

# EISC WORKSHOP REPORT



Prepared for  
**Indian and Northern Affairs Canada,  
National Energy Board,  
Environmental Impact Screening Committee**

Submitted by  
**Gartner Lee Limited**

January 2006



# **EISC WORKSHOP REPORT**

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Gartner Lee Limited



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**Re: 50916 – EISC Workshop**

Gartner Lee is pleased to provide you with the final report from the EISC Workshop, held in Inuvik from October 17 – 19, 2005. This workshop was recognized as being a starting point for reconciling the existence of two similar, yet separate and legally binding environmental assessment processes in the Inuvialuit Settlement Region.

The recommendations section of the report identifies nine key recommendations aimed at improving the overall effectiveness of the IFA screening process and the involvement of regulators and other parties in the process. There were also three outstanding issues that remain to be addressed, and were identified as being central to reconciling the two environmental assessment processes.

Gartner Lee appreciated the opportunity to have participated in and contributed to this important initiative, and we look forward to working with all parties again in the future.

Yours very truly,  
GARTNER LEE LIMITED

Heidi Klein, M.E.S.  
Senior Environmental Planner, Principal

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# EISC WORKSHOP REPORT

## 1. Introduction

A workshop was held in Inuvik, NWT on October 17 – 19, 2005 that was attended by members of federal and territorial government departments, the Environmental Impact Screening Committee (Inuvialuit), Environmental Impact Review Board (Inuvialuit), Inuvialuit Lands Administration, the Inuvialuit Game Council, the NWT Water Board, and the Canadian Environmental Assessment Agency. Please refer to Appendix A for a list of workshop participants.

This workshop was convened in partial response to the March 2004 amendments to the Inuvialuit Final Agreement (IFA), in particular the expansion of the EISC's decision making authority under paragraph 11(17)(b).

Section 11(17) of the IFA reads:

11(17) On receipt of a project description, the Screening Committee shall expeditiously determine if the proposed development could have a significant negative environmental impact and shall indicate in writing to the governmental authority competent to authorize the development that, in its view:

- (a) the development will have no such significant negative impact and may proceed without environmental impact assessment and review under this Agreement;
- (b) the development, if authorized subject to environmental terms and conditions recommended by the Screening Committee, will have no such significant negative impact and may proceed without environmental impact assessment and review under this Agreement
- (c) the development could have significant negative impact and is subject to assessment and review under this Agreement; or
- (d) the development proposal has deficiencies of a nature that warrant a termination of its consideration and the submission of another project description.

The EISC met with regulators and the Inuvialuit Land Administration (ILA) several times in 2004 and 2005, and discussed several drafts of a Memorandum of Understanding (MOU) to address questions raised, by government departments primarily, over the addition of paragraph 11(17)(b) to the IFA. In the course of these discussions, participants agreed to hold a general workshop to better understand the screening and assessment processes that apply in the ISR, and the roles and responsibilities of the various responsible agencies, departments and boards in the ISR, before continuing with discussions on the draft MOU. Please refer to Appendix B to view the Workshop Agenda.

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## 1.1 Purpose of Workshop

The purposes of the workshop were to:

- share details about the Environmental Impact Screening Committee (EISC) process;
- share details about departmental roles and responsibilities in the Inuvialuit Settlement Region (ISR);
- review regulatory responsibilities of specific departments;
- discuss participation by others in the EISC process;
- discuss how the EISC screening decisions / terms and conditions are currently implemented by regulators and non-regulators;
- identify constraints and recommend solutions to the implementation of terms and conditions; and
- discuss the role of significance determination and approach in setting terms and conditions.

## 1.2 Goals and Desired Outcomes

Goals of the workshop were outlined as being, to:

- gain a better understanding of the EISC process and the processes of Federal and Territorial departments;
- understand how each agency utilizes the EISC decision;
- come up with conclusions on how to work together more efficiently;
- share information between different federal and territorial departments;
- understand the different roles, regulatory responsibilities, and mandates of the federal and territorial departments;
- discuss participation in the various processes by all parties;
- identify constraints and come up with solutions; and
- discuss significance and how significance is determined.

The desired outcomes of the workshop were identified as:

- having a better understanding of the EISC process;
- an improved information / advice exchange process between parties;
- recommending improvements to the decision letter issued by the EISC;
- identify an approach for developing terms and conditions;
- having a discussion on determining significance; and
- achieving clarity on the relationship to CEAA.

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## 2. Results

There was no agreement on the interpretation of paragraph 11(17)(b). Instead, much of the discussion revolved around where improvements could be made to the EISC process and the response of the regulators to that process. These suggested improvements may avoid situations of conflicting interpretation of paragraph 11(17)(b). Prevailing over much of the discussion, and an inadvertent source of tension, was the failure to recognize the EISC and the CEAA environmental assessment processes as two independent processes each with their own tests, decisions and outcomes. In the valid attempt to avoid duplication of process, tensions may arise when one process comes to a conclusion different from the other.

All parties at the meeting were legitimately concerned with doing an adequate job to avoid negative, significant impacts from a proposed project. The EISC achieved this by recommending conditions that they felt are needed to bring a project from significant negative impacts to a state where it could be implemented without proceeding to a review by the EIRB. Prior to the amendments to the land claim, these projects may have been referred for a review. The EISC reviews the information available to it and then determines the conditions that need to be applied. It does not work directly with the proponent to achieve improvements in the project to avoid significant, negative impacts.

The CEAA responsible authorities (RA's) achieve the same results by progressively working with the proponent (i.e., through an iterative process) to adjust the project to a state of no significant, negative impacts so that the screenings could be completed. It is within the capacity of the RA's to work with proponents in this fashion. The responsible authorities undertake their work from two perspectives: as a regulator; and, as a party with environmental assessment responsibilities. In working with the proponent, regulatory issues are also resolved.

It would appear that the "reasons for decision" by the EISC and RA's potentially focus on different matters, if the workshop discussion relating to impacts on fish and fisheries is any indication. The EISC focused on the impact to harvesters (i.e., cultural impacts), as well as the environment, to reach their conclusions for potential for significant impacts, while RA's such as the Department of Fisheries and Oceans (DFO) and the Department of Indian Affairs and Northern Development (DIAND – in its capacity as advisor to the NWT Water Board) paid attention to the biophysical effects. Different conclusions were reached, though the valued environmental component under consideration in both cases was fish.

To resolve some of the tensions, recommendations were made which may:

- require better information submission by proponents so that mitigation / commitments are easier to enforce and track;

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- require the EISC to adjust its “expeditious” screening process to take advantage of information collected through the CEAA screening process;
- require the EISC to be clearer about how it came to its decision of significance;
- require departments and agencies to examine and exercise all the options available to them to ensure that mitigation is achieved. There are few limits to mitigation options under the CEAA.
- require all parties to do a better job of keeping each other informed of the outcome of assessments and the effectiveness of mitigation; and
- require more EA training for all the participants in both the EISC process and the CEAA process.

## 3. Identified Issues

The following issues were identified based on our analysis of the background information provided to us, the feedback received during the workshop, and from comments received on the draft final report. These issues have been identified for resolution as a means to facilitate improvement to the overall effectiveness of the EISC process and to assist the reconciliation of the IFA screening and the CEAA processes.

1. Proponents need additional direction from all parties.
  - Proponents need to be advised to be more explicit about the standards and guidelines they have used in developing their project design.
  - Proponents should be asked to list all the commitments they have made in their environmental assessment report. This list would be revised at the end of the screening/assessment process. The list of commitments can then be attached as a condition in permitting processes such as the DIAND or National Energy Board (NEB) processes. Inspectors can also use it as part of any monitoring process.
2. Reporting back to communities, etc.
  - Better means of reporting back the commitments to be implemented by the proponent needs to be achieved. Commitments could be posted along with notification information when potential infractions are observed (e.g., reporting information for harvesters to use).
  - Regulators should confirm if the EISC would like to receive copies of final land use permits, water licences, and other permits and authorizations for the project.
  - Inspectors should report back to the EISC as to the effectiveness of any measures implemented, and any corrective actions they impose.
  - Need to explicitly identify who will be responsible for confirming that the measures are implemented. This information should be shared with the EISC and put on file there.

