

LABRADOR INNU LAND CLAIMS AGREEMENT-IN-PRINCIPLE



**Cover drawing created by
Agathe Rich from
the Innu community of Natuashish
in northern Labrador**

LAND CLAIMS AND SELF-GOVERNMENT AGREEMENT-IN-PRINCIPLE

AMONG

**THE INNU OF LABRADOR
AND
THE GOVERNMENT OF NEWFOUNDLAND AND LABRADOR
AND
THE GOVERNMENT OF CANADA**

ASSI MAK INNU TSHEU-UTSHIMAMATATISHUT TAPUETATUN MISHANAIEKAN

MAMU

**INNUT NETE NAPATUA
MAK
NIPUNANIT TSHE-UTSHIMAUT
MAK
MISTA-UTSHIMAU NETE UTAUAT KANATA**

ASSIN MAK INNU TSHENISHI TSHEUTSHIMAUTASHUTSH TAPUETATUN MISHINANIKAN

MAMU

**INNUTSH UTE NAPATUA
MAK
NIPUNANT TSHE-UTSHIMAU
MAK
MISTITSHE-UTSHIMAU ENTE ATUAUA KANATA**

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Chapter 1: General Definitions and Interpretation¹

Part 1.1 Definitions²

1.1.1 In the Agreement, unless otherwise provided:

“Accessible Lands” means the areas of Labrador Innu Lands referred to in 5.3.10;

“Adopted Child” means an individual who, while a Child, was adopted in accordance with the Innu custom of Nikuniaushun/Niuitshimakai or pursuant to laws recognized in Canada;³

“Agreed Upon Programs and Services” means those programs and services agreed to by the Parties in a Fiscal Financing Arrangement;

“Agreement” means the final land claims agreement between the Innu, as represented by the Innu Nation, Canada and the Province;

“Agreement-in-Principle” means the land claims agreement-in-principle signed by the Innu Nation, Canada and the Province in accordance with Chapter 31;

“Archaeological Activity” means physical activity carried out in connection with the discovery, recovery, survey or field study of Archaeological Material, an “archaeological investigation” as defined in the *Historic Resources Act* (Newfoundland and Labrador), RSNL 1990, c.H-4, and any activity that disturbs or may result in the disturbance of Archaeological Material or an Archaeological Site;

“Archaeological Material” means an object, a sample, or any material showing evidence of manufacture, alteration or use by humans which are of archaeological importance, interest or significance for the information that they may give regarding past human activity, including an “archaeological object” as defined in the *Historic Resources Act* (Newfoundland and Labrador), RSNL 1990, c. H-4, but does not include Innu Ethnographic Material or Archival Records or, for the purposes of Part 18.[9]⁴, human remains;

¹ Legal drafting. This may not be a complete listing of Chapter 1 definitions.

² Legal drafting. Parties to review the use of federal/provincial Law, federal/provincial Legislation.

³ To be negotiated. this definition is satisfactory for purposes of Chapter 3. Its potential applicability to other chapters is to be reviewed.

⁴ To be negotiated. Cross reference is subject to check in the context of Chapter 18.

"Archaeological Site" means a site containing Archaeological Material or other physical evidence of past human activity that is of archaeological importance;

"Aquatic Habitat" means the physical environment where Aquatic Plants, Fish or benthic invertebrates⁵ occur, or on which they depend directly or indirectly in order to carry out their life processes, or formerly occurred and have the potential of being reintroduced;

"Aquatic Plant" means any species of flora existing in a wild state, living or dead, and all seeds, parts and products thereof, that completes its entire life cycle in Water;

"Arbitration" means arbitration conducted in accordance with Part 26.5;

"Arbitration Decision" means a ruling, order, award or decision of an Arbitrator;

"Arbitrator" means a natural person responsible under Part 26.5 for arbitrating a Dispute;

"Atlas" means the series of American National Standards Institute (ANSI) 'D' map sheets containing the maps that graphically represent the boundaries of lands illustrated in

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⁵ To be negotiated. Inclusion of benthic invertebrates under review by NL.

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of the Agreement. Unless otherwise stated, these maps were created using the National Topographic Data Base (NTDB) 1:50,000 digital topographic base maps, and the digital data files depicting all boundaries as agreed by the Parties;

“Band Councils” means the Mushuau Innu Band Council and the Sheshatshiu Innu Band Council established pursuant to the *Indian Act (Canada)*;

“Board” means the Resource Management Board established pursuant to Part 6.2;

“Body of Water” means a surface or subterranean source of fresh or salt water within the jurisdiction of the Province, whether that source usually contains liquid or frozen water or not, and includes water above the bed of the sea that is within the jurisdiction of the Province, a river, stream, brook, creek, watercourse, lake, pond, spring, lagoon, ravine, gully, canal, wetland and other flowing or standing water and the land occupied by that body of water;

“Burial Site” means a site where a deceased person was intentionally placed in a natural or prepared physical location into or onto which human remains were deposited;

“Canada” means, unless the context refers to the geographic area of Canada, Her Majesty the Queen in Right of Canada;⁶

“Capital Transfer” means...

“Carving Stone” means soapstone and serpentinite that is suitable for carving purposes;

“CF(L)Co” means Churchill Falls (Labrador) Corporation Limited, including its successors, subsidiaries or assigns;

“Challengee” means an individual who is being challenged for removal from the Preliminary Voters List;

“Challenger” means an individual whose name is on the Preliminary Voters List applying to have another individual whose name is on the Preliminary Voters List removed from that list;

“Child” means an individual under the age of majority in that individual’s place of residence and includes an Adopted Child;

“Commercial Wildlife Operation” means an undertaking in the Labrador Innu Settlement Area that uses Wildlife for commercial purposes and includes a facility catering to recreational hunting and the consumptive use or the non-consumptive use of Wildlife, and includes Sports Fish Camps;

“Community” means either Sheshatshiu or Natuashish, or any other community in the Labrador Innu Settlement Area inhabited primarily by Participants, and the boundaries of such communities will be set out in Chapter 30;

⁶ Legal drafting. Need to consider throughout the agreement use of “agents of Canada”.

"Conflict" means an actual conflict in operation;⁷

["Conservation" means the management of Wildlife, Migratory Birds, Forest Resources, and Plants and their Habitats and Fish, Aquatic Plants and Aquatic Habitat, including the management of human activities in relation to them, to foster Sustainable Utilization and maintenance of:

- (a) healthy natural populations of Wildlife, Migratory Birds, Fish, Forest Resources, Plants, and Aquatic Plants,
- (b) the Habitat of Wildlife, Migratory Birds, Forest Resources, and Plants;
- (c) Aquatic Habitat; and
- (d) bio-diversity and ecological processes]⁸;

["Consult" means to provide:

- (a) to the Person being consulted, notice of a matter to be decided in sufficient form and detail to allow that Person to prepare its views on the matter;
- (b) a reasonable period of time in which the Person being consulted may prepare its views on the matter, and an opportunity to present its views to the Person obliged to consult;
- (c) full and fair consideration by the Person obliged to consult of any views presented
- (d) [provision of written reasons for any views that are not substantially incorporated]⁹

or

["Consult" means to:

- (a) provide to the Person being consulted, as early as possible and at the strategic planning stage where a matter is at such a stage, notice of a matter to be decided, in sufficient form and detail to allow that Person to prepare its views on the matter;
- (b) establish, between the Person being consulted and the Person obliged to consult, a process for consultation on the matter which provides the

⁷ To be negotiated. Canada may propose new definition of Conflict. The question of whether to define Conflict at all is also under consideration.

⁸ To be negotiated. NL has under review.

⁹ To be negotiated.

Person being consulted with a meaningful opportunity to, within a reasonable period of time, prepare and present its views on the matter, including through provision of adequate funding to the Person being consulted;

- (c) demonstrate to the Person being consulted how the Person obliged to consult has taken into consideration the views expressed by the Person being consulted; and
- (d) accommodate, to the extent required by the severity of any negative effects on the rights and interests of the Person being consulted as viewed from the perspective of the Person being consulted, the concerns set out in any views on the matter presented by the Person being consulted.

In determining appropriate accommodation in the process of consultation, the Person obliged to consult shall consider accommodation measures with reference to the context of the matter to be decided, which measures may include but shall not be limited to any or all of the following measures: alteration or cessation of proposed activities, avoidance of, minimization of and compensation for negative effects; and promotion of any positive effects of the matter to be decided.]¹⁰

“Designated Species” means those species as set out in the *Endangered Species Act* (Newfoundland and Labrador);

“Developer” means a Person proposing or undertaking a Development [or Major Development] ¹¹; ¹²

“Development” means a commercial or industrial undertaking, but excludes:

- (a) Exploration;
- (b) map staking;
- (c) a National Park;
- (d) a National Marine Conservation Area;
- (e) a Protected Area;
- (f) a National Historic Site; and;

¹⁰ To be negotiated. The first definition was proposed by the Province and the second definition was proposed by Innu. Canada has these under review.

¹¹ Legal drafting. Canada proposes language in square brackets.

¹² To be negotiated. Canada is also considering if it might be a Developer.

(g) [a Marine Protected Area;]¹³

“Dispute” means a controversy, difference, disagreement or claim:

- (a) between or among the Parties, respecting the interpretation or application of this Agreement, including any alleged or anticipated breach thereof;
- (b) that the Agreement stipulates may be resolved under Chapter 26;
- (c) that the Agreement stipulates shall be resolved under Chapter 26; or
- (d) that the Parties have agreed to refer to Chapter 26 for resolution in accordance with the terms of that agreed-upon referral, including an agreed-upon referral with respect to a controversy, difference, disagreement or claim about the implementation of the Agreement that may arise under an agreement that is supplemental or ancillary to the Agreement;

“Domestic Inter-Jurisdictional Agreement” means an agreement between Canada and one or more provincial or territorial governments or between the Province and one or more provincial or territorial governments;

“Donner Area” means the area depicted on Map 21-1;

“Economic Major Development Impacts and Benefits Agreement Areas” means the areas referred to in 5.5.1, which areas, for greater certainty, are outside the Labrador Innu Settlement Area, the Permit Free Hunting Area, and the Hydroelectric Major Development Impacts and Benefits Agreement Areas;

“Effective Date” means the first date on which Federal Legislation and Provincial Legislation referred to in Part 4.5 are both in effect;

“Environment” means the components of the earth, and includes:

- (a) land, water and air, including all layers of the atmosphere;
- (b) all organic and inorganic matter and living organisms;
- (c) the social, economic, recreational, cultural, and aesthetic conditions and factors that influence the life of humans and communities;
- (d) any known Burial Sites or other places of potential religious or spiritual significance to the Innu; and
- (e) any part or combination of those components referred to in paragraph (a) to (d) and the interrelationships between two (2) or more of them;

“Environmental Assessment” means:

¹³ To be negotiated. Under review by Canada pending Marine Zone.

- (a) an assessment of the Environmental Effects of a Project in Labrador Innu Lands and, in case of a Straddling Project, an assessment of the Environmental Effects of the part of that Straddling Project that is in Labrador Innu Lands; or an assessment of the Environmental Effects of a policy, plan or program of the Innu Government, conducted in accordance with Innu Law made under Part 14.4; or
- (b) an environmental assessment of a Project or Undertaking conducted under the *Canadian Environmental Assessment Act* (Canada) or the *Environmental Protection Act* (Newfoundland and Labrador); or
- (c) an assessment conducted under two or more of laws referred to in paragraphs a) and b); ¹⁴

"Federal Law" includes federal statutes, regulations, Orders-in-Council and the common law and equity;

"Federal Legislation" includes federal statutes, regulations and Orders-in-Council;

"Fiscal Financing Arrangement" means an agreement or other arrangement, negotiated in accordance with Chapter 20, including for the provision of Agreed Upon Programs and Services by the Innu Government or an Innu Community Government to Participants and where the Parties agree, to other persons;

"Fish" includes:

- (a) parts of fish;
- (b) shellfish, crustaceans, marine animals and any parts of shellfish, crustaceans or marine animals; and
- (c) the eggs, sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals;

"Five Year Operating Plan" means that part of a Forest Resource Management Plan prepared in accordance with Part 11.6 which identifies strategies for achieving Sustainable Forest Management within a Forest Management District over a five (5)-year period, and describes the Forestry Activities to be carried out over that period, including any areas in which Forestry Activities, including Forest Operations, are to occur within lands to which the plan applies, and containing information required under this Agreement and under the *Forestry Act* (Newfoundland and Labrador);

"Forest Management District" means an area designated pursuant to the *Forestry Act* (Newfoundland and Labrador) for the efficient planning, administration and management of Forestry Activities;

¹⁴ To be negotiated. Canada has Chapter 14 and related definitions under review with respect to federal interests.

“Forest Resources” means all Timber and Non-Timber Forest Products but does not include Plants, Fish, Aquatic Plants, Wildlife, or Migratory Birds;

“Forest Resource Management Plan” means a plan prepared in accordance with the procedures set out for the preparation of a district forest management plan under the *Forestry Act* (Newfoundland and Labrador), notwithstanding the jurisdiction of the Innu Government under Part 11.10, but subject to the modification of those procedures as set out in Part 11.6, and which is designed to achieve Sustainable Forest Management within a Forest Management District, and consisting of a Strategic Plan and a Five Year Operating Plan;

“Forestry Activities” includes forest access road construction, maintenance and decommissioning, Harvesting of Forest Resources, Silvicultural Treatments, and mitigation, restoration, forest protection, and rehabilitation and other activities carried out pursuant to a Forest Resource Management Plan;

“Gas” means natural gas and includes all substances other than Oil that are produced in association with natural gas;

“Geothermal Resource” means a subsurface or surface source of heat energy that results from subsurface geological processes, and includes steam, hot fluids or heated rock, but does not include the normal background heat flow found in the subsurface;

“Government” means Canada, the Province, or the Innu Government, and Governments means any two or more of the aforesaid;¹⁵

“Hydroelectric Major Development Impacts and Benefits Agreement Areas” means the areas referred to in 5.6.1, which areas, for greater certainty, are outside the Labrador Innu Settlement Area, the Permit Free Hunting Area, and the Economic Major Development Impacts and Benefits Agreement Areas;

“Immediate Family” means spouse, parent, brother, sister, Child, grandchild, son-in-law and daughter-in-law;

“Impacts and Benefits Agreement” means an agreement concluded between the Innu Government and a Developer pursuant to Part 21.5;

“Innu” means,

- (a) for the purposes of Part 2.12 [and XXX]¹⁶ and references of a general historic nature, all members of the Aboriginal people of Labrador, known as Innu, that:

¹⁵ Legal drafting. Canada suggest that this definition may not be needed if all references have been replaced.

¹⁶ To be negotiated/Legal drafting. Additional sections to be determined. And when they are determined provision (b) will be reviewed to determine if it should be included as it would mean that unless covered in a section that is referenced as a section in (a) “Innu” who do not enroll as Participants cease to be Innu after the Register is published and that is not the intention.

- (i) have traditionally used and occupied and currently use and occupy lands and waters in Newfoundland and Labrador and parts of the Offshore Area; and
 - (ii) whose aboriginal rights, including aboriginal title with respect to the lands and waters in Newfoundland and Labrador and parts of the Offshore Area, were, prior to the Effective Date, the subject of comprehensive land rights negotiations among Innu Nation, Canada and the Province pursuant to the Framework Agreement among Innu Nation, Canada and the Province dated March 29, 1996; and
- (b) for purposes of all provisions other than those referred to in (a) above:
- (i) until the Register is published, all those individuals eligible to be enrolled under Chapter 3; and
 - (ii) after the Register is published, all Participants;

"Innu Archaeological Material" means Archaeological Material showing evidence of manufacture, alteration or use by Innu [and their ancestors]¹⁷, and which is of interest or significance to the understanding of Innu history and culture;

"Innu Basic Needs Level" means, with respect to Harvesting by Participants, the quantity of:

- (a) a species or population of Wildlife established pursuant to Part 7.3;
- (b) a species or population of Migratory Bird pursuant to Part 8.6;
- (c) a species or stock of Fish established pursuant to Part 9.6; or
- (d) a species or population of Aquatic Plant established pursuant to Part 9.6;

"Innu Business" means a business that is a sole proprietorship, partnership, not-for-profit corporation, co-operative, limited partnership or incorporated company, operating independently or in a joint venture, alliance or consortium:

- (a) in which Innu, the Innu Government, or an Innu Community Government has or have:
 - (i) at least fifty-one (51) percent ownership or effective control, or in the case of a not-for-profit corporation, at least fifty-one (51) percent membership; or

¹⁷ To be negotiated. Canada proposes to delete ancestors; Innu wish to retain; NL has no objection to retaining reference to "ancestors".

(ii) where ownership or effective control or, in the case of a not-for-profit corporation, membership is less than fifty-one (51) percent, significant Innu benefit, ownership, effective control or Innu employment and on that basis has been added to the registry of Innu Businesses; or

- (b) in which, in the case of a business with six (6) or more full time employees, at least thirty three (33) percent of them are Innu or, where Innu employment is less than thirty three (33) percent, has significant Innu benefit, ownership, effective control or Innu employment and on that basis has been added to the registry of Innu Businesses;

“Innu Business Registrar” means the individual or individuals or other entity designated by the Innu Government to establish and maintain a comprehensive registry of Innu Businesses, including information on the works, goods and services the Innu Businesses are in a position to supply;

“Innu Community Governments” means those governments established pursuant to 30.2.2¹⁸;

“Innu Community Law” means a law made by an Innu Community Government;

“Innu Government” means the government established pursuant to 30.2.1;

“Innu Law” means a law of the Innu Government and includes:

- (a) regulations made under an Innu Law; and
- (b) an Innu customary law proclaimed, published and registered in accordance with 30.XX; and

“Innu Nation” means the body corporate duly incorporated and existing under that name under Federal Legislation, and includes its successors and assigns;

“International Agreement” means....

“Labrador Innu Constitution” means the constitution established pursuant to Part 30.3;

“Labrador Innu Lands” means the lands referred to in 5.3.1 which lands form part of the Labrador Innu Settlement Area, but are outside the Permit Free Hunting Area, the Economic Major Development Impacts and Benefits Agreement Areas, and the Hydroelectric Major Development Impacts and Benefits Agreement Areas;

“Labrador Innu Settlement Area” means the area referred to in 5.2.1, which area includes Labrador Innu Lands, but, [for greater certainty], is outside the Permit Free Hunting Area, the Economic Major Development Impacts and Benefits

¹⁸ To be negotiated. The Parties will review whether to include “Innu Community Government” in various provisions throughout the Agreement.

Agreement Areas, and the Hydroelectric Major Development Impacts and Benefits Agreement Areas;

"Land Use Plan" means a regional land use plan for a Planning Area prepared in accordance with Chapter 15, approved under Part 15.6, and brought into effect under Part 15.7, and includes any related regulations under Provincial Legislation or Innu Law, amendments to the plan or the regulations, and a substitute plan;

"Legal Proceeding" means any civil, criminal or regulatory proceeding or inquiry in which evidence is or may be given, and includes an arbitration, other than an Arbitration under Chapter 26, and a proceeding before a board, commission or tribunal;

["Listed Species" means those species listed as species at risk under Federal Legislation;]¹⁹

"Lower Churchill Innu Impacts and Benefits Agreement" means the agreement about the Lower Churchill Projects among the Developer, Innu Nation, Sheshatshiu Innu First Nation and Mushuau Innu First Nation dated XXX, including any amendments thereto;

"Lower Churchill Projects" means:

- (a) one or more of the proposed hydro-electric generation facilities and associated infrastructure and activities carried on, at or in, or related to such generation facilities and associated infrastructure; and
- (b) one or more of the proposed transmission facilities and associated infrastructure and activities carried on, at or in, or related to such transmission facilities and associated infrastructure,

within the area depicted in Schedule "1-B" to the Lower Churchill Innu Impacts and Benefits Agreement, as amended from time to time;

"Lower Churchill Subsequent Development" means any part of the Lower Churchill Projects undertaken by a Subsequent Developer;

"Major Development" means a Development that involves, during any five (5) year period, either more than two hundred and fifty (250) person-years of employment or capital expenditures of more than fifty (50) million dollars in constant 2005 dollars, where such Development is:

- (a) within the Labrador Innu Settlement Area outside Labrador Innu Lands;
- (b) within any of the Economic Major Development Impacts and Benefits Agreement Areas including such a Development that is for the purpose of generating hydroelectric power, including all hydroelectric

¹⁹ To be negotiated. NL and Innu have under review.

generation facilities and all associated infrastructure and related activities constructed, operated, maintained, decommissioned and carried out in relation to such generation, but excluding all transmission lines and all associated facilities and infrastructure; or

- (c) within any of the Hydroelectric Major Development Impacts and Benefits Agreement Areas and for the purpose of generating hydroelectric power, including all hydroelectric generation facilities within the Hydroelectric Major Development Impacts and Benefits Agreement Area and the transmission line(s) that connects those generation facilities to the transmission grid and all associated infrastructure and all activities relating to construction, operation, maintenance, and decommissioning that are carried out in relation to such facilities;

provided that notwithstanding the foregoing, a Major Development shall not include any Development

- (d) by CF(L)Co in the Western Labrador Economic Major Development Impacts and Benefits Agreement Area; or
- (e) for the purpose of Harvesting Forest Resources located in the Southern Trans Labrador Highway Economic Major Development Impacts and Benefits Agreement Area;

“Marine Protected Area” means an area that has been designated under section 35 of the *Oceans Act* (Canada) for special protection;

“Migratory Bird” has the same meaning as defined in the *Migratory Birds Convention Act, 1994* (Canada);

“Migratory Birds Sanctuary” means a protection area for Migratory Birds and nests prescribed in a regulation under paragraph 12(1)(i) of the *Migratory Birds Convention Act, 1994* (Canada);

“Mineral” means any naturally occurring inorganic substance including gems, precious and base metals, coal and minerals contained in mine tailings, but does not include water, Quarry Materials, stratified deposits other than coal from which Oil can be extracted, or Petroleum;

“Minister” means in relation to any matter, the responsible minister of Canada or the Province having jurisdiction over the particular matter;

“*Mishtapeuat*” means beings with whom Innu shamans and other powerful Innu people could communicate through the *kushapatshikan* (shaking tent), dreams and other means;

“National Historic Site” means a site, building or other place of national historic interest or significance that is commemorated under section 3 of the *Historic Sites and Monuments Act* (Canada);

“National Marine Conservation Area” includes a national marine conservation area reserve and means the lands and waters named and described in the schedules to the *Canada National Marine Conservation Areas Act* (Canada) and administered under Federal Law;

“National Park” includes a national park reserve and means the lands and waters named and described in the schedules to the *Canada National Parks Act* (Canada) and administered under Federal Law;

“Non-Participant” means a non-Innu individual who is not enrolled on the Register;

“Non-Timber Forest Products” means all Plants other than Timber that have realizable commercial value;

“Nikuniaushun/Niuitshimakai” means when the biological mother or both biological parents of an Innu Child reach a verbal understanding with another Innu adult individual or couple that the Innu Child be raised by that adult individual or couple, and that Innu Child is recognized by a Community as being a member of the adopting individual’s or couple’s family;

“Notice of Dispute” means a written notice containing the information referred to in 26.3.2;

“Offshore Area” means those submarine areas lying seaward of the low water mark of the province of Newfoundland and Labrador and extending, at any point, as far as:

- (a) a prescribed line pursuant to the *Canada- Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* (Newfoundland and Labrador) and the *Canada-Newfoundland Atlantic Accord Implementation Act* (Canada), or
- (b) where no line is prescribed at a location, the outer edge of the continental margin or a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea of Canada is measured, whichever is the greater;

“Oil” means:

- (a) crude oil regardless of gravity produced at a well-head in liquid form; and
- (b) any other hydrocarbons, except coal and gas and, [without limiting the generality of the foregoing], hydrocarbons that may be extracted or recovered from deposits of oil sand, bitumen, bituminous sand, oil shale or from other types of deposits in, upon or beneath the soil of the earth including the sea bed or the subsoil of the sea bed;

“Participant” means an individual who has been enrolled on the Register;

"Parties" means the Innu, as represented by the Innu Nation, Canada and the Province;

"Permanent Long-Term Resident" means an individual, who is not a Participant, who has resided in the [Claim Area]²⁰ no less than ten (10) consecutive years and who at all times after that date is ordinarily resident in [Claim Area];

"Permit Free Hunting Area" means the areas referred to in 5.4.1, which area for greater certainty, is outside the Labrador Innu Settlement Area, the Economic Major Development Impacts and Benefits Agreement Areas, and the Hydroelectric Major Development Impacts and Benefits Agreement Areas;

"Person" includes an individual, a partnership, a corporation, a trust, a joint venture, an unincorporated association, a government or any agency or subdivision of a government, and their respective heirs, executors, administrators and other legal representatives²¹;

"Petroleum" means Oil and Gas;

"Places of Religious Significance to Innu" means land associated with important Innu religious behaviour and belief, such as those sites set out on the List, which includes locations where religious events occur or have occurred, and locations that link contemporary and historic Innu to the world of animal masters, *Mishtapeuat* and *Tshishe-manitu*;

"Plant" means any species of flora, other than an Aquatic Plant, that is wild by nature and all seeds, parts and products thereof and wild plant species that have been planted or transplanted in the wild by humans, but excludes Forest Resources;

²⁰ To be negotiated. Innu state should be LISA not the Claim Area. NL disagrees. Innu see NL's point re LISA being too limiting, but Claim Area was never in Innu contemplation - rather, Innu had assumed that most of Upper Lake Melville would be LISA, and accordingly, that residents of the Upper Lake Melville communities of NWR, HVGB and Mud Lake would qualify as PLTRs.

Innu propose for the Wildlife Chapter (and would propose the same for the Migratory Birds Chapter) that

"Permanent Long-Term Resident" means an individual who is not a Participant and who has resided in any one or more of the following locations:

- (i) Labrador Innu Settlement Area;
 - (ii) Northwest River; and
 - (iii) Happy Valley-Goose Bay,
- for no less than 10 consecutive years and who at all times thereafter has been ordinarily resident in one or more of the communities of Northwest River, Happy Valley-Goose Bay and the Communities."

For the purposes of the draft definition, Innu have assumed that Mud Lake is in LISA.

Under review by NL.

²¹ Legal drafting. Parties to review all definitions of "Person" occurring throughout the Agreement.

"Protected Area" means any area of land, Water or ocean that has been designated or established pursuant to Federal Legislation or Provincial Legislation, or an Innu Law enacted in accordance with 13A.3.1 for one or more of the following or similar purposes:

- (a) scientific research or environmental monitoring;
- (b) wilderness protection;
- (c) ecosystem, landscape or seascape Conservation and recreation;
- (d) conservation of specific natural or cultural features;
- (e) [Conservation of the Habitat or Aquatic Habitat of particular species; or]²²
- (f) Sustainable Utilization of natural systems; and

examples of such areas are: wilderness and ecological reserves, Migratory Bird sanctuaries, Protected Marine Areas, Conservation areas, Provincial parks, bird and Wildlife sanctuaries, historic sites or places, marine Wildlife areas and Provincial marine protected areas, but does not include a National Historic Site, National Park, National Marine Conservation Area, or Marine Protected Area;²³

"Province" means Her Majesty the Queen in Right of Newfoundland and Labrador;

"Provincial Law" includes Provincial statutes, regulations, Orders-in-Council and the common law and equity;

"Provincial Legislation" includes Provincial statutes, regulations and Orders-in-Council;

"Quarry Material" means a substance used in its natural form for civil construction or agricultural purposes and includes labradorite, chert, shale, marl, clay, sand, gravel, rock, soil, peat, peat moss and slag, but does not include slate, marble, granite, gabbro, anorthosite and similar stone used as dimension stone;

"Recovery Strategy" means...

"Recreational Fishing" includes sport fishing;

"Register" means the register established pursuant to 3.4.6 (f) containing the names of all Participants.

²² To be negotiated. NL has under review.

²³ To be negotiated. NL has definition under review.

"Reply" means a written reply containing the information referred to in 26.3.3;

"Residence" means a specific dwelling-place, such as a den, nest or other similar place, that is occupied or habitually occupied by one or more of a species of Wildlife during all or part of their life cycles²⁴;

"Revenue" means:

- (a) any Royalty Tax that is received by the Province under Part VII of the *Revenue Administration Act* (Newfoundland and Labrador), the *Petroleum and Natural Gas Act* (Newfoundland and Labrador), the *Quarry Materials Act* (Newfoundland and Labrador) or the *Mineral Act* (Newfoundland and Labrador);
- (b) any Royalty Tax that is received by the Province under any Provincial Legislation to replace or amend Part VII of the *Revenue Administration Act* (Newfoundland and Labrador), the *Petroleum and Natural Gas Act* (Newfoundland and Labrador), the *Quarry Materials Act* (Newfoundland and Labrador) or the *Mineral Act* (Newfoundland and Labrador) or to levy a new or additional Royalty Tax in respect of Subsurface Resources in Newfoundland and Labrador;
- (c) any amount that is received by the Province under a tax collection, tax rental, revenue sharing or similar arrangement with Canada or any other jurisdiction in respect of a Royalty Tax referred to in (a) and (b) in respect of Subsurface Resources in Newfoundland and Labrador;
- (d) any interest or penalty that is received by the Province in respect of a Royalty Tax or an amount referred to in (a), (b) or (c); and
- (e) where the Province has taken an equity share in a Subsurface Resource Development *in lieu* of Royalty Taxes, the net revenue received by the Province in respect of such share but, for greater certainty, excludes revenue where the Province acquires an interest through a purchase of shares or where it receives a return on the Subsurface Resource Development from the investment of capital or resources other than the Subsurface Resource in respect of which the equity share is taken in lieu of Royalty Taxes;

"Royalty Tax" means:

- (a) an amount in respect of a Subsurface Resource that is a tax, royalty, rent, fee, excluding a fee levied for administrative purposes, or other payment in the nature of a royalty; and
- (b) any other amount that is payable for a right to explore for or exploit a Subsurface Resource, or for a right of entry or use relating to a right to explore for or exploit a Subsurface Resource;

²⁴ To be negotiated. Definition to be reviewed.

"Silvicultural Treatments" means treatments designed to control the establishment, composition, structure, and growth of forests;

"Specified Material" means Quarry Materials and slate, marble, granite, gabbro, anorthosite and similar stone used as dimension stone, in Specified Material Lands;

"Sports Fish Camp" means a site, facility, camp or building, constructed, used or operated for purposes of Recreational Fishing with a view to income or gain to the owner or operator;

"Stewardship Agreement" means...

"Strategic Plan" means that part of a Forest Resource Management Plan prepared in accordance with Part 11.3 covering a period of no less than twenty (20) years which sets out the approach for the achievement of Sustainable Forest Management, and containing the information that may be required under this Agreement and the *Forestry Act* (Newfoundland and Labrador);

"Subsurface Interest" means a lease, licence or permit in relation to a Subsurface Resource issued by the Province;

"Subsurface Resource" means Minerals, Petroleum, and Quarry Materials but excludes:

- (a) Carving Stone and Geothermal Resources in Labrador Innu Lands; and
- (b) Specified Materials in Labrador Innu Lands;

"Surface Interest" means a grant, lease, license, easement or permit with respect to land or a surface resource;

"Sustainable Utilization" means the use and management of Wildlife, Migratory Birds, Plants, and Forest Resources and their Habitat and Fish, Aquatic Plants and Aquatic Habitat in a manner that does not impair their natural viability in order that the needs of the present may be met without compromising the ability of future generations to meet their needs;²⁵

"Tenure" when used in relation to provincial Crown lands means a grant, lease, licence, permit, or any other authorization to possess, occupy or use those lands that has been or may be issued by the Province for those lands;

"Tidal Waters" means any part of the sea and any part of a river within the ebb and flow of the sea at average spring tides;

"Timber" means trees of realizable commercial value, whether standing, felled, or otherwise, and parts of standing or felled trees, round logs, wood chips or logs that have been slabbed on one (1) or more sides;

²⁵ To be negotiated. NL has under review.

"*Tshishe-manitu*" means God, the Creator;

"Waste" includes residential, municipal, commercial or industrial waterborne or solid wastes, which would if left untreated cause adverse effects, but does not include artificial drainage or storm water and natural run-off, or storm water collected from natural run-off;

"Water" means all water located in or derived from a Body of Water;

"Water Use, Use of Water or Use Water" means all uses of Water, including diversion, removal, storage, and sale of Water, and the discharge or release of Waste into Water;

"Water Use Permit" means:

- (a) a licence for the Use of Water;
- (b) a permit required for an undertaking or works in relation to Water Use or alteration of Water; or
- (c) an approval for the discharge or release of Waste into Water, pursuant to Federal Legislation or Provincial Legislation, and includes any other instrument that may be required in relation to Water for a purpose referred to in (a), (b), or (c);

"Wildlife" means all fauna existing in a wild state, all parts and products thereof, but does not include Fish, Plants, Aquatic Plants, Forest Resources, or Migratory Birds; and

"Winter Trail" means a trail in the Labrador Innu Lands shown, for illustrative purposes only, on Map 17-1.

Part 1.2 Interpretation

- 1.2.1 There shall be an Innu-Aimun, an English and a French version of the Agreement. The English and French versions shall be the authoritative versions. The Agreement is made, for the purposes of the *Official Languages Act* (Canada), when it is signed by the representatives of the Parties.
- 1.2.2 The preamble, the several chapters, the schedules and the appendices to the Agreement shall be read together and interpreted as one agreement.
- 1.2.3 [There shall not be any presumption that doubtful expressions, terms or provisions in the Agreement be resolved in favor of the Innu, Canada or the Province.]²⁶

²⁶ To be negotiated. Innu would like to delete. Under review by NL. Canada requires this interpretive clause.

- 1.2.4 Except where the full citation of Federal Legislation or Provincial Legislation is provided, a reference in the Agreement to Federal Legislation or Provincial Legislation, includes, every amendment to them, every regulation made under them, and any substitution or replacement of them.
- 1.2.5 Subject to [Part 2.18 and Part 2.19]²⁷, the Agreement shall be construed according to the *Interpretation Act* (Newfoundland and Labrador) with any modifications that the circumstances require.
- 1.2.6 When the Agreement refers to an agency, board or tribunal established under Federal Legislation or Provincial Legislation, the reference includes any Person or entity that replaces the agency, board or tribunal.
- 1.2.7 Unless it is otherwise clear from the context, in the Agreement the word “including” means “including but not limited to” and the word “includes” means “includes but is not limited to.”²⁸
- 1.2.8 Whenever a footnote indicates a matter is to be negotiated, or the Agreement-in-Principle provides that a matter is to be negotiated prior to the Agreement, the Parties shall either:
- (a) reach agreement about the matter and, if applicable, reflect the agreed-upon text in the Agreement;
 - (b) reach agreement about the matter and reflect that agreement elsewhere than in the Agreement; or
 - (c) not reach agreement on all or any provisions in relation to the matter.
- 1.2.9 Whenever a footnote indicates a matter is “Legal drafting”, it refers to drafting to be completed between Agreement-in-Principle and Agreement
- 1.2.10 Wherever a series of sections are referred to in the Agreement, they include the first and last sections.

²⁷ To be negotiated.

²⁸ Legal drafting. Parties to review.

Chapter 2: General Provisions

"Innu Government Entity" means any one or more of:

- (a) an institution, agency, board, entity, panel or commission established by the Innu Government or an Innu Community Government pursuant to Innu Law; or
- (b) a corporation or trust controlled, directly or indirectly, by one or more of the Innu Government and an Innu Community Government.

Part 2.1 Status of Agreement-in-Principle

- 2.1.1 The Agreement-in-Principle does not create legal obligations binding on the Parties and does not define, create, recognize, abrogate, derogate, deny or amend any of the rights of the Parties.
- 2.1.2 The Agreement-in-Principle shall form the basis for concluding the Agreement and the Parties agree to begin to negotiate the Agreement in good faith as soon as possible following the signing of the Agreement-in-Principle.

Part 2.2 Status of the Agreement

- 2.2.1 The Agreement shall be a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

Part 2.3 Coming Into Effect

- 2.3.1 The Agreement comes into effect upon its ratification by all Parties as set out in Chapter 4.
- 2.3.2 Canada and the Province shall Consult the Innu Nation with respect to the form and content of the proposed Federal Legislation and Provincial Legislation giving effect to the Agreement.

Part 2.4 Identity as Aboriginal People

- 2.4.1 Nothing in the Agreement shall be construed so as to deny that:
 - (a) Innu are an Aboriginal people of Canada within the meaning of the *Constitution Act, 1982*; or
 - (b) Innu are "Indians" within the meaning of section 91(24) of the *Constitution Act, 1867*.

Part 2.5 Rights as Citizens of Canada and as Residents of Newfoundland and Labrador

2.5.1 Nothing in the Agreement affects the rights of [Innu and/or Participants] as citizens of Canada and as residents of Newfoundland and Labrador.

Part 2.6 Right to Benefit from Future Constitutional Rights

2.6.1 [Nothing in the Agreement affects the ability of the [Innu Government, any Innu Community Governments, or]²⁹ Innu to participate in or benefit from any future amendment to the Constitution of Canada for³⁰ Aboriginal people of Canada conducted in accordance with the General procedure for amending the Constitution of Canada as found in section 38 of the *Constitution Act, 1982.*³¹

Part 2.7 Consultation

2.7.1 The Agreement exhaustively sets out all consultation obligations that Canada or the Province has to Innu, the Innu Government, an Innu Community Governments or to Innu Government Entities established by or under the Agreement, other than:

- (a) consultation obligations under Federal Legislation or Provincial Legislation; and
- (b) consultation obligations as may be provided for in agreements, other than the Agreement, that Canada or the Province may enter into with Innu, the Innu Government, Innu Community Governments or Innu Government Entities.

2.7.2 Innu, the Innu Government, Innu Community Governments and Innu Government Entities established by or under the Agreement agree not to assert any claim or right to consultation based upon any existing or future common law rule.

Part 2.8 Right to Benefit from Programs

2.8.1 Nothing in the Agreement affects the ability of

- (a) Innu to participate in or benefit from
 - (i) Provincial or federal programs of general application, or

²⁹ To be negotiated. The Innu are not convinced the bracketed text should be deleted. Canada states these rights accrue to the Innu as a collectivity so no need for bracketed text. NL is ok with deleting the bracketed text. Innu to review.

³⁰ To be negotiated. Innu propose "affecting", rather than "for".

³¹To be negotiated. Canada has under review in the context of Certainty discussions. NL and Innu agreed to this text in the bilateral AIP.

- (ii) Provincial, if any, or federal programs for Aboriginal people; and
- (b) Innu Government, Innu Community Governments, Innu Government Entities and Innu Businesses to participate in or benefit from
 - (i) Provincial or federal programs of general application, or
 - (ii) Provincial, if any, or federal programs for Aboriginal entities or businesses ;

except as otherwise specifically agreed by the Innu Government or an Innu Community Government under a Fiscal Financing Arrangement. Participation in or benefits from those programs shall be determined by general criteria for those programs established from time to time.

2.8.2 Canada shall Consult the Innu Government prior to the transfer of any federal program for Aboriginal people to the Province.

Part 2.9 Constitution of Canada

2.9.1 The Agreement does not affect the constitutional distribution of powers between Canada and the Province and does not transfer any powers between Canada and the Province.

Part 2.10 Status of Labrador Innu Lands

2.10.1 Labrador Innu Lands are not "Lands reserved for the Indians" within the meaning of section 91(24) of the *Constitution Act, 1867* or reserves within the meaning of the *Indian Act (Canada)*³².

Part 2.11 Other Aboriginal People of Canada

2.11.1 Nothing in the Agreement shall be construed to affect, recognize or provide any rights under section 35 of the *Constitution Act, 1982* for any Aboriginal people other than Innu.

2.11.2 If a court of last resort determines that 2.11.1 has the effect of rendering a provision of the Agreement wholly or partially inoperative or ineffective because the provision would otherwise affect rights under section 35 of the *Constitution Act, 1982* of any Aboriginal people of Canada other than Innu, the Parties shall amend the Agreement so as to remedy or replace the provision.

2.11.3 If Canada or the Province enters into a treaty or a land claims agreement with any other Aboriginal people within the meaning of the *Constitution Act, 1982*, and that treaty or land claims agreement adversely affects the rights of Participants as set out in the Agreement, Canada and the Province shall, at the request of the Innu Government, negotiate an amendment to the Agreement to provide Participants with additional or replacement rights or other appropriate remedies.

³² To be negotiated. Issue of number of years after Effective Date that s.87 would cease to apply. Linked to Chapter 24 discussions.

- 2.11.4 If under 2.11.3, the Parties fail to reach agreement on additional or replacement rights or other appropriate remedies within ninety (90) days or within such other time as agreed to by the Parties, from the commencement of negotiations, any Party may refer the matter to Arbitration under Chapter 26.
- 2.11.5 If under 2.11.3 the Parties cannot agree on whether there is an adverse affect on the rights of Participants as set out in the Agreement, the Parties may refer the matter for resolution, except Arbitration, under Chapter 26.
- 2.11.6 Provisions in overlap agreements, if any, in respect of any overlapping interests between Innu and other aboriginal peoples may, with the agreement of the Parties, be set out in the Agreement.

Part 2.12 Certainty

- 2.12.1 The Agreement will:
- (a) constitute the full and final settlement of the aboriginal rights of Innu in Canada, except in Quebec; and
 - (b) subject to section 2.6.1, exhaustively set out the rights of Innu in Canada, except in Quebec, that are recognized and affirmed by section 35 of the *Constitution Act, 1982*.
- 2.12.2 Certainty provisions addressing the rights of Innu in Canada, except in Quebec, that are referred to in 2.12.1 will be negotiated between the Agreement-in-Principle and the Agreement and will be included in the Agreement.³³
- 2.12.3 Nothing in 2.12.1 shall preclude the Innu from making claims, demands, actions or proceedings of whatever kind that are not released under 2.13.1.

³³ To be negotiated in context of 2.12.2. Province's preferred certainty model is set out at 2.12.2 to 2.12.5. Innu disagree.

- 2.12.2 Subject to section 2.12.3, Innu hereby cede and release to Canada and the Province all the aboriginal rights which Innu ever had, now have or may in future claim to have within Canada, except Quebec.
- 2.12.3 The cession and release in section 2.12.2 does not apply to the aboriginal rights of Innu in and to Labrador Innu Lands other than to any aboriginal rights that Innu ever had, now have, or may in future claim to have in and to Subsurface Resources in Labrador Innu Lands.
- 2.12.4 Notwithstanding any common law rule to the contrary, the aboriginal rights of Innu in and to Labrador Innu Lands as they existed before the Effective Date, including their attributes and geographical extent, that have not been ceded and released by virtue of section 2.12.3 are, as a result of the Agreement and the Federal and Provincial Legislation referred to in Part 4.5, modified, and continue as modified, as set out in the Agreement.
- 2.12.5 If, despite the Agreement and the Federal and Provincial Legislation referred to in Part 4.5, it is determined by a court of last resort that Innu have an aboriginal right in and to Labrador Innu Lands that is other than, or that is different in attributes or geographical extent from, the rights of Innu as set out in the Agreement, Innu, from the Effective Date, cede and release that aboriginal right to Canada and the Province to the extent that the aboriginal right is other than, or different in attributes or geographical extent from, the rights of Innu as set out in the Agreement.

Part 2.13 Release For Past Claims

2.13.1 If the Parties reach the Agreement, Innu will release Canada, the Province and all other Persons from all claims, demands, actions or proceedings, of whatever kind, whether known or unknown, that Innu ever had, now have, or may have in the future, relating to or arising from, any act or omission occurring before the Effective Date that may have interfered with, affected or infringed any aboriginal rights of Innu in Canada, except:

- (a) in Quebec; and
- (b) that the Parties agree to negotiate the extent and scope of the application of the release to "other Persons" before the Agreement. .

Part 2.14 Indemnity

2.14.1 The Innu Government will indemnify and forever save harmless Canada or the Province, as the case may be, from all damages, costs, losses, or liabilities that Canada or the Province, respectively, may suffer or incur in connection with or as a result of any suits, actions, causes of action, claims, proceedings, or demands initiated or made after the Effective Date by Innu against Canada or the Province relating to or arising from:

- [(a) the aboriginal rights ceded and released under 2.12.2 to 2.12.5;
- (b) any act or omission by Canada or the Province before the Effective Date that may have affected or infringed any aboriginal right that has not been ceded and released by virtue of 2.12.3; and
- (c) the existence of an aboriginal right that is determined to be other than or different in attribute or geographical extent from the rights of Innu as set out in the Agreement.]³⁴

2.14.2 The costs referred to in 2.14.1 do not include fees and disbursements of lawyers and other professional advisors.

2.14.3 Canada or the Province, as the case may be, shall vigorously defend any suit, action, claim, demand or proceeding referred to in 2.14.1 and shall not compromise or settle any suit, action, claim, demand or proceeding without the consent of the Innu Government.

2.14.4 For greater certainty, the right of a Party to be indemnified under 2.14.1 does not extend to any suit, action, claim, demand, proceeding, damage, cost, loss,

³⁴ To be negotiated. Given NL's preferred certainty model, this is NL's preferred text for 2.14 1 (a)-(c). Innu disagree and may require an indemnity as well; Canada is open to include any one of the existing certainty models as they are currently worded in other land claim agreements.

liability or entitlement that relates to or arises from its failure to carry out its obligations under the Agreement.

Part 2.15 Invalidity

2.15.1 No Party shall challenge, or support a challenge to, the validity of any provision of the Agreement.

2.15.2 No Party shall have a claim or cause of action based on a finding that any provision of the Agreement is invalid. Nothing in 2.15.2 shall be construed so as to prevent a claim or cause of action under Part 2.14.

2.15.3 If a court of competent jurisdiction finds any provision of the Agreement to be invalid, the Parties shall make best efforts to amend the Agreement or agree on other measures to remedy the invalidity or replace the invalid provision.

Part 2.16 Legal Proceedings

2.16.1 Where a Participant has a right of action that relates to or arises from the Agreement, the Innu Government may initiate and carry on the action on behalf of that Participant. Nothing in 2.16.1 precludes a Participant from commencing an action on his or her own behalf.

2.16.2 If in any Legal Proceeding a question is raised respecting the interpretation, validity or application of the Agreement, Federal Legislation or Provincial Legislation giving effect to the Agreement, or Federal Legislation or Provincial Legislation made for purposes of implementing the Agreement, the Legal Proceeding shall not be filed until sixty (60) days prior notice has been given to the Parties and the requirements of 26.7.1 have been satisfied.

2.16.3 A Party is entitled, as of right, to be heard with respect to a question referred to in 2.16.2 and shall be considered a party to the Legal Proceeding for the purpose of an appeal from an adjudication as to such a question or for the purpose of a judicial review of the Legal Proceeding or an order or decision made in the Legal Proceeding.

Part 2.17 Charter of Rights and Freedoms

2.17.1 The *Canadian Charter of Rights and Freedoms* applies to the Innu Government and Innu Community Governments in respect of all matters within its authority.

Part 2.18 Application of Laws³⁵

2.18.1 Subject to 2.19.1 to 2.19.3, Federal Law and Provincial Law apply to Participants, the Innu Government, Innu Community Governments and Labrador Innu Lands.

³⁵ To be negotiated. Canada proposes a new provision "Except as otherwise provided in this Agreement, Innu Law does not apply to Canada or the Province". Linked to further negotiations under 30.10.1

Part 2.19 Conflict of Laws

- 2.19.1 If there is a Conflict between Federal Law, Provincial Law or Innu Law and the Agreement, the Agreement prevails to the extent of the Conflict.
- 2.19.2 If there is a Conflict between Federal Legislation made for purposes of implementing the Agreement and any other Federal Legislation, the Federal Legislation made for purposes of implementing the Agreement prevails to the extent of the Conflict.
- 2.19.3 If there is a Conflict between Provincial Legislation made for purposes of implementing the Agreement and any other Provincial Legislation, the Provincial Legislation made for purposes of implementing the Agreement prevails to the extent of the Conflict.
- 2.19.4 Notwithstanding any other rule of priority in the Agreement, if there is a Conflict between a Federal Law or Provincial Law and an Innu Law that has a double aspect with or an incidental impact on:
- (a) a subject matter in respect of which the Innu Government does not have jurisdiction; or
 - (b) a subject matter in respect of which an Innu Law does not have paramountcy over a Federal Law or Provincial Law,
- the Innu Law is valid but, with respect to a double aspect or the incidental impact, the Federal Law or Provincial Law prevails to the extent of the Conflict.
- 2.19.5 Notwithstanding any other rule of priority in the Agreement, if there is a Conflict between an Innu Law and:
- (a) a Federal Law in relation to the peace, order and good government of Canada; or
 - (b) a Federal Law that relates specifically to the criminal law or criminal procedure, the recognition and protection of human rights of all Canadians, or the protection of health and safety of all Canadians,

the Federal Law prevails to the extent of the Conflict.

Part 2.20 Amending the Agreement

- 2.20.1 Unless otherwise provided in the Agreement, an amendment to the Agreement shall require the consent of the Parties and:
- (a) Canada shall give its consent by an order of the Governor-in-Council;
 - (b) the Province shall give its consent by an order of the Lieutenant Governor-in-Council; and

- (c) the Innu Government shall give its consent in accordance with the Labrador Innu Constitution.

2.20.2 An amendment to the Agreement takes effect on the date agreed to by the Parties to the amendment, but if no date is agreed to, on the date that the last Party required to consent to the amendment gives its consent.

Part 2.21 Entire Agreement

2.21.1 The Agreement is the entire agreement and there is no representation, collateral agreement, warranty or condition affecting the Agreement unless otherwise provided in the Agreement.

Part 2.22 Disclosure of Information

2.22.1 The Parties may enter into agreements addressing the collection, protection, retention, use, disclosure and confidentiality of personal, general or other information.

2.22.2 For the purposes of Federal Legislation on access to information and privacy, information provided in confidence by the Innu Government is deemed to be information obtained in confidence from another government in Canada.

2.22.3 The Province shall present in the Provincial Legislation giving effect to the Agreement, amendments to the *Freedom of Information Act* (Newfoundland and Labrador), and to the *Privacy Act* (Newfoundland and Labrador) to protect from disclosure information provided in confidence by the Innu Government as if it were information provided to the Province by another government in Canada.

2.22.4 Canada or the Province may provide information to the Innu Government in confidence if the Innu Government has made a law or has entered into an agreement with Canada or the Province, as the case may be, under which the confidentiality of the information will be protected.

2.22.5 Notwithstanding any other provision of the Agreement, no Party is required to disclose any information:

- (a) that it is required to withhold under any Federal Law, Provincial Law or Innu Law; or
- (b) that may be withheld under a privilege at law or under sections 37 to 39 of the *Canada Evidence Act* (Canada); and
- (c) unless the conditions for the disclosure of that information specified in Federal Legislation, Provincial Legislation or Innu Law are satisfied.

Part 2.23 Authorization to Act

2.23.1 For the purpose of any provision of the Agreement:

- (a) Canada may authorize any body or person to act on its behalf, or may identify which of its Ministers is responsible for the subject matter of the provision, by Federal Legislation, an order of the Governor in Council or ministerial letter;
- (b) the Province may authorize any body or person to act on its behalf, or may identify which of its Ministers is responsible for the subject matter of the provision, by Provincial Legislation or an order of the Lieutenant Governor-in-Council or by ministerial letter; and
- (c) the Innu Government may authorize any body, including an Innu Entity, or person to act on its behalf, or may identify which of its officials is responsible for the subject matter of the provision, by Innu Law or xxx.

2.23.2 Written notice of any authorization or identification made pursuant to 2.23.1 shall be given to each Party.

Part 2.24 Communications

2.24.1 Communications from the Innu Government:

- (a) to Canada, shall be in one of Canada's official languages; and
- (b) to the Province, shall be in English.

2.24.2 Communications from Canada or the Province to the Innu Government shall be in English or at the sole discretion of Canada or the Province, as the case may be, in innu-Aimun.

2.24.3 Nothing in 2.24.2 abrogates or derogates from any right, privilege or obligation with respect to the official languages of Canada that the Innu Government may have under the Constitution of Canada.

2.24.4 Unless otherwise set out in the Agreement, notice between or among the Parties under the Agreement must be in writing and be:

- (a) delivered personally or by courier;
- (b) transmitted by fax, e-mail or other means of electronic transmission; or
- (c) mailed by prepaid registered post in Canada.

2.24.5 A notice is considered to have been received:

- (a) if delivered personally or by courier, on the day it was delivered;
- (b) if transmitted by fax or other means of electronic transmission other than e-mail and the sender received confirmation of the transmission on the date of receipt;

- (c) if transmitted by e-mail and the sender received a delivery or a "read" receipt or an e-mail acknowledgment of receipt, on the date of receipt; or
- (d) if mailed by prepaid registered post in Canada, on the day the postal receipt is acknowledged by the addressee.

2.24.6 In addition to 2.24.4 and 2.24.5, the Parties may agree to give, make or deliver a notice by a means other than one provided in 2.24.4.

2.24.7 The Parties shall provide to each other addresses for delivery of communications under the Agreement, and subject to 2.24.8, will deliver a communication to the address provided by each other Party.

2.24.8 If no other address for delivery of a particular communication has been provided by a Party, a communication will be delivered, transmitted, or mailed to the intended recipient as set out below:

For: Canada

Attention:

For: The Province

Attention:

For: Innu Government

Attention:

2.24.9 A Party may change its address or fax number under 2.24.8 by giving a notice of the change in writing to the other Parties.

Part 2.25 Warranty of Representation

2.25.1 The Innu Nation represents and warrants to Canada and the Province that:

- (a) it represents Innu; and
- (b) in respect of the matters dealt with in this Agreement, the Innu Nation has the authority to enter, and it enters, into this Agreement on behalf of all Innu who have or may exercise any aboriginal rights, including aboriginal title, in Canada, or who may make any claim in respect of those rights.

2.25.2 Canada and the Province represent and warrant to the Innu Nation that, in respect of the matters dealt with in this Agreement, they have the authority to enter, and they enter, into this Agreement within their respective authorities.

Part 2.26 Negotiations under the Agreement

2.26.1 Where the Agreement requires a Person to negotiate a matter, that Person shall negotiate in good faith.

Part 2.27 Vacancies in Appointments Under the Agreement

2.27.1 If a vacancy occurs in the membership of a board or committee established under the Agreement prior to the expiry of the member's term, the replacement member shall be appointed for the unexpired portion of the term unless the Parties agree, in writing, that the replacement member shall be appointed for a full term.

Part 2.28 Deposit of the Agreement

2.28.1 The Parties shall cause an original copy of the Agreement, and any amendments thereto, to be deposited :

(a) by Canada in the:

(i) **National Archives of Canada;**

(ii) **Library of Parliament;**

(iii) **library of the Department of Indian Affairs and Northern Development situated in the National Capital Region; and**

(b) by the Province in the Provincial Archives; and

(c) by the Innu Government in xxx.

Chapter 3: Eligibility and Enrollment

Part 3.1 Definitions

3.1.1 In this Chapter:

“Applicant” means an individual applying to be enrolled under the Agreement, whether on his or her own behalf, or by his or her parent in the case of a Child, or by another individual who has the legal authority to manage the individual’s affairs pursuant to 3.2.6;

“Enrollment Committee” means the committee established pursuant to 3.4.1;

“Enrollment Appeal Board” means the board established by the Innu Government pursuant to 3.7.5 b).

“Initial Enrollment Appeal Board” means the board established pursuant to 3.5.1 for the Initial Enrollment Period;

“Initial Enrollment Period” means the period of time from the signing of the Agreement to the day before the second anniversary of the Effective Date;

“Innu Registrar” means the individual appointed by the Innu Government pursuant to 3.7.5 (a) who will assume the responsibilities of the Enrollment Committee following the Initial Enrollment Period;

Part 3.2 Eligibility Criteria

3.2.1 The Innu Government may make laws, consistent with Part 3.2, with respect to enrollment as a Participant.

3.2.2 Subject to Part 3.3, an individual is entitled to be enrolled as a Participant if that individual is alive, and:

- (a) is a Canadian citizen or permanent resident of Canada; and
- (b) is either:
 - (i) a registered member of, or entitled to be registered as a member of, the Sheshatshiu Innu First Nation or the Mushuau Innu First Nation on the day prior to the Effective Date;
 - (ii) accepted either by the Sheshatshiu Innu First Nation or the Mushuau Innu First Nation as a member of that First Nation, or by an Innu Community Government;
 - (iii) a member of that Community, in accordance with the custom of that First Nation or Innu Community Government;

- (iv) the descendant of an individual referred to in 3.2.2(b) i); or
 - (v) an individual not falling into 3.2.2 (b) i) to iv) but who appears on the Innu Nation membership list on the day prior to the Effective Date.
- 3.2.3 An individual referred to in 3.2.2 includes an individual who is not of Innu ancestry but is an Adopted Child of an individual who is entitled to be enrolled pursuant to 3.2.2.
- 3.2.4 Notwithstanding 3.2.2(a), an individual referred to in 3.2.2 includes a person who is of Innu ancestry and who is born:
 - (a) in Canada, but as a result of adoption, foster care or other similar arrangements, became a citizen of a country other than Canada as a Child; or
 - (b) outside Canada, and is a citizen of a country other than Canada as a result of the relocation of an individual who is a Participant, or entitled to be enrolled as a Participant, pursuant to 3.2.2.
- 3.2.5 The relevant custom of the Sheshatshiu Innu First Nation, Mushuau Innu First Nation or Innu Community Government referred to in 3.2.2(b) iii) shall be communicated by the Sheshatshiu Innu First Nation or Mushuau Innu First Nation or Innu Community Government to any individual seeking enrollment as a Participant under 3.2.2(b) iii).
- 3.2.6 Any individual who, by order of a court, by Innu custom or pursuant to Federal Law, Provincial Law or Innu Law, has been vested with the authority to manage the affairs of an adult incapable of managing his or her own affairs, may apply to the Enrollment Committee to enroll that adult as a Participant.
- 3.2.7 The burden of demonstrating eligibility will be on the Applicant.
- 3.2.8 Enrollment as a Participant pursuant to this Agreement does not confer or deny rights of entry into Canada, Canadian citizenship, or the right to be registered as an Indian under the *Indian Act* (Canada).
- Part 3.3 Other Land Claims Agreements**
- 3.3.1 An individual who is enrolled under another land claims agreement in Canada may not at the same time be a Participant under this Agreement.
- 3.3.2 An individual enrolled under another land claims agreement in Canada may apply to be a Participant under this Agreement, but if their application succeeds pursuant to Part 3.2, that individual must withdraw from enrollment under the other land claims agreement.
- 3.3.3 An Applicant, upon application, must notify the Enrollment Committee if the Applicant or an individual on behalf of whom the Applicant is applying, falls within

the category set out in 3.3.1.

Part 3.4 The Enrollment Committee for the Initial Enrollment Period

3.4.1 Following the signing of the Agreement, the Innu Nation shall establish the Enrollment Committee for the Initial Enrollment Period.

3.4.2 The Enrollment Committee shall be composed of four (4) Innu individuals. The Innu Nation or the Innu Government shall:

- (a) appoint two (2) individuals from each Community who understand Innu-aimun and reside in a Community; and
- (b) notify Canada and the Province of the members of the Enrollment Committee.

3.4.3 Canada and the Province may each appoint one (1) individual who may attend all meetings and observe all proceedings of the Enrollment Committee and shall:

- (a) receive notice of all Enrollment Committee meetings;
- (b) have access to all records pertaining to Enrollment Committee proceedings or decisions;
- (c) not be a member of the Enrollment Committee for any purpose; and
- (d) not participate in the proceedings or decisions of the Enrollment Committee.

3.4.4 The Innu Nation or the Innu Government may appoint one or more alternate members to replace individuals appointed under 3.4.2 (a).

3.4.5 Any information obtained by Canada and the Province pursuant to 3.4.3 shall be kept confidential.

3.4.6 The Enrollment Committee shall:

- (a) within ninety (90) days of the commencement of the Initial Enrollment Period, establish and publish the enrollment procedures and time limits, including the documentation and information required of each Applicant;
- (b) within ninety (90) days of the commencement of the Initial Enrollment Period, publish the eligibility criteria set out in Part 3.2;
- (c) provide information about the enrollment process and application forms to all individuals wishing to apply for enrollment;
- (d) consider each application and:
 - (i) enroll Applicants who meet the eligibility criteria set out in 3.2.2; or

- (ii) refuse to enroll Applicants who do not meet the eligibility criteria set out in 3.2.2;
 - (e) within thirty (30) days of making a decision pursuant to 3.4.6 (d), notify in writing the Applicant, the Innu Nation or the Innu Government, the Band Councils or the Innu Community Governments, the Province, and Canada of its decision, and where enrollment is refused, provide written reasons;
 - (f) immediately following the enrollment of the first Applicant, establish and maintain a Register that contains the name of each individual who has been determined to be a Participant and provide a true copy of the Register to the Innu Nation or the Innu Government, Canada and the Province each year and at other times on request;
 - (g) add or delete names from the Register in accordance with decisions of the Enrollment Appeal Board;
 - (h) in accordance with the enrollment procedures, and subject to 3.4.6 (f) and (i), keep information provided by and about Applicants confidential; and
 - (i) provide in confidence, information, including any confidential information, that is relevant to determining an individual's eligibility, on request, to the Innu Nation or Innu Government, the Band Councils or the Innu Community Governments, Canada, the Province and the Initial Enrollment Appeal Board.
- 3.4.7 If requested, the Enrollment Committee shall make the Register or extracts from it available to the public. The Enrollment Committee may charge a reasonable fee to recover its administrative costs for doing so.
- 3.4.8 If the Enrollment Committee determines that an individual whose name is on the Register is not entitled to be enrolled pursuant to Part 3.2, or that an individual whose name is not on the Register is entitled to be enrolled pursuant to Part 3.2, the name of such an individual shall be removed from or added to the Register by the Enrollment Committee, and the Enrollment Committee shall within fifteen (15) days of making a decision, notify the Applicant, the Innu Nation or the Innu Government, the Band Councils or the Innu Community Governments, the Province and Canada of its decision, with reasons in writing.
- 3.4.9 Subject to Parts 3.5 and 3.6, all decisions and orders of the Enrollment Committee shall be final and binding.
- Part 3.5 The Initial Enrollment Appeal Board for the Initial Enrollment Period**
- 3.5.1 Following the signing of the Agreement, the Innu Nation, Canada, and the Province shall establish the Initial Enrollment Appeal Board.
- 3.5.2 The Initial Enrollment Appeal Board shall have five (5) members:

- (a) one (1) individual appointed by each Band Council or Innu Community Government;
- (b) one (1) individual appointed by the Province;
- (c) one (1) individual appointed by Canada; and
- (d) a chairperson appointed by the Innu Nation or the Innu Government.

but no members shall be the same as those appointed pursuant to 3.4.2 (a) or 3.4.3.

3.5.3 Each Band Council or Innu Community Government may appoint an alternate member to replace an individual appointed under 3.5.2 (a).

3.5.4 The Initial Enrollment Appeal Board shall:

- (a) within sixty (60) days of the appointment of all of its members under 3.5.2, establish and publish its own procedures and time limits, consistent with the principles of natural justice;
- (b) within one hundred and eighty (180) days of receipt of an appeal brought under 3.5.5, hear, determine and provide its decision, with reasons in writing;
- (c) conduct its hearings in public unless it determines in a particular case that there are reasons for confidentiality which outweigh the public interest in having an open hearing; and
- (d) ensure that translation is provided if Innu-aimun is used in its proceedings.

