



Nunavut Tunngavik Incorporated

Discussion Paper:

DEVOLUTION AND MARINE AREAS

**Presented to Paul Mayer
Ministerial Representative
Minister of Indian Affairs &
Northern Development
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DEVOLUTION AND MARINE AREAS

NTI has read with interest the papers produced so far by the Nunavut Government relating to marine areas. NTI's object in this discussion paper is to outline in a most general way how it sees marine areas as being integral to future devolution negotiations and provide a "claims based" analysis to add to the discussion to date.

One very unique aspect of the Nunavut devolution negotiations is the significant marine area in Nunavut, which we recommend be described as "marine areas", as outlined below. Nunavut's marine areas include minerals, oil and gas. NTI wants to offer Canada its perspective on why marine areas should be a topic for discussion in devolution negotiations.

Geographic Scope of Nunavut's Marine Areas

Nunavut has a proportionately larger marine area than either the NWT or Yukon, where Devolution talks have already taken place. This is consistent with the definition of Nunavut in section 3(a) of the *Nunavut Act*, as a territory which includes "*all that part of Canada north of the sixtieth parallel of north latitude [and east of the NWT] . . .*" (our emphasis).

Inuit are a Coastal People

Inuit are very concerned about marine areas because the communities of Nunavut are all, perhaps with the exception of Baker Lake,¹ coastal communities. This is because the large majority of the people of Nunavut are Inuit, who are harvesters of the resources of the sea. This is what has sustained the Inuit people for thousands of years and allowed them to survive in an adverse climate. Nunavut is a territory of coastal dwellers who have traditionally and to this day had a very unique marine economy – a reality well reflected and protected in the Nunavut Land Claims Agreement.

The Nunavut Land Claims Agreement (NLCA)

The principles which establish the context for marine management in Nunavut, include recognition that in marine areas, the legal rights of the Inuit flowing from the agreement are based on traditional and current use. In fact, the preamble of the NLCA spells out that Inuit assert an aboriginal title to the Nunavut Settlement Area "based on their traditional and current

¹ Baker Lake is connected to Hudson Bay directly, via fresh water

use and occupation of the lands, waters and land-fast ice therein in accordance with their own customs and usages.”

A good portion of the NLCA focuses on marine areas rights, responsibilities and jurisdiction. The agreement recognizes seven principles related to marine areas:

“Article 15.1.1 This Article recognizes and reflects the following principles:

- (a) Inuit are traditional and current users of certain marine areas, especially the land-fast ice zones;*
- (b) The legal rights of Inuit in marine areas flowing from the Agreement are based on traditional and current use;*
- (c) Canada’s sovereignty over the waters of the arctic archipelago is supported by Inuit use and occupancy;*
- (d) Inuit harvest wildlife that might migrate beyond the marine areas;*
- (e) an Inuit economy based in part on marine resources is both viable and desirable;*
- (f) there is a need to develop and co-ordinate policies regarding the marine areas;*
and
- (g) there is a need for Inuit involvement in aspects of Arctic marine management, including research.”*

Also, no fewer than 14 of its 42 articles – one third - relate directly to marine matters:

- Article 5 – Wildlife
- Article 6 – Wildlife Compensation
- Article 8 – Parks
- Article 9 – Conservation Areas
- Article 11- Land Use Planning
- Article 12 – Development Impact
- Article 15 – Marine Areas
- Article 16 – Outer Land Fast Ice Zone – East Baffin Coast
- Article 23 – Inuit Employment Within Government
- Article 24 – Government Contracts
- Article 25 – Resource Royalty Sharing
- Article 27 – Natural Resource Development
- Article 33 – Archaeology

- Article 34 – Ethnographic Objects and Archival Materials

A number of management provisions are set out in Section 15, Marine Areas. It is also noteworthy that 12 additional articles, ranging from conservation through land-use planning and development impact to employment matters, *shall also apply to marine areas* (Article 15.2.2). This is because the agreement is a step towards ecosystem management – a management system that does not stop at the shore but considers the land and sea as two connected parts of a whole.

Further compelling evidence of the links between the land claim and marine areas and a compelling argument for the necessity of including marine areas in the Chief Federal Government negotiator’s mandate forthcoming devolution negotiations is found in the preamble to the legislation which implemented the land claim – the *Nunavut Land Claims Agreement Act*, which describes an objective of the NLCA as: “to provide for certainty and clarity of rights to ownership and use of lands and resources and of rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, *including the offshore*.”²

NTI believes that it is the Inuit land claim and the history, traditions and marine economy of the Inuit underlying that claim, which provide the very best argument for including marine areas in devolution negotiations.

