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# The Effects of Native Land Claims on Public Participation in Environmental Impact Assessment in the Canadian North.

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This thesis is submitted in partial fulfillment of the Master's of Arts Degree, Faculty of Graduate Studies, University of Ottawa.

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# ABSTRACT

The research purpose is to identify and to analyse the real and potential effects of Native land claim settlements on public participation in northern environmental impact assessment (EIA). More specifically, the intent is to identify and evaluate effects of the *Western Arctic Inuvialuit Final Agreement* on public participation in EIA in the Mackenzie Delta/Beaufort Sea region (Figure 1.1). The fundamental research product is a recommendation set related to the enhancement of claims-based EIA in this region. A secondary research objective is the production of a more general recommendation set related to the future of public participation in northern EIA in light of the upcoming settlements of currently outstanding land claims.

The methodology employed consisted of a literature review, and survey research involving the use of a research questionnaire and a series of field interviews. Fieldwork was undertaken in September - October 1987 in Calgary, Yellowknife, Inuvik, Tuktoyaktuk, Whitehorse, Vancouver and Ottawa.

Following the review of EIA literature, eleven recurring concerns in EIA were identified. These concerns are: Conduction of Post-Audit Analysis; Process Implementation Costs; Process Maintenance Costs; Scoping Procedures and Methodologies; Methods for Consideration of Cumulative Impact; Soundness of Science in EIA; Provision of Intervenor Funding; Legal Standing of EIA; Accessibility of Information; Timeliness of EIA; EIA and Social Impact Assessment. It is argued that public participation forms a common element among these concerns and is therefore a useful subject for study. It is further argued that the following eight pre-conditions for effective public participation can be identified: Opportunity to Participate; Awareness of Opportunity to Participate; Process Timing; Financial Resources; Access to Information; Expertise; Clarity of Process Role and Process Scope; and, Process and Participant Credibility. In the absence of one or more of these pre-conditions, the potential for effective public participation in EIA is diminished.

In the context of these pre-conditions, an examination of public participation in northern EIA to date leads to the conclusion that confusion and uncertainty regarding the role of EIA in resource management decision-making has inhibited effective public participation in northern EIA to date. The settlement of the Western Arctic Inuvialuit Final Agreement adds to this uncertainty by establishing another EIA mechanism, which to date, is not linked in any fashion to previously existing EIA processes. The Western Arctic Inuvialuit Final Agreement will, however, increase the effectiveness of Inuvialuit participation in EIA in the Mackenzie Delta/Beaufort Sea region. At the same time, it will diminish the effectiveness of non-Inuvialuit participation in EIA reviews. Finally, a considerable number of difficulties have arisen as a result of the loose wording of the Western Arctic Inuvialuit Final Agreement and the lack of sufficient forethought and planning regarding its implementation. Similar difficulties will arise following future northern Native land claim settlements if considerable thought is not given to their implementation.



# RÉSUMÉ

Le but de cette étude est d'identifier et d'analyser les effets réels et latents des règlements relatifs aux revendications de terres natales sur la participation publique au processus d'évaluation et d'examen en matière d'environnement (PEEE). L'intention est, plus précisément, d'identifier et d'évaluer les effets de l'Accord Final d'Arctique Ouest d'Inuvialuit

sur la participation publique au PEEE dans la région Delta Mackenzie/Mer de Beaufort. Fondamentalement, la recherche propose un ensemble de recommandations relatives à la mise en valeur d'évaluations environnementales basées sur les revendications dans cette région. Aussi, elle s'applique à l'élaboration d'un certain nombre de recommandations générales, relatives à la participation publique au PEEE, à la lumière des règlements à venir sur des revendications de terres présentement en cours.

La méthodologie employée a consisté en une revue d'écrits sur le sujet et en une étude comprenant l'usage d'un questionnaire de recherche et d'une série d'enquêtes sur les lieux. Ces dernières ont été entreprises en septembre et octobre 1987, à Calgary, Yellowknife, Inuvik, Tuktoyaktuk, Whitehorse, Vancouver et Ottawa.

A la suite de l'examen des publications de PEEE, onze préoccupations récurrentes ont été identifiées. Il apparaît que la participation publique constitue un élément commun à toutes ces préoccupations qui fait état de l'utilité de la recherche. De plus, huit conditions nécessaires à une participation publique efficace sont ici proposées.

Dans le contexte de ces conditions préables, un examen de la participation de PEEE septentrional amène à conclure que la confusion et le manque de certitude concernant le rôle de PEEE dans la prise de décisions sur l'aménagement des ressources ont, à ce jour, paralysé une participation publique efficace au PEEE septentrional. De plus, en établissant un autre mécanisme PEEE, qui n'est relié d'aucune façon à des processus existants, le règlement de l'Accord d'Arctique Ouest d'Inuvialuit ne fait qu'accroître cette incertitude. On doit cependant souligner que l'Accord augmente l'efficacité de la participation Inuvialuit au PEEE de la region Delta Mackenzie/Mer de Beaufort. Il diminuera, en même temps, l'efficacité de la participation non-Inuvialuit au processus PEEE. Finalement, en raison de la terminologie vague de l'Accord et d'un manque de préparation et de planification suffisantes concernant sa mise en oeuvre, de nombreuses difficultés ont surgi. Des difficultés semblables vont se présenter à la suite des règlements des terres natales septentrionales, si leur mise en oeuvre ne fait pas l'objet de sérieuses considérations.

# *DEDICATION*

This thesis is dedicated to my mother, Mrs. Margery West. Without her inspiration and encouragement, it would never have been started let alone finished.

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Finally, it remains to acknowledge two people to whom it is difficult to adequately express my gratitude. The first, my thesis supervisor Roger D. Needham, was a constant source of useful advice, constructive criticism and enthusiastic encouragement. His efforts on my behalf went far beyond the traditional duties of a thesis supervisor and I am truly appreciative.

The second, my wife Ms. Angela M$^{c}$Gree, put up with my emotional highs and lows throughout the preparation of my thesis and helped keep me on an even keel. Without her support, both emotional and financial, this thesis would still be in the process of being written.

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# *LIST OF ACRONYMS USED IN THE TEXT*

CARC - Canadian Arctic Resources Committee

CEARC - Canadian Environmental Assessment Research Council

COPE - Committee for Original Peoples' Entitlement

CYI - Council of Yukon Indians

DIAND - Department of Indian Affairs and Northern Development

EARP - The Federal Environmental Assessment and Review Process

EIA - Environmental Impact Assessment

EIS - Environmental Impact Statement

FEARO - The Federal Environmental Assessment and Review Office

GNWT - Government of the Northwest Territories

IEE - Initial Environmental Evaluation

NEB - The National Energy Board

NEPA - National Environmental Policy Act

NWT - Northwest Territories

RERC - Regional Environmental Review Committee

TFN - Tungavik Federation for Nunavut

YTG - Yukon Territorial Government

# CHAPTER I

# INTRODUCTION

## PURPOSE STATEMENT

The research purpose is to identify and to analyse the real and potential effects of Native land claim settlements on public participation in northern environmental impact assessment (EIA). More specifically, the intent is to identify and evaluate effects of the *Western Arctic Inuvialuit Final Agreement* on public participation in EIA in the Mackenzie Delta/Beaufort Sea region (Figure 1.1). The research culminates in recommendations related to the enhancement of claims-based EIA in this region. In addition, general recommendations related to the future of public participation in northern EIA in light of the upcoming settlements of currently outstanding land claims are presented.

## CENTRAL POSITIONS

*The vast majority of northern EIA reviews have not featured any public involvement.* Most resource development projects are processsed within the appropriate bureaucracies and are given environmental approval without any public consultation. That this is the case has, in some measure, detracted from the credibility of EIA in the eyes of the northern public.

*A number of factors have acted to reduce the effectiveness of public participation in northern EIA to date.* Confusion regarding the appropriate role and scope of EIA has negatively affected the public's ability to participate effectively in EIA. Structural flaws, such

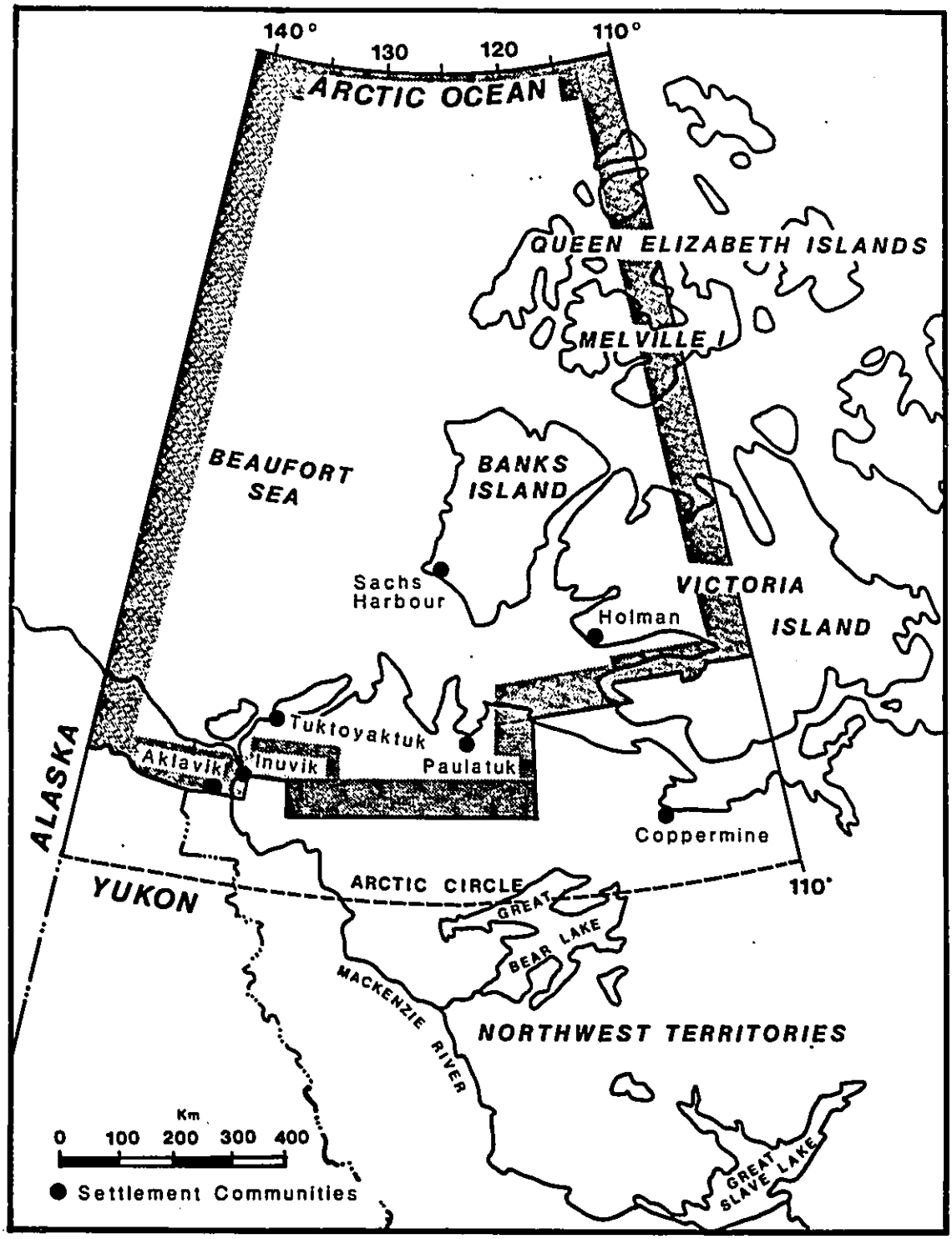


*Figure* 1.1: *The Inuvialuit Settlement Region*
*Source*: DIAND, 1984a, Annex A.

as the lack of intervenor funding, the absence of public access to the initial assessment phase of EIA, and the lack of post-development auditing mechanisms in major EIA processes, have also reduced public participation effectiveness. Lastly, the credibility of northern EIA has suffered as a result of these difficulties. This credibility problem is greatly exacerbated by a perception shared by many northerners that southern *experts*, and EIA decision making bodies are unwilling to accept northerners' testimony as at all factual in content. Indeed, many northerners argue that their testimony is largely regarded as being highly emotional, qualitative and unscientific.

*Settlement of Native land claims will enhance public participation in northern EIA, especially for aboriginal peoples.* It will do so by making EIA more local in its orientation than it has been in the past and by providing aboriginal peoples with a guaranteed role in EIA decision making. A considerable number of difficulties will arise in the short to medium term following the settlement of claims as new EIA institutional structures and responsibilities are fleshed out and relationships between the claims-based EIA and currently existing processes are defined.

## PROBLEM CONTEXT

Environmental impact assessment (EIA) has been a prominent feature of the regulatory network in Canada's northern territories since the early seventies. An enormous number of projects ranging from two-person surveying expeditions to the construction and operation of mining projects have been reviewed for potential environmental impact. This review process has taken place under the auspices of mechanisms such as the Federal Environmental Assessment and Review Process (EARP), the territorial Water Boards and the National Energy Board (NEB). In addition, over forty federal and territorial statutes, regulations and ordinances regulating the use of natural resources in the North have served EIA functions in

one form or another (Task Force on Northern Conservation, 1984).

The existence of this wide array of processes has led to the development of considerable confusion relating to the appropriate role and scope of northern EIA (Horte, 1983; MacPherson, 1984; Task Force on Northern Conservation, 1984; Bugslag, 1985; Marshall et. al., 1985; Hoos, 1987, Personal Communication; Hubert, 1987, Personal Communication). For any given northern resource development project, five or six public environmental reviews could conceivably be activated. How these processes fit together is not clear. Nor is it clear what range of issues they should deal with.

In most cases, this state of confusion has not become a problem for the public as a majority of resource development proposals are never subject to public EIA reviews. Environmental approvals for most activities are routinely issued from within the bureaucratic machinery operating in the North. Only in the case of very large-scale development projects, are public EIA reviews held. Notable examples of such reviews include Justice T. Berger's Mackenzie Valley Pipeline Inquiry (Berger, 1977), the National Energy Board hearings regarding northern pipeline proposals (NEB, 1977, 1981), and the seven public reviews conducted under the auspices of EARP (FEARO, 1978a, 1978b, 1979a, 1980, 1981, 1982, 1984a). Of lesser prominence is the series of public reviews held by the territorial Water Boards (Northwest Territories Water Board, 1986). These reviews have generated tremendous amounts of information relating to northern development issues - the Beaufort Sea EARP alone produced 30,000 pages of material (Marshall, 1984, Personal Communication). At the same time, they have engendered a number of groups with considerable experience and expertise in northern EIA.

Of primary importance amongst these groups are the various Native organizations in the North. Given that Native people make up a large percentage of the population of the North - fifty-eight percent of the Northwest Territories's population and eighteen percent of Yukon's (Stabler, 1985) - they have played a large role in EIA public reviews. In all northern reviews

to date, Native groups have used the EIA process to put forward their concerns regarding land claims issues. The Mackenzie Valley Pipeline Inquiry, for example, dealt extensively with questions related to land claims and development, despite the fact that it was established to consider only the environmental impacts of a proposed pipeline (Bregha, 1979; Page, 1986). As a result, land claim issues have been prominently featured in almost all EIA public reviews. It is essential, therefore, that land claims be taken into account in any discussion of northern EIA.

Separate land claims have been submitted by the Council of Yukon Indians (CYI), the Déné/Métis of the Mackenzie Valley, the Tungavik Federation of Nunavut (Eastern Arctic) and the Inuvialuit's Committee for Original Peoples Entitlement (COPE). Three of these claims are currently under negotiation while the fourth, the COPE claim, was settled in 1984.

The COPE claim was filed by the Inuvialuit of the Mackenzie Delta/Beaufort Sea region in February of 1976 (DIAND, 1983). Negotiations led to the signing of an Agreement-In-Principle on October 31, 1978. Final discussions aimed at finalizing the claim concluded on June 5, 1984 with the signing of the Inuvialuit Western Arctic Final Agreement (DIAND, 1984a). A description of the Agreement is provided in Chapter V of this thesis. At this point, suffice it to note that an EIA screening and review process is established under the Agreement.

In sum, EIA in a formal sense has been taking place in the North since the early seventies. Since that time, a number of large-scale public reviews of major development projects have been undertaken. At the same time, land claim negotiations have been occurring throughout the North. It is the interaction of these two themes - public participation in EIA, and Native land claims - that forms the focus of this research.

# RESEARCH APPROACH

## Research Hypotheses

A synthesis of the literature related to northern EIA and Native land claims led to the development of the following research hypotheses:

*Hypothesis One*

Limited public access to EIA processes has inhibited public participation in northern EIA.

*Hypothesis Two*

Confusion related to the appropriate role of northern EIA, has inhibited effective public participation in northern EIA and will continue to do so following the implementation of the Western Arctic Inuvialuit Final Agreement.

*Hypothesis Three*

The Western Arctic Inuvialuit Final Agreement will increase the effectiveness of Inuvialuit participation in EIA in the Mackenzie Delta/Beaufort Sea region.

*Hypothesis Four*

The Western Arctic Inuvialuit Final Agreement will diminish the effectiveness of non-Inuvialuit public participation in EIA in the Mackenzie Delta/Beaufort Sea region.

In order to test these hypotheses, three sets of data were gathered. First, information related to the historical background of the research themes was amassed. Historical insight is

particularly important in northern studies as northern environmental and other issues generally change rapidly. Many contemporary issues, particularly in the realm of Native land claims, have their roots in the early sixties and seventies and can not be properly understood without a consideration of their historical underpinnings.

Second, data regarding the current status of northern EIA, and land claims were gathered. At this point it was decided to focus upon the Inuvialuit Western Arctic Final Agreement as it remains the only settled claim in the North. Information regarding the Agreement and the structures created by it is generally available to the public. In addition, as previously indicated, an EIA process has been established by the Agreement and examples of how it operates are available.

Third, given the focus on the Inuvialuit Western Arctic Final Agreement, data specifically related to the Agreement and the Mackenzie Delta/Beaufort Sea region were gathered. This data included material related to the various corporate entities established through the Agreement, the history of the Agreement and information related to the various communities in the Mackenzie Delta/Beaufort Sea region. In addition, particular attention was paid to the EIA institutional structures and arrangements established through the Agreement.

Materials for the first data set were gathered primarily through literature reviews. Some discussions with individuals involved in northern EIA over the past fifteen years were also used to obtain information in this area.

Literature reviews were only of limited use in preparing the second and third data sets. In the realm of northern resource development, change in most issue areas is very rapid. For example, many of the issues which arose in the late seventies and early eighties in anticipation of large-scale oil and gas development and production disappeared virtually overnight, following the collapse of world oil prices and the resultant curtailment of oil and gas

exploration and development activities in the North. As a consequence, much of what is written about northern resource development is either obsolete or irrelevant shortly after it is published. To exacerbate this problem, many of the key actors involved in northern development do not formally record their experiences or opinions. Clear, lucid statements of industry perspectives on process aspects of EIA, for example, are extremely difficult to find. Instead, discussion and study of most issues in northern resource development relies heavily upon word of mouth. Indeed, the North has been described as having "an oral socio-political culture" (Merritt, 1987, Personal Communication).

In light of this situation, the largest proportion of the second and third data sets was obtained through interviews conducted in Ottawa, Calgary, Yellowknife, Inuvik, Tuktoyaktuk, Whitehorse and Vancouver.

## THESIS DEVELOPMENT

Chapter II presents the research methodology. The chapter describes the literature review and the survey exercise conducted as part of the research.

Chapter III presents a review of the literature relating to EIA in Canada generally, and Canada's North specifically. As a means of synthesizing this literature, a series of recurring issues and concerns in Canadian EIA is included at the end of the chapter.

Chapter IV addresses matters relating to the scope, purpose, objectives and methods of public participation in EIA. In this chapter, eight pre-conditions for effective EIA are also presented.

Chapter V discusses public participation in northern EIA to date in terms of each of the eight pre-conditions identified in Chapter IV. The discussion focuses on the Federal

Environmental Assessment and Review Process (EARP) and the National Energy Board (NEB) certificate issuance process.

Chapter VI introduces the topic of Native land claims. Particular emphasis is placed upon the legal and historical antecedents of the land claims movement. The Western Arctic Inuvialuit Final Agreement is also described in this chapter.

Chapter VII discusses public participation in the Inuvialuit EIA process. The chapter begins with a detailed description of the Inuvialuit EIA process, and then turns to a consideration of its effects on EARP and the NEB process. Following these preliminary sections, the chapter concludes with an examination of public participation in the Inuvialuit process.

Chapter VIII presents a series of conclusions and recommendations related to public participation in northern EIA to date and public participation in the Inuvialuit process. In addition, several observations are made regarding the potential effects of future claims settlements on northern EIA generally.

# CHAPTER II

# METHODOLOGY

The purpose of this chapter is to describe the methodology employed to gather and analyse data relevant to the two central research foci or themes - public participation in northern environmental impact assessment (EIA) and northern Native land claims. Discussion includes a review of relevant theoretical literature related to methodology and describes the formulation and operationalization of the questionnaire utilized in this research. Finally, the field studies and interview component is addressed. This review is also organized in terms of theoretical literature and a description of the interview procedures implemented.

## DATA SOURCES

### Literature Review

A literature review pertaining to each of the two research foci is presented in subsequent chapters. The purpose of this section is to describe the nature of the material consulted and the strengths and weaknesses of the literature review approach to data collection in northern studies. The literature is described in terms of primary and secondary sources.

*Primary Sources*

In the context of EIA, a number of primary sources were of considerable utility. The various reports of environmental assessment panels (Berger, 1977; FEARO, 1981, 1984a; NEB, 1977, 1981) and the transcripts of the public hearings held as part of their review (Knowles and Waddell, 1975), are notable examples in this regard. Of equal importance were the various

pieces of legislation establishing review processes (Canada, 1959; United States, 1970) as well as the Order-In-Council and original documents establishing the Federal Environmental Assessment and Review Process (EARP) (FEARO, 1979; Canada, 1984).

In relation to land claims, primary sources included copies of the text of the two land claims settled to date in Canada (Quebec, 1976; DIAND, 1984a), as well as the various versions of federal policy on Native land claims (DIAND, 1981, 1982, 1986). In addition, the Supreme Court of Canada case history relating to land claims issues was consulted (Elliot, 1981).

*Secondary Sources*

A considerable body of literature relating to EIA in Canada and elsewhere has developed since the early seventies (Yannacone, 1970; Elder, 1975; Plewes and Whitney, 1977; Holling, 1978; Rees, 1979; Beanlands and Duinker, 1983; MacLaren and Whitney, 1985; Smith, 1987). Most of this literature deals with EIA theory or with the structural aspects of a given process, and generally does not deal with specific reviews or geographical regions.

In the context of Canada's North, exceptions to this tendency do occur from time to time (Rees, 1984; Page, 1986). For the most part, however, academic literature relating to northern EIA is scarce. Furthermore, northern EIA literature produced by actor groups such as industry, environmental organizations or government agencies, is virtually non-existent.

The literature is quite limited with respect to Native land claims. A number of works related to the legal rights of aboriginal peoples and the legal underpinnings of their claims to various lands are available (Cumming and Mickenberg, 1972). In addition, some of the Australian literature related to aboriginal peoples is useful in developing an understanding of the Canadian situation. (Maddock, 1980; Fitzgerald, 1982; Peterson, 1983) However, literature dealing specifically with comprehensive claims in the North is quite scarce.

To summarize, there is a body of literature generally related to the two research foci. In addition, a small number of primary source documents related to northern EIA and to Native land claims is available. However, there is a paucity of material dealing directly with northern EIA, and northern Native land claims.

This information predicament, connotes a major weakness of literature reviews in northern studies. Although the literature can provide the researcher with an adequate understanding of the general and historical background to most northern issues, it is limited in its ability to provide accurate, detailed and *current* information regarding the rapidly evolving key issues of the North today. Several reasons for this are apparent.

First, many people involved in northern EIA do not have the opportunity to write about their EIA related experiences or opinions. For example, individuals working in industry and government agencies do not have the freedom or the academic licence. Environmental groups often do not have the resources to prepare comprehensive articles for publication.

Second, the absence of a post-secondary educational institution in the North is a contributing factor. While many social and environmental science faculties in southern universities have strong interests in northern issues, their physical separation from the North and its people, makes it difficult to stay in touch with the day to day details of evolving northern issues.

Third, the development of land claims related literature is restricted by the secrecy which cloaks all claims negotiations. Negotiation details are rarely made public.

In sum, the literature related to the two research foci is insufficient in volume, detail, and evidence to adequately test the research hypotheses. Consequently survey research methodology was employed to gather additional relevant data, insight and information.

# Research Questionnaire

The purpose of this section, is to review theoretical literature pertaining to questionnaire administration and design, and to describe the development and implementation of the questionnaire employed.

*Questionnaire Administration and Design*

Three primary methods of administering a questionnaire can be identified. The first, and perhaps the most commonly used method, involves mailing the questionnaire to respondents. The mailed questionnaire has the advantage of being relatively cheap to administer, making it possible to cover larger samples. It also may safeguard the anonymity of the respondent and remove the potential for bias inherent in survey technologies using interviewers (Babbie, 1971). Lastly, it usually generates easily codifiable data which can be quickly transferred to computer programs for analysis.

However, the mailed questionnaire is often plagued by low response rates and response bias. "*Nonresponse is not a random process* ; it has its own determinants which vary from survey to survey" (Oppenheim, 1966, p. 34). In addition, the questionnaire must be easy to understand in both form and content so that respondents can participate without assistance. Furthermore, respondents may skip questions or address them in an order different from that in which they are posed (Oppenheim, 1966, p. 36).

In view of these difficulties, researchers often prefer to implement surveys questionnaires which involve some contact with the respondents. This contact can take place either indirectly by means of the telephone, or through direct interpersonal communication. Telephone interviews save the cost associated with travelling to a field location while retaining the capacity to explain or clarify the questions posed. Telephone interviewers can also pose questions and record answers themselves, thereby ensuring that all the questions are identically posed and that all data is recorded in the same manner. Lastly, if telephone

numbers are picked at random, the anonymity of the respondents can be preserved.

On the negative side, telephone questionnaires do not allow interviewers to monitor non-verbal responses to questions (Babbie, 1979). Nor do they allow them to visually assess other factors such as the socio-economic status or ethnic origin of the respondents. This is particularly important as some respondents *may* object to being asked questions related to these matters in the context of a questionnaire which focuses on non-personal or scientific issues such as EIA. Furthermore, the respondent can not show items such as maps or documents to the interviewer in the course of responding. Lastly, *the development of an interviewer-respondent rapport* is often very difficult, particularly when dealing with Native people (Spradley, 1979).

Direct interpersonal communication generally yields the richest and most voluminous information of all questionnaire techniques (Moser and Kalton, 1972; Babbie, 1979). The interviewer can explain and discuss the questions with respondents and can probe for greater detail in their answers. Interviewers also have *the flexibility to pursue related issues of interest to the respondent and the researcher.* Lastly, questionnaires administered using interviews generally have high response rates (Moser and Kalton, 1972).

Direct personal communication and questionnaire implementation have two major shortcomings. First, they require a considerable amount of time and money, especially if respondents are located at great distance from the researcher. Second, they introduce an important potential source of bias, namely the interviewer's perceptions, attitudes and values (Oppenheim, 1966; Babbie, 1979). No interviewer can be completely unbiased. The interviewer may unintentionally and/or intentionally lead the respondent toward certain responses or may record the respondents answers as he or she understands them, not necessarily as the respondent intended. Although these difficulties can not be eliminated completely, experience and training can enable the interviewer to attain higher levels of objectivity.

Alternate questionnaire implementation technologies each have inherent strengths and weaknesses. The researcher must, therefore, match information needs and available resources to the appropriate technology. Once a particular approach has been decided upon, the specific questions to be posed can be formulated.

*Question Formulation*

Four factors are of primary importance in decisions regarding question formulation. First, it is important to ensure that each question has a specific and clearly defined purpose. The temptation to pose questions purely for *interest's sake* must be avoided. Indeed, each question must be aimed at eliciting a specific datum necessary for the measurement of a particular variable.

Second, the order in which questions are posed is of crucial importance (Oppenheim, 1966; Moser and Kalton, 1972; Babbie, 1979). The posing of a given question may bring forth perceptions, attitudes, and values which *may affect* responses to subsequent questions.

One way to avoid these difficulties, is to order the questions in a totally random fashion. However, to do so is difficult at best, and leads to the development of a somewhat chaotic questionnaire. Furthermore, this approach does not eliminate the effects of question ordering. Rather, it only makes them haphazard and uncontrolled (Babbie, 1979). Relevant theoretical and applied literature suggests that the researcher be sensitive to the potential problems raised by question ordering and that these problems be taken into account in the survey design (Oppenheim, 1966; Moser and Kalton, 1972).

Third, the wording of individual questions is of cardinal importance. Care must be taken to avoid introducing bias to the questions. A question such as: "Why do you think public participation in northern EIA has been so awful?", contains pre-formed value judgements and may bias replies. The use of leading question statements, such as: "Intervenor funding in northern EIA is a good idea. Do you agree or disagree?" and questions containing *loaded*

terms such as: "How do you feel about the *left-wing* nature of public participation in northern EIA?" are also to be avoided. Finally, confusion can be caused by *double-barrelled* questions, such as: "Do you feel that the lack of intervenor funding and the fact that many Native land claims remain unresolved, have affected public participation in EIA?" Confusion can also be created by questions employing double negatives as in the question: "Don't you agree that environmental groups do not have enough money to participate effectively in EIA?"

A fourth factor to consider is the use of open versus closed questions.

> "A closed question is one in which the respondent is offered a choice of alternative replies... Open or free-answer types of questions are not followed by any kind of choice and the answers have to be recorded in full" (Oppenheim, 1966, p. 40).

Open-ended questions permit respondents to reply spontaneously and generally yield the richest variety of data. However, the data they produce are difficult to analyse as they tend to vary significantly. In addition, open-ended questions are hard to use if one wishes to elicit responses related to detailed aspects of given issues. Closed questions, on the other hand, generally provide easily analysed data and can be more simply and rapidly answered. However, close-ended questions do limit the respondents' replies and may be somewhat leading in nature if the responses to select from do not represent a reasonable universe of potential replies.

