law did not run until the conquering sovereign desired it to do so. Accordingly, the conqueror had a supreme and unfettered power to rule by his royal prerogative. He was not, as in an inheritance, bound to respect those antecedent rights arising under the *lex loci*. Rather, he could abolish those private rights at will, and without being in any way accountable to the Courts for the exercise of this enormous discretionary power. This meant that no person affected by an exercise of this power could complain in the Courts if his rights were unilaterally extinguished. For, being unexaminable, the Courts had no jurisdiction to entertain a suit by an aggrieved person.

Thus although those private rights were presumed to survive, they did not survive willy-nilly as a matter of law. For because the conqueror had a supreme legislative

power, he could unilaterally extinguish those antecedent rights, unless he had somehow recognised them and disabled himself from exercising that power. This meant, simply, that the antecedent rights, though not ipso facto extinguished on a conquest, could not be asserted or enforced against the conquering sovereign unless he had recognised them.

In Calvin's Case (1608), this view as to conquest was said to be subject to a vital exception: in the case of a conquest of an infidel kingdom, the Doctrine of Continuity did not apply. Rather infidels were presumed by the law to be the perpetual enemies of Christian Kings, and their rights under their lex loci bad in themselves (malum in se) and so were instantly abrogated on the conquest. Thus the only obligation on a Christian King who conquered infidels was to rule the conquered people according to natural equity.⁵

In fact this doctrine on infidels was never invoked by English sovereigns to justify their conquests of the Indians in North America. Instead, as we shall see, the English relied less on the disabilities supposed to flow from the natives' lack of Christianity than on other grounds.

But the point, shortly stated, is that when the English conquest of North America got seriously underway in the early 17th century, the only way in which an English King could acquire a valid title to the territories occupied by the Indians and Inuit was derivatively, by inheritance or conquest. Thus acquisition by "discovery" was completely unknown to English law.

Acquisition by Discovery or Peaceful Settlement

It was widely recognised by those European sovereigns who were anxious to plunder the wealth of the New World offered by the discoveries by Christopher Columbus that some sort of justification for those acquisitive desires had to be devised.

The dictum on infidels in Calvin's Case would have justified seizing the Indians' lands, because a Christian King, as a soldier of Christ, was supposed to be under a duty to exterminate the infidel. In fact, Englishmen (with one or two exceptions) were reluctant to resort to using the Indians' religious disabilities as justification for seizing their land. Instead, Englishmen looked at the way the Indians used their land, and compared it with their own use. What they saw they did not like, and turned it to their own advantage. The main point they focused on was the apparently extravagant and wanton use

made of the land by the Indians: they did not husband it, nor did they grow crops. Instead, they merely hunted the animals. There was thus plenty of room for everyone, so the English were quite justified in emigrating.

Samuel Purchas, a propagandist for English expansion into Virginia during the 1620's, argued that all people had a natural right to expand into underpopulated territories, "especially where the people is wild, and holdeth no settled Possession in any parts". As Purchas explained it:

Thus the holy Patriarks removed their habitations and pasturages, when those Parts of the world were not yet replenished: and thus the whole world hath been planted and peopled with former and later Colonies: and thus Virginia hath roome enough for her own (were their numbers an hundred times as many) and for others also which wanting at home, seeke habitations there in vacant places, with perhaps better right than the first, which (being like Cain, both Murtherers and Vagabonds in their whatsoever and howsoever owne) I can scarsly call Inhabitants.

This perception of aboriginal land use led to the conclusion that the Indians (and by extension, the Inuit) had no rights to the land that could impede the assertion of a competing right by an English sovereign. Thus while not completely without rights, the rights accorded to the Indians were of a much lower order than legal rights. They were rights granted by the law of nature, not by the common law of England. As Purchas explained it, their right was "onely a Naturall right, by the reliques of the

Law of Nature left in Man, by the Creators goodnesse, for the conservation of the face of a world in the world".⁷

And so the aboriginal inhabitants became disqualified from having any cognizable rights, not on religious grounds, but on secular grounds: they were regarded as primitive barbarians, without settled habitation, indeed without any settled law.

With this perception it was only a short step to realise that, perhaps, the whole world was not in fact owned by someone. The Indians could not own their lands for the reasons given. Perhaps there was, after all, territory title to which could be acquired by a means other than inheritance or conquest. Perhaps an original title could be acquired?

From about 1670, this view was being suggested, and by 1765 it had taken hold.⁸ New territory could be acquired by discovery. All that had to be shown was that the territory in question was either literally devoid of any human population, or else inhabited by savage, migratory roaming tribes, hunters and gatherers, who were too primitive and barbaric to be accorded any rights of sovereignty by a civilised power.

While there were other factors at work encouraging the

development of the concept of acquisition by discovery or peaceful settlement, there can be no doubt that this gradual perception that the presence of an aboriginal population was no impediment to asserting territorial sovereignty over their lands was fundamentally linked to the fact that the inhabitants of territories that qualified to be acquired by discovery actually practised a hunting and gathering economy.

Peaceful Settlement Distinguished from Conquest and Cession

One other factor leading to this development was colonial concern as to by what law the colonists themselves were to be governed. If the original American colonies had been acquired by conquest, it followed from the rule mentioned above that English common law did not automatically run into the colonies. The colonists resented this conclusion, and so were driven to argue that the colonies had not been acquired by conquest. Rather, they were discovered territories, and so in the absence of any other law they carried with them their own English common law.

This view eventually prevailed, and so there grew up a fundamental distinction between countries acquired by conquest, and countries acquired by discovery, or, to give it another name, "peaceful settlement". This was that

English common law and English statutes enacted prior to the settlement automatically ran in to the new acquisition, at least insofar as they were suitable to the circumstances and conditions of the new settlement.

But with the common law running automatically, it followed that the King had no greater powers by virtue of his prerogative than he had within the realm of England itself. Additionally, if the territory was inhabited by aborigines, they automatically became subjects of the new sovereign, and were not enemy aliens who could be put to the sword.

Pre-Emotive Right to Acquire Title, Not Title Itself

Granted that it was now theoretically possible to obtain an original title to territory beyond the realm, how could such a title be acquired? European sovereigns argued amongst themselves over this very question. Some claimed that a symbolic act of possession (such as unfurling the royal standard, or erecting a stone cairn or a wooden cross on the beach head) delivered a full title; others argued that before a full title was acquired, symbolic possession was not enough, and acquiring title was a time-consuming process, requiring that possession be "real", "actual", or "effective" -- meaning colonisation by settlers.

English sovereigns for a long time wavered between these two views, but there is sufficient evidence to suggest that all that a discovery did was to grant a preferential or pre-emptive right to acquire title but not title itself.⁹

In Johnson v M'Intosh, Chief Justice John Marshall said that English rights in North America were based on John Cabot's discovery and symbolic act of possession in 1497. As a result of Cabot's achievements, Henry VII owned North America absolutely, though subject to the aboriginal right of occupancy above described. This explains, he said, why James I was able to grant the real estate of North America to his subjects under the colonial charters. These grants did exactly what they purported on their face to do: to convey the territory in "absolute property". This property right rested on discovery and symbolic possession.¹⁰

In Worcester v State of Georgia, Marshall changed his mind on this fundamental problem of the effect of a discovery and symbolic act of possession. In this case, far from delivering an absolute title, a discovery and symbolic act of possession merely conferred on the English sovereign an exclusive right of purchasing such lands as the natives were willing to sell. Thus a colonial charter merely asserted a title against Europeans only, and was

considered as blank paper as far as the right of the natives were concerned.¹¹

In other words, a discovery and symbolic act of possession merely conferred on English sovereigns a preferential or pre-emptive right to acquire title, but not title itself. There can be no doubt that this much more limited view of the effect of a discovery would be followed by the Canadian Courts.¹²

The Constitutional Status of the Original Thirteen Colonies

It is clear, because peaceful settlement as a method of acquiring territory beyond the realm only developed after English claims to North America had first been advanced, that the original constitutional status of the old thirteen colonies was not that of discovery or peaceful settlement, but of conquest. John Marshall's judgments are thus fundamentally a re-interpretation of this status: Marshall collapsed later developments into one proposition, and read those developments back into a past in which they were simply not relevant.

This then explains why Marshall was half right and half wrong in his explanation of the relationship between the rights acquired by English sovereigns and the rights of

the aboriginal inhabitants. He was right in perceiving that English Kings had an absolute power to do what they wanted to with the land in the colonies. But he was wrong as to the source of that power: it flowed from conquest, not from discovery. For a discovering sovereign has no greater power over a peaceful settlement than he has at home.

It is therefore vital to distinguish between conquest and settlements, because in the former it is the absolute power of the sovereign to extinguish that leads to the requirement that, before antecedent territorial rights are enforceable against the sovereign, he has first recognised them. In a settlement, on the other hand, there is no need for recognition, simply because on the assertion of sovereignty the Crown does not win a plenary or full proprietary title, but merely a preferential right to acquire one. And because the aboriginal inhabitants are subjects of the Crown, with full rights and privileges and capable of claiming the protection of the common law, the King has no prerogative legislative power unilaterally to extinguish any rights that they might be able to claim based on the fact that they were in possession before the assertion of sovereignty. Admittedly, the aboriginal inhabitants cannot be said to have been sovereigns of their territories before they were discovered and annexed by peaceful settlement. But it does not follow that they

had no rights based on the fact of prior possession.