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- In situations where the proponent has not complied with the terms and conditions, it would be helpful if the EISC were advised of the infraction and how it was treated. It would definitely help the EISC determine the level of trust.

## 3. Wording of mitigation.

- Commitments by proponents, recommended terms and conditions from the EISC, and advice by regulators should clearly identify the effect that is targeted and in need of management. The EISC and regulators have discussed the value of recommended terms and conditions being outcome-based rather than prescriptive.
- The regulators could provide draft terms and conditions to the EISC before the EISC makes its decision (similar to a draft screening report). This may require a look at the EISC process timing. Adjustment in the timing on some projects may resolve the concern that the EISC does not have all the evidence it needs to make a decision. Likewise, any work by regulators could emphasize improved mitigation by project design and by avoidance and some analysis of how mitigation might be improved.
- Any change to the proposed project required by the RA's in order to receive approvals (e.g., for impact avoidance and mitigation purposes) that occurs after the EISC has made its screening decision, could effectively nullify that screening decision, particularly if the change is significant. The EISC would have to revisit the project proposal to determine the significance of any required changes.
- Security deposits could be used more creatively and could be used to ensure that proponents ensure their commitments and provide regulators with additional leverage. The amount of security requested would be dependant upon size of effect.
- Need to find a mechanism to deal with socio-economic impact mitigation.

## 4. Significance determination.

- All parties have to be clear about the valued component being impacted to the point of significance. For example, DFO considers water withdrawal from the perspective of fish and how fish will be affected. The EISC considers water withdrawal from the perspective of the potential impact on fish as well as the humans who use the lake. Different valued components = different significance perspectives. All parties have to provide supporting documentation explaining what is being impacted, what is being found and what would avoid significance from happening. To some extent this is already done, but not documented, when regulators work with the proponent to reduce impacts further.
- There is a need to develop a collective understanding of the role of societal values in determining significance and develop an understanding of and mechanisms for how to deal with significant socio-economic / cultural impacts (e.g., harvesting issues).

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## 5. Time to provide input.

- Some reviewers and regulators are requesting additional time to review documents sent out by the EISC. Additional review time is sometimes also being requested during the CEAA process. Generally the CEAA process is completed when all the required information is received, but the EISC process closely follows the process timelines established in its operating procedures, and an EISC decision may be made without the requested input. This need for additional time may allow easier coordination with the CEAA screenings. The EISC could consider a two-tiered review system. A list or some kind of rule to allow for a review extension should be considered (i.e., notify within 15 days that more time is required).
- All parties need to improve their communications with each other throughout the screening process.

## 6. Information request process.

- The EISC should consider an information request (IR) process to seek clarification on issues.
- This IR process should work so the EISC could request further information from the proponent and regulators, and vice versa.

## 7. Funding for the EISC.

- Any changes in process (i.e., need to meet more frequently or longer than the current schedule of meetings) will require additional funding, particularly since the EISC is a part-time board with only one staff member. DIAND and the EISC will need to address this issue.
- Workload of the EISC (i.e., the number of applications it considers each year) is influenced by external factors outside of its control. As project proposals become more complex and technologically advanced, additional staff resources may also be necessary to support and facilitate the EISC process.

## 8. Better departmental coordination.

- The regulators, departments and agencies (federal and territorial) need to work more closely to ensure that contradictory advice is not provided to the EISC.
- Could create a one-window approach for proponents and coordinate adjustments to the proponents program before providing comments to the EISC.
- The EISC should be made aware of all the departments that can provide advice. The EISC is not taking advantage of most of the GNWT departments.

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## 9. Environmental Assessment Training

- All parties should participate in EA training in their respective processes. The EISC and CEAA processes are grounded on different principles and values, and require different decision-making criteria. The two processes do not lend themselves to easy harmonization as a result.

## 3.1 Outstanding items

There are three outstanding issues that warrant examination and are at the core of the work that needs to be done.

1. Fundamentally different approach for completing EA work. The EISC for financial and time commitment reasons evaluates the reports and makes recommendations to improve upon the evaluation the proponent has done and add to the required mitigation. The process does not allow for negotiated mitigation and commitments by the proponent. These measures are just stated in correspondence and the EISC has relied on regulators/governmental authority to finish that work. The federal and territorial departments negotiate changes with the proponent before they complete their evaluation of the impacts.
2. There is a need to come to a common understanding of the changes to the land claim agreement. Measures discussed in the workshop, if implemented will help avoid the primary concern of, “*what happens if a measure aimed at avoiding a significant impact is not implemented?*”.

This question is not unique to the IFA, the same issue is resident under CEAA or any other assessment process in Canada and has created problems in ensuring that mitigation measures are implemented. To address this problem, CEAA was amended (ss.20 (1.1)) to allow non-federal parties the ability to assume mitigation responsibilities. Environmental Agreements are one way that a party can require a proponent to carry out the commitments it made or fulfill the terms and conditions attached to, for example the EISC decision. The EISC could consider whether this approach is allowed for under the IFA, or look at ways of requiring such agreements. Federal and territorial departments could also use this approach.

3. Finally, there is the question of, “*what is the meaning of an EISC significance determination?*”. There appears to be a disagreement among the parties as to the standing of an EISC finding of significance and therefore, their recommendations to avoid impacts from becoming significant. It is not clear why this is an issue. Prior to the amendments to the IFA, if the EISC found significance, the project would have been referred to the EIRB. There was no apparent problem with this authority. The real concern may stem from needing clarity on what is being found significant (see mitigation above).

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## 4. Recommendations

The following recommendations are suggested next steps to facilitate improved effectiveness of the EISC process, to improve communications and facilitate a better understanding of alternative and equally valid legislated and land claim processes between all parties involved in the ISR environmental assessment and regulatory processes, to improve the understanding of basic environmental assessment principles and best practices amongst all parties, and to provide an established mechanism for the resolution of any future issues that may arise between parties. These recommendations have been sorted into short-term and long-term application. The bracketed number makes reference to the particular issue(s) (i.e., 3-1) or the particular outstanding item (i.e., 3.1-1) the recommendation addresses. Additional commentary *in italics* may also accompany a recommendation.

It should be noted that not all of the issues identified in section 3, or the outstanding items identified in sub-section 3.1 are addressed by the following recommendations. All of the issues and outstanding items should be carefully considered and addressed.

### Short-Term

1. The EISC should improve its direction to proponents by revising its “Operating Guidelines and Procedures” manual (3-1).
2. The regulators and other government departments and agencies that may be responsible for regulating, inspecting and/or otherwise ensuring mitigation and the terms and conditions (recommended by the EISC and required by regulators) are met by proponents, should establish a formal reporting process with the EISC in order for the EISC to remain informed as to the effectiveness of its recommended terms and conditions, the effectiveness of terms and conditions required by others, and of the overall compliance and “track record” of proponents (3-2).

*The information provided should include: inspection reports; spill reports; copies of final land use permits, water licences, and any other licences, permits or authorizations issued for the project; reports on any infractions and corrective actions taken; copies of any reports proponents are required to file; and any other information deemed useful by the EISC.*

3. The EISC should receive environmental assessment training on determining significance, environmental assessment best practices, understanding and using Valued Components (both environmental and socio-economic/cultural) in environmental assessment, and writing EISC decisions (3-4; 3.1-3).