*Questionnaire Implementation*

Prior to the development of specific questions for use in the survey, a decision was made regarding the method of questionnaire implementation. As discussed shortly, the nature of the respondent population prohibited the use of a mailed questionnaire. The population is quite small and specific individuals within it are difficult to identify from a distance. Many respondents were contacted for the first time during fieldwork at the suggestion of other respondents. Thus, a *respondent network* evolved in the field after interviewer trust was

developed and the research problem was better understood by northern respondents. In effect, many respondents would not have been identified and utilized, had only a mailed questionnaire been used.

The telephone interview approach was discarded as well. The difficulties in establishing a rapport with northerners, generally, and Native people in particular, are significant to begin with, without the added filter of the telephone (Spradley, 1979).

In sum, interpersonal communication remained as the means of implementing the research questionnaire.

*Question Development*

In order to generate the information necessary to test the research hypotheses, questions related to eight pre-conditions for effective public participation in EIA had to be posed (Table 2.1). (These pre-conditions are discussed in detail in Chapter IV dealing with public participation in EIA.) Furthermore, information and data related to public participation before and after the settlement of the Inuvialuit claim were needed. With these requirements in mind, the questionnaire reproduced in Appendix I was developed. The questionnaire is divided into three sections. Section One consists of questions related to public participation in northern EIA in general. Section Two deals with the effects of the Western Arctic Final Agreement on public participation in EIA, while Section Three focuses on political evolution and its implications for public participation.*

Section One includes questions one to ten. The first question is quite wide-ranging in nature, and asks respondents to provide a general assessment of public participation in

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* Questions related to political evolution were posed in the questionnaire in order to gain further background information and to develop lines of investigation for future research. The responses to these questions will not be addressed in the body of the thesis, but will be returned to in the section of Chapter VIII dealing with future research avenues.

*Table* 2.1: *Pre-conditions for Effective Public Participation in EIA*

| |
|---|
| 1. Opportunity to Participate |
| 2. Awareness of Opportunity to Participate |
| 3. Process Timing |
| 4. Financial Resources |
| 5. Access to Information |
| 6. Expertise |
| 7. Clarity of Process Role and Process Scope |
| 8. Process and Participant Credibility. |

northern EIA. The question was posed in this fashion for two reasons. First, the respondents were forced to cast their minds over a number of aspects of public participation in order to answer the question. The intent here was to trigger memories and ideas which the respondent could then use to answer subsequent questions more fully. Second, the question was intended to provide an introduction to the topic of public participation in EIA.

Questions two through ten focus on the indicators of public participation effectiveness as listed in Table 2.1. In each question, the indicator or subject variable was *italicized*. Questions two and three, dealt with information raised in EIA reviews as a result of public participation. Questions four and five focussed on the public's opportunity to participate in EIA while question six addressed the issue of who is the public?

In question seven, respondents were asked for their opinions regarding the provision of

public funds to groups wishing to participate in EIA. This question's purpose was threefold. First, it assessed respondents' views regarding the availability of funds for the public to participate. Second, it further contributed to the consideration of the appropriate definition of *public* by asking who should be eligible to receive public funding. Third, it provided an indication of the value respondents place on public participation in EIA by asking them whether or not they are willing to contribute to the cost of intervenor funding.

The main function of question eight, was to prepare the respondent for questions nine and ten. The question introduced the concept of *effectiveness* and required respondents to consider criteria for its measurement.

In questions nine and ten, seven factors which *could potentially* impinge upon the effectiveness of public participation in EIA are listed. Respondents were then asked to assess the extent to which these factors *have affected* public participation in EIA. The objective here was to identify factors which enhance or inhibit effective public participation in EIA. In order to avoid prescribing the range of factors, respondents were given the opportunity to identify and explain any other factors which they felt could alter the effectiveness of public participation. After this identification process, respondents were asked in questions ten, eleven, and twelve, about the effects of the Western Arctic Inuvialuit Final Agreement on these factors.

Questions thirteen and fourteen attempt to determine whether or not public participation by Native and non-Native northerners is affected equally by the Agreement. The objective was to determine whether or not the quality of public participation in the North will be differentiated on the basis of ethnic origin. As a concluding question in Section Two, respondents were asked for a general assessment of the affects of the Agreement on public participation in EIA.

*Questionnaire Format*

The primary objective in designing the physical appearance of the questionnaire was to make it as clear and efficient looking as possible. Care was taken to maximize white space at the risk of making the questionnaire appear too long. This was done in order to make the questionnaire attractive and simple to fill out (Babbie, 1979). Each section was clearly labelled to facilitate understanding. In addition a commentary explaining the purpose of the questionnaire, the intended use of the data, and the way it was to be completed and returned, was attached to the questionnaire. Lastly, a brief research description was also included. This documentation is contained in Appendix I.

## Research Interviews

In this section, the interview component of the research is described. It begins with a brief outline of interview theory and moves to a discussion of the operationalization of the interview exercise.

*Interview Theory*

An interview can serve a number of functions (Sewell and Burton, 1974). It can be used as a tool to persuade respondents to endorse a particular point of view (Gorden, 1980). It is often used to determine the suitability of an individual for a particular job. Alternatively, it is commonly used to help or to educate respondents (Evans et. al., 1979). Lastly, it is frequently used in social sciences research to obtain information about a given issues set. It is this latter function that is of interest here.

This latter function allows for the collection of two data types. First, an interview can be used to gather factual information. Data such as the number of committee members, the locations of offshore drilling operations, and the number and ethnic origin of people living in a given community are examples of this information type.

Second, an interview can be used to gather attitudinal data. As Gorden (1980, p.11) notes:

> "Interviewing is most valuable when we are interested in knowing people's beliefs, attitudes, values, knowledge or any other subjective orientations or mental content."

In this context, it is essential that the researcher remember at all times that *people* are the observation units. Two points are important in this regard. First, researchers must consider the ethical aspects of their work and must ensure that the respondents will not be hurt or offended by the survey. Respondents should be made fully aware of the research purpose and the use to which the data will be put. Increasingly in the social sciences, researchers ask respondents to sign an *informed consent* form indicating that they have agreed to be research subjects in full understanding of research purpose (Ethics Committee, 1987, Personal Communication).

Second, it must be remembered that the interview is a dialogue between two or more people. As such;

> "... the interview is a social process involving two individuals, the interviewer and respondent. The outcome of the interview must be seen in this light, and must take into account the *interaction* of the interviewer and respondent" (Moser and Kalton, 1972, p. 272).

In addition, this interaction is part of a larger social process and can be affected by external factors as a result.

> "The inhibitors and facilitators of the flow of relevant information in the interview depend upon the relationship between the respondent, the interviewer and the information sought. These relationships are not hermetically sealed from the larger social context" (Gorden 1980, p.8).

Interviewers, therefore, must be conscious of the societal context of the interview if their work is to be successful.

A further key to successful interviewing is the establishment of the interviewer's credibility. Respondents are unlikely to give serious attention to the questions posed if they feel that the interviewer is not well prepared. Interviewers must therefore demonstrate that they have a good grasp of the subject material. There is of course a danger in going too far in this respect.

> "One of the common errors made by the interviewer is to yield to the temptation to impress the respondent with his knowledge of the subject of the interview" (Gorden 1980, p.20).

However, as long as the interviewer is conscious of this temptation, it can generally be avoided. Credibility can then be established. This has the effect of encouraging better information production from the respondent and can also help to establish an inter-personal rapport in the interview.

The establishment of the interviewer's credibility does not of course guarantee the development of such a rapport. Indeed, the degree of formality of the interview is perhaps the most important factor affecting the interviewer-respondent relationship.

In Figure 2.1 an interview formality spectrum is presented. At the left of the spectrum, interviews feature a set group of questions posed in exactly the same way and answers recorded in a standardized fashion. At the opposite end, interviews are carried out with only a central idea as a guide. Different questions are posed in each interview and discussion is much more free-flowing. Between these points are varying degrees of formality featuring a mix of set questions and more free-flowing discussion.

Where the interviewer chooses to fall within this spectrum, depends largely upon the types of questions posed, the nature of the respondents to be interviewed and the nature of the research task.

The selection of respondents can be a complicated exercise involving the identification of

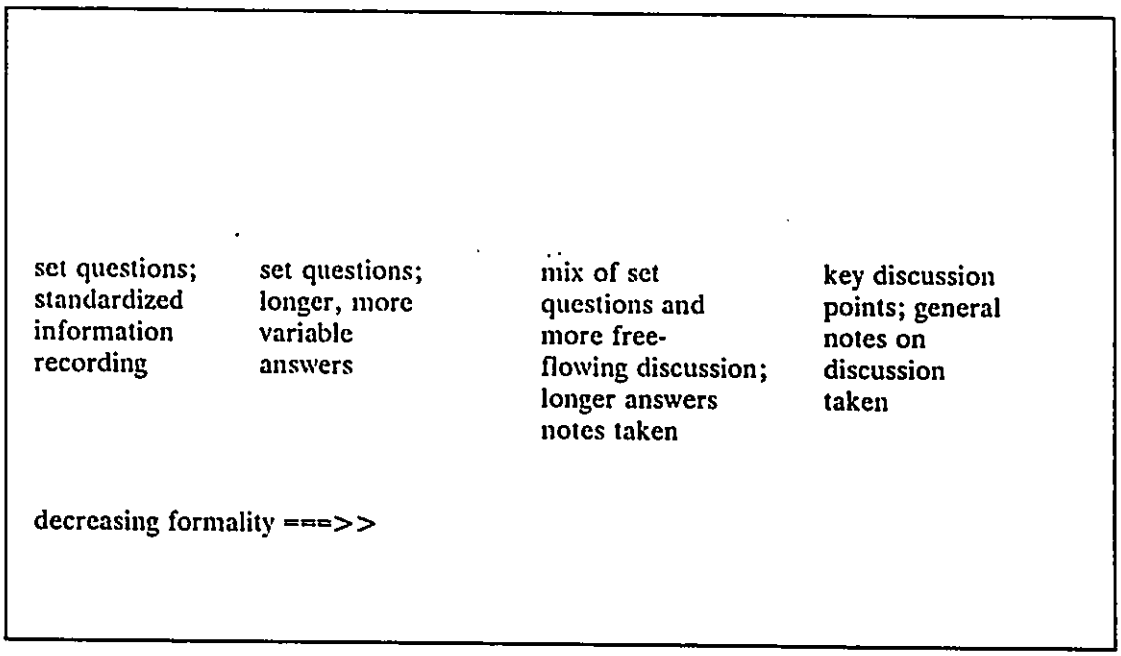


*Figure* 2.1: *Interview Formality Spectrum*

individuals who meet a number of criteria selected by the researcher. In addition, the respondents interviewed must be a representative sample of the total research population (Walizer and Wienir, 1978).

In addition to being representative of the population, the respondents must meet a number of conditions if the interview is to be successful. Cannell and Kahn, 1968, identify three such conditions (Moser and Kalton, 1972). First, respondents must have access to the information required to answer the questions posed. In other words, they must be competent to reply. Second, respondents must fully understand what is required of them if they are to respond effectively. Third, respondents must be motivated to reply accurately and thoroughly. Respondents who are really not interested in the survey or feel that it is irrelevant, are unlikely to provide useful responses.

*Interview Procedures*

During the period January 1, 1987 - June 1, 1987 informal and formal meetings were held with a variety of individuals representing the public and the private sectors. These representatives were purposefully selected in an attempt to ensure a broad and balanced expression of opinion on northern development and EIA related issues. Meetings were conducted with officials of the Department of Indian Affairs and Northern Development and Environment Canada. In addition, relevant non-government organizations, such as the Canadian Arctic Resources Committee (CARC), the Canadian Wildlife Federation and the Tungavik Federation for Nunavut were consulted. These consultations yielded two primary research products. First, an up-to-date information base on such topics as wildlife management strategies, northern land use planning, national parks and protected area establishment, Arctic marine resource development policy, oil and gas exploration and development, Arctic sovereignty status, and Native land claims and settlements was generated.

Second, a northern EIA contact list was compiled. This ledger, built from the recommendations of previously identified senior managers and non-governmental officials, included *only potential respondents with past or present direct involvement in northern EIA*. Involvement was defined in a manner to ensure proponent, manager, and interest group representation (Appendix II). The first version of the contact list was reviewed and amended by François Bregha, Northern Conservation, Environment Canada, Patrick Duffy, FEARO, John Merritt, Executive Director, CARC, and Roger Needham, Professor of Geography, University of Ottawa. It identified sixty-one contacts in the following centres: Calgary, Edmonton, Yellowknife, Inuvik, Tuktoyaktuk, Whitehorse, Vancouver, and Victoria.

The participation of the repondents was ultimately determined by their availibility during the September - October 1987 field programme. Funding for field studies was secured from both the University of Ottawa Northern Studies Research Group ($3000) and the Canadian Environmental Assessment Research Council ($5000). As Table 2.2 indictes, the actual

number of respondents was considerably less than hypothesized. However, a total of twenty-six field interviews based on the research questionnaire were conducted in seven cities and towns.

Respondents interviewed hold or have held, important roles in northern EIA. The respondents and their affiliations are listed in Table 2.3 and in the Personal Communication section of the Bibliography. They typically serve(d) as senior representatives of oil and gas companies, government agencies, environmental organizations, and native groups. As such they comprise a group of elites, and cannot be considered as being representative of the general public.

While it may seem dangerous to canvass the views of these elites in a research exercise dealing with EIA *public* participation, only these individuals possess the process intimacy and knowledge depth required to test the research hypotheses. In addition, time and budgetary constraints prohibited visits to the various communities in the Mackenzie Delta/Beaufort Sea region to solicit the views of residents with experience in EIA.

The respondents were met personally and discussions ranged from one to two hours. The *research questionnaire* was employed as a discussion guide in all interviews and both the researcher and the respondent had access to a sample copy. Efforts were made to move systematically through each of the three information fields and associated question sets. However, in several sessions, the interview dynamic sparked insightful discussion of companion issues and topics, including political evolution in Yukon and the Northwest Territories. In most cases, the respondent's dialogue was tape recorded. In some instances, respondents did not wish to have their discussion recorded and written notes were taken and

*Table 2.2: Discussion and Interviews by Actor Group, January 1, 1987 - October 5, 1987.*

Actor Group

| | Fed Gov't | Terr. Gov't | o&g Ind. | Native Groups | env. Groups | acad. | |
|---|---|---|---|---|---|---|---|
| Locat. | | | | | | | |
| Ott. | 7 | | 1 | 1 | 3 | | 12 |
| Cal. | | | 3 | | | 2 | 5 |
| Yell. | 3 | 2 | | 2 | | | 7 |
| Inuv. | 2 | 1 | 1 | 3 | 1 | | 8 |
| Tuk. | | | 1 | | | | 1 |
| White. | 1 | 1 | | | | | 2 |
| Vanc. | | | | | | 1 | 1 |
| Total | 13 | 4 | 6 | 6 | 4 | 3 | 36 |

*Table* 2.3: *Individuals Contacted During Fieldwork*

FEDERAL GOVERNMENT (13)

| | |
|---|---|
| François Bregha | Ottawa, January 14, 1987. |
| Rudy Cockney | Inuvik, September 23, 1987 |
| Marg Crombie | Whitehorse, September 29, 1987 |
| Patrick Duffy | Ottawa, September 1, 1987. |
| Wanda Erickson | Inuvik, September 22, 1987 |
| Jim Hodges | Ottawa, March 22, 1987 |
| Ben Hubert | Yellowknife, September 18, 1987 |
| Rick Hurst | Yellowknife, September 21, 1987 |
| Fred MacFarland | Ottawa, February 29, 1987 |
| Murray M$^{c}$Comb | Ottawa, February 5, 1987 |
| John Ramsay | Ottawa, June 6, 1984. |
| Arthur Redshaw | Yellowknife, September 18, 1987 |
| Judith Tanguay | Ottawa |

TERRITORIAL GOVERNMENTS (4)

| | |
|---|---|
| Bruce Demchuk | Whitehorse, September 29, 1987 |
| Randall Glaholt | Inuvik, September 22, 1987. |
| Gay Kennedy | Yellowknife, September 18, 1987 |
| Lorne Matthews | Yellowknife, September 17, 1987 |

ENVIRONMENTAL GROUPS (4)

| | |
|---|---|
| Ken Brynaert | Ottawa, February 16, 1987 |
| Stephen Hazell | Ottawa, February 16, 1987 |
| John Merritt | Ottawa, January 23, 1987. |
| B. Sullivan | Inuvik, September 25, 1987. |

NATIVE ORGANIZATIONS AND THEIR EMPLOYEES (6)

| | |
|---|---|
| Roger Allen | Inuvik, September, 23, 26, 1987 |
| Ewan Cotterill | Yellowknife, September 17, 1987 |
| Terry Fenge | Ottawa, January 26, 1987 |
| Stephan Himmer | Inuvik, September 22, 1987 |
| Tom Nesbitt | Yellowknife, September 18, 1987 |
| Gary Wagner | Inuvik, September 22, 1987 |

OIL AND GAS INDUSTRY AND BUSINESSPEOPLE (6)

| | |
|---|---|
| Doug Billingsley | Inuvik, September 22, 1987 |
| J. Louis Blais | Ottawa, February 15, 1987 |
| Rick Hoos | Calgary, Sept. 14, 1987, Aug. 17, 1984. |
| Gerry Kruk | Calgary, September 15, 1987 |
| Jim Livingston | Calgary, September 14, 1987 |
| Bruce M$^{c}$Kenzie | Tuktoyaktuk, September 24, 1987 |

ACADEMICS (3)

| | |
|---|---|
| Barry Barton | Calgary, September, 15, 1987 |
| Janet Keeping | Calgary, September, 15, 1987 |
| William Rees | Vancouver, October 1, 1987 |

later transcribed.

## NATURE OF THE DATA

A total of twenty-six questionnaires were distributed during the fieldwork and after the formal interviews. The intent was to provide all respondents with an additional opportunity to contribute supplementary information. Only four were returned to the researcher after the interviews. These questionnaires did not, therefore, yield a sufficient volume of supplementary data. This was not surprising. In preliminary discussions held in Ottawa with Bregha, Merritt and Duffy, the researcher was warned that the rather informal nature of northern society could serve to limit willingness to complete and return the formal questionnaire.

Notwithstanding this low return rate, one hundred percent of the available individuals contacted by the researcher, were willing to participate in the interview component of the research. Thus, the information sought in the questionnaire was still obtained in the interview exercise.

No groups bias or pattern appeared in the information generated during the interviews. Responses were very much individual opinions and were not fixed by affiliation. The only exception to this rule occurs in the responses of the oil and gas industry representatives. Their replies were remarkably similar in orientation.

It should be noted that Native people are perhaps underrepresented in the sample (16%). This is due to the fact that many of the Native people identified as potential respondents were not available for interviews.

# CHAPTER III

# ENVIRONMENTAL IMPACT ASSESSMENT

The purpose of this chapter is to describe environmental impact assessment (EIA) generally and northern EIA specifically. It begins with a consideration of the definition of EIA and then moves to a discussion of EIA history. The EIA processes most commonly implemented in the North, and their northern case histories are then briefly described. In a concluding section, eleven recurring concerns in EIA are identified. It is then argued that *effective public participation*, forms a common element in these concerns.

## EIA DEFINED

Defining the term environmental impact assessment (EIA) is not as straightforward a task as it may seem. Virtually every author has his or her own working definition (Table 3.1). However, there is agreement in the literature on a number of points regarding the definition of EIA.

First, EIA is generally seen as a mechanism through which the potential environmental consequences of a resource development project are considered *before the project is undertaken* (Lang, 1979; Beanlands and Duinker, 1983). EIA is not a tool for assessing the impacts of a project which is already operating and having an impact upon the environment. EIA is, therefore, essentially predictive in nature. In an EIA review, those involved in the review *predict* to the best of their ability, what the impacts of a given project will be. As a result, uncertainty is always a feature of EIA (Holling, 1978; Jones and Grieg, 1985).

Second, EIA is intended to develop conclusions related to the significance and

*Table* 3.1: *EIA Definitions*

"The need for an appraisal to identify the chain effects of actions and their cumulative impact is apparent. This appraisal is the basic function of EIA... The phrase EIA therefore denotes a planning tool, a method of incorporating environmental considerations into the earliest stages of the planning process ( Lucas and McCallum, 1975)".

"EIA can be defined as the systematic description, prediction, evaluation and integrated presentation of the environmenal effects of a proposed action at a stage where serious environmental damage may be avoided or minimized (Lang, 1979)".

EIA is: "A process or set of activities designed to contribute pertinent environmental information to project or programme decision making. In doing so it attempts to predict or measure the environmental effects of specific human activities or do both, and to investigate and propose means of ameliorating those effects (Beanlands and Duinker, 1983)".

"EIA is an analytical approach to the future which attempts to either evaluate the multiple consequences of a proposed intervention or analyse the relative merits of alternative methods of carrying out a proposed action (Owen, 1977)".

"EIA is ... defined as a process of making decisions about actions having environmental consequences (Coleman, 1977)".

"EIA involves a preliminary identification, interpretation and prediction of impacts and mitigative measures for an action (Jain, 1977, p. 18)".

EIA is a "legislative or policy-based concern for possible positive/negative, short/long term effect on our total environment attributable to proposed or existing projects, programs or policies of a public or private origin (Mitchell, 1979, p. 229)".

acceptability of whatever impacts are predicted (FEARO, 1979b; Beanlands and Duinker, 1983). The prediction of impacts without any consideration of their importance would not be especially useful. EIA therefore seeks to determine whether or not a given impact is *significant* (FEARO, 1979b). The determination of what is and is not significant, is the subject of considerable debate (Beanlands and Duinker, 1983; Haug, 1984; Conover et. al., 1985).

Third, EIA considers a project's impacts on the physical and biological environments. In

addition, most EIA practioners and managers would agree that socio-economic impacts directly resulting from a project should also be considered within the purview of EIA (Marshall, et. al. 1985; Livingston, 1987, Personal Communication; Hoos, 1987, Personal Communication). However, the extent to which the scope of EIA should be broadened to consider socio-economic and political issues is not clear. Indeed, a considerable range of opinions regarding what is and is not relevant in an EIA, can be discerned (MacDonald, 1984). These opinions are generally voiced in discussions relating to *scoping*, and will be addressed later in this chapter.

For the purposes of this research, it is argued that EIA should consider only those socio-economic impacts which are directly related to a project. Failure to consider such impacts would mean that the people living in an area to be affected, are largely ignored in the EIA. Given that they have to live with a project, it would be unfair to leave them out of the decision making process.

However, in the researcher's opinion, EIA *should not* be used as an instrument in which to consider broad, *macro* issues such as land claims or national energy policy. While these issues are indeed important and do have significant implications for the prediction of project impacts (Gibson, 1984), they are public policy issues and as such should be discussed in broader, political policy making fora. Bringing issues of this nature into EIA simply slows down the process to a largely unacceptable degree, and diminishes the time and resources that can be spent on detailed examination of specific projects and their impacts. Furthermore, doing so forces EIA to attempt to deal with issues for which it was not designed.

In light of the preceding discussion, the following definition of EIA is put forward:

> Environmental impact assessment is a process through which the potential environmental consequences of a given project are considered prior to the construction and operation of the project. The objective of doing so is to ensure that the potential environmental consequences of

the project are considered with a view to altering the project design so as to keep the project's impacts to an acceptable level. In the event that the impacts cannot be kept to an acceptable level, the project would not be given environmental approval. *Potential environmental consequences* refers to the ecological, physical and directly related socio-economic impacts of the project.

## EIA HISTORY

### The National Environmental Policy Act

The history of formalized EIA begins in the United States with the passing of the National Environmental Policy Act (NEPA) of 1970 (United States, 1970). Prior to its enactment, no formal EIA processes existed in North America. With the passage of the Act, symbolically the first piece of legislation signed by President Richard Nixon in the new decade, this situation changed dramatically.

The Act performs a number of different functions at once, notably serving as a vehicle for the creation of the United States Environmental Protection Agency (United States, 1970). However, with respect to EIA, it contains three primary directives. First, it requires all federal agencies to factor environmental concerns into the decision-making process related to the development of any policy, program or project. In doing so, agencies are required to adopt an inter-disciplinary approach and are directed to consult with other agencies wherever appropriate (United States, 1970, s. 102 A and B).

Second, federal agencies are required to consider alternatives to all proposed projects. They are to evaluate the relative environmental impacts of project alternatives with a view to selecting the most environmentally acceptable scenario (United States, 1970, s. 102 A and B).

Third, federal agencies are required to prepare environmental impact statements (EIS) for all "recommendations or reports on proposals for legislation and other major Federal

Actions ... significantly affecting the quality of the human environment" (United States, 1970, s. 102 D).

NEPA was enacted largely in response to a growing public sentiment in favour of taking concrete action against environmental degradation (Ward and Dubos, 1972; Stone, 1973; Brown, 1978; Schnaiberg, 1980; Lewis, 1985). The general atmosphere of public activism engendered by the anti-Vietnam War movement, together with fears created by books such as Rachel Carson's *Silent Spring* (Carson, 1962), led to the development of broad societal support for environmental action. While this sentiment no doubt drew upon a basic will to protect the natural environment, the movement drew its primary impetus from the desire to protect *humans* from environmental disaster. Indeed, as Jack Lewis, the current administrator of the United States Environmental Protection Agency notes:

> "Environmentalism gained strength as a movement dedicated to ending - and if possible - reversing [the] decline in the *human* environment (Lewis, 1985, p. 6)".

This motive is reflected in the wording of the Act. It says little of preserving nature or wildlife, and refers more to human health concerns. For example, Section 4321 of NEPA states that the Act's purpose is:

> "To declare a national policy which will encourage productive and enjoyable harmony between man and his environment, to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation (United States, 1970, s.4321.)".

To achieve this objective, the government commits itself to

> "use all practicable means and measures including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social and economic, and other requirements of present and future generations of Americans (United States, 1970, s.4332)".

The same section of the Act goes on to list a series of rather ethnocentrically oriented sub-goals, most of which deal with the preservation of the environment for the use of all Americans. Indeed, a major objective of the Act, according to the Senate Committee which reviewed the bill creating the Act, is "to assert congressional recognition of each person's fundamental and inalienable right to a healthful environment" (Hanks and Hanks, 1970).

Given this orientation, it is particularly interesting to note that the Act does not require federal agencies to hold public hearings regarding proposed projects. The Act certainly does not preclude them from doing so and in practice many agencies do in fact conduct them (Schnaiberg, 1980). However, there is no *legal* requirement that hearings be held on even the most major of projects. As a result, concerned citizens are often left with little alternative but to pursue issues in the courts.

In a 1972 decision, the United States Supreme Court allowed the United States Environmental Defense Fund to sue William Ruckelhaus, Director of the United States Environmental Protection Agency, for *not* taking the steps he had promised in eradicating several harmful pesticides (Foy, 1972). This decision established an important precedent. In the United States, members of the public can sue a federal government agency if they feel that the agency has not adequately fulfilled its responsibilities (Foy, 1972; Hill and Ortolano, 1978; Schnaiberg, 1980). Concomitantly, members of the public can sue a government agency if they feel that the agency has not adequately fulfilled its environmental responsibilities as outlined in NEPA. This has had the effect of making the American system of EIA very legalistic and litigative in nature. This situation contrasts sharply with Canadian EIA. It is on the Canadian system that the remainder of this chapter focusses.

# CANADIAN EIA

Historically, Canadians have been committed to economic growth predicated upon extensive capital-intensive use of the nation's natural resources.

> "During the late 1960's and 1970's, however, the dramatic emergence of pollution as a salient public issue forced government and citizens alike, to begin to reassess that wholesale commitment to the growth ethic and established environmental quality as a national goal of at least intermediate importance (Woodrow, 1980. p. 24)".

In addition, events such as the United Nations Stockholm Conference on the Human Environment (Stone, 1973), and the 1973 Arab oil embargo (Brooks, 1981), served to further heighten public concern regarding the environment.

At the federal level, part of the government's response to these developments, was the establishment of the Federal Environmental Assessment and Review Process (EARP). It was created by a Cabinet Memorandum on December 20, 1973 (FEARO, 1978c), and marked the beginning of EIA in Canada.

Since that time, Canadian EIA has developed considerably. Today, each of the ten provinces have their own form of EIA (Couch, 1983). EIA has in fact become a solidly entrenched component of the Canadian environmental management regime.

It is important to note at this point, that a great many regulatory mechanisms impose various environmental terms and conditions on resource users. Most water licences and permits in Canada's North, for example, contain a number of stipulations regarding the maintenance of water quality (Pearse, 1985; Redshaw, 1987, Personal Communication). As a result, it could be argued that these processes perform EIA functions. However, given that applications for various licences and permits are usually only filed when the project is at, or at least very near, the final design stage, these processes can hardly be considered as part of

the project planning process. As such they are not truly EIA processes.

The distinction between what is and is not an EIA process may not seem to be terribly important. However, given the impossibility of describing and studying all of the natural resources regulatory mechanisms in place in a given jurisdiction, it is important that such a distinction be made in any study of EIA.

In the context of the Canadian North, three EIA processes can be identified. The first, EARP, is entirely dedicated to EIA. The second, the National Energy Board licencing process, deals only with pipelines and trans-boundary power lines. While it considers many non-environmental matters, its examination of the project design as well as its potential environmental impacts is rigorous and comprehensive and takes place before final design decisions are made. As a result, it can be classified as an EIA process. A third EIA system, that created by the Western Arctic Inuvialuit Final Agreement, applies to developments in the Mackenzie Delta/Beaufort Sea region. However, discussion of the Inuvialuit process will be reserved for Chapter VII.

In the following section, EARP and the National Energy Board process and their northern case histories are discussed. In addition, the Mackenzie Valley Pipeline Inquiry is briefly examined.

## EIA in the Canadian North

### *The Mackenzie Valley Pipeline Inquiry*

The first major environmental review undertaken in the North was the 1974-77 Mackenzie Valley Pipeline Inquiry. More commonly known as the Berger Inquiry after its director, Justice Thomas C. Berger, it was established to examine a series of pipeline proposals for the Mackenzie Valley and northern Yukon (Figure 3.1).