The Constitutional Status of Nunavut

Since there is practically nothing to distinguish the great charter granted by Charles II to the Hudson's Bay Company in 1670 from those other charters granted by English sovereigns in the 17th century, it seems that the better view is that the territories within the charter limits were originally acquired by conquest. However, this view has never taken root in Canadian law, and the assumption has always been that Rupert's Land was acquired by peaceful settlement.¹³ Those areas outside Rupert's Land but within Nunavut have uniformly been treated as being of the same constitutional status. There can be no doubt whatever that the Canadian Courts would hold that Nunavut was acquired by settlement and not by conquest.¹⁴

INUIT IN POSSESSION UNDER THEIR OWN CUSTOMS AND USAGES

Some lawyers believe that the only territories that can possibly qualify as candidates for being acquired by discovery are those that are literally devoid of any human population whatsoever. That view flies in the face of the evidence, because it follows that Nunavut, British Columbia, New Zealand and Australia could not have been

acquired by settlement: the plain fact is that until recently everybody has assumed that they were. What has in fact happened is that the ancient category of acquisition by inheritance has been replaced by peaceful settlement, although with necessary modifications.

But if territory need not be literally desert and uninhabited in order to qualify for being acquired by settlement, one cannot point to the simple fact of possession by aboriginal peoples as giving them territorial and other rights that can be said to survive the assertion of sovereignty by the Crown. For if possession alone disqualified a territory from being discovered, no territories that were occupied by human beings could be acquired by discovery. That is plainly not the case.

Therefore, the possession must be more than mere possession, and must be supported by other facts. Unfortunately, we have precious few clues as to what those other facts might be.

It is clear, though, that the guiding principle is this: the aboriginal people must be able to show that they have a system of tenure of land which is either known to lawyers or discoverable by them by evidence.¹⁵ As Lord Sumner put it in In re Southern Rhodesia :

The estimation of the rights of aboriginal tribes is always inherently difficult. Some tribes are so low on the scale of social organisation that their usages and conceptions of rights and duties are not to be reconciled with the institutions or legal ideas of civilised society. Such a gulf cannot be bridged. It would be idle to impute to such people some shadow of rights known to our law and then transmute it into the substance of transferable rights of property as we know them. In the present case it would make each and every person by a fictional inheritance 'richer than all his tribe.' On the other hand, there are indigenous peoples whose legal conceptions, though differently developed, are hardly less precise than our own. When they have been studied and understood they are no less enforceable than rights arising under English law.¹⁶

Again, as Judson J. put it in Calder's Case, an aboriginal title arises on the basis that, when the settlers first arrived, the aboriginal inhabitants were there, "organised in societies and occupying the land as their forefathers had done for centuries".¹⁷

The Inuit Tapirisat of Canada Land Use and Occupancy Study,¹⁸ and the Baker Lake Case¹⁹ show that the Inuit of Nunavut have a lex loci which is of a class that can be presumed to have survived the assertion of sovereignty over Nunavut and can thus qualify for the benefit of the Doctrine of Continuity. The Inuit can show, in other words, that their aboriginal possession is not something that is simply random and haphazard, without any rhyme or reason, but was and is based on a coherent and systematic adaptation to the land. In short, that they have a cognizable lex loci.

LEGAL STATUS OF ABORIGINAL TERRITORIAL RIGHTS

It is often said that the Aboriginal territorial right is merely a personal and usufructuary right dependent upon the goodwill of the sovereign. This view is derived from the Privy Council's advice in St. Cathrine's Milling & Lumber Co. v The Queen, the effect of which is more fully discussed in the footnote.²⁰ Suffice it to say here that that case has nothing whatever to say about Inuit rights in Nunavut, because it concerned the legal nature of the rights of some Ontario Indians arising under the Royal Proclamation of 1763, and who also lived in territory that had been acquired by conquest and cession from the King of France in 1763. It is not often realised that their Lordships' remarks in that case have nothing whatever to do with other parts of Canada that were acquired by settlement and not by conquest.

It follows from the fact that the Crown has merely a right of pre-emption over Inuit lands, and from the fact that this right of pre-emption can only be exercised with the consent of the aboriginal occupiers, that the Inuit's territorial rights are legal rights of occupation and possession. There is no need for their rights to have been recognised, because there is no need to obtain immunity from the conqueror's prerogative legislative power unilaterally to extinguish those rights. Therefore

they are enforceable at the action of the Inuit whenever they are unlawfully interfered with.²¹

The mainstay of the Inuit economy in the past has of course been their hunting, trapping and fishing activities. These rights are not the only aboriginal rights that can be claimed in relation to the land, for they are merely incidents of a broader aboriginal title based on prior possession. But they are nonetheless very valuable rights, because any activity which interferes with their exercise is a trespass, and a trespass is actionable per se and without proof of damage.

Other Aboriginal Rights

But the Inuit can also claim a set of rights apart from those flowing from prior possession. The Inuit are deeply concerned, for example, that they be able to retain their customs as to marriage, adoption and divorce and so on, rights that are already able to be claimed under the present law.²²

Whatever other interest the Federal Government might have in obtaining a surrender of the Inuit's territorial rights because of its policy on the principles of certainty and finality, there can be no justification for drawing an extinguishment clause that extinguishes these other non-territorial aboriginal rights.

The Constitution Act 1982

Notwithstanding the above conclusion that the Inuit have enforceable legal rights because they have an aboriginal title, s.35(1) of the Constitution Act re-enforces that conclusion. But were it to be authoritatively decided by a Canadian Court that the Inuit of Nunavut, without s.35, do not have enforceable rights, s.35 appears to put any doubts as to enforceability to rest. At the very least, s.35 must mean that the Federal Government cannot unilaterally abrogate or extinguish the Inuit's aboriginal rights. The Inuit must first agree.

CONCLUSION

Thus Inuit opposition to the Federal Government's resource development policies in general, and the present requirement that as a price of land claims settlement the Inuit agree to have their aboriginal rights extinguished, is not based on some vague and mystical set of generalisations about noble Eskimos. On the contrary. Our opposition is based on a clear and identifiable claim to continued access to our resources, a claim that is supported by Canadian law. Inuit insist that the Federal Government take our claim seriously, not merely as a matter of negotiating strategy but also as a question of the overall objectives of a land claims settlement.

Before the Crown asserted sovereignty over Nunavut, Inuit were leading independent and self-reliant lives, expressing our own humanity and vision of the world as determined by our own free choice. Our continuing ability to exercise a free choice is rapidly being undermined by Federal Government policy.

Federal Government policy must be changed: Inuit must be able to determine our own future, and retain and exercise those rights that have enabled us to become who we are. We want to remain Inuit, and not become a dispossessed people who can only find comfort on Skid Row.

FOOTNOTES

1. Fletcher v Peck, 10 U.S. (6 Cranch) 87 (1810); Johnson v M'Intosh, 21 U.S. (8 Wheaton) 543 (1823).

2. Tee-Hit-Ton Indians v U.S. 314 U.S. 272 (1954); Wi Parata v Bishop of Wellington (1877), 3 N.Z.Jur. (N.S.) 72; Calder v Attorney-General of British Columbia [1973] S.C.R. 313, 34 D.L.R. (3d) 145; Milirrpum v Nabalco Pty. Ltd. and Commonwealth of Australia (1971), 17 F.L.R. 141. Calder and Milirrpum were of course decided on the assumption that the original thirteen colonies were acquired by discovery and not by conquest, and therefore Johnson v M'Intosh was a relevant authority.

3. Stephen to Smith, 28 July 1839, C.O. 209/4, quoted in Paul Knaplund, James Stephen and the British Colonial System, 1813-1847 (Madison: University of Wisconsin Press, 1953), p. 89.

4. [1973] S.C.R. 313, 34 D.L.R. (3d) 145. The extraordinary thing about this dissenting judgment is that it rests primarily on an appeal to American authority in support of its conclusions but arrives at a result diametrically opposite to that arrived at by Judson Martland and Ritchie JJ., who relied on the same line of authorities!

5. Calvin's Case (1608), 7 Co. Rep. 1a, 77 E.R. 377 (Exch. Ch.).

6. Samuel Purchas, Hakluytus Posthumus or Purchas His Pilgrimes, 19 vols. (London: Printed for W. Stansbury and H. Fetherstone, 1625; reprint ed., Glasgow: James MacLehose and Sons, 1906), XIX, pp. 222-223. For a later but more influential version of this ideological position, see Joseph Story, Commentaries on the Constitution of the United States, with a Preliminary Review of the Constitutional History of the Colonies, 3 vols. (Boston: Hilliard, Gray and Company, 1833), I, p. 131.

7. Purchas, op. cit., p. 219.

8. The early precedents are discussed in Geoffrey S. Lester, "The Territorial Rights of the Inuit of the Canadian Northwest Territories: A Legal Argument" (D.Jur. dissertation, Osgoode Hall Law School, York University, Toronto, 1981), pp. 623-633. That territories could be acquired by discovery was orthodox doctrine by 1765. See Sir William Blackstone, Commentaries on the Laws of England, 4 vols. (Oxford: Clarendon Press, 1765-1769), I, pp. 104-105.