3.5.5 An Applicant, Canada, the Province, the Innu Nation or the Innu Government or a Band Council or Innu Community Government may appeal in writing any decision of the Enrollment Committee made pursuant to 3.4.6 (d) or 3.4.8 to the Initial Enrollment Appeal Board within sixty (60) days of the decision being published under 3.4.6 (e) or 3.4.8.

3.5.6 The Initial Enrollment Appeal Board will permit the appellant or any witness appearing before it to be assisted by counsel or an agent.

3.5.7 Subject to Part 3.6, decisions of the Initial Enrollment Appeal Board will be final and binding.

3.5.8 The Initial Enrollment Appeal Board may:

- (a) by summons require any individual to appear before the Initial Enrollment Appeal Board as a witness and produce any document in his or her possession; and

- (b) require any witness to answer on oath or solemn affirmation any question posed to him or her.

3.5.9 Where an individual fails to comply with a direction of the Initial Enrollment Appeal Board made under 3.5.8, on application by the Initial Enrollment Appeal Board, a judge of the Federal Court may enforce the direction.

3.5.10 No action lies against the Initial Enrollment Appeal Board or any member for anything done or omitted in good faith in the performance or intended performance of a duty under this Part or Part 3.6.

Part 3.6 Judicial Review for the Initial Enrollment Period

3.6.1 An application for judicial review may be made by an Applicant, Canada, the Province, the Innu Nation or Innu Government, or a Band Council or Innu Community Government within sixty (60) days of notification of the decision made by the Initial Enrollment Appeal Board pursuant to 3.5.4(b) or within a longer time that may be determined by the Federal Court where it is submitted that the Initial Enrollment Appeal Board:

- (a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
- (b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
- (c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;
- (d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
- (e) acted, or failed to act, by reason of fraud or perjured evidence; or
- (f) acted in any other way that was contrary to law, including by acting in any other way for which the Federal Court may have jurisdiction to grant relief on an application for judicial review under the *Federal Court Act* (Canada).

3.6.2 On an application for judicial review, the Federal Court may either dismiss the application or set aside the decision and refer the matter back to the Initial Enrollment Appeal Board for determination in accordance with such directions as the Federal Court considers appropriate.

3.6.3 Where the Initial Enrollment Appeal Board refuses or fails to hear or decide an appeal, an Applicant, Canada, the Province, the Innu Nation or the Innu Government, or a Band Council or Innu Community Government may apply to the Federal Court for an order directing the Initial Enrollment Appeal Board to

hear or decide the appeal in accordance with such directions as the Federal Court considers appropriate.

Part 3.7 Enrollment After the Initial Enrollment Period

3.7.1 Subject to 3.7.2 and 3.7.3, at the end of the Initial Enrollment Period, the Enrollment Committee and the Initial Enrollment Appeal Board shall be dissolved and enrollment shall be the responsibility of the Innu Government.

3.7.2 The Enrollment Committee or the Initial Enrollment Appeal Board shall render a decision in respect of an application under 3.4.6(d) or an appeal under Part 3.5 that is pending on the date of dissolution of the Enrollment Committee or the Initial Enrollment Appeal Board as though they had not been dissolved.

3.7.3 The Federal Court shall render a decision in respect of:

- (a) an application for judicial review under 3.6.1;
- (b) a referral for determination under 3.6.2; or
- (c) an application under 3.6.3

that are pending before the Federal Court on the date of dissolution of the Enrollment Committee or the Initial Enrollment Appeal Board as though they had not been dissolved.

3.7.4 On dissolution, the Enrollment Committee and the Initial Enrollment Appeal Board shall provide their records, including confidential information, to the Innu Government.

3.7.5 Following the Initial Enrollment Period, the Innu Government shall have the following powers and responsibilities in respect of enrolment:

- (a) appoint an Innu Registrar who shall:
 - (i) establish, publish and amend its procedures for enrolment;
 - (ii) supply application forms to any individual wishing to apply for enrolment;
 - (iii) decide upon all applications received in accordance with the eligibility criteria set out in Part 3.2;
 - (iv) continue to maintain and update the Register;
 - (v) provide a true copy of the Register to the Innu Government, Canada and the Province each year at no cost; and
 - (vi) provide copies of the reasons for decisions made by the Innu Enrollment Appeal Board to the Innu Government, Canada and the Province, upon request at no cost.

- (b) establish an Innu Enrollment Appeal Board, consisting of three (3) members to hear appeals from decisions of the Innu Registrar made pursuant to 3.7.5(a) iii); and
- (c) [subject to Part 2.22³⁶] provide information concerning the enrolment of or failure to enroll an individual to Canada and the Province upon request, where the matter is not subject to a judicial review under 3.7.8, and at no cost.

3.7.6 The Enrollment Appeal Board shall:

- (a) establish and publish its procedures for hearing appeals, including time limits;
- (b) hear and determine any appeal brought in respect of a decision made under 3.7.5(a) iii), including:
 - (i) whether the Applicant or the individual on behalf of whom the Applicant appealed will be enrolled; and
 - (ii) re-hearing any matters arising from 3.7.9;
- (c) conduct hearings in public, unless it determines in a particular case that there are reasons for confidentiality that outweigh the public interests in having an open hearing;
- (d) provide written reasons for each decision to each Applicant; and
- (e) maintain a record of decisions and the reasons for these decisions and provide those decisions and their reasons to the Innu Registrar as required.

3.7.7 Subject to 3.7.8, no order, decision or ruling of the Enrollment Appeal Board may be appealed. Every order, decision or ruling of the Enrollment Appeal Board is final and may not be reviewed in any court except as permitted by this Part.

3.7.8 An application for judicial review may be made to the Federal Court by the Applicant, Innu Government or an Innu Community Government within sixty (60) days from the date of notification of the decision made by the Enrollment Appeal Board or a longer time that may be determined by the Federal Court where it is submitted that the Enrollment Appeal Board:

- (a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
- (b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
- (c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

³⁶ To be negotiated. Keeping the information confidential is the objective.

- (d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
- (e) acted, or failed to act, by reason of fraud or perjured evidence; or
- (f) acted in any other way that was contrary to law, including by acting in any other way for which the Federal Court may have jurisdiction to grant relief on an application for judicial review under the *Federal Court Act* (Canada).

3.7.9 On application for judicial review, the Federal Court may either dismiss the application or set aside the decision and refer the matter back to the Enrollment Appeal Board for determination in accordance with such directions as the Federal Court considers appropriate.

3.7.10 Where the Enrollment Appeal Board refuses or fails to hear or decide an appeal, an Applicant, the Innu Government or an Innu Community Government may apply to the Federal Court for an order directing the Enrollment Appeal Board to hear or decide the appeal in accordance with such directions as the Federal Court considers appropriate.

3.7.11 No action lies against the Innu Registrar or the Enrollment Appeal Board or any member thereof for anything done or omitted in good faith in the performance or intended performance of a duty under this Part.

Part 3.8 Proof of Enrollment

3.8.1 The Enrollment Committee for the Initial Enrollment Period or the Innu Registrar shall provide each Participant with a card that identifies that individual as a Participant.

3.8.2 The card referred to in 3.8.1 is non-transferable and is rebuttable proof that the individual named on it is a Participant.

3.8.3 In any Legal Proceeding a copy of, or extract from, the Register shall be admitted as evidence of the Register or extract if it is proved by the affidavit of an officer of the Innu Government. It is not necessary to prove the signature or official status of the individual making the affidavit if the official status of that individual is set out in the affidavit.

3.8.4 If requested, the Innu Registrar shall make the Register or extracts from it available to the public. It may charge a reasonable fee to recover its administrative costs for doing so.

Part 3.9 Costs

3.9.1 Canada and the Province will pay the reasonable and necessary costs of the Enrollment Committee and the Initial Enrollment Appeal Board for the Initial

Enrollment Period and for the costs of the Enrollment Committee and the Initial Enrollment Appeal Board in the event that a decision is required under 3.7.2.

3.9.2 During the Initial Enrollment Period, the Enrollment Committee and the Initial Enrollment Appeal Board will each submit an annual budget to Canada and the Province for approval and will operate within their approved budgets.

3.9.3 Subject to 3.9.1, after the Initial Enrollment Period, the Innu Government will bear all costs associated with enrollment.

Chapter 4: Ratification

Part 4.1 Definitions

4.1.1 In this Chapter:

“Final Voters List” means the final list, referred to in 4.4.5(d), of individuals ordinarily resident in or affiliated with Sheshatshiu or Natuashish who are eligible to participate in the Innu ratification vote on the Agreement who are:

- (a) at least eighteen (18) years of age on the last scheduled day of the Innu ratification vote as set by the Ratification Committee pursuant to 4.4.5(e); and
- (b) eligible to be enrolled as a Participant in accordance with the criteria established under Part 3.2.

“Preliminary Voters List” means the preliminary list referred to in 4.4.5(b), of individuals ordinarily resident in or affiliated with Sheshatshiu or Natuashish deemed to be eligible to participate in the Innu vote for the Agreement who are:

- (a) at least eighteen (18) years of age on the last scheduled day of the Innu ratification vote as set by the Ratification Committee pursuant to 4.4.5(e); and
- (b) eligible to be enrolled as a Participant in accordance with the criteria established under Part 3.2; and

“Ratification Committee” means the committee established under Part 4.4.

Part 4.2 General

4.2.1 Once the Agreement has been initialed by the negotiators of the Innu Nation, Canada and the Province, it shall be submitted for ratification by the Parties.

Part 4.3 Innu Ratification Process

4.3.1 The Innu ratification vote shall be by secret ballot.

4.3.2 The Innu shall have ratified the Agreement when:

- (a) fifty percent plus one (50% +1) of the voters on the Final Voters List for Sheshatshiu vote in favour of ratifying the Agreement; and
- (b) fifty percent plus one (50% +1) of the voters on the Final Voters List for Natuashish vote in favour of ratifying the Agreement.

4.3.3 Upon a vote in favour of ratifying the Agreement pursuant to 4.3.2, the duly appointed officers of the Innu Nation shall sign the Agreement.

4.3.4 The Innu ratification vote shall be held no earlier than thirty (30) days and no later than one hundred and eighty (180) days after publication of the Final Voters List by the Ratification Committee.

Part 4.4 Ratification Committee

4.4.1 Between the approval of the Agreement-in-Principle and the initialing of the Agreement, a Ratification Committee shall be established by the Parties at a time to be agreed upon by the Parties taking into account the requirements set out in this Chapter.

4.4.2 The Ratification Committee shall be composed of seven (7) representatives:

- (a) two (2) appointed by each Band Council;
- (b) one (1) appointed by the Province;
- (c) one (1) appointed by Canada; and
- (d) one (1) appointed by the Innu Nation.

4.4.3 The Ratification Committee members shall choose one of its members to act as a chairperson. If the members fail to choose a chairperson within thirty (30) days, the chairperson of the Ratification Committee shall rotate amongst the representatives beginning with the representatives appointed pursuant to 4.4.2(a) and ending with the representatives appointed pursuant to 4.4.2(d) for a period of two (2) months each.

4.4.4 Decisions of the Ratification Committee during the ratification period shall be made by consensus wherever possible. In the event consensus cannot be reached, which shall be determined by the chairperson, the decision shall be put to a majority vote of all seven (7) members of the Ratification Committee.

4.4.5 The Ratification Committee shall:

- (a) be responsible for all aspects of the conduct of the Innu ratification vote outlined in this Chapter, as well as other aspects as the Parties may agree;
- (b) within forty-five (45) days of initialing the Agreement pursuant to 4.2.1, prepare, publish and provide to the Parties a Preliminary Voters List;
- (c) follow the procedures set out below in respect of any challenges to the Preliminary Voters List:
 - (i) within sixty (60) days from publication of the Preliminary Voters List, an individual not on the Preliminary Voters List may apply in writing to the Ratification Committee to be placed on the Preliminary Voters List. The Ratification Committee shall make its decision within forty-five (45) days of receipt of the application;

- (ii) within sixty (60) days from publication of the Preliminary Voters List, an individual whose name is on the Preliminary Voters List may, by written request, ask to be excluded from the Final Voters List, and the Ratification Committee shall exclude that individual's name from the Final Voters List;
 - (iii) within sixty (60) days from publication of the Preliminary Voters List, a Challenger may apply in writing, with reasons, to the Ratification Committee to have a Challengee removed from that list;
 - (iv) within ten (10) days of receipt of an application under 4.4.5(c) (iii), the Ratification Committee shall provide written notice by registered mail, along with the stated grounds for the challenge, to the Challengee and the Challenger and provide the Challengee and Challenger, or any representative thereof, fifteen (15) days from the receipt of the notice by the Challengee an opportunity to provide further information and make written and oral representations in relation to the application;
 - (v) within fifteen (15) days of receiving further information and hearing representations under 4.4.5 (c) (iv), the Ratification Committee shall provide its decision in writing, with reasons, to the Challengee and Challenger;
 - (vi) notwithstanding 4.4.5(c) (i) to (v), the Ratification Committee may make its own inquiries to gather or verify information; and
 - (vii) decisions made by the Ratification Committee pursuant to 4.4.5 (c) are final and binding.
- (d) within ten days (10) of deciding upon all applications made pursuant to 4.4.5(c), prepare, publish and provide to the Parties a Final Voters List which is binding on the Parties;
 - (e) subject to 4.3.4, notify the Parties, upon provision of the Final Voters List, of the day or days on which the Ratification Committee will conduct the Innu ratification vote;
 - (f) take all reasonable steps to ensure that individuals on the Final Voters List have a reasonable opportunity to review the substance and details of the Agreement, with particular attention given to the need for community meetings and to the production and distribution of materials in Innu-aimun;
 - (g) establish the mechanism to conduct the Innu ratification vote, including the form and content of the ballot, advance polls, mail-in ballots, and voting venues;

- (h) conduct the Innu ratification vote on a day or days determined by the Ratification Committee, and ensure the vote is held on the same date or dates in all of the polling stations;
- (i) retain all ballots, document all events and decisions related to the Innu ratification vote, make such documentation available to the Parties upon request, and transfer originals of all such documentation to the Innu Government and copies of all such documentation to the National Archives of Canada within six (6) months after completion of the Innu ratification vote. These documents shall not be disposed of, in whole or in part, without prior written notification to the Parties who shall be entitled to have access to and to make copies of any and all such documents; and
- (j) within ten (10) days following the Innu ratification vote, publish the results of the Innu ratification vote in each Community and communicate the results, in writing, of the Innu ratification vote to the Parties.

4.4.6 The results referred to in 4.4.5 (j) shall include:

- (a) the total number of individuals enumerated on the Final Voters List;
- (b) the total number of ballots cast;
- (c) the total number of ballots from voters on the Final Voters List for Sheshatshiu ratifying the Agreement;
- (d) the total number of ballots from voters on the Final Voters List for Natuashish ratifying the Agreement;
- (e) the total number of ballots not ratifying the Agreement; and
- (f) the total number of ballots spoiled or rejected.

Part 4.5 Government Ratification Process

4.5.1 Canada and the Province shall consider the Agreement for ratification once the Innu ratification vote has been successfully completed pursuant to 4.3.2.

4.5.2 Canada will have ratified the Agreement when:

- (a) the Agreement is signed by a Minister as authorized by Cabinet; and
- (b) Federal Legislation giving force to the Agreement is in effect.

4.5.3 The Province will have ratified the Agreement when:

- (a) the Lieutenant Governor-in-Council has approved the Agreement;
- (b) its authorized representative has signed the Agreement; and
- (c) Provincial Legislation giving force to the Agreement is in effect.

Part 4.6 Costs

4.6.1 Canada and the Province will pay the reasonable and necessary costs of the Ratification Committee and of the Innu ratification vote.

Chapter 5: Land and Non-Renewable Resources

Part 5.1 Definitions

5.1.1 In this Chapter:

“Applicant” means a Person, other than a Party, who wishes to Explore in Labrador Innu Lands;

“Carving Stone Permit” means a permit issued by the Innu Government under 5.17.1;

“Exploration” means prospecting, ground staking, surveying, drilling, trenching, sinking underground shafts or otherwise searching for or proving the existence, value or extent of Subsurface Resources, but does not include map staking;

“Exploration Agreement” means an exploration agreement as required by and as set out in Part 5.14;

“Exploration, Quarry and Lands Appeal Board” means the board established pursuant to Part 5.20;

“Exploration Standards” means the standards for possible inclusion in Exploration Agreements that are a subset of actual physical non-procedural standards in Newfoundland and Labrador Regulation 39/07 (Mineral Exploration Standards Regulations under the *Labrador Inuit Land Claims Agreement Act*) (Newfoundland and Labrador) which subset is to be negotiated during the negotiation of the Agreement;

“Ground Disturbance” means disturbance to the topsoil or surface rock layer of the ground, or a waterway, by machinery in the course of clearing, grading, excavating, digging, dredging, or drilling, and includes for the purposes of 5.14.5 mechanical trenching, diamond drilling, or bulk sampling;

“Nuclear Substance” has the same meaning as defined in s.2 of the *Nuclear Safety and Control Act* (Canada);

“Specified Material Permit” means a permit to quarry a Specified Material issued by the Innu Government under 5.18.2.

Part 5.2 Labrador Innu Settlement Area

5.2.1 The Labrador Innu Settlement Area consists of the areas within the boundaries set out in Map 5-A³⁷ of the Atlas[, including the Akamiupishku/Mealy Mountains National Park].³⁸

³⁷ To be negotiated. The LISA around the community of Mud Lake has to be refined to exclude the community of Mud Lake. To this end NL wishes to exclude the Mud Lake cemetery, the incinerator and areas habitually used or needed by the residents of Mud Lake from LISA. The Innu propose that there be a strip of LISA outside LIL near Mud Lake, as shown on map 5-Q, where

5.2.2 The quantity of lands and waters in the Labrador Innu Settlement Area is, excluding the land and waters of the Akamiupishku/Mealy Mountains National Park, as shown in Map 5-A of the Atlas, 14, 000 square miles (36, 260 square kilometres), more or less.

5.2.3 The Labrador Innu Settlement Area includes the lands and waters of the Akamiupishku/Mealy Mountains National Park, [as shown in Map 5-K of the Atlas.]

Part 5.3 Labrador Innu Lands

5.3.1 Labrador Innu Lands will be areas within the Labrador Innu Settlement Area comprising 5, 000 square miles (12, 950 square kilometres), more or less, on the Effective Date, and will be described and shown in Map 5-B of the Atlas.³⁹

5.3.2 The area of Crown Grant Number 10381 shown in purple on Map 5-M, excluding the area of that grant to the north of the green line shown on Map 5-1, will be Labrador Innu Lands and form part of the quantum referred to in 5.3.1.

5.3.3 Persons holding an interest to any area north of the green line which is part of the area of Crown Grant Number 10381 shown on Map 5-1 have a right of access across any Labrador Innu Lands in the area to access and use the freshwater source noted on Map 5-1 south of that green line for domestic purposes.

5.3.4 Labrador Innu Lands will be adjusted by the Province to the extent necessary to avoid impeding, impairing or adversely affecting:

- (a) the Lower Churchill Projects or any Lower Churchill Subsequent Development; or

Non-Participant cabins will not be permitted without the consent of the Innu Government. NL agrees in principle with such a prohibition on this strip after the strip has been adjusted to exclude the noted cemetery, any extant titles intruding into it, and the incinerator.

NL agrees that if the incinerator is relocated, then the area excluded from Map 5-Q for the incinerator may be taken up by the Innu as LISA outside LIL on an "as is" basis.

³⁸ To be negotiated: language of 5.2.1, 5.2.3 and square bracketed text in 5.4.5 under review – status of Akamiupishku/Mealy Mountains National Park (whether it is a Reserve on the Effective Date or has become a Park), which is deemed to be part of LISA, has to be dealt with consistently throughout the Agreement Proposal under consideration is to merge 5.2.1 and 5.2.3, and include, as part of Map 5-A, the MMNPark boundaries, which would mean Map 5-K would be removed.

³⁹ To be negotiated. NL agrees that the airstrip at Border Beacon will become LIL, after NL gets the land back from the federal government in a condition that is satisfactory to NL, should the Innu wish to have it as LIL in the condition that it is returned to NL from the federal government. However, any such LIL shall be subject to the right of federal and provincial officials, and public utilities to use the airstrip on notice, but without consent or payment, as long as the airstrip exists. The Innu are under no obligation to maintain it as an airstrip.

- (b) any Major Development as defined by (c) of the definition of Major Development in Chapter 1 originating in any of the Hydroelectric Major Development Impacts and Benefits Agreement Areas.

- 5.3.5 If as a result of adjustments pursuant to 5.3.4(a), 5.3.4(b), or 5.3.12(b), the quantum of Labrador Innu Lands is reduced below the quantum required by 5.3.1 for Labrador Innu Lands, the Province and the Innu Government will, to make up for any such reduction, endeavour to locate and agree upon replacement lands of equivalent significance and value to the former Labrador Innu Lands that are to be replaced, if such equivalent lands are reasonably available.
- 5.3.6 For the purposes of 5.3.5, the following lands are not reasonably available:
- (a) lands subject to third party interests; and
 - (b) lands occupied or used by Canada⁴⁰ [or its agents], the Province or its agents, or by a municipal government, unless Canada [or its agents], the Province or its agents, or a municipal government consents to have these lands used for the purposes of 5.3.5.
- 5.3.7 If under 5.3.5 lands of equivalent significance and value are limited or not reasonably available, cash, lands, or both cash and lands may be offered.
- 5.3.8 Replacement lands acquired by the Innu Government under 5.3.5 or 5.3.7 shall be Labrador Innu Lands.
- 5.3.9 For greater certainty, if, after negotiating for 180 days or such greater or lesser period as the Province and the Innu Government may agree, the Province and the Innu Government cannot reach agreement under 5.3.5 or 5.3.7, that disagreement will be a Dispute between the Province and the Innu Government.
- 5.3.10 All Labrador Innu Lands shown in green and purple on Map 5-C of the Atlas are Accessible Lands.
- 5.3.11 All existing roads and road reservations and hydroelectric lines and their easements that are depicted within the area depicted within the circle on Map 5-L (Northwest Point) shall not be Labrador Innu Lands, Labrador Innu Settlement Area, Permit Free Hunting Area, Economic Major Development Impacts and Benefits Agreement Areas, or Hydroelectric Major Development Impacts and Benefits Agreement Areas.
- 5.3.12 When it is finally determined by the Province which part of the cross-hatched area on Map 5-L and which part of the cross-hatched area on either, but not both, Map 5-M or Map 5-N are required for the purposes of the HVdc electrode line of the Lower Churchill Projects or Lower Churchill Subsequent Development, then within twelve (12) months of the start of construction of the electrode line within the required areas:

⁴⁰ To be negotiated. The Innu want a more precise understanding of what constitutes lands used or occupied by Canada or its agents.

- (a) the areas not required for [the/that] electrode line continue to be Labrador Innu Lands, and, for greater certainty, are subject to the provisions of Part 17A.4; and
- (b) the areas required for [the/that] electrode line will cease to be Labrador Innu Lands, and are not part of the Labrador Innu Settlement Area, Permit Free Hunting Area, Economic Major Development Impacts and Benefits Agreement Areas, Hydroelectric Major Development Impacts and Benefits Agreement Areas, or Lower Churchill Area, and will not be subject to the application of Innu Law.

5.3.13 The width of the HVdc electrode line corridor of the Lower Churchill Projects referred to in 5.3.12 will be 250 metres.

Part 5.4 Permit Free Hunting Area

5.4.1 The Permit Free Hunting Area consists of the areas within the boundaries set out in Map 5-D of the Atlas.

5.4.2 The quantity of lands and waters in the Permit Free Hunting Area is 13,000 square miles (33,670 square kilometres), more or less, as shown on Map 5-D of the Atlas.

5.4.3 The right [under the Agreement]⁴¹ applicable in the Permit Free Hunting Area is limited to the right of Participants to Harvest:

- (a) any species of Wildlife that are under the jurisdiction of the Province and Harvested as part of an Innu Domestic Harvest; and
- (b) any species of Migratory Birds Harvested as part of an Innu Domestic Harvest,

in the Permit Free Hunting Area without obtaining any form of provincial or federal licence or permit that would be required for a Non-Participant to Harvest any of the species referred to in 5.4.3 (a) or (b), and without paying any [tax⁴² or] fee⁴³ associated with such a permit or licence.

5.4.4 Participants may assign to the individuals named in 7.2.17 (a) to (e) and 8.10.1 (a) to (e) their right under 5.4.3 in accordance with 7.2.17, 7.2.18, 8.10.1 and 8.10.2.

⁴¹ Legal drafting. The Innu do not want to have language in the treaty derogate from their right to harvest under Federal or Provincial legislation outside of the treaty areas. Language to be developed to reflect this interest.

⁴² To be negotiated. Canada proposes deletion of "tax or". Innu and NL to consider.

⁴³ Legal drafting. Parties to review the use of terms referring to financial levies, including royalties, rentals, incentives, subsidies, securities, imposts, fees, charges, assessments and other financial levies.

- 5.4.5 The total number of animals of any of the species referred to in 5.4.3 (a) and (b) Harvested by Participants, and their assignees referred to in 5.4.4, in the Labrador Innu Settlement Area[, including the Akamiupishku/Mealy Mountain National Park,] and in the Permit Free Hunting Area combined shall not exceed the lower of :
- (a) the number of those animals that may be Harvested by Participants pursuant to the applicable Innu Domestic Harvest; and
 - (b) any Innu Basic Needs Level established for the Harvest of animals of that species.
- 5.4.6 Other than the right set out in 5.4.3, no rights under the Agreement are applicable to, exercisable in or attach to the Permit Free Hunting Area[, but nothing in Part 5.4 derogates from the ability of Participants to Harvest in the Permit Free Hunting Area pursuant to Federal Law and Provincial Law]⁴⁴.
- 5.4.7 Participants, and their assignees referred to in 5.4.4, Harvesting in the Permit Free Hunting Area must:
- (a) carry the documents that may be required or issued by the Innu Government in relation to the relevant Innu Domestic Harvest, Innu Basic Needs Level, or both, and in relation to any assignment or transfer thereof authorized under the Agreement, including any such documentation issued under 7.2.16, 7.2.18, 7.4.6, 7.7.8, 8.4.4, 8.9.6, 8.10.2, and 8.11.9, and under Innu Laws made under 7.7.1 and 8.11.1;
 - (b) carry any documents that may required by the Minister under 7.2.16 or 8.9.6; and
 - (c) supply to the Innu Government any information regarding Harvesting activities or Harvesting-related activities that the Innu Government may require under 7.3.20.
- 5.4.8 Anywhere the Permit Free Hunting Area overlaps an area held by CF(L)Co under a statutory or other lease, the rights under the Agreement exercisable by Participants and their assignees referred to in 5.4.4 in the Permit Free Hunting Area shall:
- (a) be exercised in a manner that does not interfere with the rights held by CF(L)Co under those leases; and
 - (b) shall not be exercisable in any area fenced or otherwise secured by CF(L)Co in a manner designed to deny or restrict access to that area, except with the advance authorization of CF(L)Co.

⁴⁴ Legal drafting. The Innu do not want to have language in the treaty derogate from their right to harvest under Federal or Provincial legislation outside of the treaty areas. Language to be developed to reflect this interest.

- 5.4.9 The exercise by a Participant or assignees referred to in 5.4.4 of the right set out in 5.4.3 in the areas of overlap referred to in 5.4.8 shall not:
- (a) create, cause, result in, or give rise to any additional or higher duty of care on the part of CF(L)Co being owed to a Participant or assignees referred to in 5.4.4, other than that which CF(L)Co would owe to a Non-Participant accessing or using the leased areas referred to in 5.4.8 without the consent of CF(L)Co. For greater certainty, the legal status and rights of, and the duty of care owed by CF(L)Co to such Participant or assignees referred to in 5.4.4 shall be equivalent to the legal status and rights of, and duty of care owed by CF(L)Co to a Non-Participant that has, without the consent of CF(L)Co, accessed or used those leased areas;
 - (b) create, cause, result in, or give rise to, or impose any duty, responsibility or liability for any injury, loss of life, damage to person or property or any loss of any kind suffered by or resulting to a Participant or assignees referred to in 5.4.4 from any act or omission by CF(L)Co and its employees, contractors, agents and suppliers, except to the extent provided for in 5.4.9 (a);
 - (c) create, cause, result in or give rise to, or impose any liability upon CF(L)Co with respect to any loss, damage or injury to person or property arising out of use by CF(L)Co of those leased areas for the regulation of the flow of, inundating by and storing of water on or over or affecting from time to time those leased areas consistent with the terms and conditions of any authorization issued to CF(L)Co by the Province or Canada and consistent with Federal Law or Provincial Law; or
 - (d) create, recognize, confer or impose any duty on the part of CF(L)Co other than that owed to a Non-Participant pursuant to a Federal Law or Provincial Law with respect to the construction, maintenance, repair, removal, restoration, refurbishment, replacement or operation of the assets of CF(L)Co or to facilitate the exercise by the Participant or assignees referred to in 5.4.4 of the right set out in 5.4.3 in the areas of overlap referred to in 5.4.8.
- 5.4.10 If at any time the Province constructs a public highway or a part or parts thereof, in all or any part of the potential highway corridor inside the area of land shown inside the circle on Map 5-N, or a public utility establishes any public utility infrastructure in all or any part of [the/that] corridor, then the areas required for the aforementioned purposes, and any road reservation normally associated with such a public road or part or parts thereof, will cease to be part of the Permit Free Hunting Area, and will not be Labrador Innu Lands, Labrador Innu Settlement Area, Permit Free Hunting Area, Economic Major Development Impacts and Benefits Agreement Areas, Hydroelectric Major Development Impacts and Benefits Agreement Areas, or Lower Churchill Area, and will not be subject to the application of Innu Law.

Part 5.5 Economic Major Development Impacts and Benefits Agreement Areas

5.5.1 The Economic Major Development Impacts and Benefits Agreement Areas consist of the areas within the boundaries set out:

- (a) in Maps 5-E-1 (Western Labrador Economic Major Development Impacts and Benefits Agreement Area);
- (b) 5-F-1 (Northern Trans Labrador Highway West Economic Major Development Impacts and Benefits Agreement Area);
- (c) 5-G-1 (Northern Trans Labrador Highway East Economic Major Development Impacts and Benefits Agreement Area);
- (d) 5-H-1 (Southern Trans Labrador Highway Economic Major Development Impacts and Benefits Agreement Area); and
- (e) 5-I (Labrador Inuit Overlap Economic Major Development Impacts and Benefits Agreement Area)

of the Atlas.

5.5.2 The right under the Agreement applicable in the Economic Major Development Impacts and Benefits Agreement Areas is limited to the right to acquire an Impacts and Benefits Agreement for a Major Development as defined by (b), in Chapter 1, of the definition of Major Development in these areas, in accordance with the applicable provisions of Part 21.5.

5.5.3 Subject to 5.5.4, other than the right set out in 5.5.2, no rights under the Agreement are applicable to, exercisable in, or attach to the Economic Major Development Impacts and Benefits Agreement Areas[, but nothing in Part 5.5 derogates from the ability of Participants to Harvest in the Economic Major Development Impacts and Benefits Agreement Areas pursuant to Federal Law and Provincial Law]⁴⁵.

5.5.4 A Participant may exercise the right set out in 5.4.3 in the areas where the Permit Free Hunting Area overlaps the Western Labrador, Northern Trans Labrador Highway West, Northern Trans Labrador Highway East, and the Southern Trans Labrador Highway Major Development Impacts and Benefits Agreement Areas, as shown on Maps 5-E-2, 5-F-2, 5-G-2 and 5-H-2 respectively.

Part 5.6 Hydroelectric Major Development Impacts and Benefits Agreement Areas

5.6.1 The Hydroelectric Major Development Impacts and Benefits Agreement Areas consist of the areas illustrated on Map 5-J of the Atlas.

⁴⁵Legal drafting. The Innu do not want to have language in the treaty derogate from their right to harvest under Federal or Provincial legislation outside of the treaty areas. Language to be developed to reflect this interest.

5.6.2 The right under the Agreement that is applicable in the Hydroelectric Major Development Impacts and Benefits Agreement Areas is limited to the right to acquire an Impacts and Benefits Agreement for a Major Development as defined by (c), in Chapter 1, of the definition of Major Development in these areas, in accordance with the applicable provisions of Part 21.5.

5.6.3 Other than the right set out in 5.6.2, no rights under the Agreement are applicable to, exercisable in, or attach to the Hydroelectric Major Development Impacts and Benefits Agreement Areas[, but nothing in Part 5.6 derogates from the ability of Participants to Harvest in the Hydroelectric Major Development Impacts and Benefits Agreement Areas pursuant to Federal Law and Provincial Law]⁴⁶.

Part 5.7 Mealy Mountain National Park

5.7.1 The boundaries of the Akamiupishku/Mealy Mountains National Park will be as established pursuant to Chapter 13, and are shown, for illustrative purposes only, in Map 5-K of the Atlas.

Part 5.8 Vesting and General Attributes of the Innu Estate in Labrador Innu Lands

5.8.1 [Innu]⁴⁷ own [in fee simple]⁴⁸ Labrador Innu Lands, excluding Subsurface Resources, but for greater certainty including:

⁴⁶Legal drafting. The Innu do not want to have language in the treaty derogate from their right to harvest under Federal or Provincial legislation outside of the treaty areas. Language to be developed to reflect this interest.

⁴⁷ To be negotiated. Parties to consider whether title should be vested in the Innu Government, and/or Innu Community Governments. Once the matter of the title holder(s) of LIL is settled, Parties will review this Chapter to make related amendments.

Canada has indicated that the options for who will hold the title could include Innu (as a collectivity), and Innu Government and/or Innu Community Governments are also under consideration as potential title holders. Innu interest is in having some flexibility in who the title holder can be while the lands have the status of LIL.

⁴⁸ To be negotiated. The Agreement will include provisions for independent and consultative processes to address the effects on the environment and Participants' rights of [low-level flight/military flight] training in the low level training area (LLTA), consistent with the current processes, for as long as such training continues to take place.

The Agreement will also provide that the processes referred to in paragraph 1 will apply should [low-level flight/military flight] training be proposed to take place over the proposed Mealy Mountains/Akamiupishku National Park.

The Innu propose that the Dispute Resolution chapter of the Agreement will apply in the event that the Innu and DND cannot agree on measures to address the effects of the flight training on Innu land use. Canada does not agree.

Canada proposes "low-level flight training" and the Innu propose "military flight training." [This is only under review by NL in relation to airspace.]

- (a) Specified Materials;
 - (b) Carving Stone; and
 - (c) Geothermal Resources.
- 5.8.2 For purposes of 5.8.1, “fee simple” is the equivalent of an estate in fee simple absolute, being the largest estate known in law, without any proviso, restriction, exception or reservation under any Federal Law or Provincial Law, except as set out in the Agreement.
- 5.8.3 Where Labrador Innu Lands are bounded by Water or Tidal Waters, the boundary of such Labrador Innu Lands will extend [to the water’s edge]⁴⁹ in the case of Waters⁵⁰ and to the ordinary high water mark in the case of Tidal Waters. While all lands covered by water within the boundaries of Labrador Innu Lands are included and counted as part of Labrador Innu Lands, the Innu estate in Labrador Innu Lands does not include ownership of the water column.
- 5.8.4 Labrador Innu Lands:
- (a) are under the administration, control and management of the Innu Government; and
 - (b) may be alienated by the Innu Government, subject to 5.8.5.
- 5.8.5 The Innu Government shall not alienate Labrador Innu Lands to any Person other than Canada or the Province, but may grant an interest less than fee simple title in or to Labrador Innu Lands.
- 5.8.6 If the Innu Government alienates a parcel of Labrador Innu Lands to Canada or the Province, that parcel of land ceases to be Labrador Innu Lands for all purposes but, for greater certainty, that parcel of land remains in the Labrador Innu Settlement Area.
- 5.8.7 If the Innu Government acquires fee simple title to a parcel of land located in the Labrador Innu Settlement Area outside Labrador Innu Lands, that parcel of land may, with the consent of Canada and the Province, be held as Labrador Innu Lands under 5.8.1.
- 5.8.8 The Province shall guarantee the title of Innu in Labrador Innu Lands.

⁴⁹ To be negotiated. Innu have the term “to the water’s edge” under review to see if this is clear enough, and to consider how it fits with the definition of “Water” and “Body of Water”. Also, the detailed mapping work on LIL boundaries completed and still underway should be considered to see where/whether the boundaries have been “plotted” in the situation of LIL bounded by non-tidal waters.

⁵⁰ To be negotiated. The Innu want a treaty provision to set out a rule to address the loss of treaty lands that may occur because of loss of land due to the encroachment of water. Canada opined that the general law should speak to this. NL is inclined to agree that the general law should speak to this.

- 5.8.9 No Person may acquire an estate or interest in Labrador Innu Lands by prescription, the doctrine of lost modern grant, adverse possession or limitation of action, or by operation of Federal Law or Provincial Law with respect to prescription, adverse possession or limitation of action.
- 5.8.10 If a parcel of Labrador Innu Lands is valued for purposes of a Legal Proceeding, no discount shall be applied to the valuation solely due to the status of that parcel as Labrador Innu Lands unless otherwise provided in an agreement entered into with the Innu Government or, where the Innu Government is not a party to such an agreement, with the consent of the Innu Government.
- 5.8.11 An interest of the Innu Government in Labrador Innu Lands is not subject to attachment, charge, seizure, distress, execution or sale, except:
- (a) for liens by Canada or the Province, and any other security interest granted to Canada or the Province by the Innu Government; or
 - (b) in accordance with an Innu Law where the interest has been created under an Innu Law.
- 5.8.12 The following Provincial Laws do not apply in or to Labrador Innu Lands:
- (a) a Provincial Law respecting the creation and reservation of rights and interests in Crown land, including the reservation of mineral rights and public rights of way around waters;
 - (b) Provincial Laws respecting the fencing, marking or monumenting of the boundaries of land and other matters under Part I (sections 3 – 42) of the *Lands Act* (Newfoundland and Labrador) and for greater certainty, it shall be no defence in an action of trespass or ejection that a boundary of Labrador Innu Lands was not fenced, monumented or otherwise marked;
 - (c) a Provincial Law providing for the reversion to, reversioning in, or other acquisition by the Crown of unused or unoccupied land but nothing in 5.8.12 (c) is intended to affect or shall be construed so as to affect Chapter 16;
 - (d) a Provincial Law imposing conditions or restrictions on the conveyancing, leasing or licensing of land, the placing of buildings, structures or things in, on, or over land, the application of land for agricultural, commercial, industrial, recreational, residential or other purposes or the establishment or designation of special management areas under Part IV (sections 56 – 62) of the *Lands Act* (Newfoundland and Labrador);
 - (e) a Provincial Law to permit the holder of a license to cut timber, or a lessee of Water rights or a Person engaged in lumbering or the management of lumber or pulp to acquire rights of way or other rights or easements over private property; and

- (f) a Provincial Law to lease or grant any other right of occupancy in respect of a pond, river or other body of Water for the purpose of aquaculture.⁵¹

Part 5.9 Boundaries, Surveys and Descriptions

- 5.9.1 If, after the Effective Date, a survey is required by the Parties to better define the location of a boundary or part of a boundary of Labrador Innu Lands, the required survey, including any associated map or description of the boundary, shall be of no effect until approved by the Parties as an amendment to the Agreement or established by Arbitration.
- 5.9.2 If there is a Dispute concerning the location of a boundary or part of a boundary of Labrador Innu Lands, the boundary or part of the boundary shall be surveyed if at least two (2) of the Parties agree that a survey is required and, subject to 5.9.6, the cost of the survey shall be paid by those Parties. The survey, including any associated map or description of the boundary, shall be of no effect until approved by the Parties as an amendment to the Agreement or established by Arbitration.⁵²
- 5.9.3 Nothing in 5.9.1 or 5.9.6 prevents a Party from surveying a boundary or part of a boundary of Labrador Innu Lands at its own discretion and at its own cost. The results of the survey, including any associated map or description of the boundary, shall be of no effect until approved by the Parties as an amendment to the Agreement or established by Arbitration.
- 5.9.4 If a third party holds a Surface Interest in Labrador Innu Lands issued by the Province or freehold title in land bounded by Labrador Innu Lands and there is a disagreement concerning the location of the boundary or the area of the third party's Surface Interest or land, the Province shall ensure that the relevant boundaries of the third party's land are surveyed.
- 5.9.5 Notwithstanding 5.9.2, 5.9.3, and 5.9.4, if there is a Dispute between or among the Parties respecting the cost, necessity for or accuracy of a survey under Part 5.9 or the location of a boundary or part of a boundary of Labrador Innu Lands, that Dispute may be referred by any Party to that Dispute to Dispute resolution, under Chapter 26.
- 5.9.6 Unless they otherwise agree, neither Canada nor the Province is responsible for the cost of a survey associated with the sale, conveyance, transfer, mortgage, acquisition or disposal of an interest in Labrador Innu Lands by the Innu Government or pursuant to an Innu Law under 5.10.1.
- 5.9.7 The Innu Government shall contract for any surveys that are required under Part 5.9, other than those referred to in 5.9.4, on condition that:

⁵¹ To be negotiated. Innu will review this list to determine if in their view it is exhaustive. Negotiations will also include whether to add "a Law to acquire or permit the acquisition of rights of way or other rights, easements, privileges, powers or interests over private property for the purpose of gaining access to, working or developing a Subsurface Resource which is covered by Tidal Waters" after 5.8.12(f).

⁵² To be negotiated. Matter of costs of surveys in the event of boundary disputes.

- (a) the Innu Government establishes a competitive bidding process for the awarding of those contracts; and
- (b) the surveys shall be carried out by a land surveyor licenced pursuant to Provincial Legislation and according to recognized Provincial surveying standards,

but the Innu Government incurs no financial obligation for the cost of a survey conducted under 5.9.1, 5.9.2 or 5.9.3.

5.9.8 A survey of a boundary of Labrador Innu Lands that has been conducted under Part 5.9, and that has been approved by the Parties by an amendment to the Agreement pursuant to Part 2.20, supercedes and replaces the original map and description of the boundary.

5.9.9 If a boundary is established by Arbitration under Part 5.9 or is finally determined by a court of last resort, the Parties shall amend the Agreement pursuant to Part 2.20 to replace the original map and description of the boundary in accordance with the boundary established by that Arbitration or by that court of last resort, but the boundary is in effect as of the date of the Arbitration Decision or court decision.

Part 5.10 Innu Government Powers and Authorities in Relation to Labrador Innu Lands

5.10.1 The Innu Government may make laws in relation to the following matters in accordance with the Agreement:

- (i) [the administration and control of Labrador Innu Lands;
- (ii) [the alienation or other disposition of Labrador Innu Lands and interests/ Surface Interests]⁵³ in Labrador Innu Lands;
- (iii) the development, conservation and management of Labrador Innu Lands;
- (iv) the conveyance or use of Labrador Innu Lands or interests in Labrador Innu Lands as security for the discharge of an obligation or debt, whether by mortgage, pledge, assignment or other form of charge;
- (v) the attachment, confiscation or seizure of Labrador Innu Lands or interests in Labrador Innu Lands and executions against Labrador Innu Lands or interests in Labrador Innu Lands;
- (vi) the granting of rights and interests, including the right to Explore, in relation to Specified Materials, Carving Stone and Geothermal Resources

⁵³ To be negotiated. Innu want to replace opening words with "Surface Interest." As to fees for Surface Interests in LIL, NL feels notwithstanding (vii) this is covered by (ix). NL notes this is not an issue pursuant to 1(b) of Tshash Petapen, and so NL wishes to retain LILCA consistency on these matters.

in Labrador Innu Lands;

- (vii) the establishment, levying, collection and administration of fees⁴³, charges other than taxes, rents or royalties in relation to [Surface Interests,] Specified Materials, Carving Stone and Geothermal Resources in Labrador Innu Lands;
- (viii) access to or use of Labrador Innu Lands; and
- (ix) the imposition of fees⁴³, charges other than taxes, rents or royalties in respect of access to Labrador Innu Lands and use of Labrador Innu Lands.]⁵⁴

5.10.2 If there is a Conflict between an Innu Law under 5.10.1 and a Federal Law or Provincial Law, the Innu Law prevails to the extent of the Conflict.

Part 5.11 Existing Surface Interests in Labrador Innu Lands

5.11.1 Where Labrador Innu Lands are subject to a Surface Interest that has been issued by the Province and that is in existence on the Effective Date, including a Surface Interest issued to a Person providing public utilities other than a Person providing public utilities on a Surface Interest referred to in 17A.4.22, the Province shall assign its rights and obligations under the Surface Interest to the Innu Government.

5.11.2 For greater certainty, a Surface Interest assigned under 5.11.1:

- (a) continues in accordance with its terms and conditions; and
- (b) vests fully in the Innu Government upon its expiration if the [holder of the Surface Interest]⁵⁵ chooses not to renew or extend it.

5.11.3 If:

- (a) the holder of a Surface Interest referred to in 5.11.1 has a right to apply for a renewal or extension of the interest under the terms and conditions of the lease, license, permit or Provincial Law under which the interest was held immediately prior to its assignment under 5.11.1; [or
- (b) the term of the Surface Interest {and the term of any renewal or extension to which the holder of the Surface Interest may be entitled to

⁵⁴ To be negotiated. Innu have this list under review for completeness and duplication and Innu proposals for clarity.

⁵⁵ To be negotiated. The Innu propose to change "holder of the Surface Interest" to "Person holding the Surface Interest on the Effective Date." The Province disagrees. The Innu now suggest they may be able to accept passing on to the Immediate Family of the Surface Interest holder with an Innu right of first refusal on non-Immediate Family transfers. NL-Comment-while this might work for cabins, subject to further review, it may not work for other Surface Interest holders.

apply) referred to in 5.11.1 is five (5) years or more,]⁵⁶

and the holder chooses to renew or extend the interest prior to the expiration of the interest, the holder shall make application to the Innu Government to renew or extend the interest.

- 5.11.4 The Innu Government shall renew or extend a Surface Interest referred to in 5.11.3 if the interest holder has satisfied the terms and conditions of that Surface Interest.
- 5.11.5 Except as otherwise provided in 5.11.8 or elsewhere in the Agreement⁵⁷, including in 17A.4.22, the Innu Government may, at its discretion, impose additional terms and conditions upon the renewal or extension of a Surface Interest referred to in 5.11.3, including the imposition of fees⁴³, charges other than taxes, rents or royalties, but the additional terms or conditions shall be reasonable.
- 5.11.6 If there is a dispute, other than a dispute under 5.11.9, between a holder of a Surface Interest referred to in 5.11.3 and the Innu Government [in connection with/with respect to]⁵⁸ the renewal or extension of that Surface Interest, the dispute may be referred by either party to that dispute to the Exploration, Quarry and Lands Appeal Board for a decision.
- 5.11.7 After the Effective Date and subject to Part 17A.4, the Innu Government/the appropriate Innu Community Government⁵⁹ has the exclusive authority to issue public utility easements on Labrador Innu Lands and in an Innu Community, including to issue public utility easements to Persons who provide Other Services, as defined in Part 17A.4, where those Persons are not eligible to be issued or to provide Other Services under the terms of:
- (a) a Post-Effective Date Easement issued under 17A.4.8(a) or (b); or

⁵⁶ To be negotiated. Innu not satisfied with clarity of 5.11.3 and 5.11.4. NL does not see a difficulty with this clause. The renewal or extension refers back to the two interests noted in 5.11.3. Consequently, the obligation on the IG to renew or extend depends upon whether the original document provided for a renewal or extension, if it did, then 5.11.4 applies. If it did not, but the original term was five years or longer, then 5.11.4 still applies. The Innu wish to add the text in the two} brackets. NL has concerns that the new text renders the existing text ambiguous. It appears in the LILCA, (b) is meant to apply to any original term longer than five years regardless of whether there was a right to renew or extend the original term. Innu would be ok with this provision if (b) was deleted.

⁵⁷ Legal drafting. Reference to "or elsewhere in the Agreement" to be replaced with pinpoint references.

⁵⁸ Legal drafting. Use of "in connection with" vs. "with respect to", here and elsewhere in the Agreement to be determined. NL prefers "in connection with".

⁵⁹ To be negotiated. NL has concern that an easement would be required from both the Innu Government and an Innu Community Government and would prefer to seek an easement from the Innu Government to ensure there is consistency with respect to the process.

- (b) a Surface Interest renewed or extended under 17A.4.22 as may be amended under 17A.4.23.

- 5.11.8 The terms and conditions, including fees⁴³, charges other than taxes and rents, imposed by the Innu Government upon the renewal or extension of public utility easements assigned under 5.11.1 or the issuance of public utility easements referred to in 5.11.7 to Persons providing public utilities, other than Providers of Public Utilities or Other Services pursuant to Part 17A.4, shall be the same as the terms and conditions imposed by the Province for easements held by Persons providing those public utilities.
- 5.11.9 If there is a disagreement between a Person providing public utilities and the Innu Government arising [in connection with/with respect to] the issuance, renewal or extension of a public utility easement assigned under 5.11.1 or referred to in 5.11.7, the holder of such easement shall not be bound by or required to refer the matter to Dispute resolution under Chapter 26 and is not prohibited in any manner from pursuing any available legal recourse or remedy.
- 5.11.10 Where Persons providing public utilities, other than Providers of Public Utilities or Other Services pursuant to Part 17A.4, have infrastructure in Labrador Innu Lands prior to the Effective Date and this infrastructure is not the subject of a Surface Interest issued or created by the Province prior to the Effective Date, then those Persons may temporarily enter, remain on or cross Labrador Innu Lands to deliver, manage, repair, remove, restore, replace, operate and maintain the infrastructure related to the provision of the public utilities, and such Persons exercising access under 5.11.10 may be required by the Innu Government to obtain a Surface Interest, and in such a case, the Innu Government shall issue a Surface Interest that provides for the rights set out in 5.11.10, and which Surface Interest shall be subject to 5.11.8.
- 5.11.11 Persons providing public utilities in Labrador Innu Lands under 5.11.10 shall use, to the greatest extent possible, generally recognized travel routes and camp sites, or other practical travel routes and camp sites that may be designated by the Innu Government, whether year round or seasonal, and Winter Trails under Part 17A.3.
- Part 5.12 Harvesting in Labrador Innu Lands by Persons Having an Interest in Labrador Innu Lands or in Lands Outside Labrador Innu Lands on Map 5-M (Carter Basin Circle) of the Atlas**
- 5.12.1 Subject to 5.12.2 and 5.12.3 [and 17A.2.7(a) to (c)]⁶⁰, a Non-Participant who holds a Surface Interest in Labrador Innu Lands or, subject to 5.12.2 and 5.12.4, a Non-Participant who holds a Surface Interest outside Labrador Innu Lands in the circle shown on Map 5-M of the Atlas (Carter Basin Circle) on the date of ratification of the Agreement-in-Principle by all Parties whose name is enumerated on Schedule 5-1, and the Immediate Family of such a Non-

⁶⁰ To be negotiated. NL is not convinced that this is needed as 17A.2.7 already speaks to LIL. Innu position is that if LIL is closed to access via 17A.2.7, than how can one Harvest in that closed LIL without access?

Participant, shall be issued a permit by the Innu Government to Harvest Wildlife, Migratory Birds, Fish, Aquatic Plants, Forest Resources and Plants in Labrador Innu Lands, for personal, non-commercial use.

- 5.12.2 The Innu Government may charge fees⁴³ for permits it issues pursuant to 5.12.1, but such fees shall not exceed the fees charged by the Province or Canada, as the case may be, for a permit or licence to Harvest the relevant species or stock.
- 5.12.3 Access to Labrador Innu Lands for the purpose of Harvesting and Harvesting under 5.12.1 by a Non-Participant referred to in 5.12.1 who holds a Surface Interest in Labrador Innu Lands shall be restricted to those areas which the Non-Participant can demonstrate to the satisfaction of the Innu Government have been used and are currently being used for personal, non-commercial Harvesting.
- 5.12.4 Access to Labrador Innu Lands for the purpose of Harvesting, and Harvesting under 5.12.1 by a Non-Participant who holds a Surface Interest in the lands of Map 5-M of the Atlas outside Labrador Innu Lands, shall be restricted to those areas which the Non-Participant can demonstrate to the satisfaction of the Innu Government have been used and are currently being used for personal, non-commercial Harvesting in the Labrador Innu Lands shown on Map 5-M of the Atlas.
- 5.12.5 If the Non-Participant disagrees with the Innu Government's determination of the areas of use for Harvesting under 5.12.3 or 5.12.4, the Non-Participant may refer the dispute to the Exploration, Quarry and Lands Appeal Board for a decision.
- 5.12.6 The rights established under 5.12.1, 5.12.3 and 5.12.4 may be transferred by the individuals enumerated on Schedule 5-1 in accordance with 5.12.7.
- 5.12.7 A Non-Participant enumerated on Schedule 5-1 may transfer the rights under Part 5.12 to any member of his or her Immediate Family descendants, or spouse.
- 5.12.8 Any individual to whom a right is transferred to under 5.12.7 stands in the same position vis à vis that right, including the right to transfer that right, as the Non-Participant originally enumerated on Schedule 5-1.
- 5.12.9 Non-Participants holding a permit issued by the Innu Government pursuant to 5.12.1 may exercise the rights of access for Harvesting and Harvesting provided for in Part 5.12 without notice, consent, or payment to the Innu Government, except for the payment of permit fees⁴³ required by the Innu Government pursuant to 5.12.2.

Part 5.13 Access for Persons Having an Interest in Labrador Innu Lands

- 5.13.1 If, on the Effective Date, a Non-Participant has freehold title, a Surface Interest or a Subsurface Interest in lands that are in or surrounded by Labrador Innu Lands, that title or interest includes the right to enter and cross Labrador Innu Lands

using the mean[s]⁶¹ and route[s] of access that are in use by the title or interest holder on the Effective Date without the consent of or notice to the Innu Government and [without any payment, including, any fee⁴³, charge other than tax or rent]⁶² to the Innu Government. If there is a dispute concerning access to Labrador Innu Lands under 5.13.1, the Non-Participant or the Innu Government may refer that dispute to the Exploration, Quarry and Lands Appeal Board for a decision.

- 5.13.2 A means or route of access in use on the Effective Date referred to in 5.13.1 includes a means or route of access used seasonally prior to the Effective Date.
- 5.13.3 A Non-Participant referred to in 5.13.1 who wishes to cross Labrador Innu Lands by a means or route of access that did not exist or was not in use on the Effective Date must obtain the consent of the Innu Government and pay any reasonable fee⁴³, rent or charge other than tax established by the Innu Government for that access.
- 5.13.4 The Innu Government may restrict a route of access referred to in 5.13.1 only for reasons of Conservation or public safety. However, such restrictions shall only be in place for and to the extent necessary to achieve those purposes; and where such restrictions result in the closure of that route for any period, a practical alternative routing shall be provided by the Innu Government for the period of closure.
- 5.13.5 The need for restrictions, the duration and extent of restrictions, and whether a route is a practical alternative may be referred by a Party or the affected title or interest holder to Dispute resolution under Chapter 26, including Arbitration and, if the Parties or the affected title or interest holder agrees, mediation. In the event a matter is referred to Dispute resolution under 5.13.5, restrictions put in place by the Innu Government under 5.13.4 shall remain in effect until resolution of the Dispute.
- 5.13.6 Except in the event of an emergency, the Innu Government shall Consult the Province before restricting the use of an access route under 5.13.4.
- 5.13.7 If the holder of a Subsurface Interest or a Surface Interest issued by the Province for commercial purposes outside Labrador Innu Lands, other than a holder referred to in 5.13.1, requires access across Labrador Innu Lands and all other means of access to the Subsurface Interest or Surface Interest are impractical, that holder and that holder's contractors and suppliers shall be permitted access

⁶¹To be negotiated. Innu contend this should be restricted to a single route and a single mean. NL does not think such a restriction is practical given seasons etc. Innu state seasonal routes are ok. NL notes seasonal routes are covered by 5.13.2. NL feels the clause is sufficiently restrictive since the interest, route and mean must pre-exist the Effective Date.

⁶²To be negotiated: Innu want to charge access fees to the same extent NL may. NL can consider this concept for some post Effective Date interests, but clause facilitates land selection where there are pre-treaty interests. These interests should diminish over time, and the public approval of the treaty will be enhanced by preserving the status quo for these pre-existing interests.

across Labrador Innu Lands with the consent of the Innu Government on any terms and conditions the Innu Government may establish.

5.13.8 If the Innu Government:

- (a) refuses to give the consent required by the holder of a Subsurface Interest or Surface Interest under 5.13.7; or
- (b) requires terms and conditions that are not acceptable to the holder of the Subsurface Interest or Surface Interest,

the holder of the Subsurface Interest or Surface interest may refer the dispute to the Exploration, Quarry and Lands Appeal Board for a decision.

5.13.9 In an arbitration under 5.13.8(a) with respect to a refusal of consent, the Exploration, Quarry and Lands Appeal Board shall not award access unless the holder of the Subsurface Interest or Surface Interest seeking access establishes that:

- (a) access to or across Labrador Innu Lands is essential in relation to the Subsurface Interest;
- (b) access by any other means is not physically practical or financially feasible;
- (c) the proposed route will minimize harm, disturbance, disruption or damage to Labrador Innu Lands and minimize interruption or interference with Participants' use, occupation or enjoyment of Labrador Innu Lands; and
- (d) the holder of the Subsurface Interest has attempted to negotiate access for a period of not less than fifteen (15) days.

5.13.10 In an arbitration under 5.13.8(b) with respect to the terms and conditions for consent, the Exploration, Quarry and Lands Appeal Board shall not vary a term or condition referred to in 5.13.8(b) unless it determines that the term or condition will frustrate access or make it financially unfeasible.

5.13.11 Non-Participants may exercise the rights of access provided for in Part 5.13 without notice, consent, or payment, except to the extent that notice, consent or payment is expressly provided for in Part 5.13.

Part 5.14 Subsurface Interests

5.14.1 Subject to the Agreement, the administration of Subsurface Resources in the Labrador Innu Settlement Area shall be by the Province or by Canada, as the case may be, and Canada shall in exercising its jurisdiction act in accordance with 15.2.2.

5.14.2 Subject to Part 5.19, after the Effective Date, all Exploration in Labrador Innu Lands and quarrying of Subsurface Resources in Labrador Innu Lands shall be carried out in accordance with Parts 5.14 and 5.18, except for:

- (a) Exploration that began before the Effective Date in accordance with an exploration plan approved under Provincial Law; and
 - (b) quarrying that began before the Effective Date in accordance with a quarry lease or permit issued under Provincial Law.
- 5.14.3 Parts 5.14, 5.18 and 5.19 do not apply to a Person carrying on Exploration or quarrying in Labrador Innu Lands under Provincial Law prior to the Effective Date, but do apply to:
- (a) any application made after the Effective Date for an amendment, extension or renewal of the exploration plan or the quarry lease or permit under which the Exploration or quarrying is carried out; and
 - (b) any change in location of the Exploration or quarrying.
- 5.14.4 An Applicant that intends to Explore in Labrador Innu Lands shall notify the Innu Government of that intention before commencing any Exploration in Labrador Innu Lands.
- 5.14.5 An Applicant that intends to conduct Exploration work that involves either Ground Disturbance, or an annual expenditure of more than one thousand dollars per hectare per map staked licence under the *Mineral Act (Newfoundland and Labrador)* in 2009 constant dollars in Labrador Innu Lands, requires an Exploration Agreement with the Innu Government prior to commencing such work.
- 5.14.6 Any Exploration Agreement required by Part 5.14 shall be established by negotiation or by the Exploration, Quarry and Lands Appeal Board pursuant to Part 5.14.
- 5.14.7 An Exploration Agreement shall be comprised of provisions addressing the following matters:
- (a) the payment of any applicable fees⁴³ referred to in 5.14.9;
 - (b) access in accordance with 5.14.13;
 - (c) employment of qualified Participants in the Exploration;
 - (d) provisions of goods or services needed for the Exploration by qualified Innu Businesses;
 - (e) environmental protection and monitoring;
 - (f) protection of Innu traditional activities and compensation for loss to any Innu Domestic Harvest or damage of habitat; and

- (g) other matters appropriate to the circumstances of the Exploration and the financial means of the Applicant.
- 5.14.8 An Exploration Agreement shall be a contract under Provincial Law.
- 5.14.9 Subject to Parts 5.18 and 5.19, the Innu Government may from time to time establish a schedule of annual fees⁴³, rentals or charges other than taxes for access to or rental of Labrador Innu Lands for purposes of carrying out Exploration in Labrador Innu Lands or quarrying in Specified Material Lands. This schedule of charges, fees⁴³ or rentals shall:
- (a) apply uniformly to Exploration activities that are of a similar size and nature;
 - (b) apply uniformly to quarrying activities that are of a similar size and nature; and
 - (c) be published by the Innu Government.
- 5.14.10 Nothing in 5.14.7, either individually or collectively, can place an excessive burden on or undermine the feasibility of the Exploration.
- 5.14.11 Exploration in Labrador Innu Lands that does not require an Exploration Agreement pursuant to 5.14.5 shall be conducted in accordance with the Exploration Standards and in accordance with an exploration plan approved under Provincial Legislation.
- 5.14.12 Exploration in Labrador Innu Lands that requires an Exploration Agreement pursuant to 5.14.5 shall be conducted in accordance with the Exploration Standards and the Exploration Agreement, and in accordance with an exploration plan approved under Provincial Legislation.
- 5.14.13 The Innu Government shall provide sufficient access to Labrador Innu Lands to permit the Exploration authorized under the Province's approved exploration plan to be carried out in a reasonable and practical manner given the nature of the Exploration.
- 5.14.14 An Applicant who is required to enter into an Exploration Agreement pursuant to 5.14.5 or the Innu Government may refer any matter in dispute in an Exploration Agreement to the Exploration, Quarry and Lands Appeal Board, and that board shall provide its decision within thirty (30) days from the date of receipt by that Board of written notice pursuant to 5.20.3.
- 5.14.15 An Applicant who is not required to enter into an Exploration Agreement pursuant to 5.14.5 may refer any matter in dispute with respect to access under 5.14.13 to the Exploration, Quarry and Lands Appeal Board, and that board shall provide its decision within thirty (30) days from the date of receipt by that board of written notice pursuant to 5.20.3.
- 5.14.16 The Exploration, Quarry and Lands Appeal Board shall hold any hearing related to a dispute under 5.14.14 or 5.14.15 in camera.