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4. The EISC and those federal and territorial departments involved in regulating and providing advice on projects in the ISR should convene an annual meeting to, as a minimum: facilitate communications between all parties about roles and responsibilities; to identify, discuss and work to resolve any issues that may have arisen or may potentially arise; to review how environmental assessment and regulatory processes are working; to review future projects and issues that may affect the parties; and to receive combined training about each others processes and how they work (3-8; 3.1-2).

*With the advent of the Mackenzie Gas Project proceeding to development, there will be a long-term association in the ISR with projects that have highly technical components to them, and with the proponents operating them. This would be an opportunity for the EISC and other regulators to also consider convening an annual forum with these operators to review performance and to obtain training about the project. This would also facilitate communication and build trust between the parties and the proponents.*

5. All parties should collectively receive environmental assessment training in the IFA and CEAA processes, in order to facilitate a better understanding of the different principles and values required for decision-making (3-9).

## **Long-Term**

1. The EISC should consider revising its operating procedures to allow for the exchange of information requests and allow more time for solicited parties to provide comments to the EISC requests for review comments (3-5; 3-6).
2. The EISC should review its land claim responsibilities and assess the need to request additional core funding from the federal government in order for the EISC to efficiently and effectively meet and fulfill its roles and responsibilities. This would include a fundamental review of the level of funding received, the part-time nature of the EISC, the role and effectiveness of support staff, the need for formal training on a regular basis of its members and support staff in order to better address EISC business, and to better understand the changing nature of the ISR and the projects that commonly occur there (3-7; 3.1-1).

# Appendices

# **Appendix A**

## **Workshop Agenda**

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### DRAFT AGENDA for Discussion - EISC Workshop

October 17-19<sup>th</sup>, 2005

Eskimo Inn

Inuvik, NWT

#### October 17 (Monday)

2:00 – 3:00 Welcome, Goals and Objectives of Workshop  
3:00 – 4:00 Environmental Impact Screening Committee  
4:00 – 5:00 Canadian Environmental Assessment Agency

#### October 18 (Tuesday)

8:30 – 9:00 Coffee  
9:00 – 10:00 Inuvialuit Land Administration  
National Energy Board  
10:00 – 10:30 Coffee break  
10:30 – 11:30 Environment Canada  
Fisheries and Oceans  
11:30 – 12:00 Process check  
  
12:00 – 1:00 Lunch break  
  
1:00 – 2:30 Northwest Territories Water Board  
Government of Northwest Territories  
Indian and Northern Affairs Development  
2:30 – 3:00 coffee break  
3:00 – 5:00 Working scenarios of development application received  
  
6:00-8:00 Evening social (group dinner at the Finto)

#### October 19 (Wednesday)

8:30 – 9:00 Coffee  
9:00 – 12:00 Workshop summary  
Plan for attack  
Format for agreement/ MOU/ protocol  
Next Steps

# **Appendix B**

## **Participant List**

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### PARTICIPANTS LIST FROM EISC WORKSHOP (October 17–19, 2005) Inuvik, Northwest Territories

	Organization	Name	Phone No.	Email Address
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**Appendix C**  
**Presentations & Questions**  
**Inuvialuit Final Agreement**  
**Canadian Environmental Assessment Act**  
**Participant Presentations**

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# 1. Inuvialuit Final Agreement: Environmental Screening and Review Process (Bill Klassen)

## 1.1 Summary of presentation

The IFA is an Aboriginal land claim settlement signed in 1984 between the Inuvialuit and the Government of Canada. It was given effect and declared valid by the *Western Arctic (Inuvialuit) Claims Settlement Act*. The IFA takes precedence over all other legislation to the extent of any inconsistency.

The goals of the IFA are:

- to preserve Inuvialuit cultural identity and values within a changing northern society;
- to enable Inuvialuit to be equal and meaningful participants in the northern and national economy and society; and
- to protect and preserve the Arctic wildlife, environment and biological productivity.

The Inuvialuit Game Council (IGC) was set up in 1983 to carry out the functions of the review committee. The roles of the IGC are to:

- represent the collective Inuvialuit interest in wildlife;
- appoint Inuvialuit to co-management boards and other groups;
- advise the government on wildlife issues;
- assign community hunting and trapping areas; and
- allocate wildlife quotas among the communities.

As a result of the IFA, six community conservation plans have been developed that identify such things as areas of local importance and lands in need of protection, in addition to wildlife management plans which identify such things as zones which prohibit any industrial activity.

The EISC and the Environmental Impact Review Board (EIRB) consist of 3 Inuvialuit appointees, 3 Government appointees, and one chair. The roles of the EISC are to review a project and decide if it will pose significant negative environmental impacts, and to decide if a project will be recommended to the EIRB for review. The EISC and EIRB have developed operating guidelines and procedures that are amended regularly.

Developments proposed for Crown lands within the Inuvialuit Settlement Region (ISR) that require a permit must be submitted to the EISC for review. Regulatory agencies are not permitted to licence or permit any development to proceed until the screening or, if necessary, a review has been conducted.

The proponent is responsible for submitting a project description to the EISC 30 days prior to the EISC meeting (meetings occur every 5 weeks). The project descriptions are then distributed to the appropriate

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Hunter and Trappers Committee (HTC), which are responsible for commenting on project descriptions from the perspective of wildlife and wildlife harvesting<sup>1</sup>, and government agencies for comments and advice. This 30-day requirement can be waived in special circumstances.

Examples of instances when the 30-day requirement can be waived are:

- if the proponent is requesting a renewal of activity;
- if the project request is to conduct research; and
- if the project has been deferred or screened previously.

In these instances the decision letter notes the waiver indicating this should not be taken as a precedent. In the future, decision letters may be posted on the EISC website, which is maintained by the Joint Secretariat.

Once the EISC has reviewed the project description and all of the comments received from regulators, the EISC will then decide one of four outcomes:

- development will have no significant negative impact and may proceed;
- development, if authorized subject to EISC recommended terms and conditions, will have no significant negative impact and may proceed;
- development could have significant negative impact and is subject to assessment and review; or
- development proposal has deficiencies of a nature that warrant termination of its consideration. In this case a project can be referred back to developer.

### 1.2 Questions and Answers<sup>2</sup>

**Question.** What is the timing of the first decision?

**Answer.** If the project description is received 30 days in advance, the EISC can usually make a decision at the next scheduled EISC meeting. The proponent is then phoned and notified of the decision and a letter is sent out within a week. The whole process usually occurs within 50 days.

**Question.** What is the timeframe for requiring feedback from other agencies?

**Answer.** Within 30 days.

**Question.** On occasion, does the EISC make a decision prior to hearing back from all government agencies?

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<sup>1</sup> For a complete description of the roles and responsibilities of the HTC's, please refer to s.14(75 & 76) of the IFA.

<sup>2</sup> Answers were provided by the appropriate respondent who the question was directed to, but were also augmented by others at the workshop or through additional but related questioning.

## EISC WORKSHOP REPORT

**Answer.** Yes, on occasion the EISC may make a decision prior to receiving all feedback. If comments are received in time to go into the EISC briefing package they are incorporated. However, if comments are not received until after the package has been put together, they are held and considered on the day of the meeting.

**Question.** Does everyone receive project descriptions on your distribution list?

**Answer.** Yes, the proponent must provide 11 copies of the project description, which are circulated to the members on the distribution list.

**Question.** What if the agencies respond to the EISC within 30 days but ask for more time to provide comments?

**Answer.** Previously this has not occurred with any government agencies. It has only occurred with the HTC and in that instance the deadline was extended.

**Question.** What happens if the EISC sends out a project description for comment and required information from an agency but does not receive it within the 30-day deadline?