In his terms of reference, Berger was directed to:

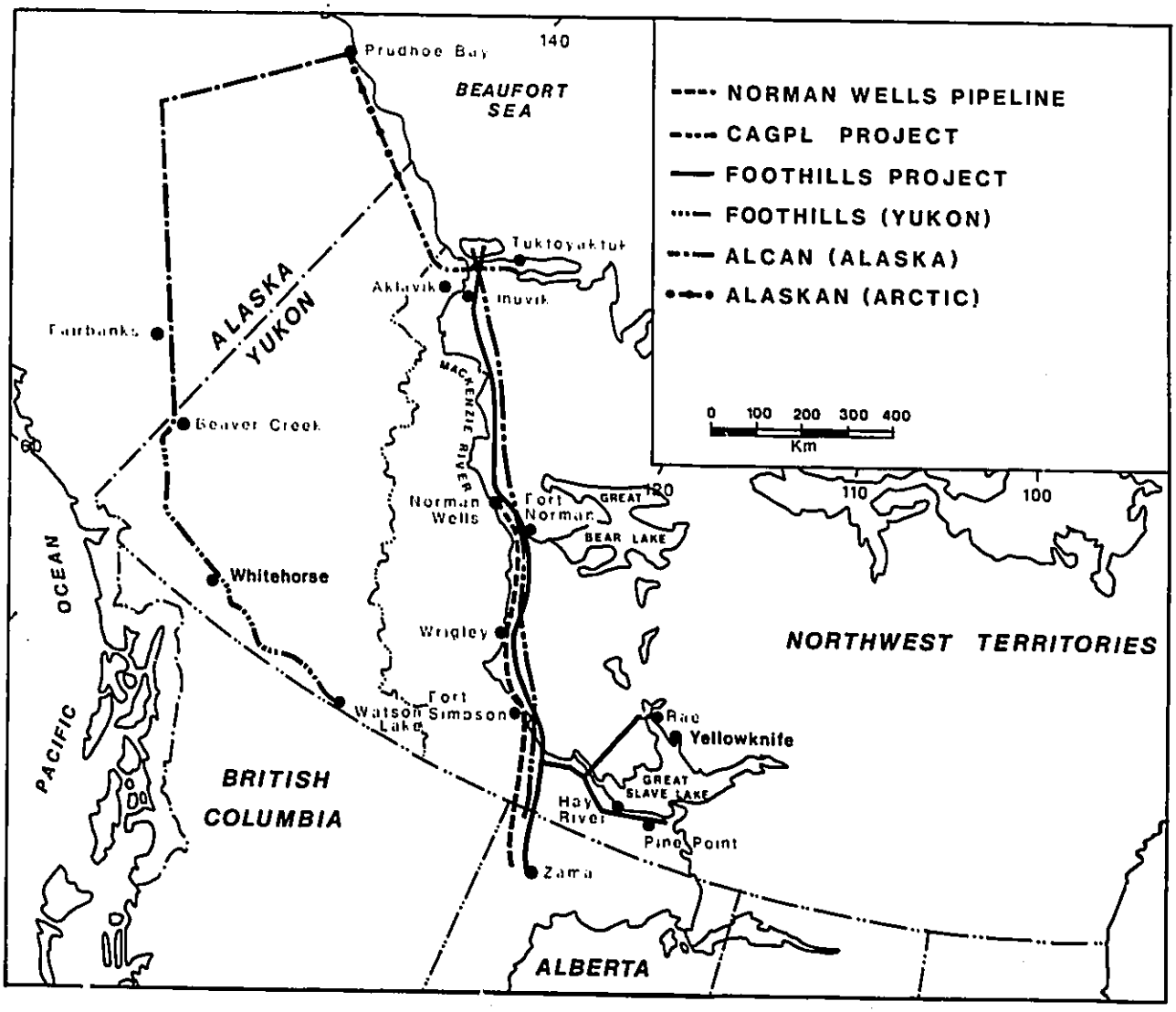


*Figure* 3.1: *Alternative Northern Pipeline Routes*
*Source*: NEB, 1977, 1981.

> "inquire into and report upon the terms and conditions that should be imposed in respect of any right-of-way that might be granted across Crown lands for the purposes of the proposed Mackenzie Valley Pipeline having regard to:
>
> a) the social, environmental and economic impact regionally, of the construction, operation and subsequent abandonment of the proposed pipeline in the Yukon and Northwest Territories and;
>
> b) any proposals to meet the specific environmental and social concerns set out in the Expanded Guidelines for Northern Pipelines" (Berger, 1977, p. 159).

The terms of reference did not give Berger any specific instructions as to how to carry out his task. As a result, he decided to conduct a series of preliminary hearings in Yellowknife, Inuvik, Whitehorse and Ottawa to hear submissions regarding the way the Inquiry ought to be conducted (Berger, 1976). These hearings were held in April and May of 1974 and produced a number of decisions regarding the Inquiry's scope and timing, as well as its practice and procedure.

The most important result of these hearings was Berger's announcement that he would conduct two types of public hearings during the Inquiry. The first, known as a formal hearing, was very much the conventional style of public hearing. It involved detailed and rigorous examination of information presented by a battery of scientists and other experts in a courtroom environment. Lawyers played a prominent role in these hearings.

The second type of hearing was labelled a *community hearing* and marked a dramatic departure from the conventional style of public hearing. Community hearings were held in the settlements throughout the Mackenzie Valley and Yukon and were extremely informal in nature. Often held outdoors, they did not feature cross-examination by lawyers, swearing-in of witnesses or any other trappings of the more legalistic approach. They were "designed to allow people in the community to tell [Berger] their views about the proposed pipeline" (Berger, 1976, p. 8). Berger describes his reasons for using the community hearing format:

> "I have wanted the people in the communities to feel that they can

> come forward and tell me what their life and experience lead them to believe the impact of the pipeline will be. I do not want them to worry about lawyers asking them questions or tripping them up. The object is to give people, native and white, an opportunity of expressing their concerns without worrying about what they might well regard as harassment by lawyers (Berger, 1976, p. 8)".

The scope of the Inquiry was quite wide, both in terms of its geographical range and the issues it examined. Berger took his Inquiry to almost all communities in the Mackenzie Valley, the Mackenzie Delta and the Northern Yukon. In addition, he held hearings in several southern Canadian cities.

The issues the Inquiry covered during these hearings can be classified into four groups. First, a considerable amount of attention was focussed on Native social problems and Native land claims. Second, the environmental issues were examined in great detail. This involved the consideration of huge amounts of information describing the northern environment and the pipelines' potential impacts. Third, the Inquiry dealt extensively with detailed aspects of project engineering and construction. Lastly, Berger directed his attention to a broad group of issues dealing with the future of the Canadian north in general (Berger, 1977).

The Berger Inquiry took three years to complete. It was a one-time, large-scale, expensive, and time-consuming exercise which covered a tremendous range of issues. Its cost and the contemporary sophistication of EIA processes will probably preclude a similar inquiry in the future. Nevertheless, it is important that it be considered in any examination of northern EIA as it has had significant effects on all northern EIA and on EARP in particular.

*The Federal Environmental Assessment and Review Process (EARP)*

The Environmental Assessment and Review Process, commonly referred to as EARP, was established by a 1973 Cabinet policy directive and was amended by Cabinet in 1977. The Process was further amended by a 1984 Order-In-Council which outlined the guidelines under which EARP operates today (Canada, 1984). Although the range of issues EARP considers has continually expanded during the years since its establishment, its purpose has remained essentially the same. It was created to ensure that all federal departments "take into account, environmental matters throughout the planning and implementation of projects (FEARO, 1978c)".

The Process stipulates that all federal initiatives must be screened for potential environmental impact. Federal initiatives are defined as undertakings which: a) use federal funds; b) take place on federal lands; c) take place in areas of federal jurisdiction; or d) are directly undertaken by a federal agency (Canada, 1984, s. 12). All federal agencies are subject to EARP. Crown corporations are not bound by the EARP Order-In-Council, but are encouraged to adhere to EARP anyway.

In the screening phase, three possible decisions can be reached by the initiating department (Figure 3.2). If the identified environmental impacts are considered to be easily mitigable or negligible, the project is allowed to proceed. If the impacts are not easily defined, further studies of the project are undertaken to determine what its impacts will be. These studies comprise what is known as an Intital Environmental Evaluation (IEE). Should the screening exercise or the IEE determine that the predicted impacts of the proposal are significant, the Minister of the initiating department refers the proposal to the Minister of the Environment for public review (FEARO, 1979b).

When a project proposal is referred for public review, the Minister of the Environment establishes an Environmental Assessment Panel. One of the Panel's first tasks is to issue

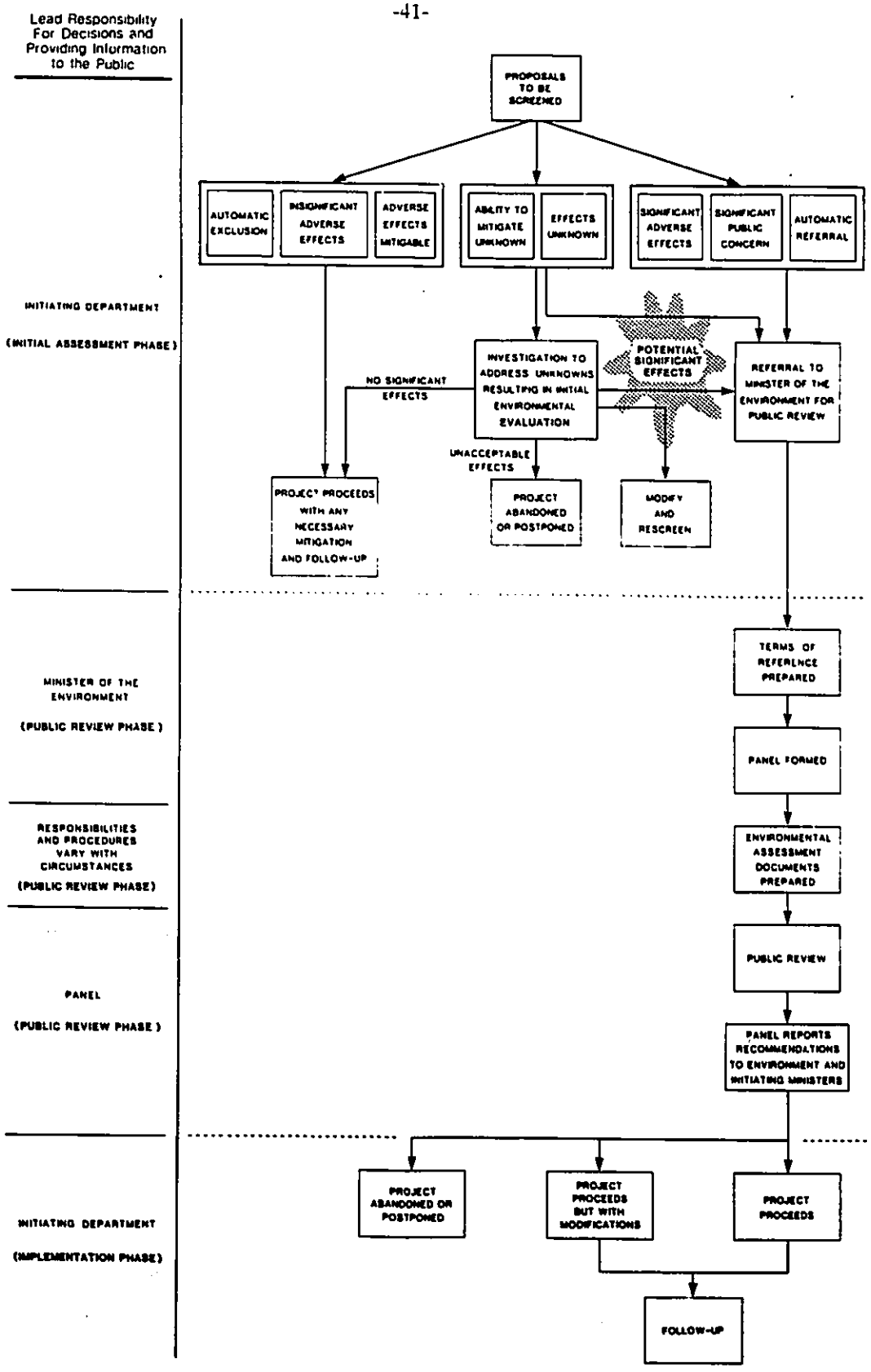


*Figure* 3.2: *Schematic Diagram of EARP*
*Source*: Duffy, 1986, p. 38.

Draft Guidelines for the Preparation of an Environmental Impact Statement (EIS). The Panel then holds public hearings inviting comments on the draft guidelines. After the hearings, any guideline modifications that the Panel feels are necessary are made and the final guidelines are transmitted to the project proponent. The proponent then prepares an EIS and submits it to the Panel. An EIS typically includes a description of the project, the potentially affected environment and the predicted impacts. Having received the EIS, the Panel conducts a second set of hearings focussing on the potential impacts of the proposal. Following these hearings, the Panel prepares its report for the Minister of the Environment and the Minister of the initiating department. As much as four years may elapse from the time of referral to the issuance of the final report (FEARO, 1984), although on average, EARP reviews in the North have been two years in duration.

EARP is essentially a self-administered process in that each federal government department is responsible for its own screening operations. The administration of the public review phase of EARP is conducted by the Federal Environmental and Assessment and Review Office (FEARO). The Office Chairman reports directly to the Minister of the Environment and establishes review panels on the Minister's behalf. In earlier reviews, the FEARO Chairman served as the Chairman for the various Panels but this practice has since been discontinued. FEARO provides a Secretariat to each review panel to handle administrative matters and to serve as an intermediary between the Panel, the public and the proponent. The Office is also responsible for the development of policy regarding EARP. From time to time, it provides other departments with advice regarding EARP (Duffy, 1986).

## EARP Northern Case History

In theory, all federal initiatives are subject to EARP. Whether or not all federal initiatives have in fact been screened under EARP, is impossible to determine, given that screening decisions were not published until recently. In addition, no method exists for tracking a proposal through the government decision making system to determine whether or not it

underwent environmental review.

Seven projects have been subject to public EARP review in the North (FEARO, 1978a, 1978b, 1979a, 1980, 1981, 1982, 1984a). In the earlier reviews, the Panels focussed primarily on the project design, and its biological impacts. Over time, the scope of northern EARP reviews grew progressively wider to include the consideration of the projects' socio-economic impacts as well (Rees, 1984). By the time of the Beaufort Sea Review (FEARO, 1984a), socio-economic issues and biophysical matters were of almost equal importance.

*The National Energy Board (NEB)*

The National Energy Board (NEB) was established in 1959 by the National Energy Board Act (Canada, 1959). Its creation was recommended by the 1956 Gordon Royal Commission on the economy while its form and jurisdiction were fleshed out by the Borden Royal Commission of 1957. The primary focus of the Board at the time of its creation was on oil and gas as trade products and on the development of oil and gas policy (Lucas and Bell, 1977, p.5).

The Board is currently comprised of eleven full-time members, each of whom are appointed for a seven year renewable term. A Board Chairperson and Vice-Chairperson are appointed by the Minister of Energy, Mines and Resources to whom they report. A Panel of three Board members is struck rather than having the entire Board sit at once for any given issue with which the NEB is concerned (Ramsay, 1984, Personal Communication).

The Board has two main roles. The first is an advisory one related to the development of national energy policy. The second role of the Board, that of a regulatory agency, is the one of primary interest in this thesis.

The NEB is responsible for the regulation of all interprovincial and territorial pipelines and power lines. Section 26 of the Act states that no company may operate a pipeline without

a certificate of public convenience and necessity, a permit which the Board issues only when it is "satisfied that the line is, and will be, required by the present and future public convenience and necessity" (Canada, 1959, s.44).

In processing an application for such a certificate, the Board is instructed to consider among other things;

> "any public interest that in the Board's opinion may be affected by the granting or the refusing of the application (Canada, 1959, s. 44e)".

It is under this heading that the environmental matters are examined during the certificate issuance process described below.

The first stage of the process is known as the pre-application phase. The applicant meets with Board staff to determine what the Board's information requirements are and what major issues can be expected to arise from the application. Following these preliminary discussions, the application is formally filed with the Board. The application is reviewed by Board staff and if necessary Additional Information Requests, are transmitted to the applicant (Ramsay, 1984, Personal Communication).

Once the application is completed to the Board's satisfaction, the Board Secretary issues a Hearing Order indicating the dates and locations of the Board's hearings. The hearings are conducted in a courtroom format featuring very legalistic procedures. Anyone is entitled to intervene in the hearings, provided they notify the Board of their intent to do so (NEB, 1983a).

After considering all information received during the hearings, the Board comes to a decision regarding the issuance of the certificate. The rationale for the verdict is explained in the Board's Reasons for Decision (NEB, 1977, 1981).

If a certificate is granted, it is considered a general authorization for the pipeline or

power line. At this stage, the proposed general route of the pipeline or power line will have been identified but the detailed specific route may not have been. The detailed route is fixed by a second round of hearings in which the individual affected landowners are given an opportunity to make their views on the pipeline or power line known to the Board (NEB, 1983b).

Once the detailed route is determined, construction may begin. Throughout the building phase, the company is required to monitor the environmental impacts of the project. Upon completion of the pipeline, and provided that the company has complied with all terms and conditions of the certificate, the pipeline operator is given *leave to open* and pipeline operations commence. The NEB requires the pipeline owners to submit several post-construction monitoring reports outlining any environmental problems encountered and how they have been dealt with (Ramsay, 1984, Personal Communication).

## NEB Northern Case History

The National Energy Board has carried out two major northern project reviews to date. The first, held from 1974 to 1977, examined pipeline proposals put forward by Foothills Incorporated (Figure 3.1), and by the Canada Arctic Gas Pipe Line (CAGPL) consortium (NEB, 1977). The review was held simultaneous to the latter part of the Berger Inquiry and considered many of the same issues as the Inquiry. However, the NEB placed far greater emphasis on the economic questions associated with the proposal and much less emphasis on socio-economic and land claims issues (Berger, 1977; NEB, 1977).

In its final decision, the Board rejected the CAGPL scenario because, in the Board's opinion, it was environmentally unacceptable to build a pipeline across northern Yukon (NEB, 1977, p. 160). The Board also rejected the Foothills Mackenzie Valley application, stating that it did not have sufficient funding. However, the Board did decide that the Foothills Yukon option could receive approval following the submission of further

information (NEB, 1977, p. 159).

The second NEB review dealt with Interprovincial Pipeline Limited's Norman Wells project. Their proposal involved the construction of a 323.9 millimetre diameter, 866 kilometre long, oil and natural gas liquids pipeline from Norman Wells to Zama, Alberta. Following its review of the proposal, the Board gave its approval for the pipeline to be built. It has since been constructed and is currently in operation.

## RECURRING CONCERNS IN EIA

Since its inception in the early 1970's, Canadian EIA has been subject to considerable criticism from a wide range of actor groups. Industry, for example, has traditionally argued that EIA has become too wide ranging an exercise, and that as a result it has become overly expensive in terms of both time and money (Horte 1983; Hoos 1984, Personal Communication; Livingston, 1987, Personal Communication). Public interest groups on the other hand frequently complain that EIA reviews have usually been of so little significance in the overall government decision-making apparatus and so narrow in scope as to make them frustrating and virtually useless exercises (Gibson, 1984, Personal Communication; MacPherson, 1984). Academics have identified a range of procedural and theoretical deficiencies in Canadian EIA (Rees 1979; MacLaren and Whitney, 1985; Fenge and Smith, 1986; Smith, 1987; Storey, 1987). Government agencies, depending upon their departmental or jurisdictional mandates, have criticized EIA from virtually every perspective imaginable (Environment Canada, 1982; Rothwell, 1983; FEARO, 1984, 1987; MacDonald, 1984).

Notwithstanding this variance in viewpoints, several recurring concerns in Canadian EIA can be identified. In the remainder of this chapter, eleven such concerns are outlined. While each of these concerns could conceivably apply to any EIA process in any jurisdiction, they are all relevant to northern EIA.

This list of concerns was generated through a comprehensive literature review, and by drawing upon the researcher's work experience in the environmental office of the federal government's Department of Energy Mines and Resources. In addition, the researcher sought a reaction to the literature synthesis and interpretation, from a group of acknowledged EIA experts. Experts were identified using the 1983-84 *Environmental Impact Assessment Directory of University Teaching and Research* and were selected on the basis of their publishing record in the EIA field (Couch and Rigby, 1984). Using the matrix presented in Table 3.2, respondents were asked to, a) comment on the validity of the concerns, b) to rank them in terms of their relative importance and c) to suggest additions to the list of concerns.

The survey did not yield conclusive results regarding the relative importance of the issues. Respondents did however, agree, that each of the concerns identified is in fact a legitimate issue in the EIA field.

## Post-Development Auditing

Post-Development auditing in the context of EIA is a procedure through which the performance of individual environmental assessments are evaluated after the assessed project has begun operations. The evaluation involves the determination of the accuracy of the predictions and assumptions made during the assessment as well as a consideration of the degree to which the conclusions and recommendations of the assessment have been acted upon by those to whom they are directed. To date, post-development auditing is not an integral component of most EIA processes (Holling, 1978; Hurtubise and Connelly, 1979; Beanlands and Duinker, 1983; Duinker, 1985; Rigby, 1985; Munro, 1985; FEARO, 1987; Smith, 1987; Storey, 1987).

*Table* 3.2: *Experts Survey of EIA Concerns*

| Issues | Rank |
|---|---|
| Conduction of Post-Audit Analysis<br>Process Implementation Costs<br>Process Maintenance Costs<br>Scoping Procedures and Methodologies<br>Methods for Consideration of Cumulative Impact<br>Soundness of Science in EIA<br>Provision of Intervenor Funding<br>Legal Standing of EIA<br>Accessibility of Information | |
| Others: | |

## Process Implementation Costs

Process implementation costs are associated with the carrying out of individual project reviews. These costs include the expenses incurred in the preparation of an Environmental Impact Statement (EIS), operation of review panels, the provision of intervenor funding, the preparation of project related research papers and so on. Many authors feel that process implementation costs are far too high, while others have suggested that not enough time and money is spent on EIA implementation (Lucas and Bell, 1975; Hurtubise and Connelly, 1979; Robinson, 1980; Horte, 1983; Page, 1986).

## Process Maintenance Costs

Process maintenance costs are associated with the development and support of the infrastructure necessary to conduct EIA. This infrastructure includes components such as EIA administrative networks (for example, FEARO), EIA related research (for example, CEARC), public information programs (for example, FEARO publishing programmes) and EIA policy development and review mechanisms. Some may view the current EIA infrastructure as being too large and costly. Alternatively, it could be argued that insufficient funding of the EIA infrastructure in the past, has precluded effective EIA. This concern has not been specifically addressed in the literature but is often referred to indirectly in the context of other issues.

## Scoping Procedures and Methodologies

*Scoping*, in the context of EIA, is a process which has two primary functions. First, it involves the setting of review boundaries. Issues which are within, and outside the scope of the review, are identified. Second, it involves defining issues and priorizing them for assessment purposes. Various authors have suggested that scoping should be recognized as a formal EIA process component and that a hard technique for conducting scoping exercises should be developed (Koshland, 1978; Beanlands and Duinker 1983; MacDonald, 1984; O'Reilly, 1984; Marshall et. al., 1985; Fenge and Smith, 1986).

## Methods for Consideration of Cumulative Impact

The effects of several projects or several components of large projects, can have synergistic or cumulative impacts on an environment. In addition, the ongoing impacts of a project operating over a period of time may have cumulative impacts not apparent at the design and early implementation stage. Current understanding of cumulative impacts and methodologies for considering them in EIA reviews, are not well developed (Jain, 1977; Beanlands and Duinker, 1983; Haug, 1984; CEARC, 1985; Conover, et.al., 1985; Jones and

Grieg, 1985; Rigby, 1985; Marsollier, 1987).

## Soundness of Science in EIA

Effective EIA depends fundamentally on high quality ecological information. Yet several authors have called into question the soundness of the science in EIA and have argued that the scientific testimony presented in Canadian EIA's is generally not of sufficiently high quality, and that steps must be taken to improve the ecological information sets upon which EIA's are based. Further, it has been suggested that efforts must be made to train researchers in the development of scientific information of relevance and use in the context of EIA (Holling 1978; Beanlands and Duinker 1983; Haug, 1984; Rees, 1984; Conover, et. al., 1985; Duinker, 1985; Hirst, 1985; Marshall et. al., 1985).

## Provision of Intervenor Funding

Intervenor funding involves the provision of financial assistance to groups wishing to participate in the public hearing phase of EIA reviews. Funds are provided to groups which have demonstrably direct interests in the review and are financially unable to participate effectively in the process without such assistance. Sources of funds, and their administration and use, can vary with different jurisdictions and among projects. In the literature, and within the EIA community, the question of whether or not intervenor funding should be regularly provided in public reviews, is the subject of considerable debate (Swanson, 1971; Lucas and McCallum, 1975; Hurtubise and Connelly, 1979; Robinson, 1980; MacPherson, 1984; O'Reilly, 1984).

## Legal Standing of EIA

Legal standing of EIA refers to the position of EIA processes in the eyes of the law. Some processes have the force of law while others have been assigned a purely advisory role with no legal force. This situation is cause for concern as some processes may be too legalistic and formal, to allow for adequate discussion and public input. Alternatively, a process which does not have any legal standing, may become ineffective and lacking in credibility as a result. (Sive, 1970; Foy, 1972; Fenge, 1979; Rees, 1979, 1984; Fenge and Smith, 1986).

## Accessibility of Information

All EIA reviews involve of the analysis of information relating to the proposed project and its potential environmental and social implications. This information originates with different actors and agencies, for example, industry, government and academia. Some review participants, for a variety of reasons, may not have access to such information. Their ability to effectively participate in the review process may be limited as a result (Burton, 1971; O'Riordan, 1971; Lang, 1979; Environment Canada, 1982; Rees, 1984).

## Timeliness of EIA

A fundamental objective of EIA is to ensure that environmental aspects of a given project are considered early on in the project planning process. In order for this objective to be realized, EIA must be carried out before final decisions on project design and construction schedules are made. In addition, assessments must be completed in a reasonable length of time in order to ensure that the developmental and technological climates for the project have not changed so much during the assessment period that the assessment is made irrelevant. However, it is commonly suggested that EIA generally does not take place early enough in the project planning process and that when public reviews take place, they take far too long to complete (Lang, 1977; Environment Canada, 1982; Rothwell, 1983; Fenge and Smith, 1986; Duinker,

1987, Personal Communication).

## EIA and Social Impact Assessment

In the early years of EIA, project reviews focussed almost exclusively on the ecological and biophysical impacts of the project being considered. However, over time, increasing emphasis has been placed on the socio-economic impacts of development as well. Today, the appropriate range of socio-economic impacts which should be considered in a review and the appropriate means for doing so, is the subject of considerable debate (Rees, 1979; Lerner, 1981; Horte, 1983; Fenge and Smith, 1986; Storey, 1987).

Two approaches to the further consideration of these concerns are apparent. On one hand, the concerns could be priorized with a view to selecting one or more for detailed study. On the other hand, one could select an underlying theme or element common to each of these concerns with a view to studying it in some detail. For a number of reasons, the first approach was academically unattractive to the researcher. As a result, the the second approach was adopted and efforts were made to identify a common theme or element among the concerns.

Public participation has been identified as such an element. *Public participation* "refers to the actions of citizens in relation to both the outcome of decisions and the way in which they are made; it embraces both the process and product of participation" (Sadler 1978, p. vi). In the context of EIA, public participation includes involvement in individual EIA reviews as well as inputting to the EIA policy making process. It is a fundamental element of EIA as much of the impetus for the creation of EIA processes was a desire to facilitate citizen involvement in environmental decision making (Elder, 1975; FEARO, 1978; Schnaiberg 1980; Woodrow, 1980).

It is argued that public participation both affects and is affected by each of the eleven concerns identified earlier. By way of example, the nature of the relationship between *process implementation costs*, and public participation is briefly outlined below.

In virtually any field, the time and money required to reach a particular decision tends to vary directly with the number of interests that must be satisfied by the decision (Allison, 1971). This tendency certainly holds true in the field of EIA. Inclusion of the public in the EIA decision making process greatly expands the time frame for decision making, and generally raises the cost of EIA as proponents are forced to disseminate a greater amount of information to a wider variety of interests than would be necessary were the public not involved.

Conversely, public participation may be limited by the costs involved in a given EIA process. Interest groups with limited funds are often unable to take part in EIA reviews such as those operated by the National Energy Board. It is a review process which requires the retention of lawyers, distribution of numerous copies of testimony and extensive preparation for cross-examination and may well be too expensive for most interest groups to participate in (Lucas and Bell, 1977; Robinson, 1980; Salter and Slaco, 1981).

Public participation is therefore limited by process implementation costs while, at the same time, it can often raise the costs of EIA process implementation.

To explain the nature of the relationships between public participation and each of the eleven concerns is beyond the scope of this chapter. However, it is argued that a similar two-way relationship exists between public participation and each of the concerns identified. The theme of public participation in EIA is therefore the subject of the next chapter.

# CHAPTER IV

# PUBLIC PARTICIPATION IN EIA

The purpose of this chapter is to describe public participation in decision-making generally and public participation in EIA specifically. It is argued that public participation in decision-making is an amorphous concept. To some it implies little more than marking a ballot at election time or writing a letter to a Member of Parliament or the editor of a newspaper. To others, it means sitting on decision-making boards or running for public office. Between these extremes, lies a host of activities which could be included under the rubric of public participation. As a result, any definition of public participation becomes somewhat arbitrary in nature. Therefore, no attempt is made here to develop an all-encompassing definition of public participation. Instead, this chapter discusses a number of components of public participation including its scope, roles, objectives and methodologies. In a concluding section, a number of pre-conditions for effective public participation in EIA are presented.

## COMPONENTS OF PUBLIC PARTICIPATION IN EIA

### Scope of Public Participation

A distinction can be made between participation in the political arena, and participation in specific decision-making processes such as the Environmental Assessment and Review Process (EARP). At the level of the individual, participation in the political arena can involve anything from voting to running for public office. At the collective level, public participation in the political process generally features organizations which can be termed, *pressure groups*. Pross (1986, p.3), defines pressure groups "as organizations whose members act together to

influence public policy in order to promote their common interest". Generally speaking, the primary objective of these groups is to *persuade* government to adopt their proposals. To do so, they rely heavily upon the logic and depth of their argument. In addition, they frequently attempt to develop support for their views through the use of techniques such as public information campaigns or demonstrations. Their activities typically continue over a period of time and focus primarily upon government and the political process.

Public participation in specific decision-making processes is more restricted in scope. It generally focusses upon discrete issues or groups of issues and involves activities such as: gathering information, preparing presentations, developing public awareness and support, taking part in public hearings, and sitting on boards or advisory bodies established by the process. Such participation generally features organizations known as *public interest groups*, although individuals do, of course, participate as well (Pross, 1986).