- 5.14.17 The Innu Government, the Applicant and the Exploration, Quarry and Lands Appeal Board shall keep all proceedings, negotiations, and associated documentation relating to the Exploration or the Exploration Agreement, and the Exploration Agreement itself, confidential.
- 5.14.18 When making a decision concerning a dispute under 5.14.14 or 5.14.15, the Exploration, Quarry and Lands Appeal Board shall consider:
- (a) the loss of use of the land by Participants and the Innu Government;
 - (b) the effect on Harvesting by Participants;
 - (c) any damage to and adverse effects on Labrador Innu Lands, including the lands to be used or occupied by the Applicant;
 - (d) any nuisance and inconvenience to Participants and the Innu Government;
 - (e) the cultural attachment of Participants to the land to be used or occupied by the Applicant;
 - (f) all reasonable and related costs incurred or to be incurred by the Innu Government;
 - (g) the financial ability of the Applicant to pay the costs of cleaning up, restoring or rehabilitating the land to be used or occupied by the Applicant;
 - (h) matters addressed in 5.14.9 regarding the application of fees⁴³, and matters addressed in 5.14.10 regarding excessive burdens or that undermine the feasibility of Exploration; and
 - (i) 5.14.11 and 5.14.12.
- 5.14.19 At any time during the creation of a Land Use Plan or generation of an amendment to a Land Use Plan, the Innu Government and the Province may agree to exempt lands in any area of Labrador Innu Lands covered by that Land Use Plan from the acquisition of Subsurface Interests.
- 5.14.20 A Subsurface Interest in existence prior to the creation of exempt lands under 5.14.19 continues unaffected and unimpaired by the exemption.
- 5.14.21 Subject to 2.22, the Province shall periodically make available to the Innu Government the following information:
- (a) information concerning the status of Subsurface Interests in the Labrador Innu Settlement Area;
 - (b) information on the applicable shares of staking recording fees⁴³, renewal fees⁴³ and forfeited security deposits, if any, that are owed to the Innu

Government;

- (c) summaries of Exploration activities and results in the Labrador Innu Settlement Area, at the same time as such summaries are placed in the public domain; and
- (d) [assessment reports providing details of Exploration results upon the earlier of the publication in the *Newfoundland and Labrador Gazette* of the expiration of the applicable mineral license, or upon the expiration of their confidential status under Provincial Law. /provide to the Innu Government information that it receives under Provincial Law respecting Exploration, quarries, quarrying and Developments in relation to Subsurface Interests in the Labrador Innu Settlement Area on a quarterly basis.]⁶³

5.14.22 Notwithstanding 5.14.1, the Innu Government and the Province may enter into agreements for the administration of Subsurface Resources in Labrador Innu Lands, but those agreements:

- (a) shall not form part of the Agreement; and
- (b) are not intended to be treaties or land claims agreements and are not intended to recognize or affirm aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

Part 5.15 Subsurface Resource Development in Labrador Innu Lands

- 5.15.1 Subject to 5.15.2, the holder of a Subsurface Interest in Labrador Innu Lands may not develop a Subsurface Resource in Labrador Innu Lands unless the holder of the Subsurface Interest has entered into an Impacts and Benefits Agreement under 21.5.1.
- 5.15.2 A Person permitted to quarry a Quarry Material in Labrador Innu Lands under 5.14.2 or 5.19 is not required to enter into an Innu Impacts and Benefits Agreement with the Innu Government under Chapter 21.
- 5.15.3 The Province shall notify the Innu Government of any application to develop a Subsurface Interest in Labrador Innu Lands.
- 5.15.4 The Province shall Consult the Innu Government about the conditions to be attached to the development of a Subsurface Interest in Labrador Innu Lands.
- 5.15.5 [Conditions may be attached to the development⁶⁴ of a Subsurface Interest in Labrador Innu Lands if the conditions:

⁶³ To be negotiated. In the square brackets, NL suggested clause before the "/" and the Innu suggested clause after the "/" Innu have concerns that NL's clause only provides publicly available information. Innu to provide comments. Innu requested LIA 4.11.28, but this is the last part of this clause. If NL were to insert LIA 4.11.28, then NL would at a minimum need LIA part 2.19.

⁶⁴ To be negotiated. While the Innu agree that development does not include Exploration for the purposes

- (a) are supported by the recommendations of an Environmental Assessment carried out in accordance with Chapter 14;
- (b) relate directly to applicable requirements of the Agreement; or
- (c) relate to applicable requirements in Provincial Law respecting Subsurface Resources.⁶⁵

5.15.6 The Province shall Consult the Innu Government before approving, authorizing or permitting the abandonment, closure, decommissioning, reopening or reclamation of a Development in relation to a Subsurface Resource in Labrador Innu Lands.

Part 5.16 Nuclear Substances

5.16.1 Nothing in the Agreement confers jurisdiction on the Innu Government in relation to Nuclear Substances, nuclear facilities or prescribed equipment or information in relation to Nuclear Substances or nuclear facilities.

5.16.2 Subject to Part 5.16, the rights and responsibilities of the Innu Government in relation to Subsurface Resources under this Chapter apply to Minerals that may be used as a source of nuclear energy.

5.16.3 The Canadian Nuclear Safety Commission shall, on a best efforts basis, inform the Innu Government of:

- (a) any application for and the issuance, renewal, replacement or amendment by the Canadian Nuclear Safety Commission of any license that is within its jurisdiction to issue in the Labrador Innu Settlement Area;
- (b) the terms and conditions proposed by the Canadian Nuclear Safety Commission to be attached to any license referred to in (a); and
- (c) documentation related to licenses issued by the Canadian Nuclear Safety Commission as it relates to any environmental risks, risks to health and safety of Innu and measures to protect the environment and the health and safety of Innu associated with any Nuclear Substances or nuclear facilities in the Labrador Innu Settlement Area.

of this Part, they do not agree that development should be capitalized. This redraft was an attempt to accommodate the Innu's desire to insert "Subsurface Interest" in various places in this part. Now this redrafting has created new drafting questions. NL's position is that this was not an issue pursuant to 1(b) of Tshash Petapen, and so has reverted to the original text.

⁶⁵ To be negotiated. Innu wish to delete 5.15.5. The corresponding clause is in LILCA. NL notes this part was not an issue pursuant to 1(b) of Tshash Petapen, so NL wishes to retain LILCA consistency on these matters. Innu disagree.

- 5.16.4 For greater certainty, Chapter 16 applies to the Expropriation of Labrador Innu Lands or an interest of the Innu Government in Subsurface Resources in Labrador Innu Lands for purposes of the *Nuclear Energy Act* (Canada).
- 5.16.5 Canada shall be responsible for any costs of reducing or cleaning up any nuclear contamination in Labrador Innu Lands for which decommissioning was approved prior to the Effective Date.
- 5.16.6 Innu Government is not responsible or liable for any costs of reducing or cleaning up any nuclear contamination in Labrador Innu Lands or the Communities where the contamination occurred prior to the Effective Date.

Part 5.17 Carving Stone

- 5.17.1 A Person who wishes to extract, use or dispose of Carving Stone from Labrador Innu Lands must obtain a permit from the Innu Government.
- 5.17.2 The holder of a Carving Stone Permit may not use or dispose of the Carving Stone extracted under the Carving Stone Permit for any purpose other than carving.
- 5.17.3 A Person who holds a Subsurface Interest in Labrador Innu Lands, whether that interest was acquired before or after the Effective Date, holds the Subsurface Interest subject to the rights of Innu in Carving Stone under 5.8.1 and Part 5.17.
- 5.17.4 If the Innu Government intends to issue a Carving Stone Permit in a location where the Province has issued a Subsurface Interest, the Innu Government shall Consult the Province to establish terms and conditions for the Carving Stone Permit that allow the extraction of Carving Stone to proceed and the rights of the Subsurface Interest holder to be respected.
- 5.17.5 If there is a dispute between the holder of a Carving Stone Permit and the holder of a Subsurface Interest, either holder may refer the dispute to the Exploration, Quarry and Lands Appeal Board for a decision.
- 5.17.6 A Participant has the right to extract up to fifty (50) cubic metres (1,765.5 cubic feet) per year of Carving Stone from Crown land in the Labrador Innu Settlement Area outside Labrador Innu Lands, excluding a National Park, where such extraction does not interfere with the authorized use of the Crown land and of resources by holders of Surface Interests and Subsurface Interests.
- 5.17.7 A Participant shall not be required to pay any fee⁴³ or Royalty Tax⁶⁶ on Carving Stone to which a Participant has a right under 5.17.6.
- 5.17.8 Where a Participant extracts more than fifty (50) cubic metres (1,765.5 cubic feet) per year of Carving Stone from a site under 5.17.6, a quarry permit or lease must be obtained by the Innu Government under Provincial Law and the Innu

⁶⁶ To be negotiated. Canada proposes to delete "tax" from definition of Royalty Tax for purposes of this provision. Innu have under review.

Government shall pay applicable fees⁴³ under the quarry permit or lease. The Innu Government may recover any fees⁴³ paid under such quarry permit or lease issued from the Participant engaged in the extraction of Carving Stone from the site.

Part 5.18 Specified Materials

- 5.18.1 The Innu Government may quarry, or permit any Person to quarry, a Specified Material in Labrador Innu Lands without payment of any fee⁴³ or [Royalty Tax]⁶⁷ to the Province.
- 5.18.2 Subject to Parts 5.14 and 5.19, no Person may quarry a Specified Material in Labrador Innu Lands without a Specified Material Permit and the Innu Government shall give notice to the Province of any Specified Material Permit that it issues.
- 5.18.3 The Innu Government or a Person quarrying under a Specified Material Permit and a Person exercising a right pursuant to a Subsurface Interest shall exercise their respective rights so far as practicable to avoid conflict between their respective rights.
- 5.18.4 If there is a dispute under 5.18.3, any party referred to in 5.18.3 may refer the dispute to the Exploration, Quarry and Lands Appeal Board for a decision.
- 5.18.5 In a dispute referred for decision under 5.18.4, the Exploration, Quarry and Lands Appeal Board shall make an award specifying the terms and conditions of exercising either the right to the Specified Material or the right to the Subsurface Resource, or both, so as to reduce the conflict as far as practicable. If a conflict cannot be avoided, the Exploration, Quarry and Lands Appeal Board shall give priority to the rights of the holder of the Subsurface Interest subject to payment of compensation to the Innu Government or the holder of the Specified Material Permit or, in circumstances referred to in 5.18.7, to both.
- 5.18.6 Compensation awarded under 5.18.5 is limited to:
- (a) reimbursement of any fees⁴³ or costs associated with obtaining a Specified Material Permit;
 - (b) exploration expenses incurred for purposes of defining the Specified Material;
 - (c) the net present value of the Specified Material that would be partially or completely destroyed or that would otherwise be unavailable to the Innu Government or the holder of the Specified Material Permit as a result of the priority given to the rights of the holder of the Subsurface Interest; and

⁶⁷ Legal drafting. Note that Royalty Tax would not be an appropriate term at any rate, given Subsurface Resource does not include Specified Materials. NL and Innu to develop alternate wording to achieve the shared intent that the Innu Government and Persons quarrying Specified Materials in LIL will not pay tax to the province under the relevant Provincial taxation legislation.

- (d) reimbursement of additional, reasonably foreseeable costs or losses that are a direct consequence of the priority given to the rights of the holder of the Subsurface Interest.

5.18.7 Compensation awarded to the Innu Government under 5.18.5 in circumstances where compensation is awarded to the holder of a Specified Material Permit under 5.18.6(c) shall be limited to the difference between the rents, royalties and charges other than taxes that would have been received by the Innu Government from the holder of the Specified Material Permit pursuant to an Innu Law under 5.10.1(vii) and the Revenue received by the Innu Government in respect of the Subsurface Resource under 21.3.1, if the rents, royalties and charges, other than taxes that would have been paid to the Innu Government pursuant to an Innu Law under 5.10.1(vii) exceed the amount of the Revenue shared under 21.3.1.

5.18.8 For purposes of 5.18.6(c), the net present value of the Specified Material is the net present value discounted at the prevailing industry-weighted average cost of capital. This net present value shall be determined through technical and economic feasibility and financing studies conducted by an agency or agencies qualified in conducting such studies, operating independently at arm's length from the Specified Material and Subsurface Resource rights holders, and conforming to accepted industry standards.

Part 5.19 Specified Materials in Labrador Innu Lands for use by the Province and Public Utilities

5.19.1 For the purposes of Part 5.19:

"Province" includes all departments, agencies, and crown corporations of the Government of Newfoundland and Labrador, and includes all cities, municipalities, local service districts or other local governments established under Provincial Law, and their respective contractors;

"Public Utility" includes the contractors of a public utility; and

"Public Work" includes any existing or future:

- (a) public roads, public buildings, water and sewer lines, ports, railways, or airports and associated infrastructure, where constructed, operated, maintained, or improved by the Province; and
- (b) telecommunication lines and facilities and associated infrastructure, and lines for the transmission and delivery of electrical energy and power, including distribution class lines and HVdc electrode lines, and all associated infrastructure and improvements, where such telecommunication lines, facilities and associated infrastructure or transmission lines, infrastructure and improvements are constructed, operated, maintained or improved by the Province, or a Public Utility.

- 5.19.2 Notwithstanding anything in the Agreement to the contrary, everything concerning Specified Materials in Labrador Innu Lands for Public Works by the Province or Public Utilities is dealt with exclusively by Part 5.19.
- 5.19.3 The Innu Government shall provide reasonable access to extract and transport Specified Materials in Labrador Innu Lands to the Province or any Public Utility when the Specified Materials are used to construct, install, maintain, repair, remove, restore, replace, operate or improve a Public Work or any part of a Public Work executed by any one or more of them.
- 5.19.4 A Dispute concerning access to extract and transport Specified Materials under 5.19.3 shall be a Dispute for the purposes of:
- (a) Informal discussion pursuant to 26.3.1 and Part 26.5 (Mediation) if the Dispute is between the Innu Government and one or more of the Province or any Public Utility; and
 - (b) Part 26.4 if the Disputing parties are the Innu Government and the Province.
- 5.19.5 The Province or any Public Utility shall extract and transport Specified Materials in Labrador Innu Lands in accordance with any [applicable] Federal Law or Provincial Law that applies to quarries of similar size and circumstance within the Province.
- 5.19.6 The Province or any Public Utility shall rehabilitate the extraction site from which the Specified Materials were extracted in accordance with any applicable Federal Law or Provincial Law that applies to quarries of similar size and circumstance within the Province; and, in any event, such rehabilitation shall ensure the environmental disturbance to the extraction site is remediated to the point where the extraction site is safe and stable, and is restored as near as reasonable to its pre-disturbance condition, unless the extraction site is made suitable for a use pursuant to an agreement between the Innu Government, the Province or the Innu Government and the Public Utility, excluding its contractors, as the case may be.
- 5.19.7 For any Public Work or part of a Public Work that is located in Labrador Innu Lands, the Province or any Public Utility shall not be required to pay the Innu Government any amount for any Specified Material used to construct, install, operate, maintain, repair, remove, restore, replace, operate or improve that Public Work or part of a Public Work.
- 5.19.8 For any Public Work or part of a Public Work that is located outside Labrador Innu Lands, the Province or any Public Utility may be required by the Innu Government to pay to the Innu Government, for any Specified Material extracted and transported from Labrador Innu Lands used to construct, install, operate, maintain, repair, remove, restore, replace, operate or improve that Public Work or part of that Public Work, an amount not exceeding the amount that the Province would charge, assess, impose, levy or otherwise require be paid by a Person, other than a Party, to the Province as taxes, royalties, rentals, imposts, fees⁴³, charges, assessments, or other governmental financial levies for the same or a

comparable use of those Specified Materials outside Labrador Innu Lands; but the Province or any Public Utility shall not be required to pay application or processing fees⁹¹ to the Innu Government for those Specified Materials.

5.19.9 Subject to 5.19.7, 5.19.10 and 5.19.14 and, for greater certainty, the only amount that is to be paid to the Innu Government by the Province or any Public Utility for the Specified Materials pursuant to Part 5.19 is the amount referred to in 5.19.8, and the Innu Government shall charge no other amount, including no other amount for access to, extraction of, use of, or rehabilitation in respect of those Specified Materials; and there shall be no impact and benefit agreement of any kind for the actions and uses contemplated by Part 5.19 in relation to Specified Materials by the Province or any Public Utility for Public Works.

5.19.10 Notwithstanding 5.19.8, or anything in this Agreement to the contrary, but subject to 5.19.14, there shall be no [taxes,]⁶⁸ royalties, rentals, [imposts], fees⁴³, charges, assessments or application or processing fee payable by the Province or any Public Utility to, or impacts and benefits agreement required by, the Innu Government in respect of the extraction and transportation of any Specified Materials from Labrador Innu Lands for use in lands adjacent to those portions of the cross-hatched areas in Map 5-L and in either but not both of Map 5-M or Map 5-N, as determined under 5.3.12, for the construction, operation maintenance, repair, restoration, replacement, or improvement of:

- (a) HVdc electrode lines; and
- (b) any facilities and infrastructure associated with (a)

for purposes of the Lower Churchill Project.

5.19.11 The access rights under Part 5.19 are in addition to rights provided elsewhere in the Agreement⁶⁹.

5.19.12 Where the Innu Government on reasonable grounds believes the Province or a Public Utility has not rehabilitated an extraction site in accordance with 5.19.6, the Innu Government shall notify either the Province or the Public Utility of the alleged default, and provide a reasonable period of time in that notice for either the Province or the Public Utility to correct the alleged default.

5.19.13 Where either the Province or a Public Utility to whom a notice is given under 5.19.12 has defaulted on that Person's obligation to rehabilitate an extraction site in accordance with 5.19.6, and either the Province or the Public Utility does not correct that default or contest whether there is such a default within the time period set out in 5.19.12, the Innu Government may rehabilitate the extraction site in accordance with 5.19.6.

5.19.14 Where the Innu Government incurs costs, expenses or charges in order to rehabilitate an extraction site pursuant to 5.19.13, the reasonable costs,

⁶⁸ To be negotiated. NL want these terms to remain. Canada wants removed.

⁶⁹ Legal drafting. Pinpointing to Chapter 17A only or are there other rights of access?

expenses and charges incurred by the Innu Government in taking that action under 5.19.13 are recoverable by the Innu Government from the Province or Public Utility as a debt owed to the Innu Government and the Innu Government shall notify the Province or Public Utility of the amount of the recoverable costs, expenses and charges.

- 5.19.15 Notwithstanding anything in Part 5.19 to the contrary, Specified Materials cannot be removed from any Community pursuant to Part 5.19 without the consent of that Innu Community Government.

Part 5.20 Exploration, Quarry and Lands Appeal Board

- 5.20.1 The Exploration, Quarry and Lands Appeal Board shall consist of three (3) members agreed upon by the Province and the Innu Government, and the Exploration, Quarry and Lands Appeal Board shall discharge the responsibilities assigned to it pursuant to this Chapter.

- 5.20.2 The Exploration, Quarry and Lands Appeal Board shall arbitrate all disputes referred to it in accordance with this Chapter and, subject to Part 5.20, in the exercise of its jurisdiction, powers, responsibilities, duties and functions, the Exploration, Quarry and Lands Appeal Board shall have the same powers, responsibilities, duties, and functions, and be subject to the same review, as an Arbitrator acting under 26.6.6 to 26.6.17, with any necessary changes to those provisions.

- 5.20.3 Any party referring a dispute to the Exploration, Quarry and Lands Appeal Board for a decision in accordance with this Chapter shall provide written notice of the dispute being referred to both the Board and to the other party or parties to the dispute.

- 5.20.4 If the Province and the Innu Government cannot agree upon three (3) members referred to in 5.20.1 within 120 days from the Effective Date, then the Province and the Innu Government shall each appoint one individual, and the third individual:

- (a) shall be appointed by the Chief Justice of the Supreme Court of Newfoundland and Labrador, Trial Division – General Division upon the application of either the Province or the Innu Government;
- (b) within fifteen (15) days of the application referred to in (a), the Province and the Innu Government may each submit the name of one potential appointee to the Chief Justice for consideration; and
- (c) the Chief Justice, before making the appointment under (a), shall consider, in camera, the ability of the potential appointees put forward under (b) to discharge the duties of a member of the Exploration, Quarry and Lands Appeal Board, including, for greater certainty considering 5.20.5.

- 5.20.5 Any individual appointed to the Exploration, Quarry and Lands Appeal Board shall be familiar with Exploration and quarrying practices in Labrador.

- 5.20.6 The term of office of appointed members is six (6) years during good behaviour and an individual may be re-appointed for a further term or terms in accordance with Part 5.20. [However, notwithstanding anything to the contrary, the entire membership of the Exploration, Quarry and Lands Appeal Board is to be reconstituted every six (6) years in accordance with the procedures set out in 5.20.1 and 5.20.2 with any necessary changes]⁷⁰.
- 5.20.7 If a member does not complete a full term then, within sixty (60) days from the date on which the vacancy occurs, a replacement shall be appointed using the procedure and by the Government that appointed the replacement's predecessor, but a replacement only serves for the balance of the term then remaining to the replacement's predecessor.
- 5.20.8 The three (3) members referred to in 5.20.1 shall select one of them to act as the chairperson, but if a chairperson has not been selected within ninety (90) days from the establishment or reestablishment of the entire Exploration, Quarry and Lands Appeal Board, the Chief Justice of the Supreme Court of Newfoundland and Labrador, Trial Division – General Division upon application by the Province or the Innu Government, shall appoint one of the individuals to be the chairperson.
- 5.20.9 If the chairperson does not complete a full term, the members of the Exploration, Quarry and Lands Appeal Board shall, within sixty (60) days from the date on which a replacement is appointed under 5.20.7, select one of the members as the new chairperson. If a new chairperson has not been selected within that time, the Chief Justice of the Supreme Court of Newfoundland and Labrador, Trial Division – General Division upon application by the Province or the Innu Government, shall appoint one of the members of the Exploration, Quarry and Lands Appeal Board to be the chairperson.
- 5.20.10 The remuneration of members of the Exploration, and Quarry and Lands Appeal Board shall be on an hourly or *per diem* basis for time worked.
- Part 5.21 Identification and Selection of Lands.**
- 5.21.1 The areas which are not Labrador Innu Lands as shown on the map attached as Map 5-P are access corridors that are intended to provide general access between central and northern Labrador.
- 5.21.2 All the boundaries shown on the maps attached as Maps 5-A, B, C, D, E-1, E-2, F-1, F-2, G-1, G-2, H-1, H-2, I, L, M, N, and O, shall be adjusted or refined for the Atlas of the Agreement, upon agreement of the Parties, so as
- (a) to create final boundaries and legal descriptions for those selections that are based upon topographic features to the greatest reasonable extent,

⁷⁰ Legal drafting. Formulation to be negotiated.

while maintaining to the greatest reasonable extent the integrity of those selections; and

(b) to attain the land quanta prescribed in 5.2.2, 5.3.1 and 5.4.2.

5.21.3 All selections of lands by the Innu Nation under this Agreement-In-Principle that overlap the Labrador Inuit Settlement Area are subject to the Innu Nation making appropriate arrangements with the Nunatsiavut Government with respect to those selections.

5.21.4 There is an initialled disk that accompanies this Agreement-in-Principle containing the electronic versions of the paper maps in this Agreement-in-Principle, and the information that was used to generate the paper maps in this Agreement-in-Principle. In the event of a conflict between the paper maps and the electronic maps and information on the disk, the paper maps will prevail.

Part 5.22 Grandfathering of Innu Cabins in Labrador⁷¹

5.22.1 Prior to the Agreement the Parties will negotiate provisions regarding Innu cabins in Labrador following review of information concerning those cabins.

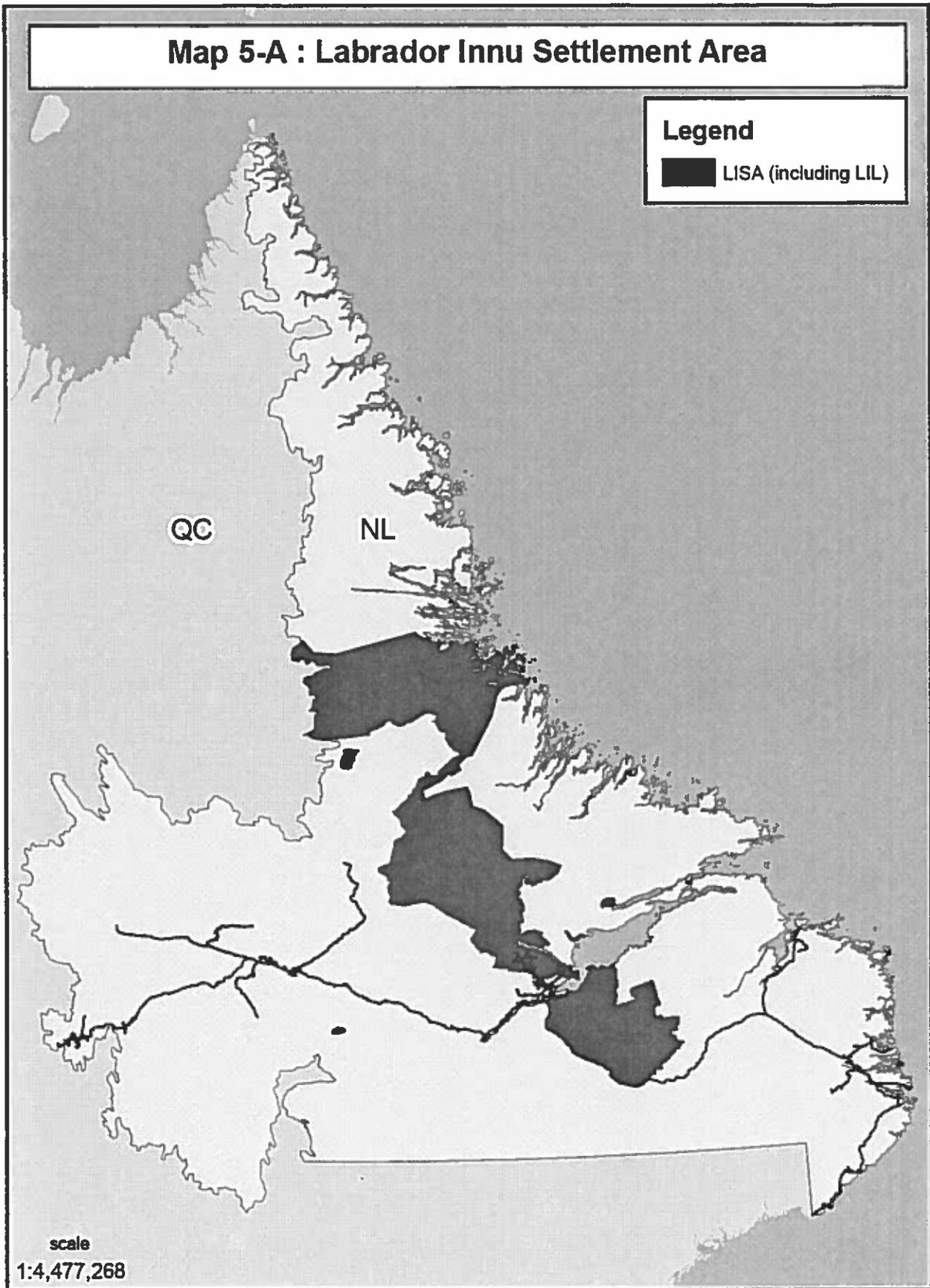
Part 5.23 Road Corridors Adjacent to Labrador Innu Lands Near Sheshatshiu and Along the Trans Labrador Highway Phase 3

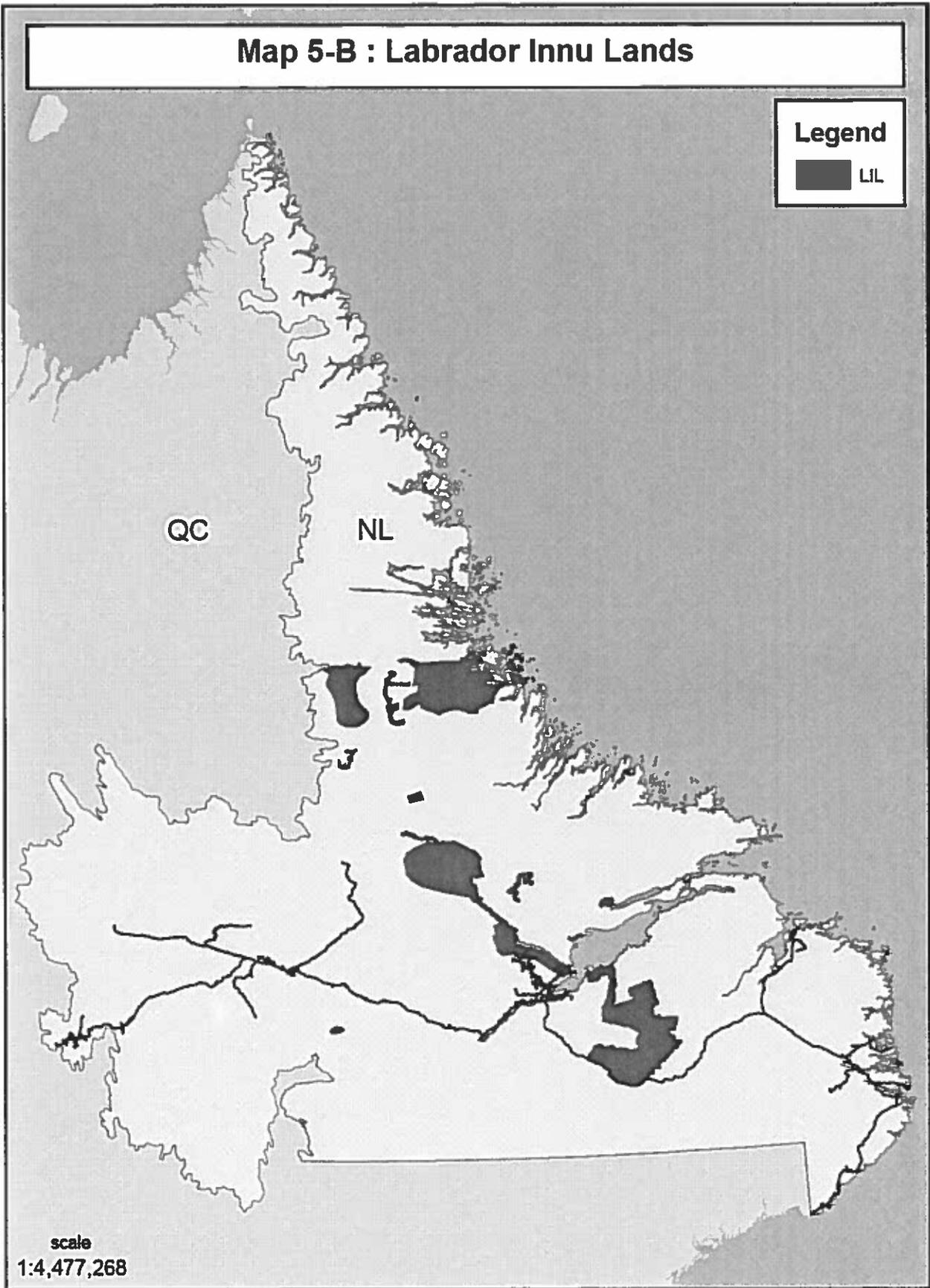
5.23.1 No development will be permitted in the 15.24 metre road corridors on each side of the centre line of the highway that adjoin Labrador Innu Lands as shown on Map 5-R and in the 30 metre northern road corridor from the highway centre line that adjoins Labrador Innu Lands on Map 5-S, except for developments by the Province and public utilities.

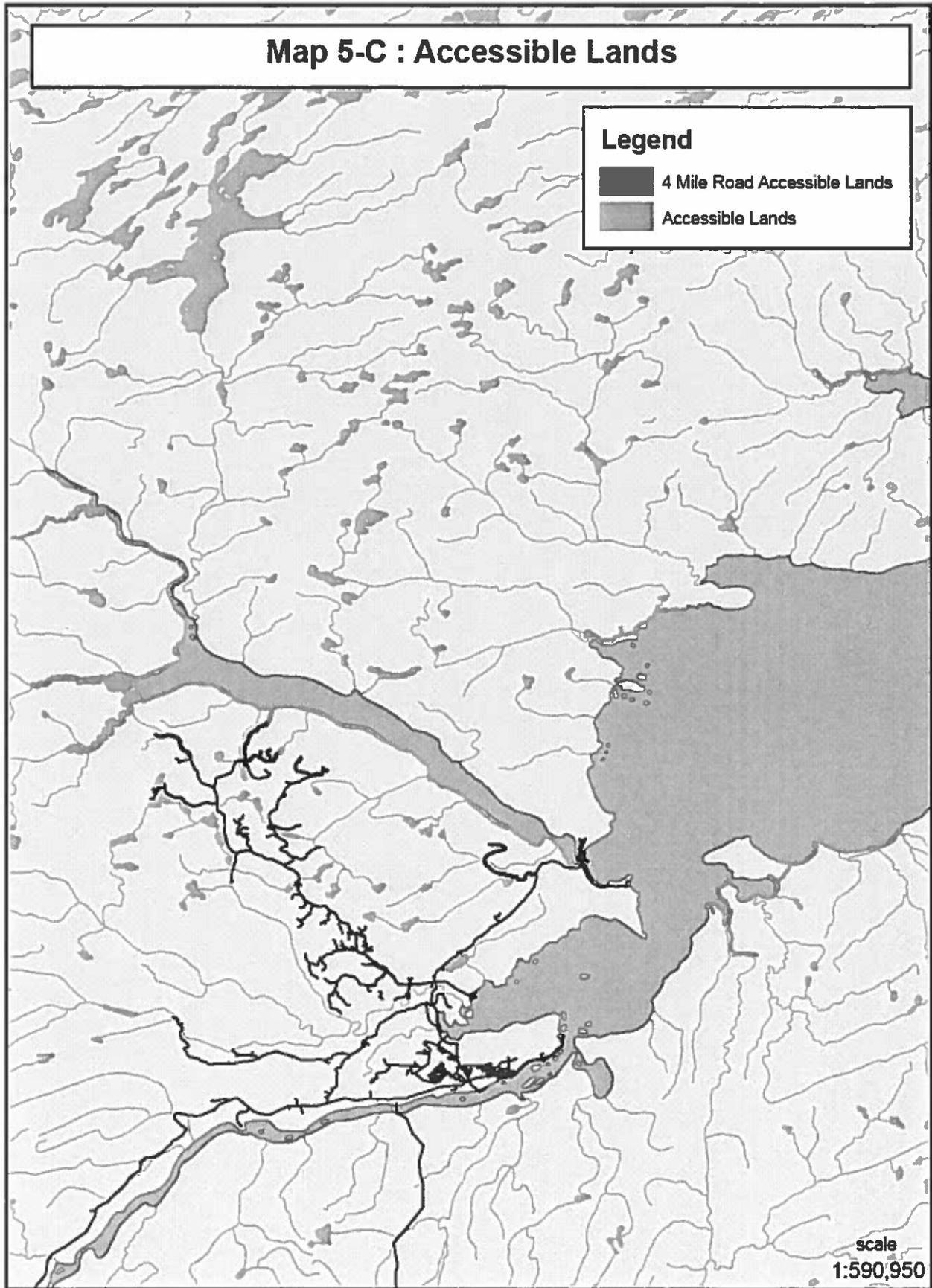
5.23.2 Access across the corridors referred to in 5.23.1 from developments on lands outside those corridors will be permitted in accordance with Federal Law and Provincial Law.

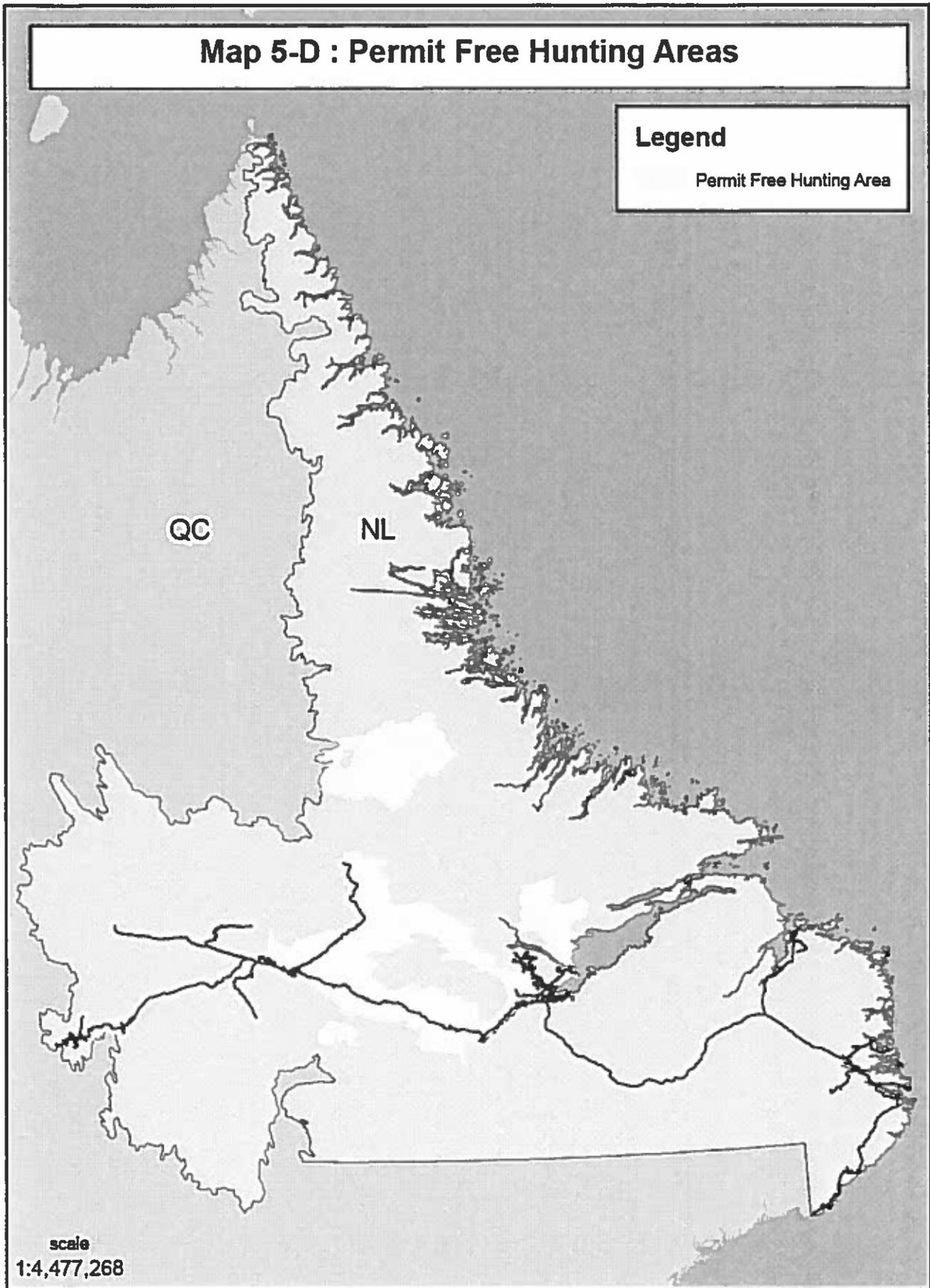
5.23.3 When a protected road plan is being prepared in relation to the road corridor shown on Map 5-S, under the *Urban and Rural Planning Act* (Newfoundland and Labrador), the Innu Government, in addition to the opportunities for input into such a plan as provided for in that Act, will be given, as part of the overall planning process for such a plan under that Act, a separate opportunity for input into that plan in relation to the northern road corridor that adjoins Labrador Innu Lands, as shown on Map 5-S.

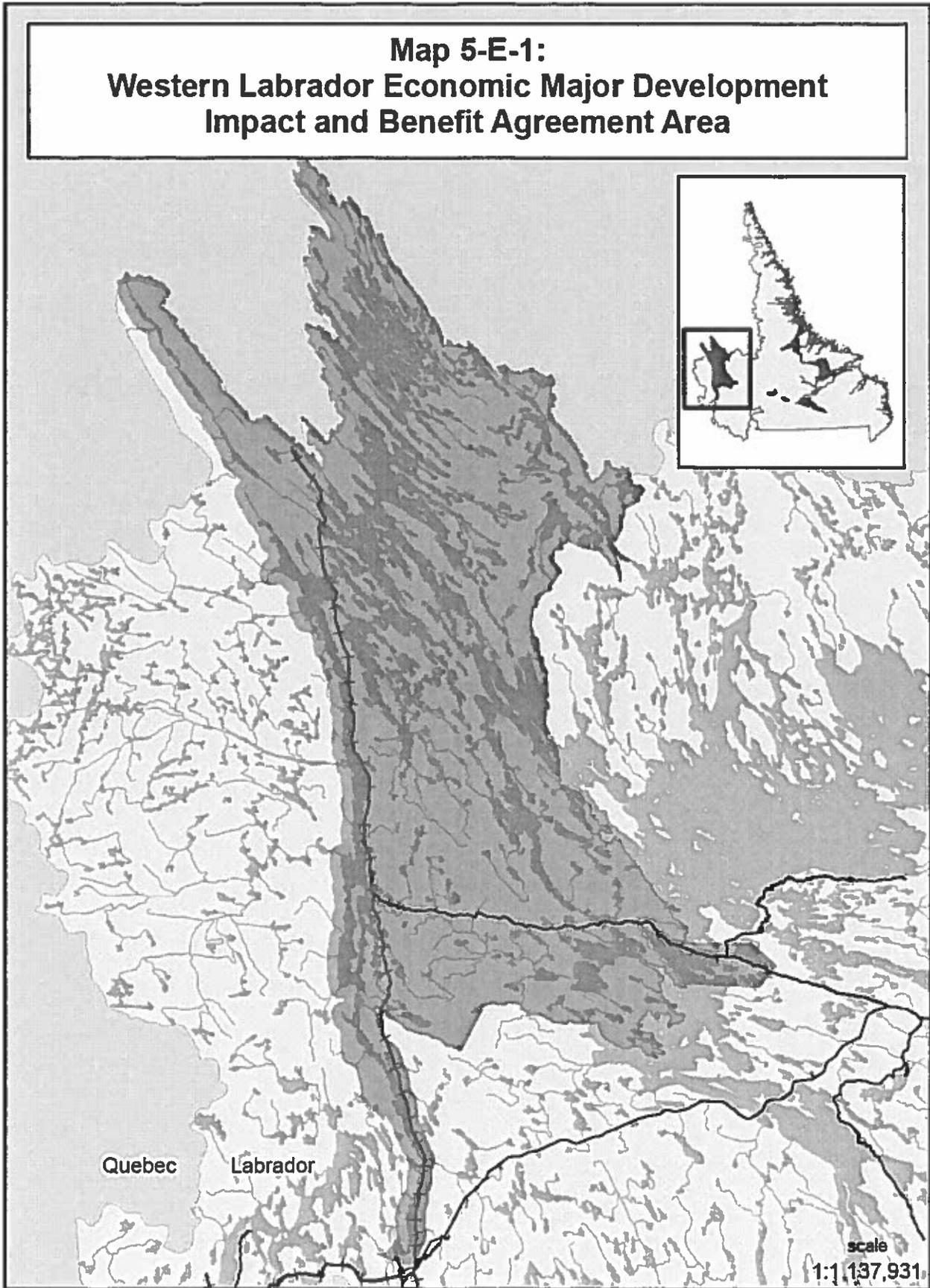
⁷¹ To be negotiated. The Innu will generate a list of Innu cabins to be grandfathered for the Agreement. The provisions of this Part will be negotiated following receipt of that list. Parties are referred to email exchanges in May 2009 between Provincial and Innu negotiating team members related to potential approaches to this matter.

