THE IMPACT OF DEVOLUTION ON THE REGULATORY REGIME OF THE INUVIALUIT SETTLEMENT REGION

A Thesis Submitted to the College of Graduate Studies and

Research in Partial Fulfillment of the Requirements for the

Degree of Master of Arts in the Department of Political Studies

University of Saskatchewan

Saskatoon

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PERMISSION TO USE

AKNOWLEDGEMENTS

Much gratitude is owed to my two thesis supervisors, Dr. Greg Poelzer and Dr. Bram Noble, for their unwavering advice, support and encouragement through the entire process of researching, writing, and editing this thesis. I am also indebted to the members of my committee, and indeed to the Department of Political Studies at the University of Saskatchewan, which presented me with phenomenal opportunities to travel, research, and to learn from some truly gifted thinkers. Thank you to Dr. Hans Michelmann and Dr. Joseph Garcea for the opportunity to study in Saskatoon, and to the Honourable Roy Romanow for his wisdom and mentorship.

I owe as much gratitude as I do money to my parents, Nancy and Scott, for their emotional and economic support and unlimited faith in me. To my siblings, Brad, Katie and Jason, for being there to make me smile whenever I was home to visit, and to my niece, Avery, who is the most positive distraction a graduate student could ever ask for. The encouragement of my friends, particularly Nic, Cody, Beth, Mélissa, as well as the wonderful people of the Yellow House is truly appreciated. And many thanks are owed to Talis whose wisdom and support played a huge role in this chapter of my life.

ABSTRACT

In the Beaufort Sea/Mackenzie Delta region of the Northwest Territories, devolution has reconfigured institutional arrangements responsible for managing oil and gas development. Today, a diversity of perspectives exist regarding constraints to oil and gas development within the regulatory regime that has emerged from the process of devolution. This thesis identifies the strengths and limitations of the regulatory regime that has emerged from the process of devolution, as well as where perceived problems and challenges may have been exaggerated. In such cases, first impressions as opposed to actual experience with the regulatory system, as well as confusion stemming from the existence of two separate regulatory regimes in the NWT contribute to negative perceptions of the regime.

ABBREVIATIONS

BSP – Beaufort Sea Partnership

CEAA – Canadian Environmental Assessment Agency

CAPP – Canadian Association of Petroleum Producers

COPE - Committee for Original People's Entitlement

DFO – Department of Fisheries and Oceans

EA – Environmental Assessment

EIA – Environmental Impact Assessment

EIRB – Environmental Impact Review Board

EISC – Environmental Impact Screening Committee

FJMC – Fisheries Joint Management Committee

GNWT – Government of the Northwest Territories

HTC – Hunters and Trappers Committee

IDC – Inuvialuit Development Corporation

IFA - Western Arctic (Inuvialuit) Final Agreement

IGC – Inuvialuit Game Council

IIC – Inuvialuit Investment Corporation

ILA – Inuvialuit Land Administration

INAC – Indian and Northern Affairs Canada

IRC - Inuvialuit Regional Corporation

ISR – Inuvialuit Settlement Region

LOMA – Large Ocean Management Area

MVRMA – Mackenzie Valley Resource Management Act

NWT – Northwest Territories

RCC – Regional Coordination Committee

WMAC – Wildlife Management Advisory Council

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Introduction

1.1 Problem and Context of Study

The signing of the Inuvialuit Final Agreement in 1984 represented an historic step in the devolution of powers from the federal government to local authorities in Canada's North. The Agreement fundamentally reconfigured institutional arrangements in the Beaufort Sea and Mackenzie Delta region of the Northwest Territories, and enhanced the decision-making capacity of the Inuvialuit people to influence and benefit from the development of oil and gas resources in the Inuvialuit Settlement Region (ISR) (Fig. 1).

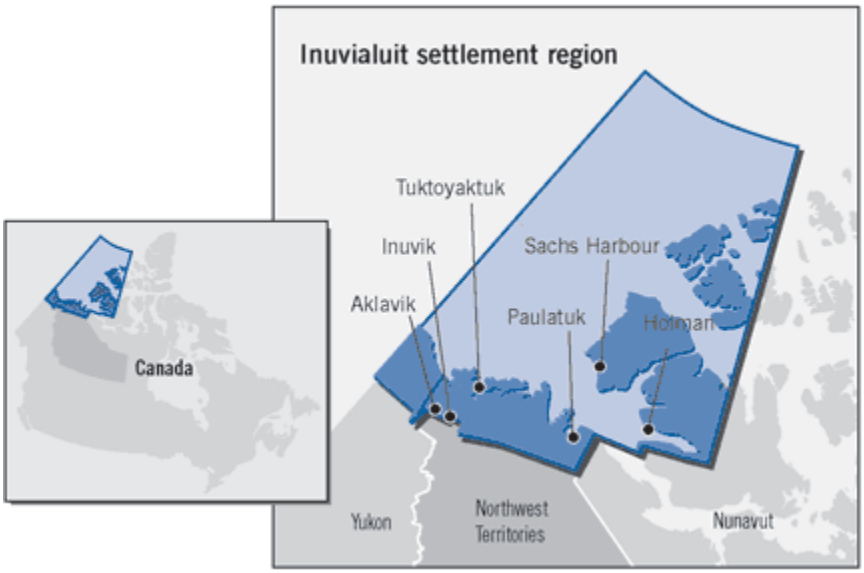

Figure 1. Geographic location of the Inuvialuit Settlement Region. (Office of the Auditor General, 2007).

At the core of these devolved institutional arrangements is an integrated, decentralized approach to regulation, reflecting recognition on the part of legislators that Inuvialuit people have the right

to meaningfully participate in discussions of what should or should not happen to the land upon which they have depended and thrived for generations. In the nearly three decades that have passed since the signing of the Agreement and the legal establishment of the ISR, however, a warming climate and uncertain global energy supplies have served to heighten demand for energy-development in the Canadian North. These drivers have led to an increasing need for a regulatory approach to managing oil and gas resource development that can effectively balance the varying interests of stakeholders - communities, environmental groups, industry, and regulators – in meeting global energy demands and managing the impacts of energy development on climate change and regional and local socioeconomic and biophysical environments.

Today, a diversity of perspectives exist regarding the limitations and constraints to oil and gas development and regulation in the ISR. Some voices in industry, for example, argue that the regulatory regime of the ISR is overly complicated and deters exploration and development activity (Canadian Association of Petroleum Producers 2008, Dixit et al. 2008, Harrison 2006), thus preventing opportunities for Inuvialuit communities to benefit from energy resource development. Further, some government and industry actors identify an apparent confusion over the roles and responsibilities of those involved in development and applying regulations (Canadian Association of Petroleum Producers, 2008, McCrank 2008, INAC, 2005). Underscoring such concerns over the management of oil and gas development in the region, the federal government has recently committed nearly $22 million for research in the Beaufort Sea to assist regulators in their decision-making capacity in relation to oil and gas exploration and development (INAC, 2010).

Conversely, environmental groups and researchers have argued that concerns regarding the complexity and capacity of the regulatory regime are exaggerated; they emphasize strengths

to the regulatory regime (Alternatives North, 2008) and argue that it is no more complicated than that of other northern jurisdictions (INAC, 2005). Further, one could argue that devolution, through the Inuvialuit Final Agreement, may have in fact strengthened the ability of developers to operate in the Beaufort region, as Inuvialuit communities have generally been supportive of resource development, often in contrast to the neighbouring regulatory environment of the Mackenzie Valley Resource Management Act (MVRMA).

The problem is that there has been limited critical analysis of the regulatory regime as it applies to the Beaufort region. Much of the analyses of the regulatory systems in the Northwest Territories have up to this point taken the form of government reports (INAC 2005, INAC 2009a, McCrank, 2008), academic papers describing geographic research (Armitage, 2004, Christensen et al., 2007), or criticisms of the findings of others (Alternatives North, 2008, Charlie and Simpson, 2008). Although such analyses provide valuable insight into the diversity of perspectives regarding the overall functionality of the regulatory systems of the territory, they arrive at what are often conflicting conclusions.

Specific to the Inuvialuit Settlement Region, much of the research to date has tended largely to focus on governance and environmental issues related to the regulatory regime (Cameron and White, 1995, Fitzpatrick et al., 2008, Hamilton, 1994, Kulchyski, 2005, Wilson, 2005,) and much less on the structure and efficacy of the regime itself. Such research is valuable, however, in providing background and context to the regulatory system that has emerged and does serve to inform this thesis. In addition, the research on regulatory policy in the NWT has tended to focus on the area regulated under the MVRMA with far less emphasis on the ISR. In some cases this is stated in the contents of the documents, such as the McCrank Report, in which it is specified: “This review also includes an examination of the common

themes across the ISR, but the focus is on the regulatory system covered by the MVRMA" (2008, p.2). In other cases, however, emphasis is on broad regulatory issues in the territory with little if any distinction between the separate regimes (INAC, 2005, CAPP, 2008). This creates the possibility that perceived problems with regulatory policy in the Mackenzie Valley are simply being extrapolated to the ISR.

The purpose of this thesis is to examine the consequences of devolution on resource management and environmental assessment in the Inuvialuit Settlement Region of the NWT. Drawing on information collected from document review and semi-structured interviews, this thesis identifies and assesses the strengths and limitations of the regulatory regime that have emerged from the process of devolution, as well as where perceived problems and challenges may be exaggerated and why. Specifically, this thesis examines the following questions:

1. How has devolution shaped the policy environment of the ISR?
2. What are the current regulatory and procedural challenges to EA and approvals for oil and gas development in the ISR? Why do they exist? Are they being exaggerated?
3. Are regulatory and procedural challenges to EA and approvals for oil and gas development in the ISR exacerbated or diminished as a result of devolution in the NWT?

1.2 Research methods

This thesis conducts a policy analysis of the regulatory regime established in the ISR with the settlement of the Inuvialuit Final Agreement. Policy analysis "represents the efforts of actors inside and outside formal political decision-making processes to improve policy outcomes by applying systematic evaluative rationality" (Howlett & Lindquist, 2007, p.87). Put simply, policy analysis is "the disciplined application of intellect to public problems" (Pal, 2010, p.13). Following the approach presented by Dunn (2008), the research will use multiple methods of inquiry to inform the analysis and to provide insight into potential policy problems in the ISR.

In conducting policy analysis, it is important to recognize that there are likely to be varying perspectives among stakeholders, particularly in policy arenas where devolution has distributed roles and responsibilities of governance to multiple actors. In their review of policy analysis in Canada, Howlett and Lindquist acknowledge the complexity of the Canadian case: "It is difficult to overstate the complexity of Canadian federalism and its supporting policy institutions in such a huge, regionally and linguistically diverse country with provinces and territories of starkly different fiscal, population, and land bases (2007, p.98). In considering varying perspectives as they appear in existing analyses of the regulatory system of the ISR, the thesis draws from the principles of the "case survey method" of Heald and Yin (1975), which "works best when the studies consist of a heterogeneous collection of case studies. The reviewer's main task then is to aggregate the characteristics, but not necessarily the conclusions, of these cases" (p.371).

The thesis will seek further guidance from Ripley's features of "good science" in policy analysis (1985), which calls for the identification of patterns and the relationships between

patterns. Since devolution is an ongoing process, and the ISR regime a consequence of that ongoing process, we cannot point to a specific moment which could then be viewed as the independent variable with the regime as the dependent variable. The research approach then necessitates a case study strategy as an empirical inquiry that "investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident," and multiple sources of evidence are used (Yin, 2003, p.23). With further guidance from Pal's model of the "logical analysis," the thesis applies a qualitative approach to policy analysis, as a qualitative case study. Pal's approach allows the researcher to evaluate a policy in terms of its internal, vertical and horizontal consistency "and whether it makes sense" (2010, p.17). The thesis will also go beyond a logical policy analysis by considering not only the *intended* effects of policy decisions in the ISR, but the *actual* effects of policy through empirical policy analysis (Pal, 2010).

Through triangulation, the thesis will examine the ISR's regulatory regime as it relates to oil and development through a number of approaches. Triangulation is "the use of multiple methods, databases, theories, disciplines and/or investigators to study the same object, event or phenomenon" (Roe, 1998, p.85) and is used to inform the research, drawing on document review and semi-structured interviews. In addition to existing monographs, the use of government documents at both the territorial and federal level provided much of the basis for background information on devolution and territorial history. Further information on the regulatory regime is gathered with the review of relevant academic papers. To investigate the varying perspectives on resource management in the Beaufort, particular attention is given to reports prepared by industry, environmental groups and Northerners.

Table 1. Sample of key documents and reports reviewed during the data collection process

Author	**Title**	**Year**
INAC	*2005 NWT Environmental Audit*	2005
INAC, Neil McCrank	*Road to improvement: the review of the regulatory systems across the North*	2008
Arctic Journal. Harrison, C	*Industry perspectives on barriers, hurdles, and irritants preventing development of frontier energy in Canada's Arctic Islands*	2006
Alternatives North	*A response to the "road to improvement" report by Neil McCrank on regulatory systems across the North*	2008
Arctic Journal. Dixit, B., Millman, P., Reid, J., Sparkes, A., Voutier, K.	*Sustainable energy development in Canada's Mackenzie Delta – Beaufort Sea coastal region*	2008
Canadian Association of Petroleum Producers	*Northern regulatory improvement initiative: a submission to Neil McCrank*	2008
Charlie, R., Bob Simpson	*A joint response from the Gwich'in Settlement Area to: road to improvement "the review of the regulatory systems across the North."*	2008

Further insight into regulatory strengths and challenges in the Beaufort is gained by conducting semi-structured interviews with individuals bearing knowledge and/or experience with regulatory issues in the Inuvialuit Settlement Region. Two individuals with the Canadian Environmental Assessment Agency (CEAA), one individual with the National Energy Board, and one representative of the Inuvialuit Regional Corporation are interviewed by phone in February of 2011. Interviews conducted by Ketilson (2011) provide further insight, as her

research explores similar themes as part of a broader research initiative of which this thesis is part of. In both cases, participants are asked what they perceive to be the central strengths of and challenges to the regulatory regime of the Inuvialuit Settlement Region, particularly as such strengths and challenges relate to offshore oil and gas development. The responses offered a wide range of perspectives which served to inform the thesis.