**Answer.** In this instance the EISC can defer its decision if expert advice is required.

The EISC feels that the letters of advice provided by regulatory agencies would be more useful if specific advice was clearly outlined to be worked into a recommendation (i.e., what the proponent must do (regulations) vs. what the proponent should do to mitigate impacts and reduce significance (recommendations)).

**Question.** Are there impact thresholds outside current regulations?

**Answer.** The EISC hopes to discuss this over the next few days.

The EIRB (Chair Liz Snider) sets up a panel, conducts consultations and comes to a decision. The EISC sends a letter to the EIRB saying why they feel a proposed project demonstrates potential for significant negative impacts and why the project has been referred to the board. The proponent is responsible for sending information to the EIRB.

The EIRB differs from the EISC in the following ways:

- hire expertise;
- write specific terms and conditions;
- look into matters to do with compensation (wildlife);
- can look at worse case scenario; and
- assess the companies' ability to meet liabilities.

Finally, the EIRB makes recommendation to the Minister who responds within 30 days, however the Minister doesn't have to agree with the recommendation of the EIRB.

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On a side note: The EISC recommendations are final and cannot be changed. With the amendments to the land claim, the EISC would like to have some certainty if proponents or regulators do not fully implement the conditions provided by the EISC. As per the purpose of this workshop, the EISC would like to be able to pull back a project and send it to the EIRB if it feels there will be significant impacts.

**Question.** Are the EISC recommendations directed towards proponents to be enforced by the regulators?

**Answer.** They may not be enforced by law, however the EISC can make recommendations that keep the project below the level of significance. If recommendations are not implemented then the project would be referred for review.

Sometimes companies will write things into the project description that are their commitments but there is no apparent means of enforcing these statements. According to the EISC, the term “recommendation” refers to mitigation that the proponent must implement to improve a project and to reduce significant negative impact, where as recommendations provided by regulatory agencies are more like suggestions.

## 2. CEAA Process (Keith MacDonald)

### 2.1 Summary of presentation

The *Canadian Environmental Assessment Act* (CEAA) is a federal law that requires consideration of environmental effects of proposed projects before federal authorities take any actions to allow them to proceed.

To determine if the Act applies it must meet all of the following criteria:

- Do you have a project?
- Is the project on the exclusion list or is it otherwise excluded?
- Do you have a Federal Authority?
- Do you have a S.5 trigger? These include a proponent (public works), money (is there funding going into a project?), land (is land being administered?), permit/authorization (is a permit or authorization required for the project?). The primary trigger is usually permitting/authorizations.

The types of Environmental Assessments undertaken by federal authorities include Screenings, Comprehensive Studies or Panel/mediation Reviews.

Roles and Responsibilities – if a Federal Authority (FA) finds that a project falls into any one of the categories then the FA becomes a Responsible Authority (RA) and responsible for completing an environmental assessment. Several methods of notification are used, online and in office.

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The Federal Environmental Assessment Coordinator (FEAC) is established for every screening and comprehensive study under the Act to:

- Promote coordination among Federal Authorities;
- Ensure a “single federal window” in EAs involving other jurisdictions; and
- Facilitate communication and cooperation with all participants in the EA.

Currently in the NWT, and only in the ISR as CEAA does not apply in the Mackenzie Valley (except under special circumstances), the role of the FEAC has been delegated back to the RA and the governmental agencies take turns functioning as the RA. The role of the FEAC in the NWT is determined generally by which federal department has the primary regulatory instrument required for a project to proceed. In most cases it falls to either DIAND or DFO.

### 2.2 Questions and Answers

**Question.** Does CEAA screening process wait until the EISC screening is completed? Are the CEAA and EISC screening processed done concurrently?

**Answer.** The CEAA process starts once the project description is received and occurs concurrently and parallel with the EISC.

**Question.** Is just the project description adequate for the CEAA process?

**Answer.** Each department may require certain information. There are no specific guidelines regarding the types or amount of information required. A decision is made quickly if the project requires a permit and consequently if CEAA is triggered. Sometimes the agencies request specific information so they have enough information to know if they will need to authorize a permit.

**Question.** Does the Federal agency ever have information that they do not share with the EISC? Who is responding to EISC input? Is it the same person or different people as there could be an issue of information being lost if different people are in charge of providing comments.

**Answer.** In the case of Environment Canada, it is the same person.

**Answer.** The Federal agencies may have information that the EISC doesn't have due to additional information requested from the proponent. This information may come after the EISC has made its decision but the EISC would still have this information, as it is copied to both the EIRB and EISC. Sometimes the request for additional information requires further studies and therefore this information may not be received until after the EISC has made its decision.

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### 3. Participant Presentations (Day Two)

#### 3.1 CEA Agency Questions and Answer continued

**Question.** How are socio-economic impacts addressed through the EISC and CEAA?

**Answer.** Socio-economic impacts are not addressed in the IFA and therefore not in the EISC process.

**Answer.** Through CEAA, only indirect socio-economic effects are addressed that stem from a change in the environment (e.g., loss of employment due to loss of fish habitat). Direct socio-economic effects fall outside what the CEAA requires to be considered. This is mainly due to CEAA jurisdiction, which does not allow a way to mitigate direct socio-economic effects. On the other hand, CEAA can deal with mitigation from indirect effects due to a change in the environment. Although direct socio-economic impacts may be looked at they are not taken into consideration for determination of effect.

**Question.** The definition of environmental effect under CEAA was amended to give effect to SARA, however there was no implementing legislation associated with this amendment. What obligation does EISC have to look at species at risk?

**Answer.** IFA covers wildlife in great detail but not species at risk.

#### 3.2 Continuation of presentations

Today's workshop will include several presentations by different regulatory agencies and departments, and a development scenario/mock exercise. The presentations are intended to identify the type of expertise each agency provides, the regulatory responsibilities/obligations of each agency, and the departmental mandates of each agency. Also, the presentations will help to demonstrate how regulatory agencies and departments participate in the EISC process, how significance determinations are made, how regulatory agencies and departments can help the EISC in these determinations, how the terms and conditions that the EISC recommend would be dealt with, and identifying any constraints that may arise.

The purpose of the development scenario/mock exercise is to help identify any potential issues and solutions.

To summarize some points from yesterday:

- The EISC focuses on environmental impacts and impacts to Inuvialuit harvesting.
- The EISC is triggered by project developments that require authorizations. CEAA triggers include contribution of money, proponent, disposition of land, and regulatory permit/authorization applications.
- Regulatory agencies cannot issue permits until they receive a decision from the EISC.
- The EISC has a 30-day review period and meets every 5 weeks.

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- The IFA allows the EISC to develop its own operating guidelines and procedures.
- The EISC seeks advice from regulatory agencies, established wildlife management plans, joint management plans, etc.
- Comments from agencies should be focused regarding the review of the development. Process issues will be noted with emphasis on the EISC determination.
- EISC decisions are final. They do not go to the Minister of DIAND, or to the appropriate competent government authority, for confirmation as is the case for EIRB decisions.
- CEAA is not always triggered for all projects that occur within the Inuvialuit Settlement Area. There are cases where the IFA screening process will be triggered and not CEAA.
- The EISC sends out notification of projects they are screening.

### 3.3 Inuvialuit Land Administration (Marilyn Cockney)

The Inuvialuit Land Administration (ILA) is a division of the Inuvialuit Regional Corporation and is responsible for the day-to-day management and administration of Inuvialuit Private Lands.