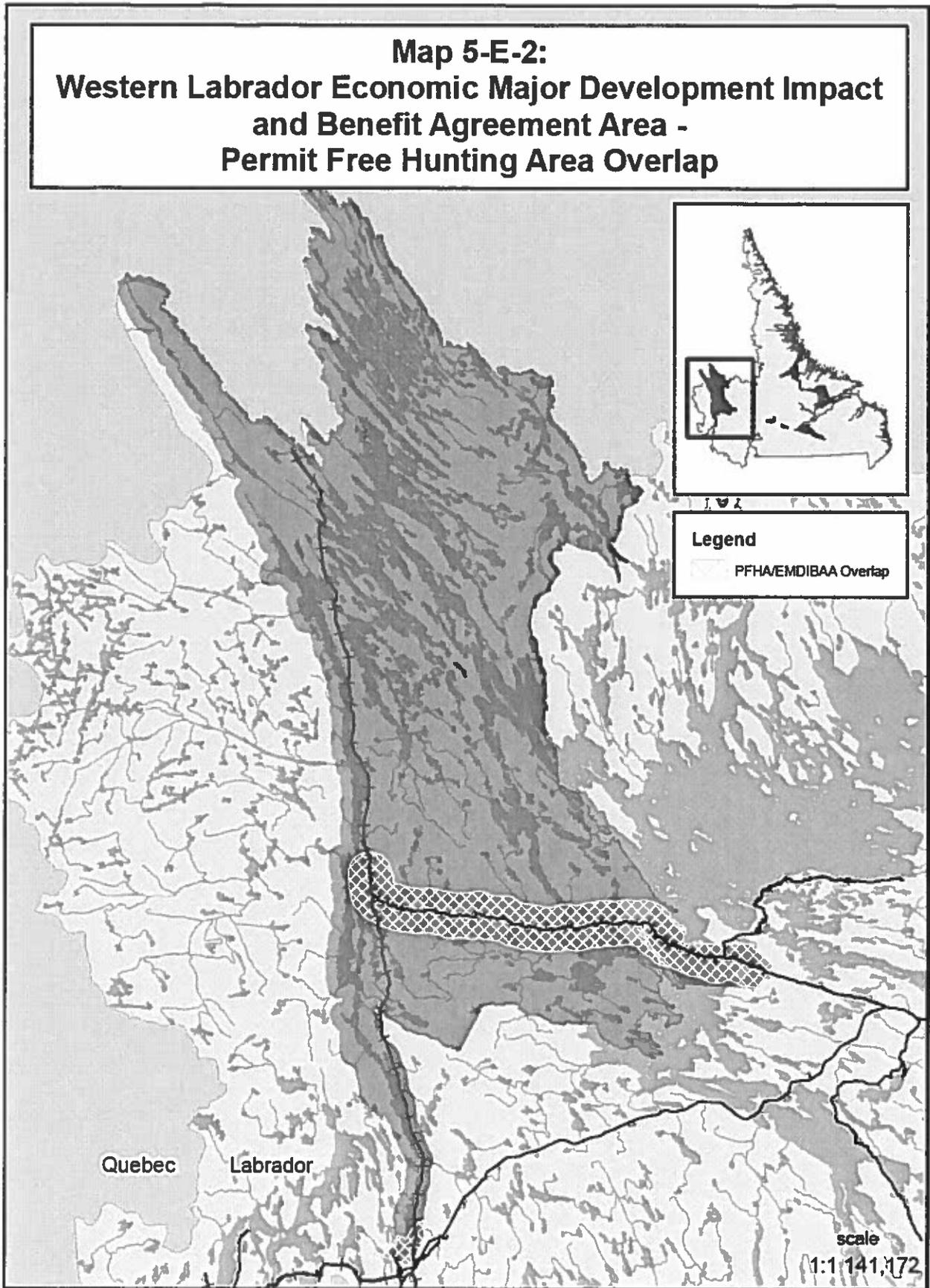


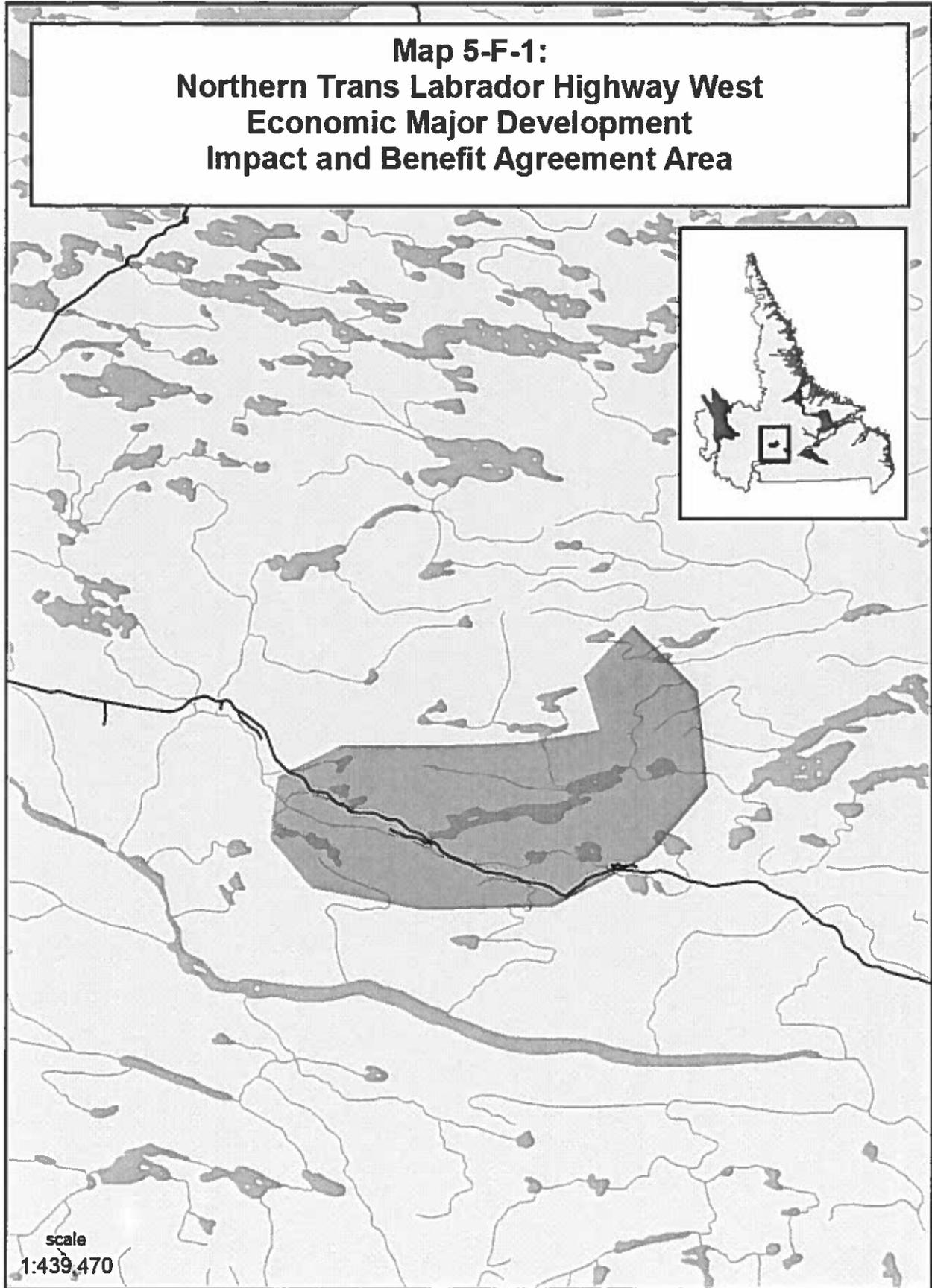


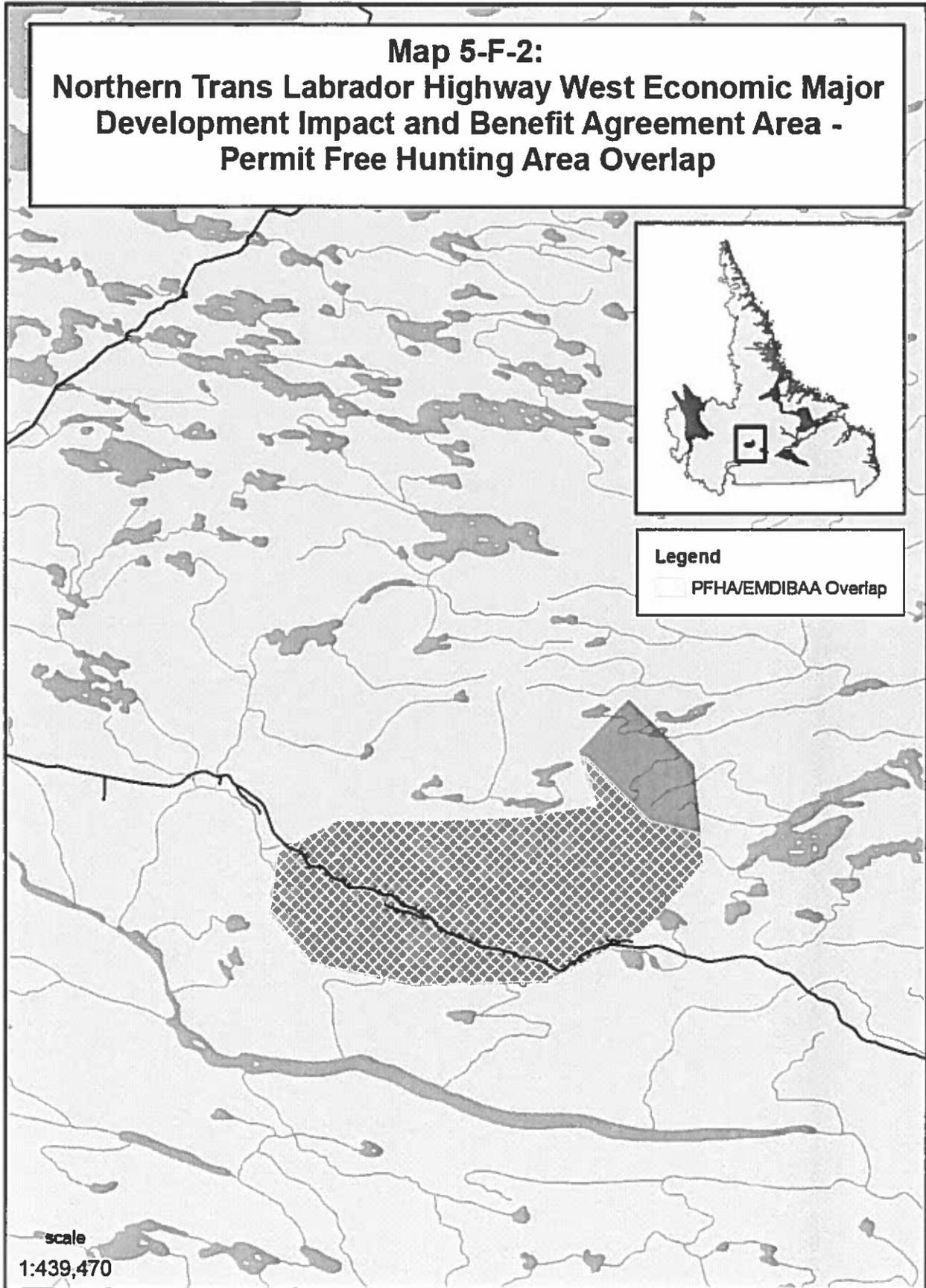


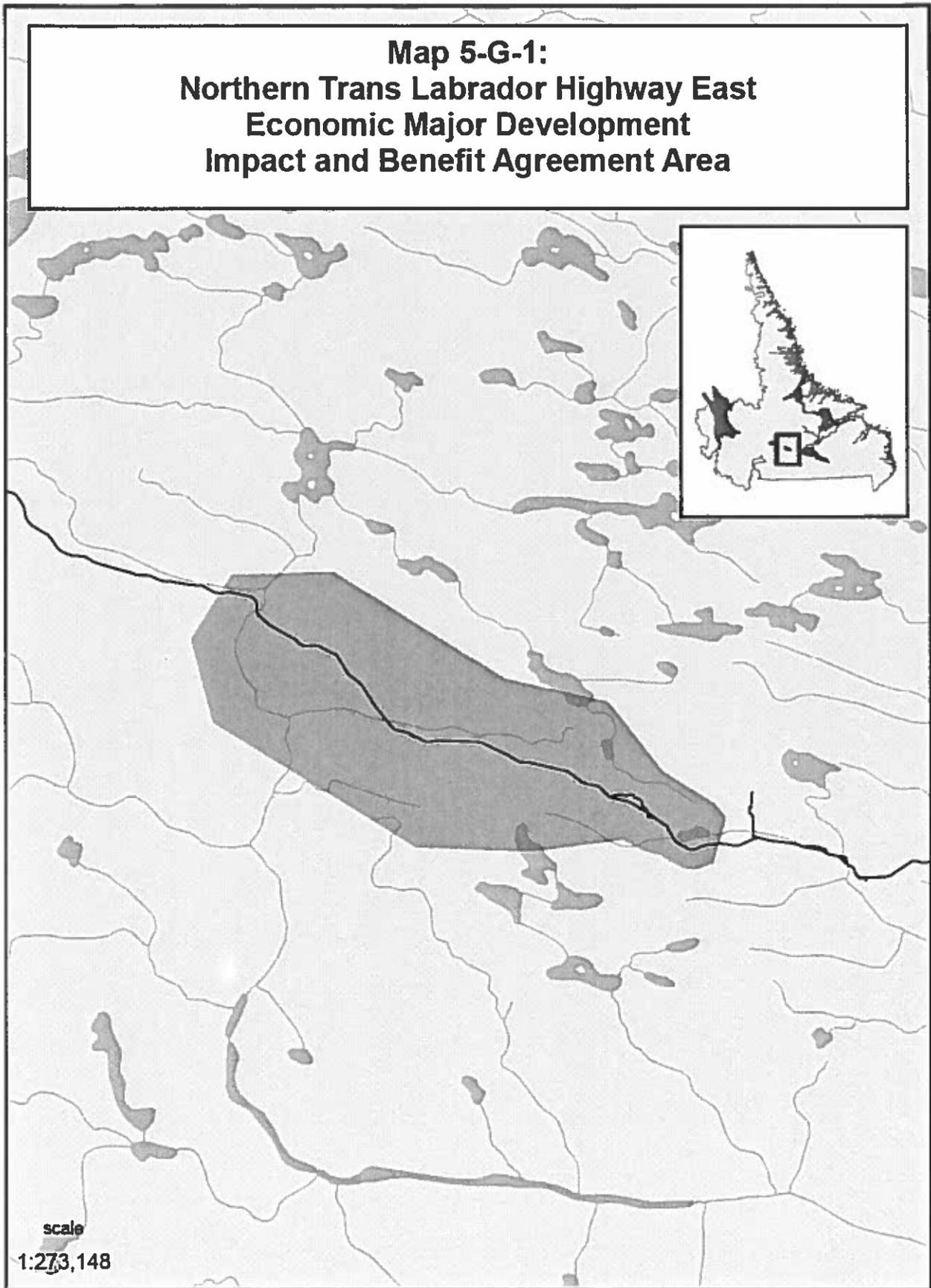


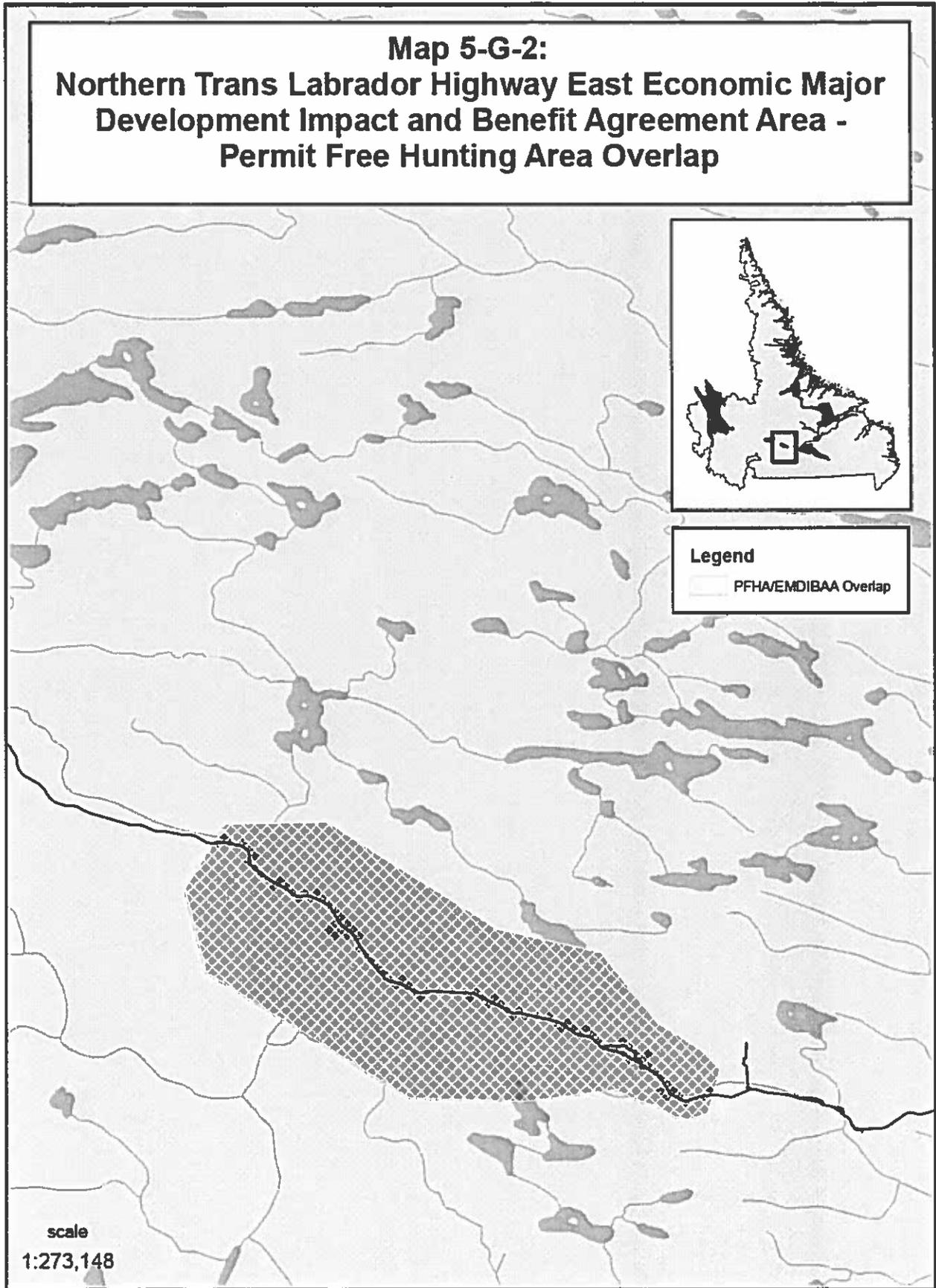


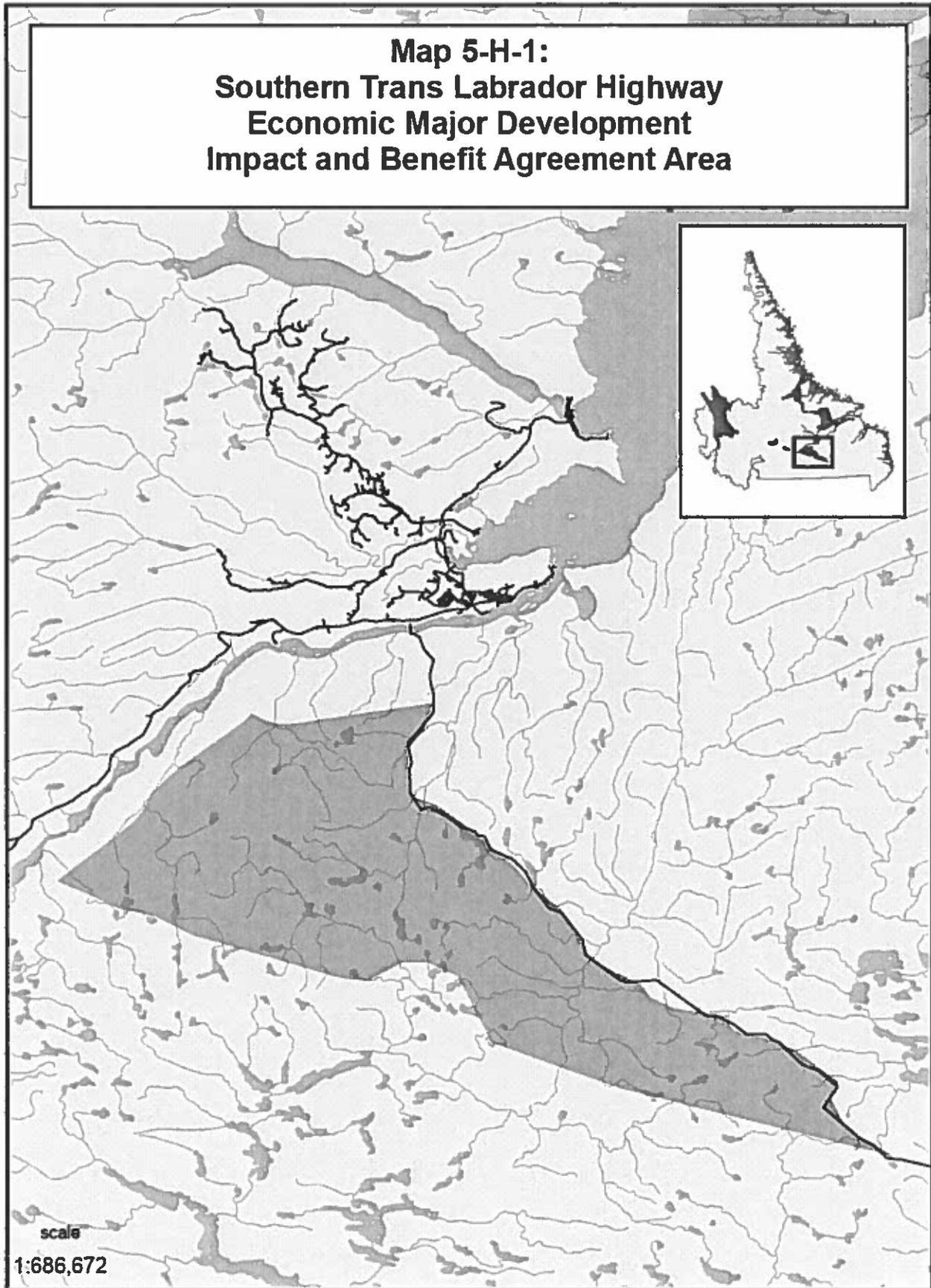




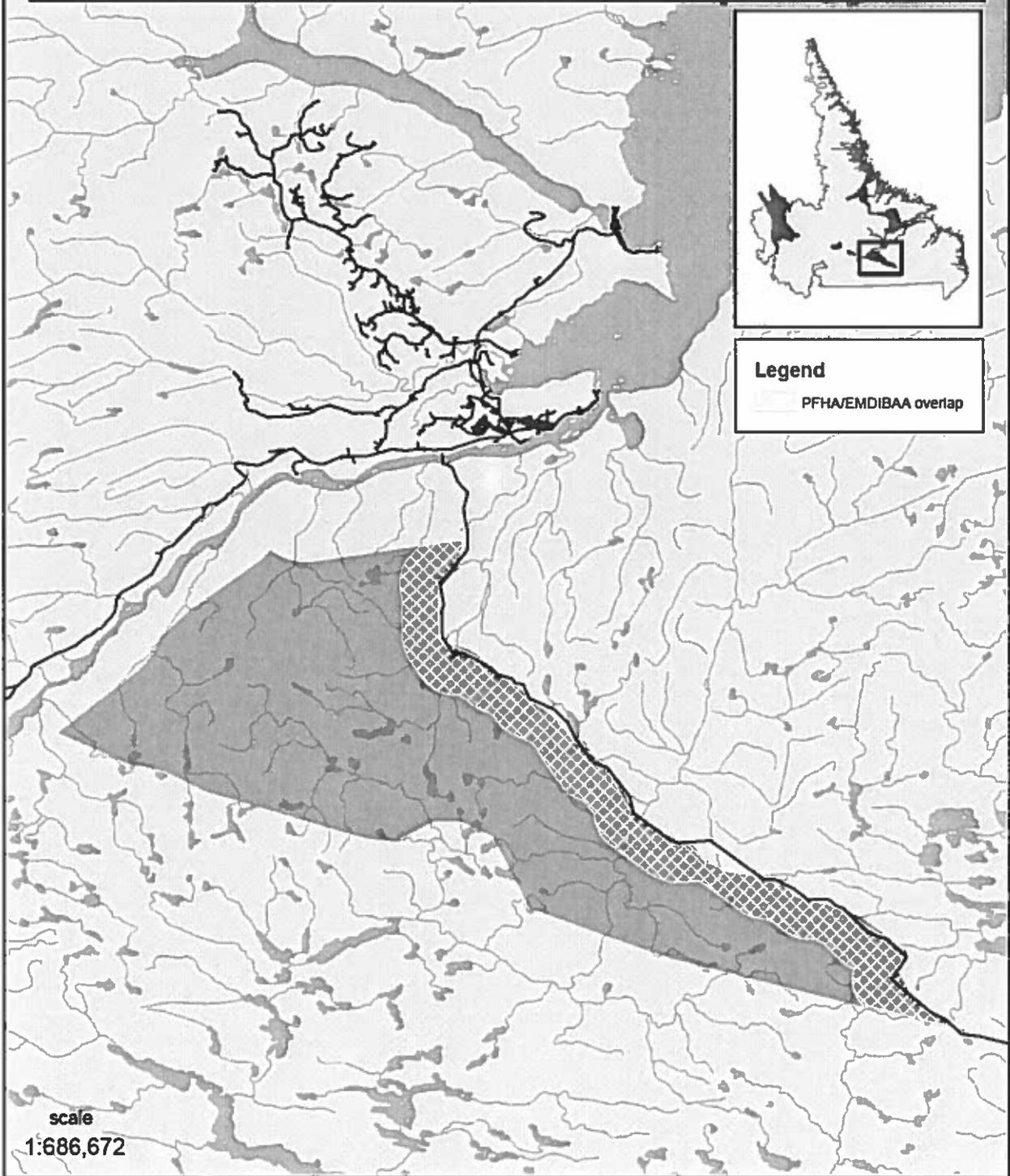


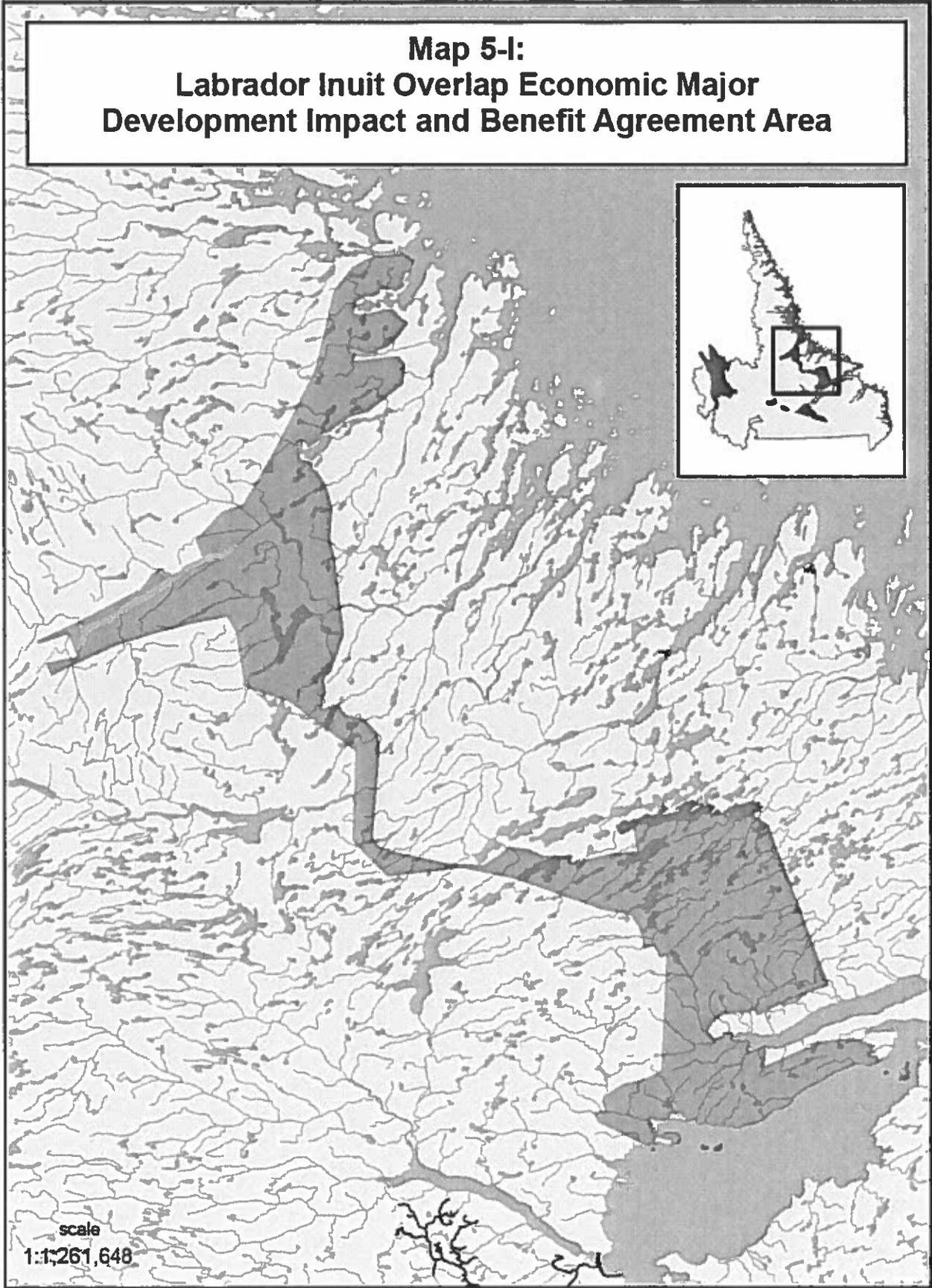


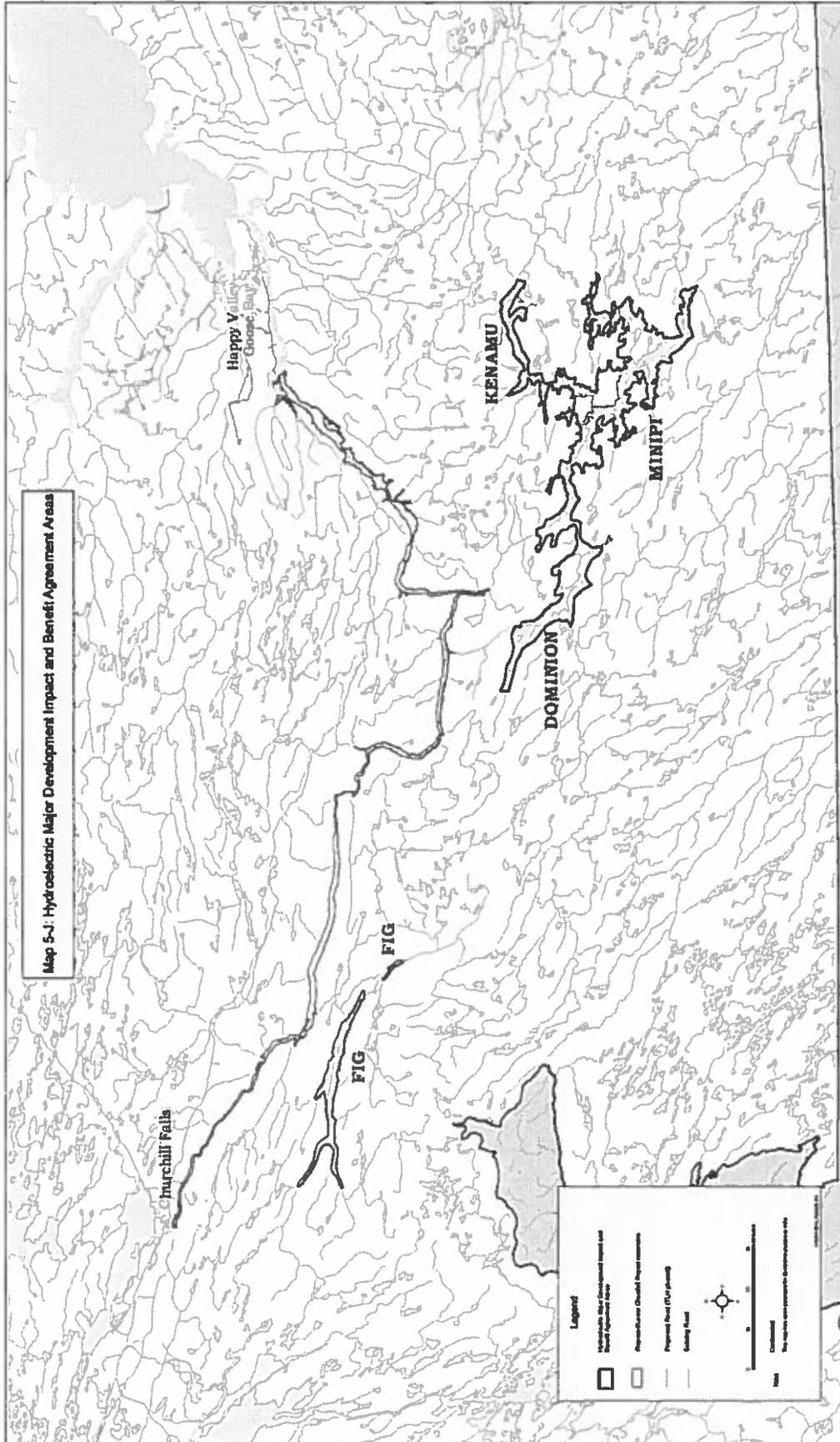


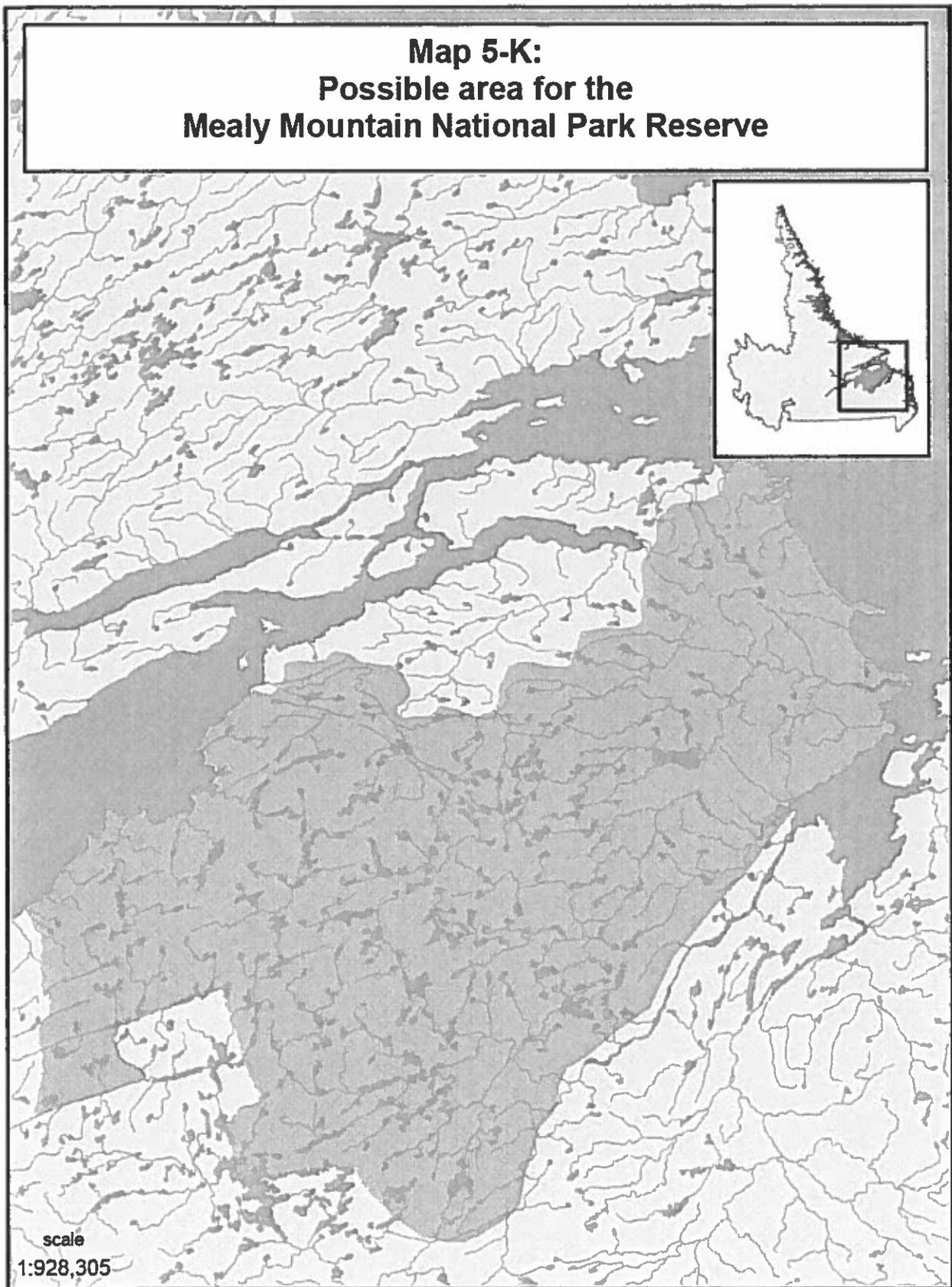


**Map 5-H-2:
Southern Trans Labrador Highway Economic Major
Development Impact and Benefit Agreement Area -
Permit Free Hunting Area Overlap**



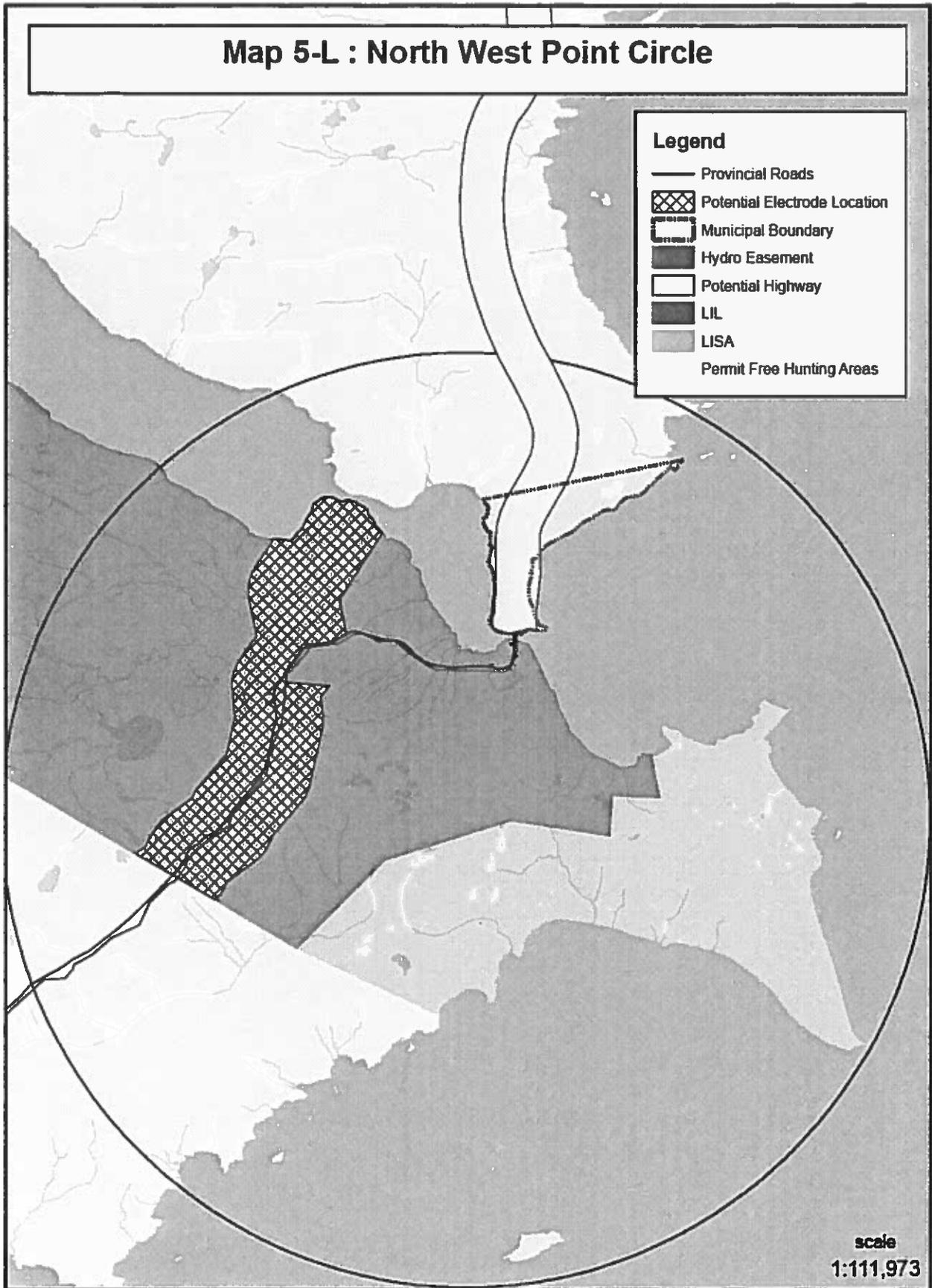






Note: This map is subject to federal and provincial cabinet approval.

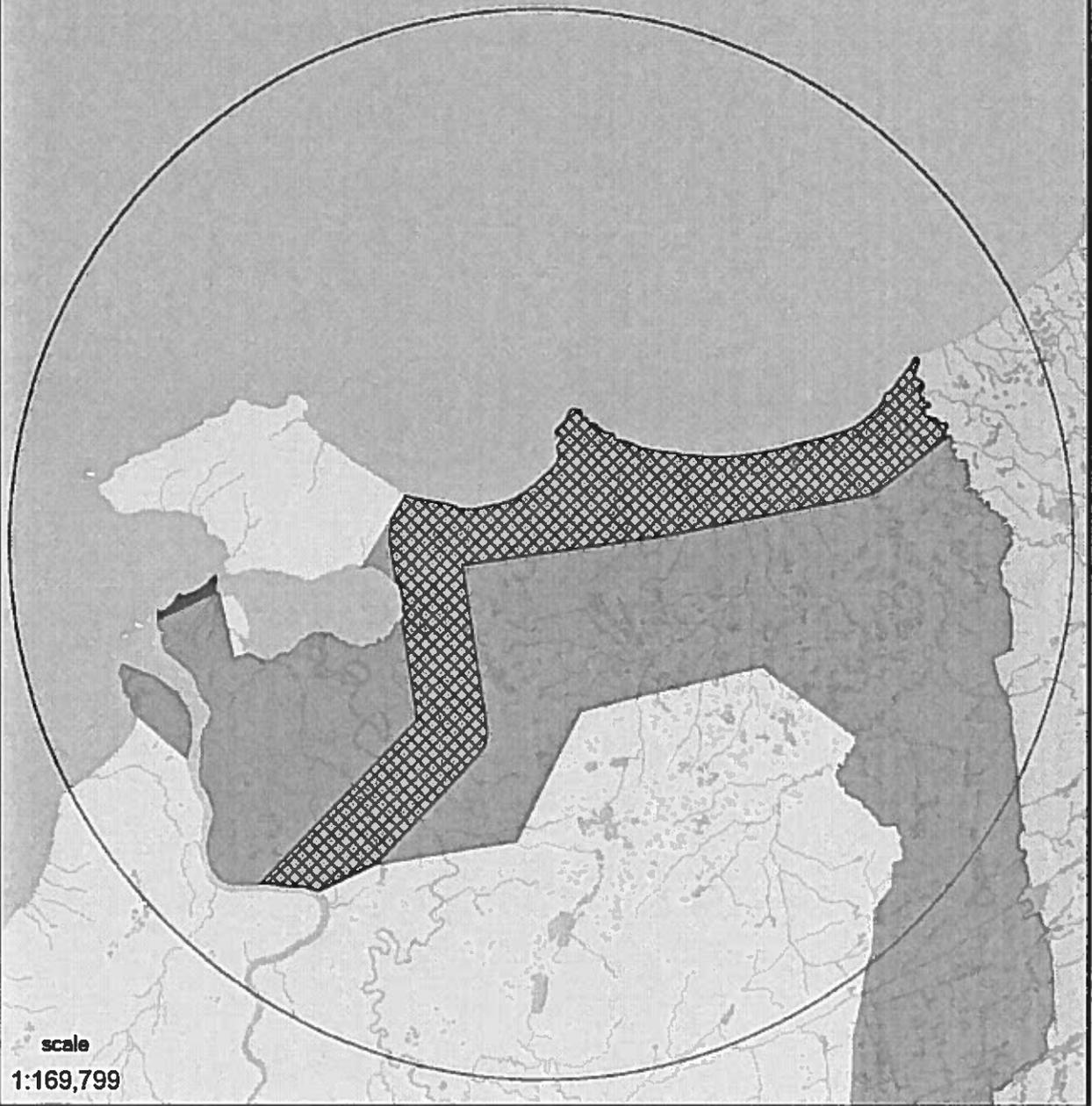
Labrador Innu Land Claims Agreement Land and Non-Renewable Resources



Map 5-M : Carter Basin Circle

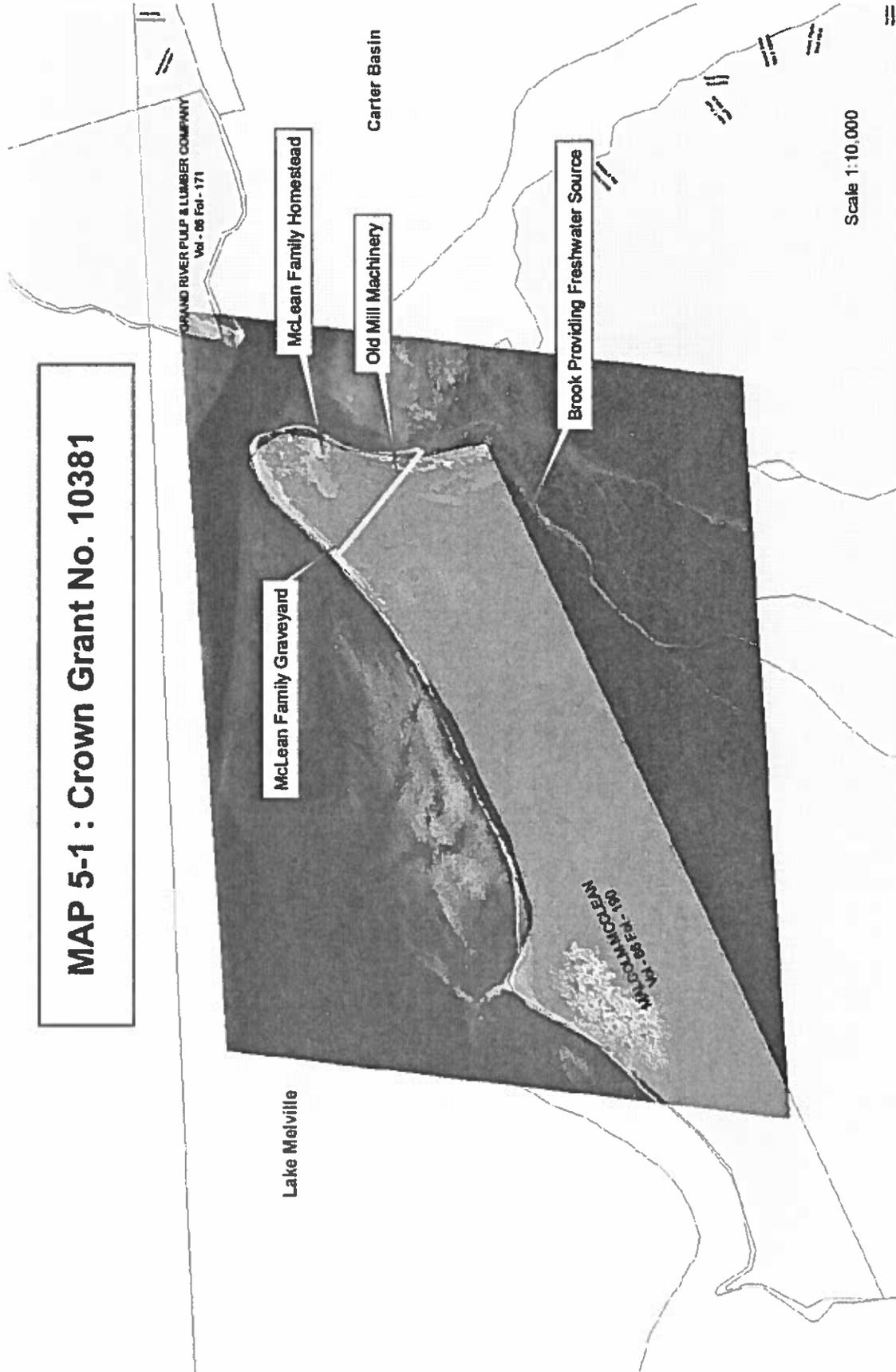
Legend

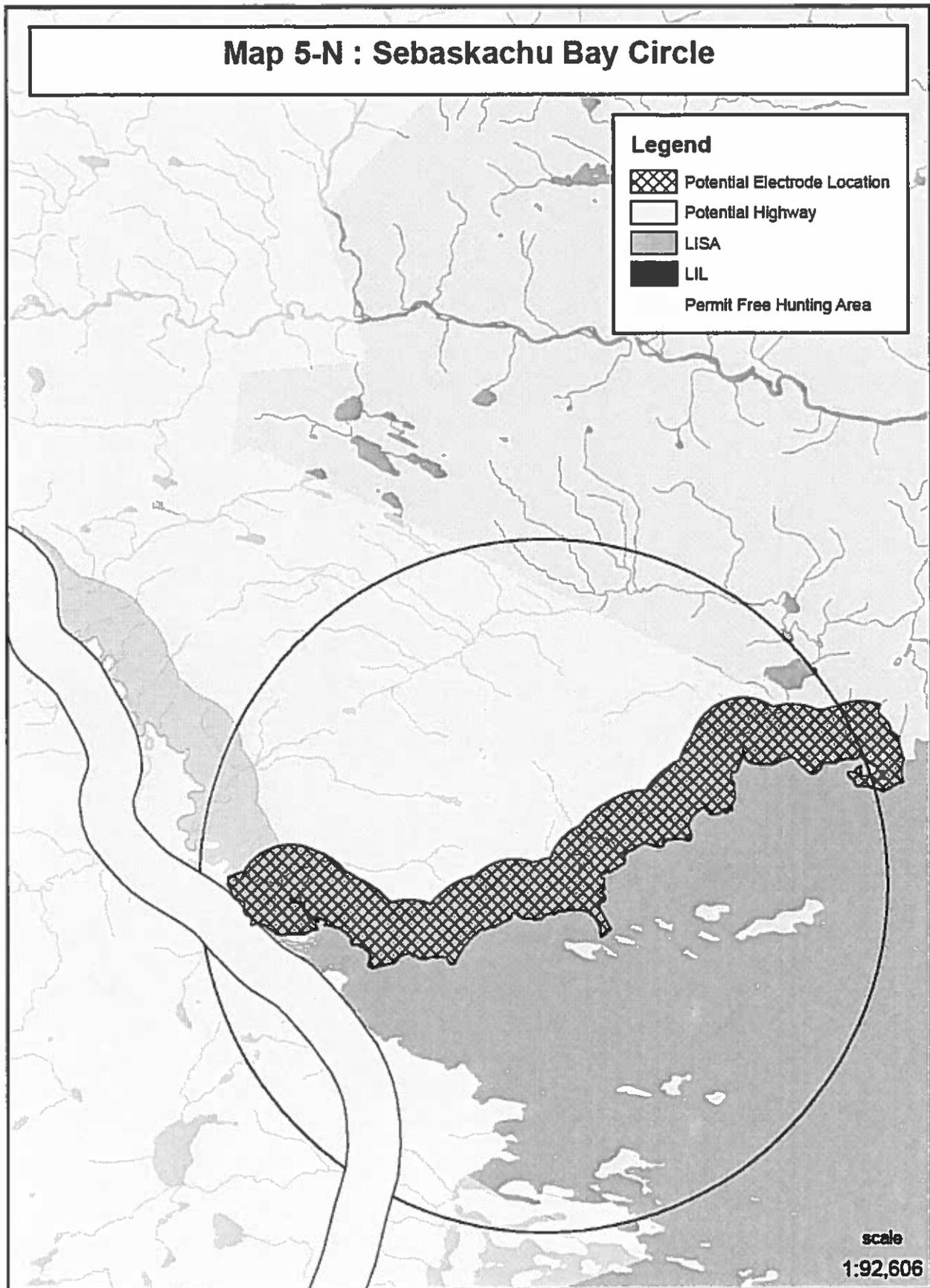
-  Potential Electrode Location
-  LIL
-  LISA
-  Crown Grant No. 10381, part of which is to become LIL pursuant to 5.3.10
-  Possible MMNP

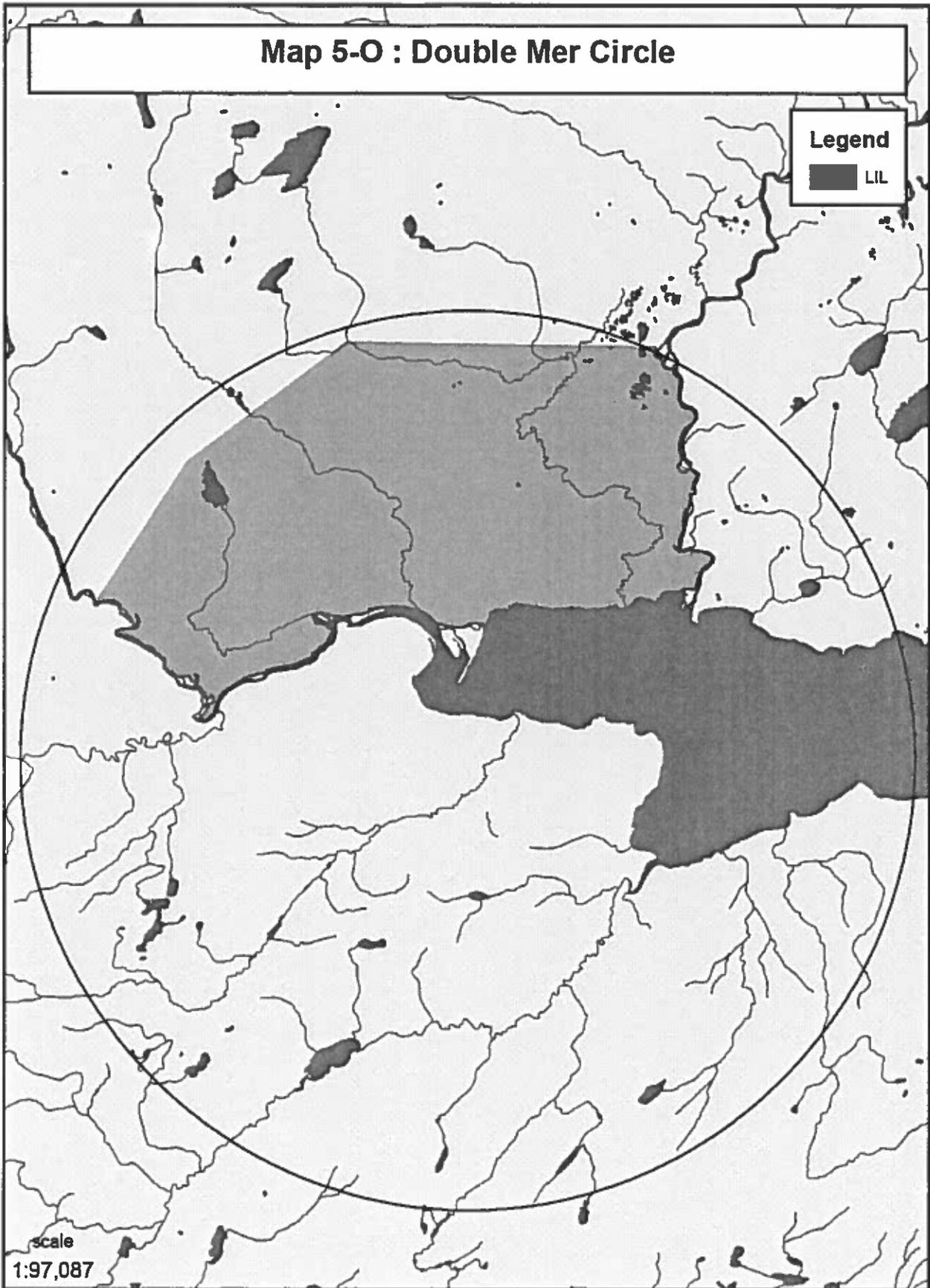


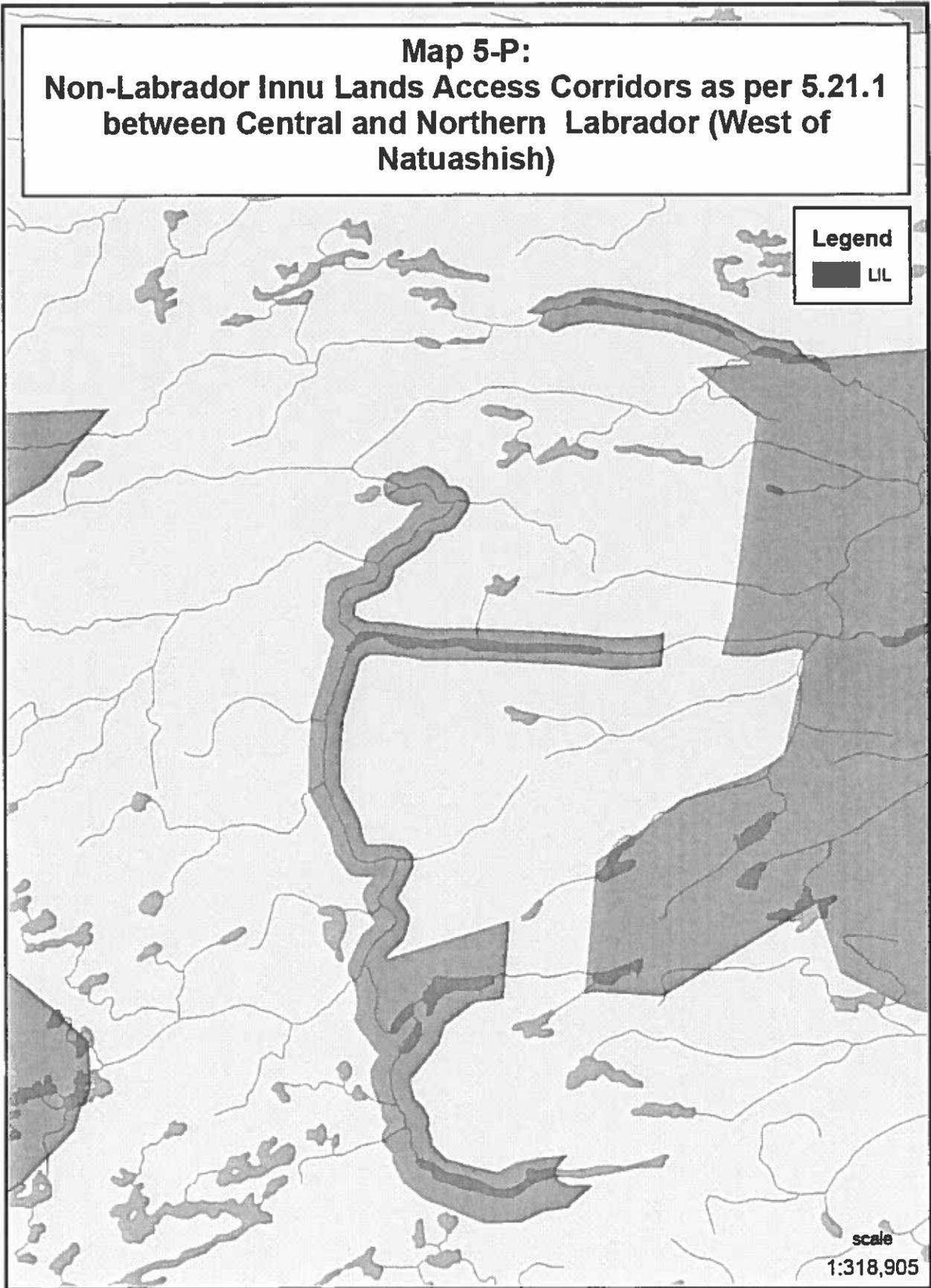
scale
1:169,799

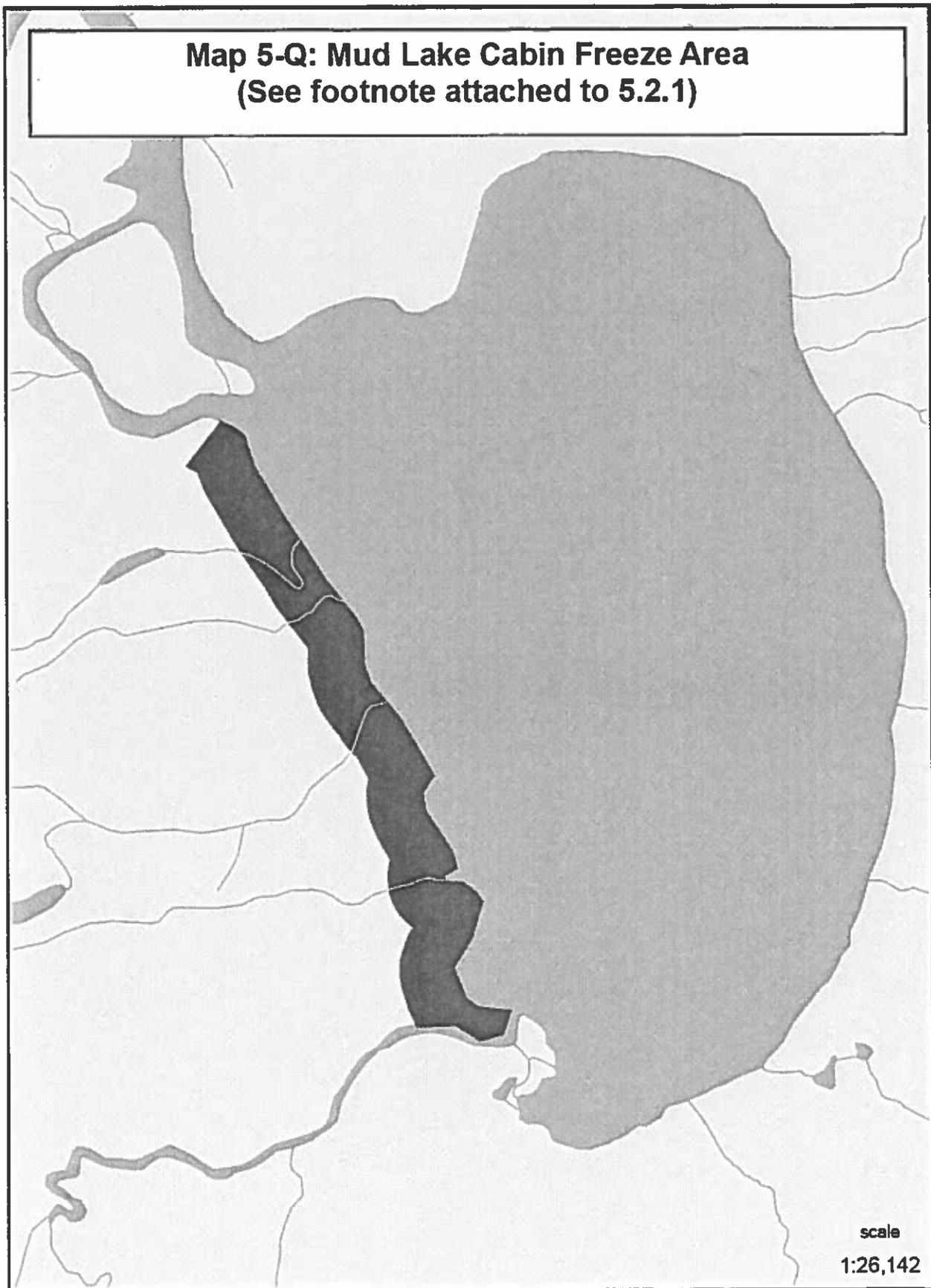
MAP 5-1 : Crown Grant No. 10381

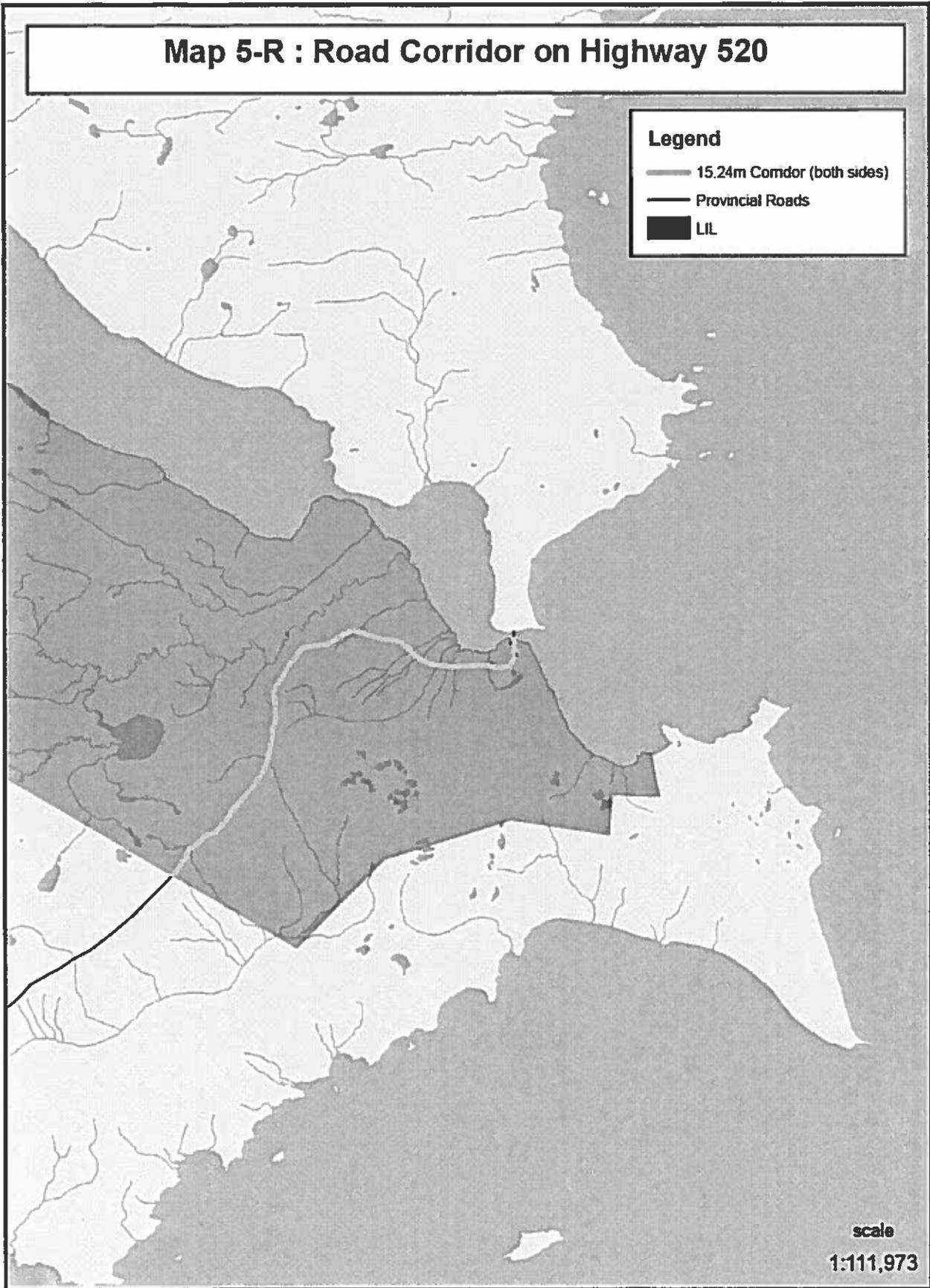


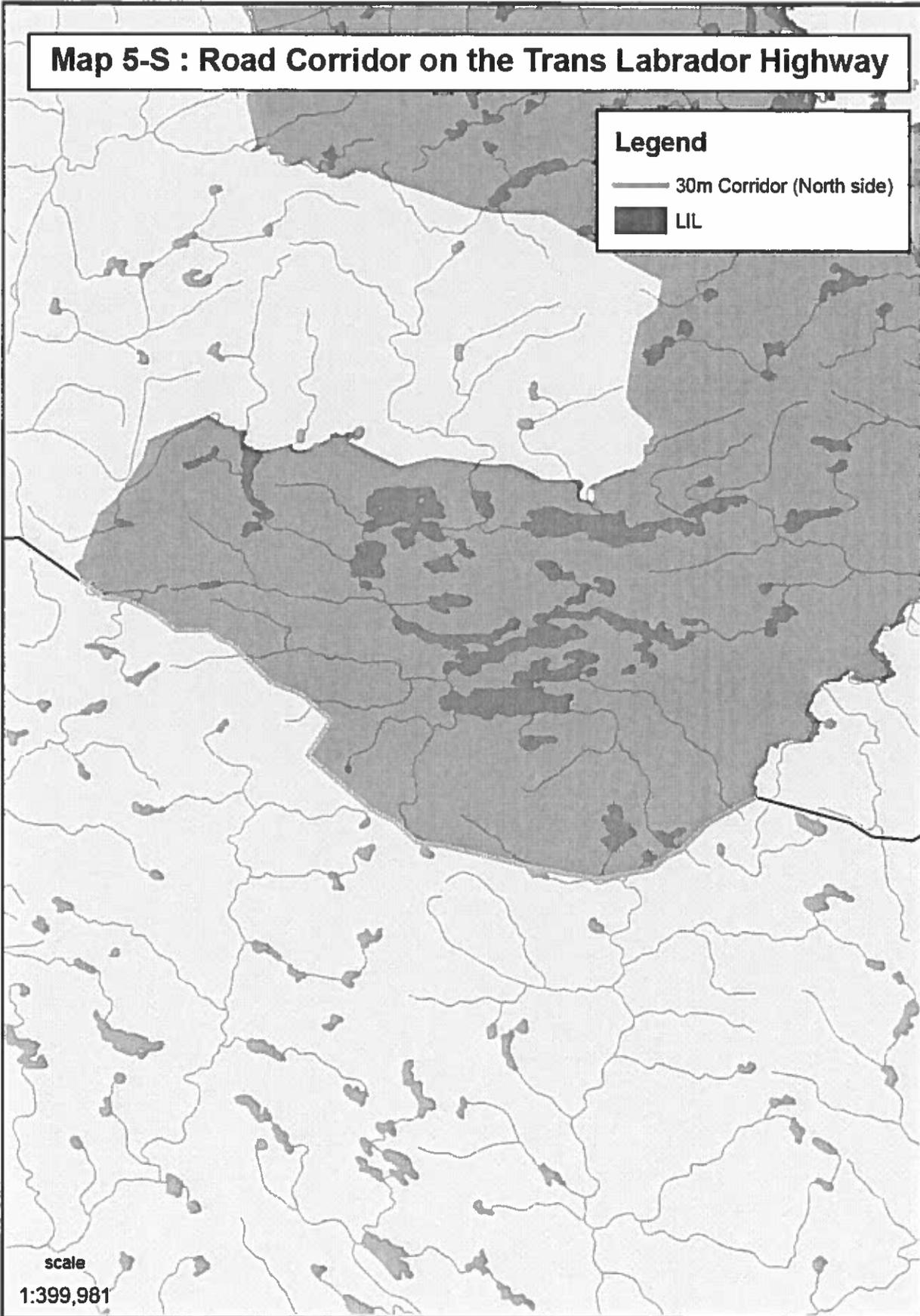












Chapter 6: Resource Management Board

Part 6.1 Responsibilities of the Resource Management Board

- 6.1.1 The Board shall, with respect to the Labrador Innu Settlement Area, make recommendations where the Agreement requires the Board to make such recommendations.
- 6.1.2 The Board may, with respect to the Labrador Innu Settlement Area and within its budget:
- (a) make recommendations in accordance with the Agreement;
 - (b) develop and undertake public education and promote public awareness of the responsibilities of the Board;
 - (c) commission technical assessments on natural resource management issues that affect the rights of Participants or the Innu Government under this Agreement; and
 - (d) create technical working groups in its discretion.

Part 6.2 Resource Management Board

- 6.2.1 On the Effective Date, the Resource Management Board is established.
- 6.2.2 The Board shall consist of five (5) members, including a chairperson, to be appointed as follows:
- (a) a chairperson appointed by and with the agreement of the Parties;
 - (b) two (2) members appointed by the Innu Government;
 - (c) one (1) member appointed by the Province; and
 - (d) one (1) member appointed by Canada.
- 6.2.3
- (a) If the Parties cannot agree upon the appointment of the chairperson within one hundred and eighty (180) days, or longer upon agreement of the Parties, of the Effective Date, or following a vacancy at any other time in the office of the chairperson, the appointment shall be made by the Chief Justice of the Supreme Court of Newfoundland and Labrador, Trial Division – General Division upon the application of any one of the Parties for such an appointment;
 - (b) within fifteen (15) days of the application referred to in (a), each of the Parties may submit the name of one (1) potential appointee to the Chief Justice for consideration; and

- (c) the Chief Justice, before making the appointment under (a), shall consider, in camera, the ability of the potential appointees put forward under (b) to discharge the office of chairperson, and the submissions of the Parties regarding that ability.
- 6.2.4 The Parties shall appoint alternates for each of its members under 6.2.2 (b), (c), and (d) and notify each other in writing of those alternates.
- 6.2.5 Each alternate has all of the rights, responsibilities, constraints, and limitations of the corresponding member whenever the alternate is present and the corresponding member is absent.
- 6.2.6 Each member of the Board:
- (a) subject to 6.2.7, 6.2.8, 6.2.9 and 6.2.11(c), shall be appointed to hold office for a term of three (3) years;
 - (b) may be reappointed to office;
 - (c) shall, before assuming office, take and subscribe to an oath in the form set out in Schedule 6-A before an officer authorized by law to administer oaths;
 - (d) shall be remunerated, and reimbursed for expenses incurred in the performance of the member's duties by the Party appointing the member, except in the case of the chairperson whose remuneration and expenses shall be set by agreement of and shared equally by the Parties;
 - (e) shall be subject to such rules relating to conflict of interest as may be agreed among the Parties from time to time but no member shall be considered to be in a position of conflict of interest or to be biased solely because the member was, is or is eligible to be a Participant, or was or is a public servant.
- 6.2.7 The initial members, apart from the chairperson, appointed to the Board shall have the following terms:
- (a) the member appointed by the Province and one member appointed by the Innu Government shall have a term of one (1) year; and
 - (b) the member appointed by Canada and one member appointed by the Innu Government shall have a term of two (2) years.
- 6.2.8 The chairperson may be removed from office:
- (a) for cause upon the agreement of the Parties; or
 - (b) should there be no agreement under (a), upon the application by any one of the Parties, to the Supreme Court of Newfoundland and Labrador, Trial Division – General Division for a determination that cause exists for the removal of the chairperson; and

- (c) for the purposes of (a) and (b), cause shall include ineffectiveness, bias, or conduct inconsistent with that office.
- 6.2.9 A member of the Board, other than the chairperson, may be removed from office for cause at any time by the Party that appointed the member.
- 6.2.10 Subject to 6.3.4, each member of the Board has the right to participate fully in all deliberations and decisions of the Board.
- 6.2.11 A vacancy in the membership of the Board shall be filled as follows:
- (a) a vacancy, other than the chairperson, shall be filled by the Party that made the original appointment, using best efforts, within one hundred and eighty (180) days following the vacancy;
- (b) a vacancy in the position of the chairperson shall be filled in the manner set out in 6.2.2 (a) and 6.2.3; and
- (c) an individual filling a vacancy under 6.2.11 (a) or (b) may serve for the remainder of the term of the member whose vacancy that individual has been selected to fill, and is also eligible for reappointment in accordance with this Part.
- 6.2.12 The Board operates at a policy level and is not an administrative body. The Board shall not duplicate the operational work of departments or agencies of Canada, the Province, or the Innu Government.
- 6.2.13 The Board may request that a public servant provide information and expertise to it or attend its meetings for that purpose and the request shall not be unreasonably denied by the Party that employs the public servant.
- 6.2.14 A member of the Board may invite non-voting observers or advisors to attend meetings of the Board in order to provide that member with assistance or advice, and a Party may have non-voting advisors and observers attend meetings of the Board.
- 6.2.15 Subject to the Agreement, the Board may make procedures respecting the management of its internal affairs and the conduct of its business.
- 6.2.16 The Board shall conduct its business in Labrador and may conduct its business elsewhere only upon the agreement of the Parties.
- 6.2.17 Participants may use Innu-aimun in all their dealings with the Board.
- 6.2.18 Any linguistic obligations on the Board and its members, including the chairperson, may be met through interpretation and translation, and such services shall be provided to all members of the Board, including the chairperson, to ensure each of them is able to fully discharge their Board related responsibilities, duties, offices, and functions.

Part 6.3 Recommendations and Decisions of the Board

- 6.3.1** With respect to any matter under this Agreement which requires a Party to seek advice or a recommendation from the Board, such advice or recommendation shall be made:
- (a) in accordance with the timelines set out in this Agreement;
 - (b) in accordance with timelines established under Federal Law, Provincial Law or Innu Law that applies to the matter under consideration and that is applicable to the Party with jurisdiction in deciding the matter; or
 - (c) where no specific timelines apply, within a reasonable period of time, taking into account any requests concerning timelines that the Party with jurisdiction may make in respect to that matter.
- 6.3.2** If, in the opinion of the chairperson, a recommendation of the Board cannot be reached by consensus after reasonable efforts have been made to achieve consensus, the chairperson may declare that the recommendation shall be decided by a vote in accordance with 6.3.3 and 6.3.4.
- 6.3.3** If a recommendation of the Board is decided by vote, the recommendation shall be decided by a majority of votes cast and the chairperson shall vote only in order to break a tie. In the event of a decision by vote, a member in the minority may file a report that shall be appended to the decision.
- 6.3.4** In the case of a vote under 6.3.3:
- (a) the two (2) members of the Board appointed by the Innu Government shall vote on all matters before the Board;
 - (b) the members of the Board appointed by Canada and the Province shall each have a vote on all matters before the Board where the recommendation or advice on a matter is directed to the responsible minister for the Innu Government and on all matters internal to the Board;
 - (c) the member of the Board appointed by Canada shall have two (2) votes on all matters before the Board, where the recommendation or advice on an issue or matter is directed to the responsible Minister for Canada, in which case the member appointed by the Province shall not vote; and
 - (d) the member of the Board appointed by the Province shall have two (2) votes on all matters before the Board where the recommendation or advice on an issue or matter is directed to the responsible Minister for the Province, in which case the member appointed by Canada shall not vote.
- 6.3.5** A quorum of the Board shall be all of the Board members, including the chairperson, entitled to vote on the matter under consideration pursuant to 6.3.4.

6.3.6 All decisions of the Board with respect to the operations of the board and all decisions made under 6.1.2 (b) to (d) shall be arrived at by consensus of all of the members.

Part 6.4 Funding

6.4.1 The Parties shall negotiate the funding of the operations of the Board as part of the Implementation Plan.

6.4.2 The Board shall submit an annual budget to the Parties for review and approval.

6.4.3 The cost of each non-voting advisor or observer referred to in 6.2.14 shall be paid by the inviting member or the Party sending that advisor or observer, unless the Board agrees to pay that cost.

6.4.4 [Nothing in this Chapter prejudices the position the Parties may take with respect to the funding of the Board, or derogates from the obligations of Canada or the Province to seek Parliamentary or House of Assembly appropriations to fund the Board.]⁷²

Part 6.5 Disclosure of Information Held by the Board

6.5.1 The Board shall not make public any recommendations, advice or views it has transmitted to a Party until that Party has dealt with the recommendations, advice or views in accordance with the Agreement.

6.5.2 [Information held exclusively in the possession of the Board shall not be subject to Federal Law, Provincial Law or Innu Law respecting access to or the disclosure of information.]⁷³

6.5.3 Any information provided by the Board to the Parties shall be subject to Federal Law, Provincial Law or Innu Law respecting access to or the disclosure of information.⁷⁴

⁷² To be negotiated. Under review by NL. Canada proposes to delete. Innu agree.

⁷³ To be negotiated. Parties to review and discuss which legislation applies to the Board regarding access to and disclosure of information.

⁷⁴ Legal drafting. Canada suggests this clause is unnecessary.

Schedule 6-A

Affirmation or Oath of Office for Member, including Chairperson, of the Board (6.2.6(c))

I, _____, do solemnly affirm (or swear) that I will faithfully, truly, impartially and honestly and to the best of my judgment, skill and ability, execute and perform the duties required of me as a member of the Resource Management Board. (So help me God.)

_____))
(Signature of Member)))
))
))
_____)	_____
(Date))	(Official Administering Affirmation or Oath)

Chapter 7: Wildlife⁷⁵

Part 7.1 Definitions

7.1.1 In this chapter:

"Habitat" means the physical environment where Wildlife occur or on which they depend directly or indirectly in order to carry out their life processes;

"Harvest" means the reduction or attempted reduction of Wildlife into possession;

"Innu Basic Needs Level" means the quantity of a species or population of Wildlife which may be harvested by Participants established in accordance with part 7.3;

"Innu Domestic Harvest" means the exercise by Participants of the rights to Harvest Wildlife up to the full level required to satisfy the domestic requirements of Participants and Innu communal needs;

"Innu Guides" means....

"Nakatuenta" means that, if there are threats of serious or irreversible damage to Wildlife or Habitat, measures to prevent the reduction or harm should not be postponed for lack of full scientific certainty;

"Primary Body" means the principal body for the responsibilities noted in 7.3.5 and 7.9.1 when compared to the role of individual interests or stakeholder groups with respect to such responsibilities, but this in no way derogates from the ability of the Parties to seek and consider the advice and views of their departments or agencies.

"Residence" means a specific dwelling-place, such as a den, nest or other similar place, that is occupied or habitually occupied by one or more of a species of Wildlife during all or part of their life cycles;

"Sustainable Utilization" means the use and management of Wildlife, Aquatic Plants, Fish, Migratory Birds, Plants, Forest Resources and Habitat in a manner that does not impair their natural viability in order that the needs of the present may be met without compromising the ability of future generations to meet their needs;

"Technical Innu Basic Needs Level Committee" means the committee established pursuant to part 7.3.

"Total Allowable Harvest" means the total quantity of a species or population of Wildlife that may be lawfully Harvested under this Agreement; and

⁷⁵ Legal drafting. Parties to review and consider revisions for drafting consistency with other chapters.

Part 7.2 Innu Domestic Harvest

7.2.1. Conservation and Nakatuenta, are priorities in decision-making that relates to or directly affects Wildlife or Habitat in the Labrador Innu Settlement Area.

7.2.2 In exercising powers or carrying out responsibilities under this Chapter in relation to the management of Wildlife or Habitat the Innu Government, Board and Technical IBNL Committee under 7.3 shall consider relevant and accessible Innu environmental knowledge, provided pursuant to 7.2.3, as well as other types of scientific information and expert opinion.

7.2.3 The Innu Government, Participants or both may provide Innu environmental knowledge, at no cost, to the Board, Technical IBNL Committee under 7.3, or both, for the purposes of 7.2.2, pursuant to a confidentiality agreement and such Innu environmental knowledge shall be held confidential by the Board, the noted committees or both in accordance with that agreement, except to the extent necessary to execute their responsibilities under the Agreement.

7.2.4 Participants have the exclusive right to Harvest Wildlife within Labrador Innu Lands throughout the year for the Innu Domestic Harvest in accordance with the Agreement.

7.2.5 Participants have the right to Harvest Wildlife within the Labrador Innu Settlement Area, outside Labrador Innu Lands, throughout the year for the Innu Domestic Harvest in accordance with the Agreement.

7.2.6 The exercise of the individual and collective rights of Participants set out in this Part are subject to:

- (a) Innu Laws;
- (b) Laws of General Application to the extent necessary for Conservation, public health or public safety; and
- (c) measures for the purposes of Conservation, public health or public safety, established by the Minister under Legislation.