1.3 Thesis structure

This thesis is presented in five chapters, including the Introduction. Chapter two focuses on the process of devolution and recent history of the region towards an integrated, decentralized approach to regulation in the NWT, specifically in the Inuvialuit Settlement Region. Attention then turns to an overview of the regulatory system that has emerged, examining the structural basis of the existing regime by exploring the various Acts and legislation that define it, as well as the boards, organizations and corporations that have emerged as result. Next, supposed problems associated with the regulatory regime are discussed, as reported in both the 2005 NWT Environmental Audit and the McCrank Report, and further revealed in the responses of stakeholders to these documents. An understanding of the legislative underpinnings of the regulatory regime provides insight to possible explanations for the challenges associated with oil and gas development and environmental assessment in the region, such as areas where responsibilities are not clearly defined or are overlapping. Based on this information, a description of the regulatory process in the Inuvialuit Settlement Region is presented to explain how it actually operates and how oil and gas development projects currently manoeuvre through the system. A communication matrix is then presented to illustrate the jurisdictional

responsibilities of the stakeholders, to identify those areas in which perspectives and responsibilities are unclear or overlap, consequentially producing conflict and disagreement among diverging interests. Central problems and issues associated with the current regulatory regime as it relates specifically to oil and gas development are identified, providing insight into areas requiring further research, as well as possible recommendations for clarifying or adjusting the existing regulatory regime. Finally, the role that devolution has played in affecting resource development in the Beaufort Sea/Mackenzie Delta is discussed.

Chapter Two

Background and Literature Review

2.1 Introduction

In recent decades, governance in Canada's Northern territories has transformed dramatically. Contrasting Ottawa's distant colonial administration of the past, today's territories exercise provincial-like responsibilities, and have been significantly impacted by the negotiation and settlement of land-claims. This decentralizing process of transferring powers and responsibilities from a central government to smaller, regional levels of government is known as devolution. Understanding the history of this process in the Northwest Territories (NWT) is essential to understanding the regulatory regime that was established with the signing of the Inuvialuit Final Agreement (IFA). As such, this chapter describes the historical process of devolution in the Territory and the parallel Aboriginal land claims negotiations and agreements, with particular attention on the IFA and the key organizational bodies established through the Agreement.

2.2 Devolution

In the Canadian North, few significant political events have occurred in recent decades that were not directly connected to the process of devolution (White, 2011). Devolution describes the transfer of authority from a senior level of government to a junior level, and can be viewed as both a theoretical concept and as an administrative process (Dacks, 1990): "viewed theoretically, devolution can be seen as an instance of decolonization which can be usefully related to literature on political development.... Viewed as an administrative process, the study of devolution can contribute to understandings of institutional change in general, and… to particular issues of development administration…" (p.5-6). There are two dimensions to the concept:

> Decentralization (devolution) has a spatial aspect in that authority and responsibility are moved to organizations and jurisdictions in different physical locations, from the center to the local level. And it has an institutional aspect in that these transfers involve reallocating roles and functions both within government, from one central government agency to lower-level jurisdictions and agencies; and between government and civil society, through service coproduction and partnerships as well as joint policymaking and feedback mechanisms (Brinkerhoff, D., Brinkerhoff, J. & McNulty, 2007, p.190-191).

Clancy relates this insight to the northern context, arguing: "The fact that devolution combines a spatial with an institutional dimension emphasizes that it is pre-eminently a program for northern resident interests, straining against absentee or remote political control" (1990, p. 14-15).

Viewing the regulatory regime of the ISR through the lens of devolution provides context for understanding the system that has emerged with the process, and is vital to understanding the relationships between multiple levels of governance and numerous organizations and co-management bodies in such a decentralized political arena: "The unique nature of many self-

government arrangements and the diversity of organizations that play a role in intergovernmental relations between Aboriginal peoples and federal, provincial and municipal governments requires a flexible framework of analysis that takes into consideration both traditional and non-traditional actors and institutions" (Wilson, 2008, p.74).

Arguments favouring the devolution of powers and resources to local levels of governance emphasize that the enhanced decision-making power, authority and control over resources play a pivotal role economic and social development (Cheema and Rondinelli, 2007). They contend that devolution will result in increased citizen participation in local political processes where "local governments are perceived to have the capacity to make political and financial decisions affecting their economic and social welfare" (p.12). The improved allocation of resources is the most common theoretical argument for decentralization (Azfar, Kahkonen, Lanyi, Meagher & Rutherford, 2004). By bringing government closer to local people, it is asserted that the government will be better informed to local needs and preferences, resulting in increased accountability and enhanced responsiveness of officials and government at the empowered local or regional level (Oates, 1972, Brinkerhoff et al., 2007).

Where Aboriginal peoples are involved, research links Aboriginal economic development with successful self-government (Calliou, 2008), and as such, self-government tends to be the objective that many First Nation leaders advocate for through negotiations with government. The settling of land claims is a significant step towards self-government, as comprehensive land claim agreements provide a legal and institutional basis from which Aboriginal peoples can gradually acquire further powers and responsibilities (Papillon, 2008). Interestingly, in Canada's Territories, the advocacy of devolution to the level of self-government for First Nations and Inuit communities actually impedes devolution at the territorial level. On

the issue of territorial control over resources, First Nations and Aboriginal communities in the territories "frequently see the territorial governments as illegitimate, usurping powers and resources that rightfully belong to them" (White, 2011, p.757), and often oppose the territorial pursuit of provincial-status unless their regional claims are resolved or resource revenue sharing agreements are signed (McArthur, 2009).

There is, however, no consensus on the perceived benefits of legally recognized self-government (Belanger, 2008, Alcantara, 2008). There are also conflicting perspectives in the academic realm regarding the desirability and potential consequences of devolution and political decentralization. Arguments against decentralization fall into two categories, focusing either on national effects or local effects (Azfar et al., 2004). At the national level, scholars have argued that the establishment of sub-national (or sub-provincial/territorial) governments can lead to fiscal deficits, as local government debts are reluctantly absorbed by the central government (Azfar et al., 2004, Treisman, 2007). At the local level, rather than increasing democratic accountability, it has been argued that local elites can benefit disproportionately from devolution, effectively creating "authoritarian enclaves" in local settings (Diamond, 1999., Hutchcroft, 2001).

Shackleton et al., (2002) suggest that arguments favouring devolution (specifically in relation to natural resource management) typically amount to little more than rhetoric. We are cautioned that general presumptions in favour of decentralization are "hard to justify" (Treisman, 2007, p.246), as it is difficult to identify specific political conditions that will result in positive or negative effects (Treisman). It has been further argued that political decentralization can result in unfulfilled expectations and unanticipated problems (Grindle, 2007), and in some cases, "devolution of legal powers and administrative responsibilities to subnational units of

government has left some localities ill-prepared and unequipped to meet the demands placed upon them in the complex intergovernmental system" (McGuire et al, 1994, p.426).

In the Canadian context, the past three decades have seen the power and authorities of the territorial governments and Inuvialuit, First Nations, and Metis communities in the territories grow considerably. This is not only a reflection of the desire of Northerners and their governments for greater decision-making capacity regarding political and economic issues affecting their communities, but also reflects recognition by the federal government that those best able to govern Northern communities are Northerners themselves (White, 2002). Through the transfer of provincial-like authorities from the federal government to the territories, devolution and Aboriginal land claims agreements have fundamentally reshaped governance and development in the Canadian North (Kulchyski, 2005, Funston, 2007).

In the NWT, devolution was advocated on the grounds that the sheer size of the territory required regional governance structures for rational administration, and that enhanced power and responsibilities at the local level would allow for greater levels of political participation amongst racial minorities (Weller, 1990). As a result, governance in the NWT today allows for increased flexibility, as well as stronger regional and local control; it also reflects the complex and diverse interplay of intergovernmental relations in the North. But it is possible that devolution may have led to some of the unanticipated consequences described above, specifically in those areas identified by stakeholders as regulatory challenges or perceived weaknesses with the regulatory regime. To provide background to today's regulatory environment in the NWT, this chapter turns to a review of federalism and the political history of the Territory, with the Aboriginal land claims negotiations and agreements that have emerged through the process of devolution.

Particular attention is given to the Inuvialuit Final Agreement (IFA) and the key organizational bodies established with its signing.

2.3 Federalism in the NWT

Contemporary governance in the NWT is complex: the territory does not enjoy constitutional recognition as an order of government, and Aboriginal land claims play an enormous role in intergovernmental relations. Lacking the constitutional recognition that its provincial counterparts enjoy, the NWT operates under the legislative jurisdiction of the federal government, and as such, one might expect that this would be preferential to the complicated, often adversarial relationship between the federal government and the provinces. White (2002, p.89), for example, notes that "Among the most pressing problems facing the Canadian federation, those involving the accommodation of Aboriginal people's rights, aspirations, and interests arguably raise the most fundamental and most difficult governance issues." The added remoteness of many Northern communities, and the diversity of interests between industry stakeholders, government administrators, non-governmental organizations, and between northern residents themselves, illustrate that there is no "one size fits all" administrative approach to be taken. As such, the relationships between the territories and the federal government have evolved to accommodate such challenges and interests.

In the NWT, for example, accommodation and the shift to democratic representation is a relatively recent development. For much of the territory's history, it was unrepresentative of Northern people, who were primarily of Dené, Métis, or Inuit descent, and it was governed by administrators rather than politicians (Kulchyski, 2005). When the federal government did begin considering the social and economic circumstances of the Aboriginal population living

throughout the territory, it did so largely out of self-interest relating to mining activities, and later, oil and gas development (Alunik et al, 2003).

Such were the motivating factors of the numbered treaties relevant to the region. For example, "Treaty Eight (1899) was negotiated because of the gold rush in the Yukon; … Treaty Eleven (1921) was negotiated because of fears of an oil rush after non-Natives learned from Dené about oil at Norman Wells on the Deh Cho in 1920" (Kulchyski, 2005, p. 81). As Abele (2005) argues, "political development (in the North) has always followed externally generated pressures for resource development" (p.226).

This was the case with Treaty 8 and Treaty 11, where in both cases the treaties sought to govern relations between the Canadian government and Aboriginal people, as well as to assure that the Crown had control over Indigenous lands (Abele, 2005). There was little desire on the part of the federal government to sign treaties in other parts of the territory. "The policy was not to talk about a treaty until it was needed for mineral development or the opening up of land for settlement" (Hamilton, 1994, p.69), and as such, beyond treaties 8 and 11, no other treaties were signed involving any regions of the NWT. This allowed colonial administration of the territory to continue unabated into the middle of the twentieth century, with general indifference on the part of government to the social and political circumstances of Aboriginal people. "Non-interference in the lives of Northern Aboriginal peoples was the standard policy through the first half of the 20th century, reflecting more on the difficulties, cost, and lack of interest associated with integrating northern communities into the growing Canadian society rather than a benevolent intention on the part of the federal government to maintain Northern cultures" (Alunik et al., 2003, p.162).

Gradually, however, commitments to health, education and social welfare grew in the North as with the broader country during the post-war period (Clancy, 1990). In addition, the increased presence of non-Aboriginal Canadians in the North, largely relating to military operations, reduced the relative isolation of many Aboriginal communities, and generally increased awareness amongst southerners of the poor health conditions in Northern communities (Abele, 2005). Accordingly, the principles of non-interference and general indifference began to change in the 1950s, characterized by increased emphasis on social welfare. The result of this, for better or for worse, was an increased federal role in the North, and a transition in the approach of the federal government from one of indifference to one of paternalism.

This role was to be largely based on the assumption that Aboriginal culture was disappearing, and that the adoption of Canadian mainstream culture and the market economy was necessary and inevitable. Justice Thomas R. Berger describes the programs initiated during this period:

> The short-run-solution to the Northern crisis was the provision of health and welfare measures. The long-run solution was the education of Native people to enable them to enter the wage economy. The Native people who were still living in the bush and on the barrens had to live in the settlements if they were to receive the benefits of the new dispensation, and if their children were to attend school (Berger, 1998, p.131).

Prime Minister Diefenbaker's "Road to Resources" strategy for development in the North focused even more attention on the need to respond to the social problems plaguing many Inuit and First Nation communities. Administering new programs and overseeing developments required considerable expansion of government services in the North, and the viability of administration out of Ottawa became less realistic (Cameron & White, 1995, p.48-49).

The development of government social services in the North demanded that Inuit groups that had previously lived in different areas at different times (relating to the migratory patterns of wildlife and traditional activities) (Nuttall, 1998) be moved into permanent settlements, and into planned communities. As new programs and policies fundamentally altered the lives and cultures of Aboriginal people, so too did the systems of governance in the territory begin to drastically change. The 1966 Carrothers Commission (formally The Advisory Commission on the Development of Government in the NWT) proposed "a series of measures to enhance the autonomy of the Government of the NWT and to increase the degree of political autonomy for the people of the NWT." Its recommendations that Yellowknife become the territorial capital and that the entire apparatus of the territorial administration be transferred to the North were implemented in 1967 (Cameron & White 1995, p.49). This event is humorously described by Hamilton:

> "On 18 September 1967 two DC-7 aircraft landed at Yellowknife. The first one carried seventy-four civil servants and their families; the second thirty tons of files. The capture of Yellowknife by the Ottawa bureaucracy was thus accomplished without a shot being fired" (1994, p.103).