Participation in the political arena and in specific decision-making exercises, are not necessarily mutually exclusive activities. The Canadian Arctic Resources Committee, for example, has taken part in several northern environmental reviews in the past fifteen years. Yet it remains actively involved in lobbying the federal government on a daily basis (Faulkener, 1982). In addition, those regularly taking part in decision-making processes, are frequently consulted by government policy-makers on policy aspects of process design and operation. As this thesis focusses on EIA, the discussion concentrates on public participation in specific processes and does not deal with the more political aspects of public participation.

## Roles of Public Participation

A considerable number of authors have expressed opinions regarding the role of public participation (Arnstein, 1969; Kasperson, and Breitbart, 1974; Bregha, 1978; Connor, 1978; Kasperson, 1978; Glass, 1979; Jolly, 1979; Schnaiberg, 1980; Faulkener, 1982; Gundry and Heberlein, 1984; O'Riordan, 1985; Pross, 1986). Not surprisingly, there is a significant range of viewpoints on the subject.

Fortunately however, some common ground can be discerned. As Glass (1979) explains, the literature generally ascribes one of two purposes to public participation. On one hand, public participation is seen as a means to justify a decision which has already been made and to ensure that the affected public complies with it. By involving the public in the decision implementation, public fears can be allayed and public trust and support for the decision can be developed. Glass (1979) labels this school of thought the *administrative perspective*. He argues that seen from this perspective, the purpose of public participation is:

> "to *serve the interests of government* by producing well-behaved and trusting citizens who, realizing the limitations on resources and the competition among interests, will continue working within prescribed channels even when their demands are not met (Glass, 1979, p. 182)" *emphasis added*.

On the other hand, public participation can be viewed as a mechanism for facilitating public access to the decision-making process. Public involvement is seen as a means of ensuring that societal needs and desires are taken into account by decision-makers. In addition, it maximizes the chances that good decisions are made by encouraging further development and analysis of relevant information and by increasing the likelihood that all project alternatives and relevant information sets are considered. Glass (1979) labels this viewpoint the *citizen perspective*. According to this perspective, the purpose of public participation is:

> "to serve citizens in their demand for [decisions] that incorporate their

> needs and result in new or improved services, regardless of whether they have the trust and confidence of their government (Glass, 1979, p. 182)".

Adoption of either of these perspectives necessitates the consideration of much larger issues related to the nature of participatory democracy. Sympathizers of the Galbraithian world view of a *technostructure* dictating to the general public may be more inclined to adopt the administrative perspective on public participation (Galbraith, 1978). Others, who feel that the public's needs and desires percolate upwards to inform decision-makers may be more inclined toward the citizen perspective (O'Riordan, 1971). In addition, one could of course see public participation as serving a combination of these purposes.

Regardless of the position one takes on these larger issues, it is essential that any adequate understanding of public participation in a given process, includes an appreciation of these underlying fundamental themes. Indeed, ignorance of these themes can lead to an incomplete understanding of the objectives of process participants.

## Public Participation Objectives

Public participation objectives and expectations within the EIA process are as different as the participants themselves. There are two fundamental reasons for these differences. First, participants may have different *substantive* objectives. Substantive objectives include such *tangible* goals as the establishment of a park, the transfer of funds to a Native group or the construction of an oil pipeline. All participants in the process seek substantive results which satisfy their particular needs or desires. This may seem to be stating the obvious. However, it is an important point nonetheless, as it is sometimes assumed that all organizations or individuals of a particular actor type - environmental groups for example - seek the same results from a process.

Second, participants in the decision-making process may seek differing *levels of influence*. To illustrate, it is useful to consider Arnstein's Ladder of Citizen Participation

(Arnstein, 1969, p. 217). As Figure 4.1 indicates, Arnstein identifies eight levels in a *ladder* of citizen influence in the decision-making process. At the bottom of the ladder, citizens have virtually no decision-making power. Moving up the ladder, citizens exert increasing influence, to the point that at the top of the ladder, they are making the decisions.

Arnstein (1969) essentially adopts the administrative perspective alluded to earlier. She would probably argue that EIA process administrators hold all the power, and only relinquish it insofar as is necessary to bring the public on side. EIA, in her view, would likely fall into the *manipulation* or at best the *information* level of the ladder. Thus, EIA managers' objective is to control the amount of decision-making power the public has, and to allow the public only as much influence as is needed to suit the purposes of the administration. As a result, citizens are continually forced to struggle to attain a significant say in the decision-making process.

While this is no doubt true to some extent, it is argued here, that within a given EIA process, participants do not necessarily seek maximum decision-making influence. For example, in a given EIA review, some individuals or interest groups may only want to obtain information or voice their concerns about a project and would certainly not want to make the decisions regarding that project. The Canadian Mental Health Association for instance, presented a brief during the Beaufort Sea EARP (FEARO, 1984). While it definitely wanted to raise concerns about the mental health implications of the hydrocarbon development proposed, it is unlikely that the Association would feel comfortable in an EIA *decision-making* capacity.

Alternatively, some government agencies may well *prefer* that members of the public make their own decisions. They may do so for altruistic reasons on the assumption that better decisions will be made as a result, or for more selfish reasons related to shirking responsibility and avoiding criticism.

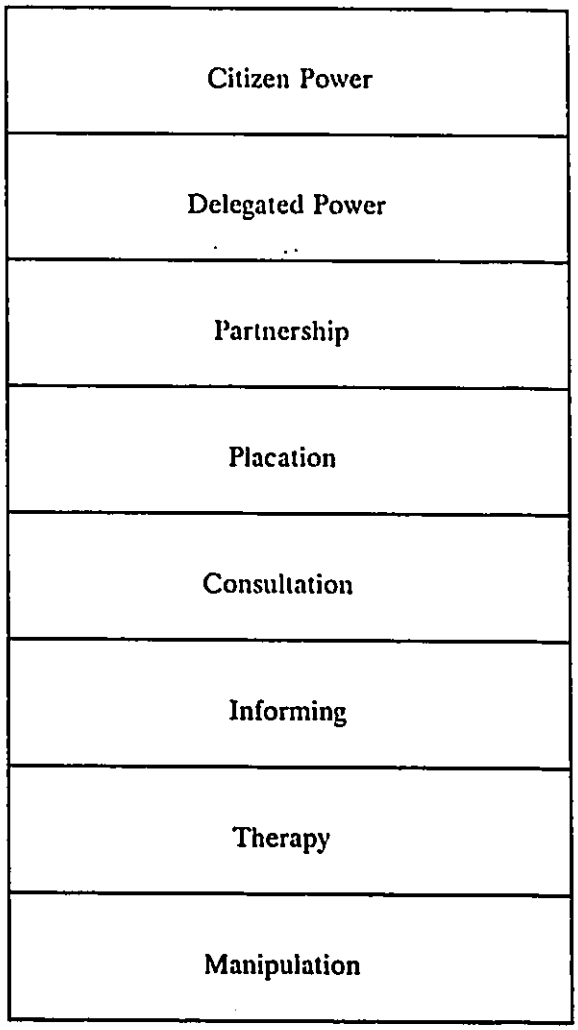


*Figure* 4.1: *Arnstein's Ladder of Public Participation*

*Source*: Arnstein, 1969, p. 217.

In any case, the important point here is that in considering public participation in a decision-making process, it is essential to remember that different process participants pursue different objectives, both in terms of substantive process results, and in terms of the degree of influence they seek in the process. Given these differing objectives, specific public participation methodologies, may not be appropriate for all participants. Accordingly, a

number of methodologies must be considered.

## Methods of Public Participation

Several authors have compiled inventories of public participation methodologies (Burton, 1977; Homenuck et. al., 1978; Glass, 1979; Salter and Slaco, 1981; Duffy, 1986; Pross, 1986). To attempt to review each of these methodologies is beyond the scope of this thesis. Instead, a tabular inventory of EIA public participation methodologies is presented in Table 4.1. Clearly, each and every one of these methodologies is not used in every EIA review. However, they have all been employed at one time or another in the context of processes such as EARP or NEB reviews.

To summarize, the previous pages have presented a discussion of the scope, purpose, objectives and methods of public participation. It was noted that for the purposes of this thesis, the focus is on public participation in specific decision-making processes as opposed to the political arena. Further, it was suggested that the purpose of public participation can be viewed from an administrative, or from a citizen perspective. Regardless of which perspective one takes, it is essential to remember that process participants pursue differing objectives, and as a result, utilize a number of participation methodologies.

In the remainder of this chapter, a set of minimum pre-conditions for effective public participation in EIA is outlined. It is argued that unless a majority of these pre-conditions are met, public participation, regardless of its purpose, objectives, or methods, will not be effective.

These conditions do not serve as measures of public participation effectiveness. Rather, they serve as indicators of the ***potential*** effectiveness of public participation in a given process. Accordingly, a given EIA process which meets all or most of these conditions, has a very high potential for effective public participation to take place. Concomitantly, one which does not meet many of these conditions, has a low potential for engendering effective

*Table 4.1: Public Participation Methodologies*

| Communication Characteristics | | | | Public Information and Participation Objectives | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Level of Public Contact Achieved | Ability to Handle Specific Interest | Degree of 2-way Communication | Public Participation/Communication Techniques | Inform/Educate | Identify Problems/ Values | Get Ideas/Solve Problems | Feedback | Evaluate | Resolve Conflict/ Consensus |
| 2 | 1 | 1 | Public Hearings | | X | | X | | |
| 2 | 1 | 2 | Public Meetings | X | X | | X | | |
| 1 | 2 | 3 | Informal Small Group Meetings | X | X | X | X | X | X |
| 2 | 1 | 2 | General Public Information Meetings | X | | | | | |
| 1 | 2 | 2 | Presentations to Community Organization | X | X | | X | | |
| 1 | 3 | 3 | Information Coordination Seminars | X | | | X | | |
| 1 | 2 | 1 | Operating Field Offices | | X | X | X | X | |
| 1 | 3 | 3 | Local Planning Visits | | X | | X | X | |
| 2 | 2 | 1 | Information Brochures and Pamphlets | X | | | | | |
| 1 | 3 | 3 | Field Trips and Site Visits | X | X | | | | |
| 3 | 1 | 2 | Public Displays | X | | X | X | | |
| 2 | 1 | 2 | Model Demonstration Projects | X | | | X | X | X |
| 3 | 1 | 1 | Material for Mass Media | X | | | | | |
| 1 | 3 | 2 | Response to Public Inquiries | X | | | | | |
| 3 | 1 | 1 | Press Releases Inviting Comments | X | | | X | | |
| 1 | 3 | 1 | Letter Requests for Comments | | | X | X | | |
| 1 | 3 | 3 | Workshops | | X | X | X | X | X |
| 1 | 3 | 3 | Advisory Committees | | X | X | X | X | |
| 1 | 3 | 3 | Task Forces | | X | X | | X | |
| 1 | 3 | 3 | Employment of Community Residents | | X | X | | | X |
| 1 | 3 | 3 | Community Interest Advocates | | | X | | X | X |
| 1 | 3 | 3 | Ombudsman or Representative | | X | X | X | X | X |
| 2 | 3 | 1 | Public Review of Initial Assessment Decision Document | X | X | X | X | X | X |

1 = low, 2 = medium, 3 = high

x = Capability

Source: Duffy, 1986, p. 19.

public participation. It is important to note the use of the word potential. Public participation with a high *potential* for success, will not necessarily be successful and low potential does not guarantee failure.

One may well argue that a consideration of potential effectiveness of public participation is not especially useful, as most people are concerned primarily with whether public participation *is* effective or not. While this viewpoint has some merit, it is argued that many of the difficulties experienced with public participation in the past, stem from an inadequate consideration of the essential pre-conditions for effective public participation. Consequently, many of the critiques of public participation in EIA, focus upon the *symptom* of a problem, and not upon the *cause* of the problem itself. Accordingly, this thesis focuses on the pre-conditions for effective public participation, and does not seek to evaluate the effectiveness of specific public participation exercises. This orientation is necessary, given the focus on the Western Arctic Inuvialuit Final Agreement as there is not yet a sufficient public participation case history to evaluate. The pre-conditions considered are: Opportunity to Participate; Awareness of Opportunity to Participate; Process Timing; Financial Resources; Access to Information; Expertise; Clarity of Process Role and Process Scope; and, Process and Participant Credibility. As stated in the preceding chapter, the survey research undertaken attempts to gather information and insight related to these pre-conditions.

## PRE-CONDITIONS FOR EFFECTIVE PUBLIC PARTICIPATION

### Opportunity to Participate

In order for public participation to take place in EIA, the process must be accessible to the public. It must be designed to provide an *opportunity* to participate. An EIA process which does not feature such an opportunity, will not engender significant public participation

(Holling, 1978; Rees, 1978; Salter and Slaco, 1981; Fenge and Smith, 1986).

It could be argued that EIA process design need not necessarily feature a public participation component as some informal and ad hoc public consultation takes place anyway in all resource management decision-making. Further, South (1986) suggests that government agencies will not approve a resource development project unless it has public support. However, informal and *ad hoc* consideration of public interest by decision-makers, can hardly be considered public participation as the public is only able to react to information requests and is unable to actively take part in the making of the decision. Furthermore, there is no guarantee that all affected segments of the public will be consulted.

## Awareness of Opportunity to Participate

In addition to having the opportunity to participate, the public must be *aware* of the opportunity. It is impossible to take advantage of an opportunity one does not know exists. Accordingly, administrators of a given EIA process must make considerable effort to make the public aware of hearings, meetings, available information, process objectives and so on, if effective public participation is to occur.

## Timing

The timing of an EIA review is of critical importance from the point of view of public participation (Bugslag, 1985; Storey, 1987; Duinker, 1987, Personal Communication). In order for public participation to be effective and meaningful, it must take place before final project decisions are made. Otherwise, the public can do little more than suggest minor project design or implementation changes. This has the effect of reducing public participation in EIA to an exercise which simply rubber-stamps a decision which has already been made.

## Financial Resources

Participation in EIA reviews is costly. Funds are required to gather information, prepare presentations, retain experts, travel to hearings and meetings, and so on. These funds must either be generated independently by review participants, or must be supplied to them from the public purse. Failure to obtain sufficient funds from whatever source, will *generally* decrease the effectiveness of a given individual's or group's public participation efforts.

## Information

Information energizes the EIA process. Information is presented, analysed, discussed and debated at each process stage. As a result, those who have access to relevant information regarding the project and its impacts, are most likely to be able to participate effectively. Those who do not have access to necessary information, are forced to rely more on emotional and intuitive arguments such as *preserve the environment for future generations* or *save Nature for its own sake*. While this does not preclude effective public participation, it can make it more difficult. Accordingly, access to information is an essential pre-condition of effective public participation in EIA.

## Expertise

Access to information is of limited use if one can not understand and interpret the material acquired. Much of the data generated in EIA reviews is couched in terms which are easy for the layperson to comprehend (Dome et. al., 1982; Hoos, 1987, Personal Communication). However, under some conditions, information and argument may be highly technical and scientific in nature, and may demand expert examination and interpretation if an adequate depth of analysis is to be achieved in the consideration of the material. Accordingly, professional expertise may, in some cases, be essential to effective public participation.

## Clarity of Process Role and Process Scope

Effective participation in a given EIA process requires a sound understanding of both its role and its scope. In identifying the *role* of EIA, one is seeking to determine what the purpose of the process is - what is it supposed to accomplish? Further, one could ask where and how EIA fits into the overall management regime. Is it a small component of a larger decision-making system such as regional land use planning, or is it a more self-contained mechanism designed to stand on its own?

In considering the *scope* of an EIA process, one is attempting to identify the range of issues to be investigated. In other words, what substantive issues is the process concerned with? Does the process deal only with ecological matters? Or, does it also consider socio-economic issues, such as project impacts on local employment, and larger socio-political concerns, such as national energy policy or Arctic sovereignty? In addition, attempts can be made to discern geographic limits to the scope of inquiry. Does the process focus only on the directly impacted area, or is it also concerned with broader regional, national, or international impacts?

Poor definition of either EIA role or scope, can lead to considerable difficulty in process implementation and administration. In order to avoid these difficulties and thereby maximize the likelihood of effective public participation, a clear statement of an EIA mechanism's role and scope is required (Gibson, 1984; MacDonald, 1984). Unless one is clear as to what the process seeks to accomplish, and where it fits within an overall decision-making framework, it is difficult to prepare relevant and appropriate positions and presentations (Gibson, 1984; Bugtsag, 1985; Hubert, 1987, Personal Communication). Likewise, one must be cognizant of the issues the process is intended to address so as to avoid raising issues that are of little significance or relevance to the EIA case at hand (MacDonald, 1984).

## Process and Participant Credibility

Credibility is an important attribute of public participation in EIA in two respects. First, the EIA process itself must have credibility in the eyes of the public. An EIA mechanism which is commonly viewed as nothing more than a rubber-stamp exercise, or as a procedure which produces recommendations which go largely unheeded, will probably not engender public confidence and trust. Conversely, processes which appear to be well organized, to examine information in a rigorous and detailed fashion and to produce concrete and enforceable results, are more likely to have higher public credibility and are more *likely* to be perceived as worthwhile exercises.

Second, individual review participants must establish personal credibility (Faulkener, 1982). In doing so, a number of factors are important. Quality material must be presented by intervenors if they are to be credible. Intervenors who continually present incorrect information, flawed arguments, or irrelevant issues may be ignored by the review Panel, and may have little effect on the review outcome (Faulkener, 1982; Hoos, 1987, Personal Communication). In addition, a recognized experience record or expertise is important in establishing credibility. Intervenors with no background or prior involvement in review issues, may have a more difficult time convincing adjudicators and other EIA participants. This is particularly important in the context of northern EIA. For example, southern based interest groups or individuals with no indepth knowledge of northern issues, who appear at northern EIA reviews to tell northerners, *how things should done*, have proven to be largely ineffective (Demchuk, 1987, Personal Communication; Cotterill, 1987, Personal Communication).

In order to further establish credibility, intervenors must be able to clearly delineate their constituency. It is essential that other review participants, as well as the decision-making Panel or Board, are aware of who and what interests are being represented. If such declarations are not made, it is extremely difficult to adequately judge the merits or reliability

of intervenor testimony. Furthermore, intervenors must be able to prove they represent the interests they say they do. It is one thing to say "I represent the environmentally concerned citizens" - it is quite another thing to prove it.

In sum, failure to meet any of the pre-conditions listed above ultimately affects the credibility of the whole EIA process. The lack of an opportunity to participate, poorly advertised hearings or meetings, badly timed reviews, underfunding of intervenors, limited public access to information and/or expertise, or poorly defined process structure, makes effective public participation impossible and undermines the credibility of the process as a result. Furthermore, the absence of one or more of these pre-conditions, may make it impossible for all but the most established and experienced intervenor, to participate in EIA reviews. As a consequence, representation of the impacted and interested public, may be inadequate. This condition may lead to the suggestion that the exercise is not one of true public participation. Indeed,

> "the belief that the people involved as well as the opinions gathered, in public meetings are not representative of the client public or their views,. has been stated so often that it is now generally accepted (Gundry and Heberlein, 1984, p.175)".

This chapter has highlighted the main components and pre-conditions of effective public participation. In the following chapter, the history of public participation in northern EIA, is discussed in terms of each of the eight pre-conditions identified above.

# CHAPTER V

## PUBLIC PARTICIPATION IN NORTHERN EIA TO DATE

The two preceding chapters have focussed on EIA generally and on public participation in EIA specifically. The purpose of this chapter is to link these foci in a discussion of public participation in northern EIA, prior to the achievement of the Western Arctic Inuvialuit Final Agreement. The discussion is organized around the eight pre-conditions for effective public participation identified in Chapter IV: Opportunity to Participate; Awareness of Opportunity to Participate; Process Timing; Financial Resources; Access to Information; Expertise; Clarity of Process Role and Process Scope; and, Process and Participant Credibility. In the first part of the chapter, the Environmental Assessment and Review Process (EARP) is discussed in terms of each pre-condition. The focus is on the public review phase of EARP because, as indicated below, the initial assessment component of EARP does not feature public participation. In the second part of the chapter, the National Energy Board process is considered in the same fashion. In a concluding segment, the discussion is summarized.

# THE ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESS (EARP)

## Opportunity to Participate

Public participation, by definition, is a fundamental feature of the public review component of the Federal Environmental Assessment and Review Process (EARP). Seven northern EARP public reviews have been conducted to date (FEARO, 1978a, 1978b, 1979, 1980, 1981, 1982, 1984). A host of individuals and interest groups such as the Canadian Mental Health Association, the Beaufort Sea Alliance, the Déné Nation, the Inuvik Chamber of Commerce, and the Canadian Petroleum Association, have taken part in these reviews.

The public is involved in two stages of EARP public reviews. First, members of the public are invited to comment on the draft guidelines for the preparation of the Environmental Impact Statement (EIS) (FEARO, 1984; Gibson, 1984). Interested parties can suggest modifications or additions to the draft guidelines during a series of hearings held by the Panel. The Panel considers these suggestions and then issues a set of final EIS guidelines which *may* reflect these suggestions.

The public *is not*, involved in the original preparation of the draft guidelines. In the Beaufort Sea review for example, the draft guidelines were prepared by the Panel Secretary and the industry representative coordinating the oil and gas companies' input to the review (Hoos, 1984, Personal Communication). As a result, the public is placed in a *reactive* position vis-à-vis the guidelines. The public is asked to *comment on* a set of prepared draft guidelines. The public is not asked to take part in the original drafting of the guidelines or in their finalization. The public's opportunity to participate in the EIS guidelines preparation stage is somewhat limited as a result.

Second, the public is given the opportunity to take part in a series of *community* and *formal* meetings during which the impacts of the proposal are discussed. Access to the community meetings is restricted to community members. Individuals are invited to voice their opinions regarding the proposal in a non-adversarial, unintimidating atmosphere. The intent at this stage is to make individuals feel comfortable in presenting their views, without fear of being tripped up or ridiculed through questions posed by lawyers or other review participants.

Formal meetings, (sometimes known as technical or general meetings or hearings) are open to all members of the public, and to any representatives of industry and government who wish to participate or observe. They usually begin with the proponent's presentation followed by questions and submissions from interest groups and individuals. Participants are allowed to pose questions for clarification purposes, but are not permitted to cross-examine. This can make it difficult to dispute the assertions made in any given presentation. In light of this difficulty, EARP has been criticized on the grounds that it does not offer the public the opportunity to effectively counter the arguments of industry (Rees, 1979, 1984; MacPherson, 1984; Fenge and Smith, 1986; Nesbitt, 1987, Personal Communication).

Of further concern in the context of the formal meetings, is the fact that most of the discussion and testimony focuses upon the proponent-prepared EIS. The EIS is prepared entirely in-house by the proponent with the help of any consultants it may choose to retain. The public *is not* involved in its preparation. As a result, the public is once again forced into a reactive posture. They are invited to critique a document that may be imposing in volume and substance. For example, the Beaufort Sea EIS contained seven volumes of technical evidence.

Exacerbating this difficulty, is the nature of proponent-prepared EIS's. Tull's examination of the Beaufort Sea proponent's EIS, concludes that it consistently understated the severity of the environmental impacts identified by the consultants hired by the proponent

(Rees, 1984). Rees (1984), states that:

> "Tull's analysis exposes clearly, the fundamental contradiction that undermines the concept of self-assessment. The present EARP (and most other formalized EIA processes) obliges the proponents in effect, to erect every manner of social and economic barrier to their own enterprise. This inherent conflict of interest can only contribute to the distortion of information at every level of analysis, and leads to the suspicion, seemingly supported in this case, that the proponent will understate the negative impacts of the proposal" (Rees, 1984, p. 547).

Following this line of argument, it seems that in addition to being forced to develop a comprehensive response to the conclusions of the proponent's EIS, the public must also question, or at least treat with some suspicion, the information and statements upon which those conclusions are based. This makes the public's task all the more difficult and leads to the call for an opportunity for the public to participate in EIS preparation (Rees, 1984; Kennedy, 1987, Personal Communication; Rees, 1987, Personal Communication).

A comment regarding the selection of the Panel members is appropriate at this point. Panel members for northern EARP reviews, are selected on the basis of their northern experience and their technical expertise in a given area. Some efforts are also made to reflect the demographic character of the affected public on the Panel. In the Beaufort Sea review for example, care was taken to ensure that a Native person sat on the Panel (FEARO, 1984a).

The public does not have any role in the Panel selection process. Nor does it have any legal right or avenue to question a given Panel appointment. Therefore, should an intervenor object to a given Panel member, or, as happened in the Beaufort Sea review, should an intervenor object to the absence of a female Panel member (Macpherson, 1984), there is no means of formally voicing these objections and no means of having them addressed.

Thus far, the discussion has focussed on the public review component of EARP. It has been argued that the absence of public involvement in the preparation of the original EIS draft guidelines, or in the preparation of the EIS itself, detracts from the public's opportunity

to participate in EARP public reviews. Notwithstanding these difficulties, it is undeniable that all EARP public reviews in the North to date, have featured significant opportunity for the public to participate. The problem here of course, is that very few project proposals are ever referred for public review.

It is impossible to determine exactly how many resource development proposals have been screened under the auspices of EARP since its inception in 1973. However, given that all federal initiatives are supposed to be subject to the process, the number of proposals reviewed should be quite high (FEARO, 1979b; Canada, 1984). However, as only seven northern development proposals have been referred for public review as of February 1988, it is clear that the overwhelming majority of EARP activity takes place at the *initial assessment*, or *screening* phase (see Figure 3.2, page 40).

Public participation is not a feature of the EARP screening process. Screening is carried out within federal line agencies such as the Department of Indian Affairs and Northern Development (DIAND), Energy Mines and Resources, the Department of Fisheries and Oceans, the Department of National Defense and the Department of Public Works. While government officials are not prohibited from informally contacting members of the public regarding a particular project proposal, they are not encouraged or compelled to do so. Further, although officials are instructed to consider public opinion in making their decisions, they are often far removed from the proposed location of the project and are uninformed about the local grass roots feelings regarding development. This is particularly true in the context of the North as many of the decisions affecting the North are made by officials in Ottawa (Naysmith, 1977; Robertson, 1985; Whittington, 1985; Page, 1986; Demchuk, 1987, Personal Communication).

It may be suggested that the public's exclusion from EARP screening is desirable. Advocates of this point of view may feel that the public's inclusion in EARP screening, would slow the decision-making process to an unacceptable degree and would promote decision-

making inefficiency. Further, it may also be argued that the average, *person-in-the-street*, is unqualified to contribute to the screening process and that associated decisions are best left to experts.

This line of thought seems to have formed the federal government conventional wisdom regarding the screening phase of EARP for some time now. Indeed, few attempts have been made to challenge this viewpoint and the literature is virtually silent as far as suggesting means to integrate the public into the EARP screening phase is concerned. However, as the next chapters will point out, recent developments in the Mackenzie Delta/Beaufort Sea region following from Inuvialuit Agreement, are giving credence to the view that screening mechanisms which feature regular public participation can in fact be developed and operated effectively.

## Awareness of Opportunity

Those interviewed in the course of this research, felt that northerners have been made well aware of their opportunity to participate in EIA reviews (Cotterill, 1987, Personal Communication; Hoos, 1987, Personal Communication; Hubert, 1987, Personal Communication; Kruk, 1987, Personal Communication). Several reasons for this situation are apparent.

First, industry has learned from development experience in the early seventies that it can not efficiently proceed with development activities without local communities' support (Hoos, 1987, Personal Communication; Kruk, 1987, Personal Communication). As a result, they have made extensive efforts to inform potentially affected communities about their development plans and the EIA mechanisms related to them (Cotterill, 1987, Personal Communication; Sullivan, 1987, Personal Communication).

Second, northerners have developed a considerable experience base vis-à-vis EIA. They have been confronted with seven EARP public reviews, two National Energy Board reviews,

the Mackenzie Valley Pipeline Inquiry, and the Lysyk Inquiry, in the last fifteen years.

Third, a number of information processing networks are now in place in the North and are acting to keep northerners well informed regarding resource development and companion environmental regulation. Organizations such as the Beaufort Sea Advisory Committee, the Beaufort Sea Development Impact Zone, and the newly established northern land use planning commissions, greatly facilitate the flow of information to and from the community level and act to ensure that northerners are well aware of any opportunity to comment on given resource developments.

## Process Timing

For the most part, northern EARP reviews have focussed on finalized development proposals and not upon projects in the process of being planned (Fenge and Smith, 1986). Evidence of this situation is the scant attention paid to development alternatives in EARP reviews (FEARO, 1978a, 1979a, 1980, 1981). The ultimate effect is to restrict the issue agenda upon which the public could comment. The public is forced to react to proponents' proposals and can not formulate alternative development scenarios or meaningful suggestions for alterations in project plans. Further evidence of this predicament is provided by respondents' answers to question 3a of the research questionnaire, which asks: "How often have members of the public raised *new issues* in EIA reviews?" With few exceptions, the reply was *never*.

Although many northern EARP reviews have occurred late in the project planning process, it could be argued that the Beaufort Sea review did not. Its mandate was to consider the *concept* of hydrocarbon development in the Mackenzie Delta/Beaufort Sea region, and *was not* focussed on any one specific project proposal. However, the review focussed only on variations on the theme of hydrocarbon development (Dome et. al., 1982), and did not

consider any other development *concepts* (a renewable resource based regional economy for example). Therefore, while it did take place early in the project planning stage, it still did not offer the public an opportunity to comment on the environmental ramifications of other development scenarios.

The Beaufort review also raises another important point related to process timing. The review took four years to complete. Consequently, many of the fundamental ground rules upon which the commencement of the review was based, changed dramatically over the course of the review. World oil prices for example, were high at the review's outset, but by 1984 had plunged to the point that many of the financial and project planning schedules originally discussed in the review, were thrown hopelessly out of kilter. Indeed, by the time the review ended, many of the proponents had already begun to pull out of the North. Thus, the large amount of time required to complete the review, compromised its utility and relevance. Furthermore, review participants on all sides of the issues, experienced difficulties in sustaining their involvement over a four year period (MacDonald, 1984; Macpherson, 1984; Hoos, 1987, Personal Communication). These difficulties illustrate the perils inherent in long-lasting reviews, even if they begin early in the project planning process.

## Financial Resources

Environmental reviews in the North have typically featured a somewhat *David-versus-Goliath-like* confrontation between public intervenors and project proponents. Proponents are backed by extensive corporate funds, are generally very well prepared and have large staffs of experts and contracted consultants to call upon.