9. The evidence is reviewed in Lester, op. cit., pp. 496-598.

10. Johnson v M'Intosh, 21 U.S. (8 Wheaton) 543 at pp. 587-592.

11. 31 U.S. (6 Peters) 515 at pp. 544-547 (1832).

12. This follows from the actual result in the Ontario/Manitoba Boundary Dispute in 1884. The result is explicable only on the assumption that Charles II's Charter to the Hudson's Bay Company (1670) conveyed merely a preferential right to acquire title, but not title itself. This is also consistent with the reasoning of Judson J. in Calder's Case in explaining why the Royal Proclamation of 1763 could not extend as far west as British Columbia. That area was, according to Judson J., terra incognita, as late as 1763 and therefore George III did not have sufficient title vested in himself to enable him to reserve those lands under his sovereignty, protection and dominion for the use of the Indians. If George III did not have sufficient title to territory west of the Rockies as late as 1763, it is obviously impossible to understand how Charles II had sufficient title to Rupert's Land in 1670 to enable him to convey a plenary title to the company under the charter.

13. Sinclair v Mulligan (1886), 3 Man. L.R. 481 (Eq.); (1888) 5 Man. L.R. 17 (C.A.); Templeton v Stewart (1892), 3 W.L.T. 189 (Q.B.); Larence v Larence (1911), 21 Man. L.R. 145 (K.B.); Walker vs Walker [1919] A.C. 947 (P.C.); Attorney-General of Alberta and Anor. v Huggard Assets Ltd. [1953] A.C. 420 (P.C.), reversing [1951] S.C.R. 427.

14. Hamlet of Baker Lake v Minister of Indian Affairs and Northern Development [1980] 1 F.C. 518 (T.D.).

15. Nireaha Tamaki v Baker [1901] A.C. 561 at pp. 577-578 (P.C.).

16. [1919] A.C. 211 at pp. 233-234 (P.C.).

17. [1973] S.C.R. 313 at pp. 322-323, 34 D.L.R. (3d) 145 at pp. 152-153.

18. Milton M.R. Freeman (gen. ed.), Report: Inuit Land Use and Occupancy Project, 4 vols. (Ottawa: Minister of Supply and Services Canada, 1976).

19. [1980] 1 F.C. 518 (T.D.).

20. (1888), 14 App. Cas. 46. This case was brought to test the question as to who had the underlying title to certain territory found, as a result of the decision in the Special Case on the Ontario-Manitoba Boundary Dispute, to lie within the boundaries of Ontario, and which had been surrendered by the Indians to the Dominion Government by treaty in 1873. The Dominion Government had granted a timber permit to the appellant company, and the question was whether the Dominion Government had title to enable it to grant the timber rights. The real appellant, therefore, was the Dominion Government, and the dispute was between Canada and Ontario.

It was held, inter alia, that on surrender of the personal and usufructuary right of the Indians granted to them by the Royal Proclamation of 1763, the territory became unencumbered Crown lands and the surrender of the right (which, incidentally, did not carry a right to the timber) enured to the benefit of the Province. The Crown was supposed to have the underlying title because the territory in question had been acquired by conquest and cession from the King of France and passed under the Treaty of Paris, 1763.

The decision is important in the context of the present submission because it shows that when the aboriginal title is surrendered, the beneficiary of that surrender is the party holding the underlying title, or, in the terminology developed in this supporting document, the right of pre-emption.

Since it is the Crown in right of Canada that has the right of pre-emption in Nunavut, it follows that on the exercise of that right by obtaining a surrender of the aboriginal title from the Inuit, it is Canada that will benefit; otherwise, where land claims arise in a Province.

Accordingly, there is no constitutional impediment to the Federal Government having a different policy on the Principle of Certainty and the Principle of Finality in the Northwest Territories or the Yukon Territory. TFN has no fixed policy at this time on what position the Federal Government should adopt in relation to land claims within a Province.

But St. Catharine's Milling & Lumber Co. v The Queen shows that it is merely a question of political will on the part of the Federal Government. Therefore, the Task Force is quite free to recommend to the Federal Government that the principles of certainty and finality be abandoned in Nunavut.

21. The Public Lands Grants Act, R.S.C., 1970, c.P-29, and the Territorial Lands Act, R.S.C., 1970, c.T-6 do not provide sufficient authority to the Federal Government to enable it to grant permits and so on to third parties which may be inimical to the Inuit's interests. This is because that legislative regime merely enables the Federal Government to make grants in relation to both "public lands" or "territorial lands", which are lands that belong to Her Majesty or are vested in the Crown. Since lands do not "belong" to Her Majesty and not "vested" in the Crown by operation of law, but only on the exercise of the exclusive right of pre-emption and the surrender of the aboriginal territorial title to the Crown, a permit and so on granted pursuant to those enactments would not provide a defence of lawful authority to an action in trespass by the aboriginal title-holders. Contra: Hamlet of Baker Lake v Minister of Indian Affairs and Northern Development [1980] 1 F.C. 518 (T.D.).

22. See, for example, Connolly v Woolrich et al (1867), 11 L.C.J. 197; The Queen v Nan-E-Quis-A-Ka (1889), 1 Terr. L.R. 211; Re Adoption of Katie E7-1807 (1961), 32 D.L.R. (2d) 686; In re Noah Estate (1961), 32 D.L.R. (2d) 185.

C. OFFSHORE

Importance to Inuit

Inuit are aboriginal people who derive our living from the resources of the land and sea. Our dependence upon the sea is as great, if not greater than our dependence on land. Our relationship with the sea and our dependence on its resources has changed little over time. We are descendants of the Thule, whom the archaeological record indicates were much more marine than land oriented. And so it remains today.

All our communities, with the exception of Baker Lake, are located on the coast, thereby providing us with year round access to the sea and its resources (see Map 1, pg. 204). The federally-funded Inuit Land Use and Occupancy project demonstrated our use and dependence on the sea. Over half of the 1.1 million square miles of the TFN claim area is located in marine areas (see Map 2, pg. 205). The marine resources we use include various species of seals, (the ringed seal in particular), beluga, narwhal, walrus, polar bear, ducks, geese, seabirds, shellfish, marine fish and anadromous char. These resources provide us with food and clothing, and their by-products are important sources of cash income.

In the Beaufort Sea region in 1969-70 the communities of

Holman, Paulatuk and Sachs Harbour earned from 53% to 78% of their income from the sale of seal, arctic fox (which is trapped on the sea ice) and polar bear skins. The imputed value of country foods in this region during the 1970's was estimated at \$10 million annually. In the Lancaster Sound Region in 1978-79, 60% to 83% of the cash income earned by the communities of Pond Inlet, Arctic Bay, Resolute Bay and Grise Fiord came from the sale of marine products (ivory, skins and furs). And in 1985 the harvesting of marine resources for food, clothing and cash remains just as important.

The nature of the marine environment -- water circulation, the ice regime, the migratory patterns of marine wildlife and the general ecological processes -- make all marine regions important to us. But the area of greatest importance in terms of resource use is the coastal zone or near shore region (see Map 3, pg. 206). In the summer these waters are open and ice free. In the winter they are blanketed with a cover of solid unmoving ice extending throughout the internal waters of the arctic islands, and seaward from the islands facing Baffin Bay, Davis Strait and the Arctic Ocean, and bordering the coasts of Hudson Bay and the Beaufort Sea (see Map 4, pg. 207). These waters, whether open or ice covered, are important to us on a year round basis.

In summer we travel the waters and coasts by boat, taking fish, seals, whales and birds, and in fall taking seals, fish and birds before the ice forms. In the winter and spring, when the waters are ice covered, we travel by snowmobile and dog team using the ice as much as land. We hunt, fish, travel and camp on it. Foxes and land mammals are taken on it. Mammals are hunted at the floe edges and in leads, cracks and polynias. Fish are jigged through holes or are taken at ice edges. And in the spring migratory birds are hunted at floe edges, in polynias and in melt pools.

Our claim to marine areas and resource do not differ from our claim to terrestrial areas and resources. We require rights to hunt, trap and fish in the marine environment and to participate in its management. We require the establishment of a system of marine management that provides environmental protection from the impact of resource development, participation in its management, and the right to benefit from the economic use of marine areas and resources including employment and a share of resource revenues.

As on land, our rights to the offshore derive from our traditional use and occupancy. We have never signed any treaties, and we have never extinguished our aboriginal title to the offshore. There is no legal impediment to

the federal government agreeing to negotiate rights in the offshore, subject to those few areas where it does not have jurisdiction under international law.

The application of our rights to marine areas is, in principle, the same as their application to land. Our interests in marine areas and resources are many, but flow essentially from concerns regarding marine life and the need for environmental protection. If it were simply a matter of managing wildlife harvesting activities, marine management would not be a problem. But the face of the developing North poses a threat to the marine environment, marine life and our way of life. Intensive development of seabed resources; the possibility of year round shipping; the construction of ports, offshore structures and artificial islands; the establishment of marine conservation or protected areas; and commercial fishing operations in international waters raise many concerns for us, and require the establishment of a comprehensive system of marine management.