This "capture of Yellowknife" represented a major step in the devolution of power from Ottawa to the North, but was not without controversy. Several Aboriginal organizations contested, and continue to contest the legitimacy of the GNWT, arguing that "the devolution of powers from Ottawa to the GNWT is an improper abrogation of Canada's fiduciary responsibilities under the treaties… (and thus), program authority, and the funding to support it, (should be transferred) directly to Aboriginal people" (Cameron & White, 1995, p.44). Further, control over sub-surface rights and natural resources – essentially the only revenue producing

sources available – remained within the jurisdiction of the federal government (Hamilton, 1994, p.101), denying the GNWT the opportunity to substantially generate its own funds.

Ironically, the shift in the administration of the territory from Ottawa to Yellowknife represented a loss in power for some communities. Frank T'Seleie, Dené activist and community leader described; "We lost a lot of control when the territorial government moved in 1967 and began establishing their own administrations in the communities, and completely bypassing the authority of the bands" (Kulchyski, 2005, p.156). Having been more or less ignored for decades, many communities resented the increased presence in their lives of what surely must have seemed to be, at least initially, an alien government.

Still, this shift in the location of power carried great symbolism. Governance in the North was to be no longer directed from the south, but was intended to become representative of the Northern population. The changing approach of federalism during this period reflected the need for a more regional system that could efficiently and more locally administer to people living in remote regions throughout the territory.

2.4 The Inuvialuit Final Agreement

By the early 1970s, the devolution of powers from the federal to the new Yellowknife-based government of the Northwest Territories was underway; but there remained significant problems with this new design of governance, particularly in terms of representation. It wasn't until 1965 that the first Aboriginal person was appointed to the territorial Council, with Aboriginal people remaining a minority on the Council and essentially absent from the upper levels of the territorial government (Cameron and White, 1995). It was in this context that Aboriginal communities in the NWT found themselves to be living on land that industry was increasingly seeking to exploit

for its rich hydrocarbon resources. However, as mentioned above, such resources remained the property of the federal government, as it alone had jurisdiction over sub-surface resources, and there were virtually no means for Aboriginal people in the territory to engage or affect the government at the time.

Such was the situation of the Inuvialuit people, living in the Mackenzie Delta and Western Arctic Islands region who found their traditional land to be of immense strategic importance with the discovery of vast oil and natural gas reserves in the 1970s (INAC, 2008). Seismic exploration in the Mackenzie Delta, following a major oil strike in Prudhoe Bay, Alaska, had led to a major oil find in Inuvialuit territory in 1970. This, in turn, led to greatly increased industry interest and exploration in the region, but with little concern for the interests of the Inuvialuit.

Increased oil and gas activity focused the eyes of Canadians on the North. A central issue was the federally supported proposal for the Mackenzie Valley Gas Pipeline, which was to move natural gas from Alaska to southern markets. Planning for the project had proceeded largely behind closed doors, with essentially zero input from residents of the NWT (Hamilton, 1994). In spite of this, concern was expressed regarding the potential implications of such a massive project for the environment, the economy, and of course, the Aboriginal people who would be most affected. Proponents of the project, including the president of the Arctic Gas Pipeline Project, stressed the urgency of the situation to Canadians: "Supplies of energy from the western provinces are now inadequate to meet all of Canada's requirements." He argued that importing energy with rising prices would cost Canadians billions of dollars, and the construction of the pipeline was the most logical energy option (CBC Archives, 2009).

From this context, the federal government appointed Justice Thomas Berger to head a commission with a mandate of investigating the social, economic and environmental impacts of the proposed project. The commission would identify the concerns of Canadians, paying particular attention to the concerns of Aboriginal people in the NWT. The commission offered recommendations that were largely favourable to Aboriginal views, and advocated at least a ten-year moratorium on construction to enable Aboriginal land claims to be settled before construction work began (Chiperzak et al., 2005). The commission also raised awareness of the industrial activity in the Mackenzie Delta region, and a need for Inuvialuit control over the land.

The participation and input of Aboriginal communities in the pipeline inquiry was part of a broader trend, and "one aspect of a general movement among the Indigenous peoples of the Northwest Territories towards negotiating increased control over impending economic development. Another was their engagement with comprehensive claims negotiation" (Abele et al., 2009, p.228). A motivating factor for the Inuvialuit to finalize a comprehensive land claim was the oil and gas boom in the Beaufort Sea (Cameron and White, 1995), that largely resulted from the fuel price shocks of the 1970s and 1980s and from lucrative federal financial and tax incentives. There was increased industry interest and exploration in the Mackenzie Delta and Beaufort Sea region during this period (Dixit et al., 2008), and this activity served to heighten Inuvialuit awareness of the need for local control (Cameron and White, 1995). Such motivation was broadly consistent with Aboriginal self-determination movements in Northern Canada: "protecting indigenous homelands with environmental management programmes that integrate conventional scientific approaches with traditional or indigenous knowledge, yet arguing for the need to create the conditions necessary for a sustainable economic base in Northern communities" (Nuttall, 1998, p.24).

The federal government also had a vested interest in settling land claims, emerging from potential difficulties it saw as likely to arise with potential oil and gas development in the Northern context. The negotiation of land claims was viewed as a legal process that urgently needed to be undertaken for such development to proceed (Frideras and Gadacz, 2001). Indian and Northern Affairs Canada cites the negotiations of land claims as a priority that actually slowed exploration and development activities in the north during the 1980's, as developers awaited the clarification of issues of land ownership (INAC, 2008).

In responding to Inuvialuit demands for control over the development of their land, as well as to the eagerness of industry to exploit the oil and natural gas resources in the Beaufort Sea/Mackenzie Delta region, the government sought a negotiated solution that could accommodate diverse ambitions and needs. The result, following a decade of negotiations with the Inuvialuit Committee for Original People's Entitlement (COPE), was the Western Arctic (Inuvialuit) Final Agreement, signed in 1984.

The IFA ensured that the Inuvialuit would maintain control over their traditional land through claims-mandated joint government-Inuvialuit boards, and would be included in the benefits of resource development. In return for surrendering their rights to 344,000 square kilometers of land, the Inuvialuit people were guaranteed title to 91,000 square kilometers with over 11,000 square kilometers of subsurface rights, and compensation of $152 million to be paid by the federal government over 13 years (Frideras and Gagacz, 2001).

Under this arrangement, the federal government was no longer to play a significant role in supporting industry exploration or development in the region, adopting a "hands-off approach to future development in the region, leaving emerging frontier energy companies to deal directly with both Native land claimants and a vast array of non-industry stakeholders" (Harrison, 2006,

p.239). The federal government partially unloaded its jurisdiction over the resources within the region, recognizing that development could be managed more effectively at the local level, and by the individuals who stood to be most affected by development, to distant management out of Ottawa. This is in keeping with the stated priorities of the GNWT, which emphasize the principles of devolution in relation to resources: "Having northerners take over control of NWT energy resources and their development from the federal government is one of our major objectives" (Dacks, 1990, p.230).

Leading up to the negotiation of a Northern Accord in 1988, the oil and gas industry expressed concern that continued devolution could lead to consequences unfavourable to their interests. "The oil and gas industry was concerned that an increased role for the GNWT (and presumably Aboriginal land claimants) in the management of oil and gas development would lead to uncertainty in regulatory and management regimes and, perhaps, to policies that were harmful to industry interests" (Graham, 1990, p.271). Yet despite the reservations of the oil and gas industry regarding devolution, the Gwich'in Agreement of 1992 and the Sah'tu Agreement of 1993 were comprehensive land claims that continued the process, transferring ownership of vast areas of NWT land with significant subsurface rights from the Crown to the people who lived and depended on the land. Negotiations have also taken place with the Deh Cho peoples, the Dené, and the Chipewyans. Collectively, the lands covered by these claims and agreements comprise the vast majority of the territory. Such negotiations reflected a shift in governance in the North; industry interest and activity had prompted a real and urgent need for issues of land management and Aboriginal rights to be considered and resolved. These negotiations continued a transformation in the governance of the territory - from a colonial south-to-north based model, lacking Aboriginal participation - to a model that enables Aboriginal communities to participate

in decisions of what does or does not happen in terms of development. This transformation is not confined to the Northwest Territories, as "the configuration of public institutions in northern Canada (in general) has… been transformed, and along with it, the conditions in which future economic development will take place" (Abele et al., 2009, p.225-226).

2.5 Summary

The process of devolution has reshaped northern political arrangements. "Since 1985, the issue of devolution has assumed a leading role on the political agendas of Canada's northern territories. It has accelerated the prospect of territorial autonomy, even if full provincial status under the constitution remains elusive" (Clancy, 1990, p.13). As the most recent stage of the devolution process, land claim negotiations have moulded the current configuration of institutions that manage resource development in the Northwest Territories, not only accelerating a decentralizing trend in governance, but also creating a decentralized, regionally focused approach to regulating resource development. In the Inuvialuit Settlement Region (a region that is legislatively a direct result of devolution), this decentralizing, regionally focused trend necessitated the establishment of a unique organizational structure for the management of oil and gas resource development.

Chapter Three

Organizational Structure of the ISR Regulatory Regime

3.1 Introduction

The signing of the Inuvialuit Final Agreement was a major step in the devolution of powers from the federal government to territorial and regional levels of government. In devolving federal jurisdiction over key areas of environmental monitoring and resource management, an organizational structure was established with the Agreement to fulfill what had been federal roles and responsibilities. Understanding this organizational structure is fundamental to an analysis of its perceived strengths and weaknesses, and to understanding the impact that devolution has had on resource management in the ISR.

3.2 The Organizational Structure Established with the IFA

Two parallel organizational structures were created with the signing of the Inuvialuit Final Agreement. The first structure is composed of six Community Corporations that collectively comprise the Inuvialuit Regional Corporation (IRC). The second structure is the six Hunters and Trappers Committees, which combine to form the Inuvialuit Game Council (IGC) (Ayles and Snow, 2002). The IGC, in turn, works with several co-management bodies created by the IFA, with whom various government agencies and organizations cooperate.

"The goal of the Inuvialuit negotiators was to maintain their traditional way of life and, at the same time, venture into the market economy. This dual objective was achieved by the creation of a business sector [as well as] a wildlife sector" (Anderson and Bone, 2008, p.515), in an "attempt to balance the economic interests and environmental concerns of the Inuvialuit"

(p.527). "The relationship between these two management structures… is not explicitly spelled out [in the IFA], but there seems to be a deliberate 'dichotomy or tension' created under the Agreement" (Notzke, 1995, p.192).

To achieve the goal of "venturing into the market economy," Inuvialuit participation in the northern and national economy, and to guarantee their control over the management and administration of the settlement area, section six of the negotiated agreement (IFA) included the establishment of a series of Inuvialuit corporations to be "responsible for the management of the compensation and benefits received by the Inuvialuit." These corporations became significant actors in the settlement area, "with [whom] the oil and gas industry, as well as many others… have [had] to deal" (Keeping, 1989, p.69).

The Inuvialuit Land Corporation, Inuvialuit Development Corporation and Inuvialuit Investment Corporation are subsidiary corporations of the IRC, which is the primary corporate body with a mandate to:

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

In addition, the Inuvialuit Petroleum Corporation was created in 1985 as an oil development and investment company. In their review of this subsidiary, as well as of the Inuvialuit Development and Investment Corporations, Anderson et al. (2004) concluded that "a just settlement of land claims has provided the capital for successful entrepreneurship and business

development and has contributed to a significant improvement in socioeconomic conditions" in the settlement area (p.644).

The broader IRC exists to "continually improve the economic, social and cultural well-being of the Inuvialuit through implementation of the IFA and by all other available means" (Inuvialuit Regional Corporation, 2007). The composition of the corporation's board of directors stems from six Inuvialuit community corporations, thus providing a formalized means of community participation (Fig. 2). Playing a central role in the regulatory process, the Inuvialuit Land Administration is not a corporation, but is, under the terms of S.6(1a) of the IFA, responsible for the management and administration of Inuvialuit land in the ISR. The ILA has been a key player in the development of regulatory and administrative matters pertaining to Inuvialuit land, in consultation with the oil and gas industry (Keeping, 1989).

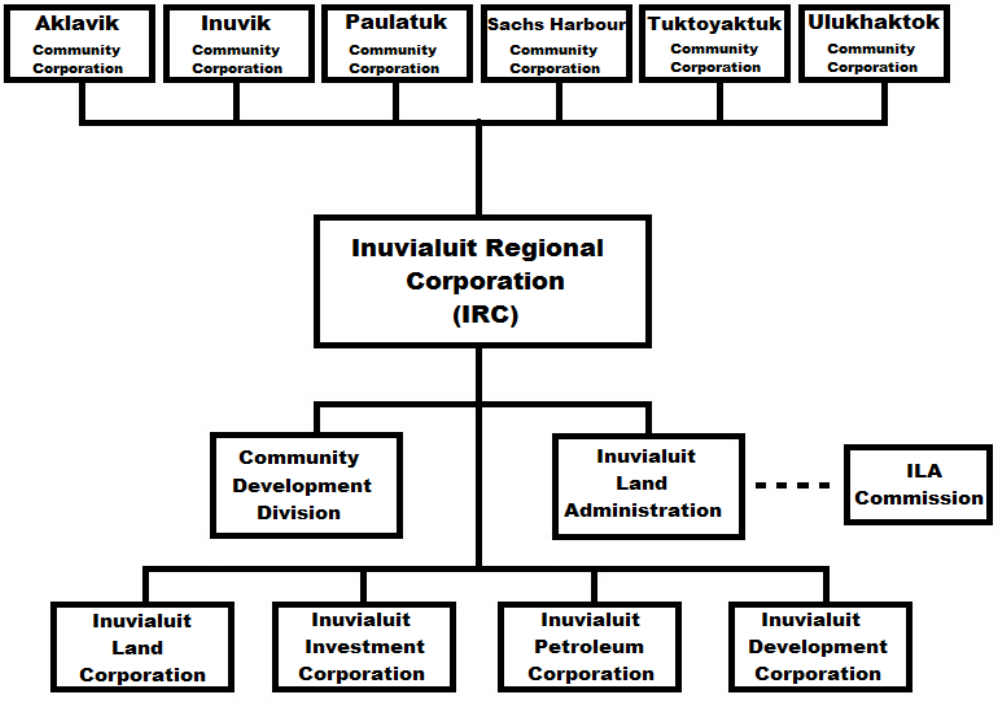

Figure 2. IRC Corporate Structure (IRC, 2007)

While the establishment of the IRC and its subsidiaries was intended to address the economic interests of the Inuvialuit, a means of ensuring that potential development would not come at the expense of the environment and wildlife in the region was also required. In a 1982 case study (released post-IFA) focusing on oil and gas development in the Beaufort Sea, Brown et al. (1985) associated potential environmental impact issues with drilling activities: the construction and use of artificial islands; production; transportation of oil and gas; construction of support facilities; and an increase in the regional population. Concerns over the consequences of increased shipping and dredging activities stemming from shorter ice-seasons and use of the Northwest Passage have also been expressed (Chiperzak et al., 2005). It was recognized that such activities would have potential environmental and social consequences for the Inuvialuit. Chiperzak et al. (2005) summarize, "While the economic potential offered by the resurgence of [resource-development] activity was generally welcomed, the potential for negative environmental effects was of concern to community members who depended on the natural resources in the region for food, and whose culture and traditional way of life depended on their continued use of the land and sea" (p.99).