Legislation	IFA
Roles / Mandates	The ILA is responsible for issuing of rights; Ensuring proper consultation; Land use assessment and approvals; Ensuring Inuvialuit participation, monitoring and enforcement of rights and information management
Regulatory Authorities	Inuvialuit Final Agreement Inuvialuit Regional Corporation Bylaws Inuvialuit Land Administration Procedures Other directions of the IRC Board
How do you participate in the EISC process?	The ILA does not participate directly in the EISC process
How do you use the EISC decision in meeting your CEAA requirements and/or providing advice?	The ILA has no CEAA requirements
How do you use the EISC decision in your authorization/permitting process?	Any recommendations received from the EISC, EIRB or other review agency are considered by the ILA in their assessment of an application and may be incorporated by the ILA in the terms of a Right.
How should the EISC format its decision letter to ensure your input/advice is	No comment

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Legislation	IFA
appropriately considered?	
Do you have any other suggestions to improve the screening process in the ISR?	No comment

### 3.3.1 Questions and Answers

**Question.** When the ILA is involved in issuing approvals, at what point does the ILA get involved in a project?

**Answer.** The ILA is usually involved prior to land use applications. The ILA receives applications for projects proposed on Inuvialuit Lands and reviews them to ensure that the proposed use is in accordance with the Inuvialuit Land Use Policy and Requirements under the IRC direction. Once the application has been reviewed and has been determined to be in accordance, the ILA sends the application to the regulatory agencies on its referral list for feedback. Once feedback is received including any comments from the EISC, the ILA can approve or issue a permit/Right with terms or conditions.

To clarify, the EISC does not review projects on private land unless such a project is referred to them. For example, if a project deals with non-renewable resource removal, the IGC will refer the project to the EISC because the ILA will need to issue permits. If a project is located on both crown land and private land, the EISC only screens the portion of the project on crown land unless that portion on Inuvialuit private land is referred.

Comment. ILA is part of the Technical Advisory Committee (TAC) for the NWT Water Board. If an issue is not water related, an information request can still be forwarded to the NWT Water Board.

### 3.4 The National Energy Board (Anne-Marie Buchwald)

Legislation	Canadian Oil and Gas Conservation Act
Roles / Mandates	To promote safety; The protection of the environment; The conservation of oil and gas resources and; Joint production arrangements
Regulatory Authorities	The NEB regulates the construction / operation of inter-provincial and international oil and natural gas pipelines; International power lines and the import and export of energy commodities Security of NEB-regulated facilities

## EISC WORKSHOP REPORT

Legislation	Canadian Oil and Gas Conservation Act
	Exploration and development of oil and gas resources in non-accord frontier lands (Canadian Oil and Gas Operations Act)
How do you participate in the EISC process?	The NEB receives the EISC meeting agenda of upcoming projects Time permitting – the NEB uses information requests to contribute to the EISC meeting The NEB functions as a resource for providing expert advice to the EISC on technical issues
How do you use the EISC decision in meeting your CEAA requirements and/or providing advice?	Through the extensive consultations conducted by the proponent and reviewed by the EISC's, the NEB is able to ensure that local perspectives / issues are identified. The NEB has an obligation under CEAA to conduct consultations. The EISC's decision allows the NEB to consider other departmental advice or concerns and allow for follow-up, as required, with other agencies.
How do you use the EISC decision in your authorization/permitting process?	The NEB waits for the EISC decision prior to issuing any permits or licenses
How should the EISC format its decision letter to ensure your input/advice is appropriately considered?	No comment
Do you have any other suggestions to improve the screening process in the ISR?	Coordinated review – benefit in paralleling EISC process Clarity of expert advice from other regulators Clarity of conditions from the EISC goal oriented by describing the desired end result or objective to be achieved enforceable and measurable and clearly outlined timing expectations.

### 3.4.1 Questions and Answers

**Question.** Is the NEB limited to regulatory permits and licenses or can they explore contractual arrangements with the proponent?

**Answer.** The NEB is limited to regulatory permits and licences.

**Question.** If something needs to be done, does the NEB need to call on regulatory agencies?

**Answer.** NEB does not direct companies to do anything but identifies how significance can be decreased if the proponent follows the suggestions identified by the NEB. The NEB tries to work with the proponent and get them to commit to the suggestions. The NEB tries to build proponent commitments.

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Once a proponent makes a commitment, these commitments become binding by putting them into licences and permits.

**Question.** Does the NEB look for the regulatory agency, which has the best mandate to deal with a particular commitment? For example, a proponent has committed to reduce impacts to migratory birds.

**Answer.** If a commitment is identified/made by a proponent during a consultation event, the NEB can make this commitment a specific condition in the permit. (i.e., if the proponent has committed to mitigation the NEB can issue it as condition).

**Question.** Is there a way of checking what a proponent has committed to?

**Answer.** A list of commitments made by the proponent is attached to the authorization. The inspection staff also receives a list of all commitments made by the proponent.

**Question.** This is a concern of the EISC regarding commitments made by the proponent. How does the inspection staff make sure that commitments are complied with? In some instances, a proponent makes a commitment but their sub-contractors have not been advised.

**Answer.** The NEB works with the ILA and other federal departments to ensure compliance with commitments.

**Question.** What happens if a proponent comes up with an alternative to a commitment?

**Answer.** A contingency is outlined by the NEB to show how mitigation was achieved even if the proponent cannot comply 100% with the original commitment. In the end, it is the NEB's job to see if the proponent has demonstrated responsibility and if the environment is protected.

**Question.** What do you do with federal advice?

**Answer.** In this case, the NEB would ask the proponent to commit to recommendation(s) provided by the federal authority.

### 3.5 Environment Canada (Mike Fournier)

Legislation	Canadian Environmental Protection Act (CEPA, 1999) Fisheries Act – Pollution Prevention Provisions Section 36(3) Canada Water Act Migratory Birds Convention Act (MBCA) Migratory Birds Regulations (MBR's) Migratory Bird Sanctuary Regulations Species at Risk Act (SARA) Canada Wildlife Act Wild Animal and Plant Protection and Regulation of International and Inter-Provincial Trade Act
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## EISC WORKSHOP REPORT

Roles / Mandates	Department of Environment Act
Regulatory Authorities	<p>Ocean Disposal Permits within Migratory Bird Sanctuaries.</p> <p>Migratory Bird Sanctuary Permits.</p> <p>Scientific Research Permits on migratory birds authorizing a person to engage in an activity affecting a species listed under the Species at Risk Act, any part of its critical habitat or the residences of its individuals.</p> <p>Species at Risk Act (SARA) Permits authorizing a person to engage in an activity affecting a species listed under the Species at Risk Act, any part of its critical habitat or the residences of its individuals.</p> <p>Environment Canada does not issue any “authorizations”.</p>
How do you participate in the EISC process?	Environment Canada will screen projects as requested by the EISC, NWT Water Board, ILA, DIAND or other Responsible Authority. Environment Canada will respond directly to the EISC with a letter of advice / recommendations and to any other agency screening the application with a similar letter of advice / recommendations.
How do you use the EISC decision in meeting your CEAA requirements and/or providing advice?	
How do you use the EISC decision in your authorization/permitting process?	Environment Canada will not issue a permit until they have received the EISC advice. If the EISC makes a recommendation that can be accommodated within an Environment Canada permit, it will be incorporated (may require some communication to clarify intent). If the EISC makes a recommendation that can be accommodated within an Environment Canada permit, it will be incorporated (may require some communication to clarify intent). Environment Canada may not always have a way to incorporate EISC’s advice into their permits.
How should the EISC format its decision letter to ensure your input/advice is appropriately considered?	EISC should clearly identify and/or reiterate the Environment Canada advice they want included.
Do you have any other suggestions to improve the screening process in the ISR?	No comment

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### 3.5.1 Questions and Answers

**Question.** Are there any agreements with the Yukon government regarding species at risk?

**Answer.** Environment Canada is not to sure if there are any agreements with the Yukon Government, but suspects that something may be in the works, as similar agreements are being discussed with the GNWT. There is an agreement being negotiated among EC, DFO, Parks, and YTG, however details are not available at this time (comment from DIAND).