The nearshore or coastal zone regions and land fast ice areas require particular consideration. Because of the inter-relationship of the land and sea, they are areas high biological activity. In the summer months, when the ice has cleared, the nearshore areas are the retreat of the polar bears. Seabirds nest and feed along the

shorelines and in the nearshore areas. The shoreline is the edge of land watershed which, during run-off, contributes valuable nutrients to the marine environment. And the shore is where nutrient-carrying rivers and rivers that are important for sea run char join the sea. Nearshore areas are also the migratory paths of sea mammals and seabirds, and the bays, inlets and river mouths -- with their warmer waters and nutrient contributions-- are important for the feeding and nursing of beluga calves. Certain locations are important as hauling out areas for seals and walruses.

In the winter the land fast ice cover plays an important role in the distribution and location of marine life. Its presence limits the use of ice covered waters to the ringed seal, capable of maintaining breathing holes; to the polar bear; and to arctic fox. Most marine mammals and seabirds which require open water to survive, spend the winter in the relatively open waters of the pack ice and along the floe edges. In the spring, ice plays a different role in the ecological process and is responsible for much of the biological productivity of arctic waters. The open water areas of the floe edges, cracks and polynias, in conjunction with winds passing over the water surface, destabilize lower layers of arctic waters causing a mixing of waters and the drawing of nutrients to the surface where they can be usefully employed by lower levels of the

food chain. Ice also provides the habitat for epontic (ice associated) communities of algae, an important link in the biological productivity of arctic waters. And schools of arctic cod, important sources of food for most marine mammals and seabirds, are found along its edges. Because of this biological activity in these coastal areas they are important for hunting and fishing. They are also susceptible to the impact of development.

It is the coastal regions of Nunavut that are important to industry. Within these areas, industry will locate its ports, run its ships and build its access routes to inland resources. Offshore drilling will take place, seabed pipelines will come ashore, land based support and supply depots will be established, the transfer of freight supplies and resources will occur, dredging for ship anchorages will be required and storage and loading facilities for minerals and hydro-carbons will be established. It is therefore the area where land-based pollution will occur and where oil spills will have their greatest impact. It is for these reasons we are so concerned about the use and development of marine areas and resources. We are not convinced that the current system of marine management affords us the protection that is required.

Marine matters are managed almost exclusively by the

federal government with little or no Inuit involvement. Federal marine responsibilities are divided among several federal departments; administered under different pieces of legislation; and coordinated through a proliferation of departmental and inter-departmental committees. There are, for example, some eighty federal acts and ten territorial ordinances containing environmental provisions and more than fifty committees dealing with environmental matters. Moreover there is no single coordinated marine policy. The policies affecting marine management are department specific, developed independently, and frequently conflict. We believe there is a need to develop a coordinated marine policy with our involvement, and that a reorganization and coordination of federal responsibilities is required.

Inuit Rights and Benefits

Because of the importance of the offshore to us, our unextinguished aboriginal rights, and the difficulties inherent in the present system, we seek the recognition of certain rights and benefits in the marine areas of Nunavut. These rights and benefits take three main forms: i) management rights; ii) resource harvesting rights; iii) economic benefits.

First, as to our resource harvesting rights, we have consistently sought the recognition of our traditional and

commercial rights to hunt, trap and fish in marine areas. Our Wildlife Agreement-in-Principle has been negotiated on this basis and applies to marine species. We believe that, once implemented, it will adequately protect our traditional and commercial rights.

Second, as to our management rights, Inuit are not satisfied with simply owning land and resources. We also want a say in management on issues which will affect us. Our role in management should take many forms and vary with the resource in question. We believe that it should include management of the marine environment, development of marine policies, management of the wildlife resources and a role in marine planning. In addition, Inuit should also be able to participate in the impact review of project proposals with a significant marine component. To a large extent the Inuit role in management can be achieved by simply extending the agreements we have already made for terrestrial areas to marine areas, for example, the application of the land use planning functions to the coastal zone or land fast ice areas.

Finally, there is the question of Inuit economic benefits in marine areas. This matter relates particularly to non-renewable resource development. We recognize that development of marine non-renewable resources is inevitable, and that this will result in both the

exploitation of these resources within our claims area, and an increase in marine navigation. Inuit are not opposed to such development provided that we can benefit from it, participate in it and play a role in its management. To this end we have proposed the recognition of Inuit rights to resource revenues; the right to negotiate what we have called Inuit Impact and Benefit Agreements to provide project specific benefits; and the right to participate in the equity development of marine projects on advantageous terms. We believe that it is particularly important that these rights and benefits apply not only to land but also to marine areas simply because so much of the oil and gas development in our claim area will occur in the marine areas. If development is to be permitted in the north, we, as the people most directly affected, must be entitled as of right to participate in and benefit from that development.

In addition to these three main forms of rights and benefits which should be recognized, there are also a number of ancillary rights. For example, there is at present a large amount of marine research being conducted within Nunavut with very little Inuit involvement. This is entirely unacceptable and Inuit should have a right to participate in such research. At an international level the federal government has negotiated a number of agreements with other states which have had an impact on

Inuit harvesting rights, such as the Polar Bear Convention. In the future the federal government should be obliged to consult with the Inuit and involve us in the negotiations of such conventions.

Inuit Management proposals

The question of Inuit rights and benefits takes us logically to the issue of Inuit proposals for marine management. In September 1982, TFN tabled for discussion with the federal government a proposal for the land and resources element of claims. That package, which provided a comprehensive approach to northern resource management, was designed initially to apply to the land areas of the claim. However, we believe that many elements of that package are equally applicable to the marine areas, and in fact it only makes sense to apply these provisions to the offshore, so as to provide for the integrated management of the land and marine environments. To some extent this possibility has already been recognized and anticipated. Our Wildlife Agreement-in-Principle, for instance, applies to both terrestrial and marine species and many of our other agreements could and should be easily adapted to apply to marine areas. For example, we believe that our agreement on land use planning should also apply to the marine areas within Nunavut so as to provide a rational basis for development of the marine environment. This

agreement provides for the development of land use plans by a Nunavut Planning Commission which receives direction from a Nunavut Planning Policy Committee. Both the Commission and the Committee have an impartial membership of Inuit, territorial and federal government representatives. We believe that the functions and composition of these bodies would also be suitable for the offshore. By the same token, we believe that our agreements on national parks, on conservation areas and our proposals for impact review are equally applicable, with minor adjustments, to marine areas.

Some of our management concerns in the offshore, however, raise unique problems which cannot be adequately addressed by application of the agreements negotiated to date or the proposals for land areas which we have tabled. Our particular concerns include matters such as port locations and control of shipping in sensitive areas, as well as the overall co-ordination of federal marine policy and decision making. To some extent these matters can be addressed in the development of appropriate plans but we believe that there is also a need for a more broadly based coordinating body.

We therefore propose the creation of a Nunavut Marine Authority (NMA). The NMA should be responsible for the development of an arctic ocean policy and the

co-ordination of wildlife, planning and impact review responsibilities. It would thus ensure consistency and coordination of effort. The NMA should be composed of representatives of the various management board instituted under the claim.

We also require joint wildlife and environmental management systems with other aboriginal claimants in certain marine regions, such as Hudson Bay and Hudson Strait, where we use and share common areas and common resources.

Benefits to Canada of an Inuit Offshore Claim

It should not be thought that the recognition of our rights in the offshore is entirely one-sided in its distribution of benefits. There are also benefits which will accrue to the federal government of Canada. First of all and most importantly are the benefits to strengthening Canada's jurisdictional claims in arctic waters. Canada's strongest claim to exercise its coastal state jurisdiction in the arctic archipelagic waters is based upon the argument that these waters are historic internal waters, just like Hudson Bay. But one difficulty Canada has is actually establishing the historic nexus between land and water use which is required under international law before such a claim could succeed. The recognition of Inuit