Addressing Inuvialuit interests in environmental and wildlife management within the ISR, Section 14 of the IFA provided for the establishment of the Inuvialuit Game Council (IGC), as well as Hunters and Trappers Committees (HTCs) for the Inuvialuit communities of Aklavik, Inuvik, Tuktoyaktuk, Paulatuk, Sachs Harbour and Holman Island. The HTCs act in an advisory capacity to the IGC, and collectively, with each committee electing two representatives, comprise (with an additional elected chair) the Inuvialuit Game Council (IGC). The website for the IGC explains: "the IGC represents the collective Inuvialuit interest in all matters pertaining to the management of wildlife and wildlife habitat in the Inuvialuit Settlement Region. This

responsibility gives the IGC authority for matters related to harvesting rights, renewable resource management, and conservation" (Joint Secretariat, 2009). In addition, the IGC appoints Inuvialuit representatives to all of the joint wildlife and environmental co-management committees established through the IFA, and the federal government must seek the consent of the IGC in the selection of the Chairpersons for these committees. The IGC is effectively the regional representative of hunters, trappers and fisherman in the ISR (Inuvialuit Game Council, 2003). The organizational structure of the IGC established under the IFA is outlined in Figure 3.

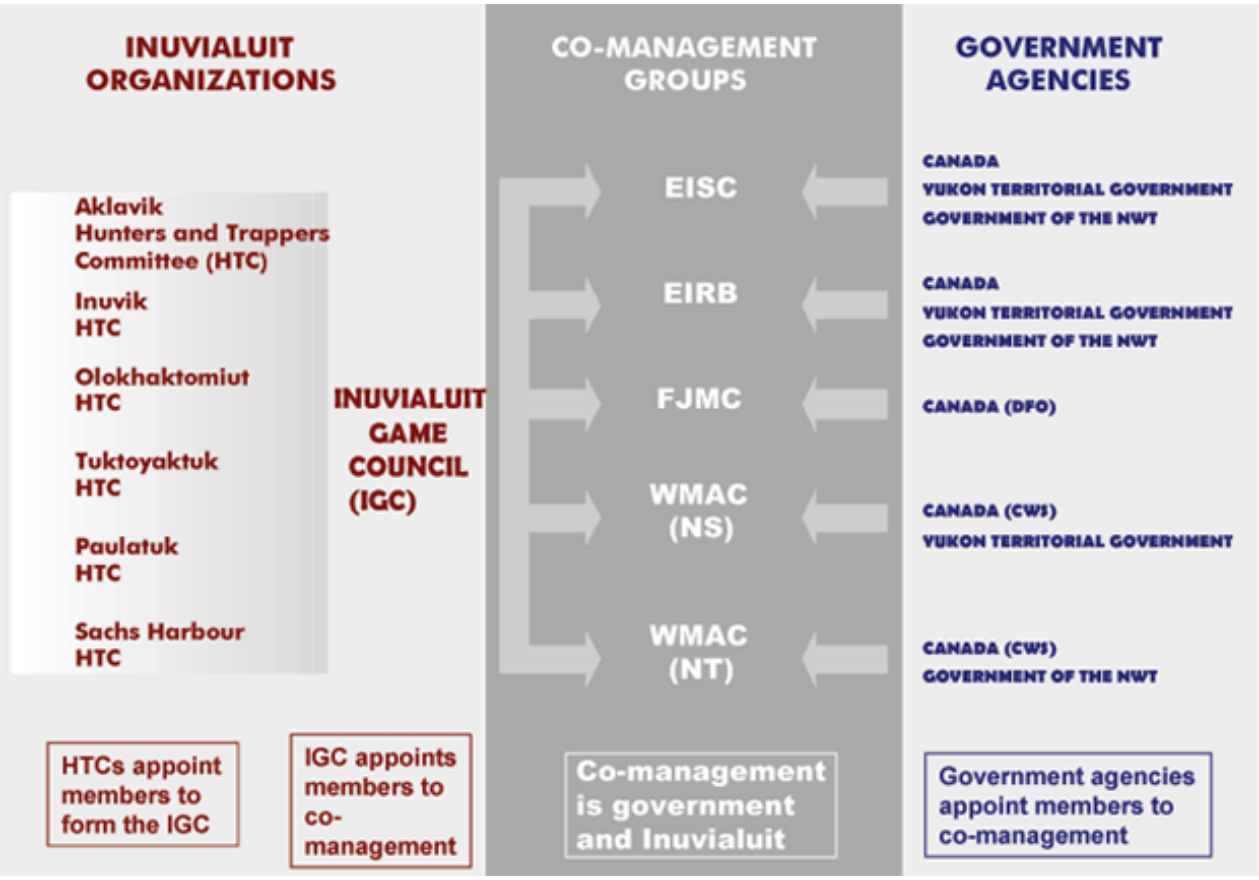

Figure 3. Inuvialuit Game Council Organizational Structure (Joint Secretariat, 2009).

In addition to the corporate bodies, the IGC and HTCs, the IFA established a number of co-management bodies (see Fig. 3), which became key actors in the environmental assessment and regulatory regime. Two of these bodies, the Environmental Impact Screening Committee (EISC) and the Environmental Impact Review Board (EIRB), are involved in the environmental assessment process in the region. The EISC was established as a board that would operate with the participation of the Yukon and the NWT governments, as well as the Government of Canada, and the Inuvialuit. The committee conducts screenings automatically for developments in specific areas, or, more broadly, for developments in the ISR for which the Inuvialuit request a screening (INAC 1984).

Project proposals that the EISC determines are likely to have "potential significant environmental impacts" (Joint Secretariat, 2009) are then referred to the EIRB, which initiates the public review process, whereby the general public in the community most affected by a proposed development are invited to express concerns and participate in the review. Following this, the EIRC submits a final report with its recommendations to the federal authority (Joint Secretariat, 2009). This process has the potential to seriously delay a development or project, as S.11(31) of the IFA requires the submission of this final report before any licenses or approvals allowing development to proceed may be issued (INAC, 1984).

The EIRB is also the body that actually carries out detailed environmental assessments for project proposals, referred by the EISC, and decides how and whether a project should proceed, taking into consideration the need for wildlife compensation, mitigation, and remedial measures. As such, the EIRB plays a major role in determining which development projects gain approval, as well as the length of time it takes for them to do so. In this context, Keeping (1989) notes that "the scope of the requirement for environmental screening, and review if that should

be determined necessary, is generally limited to onshore development, but this is not the case where the process is carried out to assess wildlife compensation (p.36). Beyond the EISC and EIRB, the Wildlife Management Advisory Council (WMAC) and Fisheries Joint Management Committee (FJMC) co-management bodies were established with the signing of the IFA, and conduct research and monitoring programs in their respective areas, and engage in community consultation programs to increase public participation in wildlife and fisheries management.

These four organizations: the EISC, the EIRB, the WMAC, and the FJMC comprise the co-management bodies created through the IFA, and play significant roles in the regulatory regime of the Inuvialuit Settlement Region. The EISC and EIRB in particular act as significant organizations within the ISR, with the capacity to approve or deny development projects. The Joint Secretariat acts as an administrative liaison between the co-management organizations, as well as the IGC. With an administrative office in Inuvik, the Joint Secretariat serves as an entry point for those seeking information relating to the co-management bodies operating in the ISR.

3.3 Roles of the Federal and Territorial Governments

Despite devolution and the various bodies established through the IFA, the federal government remains an important actor, possessing the spending power, the control over territorial expenditures, and substantial regulatory authority to affect oil and gas development in the North. The federal government retains considerable control over regulatory decision-making, with constitutional and fiscal advantages over ISR regulatory bodies, and with greater capacity and more regulatory experience (Abele, 2005).

The ISR must also work cooperatively with the territorial government. Through the co-management bodies discussed above, the IGC and a number of government agencies at both the

federal and territorial level work together on environmental, wildlife and fisheries management in the settlement region. This was not the case prior to the signing of the Agreement:

> Until the signing of the Inuvialuit Final Agreement in 1984, environmental impact assessment in the Western Arctic was conducted by the Federal Environmental and Review Office (FEARO)… [which] conducted environmental impact assessments from a national perspective. For that reason, local issues, while discussed at public hearings and duly noted by numerous boards of inquiry, carried little weight in the final deliberations. (Bone 2009, p.530-531).

The federal government also retains a strong role in the environmental assessment process in the ISR, effectively having the power of a veto. The federal government is still the responsible authority for either approving or rejecting project proposals and determinations of the EIRB (Binder & Green, 1995). The Government of Canada's *Canadian Environmental Assessment Act* (see Department of Justice 1992) provides the legislative foundation upon which the EIRB conducts environmental assessments in the Inuvialuit Settlement Region (NWT Board Forum ((a)), n.d.).

Further, co-managed organization membership on both the EISC and EIRB is representative of the various levels of government, including the federal government. Of the seven members, three are appointed by the Government of Canada, and three members are appointed by the Inuvialuit Game Council. Of those appointed by the Government of Canada, one each is nominated by the federal government, the Yukon Territorial Government, and the Government of the Northwest Territories, with the Government of Canada selecting the chair of the Board with the consent of the Inuvialuit (EIRB, n.d.). As such, the federal government is a significant participant in the co-managed assessment process, and retains the final say over which EIRB recommendations are approved.

Indian and Northern Affairs Canada (INAC) is the most visible arm of the federal government operating in the ISR, playing an important role in "administering economic development programs, and acting as a regulatory authority on major mining and infrastructure projects" (INAC, 2009b). INAC is also the body responsible for managing surface activities on Crown land "through the administration, regulation, inspection and enforcement of renewable and non-renewable resource legislation" (INAC, 2009c). The Department of Fisheries and Oceans (DFO) is also an active participant in the co-management of the Beaufort Sea within the ISR, most directly through the Fisheries Joint Management Committee (FJMC). The most relevant example of collaboration between these parties is found in the Beaufort Sea Integrated Management Planning Initiative (BSIMPI), with the history and work of this initiative having been well documented by Chiperzak et al. (2005).

At the territorial level, the most significant legislation affecting the ISR is the Northwest Territories Water Board, which was established under the 1972 Northern Inland Waters Act, and was replaced in 1992 with the Northwest Territories Waters Act. The board "provides for the conservation, development and utilization of the water resources of the ISR that will provide the optimum benefit of the waters for all Canadians and for the residents of the NWT in particular" (NWT Water Board, n.d.).

While devolution and the signing of the IFA enhanced the ability of the Inuvialuit people to influence and make decisions about what does or does not happen on their traditional land, the federal and territorial governments have not been rendered obsolete. Although the co-management structure encourages consultation and cooperation between the Inuvialuit and government departments, this does not always proceed smoothly, as "the Inuvialuit are often skeptical of new government-led initiatives because of past negative experiences" and at times

there has been a "perception that 'government will do what it wants despite what the communities say'" (Chiperzak, et al., 2005). However, despite such skepticism, the structure and system of the ISR's regulatory regime does allow the Inuvialuit a much greater share of decision-making power and management responsibilities over their traditional land than they exercised previously. "In particular, the IFA has provided the Inuvialuit with powerful tools (including an EA process) to safeguard their interest in wildlife and the environment" (Bone, 2009, p.535). Under co-management regimes, the Inuvialuit now share the authority and responsibility for assessing development projects in the ISR as well as developments outside the ISR that affect wildlife within the region, which are subject to screening and possible assessment.

3.4 Integrated Management Initiatives

In the context of the ISR, initiatives that seek to balance both conservation and development interests while pursuing regional and integrated management have largely stemmed from the federal government's 1997 *Oceans Act.* The Oceans Act called for a comprehensive and integrated approach to the management of oceans and coastal waters, and a "wide application of the precautionary approach to the conservation, management and exploitation of marine resources" (Chiperzak et al., 2005, p. 101). The Government of Canada then initiated a two-year Oceans Action Plan for 2005-07, which called for (among other initiatives) the identification of five priority areas for integrated management, as Large Ocean Management Areas (LOMAs) (Siron et al., 2008). The Beaufort Sea (the marine section of the ISR) was identified as a priority area, and a regional governance process was then established to complement national

interdepartmental and inter-governmental oceans governance processes and to advance integrated ocean management in the Beaufort Sea LOMA.