Public intervenors on the other hand, are usually individuals or groups operated by volunteers or small, paid staffs, and have little money for the conduction of research and public awareness programs, the preparation of presentations, the retention of experts or the travel necessary to attend hearings at distant locations. In short, lack of sufficient funds has

been a major problem for public intervenors in northern EARP reviews (Gibson, 1984; Fenge and Smith, 1986; Hoos, 1987, Personal Communication; Cotterill, 1987, Personal Communication).

The most frequently identified solution to this problem is the provision of public funds to members of the public wishing to intervene. This practice, commonly referred to as *intervenor funding*, was first undertaken during the Mackenzie Valley Pipeline Inquiry in the mid-seventies (Berger, 1977). However, it was not until the Beaufort Sea review, that intervenor funding was featured in EARP.

Evaluations of intervenor funding in the Beaufort Sea review have been somewhat mixed in their conclusions. At the Beaufort Sea EARP Evaluation Workshop held in Ottawa in May 1984, participants were virtually unanimous in their support for the principle of intervenor funding (MacDonald, 1984). However, considerable dissatisfaction was expressed regarding the ways in which the funds were allocated and expended. The most commonly voiced criticism was that too much funding was provided to southern-based groups such as the Beaufort Sea Alliance who produced materials and experts that were not relevant to the northern scene (MacDonald, 1984; Cotterill, 1987, Personal Communication; Kennedy, 1987, Personal Communication). It was felt that the money would have been better spent on greater funding for northern communities and groups.

Questionnaire respondents were generally in favour of the idea of intervenor funding in the context of EARP reviews. However, they were equally precise in their view that funds should only be provided to directly affected communities and northern based interest groups. It was suggested that southern-based groups seeking intervenor funds, should have to approach northern groups for a portion of the funds provided to them. This would ensure that these southern participants conduct themselves in a fashion relevant to the northern context (Cotterill, 1987, Personal Communication).

## Information

In EARP reviews, access to information is controlled by those who possess the information. The public can not demand relevant documents or knowledgeable individuals, through the use of subpoenas or other mechanisms. Therefore, it is not always possible to obtain industry studies and background reports related to the project. Similarly, it is difficult to determine what government reports or positions have been prepared in relation to the review (MacDonald, 1984; Macpherson, 1984; FEARO, 1988).

Public intervenors also experience frequent difficulties in obtaining the information they request during the hearings themselves. Commenting on behalf of the Beaufort Sea Alliance, MacPherson, (1984, p. 5) states that:

> "During the Beaufort hearings it was very difficult to get a firm answer from witnesses or proponents at times, due to the 'informal' nature of the Beaufort hearings".

These sentiments have been echoed by other authors and questionnaire respondents (Rees, 1979; Marshall et. al., 1985; Fenge and Smith, 1986; Allen, 1987, Personal Communication; Cotterill, 1987, Personal Communication; Hubert, 1987, Personal Communication; Nesbitt, 1987, Personal Communication). This is an important point as it highlights a key weakness of EARP reviews. Individuals presenting material can present what they want the Panel and the audience to hear. The nature of the hearings is such that other intervenors cannot *demand* corroborating evidence or a canvassing of alternate viewpoints.

Two further points can be made regarding public access to information. First, as was noted in Chapter III, some concern about the quality of the scientific information in EIA, has been voiced in recent years (Beanlands and Duinker, 1983; Haug, 1984; Conover et. al., 1985; Duinker, 1985). While this concern has been primarily related to the overall integrity of EIA reviews, information quality has significant implications for public participation as well.

Perhaps most importantly, enormous volumes of scientific information have been generated in most EIA reviews. EIS's have generally adopted a *cover-the-waterfront* attitude in describing the potentially impacted environment rather than identifying and studying key environmental attributes. This has resulted in the generation of vast amounts of information, which, for the most part, has been somewhat superficial in nature (Beanlands and Duinker, 1983). Adequate consideration of this material is beyond the capabilities of most public intervenors. Indeed, many intervenors are simply overwhelmed by a sea of information and unable to participate effectively as a result (Rees, 1984; Gibson, 1984; Page, 1986).

Second, it is important to keep in mind that in the context of the North, much of the information usually required in EIA reviews, simply does not exist and must be gathered, often for the first time (Beanlands and Duinker, 1983; FEARO, 1984; Hoos, 1984, 1987, Personal Communication). A continual frustration for industry, government and the public alike, is the limited northern environmental data base. Many types of information which are routinely available in the South, have not been developed in the North. For example, basic data regarding wildlife population, habitat, and migration patterns, are often not available (Roots, 1980; Usher, 1986). Our knowledge base related to tracking oil spills under Arctic ice is also limited (FEARO, 1984a). Numerous other information voids could be identified (Nelson, Needham and Norton, 1987). Their existence creates difficulties for all participants in northern EIA.

## Expertise

Public intervenors do not necessarily require technical expertise to participate effectively in EARP. However, in some instances, discussion of oil spill trajectories for example, expertise is required.

In EARP reviews, *expertise*, has generally been manifested in one of three forms. First, individuals or groups, may possess some expertise themselves. A Native hunter for example,

may have considerable knowledge of animal movement patterns, and can draw upon this knowledge when making a presentation to the Panel. Alternatively, a group such as the Canadian Wildlife Federation, generally has staff biologists or lawyers, who can be called upon to present information to the Panel.

Second, public intervenors often take steps to acquire expertise. They can carry out the necessary research to educate themselves on a particular topic. However, resource constraints, oftentimes make this impossible. Therefore, it is frequently necessary to hire experts to prepare reports and analysis regarding subjects of concern to the intervenor. However, this course of action may also be beyond the means of public intervenors. Furthermore, the retention of experts creates the danger of a group becoming dominated by the experts and somewhat alienated from its original grass roots or community base (Christiansen-Ruffman and Stuart, 1977).

Third, it is possible for the EIA Panel to retain a staff of technical specialists and make it available to all review participants. This strategy, first used by Berger in his Mackenzie Valley Pipeline Inquiry, was implemented for the first time under EARP in the Beaufort Sea review. While participants generally saw this as a very positive innovation (MacDonald, 1984), some intervenors found it difficult to secure access to these specialists (MacPherson, 1984).

Notwithstanding the periodic appearance of expertise in these forms during EARP reviews, access to sufficient expertise has generally been a problem for public intervenors. The lack of intervenor funding and the relatively late timing of EARP reviews (see above), has made it nearly impossible for intervenors to hire experts or to develop expertise of their own. That this has been the case, is evidenced by the low numbers of public intervenors in the general or technical meetings of EARP reviews (FEARO, 1978, 1979a, 1980, 1981, 1984; Cotterill, 1987, Personal Communication; Hoos, 1987, Personal Communication; Nesbitt, 1987, Personal Communication).

## Clarity of Process Role and Process Scope

In Chapter IV, it was argued that in order for public participation in EIA to be effective, it is essential that public intervenors have a clear understanding of EIA role and scope. However, as Marshall et. al. (1985, p.8) explain:

> "The fundamental deficiency of impact assessments in Canada is structural and concerns its (*sic*) role and scope in relationship to other areas of decision-making. Because EIA is usually site and project specific, it requires an appropriate policy-planning context to focus analysis and permit evaluation. This might encompass for example, specified objectives for environmental management which are given effect through planning systems for resource and land use allocation. For the most part, however, these frameworks are either not yet in place or are insufficiently developed".

This is particularly true in the context of northern EIA. No over-arching resource management or land use allocation system exists in the North (FEARO, 1979a; Task Force on Northern Conservation, 1984; Bugslag, 1985). Northern land use planning is in early stages of operation and is not yet affecting northern resource management (Hubert, 1987, Personal Communication).

This situation has important implications for EARP. Indeed, as Rees (1979, p. 27) argued:

> "The absence of a national policy framework, or in some cases a regional overview, for the implementation of EARP is its most serious threat. By no means a weakness of EARP itself, the 'lack of context' could bring the whole process down".

While the lack of clear definition of the decision-making role of EARP has not yet brought the process down, it has created considerable difficulties for all participants in EARP reviews (Gibson, 1984; MacPherson, 1984; Fenge and Smith, 1986; Smith, 1987; Allen, 1987, Personal Communication; Cotterill, 1987, Personal Communication; Hoos, 1987, Personal Communication).

Most importantly, it contributes to a sense of uncertainty about what EARP reviews are supposed to accomplish. In the Beaufort Sea EARP, for example, confusion still exists about something so fundamental as whether the review was supposed to grant the proponents an approval-in-principle for development or to just identify issues and concerns for future reviews (Gibson, 1984; MacDonald, 1984; Hoos, 1984, 1987, Personal Communication; Blais, 1987, Personal Communication; Bregha, 1987, Personal Communication). This uncertainty makes it difficult for public intervenors to prepare effective and useful presentations. They are confronted with the question: What should the target of discussion and assessment be?

An important consequence of this uncertainty is the resulting unclear nature of the *scope* of EARP reviews. In the absence of adequate understanding of EARP's purpose, intervenors address a wide range of social, economic, and political issues. For example, in the Beaufort Sea review, everything from migratory caribou movements to the basic tenets of national energy policy, were discussed (FEARO, 1984; MacDonald, 1984). This unnecessary breadth of EIA scope results in frustration and dissatisfaction for many participants. Time is wasted on trivial and irrelevant matters, while issues of greater importance are not sufficiently addressed (Beanlands and Duinker, 1983; Fenge and Smith, 1986; Marshall, et. al. 1985; Page, 1986; Smith, 1987; Cotterill, 1987, Personal Communication; Hoos, 1987, Personal Communication; Nesbitt, 1987, Personal Communication).

## Process and Participant Credibility

In the context of EIA, credibility is a two-faceted pre-condition for effective public participation. On the one hand, participants must have credibility. On the other hand, the EIA process must be credible in function and consequence. An evaluation of the credibility of all of EIA intervenors is beyond the realm of this research. Instead, the following general observations regarding the credibility of review participants are offered.

In evaluating the credibility of public intervenors generally, it is important to consider

what the objectives of public intervenors have been. In this vein, it is essential to recognize that not all public intervenors have the same or even similar objectives. As several interview respondents explained, a range of intervenor objectives can be identified (Allen, 1987, Personal Communication; Billingsley, 1987, Personal Communication; Cotterill, 1987, Personal Communication; Hubert, 1987, Personal Communication; Kruk, 1987, Personal Communication; Nesbitt, 1987, Personal Communication; Rees, 1987, Personal Communication). As Figure 5.1 indicates, at one extreme of the objectives spectrum are those members the of public who want nothing more out of EIA reviews than project information and are not interested in presenting briefs to the Panel. Typical of this type of intervenor are people who are not directly affected by the development but like to know what is going on in their area (Cotterill, 1987, Personal Communication; Hubert, 1987, Personal Communication; Sullivan, 1987, Personal Communication).

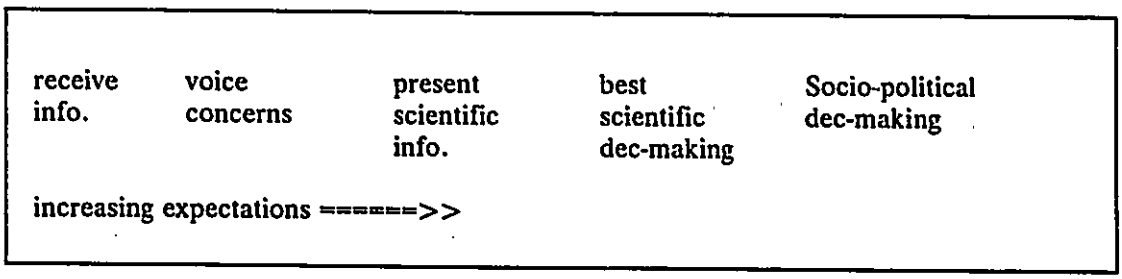


*Figure* 5.1: *Participant Objectives Spectrum*

At the next step, one finds intervenors that wish to formally voice their concerns about the proposal. In doing so however, they are unwilling or unable to conduct extensive research or study and, therefore, present only their personal feelings about the project (Allen, 1987, Personal Communication; Billingsley, 1987, Personal Communication; Cotterill,

1987, Personal Communication; Hubert, 1987, Personal Communication; Kruk, 1987, Personal Communication; Nesbitt, 1987, Personal Communication; Rees, 1987, Personal Communication). Residents of potentially affected communities typify this group of intervenors (FEARO, 1978a, 1978b, 1979a, 1980, 1981, 1982, 1984a).

Towards the centre of Figure 5.1, are those intervenors who carry out research regarding the potential ecological impacts of the proposal with a view to presenting their results to the Panel. Further along to the right, are intervenors who feel that in addition to ecological issues, the Panel should consider the project's socio-economic impacts. Accordingly, they prepare research and analysis related to socio-economic impacts of the project and present it to the Panel. These types of intervenors are usually issue-oriented interest groups such as the Canadian Wildlife Federation, the Canadian Petroleum Association, or the Canadian Nature Federation, who have the resources to carry out research (Allen, 1987, Personal Communication; Billingsley, 1987, Personal Communication; Cotterill, 1987, Personal Communication; Hubert, 1987, Personal Communication; Kruk, 1987, Personal Communication; Nesbitt, 1987, Personal Communication; Rees, 1987, Personal Communication).

Finally, at the right of the spectrum, are those intervenors who continually raise broad socio-political questions such as whether or not non-renewable resource development is a good thing for the North (Rees, 1979; Mackenzie Delta Regional Council, 1983; Gibson, 1984; Macpherson, 1984; MacDonald, 1984, Bugslag, 1985; Page, 1986; Allen, 1987, Personal Communication; Billingsley, 1987, Personal Communication; Cotterill, 1987, Personal Communication; Hubert, 1987, Personal Communication; Kruk, 1987, Personal Communication; Nesbitt, 1987, Personal Communication; Rees, 1987, Personal Communication). These groups are more concerned with the larger picture than the scientific and technical quality of the decisions made in the review. These intervenors are typified by groups such as the Canadian Arctic Resources Committee, the Beaufort Sea Alliance, or the

Canadian Nature Federation.

Interview results suggest that this last group of intervenors, may not have a great deal of credibility in the northern EIA community (Allen, 1987, Personal Communication; Billingsley, 1987, Personal Communication; Cotterill, 1987, Personal Communication; Hubert, 1987, Personal Communication; Kruk, 1987, Personal Communication; Nesbitt, 1987, Personal Communication; Rees, 1987, Personal Communication). Respondents frequently complained that these groups are generally based in the south and have limited knowledge and understanding of issues of importance to northerners (Allen, 1987, Personal Communication; Billingsley, 1987, Personal Communication; Crombie, 1987, Personal Communication; Cotterill, 1987, Personal Communication; Demchuk, 1987, Personal Communication; Erickson, 1987, Personal Communication; Glaholt, 1987, Personal Communication; Hubert, 1987, Personal Communication; Hurst, 1987, Personal Communication; Kruk, 1987, Personal Communication; Nesbitt, 1987, Personal Communication; Rees, 1987, Personal Communication). Perhaps surprisingly, the Canadian Arctic Resources Committee was frequently offered as a prime example of this type of group. It was suggested that notwithstanding its considerable experience in northern issues (Keith and Wright, 1978; Faulkener, 1982; Canadian Arctic Resources Committee, 1984), it has become distanced from its northern constituency and is too much involved in the various political machinations in Ottawa (Cotterill, 1987, Personal Communication; Demchuk, 1987, Personal Communication; Matthews, 1987, Personal Communication; Nesbitt, 1987, Personal Communication).

In a similar vein, a frequent subject of criticism for respondents, was southern academics (Allen, 1987, Personal Communication; Billingsley, 1987, Personal Communication; Crombie, 1987, Personal Communication; Cotterill, 1987, Personal Communication; Demchuk, 1987, Personal Communication; Himmer, 1987, Personal Communication; Hubert, 1987, Personal Communication; Hurst, 1987, Personal Communication; Kruk, 1987, Personal

Communication; Nesbitt, 1987, Personal Communication; Rees, 1987, Personal Communication; Wagner, 1987, Personal Communication). Some northerners deeply resent what they perceive as the paternalistic attitude of southern academics and environmental groups. In one respondent's opinion:

> "In EIA reviews, when academics and southern experts want *facts*, they look to other southerners, when they want *feelings*, they come to northerners. They refuse to acknowledge that we have *facts* too (Nesbitt, 1987, Personal Communication)".

It was suggested to the researcher on a number of occasions, that many southern academics, never go North, preferring instead to work from books or to attend conferences in various southern resort areas. (Allen, 1987, Personal Communication; Cotterill, 1987, Personal Communication; Livingston, 1987, Personal Communication; Nesbitt, 1987, Personal Communication; Mackenzie, 1987, Personal Communication). Consequently, they argue, many southerners writing about northern matters or taking part in northern EIA reviews, are not sufficiently informed about the details of northern issues.

It is important to keep in mind at this point that, although these views were expressed by nearly all questionnaire respondents, the researcher only spent three weeks in the field and only twenty-six northerners were formally interviewed. Thus it may well be, that this circumspection regarding the credibility of southern academics and environmental groups, is held only by a small, and somewhat jaded segment of the northern resource management community. Without further research, it is impossible to determine the extent to which these feelings are held by the broader cross-section of northern society. *If*, however, these views are commonly held, they have significant implications for academics and interest groups with limited northern experience, wishing to participate in future northern EIA reviews or EIA policy making exercises. They *may* encounter increasing difficulties in establishing credibility and exerting influence in northern EIA reviews and EIA policy making fora.

The second facet of EIA credibility relates to the way in which the process is perceived by its clients. Processes which are seen as *rubber-stamp* exercises, or which produce results which are essentially ignored, *will in all likelihood*, have little public credibility. While it is to too extreme to argue that EARP is nothing more than a rubber-stamp blindly approving any and all proposals put before it, it is clear that no project has been refused government approval as a result of EARP. No EARP northern Panel has suggested that a project be delayed or refused approval until further *environmental* information has been gathered, nor have major alterations in project design been suggested (Holling, 1978; Beanlands and Duinker, 1983; Rigby, 1985; Smith, 1987; Storey, 1987).

It could be argued that the projects reviewed to date have not posed potentially severe environmental risks and were therefore not in need of revision. Some may also suggest that the role of EARP is simply to determine the most environmentally acceptable way of undertaking projects *if* proponents and government decide to go ahead with them. Regardless of the merits or demerits of these arguments, the fact remains that the EARP review case history does little to inspire confidence that the Process is able to effect real change in the operations of resource developers and the decision-makers who approve their actions (Rees, 1979; Fenge and Smith, 1986; Rees, 1987, Personal Communication).

This public relations difficulty is exacerbated by the fact that EARP is purely an *advisory* process (FEARO, 1979; Rees, 1979; FEARO, 1988). Indeed, there is no formal mechanism to ensure that federal agencies even implement EARP in the first place (Environment Canada, Evaluation Branch, 1982). Its recommendations are not legally binding. Therefore, EARP reviews are essentially a complex means of developing *advice* to be passed on to government decision-makers. Interestingly, EIA case records and documents fail to reveal any evidence of a government department ever taking specific steps in reaction to EARP Panel recommendations. Further, it has frequently been suggested that decision-makers ignore most EARP Panel recommendations (Holling, 1978; Beanlands and Duinker, 1983;

Gibson, 1984; Rees, 1984; Rigby, 1985; Smith, 1987; Storey, 1987; Hubert, 1987, Personal Communication; Nesbitt, 1987, Personal Communication; Rees, 1987, Personal Communication).

## NATIONAL ENERGY BOARD

### Opportunity to Participate

It is not clear whether or not the National Energy Board (NEB) is required *by law* to hold public hearings in relation to all certification applications it receives. Section 20 of the *National Energy Board Act* (Canada, 1959, s. 20), states that: "hearings before the Board with regard to the issue of certificates,...shall be public". Furthermore, the Board has stated "that the National Energy Board considers major applications through public hearings" (NEB, 1983b, p.1). Thus, it can be argued that the NEB certificate issuance process features an opportunity for public participation.

However, this opportunity is not open to everyone. Prior to the commencement of hearings, individuals or groups must file written interventions which, among other things, must demonstrate "that the intervenor has a real interest in the application. A real interest means that the intervenor would be affected by the granting or denial of the application" (NEB, 1983b, p.1). In the past, the Board appears to have interpreted this definition quite liberally. The Board notes that:

> "Intervenors at the Board's hearings include pipeline companies, electrical and gas utilities, consumer and trade associations, various industries, governments, special interest groups, and individuals" (NEB, 1984, p.1).

However, the Board has the right to reject an intervention if it feels that the intervention is "frivolous or vexatious or is not in good faith" (Canada, 1959, s. 29.2, 5b).

Once an individual or group is granted intervenor status, their rights to participate are considerably greater than those of intervenors in EARP.

> "Intervenors have the right to participate fully in hearings. That is, they may present evidence and argument, and conduct cross-examination, subject to the Board's power to control its own proceedings" (NEB, 1984, p.1).

If the Board issues a certificate for a pipeline or power line, a second round of hearings related to the detailed route are held. Proponents are required by law, to notify affected landowners of the imminent construction of the line. These landowners then have thirty days to file written interventions with the Board if they wish to oppose the pipeline. If such interventions are received by the Board, "the Board shall forthwith order that a public hearing be held within the area in which the lands to which the statement relates are situated" (Canada, 1959, s, 29.2.1). Intervenors then have the same rights and obligations as those explained above.

## Awareness of Opportunity

As previously indicated in the context of EARP, interview respondents generally suggested that northerners are well aware of their opportunities to take part in EIA reviews (Cotterill, 1987, Personal Communication; Hoos, 1987, Personal Communication; Hubert, 1987, Personal Communication; Kruk, 1987, Personal Communication). This awareness extends to the NEB process as well. Furthermore, proponents are required *by law*, to notify potentially affected landowners of their intentions. At the same time, the landowners are informed about their rights to take part in NEB hearings. It is, therefore, difficult to conceive of a situation in which NEB hearings would be conducted without public awareness.

## Process Timing

NEB reviews generally occur late in the project planning phase. Indeed, they are commonly perceived as being the last regulatory step before the commencement of construction (Horte, 1983; Rothwell, 1983). Upon preliminary consideration, this would seem to greatly restrict the public's ability to do much more than comment on the various merits and demerits of the proposal under review.

However, the nature of NEB reviews must be kept in mind. Although the Board does pay attention to the environmental aspects of applications it also addresses such fundamental questions as whether or not projects are even needed, or whether or not proponents are financially sound. All intervenors are entitled to comment on issues of this nature. Thus, the public is given considerable leeway to address basic project rationale or justification. Consequently, the public has the opportunity to address broader questions relating to projects, even though the review does not take place early in the planning phase.

## Financial Resources

Perhaps the single biggest factor limiting public participation in NEB reviews, is their cost. All intervenors in NEB reviews are potentially subject to rigorous cross-examination and must be well prepared in order to be effective. The retention of lawyers is generally necessary to achieve this degree of preparation. Participation can therefore be quite costly in human and financial terms.

The costs associated with NEB participation are not alleviated by the provision of intervenor funding. While the NEB, like any other court, *may* award costs to certain intervenors, there is no guarantee that it will do so. Furthermore, costs are not awarded prior to the hearings making it necessary for intervenors to raise large amounts of money before the review commences.

## Information

Section 10 of the *National Energy Board Act* states that the Board "is a court of record [and has] all such powers, rights and privileges as are vested in a superior court". As such, the Board can subpoena witnesses and documents. Any information produced through such subpoenas becomes part of the public record (NEB, 1983b). Provided that they can convince the Board to exercise its subpoena powers, public intervenors can therefore gain access to virtually all documentation related to the project under review. In addition, all witnesses appearing before the Board can be cross-examined making it possible to probe for indepth answers.

## Expertise

The problems experienced by EARP intervenors in retaining or developing expertise, are exacerbated in NEB reviews. This condition is once again related to the predominant role played by lawyers.

Some *experts* may be willing to appear in the essentially benign atmosphere of EARP reviews. However, NEB reviews can be considerably more intimidating given their legalistic character. This can make it more difficult to get experts to take part. Additionally, individuals who wish to draw upon expertise based primarily upon experience as opposed to formal education, may be less likely to want to appear in the more formal and intimidating atmosphere of NEB reviews. Finally, the costs associated with the retention of lawyers may prohibit the hiring of experts or the conduction of research (Berger, 1977; Christiansen-Ruffman and Stuart, 1978; Rees, 1979; Salter and Slaco, 1981; Page, 1986; FEARO, 1988).

## Clarity of Process Role and Process Scope

The role of the NEB process is clearly defined in the *National Energy Board Act* and its accompanying regulations. Simply put, the role of the NEB process is to either issue or withhold certificates of public convenience and necessity.

What is not clear however, is the degree to which environmental concerns are factored into the decision on individual certification applications. In the 1977 pipeline hearings, the Board refused the Canadian Arctic Gas proposal on the grounds that it was environmentally unacceptable to construct a pipeline across the Yukon North Slope (NEB, 1977). This would seem to indicate a considerable prominence for environmental concerns. However, there is no guarantee that this will always be the case.

The scope of the environmental component of the NEB process is defined by Part IV of the Board's Rules of Practice and Procedure. A list of ecological matters which must be considered is contained in the rules (NEB, 1985). The degree to which socio-economic impacts are considered, is not specified in the rules.

## Process and Participant Credibility

In the context of the NEB process, four general comments can be made about the credibility of process participants. First, it would seem that individuals or groups attain a certain degree of credibility simply by virtue of being able to participate in NEB reviews. To do so, they must raise large amounts of money and must also be sufficiently organized and prepared to meet the various requirements of the Board's procedural rules (Page, 1986).

Second, within the Board itself, it appears that there has been some acknowledgement of the legitimacy of public interest groups. As Page (1986, p. 130) notes:

> "Fred Lamar, general counsel to the Board, in addressing the Canadian Bar Association, stressed that environmental groups deserved financial support to present 'legitimate points of view' before regulatory boards".

Third, it must be remembered that the NEB process, is considerably more wide ranging in content than EARP. It addresses fundamental questions relating to project financing and need. Therefore, groups or individuals on the far right of the objectives spectrum outlined earlier (see Figure 5.1, page 82), are more easily accommodated within the context of the NEB than EARP. As a result, their credibility does not suffer in NEB reviews.

Fourth, the NEB process has a high public credibility due to its legal weight (Lucas and Bell, 1975; Horte, 1983; Rothwell, 1984; Hoos, 1987, Personal Communication; Livingston, 1987, Personal Communication). All orders, licences or certificates issued by the Board have the force of law, just as any decision of the Federal Court of Canada (Canada, 1959, s. 15.1). Process participants, therefore, can be assured that their efforts have the potential to be meaningfully expressed.

## SUMMARY

This chapter has discussed public participation in northern EIA to date. In doing so, it has identified a number of difficulties facing northern EIA. In the Mackenzie Delta/Beaufort Sea region at least, many of these difficulties may be alleviated as a result of the Western Arctic Inuvialuit Final Agreement. On the other hand, some may be exacerbated. In any case, it seems clear, that the claim settlement has significant implications for public participation in the Mackenzie Delta/Beaufort Sea region. In order to facilitate the discussion of these implications, Chapter VI briefly describes the Western Arctic Inuvialuit Final Agreement and Native land claims throughout the North. In Chapter VII, the effects of the Agreement on public participation in EIA are then discussed.

# CHAPTER VI

# NATIVE LAND CLAIMS

The purpose of this chapter is to describe the background and current status, of Native land claims in the Canadian North. Prior to 1970, Native land claims were not important concerns in the Canadian North. However, with the filing of five separate claims by the Council of Yukon Indians (1973), the Committee for Original Peoples Entitlement (1976), the Inuit Tapirisat of Canada (1976), the Déné (1977) and the Métis (1978), Native land claims issues became matters of major importance. Indeed, it could be argued that land claims and the implications of their resolution, are the most important issues in the North today as they have the potential to impinge on economic, environmental, political, and social processes.

In order to adequately appreciate the significance of land claims, it is important to consider their historical background. Therefore, the chapter begins with a discussion of the antecedents of the land claims movement. It then examines the evolution of the federal government's land claims policy. In a concluding section, the status of the currently unresolved land claims and the key provisions of the Western Arctic Inuvialuit Final Agreement, are described.

## LAND CLAIMS ANTECEDENTS

It is important to note at the outset, that land claim issues are not purely socio-political or ethical concerns. Indeed,

> "Native land claims have their fundamental basis in the argument which states that Canada's aboriginal people have *legal title* to large areas of land in Canada" (Lysyk, 1973).

It can be argued that this title has never been extinguished and that as a result, native people still have *title* to their traditional lands. To develop this argument, it is necessary to briefly consider the case history of Native title to land.

The history of Native title to land in Canada begins with the Royal Proclamation of 1763 which reads in part:

> "We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid to reserve under Our Sovereignty, Protection and Dominion for the Use of the said Indians, all the Lands and Territories not included within the Limits of the boundaries of Our said Three New Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West, as aforesaid:
>
> and We do hereby strictly forbid on Pain of Our Displeasure, all Our Loving Subjects from making any Purchases of any Lands above reserved, without Our special Leave and Licence for the purpose first obtained" (DIAND, 1981, p. 9.).

It is clear from this excerpt, that early white settlers were involved in purchasing land from Native people and the Crown recognized that they were doing so. The Crown, in an attempt to protect Indians from unscrupulous settlers, as well as to encourage the military cooperation of the Indians, prohibited the purchase of Indians lands without the express approval of the Crown (Badcock, 1976; Daniel, 1980). The important point here, is that as early as 1763, the Crown recognized that Indians had a *legal title* to land which could be purchased.

A number of court cases have served to reinforce this viewpoint. Four such cases are particularly notable in this regard. In the 1888 St. Catherine's Milling and Lumber Company case, Lord Watson of the Privy Council ruled that the Indians in the area in question, have a "personal and usufructuary right to the land dependant on the goodwill of the sovereign" (Elliot, 1982). The decision held that Native title to the land in the area did exist at one time, but that it had been extinguished by treaty and was now dependant on the goodwill of the sovereign. Regardless, the existence of a Native title to the land, *was recognized in a court of*

*law.*

Further court recognition of Native title, was provided in the 1973 Calder Case (Elliot, 1982). In this case, the Nishga Indians of British Columbia sued for a declaration that their title to lands in northern British Columbia, had never been extinguished and was therefore still extant. Six of the seven judges agreed that title had existed at one time. Three of these six felt that it had been extinguished while three argued that it had not. The seventh judge argued that the Court did not have the jurisdiction to make a decision on whether or not title to the land rested with the Nishga or with the province. As a result, he did not rule on the case and it was dismissed. However, the main point of the case remains: *Native title to land did at one time exist in British Columbia and may well still do so.*

The strongest court affirmation of Native title came in relation to the James Bay Cree's injunction to stop the construction of the of a major hydro dam on lands they claimed as theirs. As Feit (1983, p. 420) explains,

> "The judge ruled that there was clear evidence that the Cree and Inuit had exercised personal and usufructuary rights over the territory and had possessed and occupied it since time immemorial. As a result, 'the province of Quebec cannot develop or otherwise open up the lands for settlement without the prior agreement of the Indians and Eskimos".