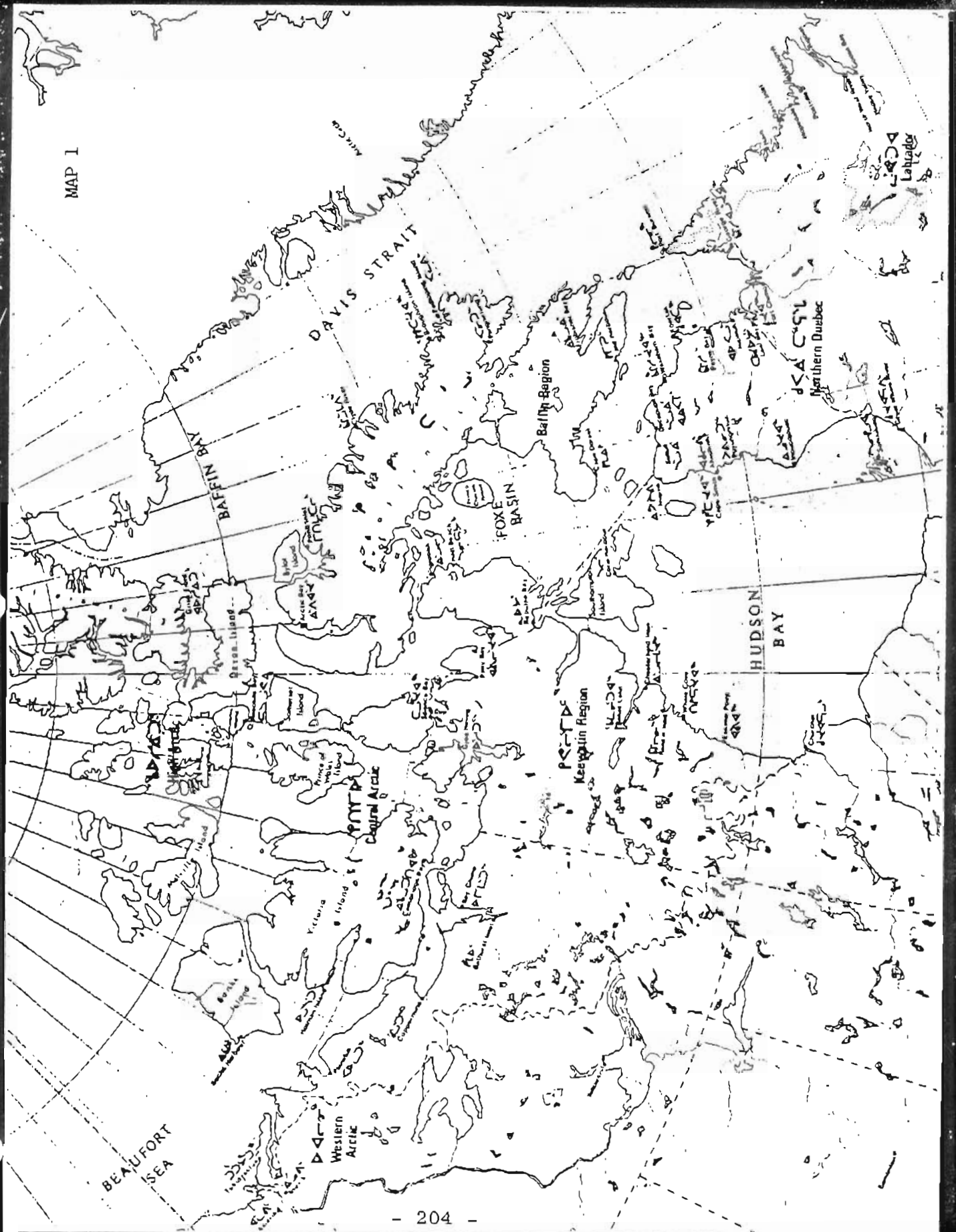
offshore rights can only strengthen the federal claim because the Inuit use of the sea-ice is especially extensive, and clearly establishes a link between land and marine areas. Even if the federal government is not able to establish an historic waters claim, it should still be able to make use of Inuit sea-ice occupation to justify the drawing of straight base-lines under the Law of the Sea Convention, or the Anglo-Norwegian Fisheries Case.

Second, there are also direct economic benefits in recognizing and affirming Inuit marine rights. The continual and successful harvest of marine resources is of economic, health and social benefit to Inuit and therefore of benefit to Canada, and a share of resource revenues will contribute to the development of a strong northern economy and reduce economic dependence of the north on the south.

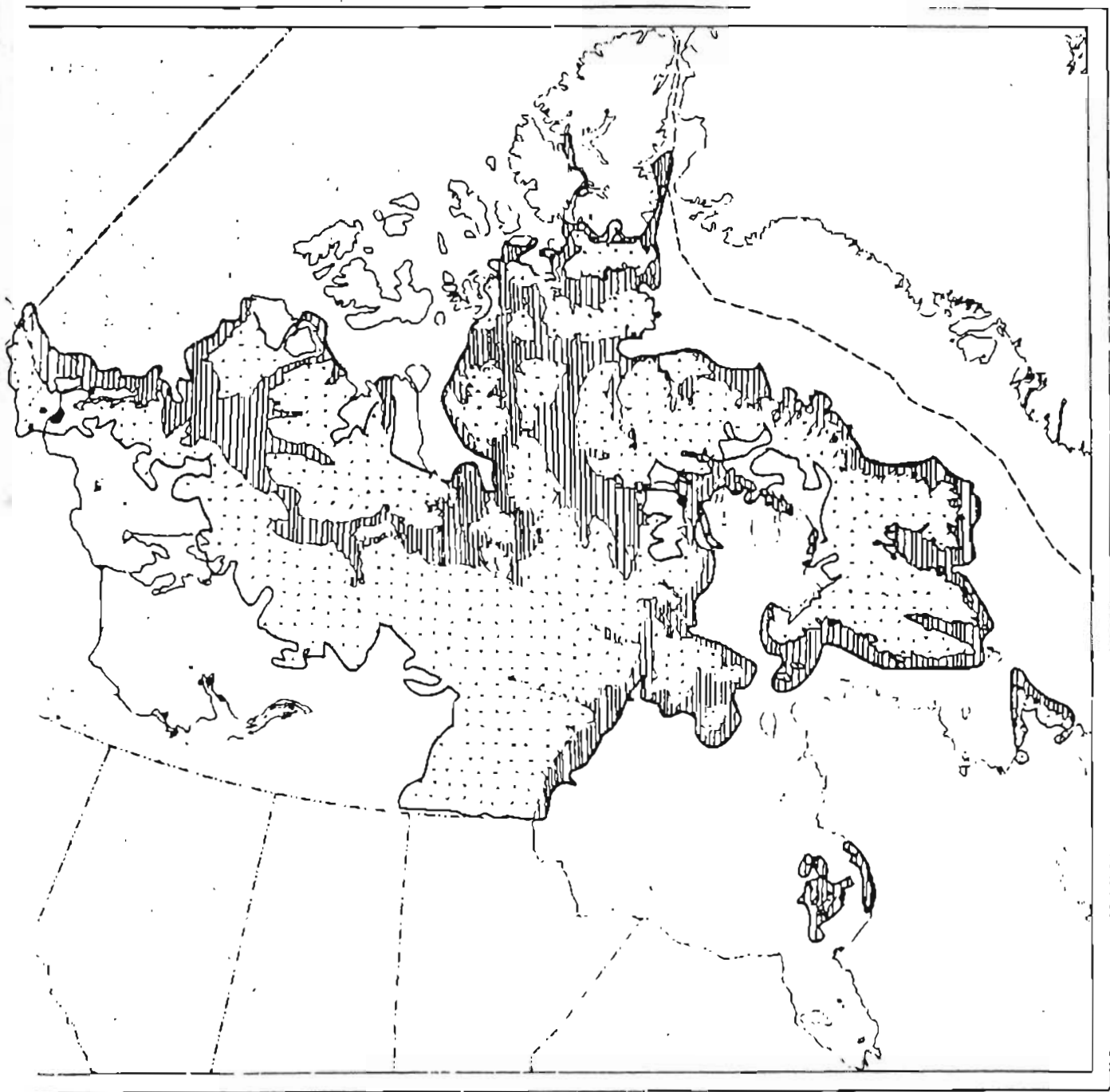
Recommendations:

1. The revised federal comprehensive claims policy should specifically include the offshore as a topic appropriate for negotiation.
2. The policy should expressly include the recognition of Inuit rights to offshore resources, to their management, and to resource revenues.