The pursuit of these goals led to the formation of the Regional Coordination Committee (RCC), the Beaufort Sea Strategic Regional Plan of Action (BStRPA), the Beaufort Sea Partnership (BSP) as well as multiple working groups. Through these bodies, multiple stakeholders were engaged and cooperated to encourage an integrated approach to oceans management in the Beaufort. This governance structure is outlined in Figure 4.

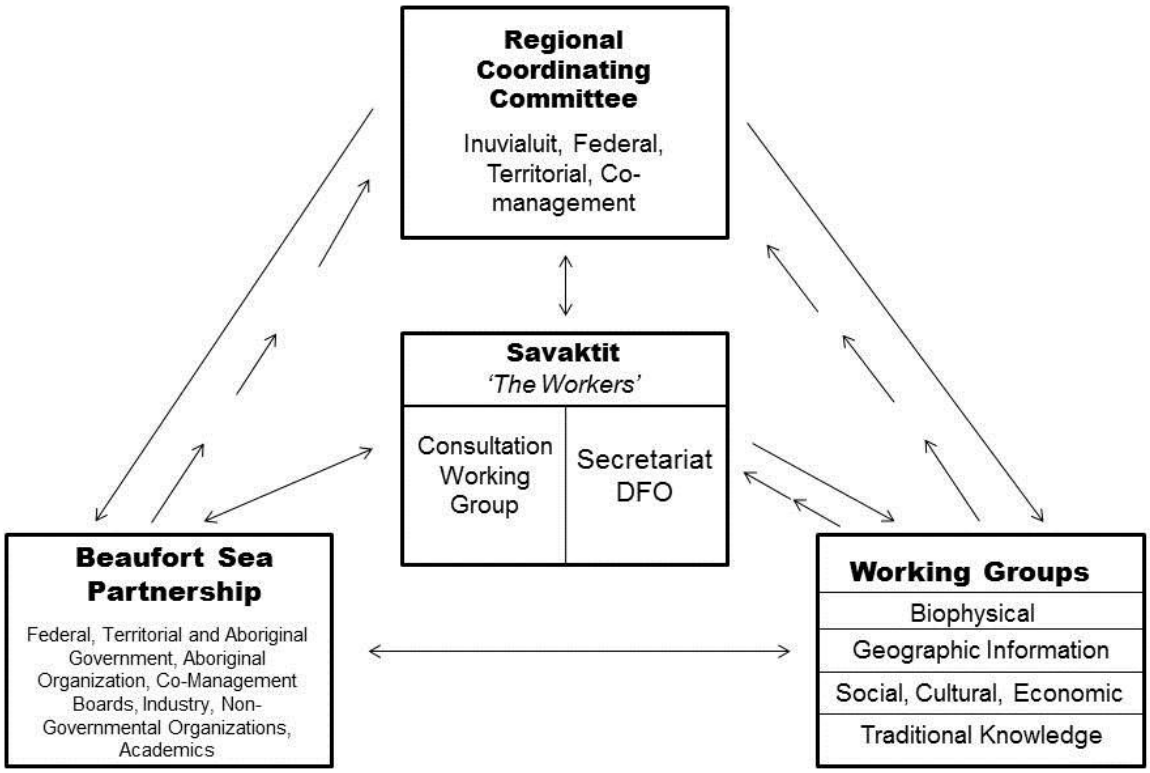

Figure 4. Regional governance structure advancing integrated oceans management in the Beaufort Sea LOMA. (Beaufort Sea Partnership, n.d.)

3.5 The Regulatory Process

There are two categories of land within the Inuvialuit Settlement Region, distinguished in S.7 (1)(a) and (1)(b) of the IFA, between land that affords Inuvialuit ownership of subsurface rights and land that is owned by the Inuvialuit, but does not include subsurface rights. "Access that is more than casual and individual in nature to Inuvialuit lands requires permission from the Inuvialuit. Accordingly, (the) Inuvialuit Land Administration issues rights to access both 7(1)(a) and 7(1)(b) Lands" (ILA, 2005). Federal and Territorial Agencies are responsible for the administration of land-use rights on Crown lands, with input on applications from the Inuvialuit (ILA, 2005). Before a potential developer can enter the regulatory process, they must identify the specific area that a proposal seeks to utilize.

The first stage of the regulatory process is the determination of whether a proposed project constitutes a "development," as defined by the S.2 of the IFA as "(*a*) any commercial or industrial undertaking or venture, including support and transportation facilities relating to the extraction of non-renewable resources from the Beaufort Sea other than commercial wildlife harvesting," or "(*b*) any government project, undertaking or construction whether federal, territorial, provincial, municipal, local or by any Crown agency or corporation, except government projects within the limits of communities not directly affecting wildlife resources outside those limits and except government wildlife enhancement projects" (INAC, 1984). Consultation efforts then begin at this point with the relevant advisory bodies and reviewers (NWT Board Forum, ((a)), n.d.).

If a proposal is determined to constitute a development, the developer will then begin the application procedure for required permits/licenses. For oil and gas developments, the developer

will apply to the National Energy Board, which is the primary body responsible for the regulation of oil and gas activities in the Beaufort Sea (NEB, 2009). Water and land use permits are also applied for at this stage. When the land that a proposal seeks to utilize is Inuvialuit owned (under section 7 of the IFA), the issuance of a land use permit must come from the ILA, which, depending on the activity for which an application is submitted, may require an independent review and consultation process (NWT Board Forum ((a)), n.d.) (see Fig. 5).

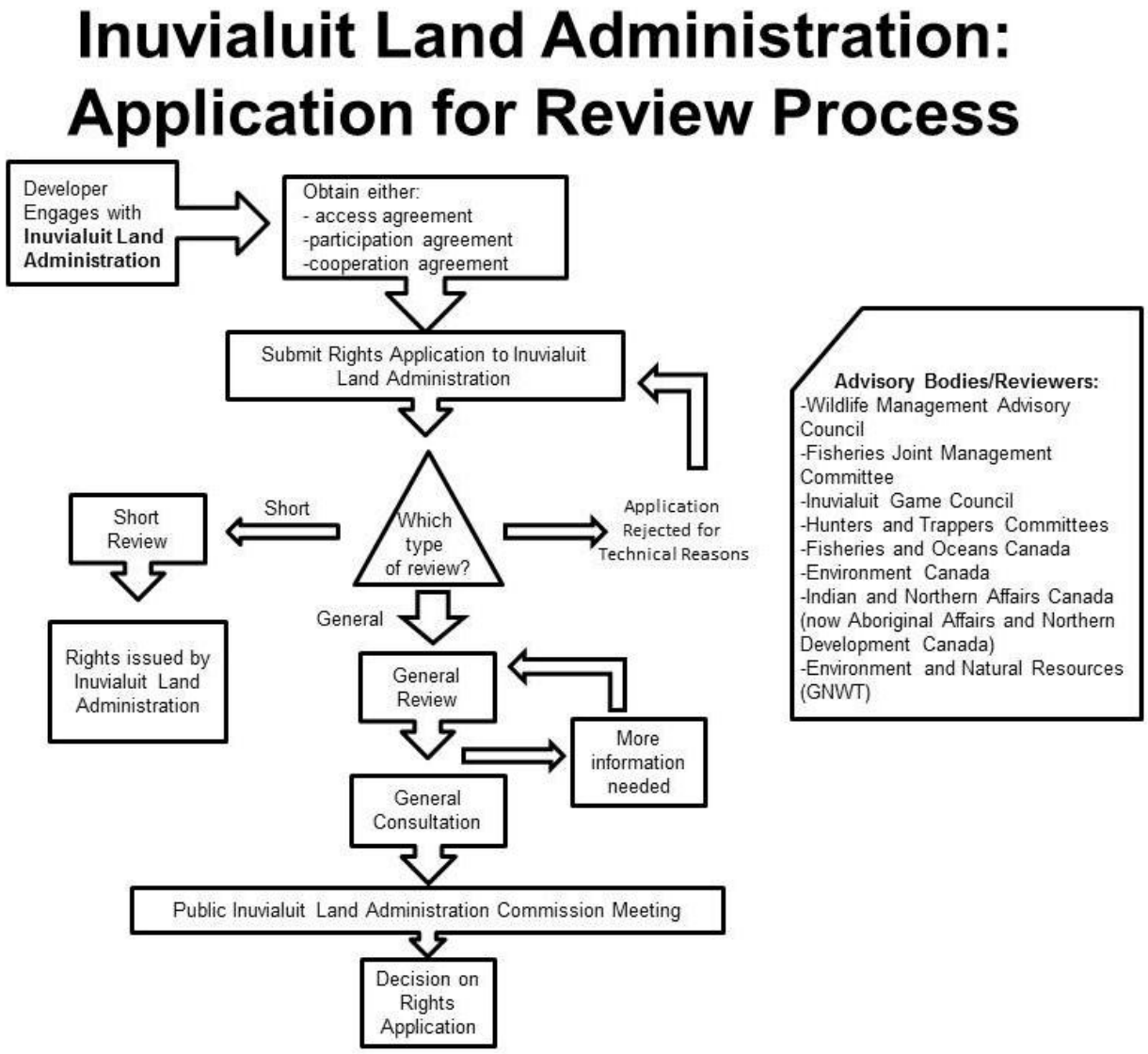

Figure 5. ILA Application Review Process (NWT Board Forum, n.d.).

The next stage for a proposed development is an evaluation conducted by the EISC, which is required for developments that meet the following criteria (INAC 1997, S.2.1.3.8):

- Developments that are likely to have a negative environmental impact of consequence to the ISR;
- Developments in the ISR, where Inuvialuit request environmental screening; and
- Developments where traditional harvest of the Dené and/or Métis may be adversely affected (on the request of the Dené, Métis or Inuvialuit).

It is noted in the INAC report (S. 2.1.3.9, 1997) that "no license or approval will be issued permitting any proposed development, until the environmental impact screening and review provisions of the IFA are followed." The EISC review process is itself multi-layered, requiring a potential developer to engage in community consultation before submitting a project description to the EISC, in order to identify and deal with local concerns and potential conflicts. Binder and Green (1995) provide a thorough description of this process.

If the Screening Committee finds the proposed development will have no significant impact, a project will be permitted to go forward, with or without recommended terms and conditions. The developer and the appropriate regulatory authority are then notified and required licenses and permits can be issued. On the other hand, if the project is determined to be likely to have a significant negative impact, the developer and regulatory authority will be notified, and the development proposal will be subject to further environmental impact assessment and review. A project will also be subjected to further impact assessment if it is found to have "deficiencies of a nature that warrant termination of its consideration by the EISC and the

submission of another project description" (Binder & Green, 1995, p.344). In such instances, the proposal will be referred to the Environmental Impact Review Board (EIRB), which is responsible for carrying out the assessment (see Fig. 6).

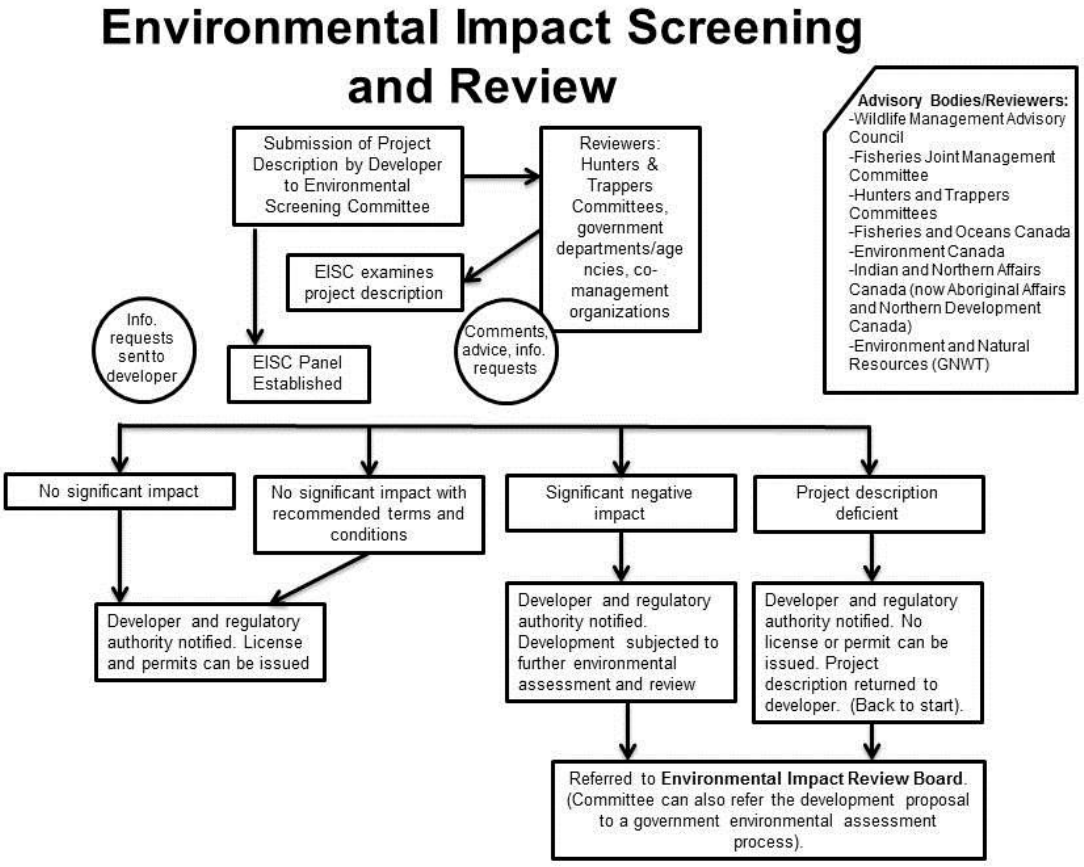

Figure 6, EIRB Screening and Review Process (NWT Board Forum, n.d.).