Lastly,

> "In November 1984, in *Geurin v The Queen*, the majority of the Supreme Court of Canada re-affirmed the existence of aboriginal title and underscored the duty of the federal government, as fiduciary, to protect such rights" (Coolican, 1985, p.8).

These four cases in combination with several other more minor court decisions, have served to provide court recognition of the existence of a Native title to land in Canada.

However, the most telling argument supporting the notion of Native title, is the fact that the early settlers felt compelled to negotiate land ownership treaties with Native peoples

(Brown and Maguire, 1973; Daniel, 1980). Indeed, sixteen such treaties have been signed to date (Figure 6.1). The point is obvious - treaties would not have been signed with Native people if it was felt that they did not own the land. Accordingly, areas of Canada which were not subject to treaty, and are not currently used by non-Native society, theoretically could still belong to the Native people of those areas. Additionally, a number of treaties signed with the Indians do not extinguish title to the land. As a result, Native people could conceivably still have some sort of title or rights, related to the lands covered by these treaties.

It is upon these arguments that the legal basis of the Native land claims in the North is premised. Northern aboriginal peoples argue that Treaty 11 pertaining to the Northwest Territories (Figure 6.1), did not extinguish their title to the land. Further, no treaties were signed regarding the rest of the North. They argue, therefore, *that they retain title to the land*.

Notwithstanding this argument, no Native land claims were filed in the North before 1973. In the absence of any real threat to the use of their lands, Native people had little or no motivation to file claims.

However, this situation changed dramatically in the early seventies. Although it is difficult to establish direct causal linkages between resource development and the filing of Native land claims, it is clear that the upsurge in prominence of land claims issues in the North, corresponds directly with the increase in resource development activity in the region.

Prior to 1970, development activities in the North were limited in scope and did not affect large areas of land. However, with the dramatic increase in world oil prices following the 1973 Arab oil embargo (Brooks, 1981), several large-scale northern oil and gas development proposals such as the Mackenzie Valley pipeline, the Alaska Highway Gas pipeline, and the Arctic Pilot Project, appeared in rapid succession (Dosman, 1980; Robinson, 1980; Nelson and Needham, 1985). Consequently, northern lands which previously had been of little or no interest to anyone other than the Native people using them,

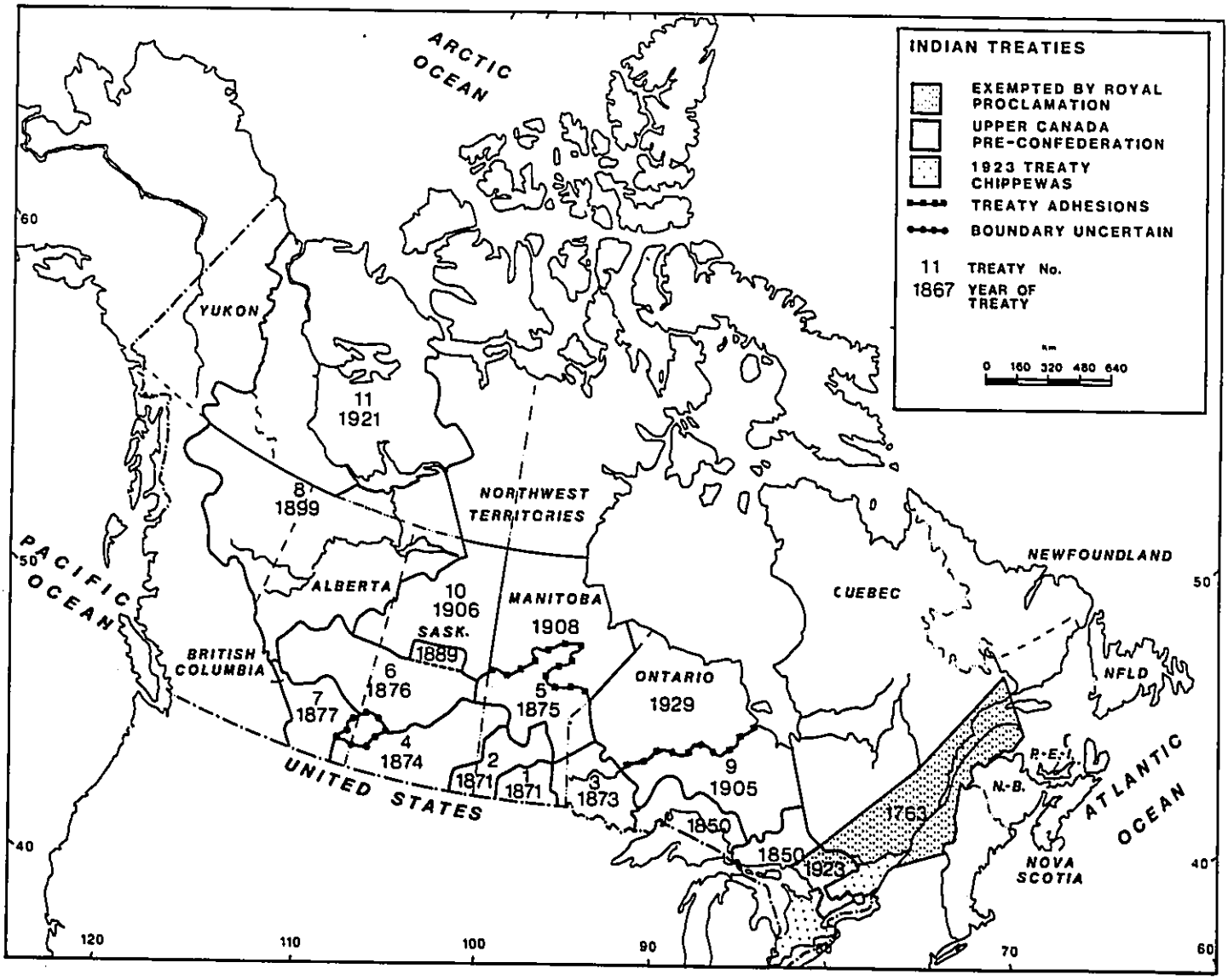


*Figure* 6.1: *Indian Treaties Signed to Date*
*Source*: DIAND, 1977.

were now threatened by development. It therefore seems that Native people that submitted land claims were motivated not only by abstract legal concepts, but also by a desire to protect their lands and culture from the pressures of development.

Three primary motivations for settling land claims can be discerned from the non-Native perspective. First, the existence of a native title to the land creates an atmosphere of some uncertainty for development. Doubtful or dubious ownership throws into question the division of economic rent revenues. As a result, the establishment or clearing of Native title to land is seen as an important pre-condition to large-scale resource development (Berger, 1977; Mackenzie Delta Regional Council, 1983).

Second, there is a moral or ethical, imperative which spurs claims negotiations. Popular and academic literature is rife with examples of non-Native society's mistreatment of Native peoples (Crowe, 1974; Maddock, 1974; Newman, 1985; Manthorpe, 1987). Further, such well publicized events as the South African ambassador's visit to a Saskatchewan Indian reserve, and the various constitutional conferences on Native rights, have highlighted the problems facing Canada's Native people. These media, it could be argued, engender feelings of guilt in non-Native society and stimulate a desire to make some sort of restitution to our Native peoples. Land claims may well be seen as one way of doing so.

Third, land claims may be intended to serve a social welfare function for Canadian Native peoples (Merritt, 1987, Personal Communication). Claims negotiations are aimed at producing a compensation package for aboriginal peoples which will enable them to become somewhat self-sufficient and economically independent from the state (DIAND, 1981, 1986). As such, they are significantly more than legal contracts relating to the extinguishment of Native title and are, presumably, designed to address fundamental social problems such as chronic acoholism, unemployment, and poverty which plague Native society (Crowe, 1974).

In sum, it has been suggested that Native land claims in Canada, have been motivated by

three primary factors. First, claims rely heavily upon the argument that at one time, a Native title to land existed throughout Canada. It is stated that in many parts of the country, this title was never extinguished, and therefore, still exists. Further, it was argued that the upswing in northern resource development activities in the early seventies, acted as a catalyst for the emergence of land claims as a major issue in the North. In addition, it was suggested that the pursuance of land claim settlements is also motivated by non-Native society's moral and social welfare concerns. In this context, the following section examines the evolution of the federal government's policy on Native land claims.

## LAND CLAIMS POLICY

The evolution of modern land claims policy in Canada begins with the federal government's 1969 White Paper Policy (Daniel, 1980). The White Paper made clear the government's goal of aboriginal peoples' assimilation into the mainstream of Canadian society. The *Indian Act* (Canada, 1959) and the myriad Native programs and bureaucracies were to be abandoned. Any form of *special status* for Canada's aboriginal peoples was to be gradually phased out (Elliot, 1982, p. 313). The government was definitely not interested in the negotiation of land claims based on the existence of any form of aboriginal title or rights.

> "'These' the Paper said 'are so general and undefined that it is not realistic to think of them as specific claims capable of remedy except through a policy and program that will end injustice to Indians as members of the Canadian community'" (Daniel, 1980).

This assimilationist approach remained government policy until the 1973 Calder case. Following this case, the federal government acknowledged that regardless of the uncertain status of Native title in British Columbia, "there were areas [in the rest of Canada] in which Native people clearly still had aboriginal interests"(DIAND, 1981, p.11).

In addition, the government announced in August of 1973, that it would accept for

negotiation, land claims based on the continued existence of aboriginal title (DIAND, 1981, p.12). Negotiations were to involve the exchange of aboriginal title, however defined, for a wide range of compensation items such as money, land title, guaranteed hunting, fishing and trapping rights and other rights and benefits. Because such a wide variety of issues were to be considered in the negotiations, the claims were termed *comprehensive claims*. In addition, claims based on the government's failure to fulfill Indian treaty obligations were also to be accepted and labelled *specific claims*. Government claims policy was more clearly stated in the documents entitled, *In All Fairness* (comprehensive claims) (DIAND, 1981) and in *Outstanding Business* (specific claims) (DIAND, 1982).

In early 1985, a Federal Task Force on Comprehensive Claims Policy chaired by Murray Coolican was appointed to conduct a complete review of comprehensive claims policy. In December of 1985, The Task Force submitted its report to the Honourable David Crombie, Minister of Indian Affairs and Northern Development (Coolican, 1985). Early in the report, the Task Force notes that;

> "Formulated before the entrenchment of aboriginal rights in the Constitution, before the special committee on self-government, and before other recent developments in this area, the current claims policy *In All Fairness*, clearly requires change to reflect recent progress on these issues and to reflect the principles that now form the basis of the federal government's policy toward aboriginal peoples" (Coolican, 1985, p.15).

Accordingly, the Task Force makes a series of recommendations relating to possible changes in the *In All Fairness* claims policy.

Many of these policy recommendations have been adopted in the new claims policy released by the current Minister of Indian Affairs and Northern Development, the Honourable Bill McKnight on December 18, 1986 (DIAND, 1986a). Key items in the new policy are :

a) Future claims settlements will not use the terminology of extinguishment;

b) The government remains committed to a negotiatory approach to claims resolution;

c) The government remains committed to achieving certainty of title to land in claims negotiations;

d) The government will negotiate on a broader range of self-government mechanisms and jurisdictions than it has in the past;

e) The government acknowledges the need to guarantee Native people a role in environmental management in the claim areas;

f) The government will discuss non-renewable resource revenue sharing agreements;

g) The government will review the current negotiatory process and commits itself to deciding upon the validity of claims within one year of their submission;

This policy applies to negotiations currently underway in relation to the three unresolved claims in the North today - the Yukon claim, the Déné/Métis claim, and the Inuit claim. Although the exact spatial dimensions of the areas affected by these claims will not be known until the negotiations are completed, it is clear that together with the recently resolved Inuvialuit claim, they encompass almost the entire Canadian North. These claims are briefly described below, as is the Western Arctic Inuvialuit Final Agreement concluded under the 1981 *In All Fairness* policy.

## NORTHERN NATIVE LAND CLAIMS

### *The Yukon Claim*

In February 1973, the Council of Yukon Indians submitted their claim to most of the lands in Yukon Territory. However, serious negotiations on the claim did not begin until the early eighties. In 1984 an Agreement-in-Principle was reached between federal and Native negotiators. However, several Yukon communities refused to ratify the agreement due to

concerns related to self-government questions and the extinguishment of aboriginal title to land. Negotiations on these issues were commenced in early 1986 and are ongoing (DIAND, 1986b, p.1).

*The Dénè/Métis Claim*

Two separate claims to the Mackenzie Valley were submitted by the Déné and Métis in 1977 and 1978 respectively. These claims were amalgamated following federal government's refusal to negotiate separate claims for the same geographical area. Negotiations on a single claim began in 1982 and as of June 1986, 16 sub-agreements and the basis for a possible agreement - in - principle have been reached (DIAND, 1986b, p. 2). Negotiations aimed at the development of a final agreement are ongoing at present.

*The Inuit Claim*

The Inuit of the NWT have laid claim to the majority of the Eastern Arctic. The claim was first submitted by the Inuit Tapirisat of Canada in 1976, but was withdrawn in 1977. Negotiations began on a new claim proposal with the newly formed Tungavik Federation of Nunavut (TFN) in 1982. To date, 16 sub-agreements and 2 discussion papers have been signed (DIAND, 1986b, p. 2). Negotiations aimed at the development of a final agreement are ongoing at present.

*The Inuvialuit Final Agreement*

The Western Arctic Inuvialuit Final Agreement was signed on June 5, 1984 (DIAND, 1984a). Under the terms of the Agreement, the Inuvialuit of the Mackenzie Delta/Beaufort Sea region exchange legal title to most of their land, for a wide range of compensation items. Approximately 2500 Inuvialuit in the communities of Inuvik, Paulatuk, Sachs Harbour, Holman, Tuktoyaktuk and Aklavik, are eligible as beneficiaries of the Agreement. Eligibility is determined by the Inuvialuit themselves on the basis of ethnic origin and length of

residency in the settlement region.

In order to receive and manage the lands and funds obtained by the Inuvialuit in the Agreement, a number of Inuvialuit corporations are established. An Inuvialuit Community Corporation is created for each of the six settlement communities. Together, these corporations control the Inuvialuit Regional Corporation. The Inuvialuit Regional Corporation in turn, is responsible for the day to day management of the four remaining corporations established under the Agreement. These corporations are:

> - "The Inuvialuit Land Corporation, which [owns] the lands received by Inuvialuit beneficiaries in settlement of their claim;
>
> - the Inuvialuit Development Corporation, which [uses] part of the total financial compensation to initiate and carry on business activities, either directly or through ownership of shares in, or participation in joint ventures with, other businesses;
>
> - the Inuvialuit Investment Corporation, which [invests] a portion of the total financial compensation under a conservative investment strategy; and
>
> - the Inuvialuit Trust, which [owns] 100 per cent of the non-voting preferred shares of the land, development and investment corporations on behalf of the Inuvialuit Regional Corporation and eligible beneficiaries (DIAND, 1984b, p.3)".

The nature of the relationships between these corporations, is not clearly defined in the Agreement (DIAND, 1984a). Notwithstanding the semblance of a decision-making hierarchy among the corporations, there does not appear to be a firmly established decision-making system linking all of the corporations. This situation will be discussed in more detail in the following chapter.

The Inuvialuit retain title to a total of 91,000 km.$^2$ of land in the settlement region. Approximately 11,000 km.$^2$ of this land is held in fee simple* in six blocks around each of the

---

* *Fee Simple* is a legal term referring to absolute ownership of the land and the resources above and below its surface. Most homeowners, for example, hold their lot in *fee simple*.

settlement communities (Figure, 6.2). This title includes both surface and sub-surface rights to resources. A further 2,000 km.$^2$ in Cape Bathurst, are also also transferred in fee simple to be used as a non-development zone. Finally, the Inuvialuit retain surface rights and sub-surface rights to sand and gravel only, in a further 78,000 km.$^2$. The Agreement includes an extensive range of terms and conditions related to the use of all of these lands (DIAND, 1984a).

Under the Agreement, the federal government will transfer to the Inuvialuit, $45 million (1977 dollars) during the period 1984-1997. The Agreement also includes the provision of a $10 million Economic Enhancement Fund to spur development in the area immediately after the signing of the Agreement and a $7.5 million Social Development Fund to be used to institute programs aimed at addressing the various social problems facing the Inuvialuit (DIAND, 1984b).

A significant portion of the Agreement relates to the use and management of the renewable resources in the region. As is discussed in the following chapter, under section 11 of the Agreement, the Inuvialuit Environmental Impact Screening Committee and the Inuvialuit Environmental Impact Review Board are established to conduct EIA in the Settlement Region. In addition, a number of resource management and advisory committees are established to regulate use of resources in the settlement region (Figure 6.3). The Inuvialuit members of each of these committees, report to the Inuvialuit Game Council, which is made up of representatives from each of the Hunting and Trapping Committees in the six settlement communities. In total, approximately eighty Inuvialuit representatives are involved in this resource management system.

In future, many of the day to day decisions regarding the management and use of natural resources in the Mackenzie Delta/Beaufort Sea region, will in essence be made by the various bodies established by the Agreement, even though the federal and territorial governments will

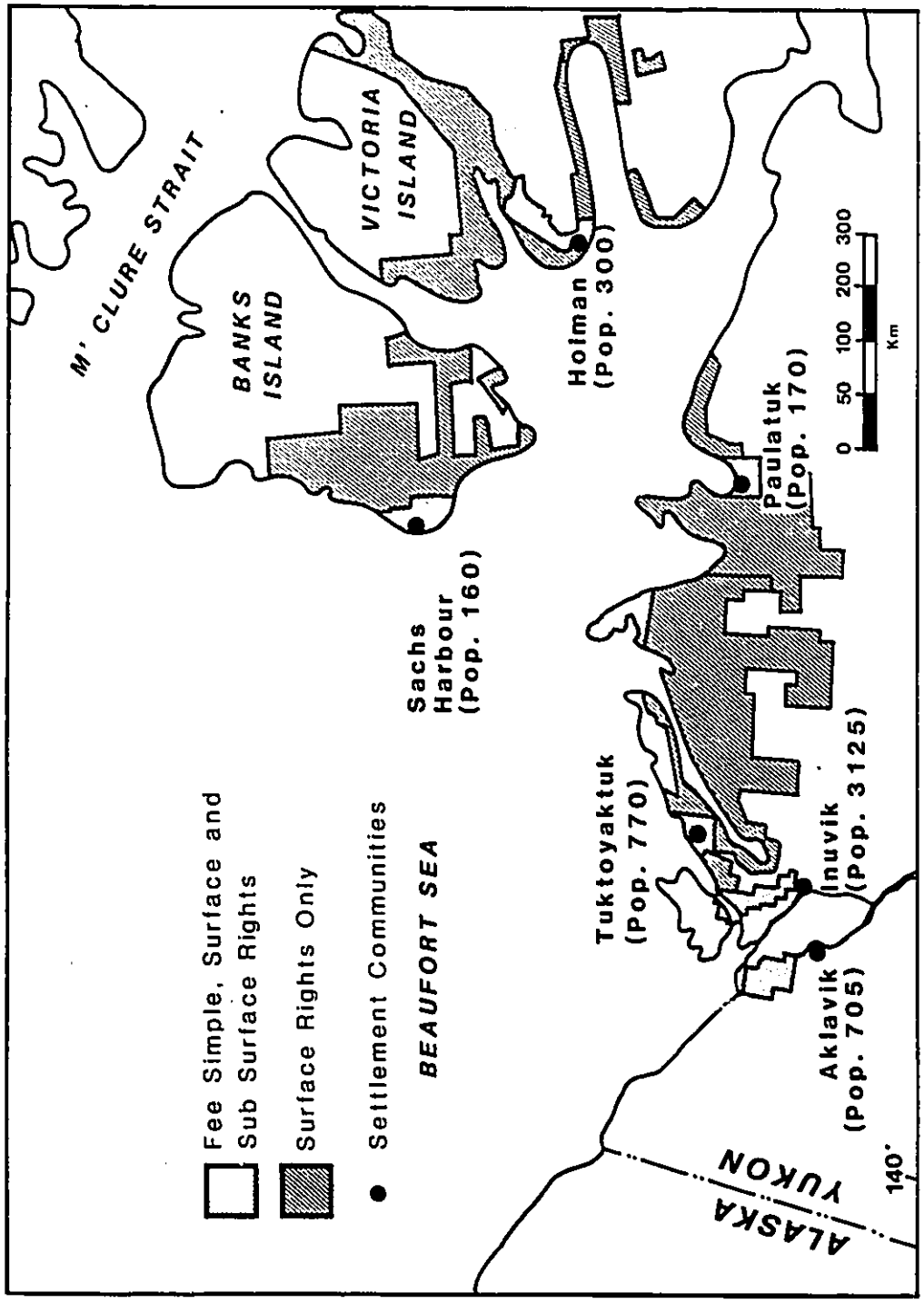


*Figure* 6.2: *The Inuvialuit Settlement Region*
*Source*: DIAND, 1984, Annex A.

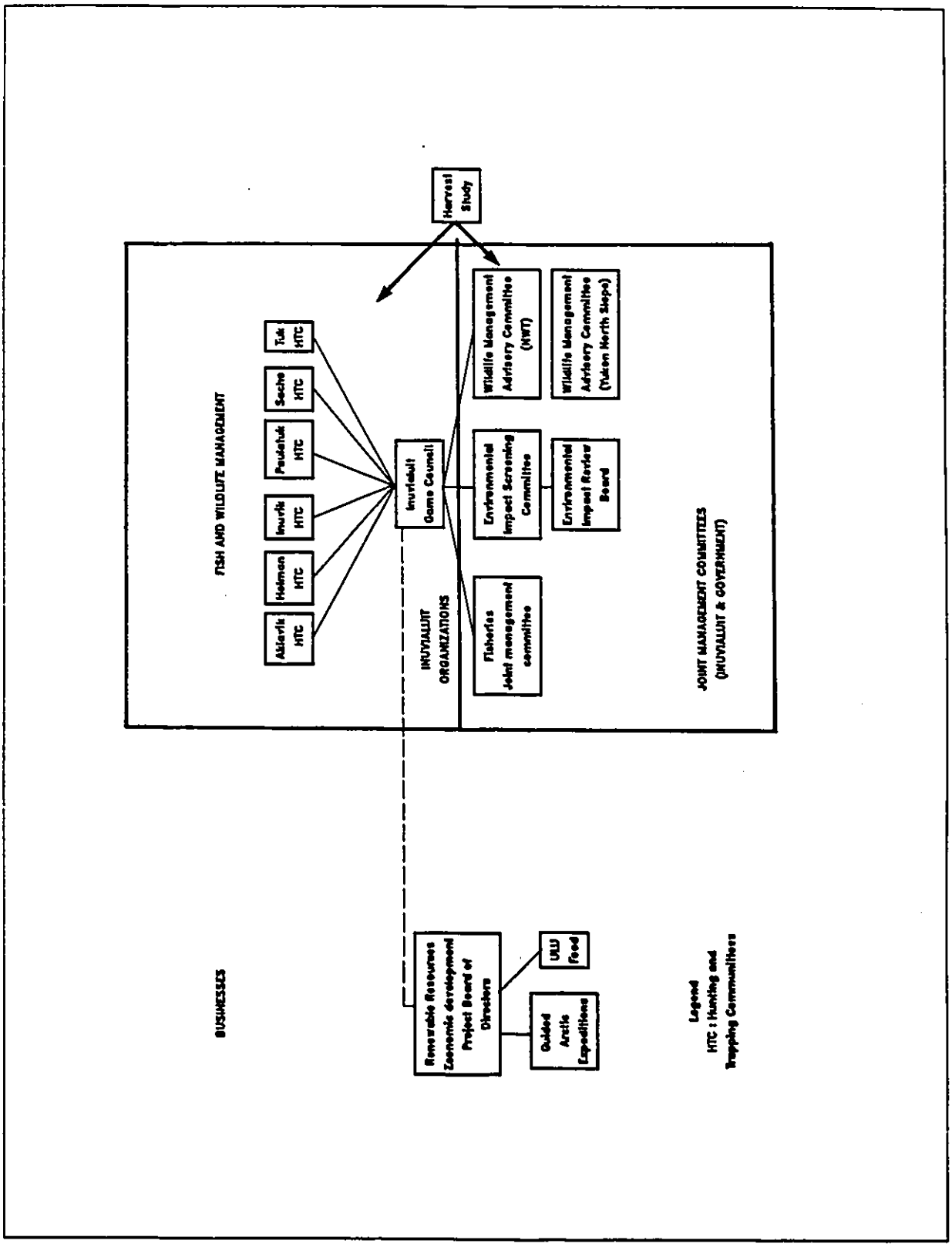


*Figure* 6.3: *Inuvialuit Fish and Wildlife Committees*
*Source*: Wagner, 1987, Personal Communication.

retain ultimate decision-making authority. This, it could be argued, will have a fundamental impact on the nature of public government in the North. Further, this situation will have significant implications for public participation in environmental impact assessment. This is the theme of the discussion to follow in Chapter VII.

# *CHAPTER VII*

## *PUBLIC PARTICIPATION IN EIA, THE INUVIALUIT CASE*

The purpose of this chapter, is to examine the ways and means by which public participation in EIA is affected by the Western Arctic Inuvialuit Final Agreement. The discussion begins with a description of the Inuvialuit process and then turns to a consideration of its effects on the Environmental Assessment and Review Process (EARP) and the National Energy Board (NEB) process. Following these preliminary sections, the chapter moves to its primary focus, namely, public participation in EIA.

## THE INUVIALUIT PROCESS

The Inuvialuit EIA process applies to all onshore undertakings in the Settlement Region for which the Inuvialuit request environmental screening. In addition, any development proposals (including offshore undertakings) which have the potential to affect wildlife harvesting or are to take place in the Yukon North Slope, are subject to the Process. Lastly,

> "subject to any agreement between the Inuvialuit and the Déné/Métis, developments in areas including the Aklavik land selections where the traditional harvest of the Déné/Métis may be adversely affected, [may also be reviewed] on request by the Déné/Métis or by the Inuvialuit" (DIAND, 1984a, s. 11.1d).

In a fashion similar to EARP, the Inuvialuit process features a screening component and a public review component. Section 11.3 of the Agreement establishes a seven member *Inuvialuit Environmental Impact Screening Committee*. The structure of the Committee is designed to guarantee a strong Inuvialuit role in EIA decision-making. Three Committee members are appointed by the Inuvialuit, while each of the territorial governments and the

federal government designate one member each. The Chairperson is appointed at the mutual agreement of the Inuvialuit and the federal and territorial governments. General guidelines or rules regarding topics such as the Committee's operating procedures, the time allowed for Committee decisions, or conflict-of-interest provisions, are not specified in the Agreement.

It is important to note that the Committee is an independent body in the sense that it is not a creature of any one government department or Inuvialuit corporation. This is of cardinal importance as it marks a fundamental departure from the concept of *self-assessment*. In EARP, for example, federal government line agencies are expected to conduct initial assessments of their own activities. In the public review phase of (EARP), the proponent prepares its own EIS. This self-assessment concept is the fundamental premise upon which EARP is based. By contrast, in the Inuvialuit process, project proposals are reviewed by a committee which does not have a vested interest in the undertaking.

In carrying out its duties, the Inuvialuit Environmental Impact Screening Committee is instructed to "determine if the proposed development could have a significant negative environmental impact" (DIAND, 1984, s.13). In doing so, the Committee is to:

> "Take into account any prior governmental development or environmental impact review process that, in its opinion, adequately encompassed the assessment and review function...Where a proposed development is or may be subject to a governmental development or environmental review process, and in the opinion of the Screening Committee that review process adequately encompasses or will encompass the assessment and review function, the Screening Committee shall refer the proposal to the body carrying out that review process" (DIAND, 1984, ss. 11.14, 11.15).

The intention here is to ensure that the Inuvialuit Environmental Impact Screening Committee does not overlap or repeat, other environmental reviews. However, there is some disagreement within the Inuvialuit Environmental Impact Screening Committee regarding the extent to which other reviews should be taken into account in Committee decisions (Cockney, 1987, Personal Communication; Cotterill, 1987, Personal Communication; Glaholt, 1987,

Personal Communication).

Following its examination of the proposal, the Inuvialuit Environmental Impact Screening Committee can make one of three decisions. First, it can find that the project has no significant negative impacts and can therefore proceed. Second, it can decide that there are potentially significant impacts associated with the proposal and that it must be subject to further review. Third, the Committee can decide that it does not have sufficient information and that the project cannot proceed until additional material is submitted and the project is re-screened.

Decisions of the Inuvialuit Environmental Impact Screening Committee depend fundamentally upon the definition of the term *significant environmental impacts*. Problems in defining *significance* have surfaced frequently in EARP and other processes (Haug, 1985; FEARO, 1986, 1987). It now appears that similar problems could arise in the context of the Inuvialuit process. The Agreement does not provide any guidelines to the Committee regarding the definition of significance. The Inuvialuit Environmental Impact Screening Committee is left, therefore, to develop guidelines of its own regarding the definition of significance. Until these guidelines are developed, controversy and uncertainty regarding major decisions of the Committee are likely.

Regardless of how significance is defined, the Committee *cannot* reject a proposal. Any project that it feels could have significant negative environmental impacts, must be referred to the Inuvialuit Environmental Impact Review Board.

The organizational structure of the Inuvialuit Environmental Impact Review Board is identical to that of the Inuvialuit Environmental Impact Screening Committee. Indeed, individuals may serve on both bodies. The Board is convened only when a proposal has been referred to it by the Inuvialuit Environmental Impact Screening Committee. To date, no proposal has been referred to the Board.

The Agreement stipulates that:

> "the Review Board shall expeditiously review all projects referred to it and on the basis of the evidence and information before it shall recommend whether or not the development should proceed and, if it should, on what terms and conditions, including mitigative and remedial measures. The Review Board may also recommend that the development should be subject to further assessment and review and, if so, the data or information required"(DIAND, 1984, s. 11.24).