The NLCA itself contains many provisions which establish a clear Inuit interest in marine areas. It is therefore the unique historic and factual situation in Nunavut, and the constitutionally-protected rights to manage the lands and resources which may give the territorial government strong arguments for an interest in marine areas:

- ✓ a majority population of Inuit who are coastal people with a long tradition of marine harvesting and travel;
- ✓ a settled land claim which covers the entire territory;
- ✓ a Nunavut Land Claims Agreement which reflects and respects Inuit marine interests throughout;
- ✓ a Nunavut Land Claims Agreement which establishes a co-management scheme which *integrates* the land and water of Nunavut;

² *Nunavut Land Claims Agreement Act*, S.C. 1993, c. 29, as am. S.C. 2004, c. 11, s. 34 {NLCA Act}.

- ✓ a territorial government which resulted from the Land Claims Agreement and contains a statutory definition of Nunavut which includes land and waters.

NTI has noted that the discussions on marine areas have taken a high public profile, as a result of positional statements by both governments. NTI is concerned that this approach may not be well timed, considering that at this stage of the process, the relevant preliminary question is simply whether the subject of marine areas should be included within the subject matters of devolution negotiations,. NTI respectfully submits that question can and should be answered in the affirmative, without in any way limiting future positions by each party, during negotiations, on the appropriate extent of jurisdiction on marine areas.

Economic Opportunities in Marine Areas:

The NLCA describes the economic interests of Inuit in marine areas in article 15.1.1(a), (d) and (e):

- “(a) Inuit are traditional and current users of certain marine areas especially the land fast ice zones;
- (d) Inuit harvest wildlife that might migrate beyond the marine areas;
- (e) an Inuit economy based in part on marine resources is both viable and desirable.”

Sovereignty:

NTI believes that a national government which has made it a stated priority to protect and advance Canada’s sovereignty in the north should be encouraged to consider that Inuit participation in management of marine areas and in the sharing of its benefits, will further enhance Canada’s sovereignty in its arctic marine areas, including the Northwest Passage.

Responsible Environmental Stewardship: An ecosystemic approach

The Government of Canada should also seek every opportunity to give further recognition to the important, constitutionally-entrenched role of the Inuit as stewards of Nunavut’s lands and resources - which they have utilized and respected for thousands of years.

Federal government administration of the offshore in the North is somewhat unwieldy, without effective coordination amongst the various agencies responsible for offshore resource use, planning and development. Agencies with jurisdiction include: DIAND, NRCan, Environment Canada, DFO, DOT, Foreign Affairs, DND, NEB and others.

The NLCA answers the need for coordinated policy development in the Nunavut offshore (within the 12 mile limit): resource management responsibility rests largely with the four co-management institutions created under the NLCA, whose co-management jurisdiction (except for the Nunavut Water Board) extends to marine areas of the Nunavut Settlement Area. These bodies are charged with making crucial land use and impact assessment decisions related to offshore development activities such as building of ports, running of ships, access routes to inland resources, offshore drilling, seabed pipelines, land-based support, supply depots, dredging, storage and loading for minerals and hydrocarbons etc.

The NLCA (Article 15, part 4) also provides for the Nunavut Marine Council, composed of these four institutions, whose composition of representatives from various boards, with shared federal-territorial-Inuit appointees, is designed to ensure an informed and coordinated approach to policy development and decision-making. The Nunavut Marine Council was conceived to advise on the development of offshore policy (subject to the approval of both governments) including recommendations on stream-lining and coordinating the current system of administration and legislation. In short, the Nunavut Marine Council is poised to be a central coordinating body to recommend comprehensive policy for marine areas and coordination of government and Inuit management responsibilities for marine areas.

The current approach, outlined in the NLCA through a comprehensive land and water co-management regime, recognizes the necessary integrity of land AND water in an ecosystemic approach to the environment. This is a progressive and enlightened approach to management of a fragile northern environment whose ongoing sustainability is important to Canada and the world.

Enabling Agreement to Negotiate a Northern Energy Accord – 1988

In 1988, after extensive negotiations and consultations, the federal government signed an agreement which was intended to be the basis for negotiating a Northern Energy Accord between the Government of Canada and the Government of the Northwest Territories, which was then responsible for the area which is now Nunavut. The agreement stated that the area of application of the Northern Energy Accord would be based on the statutory definition of the Northwest Territories as set out in the *Northwest Territories Act* (identical to the present provisions of the *Nunavut Act* relating to geographical scope), providing as follows:

“Agreement Area

- 1 This agreement applies to all Canadian territory north of 60 degrees except for the Yukon Territory, land within provinces, Hudson Bay and Hudson Strait:
- 2 The Government of Canada recognizes, however, that the Government of the Northwest Territories has interests in Hudson Bay and Hudson Strait.”

It is noteworthy that even in advance of the settlement of the Inuit land claim in 1993, the federal government signaled its recognition of the strong territorial interest in marine areas, including Hudson’s Bay, by signing the Northern Energy Accord Agreement with the Government of the Northwest Territories.

Conclusion:

In addition to the legal case which can be made to establish a territorial interest in marine areas, the NLCA provides extensive justification based on both law and public policy for including marine areas within the negotiating mandate approved by Canada. NTI respectfully submits that marine areas must therefore be a subject for negotiation of the Nunavut Land and Resources Devolution and Resource Revenue Sharing Negotiations.