Once a project has been referred to the EIRB, a new process begins, requiring a public review before a panel, which, "on the basis of the evidence and information provided... must recommend whether or not the development should proceed, and if so, on what terms and conditions" (Binder & Green, 1995, p.345). Once cleared of the EIRB review process, a developer and the regulatory authority can be notified and required permits and licenses are

issued. Figure 7 provides a comprehensive diagram of the entire regulatory process described in this chapter.

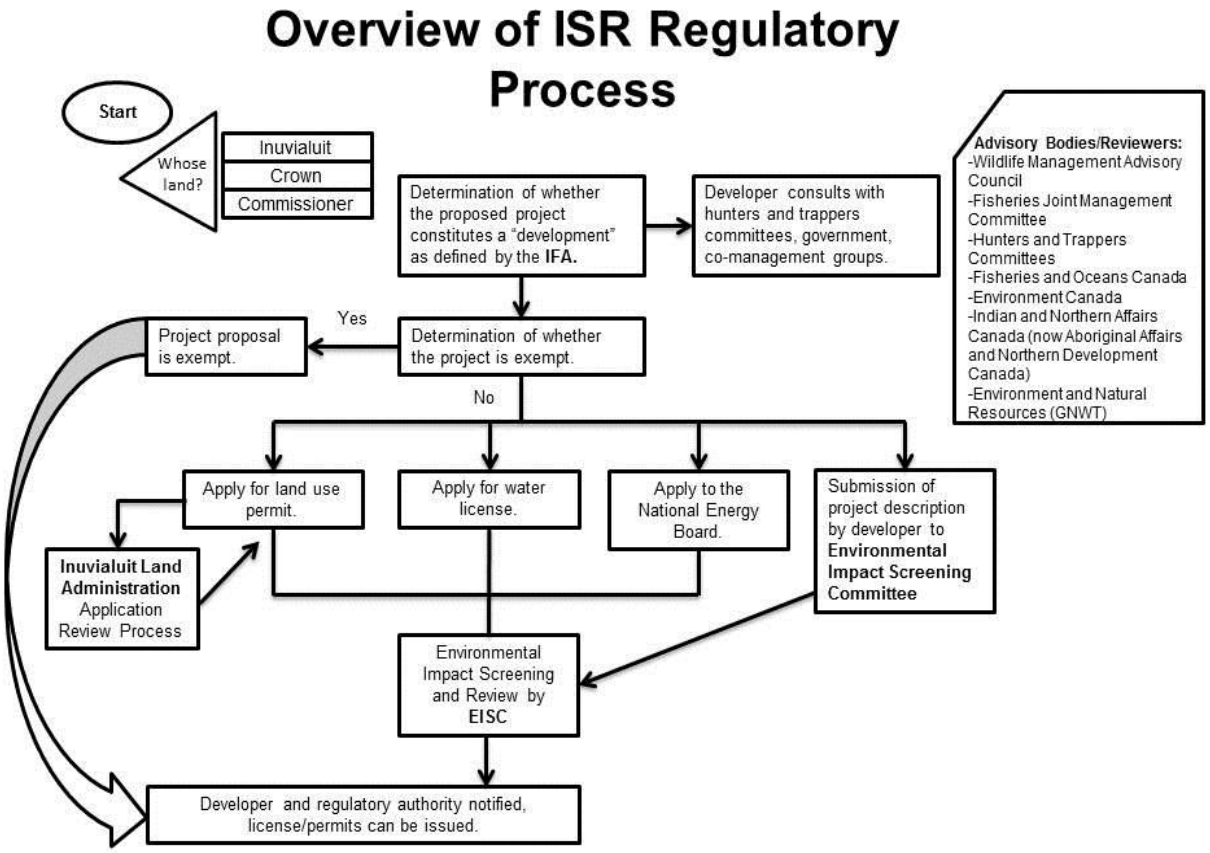

Figure 7. Overview of the ISR Regulatory Process (NWT Board Forum, n.d.).

3.6 Summary

This chapter discussed the organizational structure that was created as a result of devolution with the signing of the IFA, and the regulatory process that emerged concurrently for impact assessment and development approvals. Based on this system and process, the following chapter examines claims of regulatory and procedural challenges to EA and approvals for oil and gas development in the ISR.

Chapter Four

Challenges and Trajectory

4.1 Introduction

With devolution, the institutionalization of new governance arrangements in the NWT has brought new challenges. A number of oil and gas companies have argued that the new governance environment of the Territory has resulted in regulatory regimes so complicated or problematic as to make the entire region less attractive to potential oil and gas developers (Canadian Association of Petroleum Producers 2008, Dixit et al. 2008, Harrison 2006), thus preventing Northern communities opportunities to benefit from development. Conversely, others have argued that the regime is no more complicated than that of other northern jurisdictions (INAC, 2005), and that claims to the contrary are exaggerated. Based on document review and key informant interviews, this chapter examines the diverging perspectives, and the most commonly identified problems with the ISR's regulatory system as it relates to oil and gas development. Table 2 summarizes this diversity of perspectives:

Table 2: Matrix chart on varying perspectives of evaluative bodies.

BODY	FUNCTION	PERSPECTIVE
Government of the Northwest Territories (2004/2005 Environmental Audit)	Conducts independent review every five years to evaluate status of NWT environment and effectiveness of mitigating adverse impacts.	Neither ISR nor MVRMA regimes are overly complex. Capacity and timeliness of process are areas of concern.
Indian and Northern Affairs Canada (2005 McCrank Report).	Was tasked with identifying ways to improve regulatory regimes across the Canadian North.	The number of regulatory bodies creates unnecessary complexity. Capacity of system(s) is also a concern.
Canadian Association of Petroleum Producers	Provided McCrank Report with submission outlining industry perspective.	The regulatory system in the NWT is overly complex and time-consuming.
Alternatives North	Non-profit citizen-advocacy group in the NWT.	There are areas requiring improvement, but current system favours community participation. McCrank Report has pro-industry bias.

To date, the most comprehensive evaluations of the regulatory regimes of the NWT are found in the NWT Environmental Audit of 2004/2005, and the 2008 Minister's Report, "Road to Improvement" by Neil McCrank, commonly referred to as the McCrank Report. Although there has been a more recent 2010 NWT environmental audit, the ISR was excluded (by request of the IRC) from the evaluative component of the audit (INAC, 2011). While the 2005 Audit focused most heavily on the Mackenzie Valley and was legislatively rooted in the MVRMA, the ISR was included in the 2005 Audit as per the Audit Terms of Reference (INAC, 2005) and, as such, made note of when qualities of the ISR were found to be unique or to differ from that of the MVRMA, but failed to provide depth in their broad analysis of the NWT. The McCrank Report, on the other hand, specified that while it "include(d) an examination of the common themes across the ISR, the focus (was) on the regulatory system covered by the MVRMA" (McCrank, 2008, p.2). As such, these sources are useful in identifying regulatory themes, issues and

challenges common throughout the territory, but do not provide information specific to the ISR, and are useful only as a starting point for an understanding of the regulatory process.

4.2 Timeliness and Capacity

The 2005 Audit defined the major components of the two regulatory regimes of the NWT (ISR and the MVRMA) as including: "land use planning, regulation (i.e., issuance and enforcement of permits and licenses) and environmental impact assessment" (INAC, 2005, p.1). Examining these components within the ISR and the broader NWT, the Audit found both positive and negative qualities. While it credited the ISR as having been fairly successful in the development and implementation of land use planning processes, their findings expressed concern over issues of capacity and timeliness in both the regulation (p.2) and environmental impact assessment components (p.3) of the regimes.

Specifically, the authors reported that "concerns were expressed about the timeliness of EIA processes" and "that the number and nature of proposals being referred to Environmental Assessment was inappropriate" (p.4). The Audit did not, however, specify if such concerns included the EIA process within the ISR in addition to the broader Mackenzie Valley, or if they were exclusive to the Mackenzie Valley. But, such concerns are consistent with themes discussed in the McCrank Report (p. 6, 11, 12, 23-24), as well as in a submission to the McCrank Report from the oil industry (CAPP, 2008, p.11).

The McCrank Report differed in focus from the NWT Environmental Audit, as its primary purpose was to seek ways of improving regulatory regimes across the North (p.1), while the Audit sought to evaluate the status of the environment within the NWT, as well as the

effectiveness of efforts at minimizing significant adverse impacts (INAC 2005 p.1). In conducting the review, McCrank spent a total of 55 days consulting Aboriginal organizations, land claim signatories, regulatory bodies, government departments (both territorial and federal), municipal governments, industry (both individual companies and associations), environmental organizations, politicians and individuals, receiving and reviewing oral and written submissions, sent out questionnaires and held roundtable discussions (p.4). The outcome, like the 2005 Audit, found both strengths and weaknesses in the regulatory systems of the territory, but was somewhat harsher in its conclusions. The McCrank Report presented a list of objectives that would characterize an ideal regulatory system. It qualified that the list was "not meant to be exhaustive and it by no means suggest(ed) that all regulatory bodies achieve(d) all of these, all the time. (Rather), it (was) meant to act as a foundation to recommend improvements to the current system in the North, particularly in the NWT" (p.5). Of the eleven listed objectives of a model regulatory system, McCrank found that seven of the objectives were consistently not being met in the current system, and two objectives, including the need for the system to have sufficient capacity and for it to be understandable could not be met at all within the current structure.

A lack of sufficient capacity and a time-consuming approval process are common critiques made against the regulatory system of the ISR. If such concerns are valid, the question becomes whether or not these problems can be considered justifiable consequences of a regulatory approach that seeks to balance the need for economic development with social and environmental needs, and the answer is of course dependent upon one's perspective. Richard Binder of the IGC, for example, described the organization's position relating to a specific project, and his description articulates this balancing act:

> "The IGC is not opposed to development in general nor the Mackenzie Gas Project in particular. It is viewed as a major development, which, if it proceeds, must be carefully mitigated to the greatest extent possible to ensure that there are minimal negative effects to wildlife, the environment and traditional lifestyle" (Anderson, Dana & Meis-Mason., 2008, p.160).

With strong industry interest and the multitude of governmental and organizational actors, as well as a strong emphasis on community participation in decision-making, a variety of perspectives are found in the ISR, with some finding the issue of capacity (resulting in time-constraints) more reasonable than others. Binder and Green, in their description of the ISR screening and review process, do identify as a central challenge for the process, "the continuing need to expeditiously deal with any new application," but have mostly praise for the system (1995, p.345).

Given the level to which community consultation is encouraged and indeed required under the IFA for proposed developments, timeliness in the ISR may be an unavoidable challenge for potential developers. This was hinted in the findings of the 2005 NWT Audit: "What is unique is the extent and proactive nature of community involvement, and the degree to which public input can influence the process" (p.2), but the report conceded that there existed room for improvement in the timeliness of community consultation and involvement.

4.3 Complexity

The McCrank Report argued that "the proliferation of regulatory bodies creates complexity and lack of understanding, as well as… extreme difficulty (in) developing the proper capacity of these bodies… The complexity of the system speaks for itself. The number of boards and regulatory authorities are a result of the comprehensive land claim agreements… The (regulatory) system was created to meet multiple objectives, but, in doing so a very complex regulatory system, that is not very well understood, was developed" (p.11-12).

Once again, criticism is being made in general terms regarding the regulatory system in the territory as a whole, without specifying the extent to which such concerns do or do not extend to the ISR. Such concerns echoed those voiced by the petroleum industry in their submission to the McCrank Report (CAPP, 2008), in which they argued that "Environmental assessment and regulatory authorization systems north of 60 are unnecessarily complicated, in that the complexity does not result in better outcomes. This places a heavy duty on operators, and can be a challenge for regulators, few of whom have a working understanding of the system as a whole" (p.7). CAPP also argued that the system was poorly suited to resource development activities. It is unclear which regime is being referred to, but given the high level of interest in oil and gas development within the Beaufort Sea, we can reasonably assume the criticism was directed at least partly towards the ISR:

> "Even simple activities typically require a number of authorizations from multiple authorities, with each authorization requiring the completion of environmental assessment… From a resource management perspective, the degree of regulatory complexity is inconsistent with the stage of development of northern hydrocarbon basins" (p.10).

In contrast to the findings of the McCrank Report and the CAPP submission, the NWT Environmental Audit found neither regime to be particularly complex, arguing that "the regulatory regimes of the NWT are not substantially more complex than those of other jurisdictions" (p.2), but the Audit failed to provide a reasonable explanation of why complexity was often cited as a regulatory challenge by the oil and gas industry.

Interestingly, claims of over-complexity predate the current regime in the region. In their 1982 case study of oil and gas development in the Beaufort Sea, Brown et al. (1985) reported that "a major problem facing both Beaufort Sea developers and communities is the plethora of government departments and agencies involved in planning and regulating activities in the area and the ad hoc nature with which these have emerged" (p.47). Additionally, they claimed: "When faced with the existing organizational complexity, it is not surprising that the desirability of a so-called 'single window' approach to planning and regulation in the Beaufort Sea is raised" (p.48).

While the alleged complexity of the regime(s) seems to be a broadly consistent claim (CAPP, 2008, INAC, 2005, McCrank, 2008, Dixit et al., 2008, Harrison, 2006), specific examples to validate such claims, as well as suggestions on simplifying problematic areas are seldom provided. In their response to the McCrank Report, representatives of the Gwich'in Land Use Planning Board and the Gwich'in Renewable Resources Board (of the Mackenzie Valley region of the territory) illustrated this point:

> "Although the system has been criticized as being complex there is very little detail offered about how to make the system simpler for developers to navigate. The McCrank Report focuses on co-management boards while simply acknowledging government regulation and decisions need to be coordinated… The assertion of complexity is linked to the creation of 20+ co-management boards but it is not put in the context of an

example to show which, or how many, of these a developer can expect to deal with for any one project" (Charlie & Simpson, 2008).