MAP 1



MAP 2
FULL EXTENT OF INUIT USE AND OCCUPANCY IN NUNAVUT

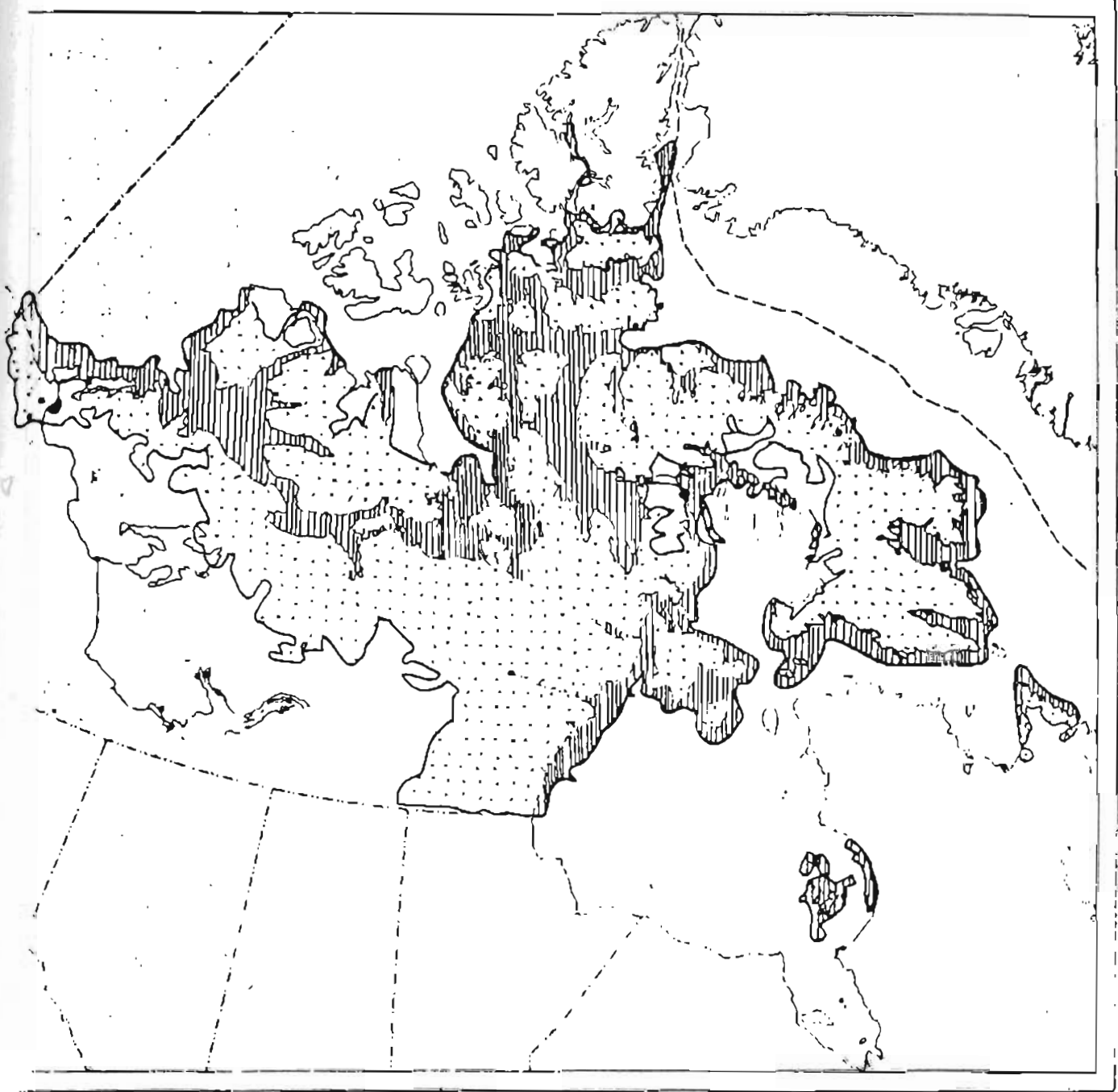


Land Use



Offshore Use

MAP 2
FULL EXTENT OF INUIT USE AND OCCUPANCY IN NUNAVUT

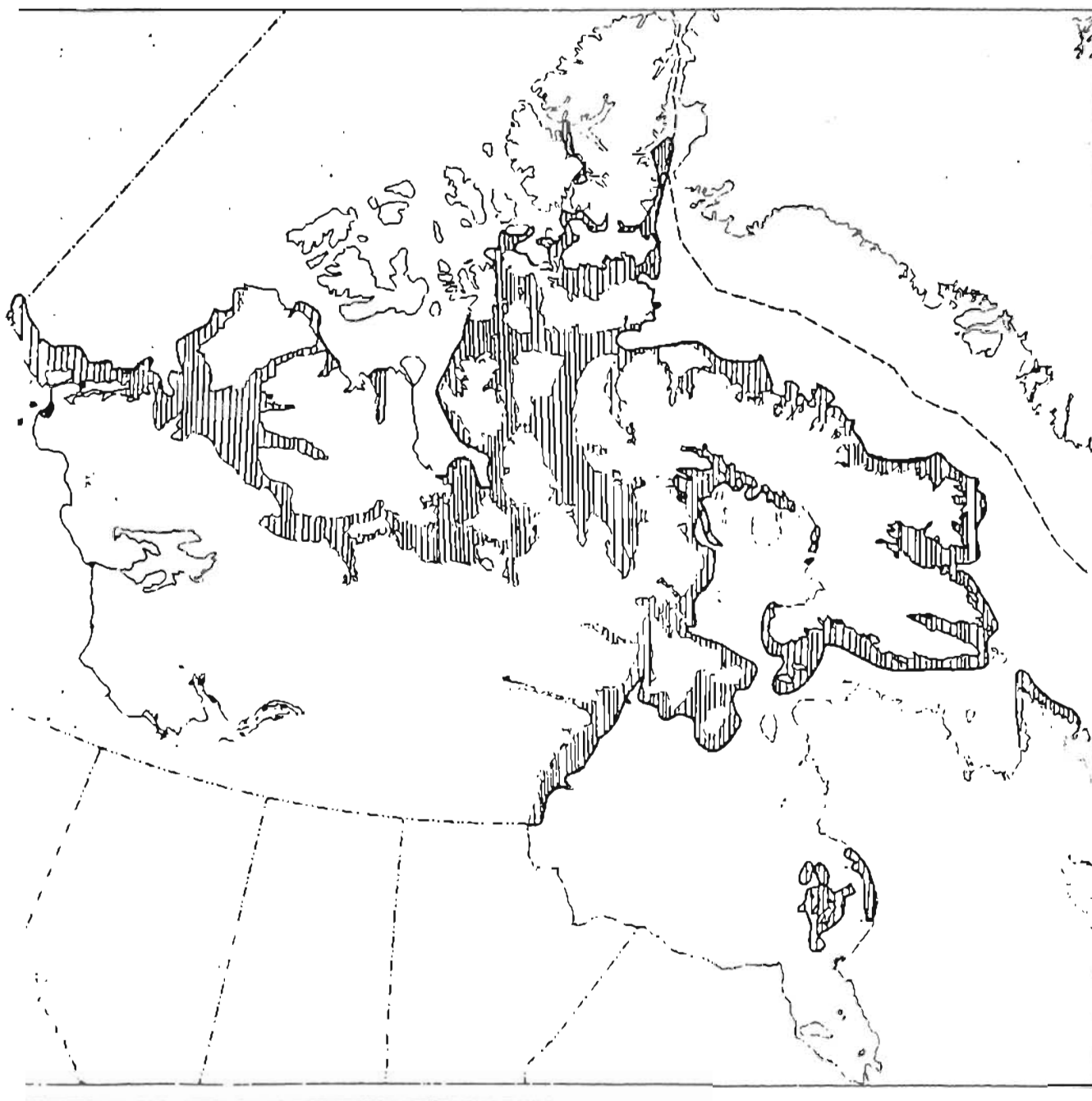


Land Use



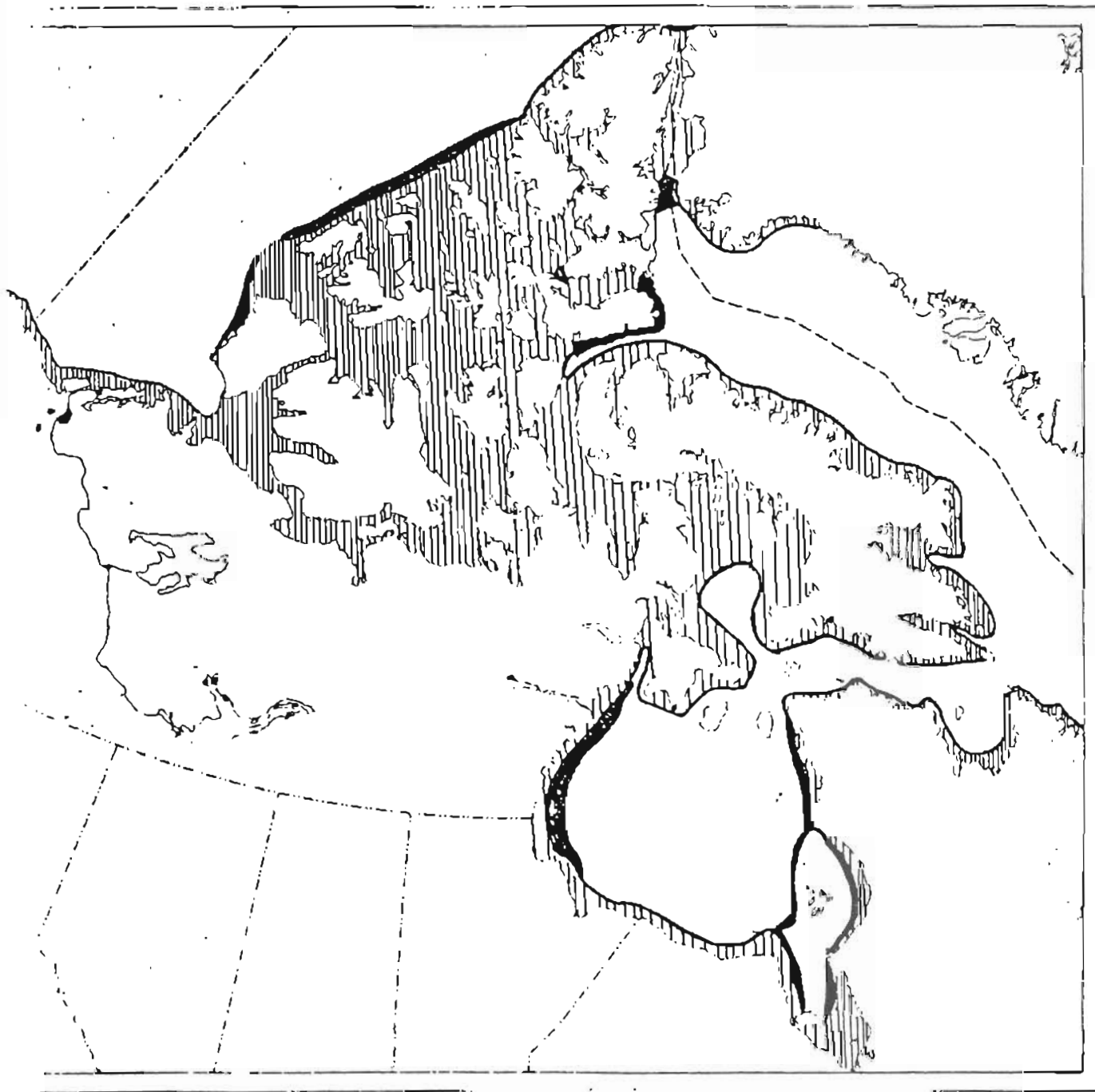
Offshore Use

OFFSHORE USE BY INUIT OF NUNAVUT



Offshore Use by Inuit

MAP 4
SEA ICE



-  Moving Ice
-  Fast Ice
-  Flaw Leads and Polynyas

C. FEDERAL ADMINISTRATIVE BOARDS WITH DECISION-MAKING POWERS

In the section on Decision-Making Powers, we made reference to some Administrative Boards which have decision-making authority. The following is a list of some of these boards which were created by the federal government and a brief summary of some of their powers. Attached as a separate volume for the information of the Task Force are excerpts from the relevant statutes. Also attached in the separate volume is a computer listing of boards or advisory agencies with powers of a Commissioner pursuant to Part I of the Inquiries Act or similar investigatory powers.

AGRICULTURAL PRODUCTS BOARD

This Board is established pursuant to section 3 of the
Agricultural Products Board Act¹

This Board has the power, with the authority of the
Governor in Council and under the direction of the
Minister, to do various duties including the buying,
selling or importing of agricultural products;² purchase
of, or negotiating contracts for the purchase, of
agricultural products with any government of any
country.³ The authority from the Governor in Council and
the direction from the Minister may be given generally.⁴

-
- 1) R.S.C. 1970, c.A-5
 - 2) s.4(1)(c)
 - 3) s.4(1)(b)
 - 4) s.4(2)

THE AGRICULTURAL PRODUCTS MARKETING ACT¹ provides that the Governor in Council may grant authority to a provincial board or agency to exercise powers of regulation in relation to the marketing of any agricultural product locally within the province, and to regulate the marketing of such agricultural product in interprovincial and export trade.²

There have been numerous provincial boards which have been granted authority by regulation under this Act. One example which is included is the Alberta Turkey Order³ which grants these powers to the Alberta Turkey Growers' Commodity Board.

-
- 1) RSC 1970 c A-7
 - 2) s.2(1)
 - 3) C.R.C. c. 953

AGRICULTURAL STABILIZATION BOARD (ASB)

The ASB is established pursuant to section 3 of the Agricultural Stabilization Act,¹ to stabilize the price of agricultural commodities. To achieve this the Board may buy and sell agricultural commodities² and order any person to give such information respecting agricultural commodities as may be necessary for the administration of the Act.³ The Board had the power to make rules for the regulation of its proceedings and the performance of its duties and function under the Act.⁴

The Governor in Council may establish a ceiling on the quality or value of an agricultural commodity for price stabilization,⁵ but this does not preclude the Board from setting limits within such a ceiling.⁶

An interesting aspect of this Act is the creation of an Advisory Committee which advises both the Board and the Minister.⁷

-
- 1) R.S.C. 1970, c.A-9
 - 2) s.10(1)(a) & (d)
 - 3) s.10(1)(f.1)
 - 4) s.10(3)
 - 5) s.11(a)
 - 6) Agricultural Stabilization Board v. Jacobs et al
1980, DLR (3d) 727 (Fed.C.A.)
 - 7) s.5

ATOMIC ENERGY CONTROL BOARD (AECB)

The AECB is established pursuant to section 3 of the Atomic Energy Act.¹ The AECB may with the approval of the Governor in Council make regulations for developing, controlling, supervising and licensing the production, application and use of atomic energy.² It may also make regulations for the purpose of keeping secret information respecting the production, use and application of, and research and investigations with respect to atomic energy,³ and regulations necessary to carry out the provisions or purposes of the Act. The AECB with the approval of the Governor in Council has passed regulations governing the licensing of nuclear facilities, the production, mining, prospecting for, refining, use, sale, and possession of prescribed substances, security and inspection.⁴

Since the AECB is dealing with such a sensitive matter it is not surprising that the Governor in Council approves all of its regulations, however the Minister's powers under the Act are also subject to approval of the Governor in Council.⁵

-
- 1) R.S.C. 1970, c.A-19
 - 2) s.9(b)
 - 3) s.9(e)
 - 4) see C.R.C. c. 365
 - 5) s.10(1)(b)(c) and(d)