Upon completion of its review, the Board is to transmit its decision, in writing, to:

> "The governmental authority competent to authorize the development. That authority, consistent with the provisions of this section and after considering, among other factors, the recommendations of the Review Board, shall decide whether or not, on the basis of environmental impact considerations, the development should proceed and, if so, on what terms and conditions, including mitigative and remedial measures" (DIAND, 1984, s. 27).

The *governmental authority* may be a federal or a territorial department, depending upon the nature of the project. Upon receiving the Board's report, it may either accept or reject the Board's findings. Should it disagree with them, it must provide the Board with a written explanation of its reasons for doing so. Thus, although the Board does not have final decision-making power, the government authority which does, must provide a *public* justification for any disagreement with the Board's conclusions. This is in marked contrast to EARP, as government agencies are not required to even formally respond to the report of an Environmental Assessment Panel.

At this point in time, it is difficult to determine how the Review Board will involve the public in its deliberations. There does appear to be a general consensus that the board will hold some form of public hearings (Cotterill, 1987, Personal Communication; Glaholt, 1987, Personal Communication; Hurst, 1987, Personal Communication). In addition, the Inuvialuit members of the board will no doubt consult extensively with the members of the Settlement communities. Beyond that, little is known for sure. The anticipated style, location, and

duration of any hearings to be held are not identified in the Agreement. Nor does the Agreement explain who the hearings will be open to, whether or not they will feature intervenor funding, or even whether or not they will require the preparation of an EIS. In the absence of clarification of these questions one can not adequately discuss public participation and the Inuvialuit Environmental Impact Review Board. Therefore, the remainder of this chapter will focus on the Inuvialuit Environmental Impact Screening Committee.

## THE INUVIALUIT PROCESS: IMPLICATIONS FOR EARP AND NEB.

### EARP

The answer to the question "How exactly will EARP be affected by the Inuvialuit process?" is *"No one knows"* (Cotterill, 1987, Personal Communication; Duffy, 1987, Personal Communication; Hurst, 1987, Personal Communication). At present, it appears that the NWT Regional Environmental Review Committee (RERC), chaired by DIAND and made up of representatives of each of the line agencies with responsibilities in the Northwest Territories, will continue to carry out the federal government's EARP responsibilities with regards to all projects proposed for the Northwest Territories (Crombie, 1987, Personal Communication; Hurst, 1987, Personal Communication). In some instances, RERC *may* also carry out the responsibilities of the Inuvialuit Environmental Screening Committee. In the hydrocarbon development proposal Gulf Canada Inc. submitted to the Inuvialuit Environmental Impact Screening Committee in early 1987 for example, the Committee decided that it did not have the resources to adequately evaluate the proposal and it was passed to RERC for review (Glaholt, 1987, Personal Communication; Hurst, 1987, Personal Communication). As the Inuvialuit process matures however, it is unlikely that a similar situation will recur (Cotterill, 1987, Personal Communication).

It seems that in the future, in making its own screening decisions, RERC will rely heavily upon the decisions made by the Inuvialuit Environmental Impact Screening Committee (Hurst, 1987, Personal Communication). RERC will however, continue to screen all federal initiatives in the Mackenzie Delta/Beaufort Sea region, regardless of whether or not they have already been examined by the Inuvialuit Environmental Impact Screening Committee (Hurst, 1987, Personal Communication). It is not clear in the Agreement or the RERC procedures, what will happen in the event of a disagreement between RERC and the Inuvialuit process. To date, such a conflict has not occurred and DIAND has not yet determined what course of action should be taken if a disagreement does occur (Cotterill, 1987, Personal Communication; Hurst, 1987, Personal Communication).

A similar situation exists with regards to the public review components of EARP and the Inuvialuit process. It is not known at present, what steps would be taken should both the RERC and the Inuvialuit Environmental Impact Screening Committee refer a project for public review (Crombie, 1987, Personal Communication; Hurst, 1987, Personal Communication). There is general agreement that to hold two public reviews of the same project would be undesirable (Cotterill, 1987, Personal Communication; Crombie, 1987, Personal Communication; Hurst, 1987, Personal Communication). However, there is no agreement among EARP or Inuvialuit process managers regarding ways and means of avoiding this situation. In the absence of a project proposal that would force the development of such a coping strategy, neither DIAND or the Inuvialuit themselves have addressed this administrative void.

## NEB

The National Energy Board (NEB), is a court of record and is established by legislation. The *National Energy Board Act* stipulates that *all* pipelines in the Northwest Territories must have a NEB certificate before they can commence operations. Barring any major changes to the NEB legislation, NEB reviews and their accompanying public hearings will always have to be

held in relation to any pipeline proposals. The NEB process can not, therefore, be replaced or in any way usurped by the Inuvialuit process. Nor is it likely that any structural modifications to the NEB process will be made as a result of the Western Arctic Inuvialuit Final Agreement.

## PUBLIC PARTICIPATION IN THE INUVIALUIT EIA PROCESS

### Opportunity to Participate

The Inuvialuit Inuvialuit Environmental Impact Screening Committee process is characterized by a decision-making dichotomy. On one side, the Inuvialuit hold half of the positions on the Inuvialuit Environmental Impact Screening Committee. On the other side, are the representatives of the three governments with jurisdiction in the area. This situation has important ramifications for the public's opportunity to participate in the process.

On the Inuvialuit side, two points are of primary significance. First, it must be remembered that the Inuvialuit members of the Committee, are first and foremost, members of the communities in the Settlement Region (Allen, 1987, Personal Communication; Wagner, 1987, Personal Communication). They travel to Inuvik to serve on the Inuvialuit Environmental Impact Screening Committee for one or two days a month and spend the rest of the time otherwise employed. They are not necessarily members of a government department or Inuvialuit executive body. They are *members* of the group they represent and are not elected officials who only periodically touch base with their grass roots constituents.

Second, the Inuvialuit communities all have populations of less than one thousand people making communication within them relatively easy. As a result, communication between Committee members and community residents can be established. Communities that do not have their own Committee member, can ensure that their concerns reach the

Committee through mechanisms such as the Inuvialuit Game Council, the Wildlife Management Advisory Committee, and other Committees and Boards. In addition, Committee members make efforts to stay in touch with other communities both by telephone and by personal visits (Allen, 1987, Personal Communication; Wagner, 1987, Personal Communication). Finally, staff members of the Inuvialuit Joint Secretariat, a support staff for the various resource management committees and boards, work to ensure that Committee members are aware of the concerns of all six settlement communities (Wagner, 1987, Personal Communication). As a result, of this networking, Inuvialuit residents of the Settlement Region, can, indirectly, participate in the Inuvialuit Environmental Impact Screening Committee decision-making process.

On the non-Inuvialuit side, the situation is somewhat different. The Yukon Territorial government's (YTG) representative on the Committee, a civil servant, indirectly represents the views of the Yukon population. However, given that the Yukon section of the Settlement Region is a national park and no one lives there, it is difficult to argue that he or she represents the interests of anyone directly affected by the Committee's decisions.

The Government of the Northwest Territories (GNWT) representative, Randall Glaholt, was not selected from among the general populace of the NWT. He is from southern Canada and has degrees from an Ontario and an Albertan university. He was hired by the GNWT on the strength of the expertise he acquired at these institutions (Glaholt, 1987, Personal Communication). The fact that Glaholt was not a resident of a settlement community had no bearing on the final appointment decision. As a result, while there is no doubt that he is capable of performing his job more than competently, he is certainly not a northerner and can not be said to hold the perspectives and values of long-term residents and non-Inuvialuit residents of the Mackenzie Delta/Beaufort Sea region.

The DIAND appointee to the Committee, Rudy Cockney, is an Inuvialuit who has lived in the area and has worked for DIAND for quite some time (Cockney, 1987, Personal

Communication). The fact that he is Inuvialuit in no way compromises his ability to serve as the federal government's committee member. That this is the case is evidenced by the fact that DIAND saw fit to appoint him to the position. However, it is unlikely in the extreme, that the *non-Inuvialuit residents of the area*, would consider him as representing their views (Billingsley, 1987, Personal Communication).

The Chairman of the Inuvialuit Environmental Impact Screening Committee, Ewan Cotterill, has long experience in northern EIA (Cotterill, 1987, Personal Communication). His expertise and impartiality were recognized by all parties when he was appointed to the Chair at the mutual agreement of the Inuvialuit and the three governments involved. However, he is neither a resident of the Mackenzie Delta/Beaufort Sea region, nor has he ever been. While this by no means detracts from his ability to manage the process and to ensure that it makes the best possible scientific decisions, it does make it difficult to suggest that his presence on the Inuvialuit Environmental Impact Screening Committee facilitates public participation in EIA.

In sum, the role of individual personalities in northern EIA is crucial. In this case, it is necessary that the identities and backgrounds of the non-Inuvialuit committee members be considered because terms such as *YTG representative*, simply do not convey enough information. Without a consideration of the individuals involved, it would be impossible to illustrate the fundamental nature of the process - *Non-Inuvialuit residents* of the Mackenzie Delta/Beaufort Sea region do not appear to have representatives on the Inuvialuit Environmental Impact Screening Committee whom they feel reflect their views and values and to whom they have frequent, direct and informal access (Billingsley, 1987, Personal Communication; Cotterill, 1987, Personal Communication; Hoos, 1987, Personal Communication). As a result, non-Inuvialuit residents of the region do not have the opportunity to participate in the decision-making process of the Inuvialuit Environmental Impact Screening Committee.

## Awareness of Opportunity to Participate

The Inuvialuit Environmental Impact Screening Committee is still quite a new body having only begun operations in early 1987. While the Committee members have been making efforts to inform their communities about claims-based, many of the Inuvialuit are still involved in a learning process regarding the Agreement as a whole as well as the EIA component of it (Allen, 1987, Personal Communication; Cotterill, 1987, Personal Communication; Erickson, 1987, Personal Communication; Hubert, 1987, Personal Communication).

A major stumbling block in this learning process, is the myriad of committees, boards, commissions, Panels and so on currently in place as a result of the Agreement. As Figure 6.3 indicates, seventeen such organizations and committees are established in relation to fish and wildlife management alone. Add to this total other institutions such as the Inuvialuit Regional Corporation, the Inuvialuit Land Corporation, the Inuvialuit Development Corporation as well as the already existing regulatory maze, and it becomes apparent that the Inuviailuit EIA process is only a small component of a very complex resource management regime. Thus, a major task in informing the Inuvialuit of their opportunity to participate in EIA, is to sort EIA out from the rest of the management system.

This task challenges non-Inuvialuit public participation in EIA as well. However, making the challenge all the more difficult, is the fact that the Inuvialuit process is perceived as being essentially for Inuvialuit only (Billingsley, 1987, Personal Communication). This has the effect of deterring participation by those few non-Inuvialuit who even realize that the Inuvialuit process exists.

## Process Timing

There was no indication during the interviews conducted in this research, that the timing of EIA reviews under the Inuvialuit process would differ at all from the timing of reviews conducted under EARP. There are no design features of the Inuvialuit process which provide any reason to suppose that industry will put forward its resource development proposals earlier in their planning stages than they have in the past. Nor does the Agreement stipulate that greater attention be paid to the consideration of project alternatives.

There is some feeling that because of the involvement of fewer individuals and interests , the Inuvialuit process will be somewhat more fast moving in its decision-making that the EARP Regional Environmental Review Committee (Blais, 1987, Personal Communication; Cotterill, 1987, Personal Communication; Hoos, 1987, Personal Communication; Livingston, 1987, Personal Communication). Whether or not this feeling will stand the test of time, remains to be seen.

## Financial Resources

Public participation in the Inuvialuit Environmental Impact Screening Committee process, for those who have the opportunity to take part in it, is primarily informal and indirect in nature. For Inuvialuit residents of the Mackenzie Delta/Beaufort Sea region in particular, it is not necessary to prepare research, to go to hearings or to carry out any of the other activities often associated with public participation in EIA. Instead, participation takes place through informal consultation with the Committee members. This form of public participation is essentially *no cost* involvement. Accordingly, for those who have access to Committee members, lack of sufficient financial resources is unlikely to be a factor limiting public participation in the Inuvialuit Environmental Impact Screening Committee process.

## Information

In order to effectively participate in EIA reviews, information about the project under review and about the environment it will affect is required by all parties. There seems to be little doubt that the Inuvialuit possess sufficient information about the environment in the Mackenzie Delta/Beaufort Sea region (Usher, 1986; Allen, 1987, Personal Communication; Hubert, 1987, Personal Communication; Nesbitt, 1987, Personal Communication). In addition to the knowledge and expertise they have accumulated through their experiences and their cultural traditions, the Inuvialuit have also hired wildlife biologists to carry out research aimed at enhancing this expertise and to put it in a form which is more amenable to use in a planning or management context (Himmer, 1987, Personal Communication).

A key question with regards to the dissemination of project information, is: "Do the residents of the settlement region possess sufficient project information to voice their concerns to Inuvialuit Environmental Impact Screening Committee members?" Organizations such as the Beaufort Sea Development Impact Zone Society or the Beaufort Sea Regional Land Use Planning Commission, have been established, in part, to facilitate the flow of information aimed at keeping residents of the Mackenzie Delta/Beaufort Sea region abreast of development issues generally (Erickson, 1987, Personal Communication; Sullivan, 1987, Personal Communication). In addition, the Inuvialuit members of the Inuvialuit Environmental Impact Screening Committee attempt to keep their constituents well informed and are reasonably satisfied that they have done so (Allen, 1987, Personal Communication; Cotterill, 1987, Personal Communication; Wagner, 1987, Personal Communication). Whether or not their satisfaction is justified, could only be determined by research testing project knowledge levels in the settlement communities. For the time being, suffice it to note that information distribution programs are in place and that Inuvialuit members of the Committee do attempt to keep their constituents informed.

The non-Inuvialuit members of the Committee are not involved in a similar exercise. Public information dissemination is not considered a part of their job (Cockney, 1987, Personal Communication; Cotterill, 1987, Personal Communication; Glaholt, 1987, Personal Communication). They certainly do not hide or withhold information and if a white resident of Inuvik for example, requests specific information about the Committee and its activities, he or she will usually get it (Glaholt, 1987, Personal Communication). However, non-Inuvialuit residents of the Mackenzie Delta/Beaufort Sea region, do not, as a matter of course, receive information about projects under consideration by the Inuvialuit Environmental Impact Screening Committee.

## Expertise

The Inuvialuit possess what can be termed *endogenous expertise*, in relation to the northern environment. This term denotes knowledge and understanding acquired primarily through experience and cultural traditions. In addition, as mentioned above, the Inuvialuit Joint Secretariat has hired a number of biologists to conduct research geared toward enhancing and refining this expertise. To help them understand the more technical aspects of resource development proposals, the Inuvialuit have the funds available to hire experts as they require them. Finally, they have access to the expertise of the various members of the Inuvialuit Environmental Impact Screening Committee by virtue of the fact that their representatives sit on the Committee.

On the non-Inuvialuit side, the situation is somewhat different. Many of the Mackenzie Delta/Beaufort Sea area residents, perhaps especially the Déné/Métis, possess considerable endogenous expertise of their own regarding the local environment. However, financial constraints restrict their ability to retain researchers to embellish this expertise. Also, as noted above, the non-Inuvialuit do not have easy access to members of the Inuvialuit Environmental Impact Screening Committee. As a consequence, the development of the non-Inuvialuit expertise required to participate in EIA, may be somewhat retarded in

comparison to that the Inuvialuit.

## Clarity of Process Role and Process Scope

In Chapter V, it was suggested that one of the main problems confronting potential participants in EARP, has been the confusion surrounding the appropriate role and scope of EARP. This difficulty does not appear to have been resolved as a result of the Western Arctic Inuvialuit Final Agreement. If anything, the problem may well be exacerbated by the addition to the EIA regime, of the Inuvialuit EIA process as well as the various other resource management mechanisms established under the Agreement. To illustrate this problem, it is useful to consider a regulatory scenario for a hypothetical oil pipeline originating in the Mackenzie Delta/Beaufort Sea area.

The pipeline, because it would be on federal lands, would be subject to EARP and would probably be referred for public review. As the pipeline would also traverse Inuvialuit lands, it would be examined by the Inuvialuit Environmental Impact Screening Committee and would no doubt be referred to the Inuvialuit Environmental Impact Review Board. Given that it would have to cross inland waters, the NWT Water Board would have to hold hearings regarding the pipeline's route. Should the route follow the Dempster Highway into Yukon Territory, the Yukon Water Board could also be involved. If the Déné/Métis or the Yukon Indians resolve their claims, it is conceivable that their EIA processes would also be activated. Finally, the National Energy Board will have to hold public hearings regarding the pipeline and a second set of detailed route hearings would also be required should the pipeline be approved.

The absence of framework linking these various review mechanisms makes a determination of the exact role of the Inuvialuit process in the overall decision-making system somewhat difficult. When one factors in other resource management arrangements established by the Agreement (Table 6.3), it is easy to see how residents of the Mackenzie

Delta/Beaufort Sea region could find the whole situation quite confusing.

It is difficult to determine what effect this situation will have on the scope of the Inuvialuit process as there is not a sufficient case history upon which to base such a determination. However, there is no reason to expect that scoping problems experienced in EARP will not surface in the Inuvialuit process.

### Process and Participant Credibility

There does not appear to be any reason to assume that the credibility of southern based participants in the Inuvialuit process, will be any higher than it has been in recent EARP reviews. Indeed, given the predominance of northern residents on both the Inuvialuit Environmental Impact Screening Committee and the Inuvialuit Environmental Impact Review Board, southerners may well have to work hard to establish their legitimacy in Inuvialuit process reviews.

The Inuvialuit process has many of the same features that undermine the credibility of EARP. It is purely advisory in nature, it can not subpoena individuals or documents, and there is no guarantee that its results will be acted upon. These difficulties combined with a perception that the Inuvialuit process is essentially for Inuvialuit only, may damage the long-term credibility of the process.

## SUMMARY

This chapter has focussed upon the EIA process created by section 11 of the Western Arctic Inuvialuit Final Agreement. It was noted that the process features a screening phase conducted by the Inuvialuit Environmental Impact Screening Committee and a public review phase conducted by the Inuvialuit Environmental Impact Review Board. It was further suggested that at this point in time, it is not known what effect the Inuvialuit process will have

on public participation in EARP. However, it is clear that NEB reviews will be essentially unaffected by the Inuvialuit process.

Each of the eight pre-conditions for effective public participation were discussed in the context of the Inuvialuit Environmental Impact Screening Committee process. The Inuvialuit Environmental Impact Review Board was not considered due to the lack of an appropriate case to history to investigate. In the following chapter, the conclusions which follow from the preceding chapters are presented.

# CHAPTER VIII

# CONCLUSIONS

The purpose of this chapter is to present the conclusions stemming from the preceding sections of the thesis. It is organized according to the four research hypotheses outlined in Chapter I. The hypotheses are each discussed in terms of their validity within the context of the Federal Environmental Assessment and Review Process (EARP), the National Energy Board process (NEB), and the Inuvialuit EIA process. A series of more general conclusions are then presented. Within the discussion, a number of recommendations related to the enhancement of public participation in northern EIA, are put forward. These recommendations are printed in *italics*. Finally, in closure, avenues for further research are identified.

## RESEARCH HYPOTHESES

### Hypothesis One

**Limited public access to EIA processes has inhibited public participation in northern EIA.**

This hypothesis hinges upon the assumption that limited public access to an EIA process, inhibits public participation in that process. It is important to note the use of the word *inhibits*. Limited public access to EIA *does not preclude* public participation. Indeed, the public *can* still participate effectively in a process to which it has only limited access. However, it is argued that such participation is much more difficult than participation in an accessible one. If one accepts this argument, it is only necessary to determine whether or not

public access to EIA has been limited, to determine the validity of the hypothesis. A determination of what is meant by *access to EIA*, therefore becomes essential.

An EIA process which does not feature an opportunity for public participation, is clearly not open to the public. *Opportunity to participate* is, therefore, the key variable determining process accessibility. However, opportunity is not the only determining variable. In order to take part in EIA, the public must also be *aware* of that opportunity, and must possess sufficient financial resources, time, information, and expertise.

*EARP Context*

It has been shown that at the screening phase of EARP there is no public participation at all. At the public review stage of EARP (Figure 3.2, page 40) the opportunity for public participation definitely exists and the public is generally well aware of this. However, the fact that the public *is not* involved in the preparation of either the original EIS draft guidelines or the EIS itself, limits the public's participation.

*It is recommended, therefore, that a means of involving the public in the preparation of the draft guidelines be developed. The Issues Seminar approach exercised in the Beaufort Sea Review, could serve as a useful model in this regard.* The Issues Seminar brought potential review participants together prior to the commencement of the review, to discuss possible issue agendas for the review (FEARO, 1984a). Such an approach could serve as a mechanism to identify key issues to be included in the Draft EIS guidelines.

*It is further recommended that the public be involved in the preparation of the project EIS, particularly in those sections pertaining to socio-economic impacts.*

A companion concern is that information access in EARP reviews is firmly controlled by those who possess the information. The nature of EARP is such that neither the public nor

the Panel, can *demand* information from the proponents or other review participants. The informal style of EARP hearings also makes it difficult to pursue information or lines of argument. Exacerbating these difficulties is the fact that much of the necessary information regarding northern resource development simply does not exist. Finally, the lack of intervenor funding, and the relatively late timing of EARP reviews, has made it nearly impossible for members of the public to hire experts or develop expertise of their own.

*It is recommended that a mechanism for the public funding of individuals or groups wishing to participate in EARP reviews, be built into the process design. Funding should be extended only to individuals or groups that are directly affected by the proposal.* While the provision of intervenor funding will not eliminate the problems identified above, it will alleviate them by enabling intervenors to participate at the early review stage; to develop and present their own information sources; and to hire expert researchers or advisors as well as the support staff required to operate an office or direct public information campaigns.

The above factors combine to limit the public's access to EARP, and to inhibit public participation in EARP. Hypothesis One, therefore, is valid in relation to EARP.

*NEB Context*

Many of the factors limiting public access to EARP, do not apply to the NEB. The opportunity to participate in NEB reviews is built into NEB legislation and is part of explicit NEB policy. Public awareness of this opportunity was shown to be generally high. Although the NEB conducts its reviews late in the project planning process, the nature of NEB reviews is such that fundamental questions related to the need for the project as well as its desirability vis-à-vis other options, can be addressed. Individuals and the documents or information they possess can be subpoenaed by the Board and witnesses can be cross-examined. As a result, in several respects the NEB appears accessible to the public.

Unfortunately, this is not the case. Two factors act to substantially limit public access to the NEB process. First, the cost of participation in NEB reviews can be quite high. It is essential to retain lawyers for NEB reviews. Furthermore, given that one is liable to cross-examination, presentations to the Board must be prepared with considerable diligence and generally must be supported by some research or documentation. No intervenor funding is provided by the Board to defer the costs of legal representation or presentation preparation. Evidence suggests that most members of the public can not afford to take part in NEB reviews.

*It is recommended, therefore, that some form of intervenor funding be extended in NEB reviews. The funding mechanism employed by the Alberta Energy Review Control Board may serve as a useful model in this regard.* The Board awards costs to public intervenors after the Board's review is complete. Costs are awarded according to the quality of an intervenor's presentation (Millard, 1987).

Second, the legalistic, adversarial format of NEB hearings can be quite intimidating to public intervenors. Many individuals are deterred from participating as a result. *It is recommended, therefore, that the NEB hold informal, community hearings in order to adequately canvass the views of the affected public. These hearings would parallel its more formal hearings in much the same fashion as those held during the Mackenzie Valley Pipeline Inquiry. This type of hearing could also serve to diminish the need for intervenor funding.*

Due to its high costs and intimidating nature, the NEB is not easily accessible to the public despite its structural strengths. Public participation in the process is inhibited as a result. **Hypothesis One, therefore, is valid in relation to the NEB.**

## Hypothesis Two

**Confusion related to the appropriate role of northern EIA, has inhibited public participation in northern EIA, and will continue to do so following the implementation of the Inuvialuit Western Arctic Final Agreement.**

*EARP and the Inuvialuit Process Context*

Natural resource management in the Canadian North is characterized by a wide range of independently operating institutional arrangements. With the exception of the political process, there is no coordinating policy framework to link these instruments. A direct result of this institutional labyrinth is the unclear role of EARP in overall government decision-making. This has important implications for participants in EARP public reviews.

Most importantly, it makes the appropriate scope of EARP somewhat difficult to define. This creates significant difficulties for participants as they are unsure of the relevant issues; they are unsure of the presentation detail required; and they are unsure of the approach best suited to put them forward.

When it is known that many, if not most, of the key northern resource policy decisions are made by federal government departments and agencies located in Ottawa, the territorial political process does not serve as an adequate forum for northerners to voice their opinions regarding resource policy. Participation in federal elections does not offer an alternative as competing parties rarely deal with northern development issues, and the election itself only produces three northern Members of Parliament. As a result, many public intervenors use EARP as a vehicle to address broad socio-political issues affecting the North as a whole. This process state leads to frustration and dissatisfaction with EARP when intervenors discover that the Process is not equipped to deal with these matters. Furthermore, the raising of these issues undermines the credibility of public intervenors as a whole, making their task all the

more difficult.

Finally, the absence of an over-arching policy framework for northern resource management also makes it more difficult to predict project impacts. It is difficult to predict the impacts of year-round oil tanker traffic in the Northwest Passage, for example, without an adequate understanding of government policy regarding Arctic shipping regulation. Similarly it is difficult to predict the impacts of a given change, in the absence of any knowledge regarding how government intends to respond to that change.

These problems combine to make effective and efficient public participation difficult. They make it hard for review participants to know which issues should receive maximum attention and scrutiny. They also make it difficult to determine whether the participation effort will be reflected in the policy or programme decisions - the ultimate test of effective public action. Further, efficient public participation becomes a hit-and-miss affair. Resources *may or may not* be spent on preparing testimony on issues of relevance and review importance. In the absence of any certainty regarding EIA scope, it is possible that resources will be channeled toward issues of minimal importance.

The elimination of the uncertainty surrounding EARP's role is a difficult task. However, the development of the Northern Land Use Planning Commission offers a promising first step. The Commission has recently been established to develop regional land use plans for the Northwest Territories. As part of this planning exercise, the Commission will seek to develop a more rational and efficient approach to resource management in the NWT (Hubert, 1987, Personal Communication). *It is recommended, therefore, that the Northern Land Use Planning Commission pay careful attention to integrating EIA into its planning process.*

As noted in Chapter VII, neither the literature review nor the questionnaire response analysis, indicates that northern EIA role and scope uncertainty will be diminished as a result of the Western Arctic Inuvialuit Final Agreement. Indeed, it was suggested earlier that many

of these problems may be exacerbated as it remains unclear how the new Inuvialuit process is to relate to any other EIA process or management regime.

This situation gives rise to many of the same problems identified above. It is unclear what issue types belong in the Inuvialuit process, or at what level of detail the Process should delve into issues. Should only issues directly related to the Inuvialuit be considered, on the assumption that other concerns will be addressed by EARP? Or, should the administrators of, and participants in, the Inuvialuit process, ignore EARP altogether on the assumption that the Inuvialuit process is the one that really matters? Should the Inuvialuit process be considered a preliminary examination of issues before detailed consideration in EARP? Should the Inuvialuit process be used to conduct detailed examinations of proposals on the assumption that EARP practitioners will essentially accept Inuvialuit process decisions? In an effort to avoid these questions, will the Inuvialuit process and EARP be administratively combined in the case of large-scale project reviews? The list of potential questions is lengthy. The fact that the questions cannot be answered, illustrates the degree of confusion and uncertainty surrounding the role of the Inuvialuit process.

An additional concern is the absence of any clear strategy in the event of disagreement between the Inuvialuit process and the DIAND decision making system which relies on EARP review. Under the terms of the Western Arctic Inuvialuit Final Agreement, the government agency "competent to authorize" the development, must provide the Inuvialuit with written reasons for disagreeing with the Inuvialuit's conclusions. Beyond that, there is no method for resolving the conflict by finding a middle ground. It may well be that DIAND's decision will always hold sway. However, if this is true, the rationale for initiating the Inuvialuit process place must be questioned. If this is not the case, by what means will conflict be resolved? The possibility of Inuvialuit court action looms large in such an instance and represents a potential source of gross inefficiency in the decision making process. Any court action dealing with the rights of the Inuvialuit vis-à-vis the federal government, is bound

to be long and drawn out and would slow down decision-making progress.

This confusion is largely attributable to two factors. First, the wording of the Agreement is deficient. Key terms such as *significant environmental impacts* are not defined. The nature of the relationship between the Inuvialuit Environmental Impact Screening Committee and the Inuvialuit Environmental Impact Review Board is not described. The powers of each body are not clearly delineated. The extent to which the Inuvialuit process applies to offshore development is left uncertain. One can only speculate about the purpose of this vagueness. However, in order to avoid the difficulties it creates, *it is recommended that in future, far greater attention and time be devoted to the final wording of land claim agreements. Particular emphasis should be placed on clearly delineating the roles and powers of the various committees and boards created in the Agreements.*

Second, there is no evidence to suggest that the *implementation* of the Agreement was carefully considered by its authors. No operationalization plan for the various components of the Agreement was drawn up in advance of its enactment. No attempt was made to integrate the various claims-based mechanisms with the currently existing resource management regime, and no effort was made to replace existing mechanisms with those established by the Agreement. Instead, currently existing resource management instruments (EARP, NEB, The Inland Waters Act, and The Territorial Land Use Act) were retained in an unaltered form. In addition, the Western Arctic Inuvialuit Final Agreement produced a number of duplicate instruments.

The Agreement provides little or no direction to the various Inuvialuit corporations, committees and boards it establishes. Consequently, the operations of organizations such as the Inuvialuit Environmental Impact Screening Committee, are forced to proceed on a *trial and error* basis. There is the possibility that many of the actors involved in Inuvialuit agencies' operations may be alienated.