The non-profit group Alternatives North (2008) went a step further in their response to the report, accusing it of having a pro-industry bias, arguing that the "review seems to be based in the unreasonable, yet persistently held views of some private sector developers that refuse to recognize and adapt to the governance and regulatory system that has evolved in the Northwest Territories as a result of constitutionally entrenched land claims agreements." The group goes on to explain that "while we acknowledge that there may be some areas of the environmental management system that require real improvement, Mr. McCrank's assignment appears to be one of attempting to tip the balance of power in favour of the corporate sector."

Thoroughly investigating common criticisms regarding the alleged complexity of the system would require a comparative approach, beyond the scope of this thesis. Having described the overall process, however, the regulatory regime established with the IFA seems relatively straightforward and understandable. The number of organizational and governmental actors affecting the regulatory system is impressive, but the result of having multiple actors affecting the regime has not necessarily been poor or inefficient resource management. Indeed, at least in some areas, it has been argued that "while the numerous committees and boards established by the IFA may initially seem cumbersome, there in fact has been increased expediency and cost-effectiveness of fish and wildlife management decision-making" (Bailey et al., 1995, p. 15).

It is possible that allegations of unnecessary complexity relate more to the consequences of devolution with the existence of two separate regulatory regimes and multiple land claims in the NWT, and have less to do with the regime of the ISR itself. In a summary of land management issues in the NWT, Bastedo (2010) argues that from a regulatory perspective, the

multiple land claim settlements found in the NWT make it a more complicated place than its territorial neighbours:

> From a land management perspective, life is simpler in the Yukon where, unlike the NWT, several regional claim settlements fall under an umbrella agreement, creating fewer boards with a more unified mandate. A much broader devolution of resource management powers in the Yukon further enhances clarity over roles and certainty over land ownership. The same could be said for Nunavut where a single region-wide claim settlement created a simpler system with greater operational certainty. In the NWT, the settlement of four independent claims – with three more waiting in the wings – created a proliferation of boards and processes that contribute to a relatively more complex regulatory regime. Future devolution of greater resource management powers may add another layer of complexity to this regime (p.11).

It is expected that the licensing and approval of projects overlapping the regulatory regime of the ISR and that of the MVRMA would be much more time-consuming and complex than a development proposal that were contained to a single regime. The fact that the ISR is often included, but rarely specifically discussed in evaluations and criticisms of environmental assessment and regulatory processes in the NWT suggests the possibility that challenges facing the oil and gas regulatory regime of the MVRMA are being generalized for the territory as a whole, including the ISR. This possibility was suggested during interviews. One federal regulator summarized the present situation this way:

> I think, unfairly, that the ISR gets tarred with the same brush, if you like. The regime that was set up there, of all the northern land claims – maybe I'd even say all of the modern land claims – I really like the IFA the best. For the basic reason that it is less detailed than any of the others. Because these land claims become constitutional documents… changing them is extremely difficult. It took them I think over ten years to amend the IFA, and this is with the parties agreeing to the amendments… it wasn't contentious

> particularly. And the regime that's described there is far, far, far simpler than that created in the MVRMA and through the Acts and such. And as a result, it can improve with time – it can change over time. (Federal Regulator B, personal communication, 2011).

Potential improvement or evolution within the regulatory system of the ISR is further suggested by previous evaluations. In the conclusions of the 2005 NWT Environmental Audit, for example, the authors reported that "the MVRMA and ISR regulatory regimes are, to varying degrees, relatively new and they continue to evolve as additional operational experience is obtained. The ISR process has had much more time to evolve than that of the Mackenzie Valley. As such, it has progressed beyond many of the initial challenges, frustrations and uncertainty of process being faced in parts of the Mackenzie Valley" (INAC, 2005, p.S-2).

This suggests that the ISR is recognized as having a more understandable and less complex regulatory process than that of the MVRMA. This is further validated by CAPP, who specified that "there is greater clarity and familiarity around the processes in the ISR, both among regulators and proponents" and that "there has been a substantial increase (in expediency) in processing time for applications over the past few seasons" (2008, p.16).

It would be too sweeping to categorically deny arguments of complexity made against the regulatory process in the ISR, but based on document analysis, and having reviewed the process in the previous chapter, it is a reasonable assumption that allegations of the system being overly complex have been exaggerated, or may be the result of first impressions, rather than actual experience. This is suggested in the comments of a federal regulator, who explained, "I do know that [to] people, when they're coming into the ISR, it is initially very confusing… But once you actually sit down, and take half a day, even, and have someone explain it to you, it isn't that

difficult. I think people just get frustrated quite easily, because it isn't what they're used to" (Federal Regulator C, Personal Communication, 2011).

4.4 Duplication of Efforts

An additional factor that may contribute to the perception that the regime is overly complex is the continued role of the CEAA in the environmental assessment process. CEAA provides the legislative foundation upon which the IFA's EIRB conducts environmental assessments in the ISR (NWT Board Forum, n.d.). Ensuring that a development meets its requirements remains a responsibility of CEAA, despite the screening and review process (EIRB and EISC) established with the IFA. Currently, efforts between the Inuvialuit and the federal Agency to deal with overlap and/or duplication in EA processes are made primarily on a case-by-case basis (Beaufort Sea Strategic Regional Plan of Action, 2008, p.17), and efforts to harmonize the two processes have been discussed (Regulatory Roadmaps Project, 2001).

To avoid potential duplication of efforts, CEAA and the EIRB signed a memorandum of understanding in 2000, outlining the terms and process of CEAA panel review substitutions in place of EIRB environmental assessments, as may be requested by the EIRB (CEAA, 2000). Thus far, such a substitution has taken place once with the proposed Inuvik to Tuktoyaktuk Highway project (CEAA, 2010), reflecting the comments of a federal regulator (A) that "There is potential for a duplication of reviews happening, but usually CEAA has deferred to the Inuvialuit processes" (Personal Communication, 2011). The perspectives of regulators regarding the feasibility, or desirability of simplifying or harmonizing these systems are varied. As one regulator explained: "Anything that can simplify the administrative complexity, while still delivering an open, transparent public process to engage the public in these kinds of decisions is

desirable, and there's probably lots of ways to do it" (Federal Regulator A, Personal Communication, 2011). Conversely, on the prospect of eliminating CEAA's presence in the ISR, the issue of capacity arose when another federal regulator argued; "people are always saying that we need to get rid of CEAA in the ISR, but in my opinion that would be kind of disastrous. The EISC does not have the capacity, or ability, to run an entire environmental assessment" (Federal Regulator C, Personal Communication, 2011).

4.5 Cumulative Effects

Beyond possible duplication of efforts, an added factor that has been cited by both regulators and developers as a regulatory challenge in the Beaufort Sea region is the project-by-project nature of environmental assessments in the region. Although devolution has unquestionably enhanced the ability of northern communities to influence oil and gas development in the ISR, it could be argued that the decentralized nature of the IFA's institutional organization, in the face of multi-jurisdictional ecosystems and in relation to other regulatory regimes (MVRMA), has reached a point where regional planning and the consideration of cumulative effects must be considered.

The 2005 NWT Environmental Audit warned that "a Cumulative Impact Monitoring Program (CIMP) has not yet been implemented and limited regional/territorial environmental baseline and cumulative impact data were available to decision makers" (INAC, 2005, p.5). Individuals with knowledge of the region echo this concern. One federal regulator cited the lack of cumulative effects as the key challenge for environmental assessment in the region: "We can review individual projects quite well. We can do a good job on that. But when you don't have a regional context with these projects, you don't know what their contribution is to regional

effects, to cumulative effects" (Federal Regulator B, Personal Communication, 2011). A representative of a northern non-governmental organization further explained;

> "The requirements for EA don't require a real cumulative effects analysis [because] it's all project based, which leads to potentially a lot of duplication. Especially when you are going to have similar assessments done for adjacent parcels in the offshore... [separate developers] would each be doing an EA, and that means a lot of duplication, but without a really robust Cumulative Effects Assessment. So obviously we think a regional approach would be much better" (Personal Communication, 2010).

In addition, the resurgence of interest and activity among oil and gas developers in the Beaufort Sea, and the potential construction of the Mackenzie Valley Gas Pipeline have raised concern among some Inuvialuit regarding the potential consequences of such projects on local ecosystems and wildlife (Elliot and Spek, 2004). Such concerns have served to heighten the need for a more regional and cumulative approach to resource management in the ISR, and have in turn led to several initiatives, largely focused on integrated planning and management.

To date, the ongoing work of the RCC, BSP and affiliated committees and initiatives have been well documented (Chiperzak et al., 2005, Siron et al., 2008), and reflect the growing recognition in the North of a need for integrated and cooperative management of resource conservation and development. The Beaufort Regional Environmental Assessment (BREA), for example, is an initiative intended to engage multiple stakeholders through the sponsorship of regional environmental and socio-economic research, to "remain relevant to longer-term potential development in the Beaufort by providing a scientific and socio-economic baseline for the Beaufort Sea" (INAC, 2010).

Responding to the limitations of the existing regulatory regime, the text of the BSP's Strategic Regional Plan of Action (BSStRPA) acknowledged some of the criticisms directed

towards the regulatory regime of the ISR: "While the existing regulatory framework is generally comprehensive, it is relatively complicated, and individual project reviews are inefficient and time consuming" (2008, p.16). There is some doubt, however, that these integrated initiatives will have the capacity to resolve a number of issues that have been identified as challenges. As one federal regulator argued: "Integrated management seems to be dead, or slumbering at least. They haven't been funded, so that's not going to go very far. BREA's turned into a science-funding program. So you're still not tackling the regional issues" (Federal Regulator B, Personal Communication, 2011). An additional individual, discussing BSStRPA and BREA added; "Everybody's heart has been in the right place, trying to improve the state of science and improve the availability of information that's relevant to good EA, but they've tended to be under-resourced, and nobody would really take ownership… [They are] not so much about regional EA, [but are rather] about data that could support regional EA" (Federal Regulator A, Personal Communication, 2011). Further, a northern board/agency representative saw a lack of funding as a limitation on the potential of regional initiatives:

> We've been at it for a long time, constantly trying to push forward and press [upon] government that there needs to be a lot more science done in terms of the offshore. So that goes back quite a while now and was really highlighted in the Strategic Regional Plan of Action… and these are …areas that there either is a lack of knowledge, or [there] is an issue raised by [a] community. So out of BSStRPA of course BREA happened, but there's still potential for a lot of gaps, or not enough money to fill those gaps. BREA sounds like a lot of money, but we're discovering it's not enough to do all the research. [The potential for] oil spills [represents] a big factor. And that's probably going to cost twenty, thirty million dollars, which is way beyond the capability of BREA to do. (Northern Board/Agency Representative A, Personal Communication, 2011).

What remains unclear is the degree to which the regulatory regime of the ISR, with its decentralized nature, is compatible with initiatives emphasizing more regional approaches to planning for oil and gas development, assuming that such initiatives stood to improve environmental assessment and resolve perceived challenges. Given the constitutionally entrenched status of land claims agreements, any changes to the regulatory system would have to respect the process created with the signing of the IFA, and would necessarily be undertaken with the support of the Inuvialuit communities:

> The way you reconcile [the decentralized nature of the ISR and regional initiatives], I guess, really is that your approach to these initiatives is community based. To make it successful you have to have the buy-in to the participation of communities, the HTO's, the co-management bodies, the relevant government departments, so if you look at the membership list of the BStRPA or BREA, they're all basically the same, and have the same representation in many respects. And if you go through a big list, that sounds like a very cumbersome way of doing things, but it's actually not. It's a fairly small community there, and it's not that big a deal to do it that way. There aren't a lot of axes to grind there (Federal Regulator B, Personal Communication, 2011).

In contrast, another individual saw administrative complexity as a major barrier to regional or strategic EA in the Beaufort:

> When we talk about regional or strategic EA, particularly in the North, we quickly run into land-use planning kind of concepts. And a lot of my federal colleagues, and a lot of people who design federal EA, really don't trust provinces and territories to do land-use planning in a way that protects the environment. It's almost a chauvinist kind of attitude, but it's very strong. And so they really see value to having the feds involved, to kind of second-guess or oversee regional or land claim or provincial land-use planning. And so regional EA is about setting a vision for future development, ideally about having some kinds of thresholds which very rarely work out in practice. So you run, right away, smack

> into a constitutional issue over who is calling the shots on whose land. (Federal Regulator A, Personal Communication, 2011).

It becomes further evident that there is a considerable diversity of views on what the perceived challenges are to the regulatory system of the ISR both as it currently functions, and also going forward. Although the IFA, as a constitutionally protected agreement, sets the foundation for the regulatory process and environmental assessment in the ISR, recent regional and integrated planning initiatives illustrate that the regime is hardly static or non-changing.

4.6 Summary

Chapter four has reviewed themes commonly identified as challenges for oil and gas development approvals in the ISR, and has explored potential explanations for areas where such themes are being exaggerated. As devolution unfolds and resource development proceeds, new challenges and opportunities for oil and gas development in the ISR are likely to emerge. In spite of uncertainties and a diversity of views on perceived challenges, it has been suggested that the regulatory process is improving with time and experience. There does seem to be consensus that regional initiatives have the potential to strengthen the regulatory process, provided that these initiatives are adequately funded, actively engage the communities of the ISR, and build upon, rather than attempt to alter the institutional organization created through the IFA.

Chapter 5

Discussion and Conclusion

Using the lens of devolution, the purpose of this paper was to identify and connect existing knowledge on a subject that has arguably been neglected, and to provide a more comprehensive overview of the regulatory regime of the ISR than has previously been available. Understanding that the ISR's regulatory regime is a product of the ongoing process of devolution allowed the research to situate the ISR in space and time, providing context and understanding of how the ISR's regulatory regime has emerged and the rationale behind its organizational design. Indeed, the experience of this thesis suggests that devolution is a crucial factor that must be considered by researchers of EA or SEA in political environments where there is an Indigenous element. This is validated by Cheema and Rondinelli (2007): "Any assessment of decentralization of natural resource control must take into account the current context that has given rise to many of the initiatives to restore control to the local populations" (p.294).