**Question.** Is Environment Canada a responsible authority under the Fisheries Act?

**Answer.** No. Environment Canada only becomes the responsible authority under the *Migratory Birds Convention Act* (Sanctuary Permits and some scientific permits [see CEAA Inclusion List]) and the *Canadian Environmental Protection Act* (Ocean Disposal Permits).

**Question.** How does a mitigation/commitment become a condition?

**Answer.** Conditions are developed by biologists in the case of Migratory Bird Sanctuary permits (currently biologists in Yellowknife make those decisions on what conditions are appropriate). Environment Canada is in the process of developing a list of conditions.

**Question.** How does Environment Canada ensure that their conditions are measurable and trackable?

**Answer.** **In the case of Sanctuary Permits and Ocean Disposal Permits** Environment Canada's conditions are measurable, trackable and enforced by Environment Canada enforcement staff. In the case of EC's comments provided on land use permits or water licences where EC is not issuing a permit, EC must look to other regulatory agencies to include EC's recommendations in their permit or license and in some cases enforce them.

**Question.** What are Environment Canada's responsibilities under the Marine Protected Areas Act?

**Answer. Don't know.** Environment Canada may not have much jurisdiction under the Marine Protected Areas Act.

**Question.** How does Environment Canada keep track of thresholds on Kendall Island Bird Sanctuary.

**Answer.** Through a geographic information system (GIS).

**Question.** Under the new amendment to CEAA, are there any provisions for federal authorities to implement mitigation measures? How is this done in other parts of Canada?

**Answer.** This is done in other parts of Canada by putting a federal member on the provincial committee to monitor effects.

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### 3.6 Department of Fisheries and Oceans (Dorothy Majewski)

Legislation	<p>Fisheries Act</p> <p>Canadian Environmental Assessment Act</p> <p>Oceans Act</p> <p>Species at Risk Act (responsible for all aquatic species at risk, conditions under fisheries act for regulatory approvals).</p>
Roles / Mandates	
Regulatory Authorities	<p>Section 35(1) and 35 (2) under the Fisheries Act prohibit works or undertakings that could result in harmful alteration, disruption or destruction (HADD) of habitat without authorization. Other sections under the Fisheries Act relate to fish passage, water flow, fish guards and screens, the protection of fish from destruction by means other than fishing</p>
How do you participate in the EISC process?	<p>A project description is forwarded to DFO from a proponent (when an authorization or approval may be required) or by other government agencies (when the project has the potential to impact on fish and fish habitat) or by the EISC. DFO reviews the project description for impacts to fish and fish habitat DFO requests additional information from the proponent, if required. If impacts can be mitigated, a letter of advice is sent to the proponent, EISC and other government agencies. If there are residual impacts, a Fisheries Act authorization is required.</p>
How do you use the EISC decision in meeting your CEAA requirements and/or providing advice?	<p>If the EISC rejects a project, the DFO review is terminated and no letter of advice or authorization is issued.</p> <p>If the EISC approves a project, the EISC's decisions and recommendations are incorporated into the CEAA review process.</p>
How do you use the EISC decision in your authorization/permitting process?	<p>DFO incorporates the EISC's recommendations and advice with respect to fish and fish habitat into conditions of Fisheries Act authorizations and approvals, as appropriate.</p> <p>The EISC's recommendations are considered when negotiating compensation for residual impacts.</p>
How should the EISC format its decision letter to ensure your input/advice is appropriately considered?	<p>The letter of advice from DFO should only be considered advice and not conditions of approval (Only <i>Fisheries Act</i> authorization conditions are enforceable).</p> <p>If an authorization is required, the EISC's recommendations / decision should reflect conditions of the approval.</p>
Do you have any other suggestions to improve the screening process in the ISR?	<p>Increased communication and understanding of regulatory and internal review processes.</p>

## EISC WORKSHOP REPORT

### 3.6.1 Questions and Answers

**Question.** If the EISC includes DFO's letter of advice and sends it to the NEB, does it become a term and condition?

**Answer.** NEB would not put this in their permitting. The NEB would try to work with the proponent to get them to commit to DFO's advice, at which point the commitment could then be incorporated into an NEB permit. NEB can then go back to the proponent and say you committed to do these things.

**Answer.** DFO also tries to work with the proponent so that an authorization does not have to be issued because in essence, an authorization from DFO means they are issuing a permit for the harmful alteration, disruption or destruction fish habitat and DFO strives to reduce that to the extent possible.

**Answer.** If a project requires an authorization, it is required to undergo a screening under CEAA. If the NEB is the Responsible Authority under CEAA, they are responsible for a decision of significance. In this case, the NEB may ask DFO for advice but they do not have to take it.

**Question.** How do agencies deal with recommendations from the EISC that deal with traditional knowledge? For example, the HTC does not want water to be removed from a specific lake, which the proponent has identified, for traditional / cultural reasons. How is traditional knowledge used in the assessment process? How is that accommodated in a permit?

**Answer.** Traditional Knowledge is important for significance determinations. Any issues identified by the local people would be passed onto the Responsible Authority who would then work with the proponent to address that concern. For example, if water removal from a lake was a concern to local people, DFO would work with the proponent to identify alternative water sources. DFO's authorization would be conditioned accordingly. This becomes a compliance issue in the event the proponent removes water from the lake in question. In that event, DFO would have to prove that fish or fish habitat were impacted and that is often difficult.

**Question.** What happens if the HTC does not agree to a proposed project activity because it may cause changes with respect to harvesting? Someone must take the EISC recommendations and make it a condition of a permit.

**Answer.** DFO would consider recommendations related to fish and fish habitat.

**Question.** Who can regulate what at the end of day? What is the EISC authority to put it into an approval?

**Answer.** Section 20 1.1 of CEAA reads as follows:

Mitigation measures that may be taken into account under subsection (1) by a responsible authority are not limited to measures within the legislative authority of Parliament and include

- a) any mitigation measure whose implementation the responsible authority can ensure; and
- b) any other mitigation measures that it is satisfied will be implemented by another person or body.

## EISC WORKSHOP REPORT

The problem is that the conditions are not enforceable (i.e., need to prove that removal of water above the acceptable limit has increased HADD). In the case of DFO, enforcement can only take effect once something has happened. Under the amendment to the Fisheries Act, the conditions of an authorization need to be met or they are a non-compliance issue.

**Answer.** DFO can make an EISC recommendation a condition of an authorization.

**Question.** What is the acceptable percentage of water a proponent can withdraw from a lake? Is this percentage enforceable?

**Answer.** No. Currently there are only guidelines, which identify such things as the acceptable percentage of water which may be withdrawn from a lake.

**Question.** What is the enforceability of a land claim and a community conservation plan?

**Answer.** The community conservation plans have no basis in law.

### 3.7 NWT Water Board (Nathen Richea)

The TAC is a multi-disciplinary, multi-agency advisory committee that provides expert technical advice and recommendations to NWT Water Board. Other members include the NEB, GNWT Health, ILA and GNWT ENR. The TAC comments are compiled and issued as an information request to the proponent and added to the screening to mitigate effects. The TAC's review process (30-days) occurs simultaneously with the EISC process. Finally, the NWT Water Board is a responsible authority under CEAA.

Legislation	Northwest Territories Waters Act and Regulations (Regulations determine if a Type A or Type B water license is required.)
Roles / Mandates	TAC does not represent any single agency or mandate
Regulatory Authorities	Establishes a NWT Water Board Governs the use of water and disposal of waste in the ISR
How do you participate in the EISC process?	TAC process is separate from the EISC process (parallel).
How do you use the EISC decision in meeting your CEAA requirements and/or providing advice?	The CEAA screening can not be completed until the EISC has made its decision. The EISC conditions are factored into the mitigation in the CEAA screening process.
How do you use the EISC decision in your authorization/permitting process?	Where applicable the EISC terms and conditions may be written into a water license. The EISC decision letter is sent to the proponent to ensure compliance.