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS
COMMISSION (CRTC)

The CRTC is established pursuant to section 3 of the Canadian Radio-Television and Telecommunications Commission Act.¹ There is also an Executive Committee.² The objects and powers of the CRTC and the Executive Committee are set out in the Broadcasting Act.³

The Commission on the recommendation of the Executive Committee, may prescribe classes of broadcasting licenses,⁴ make regulations applicable to all persons holding broadcasting licenses,⁵ and revoke broadcasting licenses.⁶

The Executive Committee may, subject to section 22, issue broadcasting licenses for terms of less than five years,⁷ amend conditions of the broadcasting license⁸ and renew broadcasting licenses for terms of less than five years. Section 22 provides that no broadcasting license may be issued, amended or revoked in contravention of directions from the Governor in Council respecting certain items, unless the Minister of Communications certifies the requirements of s.22(1)(b).

Any issue, ammendment, or renewal of a license may be referred back for a hearing to the Commission by order of

the Governor in Council.⁹ The Commission may then rescind, vary or confirm its previous decision.¹⁰ If they confirm their previous decision, the Governor in Council may set aside their decision¹¹ within 60 days of the confirmation. An appeal from any decision or order of the Commission lies with the Federal Court of appeal, with leave, upon a question of law or jurisdiction.

The Governor on Council may issue directions to the Commission in certain circumstances.¹² The directions precluding the issue of licenses to particular classes of persons is exercisable by the Governor in Council for any valid reason of public policy.¹³

-
- 1) S.C.74-75-76, c.49
 - 2) s.12
 - 3) R.S.C.1970, c.8-11
 - 4) 16(1)(a)
 - 5) 16(1)(b)
 - 6) 16(1)(c)
 - 7) 17(1)(a)
 - 8) 17(1)(b)
 - 9) 23(1)
 - 10) 23(3)
 - 11) s.23(4)
 - 12) 27(1)
 - 13) Re: New Brunswick Co. Ltd. v. CRTC (1984) 55 N.R. 143 (F.C.A.)

FRESHWATER FISH MARKETING CORPORATION

The Freshwater Fish Marketing Corporation consisting of a Board of Directors is established by section 3 of the Freshwater Fish Marketing Act¹, for the purpose of marketing and trading in fish, fish products and fish by-products, in and out of Canada and may do anything necessary to carry out these functions, or incidental to the exercise of its powers including buying and selling fish², buying or leasing real or immovable property³, or investing money in securities guaranteed by the Government of Canada⁴, and borrowing money⁵.

There is also an Advisory Committee, composed of at least one-third fishermen which advises the Corporation on such matters relating to trading and dealing in fish and fish products⁶

-
- 1) R.S.C. 1970, c.F-13
 - 2) 7(a) and (c)
 - 3) 7(d)
 - 4) s.7(f)
 - 5) s.7(g)
 - 6) s.19

HARBOUR COMMISSION

Under the Harbour Commissions Act, a Harbour Commission may be established by the Governor in Council upon the recommendation of the Minister of Transport, if the Governor in Council is of the opinion that the establishment of a Commission for the harbour or port will improve its administration Harbour Commissions Act.¹

A Commission shall regulate and control the use and development of all land, buildings and other property within the limits of the harbour, and all docks, wharfs and equipment erected or used in connection therewith.²

The Commission may administer and develop property within the limits of the harbour or immediate vicinity.³ With the approval of the Governor in Council, a commission may make by-laws for the management and control of the harbour including the regulation of the navigation and use of the harbours by vessels.⁴

1) R.S.C. 1970, c.H-1

2) s.9

3) s.11

4) 13(1)(a)

NWT WATER BOARD (NWTWB)

The NWT Water Board and the Yukon Territory Water Board are established pursuant to section 7 of the Northern Inland Waters Act.¹

The objects of the boards are to provide for the conservation, development and utilization of the water resources of the Territories.² The NWTWB may with the approval of the Minister issue water use licenses to an applicant,³ review, amend or cancel licenses.⁴ A public hearing should be held by the Board in connection with each application for a license or renewal, amendment or cancellation of a licenses.⁵ Every decision or order of a Board is final and conclusive⁶ subject to appeals with leave to the Federal Court of Appeal upon a question of law or jurisdiction.