7.2.7 Any measures referred to in 7.2.6 (c) shall be no greater than necessary to achieve the objective for which they are prescribed and, if there are multiple measures available to achieve the same objective, the measure that involves the lesser limitation on the exercise of Participants rights in the Innu Domestic Harvest shall be prescribed.

[7.2.8 Subject to 7.2.9, before establishing a measure referred to in 7.2.6(c) that directly affects the Innu Domestic Harvest, the Minister shall Consult the Innu Government for the purpose of attempting to reach agreement on measures that the Innu Government could take to effect the same purpose. If agreement cannot be reached within thirty (30) days from the commencement of the Consultation, the Minister may establish a measure referred to in 7.2.6 (c) on a temporary

basis and shall notify the Innu Government and the Board of the decision with reasons in writing.

- 7.2.9 If Consultation under 7.2.8 is not practical because of an emergency, the Minister shall, within seven (7) days of establishing the measure referred to in 7.2.6(c), notify the Innu Government of the measure that has been established and seek the advice and views of the Innu Government as soon as practicable thereafter.]⁷⁶
- 7.2.10 Participants Harvesting under this Part have the right to employ any method or technology of Harvesting, including those traditionally used by the Innu, and to possess and use any equipment for that purpose, except as otherwise provided in Legislation to the extent necessary for Conservation, public health or public safety or implementing an International Agreement respecting the Harvesting of Wildlife.
- 7.2.11 Subject to part 7.4, if a Total Allowable Harvest for a species or population of Wildlife is established:
- (a) Participants have the right to Harvest that species or population of Wildlife within the Labrador Innu Settlement Area up to the Innu Basic Needs Level; and
 - (b) a Participant has the right to Harvest the share of the Innu Basic Needs Level allocated to him or her by the Innu Government.
- 7.2.12 Any sale of Wildlife Harvested under this Agreement, except as provided in this part, will be in accordance with federal and Provincial Laws; and the Harvest under this part shall not be construed to grant any rights to sell Wildlife, except as provided for in this part.
- 7.2.13 Participants have the right to give, exchange or barter with other aboriginal individuals in Canada, any Wildlife Harvested under this Part.
- 7.2.14 Participants have the right to sell, or make gifts, of inedible by-products of Wildlife Harvested under this Part to any Person in accordance with Innu Law and any applicable federal or Provincial Laws.
- 7.2.15 Participants have the right to give, trade, exchange or barter with other Participants any Wildlife Harvested under this Part in accordance with Innu Law.
- 7.2.16 Participants may be required by the Minister or the Innu Government to obtain a permit to transport any Wildlife outside the Labrador Innu Settlement Area, but:
- (a) the permit shall be issued upon request unless good cause exists for refusing to issue the permit;

⁷⁶ To be negotiated. The Innu are requesting that the process outlined in 8.4.7 – 8.4.12 to be applied to Wildlife chapter. NL has under review keeping in mind the objective of a uniform process.

- (b) the permit shall identify where the Wildlife was Harvested, under what authority it was Harvested, the name of the individual who Harvested it, the name of the individual receiving it, and the method by which it is being transported; and
- (c) any fee for the permit shall be waived.

7.2.17 A Participant may assign a right to Harvest under 7.2.4, 7.2.5 or 7.2.11 including all or part of his or her share of an Innu Basic Needs Level to:

- (a) that Participant's spouse or a Person co-habiting as the spouse of a Participant;
- (b) that Participant's parent or Child;
- (c) an individual to whom that Participant stands in the position of a parent;
- (d) an individual who stands in the position of a parent to that Participant; or
- (e) another Participant;

and in all such cases, the assignee shall be subject to the same restrictions as the assignor.

7.2.18 An assignment under 7.2.17 shall be in writing made in accordance with Innu Law and identification shall be issued under Innu Law as per 7.7.1 (d). This assignment shall be for a term not exceeding one (1) year and may include an option of renewal for a period not exceeding the original term. Any assignment for a term exceeding one (1) year shall be void.

7.2.19 A Participant may Harvest Wildlife under this Part without any form of Provincial license, permit, subject to Innu Laws.

7.2.20 The Innu Government may negotiate agreements with Canada or Newfoundland and Labrador concerning the enforcement of Laws in respect of Wildlife.

Part 7.3 Innu Basic Needs Level

7.3.1 The Innu Basic Needs Level constitutes a first demand against a Total Allowable Harvest, in accordance with this chapter and is intended for the protection of the Participant's Harvesting rights under the Innu Domestic Harvest.

7.3.2 The Innu Government shall establish measures intended to ensure that the quantities of Wildlife taken in the Innu Domestic Harvest do not exceed Innu Basic Needs Levels.

7.3.3 If a Total Allowable Harvest is established for a species or population of Wildlife in the Labrador Innu Settlement Area pursuant to Part 11, the Minister shall establish an Innu Basic Needs Level for that species or population of Wildlife.

The Innu Basic Needs Level shall be reviewed every 5 years or earlier, but not more than once in any given year, at the request of the Minister or the Innu Government.

- 7.3.4 Once a Total Allowable Harvest is established for a species or population of Wildlife in the Labrador Innu Settlement Area pursuant to Part 11, the Parties shall establish a Technical IBNL Committee for the purposes of reaching a consensus on a recommendation to the Minister for the Innu Basic Needs Level for that species.
- 7.3.5 Subject to 7.3.7, the Technical IBNL Committee shall consist of equal representation of the Innu Government and Newfoundland and Labrador, and it shall be the Primary Body with respect to any recommendation for an Innu Basic Needs Level.
- 7.3.6 All members of the Technical IBNL Committee shall be the quorum of the Committee.
- 7.3.7 Should a Government fail to provide one or more of its representatives within 30 days of a request in writing by one Government to the other Government to do so, the Technical IBNL Committee will be validly constituted without the requested representative or representatives.
- 7.3.8 The Innu Basic Needs Level shall be as accurate a quantification as possible of the amount of a species or population of Wildlife required by Participants for the purposes of the Innu Domestic Harvest.
- 7.3.9 The Technical IBNL Committee shall base its recommendation on all relevant information available to it, including:
- (a) any data, including Innu environmental knowledge and historical data, related to the Harvest of Wildlife by Participants;
 - (b) data compiled by Innu Government during its monitoring of the Harvest of Wildlife by Participants;
 - (c) information on variations in the availability and accessibility of the species or population of Wildlife;
 - (d) population growth and demographic changes in the Innu population;
 - (e) data that may be compiled by the Board relating to the Harvest of Wildlife within Labrador Innu Settlement Area; and,
 - (f) any other relevant information.
- 7.3.10 The Technical IBNL Committee shall make a recommendation on the Innu Basic Needs Level within 90 days of its constitution, unless otherwise agreed to by the Innu Government and Newfoundland and Labrador, and provide the Minister and

the Innu Government with the data and information on which the recommendation is based.

- 7.3.11 Subject to 7.3.10, the Technical IBNL Committee may consult the Board in developing its recommendation pursuant to 7.3.10 for an Innu Basic Needs Level.
- 7.3.12 Subject to 7.3.13, 7.3.15 and 7.3.16, the Minister shall, after having Consulted with the Innu Government on the recommendation made pursuant to 7.3.10 or 7.3.14, establish the Innu Basic Needs Level recommended by Technical IBNL Committee.
- 7.3.13 ⁷⁷The Minister or Innu Government may request a reconsideration of the Innu Basic Needs Level recommended by the Technical IBNL Committee on the basis of:
- (a) information available either to the Minister or Innu Government that was not considered by Technical IBNL Committee in making its recommendation under 7.3.10. In the event that the Minister or Innu Government requests the noted reconsideration, the Minister or Innu Government shall provide the Technical IBNL Committee and other Parties with the noted information
 - (b) If the Minister or Innu Government determines that a recommendation referred to in 7.3.10 is not supported by the information referred to in 7.3.9.
- 7.3.14 The Technical IBNL Committee shall within 30 days, or within another timeline agreed to by the Innu Government and Newfoundland and Labrador, of a request for reconsideration under 7.3.13 either confirm its original recommendation under 7.3.10, or submit a new recommendation to the Minister and the Innu Government together with the data and information on which either the confirmation or new recommendation is based.
- 7.3.15 If the Minister or Innu Government requests a reconsideration of the Innu Basic Needs Level recommendation under 7.3.13, the Minister may, after Consulting with the Innu Government for the purposes of achieving consensus on an interim Innu Basic Needs Level, establish an interim Innu Basic Needs Level which may differ from the Innu Basic Needs Level recommended under 7.3.10 and which will apply until an Innu Basic Needs Level is established in accordance with this part. If the Consultation noted in this section fails to result in agreement within 30 days from its commencement, the Minister may establish the interim Innu Basic Needs Level noted in this section, and provide the Innu Government with written reasons for the established level of the interim Innu Basic Needs Level.
- 7.3.16 If the Minister establishes a Total Allowable Harvest under emergency circumstances in 7.10.4, the Minister may establish an interim Innu Basic Needs

⁷⁷ To be negotiated. The Innu are requesting that the process outlined in 8.7.1 to 8.7.6 be applied to the Wildlife chapter. NL has under review keeping in mind the objective of a uniform process.

Level which will apply until an Innu Basic Needs Level is established in accordance with this part. The Minister will provide the Innu Government and the Technical IBNL Committee with written reasons for the established level of the interim Innu Basic Needs Level.

7.3.17 If the Technical IBNL Committee fails to:

- (a) make a recommendation under 7.3.10; or
- (b) confirm its original recommendation or submit a new recommendation under 7.3.14; or
- (c) if the Minister or Innu Government believes the recommendation pursuant to 7.3.10 or 7.3.14 is not supported by the information noted in 7.3.9; or
- (d) if the Consultation pursuant to 7.3.12 fails to result in agreement on the recommended Innu Basic Needs Level within 60 days;

then the Minister may, after Consulting with the Innu Government for the purpose of achieving consensus on an Innu Basic Needs Level, establish an Innu Basic Needs Level which may differ from the Innu Basic Needs Level recommended, if any, by the Technical IBNL Committee. If the Consultation noted in this section fails to result in agreement within 60 days from its commencement, then the Minister may establish the Innu Basic Needs Level, and provide the Innu Government with written reasons for the established level of the Innu Basic Needs Level.

7.3.18 Any review of an Innu Basic Needs Level established pursuant to 7.3.3 shall follow the process set out in 7.3.4 to 7.3.17, with any necessary changes as agreed to by the Parties.

7.3.19 Subject to this chapter, if a Total Allowable Harvest for a species or population of Wildlife exceeds the Innu Basic Needs Level for a species or population of Wildlife, the surplus may be allocated by the Minister.

7.3.20 A Participant shall supply to Innu Government any information regarding Harvesting activities or Harvesting-related activities as required by Innu Government which shall be comparable to that provided by Non-Participants to the Provincial Government in comparable circumstances. The Innu Government may seek the advice of the Board in establishing reporting requirements for Participants.

Part 7.4 Process when Total Allowable Harvest is less than Innu Basic Needs Level

7.4.1 The quantity of Wildlife that may be Harvested in the Innu Domestic Harvest shall not be restricted to an amount less than the Innu Basic Needs Level, except in accordance with this part.

- 7.4.2 If, for a species or population of Wildlife in the Labrador Innu Settlement Area for which a Total Allowable Harvest is established, the Total Allowable Harvest is less than the Innu Basic Needs Level, all Harvesting of Wildlife by Persons other than Participants and an aboriginal people referred to in 7.4.4 in the Labrador Innu Settlement Area directed at that species or population of Wildlife shall be closed and, subject to 7.4.4, the Minister shall allocate the Total Allowable Harvest to Participants.
- 7.4.3 If, after a Total Allowable Harvest has been established for a species or population of Wildlife in the Labrador Innu Settlement Area, that Total Allowable Harvest is reduced to a quantity that is less than the Innu Basic Needs Level, all Harvesting of Wildlife by Persons other than Participants and an aboriginal people referred to in 7.4.4 in the Labrador Innu Settlement Area directed at that species or population of Wildlife shall be closed and, subject to 7.4.4, the Minister shall allocate the Total Allowable Harvest to Participants.
- 7.4.4 If an aboriginal people of Canada, other than Innu, has an aboriginal or treaty right in the Labrador Innu Settlement Area with respect to a species or population of Wildlife to which 7.4.2 or 7.4.3 applies, the Minister shall, prior to making any allocation of that species or population of Wildlife, Consult the Innu Government and determine an equitable allocation of the Total Allowable Harvest for Participants.
- 7.4.5 In circumstances referred to in 7.4.2 and 7.4.3, the Innu Government shall, at the request of the Minister, but in its sole discretion, make a portion of the Innu Basic Needs Level available to Permanent Long Term Residents who are eligible to receive licenses to Harvest under Laws of General Application.
- 7.4.6 If the quantity of a species or population of Wildlife that may be taken in the Innu Domestic Harvest is restricted under this part to an amount that is less than the Innu Basic Needs Level in respect of that species or population, the Innu Government shall use that lesser amount as a Conservation limit and if the Innu Government allocates a portion of the Innu Basic Needs Level to a Participant, it shall provide that Participant with documentation that specifies the species or population of Wildlife that may be Harvested and the quantity that may be Harvested by that Participant.

Part 7.5 Emergencies

- 7.5.1 Nothing in this chapter shall be construed to prevent an individual from Harvesting Wildlife for personal use and consumption for survival in an emergency.
- 7.5.2 7.5.1 shall not be construed as providing a lawful excuse under Law to an individual who kills or harms Wildlife as a result of negligence, mismanagement or willful misconduct.

Part 7.6 Endangered Species⁷⁸

- 7.6.1 The Innu Government, in Consultation with the Province, has primary responsibility to protect Designated Species and the Residences of Designated Species on Labrador Innu Lands under Innu Law.
- 7.6.2 The Minister and the Innu Governments shall cooperate with each other in preparing and implementing any Recovery Strategy for Designated Species occurring on Labrador Innu Lands.
- 7.6.3 Prior to the implementation of any Recovery Strategy for Designated Species occurring on Labrador Innu Lands, the Minister and the Innu Government shall negotiate and implement a Stewardship Agreement, which shall address matters connected with the implementation of the Recovery Strategy for Designated Species, and may include provisions related to:
- (a) steps taken by the respective Parties in the implementation of the Recovery Strategy for Designated Species;
 - (b) cooperation and information sharing between the Parties on matters of mutual interest related to the Stewardship Agreement including the incorporation of Innu environmental knowledge;
 - (c) financial matters associated with the implementation of the Recovery Strategy on Labrador Innu Lands; or
 - (d) any other matter agreed upon by the Parties.
- 7.6.4 Before measures pursuant to the Endangered Species Act are applied on Labrador Innu Lands, the Minister must after Consulting the Innu Government be of the opinion that Innu Law does not effectively protect a Designated Species or the Residences of a Designated Species.
- 7.6.5 In cases where there is an imminent threat to the survival or recovery of a Designated Species or to a Residence of a Designated Species, measures pursuant to the Endangered Species Act may be applied before Consultation with the Innu Government on the above noted effectiveness of Innu Law and before the negotiation of any needed Stewardship Agreement under 7.6.3; however, for greater certainty, such Consultation and negotiation must occur immediately following the emergency application of the Endangered Species Act.

Part 7.7 Innu Government

- 7.7.1 The Innu Government may make laws applying in the Labrador Innu Settlement Area, unless Labrador Innu Lands is specified in the provision, in relation to the following matters:

⁷⁸ To be negotiated. The applicability of the *Species at Risk Act*, 2002 (Canada) to this chapter.

- (a) the allocation among Participants of the Innu Basic Needs Level and other allocations or quantities of Wildlife to which Participants are entitled under this chapter;
- (b) the issuing of licenses, permits or other authorizations to Harvest the Innu Basic Needs Level and other allocations or quantities of Wildlife to which Participants are entitled under this chapter and the establishment of terms and conditions applicable to those licenses, permits and authorizations, including the imposition of fees⁴³;
- (c) the licensing by the Innu Government of Participants who act as Innu Guides, but Participants licensed to be guides in Labrador Innu Settlement Area must have comparable qualifications for guides established under Provincial Legislation;
- (d) the assignment of rights under 7.2.17 and 7.2.18 to participate in the Innu Domestic Harvest and shares of the Innu Basic Needs Levels;
- (e) the collection and publication of Innu environmental knowledge with respect to Wildlife and Habitat;
- (f) programs and measures established by the Innu Government to promote the maintenance and development of Harvesting and skills among Participants;
- (g) the management and administration of Participant rights related to Wildlife and Habitat under this chapter;
- (h) the resolution of disputes among Participants with respect to the Harvesting of Wildlife;
- (i) in accordance with the Agreement, the regulation of Harvesting of Wildlife in Labrador Innu Lands and the management of the Innu Domestic Harvest in the Labrador Innu Settlement Area outside Labrador Innu Lands;
- (j) in accordance with the Agreement, the management of all aspects of the trade of Wildlife Harvested by Participants;
- (k) the monitoring of Participant's Harvesting of Wildlife in accordance with relevant management measures;
- (l) the licensing of guides for new Commercial Wildlife Operations in Labrador Innu Lands; and
- (m) subject to 7.8.16, the licensing of all new Commercial Wildlife Operations in Labrador Innu Lands.

- 7.7.2 If there is a Conflict between an Innu Law under 7.7.1 and a Law of General Application in relation to Conservation or public health or public safety, the Law of General Application prevails to the extent of the Conflict.
- 7.7.3 If there is a Conflict between an Innu Law under 7.7.1 and a Law of General Application other than a Law of General Application referred to in 7.7.2, the Innu Law under 7.7.1 prevails to the extent of the Conflict.
- 7.7.4 The Innu Government shall:
- (a) inform the Minister and the Board on a timely basis about its proposed measures for the Innu Domestic Harvest; and
 - (b) provide to the Minister and the Board on a timely basis all relevant information about the measures established by it for the Innu Domestic Harvest.
- 7.7.5 A Permanent Long-Term Resident who is eligible under Laws of General Application to Harvest Wildlife and Plants shall be issued a permit by the Innu Government to Harvest Wildlife and Plants in specified locations in Labrador Innu Lands and any needed permit to access those locations if:
- (a) the Permanent Long-Term Resident can demonstrate to the satisfaction of the Innu Government that the Permanent Long-Term Resident has traditionally Harvested and currently Harvests Wildlife and Plants in specified locations within Labrador Innu Lands; and
 - (b) it would be unreasonable for the Permanent Long-Term Resident to Harvest Wildlife and Plants in areas outside Labrador Innu Lands.
- 7.7.6 Subject to 7.7.7, a decision of the Innu Government under section 7.7.5 is final and binding.
- 7.7.7 Judicial review of a decision of the Innu Government under section 7.7.5 shall be available at the motion of a Permanent Long-Term Resident personally affected by the decision.
- 7.7.8 The Innu Government shall provide to each individual having a right to take Wildlife in the Innu Domestic Harvest documentation that specifies that the individual has a right to take Wildlife in the Innu Domestic Harvest and if a Total Allowable Harvest is established:
- (a) the species or population that may be taken by the individual; and
 - (b) the quantity of the species or population that may be taken by the individual.
- 7.7.9 No Person other than a Participant may Harvest Wildlife on Labrador Innu Lands unless that Person is:

- (a) the holder of a valid permit issued by the Innu Government, including a permit referred to in 5.3.9.1, 7.7.5 and 5.12;
- (b) a client of a Commercial Wildlife Operation in Labrador Innu Lands referred to in 7.8.1 or 7.7.1 (m); and
- (c) an individual who holds a commercial trapping license [or rights to harvest furbearers for commercial purposes]⁷⁹ in Labrador Innu Lands on the Effective Date as listed in Schedule 7-A.⁸⁰

7.7.10 Subject to this chapter, all new Commercial Wildlife Operations authorized in Labrador Innu Lands after the Effective Date shall be subject to Innu Laws and Laws of General Application.

Part 7.8 Commercial Harvesting

7.8.1 For greater certainty, Commercial Wildlife Operations existing on the Effective Date are subject to Laws of General Application.

7.8.2 After Consulting the Innu Government, and after seeking the advice of the Board and the views of the owners or operators of Commercial Wildlife Operations existing on the Effective Date, the Minister shall establish and cap the total amount of a species or population of Wildlife that may be taken annually at or from those Commercial Wildlife Operations.

7.8.3 The Minister shall not permit the owner or operator of a Commercial Wildlife Operation referred to in 7.8.1 located in Labrador Innu Lands to expand beyond the maximum guest capacity or hunting quota that existed at the Effective Date or to change the nature of the operation without the consent of the Innu Government.

7.8.4 After Consulting the Board and the owners or operators of Sports Fish Camps existing in the Labrador Innu Settlement Area on the Effective Date, the Minister shall establish and cap:

- (a) the total amount of a species of Fish that may be taken annually at or from those Sports Fish Camps; and

⁷⁹To be negotiated. Innu question how one would acquire such rights other than via a licence, and suggest that commercial trapping licences be a defined term.

⁸⁰ To be negotiated. Intergenerational transfer of trapping licences: The objective for this request is to allow a trapper who is actively-trapping a historical trapping line that has been passed down for generations to be able to pass this licence to a member of the immediate family. Innu state this should be restricted to a trapper that has a valid commercial trapping licence for a trap line that has been officially passed down for generations. This is not intended to capture all trappers. Trappers to be grandfathered will be on Schedule 7-A. NL would propose a cut off date of December 31, 1970, to capture trapping before the advent of skidoos etc. Innu state this should only apply to commercial trappers.

- (b) the amount of a species of Fish that may be taken annually at or from each such Sports Fish Camp.
- 7.8.5 The amount of a species of Fish established under 7.8.4(b) shall not be transferred to a third party separately from a transfer of the Sports Fish Camp.
- 7.8.6 If the total amount of a species of Fish available for Sports Fish Camps in the Labrador Innu Settlement Area exceeds the number established under 7.8.4 (a), the Minister shall make an allocation to the Innu Government on a priority basis for the purpose of supporting the establishment and continued operation of Sports Fish Camps owned by Innu Businesses.
- 7.8.7 If a Sport Fish Camp fishery in the Labrador Innu Settlement Area for a species or stock of Fish listed in schedule 7-B is closed for an indefinite period but Recreational Fishing with respect to that species or stock remains open in the Labrador Innu Settlement Area, the Minister shall offer to the Innu Government 80 percent of all Sport Fish Camp Fishing opportunities in the Labrador Innu Settlement Area with respect to that species or stock that are surplus to the number established under 7.8.4 (a).
- 7.8.8 For greater certainty, any Fish that are surplus to the numbers established under subsection 7.8.4(a) and 7.8.6 and, when applicable, 7.8.7 may be allocated by the Minister at the Minister's discretion.
- 7.8.9 For greater certainty, all licences issued to the Innu Government under 7.8.6 and 7.8.7 shall be subject to Laws of General Application governing any other similar licence.
- 7.8.10 If the owner, including any future or subsequent owner, of a Commercial Wildlife Operation existing on the Effective Date intends to sell or transfer the operation after the Effective Date, the Innu Government shall have a right of first refusal to acquire the operation.
- 7.8.11 The exercise of the right of first refusal referred to in 7.8.10 is governed by schedule 7-C.
- 7.8.12 7.8.10 does not apply to the following:
- (a) subject to (d), a bona fide arms length sale or transfer to Persons holding rights or options to purchase on the Effective Date;
 - (b) a renewal of the lease or permit and a renewal of an outfitting license by the Person holding the lease or license on the Effective Date or a Person referred to in 7.8.12 (a), (c), or (d);
 - (c) subject to (d), a bona fide incorporation of the operation or a corporate reorganization that does not directly or indirectly affect the ownership of the operation or constitute a sale or transfer of all or part of the operation; or

- (d) a sale, or transfer, incorporation or corporate reorganization of the operation to a member of the owner's Immediate Family who is eligible to continue the operation under Laws of General Application.
- 7.8.13 If the Innu Government does not exercise its right of first refusal under 7.8.11, the owner of the Commercial Wildlife Operation shall be free to sell or transfer the operation to another Person on condition that any terms and conditions that the owner offers to or is willing to accept from another Person shall not be more favourable than any terms and conditions that the owner offered to the Innu Government.
- 7.8.14 The Innu Government shall not deny or unreasonably restrict access to Labrador Innu Lands by Commercial Wildlife Operations existing in Labrador Innu Lands on the Effective Date.
- 7.8.15 A Dispute under 7.8.14 between the owner or operator of a Commercial Wildlife Operation referred to in 7.8.1 and the Innu Government shall be referred to dispute resolution under chapter 26, including Arbitration under that chapter.
- 7.8.16 Nothing in this Agreement confers any authority on the Innu Government with respect to renewal of authorizations that may be required by Commercial Wildlife Operations referred to in 7.8.1.
- 7.8.17 Subject to 7.8.1, the Innu Government has the exclusive right to authorize new Commercial Wildlife Operations in Labrador Innu Lands.
- 7.8.18 Subject to this chapter, all Commercial Wildlife Operations authorized in Labrador Innu Lands after the Effective Date shall be subject to Innu Laws.
- 7.8.19 The Minister shall Consult the Innu Government before authorizing the establishment of a new Commercial Wildlife Operation or the allocation of additional Wildlife for commercial Harvesting in the Labrador Innu Settlement Area outside Labrador Innu Lands and shall provide reasons in writing for any advice or recommendation of the Innu Government which is varied or rejected.
- 7.8.20 The Innu Government shall have a right of first refusal for establishment of new Commercial Wildlife Operations; and this right shall be exercised in accordance with Schedule 7-D.
- 7.8.21 If the Innu Government does not exercise its right of first refusal referred to in section 7.8.20, or if the right of first refusal is exercised but the Innu Government fails, without just cause, to establish and commence operation of the new Commercial Wildlife Operation within three years of notifying the Minister of its intention to exercise the right of first refusal pursuant to paragraph 3 of schedule 7-D, the Minister may declare that the right of first refusal of the Innu Government has lapsed and the opportunity to establish a new Commercial Wildlife Operation may then be made available in accordance with paragraph 10 of schedule 7-D.

- 7.8.22 If the Innu Government does not exercise its right of first refusal under 7.8.20, or the Minister has declared that the right of first refusal of the Innu Government has lapsed under 7.8.20, then the Minister shall be free to offer the new Commercial Wildlife Operation to another Person on condition that any terms and conditions that the Minister offers to or is willing to accept from that other Person shall not be more favourable than any terms and conditions that the Minister offered to the Innu Government.
- 7.8.23 The Innu Government in exercising a right of first refusal for the establishment of new Commercial Wildlife Operations may assign the opportunity to establish a Commercial Wildlife Operation to a Participant or to an Innu Business.
- 7.8.24 An Innu Business has the same right as any other Person to apply to establish a Commercial Wildlife Operation in the Labrador Innu Settlement Area outside Labrador Innu Lands.
- 7.8.25 Commercial Wildlife Operations in the Labrador Innu Settlement Area shall be required to hire qualified Innu Guides.
- 7.8.26 Existing guides employed by Commercial Wildlife Operations on the Effective Date may continue employment, notwithstanding any temporary or seasonal layoff.
- 7.8.27 Requirements to employ Innu Guides shall be waived by the Innu Government if no qualified Innu guide is available.
- 7.8.28 A Non-Participant who Harvests at or through a Commercial Wildlife Operations shall give to his or her qualified Innu Guide any part of wildlife that are not retained by the Non-Participant.
- 7.8.29 The marketing, transportation and exportation of furs commercially Harvested in the Labrador Innu Settlement Area outside Labrador Innu Lands shall be governed by Laws of General Application. However, furs commercially Harvested in Labrador Innu Lands and transported outside Labrador Innu Lands must be labeled as having been commercially harvested in Labrador Innu Lands in accordance with the Agreement.

Part 7.9 The Role of the Resource Management Board

- 7.9.1 Subject to the Agreement, the Board has the following responsibilities with respect to the Conservation and management of Wildlife and Habitat in the Labrador Innu Settlement Area, and is the Primary Body with respect to those responsibilities:
- (a) making a recommendation pursuant to Part 7.10 in relation to Total Allowable Harvests for Wildlife in Labrador Innu Settlement Area; and
-

- (b) to provide its views to the Minister on Conservation and management measures for Wildlife and Habitat in the Labrador Innu Settlement Area, including:
- (i) Harvesting restrictions;
 - (ii) the establishment of new Commercial Wildlife Operations and measures respecting the commercial exploitation of Wildlife, including commercial Harvesting of Furbearers,
 - (iii) the non-consumptive uses of Wildlife for commercial purposes;
 - (iv) research respecting the Conservation and management of Wildlife and Habitat;
 - (v) the establishment of Protected Areas for Wildlife, and Habitat and the activities that may be carried out in those areas;
 - (vi) the activities that may be carried out in areas of important biological productivity;
 - (vii) matters related to Designated Species;
 - (viii) plans for restocking or propagation of Wildlife ;
 - (ix) to provide its views to the Minister and the Innu Government on measures for the timely collection, analysis and sharing of data and information relevant to the implementation of the rights of Participants under this chapter, and the Conservation and Sustainable Utilization of Wildlife and Habitat.

7.9.2 If requested by the Minister or the Innu Government, the Board may provide its views to the Parties with respect to the coordination or harmonization of measures for the management of Wildlife, and Habitat in the Labrador Innu Settlement Area.

7.9.3 The Board may, within its budget:

- (a) develop and undertake public education and promote public awareness with respect to Wildlife, and Habitat in the Labrador Innu Settlement Area;
- (b) at the request of the Minister or the Innu Government, whichever has jurisdiction in the particular case, and subject to funding specifically provided by the Party making the request, develop and undertake research activities related to Wildlife and Habitat in the Labrador Innu Settlement Area;
- (c) provide advice to the Minister and the Innu Government regarding the integration into decision-making about Wildlife and Habitat in the

Labrador Innu Settlement Area of relevant, accessible, Innu environmental knowledge; and

- (d) exercise any other functions delegated to the Board by agreement of the Parties.

7.9.4 The Minister, or the Innu Government, or both depending to whom the recommendation of the Board is addressed shall:

- (a) notify the Board, in writing, of the decision with respect to any recommendation the Board makes under this part; and
- (b) shall provide timely written reasons to the Board, for a decision that rejects or varies the recommendation.

7.9.5 The Innu Government or the Board shall not make public a decision under 7.9.1(a) or recommendations, views or advice under 7.9.1(b), 7.9.2 or 7.9.3 until it has been finally dealt with by the Minister, the Innu Government or both pursuant to the Agreement, as the case may be.

7.9.6 For emergency purposes related to Conservation, public health or public safety, the Minister may make and implement any interim decision with respect to a matter over which the Board has a function under Part 7.9 before having received its views, recommendation or advice under Part 7.9, but the Minister shall inform the Board and the other two Governments of the action within seven clear days from the date of the decision and as soon as practicable thereafter seek the advice of the Board before making a final decision.

7.9.7 If the Minister intends to allow the importation or transplantation of a species or population of Wildlife that is not indigenous to the Labrador Innu Settlement Area, the Minister shall Consult the Innu Government and seek the views of the Board before making the decision. If the Minister accepts, rejects or varies its advice, the Minister shall notify the Board and the Innu Government, and in the case of a rejection or variance of the Board recommendation, shall provide the Board and the Innu Government with reasons in writing for the decision.

7.9.8 The Parties shall keep the Board informed concerning the status of Wildlife and Habitat in the Labrador Innu Settlement Area.

Part 7.10 Total Allowable Harvest

7.10.1 The Minister or the Innu Government, based on information available to them on the state of a species or population of Wildlife within the Labrador Innu Settlement Area, may request that the Board develop a recommendation on the establishment, modification or elimination of a Total Allowable Harvest for that species or population of Wildlife.

7.10.2 Upon receiving a request pursuant to 7.10.1, the Board shall develop a recommendation and forward it to the Minister and to the Innu Government.

- 7.10.3 The Minister may, following receipt of a recommendation under 7.10.2, and after having Consulted the Innu Government, subject to 7.2.1, establish, modify or eliminate a Total Allowable Harvest for that species or population of Wildlife.
- 7.10.4 For emergency purposes related to Conservation, public health or public safety, the Minister may establish, modify or eliminate a Total Allowable Harvest prior to having met the requirements set out in 7.10.3. In all such cases, the Minister shall inform the Board and the Innu Government of his or her decision as soon as practicable thereafter and seek the advice and recommendations of the Board and Consult the Innu Government.
- 7.10.5 If the Minister chooses not to follow a recommendation of the Board under 7.10.2, the Minister shall notify the Board and the Innu Government, and shall provide the Board and the Innu Government with reasons in writing for the decision.

Part 7.11 General

- 7.11.1 The rights of Participants to Harvest, use and enjoy Wildlife set out in this chapter are subject to limitations provided for [in the Agreement]⁶².
- 7.11.2 For greater certainty, none of the rights in this chapter apply in respect of Wildlife Harvested outside of the Labrador Innu Settlement Area, except where the Agreement expressly provides that a right in this chapter applies in the Permit Free Hunting Area, and then only to the extent that it is so provided.
- 7.11.3 Unless otherwise provided for in this Chapter, a Participant with proper identification may Harvest Wildlife pursuant to the Innu Domestic Harvest under the Agreement without any form of license or permit and without any imposition of any form of tax⁶³ or fee⁴³.
- 7.11.4 Nothing in the Agreement is intended to confer rights of ownership in any Wildlife or guarantee the supply of Wildlife.
- 7.11.5 While, for greater certainty, moose are subject to the provisions of this chapter, notwithstanding anything else in this chapter, at any time, the Innu Government shall, at the request of the Minister, make an equitable portion of the Innu Basic Needs Level available to those eligible to Harvest under Laws of General Application.

⁶² To be negotiated. Innu wish to replace the generality of this text with references to specific provisions of the Agreement.

⁶³ To be negotiated. Federal approach is to delete "tax" so as to not create a tax exemption. Innu view is that the exercise of the right should be exempt from tax.

Schedule 7-A: Existing Commercial Trappers In Labrador Innu Lands

Schedule 7-B: Sport Fish Camp species or stocks of Fish

ARCTIC CHAR	
ATLANTIC SALMON	
SCALLOP	
GREY SEAL	
HARP SEAL	
RINGED SEAL	
HARBOUR SEAL	
HOODED SEAL	
BEARDED SEAL	
WALRUS	
CLAM	
MUSSEL	
SQUID	
WHELK	
SHRIMP	
SEA URCHIN	
SEA CUCUMBER	
STAR FISH	
LUMP FISH	
ROCK COD	
TOM COD	
SCULPIN	
SMELT	
CAPELIN	
EEL	
SAND LANCE	
MACKEREL	
HERRING	
SEA TROUT	
	WOLF FISH
	BROOK TROUT
	LAKE TROUT
	OUANANICHE
	NORTHERN PIKE
	WHITEFISH
	LANDLOCKED CHAR
	BURBOT
	SKATE
	SUCKERS
	SHARK
	ARCTIC COD (POLAR COD)
	GRENADIER
	ATLANTIC HALIBUT
	FLOUNDER
	SOLE
	PLAICE
	REDFISH
	ROCK CRAB
	TOAD CRAB
	SNOW CRAB
	PORCUPINE CRAB
	STONE CRAB
	SPINY CRAB
	GREENLAND HALIBUT (TURBOT)

The list in this schedule is subject to the addition of further Sport Fish Camp species or stocks of Fish as agreed to by the Innu Government and the Minister.

**Schedule 7-C:
Innu Right of First Refusal Regarding Existing Commercial Wildlife Operations**

1. The owner, including any future or subsequent owner, (herein "Owner") of an existing Commercial Wildlife Operation (herein "Operation") who intends to sell or transfer the Operation after the Effective Date shall notify the Innu Government and the Province in writing of the intended sale or transfer and the Innu Government shall have the right to purchase the Operation, in accordance with this schedule and the Agreement.
2. For purposes of this schedule, "Market Value" means the greater of:
 - (a) the amount that could reasonably be expected to be realized on the open market on a sale of the Operation as between a willing vendor and a willing purchaser with the benefit of the governmental consents and permits required under federal or Provincial Laws for continuation of the Operation; and
 - (b) a legally binding bona fide arms length offer to purchase the Operation.
3. The right referred to in paragraph 1 shall be exercisable by notice in writing from the Innu Government to the Owner at any time within 45 clear days from receipt of the notice referred to in paragraph 1.
4. The Owner and the Innu Government shall enter into an Agreement of Purchase and Sale (herein "Agreement of Purchase and Sale") that shall:
 - (a) set out the Purchase Price, which shall be the Market Value of the Operation, unless another Purchase Price is agreed upon between the Owner and the Innu Government;
 - (b) establish the date for completion of the sale or transfer which date shall be within 120 clear days from the date on which the Innu Government receives all necessary Government consents and permits, including approval of its business plan, or any longer period agreed to by the Owner and the Innu Government;
 - (c) require that the Operation shall be sold with vacant possession;
 - (d) allow the Innu Government at least 30 clear days to raise any requisition or objection to the title of the Owner; and
 - (e) contain any other terms and conditions as are deemed necessary and advisable for the sale or transfer of the Operation to the Innu Government.
5. The Operation shall be sold subject to and with the benefit of the covenants, rights, easements and other matters that are for the benefit of the Operation, but otherwise free from encumbrances.
6. The Agreement of Purchase and Sale may be assigned by the Innu Government to an Innu Business.

7. If the Owner and the Innu Government cannot agree, in the absence of a 2(b) offer, on the Purchase Price or any other matter that is necessary or advisable for completion of the Agreement of Purchase and Sale, the matter in dispute shall be determined by arbitration under the Dispute Resolution chapter of the Agreement.
8. If the Purchase Price is determined by the noted arbitration, the Innu Government may, within 15 clear days from the date of the determination, serve written notice on the Owner that it is ending its exercise of the right referred to in paragraph 1 or is ending any contract then subsisting in connection with the purchase and sale of the Operation without any further obligation.
9. If the Innu Government gives notice under paragraph 8 or if the Agreement of Purchase and Sale is not completed by the Innu Government in accordance with its terms and this schedule, the Owner may deal with or dispose of the Operation free of the rights of the Innu Government, subject to paragraphs 10 and 11.
10. If, after an event referred to in paragraph 9, the Owner concludes an agreement to sell the Operation to a third party, the agreement shall be made subject to paragraph 11 and the Owner shall give the Innu Government written notice of the agreement.
11. If the Owner intends to dispose of the Operation for an amount less than the Purchase Price set out in the Agreement of Purchase and Sale or less than the value established by arbitration or on other terms and conditions more favourable than those offered to the Innu Government, the Innu Government shall have a right of preemption, exercisable on 30 clear days written notice, to purchase the Operation at the same price and on the same terms and conditions as the Owner is willing to sell or transfer the Operation to the third party.

**Schedule 7-D:
Right of First Refusal for Commercial Wildlife Operation**

1. Any Person other than an Innu Business who intends to establish a Commercial Wildlife Operation in the Labrador Innu Settlement Area outside Labrador Innu Lands shall forward a letter of intent to the Province.
2. Within 30 clear days from receipt of a letter of intent referred to in paragraph 1, the Province shall notify the Innu Government.
3. The Innu Government shall have 90 clear days from receipt of the notice under paragraph 2 to notify the Province in writing whether or not it intends to exercise the right of first refusal referred to in section 7.8.14.
4. If the Innu Government does not exercise the right of first refusal within the time set out in paragraph 3, the right of first refusal referred to in section 7.8.14 shall lapse.
5. The Province shall, within 21 clear days from the receipt of notice from the Innu Government that it intends to exercise the right of first refusal, notify the original applicant for a Commercial Wildlife Operation of the Innu Government's decision.
6. The Innu Government shall have 90 clear days from the date it gives the notice referred to in paragraph 3 within which to complete any required community consultations, identify an operator if the operator will not be the Innu Government (herein "Designated Operator"), and to register a site specific proposal with the Province.
7. The Province shall have 60 clear days to approve the proposal referred to in paragraph 6, with or without conditions, or to reject the proposal.
8. If the Province approves the proposal referred to in paragraph 6 with conditions, or rejects the proposal, the Province will provide written reasons to the Innu Government; and the Innu Government will have 60 days to amend and resubmit a revised proposal. The Province will have a further 60 days to review the revised proposal.
9. If the proposal referred to in paragraphs 6 or 8 is approved with or with conditions, the Innu Government or Designated Operator must make every attempt to establish the proposed Commercial Wildlife Operation within three years from the notice referred to in paragraph 3 in respect of a Commercial Wildlife Operation, and if the Innu Government or Designated Operator fails, without just cause, to commence operation of the new Commercial Wildlife Operation, within that time, the Minister may declare that the right of first refusal of the Innu Government has lapsed.
10. If the Minister declares that the right of first refusal of the Innu Government has lapsed or that the proposal of the Innu Government referred to in paragraphs 6 or 8 has been finally rejected, the opportunity to establish a Commercial Wildlife Operation may then be made available to the original applicant or other third party and the Innu Government shall not have a further right of first refusal in relation to the application, except at the discretion of the Minister.
11. The Minister may extend any time period set out in this schedule when requested by the Innu Government.

Chapter 8: Migratory Birds

⁸⁴Part 8.1 Definitions

8.1.1 In this Chapter:

“Habitat” means the physical environment where Migratory Birds occur or on which they depend directly or indirectly in order to carry out their life processes;

“Harvest” means the reduction or attempted reduction of Migratory Birds into possession, including hunting, egging, picking, collecting or gathering;

“Innu Domestic Harvest” means the exercise by Participants of the rights to Harvest Migratory Birds up to the full level required to satisfy the domestic requirements of Participants and Innu communal needs [in accordance with Part 8.4];

“Migratory Bird Advisory Committee” means the committee established pursuant to 8.13.1;

“Nakatuenta” means that, if there are threats of serious or irreversible damage to Migratory Birds or Habitat, measures to prevent the reduction or harm should not be postponed for lack of full scientific certainty;

“Primary Body” means the principal body for the responsibilities set out in 8.12.1 and 8.13.3(a) when compared to the role of individual interests or stakeholder groups with respect to such responsibilities, but this in no way derogates from the ability of the Parties to seek and consider the advice and views of their departments or agencies.

“Total Allowable Harvest” means the total quantity of a species or population of Migratory Bird in the Labrador Innu Settlement Area that may be Harvested as established pursuant to Part 8.5.

Part 8.2 General

8.2.1 Conservation and Nakatuenta are priorities in decision-making that relate to or directly affect Migratory Birds or Habitat in the Labrador Innu Settlement Area.

8.2.2 In exercising powers or carrying out responsibilities under this Chapter in relation to the management of Migratory Birds or Habitat, the Innu Government, the Migratory Bird Advisory Committee and the Board shall consider relevant and accessible Innu environmental knowledge, provided pursuant to 8.2.3, as well as other types of scientific information and expert opinion.

8.2.3 The Innu Government, Participants, or both may provide Innu environmental knowledge, at no cost, to the Board, the Migratory Bird Advisory Committee, or

⁸⁴ Legal drafting. Canada proposes to amalgamate definitions of “Harvest”, “Habitat” and “Innu Domestic Harvest” in the Agreement.

both, for the purposes of 8.2.2, pursuant to a confidentiality agreement. Such Innu environmental knowledge shall be held confidential by the Board, the Migratory Bird Advisory Committee, or both in accordance with that agreement, except to the extent necessary to execute their responsibilities under the Agreement.

8.2.4 Nothing in the Agreement is intended to confer rights of ownership in any Migratory Birds or guarantee the supply of Migratory Birds.

8.2.5 The Innu Government and Canada may negotiate agreements concerning the enforcement of Federal Laws and Innu Laws in respect of Migratory Birds.

Part 8.3 Emergencies

8.3.1 Nothing in this Chapter shall be construed to prevent an individual from Harvesting Migratory Birds for personal use and consumption for survival in an emergency.

8.3.2 8.3.1 shall not be construed as providing a lawful excuse under Federal Law or Provincial Law to an individual who kills or harms Migratory Birds as a result of negligence, mismanagement or willful misconduct.

Part 8.4 Innu Domestic Harvest

8.4.1 Participants have the exclusive right to Harvest Migratory Birds within Labrador Innu Lands throughout the year for the Innu Domestic Harvest in accordance with the Agreement.

8.4.2 Participants have the right to Harvest Migratory Birds within the Labrador Innu Settlement Area, outside Labrador Innu Lands, throughout the year for the Innu Domestic Harvest in accordance with the Agreement.

8.4.3 Participants Harvesting under this Part have the right to employ any method or technology of Harvesting, including those traditionally used by the Innu, and to possess and use any equipment for that purpose, except as otherwise provided in Federal Law and Provincial Law to the extent necessary for Conservation, public health or public safety or implementing an International Agreement respecting the Harvesting of Migratory Birds.

8.4.4 Subject to this Chapter, a Participant with identification issued pursuant to Innu Law may Harvest Migratory Birds under the Agreement without any form of license or permit and without imposition of any form of tax⁸⁵ or fee⁴³.

8.4.5 The exercise by Participants of rights set out in this Part are subject to:

(a) Innu Laws;

⁸⁵ To be negotiated. Federal approach is to delete "tax" so as to not create a tax exemption. Innu view is that the exercise of the right should be exempt from tax.

- (b) Federal Law and Provincial Law, to the extent necessary for Conservation, public health or public safety; and
 - (c) measures for the purposes of Conservation, public health or public safety, established under Federal Law or Provincial Law.
- 8.4.6 Any measures referred to in 8.4.5 (c) shall be no greater than necessary to achieve the objective for which they are established and, if there are multiple measures available to achieve the same objective, the measure that involves the lesser limitation on the exercise of Participants rights in the Innu Domestic Harvest shall be established.
- 8.4.7 [Subject to 8.4.9, before establishing measures referred to in 8.4.5(c) that directly affect the Innu Domestic Harvest, Canada and the Innu Government, or the Province and the Innu Government, shall negotiate for the purpose of establishing measures that the Innu Government could take to effect the same purpose. If Canada and the Innu Government, or the Province and the Innu Government, are unable to reach agreement on the measures the Innu Government could take, Canada or the Province may establish temporary measures and shall notify the Innu Government and the Board in writing of the decision with reasons.
- 8.4.8 The Innu Government may seek the advice of the Board for the purposes of 8.4.7.
- 8.4.9 If negotiations under 8.4.7 are not possible due to an emergency, Canada or the Province shall, as soon as possible, notify the Innu Government, in writing, of the emergency measures it has established and seek the advice and views of the Innu Government as soon as practicable thereafter.
- 8.4.10 The Board shall review all temporary measures established under 8.4.7, or emergency measures established under 8.4.9, including the written reasons and any other relevant information, and provide a recommendation to Canada and the Innu Government, or to the Province and the Innu Government, as soon as possible after being notified under 8.4.7.
- 8.4.11 Upon receipt of the Board's recommendation under 8.4.10, Canada and the Innu Government or the Province and the Innu Government shall negotiate for the purpose of replacing the temporary measures established under 8.4.7, or the emergency measures established under 8.4.9 with measures that the Innu Government could take to effect the same purpose. If Canada and the Innu Government or the Province and the Innu Government are unable to reach agreement on the measures the Innu Government are to take, Canada or the Province may establish a measure referred to in 8.4.5 c).
- 8.4.12 Negotiations under 8.4.7 and 8.4.11 regarding the matter of establishing measures shall be conducted in the manner provided for negotiation of Disputes under Part 26.4. Canada and the Innu Government or the Province and the Innu

Government agree they shall not thereafter proceed to either mediation or Arbitration under Part 26.6.]⁸⁶

- 8.4.13 Subject to Part 8.5, if a Total Allowable Harvest is established:
- (a) Participants have the right to Harvest that species or population of Migratory Bird within the Labrador Innu Settlement Area up to the Innu Basic Needs Level; and
 - (b) a Participant has the right to Harvest the share of the Innu Basic Needs Level allocated to him or her by the Innu Government.

Part 8.5 Total Allowable Harvest

- 8.5.1 Any Party or the Board, based on information available to them on the state of a species or population of Migratory Bird in the Labrador Innu Settlement Area, may request that the Migratory Bird Advisory Committee develop a recommendation on the establishment, modification or elimination of a Total Allowable Harvest for that species or population of Migratory Bird in the Labrador Innu Settlement Area.
- 8.5.2 Upon receiving a request pursuant to 8.5.1, the Migratory Bird Advisory Committee shall develop and provide a recommendation to the Board for consideration, and inform the Parties, in accordance with 8.13.3(c).
- 8.5.3 The Board shall have forty-five (45) days from receipt of a recommendation provided under 8.5.2 to review the recommendation and provide additional information to the Parties or to vary the recommendation of the Migratory Bird Advisory Committee. If the Party making the request has not received a response from the Board within forty-five (45) days of receiving a recommendation under 8.5.2, the Parties shall assume that the Board is in agreement with the recommendation of the Migratory Bird Advisory Committee.
- 8.5.4 The Minister may, following receipt of a recommendation under 8.5.2 or 8.5.3, and after Consulting the Innu Government, establish, modify or eliminate a Total Allowable Harvest for that species or population of Migratory Bird in the Labrador Innu Settlement Area for any period of time, as necessary for purposes of Conservation.
- 8.5.5 If the Minister decides not to follow a recommendation of the Migratory Bird Advisory Committee or the Board provided under 8.5.2 or 8.5.3, the Minister shall, on a timely basis, advise the Migratory Bird Advisory Committee, the Board and the Innu Government with reasons in writing for the decision.
- 8.5.6 For emergency purposes related to Conservation, public health or public safety, the Minister may establish, modify or eliminate a Total Allowable Harvest prior to having met the requirements set out in 8.5.4. In all such cases, the Minister shall

⁸⁶ To be negotiated. The Innu want the province to be included where the Province may exercise its jurisdiction under 8.4.5 which may have an incidental effect upon the Innu Domestic Harvest (e.g., limiting ground access). Canada & NL have under review.

inform the Innu Government and the Board of the decision and seek the advice and recommendations of the Board and Consult the Innu Government as soon as practicable thereafter.

- 8.5.7 The Innu Government shall establish measures intended to ensure that the quantity of Migratory Birds taken by Participants does not exceed the Innu Basic Needs Level when a Total Allowable Harvest has been established.
- 8.5.8 If a Total Allowable Harvest exceeds the Innu Basic Needs Level for a species or population of Migratory Birds, the surplus may be allocated by Canada.

Part 8.6 Innu Basic Needs Level

- 8.6.1 In accordance with this Chapter, the Innu Basic Needs Level constitutes a first demand against a Total Allowable Harvest and is intended for the protection of the Participant's Harvesting rights under the Innu Domestic Harvest.
- 8.6.2 The Innu Government shall establish measures intended to ensure that the quantity of Migratory Birds taken in the Innu Domestic Harvest do not exceed Innu Basic Needs Levels.
- 8.6.3 If a Total Allowable Harvest is established for a species or population of Migratory Birds in the Labrador Innu Settlement Area pursuant to Part 8.5, the Minister shall establish an Innu Basic Needs Level for that species or population of Migratory Bird.
- 8.6.4 The Innu Government shall recommend the Innu Basic Needs Level to the Minister in writing and provide the Minister, the Board and the Migratory Bird Advisory Committee with the data and information on which the recommendation is based. The Minister shall establish the Innu Basic Needs Level recommended by the Innu Government, unless the Minister seeks a reconsideration under Part 8.7.
- 8.6.5 The Innu Basic Needs Level shall be as accurate a quantification as possible of the quantity of a species or population of Migratory Bird required by Participants for the purposes of the Innu Domestic Harvest.
- 8.6.6 The Innu Government shall base its recommendation for an Innu Basic Needs Level on all relevant information available to it, including:
- (a) any data contained in the five (5) year Migratory Bird Harvest study referred to in 8.13.4(d);
 - (b) any data, including Innu environmental knowledge and historical data, related to the Harvest of Migratory Birds by Participants;
 - (c) population growth and demographic changes in the Innu population;
 - (d) variations in the availability and accessibility of the species or population of Migratory Bird;

- (e) information on North American population trends, threats, challenges and status of species as it relates to Migratory Birds;
- (f) any data that may be compiled on an ongoing basis by the Innu Government during its monitoring of the Harvest of Migratory Birds by Participants;
- (g) any data that may be compiled on an ongoing basis by the Migratory Bird Advisory Committee related to the Harvest of Migratory Birds in the Labrador Innu Settlement Area; and
- (h) any other relevant information.

8.6.7 The Innu Government may seek the advice of the Board or the Migratory Bird Advisory Committee, as appropriate, in developing its recommendation for an Innu Basic Needs Level.

Part 8.7 Reconsideration of Innu Basic Needs Level

8.7.1 The Minister may request a reconsideration of the Innu Basic Needs Level recommended by the Innu Government where:

- (a) there is information available to the Minister that was not considered by the Innu Government in making its recommendation under 8.6.4. In the event that the Minister requests the reconsideration, the Minister shall provide the Innu Government, the Migratory Birds Committee and the Board with the information; or
- (b) The Minister determines that a recommendation referred to in 8.6.4 is not supported by the information referred to in 8.6.6.

8.7.2 On receipt of the request under 8.7.1, the Innu Government shall, within a timeline agreed to by the Innu Government and Minister, either confirm its original recommendation under 8.6.4 or submit a new recommendation to Minister with the data and information on which either the confirmation or the new recommendation is based.

8.7.3 If under 8.7.1 the Minister requests a reconsideration of the Innu Basic Needs Level recommended under 8.6.4, the Minister and the Innu Government shall, within an agreed-upon timeline, negotiate for the purposes of establishing a temporary Innu Basic Needs Level. If the Minister and the Innu Government are unable to reach agreement on a temporary Innu Basic Needs Level, the Minister may establish a temporary Innu Basic Needs Level which may differ from the Innu Basic Needs Level recommended under 8.6.4 which will apply until an Innu Basic Needs Level is established in accordance with Part 8.7.

8.7.4 If the Minister establishes a temporary Innu Basic Needs Level under 8.7.3 the Minister shall provide the Innu Government with written reasons for that temporary Innu Basic Needs Level.

- 8.7.5 In the event that:
- (a) the Innu Government does not make a recommendation under 8.6.4;
 - (b) the Innu Government does not confirm its original recommendation or submit a new recommendation under 8.7.2; or
 - (c) the Minister believes the recommendation pursuant to 8.6.4 or 8.7.2 is not supported by the information referred to in 8.6.6,

the Minister and the Innu Government shall negotiate for the purpose of establishing an Innu Basic Needs Level. If no agreement is reached within an agreed-upon timeline from the start of the negotiation, the Minister may establish an Innu Basic Needs Level which may differ from the Innu Basic Needs Level recommended, if any, by the Innu Government. The Minister shall provide the Innu Government with written reasons for the established level of the Innu Basic Needs Level.

- 8.7.6 Negotiations under 8.7.3 and 8.7.5 shall be conducted in the manner provided for negotiation of Disputes under Part 26.4, and if the matter is not resolved following negotiation, the Minister and the Innu Government shall proceed to mediation under Part 26.5 and, if the matter is still not resolved thereafter, to Arbitration under Part 26.6.

- 8.7.7 The Innu Basic Needs Level shall be reviewed once every fifteen (15) years or earlier, at the request of the Minister or the Innu Government. Any review shall follow the process set out in 8.6.4 to 8.7.6, with any necessary changes as agreed to by the Parties.

- 8.7.8 A Participant shall supply to the Innu Government any information regarding Harvesting activities or Harvesting-related activities as required by the Innu Government which shall be comparable to that provided by Non-Participants to Canada in comparable circumstances. The Innu Government may seek the advice of the Board in establishing reporting requirements for Participants.

Part 8.8 Process when Total Allowable Harvest is less than Innu Basic Needs Level

- 8.8.1 The quantity of Migratory Birds that may be Harvested in the Innu Domestic Harvest shall not be restricted to an amount less than the Innu Basic Needs Level, except in accordance with this Part.
- 8.8.2 If the Total Allowable Harvest is less than the Innu Basic Needs Level, all Harvesting of that species or population of Migratory Bird by individuals other than Participants and an Aboriginal people referred to in 8.8.3 shall be closed and, subject to 8.8.3, the Minister shall allocate the Total Allowable Harvest to Participants.
- 8.8.3 If an Aboriginal people of Canada, other than the Innu, has an Aboriginal or treaty right in the Labrador Innu Settlement Area with respect to a species or population of Migratory Bird to which 8.8.1 or 8.8.2 applies, the Minister shall, prior to making any allocation of that species or population of Migratory Bird,

Consult the Innu Government and determine an equitable allocation of the Total Allowable Harvest for Participants.

8.8.4 In circumstances referred to in 8.8.2 and 8.8.3, the Innu Government shall, at the request of the Minister, but in its sole discretion, make a portion of the Innu Basic Needs Level available to Permanent Long Term Residents who are eligible to receive licences to Harvest Migratory Birds.

8.8.5 The Minister may terminate the Consultation referred to in 8.8.3 after ninety (90) days if no determination is made and make an equitable allocation to the Innu in accordance with:

- (a) the provisions of the Agreement;
- (b) the provisions of the other Aboriginal group's treaty, if applicable; and
- (c) the relevant provisions of any overlap agreement between the Innu and the other Aboriginal group.

Part 8.9 Trade and Transport

8.9.1 Participants have the right to give, trade, exchange or barter with other Participants and with other Aboriginal individuals in Canada, any Migratory Birds Harvested under 8.4.1 and 8.4.2 in accordance with Innu Law.

8.9.2 Participants have the right to sell or give any non-edible by-products, including down, of Migratory Birds Harvested under 8.4.1 and 8.4.2.

8.9.3 Participants may sell Migratory Birds only if the sale is permitted by Innu Law and Federal Law.

8.9.4 Notwithstanding 8.9.1 and 8.9.2, any export of Migratory Birds and their by-products from Newfoundland and Labrador or Canada shall be in accordance with Federal Law or Provincial Law.

8.9.5 Participants have the right to transport Migratory Birds Harvested pursuant to 8.4.1 and 8.4.2 outside the Labrador Innu Settlement Area on condition that the Migratory Birds are identified as having been Harvested under 8.4.1 and 8.4.2.

8.9.6 Notwithstanding 8.9.5, a Participant may be required by any of the Parties to obtain a permit to transport Migratory Birds outside the Labrador Innu Settlement Area, but:

- (a) the permit shall be issued upon request unless good cause exists for refusing to issue the permit;
- (b) the permit shall identify where the Migratory Bird was Harvested, under what authority it was Harvested, the name of the individual who Harvested it, the name of the individual receiving it, and the method by which it is being transported; and

- (c) any fee for the permit shall be waived.

Part 8.10 Assignment of Rights

8.10.1 Subject to Innu Laws, a Participant may assign his or her right to Harvest Migratory Birds under 8.4.1, 8.4.2 or 8.4.13, including part or all of his or her share of an Innu Basic Needs Level, to:

- (a) another Participant;
- (b) the spouse or individual cohabiting as the spouse of a Participant;
- (c) a Participant's parent or Child;
- (d) an individual to whom that Participant stands in the position of a parent;
or
- (e) an individual who stands in the position of a parent to that Participant;

and in all such cases, the assignee shall be subject to the same restrictions as the assignor.

8.10.2 An assignment under 8.10.1 shall be provided by the Innu Government in writing, shall be for a term not exceeding one (1) year and may include an option of renewal for a period not exceeding the original term. Any assignment for a term exceeding one (1) year shall be void.

8.10.3 Notwithstanding 8.10.1, a Participant may not transfer a share of the Innu Basic Needs Level for a species or population of Migratory Bird, or any portion thereof, to an individual referred to in 8.10.1 unless the transfer is made without charge.

Part 8.11 Innu Government Jurisdiction

8.11.1 The Innu Government may make laws applying in the Labrador Innu Settlement Area, in relation to:

- (a) the management of the Innu Domestic Harvest;
- (b) the allocation among Participants of the Innu Basic Needs Level and other allocations or quantities of Migratory Birds to which Participants are entitled under this Chapter;
- (c) the management of the assignment of rights to Harvest Migratory Birds under 8.10.1;
- (d) the issuing of licenses, permits or other authorizations to Harvest the Innu Basic Needs Level and other allocations or quantities of Migratory Birds to which Participants are entitled under this Chapter;
- (e) the assignment of rights under 8.10.1 and 8.10.2 to participate in the Innu Domestic Harvest and shares of the Innu Basic Needs Level;

- (f) the collection and publication of Innu environmental knowledge with respect to Migratory Birds and Habitat;
- (g) Innu Government programs and measures to promote the maintenance and development of Harvesting and skills among Participants;
- (h) the management and administration of Participant rights related to Migratory Birds and Habitat;
- (i) the resolution of disputes among Participants with respect to the Harvesting of Migratory Birds;
- (j) the management of all aspects of giving, trading, exchanging or barter of Migratory Birds Harvested by Participants, in accordance with this Chapter; and
- (k) the monitoring of Harvesting of Migratory Birds by Participants in accordance with relevant management measures.

8.11.2 The Innu Government may make laws in relation to:

- (a) the regulation of Harvesting of Migratory Birds on Labrador Innu Lands, in accordance with the Agreement; and
- (b) the licensing of guides⁸⁷ on Labrador Innu Lands.

8.11.3 If there is a Conflict between an Innu Law under 8.11.1 or 8.11.2 and a Federal Law or Provincial Law in relation to Conservation, public health or public safety, the Federal Law or Provincial Law prevails to the extent of the Conflict.

8.11.4 If there is a Conflict between an Innu Law under 8.11.1 or 8.11.2 and a Federal Law or Provincial Law other than a Federal Law or Provincial Law referred to in 8.11.3, the Innu Law prevails to the extent of the Conflict.

8.11.5 The Innu Government shall:

- (a) inform Canada, the Province and the Board about its proposed measures for the Innu Domestic Harvest; and
- (b) provide Canada, the Province and the Board all relevant information about the measures established by it for the Innu Domestic Harvest.

8.11.6 A Permanent Long-Term Resident who is eligible under Federal Law or Provincial Law to Harvest Migratory Birds shall be issued a permit by the Innu Government to Harvest Migratory Birds in specified locations in Labrador Innu Lands and any needed permit to access those locations if:

⁸⁷ To be negotiated. NL was under the belief that guiding is dealt with in 7.7.1 (c) and (l). Innu require law-making authority for guiding in relation to Migratory Birds in LIL, with which Canada and NL both agree.

- (a) the Permanent Long-Term Resident can demonstrate to the satisfaction of the Innu Government that the Permanent Long-Term Resident has traditionally Harvested and currently Harvests Migratory Birds in specified locations within Labrador Innu Lands; and
- (b) it would be unreasonable for the Permanent Long-Term Resident to Harvest Migratory Birds in areas outside Labrador Innu Lands.

8.11.7 Subject to 8.11.8, a decision of the Innu Government under 8.11.6 is final and binding.

8.11.8 Judicial review of a decision of the Innu Government under 8.11.6 shall be available at the motion of a Permanent Long-Term Resident directly affected by the decision.

8.11.9 The Innu Government shall provide to each Participant or assignee having a right to take Migratory Birds in the Innu Domestic Harvest documentation that specifies:

- (a) the species or population that may be taken; and
- (b) the quantity of the species or population that may be taken.