## EISC WORKSHOP REPORT

How should the EISC format its decision letter to ensure your input/advice is appropriately considered?	Significance determinations are important and require rationale. It may be useful to have the EISC screening format modified to better align the screenings (trackable decisions).
Do you have any other suggestions to improve the screening process in the ISR?	No comment.

Review process summary: A draft water licence, which identifies project specific mitigation measures is prepared and presented to the Water Board for review and revision. If the Water Board approves the terms and conditions of the licence it is then issued by the Chairman of the Water Board. Requires sign off by DIAND (for Type A licences only).

**Clarification:** EISC can reject a project. CEAA can still complete its screening process before the EISC makes its decision.

### 3.7.1 Questions and Answers

**Question.** Will TAC continue once the NWT Water Board and INAC are separated?

**Answer.** The role of TAC will stay the same in that it will still provide input into the screening process.

**Question.** Does the Water Board sign-off on the screening decision?

**Answer.** The Water Board does sign-off on the screening because INAC only act as staff to the Water Board. The decision is made by all regulators therefore all parties must sign-off.

**Question.** Do all regulators sign-off independently?

**Answer.** Yes, all sign-off independently and everyone (i.e. regulators) must agree with the screening. The Water Board signs-off on class B water licences and DIAND (the Minister) signs off on class A water licences.

**Question.** What are the waste disposal criteria with respect to the dumping of grey-water?

**Answer.** Wastewater guidelines are currently being reconsidered.

### 3.8 Government of Northwest Territories (Gavin More)

Legislation	GNWT is unlike a province in terms of legislative powers. It does not have exclusive powers and may only make laws in relation to the classes of subjects set out in S16 of the Northwest Territories Act.
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Roles / Mandates	<p>Set out in the Territorial Act(s) that individual departments are responsible for administering.</p> <p>Each department has mandates from cabinet.</p> <p>Additional responsibilities may be derived from Federal Legislation that has designated specific responsibilities to a minister or the Commissioner.</p> <p>Receive some mandates from Federal Authorities</p>
Regulatory Authorities	
How do you participate in the EISC process?	If EISC recommends a project for review, the GNWT won't issue a permit until the review is completed.
How do you use the EISC decision in meeting your CEAA requirements and/or providing advice?	The GNWT does have consultation requirements, although they may not use EISC consultation process.
How do you use the EISC decision in your authorization/permitting process?	<p>GNWT departments incorporate mitigation measures outlined by the EISC if the mitigation measure is within the scope of the regulatory authorization. For example, dates outlined in EISC decision are carried over and incorporated into the GNWT authorization (i.e., permitting dates reflect the EISC decision).</p> <p>If the mitigation measure is outside of the scope of the regulatory authorization the authorization is not issued until the proponent agrees to comply with the measure, or in other cases it is ignored.</p> <p>Dates outlined in EISC decision are carried over and identified in the permit (i.e., permitting dates will reflect EISC decision).</p>
How should the EISC format its decision letter to ensure your input/advice is appropriately considered?	The GNWT would like advice from the EISC as to what format would be the best for the EISC to receive GNWT comments
Do you have any other suggestions to improve the screening process in the ISR?	

### 3.8.1 Questions and Answers

**Question.** Is documentation sent to all regulators?

**Answer.** The GNWT departments are reliant on other bodies to get its concerns incorporated into a licence or permit. Alternatively, the GNWT works closely with the proponent and gets the proponent to accept the condition.

## EISC WORKSHOP REPORT

**Question.** Does the GNWT have a process to track how many of its recommendations get incorporated into the EISC authorizations?

**Answer.** GNWT doesn't have a process to track this.

**Question.** Do guidelines apply in the Inuvialuit Settlement Region? Why not develop GNWT guidelines?

**Answer.** The role of the GNWT is not legislated like a province. There is a lack of staff and a lack of expertise. There is also a lot of overlap with Environment Canada especially from matters that stem from CCME issues.

**Question.** When providing advice to the EISC and overlapping advice with Environment Canada, do you meet with Environment Canada prior to sending your advice to the EISC?

**Answer.** The GNWT doesn't usually check or meet with Environment Canada at all except in the case of air issues. GNWT is currently trying to revamp this process. Any advice is reviewed by the environmental assessment people in Yellowknife before being sent to the EISC. These are not formalized discussions. Until there is a change in the IFA, the GNWT is just providing advice.

**Comment:** Therefore, it is important for the GNWT to identify what is just advice and what is more important (i.e., recommendations for permitting).

**Question.** How come there was no mention about the Public Health Act, camp management, etc?

**Answer.** The Department of Transportation, Health and Social Services, and Municipal and Community Affairs are typical of the departments that do these types of reviews. Their recommendations are not incorporated into the EISC screening perhaps due to their focus on socio-economic issues.

**Question.** How does the GNWT deal with potential issues with the Hunters and Trappers Committees?

**Answer.** With respect to outfitters, advice would come from the Department of Environment and Natural Resources. With respect to tourism activities such as a lodge, advice would come from the Department of Industry, Tourism and Investment.

**Question.** How come Aurora Research Institute is giving out permits on private land?

**Answer.** The Aurora Research Institute doesn't issue permits on private land unless authorized by the ILA. If a proponent wants to conduct wildlife research and talk to hunters, the Aurora Research Institute will issue a permit due to the consultation requirements (i.e., to ensure consultation is conducted correctly, confidentiality, etc. Deals with it from the socio-economic perspective).

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### 3.9 DIAND – Inuvik District (Lorraine Seale on behalf of Rudy Cockney)

Legislation	Territorial Lands Act Territorial Land Use Regulations Territorial Quarrying Regulations. Other Legislation administered by DIAND: Land Leases and Reserves NWT Water Licences Exploration, Significant Discovery and Production Licences
Roles / Mandates	DIAND has established guidelines governing standard land use activities.
Regulatory Authorities	Land Use Permits Territorial Quarry Permits Temporary Storage Authorities
How do you participate in the EISC process?	An application is submitted by the proponent, which is either accepted or rejected. If the application is accepted, it is sent out for consultation for 30 days to various government and aboriginal groups.
How do you use the EISC decision in meeting your CEAA requirements and/or providing advice?	Comments from the various government agencies, aboriginal groups and the EISC are received and are incorporated into the CEAA screening process, which occurs concurrently.
How do you use the EISC decision in your authorization/permitting process?	If there is determined to be no significant impacts after mitigation then a Land Use Permit can be issued with appropriate land use conditions. (DIAND waits to get the EISC decision before making their decision)
How should the EISC format its decision letter to ensure your input/advice is appropriately considered?	
Do you have any other suggestions to improve the screening process in the ISR?	

#### 3.9.1 Questions and Answers

**Question.** Is there a standard set of terms and conditions? Do you know if the land use permitting people ever write a condition that is not standard?

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**Answer.** If there is project specific mitigation that does not fall within the standard set of terms and conditions, DIAND will write specific land use conditions. Yes, it is possible.

**Comment.** Perhaps a set of best practices needs to be developed. Then, once a proponent adopts these best practices, only the non-standard ones would need to be reviewed.