In order to provide needed context, the thesis offered an historical summary of devolution and political history in the NWT, followed by the identification and a description of the key actors and organizations involved in the regime that emerged with the establishment of the ISR. The thesis then provided a description of the process by which potential developers seek approval for projects, particularly as it affects the oil and gas industry. Finally, the thesis identified and examined the most common criticisms made against the regulatory process, exploring potential explanations for perceived challenges to oil and gas development and approvals, and whether these challenges were exacerbated or diminished by devolution.

In large part, the thesis sought not so much to fill a specific knowledge gap, but to connect existing knowledge on the subject of regulatory challenges in the Mackenzie Delta and Beaufort Sea Region, and to identify those areas where gaps exist. The introduction stated the intention of the thesis to respond to sets of questions relating to the evolution of and current structure of the ISR regulatory regime, as well as those relating to current regulatory challenges and limitations, and the impact of devolution. Chapters two and three provided the necessary background information and summary of the ISR's regulatory process, respectively, which allowed chapter four to respond to these questions, and to provide an examination of the common criticisms against the regime. This was accomplished by investigating the available literature on the regulatory system, particularly as it affects oil and gas development. Interviews with individuals who had knowledge and experience with regulatory policy and EA in the ISR were conducted to provide further insight into challenges and opportunities going forward, and also to clarify where alleged problems were being exaggerated, and where they were fully or at least partially valid.

This has allowed the identification of several knowledge gaps. The related allegations that the regulatory process places unnecessary time-constraints on developers and has a limited capacity to deal with high volumes of applications for development seem to be valid, although it has been suggested that the process is becoming more expedient with time (Bailey et al. 1995, CAPP 2008, INAC 2005). This, however, has not been proven. Insight would be gained by testing this claim, ideally through an evaluation of the number of, and timeliness of individual EIRB project reviews on a year-by-year basis. Currently, only partial information on past review projects conducted by the EIRB can be found on the organization's website. The information provided is limited, however, as it does not include timelines associated with the research and

assessment conducted by the proponent, although these are likely to be factored in when criticisms of the timeliness of the process are leveled against it. Research that explored the expediency of this process over time (whether it improves, is stagnant, or declines with experience) would be enhanced by interviewing individuals associated with specific projects, ideally dating back to the signing of the Agreement.

An additional area requiring further, comparative-based research relates to claims of the ISR's organizational and procedural complexity, regularly identified as a challenge to oil and gas development and approval in the region. As responsibilities were devolved to the regional level, a great number of committees and boards, organizations, and community corporations were created to work with remaining government agencies to affect the regulatory process in the ISR. At first impression, this multitude of actors and stakeholders with varying roles and responsibilities may lead one to conclude that the regulatory process of the ISR is highly complex. However, a more detailed examination of the roles and responsibilities of these actors and an understanding of the actual review and screening process reveal a relatively straightforward and understandable system. "Many of the more negative assessments of cooperative management (under the IFA) appeared to come from individuals unfamiliar with the processes at work or the issues under consideration" (Bailey et al., p.14-15).

Through examining the reports and evaluations that have emerged regarding the regulatory systems of the NWT, and by interviewing federal regulators with knowledge of both the MVRMA and the ISR regimes, it seems that claims of complexity may be at least partially related to the existence of two separate regulatory systems in the NWT. Given that the most comprehensive research to date on environmental assessment and regulatory policy in the NWT has largely focused on the regime of the MVRMA (CAPP, 2008, McCrank, 2008, INAC, 2005),

and further suggested by interviews, it seems that problems and challenges facing the system of the MVRMA are being generalized, often unfairly, for the entire territory including the ISR. While such generalizations may or may not be accurate for the ISR, they overlook possible exceptions or possible strengths to the ISR's regulatory regime. Currently, there is an insufficient amount of research available to properly analyze how the ISR performs in comparison to that of other Northern jurisdictions. Although this thesis was able to recognize that problems with the MVRMA are being generalized to apply to the ISR, conclusively assessing the validity of such claims (capacity and complexity in particular) is an objective that lies beyond the scope of this thesis, as such an objective would require a much more detailed investigation of the regulatory regimes of the MVRMA and those of other northern jurisdictions, thereby diverging in focus from the ISR regime. Insight into both criticisms (complexity and capacity) would be gained through a comparative analysis of the ISR regulatory regime with comparatively similar regulatory systems, and in particular those regulatory systems in northern jurisdictions where the oil and gas industry is present.

An additional issue that was identified by the thesis as a possible challenge to the environmental assessment process within the ISR's regulatory process was a potential duplication of efforts. The continued presence of the CEAA in the ISR's EA process creates the potential for duplication of efforts/potential overlap of responsibilities with the EIRB. Opinions expressed during interviews were mixed, however, regarding the degree to which the presence of two separate EA processes created problems or tension, and were varied in the perceived desirability of eliminating CEAA in the region, as well as the need for harmonization between the separate EA systems. Thus far, the existence of two EA processes applying in the ISR does not seem to have contributed to organizational complexity, as the two systems work

cooperatively so long as CEAA's requirements are being met by the Inuvialuit EA process (Federal Regulator A, personal communication, 2011).

It became apparent through research and interviews that the current regime does an inadequate job of managing data and research, and the lack of cumulative impact monitoring should be a priority area for regulators and policy developers seeking ways to improve the regime, as the lack of cumulative data was consistently cited as a challenge by regulators. While recent initiatives emphasizing integrated planning and management have responded to this problem, there is concern that current efforts are limited and underfunded, and may be inadequate to meet future challenges that increased oil and gas development in the Beaufort could present.

Beyond the identification of challenges and knowledge gaps, what has been provided with this thesis is an overview of the ISR's regulatory regime: the history and motivation for the regime that emerged with the signing of the IFA; the identification of the key actors and organizations with an explanation of their roles and responsibilities; a description of how the regulatory process actually works; and document review and interviews to allow the identification of perceived challenges to oil and gas development within the regulatory system of the ISR, with attention to possible explanations for problems or limitations. Such an overview may prove invaluable to individuals approaching the topic who would otherwise be forced to seek out multiple, disaggregated sources for information. Given that much of the evaluative material available for this research generalized the regulatory regimes of the MVRMA and the ISR with little distinction, this thesis represents one of the most comprehensive regulatory overviews with specific focus on the ISR to date.

Further, the focus on the impact of devolution specific to the ISR contributes to the growing body of literature on devolution and northern governance. Notable academics have made significant contributions to devolution literature in the Canadian context (Abele, 2007, Funston, 2007, White, 2002, 2008, Wilson, 2005), but to date, such research has not focused on the ISR. There is no question that devolution has profoundly reconfigured governance arrangements in the Inuvialuit Settlement Region, and as such, it provides a unique example for scholarly discussion of federalism, multi-tiered governance and devolution. The ISR fits Wilson's (2005) framework of Nested Federalism, in which a separate entity is geographically and politically positioned within a larger "host" region (in this case the NWT). This has been to the advantage of the Inuvialuit in promoting and protecting their interests relating to oil and gas development and resource management, and supports White's argument (2005) that northern land-claims boards provide an effective vehicle for enhancing Aboriginal participation and decision-making capacity. For the broader NWT, the ISR's "host" region, the long-term consequences of continued devolution are unknown, but Abele et al. (2009) suggest the possibility that multiple Aboriginal institutions will gradually become the primary medium through which people living within their jurisdictions will participate politically. The authors quote former NWT premier George Braden, who suggested that such institutions would gradually undermine the territorial government, as "the western North will become a balkanized collection of Aboriginal institutions competing with territorial public governments that do not have the jurisdiction or financial resources to effectively govern in the interest of all territorial residents" (p.574).

Within the ISR, we are able to make several observations using the lens of devolution. The process of devolution has had both positive and negative consequences for the Inuvialuit

regulatory regime: On the positive side, it has unquestionably strengthened the ability of the Inuvialuit to influence the decision-making process, and we need look no further than the third chapter's review of the institutional organization and approvals process of the ISR to gain a sense of the central Inuvialuit role in consultation and co-management. The Inuvialuit role in the regulatory process supports the argument that decentralization favours political participation (Brinkerhoff et al., 2007, Oates, 1972, Weller, 1990, White, 2005). Further, the economic performance of the ISR (through the IRC) has been impressive, with accumulating capital (Nguyen, 2009), and continuing profits and distribution payments to beneficiaries in spite of the economic downturn of recent years (IRC, 2011). This success supports a connection between the increased decision-making capacity of communities and economic development (Ascher, 2007, Azfar, et al., 2004, Calliou, 2008).

On the negative side, possible capacity limitations within the ISR's regulatory regime could be interpreted to support the argument that decentralization leads to reduced overall capacity for regional governments (McGuire et al, 1994, Treisman, 2007). If the ISR's capacity were proven to increase with time and experience (Bailey et al. 1995, CAPP 2008, INAC 2005), however, this assertion would be difficult to maintain in the case of the ISR. Indeed, there was little to validate arguments against devolution within the ISR. On complexity, devolution does not seem to be a contributing factor inside of the ISR. In the broader NWT, however, it could be argued that the multiple land claims and separate regulatory regimes have produced a complicated regulatory environment that creates the perception of complexity in the territorial whole, including the ISR. In the MVRMA, land claims continue to be negotiated, and the uncertain status of these areas contribute to the overall complexity of the region (Bastedo, 2010).

In this sense, it is not the process of devolution itself that contributes to complexity, but rather that the process is incomplete.

The Inuvialuit experience with devolution suggests a number of observations about some of the factors that shape governance in devolved political arenas. The ISR benefits from having a settled land-claim and a relatively homogenous population. The cooperative interaction between the multiple actors of the ISR, through devolved levels of government, empowered community corporations and co-management groups defies the argument that devolution contributes to administrative complexity or divisions within the community (Diamond, 1999, Hutchcroft, 2001). In regions with multiple ethnicities and a looser sense of community identity, "the capacity of community groups to manage natural resources responsibly is challenged by conflict over definition of membership in the community" (Asher, 2007, p.296). This does not seem to be an issue in the ISR, where we are told that "It's a fairly small community… There aren't a lot of axes to grind [and] it's a fairly colloquial atmosphere" (Federal Regulator B, Personal Communication, 2011). The Inuvialuit example suggests that a defined identity within a specified territory provides a strong foundation for the devolution of powers.

Having acquired substantial economic and political control in the Mackenzie Delta and Beaufort Sea Region, however, the challenge of cumulative effects monitoring (or the current lack thereof) raises the possibility that there may be a practical limit to devolved responsibilities for oil and gas regulatory management in the ISR, and it remains to be seen how the decentralized nature of the ISR will fit into broader regional initiatives.

Although Treisman (2007) notes the lack of identifiable conditions that make devolution desirable, literature that focuses on the theoretical aspects of devolution too often assumes that the circumstances of diverse regions will be more or less similar, and that the outcomes (positive

or negative) of devolved powers and responsibilities will generally be the same. Literature discussing devolution theory regularly focusses on the experiences of populated, southern nations or regions (Ascher 2007, Brinkerhoff et al., 2007, Grindle, 2007, Lieberman & Shaw, 2000, Mooney, Scott & Williams, 2006, Oates, 1972, 1999). Such literature is useful in providing a roadmap to our understanding of the conflicting views regarding the perceived desirability or flaws with policies emphasizing devolution, but the unique circumstances and political arrangements of the Canadian North must be recognized when devolution theory is being discussed. The argument that devolution can foster increased responsiveness in government services, for example, takes on much greater significance when one considers the sheer distance between administrative centres (such as Yellowknife or Ottawa) and small, Northern communities such as Aklavik, Tuktoyaktuk or Inuvik. When Brinkerhoff et al. (2007) described the spatial dimension of devolution theory, it is unlikely that they imagined the distance from the centre to the local level as covering a distance of thousands of kilometers. In the Canadian Territories, there is also an added layer of devolution, in which both the territorial governments and the regional Aboriginal institutions seek greater powers and responsibilities, often at the expense of one another. Land claim negotiations in the NWT seek devolution within a jurisdiction that seeks devolution. This added dimension does not fit the standard framework of literature on devolution theory.

The ISR illustrates the reality that there is no single formula that can be generically prescribed for regions with devolved authority in the Northern context (Wilson, 2008). The ongoing land-claim negotiations in the NWT and the push for regional initiatives inside and outside the ISR reflect the reality that devolution is a continuing process that unfolds over time and is non-linear (Grindle, 2007).

Regardless of how that process continues to unfold, what is vital to the future of EA and the regulation of oil and gas development going forth in the ISR is that future approaches remain community-based, and strive to obtain the proper balance between interests. The need for a regulatory framework capable of balancing the interests of various stakeholders is self-evident, as the prospect of significant oil and gas development re-emerges in the region today. While a perfect balance may never be attainable, and there will likely continue to be stakeholders with varying concerns and criticisms regardless of future developments within the regulatory regime, the framework that has emerged through the ongoing process of devolution does seem to perform relatively well under the current circumstances in the Beaufort Sea/Mackenzie Delta region. It does not follow, however, that there are not areas requiring improvement. Going forward, close attention should be paid to the regional initiatives discussed in the previous chapter, as these initiatives offer opportunities for EA in the ISR and the broader Arctic to continue improving and evolving, ideally towards a more integrated approach with a cumulative-effects monitoring system, providing that the initiatives are adequately supported and funded. Through devolution, the shifting nature of the Northern political landscape is what makes it an interesting and unique region to do research in, and the ISR is no exception. It is hoped that this research might play a small role in helping stakeholders to better understand perceptions about the efficacy of the ISR's regulatory system.

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