Part 8.12 The Role of the Resource Management Board

8.12.1 Subject to the Agreement, the Board has the following responsibilities with respect to the Conservation and management of Migratory Birds and Habitat in the Labrador Innu Settlement Area, and is the Primary Body with respect to:

- (a) making a recommendation pursuant to Part 8.5 in relation to Total Allowable Harvests for Migratory Birds in Labrador Innu Settlement Area; and
- (b) providing its views to the Parties on Conservation and management measures for Migratory Birds and Habitat in the Labrador Innu Settlement Area, including:
 - (i) Harvesting restrictions;
 - (ii) the non-consumptive uses of Migratory Birds for commercial purposes;
 - (iii) science, monitoring and research respecting the Conservation and management of Migratory Birds and Habitat;
 - (iv) the establishment of Protected Areas for Migratory Birds and Habitat and the activities that may be carried out in those areas;
 - (v) the activities that may be carried out in areas of important biological productivity;

- (vi) matters related to species or populations that are Listed Species designated under the *Species at Risk Act* (Canada);
 - (vii) plans for restocking or propagation of Migratory Birds;
 - (viii) providing its views to the Parties on measures for the timely collection, analysis and sharing of data and information relevant to the implementation of the rights of Participants under this Chapter, and the Conservation and Sustainable Utilization of Migratory Birds and Habitat.
- 8.12.2 The Parties shall seek the advice and recommendations of the Board prior to making decisions regarding Federal Legislation, Provincial Legislation and Innu Law, and policies, plans, programs, standards and guidelines related to the management of Migratory Birds and Habitat in the Labrador Innu Settlement Area, except in emergency situations in which case they shall seek the advice and recommendations of the Board as soon as possible thereafter.
- 8.12.3 The Board may provide advice and recommendations to the Parties related to the management of Migratory Birds and Habitat in the Labrador Innu Settlement Area that it considers important even though there may be no other provision in this Chapter authorizing the Board to provide advice and recommendations on that particular matter.
- 8.12.4 The Board shall seek the advice of the Migratory Bird Advisory Committee in developing advice and recommendations under 8.12.1 and 8.12.2, and incorporate recommendations and information provided by the Migratory Bird Advisory Committee pursuant to 8.13.3.
- 8.12.5 The Board may, within its budget:
- (a) provide advice and recommendations, along with the relevant information, to the Parties on mitigation measures and compensation to be required from Developers whose Development activities result in damage to or loss of Migratory Birds or Habitat;
 - (b) develop and undertake public education and promote public awareness with respect to Migratory Birds and Habitat in the Labrador Innu Settlement Area;
 - (c) develop plans for the training and employment of Participants in the Conservation, management and research of Migratory Birds and Habitat in the Labrador Innu Settlement Area;
 - (d) seek the views and advice of the public and Participants on matters related to its functions under this Chapter in a manner that avoids duplication of similar activities by the Parties and their agencies;
 - (e) facilitate and provide advice and recommendations to the Parties regarding the integration of Innu environmental knowledge into decision-

making about Migratory Birds and Habitat in the Labrador Innu Settlement Area; and

- (f) perform any other functions related to the management of Migratory Birds and Habitat in the Labrador Innu Settlement Area delegated to the Board by agreement of the Parties.

- 8.12.6 The Parties shall notify the Board of their decision with respect to any recommendations made under 8.12.1 or 8.12.4.
- 8.12.7 The Parties may request advice and recommendations from the Board on any matter related to Migratory Birds and Habitat.
- 8.12.8 If requested by two or more Parties, the Board shall make recommendations to the requesting Parties with respect to the coordination or harmonization of measures for the management of Migratory Birds or Habitat in the Labrador Innu Settlement Area.
- 8.12.9 The Board shall cooperate with other organizations that have management responsibilities in relation to species or populations of Migratory Birds and Habitat within the Labrador Innu Settlement Area.

Part 8.13 Role of the Migratory Bird Advisory Committee⁸⁸

- 8.13.1 On the Effective Date, the Board shall establish the Migratory Bird Advisory Committee. On the tenth (10) year anniversary of the Effective Date of the Agreement, the Board may extend or modify the mandate of the Migratory Bird Advisory Committee.
- 8.13.2 Each Party shall appoint one (1) member to the Migratory Bird Advisory Committee.
- 8.13.3 The Migratory Bird Advisory Committee shall:
- (a) be the Primary Body making recommendations to the Board on scientific matters related to the management of Migratory Birds and Habitat in the Labrador Innu Settlement Area;
 - (b) report directly to the Board;
 - (c) inform the Parties of any recommendations it makes to the Board and provide the Parties with a copy of its recommendations and the data and information on which the recommendations are based; and

⁸⁸ To be negotiated. NFLD notes that its contribution, if any, to the costs of the Migratory Bird Advisory Committee and five year study referred to in 8.13.4(d) will only be agreed to in the Implementation Plan.

- (d) cooperate with other organizations which deal with species or populations of Migratory Birds that are found within the Labrador Innu Settlement Area.

8.13.4

The Migratory Bird Advisory Committee shall, with respect to the Conservation and management of Migratory Birds and Habitat in the Labrador Innu Settlement Area:

- (a) recommend the establishment, modification or elimination of Total Allowable Harvests to the Board;
- (b) recommend Conservation and management measures to the Board, including:
 - (i) Harvesting restrictions;
 - (ii) science, monitoring and research activities respecting the Conservation and management of Migratory Birds and Habitat;
 - (iii) the establishment of Protected Areas for Migratory Birds and Habitat and the activities that may be carried out in those areas;
 - (iv) the activities that may be carried out in areas of important biological productivity for Migratory Birds;
 - (v) matters related to species or populations of Migratory Birds that are Listed Species;
 - (vi) plans for the management of Migratory Birds;
 - (vii) measures to monitor impacts of Projects and Undertakings on Migratory Birds and Habitat;
 - (viii) measures for the timely collection, analysis and sharing of data and information; and
 - (ix) measures for the Conservation and Sustainable Utilization of Migratory Birds and Habitat;
- (c) at the request of the Board, develop and undertake science, monitoring and research activities related to Migratory Birds and Habitat in the Labrador Innu Settlement Area;
- (d) undertake a five (5) year Migratory Bird harvest study which shall cover all of the Labrador Innu Settlement Area to determine the Migratory Bird Harvest levels of Participants;
- (e) if requested under 8.6.7, assist the Innu Government in establishing the Innu Basic Needs Level; and
- (f) carry out any other activities delegated to it by the Board.

Part 8.14 Agreements

- 8.14.1 The Parties may negotiate agreements for the purposes of managing Migratory Birds and Habitat.
- 8.14.2 Any Federal Law or Provincial Law implementing an international agreement that relates to any species or population of Migratory Bird or the management of Migratory Birds in or affecting the Labrador Innu Settlement Area shall be interpreted and administered to treat Participants on at least as favourable a basis as any other Aboriginal people of Canada.
- 8.14.3 Canada shall include Innu representation, nominated by the Innu Government, in discussions leading to the formulation of Canada's position respecting any International Agreement, or an amendment thereto, that relates to any species or population of Migratory Bird or the management of Migratory Birds in or affecting the Labrador Innu Settlement Area, and the discussions shall extend beyond those generally available to non-governmental organizations.
- 8.14.4 Any Federal Law or Provincial Law implementing a Domestic Inter-Jurisdictional Agreement that relates to any species or population of Migratory Bird or the management of Migratory Birds in or affecting the Labrador Innu Settlement Area shall be interpreted and administered to treat Participants on at least as favourable a basis as any other Aboriginal people of Canada affected by the Federal Law or Provincial Law.
- 8.14.5 When Canada or the Province negotiates a Domestic Inter-Jurisdictional Agreement, or an amendment thereto, that relates to any species or population of Migratory Bird or the management of Migratory Birds in or affecting the Labrador Innu Settlement Area, the Innu Government shall have a role in the negotiations commensurate with its status, function and responsibilities. The Innu Government may seek the advice and recommendations of the Board with respect to these negotiations.

Chapter 9: Fisheries⁸⁹

Part 9.1 Definitions

9.1.1 In this Chapter:

“Aquaculture” means the production, breeding, holding or raising of Fish and the cultivation or culture of Aquatic Plants and includes sea and river ranching but does not include the holding of Fish or Aquatic Plants in an aquarium for non-commercial purposes or the holding of Fish or Aquatic Plants for experimental purposes;

“Aquaculture Facility” means a place on land or in water where Aquaculture is carried on and includes all gear, equipment and structures related to Aquaculture located at that place;

“Commercial Fishing Licence” means a licence that permits the Harvest of Fish for the purpose of sale and includes experimental and exploratory licences;

“Fisheries Advisory Committee” means the committee established pursuant to 9.12;

“Harvest” means the reduction or attempted reduction of Aquatic Plants and Fish into possession;

“Innu Domestic Harvest” means the exercise by Participants of the rights to Harvest Aquatic Plants and Fish up to the full level required to satisfy the domestic requirements of Participants and Innu communal needs;

“Nakatuenta” means if there are threats of serious or irreversible damage to Fish, Aquatic Plants or Aquatic Habitat, measures to prevent the reductions or loss of Fish, Aquatic Plants or Aquatic Habitat should not be postponed for lack of full scientific certainty;

“Primary Body” means the principal body for the responsibilities set out in 9.11.1 and 9.12.3 when compared to the role of individual interests or stakeholder groups with respect to such responsibilities, but in no way derogates from the ability of the Parties to seek and consider the advice and views of their departments or agencies;

“Residence” means a specific dwelling-place, that is occupied or habitually occupied by one or more of a species of Fish during all or part of their life cycles;

“Total Allowable Catch” means the total quantity of a species or stock of Fish which may be Harvested as established pursuant to Part 9.5; and

⁸⁹ To be negotiated. This Chapter will be revisited pending outcome of discussions relating to Innu proposal on Marine Zone.

“Total Allowable Harvest” means the total quantity of a species of Aquatic Plant which may be Harvested as established pursuant to Part 9.5;

Part 9.2 General

- 9.2.1 Conservation and Nakatuenta are priorities in decision-making that relates to or directly affects Fish, Aquatic Plants or Aquatic Habitat in the Labrador Innu Settlement Area.
- 9.2.2 In exercising powers or carrying out responsibilities under this Chapter, the Innu Government, the Fisheries Advisory Committee and the Board shall consider relevant and accessible Innu environmental knowledge, as well as other scientific information and expert opinion.
- 9.2.3 The Innu Government, Participants, or both may provide Innu environmental knowledge, at no cost, to the Board, the Fisheries Advisory Committee, or both, for the purposes of 9.2.2, pursuant to a confidentiality agreement. Such Innu environmental knowledge shall be held confidential by the Board and the Fisheries Advisory Committee, or both in accordance with that agreement, except to the extent necessary to execute their responsibilities under the Agreement.
- 9.2.4 Nothing in the Agreement is intended to confer rights of ownership in any Fish and Aquatic Plants or guarantee the supply of Fish and Aquatic Plants.

Part 9.3 Emergencies

- 9.3.1 Nothing in this Chapter shall be construed to prevent an individual from Harvesting Fish or Aquatic Plants for personal use and consumption for survival in an emergency.
- 9.3.2 9.3.1 shall not be construed as providing a lawful excuse under Federal Law or Provincial Law to an individual who Harvests Fish or Aquatic Plants as a result of negligence, mismanagement or wilful misconduct.

Part 9.4 Innu Domestic Harvest

- 9.4.1 Participants have the right to Harvest any species or stock of Fish, or species of Aquatic Plant, throughout the Labrador Innu Settlement Area, at all times of the year for purposes of the Innu Domestic Harvest in accordance with the Agreement.
- [9.4.2 The areas described in Schedules 9A and 9B are deemed to be part of the Labrador Innu Settlement Area for purposes of the Innu Domestic Fishery and the management thereof.⁹⁰]
- 9.4.3 Participants Harvesting under this Part have the right to employ any method or technology of Harvesting, including those traditionally used by the Innu, and to possess and use any equipment for that purpose, except as otherwise provided

⁹⁰ To be negotiated. Pending Marine Zone.

in Federal Legislation or Provincial Legislation to the extent necessary for Conservation, public health or public safety or implementing an International Agreement respecting the Harvesting of Fish.

- 9.4.4 Subject to this Chapter, a Participant with identification issued pursuant to Innu Law may Harvest Fish and Aquatic Plants under 9.4.1 without any form of licence or permit and without any imposition of any form of tax⁹¹ or fee⁴³.
- 9.4.5 The exercise of the rights of Participants set out in this Part are subject to:
- (a) Innu Laws;
 - (b) Federal Law and Provincial Law to the extent necessary for Conservation, public health or public safety; and
 - (c) measures for the purposes of Conservation, public health or public safety, established under Federal Law or Provincial Law.
- 9.4.6 Any measures referred to in 9.4.5 (c) shall be no greater than necessary to achieve the objective for which they are established and, if there are multiple measures available to achieve the same objective, the measure that involves the lesser limitation on the exercise of Participants rights in the Innu Domestic Harvest shall be established.
- 9.4.7 Subject to 9.4.8, before establishing a measure referred to in 9.4.5(c) that directly affects the Innu Domestic Harvest, Canada and the Innu Government, or the Province and the Innu Government, shall negotiate for the purpose of establishing measures that the Innu Government could take to effect the same purpose. If Canada and the Innu Government, or the Province and the Innu Government, are unable to reach agreement on the measures the Innu Government could take, Canada or the Province may establish temporary measures and shall notify the Innu Government and the Board in writing of the decision with reasons.
- 9.4.8 If negotiations under 9.4.7 are not possible due to an emergency, Canada or the Province shall, as soon as possible, notify the Innu Government, in writing, of the emergency measures it has established and seek the advice and views of the Innu Government as soon as practicable thereafter.
- 9.4.9 The Innu Government may seek the advice of the Board for the purposes of 9.4.7.
- 9.4.10 The Board shall review all temporary measures established by Canada or the Province pursuant to 9.4.7, or emergency measures under 9.4.8, including the written reasons and any other relevant information, and provide a recommendation to Canada or the Province and the Innu Government as soon as possible after being notified under 9.4.7.

⁹¹ To be negotiated. Federal approach is to delete "tax" so as to not create a tax exemption. Innu view is that the exercise of the right should be exempt from tax.

- 9.4.11 Upon receipt of the Board's recommendation under 9.4.10, Canada or the Province and the Innu Government shall negotiate for the purpose of replacing the temporary measure established by Canada, or the Province, under 9.4.7, or emergency measures under 9.4.8 with measures that the Innu Government could take to effect the same purpose. If agreement cannot be reached on the measures the Innu Government are to take, Canada, or the Province, may establish a measure referred to in 9.4.5 c).
- 9.4.12 Negotiations under 9.4.7 and 9.4.11 regarding the matter of establishing measures shall be conducted in the manner provided for negotiation of Disputes under Part 26.4. Canada and the Innu Government or the Province and the Innu Government agree they shall not thereafter proceed to either mediation or Arbitration under Part 26.6.
- 9.4.13 Subject to 9.7.1, if a Total Allowable Catch, Total Allowable Harvest [or other measure] to manage the fisheries is established:
- (a) Participants have the right to Harvest that species or stock of Fish or species of Aquatic Plant within the Labrador Innu Settlement Area up to the Innu Basic Needs Level; and
 - (b) a Participant has the right to Harvest the share of the Innu Basic Needs Level allocated to him or her by the Innu Government.
- 9.4.14 The measures that are in place to manage the Innu domestic fishery prior to the Effective Date shall continue to apply until removed or replaced under Part 9.4.
- Part 9.5 Total Allowable Catch [or other measure] to manage the fishery and Total Allowable Harvest**
- 9.5.1 Any Party or the Board, based on information available to them on the state of a species or stock of Fish or species of Aquatic Plant in the Labrador Innu Settlement Area, may request that the Fisheries Advisory Committee develop a recommendation on the establishment, modification or elimination of a Total Allowable Catch [or other measure] to manage the fishery for that species or stock of Fish or Total Allowable Harvest for that species of Aquatic Plant, in the Labrador Innu Settlement Area.
- 9.5.2 Upon receiving a request pursuant to 9.5.1, the Fisheries Advisory Committee shall develop a recommendation and forward it to the Board for consideration and inform the Minister and the Innu Government in accordance with 9.12.3(c).
- 9.5.3 The Board shall have forty-five (45) days from receipt of a recommendation under 9.5.2 to review the recommendation and provide additional information to the Parties or to vary the recommendation of the Fisheries Advisory Committee. If the Party has not received a response from the Board within forty-five (45) days of receiving a recommendation under 9.5.2, the Parties shall assume that the Board is in agreement with the recommendation of the Fisheries Advisory Committee.

- 9.5.4 The Minister may, following receipt of a recommendation under 9.5.2 or 9.5.3 and after having Consulted the Innu Government, establish, modify or eliminate a Total Allowable Catch [or other measure] to manage the fishery or Total Allowable Harvest in the Labrador Innu Settlement Area, for any period of time as for the purposes of Conservation.
- 9.5.5 For emergency purposes related to Conservation, public health or public safety, the Minister may establish, modify or eliminate a Total Allowable Catch or Total Allowable Harvest prior to having met the requirements set out in 9.5.4. In all such cases, the Minister shall inform the Innu Government and the Board of the decision and seek the advice and recommendations of the Board and Consult the Innu Government as soon as practicable thereafter.
- 9.5.6 If the Minister decides not to follow a recommendation of the Fisheries Advisory Committee or the Board provided under 9.5.2 or 9.5.3, the Minister shall, on a timely basis, advise the Fisheries Advisory Committee, the Board and the Innu Government with reasons in writing for the decision.
- 9.5.7 The Innu Government shall establish measures intended to ensure that the quantities of a species or stock of Fish or species of Aquatic Plant taken by Participants does not exceed the Innu Basic Needs Level when a Total Allowable Catch [or other measures] to manage the fishery or Total Allowable Harvest has been established.
- 9.5.8 If a Total Allowable Catch or Total Allowable Harvest exceeds the Innu Basic Needs Level, the surplus may be allocated by the Minister.
- [9.5.9 In the absence of a Total Allowable Catch or Total Allowable Harvest, other measures to manage the fishery may be established that would allow for the procedures set out in Part 9.6 and Part 9.7.]⁹²

Part 9.6 Innu Basic Needs Level

- 9.6.1 In accordance with this Chapter, the Innu Basic Needs Level constitutes a first demand against a Total Allowable Catch [or other measure] to manage the fishery or Total Allowable Harvest and is intended for the protection of Participants' Harvesting rights under the Innu Domestic Harvest.
- 9.6.2 The Innu Government shall establish measures intended to ensure that the amount of species or stock of Fish or species of Aquatic Plant taken in the Innu Domestic Harvest do not exceed Innu Basic Needs Levels.
- 9.6.3 If a Total Allowable Catch [or other measure] to manage the fishery for a species or stock of Fish or Total Allowable Harvest for a species of Aquatic Plant is established in the Labrador Innu Settlement Area pursuant to Part 9.5, the Minister shall establish an Innu Basic Needs Level for that species or stock of Fish or species of Aquatic Plant.

⁹² To be negotiated. Canada and Innu to discuss how other measures to manage the Innu Domestic Harvest in the absence of a TAC or TAH may be reflected in the Agreement and implemented in order to ensure an Innu priority allocation in general accordance with Parts 9.6 and 9.7.

- 9.6.4 The Innu Government shall recommend the Innu Basic Needs Level to the Minister in writing and provide the Minister, the Board and the Fisheries Advisory Committee with the data and information on which the recommendation is based.
- 9.6.5 The Innu Basic Needs Level shall be as accurate a quantification as possible of the amount of a species or stock of Fish or species of Aquatic Plant required by Participants for purposes of the Innu Domestic Harvest.
- 9.6.6 The Innu Government shall base its recommendation for an Innu Basic Needs Level on all relevant information available to it, including:
- (a) any data contained in the five (5) year Fish and Aquatic Plant Harvest study referred to in 9.12.4 (d);
 - (b) any data, including Innu environmental knowledge and historical data, related to the Harvest of Fish and Aquatic Plants by Participants;
 - (c) population growth and demographic changes in the Innu population;
 - (d) variations in the availability and accessibility of the species or stock of Fish or species of Aquatic Plant;
 - (e) any data that may be compiled on an ongoing basis by the Innu Government during its monitoring of the Innu Domestic Harvest;
 - (f) any data that may be compiled on an ongoing basis by the Fisheries Advisory Committee related to the Harvest of Fish and Aquatic Plants in the Labrador Innu Settlement Area; and
 - (g) any other relevant information.
- 9.6.7 The Innu Government may seek the advice of the Fisheries Advisory Committee in developing its recommendation for an Innu Basic Needs Level.
- 9.6.8 Subject to this Part, the Minister shall establish the Innu Basic Needs Level recommended by the Innu Government pursuant to 9.6.4.
- 9.6.9 The Minister may request a reconsideration of the Innu Basic Needs Level recommended by the Innu Government where:
- (a) there is information available to the Minister that was not considered by the Innu Government in making its recommendation under 9.6.4. In the event that the Minister requests the reconsideration, the Minister shall provide the Innu Government, the Fisheries Advisory Committee and the Board with the information; or
 - (b) The Minister determines that a recommendation referred to in 9.6.4 is not supported by the information referred to in 9.6.6.

- 9.6.10 On receipt of the request under 9.6.9, the Innu Government shall, within a timeline agreed to by the Innu Government and Minister, either confirm its original recommendation under 9.6.4 or submit a new recommendation to Minister with the data and information on which either the confirmation or the new recommendation is based.
- 9.6.11 If under 9.6.11 the Minister requests a reconsideration of the Innu Basic Needs Level recommended under 9.6.4, the Minister and the Innu Government shall, within an agreed-upon timeline, negotiate for the purposes of establishing a temporary Innu Basic Needs Level. If the Minister and the Innu Government are unable to reach agreement on a temporary Innu Basic Needs Level, the Minister may establish a temporary Innu Basic Needs Level which may differ from the Innu Basic Needs Level recommended under 9.6.4 which will apply until an Innu Basic Needs Level is established in accordance with Part 9.6.
- 9.6.12 If the Minister establishes a temporary Innu Basic Needs Level under 9.6.11, the Minister shall provide the Innu Government with written reasons for that temporary Innu Basic Needs Level.
- 9.6.13 In the event that:
- (a) the Innu Government does not make a recommendation under 9.6.4;
 - (b) the Innu Government does not confirm its original recommendation or submit a new recommendation under 9.6.10; or
 - (c) the Minister believes the recommendation pursuant to 9.6.4 or 9.6.10 is not supported by the information referred to in 9.6.6,
- the Minister and the Innu Government shall negotiate for the purpose of establishing an Innu Basic Needs Level. If no agreement is reached within an agreed upon timeline from the start of the negotiation, the Minister may establish an Innu Basic Needs Level which may differ from the Innu Basic Needs Level recommended, if any, by the Innu Government. The Minister shall provide the Innu Government with written reasons for the established level of the Innu Basic Needs Level.
- 9.6.14 Negotiations under 9.6.11 and 9.6.13 shall be conducted in the manner provided for negotiation of Disputes under Part 26.4, and if the matter is not resolved following negotiation, the Minister and the Innu Government [shall proceed to mediation under Part 26.5 and if the matter is still not resolved thereafter, to Arbitration under Part 26.6.]⁹³
- 9.6.15 The Innu Basic Needs Level shall be reviewed once every fifteen (15) years or earlier, at the request of the Minister or the Innu Government. Any review shall follow the process set out in 9.6.4 to 9.6.14, with any necessary changes as agreed to by the Parties.

⁹³ To be negotiated. Canada has under review.

9.6.16 A Participant shall supply to the Innu Government any information regarding Harvesting activities or Harvesting-related activities as required by the Innu Government which shall be comparable to that provided by Non-Participants to the Minister in comparable circumstances. The Innu Government may seek the advice of the Board in establishing reporting requirements for Participants.

Part 9.7 Process when Total Allowable Harvest [or other measure] to manage the fishery or Total Allowable Catch is less than the Innu Basic Needs Level

9.7.1 The quantity of Fish that may be Harvested in the Innu Domestic Harvest shall not be restricted to an amount less than the Innu Basic Needs Level, except in accordance with this Part.

9.7.2 If the Total Allowable Catch [or other measure] to manage the fishery or Total Allowable Harvest is less than the Innu Basic Needs Level, all Harvesting of that species or stock of Fish or species of Aquatic Plant by individuals other than Participants and an Aboriginal people referred to in 9.7.3 shall be closed and, subject to 9.7.3, the Minister shall allocate the Total Allowable Harvest to Participants.

9.7.3 If an Aboriginal people of Canada, other than the Innu, has an Aboriginal or treaty right in the Labrador Innu Settlement Area with respect to a species or stock of Fish or species of Aquatic Plant to which 9.7.2 applies, the Minister shall, prior to making any allocation of that species or stock of Fish or species of Aquatic Plant, Consult the Innu Government to determine an equitable allocation of the Total Allowable Catch [or other measure] to manage the fishery or Total Allowable Harvest for Participants.

9.7.4 The Minister may terminate the Consultation referred to in 9.7.3 after thirty (30) days if no determination is made and make an equitable allocation to the Innu in accordance with the following:

- (a) the provisions of the Agreement;
- (b) the provisions of the other Aboriginal group's treaty, if applicable; and
- (c) the relevant provisions of any overlap agreement between the Innu and the other Aboriginal group.

Part 9.8 Trade and Transport

9.8.1 No Participant may sell Fish or Aquatic Plants Harvested under 9.4.1 except as provided in 9.8.2(b).

9.8.2 Subject to Innu Laws, Participants have the right to:

- (a) give, trade, exchange or barter with other Participants any Fish or Aquatic Plants Harvested under 9.4.1; and
- (b) sell or give any non-edible by-products of Fish or non-edible Aquatic Plants Harvested under 9.4.1 to any Person.

- 9.8.3 Participants have the right to give, exchange or barter with other Aboriginal individuals in Canada any Fish or Aquatic Plants Harvested under 9.4.1.
- 9.8.4 Participants may be required by the Minister or the Innu Government to obtain a permit to transport Fish or Aquatic Plants outside the Labrador Innu Settlement Area, but:
- (a) the permit shall be issued upon request unless good cause exists for refusing to issue the permit;
 - (b) the permit shall identify where the Fish or Aquatic Plant was Harvested, under what authority it was Harvested, the name of the individual who Harvested it, the name of the individual receiving it, and the method by which it is being transported; and
 - (c) any fee for the permit shall be waived.

Part 9.9 Assignment of Rights

- 9.9.1 Subject to Innu Laws, Participants may assign their right to Harvest Fish or Aquatic Plants under 9.4.1 or 9.4.13, including part or all of their share of an Innu Basic Needs Level, to:
- (a) another Participant;
 - (b) the spouse or individual co-habiting as the spouse of a Participant;
 - (c) a Participant's parent or Child;
 - (d) an individual to whom that Participant stands in the position of a parent; or
 - (e) an individual who stands in the position of a parent to that Participant
- and in all such cases, the assignee shall be subject to the same restrictions as the assignor.
- 9.9.2 An assignment under 9.9.1 shall be in writing and for a term not exceeding one (1) year and may include an option for renewal for a period not exceeding the original term. Any assignment for a term exceeding one (1) year shall be void.
- 9.9.3 Notwithstanding 9.9.1, a Participant may not transfer a share of the Innu Basic Needs Level for a species or stock of Fish or species of Aquatic Plant, or any portion thereof, to an individual referred to in 9.9.1 unless the transfer:
- (a) is permitted by Federal Legislation or Provincial Legislation; and
 - (b) is made without charge.

Part 9.10 Innu Government Jurisdiction

9.10.1 The Innu Government may make laws applying in the Labrador Innu Settlement Area, in relation to:

- (a) the management of the Innu Domestic Harvest;
- (b) the allocation among Participants of the Innu Basic Needs Level and other allocations or amounts of species or stock of Fish or species of Aquatic Plant to which Participants are entitled under this chapter;
- (c) the management of the assignment of rights to Harvest Fish and Aquatic Plants under 9.9.1;
- (d) subject to 9.10.7, the determination of who may:
 - (i) Harvest Fish under Commercial Fishing Licences and Recreational Fishing opportunities;
 - (ii) operate pursuant to Aquaculture licences; and
 - (iii) carry out processing under Fish processing licences, issued to the Innu Government under Parts 9.13 to 9.14;
- (e) the management of all aspects of:
 - (i) giving, trading, exchanging or barter of Fish or Aquatic Plants Harvested by Participants under 9.4.1, and
 - (ii) giving or selling any non-edible by-products of Fish or non-edible Aquatic Plants Harvested by Participants under 9.4.1;
- (f) the collection and publication of Innu environmental knowledge with respect to Fish, Aquatic Plants, and Aquatic Habitat;
- (g) Innu Government programs and measures to promote the maintenance and development of Harvesting and skills among Participants;
- (h) the resolution of disputes among Participants with respect to the Harvesting of Fish and Aquatic Plants; and
- (i) the monitoring of Harvesting of Fish and Aquatic Plants by Participants in accordance with relevant management measures.

9.10.2 The Innu Government may make laws in relation to:

- (a) the management of Aquaculture in Waters and Tidal Waters overlying Labrador Innu Lands;
- (b) subject to Part 7.8, the determination of who may Harvest Fish and Aquatic Plants in Waters and Tidal Waters overlying Labrador Innu Lands; and

- (c) subject to Part 7.8, the management of access to or use of Labrador Innu Lands for purposes of Harvesting Fish and Aquatic Plants.
- 9.10.3 If there is a Conflict between an Innu Law under 9.10.1 or 9.10.2 and a Federal Law or Provincial Law in relation to Conservation, public health or public safety, the Federal Law or Provincial Law prevails to the extent of the Conflict.
- 9.10.4 If there is a Conflict between an Innu Law under 9.10.1 or 9.10.2 and a Federal Law or Provincial Law other than a Federal Law or Provincial Law referred to in 9.10.3, the Innu Law under 9.10.1 or 9.10.2 prevails to the extent of the Conflict.
- 9.10.5 The Innu Government shall:
- (a) inform the Minister and the Board as soon as possible about its proposed measures for the Innu Domestic Harvest; and
 - (b) provide to the Minister and the Board as soon as possible all relevant information about the measures established by it for the Innu Domestic Harvest.
- 9.10.6 The Innu Government shall provide to each individual having a right to Harvest Fish and Aquatic Plants under 9.4.1 documentation that specifies that the individual has a right to Harvest the Fish or Aquatic Plant, and if a Total Allowable Catch [or other measure] to manage the fishery or Total Allowable Harvest is established:
- (a) the species or stock of Fish or species of Aquatic Plant that may be taken by the individual; and
 - (b) the amount of the species or stock of Fish or species of Aquatic Plant that may be taken by the individual.
- 9.10.7 The Innu Government shall not authorize any Non-Participant to Harvest or operate under a Commercial Fishing Licence, Fish processing licence or Aquaculture licence issued to the Innu Government if that Non-Participant is not eligible to be issued a similar licence by the Minister.
- 9.10.8 The Innu Government may:
- (a) promote and undertake research respecting Innu environmental knowledge related to Fish, Aquatic Plants and Aquatic Habitat;
 - (b) conduct Fish, Aquatic Plant and Aquatic Habitat assessment programs and other fisheries research activities in relation to the Labrador Innu Settlement Area, in collaboration with Canada, the Province and the Board;
 - (c) promote the maintenance and development of fishing and related skills among Participants;

- (d) produce and disseminate information about the Innu Domestic Harvest and the Conservation and management of Fish, Aquatic Plants and Aquatic Habitat in the Labrador Innu Settlement Area; and
- (e) provide advice on matters related to Fish, Aquatic Plants and Aquatic Habitat, or the management of fisheries in the Labrador Innu Settlement Area, to bodies with regulatory, management, planning or Environmental Assessment responsibilities for the Labrador Innu Settlement Area.

Part 9.11 Role of the Board

9.11.1 Subject to the Agreement, the Board has the following responsibilities with respect to the Conservation and management of Fish, Aquatic Plants and Aquatic Habitat in the Labrador Innu Settlement Area, and is the Primary Body with respect to:

- (a) providing a recommendation to the Parties pursuant to 9.4.10 in relation to temporary measures established by Canada or the Province pursuant to 9.4.7 or emergency measures established under 9.4.8;
- (b) providing a recommendation to the Parties on the establishment, modification or elimination of a Total Allowable Catch for a species or a stock of Fish or a Total Allowable Harvest for a species of Aquatic Plant in the Labrador Innu Settlement Area pursuant to Part 9.5;
- (c) providing advice concerning an Innu Basic Needs Level to the Innu Government in accordance with 9.6.7; and
- (d) providing advice concerning reporting requirements for Participants regarding Harvesting activities to the Innu Government in accordance with 9.6.16.

9.11.2 The Board may, within its budget, make recommendations to the Minister on the following matters in the Labrador Innu Settlement Area:

- (a) the Conservation of species or stocks of Fish [listed in Schedule XX]⁹⁴, species of Aquatic Plant and Aquatic Habitat;
- (b) the management of fisheries, other than the Innu Domestic Harvest and the Innu Basic Needs Level, with respect to a species or stock of Fish [listed in Schedule XX];
- (c) Federal Legislation, Provincial Legislation, and Innu Law , and policies, plans, programs, standards and guidelines related to the management of Fish, Aquatic Plants and Aquatic Habitat;
- (d) the integration of Nakatuenta and Innu environmental knowledge into decision-making about Fish, Aquatic Plants and Aquatic Habitat;

⁹⁴ To be negotiated. Species List may be included pending resolution of the Marine Zone.

- (e) the Waters and Tidal Waters within which Harvesting of Fish and Aquatic Plants is to be carried out;
- (f) the establishment of Total Allowable Catches, Total Allowable Harvests and allocations [or other measures] to manage the fishery;
- (g) the attachment of catch controls, such as quotas, to fishing licences;
- (h) the management of Recreational Fishing, including the establishment and variation of quotas of Fish that may be taken for Recreational Fishing purposes from a river or watershed or from a Sports Fish Camp;
- (i) the criteria for issuance of Commercial Fishing Licences and licences for the commercial processing of Fish, which may include:
 - (i) traditional participation in the fishery, [adjacency]⁶ and residency requirements;
 - (ii) socio-economic needs; and
 - (iii) economic viability;⁹⁵
- (j) matters related to species or stocks of Fish or species of Aquatic Plant that are Designated Species or Listed Species;
- (k) appropriate mitigation measures or compensation to be required from Developers whose Development activities result in damage to or loss of Fish, Aquatic Plants or Aquatic Habitat;
- (l) the exercise of licensing responsibilities by authorities other than the Minister;
- (m) standards and requirements for the professional certification of fishers engaged in commercial fisheries;
- (n) the use, management and maintenance of fishing or recreational harbours;
- (o) plans for the Conservation and management of Aquatic Habitat;
- (p) the Harvesting of Fish and Aquatic Plants; and
- (q) Aquaculture.

9.11.3 The Board may:

- (a) collect the data necessary to formulate its recommendations;

⁹⁵ To be negotiated. Pending negotiations about Marine Zone.

- (b) subject to Chapter 14, participate in Environmental Assessment processes and recommend to the Minister and the Innu Government measures to monitor impacts of Projects and Undertakings on Fish, Aquatic Plants and Aquatic Habitat;
 - (c) if approved by the Minister and the Innu Government, implement measures to monitor impacts of Projects and Undertakings on Fish, Aquatic Plants and Aquatic Habitat in the Labrador Innu Settlement Area;
 - (d) develop and undertake public education and promote public awareness in relation to Fish, Aquatic Plants, and Aquatic Habitat in the Labrador Innu Settlement Area; and
 - (e) advise the Minister on any matter that relates to Fish, Aquatic Plants, Aquatic Habitat or the management of fisheries in the Labrador Innu Settlement Area and, through advisory processes established by the Minister, the Conservation and management of Fish in Waters and Tidal Waters [adjacent to] the Labrador Innu Settlement Area
- 9.11.4 The Board shall make its recommendations to the Minister under this Part in writing and, at the request of the Minister, include all supporting information.
- 9.11.5 The Board shall:
- (a) Consult the Innu Government before making a recommendation that might affect the Innu Domestic Harvest;
 - (b) notify the Innu Government if it does not accept its advice on the proposed recommendation with reasons in writing; and
 - (c) advise the Minister of the results of the Consultation with the Innu Government.
- 9.11.6 The Minister shall notify the Board, in writing, of his or her decision with respect to any recommendation the Board makes under 9.11.1 and provide timely written reasons if the Minister does not accept its recommendation.
- 9.11.7 The Minister shall seek the advice and recommendations of the Board before establishing special initiatives or programs related to Fish, Aquatic Plants, Aquatic Habitat or the management of fisheries in the Labrador Innu Settlement Area.
- 9.11.8 The Minister shall seek the advice and recommendations of the Board before making any decision to remove or change any of the limited entry criteria applicable to participation in commercial fisheries in the Labrador Innu Settlement Area directed at a species or stock of Fish listed in [Schedule XX] that are in effect on the Effective Date.
- 9.11.9 The Minister shall seek the advice and recommendations of the Board before issuing any Aquaculture licence for a site in the Labrador Innu Settlement Area.

- 9.11.10 The Board shall co-operate with other management institutions which deal with the Harvest of species or stocks of Fish or species of Aquatic Plant in the Labrador Innu Settlement Area.
- 9.11.11 The Board may provide advice and recommendations to the Parties related to the management of Fish, Aquatic Plants and Aquatic Habitat in the Labrador Innu Settlement Area that it considers important even though there may be no specific provision in the Chapter authorizing the Board to provide advice and recommendations on that particular matter.
- 9.11.12 The Parties may request advice and recommendations from the Board on any matter related to Fish, Aquatic Plants and Aquatic Habitat in the Labrador Innu Settlement Area.
- 9.11.13 If requested by two or more Parties, the Board may make recommendations to the requesting Parties with respect to the co-ordination or harmonization of measures for the management of Fish, Aquatic Plants and Aquatic Habitat in the Labrador Innu Settlement Area.

Part 9.12 Role of the Fisheries Advisory Committee

- 9.12.1 On the Effective Date, the Board shall establish the Fisheries Advisory Committee. On the tenth (10) year anniversary of the Effective Date of the Agreement, the Board may extend or modify the mandate of the Fisheries Advisory Committee or disband it.
- 9.12.2 Each Party shall appoint one (1) member to the Fisheries Advisory Committee.
- 9.12.3 The Fisheries Advisory Committee shall:
- (a) be the Primary Body making recommendations to the Board on scientific matters related to the management of Fish, Aquatic Plants and Aquatic Habitat in the Labrador Innu Settlement Area;
 - (b) report directly to the Board;
 - (c) inform the Parties of any recommendations it makes to the Board and provide the Parties with a copy of its recommendations and the data and information on which the recommendations are based; and
 - (d) cooperate with other management institutions which deal with the Harvest of species or stock of Fish or species of Aquatic Plant in the Labrador Innu Settlement Area.
- 9.12.4 The Fisheries Advisory Committee shall, with respect to the Conservation and management of Fish, Aquatic Plants and Aquatic Habitat in the Labrador Innu Settlement Area:
- (a) recommend the establishment, modification or elimination of Total Allowable Catches and Total Allowable Harvests to the Board;

- (b) recommend Conservation and management measures to the Board, including:
 - (i) Harvesting restrictions;
 - (ii) science, monitoring and research respecting the Conservation and management of Fish, Aquatic Plants and Aquatic Habitat;
 - (iii) the establishment of Protected Areas, [Marine Protected Areas]⁹⁶ or National Marine Conservation Areas for Fish, Aquatic Plants and Aquatic Habitat and the activities that may be carried out in those areas;
 - (iv) the activities that may be carried out in areas of important biological productivity to Fish and Aquatic Plants;
 - (v) matters related to species or stocks of Fish or species of Aquatic Plant that are Designated Species or Listed Species;
 - (vi) plans for the re-introduction, re-habilitation or recovery of Fish, Aquatic Plants and Aquatic Habitat;
 - (vii) measures to monitor impacts of Projects and Undertakings on Fish, Aquatic Plants and Aquatic Habitat;
 - (viii) measures for the timely collection, analysis and sharing of data and information; and
 - (ix) measures for the Conservation and Sustainable Utilization of Fish, Aquatic Plants and Aquatic Habitat;
- (c) at the request of the Board, develop and undertake research activities related to Fish, Aquatic Plants and Aquatic Habitat in the Labrador Innu Settlement Area;
- (d) undertake a five (5) year Fish and Aquatic Plant harvest study which shall cover all of the Labrador Innu Settlement Area to determine the Fish and Aquatic Plant Harvest levels of Participants;
- (e) if requested under 9.6.6, assist the Innu Government in establishing the Innu Basic Needs Level; and
- (f) carry out any other activities delegated to it by the Board.

9.12.5

In the event the Board decides to disband the Fisheries Advisory Committee in accordance with 9.12.1, all functions of the Fisheries Advisory Committee set out in this Chapter shall be assumed by the Board.

⁹⁶ To be negotiated. Pending Marine Zone.

Part 9.13 Participation in Commercial Fishery⁹⁷

9.13.1 Canada and the Province shall, at the request of the Innu Government, provide information relevant to commercial fisheries including:

- (a) available information concerning the fleet composition, allocations and quotas;
- (b) available commercial fishing industry cost and earnings information;
- (c) recent estimates of costs associated with the retirement of fisheries access;
- (d) recent estimates of commercial Harvests and landed value; and
- (e) other available general commercial fisheries information.

Part 9.14 Aquaculture and Fish Processing

9.14.1 In accordance with Schedule 9-A, the Innu Government has a right of first refusal to establish any Aquaculture Facility in the Labrador Innu Settlement Area outside Labrador Innu Lands and, upon approval of the Minister, to obtain the Aquaculture licences necessary to establish such Aquaculture Facility.

9.14.2 If the Innu Government does not exercise its right of first refusal under 9.14.1, or if the right of first refusal is exercised and the Innu Government fails, without just cause, to establish and commence operation of an Aquaculture Facility within two (2) years of notifying the Minister of its intention to exercise the right of first refusal pursuant to paragraph 3 of Schedule 9-A, the Minister may declare that the right of first refusal of the Innu Government has lapsed and the opportunity to establish an Aquaculture Facility may then be made available in accordance with paragraph 9 of Schedule 9-A.

9.14.3 If, in any calendar year after the Effective Date, the Minister decides to issue more licences for land-based Fish processing capacity in the Labrador Innu Settlement Area than the number available for issuance in the year of the Effective Date, or to otherwise increase the processing capacity existing on the Effective Date in the Labrador Innu Settlement Area, the Minister shall offer to issue seventy (70) percent of the additional Fish processing licences or processing capacity to the Innu Government.

9.14.4 All licences issued to the Innu Government under Part 9.14 shall be subject to Federal Legislation and Provincial Legislation governing any other similar licence. However, the Innu Government may assign any licence issued to it under Part 9.14 to a Participant or to an Innu Business.

9.14.5 For purposes of calculating the number of licences available for issuance in sections 9.14.1 and 9.14.3, a licence is deemed to be available for issuance if a

⁹⁷ Part 9.13 To be negotiated. Pending Marine Zone.

Person is eligible to be issued the licence in accordance with the then existing provincial policy for the issuance of Aquaculture and Fish processing licences.

Part 9.15 Agreements

- 9.15.1 Any Federal Legislation or Provincial Legislation implementing an International Agreement that relates to any species or stock of Fish, species of Aquatic Plant, Aquatic Habitat or the management of fisheries in or affecting the Labrador Innu Settlement Area shall be interpreted and administered to treat Participants on at least as favourable a basis as any other Aboriginal people of Canada.
- 9.15.2 Canada shall include Innu representation, nominated by the Innu Government, in discussions leading to the formulation of Canada's position respecting any International Agreement, or an amendment thereto, that relates to any species or stock of Fish, species of Aquatic Plant, Aquatic Habitat or the management of fisheries in or affecting the Labrador Innu Settlement Area, and the discussions shall extend beyond those generally available to non-governmental organizations.
- 9.15.3 Any Federal Legislation or Provincial Legislation implementing a Domestic Inter-Jurisdictional Agreement that relates to any species or stock of Fish, species of Aquatic Plant, Aquatic Habitat or the management of fisheries in or affecting the Labrador Innu Settlement Area shall be interpreted and administered to treat Participants on at least as favourable a basis as any other Aboriginal people of Canada affected by the Federal Law or Provincial Law.
- 9.15.4 When Canada or the Province negotiates a Domestic Inter-Jurisdictional Agreement, or an amendment thereto, that relates to any species or stock of Fish, species of Aquatic Plant, Aquatic Habitat or the management of fisheries in or affecting the Labrador Innu Settlement Area, the Innu Government shall have a role in the negotiations commensurate with its status, function and responsibilities. The Innu Government may seek the advice and recommendations of the Board with respect to these negotiations.

Schedule 9-A: Right of First Refusal for Aquaculture in the Labrador Innu Settlement Area outside Labrador Innu Lands

“Designated Operator” means an operator that has been designated by the Innu Government;

1. Any Person other than an Innu Business who intends to apply to the Minister for a licence to carry on Aquaculture in the Labrador Innu Settlement Area outside Labrador Innu Lands shall forward a letter of intent to the Province.
2. Within thirty (30) days from receipt of a letter of intent referred to in paragraph 1, the Minister shall notify the Innu Government.
3. The Innu Government shall have ninety (90) days from receipt of the notice under paragraph 2 to notify the Minister in writing whether or not it intends to exercise the right of first refusal referred to in section 9.11.1.
4. If the Innu Government does not exercise the right of first refusal within the time set out in paragraph 3, the right of first refusal shall lapse.
5. The Minister shall, within twenty-one (21) days from the receipt of notice from the Innu Government that it intends to exercise the right of first refusal, notify the Person referred to in paragraph 1 of the Innu Government's decision.
6. The Innu Government shall have one hundred and twenty (120) days from the date it gives the notice referred to in paragraph 3 within which to complete any required community consultations, identify a Designated Operator, make application for rights to occupy the proposed Aquaculture Facility and apply to the Minister for an Aquaculture licence.
7. The Minister shall approve, with or without conditions, or reject the licence application referred to in paragraph 6 within sixty (60) days of the Innu Government or Designated Operator obtaining an approval required under Part X of the *Environmental Protection Act* (Newfoundland and Labrador) and a recommendation from the aquaculture licensing committee under the *Aquaculture Act* (Newfoundland and Labrador), whichever is later.
8. If the license referred to in paragraph 6 is issued, the Innu Government or Designated Operator must make every attempt to establish the Aquaculture Facility within two (2) years from the date of the license and if the Innu Government or Designated Operator fails, without just cause, to establish the Aquaculture Facility within that time, the Minister may declare that the right of first refusal of the Innu Government has lapsed.
9. If the Minister declares that the right of first refusal of the Innu Government has lapsed or that the licence application of the Innu Government referred to in paragraph 6 has been finally rejected, the opportunity to obtain an Aquaculture licence may then be made available to the original applicant or other third party and the Innu Government shall not have a further right of first refusal in relation to the application, except at the discretion of the Minister.
10. The Minister may extend any time period set out in Schedule 9-A when requested by the Innu Government.

Chapter 10: Harvesting Compensation

Part 10.1 Definitions

10.1.1 In this Chapter:

"Claim" means a claim for Compensation under Part 10.5.

"Claimant" means a Participant;

"Compensation" means

- (a) monetary payment in a lump sum or in periodic payments;
- (b) non-monetary compensation such as the repair, replacement or substitution of damaged or lost property or equipment, restoration in kind, or relocation or transportation of Participants and their equipment to different Harvesting locations;
- (c) interest in accordance with the authority of an Arbitrator to award interest;
- (d) costs in accordance with the authority of an Arbitrator to award costs; or
- (e) a combination of any two or more of (a), (b), (c) or (d).

Part 10.2 General

10.2.1 Whenever "Development" or "Developer" is used in this Chapter it applies only to:

- (a) Developers and Developments in Labrador Innu Lands; and
- (b) Developers of Major Developments and Major Developments in the Labrador Innu Settlement Area outside Labrador Innu Lands.

10.2.2 This Chapter does not apply to:

- (a) a decision or activity related to management of Wildlife or Habitat under Chapter 7;
- (b) a decision or activity related to management of Fish, Aquatic Plants or Habitat under Chapter 9;
- (c) a decision or activity related to management of Migratory Birds or Habitat under Chapter 8; or
- (d) a decision or activity related to management of Forest Resources, Plants, or Habitat under Chapter 11.

10.2.3 Nothing in this Chapter prevents the Innu Government and a Developer from entering into an agreement, including an Impacts and Benefits Agreement, that would replace the Developer's liabilities and obligations under this Chapter. Any such agreement shall be binding on all Participants.

10.2.4 Nothing in this Chapter is intended or is to be construed so as to limit or reduce the liability of a Developer to carry out or pay for Mitigation, compensation or remedial measures under the Agreement or under applicable Federal Law, Provincial Law or Innu Law.

10.2.5 Nothing in this Chapter shall be construed as limiting or restricting any right of recourse that a Developer who is liable under 10.3.1 may have against any Person other than the Claimant.

Part 10.3 Absolute Liability

10.3.1 A Developer is liable absolutely, without proof of fault or negligence, for loss or damage suffered by a Claimant as a result of a Development, in respect of:

- (a) loss or damage to
 - (i) property or equipment used in the Innu Domestic Harvest and the Innu Domestic Harvest;
 - (ii) Wildlife, Migratory Birds, Forest Resources, or Plants reduced into possession under the Innu Domestic Harvest; and
 - (iii) Fish or Aquatic Plants under the Innu Domestic Harvest;
- (b) present and future loss of
 - (i) Wildlife, Migratory Birds, Forest Resources, or Plants Harvested under the Innu Domestic Harvest; and
 - (ii) Fish or Aquatic Plants Harvested under the Innu Domestic Harvest;
- (c) present and future loss of income from any Innu Domestic Harvest where portions of that Harvest are expressly authorized for sale by this Agreement; and
- (d) fair market value of any Forest Resources which the Claimant has been entitled to Harvest under documentation issued pursuant to 11.3.5.

10.3.2 Notwithstanding 10.3.1(b), a Developer who affects Forest Resources during the course of construction authorized for the purposes of establishment or management of a National Park, Protected Area or National Historic Site shall not be liable under 10.3.1(b) for present and future loss of those Forest Resources.

- 10.3.3 Notwithstanding 10.3.1, a Developer is not liable where that Developer establishes that the loss or damage was wholly the result of an act of God, war, hostilities, civil war or insurrection.
- 10.3.4 Section 10.3.1 does not apply to a Developer whose Development existed prior to the Effective Date unless:
- (a) for a Development in Labrador Innu Lands that existed prior to the Effective Date, that Development is expanded or modified after that date, in which case 10.3.1 only applies in respect of that expansion or modification; or
 - (b) for a Development in the Labrador Innu Settlement Area outside Labrador Innu Lands that existed prior to the Effective Date, and which prior to the Effective Date was not a Major Development, that Development is expanded or modified and that expansion or modification will result in the Development, as expanded or modified, involving, during any five (5) year period, either more than two hundred and fifty (250) person-years of employment or capital expenditures of more than fifty (50) million dollars in constant 2005 dollars, in which case 10.3.1 only applies in respect of that expansion or modification.
- 10.3.5 For purposes of 10.3.1, Claimants shall make all reasonable attempts to mitigate the loss or damage referred to in 10.3.1.
- Part 10.4 Limitation of Liability**
- 10.4.1 The Innu Government may make laws in Labrador Innu Lands in relation to the limitation of liability under Part 10.4.
- 10.4.2 If Federal Legislation or Provincial Legislation provides for the limitation of liability of Developers under this Chapter or for methods of setting limits on the liability of such Developers, the Federal Legislation or Provincial Legislation:
- (a) shall require proof of financial responsibility and provide for security deposits by such Developers;
 - (b) shall set limits on liability at levels sufficient to cover reasonably foreseeable damages in relation to various Developments; and
 - (c) may provide for any other matters not inconsistent with this Chapter.
- 10.4.3 If there is a Conflict between an Innu Law under 10.4.1 and Federal Legislation or Provincial Legislation under 10.4.2, the Innu Law prevails to the extent of the Conflict.

10.4.4 Recognizing Innu concerns regarding collection of Compensation, Canada, the Province and the Innu Government shall give consideration to including enforcement mechanisms in Federal Legislation, Provincial Legislation and Innu Law to implement this Chapter.⁹⁸

Part 10.5 Procedure for Making a Claim

10.5.1 A Claimant may pursue a Claim alone, together with other Claimants, or through the Innu Government.

10.5.2 A Claimant shall give written notice of a Claim to a Developer within three (3) years from the date on which the loss or damage occurred or within three (3) years from the date on which the loss or damage became known to the Claimant, whichever is the later, and if not given within that time, no Claim may be made.

10.5.3 The Arbitrator may consolidate Claims where it would be appropriate to do so in accordance with general legal principles applicable to the consolidation of actions, or other similar matters.

10.5.4 If a Claim is not settled within thirty (30) days from the date of receipt by the Developer of the notice referred to in 10.5.2, a Claimant and the Developer may refer the Claim to mediation in accordance with Part 26.4, and if the Claim is not resolved by that mediation or if the Claim is not referred to mediation, the Claimant may refer the Claim to Arbitration in accordance with Part 26.5.

10.5.5 An Arbitrator, in hearing a Claim, shall give weight to Innu environmental knowledge and shall take into account the social, cultural, economic, and commercial importance of Wildlife, Plants, Forest Resources, Migratory Birds, Fish and Aquatic Plants to Participants.

10.5.6 An Arbitrator, within thirty (30) days from the date of completing the hearing of a Claim, shall determine:

- (a) liability under Part 10.4 with respect to the Claim, and apportion liability in accordance with any applicable Federal Law, Provincial Law or Innu Law, subject to 10.5.14; and
- (b) Compensation, and apportion Compensation in accordance with any applicable Federal Law, Provincial Law or Innu Law.

10.5.7 In determining an amount of Compensation to be awarded for loss or damage referred to in 10.3.1, an Arbitrator may take into account any act by the Claimant which contributed to the Claimant's loss or damage.

10.5.8 As a general principle, Compensation shall not be a guaranteed annual income in perpetuity.

⁹⁸ To be negotiated. Canada proposes to delete.

- 10.5.9 A Compensation award may be reviewed by an Arbitrator at the request of the Claimant, the Developer or the Innu Government, if the Innu Government is pursuing a Claim pursuant to 10.5.1, only at such time as new facts or circumstances may arise or new evidence may become available.
- 10.5.10 This Chapter is without prejudice to any other rights or remedies that the Claimant may have under Federal Law or Provincial Law with respect to loss or damage arising out of a Development. However, a Claimant may, at the Claimant's option, pursue a Claim under this Chapter, or under Federal Law or Provincial Law, but not both.
- 10.5.11 If a Claim against a Developer is dismissed, the same Claim may not be made again against the same Developer, but the Claimant may initiate another Claim against another Developer.
- 10.5.12 For greater certainty, an award by an Arbitrator under Part 10.5 may be registered and enforced in the same manner as an Arbitration Decision made by an Arbitrator under Chapter 26.
- 10.5.13 When an Arbitrator decides where to hold a hearing, the convenience of the Claimant shall be a major factor.
- 10.5.14 If an Arbitrator determines that loss or damage referred to in 10.3.1 resulted from the Development of more than one Developer, those Developers shall be jointly and severally liable for the whole loss or damage.

Chapter 11: Forest Resources and Plants

Part 11.1

11.1.1 In this Chapter:

“Habitat” means the physical environment where Plants or Forest Resources occur or on which they depend directly or indirectly in order to carry out their life processes;

“Harvest” means the reduction or attempted reduction of Plants or Forest Resources into possession, by any means or method;

“FMPC” means the Forest Management Planning Committee” the committee outlined in Part 11.7;

“Forest Operation” has a corresponding meaning to “Forest Operator”;

“Forest Operator” means a holder of a right issued by Canada, the Province or the Innu Government to an area of land, or to Forest Resources on the land, for the purpose of obtaining Forest Resources from the land or otherwise producing Forest Resources from the land on a commercial basis;

“Minister” means the member of the Executive Council of Newfoundland and Labrador responsible for the *Forestry Act* (Newfoundland and Labrador);

“Nakatuenta” means that, if there are threats of serious or irreversible damage to Forest Resources or Plants, measures to prevent the reductions or loss of the Forest Resources or Plants should not be postponed for lack of full scientific certainty;

“Primary Body” means the principal body for the responsibilities set out in 11.7.1 when compared to the role of individual interests or stakeholder groups with respect to such responsibilities, but this in no way derogates from the ability of the Parties to seek and consider the advice and views of their departments, or agencies;

“Sustainable Utilization” means the use and management of Forest Resources in a manner that does not impair their viability in order that the needs of the present may be met without compromising the ability of future generations to meet their needs; and

“Sustainable Forest Management” means a policy, method or plan of management to provide for the Conservation and Sustainable Utilization of Forest Resources.

Part 11.2 Innu Ownership and Management

11.2.1 The Innu Government shall own and manage all Forest Resources and Plants on Labrador Innu Lands in accordance with this Agreement.

11.2.2 Subject to 11.2.1, nothing in this Agreement is intended to confer rights of ownership in any Forest Resource or Plant.

Part 11.3 Innu Harvesting

11.3.1 Participants have the right to Harvest Forest Resources and Plants throughout the Labrador Innu Settlement Area without a Provincial permit or without the imposition of any fee⁴³ [or tax]⁹⁹ at all times of the year in accordance with the Agreement for:

- (a) ceremonial purposes; and
- (b) purposes incidental to Harvesting pursuant to any Innu Domestic Harvest that has been established under this Agreement.

11.3.2 For purposes of 17.2.1 and 17.2.2, the Harvesting by Participants under 11.3.1 will be considered rights under the Agreement to the Innu Domestic Harvest and as such, those rights with respect to access to Labrador Innu Settlement Area outside Labrador Innu Lands will be in accordance with and subject to Part 17.2

11.3.3 Participants have the right to Harvest Forest Resources throughout the Labrador Innu Settlement Area at all times of the year to satisfy the domestic requirements of Participants and Innu communal needs for the following purposes:

- (a) firewood for use by Participants;
- (b) construction or maintenance of hunting, trapping and fishing camps;
- (c) Innu traditional medicines, crafts, tools, artwork and other cultural artifacts;
- (d) construction of boats, rafts or other small watercraft;
- (e) wharves, fishing stages, and slipways;
- (f) construction of houses for occupancy by Participants or buildings in an Innu Community; or
- (g) for other related Innu Community purposes.

⁹⁹ To be negotiated. Innu view is that there will be no financial levy of any kind including taxes with respect to this right.; Federal approach is to delete tax so as not to create a tax exemption.

- 11.3.4 The rights of Participants to Harvest Forest Resources under 11.3.3 are subject to:
- (a) Innu Laws;
 - (b) Federal Law or Provincial Law, to the extent necessary for Conservation, public health or public safety;
 - (c) measures for the purposes of Conservation, public health or public safety, established under Federal Law or Provincial Law;
 - (d) limitations reasonably intended to avoid conflicts between other Forestry Activities or operations actually being carried out pursuant to authorizations granted by the Innu Government or the Province or operations identified in the Forest Resource Management Plan; and
 - (e) locations and quantities of Forest Resources and management measures that will be identified in the Five-Year Operating Plan;
 - [(f) limitations provided for elsewhere in the Agreement.¹⁰⁰]
- 11.3.5 Measures referred to in 11.3.4 (c) shall be no greater than necessary to achieve the objective for which they are established and, if there are multiple measures available to achieve the same objective, the measure that involves the lesser limitation on the exercise of Participants rights in the Innu Domestic Harvest shall be established.
- 11.3.6 The Innu Government shall issue, subject to 11.3.4, documentation to each Participant entitled to Harvest under 11.3.3 setting out the volume of Forest Resources in each area referred to in 11.3.4 (e) that the Participant is entitled to Harvest.
- 11.3.7 The rights set out in 11.2.1, 11.3.1, and 11.3.3 do not entitle a Participant or the Innu Government to any compensation for damage to or loss of Forest Resources or Forest Resource Harvesting opportunities in the Labrador Innu Settlement Area resulting from the implementation of a Forest Resource Management Plan or actions necessary for forest protection or forest health.
- 11.3.8 For greater certainty, nothing in 11.3.7 confers immunity for civil liability upon a Forest Operator who violates the conditions of an authorization for the Harvesting of Forest Resources.
- 11.3.9 A Person is not entitled to compensation for a reduction in the value of that Person's interest in land or for any loss or damage to that Person's interest in land that may result from the application of this Chapter, or exercise of rights under this Chapter by Participants.

¹⁰⁰ To be negotiated. Is this clause necessary? If so, pinpoint provisions.

Part 11.4 Trade and Transport

- 11.4.1 Participants have the right to give, exchange or barter with other aboriginal individuals in Canada, any Forest Resources Harvested under 11.3.3 or Plants Harvested pursuant to 11.3.1.
- 11.4.2 Participants have the right to give, trade, exchange or barter with other Participants any Forest Resources Harvested under 11.3.1 or 11.3.3 or Plants Harvested pursuant to 11.3.1 in accordance with Innu Law.
- 11.4.3 Participants have the right to sell to any Person any craft, tool, medicine, artwork or other cultural artifact that they produce from Forest Resources and Plants Harvested under 11.3.1 and 11.3.3 in accordance with Innu Law and any applicable Federal Law or Provincial Law.
- 11.4.4 Except as provided for in Part 11.4, any sale of Forest Resources or Plants Harvested under this Agreement shall be in accordance with Federal Law and Provincial Law.
- 11.4.5 The Harvests set out in 11.3.1 and 11.3.3 shall not:
- (a) be construed to grant any rights to sell Forest Resources except as provided in Part 11.4; or
 - (b) prevent a Person from cutting trees or Harvesting Forest Resources in the Labrador Innu Settlement Area, outside Labrador Innu Lands, in accordance with Federal Law or Provincial Law.
- 11.4.6 Participants may be required by the Minister or the Innu Government to obtain a permit to transport any Forest Resources or Plants outside the Labrador Innu Settlement Area, but:
- (a) the permit shall be issued upon request unless good cause exists for refusing to issue the permit;
 - (b) the permit shall identify where the Forest Resource or Plant was Harvested, under what authority it was Harvested, the name of the individual who Harvested it, the name of the individual receiving it, and the method by which it is being transported; and
 - (c) any fee for the permit shall be waived.

Part 11.5 Assignment of Rights

- 11.5.1 A Participant may assign a right to Harvest under 11.3.1 or 11.3.3 to:
- (a) that Participant's spouse or a Person co-habiting as the spouse of a Participant;
 - (b) that Participant's parent or Child;

- (c) an individual to whom that Participant stands in the position of a parent;
- (d) an individual who stands in the position of a parent to that Participant; or
- (e) another Participant;

and in all such cases, the assignee shall be subject to the same restrictions as the assignor.

- 11.5.2 An assignment under 11.5.1 shall be in writing and made in accordance with Innu Law and identification shall be issued under Innu Law. This assignment shall be for a term not exceeding one (1) year; however, further assignments may be made, but also only for a term not exceeding one (1) year.

Part 11.6 Forest Resource Management Planning

- 11.6.1 Forest Resource Management Plans developed pursuant to Part 11.6 will provide for reasonable opportunities for Participants to Harvest Forest Resources for their needs under 11.3.3 in the Labrador Innu Settlement Area outside of Labrador Innu Lands, but no additional allocation will be made for the purposes of 11.4.1, 11.4.2 and 11.4.3.

- 11.6.2 The FMPC, in determining reasonable opportunities under 11.6.1, must take into account potential opportunities for Harvesting of Forest Resources by Participants in Labrador Innu Lands in order to meet their needs for the purposes of 11.3.3.

- 11.6.3 In exercising powers or carrying out responsibilities in relation to the management of Forest Resources in the Labrador Innu Settlement Area, the Province and the Innu Government shall:
- (a) make management decisions so as to recognize within a Forest Management District the interconnection of Forest Resources with other components of the Environment;
 - (b) use the best information available to inform decisions; and
 - (c) monitor and periodically review management decisions and actions and modify those decisions and actions on the basis of results of such monitoring and review.

- 11.6.4 For greater certainty, nothing in 11.6.3 creates or imposes financial obligations on the Parties.