The Governor in Council retains some control over the Board as it may pass regulations covering the procedure to be followed when dealing with a license,⁷ and the information to be supplied to the Board;⁸ upon the recommendation of the Minister and the Board classifying uses of waters, establishing water management areas and providing for priorities among the classes of use.⁹ The Governor in Council may also pass regulations prescribing water quality standards;¹⁰ prescribes the quantities of waste that may be deposited. Any waters¹¹ requiring licensees to submit

to the board reports required by the regulations² setting forth information to be supplied to the board in connection with an application for permission from the Minister to enter upon use, occupy, take and acquire any lands or any interest therein.¹³

The Governor in Council may also order the Board not to issue any licenses relating to the use of any waters specified in the order to enable comprehensive evaluation and planning to be carried out with respect to those waters,¹⁴ or where the use and flow of such waters are required in connection with a particular undertaking which is in the public interest.¹⁵

-
- 1) R.S.C. 1970, (1st Supp)c.28
 - 2) s.9
 - 3) s.10
 - 4) s.12
 - 5) s.15
 - 6) s.20
 - 7) 26(a)
 - 8) 26(b)
 - 9) 26(c)
 - 10) 26(e)
 - 11) 26(f)
 - 12) 26(j)
 - 13) 26(k)
 - 14) 27(2)(a)
 - 15) s.27(2)(b)

CANADIAN TRANSPORT COMMISSION (CTC)

The CTC is a court of record created by Section 6 of the National Transportation Act.¹ It's the CTC's duty to coordinate and harmonize the operations of all carriers engaged in transport by railways, water, aircraft, extraprovincial motor vehicle transport and commodity pipelines.² The CTC's duties include; inquiring into and reporting to the Minister measures for the sound economic development of the various modes of transport over which Parliament has jurisdiction;³ studying and researching economic aspects of transportation⁴ licenses and regulation of transportation when legislated to do so by Parliament.⁵ The CTC also has special powers in relation to shipping set out in s.22 (2) including exercising and performing on behalf of the Minister, the Ministers duties under the Canada Shipping Act as the Minister may require.⁶ The CTC may delegate its powers and duties with regard to shipping to any other body in respect of safety in the operation of commodity pipelines. The CTC also has other powers and duties⁷ set out in the Railway Act,⁸ Aeronautics Act⁹ and the Transport Act.¹⁰

The CTC also conducts investigations upon request into whether the act or omissions of a carrier or the effect of a rate established by a carrier prejudice the public interest in respect of tolls or the carriage of

traffic.¹¹ If the CTC finds the carrier acted contrary to the public interest it may order the carrier to remove the prejudicial feature.¹²

A decision by the Commission may be appealed to the Minister with regards to an application for a license under the Aeronautics Act to operate a commercial air service, a license under the National Transportation Act to operate a motor vehicle undertaking, a license under the Transport Act to engage in transport by water or a certificate of public convenience in respect of a commodity pipeline. The CTC must then comply with The Minister's decision.¹³ The Minister may also overrule a decision by the CTC with respect to the suspension, cancellation, or amendment of a license to operate a transportation service or a certificate of public convenience.¹⁴

The CTC licenses the operation of commodity pipelines by issuing a certificate¹⁵ after considering the economic feasibility of the pipeline, the financial responsibility of the applicant and the public interest. The Commission also licenses aircraft carriers pursuant to the Aeronautics Act¹⁷ and railways and ships pursuant to the Transport Act.¹⁸

It also deals with reviewing the tariffs charged by
railways ships¹⁹ and air transport carriers.²⁰

-
- 1) R.S.C. 1970 c. N-17 as amm.
 - 2) s.21
 - 3) 22(1)(a)
 - 4) 22(1)(b)
 - 5) 22(1)(d)
 - 6) s.22(2)
 - 7) s,22
 - 8) Railway Act, R.S.C. 1970, c.R-2
 - 9) Aeronautics Act, R.S.C. 1970, c.A-3
 - 10) Transport Act, R.S.C. 1970, c.T-14
 - 11) 23
 - 12) 23(4)
 - 13) s.25
 - 14) 25(2)
 - 15) 31(1)
 - 16) s.32
 - 17) s.16 Aeronautics Act
 - 18) s.10(5)
 - 19) s.13 Transport Act
 - 20) 14(1)m

NATIONAL ENERGY BOARD

The National Energy Board is established by section 3 of the National Energy Board Act.¹ The Board is a court of record² and has full and exclusive jurisdiction to inquire into, hear and determine any matter where a person has failed to do an act required by this Act or regulation, certificate, license or order or direction of the Board.³ An order by the Board may be enforced in the same manner as an order of the Federal Court of Appeal, or any superior court of a province. Every order or decision of the Board is final and conclusive. The Board performs advisory functions.⁴

It also issues certificates of public convenience and necessity for pipelines or an international power line subject to the approval of the Governor in Council⁵

The Board may make orders with respect to all matters relating to traffic, tolls or tariffs.⁶ It can also force a company operating a pipeline to junction its pipeline with that of a person or municipality and sell gas to them if in the public interest.⁷

The Board regulates exports and imports in part VI of the Act and issues licenses for the exportation of power, oil or gas and for the importation of oil or gas. It governs interprovincial oil and gas trade and issues licenses to

achieve this.⁸

The Board may make regulations with the approval of Governor in Council respecting the name in which accounts of a company are kept⁹ requiring companies to make their books and records available for inspection.¹⁰

-
- 1) R.S.C. 1970, c.N-6
 - 2) s.10
 - 3) s.11
 - 4) Part II ss 22-24
 - 5) s.44
 - 6) s.50
 - 7) s.60
 - 8) s.87.2
 - 9) s.88(1)(a)
 - 10) s.88(1)(d)

THE CANADA OFFSHORE PETROLEUM BOARD

The Atlantic Accord was signed between the Governments of Canada and Newfoundland on February 11, 1985. The Accord provides for the establishment of the "Canada Offshore Petroleum Board"¹ which is a joint-management board. The Board is composed of three federal and three provincial representatives with an independent Chairman.²

Management decisions are divided between the federal government, the provincial government, and the federal/provincial "Canada Newfoundland Offshore Petroleum Board."³ The federal government is to retain its responsibilities for decisions regarding Canadianization policy (ownership requirements), decisions made under laws of general application not related to oil and gas exploration and production, and decisions regarding the application of federal tax.⁴ The province is to exercise its decision making responsibilities over royalties and other provincial type revenues from the development of resources as if they were on land within the province, and over provincial laws of general application having effect in the offshore.⁵ All other decisions with the exception of "Fundamental Decisions" which are subject to the approval of the appropriate Minister or subject to the

-
1. s.3
 2. s.4
 3. s.21
 4. s.22
 5. s.23

Ministers of both governments, will be made by the Board.⁶

The Board's decision-making responsibilities are wide and are significant in that in exercising its mandate it will be exercising responsibility for certain areas that are currently a federal responsibility. The Board's powers are such that it administers many aspects of oil field development. It has powers over the declaration of discoveries, the granting of productions licences, ensuring compliance with notices, the administration of regulations respecting Good Oilfield Practice" and emergency situations for safety and spills.⁷ As well, the Board has powers for holding public hearings, the establishment of the terms of references for impact statements and the appointment of panels and commissions to conduct the hearings.⁸ It has a member on the Environmental Studies Revolving Fund⁹ Board and has a role in the development of Canada Newfoundland Benefit packages¹⁰ and the development of an oil pollution and fisheries compensation regime.¹¹

The Board is also responsible for the collection of royalties and other revenues and for remitting them to the

- 6. s.24
- 7. s.24
- 8. s.34
- 9. s.56
- 10. s.51
- 11. s.46

province.¹² Thus, much that is currently administered by the federal government will be the responsibility of the Board. With the exception of "Fundamental Decisions" which require the approval of both governments before taking effect, all decisions of the Board are final.¹³ Although the review of "Fundamental Decisions" constrains the Board in its management of oil field development (the timing, pace, level and mode of development and its exercise of "Extraordinary Powers") they are tied to the national interest and Canada's energy policies regarding "self-sufficiency" and "security of supply". It is a measure to ensure political motives and objectives of either government will not unreasonably delay the fulfillment Canada's energy objectives. The Accord provides that in the absence of agreement within 30 days of a "Fundamental Decisions" the federal minister acting in the national interest will be responsible for approving a "Fundamental Decision" until national "self-sufficiency" and "security of supply" are reached, or having been reached are lost.¹⁴ Once self sufficiency" and "security of supply" are reached, the provincial minister will assume responsibility for "Fundamental Decisions" regarding the method of production and transportation, subject to a

12. s.38

13. s.24

14. s.26427

federal override if "self sufficiency" or "security of supply" are unreasonably delayed.¹⁵

A further constraint on the Board's independence is that it is expected to carry out joint ministerial directives regarding "Fundamental Decisions", the public review process, Canada and Newfoundland Benefits and studies and policy advice.¹⁶ Its annual plans for exploration and development are also subject to modification if thought inadequate to meet the objectives of "self-sufficiency and "security of supply".¹⁷

15. s.26427

16. s.33(a)

17. 33(b)