**Comment.** Many DIAND terms and conditions have been developed over several years; therefore, they capture a best practices perspective when issuing permits. Typically, if you can develop guidelines and publish them it virtually forces industry to use the best practices. **Suggestion – good way to get things dealt with that don't have regulatory areas.**

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### 3.10 DIAND – Environment and Conservation Division (Lorraine Seale)

Legislation	
Roles / Mandates	<p>Role: To coordinate DIAND’s involvement in environmental assessment processes in the NWT – concerned with consistent approach and promoting best practices in EA.</p> <p>Mandate: To provide programs and services which support a made-in-the-North model for environmental stewardship.</p>
Regulatory Authorities	None
How do you participate in the EISC process?	<p>No direct involvement in the EISC process. If the EISC refers a project to the EIRB, the Environment and Conservation division will:</p> <p>Coordinate DIAND input to the EIRB’s process</p> <p>Coordinate DIAND response to EIRB report, if DIAND is the Competent Government Authority under the IFA.</p>
How do you use the EISC decision in meeting your CEAA requirements and/or providing advice?	Not usually involved in CEAA screenings. If a comprehensive study (eg. Devon) or panel is conducted the Environment and Conservation Division will coordinate DIAND input.
How do you use the EISC decision in your authorization/permitting process?	The Environment and Conservation Division does not issue any permits or authorizations
How should the EISC format its decision letter to ensure your input/advice is appropriately considered?	
Do you have any other suggestions to improve the screening process in the ISR?	

# EISC WORKSHOP REPORT

## **Appendix D**

### **Significance of Environmental Effects Presentation**

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### 3.11 Significance of Environmental Effect (Debra Myles)

If there is an indication that a project is likely to cause significant adverse impacts from the beginning, the project is sent to review or comprehensive study. Usually, it is unknown if there will be significant effects from the beginning of a project so it is important not to use the term significant or significance. Terms like “major” or “important” are more appropriate to use in this case.

The term of significance under CEAA is not defined in the act itself so what exactly is meant by the word significance?

Significance - is a measure of an adverse environmental effect in a transparent, systematic and defensible manner based on an appropriate combination of scientific data, regulated thresholds (standards), social values / cultural knowledge and professional judgment.

Guidance on Significance: All significance decisions should be transparent, with all assumptions documented, so you can provide rationale for your conclusions.

Definitions of “environment” and “environmental effects” under CEAA are as follows:

Environment - components of the Earth, and includes (a) land, water and air, including all layers of the atmosphere, (b) all organic and inorganic matter and living organisms, and (c) the interacting natural systems that include components referred to in paragraphs (a) and (b).

This definition is similar the definition of environment in the IFA – found in appendix D of the EISC Operating Guidelines and Procedures.

Environmental effect – (a) any change that a project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the Species at Risk Act, (b) any effect of any change referred to in paragraph (a) on (i) health and socio-economic conditions, (ii) physical and cultural heritage, (iii) the current use of lands and resources for traditional purposes by aboriginal persons, or (iv) any structure, site or thing that is of historical, archaeological, palaeontological or architectural significance, or (c) any change to the project that may be caused by the environment, whether any such changes or effect occurs within or outside Canada.

Under the IFA there is no definition of environmental effect.

The steps for deciding if an environmental effect is significant are as follows:

1. Decide if the effects are adverse (especially in case of socio-economic).
2. Determine whether the adverse effects are significant

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3. Decide whether the significant adverse environmental effects are likely? The term likely is interpreted by a probability determination.

A combination of criteria should be used to determine the level of significance. These criteria include: magnitude, frequency, duration, timing, direction, reversibility, ecological context, geographical extent, and other factors.

Early in the assessment process the responsible authority and proponent should be asking the experts and communities what effects would be acceptable or unacceptable in order to determine if an effect is significant.

### 3.11.1 Questions and Answers

**Question.** Often you may find significance later in the project review, and not at the beginning of a project. What happens then?

**Answer.** Ideally, you should start looking for significant adverse effects in the scoping phases of a project so you can request additional information to help determine significance.

In the case of a CEAA screening, significance determinations rest with the Responsible Authority. The proponent should provide information that the regulators need.

**Question.** The EISC makes a significance determination with respect to the Inuvialuit Settlement Region. Does CEAA make significance determinations in context of the region or at a national scale? For example, the loss of caribou in the NWT may be significant at a regional scale but when viewed at a national scale it may not be significant.

**Answer.** Part of the scoping process is setting geographical boundaries. Sometimes there are multiple boundaries. Not sure how this is dealt with although I suspect this would be dealt with by separating direct effects from cumulative effects.

# Appendix E

## Development Scenario Exercise and Discussion

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### 4. Development Scenario

Developments such as the development scenario presented by Petro Corp. happen on a timeline. Often there are lots of capital costs associated with such projects and there tends to be typical phases a project will move through over time. Each phase has different regulatory and permitting requirements. The project proposed by Petro Corp. is in the exploration and appraisal stage.

Stage 1: Pre-bid Phase

Stage 2: Exploration and Appraisal Phase

Stage 3: Development Phase

Stage 4: Operations Phase

Stage 5: Decommissioning Phase

One way of affecting the outcome of an assessment is by the types of instructions given to a proponent in the first place. Instructions can be:

- Prescriptive – giving the proponent detailed instructions on what should be studied
- Objective – giving the proponent broad goals to achieve in the design and outcome of the effects of the project (might be called “sustainability indicators”)
- Blended – detailed instructions where necessary; objectives used for determining significance.

The EISC operating guidelines are more general than prescriptive. This is because they must be general enough for smallest proponent.

Potential significant issues deal with the issues that remain after mitigation and those components already built into the project description. Residual effects refer to those environmental effects that remain after mitigation measures have been factored into the analysis. They may contribute to cumulative effects. Significance is based on residual effects. Often residual effects are described in terms of duration, frequency, geographic extent, magnitude and reversibility of an effect. Once a project is underway, what changes to the environment will remain after mitigation.

**Question.** Does the EISC decide to send a project to the EIRB based on the general proposal or after mitigation is applied?

**Answer.** The EISC does take mitigation into account (residual effects after mitigation). However, this could be done better by more fully articulating the residual effect.

The focus of this exercise is the determination of significance. What information is needed to draft terms and conditions for this project and what format is this information required in? What information is available and what kind of processes are available?

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Things to keep in mind while going through the exercise:

- What is being impacted?
- What would make the impacts significant?
- Is the current mitigation adequate? If it is inadequate, what terms and conditions are needed to keep it from becoming significant?
- Keep in mind harvesting, community conservation plans, wildlife plans, and cumulative impacts.

The EISC needs help setting screening decisions for significance.

1. What is being impacted?
2. What would make the impacts significant? How do you, as a regulatory body, determine significance? How do ensure that effects stay below the significance threshold outlined in 11.17(b). Risk evaluation. At what point does your agency/department stop being comfortable with what's being proposed?
3. Is the current mitigation adequate? If it is inadequate, what terms and conditions would your agency/department recommend to keep an effect from becoming significant? What can be done about indirect effects of a project? (e.g., adverse impacts on a lake that may affect harvesting.)
4. Managing proponent commitments.
5. Enforceability. How do terms and conditions need to be written?
6. What can be done about indirect effects of a project? (e.g., Adverse impacts on a lake that may affect harvesting.) Keep in mind harvesting, community conservation plans, wildlife plans, and cumulative impacts.

The members were broken into two groups: EISC and regulatory agencies/ILA. The issues of water and fish were chosen for discussion.

Questions to answer:

1. What is the effect you are targeting?
2. Why is mitigation present not suitable/good enough?
3. How to improve mitigation. Use significance criteria to justify why you want to add additional terms and conditions.

### 4.1 Discussion of results

The discussion revolved around the perspectives of both groups with respect to identifying water withdrawal from a lake as significant by the EISC group and not by the Government group. In its review, the EISC group based its *significance* determination on the importance of that lake for harvesting by the

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HTCs. The Government group, through an iterative process, chose to work with the proponent to come to a point of *no significance* (i.e., reduce amount of water used, then determine if withdrawal harmed fish habitat).