- 11.6.5 In exercising powers or carrying out responsibilities in relation to Forest Resources, the Innu Government, the FMPC and the Board shall consider relevant and accessible Innu environmental knowledge as well as other types of scientific information and expert opinion, and consider Nakatuenta and Conservation.

- 11.6.6 Innu Government, Participants, or both may provide Innu environmental knowledge, at no cost, to the Board, the FMPC or both, for the purposes of 11.6.5, pursuant to a confidentiality agreement. Such Innu environmental knowledge shall be held in confidence by the Board, the FMPC or both in accordance with the confidentiality agreement, except to the extent necessary to execute their responsibilities under the Agreement.
- 11.6.7 On the Effective Date, [one or more]¹⁰¹ Forest Management Districts will be designated for those portions of the Labrador Innu Settlement Area where Forestry Activities are presently occurring or likely to occur, unless the Province and the Innu Government agree otherwise.
- 11.6.8 The FMPC shall be established upon the designation of the [first]¹⁰¹ Forest Management District under 11.6.7.
- 11.6.9 The FMPC will prepare a draft Forest Resource Management Plan for each District described in 11.6.7 in accordance with the *Forestry Act* (Newfoundland and Labrador), this Part and Part 11.7, and shall forward the draft Forest Resource Management Plan together with any public comments to the Innu Government, the Board and the Minister within one (1) year of the establishment of the FMPC unless otherwise agreed to by the Province and the Innu Government.
- 11.6.10 Within sixty (60) days from the date when the draft of Forest Resource Management Plan is forwarded pursuant to 11.6.9, the Innu Government, the Board, and the Minister shall provide their comments regarding the draft Forest Management Resource Plan to the FMPC.
- 11.6.11 The FMPC shall review any comments received under 11.6.10 and may revise the draft Forest Resource Management Plan.
- 11.6.12 The FMPC shall forward to the Minister and the Innu Government and the Board a final draft Forest Resource Management Plan, within ninety (90) days from the date the draft Forest Resource Management Plan is forwarded pursuant to 11.6.9; and that final draft Plan shall contain a statement that sets out how relevant and accessible Innu environmental knowledge was used along with other relevant and accessible knowledge, information, data, statistics, theory, and experience, including scientific information and theory, expert opinion, and stakeholder, interest group, and public observation, input and experience in formulating the recommendations of the final draft Forest Resource Management Plan.
- 11.6.13 The FMPC shall disband and cease its operation when it has forwarded the draft Forest Resource Management Plan under 11.6.12.
- 11.6.14 Within ninety (90) days from the receipt of the final draft Forest Resource Management Plan under 11.6.12, the Minister may, for those portions of a Forest Management District described in 11.6.7 outside of Labrador Innu Lands:

¹⁰¹ To be negotiated.

- (a) approve the draft Forest Resource Management Plan with or without conditions;
- (b) modify the draft Forest Resource Management Plan; or
- (c) reject the draft Forest Resource Management Plan and substitute a Forest Resource Management Plan,

and shall notify the Innu Government, Board and FMPC of the decision.

11.6.15 Before the Minister:

- (a) imposes any conditions that were not recommended by the FMPC;
- (b) modifies the final draft of the Forest Resource Management Plan that was recommended by the FMPC; or
- (c) rejects the final draft of the Forest Resource Management Plan recommended by the FMPC and substitutes a Forest Resource Management Plan,

the Minister shall provide the Innu Government with written reasons for such proposed action. Within thirty (30) days from the date the reasons are forwarded to the Innu Government, the Innu Government shall provide comments, if any, to the Minister. The Minister shall take into account any comments of the Innu Government before taking action under 11.6.14 (a), (b) or (c).

11.6.16 Those portions of the Forest Resource Management Plan as approved, modified or substituted by the Minister under 11.6.14 shall come into effect upon compliance by the Minister with the requirements of bringing such a plan into force in accordance with the *Forestry Act* (Newfoundland and Labrador).

11.6.17 For greater certainty, and notwithstanding 11.6.26 and 11.6.27, the drafting, bringing into effect, and implementation of Forest Resource Management Plans referred to in 11.6.14 for areas within the Labrador Innu Settlement Area described in 11.6.7 can proceed even in the absence of Forest Resource Management Plans for the areas described in 11.6.19.

11.6.18 The portions of a Forest Resource Management Plan referred to in 11.6.16 shall be implemented by the Minister.

11.6.19 Within ninety (90) days from the receipt of the final draft Forest Resource Management Plan under 11.6.12, the Innu Government may, for those portions of a Forest Management District in Labrador Innu Lands:

- (a) approve the draft Forest Resource Management Plan with or without conditions;
- (b) modify the draft Forest Resource Management Plan; or

- (c) reject the draft Forest Resource Management Plan and substitute a Forest Resource Management Plan,

and shall notify the Minister, Board and FMPC of the decision.

11.6.20 Before the Innu Government:

- (a) imposes any conditions that were not recommended by the FMPC;
- (b) modifies the final draft of the Forest Resource Management Plan that was recommended by the FMPC; or
- (c) rejects the final draft of the Forest Resource Management Plan recommended by the FMPC and substitutes a Forest Resource Management Plan,

the Innu Government shall provide the Minister with written reasons for such action. Within thirty (30) days from the date the reasons are forwarded to the Minister, the Minister shall provide comments to the Innu Government. The Innu Government shall take into account any comments of the Minister before taking action under 11.6.19 (a), (b) or (c).

11.6.21 Those portions of the Forest Resource Management Plan as approved, modified or substituted by the Innu Government under 11.6.19 shall come into effect upon compliance by the Innu Government with the requirements for bringing such plans into force under Innu Law.

11.6.22 For greater certainty, and notwithstanding 11.6.26 and 11.6.27 the drafting, bringing into effect, and implementation of Forest Resource Management Plans under 11.6.19 for areas within Labrador Innu Lands described in 11.6.7 can proceed even in the absence of Forest Resource Management Plans for the areas described in 11.6.14.

11.6.23 Those portions of the Forest Resource Management Plan referred to in 11.6.21 shall be implemented by the Innu Government.

11.6.24 The Minister may for a Forest Resource Management District that does not contain any Labrador Innu Lands, merge Forest Resource Management Plans as approved, modified, or substituted under 11.6.14 with other forest management plans for that Forest Management District to create a district forest management plan for that Forest Resource Management District.¹⁰²

11.6.25 A district forest management plan created under 11.6.24 shall be implemented by the Minister.

11.6.26 The Minister may, with the agreement of the Innu Government for a Forest Management District that does contain Labrador Innu Lands, merge forest management plans as approved, modified, or substituted under 11.6.14 and other forest management plans with the forest management plans of the Innu

¹⁰² To be negotiated.

Government for the Labrador Innu Lands of a Forest Management District to create a district forest management plan under the (Newfoundland and Labrador) for that Forest Management District.

- 11.6.27 A district forest management plan under 11.6.26 shall be implemented:
- (a) in Labrador Innu Lands by the Innu Government, and
 - (b) elsewhere within the Forest Management District by the Minister.
- 11.6.28 The Provincial officials responsible for the Forest Resource Management Plan shall meet with the corresponding officials of Innu Government twice a year, or as otherwise agreed upon by the Province and the Innu Government, to discuss the annual work schedule for the upcoming year and to review reports on past operations for Forest Resource Management Plans developed pursuant to Part 11.6, and other issues related to forest management.
- 11.6.29 Subject to Part 2.22, the Province and the Innu Government agree to exchange information and scientific data on forest resources, such as forest inventories, harvested volumes, and natural disturbance, within the Labrador Innu Settlement Area.

Part 11.7 Forest Management Planning Committee

- 11.7.1 The FMPC shall be the Primary Body with responsibilities for the development of Forest Resource Management Plans within the Labrador Innu Settlement Area, and for advising the Province and the Innu Government, as part of those Forest Resource Management Plans, on the requirements for research and monitoring related to the implementation of such Plans.
- 11.7.2 The FMPC is composed of a chairperson, two (2) representatives of the Innu Government, and two (2) representatives of the Province.
- 11.7.3 The chairperson of the FMPC shall be appointed by and with the agreement of the Province and the Innu Government.
- 11.7.4 If the Province and the Innu Government cannot agree upon the appointment of the chairperson within ninety (90) days from the commencement of discussions for that purpose, or within an agreed-upon longer period:
- (a) the appointment shall be made by the Chief Justice of the Supreme Court of Newfoundland and Labrador, Trial Division – General Division upon the application of either the Province or the Innu Government for such an appointment;
 - (b) within fifteen (15) days of the application referred to in (a), the Province and the Innu Government may each submit the name of one potential appointee to the Chief Justice for consideration; and
 - (c) the Chief Justice, before making the appointment under (a), shall consider, in camera, the ability of the potential appointees put forward

under (b) to discharge the office of chairperson, and the submissions of the Province and the Innu Government regarding that ability.

- 11.7.5 Subject to the Agreement, the FMPC may adopt rules for the performance of its functions, including rules for the calling of meetings, the conduct of business and the carrying on of the work of the FMPC.
- 11.7.6 The FMPC shall operate by consensus wherever possible, failing which the chairperson may call for a vote, but any representative may provide a separate minority report.
- 11.7.7 One member of the FMPC representing the Province and one member of the FMPC representing the Innu Government and the chairperson shall constitute a quorum for all purposes. If failure to constitute a quorum occurs for two (2) consecutive meetings due to the absence of one Party, then a quorum will consist of any two (2) members of the FMPC plus the chairperson.
- 11.7.8 The FMPC may authorize the chairperson or the members to attend meetings, vote and execute other functions of the FMPC by electronic means.
- 11.7.9 The Province and the Innu Government shall each be responsible for the costs of their representative's participation in the FMPC. The members of the FMPC shall receive remuneration for their services as members and shall be paid the expenses necessarily incurred in the discharge of their duties. A public servant appointed to the FMPC shall not receive remuneration in excess of that received as a public servant.
- 11.7.10 Notwithstanding 11.7.7, should either the Province or the Innu Government fail to provide one or both of its representatives within sixty (60) days of a request in writing by the other to do so, the FMPC will be validly constituted without the requested representative or representatives.

Part 11.8 Forest Protection and Forest Health

- 11.8.1 The Minister will remain responsible for forest protection and forest health in the Labrador Innu Settlement Area in accordance with Provincial Law.
- 11.8.2 Provincial Law applies throughout the Labrador Settlement Area with respect to the responsibility and liability of Forest Operators, owners, lessees, licensees or other Persons having possession and control of forest lands on which logging operations or commercial operations are conducted for forest fire suppression and the costs thereof.
- 11.8.3 For the purposes of 11.8.1 and 11.8.5 (b), 11.10.2, and 11.10.6 (b), forest health includes threats to Forest Resources by pests or diseases.
- 11.8.4 The Minister shall Consult with the Innu Government and seek the views of the Board prior to the planning or preparation of any spray programs within the Labrador Innu Settlement Area, and shall only undertake such programs in Labrador Innu Lands if there is no reasonable alternative method for controlling a significant threat to Forest Resources posed by pests or diseases.

- 11.8.5 The Innu Government shall by Innu Law applying
- (a) in Labrador Innu Lands; and
 - (b) to the Harvest under 11.3.3 conducted in Labrador Innu Settlement Area under 11.10.1 (b)

establish forest standards that meet or exceed forest standards established under Provincial Legislation in respect of:

- (i) fire hazard abatement, preparedness and initial suppression; and
- (ii) forest health.

Part 11.9 Timber Revenues and Commercial Operations

11.9.1 The Innu Government has the exclusive authority to establish and to benefit from any rents, royalties, fees⁴³ or charges other than taxes levied in respect of the Harvesting [and management]¹⁰³ of Forest Resources by any Person on Labrador Innu Lands subject to 11.9.2.

11.9.2 Notwithstanding 11.9.1, the Province can continue to impose, collect, and retain fire protection levies⁴³ in accordance with Provincial Legislation on Forest Operators in Labrador Innu Lands.

11.9.3 For greater certainty, levies under 11.9.2 shall be the same for Forest Operators in the Labrador Innu Settlement Area outside Labrador Innu Lands and for Forest Operators in Labrador Innu Lands, unless any differences are both necessary and reasonable.

11.9.4 Notwithstanding the ownership of Labrador Innu Lands in fee simple, 11.9.1, and Part 11.10, the rights of Forest Operators, under Timber leases, licenses or permits existing in Labrador Innu Lands on the Effective Date, and any renewals thereof, continue in effect in accordance with their terms under Provincial Legislation, but the right to receive revenues from those leases, licenses or permits shall be assigned by the Province, subject to 11.9.2, to the Innu Government.

Part 11.10 Innu Government

- 11.10.1 Subject to the Agreement, the Innu Government may make laws in relation to:
- (a) subject to Parts 11.8 and 11.9, the management of Forest Resources on Labrador Innu Lands;
 - (b) Harvesting of Forest Resources in Labrador Innu Lands and the management of Participant Harvesting of Forest Resources in the Labrador Innu Settlement Area under this Agreement; including the

¹⁰³ To be negotiated. Innu propose addition of "and management". Under review by NL.

issuing of licenses, permits or other authorizations, the establishment of terms and conditions applicable to those licenses, permits and authorizations, and the determination, collection, and administration of any fees⁴³, rents, royalties or charges other than taxes in respect of such Harvesting;

- (c) the management of Forestry Activities, including Forest Operations, on Labrador Innu Lands; and
- (d) the approval, modification, rejection, replacement and implementation of Forest Resource Management Plans on Labrador Innu Lands.

11.10.2 If there is a Conflict between an Innu Law under 11.10.1 and a Provincial Law in relation to forestry management, the Innu Law prevails to the extent of the Conflict, except where the Conflict with the Provincial Law relates to public health or safety, or the prevention, management, control or suppression or the costs thereof of forest fires or protection of forest health, in which case the Provincial Law prevails to the extent of the Conflict.

11.10.3 Notwithstanding 11.10.1 and 11.10.2, Provincial Legislation in respect of timber scaling or marking apply to Timber Harvested on Labrador Innu Lands, except the Innu Government may license timber scalers in Labrador Innu Lands.

11.10.4 All commercial Timber Harvested in Labrador Innu Lands will be scaled by a timber scaler licensed either by the Innu Government or under Provincial Legislation. The Innu Government will compile scaling reports on a quarterly basis and will submit those reports to the Province when information is exchanged at the meetings referred to in 11.6.28.

11.10.5 The Innu Government will ensure that methods for conducting Timber scaling and inventories in Labrador Innu Lands are compatible with methods used elsewhere in Labrador.

11.10.6 The Innu Government shall establish measures to ensure that:

- (a) Harvesting under this Chapter in Labrador Innu Lands is consistent with Sustainable Utilization;
- (b) the surveying and monitoring procedures of the Innu Government in Labrador Innu Lands provides for the early detection of forest fire or forest health threats; and
- (c) the locations of and quantities of Participant Harvesting under this Chapter conforms to the Agreement and the applicable Forest Resource Management Plan.

Part 11.11 Role of the Board

11.11.1 The Province, the Innu Government and the FMPC shall keep the Board informed concerning Forest Resources, Forestry Activities and of forest management planning and research within the Labrador Innu Settlement Area.

- 11.11.2 The Province and the Innu Government shall keep the Board informed concerning the status of Forest Resources, Plants and Habitat in the Labrador Innu Settlement Area.
- 11.11.3 The Board may, within its budget:
- (a) provide advice to the Province and the Innu Government on the management of Forest Resources;
 - (b) develop and undertake public education and promote public awareness with respect to Forest Resources within the Labrador Innu Settlement Area;
 - (c) seek the views and advice of the public on matters related to its functions under this Chapter in a manner that avoids duplication of similar activities by the FMPC, or the Province or the Innu Government and their agencies;
 - (d) provide advice regarding the integration of relevant, accessible Innu environmental knowledge and Nakatuenta into decision-making about Forest Resources in the Labrador Innu Settlement Area; and
 - (e) perform any other functions related to the management of Forest Resources in the Labrador Innu Settlement Area delegated to the Board by agreement of the Parties.
- 11.11.4 The Board shall cooperate with the FMPC and other institutions which deal with the management of Forest Resources in the Labrador Innu Settlement Area.
- 11.11.5 The Minister, the Innu Government or both, depending to whom the recommendation of the Board is addressed, shall:
- (a) notify the Board, in writing, of the decision with respect to any recommendation the Board makes under 11.11.3, and
 - (b) shall provide timely written reasons to the Board, for a decision that rejects or varies the recommendation.
- Part 11.12 Endangered Species**
- 11.12.1 The Innu Government, in Consultation with the Province with respect to Designated Species or Canada with respect to Listed Species, has primary responsibility to protect Designated Species or Listed Species of Forest Resources or Plants and the Residences of Designated Species or Listed Species of Forest Resources or Plants on Labrador Innu Lands under Innu Law.
- 11.12.2 The Minister and the Innu Government shall cooperate with each other in preparing and implementing any Recovery Strategy for Designated Species or Listed Species of Forest Resources or Plants occurring on Labrador Innu Lands.
- 11.12.3 Prior to the implementation of any Recovery Strategy for Designated Species or Listed Species of Forest Resources or Plants occurring on Labrador Innu Lands,

the Minister and the Innu Government shall negotiate and implement a Stewardship Agreement, which shall address matters connected with the implementation of the Recovery Strategy for Designated Species or Listed Species of Forest Resources or Plants, and may include provisions related to:

- (a) steps taken by the Minister or the Innu Government in the implementation of the Recovery Strategy for Designated Species or Listed Species of Forest Resources or Plants;
- (b) cooperation and information sharing between the Minister and the Innu Government on matters of mutual interest related to the Stewardship Agreement including the incorporation of Innu environmental knowledge;
- (c) financial matters associated with the implementation of the Recovery Strategy on Labrador Innu Lands; or
- (d) any other matter agreed upon by the Minister and the Innu Government.

11.12.4 Before measures pursuant to the *Endangered Species Act* (Newfoundland and Labrador) are applied to Designated Species on Labrador Innu Lands or before measures pursuant to Federal Legislation are applied to Listed Species on Labrador Innu Lands in relation to Forest Resources or Plants, the Minister must, after Consulting the Innu Government, be of the opinion that Innu Law does not effectively protect Designated Species or Listed Species of Forest Resources or Plants or the Residences of Designated Species or Listed Species of Forest Resources or Plants.

11.12.5 In cases where there is an imminent threat to the survival or recovery of Designated Species or Listed Species of Forest Resources or Plants or to Residences of Designated Species or Listed Species of Forest Resources or Plants, measures pursuant to the *Endangered Species Act* (Newfoundland and Labrador) regarding Designated Species or measures pursuant to Federal Legislation regarding Listed Species may be applied before Consultation with the Innu Government under 11.12.4 and before the negotiation of any Stewardship Agreement under 11.12.3; however, such Consultation and negotiation must occur immediately following the application of the *Endangered Species Act* (Newfoundland and Labrador) or the Federal Legislation applicable to the Listed Species.

Part 11.13 General

11.13.1 Nothing in this Agreement is intended to guarantee the supply of Forest Resources or Plants.

11.13.2 Except for 11.10.1(b), this Chapter does not apply in a National Park.

Chapter 12: Water Management and Innu Water Rights¹⁰⁴

Part 12.1 Definitions

12.1.1 In this Chapter:

"Adjacent to Labrador Innu Lands" means adjoining Labrador Innu Lands by touching or sharing a boundary of Labrador Innu Lands to the extent of the touching or sharing;

"Compensation Agreement" means an agreement between the Innu Government and a Developer under Part 12.6;

"Innu Applicant" means, for the purposes of Part 12.4, a Participant, the Innu Government or an agency of the Innu Government; and

"Production" includes Exploration for, extraction, mining, quarrying, milling, concentrating, transportation, or marketing of, and the operation and construction of related infrastructure and facilities in relation to [Minerals, Petroleum, Quarry Materials or Geothermal Resources]¹⁰⁵;

Part 12.2 Innu Water Rights

12.2.1 Except as provided for in 12.3.3, 12.3.4 and 12.3.7, no Person may Use Water which is on, in, under, or flowing through Labrador Innu Lands except in accordance with the provisions of Part 12.4.

12.2.2 Subject to this Chapter, Participants have the right to Use and enjoy Water which is on, in, under or flowing through Labrador Innu Lands or Adjacent to Labrador Innu Lands substantially unaltered as to quantity, quality and rate of flow.

12.2.3 The right referred to in 12.2.2 is vested in the Innu Government for the use and benefit of Participants.

Part 12.3 General

12.3.1 Subject to this Chapter, the Provincial Minister has the authority and responsibility for the management and Use of Water in the Labrador Innu Settlement Area, but nothing in this Chapter affects jurisdiction with respect to navigation [and shipping].¹⁰⁶

¹⁰⁴ To be negotiated. Canada's involvement/engagement in Chapter 12 and the effect of any related references to "Water" in the Agreement will be considered and Canada's views will be relayed for discussion after the AIP.

¹⁰⁵ To be negotiated. Innu query whether the bracketed text should be replaced with "Subsurface Resources." NL explained the need to keep this version of the definition as a 'chapter only definition' for the grandfathering under 12.4.6 (a) (ii) and see associated changes to that provision.

¹⁰⁶ To be negotiated. Canada and NL agree that shipping should be included here, in addition to

- 12.3.2 Except as provided for in 12.3.3, 12.3.4 and 12.3.7, no Person may Use Water in the Labrador Innu Settlement Area without obtaining a Water Use Permit from the Minister.
- 12.3.3 Participants may Use Water in the Labrador Innu Settlement Area for personal, family or domestic purposes, including hygiene and sanitation, for purposes related to the Innu Domestic Harvest and for transportation associated with such Harvesting without obtaining a Water Use Permit from the Minister and without charge, but nothing in 12.3.3 precludes charges¹⁰⁷ for Water services by the Person providing those services.
- 12.3.4 Nothing in this Chapter affects any right that a natural person may have to Use and enjoy Water for domestic purposes pursuant to Federal Legislation or Provincial Legislation.
- 12.3.5 The exercise of the rights referred to in 12.3.3, 12.3.4, 12.2.1 and 12.2.2 is subject to:
- (a) the public right of navigation¹⁰⁸;
 - (b) the temporary Use of Water for emergency purposes, including fire fighting; and
 - (c) Water Use rights under 12.3.7.
- 12.3.6 Nothing in this Chapter permits a Person to discharge Waste into Water without a Water Use Permit from the Minister.
- 12.3.7 Rights to Use of Water in the Labrador Innu Settlement Area existing on the Effective Date under a grant, lease, licence, or other instrument or under Federal Legislation or Provincial Legislation shall:
- (a) continue in accordance with the grant, lease, licence, or other instrument or under Federal Legislation or Provincial Legislation, subject to Federal Legislation or Provincial Legislation; and
 - (b) in the event that the right to Use of Water under 12.3.7(a) with respect to Labrador Innu Lands does not specify the quantity of Water to be used in Labrador Innu Lands, the quantity of Water that can be used in Labrador Innu Lands by the holder of the right will be negotiated between the Innu

navigation. Innu are considering this.

¹⁰⁷ Legal drafting. Canada's approach is to use a term other than "charge" to avoid the interpretation that "charge" includes a tax. Parties to review the use of terms referring to financial levies, including royalties, rentals, incentives, subsidies, securities, imposts, fees, charges, assessments and other financial levies.

¹⁰⁸ To be negotiated: Canada and NL agree that this should read "the public right of navigation". Innu have under review whether this is acceptable, as compared to the prior draft wording which said "federal jurisdiction over shipping and navigation". Review is also tied to review of 12.3.1.

Government and the Minister, and included in the Water Use Permit but the holder of the right may not use a quantity of Water that exceeds the highest annual quantity used by that holder in Labrador Innu Lands in the five (5) years preceding the Effective Date, unless and until otherwise agreed to by the Minister and the Innu Government.

- 12.3.8 Any application for an amendment to a right under 12.3.7 that is required for purposes of a Use of Water in relation to a physical enlargement or a change in the nature of a Major Development in existence on the Effective Date shall be effected by the issuance of a Water Use Permit in accordance with the provisions of this Chapter; and [for greater certainty] such an application or amendment falling under Parts 5 or 6 shall be effected in accordance with Parts 5 and 6.
- 12.3.9 Notwithstanding any other provision of this Chapter, [but subject to 12.3.7]¹⁰⁹, Labrador Innu Lands may not be flooded or used for the storage or diversion of Water by any Person without the consent of the Innu Government.
- 12.3.10 Except as provided in 12.2.2, 12.3.3 and 12.3.11, this Chapter does not apply to National Historic Sites, National Parks, National Marine Conservation Areas or Marine Protected Areas.
- 12.3.11 12.3.3 shall not be construed so as to entitle a Participant to remove Water from a National Park, National Marine Conservation Area, Migratory Bird Sanctuary, National Historic Site or Marine Protected Area except when the Water is carried by a Participant for the purposes of 12.3.3 when travelling.
- 12.3.12 Except as provided in this Chapter, nothing in Part 12.4 restricts the Minister's power to:
- (a) Use Water on, in, under or flowing through Labrador Innu Lands or Adjacent to Labrador Innu Lands for purposes related to management, research, protection and conservation of Water, aquatic life and aquatic habitat;
 - (b) establish standards and measures for the protection of Water, including community Water supplies, on, in, under or flowing through Labrador Innu Lands or Adjacent to Labrador Innu Lands;
 - (c) Use Water or authorize the Use of Water on, in, under or flowing through Labrador Innu Lands or Adjacent to Labrador Innu Lands for the purpose of fighting fires;
 - (d) establish flood control measures, develop flood plain management strategies and designate flood risk zones with respect to Water flowing

¹⁰⁹ To be negotiated. The Innu propose to remove the square brackets around "but subject to 12.3.7", and to have an interim measure providing that, between Agreement in Principle and Agreement, NL would agree that the lands selected as LIL may not be flooded or used for the storage or diversion of Water by any Person without the consent of the Innu Government.

on, in, under or flowing through Labrador Innu Lands or Adjacent to Labrador Innu Lands;

- (e) carry out or authorize hydrologic data collection and hydrologic research with respect to Water on, in, under or flowing through Labrador Innu Lands or Adjacent to Labrador Innu Lands; and
- (f) Use Water or authorize the Use of Water on, in, under or flowing through Labrador Innu Lands or Adjacent to Labrador Innu Lands for any other similar purpose that is in the common interest of Participants and the other residents of the Labrador Innu Settlement Area;

but nothing in 12.2.12 permits a Use of Water with respect to Water on, in, under, or flowing through Labrador Innu Lands or Adjacent to Labrador Innu Lands for purposes of a Development.

- 12.3.13 Nothing in 12.3.12 affects the Minister's liability under Federal Law or Provincial Law.
- 12.3.14 The Innu Government has no responsibility and incurs no liability with respect to any matter referred to in 12.3.12 and nothing in 12.3.12 abrogates or derogates from the rights of Participants under Part 12.2.
- 12.3.15 The Minister shall, as soon as is reasonably possible, Consult, except in the case of emergencies, the Innu Government, and seek the recommendations of the Board on:
- (a) proposals with respect to matters set out in 12.3.12;
 - (b) any proposed changes to Federal Legislation or Provincial Legislation, policies or guidelines that may affect the Use of Water in Labrador Innu Settlement Area; and
 - (c) the establishment of any additional purposes not specifically prescribed in the *Water Resources Act* (Newfoundland and Labrador) for which the Minister is considering issuing a Water Use Permit for the Use of Water in the Labrador Innu Settlement Area.
- 12.3.16 The Minister shall notify the Board, in writing, of the Minister's decision with respect to any recommendation the Board makes under 12.3.15, and shall provide timely written reasons to the Board, for a decision that rejects or varies the recommendation.
- 12.3.17 If a Water Use in a National Historic Site, National Park, National Marine Conservation Area or [Migratory Bird Sanctuary]¹¹⁰ negatively affects the Water rights of Participants under 12.2.2, Participants shall be entitled to compensation in respect of the factors set out in 12.6.5 or as set out in the relevant Park Impacts and Benefits Agreement or Protected Area Agreement.

¹¹⁰ To be negotiated. Inclusion of Migratory Bird Sanctuary is under review by Canada.

- 12.3.18 Nothing in this Chapter exempts a Developer from any requirements pursuant to Chapters 14 and 15, or 12.3.7(b).
- 12.3.19 Nothing in this Chapter precludes the Innu Government, a Participant or an Innu Business from selling Water in accordance with Provincial Legislation after obtaining a Water Use Permit.
- 12.3.20 The Innu Government shall be entitled to one or more Water Use Permits to take Water from one or more locations in the Labrador Innu Settlement Area on an as is basis¹¹¹ for purposes of water bottling and other finished water-based products, up to a total of 50,000 litres of Water per day from any one or more of such locations, without being required to pay:
- (a) any taxes¹¹², royalties, rentals, incentives, subsidies, securities, imposts, fees⁴³, charges, assessments, or other Provincial financial levies that could be charged, assessed, levied, imposed on or paid by a third party for the same or a comparable Use of Water; or
 - (b) any application or processing fees.
- 12.3.21 The Use of Water referred to in 12.3.20 is subject to any pre-existing Water Uses at the location or locations chosen for the purposes referred to in 12.3.20.
- 12.3.22 A Water Use Permit issued to the Innu Government under 12.3.20 may be assigned by the Innu Government to an Innu Business or a Participant under 12.4.13.
- Part 12.4 Administration of Water Uses in Labrador Innu Lands**
- 12.4.1 No Person, including the Innu Government, may Use Water which is on, in, under or flowing through Labrador Innu Lands for any purpose other than one referred to in 12.3.3 or 12.3.4 without a Water Use Permit issued by the Minister.
- 12.4.2 An Innu Applicant that requires a Water Use Permit pursuant to 12.4.1 shall apply, including an Innu Applicant applying for the Use of Water solely by the Innu Applicant under 12.4.1, to the Minister for a Water Use Permit and the Minister shall consider and decide upon such applications, subject to the following:
- (a) while the Innu Applicant shall be required to pay all taxes, royalties, rentals, incentives, subsidies, securities, imposts, fees⁴³, charges, assessments, or other Provincial financial levies, that are or would be charged, assessed, levied, imposed on or paid on or by a third party for the same or a comparable Use of Water, the Innu Applicant shall not be required to pay an application or processing fee for that Water Use Permit;

¹¹¹ Legal drafting. The Parties will consider refining "on an as is basis".

¹¹² To be negotiated. Federal approach is to delete "tax" so as to not create a tax exemption. Innu view is that the exercise of the right should be exempt from tax.

- (b) while the Minister may attach terms and conditions to the Water Use Permit, the Minister may not attach terms and conditions that are more onerous than the terms and conditions attached to Water Use Permits issued, or that would be issued to third parties, for the same or comparable Uses of Water; and
- (c) such a Water Use Permit, if issued, cannot be assigned or otherwise transferred by the Innu Applicant, except in accordance with 12.4.13.

12.4.3 If a Person, other than the Innu Government or an agency or department of the Innu Government, wishes to Use Water which is on, in, under or flowing through Labrador Innu Lands for a purpose other than one referred to in 12.3.3, 12.3.4, 12.3.7 or Parts 12.5 and 12.6, that Person shall, before submitting an application under Provincial Legislation for the Use of Water to the Minister, submit an application for the Use of Water to the Innu Government in compliance with the requirements of Innu Law for such an application.

12.4.4 The Innu Government may reject or approve, with or without conditions, an application for the Use of Water referred to in 12.4.3.

12.4.5 In the case of a rejection of an application under 12.4.3, the Innu Government shall provide written reasons to the Minister for the rejection of the application.

12.4.6 Notwithstanding 12.4.4:

- (a) [and for greater certainty] in relation to 12.3.7, a Use of Water on, in, under or flowing through Labrador Innu Lands in relation to:
 - (i) Exploration for Subsurface Resources which commenced prior to the Effective Date under a Subsurface Interest for the duration of the Subsurface Interest;
 - (ii) any Production commenced prior to the Effective Date for the duration of the authorized Production; and
 - (iii) all other Uses of Water falling under 12.3.7; and
- (b) a Use of Water on, in, under or flowing through Labrador Innu Lands in relation to Exploration in Labrador Innu Lands or quarrying in Labrador Innu Lands which is authorized in accordance with Chapter 5.

is deemed to have been approved without conditions under 12.4.4.

12.4.7 If an application for the Use of Water is approved under 12.4.4 by the Innu Government or is deemed to have been approved under 12.4.6, with or without conditions, the Person may then submit the application for the Use of Water, as approved or deemed to have been approved by the Innu Government, to the Minister, who shall decide whether to issue the Water Use Permit in accordance with Part 12.4.

- 12.4.8 The Minister shall not reject an application referred to in 12.4.7 unless the Minister determines that the proposed Water Use will have adverse effects outside Labrador Innu Lands for which compensation to a Person whose rights would be detrimentally affected by the issuance of the Water Use Permit is not possible or would not be adequate.
- 12.4.9 The Minister shall issue a Water Use Permit in accordance with Part 12.4 with or without conditions for a Use of Water for the purposes of a community water supply, which is on, in, under or flowing through Labrador Innu Lands, if such Use of Water has been approved by the Innu Government.
- 12.4.10 Nothing in this Chapter affects the discretion of the Minister to prohibit the bulk removal of water from Newfoundland and Labrador in accordance with Provincial Legislation.
- 12.4.11 Nothing in this Chapter affects the discretion of the Minister to refuse to issue a Water Use Permit which is subject to this Chapter, including a Water Use Permit under 12.4.8, for reasons of public health but the Minister shall exercise this discretion only after Consultation with the Innu Government.
- 12.4.12 Prior to rejecting an application for the Use of Water referred to in 12.4.7 or establishing terms and conditions with respect to an application for the Use of Water referred to in 12.4.7 that are different from those established by the Innu Government under 12.4.4, the Minister shall Consult the Innu Government with a view to reaching an agreement. If no agreement is reached, the Innu Government may:
- (a) reject the issuance of the Water Use Permit, in which case it shall not be issued; or
 - (b) agree to the issuance of the Water Use Permit on the terms and conditions established by the Minister.
- 12.4.13 A Water Use Permit issued to the Innu Government may be assigned by the Innu Government to an Innu Business or a Participant, but the Innu Government shall remain responsible for satisfying the terms and conditions of the Water Use Permit.
- Part 12.5 Administration of Water Uses in the Labrador Innu Settlement Area outside Labrador Innu Lands**
- 12.5.1 Before determining whether to issue a Water Use Permit in the Labrador Innu Settlement Area outside Labrador Innu Lands, or a Water Use Permit outside the Labrador Innu Settlement Area that may affect Water or a Water Use in the Labrador Innu Settlement Area, the Minister shall Consult the Innu Government with respect to the application for such a Use of Water, and shall, in making the determination, take into account:
- (a) the impact of the proposed Water Use on Fish, Aquatic Habitat, Aquatic Plants, Wildlife, Migratory Birds, Plants and Habitat in the Labrador Innu Settlement Area;

- (b) the impact of the proposed Water Use on the Harvesting rights of Participants applicable in Labrador Innu Settlement Area under the Agreement;
 - (c) the impact of the proposed Water Use on the quantity, quality or rate of flow of Water on, in, under or flowing through Labrador Innu Lands or Adjacent to Labrador Innu Lands;
 - (d) measures to mitigate any negative effects or impacts on the proposed Water Use;
 - (e) existing water rights; and
 - (f) any other matters that the Innu Government and the Minister consider relevant.
- 12.5.2 The Minister shall seek the recommendations of the Board, if the Minister is considering issuing a Water Use Permit pursuant to 12.5.1 in relation to the following matters:
- (a) an undertaking in respect of which the required Water Use Permit contravenes a policy of the Province; or
 - (b) an inter-basin transfer of Water.
- 12.5.3 The Minister shall notify the Board, in writing, of the Minister's decision with respect to any recommendation the Board makes under 12.5.2, and shall provide timely written reasons to the Board, for a decision that rejects or varies the recommendation.
- 12.5.4 Notwithstanding the definition of Consultation, if a timetable is established in relation to the issuance of Water Use Permits outside the Labrador Innu Settlement Area under Provincial Legislation, Consultation with respect to the issuance of a Water Use Permit under 12.5.1 shall be carried out and the recommendations of the Board issued to the Minister in time for the Minister to appropriately consider and decide upon those recommendations within that timetable. The Innu Government shall be given the full period of time available under that Provincial Legislation to complete the Consultation.
- 12.5.5 If the Minister, after Consulting the Innu Government in accordance with 12.5.1, determines that the Water Use may affect the rights of Participants applicable in the Labrador Innu Settlement Area under the Agreement, the Minister shall not issue a Water Use Permit in the Labrador Innu Settlement Area outside Labrador Innu Lands, unless:
- (a) the Innu Government concurs with the issuance of the Water Use Permit; or
 - (b) the Minister also determines that:

- (i) there is no alternative which could reasonably satisfy the requirements of the applicant; and
- (ii) if there is no reasonable alternative, there are no reasonable measures whereby the applicant could avoid affecting the rights of Participants applicable in the Labrador Innu Settlement Area under the Agreement.

Part 12.6 Compensation

- 12.6.1 The rights set out in 12.2.2 entitle the Innu Government to compensation in accordance with Part 12.6.
- 12.6.2 After the Effective Date, no Water Use Permit shall be issued to a Developer in respect of a Development in the Labrador Innu Settlement Area that will substantially alter the quantity, quality or rate of flow of Water on, in, under or flowing through Labrador Innu Lands or Adjacent to Labrador Innu Lands unless, after the Minister has made the determinations referred to in 12.5.5(b) or the Innu Government has concurred with the issuance of the Water Use Permit under 12.5.5(a):
- (a) the Developer has entered into a Compensation Agreement with the Innu Government in accordance with Part 12.6 or an Arbitrator has made a determination in accordance with Part 12.6; or
 - (b) the Developer and the Innu Government have agreed on compensation provisions regarding the matters referred to in 12.6.5 within an Impacts and Benefits Agreement.
- 12.6.3 Unless an Impacts and Benefits Agreement referred to in 12.6.2(b) has been reached, a Developer and the Innu Government shall negotiate for the purpose of reaching a Compensation Agreement. If the Developer and the Innu Government are unable to reach a Compensation Agreement within seventy-five (75) days of the commencement of negotiations, or within any other period of time established by agreement between the Innu Government and the Developer for the purpose of concluding a Compensation Agreement, either the Developer or the Innu Government may refer any matter in Dispute to Arbitration under Chapter 26.
- 12.6.4 For the purpose of 12.6.3, negotiations shall be deemed to have commenced seven (7) days after the proposed Development has been released or exempted from Environmental Assessment.
- 12.6.5 If a Dispute over compensation is referred to Arbitration under 12.6.3, the Arbitrator, in determining the compensation to be awarded to the Innu Government under a Compensation Agreement for the change in quality, quantity or rate of flow of Water on, in, under or flowing through Labrador Innu Lands or Adjacent to Labrador Innu Lands caused by the Development, shall take into account:

- (a) the anticipated adverse effects, including anticipated incremental and cumulative effects, of the change in quality, quantity or rate of flow of Water on, in, under or flowing through Labrador Innu Lands or Adjacent to Labrador Innu Lands;
- (b) the anticipated nuisance, inconvenience, disturbance or noise caused by the change in quality, quantity or rate of flow of Water on, in, under or flowing through Labrador Innu Lands or Adjacent to Labrador Innu Lands;
- (c) the anticipated adverse effects of the change in quality, quantity or rate of flow of Water upon pre-existing Water Uses by Participants in Labrador Innu Lands;
- (d) the cultural attachment of Participants to Labrador Innu Lands, including Water, which would be adversely affected by the change in quality, quantity or rate of flow of Water;
- (e) the decrease in value of Labrador Innu Lands, including Water, that is likely to be affected by the change in quality, quantity or rate of flow of Water;
- (f) the level of damage which is likely to result from the change in quality, quantity or rate of flow of Water on, in, under or flowing through Labrador Innu Lands or Adjacent to Labrador Innu Lands;
- (g) interference with the rights of Participants applicable in the Labrador Innu Settlement Area under the Agreement resulting from the change in quality, quantity or rate of flow of Water on, in, under or flowing through Labrador Innu Lands or Adjacent to Labrador Innu Lands; and
- (h) any other matters the Arbitration Panel may consider relevant for purposes of determining the compensation payable as a result of the change in quality, quantity or rate of flow of Water on, in, under or flowing through Labrador Innu Lands or Adjacent to Labrador Innu Lands.

12.6.6 An Arbitrator shall presume that a substantial change in the quantity, quality or rate of flow of Water on, in, under, flowing through, or Adjacent to Labrador Innu Lands entitles the Innu Government to compensation.

12.6.7 An Arbitration Decision under 12.6.5 shall be made within ninety (90) days of receiving a reference under 12.6.3.

12.6.8 A determination of compensation made by the Arbitrator under 12.6.7 may provide for periodic payments, and if periodic payments are provided for, shall also provide for periodic review of these payments for the purpose of adjustments, having due regard to the nature and duration of the Water Use.

- 12.6.9 Nothing in Part 12.6 restricts any of the rights or remedies of the Innu Government in the event that a Person:
- (a) Uses Water without a required Water Use Permit;
 - (b) breaches the terms and conditions of a Water Use Permit so as to affect the rights under 12.2.2; or
 - (c) breaches the terms or conditions of a Compensation Agreement.

Part 12.7 Further Negotiations

- 12.7.1 Prior to the Agreement, the Parties shall determine whether any other provision of this Chapter will apply in a National Park.

Chapter 13: National Parks and National Marine Conservation Areas

Part 13.1 Definitions

13.1.1 In this Chapter:

“Park Impacts and Benefits Agreement” means an agreement described in 13.5.1 with respect to a National Park or National Marine Conservation Area.

Part 13.2 Mealy Mountains / Akamiuapishku National Park¹¹³

13.2.1 Canada and the Province, in cooperation with the Innu Nation and others, are carrying out a study of the feasibility of establishing the proposed Mealy Mountains / Akamiuapishku National Park.

13.2.2 Once the feasibility study referred to in 13.2.1 is finalized, and if Canada, the Province and the Innu Nation conclude that it is desirable to establish the Mealy Mountains / Akamiuapishku National Park:

- (a) Canada and the Province undertake to negotiate an agreement providing for the transfer of administration and control of the Crown lands necessary for the establishment of the proposed Mealy Mountains / Akamiuapishku National Park to Canada in accordance with the *Canada National Parks Act* (Canada) and the Agreement, and shall Consult the Innu Nation prior to finalizing that agreement; and
- (b) Canada and the Innu Nation undertake to negotiate a Park Impacts and Benefits Agreement in relation to the proposed Mealy Mountains / Akamiuapishku National Park in accordance with the *Canada National Parks Act* (Canada) and the Agreement, and shall jointly provide a copy of the Park Impacts and Benefits Agreement to the Province prior to its signing.

13.2.3 The agreements referred to in 13.2.2 shall be signed simultaneously.

13.2.4 Subject to the conclusion of the agreements referred to in 13.2.2, and in accordance with the *Canada National Parks Act* (Canada), Canada shall on the Effective Date:

- (a) establish the Mealy Mountains / Akamiuapishku National Park; or
- (b) establish the Mealy Mountains / Akamiuapishku National Park Reserve of Canada, if a claim in respect of Aboriginal rights has been accepted by Canada that overlaps in whole or in part the proposed Mealy Mountains / Akamiuapishku National Park.

¹¹³ The Parties agree that 13.2.1 - 13.2.4 will not be included in the Agreement if completed prior to then-Innu would like to include this wording until then for greater certainty.

Labrador Innu Land Claims Agreement National Parks and National Marine Conservation Areas

13.2.5 Canada undertakes to Consult the Innu Government with respect to the establishment of the Mealy Mountains / Akamiupishku National Park Reserve as a National Park.

13.2.6 For greater certainty, Part 13.3, 13.4.6, 13.4.7 and Parts 13.5, 13.6 and 13.7 apply to the Mealy Mountains / Akamiupishku National Park [Reserve].

Part 13.3 General

13.3.1 Except as may be provided in the Agreement, or in a Park Impacts and Benefits Agreement, the establishment of, or significant enlargement to the boundaries of, a National Park or National Marine Conservation Area in or adjacent to the Labrador Innu Settlement Area shall not affect the rights of Participants or the Innu Government under the Agreement.

13.3.2 The rights of Participants, as set out in the Agreement, to use lands and resources within a National Park or National Marine Conservation Area in the Labrador Innu Settlement Area shall be set out in Federal and Innu Government policies and in public information programs and materials.

13.3.3 Federal and Innu Government publications informing the public primarily about a National Park or National Marine Conservation Area in the Labrador Innu Settlement Area shall also be available in Innu-aimun.

13.3.4 No lands in the Labrador Innu Settlement Area shall be removed from a National Park or National Marine Conservation Area without the [consent]¹¹⁴ of the Innu Government.

13.3.5 In the event Canada intends to divest all or any part of its title to lands in a National Park or National Marine Conservation Area in the Labrador Innu Settlement Area, title to those lands shall revert back to the Province and remain part of the Labrador Innu Settlement Area.

Part 13.4 Establishment of National Parks and National Marine Conservation Areas in the Labrador Innu Settlement Area

13.4.1 The Parties may agree to establish a National Park or National Marine Conservation Area in the Labrador Innu Settlement Area in accordance with this Chapter and the *Canada National Parks Act* (Canada) or the *Canada National Marine Conservation Areas Act* (Canada).

13.4.2 Except for the establishment of the proposed Mealy Mountains / Akamiupishku National Park in accordance with Part 13.2, the process of establishing a new National Park or National Marine Conservation Area in the Labrador Innu Settlement Area shall be subject to the provisions of the Land Use Plan. The provisions of the Land Use Plan do not apply to a National Park or National Marine Conservation Area once established or to an enlargement of the boundaries of a National Park or National Marine Conservation Area, in the Labrador Innu Settlement Area.

¹¹⁴ To be negotiated. Province has under review.

- 13.4.3 Canada and the Province, in cooperation with the Innu Government, and others if appropriate, shall carry out a study of the feasibility of establishing or significantly enlarging the boundaries of any National Park or National Marine Conservation Area in the Labrador Innu Settlement Area outside Labrador Innu Lands.
- 13.4.4 Once the feasibility study referred to in 13.4.3 is finalized, and if Canada concludes that it is desirable to establish or significantly enlarge the boundaries of the National Park or National Marine Conservation Area in the Labrador Innu Settlement Area outside Labrador Innu Lands, Canada shall:
- (a) invite the Province to negotiate an agreement providing for the transfer of administration and control of the necessary Crown lands to Canada in accordance with the *Canada National Parks Act (Canada)* or the *Canada National Marine Conservation Areas Act (Canada)*, as applicable, and the Agreement, and shall jointly Consult the Innu Government prior to finalizing that agreement; and
 - (b) invite the Innu Government to negotiate a Park Impacts and Benefits Agreement in accordance with the *Canada National Parks Act (Canada)* or the *Canada National Marine Conservation Areas Act (Canada)* and the Agreement, and shall jointly provide a copy of the Park Impacts and Benefits Agreement to the Province prior to its signing.
- 13.4.5 The agreements referred to in 13.4.4 shall be signed simultaneously.
- 13.4.6 The Parties shall negotiate interim measures for an area of land agreed to by the Parties for the purposes of protecting lands proposed for the inclusion in a National Park or National Marine Conservation Area in the Labrador Innu Settlement Area prior to Canada accepting the administration and control of the lands pursuant to the agreements referred to in 13.2.2 (a) or 13.4.4(a).
- 13.4.7 The Parties agree that the following activities shall not be permitted within a National Park in the Labrador Innu Settlement Area or on lands over which Canada has accepted the administration and control of, pursuant to the agreements referred to in 13.2.2 (a) or 13.4.4(a):
- (a) exploration for and development of Subsurface Resources, except as provided in 13.6.4, and except for Quarry Material that may be required for construction necessary or related to a National Park; and
 - (b) commercial Harvesting of Plants, Aquatic Plants, Forest Resources, Fish or Migratory Birds except for the trapping of furbearers by Participants in accordance with Chapter 7 and related non-consumptive commercial activities; and
 - (c) Commercial Wildlife Operations, except non-consumptive commercial activities in relation to Wildlife, Migratory Birds, Fish, Plants and Aquatic Plants and Sport Fish Camps existing prior to Effective Date.

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13.4.8 The Parties agree that there shall be no exploration for or exploitation of Subsurface Resources within a National Marine Conservation Area in the Labrador Innu Settlement Area.

Part 13.5 Park Impacts and Benefits Agreements

13.5.1 A Park Impacts and Benefits Agreement shall address any matter connected with the proposed establishment of, or significant enlargement to the boundaries of, a National Park or National Marine Conservation Area in the Labrador Innu Settlement Area that might have a detrimental impact on Participants or that could reasonably provide a benefit to Participants, including provisions related to:

- [(a) membership on a cooperative management board composed of Aboriginal and government representatives where Innu membership shall be equal to those appointed by Canada;/composition and structure of a cooperative management board;]¹¹⁵
- (b) participation and partnership in the development of park management plans through representation on any committee or working group established by Parks Canada in the preparation or development of a park management plan;
- (c) consultation with the Innu Government, prior to a park management plan being approved by the Minister;
- (d) the identification and mitigation of potential negative impacts of the National Park or National Marine Conservation Area on Participants;
- (e) the hiring of Participants, including qualifications, for positions in connection with the National Park or National Marine Conservation Area;
- (f) training opportunities to assist Participants to take advantage of employment opportunities in the National Park or National Marine Conservation Area, in accordance with federal policies in effect from time to time;
- (g) economic and employment opportunities for Participants and measures which will be adopted to assist Participants to take advantage of such opportunities;
- (h) opportunities for Innu Businesses associated with the National Park or National Marine Conservation Area, consistent with sound procurement practices and 13.6.3;
- (i) the Harvesting of Wildlife under Chapter 7, the Harvesting of Migratory Birds under Chapter 8 and the Harvesting of Aquatic Plants and Fish under Chapter 9 by Participants and the use and establishment of camps,

¹¹⁵ To be negotiated. Canada prefers to have the composition of the board outlined in the PIBA and not final agreement. Innu disagree. Innu propose language before the slash; Canada proposes language after the slash.

travel routes, cabins and caches in the National Park or National Marine Conservation Area for the exercise of those Harvesting rights.

- (j) subject to 13.6, the Harvesting of Plants and Forest Resources by Participants, and the use and establishment of camps, travel routes, cabins and caches in the National Park or National Marine Conservation Area for the exercise of those Harvesting rights.
- (k) access to any new licenses to carry on commercial activities in relation to Wildlife, Migratory Birds, Fish, Plants or Aquatic Plants, to the extent that these activities are permitted in a National Park or National Marine Conservation Area in the Labrador Innu Settlement Area;
- (l) [providing opportunities for long-term residents of Labrador who reside in proximity to the National Park for hunting or snaring small game, fishing, trapping, gathering and access to areas in a National Park or National Marine Conservation Area traditionally used by those residents;]¹¹⁶
- (m) development of priorities and policies for scientific research in the National Park or National Marine Conservation Area, including protocols for the involvement of Participants and the use of Innu environmental knowledge, and the communication of ongoing research activities and results to Participants;
- (n) Archaeological Activities, access to and displays of Archaeological Material in the National Park or National Marine Conservation Area consistent with the regime applicable to lands under the administration and control of Canada as set out in Chapter 18;
- (o) technology to extract Carving Stone, the amount of Carving Stone that may be extracted, physical access for purposes of extracting Carving Stone, and the protection of the environment and the integrity of the National Park or National Marine Conservation Area in relation to the extraction of Carving Stone;
- (p) co-operation and information sharing between Canada and the Innu Government on matters of mutual interest related to the management of the National Park or National Marine Conservation Area;
- (q) the circumstances under which the Minister may designate Innu Government employees, whose duties include law enforcement, as enforcement officers for the purpose of enforcing specified provisions of the *Canada National Parks Act* (Canada) or its regulations;
- (r) dispute resolution with respect to the interpretation, application or implementation of the Park Impacts and Benefits Agreement; and

¹¹⁶ To be negotiated. NL has under review.

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- (s) any other matters that Canada and the Innu Government consider to be relevant to the needs of Participants and the National Park or National Marine Conservation Area.

13.5.2 If Canada and the Innu Government have not concluded a Park Impacts and Benefits Agreement within eighteen (18) months, or any other agreed upon time, from the commencement of negotiations for that purpose, together they shall select a conciliator who shall submit a report to Canada and the Innu Government for consideration. If Canada and the Innu Government cannot agree following conciliation, each of them shall, within sixty (60) days from receipt of the conciliator's report, present a draft Park Impacts and Benefits Agreement to the Minister for consideration and decision. The Minister shall provide written reasons to the Innu Government for his or her decision on the terms of the Park Impacts and Benefits Agreement. Canada and the Innu Government shall implement the Park Impacts and Benefits Agreement once it has been approved by the Minister.

13.5.3 A Park Impacts and Benefits Agreement:

- (a) shall not form part of the Agreement;
- (b) is not intended to be a treaty or land claims agreement; and
- (c) is not intended to recognize or affirm Aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

Part 13.6 Benefits In Relation to National Parks and National Marine Conservation Areas in the Labrador Innu Settlement Area

13.6.1 Any restrictions on Harvesting by Participants in a National Park or National Marine Conservation Area in the Labrador Innu Settlement Area shall be no more restrictive than on any other Person.

13.6.2 Participants shall have rights of entry and use for the purpose of exercising their rights as set out in the Agreement and in accordance with the terms of any Park Impacts and Benefits Agreement, without fee⁴³ or charge, to any National Park or National Marine Conservation Area in the Labrador Innu Settlement Area. Nothing in 13.6.2 creates a free right to use facilities for which user fees are charged in a National Park or National Marine Conservation Area.

13.6.3 Where Canada intends to contract for the establishment, operation or maintenance of facilities within, or the provision of goods and services to, a National Park or National Marine Conservation Area in the Labrador Innu Settlement Area, Canada shall, in accordance with the Park Impacts and Benefits Agreement:

- (a) give [priority/fair consideration]¹¹⁷ to qualified Innu Businesses; and

¹¹⁷ To be negotiated. Canada has under review in all instances. To be resolved in the Contracting and Employment chapter.

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- (b) ensure that all contractors give [priority/fair consideration] to qualified Innu Businesses.

13.6.4 Participants have the right to extract Carving Stone within a National Park in the Labrador Innu Settlement Area for their carving purposes, subject to the terms of a Park Impacts and Benefits Agreement. Carving Stone shall not be extracted from such areas using power tools or explosives unless a permit to do so has been issued by the Minister. The permit shall not be denied unless the Minister has reason to believe that the use of such methods would be hazardous to public safety or would impair the ecological integrity of the National Park.

13.6.5 Participants have the right to Harvest Forest Resources and Plants within a National Park in the Labrador Innu Settlement Area, at all times of the year, to satisfy the domestic requirements of Participants and Innu communal needs subject to:

- (a) Innu Law;
- (b) Federal Law for the purposes of Conservation, public health and public safety;
- (c) restrictions necessary to maintain the ecological integrity of a National Park or National Marine Conservation Area; and
- (d) the terms of a Park Impacts and Benefits Agreement.

13.6.6 Any limitations on the exercise of the rights by Participants under 13.6.5 shall be no greater than necessary to achieve the objectives for which they are prescribed, and may not be prescribed where there is any other measure by which that objective could reasonably be achieved, if that other measure would involve a lesser limitation on the exercise of rights.

13.6.7 Subject to 13.6.8, if there is a Conflict between an Innu Law made pursuant to 11.10.1 (b) and a Federal Law in relation to Harvesting of Plants and Forest Resources by Participants within a National Park or National Marine Conservation Area, the Innu Law prevails to the extent of the Conflict.

13.6.8 If there is a Conflict between an Innu Law made pursuant to 11.10.1 (b) in relation to Harvesting of Plants and Forest Resources by Participants and a Federal Law for the purposes of Conservation, public health, public safety or ecological integrity within a National Park or National Marine Conservation Area, the Federal Law prevails to the extent of the Conflict.

Part 13.7 Cooperative Management Boards

13.7.1 A cooperative management board shall be established as an advisory board for each National Park or National Marine Conservation Area in the Labrador Innu Settlement Area at the time of their establishment.

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- 13.7.2 The Minister, the Innu Government, or anyone else who receives the advice of the cooperative management board may accept or reject the advice of the cooperative management board.
- 13.7.3 The role of the cooperative management board referred to in 13.7.1 shall be set out in the Park Impacts and Benefits Agreement and the role may be amended to accord with any relevant changes to the *Canada National Parks Act* (Canada) or the *Canada National Marine Conservation Areas Act* (Canada).

Chapter 13A: Protected Areas, [Marine Protected Areas]¹¹⁸ and National Historic Sites

Part 13A.1 Definitions

13A.1.1 In this Chapter:

“Marine Protected Area Agreement” means an agreement between Canada and the Innu Government with respect to a Marine Protected Area described in 13A.6.1;

“National Historic Site Impacts and Benefits Agreement” means an agreement negotiated between the Parks Canada Agency and the Innu Government described in 13A.10.7 with respect to a National Historic Site administered by the Parks Canada Agency.

“Protected Area Agreement” means an agreement between Canada or the Province and the Innu Government with respect to a Protected Area described in 13A.6.1.

Part 13A.2 General

13A.2.1 The Innu Government shall have primary responsibility for the establishment of Protected Areas in Labrador Innu Lands, recognizing the importance of co-operation among the Parties throughout the Labrador Innu Settlement Area for enhancing and protecting natural and [cultural heritage], and promoting Conservation.

13A.2.2 In exercising powers or carrying out responsibilities under this Chapter in relation to Protected Areas, the Innu Government and the Board shall consider relevant and accessible Innu environmental knowledge as well as other types of scientific information and expert opinion, and consider Nakatuenta and Conservation.

13A.2.3 Except as provided in a Protected Area Agreement or Marine Protected Area Agreement, the establishment of, or significant enlargement to the boundaries of a Protected Area or Marine Protected Area in the Labrador Innu Settlement Area shall not affect the rights of Participants or the Innu Government under the Agreement.

13A.2.4 The rights of Participants, as set out in the Agreement, to use lands and resources within a Protected Area or Marine Protected Area in the Labrador Innu Settlement Area shall be set out in Innu Government, federal and Provincial policies and in public information programs and materials.

¹¹⁸ To be negotiated. This Chapter will be revisited pending outcome of discussions relating to Innu proposal on Marine Zones.

- 13A.2.5 Innu Government, federal and Provincial publications informing the public primarily about a Protected Area or Marine Protected Area in the Labrador Innu Settlement Area shall also be available in Innu-aimun.
- 13A.2.6 Federal publications informing the public primarily about a National Historic Site in the Labrador Innu Settlement Area [where the commemorative intent is specific to the Innu]¹¹⁹ administered by the Parks Canada Agency shall also be available in Innu-aimun.
- 13A.2.7 Any restrictions on Harvesting by Participants in a Protected Area or Marine Protected Area in the Labrador Innu Settlement Area shall be no more restrictive than on any other Person.
- 13A.2.8 Participants shall have rights of entry and use for the purpose of exercising their rights as set out in the Agreement, without fee⁴³ or charge, to any Protected Area or Marine Protected Area in the Labrador Innu Settlement Area. Nothing in this section creates a free right to use facilities for which user fees are charged in a Protected Area or Marine Protected Area.
- Part 13A.3 Innu Government**
- 13A.3.1 Subject to 13A.3.2, the Innu Government may make laws in relation to the establishment, protection, use and operation of a Protected Area in Labrador Innu Lands.
- 13A.3.2 The Innu Government shall Consult Canada and the Province before establishing, altering, discontinuing or changing the level or scope of protection of a Protected Area in Labrador Innu Lands established pursuant to Innu Law.
- 13A.3.3 Nothing in 13A.3.1 confers jurisdiction on the Innu Government to make laws in relation to the establishment, protection, use and operation of a Protected Area established under Federal Legislation or Provincial Legislation
- 13A.3.4 If there is a Conflict between an Innu Law under 13.A.3.1 and a Federal Law or Provincial Law, the Innu Law prevails to the extent of the Conflict.
- Part 13A.4 Protected Areas in Labrador Innu Lands**
- 13A.4.1 No Protected Area may be established, enlarged or altered by Canada or the Province in Labrador Innu Lands until a Protected Area Agreement has been concluded with the Innu Government.
- 13A.4.2 Nothing in 13A.4.1 shall affect the process set out in Part 16.2.¹²⁰

¹¹⁹ To be negotiated. The Innu are requesting that this reference be deleted. If there is a NHS in the Settlement Area, it should provide information in Innu-aimun, regardless of commemorative intent.

¹²⁰To be negotiated. Canada and Province agree to use LIA wording. Innu – LIA wording is too ambiguous. No expropriation for a Protected Area without a Protected Area Agreement. Province has under review.

Part 13A.5 Protected Areas and Marine Protected Areas in the Labrador Innu Settlement Area

- 13A.5.1 Any Party may make a proposal for the establishment, enlargement or alteration of a Protected Area or Marine Protected Area in the Labrador Innu Settlement Area to the Party with jurisdiction.
- 13A.5.2 Subject to the Agreement, Protected Areas and Marine Protected Areas may be established, enlarged, altered or discontinued in the Labrador Innu Settlement Area by Canada and the Province pursuant to Federal Legislation or Provincial Legislation
- 13A.5.3 Subject to 13A.6.1, 13A.6.2 and 13A.7.1, no Protected Area or Marine Protected Area may be established, enlarged or altered by Canada or the Province in the Labrador Innu Settlement Area outside Labrador Innu Lands, until a Protected Area Agreement or Marine Protected Area Agreement has been concluded with the Innu Government.
- 13A.5.4 The process of establishing a new Protected Area or Marine Protected Area in the Labrador Innu Settlement Area shall be subject to the provisions of the Land Use Plan.
- 13A.5.5 Canada or the Province, as appropriate, shall Consult the Innu Government before establishing, enlarging, altering or discontinuing a Protected Area in the Labrador Innu Settlement Area.
- 13A.5.6 Canada shall Consult the Innu Government before establishing, enlarging, altering or discontinuing a Marine Protected Area in the Labrador Innu Settlement Area to the extent that any such proposed actions apply to, or impact, the estuarine, coastal or marine areas of the Labrador Innu Settlement Area and may affect rights under the Agreement.
- 13A.5.7 The relevant Parties shall, as appropriate, establish interim measures for an area of land agreed to by them for the potential inclusion in a Protected Area or Marine Protected Area in the Labrador Innu Settlement Area for the purposes of protecting that area pending the potential establishment of the Protected Area or Marine Protected Area.
- 13A.5.8 Subject to 13A.7.1, the Party with jurisdiction shall seek the advice of the Board before establishing, enlarging or altering a Protected Area or Marine Protected Area in the Labrador Innu Settlement Area.
- 13A.5.9 Existing information relevant to the establishment, status, alteration or discontinuation of a Protected Area or Marine Protected Area in the Labrador Innu Settlement Area shall be shared and exchanged as soon as practicable among the Parties and the Board upon the request of any of them.