*It is recommended, therefore, that in any future land claim settlements, a separate Implementation Agreement, be signed. To the extent possible, the Implementation Agreement should spell out when and how the various components of the settlement are to be operationalized. It should establish basic operational principles and guidelines for all bodies and powers created by the settlement. It should clearly explain the relationships between these processes and those already in existence, and should establish an arbitration mechanism for resolving any conflict between them. Finally, in recognition of the impossiblities of foreseeing all potential difficulties involved in settlement implementation, the Implementation Agreement should set out guidelines and safeguards designed to enable those involved in the settlement to deal with unexpected problems.*

In sum, it is argued that insofar as EARP is concerned, its poorly defined role in the decision-making process has inhibited effective and efficient public participation. Furthermore, largely due to the absence of a detailed implementation plan for the Western Arctic Inuvialuit Final Agreement, confusion relating to the role of EIA, has been exacerbated by the Agreement. Public participation in EIA will continue to be inhibited as a result. Hypothesis Two, therefore, is valid in the context of EARP and the Inuvialuit process.

*NEB Context*

The situation is somewhat different with regards to the NEB. As was indicated in Chapter V, there is little confusion surrounding the role of the NEB process. Both the role and the scope of NEB reviews are set out in the Board's enabling legislation and regulations. There is some uncertainty, however, regarding the degree to which environmental considerations are factored into NEB decisions. Indeed, environmental matters are not specifically mentioned in the *National Energy Board Act*. Instead, they are addressed under its catchall "public interest" section. Notwithstanding this vagueness, convention and NEB

policy, now dictate that environmental matters will be considered in all NEB reviews. *In order to formalize this situation in law, it is recommended that a section making EIA a mandatory component of all NEB pipeline and power line reviews, be added to the National Energy Board Act.*

In any event, it does not appear that confusion related to the role of the NEB, has limited public participation in its reviews. Hypothesis Two, therefore, is not valid with respect to the NEB.

## Hypothesis Three

> **The Inuvialuit Western Arctic Final Agreement will increase the efficiency of Inuvialuit public participation in EIA in the Mackenzie Delta/Beaufort Sea region.**

Restricted access to EIA processes has traditionally limited public participation in northern EIA. In order to discuss Hypothesis Three, it is necessary to determine whether or not the Western Arctic Inuvialuit Final Agreement will improve accessibility for the Inuvialuit and increase the efficiency and effectiveness of their public participation.

The Inuvialuit, by virtue of the fact that they have three representatives on both the Inuvialuit Environmental Impact Screening Committee and the Inuvialuit Environmental Impact Review Board, can be said to have the opportunity to participate in EIA decision-making in the Mackenzie Delta/Beaufort Sea region. This participation through representation is institutionalized by the Agreement. As a result, the Inuvialuit have greater access to the claims-based EIA process than any other previously existing EIA mechanism. However, as was explained above, public *access* to an EIA process requires more than just the opportunity to participate. The public must also be aware of their opportunities, and must possess sufficient financial resources, time, information and expertise.

Inuvialuit awareness of the Inuvialuit Environmental Impact Screening Committee

process is difficult to guage at this point in time. However, efforts to enhance their awareness are ongoing.

The Inuvialuit possess the necessary resources referred to above in relation to the claims-based EIA process. As was explained in Chapter VII (p. 118), Inuvialuit involvement in their process' screening phase is essentially no-cost participation. Furthermore, the Inuvialuit, through their various corporations possess funds which can be used to support participation in environmental reviews such as those held by the Inuvialuit Environmental Impact Review Board. Because of their strong position on the Inuvialuit Environmental Impact Screening Committee and the Inuvialuit Environmental Impact Review Board, the Inuvialuit can also influence the pace of decision-making.

Information related to resource development proposals is to be transferred to members of the Inuvialuit communities by their representatives on the Inuvialuit Environmental Impact Screening Committee and other resource management bodies, such as the Hunting and Trapping Committees (Figure 6.3, page 104). The Inuvialuit possess considerable endogenous expertise related to the Mackenzie Delta/Beaufort Sea region. This type of expertise will probably have greater currency than was apparent in non-Inuvialuit dominated decision-making processes. Furthermore, the Inuvialuit have recently retained researchers to study wildlife resources in the settlement area. This exercise is being undertaken with the goal of embellishing Inuvialuit endogenous expertise and increasing their ability to manage local natural resources.

The Western Arctic Inuvialuit Final Agreement has instituted major alterations in the status quo in terms of Inuvialuit access to EIA decision-making. Consequently, its positive effects are significant indeed. It is argued therefore, that Hypothesis Three is valid.

## Hypothesis Four

**The Western Arctic Inuvialuit Final Agreement will most likely diminish the effectiveness of non-Inuvialuit public participation in EIA in the Mackenzie Delta/Beaufort Sea region.**

As was explained in Hypothesis One discussion, limited access to EIA processes, such as EARP or the NEB, has inhibited public participation in northern EIA to date. It was previously argued that insofar as the Inuvialuit are concerned, many of the factors which have limited their access to EIA, were largely alleviated by the Western Arctic Inuvialuit Final Agreement.

However, as indicated in Chapter VII, the Agreement has not had a similar effect for the non-Inuvialuit of the Mackenzie Delta/Beaufort Sea region. They do not have representatives sitting on the Inuvialuit Environmental Impact Screening Committee. The Committee members designated by the territorial and federal governments neither serve as representatives of local non-Inuvialuit communities nor act as information conduits between the Inuvialuit Environmental Impact Screening Committee and the general public. Consequently, the non-Inuvialuit do not have direct input into its decision-making procedures. They do not necessarily know what proposals the Committee is assessing and they cannot influence the pace at which the Inuvialuit Environmental Impact Screening Committee proceeds. There is no funding mechanism for non-Inuvialuit individuals or groups wishing to take part in the Inuvialuit process reviews. Funds are not available for research programmes that would enhance the endogenous expertise possessed by non-Inuvialuit area residents, such as the Déné/Métis.

Finally, the public participation condition surrounding the Inuvialuit Environmental Impact Screening Committee may also have relevance to the Inuvialuit Environmental Impact Review Board. There is no reason to expect that proposal information will automatically begin to flow to the region's non-Inuvialuit residents from the Board. There is no assurance

that funding mechanisms will be established in order to ensure non-Inuvialuit participation in the decision-making. There is no guarantee that one or more representatives of the non-Inuvialuit community will be temporarily appointed to the Inuvialuit Environmental Impact Review Board. It is argued, therefore, that non-Inuvialuit access to the Inuvialuit process is limited, and that effective public participation in EIA in the region is inhibited as a result.

Reliance on other EIA processes in the absence of a clear understanding of both their function in the overall decision-making system, and their relationship to the Inuvialuit EIA process, is a perilous course. Other processes *may* be able to address non-Inuvialuit concerns or overturn unfavourable decisions made by the Inuvialuit process. However, it is just as likely that they *will not* be able to do so.

This situation focusses attention on the rights of non-Native society with respect to claims-based EIA. Do all non-Inuvialuit Canadians have the *right* to appear before the Inuvialuit Environmental Impact Screening Committee? Do non-Inuvialuit Canadians have the right to relevant information controlled by the Inuvialuit Environmental Impact Screening Committee? Can they challenge Inuvialuit Environmental Impact Screening Committee appointments? Can they appeal Inuvialuit Environmental Impact Screening Committee decisions? Many questions indeed, demand answers which are not found in the Agreement.

In sum, it has been argued that for non-Inuvialuit society, access to the Inuvialuit EIA process is limited. Public participation for non-Inuvialuit residents of the region and the rest of Canada is inhibited. Hypothesis Four, therefore, is valid.

# GENERAL CONCLUSIONS

The discussion of the first two hypotheses has focussed on the North generally and has concluded that public participation in northern EIA has been inhibited by limited public access to EIA and confusion regarding its role in the decision-making process.

These problems persist today. Indeed, most of the pre-conditions for effective public participation identified in Chapter IV, have not been met in the North. Consequently, major obstacles to effective public participation in northern EIA have confronted prospective review participants. In the absence of substantial changes in the overall resource management system in the North, public participation in future northern EIA reviews will be confronted with similar obstacles.

In the short term and perhaps in the longer term as well, the obstacles to effective public participation in northern EIA may well be heightened by the settlement of claims. Evidence from the Western Arctic Inuvialuit Final Agreement has demonstrated that the land claim settlement may further cloud the role of EIA in decision-making, and reduce the effectiveness of public participation.

However, evidence also suggests that the positive effects on Native groups of land claim settlements outweigh the negative. The Western Arctic Inuvialuit Final Agreement has demonstrated that Native access to EIA is greatly enhanced by the settlement of claims. There is every reason to expect that similar increases in access to EIA decision-making will be experienced by other Native groups settling claims. Claims settlements should, therefore, increase the potential effectiveness of Native participation in EIA.

The effects of claim settlements on non-Native participation in EIA are less clear. In the context of the Western Arctic Inuvialuit Final Agreement, non-Inuvialuit are effectively excluded from EIA decision making. On the practical level, this situation could lead to a

serious attack on the fundamental underpinnings of the Agreement. Non-Inuvialuit interests would probably argue in the Supreme Court of Canada that the Agreement is unfair, discriminatory and unconstitutional. Replication of the Western Arctic Inuvialuit Final Agreement decision-making model in future claim agreements could leave them similarly vulnerable to attack.

On a more philosophical level, it seems that one is forced to make a fundamental value judgement regarding the acceptability of an ethnically circumscribed decision-making system operating within Canadian society. It can be argued that to give significant decision-making power to a particular ethnic group, is to discriminate against the rest of society and is to transgress the basic principles of participatory democracy upon which this country is founded. This argument is given additional credence by the fact that in the Western Arctic Inuvialuit Final Agreement, and presumably in future claims settlements, the Native people *surrender their title to all but relatively small parcels of land* in the settlement region and consequently, are not the owners of the land to which the decision-making powers pertain. Therefore, they cannot claim the right to special decision-making powers or preferential treatment by virtue of being the major landowners in the area.

The contrary argument suggests that Canadian society as a whole, because of its historical mistreatment of Native peoples, and because of the generally disadvantaged situation of Native people throughout the country, *should* give Native people more than a fair chance to succeed. By way of restitution, it is argued, Canadian society, must give Native people every means possible to succeed in the society in which we have forced them to live. Furthermore, given that all claim settlements relate to lands that have been used since time immemorial by the ancestors of the claimants, and are *currently* used primarily by the claimants, they should have ultimate say in how the lands are managed. If this means giving them a somewhat advantageous postion vis-à-vis others, so be it.

A decision to choose between these viewpoints is difficult. It involves a consideration of how our society should operate and how it should treat its less fortunate members. It is left to the reader to contemplate such issues.

## FUTURE RESEARCH

This thesis has generated far more questions than it has answered. However, the scope of this brief section is confined to the identification of five topics of primary importance as future research avenues.

In the context of EIA, two areas require attention. First, it would be insightful to examine EIA mechanisms in other countries to determine whether the public participation problems identified here arise elsewhere. The objective would be to determine how other countries have dealt with these problems. Given the northern focus of this thesis, countries with experience in offshore hydrocarbon development and assessment in cold climates would be noteworthy. A list of such countries would include the United States (Alaska), Denmark (Greenland), and states adjacent to North Sea oil and gas activities.

Second, a comprehensive evaluation and assessment of the various EIA mechanisms currently in place in the North, as well as those to be implemented in the context of land claim settlements is required. These exercises would have the dual objectives of identifying the various processes and determining the linkages that exist. Fulfillment of these goals would lead to the development of recommendations regarding the rationalization of northern EIA processes.

With respect to Native land claims settlements and their implications for public participation in EIA, two areas warrant further investigation. There are many unanswered questions regarding the legal status of the Agreement. For example, What is the Agreement's constitutional status? What are the rights of non-Inuvialuit Canadians regarding participation

in decision-making processes established by the Agreement? What are the mechanics and procedures governing the administration of the Boards and Committees established by the Agreement? As indicated previously, these types of questions are likely to be posed in the near future. Research related to them is required if ill-conceived and ill-prepared *ad hoc* responses are to be avoided.

Second, a study of the various successes and failures in the *implementation* of the Western Arctic Inuvialuit Final Agreement should be undertaken. Such a study would seek to determine what aspects of the Agreement have been implemented smoothly, as well as those components which have experienced considerable difficulty in implementation. The objectives of this study would be to suggest remedies for the difficulties encountered and to provide guidance for those implementing future land claim settlements.

Finally, research focussing on northern political evolution and its implications for public participation in EIA, is required. As indicated in this thesis, land claim settlements will lead to fundamental changes in the way decisions are made in the North. Many decisions which have previously been made in Ottawa or Yellowknife, will as a result of claim settlements, be made in regional centres such as Inuvik or Iqaluit. This situation, combined with the ongoing process of northern political change will no doubt have significant implications for the conduct of northern EIA. Research regarding what exactly these implications are, and how best to plan and prepare in light of them, is required.

# *APPENDIX I*

# *QUESTIONNAIRE*

RESEARCH DESCRIPTION

**The Effects of Native Land Claims on Public Participation in Environmental Impact Assessment in the Canadian North.**

Trevor Swerdfager

University of Ottawa

The purpose of this research is to identify and study key factors affecting public participation in northern environmental impact assessment (EIA). More specifically, the goal of the research is to explore the nature of current and future effects of land claim negotiations and political devolution, on public participation in northern EIA. A further goal is to make recommendations relating to improvements in EIA public participation mechanisms and in northern EIA processes generally in light of these effects.

The focus of the research is the Western Arctic Inuvialuit Final Agreement. The research will consider the implications of the Agreement for public participation in environmental impact assessment (EIA). In particular, the new institutional arrangements for EIA established in the Agreement and the relationships between these arrangements and currently existing EIA mechanisms will be studied from the point of view of their effects on public participation in EIA.

In addition, the research will examine the influence political devolution* is having, and will continue to have on the conduct of northern EIA.

On a more general level, the research is intended to identify strengths and weaknesses in the EIA public participation mechanisms in place in the Agreement settlement area with a view to suggesting possible improvements in these mechanisms. Lastly, the research is designed to produce some conclusions regarding the implications of land claims and political devolution for EIA in the North generally.

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* Political devolution refers to the transfer of powers and responsibilities from federal to the territorial level

Trevor M. Swerdfager
Department of Geography
University of Ottawa
Ottawa, Ontario
K1N 6N5

September 8, 1988

Dear Respondent,

The attached questionnaire forms the basis of a survey being conducted as part of my Master's degree research. The results of the survey are to be used *only by myself* for the purposes of preparing my Master's thesis at the University of Ottawa.

The questionnaire consists of three sections. Section One deals with public participation in northern EIA to date and focuses on the factors which have enhanced or inhibited such participation. Section Two consists of questions relating to the effects of the Inuvialuit Western Arctic land claim settlement on public participation in EIA. Section Three considers the effects of political devolution on public participation in northern EIA.

The questionnaire includes twenty questions. Questions 6,7,10 and 12 require written answers. All other questions require that you select a response from the list provided and insert its letter key in the bracket provided. Please complete the questions in the fashion indicated in the example below.

eg. Do you enjoy helping out graduate students in their research?
A. very much enjoy
B. enjoy
C. marginally enjoy
D. do not enjoy
E. detest

(A)

Please feel free to elaborate on any answer by writing additional comments on the back of the question sheet or on a separate piece of paper.

When the questionnaire is completed, please return it to me and use the attached return envelope. If the envelope has been misplaced, please mail the completed questionnaire to me at the address listed at the top of this page.

I thank you sincerely for your time in completing this questionnaire. It is only with the assistance of people such as yourself that meaningful and useful graduate research can be conducted.

## SECTION ONE

### Questions related to Public Participation in northern EIA

1. Some critics of northern EIA processes have argued that they do not allow for sufficient public participation. Others have suggested that there has been more than enough public participation in northern EIA. In your opinion, has the *level of public participation* in northern EIA been:

   A. always sufficient
   B. often sufficient
   C. sufficient
   D. rarely sufficient
   E. never sufficient

   ( )

2. To what extent has public participation altered the *quality of information* presented in EIA reviews?

   A. greatly increased
   B. increased
   C. not affected
   D. reduced
   E. greatly reduced

   ( )

3a. How often have members of the public raised *new issues* in EIA reviews?

   A. always
   B. regularly
   C. sometimes
   D. infrequently
   E. never

   ( )

3b. If you have marked responses A,B, or C, in question 3a, how *relevant* have the new issues been?

   A. highly relevant
   B. relevant
   C. marginally relevant
   D. irrelevant
   E. totally irrelvant

   ( )

4a. In the EIA *public hearing stage*, has the *opportunity* for citizens to voice their concerns been:

A. excellent
B. good
C. adequate
D. poor
E. very poor

( )

4b. In the EIA *initial assessment stage*, has the *opportunity* for citizens to voice their concerns been:

A. excellent
B. good
C. adequate
D. poor
E. very poor

( )

5. How would you characterize northerners' *awareness of opportunities* to participate in northern EIA?

A. highly aware
B. aware
C. marginally aware
D. unaware
E. completely unaware

( )

6a. What groups, individuals or government agencies *should be involved* in northern EIA?

Please identify and explain.

6b. What groups, individuals or government agencies *should not be involved* in northern EIA?

Please identify and explain.

7a. What is your opinion concerning the *provision of public funds* to individuals or groups wishing to appear at environmental reviews?

A. strongly in favour
B. in favour
C. neutral
D. opposed
E. strongly opposed

( )

7b. If you have marked A or B in response to question 7a, to whom do you feel such funds should be provided?

Please identify and explain.

8. In your opinion, *public participation* in northern EIA generally has been:

A. highly effective
B. effective
C. marginally effective
D. ineffective
E. highly ineffective

( )

9. In your opinion, how have the following factors affected *public participation effectiveness* in northern EIA?

| | | |
|---|---|---|
| I) | understanding of the appropriate role of EIA | ( ) |
| II) | understanding of the appropriate scope of EIA | ( ) |
| III) | amount of procedural overlap in EIA | ( ) |
| IV) | access to EIA processes | ( ) |
| V) | availability of funds to participate | ( ) |
| VI) | availability of information relating to projects under consideration. | ( ) |
| VII) | credibility of northern EIA | ( ) |

Please select the appropriate descriptor and insert the letter key in the bracket.

A. greatly increased
B. increased
C. not affected
D. reduced
E. greatly reduced

10. What *other factors* have positively or negatively affected public participation in northern EIA?

Please identify and explain.

## SECTION TWO

### Questions related to the Effects of Land Claims

11. In your opinion, how will the settlement of the *Inuvialuit, Western Arctic land claim affect*:

| | | |
|---|---|---|
| I) | understanding of the appropriate role of EIA | ( ) |
| II) | understanding of the appropriate scope of EIA | ( ) |
| III) | amount of procedural overlap in EIA | ( ) |
| IV) | access to EIA processes | ( ) |
| V) | availability of funds to participate | ( ) |
| VI) | availability of information relating to projects under consideration. | ( ) |
| VII) | credibility of northern EIA | ( ) |

Please select the appropriate descriptor and insert the letter key in the bracket.

A. greatly increase
B. increase
C. not affect
D. reduce
E. greatly reduce

12. What *other effects* will the Inuvialuit, Western Arctic land claim agreement have on public participation in EIA?

Please identify and explain.

13. In your opinion, how will the Inuvialuit Western Arctic land claim agreement affect *public participation by native northerners*? It will it be:

A. greatly increased
B. increased
C. not affected
D. reduced
E. greatly reduced

( )

14. In your opinion, how will the Inuvialuit Western Arctic land claim agreement affect *public participation by non-native northerners*? It will it be:

A. greatly increased
B. increased
C. not affected
D. reduced
E. greatly reduced

( )

15. How will the *general effectiveness of public participation* in northern EIA be affected by the Inuvialuit Western Arctic land claim agreement? It will it be:

A. greatly increased
B. increased
C. not affected
D. reduced
E. greatly reduced

( )

## SECTION THREE

### Questions related to Political Devolution

16. How would you characterize the *role of territorial governments* in northern EIA? It is:

A. highly influential
B. influential
C. neutral
D. uninfluential
E. highly uninfluential

( )

17. Are you in favour of a *greater role for territorial governments* in northern EIA?

A. strongly in favour
B. in favour
C. neutral
D. opposed
E. strongly opposed

( )

18. In your opinion, are territorial governments likely to obtain responsibility for northern EIA within the next ten years?

yes ( ) no ( ).

*If you have answered 'no' to question 18, your questionnaire is complete - Thank you.*

*If you have answered 'yes' to question 18., please consider the the two concluding questions on the following page.*

19. In your opinion, how would the *transfer of EIA responsibilities* to territorial governments alter:

| | | |
|---|---|---|
| I) | understanding of the appropriate role of EIA | ( ) |
| II) | understanding of the appropriate scope of EIA | ( ) |
| III) | amount of procedural overlap in EIA | ( ) |
| IV) | access to EIA processes | ( ) |
| V) | availability of funds to participate | ( ) |
| VI) | availability of information relating to the project under consideration. | ( ) |
| VII) | credibility of northern EIA | ( ) |

Please select the appropriate descriptor and insert the letter key in the bracket.

A. greatly increase
B. increase
C. not affect
D. reduce
E. greatly reduce

20. How would the *general effectiveness of public participation* in northern EIA be affected by the transfer of responsibility for northern EIA from the federal to the territorial level? It would be:

A. greatly increased
B. increased
C. not affected
D. reduced
E. greatly reduced

( )

# *APPENDIX II*

## *PRELIMINARY CONTACT LIST*

CALGARY - Sep. 12 - Sep. 16

| | |
|---|---|
| 1. Bill Pierce | - V-P. Interprovincial Pipelines |
| 2. Ash Bhasin | - Gulf Canada |
| 3. Ed Pessah | - Dome Petroleum |
| 4. Mike Robinson | - Arctic Institute. of N. America, |
| 5. Constance Hunt | - CIRL, U. of Calgary |
| 6. Janet Keeping | - CIRL. U of Cal. |
| 7. Gerry Kruk | - Shell Canada |
| 8. Michelle Scott | - Petro-Canada |
| 9. Peter Coolican | - econ devel. for Inuvialuit |
| 10. Tom Beck | - N. Land Use Planning Comm. |

YELLOWKNIFE Sep. 16 - Sep. 21.

| | |
|---|---|
| 1. Ron Livingston | - Development Policy GNWT |
| 2. John Bayly | - former lawyer for Dene |
| 3. Andrew MacPherson | - DG, DIAND for NWT |
| 4. Brian Wilson | - Dir. Env. Policy, DOE |
| 5. Leitha McLaughlin | - Dene Nation Lawyer |
| 6. Ewan Cotterill | - Inuv. Screening Comm. |
| 9. Ben Hubert | - Land Use Planning |
| 10. Hal Mills | - Land Use Planning |
| 11. Ian Robertson | - Land Use Planning |
| 12. Peter Hart | - NWT Energy Secretariat |
| 13. Peter Allen | - NWT Devolution Secret. |

| | |
|---|---|
| 14. Charles Overvold | - Aboriginal Rights GNWT |
| 15. Tom Nesbitt | - COPE land use planning |
| 16. Richard Nerysoo | - MLA |
| 17. Tom Butters | - MLA Inuvik |
| 18. Kevin Lloyd | - Director Wild. Mgt. |
| 18. Jamie Bastedo | -Policy Analyst GNWT |
| 19. Titus Allooloo | - NLUP Comm |
| 20. Bob Gamble | - Parks Canada |

INUVIK - Sep. 23 - Sep. 26.

| | |
|---|---|
| 1. Doug Billingsley | - Businessman |
| 2. Dick Hill | - Businessman |
| 3. Sam Radii | - formerly with COPE |
| 4. Inuvik Drum | - local paper |
| 5. Alex Aviugana | - Inuv. Reg. Corp. |
| 6. Roger Allen | - COPE |
| 7. John Ostrick | - Research Centre |
| 8. CANMAR | |
| 9. Esso Resources | |
| 10. Inuv. Devel. Corp. | |
| 11. R.Res.&Eco. Dev. | |
| 12. Edward Elanik | |
| 13. Billy Day | - Env. Screen. Comm. |
| 14 Roger Gruben | - Env. Review Board |
| 15. Town of Inuvik | |

TUKTOYAKTUK Sep. 26 - Sep. 28.

1. Gulf Base camp

2. Beaudril

3. Roger Gruben - Env. Review Board

4. Frank Pohiak - Env. Screen. Comm.

WHITEHORSE - Sep.28 - Sep 30

1. Lindsay Staples - CYI

2. Nancy MacPherson - B. Sea Alliance

3. Tim McTiernan - YTG

4. Nora Kassi - MLA

5. John Lawson - Devolution Secrt.

6. Rob McWilliam - Dir. Econ. Planning and Pol.

7. Yvonne Harris - Lands and Regional Planning

VANCOUVER Sep. 30 - Oct 4.

1. David Marshall - FEARO

2. William Rees - UBC

3. Andrew Thompson - Westwater, UBC

4. Harriet Ruegeberg - Westwater

7. Bob Hornal - Land Use Plan Comm.

VICTORIA

1. Carson Templeton

2. Everitt Peterson

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## PERSONAL COMMUNICATION

Allen. 1987. - Roger Allen
- President
- Committee for Original Peoples Entitlement
- September, 23, 1987
- September, 26, 1987
- Inuvik

Barton. 1987. - Barry Barton
- Canadian Institute for Resources Law
- September, 15, 1987
- Calgary

Billingsley. 1987. - Doug Billingsley
- Businessman
- September 22, 1987
- Inuvik

Blais. 1987. - J. Louis Blais
- Gulf Canada Resources Ltd.
- February 15, 1987
- Ottawa

Bregha, 1987. - François Bregha
- Director, Northern Conservation
- Environment Canada
- January 14, 1987.
- Ottawa

Brynaert. 1987. - Ken Brynaert
- Canadian Wildlife Federation
- February 16, 1987
- Ottawa

Cockney. 1987. - Rudy Cockney
- Environmental Impact Screening Committee
- DIAND Regional Manager
- September 23, 1987
- Inuvik

Cotterill. 1987 - Ewan Cotterill
- Chairperson
- Environmental Impact Screening Committee

- September 17, 1987
- Yellowknife

Crombie. 1987.
- Marg Crombie
- Chairperson
- Regional Environmental Review Committee
- DIAND
- September 29, 1987
- Whitehorse

Demchuk. 1987.
- Bruce Demchuk
- Economic Development: Mines and Small Business
- Yukon Territorial Government
- September 29, 1987
- Whitehorse

Duffy, 1987.
- Patrick Duffy
- Director, Northern Region
- FEARO
- September 1, 1987.
- Ottawa

Duinker, 1987.
- Peter Duinker
- Environment Program
- International Institute for Applied Systems Analysis
- letter to the researcher
- February 19, 1987.

Erickson. 1987.
- Wanda Erickson
- Land Use Planner
- Northern Land Use Planning Commission
- Beaufort Sea/Mackenzie Delta Region
- September 22, 1987
- Inuvik

Ethics Committee. 1987.
- University of Ottawa Research Ethics Committee
- letter to the researcher
- September 1, 1987.

Fenge. 1987.
- Terry Fenge
- Tungavik Federation for Nunavut
- January 26, 1987
- Ottawa

Gibson. 1984.
- Robert Gibson
- Beaufort Sea Alliance
- University of Waterloo
- August 14, 1984.

Glaholt. 1987.
- Randall Glaholt
- Environmental Impact Screening Committee
- Government of the Northwest Territories
- September 22, 1987

- Inuvik

Hazell. 1987.
- Stephen Hazell
- Canadian Wildlife Federation
- February 16, 1987
- Ottawa

Himmer. 1987.
- Stephan Himmer
- Resource Person
- Inuvialuit Joint Secretariat
- September 22, 1987
- Inuvik

Hodges, 1987.
- Jim Hodges
- Assistant Director
- Environment Group
- National Energy Board
- March 22, 1987
- Ottawa

Hoos. 1987.
- Rick Hoos
- Dome Petroleum Ltd.
- September 14, 1987
- Calgary

Hoos. 1984.
- Rick Hoos
- Dome Petroleum Ltd.
- August 17, 1984
- Calgary

Hubert. 1987.
- Ben Hubert
- Chairperson
- Northern Land Use Planning Commission
- September 18, 1987
- Yellowknife

Hurst. 1987.
- Rick Hurst
- Chairperson
- Regional Environmental Review Committee (NWT)
- September 21, 1987
- Yellowknife

Keeping. 1987.
- Janet Keeping
- Canadian Institute for Resources Law
- September; 15, 1987
- Calgary

Kennedy. 1987.
- Gay Kennedy
- Project Assessment Co-ordinator
- Government of the Northwest Territories
- September 18, 1987
- Yellowknife

Kruk. 1987.
- Gerry Kruk

- Manager - External Relations
- Shell Canada Limited
- September 15, 1987
- Calgary

Livingston. 1987.
- Jim Livingston
- Gulf Canada Resources Ltd.
- September 14, 1987
- Calgary

MacFarland. 1987.
- Fred MacFarland
- A/Chief
- Environmental Assessment Division
- DIAND
- February 29, 1987
- Ottawa

Marshall. 1984.
- David Marshall
- Beaufort Sea EA Panel Secretary
- FEARO
- August 16, 1987
- Vancouver

Matthews. 1987.
- Lorne Matthews
- Regional Planning Advisor
- Government of the Northwest Territories
- September 17, 1987
- Yellowknife

M$^{c}$Comb. 1987.
- Murray M$^{c}$Comb
- Parks Canada
- Environment Canada
- February 5, 1987
- Ottawa

M$^{c}$Kenzie. 1987.
- Bruce M$^{c}$Kenzie
- Environmental Advisor
- Gulf Canada Resources
- September 24, 1987
- Tuktoyaktuk

Merritt, 1987.
- John Merritt
- Executive Director
- Canadian Arctic Resources Committee
- January 23, 1987.
- Ottawa

Nesbitt. 1987.
- Tom Nesbitt
- Consultant
- September 18, 1987
- Yellowknife

Ramsay, 1984.
- John Ramsay
- Environment Group

- National Energy Board
- June 6, 1984.
- Ottawa

Redshaw. 1987.
- Arthur Redshaw
- Chief, NWT Programs
- Inland Waters/Lands,
- Environment Canada
- September 18, 1987
- Yellowknife

Rees. 1987.
- William Rees
- Professor
- University of British Columbia
- October 1, 1987
- Vancouver

Sullivan, 1987.
- B. Sullivan
- Beaufort Sea DIZ Society
- September 25, 1987.
- Inuvik

Tanguay. 1987.
- Judith Tanguay
- Senior Policy Analyst
- Northern Policy Directorate
- DIAND
- Ottawa

Wagner. 1987.
- Gary Wagner
- Resource Person
- Inuvialuit Joint Secretariat
- September 22, 1987
- Inuvik