Part 13A.6 Agreements

13A.6.1 A Protected Area Agreement or Marine Protected Area Agreement shall address any matter connected with the proposed establishment, enlargement or alteration, development, management or operations of a Protected Area or Marine Protected Area in the Labrador Innu Settlement Area that might have a detrimental impact on Participants or that could reasonably provide a benefit to Participants, including provisions related to:

- (a) the steps that will be taken by the relevant Parties in the establishment of the Protected Area or Marine Protected Area;
- (b) management of the Protected Area or Marine Protected Area, including any changes in the level or scope of protection and range and scope of activities permitted in the Protected Area or Marine Protected Area;
- (c) the identification and mitigation of potential negative impacts of the Protected Area or Marine Protected Area on Participants¹²¹;
- (d) the hiring of qualified Participants for positions in connection with the establishment and operations of the Protected Area or Marine Protected Area;
- (e) training opportunities to assist Participants to take advantage of employment opportunities in the Protected Area or Marine Protected Area;
- (f) opportunities for Innu Businesses associated with the Protected Area or Marine Protected Area consistent with sound procurement practices;¹²¹
- (g) opportunities for Participants to access any new licenses to carry out non-consumptive commercial activities in relation to Wildlife, Migratory Birds, Fish, Plants or Aquatic Plants to the extent they are permitted in the Protected Area or Marine Protected Area;
- (h) the exercise of Harvesting rights by Participants, and the use of camps, travel routes, cabins and caches in the Protected Area or Marine Protected Area for the exercise of Participants Harvesting rights;
- (i) access to and displays of Archaeological Material in the Protected Area or Marine Protected Area consistent with Chapter 18;
- (j) Archaeological Activities and scientific research in the Protected Area or Marine Protected Area;

¹²¹ To be negotiated. Innu want priority rights with respect to economic opportunities such as employment and contracting and want to include training provisions (applies to d and e) - To be addressed in the Economic Development Chapter. Canada believes these are dealt with in clauses 13A.8.1.

- (k) co-operation and information sharing between the relevant Parties on matters of mutual interest related to the management of the Protected Area or Marine Protected Area;
- (l) the circumstances under which the Minister may designate Innu Government employees, whose duties include law enforcement, as enforcement officers for the purpose of enforcing Federal Legislation or Provincial Legislation related to the environmental and cultural protection of the Protected Area or Marine Protected Area;
- (m) termination provisions in the event the Protected Area or Marine Protected Area is discontinued;
- (n) dispute resolution with respect to the interpretation, application or implementation of the Protected Area Agreement or Marine Protected Area Agreement; and
- (o) any other matters that the Parties consider to be relevant to the needs of Participants and the Protected Area or Marine Protected Area.

13A.6.2 If Canada or the Province and the Innu Government have not concluded a Protected Area Agreement or Marine Protected Area Agreement applying to the Labrador Innu Settlement Area outside Labrador Innu Lands within eighteen (18) months, or any other agreed upon time, from the commencement of negotiations for that purpose, any matter in dispute may be referred to dispute resolution, [including arbitration, in accordance with Chapter 26.¹²²]

13A.6.3 A Protected Area Agreement or a Marine Protected Area Agreement:

- (a) shall not form part of the Agreement;
- (b) is not intended to be a treaty or land claims agreement; and
- (c) is not intended to recognize or affirm Aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

Part 13A.7 Emergency Situations

13A.7.1 An emergency reserve may be established under the *Wilderness and Ecological Reserves Act* (Newfoundland and Labrador) in an endangered area in the Labrador Innu Settlement Area outside Labrador Innu Lands prior to the commencement of negotiations for the purposes of concluding a Protected Area Agreement with respect to such Protected Area but:

- (a) negotiation of a Protected Area Agreement in respect of such Protected Area must be commenced within ninety (90) days from the date of the Provincial Legislation or order establishing the emergency reserve;

¹²² To be negotiated. Canada has under review.

- (b) if a Protected Area Agreement has not been concluded with the Innu Government within one hundred and twenty (120) days from the commencement of negotiations, any matter in dispute may be referred to Arbitration under Chapter 26;
- (c) subject to sections 13A.6.2, an emergency reserve shall not be established as a permanent reserve under the *Wilderness and Ecological Reserves Act* (Newfoundland and Labrador) until a Protected Area Agreement has been concluded with the Innu Government; and
- (d) if the emergency reserve is not established as a permanent reserve within two (2) years from the date of the Provincial Legislation or order establishing the emergency reserve, the emergency reserve shall cease to exist as a Protected Area.

13A.7.2 For the purposes of 13A.7.1, an “endangered area” is an area that has been found suitable for the establishment in it of a reserve and in the opinion of the Minister is in danger, because of some imminent activity, action or event, of becoming an area that would not be suitable for the establishment in it of a reserve.

Part 13A.8 Economic Benefits in Relation to Protected Areas and Marine Protected Areas in the Labrador Innu Settlement Area

13A.8.1 Where Canada, the Province and the Innu Government contract for the establishment, operation or maintenance of facilities within, or the provision of goods and services to, a Protected Area or Marine Protected Area in the Labrador Innu Settlement Area, Canada and the Province shall, in accordance with the Protected Area Agreement or Marine Protected Area Agreement:

- (a) give [priority/fair consideration]¹²³ to qualified Innu Businesses; and
- (b) ensure that all contractors give [priority/fair consideration] to qualified Innu Businesses.

Part 13A.9 Role of the Board with respect to Protected Areas and Marine Protected Areas

13A.9.1 The Board may, within its budget:

- (a) make recommendations to the Parties on Federal Legislation, Provincial Legislation or Innu Law, policies, regulations, plans, programs, standards and guidelines related to the establishment, protection, use and operation of Protected Areas and Marine Protected Areas in the Labrador Innu Settlement Area;
- (b) make recommendations to the Parties on the management of Protected Areas and Marine Protected Areas in the Labrador Innu Settlement Area;

¹²³ To be negotiated. NL & Canada have under review in all instances. To be resolved in the Contracting and Employment Chapter.

- (c) make recommendations to the Parties on the integration of Innu environmental knowledge and Nakatuenta into decision making about Protected Areas and Marine Protected Areas in the Labrador Innu Settlement Area;
- (d) develop, undertake public education and promote public awareness with respect to the role of the Board on Protected Areas and Marine Protected Areas in the Labrador Innu Settlement Area; and
- (e) perform any other functions related to the management of Protected Areas and Marine Protected Areas in the Labrador Innu Settlement Area delegated to the Board by agreement of the Parties.

13A.9.2 The Parties shall notify the Board, in writing and as soon as practicable, of their decision with respect to any recommendations made under 13A.10.1.

13A.9.3 The Board shall co-operate with other government institutions which deal with the establishment, protection, use and operation of Protected Areas and Marine Protected Areas in the Labrador Innu Settlement Area.

13A.9.4 The Board may co-operate with other institutions which deal with the establishment, protection, use and operation of Protected Areas and Marine Protected Areas in the Labrador Innu Settlement Area.

Part 13A.10 National Historic Sites in the Labrador Innu Settlement Area

13A.10.1 For the purposes of Part 13A.10, reference to the acquisition of a National Historic Site by the Parks Canada Agency or reference to a National Historic Site administered by the Parks Canada Agency includes a National Historic Site, a portion of a National Historic Site, or additional land for a National Historic Site, that the Parks Canada Agency administers in the Labrador Innu Settlement Area.

13A.10.2 Only a National Historic Site administered by the Parks Canada Agency in the Labrador Innu Settlement Area and acquired after the Effective Date is subject to Part 13A.10.

13A.10.3 A National Historic Site acquired by the Parks Canada Agency in the Labrador Innu Settlement Area after the Effective Date shall be acquired pursuant to applicable Federal Legislation, Provincial Legislation or Innu Law, subject to the provisions set out in this Part.

13A.10.4 If, after the Effective Date, the Parks Canada Agency proposes acquiring a National Historic Site in the Labrador Innu Settlement Area, the proposed acquisition shall be subject to the provisions of the Land Use Plan. The provisions of the Land Use Plan shall not apply to the National Historic Site once it has been acquired by the Parks Canada Agency.

13A.10.5 If, after the Effective Date, the Parks Canada Agency proposes acquiring a National Historic Site in the Labrador Innu Settlement Area, the Parks Canada Agency will notify the Innu Government. Before acquiring that National Historic

Site, the Parks Canada Agency and the Innu Government shall discuss matters resulting from the proposed acquisition that might have a detrimental impact on Participants or that could reasonably provide a benefit on Participants.

13A.10.6 Following the discussion referred to in 13A.10.5, the Parks Canada Agency [may/shall] negotiate a National Historic Site Impacts and Benefits Agreement for that National Historic Site with the Innu Government.¹²⁴

13A.10.7 A National Historic Site Impacts and Benefits Agreement shall address any matter connected with the proposed National Historic Site in the Labrador Innu Settlement Area that might have a detrimental impact on Participants or that could reasonably provide a benefit to Participants including provisions related to:

- [(a) identification and mitigation of potential adverse impacts of that National Historic Site on Participants;
- (b) consultation with the Innu Government concerning the management plan for that National Historic Site;
- (c) the hiring of qualified Participants for positions in connection with the operation of that National Historic Site;
- (d) opportunities for Innu Businesses associated with that National Historic Site, consistent with sound procurement practices;
- (e) termination provisions in the event that the Parks Canada Agency disposes of that National Historic Site;
- (f) dispute resolution with respect to the interpretation, application or implementation of the National Historic Site Impacts and Benefits Agreement; and
- (g) any other matters that the Parks Canada Agency and the Innu Government consider relevant to the needs of Innu and that National Historic Site.]¹²⁵

13A.10.8 [If Canada and the Innu Government have not concluded a National Historic Site Impacts and Benefits Agreement within eighteen (18) months, or any other agreed-upon time, from the commencement of negotiations for that purpose, together they shall select a conciliator who shall submit a report to Canada and the Innu Government for consideration. If Canada and the Innu Government cannot agree following conciliation, each of them shall, within sixty (60) days from receipt of the conciliator's report, present a draft National Historic Site Impacts and Benefits Agreement to the Minister for consideration and decision. The

¹²⁴ To be negotiated. Innu suggest an approach whereby if discussions under 13A.10.6 identify matters resulting from a proposed NHS under the admin and control of Canada that might have a detrimental impact on Participants or that could reasonably provide a benefit to Participants, a NHSIBA shall be negotiated. Otherwise, no NHSIBA is required. This fits with the proposed language of 13A.10.7, which states that the NHSIBA shall address any such matter resulting from a proposed NHS under the administration and control of Canada.

¹²⁵ To be negotiated. Innu propose consistency between 13.5.1 and 13A.10.7

Minister shall provide written reasons to the Innu Government for his or her decision on the terms of the National Historic Site Impacts and Benefits Agreement. Canada and the Innu Government shall implement the National Historic Site Impacts and Benefits Agreement once it has been approved by the Minister.]¹²⁶

- 13A.10.9 A National Historic Site Impacts and Benefits Agreement:
- (a) shall not form part of the Agreement;
 - (b) is not intended to be a treaty or land claim agreement; and
 - (c) is not intended to recognize or affirm aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 13A.10.10 Except as may be provided in a National Historic Site Impacts and Benefits Agreement, nothing in Part 13A.10 affects the rights of Participants or the Innu Government under the Agreement.
- 13A.10.11 Any restrictions on Harvesting by Participants in a National Historic Site under the administration and control of the Parks Canada Agency in the Labrador Innu Settlement Area shall be no more restrictive than on any other Person.
- 13A.10.12 Participants shall have rights of entry and use for the purpose of exercising their rights as set out in the Agreement and in accordance with the terms of any National Historic Site Impacts and Benefits Agreement, without fee⁴³ or charge, to any National Historic Site in the Labrador Innu Settlement Area [provided it is consistent with and does not impair the commemorative integrity or threaten the cultural resources of the site]¹²⁷. Nothing in 13A.10.12 creates a free right to use facilities for which user fees are charged in a National Historic Site.
- 13A.10.13 The rights of Participants, as set out in the Agreement, to use lands and resources within a National Historic Site administered by the Parks Canada Agency in the Labrador Innu Settlement Area shall be set out in Innu Government and federal policies and in public information programs and materials.
- 13A.10.14 Except as may be provided in a National Historic Site Impacts and Benefits Agreement, management of Archaeological Activities and Archaeological Material at a National Historic Site under the administration and control of the Parks Canada Agency in the Labrador Innu Settlement Area shall be consistent with the regime applicable to lands under the administration and control of Canada as set out in Chapter 18.
- 13A.10.15 Where the Parks Canada Agency intends to contract for the operation or maintenance of facilities within, or the provision of goods and services to, a

¹²⁶ To be negotiated. Canada has Innu proposal under review.

¹²⁷ To be negotiated. Innu have under review.

National Historic Site in the Labrador Innu Settlement Area under the administration and control of the Parks Canada Agency the Parks Canada Agency shall:

- (a) give [priority/fair consideration] ¹²⁸ to qualified Innu Businesses; and
- (b) ensure that all contractors give [priority/fair consideration] to qualified Innu Businesses.

¹²⁸ To be negotiated. As per the National Parks Chapter (13A), this is under review. Innu want this provision to track the language in 13A.8.2.

¹²⁹Chapter 14: Environmental Assessment and Environmental Protection**Part 14.1 Definitions and Interpretation****14.1.1** In this chapter:

“Approval Certificate” means a document issued to the Proponent by the Innu Government for a Project in Labrador Innu Lands or, in the case of a Straddling Project, for the part of that Straddling Project that is in Labrador Innu Lands, which sets out the required terms and conditions, Mitigation measures and requirements which arise from the Environmental Assessment process established pursuant to Innu Law made under Part 14.4.

“Authority” means the federal or provincial authority, or both, as the case may be, including a Minister, responsible for making a decision or taking an action pursuant to the *Canadian Environmental Assessment Act* or the *Environmental Protection Act*.

“Environmental Effect” means, in respect of a Project or Undertaking,

- (a) any change that the Project or Undertaking may cause in the Environment, including any such change to health and socio-economic conditions, physical and cultural heritage, Cultural Heritage of the Innu, current use of lands and resources for traditional purposes by the Innu, or to any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, and
- (b) any change to the Project or Undertaking that may be caused by the Environment;

whether such change occurs within or outside Canada.

“Follow-up Program” means a program for:

- (a) verifying the accuracy of the Environmental Assessment of a Project or Undertaking;
- (b) determining the effectiveness of any measures taken to Mitigate the adverse Environmental Effects of a Project or Undertaking, and may include compliance monitoring; and
- (c) implementing any additional technically and economically feasible measures necessary to Mitigate adverse Environmental Effects identified as a result of determining the effectiveness of any measures taken to Mitigate the adverse Environmental Effects of a Project or Undertaking.

¹²⁹ To be negotiated. Canada has chapter under review with respect to federal interests. Legal drafting. Parties to review and consider revisions for drafting consistency with other chapters.

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“Government” means Canada, the Province, or the Innu Government and “Governments” means any two or more of Canada, the Province or the Innu Government.

“Mitigation” means, in respect of a Project or Undertaking, the elimination, reduction or control of the adverse Environmental Effects of the Project or Undertaking, and includes restitution for any damage to the Environment caused by those effects through replacement, restoration, compensation or any other means, and “Mitigate” has a corresponding meaning.

“Nakatuenta” means that, if there are threats of serious or irreversible damage to the Environment, measures to prevent harm to the Environment should not be postponed for lack of full scientific certainty.

“Project” means any undertaking, project, work or structure physically located in, or proposed to be physically located in, or any activity carried out in, or proposed to be carried out in, including any stage in the life cycle of that development, work, structure or activity, the Labrador Innu Settlement Area, for which an Environmental Assessment is required, and includes a Straddling Project.

“Proponent” means any Person proposing a Project or Undertaking, and includes a Person who is an operator or a general partner in a Project or Undertaking proposed by two or more Persons.

“Registration” means notice of a proposed project submitted by a Proponent in accordance with the *Environmental Protection Act*.

“Straddling Project” means any undertaking, project, work or structure physically located or proposed to be physically located, or any activity carried out, or proposed to be carried out, including any stage in the life cycle of that development, work, structure or activity, both in Labrador Innu Lands and outside Labrador Innu Lands within the Province of Newfoundland and Labrador, for which an Environmental Assessment is required;

“Undertaking” means any undertaking, project, work or structure physically located, or proposed to be physically located, or any activity carried out, or proposed to be carried out, including any stage in the life cycle of that development, work, structure or activity, outside the Labrador Innu Settlement Area, for which an Environmental Assessment is required under federal or Provincial Law

14.1.2 For greater certainty, a Project, Straddling Project or Undertaking shall not be interpreted or construed as being physically located in or carried out in a geographical area or areas because, although it is physically located or carried out in one or more geographical areas, its Environmental Effects may extend to, impact on, or otherwise affect another geographical area or areas or the Environment of that other geographical area or areas.

14.1.3 In this chapter, “Cultural Heritage of the Innu” includes but is not limited to a human work or a place that either

(a) gives evidence of human activity by the Innu;

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- (b) has spiritual and/or cultural meaning for the Innu; or
- (c) gives evidence of human activity by the Innu and has spiritual and/or cultural meaning for the Innu; and
- (d) that has heritage value.

Part 14.2 General and Cooperation

14.2.1 No Project that will be located in Labrador Innu Lands, and no part of a Straddling Project that will be located in Labrador Innu Lands, or any modifications thereof made as a result of an Environmental Assessment of that Project or part of that Straddling Project (collectively referred to hereinafter in this 14.2.1 as "Project"), shall commence until:

- (a) an Environmental Assessment has been completed pursuant to 14.4.1 and the Innu Government has issued an Approval Certificate authorizing the Project to commence;
- (b) one or more Environmental Assessments have been completed pursuant to the *Canadian Environmental Assessment Act* and the *Environmental Protection Act*, and, if applicable, the Provincial Authority has released the Project from Environmental Assessment; and
- (c) issuance of all necessary permits, licences or other authorizations required by the appropriate Authority or Authorities and by the Innu Government under an Innu Law made pursuant to Part 14.9 for the Project to commence.

14.2.2 Prior to the commencement of an Environmental Assessment for a Project, where a Land Use Plan has been accepted under Chapter 15: Land Use Planning Chapter,

- (a) the Innu Government, for Projects that will be located in Labrador Innu Lands and for all parts of Straddling Projects that will be located in Labrador Innu Lands, except to the extent that such Projects or parts of Straddling Projects include Water Use in Labrador Innu Lands; and
- (b) the Province, for Projects that will be located in the Labrador Innu Settlement Area outside Labrador Innu Lands, and, to the extent a Project includes Water Use in Labrador Innu Lands then with respect to that Water Use, shall decide whether the proposed Project or Water Use, as applicable, conforms with the Land Use Plan, and notify the Proponent of the Government's decision. If a Proponent is notified by the Province or the Innu Government that the Project or the Straddling Project or the Water Use does not conform with the Land Use Plan, such notification shall not prevent an Environmental Assessment of the Project or the Straddling Project being completed, but the Project or the Straddling Project or any modification thereof made as a result of such

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Environmental Assessment, shall not be permitted to commence unless it conforms with the Land Use Plan.

- 14.2.3 The Governments may, either bilaterally or trilaterally, negotiate general cooperation agreements for the conduct of Environmental Assessments where Projects in Labrador Innu Lands and parts of Straddling Projects in Labrador Innu Lands are subject to an Environmental Assessment under Innu Law made under Part 14.4 and at least one other Environmental Assessment.
- 14.2.4 Unless superceded by a general cooperation agreement established pursuant to 14.2.3, the process set out in 14.2.5 to 14.2.8 inclusive shall be followed for Projects in Labrador Innu Lands and for parts of Straddling Projects in Labrador Innu Lands, to seek to develop specific cooperation measures for the conduct of Environmental Assessments of Projects in Labrador Innu Lands and for parts of Straddling Projects in Labrador Innu Lands subject to an Environmental Assessment under Innu Law made under Part 14.4 and at least one other Environmental Assessment.
- 14.2.5 If the Innu Government or an Authority receives a Registration, an application for a permit, licence or authorization, or another document or documents which demonstrate the intent of a Proponent to proceed with a Project in Labrador Innu Lands or a Straddling Project that will require Environmental Assessment pursuant to a Government's Environmental Assessment Legislation, the Innu Government or Authority receiving that Registration, application or other document or documents shall, as early as is practicable:
- (a) notify the Innu Government, the Authority or Authorities as the case may be, and the Board of that Project; and
 - (b) provide to the Innu Government, the Authority or Authorities as the case may be, and to the Board, that Registration, application or, subject to {X.X, general provision regarding disclosure of information}, other document or documents.
- 14.2.6 If after receipt of notice and information provided pursuant to 14.2.5:
- (a) one or both of the other Authorities decides that the Project in Labrador Innu Lands or the Straddling Project will require Environmental Assessment pursuant to their Environmental Assessment Laws; and
 - (b) the Innu Government decides that the Project in Labrador Innu Lands or the part of the Straddling Project in Labrador Innu Lands will require Environmental Assessment pursuant to Innu Law made under Part 14.4,
- then 14.2.7 shall apply.
- 14.2.7 If a decision is made pursuant to 14.2.6(a) and (b), the relevant Government or Governments, as the case may be, and the Innu Government shall seek to negotiate in good faith specific cooperation measures to coordinate the Environmental Assessment processes applicable to the Project in Labrador Innu

Lands or the Straddling Project, and to avoid unnecessary overlap and duplication of Environmental Assessment requirements.

- 14.2.8 Any Party to the negotiations under 14.2.7 may, after having engaged in negotiations in good faith for a reasonable period of time, determine that specific cooperation measures to coordinate the Environmental Assessment processes applicable to the Project in Labrador Innu Lands or the Straddling Project are not possible. If such a determination is made, the Governments may participate in the Environmental Assessment process or processes in respect of that Project or Straddling Project in accordance with the applicable requirements set out in Parts 14.4, 14.5 and 14.6.
- 14.2.9 Any general cooperation agreement or specific cooperation measure that may be agreed to pursuant to this Chapter shall not and shall not be construed so as to limit or expand the legislative authority and jurisdiction that each Government has with respect to the Environmental Assessment of Projects and Straddling Projects.
- 14.2.10 For greater certainty, and notwithstanding any general cooperation agreement or measure that may be agreed to pursuant to this Chapter, each of the Governments, if so permitted by its Environmental Assessment Legislation, has the capacity to take actions and make decisions in relation to a Project, to fund a Project, and to issue permits, licenses or other authorizations in relation to a Project for matters within its legislative authority or jurisdiction prior to completion of the steps referred to in 14.2.1(a) and (b), provided that such actions, decisions, provision of funding, and issuance of permits, licenses or other authorizations are conditional upon completion of the steps referred to in 14.2.1(a) and (b).
- 14.2.11 In the course of an Environmental Assessment conducted under this Chapter, the Proponent shall be required to
- (a) separately identify proposed actions that would
 - (i) avoid adverse Environmental Effects of a Project or Undertaking; and
 - (ii) reduce or control those adverse Environmental Effects;
- and,
- (b) identify and provide a rationale if the Proponent considers that it would not be possible to undertake a proposed action that would avoid adverse Environmental Effects of a Project or Undertaking.

Part 14.3 Matters to be considered in an Environmental Assessment of a Project

- 14.3.1 Notwithstanding general cooperation agreements or specific cooperation measures established pursuant to 14.2.3 or 14.2.7, an Environmental Assessment of a Project shall consider, and where appropriate take account of, but not be limited to, the following:

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- (a) the definition and scope of the Project;
- (b) the scope of the assessment;
- (c) the purpose, the need for, and alternatives to the Project;
- (d) a description of the existing Environment and its relation to the Project;
- (e) any Environmental Effects of the Project, including the Environmental Effects of malfunctions or accidents that may occur in connection with the Project and any cumulative Environmental Effects that are likely to occur in combination with other undertakings, projects, works, structures or activities that have been or will be carried out;
- (f) for Projects subject to Environmental Assessment under the *Environmental Protection Act* and under Innu Law made under 14.4.4, impacts in Labrador Innu Lands and Innu Communities and impacts on Participant rights applicable in the Labrador Innu Settlement Area as set out in the Agreement;
- (g) the significance of the Environmental Effects and impacts referred to in (e) and (f);
- (h) the well-being and quality of life of residents in any community in the Labrador Innu Settlement Area potentially affected by the Project;
- (i) any comments received from the public;
- (j) measures that are technically and economically feasible and that would Mitigate adverse Environmental Effects of the Project;
- (k) alternative means of carrying out the Project that are technically and economically feasible and the Environmental Effects of those alternative means;
- (l) the need for and the requirements of a Follow-Up Program in respect of the Project;
- (m) the capacity of renewable and non-renewable resources that are likely to be significantly affected by the Project in order that the needs of the present may be met without compromising the ability of future generations to meet their needs;
- (n) Innu environmental knowledge collected by or at the behest of the Innu Government where provided to the Proponent by the Innu Government;
- (o) the protection of the Environment and ecosystem integrity;
- (p) extent to which the Project contributes to attainment of social and economic benefits;

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- (q) the application of Nakatuenta; and
- (r) the scope of the assessment factors referred to in (c) to (q) inclusive.

Part 14.4 Innu Government jurisdiction and Innu Environmental Assessment process

- 14.4.1 The Innu Government may require an Environmental Assessment, pursuant to Innu Law made under 14.4.4, of Projects in Labrador Innu Lands and of parts of Straddling Projects in Labrador Innu Lands. Where such an Environmental Assessment has been required, the Innu Government shall decide whether to issue an Approval Certificate for the Project in Labrador Innu Lands, or for the part of the Straddling Project in Labrador Innu Lands, or for or any modification of such a Project or part of such a Straddling Project made as a result of an Environmental Assessment.
- 14.4.2 An Approval Certificate, if issued, shall be provided by the Innu Government to the Proponent, with a copy to the Board, Canada and the Province. If the Innu Government decides the Project in Labrador Innu Lands or the part of the Straddling Project that is in Labrador Innu Lands should not commence, it shall notify the Proponent in writing of that decision with reasons for that decision.
- 14.4.3 The Innu Government may require an Environmental Assessment of a Project or part of a Straddling Project in Labrador Innu Lands, for or related to Exploration, only if the Project or part of the Straddling Project in Labrador Innu Lands is subject to Environmental Assessment under the *Canadian Environmental Assessment Act* or the *Environmental Protection Act*
- 14.4.4 The Innu Government may make laws for and in relation to Environmental Assessment, including laws to:
- (a) establish an Environmental Assessment process for Projects in Labrador Innu Lands and for parts of Straddling Projects in Labrador Innu Lands, which may include opportunities for public consultation and involvement;
 - (b) mitigate adverse Environmental Effects or enhance attainment of social and economic benefits of Projects in Labrador Innu Lands and parts of Straddling Projects in Labrador Innu Lands, that have been assessed and that are permitted to proceed;
 - (c) subject to 14.4.3, establish a list of Projects in Labrador Innu Lands or parts of Straddling Projects in Labrador Innu Lands requiring Environmental Assessment pursuant to 14.4.1;
 - (d) subject to 14.4.3, prescribe Projects or classes of Projects in Labrador Innu Lands or parts of Straddling Projects in Labrador Innu Lands for which an Environmental Assessment is required pursuant to 14.4.1;
 - (e) authorize the making and implementation of agreements with Authorities for purposes of general cooperation agreements and specific cooperation measures referred to in Part 14.2;

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- (f) give effect to Approval Certificates, and to permit reconsideration, amendments, suspensions and revocations thereof;
- (g) establish an Environmental Assessment process for Innu Government policies, plans or programs in Labrador Innu Lands;
- (h) prescribe Follow-up Programs for Projects in Labrador Innu Lands and for parts of Straddling Projects in Labrador Innu Lands;
- (i) charge fees and recover costs incurred by the Innu Government and Participants in relation to Environmental Assessments and Follow-up Programs, including but not limited to amendments and reconsiderations of Approval Certificates and for the provision to Proponents of Innu environmental knowledge, pursuant to Innu Law made under this Part 14.4; and
- (j) regulate the collection of Innu environmental knowledge from Participants for Environmental Assessments of Projects, and the provision to Proponents of that Innu environmental knowledge.

14.4.5 If there is a [C]¹³⁰onflict between an Innu Law made under this Part and the *Canadian Environmental Assessment Act* or the *Environmental Protection Act*, the *Canadian Environmental Assessment Act* or the *Environmental Protection Act* shall prevail to the extent of the [C]onflict.

14.4.6 If Canada, the Province or both, after receiving notice and information from the Innu Government pursuant to 14.2.5, decide that a Project in Labrador Innu Lands or a Straddling Project will not require Environmental Assessment pursuant to their Laws, then either or both of Canada and the Province may advise the Innu Government of their interest in participating in the Environmental Assessment of the Project or the part of the Straddling Project in Labrador Innu Lands pursuant to Innu Law under this Part 14.4.

14.4.7 For Projects in Labrador Innu Lands and parts of Straddling Projects in Labrador Innu Lands that are subject to Environmental Assessment under Innu Law made under this Part 14.4:

- (a) in carrying out the Environmental Assessment, the Innu Government may seek recommendations from the Board on the matters listed in 14.3.1;
- (b) on completion of the Environmental Assessment, the Innu Government shall provide to the Authorities a report on the matters listed in 14.3.1; and
- (c) prior to issuing an Approval Certificate, the Innu Government shall Consult the Authorities.

¹³⁰ October 9 note: The question about whether to define "Conflict" is to be resolved in context of broader discussion.

Part 14.5 Provincial Environmental Assessment process for Projects In the Labrador Innu Settlement Area and Undertakings

- 14.5.1 (a) If the Provincial Authority receives a Registration, an application for a permit, licence or authorization, or any other document or documents which demonstrate the intent of a Proponent to proceed with a Project that will require Environmental Assessment pursuant to the *Environmental Protection Act* (hereinafter "Provincial Environmental Assessment"), the Provincial Authority shall, as early as is practicable:
- (i) notify the Innu Government and the Board of that Project; and
 - (ii) provide to the Innu Government and to the Board that Registration, application or subject to {X.X, general provision regarding disclosure of information}, other document or documents.
- (b) Upon receiving notice under (a), the Innu Government may, within time lines set by the Provincial Minister, confirm its interest in participating in the Provincial Environmental Assessment.
- (c) The provisions of 14.5.1(d) and (e) shall apply to Projects in Labrador Innu Lands and Straddling Projects unless superceded by a general cooperation agreement or specific cooperation measure established pursuant to Part 14.2.
- (d) Upon receiving confirmation by the Innu Government under (b), the Provincial Minister shall:
- (i) Consult the Innu Government about the Environmental Effects of the Project;
 - (ii) for Projects in Labrador Innu Lands and Straddling Projects, Consult the Innu Government, within time lines set by the Provincial Minister, about the best way to meaningfully involve the Innu Government in the Provincial Environmental Assessment;
 - (iii) for Projects in the Labrador Innu Settlement Area outside Labrador Innu Lands, Consult the Innu Government, within time lines set by the Provincial Minister, about the best way to meaningfully involve the Innu Government in the Provincial Environmental Assessment if, in the opinion of the Provincial Authority, that Project may reasonably be expected to have adverse Environmental Effects in Labrador Innu Lands or adverse effects on Participant rights applicable in the Labrador Innu Settlement Area]under the Agreement, but nothing in this 14.5.1(d)(iii) derogates from 14.5.6 and 14.5.7.
- (e) On completion of the Provincial Environmental Assessment of a Project referred to in 14.5.1(a), the Provincial Authority shall provide to the Innu

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Government a report on the matters listed in 14.3.1.

- (f) The Province and Innu Nation agree to negotiate the role(s) of the Innu Government in Provincial Environmental Assessments under 14.5.1(d)(ii) and 14.5.1(d)(iii) above between this Agreement-in-Principle and the Agreement, in order to seek to define those role(s). To the extent that such negotiations result in agreement, that agreement when incorporated as an amendment to this Agreement will supercede 14.5.1(d)(ii) and 14.5.1(d)(iii).

14.5.2

If, in the opinion of the Provincial Authority, an Undertaking that requires Provincial Environmental Assessment may reasonably be expected to have adverse Environmental Effects in the Labrador Innu Settlement Area or adverse effects on the rights of Participants applicable in the Labrador Innu Settlement Area under the Agreement, the Provincial Authority shall:

- (a) as early as is practicable, notify the Innu Government of the Undertaking and provide to the Innu Government the Registration, application for a permit, licence or authorization, or, subject to {X.X, general provision regarding disclosure of information}, other document or documents which demonstrate the intent of the Proponent to proceed with the Undertaking;
- (b) if the Innu Government confirms its interest in participating in the Environmental Assessment applicable to the Undertaking, then the Provincial Authority shall
- (i) subject to {X.X, general provision regarding disclosure of information}, provide any additional information available to or produced by the Province in the course of the Provincial Environmental Assessment, about the Environmental Effects of the Project;
- (ii) Consult the Innu Government about the Environmental Effects of the Undertaking; and
- (iii) Consult the Innu Government about the possible participation of Participants and the Innu Government in that Environmental Assessment, provided that at a minimum, in the course of that Environmental Assessment, the Provincial Authority shall Consult the Innu Government about how the adverse Environmental Effects in the Labrador Innu Settlement Area or adverse effects on the rights of Participants applicable in the Labrador Innu Settlement Area may be Mitigated;

14.5.3

Subject to 14.5.11, the Provincial Authority will Consult the Innu Government on the results of any Provincial Environmental Assessment prior to releasing a Project or Undertaking that is subject to 14.5.1(d)(ii), 14.5.1(d)(iii) or 14.5.2 from that Provincial Environmental Assessment.

14.5.4

The Provincial Authority will Consult with the Innu Government before establishing by regulation, or before modifying, once established, time lines for

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the purposes of this Chapter, and shall ensure that such time lines are reasonable to permit adequate review by the Innu Government.

- 14.5.5 If as part of the Environmental Assessment of a Project in Labrador Innu Lands, the Project is being assessed by a board, tribunal or public review panel under the *Environmental Protection Act*,
- (a) the members of the board, tribunal or public review panel shall be appointed jointly by the Innu Government and the Provincial Authority from a list composed of equal numbers of nominations by each of the Innu Government and the Provincial Authority;
 - (b) one half of the members appointed to the board, tribunal or public review panel, other than the chairperson, shall be Innu Government nominees and the chairperson shall be selected jointly by the Innu Government and the Provincial Authority; and
 - (c) the Innu Government and the Board shall have standing before the board, tribunal or public review panel.
- 14.5.6 If as part of the Environmental Assessment of a Project in the Labrador Innu Settlement Area outside of Labrador Innu Lands, the Project is being assessed by a board, tribunal or public review panel under the *Environmental Protection Act*,
- (a) (i) the Innu Government will have the opportunity to nominate and provide to the Provincial Authority a list of candidates that the Provincial Authority shall consider for appointment to the board, tribunal or public review panel; and
 - (ii) at least one member of the board, tribunal or public review panel shall be selected from the list of candidates nominated and provided to the Provincial Authority by the Innu Government; and
 - (b) the Innu Government and the Board shall have standing before the board, tribunal or public review panel.
- 14.5.7 If as part of the Environmental Assessment of a Straddling Project the Project is being assessed by a board, tribunal or public review panel under the *Environmental Protection Act*,
- (a) the members of the board, tribunal or public review panel shall be jointly appointed by the Provincial Authority and the Innu Government from a list composed of nominations from the Provincial Authority and the Innu Government; and
 - (b) the Innu Government and the Board shall have standing before the board, tribunal or public review panel.
- 14.5.8 If as part of the Environmental Assessment of an Undertaking referred to in 14.5.2, the Undertaking is being assessed by a board, tribunal or public review

panel under the *Environmental Protection Act*, the Innu Government and the Board shall have standing before the board, tribunal or public review panel.

- 14.5.9 The appointment of any chairperson or member of a board, tribunal or public review panel under the *Environmental Protection Act* shall be made in a manner which respects the requirements of the *Environmental Protection Act*, and all individuals appointed to the board, tribunal or public review panel shall be unbiased and free from any conflict of interest relative to the Project, Straddling Project or Undertaking, and shall have knowledge or experience relevant to the anticipated Environmental Effects of that Project, Straddling Project or Undertaking.
- 14.5.10 On completion of the assessment conducted by a board, tribunal or public review panel referred to in 14.5.5, 14.5.6, 14.5.7 or 14.5.8, the board, tribunal or public review panel shall prepare and submit a report to the Provincial Authority and the Innu Government which shall include, but shall not be limited to:
- (a) a description of the Environmental Assessment process, including provisions for public participation;
 - (b) a summary of any comments and recommendations from the public; and
 - (c) the rationale, conclusions, recommendations and where applicable, Mitigation measures and Follow-up Program requirements recommended by the board, tribunal or public review panel.
- 14.5.11 The Innu Government and the Provincial Authority shall discuss the report referred to in 14.5.10 for any Projects with a view to reaching agreement on whether each of them, within their respective jurisdictions, will allow the Project or Straddling Project to proceed and if so, on what terms and conditions, and if agreement is reached then 14.5.3 shall not apply.
- 14.5.12 If the Innu Government and the Provincial Authority fail to reach agreement on the matters referred to in 14.5.11 within any time frame established by Law for taking an action or making a decision with respect to the Project, the Innu Government and the Provincial Authority, within their respective jurisdictions, may take an action or decision notwithstanding 14.5.11.
- Part 14.6 Federal Environmental Assessment process for Projects in the Labrador Innu Settlement Area and Undertakings**
- 14.6.1 (a) If a Federal Authority receives an application for a Project, Straddling Project or Undertaking or an application for a permit, licence or authorization related to that Project, Straddling Project or Undertaking, or any other document or documents which demonstrate the intent of a Proponent to proceed with a Project, Straddling Project or an Undertaking that is subject to the *Canadian Environmental Assessment Act*, and that Project, Straddling Project or Undertaking may reasonably be expected to have adverse Environmental Effects in the Labrador Innu Settlement Area or adverse effects on Participant rights applicable in the Labrador Innu

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Settlement Area under the Agreement, the Federal Authority shall, as early as is practicable:

- (i) notify the Innu Government and the Board of that Project, Straddling Project or Undertaking;
- (ii) provide to the Innu Government and to the Board that application or other document or documents;
- (iii) ensure that the Innu Government:
 - (a) is Consulted about the Environmental Effects of the Project, Straddling Project or Undertaking;
 - (b) is Consulted about the best way to meaningfully involve the Innu Government in the Environmental Assessment if the Innu Government confirms its interest in participating in the Environmental Assessment, but nothing in this 14.6.1(a)(iii) derogates from 14.6.3 or 14.6.4; and
 - (c) receives the report generated as a result of the Environmental Assessment including, where applicable, the rationale, conclusions, and recommendations of the official, mediator or review panel that carried out the Environmental Assessment.
- (iv) ensure that there is an appropriate process in place to consider, and where appropriate, take account of impacts of the Project on Labrador Innu Lands and Innu Communities and impacts on Participant rights as set out in the Agreement that are applicable in the Labrador Innu Settlement Area.

- (b) Canada and Innu Nation agree to negotiate the role(s) of the Innu Government in federal Environmental Assessments under (a) above between this Agreement-in-Principle and the Agreement, in order to seek to define those role(s). Negotiations shall include consideration of the potential role of the Board, and consideration of how to address the matters set out in 14.3.1. To the extent that such negotiations result in agreement, that agreement when incorporated as an amendment to this Agreement will supersede 14.6.1(a)(iii).

14.6.2 A Federal Authority shall Consult the Innu Government before taking an action that would allow a Project, Straddling Project or Undertaking referred to in 14.6.1 to proceed, or before making a decision to issue funding, a permit, licence or other authorization in relation to the Project or Undertaking.

14.6.3 If Canada refers a Project, Straddling Project or Undertaking referred to in 14.6.1 to a review panel under the *Canadian Environmental Assessment Act*, all individuals appointed to the review panel shall be unbiased and free from any conflict of interest relative to the Project, Straddling Project or Undertaking, and

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shall have knowledge or experience relevant to the anticipated Environmental Effects of that Project, Straddling Project or Undertaking, and:

- (a) in the case of a Project or Straddling Project where the review panel is not a decision-making body such as the National Energy Board,
 - (i) the Innu Government will have the opportunity to nominate and provide to the Minister a list of candidates that the Minister shall consider for appointment to the review panel; and
 - (ii) at least one member of the review panel shall be selected from the list of candidates nominated and provided to the Minister by the Innu Government; and
- (b) in the case of a Project or Straddling Project where the review panel is a decision making body such as the National Energy Board, and in the case of an Undertaking,
 - (i) the Innu Government will have the opportunity to nominate and provide to the Minister a list of candidates that the Minister shall consider for appointment to the review panel; and
 - (ii) the members of the review panel shall be selected from a list that includes the list of candidates nominated and provided to the Minister by the Innu Government.

14.6.4 If Canada intends to appoint a mediator to assist in conducting an Environmental Assessment under the *Canadian Environmental Assessment Act*, with respect to a Project, Straddling Project or Undertaking referred to in 14.6.1, a Federal Authority shall Consult the Innu Government before making the appointment.

14.6.5 The Innu Government and the Board shall be entitled to make representations to mediators and review panels referred to in 14.6.3 and 14.6.4.

14.6.6 Upon completion of the mediation or the hearings of the review panel referred to in 14.6.3 and 14.6.4, the mediator or review panel shall prepare and submit a report to the relevant Federal Authorities, the Innu Government and to the Board which shall include, but shall not be limited to:

- (a) a description of the Environmental Assessment process, including provisions for public participation;
- (b) a summary of any comments and recommendations from the public, and
- (c) the rationale, conclusions, recommendations and where applicable, Mitigation Measures and Follow-up Program requirements recommended by the mediator or review panel.

14.6.7 The Innu Government and the relevant Federal Authority shall discuss the report referred to in 14.6.6 for any Projects and Straddling Projects with a view to reaching agreement on whether each of them, within their respective

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jurisdictions, will allow the Project to proceed and if so, on what terms and conditions, and if agreement is reached then 14.6.2 shall not apply.

- 14.6.8 If the Innu Government and the relevant Federal Authority fail to reach agreement on the matters referred to in 14.6.7 within any time frame established by Law for taking an action or making a decision with respect to the Project, the Innu Government and the relevant Federal Authority, within their respective jurisdictions, may take an action or decision notwithstanding 14.6.7.

Part 14.7 Role of the Board

- 14.7.1 The Innu Government and the Authorities shall inform the Board, upon the completion of Environmental Assessments of Projects, Straddling Projects and Undertakings referred to in 14.5.1, 14.5.2, and 14.6.1, of the outcome of such Environmental Assessments.

- 14.7.2 Subject to the Agreement, the Board has the following responsibilities:

- (a) in accordance with this chapter, to participate in Environmental Assessment processes;
- (b) to recommend to the Minister and the Innu Government measures to monitor impacts of Projects and Undertakings, and of Projects and Undertakings approved under Part 14.4, 14.5 or 14.6;
- (c) if approved by the Minister and the Innu Government, to implement measures referred to in 14.7.2(b); and
- (d) exercise any other environmental assessment functions delegated to the Board by agreement of the Governments.

- 14.7.3 The relevant Minister and the Innu Government shall

- (a) notify the Board in writing of the decision with respect to any recommendation of the Board provided under 14.7.2(b) or (d);
- (b) provide timely written reasons to the Board for a decision that rejects the recommendation.

Part 14.8 Monitoring

- 14.8.1 If a Project or an Undertaking that may reasonably be expected to have adverse Environmental Effects in the Labrador Innu Settlement Area is allowed to proceed subject to a permit, licence, or other authorization containing conditions that require Mitigation measures, the Innu Government and the relevant Authorities, within their respective jurisdictions, shall:

- (a) coordinate their responsibilities for Follow-up Programs to the extent possible; and

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- (b) in the exercise of their powers or the performance of their duties and functions, ensure that any Mitigation measures that they consider to be appropriate are implemented.

Chapter 15: Land Use Planning

Part 15.1 Definitions

15.1.1 In this Chapter:

"Minister" means in this Chapter, unless otherwise expressly specified, the responsible Provincial minister having jurisdiction over the particular matter;

"Planner" means an individual or individuals qualified as a planner under Provincial Law or Federal Law or who is a fellow or full member of the Canadian Institute of Planners or its successor and appointed by the Minister under 15.4.1;

"Planning Area" means the Labrador Innu Settlement Area or a part or parts thereof as defined by the Minister pursuant to 15.3.1; and

"Regional Planning Authority" means the planning authority established under part 15.3.

Part 15.2 General

- 15.2.1 The provisions of this Chapter apply to all lands, waters and resources in the Labrador Innu Settlement Area other than lands under the administration and control of Canada and Tidal Waters within the jurisdiction of Canada. The provisions of this Chapter do not affect matters within Canada's jurisdiction.
- 15.2.2 Notwithstanding that any Land Use Plan is not binding on Canada, Canada shall consider any Land Use Plan when discharging any of its responsibilities in the Labrador Innu Settlement Area.
- 15.2.3 Land use policies and development regulations established under Provincial Legislation do not apply in or to Labrador Innu Lands but, subject to this Chapter, do apply in accordance with their terms to Water Use in Labrador Innu Lands.
- 15.2.4 The Province shall Consult the Innu Government before establishing any land use policy or development regulation under any Provincial Legislation that applies in or to the Labrador Innu Settlement Area outside Labrador Innu Lands or to Water Use in Labrador Innu Lands.
- 15.2.5 The Innu Government shall Consult the Province before establishing any land use policy or development regulation under an Innu Law that applies in or to Labrador Innu Lands.
- 15.2.6 A Person is not entitled to compensation for a reduction in the value of that Person's interest in land or for any loss or damage to that Person's interest in land that may result from the application of this Chapter or a Land Use Plan.
- 15.2.7 Notwithstanding the jurisdiction of the Innu Government under 15.11.1 and the provisions of 15.11.4, any Land Use Plan must be prepared in accordance with

this Chapter and in accordance with the procedures set out for the preparation of a regional plan under the *Urban and Rural Planning Act, 2000* (Newfoundland and Labrador).

- 15.2.8 A plan under the *Urban and Rural Planning Act, 2000* (Newfoundland and Labrador) which is in effect in the Labrador Innu Settlement Area at the time a Land Use Plan comes into effect shall be amended to conform to that Land Use Plan.
- 15.2.9 A plan under the *Urban and Rural Planning Act, 2000* (Newfoundland and Labrador) within the Labrador Innu Settlement Area or a plan under an Innu Law within Labrador Innu Lands prepared subsequent to the time a Land Use Plan comes into effect must conform to that Land Use Plan.
- 15.2.10 The Province and the Innu Government, through the planning process referred to in this Chapter and thereafter, may collaborate with Canada for purposes of achieving the objectives of Canada's oceans management strategy under Part II of the *Oceans Act* (Canada).
- 15.2.11 Land Use Plans or an amendment to a Land Use Plan shall be consistent with the Agreement, all other planning and decision-making processes established under the Agreement, and their respective outcomes, but all Land Use Plans and all amendments thereto shall be fully effective where no such inconsistency exists.
- Part 15.3 Commencement of a Land use Plan and the Regional Planning Authority**
- 15.3.1 The Minister shall, within three (3) years of the Effective Date, define a Planning Area for the Labrador Innu Settlement Area, or with the agreement of the Innu Government, for any part or parts thereof.
- 15.3.2 Where a Planning Area has been defined under 15.3.1, a Regional Planning Authority shall be established for the preparation of a Land Use Plan for that Planning Area. This Regional Planning Authority will be composed of five (5) members having knowledge and experience in land use planning who shall be appointed jointly by the Province and the Innu Government as soon as practicable after a Planning Area is defined.
- 15.3.3 If the Province and the Innu Government fail to agree on joint appointments to the Regional Planning Authority for the Planning Area within sixty (60) days from the commencement of discussions for that purpose, each of the Province and the Innu Government may appoint two (2) members.
- 15.3.4 The chairperson of the Regional Planning Authority shall be appointed by and with the agreement of the Province and the Innu Government.
- 15.3.5 If the Province and the Innu Government cannot agree upon the appointment of the chairperson within ninety (90) days from the commencement of discussions for that purpose or within a longer period agreed to by the Province and the Innu Government, the appointment shall be made by the Chief Justice of the Supreme Court of Newfoundland and Labrador, Trial Division – General Division upon the

application of either the Province or the Innu Government for such an appointment.

- 15.3.6 Within fifteen (15) days of the application referred to in 15.3.5, each of the Province and the Innu Government may submit the name of one potential appointee to the Chief Justice for consideration.
- 15.3.7 The Chief Justice, before making the appointment under 15.3.5, shall consider, in camera, the ability of the potential appointees put forward under 15.3.6 to discharge the office of chairperson, and the submissions of the Province and the Innu Government regarding that ability.
- 15.3.8 The Regional Planning Authority may adopt rules for the performance of its functions, including rules for the calling of meetings, the conduct of business and the carrying on of the work of the Regional Planning Authority.
- 15.3.9 The members of the Regional Planning Authority shall receive remuneration for their services as members and shall be paid the expenses necessarily incurred in the discharge of their duties. A public servant appointed to the Regional Planning Authority shall not receive remuneration in excess of that received as a public servant.
- 15.3.10 A Regional Planning Authority shall disband and cease its operation when it has completed its functions under part 15.5.

Part 15.4 Preparation of the Land Use Plan

- 15.4.1 A Planner shall be appointed by the Minister from a list of nominees prepared by the Regional Planning Authority.
- 15.4.2 The terms of the appointment of the Planner shall be established by the Minister in Consultation with the Innu Government after considering the advice of the Regional Planning Authority on the terms of the appointment.
- 15.4.3 The Regional Planning Authority shall direct the Planner's preparation of any draft Land Use Plan, including the drafting of the Land Use Plan and any associated maps by the Planner in accordance with this Chapter, and any associated consultations or hearings conducted by the Planner.
- 15.4.4 A Regional Planning Authority shall prepare the Land Use Plan for the Planning Area following the procedures set out for preparation of a regional plan by a regional authority under the *Urban and Rural Planning Act, 2000* (Newfoundland and Labrador), as modified by this Chapter, and for that purpose has the powers and shall carry out the functions of a regional authority under the *Urban and Rural Planning Act, 2000* (Newfoundland and Labrador), subject to this Chapter.
- 15.4.5 The Regional Planning Authority shall, after Consultation with the Planner:
- (a) establish principles to guide land use planning;
 - (b) establish the objectives of the Land Use Plan; and

- (c) perform any other functions that may be agreed upon by the Regional Planning Authority, the Innu Government and the Province.

15.4.6

The draft of any Land Use Plan must provide for the management of land, water and resource use within the Planning Area and shall take into consideration and account for:

- (a) the natural resources of the Planning Area, including Water, and existing patterns of natural resource use;
- (b) the health and quality of life of the residents of the Planning Area;
- (c) the economic needs of, and the economic opportunities that are and may be available to, the residents of the Planning Area;
- (d) Environmental considerations, including Fish, Aquatic Plants, Wildlife, Migratory Birds, Forest Resources, Plants, Aquatic Habitat and Habitat;
- (e) Protected Areas, National Parks, and National Marine Conservation Areas and;
- (f) cultural factors and priorities, including the protection and preservation of Archaeological Sites, Places of Religious Significance to Innu, and Innu Burial Sites;
- (g) particular local and regional considerations;
- (h) considerations respecting the management of estuarine, coastal and marine ecosystems;
- (i) the rights of Participants as set out in the Agreement;
- (j) the mandatory and discretionary requirements for plans and regulations under the *Urban and Rural Planning Act, 2000* (Newfoundland and Labrador); and
- (k) any other factors that, in the opinion of the Regional Planning Authority and the Planner, are necessary or desirable.

15.4.7

Once the Regional Planning Authority is satisfied with the draft of the Land Use Plan it shall forward the draft to the Innu Government and the Minister.

15.4.8

Within sixty (60) days from the date when the draft of the Land Use Plan is forwarded under 15.4.7, the Innu Government and the Minister shall provide their recommendations and comments regarding the draft of the Land Use Plan to the Regional Planning Authority. The Regional Planning Authority may direct the Planner to revise the draft of the Land Use Plan.

- 15.4.9 Upon completion of the process under 15.4.8, the Regional Planning Authority shall forward the draft of the Land Use Plan or revised draft of the Land Use Plan to the Innu Government and the Minister.
- 15.4.10 The draft of the Land Use Plan referred to in 15.4.9 shall be adopted in principle by the Minister and the Innu Government.
- Part 15.5 Public Hearings**
- 15.5.1 Once the steps required under Part 15.4 have been completed and the draft of the Land Use Plan has been adopted in principle by the Minister and the Innu Government pursuant to 15.4.10, it shall be the subject of public hearings to be held within the Labrador Innu Settlement Area and other locations as determined by the Innu Government and the Minister.
- 15.5.2 The Regional Planning Authority shall:
- (a) hold public hearings and consider representations regarding the draft of the Land Use Plan from any Person; and
 - (b) have, for purposes of public hearings under this Chapter, the same powers as a commissioner under the *Public Inquiries Act* (Newfoundland and Labrador).
- 15.5.3 Within six (6) months from the date of the adoption in principle by the Minister and the Innu Government under 15.5.1, the Regional Planning Authority shall submit a written report with respect to the draft of the Land Use Plan to the Minister and the Innu Government. The report must set out in detail the Regional Planning Authority's recommendations respecting all matters and representations considered by the Regional Planning Authority at the public hearings together with the reasons for the recommendations and a statement showing objections and representations that came to the attention of the Regional Planning Authority but were not considered and the reasons why they were not considered.
- 15.5.4 The Regional Planning Authority shall Consult the Innu Government and the Minister on the report referred to in 15.5.3 and following such Consultation may revise the draft of the Land Use Plan.
- 15.5.5 After the Consultation referred to in 15.5.4 and after making any revisions, the Regional Planning Authority shall submit the draft of the Land Use Plan to the Minister and the Innu Government.
- 15.5.6 The Regional Planning Authority may appoint a commissioner to execute the functions of the Regional Planning Authority under 15.5.2 and 15.5.3; but any such commissioner shall not simultaneously be a member or an employee of a municipal or city council or a regional authority, or an employee of Canada, the Province, the Innu Government or an Innu Community Government.

Part 15.6 Approval of the Land Use Plan

15.6.1 Within ninety (90) days from the date of receipt of the draft of the Land Use Plan referred to in 15.5.5, the Minister shall, with respect to the Labrador Innu Settlement Area outside Labrador Innu Lands and with respect to Water Use in Labrador Innu Lands, review the draft of the Land Use Plan under the *Urban and Rural Planning Act, 2000* (Newfoundland and Labrador). The Minister shall, after taking into account any comments of the Innu Government pursuant to 15.6.2 and Consulting the Innu Government pursuant to 15.6.5:

- (a) approve the draft of the Land Use Plan with or without conditions;
- (b) modify the draft of the Land Use Plan; or
- (c) reject the draft of the Land Use Plan and substitute a land use plan for a matter within areas under the jurisdiction of the Province; and
- (d) forthwith notify the Innu Government and the Board of the decision.

15.6.2 With respect to proposed actions under 15.6.1 (a), (b) or (c) that are not the subject of Consultations pursuant to 15.6.5, before the Minister:

- (a) imposes any conditions that were not recommended by the Regional Planning Authority;
- (b) modifies the final draft of the Land Use Plan that was recommended by the Regional Planning Authority; or
- (c) rejects the final draft of the Land Use Plan recommended by the Regional Planning Authority and substitutes a Land Use Plan;

the Minister shall provide the Innu Government with written reasons for such action. Within thirty (30) days from the date the reasons are forwarded to the Innu Government, the Innu Government shall provide comments, if any, to the Minister. The Minister shall take into account any comments of the Innu Government before taking action under 15.6.1 (a), (b) or (c).

15.6.3 Within ninety (90) days from the date of receipt of the draft of the Land Use Plan referred to in 15.5.5, the Innu Government shall, with respect to Labrador Innu Lands and subject to 15.6.5:

- (a) approve the draft of the Land Use Plan with or without conditions;
- (b) modify the draft of the Land Use Plan; or
- (c) reject the draft of the Land Use Plan and substitute a land use plan for a matter within the jurisdiction of the Innu Government; and
- (d) forthwith notify the Minister and the Board of the decision.

15.6.4 Before the Innu Government:

- (a) imposes any conditions that were not recommended by the Regional Planning Authority;
- (b) modifies the draft final Land Use Plan that was recommended by the Regional Planning Authority; or
- (c) rejects the draft final Land Use Plan recommended by the Regional Planning Authority and substitutes a Land Use Plan;

the Innu Government shall provide the Minister with written reasons for such action. Within thirty (30) days from the date the reasons are forwarded to the Minister, the Minister shall provide his or her comments to the Innu Government. The Innu Government shall take in account any comments of the Minister before taking action under 15.6.2 (a), (b) or (c).

15.6.5 The discretion of the Innu Government under 15.6.4 shall not apply to Water Use in Labrador Innu Lands, but the Minister shall Consult the Innu Government prior to taking any action under 15.6.1 with respect to Water Use in Labrador Innu Lands.

15.6.6 Once the draft of the Land Use Plan referred to in 15.5.5 has been accepted, with or without conditions, modified or rejected and substituted, as the case may be, under 15.6.1 and 15.6.3, it shall be brought into effect as the Land Use Plan in accordance with the procedures set out in Part 15.7.

Part 15.7 Coming into Effect and Implementation of the Plan

15.7.1 For matters within the jurisdiction of the Province in the Labrador Innu Settlement Area outside Labrador Innu Lands, and with respect to Water Use in Labrador Innu Lands, the Land Use Plan shall come into effect upon compliance by the Minister with the requirements for bringing a plan into force under the *Urban and Rural Planning Act, 2000* (Newfoundland and Labrador) after which date the Land Use Plan, as it applies in such lands, shall be binding for purposes of Provincial Law on all Persons other than Canada.

15.7.2 The Land Use Plan shall come into effect in Labrador Innu Lands when it has been proclaimed and published as an Innu Law, after which date the Land Use Plan, as it applies in Labrador Innu Lands, shall be binding for purposes of Innu Law on all Persons other than Canada.

15.7.3 The Land Use Plan shall be implemented:

- (a) in Labrador Innu Lands by the Innu Government, subject to 15.11.2; and
- (b) elsewhere within the Labrador Innu Settlement Area by the Province.

15.7.4 Provincial officials responsible for the Land Use Planning shall meet with the corresponding Innu Government officials twice a year, or as otherwise agreed upon by the Province and the Innu Government, to discuss the issues that may arise in the upcoming year or have arisen in the previous year in relation to any Land Use Plan.

Part 15.8 Non-Conforming Uses

15.8.1 Subject to 15.2.1, any use of land, Water, Tidal Waters, or buildings legally existing within the Labrador Innu Settlement Area when the Land Use Plan comes into effect which does not conform with the Land Use Plan, or which becomes non-conforming as a result of an amendment to the Land Use Plan, may continue without conforming to the Land Use Plan.

15.8.2 Unless otherwise provided in the Agreement, any non-conforming use permitted under 15.8.1 which ceases for a continuous period of twelve (12) months loses its status as a permitted non-conforming use.

Part 15.9 Amendments to the Land Use Plan

15.9.1 The Innu Government and the Province shall jointly review any Land Use Plan brought into effect pursuant to Part 15.7, including the principles and objectives for the Land Use Plan that are established under 15.4.5 every five (5) years from the date when any such Land Use Plan comes into effect.

15.9.2 Recommendations for amendments to any Land Use Plan brought into effect pursuant to Part 15.7 may be made by any Person or the Board to the Innu Government or the Province at any time after any Land Use Plan comes into effect pursuant to Part 15.7.

15.9.3 An amendment to any Land Use Plan brought into effect pursuant to Part 15.7 that is proposed as a consequence of a review under 15.9.1 or that is recommended under 15.9.2 shall be dealt with in accordance with this Part.

15.9.4 The Province for matters within its jurisdiction in the Labrador Innu Settlement Area outside Labrador Innu Lands and with respect to Water Use in Labrador Innu Lands, or the Innu Government for matters within its jurisdiction in Labrador Innu Lands shall either reject the proposed amendment or, subject to 15.9.5, prepare a draft amendment to the Land Use Plan.

15.9.5 Before rejecting any proposed amendment under 15.9.4, the Province and the Innu Government shall meet to discuss the proposed amendment, unless they agree to dispense with the meeting; but, in any event, should the amendment be rejected, the Province or the Innu Government, as the case may be, shall provide reasons in writing for the rejection to the other.

15.9.6 In preparing a draft amendment to the Land Use Plan the Minister or the Innu Government, as the case may be, shall:

- (a) apply the principles and objectives for the Land Use Plan that are

established under 15.4.5, unless, as part of the draft amendment, the principles and objectives that have been established under 15.4.5 are being revised as a result of a review referred to in 15.9.1;

- (b) take into consideration, and account for, where appropriate, the matters set out in 15.4.6;
- (c) employ or engage a Planner to draft the amendment; and
- (d) Consult the other on the draft of the amendment.

15.9.7 Following the Consultation referred to in 15.9.6(d), the Minister for matters within the jurisdiction of the Province in the Labrador Innu Settlement Area outside Labrador Innu Lands and with respect to Water Use in Labrador Innu Lands, or the Innu Government for matters within its jurisdiction in Labrador Innu Lands, shall submit the draft amendment to the other and both shall, no later than thirty (30) days from the date of submission, adopt in principle the draft amendment to the Land Use Plan.

15.9.8 Upon compliance with 15.9.7, the Minister and the Innu Government shall forthwith give public notice:

- (a) that they have adopted the draft amendment in principle;
- (b) of the contents of the draft amendment;
- (c) that objections and representations may be made with respect to the draft amendment; and
- (d) setting out the time limit and method for providing objections and representations with respect to the draft amendment.

15.9.9 The time limit referred to in 15.9.8(d) shall be no less than fourteen (14) days from the date of first publication of the notice.

15.9.10 Within fourteen (14) days from the date of expiry of the time limit set out in 15.9.8(d), the Minister and the Innu Government shall Consult each other concerning:

- (a) any objections and representations with respect to the draft amendment that may have been received under 15.9.8 (c); and
- (b) subject to this Part, the process that will be followed for the disposition of such objections and representations.

15.9.11 Within sixty (60) days from the completion of the Consultation referred to in 15.9.10:

- (a) the Minister for matters within the jurisdiction of the Province in the Labrador Innu Settlement Area outside Labrador Innu Lands and with respect to Water Use in Labrador Innu Lands, or the Innu Government for

matters within its jurisdiction in Labrador Innu Lands, may hold a public hearing; or

- (b) the Minister and the Innu Government may agree to a joint public hearing where appropriate, having regard to the subject of the draft amendment and the objections and representations that have been received with respect to it.

15.9.12 If a public hearing is held pursuant to 15.9.11 (a), the Minister or the Innu Government, as the case may be, [shall appoint a commissioner]:¹³¹

- (a) to hold public hearings at locations to be determined by either the Minister or the Innu Government as the case may be, and to consider representations from any Person regarding the draft amendment;
- (b) having the powers of a commissioner under the *Public Inquiries Act* (Newfoundland and Labrador) for purposes of a public hearing under this Part; and
- (c) who shall, within six (6) months from the date of the completion of the Consultation referred to in 15.9.10, or such shorter period as the Minister or the Innu Government as the case may be determines, submit a written report to the Minister and to the Innu Government with respect to the draft amendment that meets the requirements of 15.5.3.

15.9.13 If a joint public hearing is held pursuant to 15.9.11 (b), the Innu Government and the Minister [shall jointly appoint a commissioner]:

- (a) to hold public hearings in the appropriate locations within the Labrador Innu Settlement Area and other locations as jointly determined by the Minister and the Innu Government and consider representations from any Person regarding the draft amendment;
- (b) having the powers of a commissioner under the *Public Inquiries Act* (Newfoundland and Labrador) for purposes of a public hearing under this Part; and
- (c) who shall, within six (6) months from the date of the completion of the Consultation referred to in 15.9.10, or such shorter period as the Innu Government and the Minister may agree, submit a written report to the Minister and the Innu Government with respect to the draft amendment that meets the requirements of 15.5.3.

15.9.14 Following receipt of the [commissioner's] report referred to in 15.9.12(c) or 15.9.13(c), the Minister or the Innu Government, as the case may be, may, in accordance with the procedures set out in the applicable Provincial Law or Innu Law, subject to this Part, approve the draft amendment with or without

¹³¹ Legal drafting. To be revised to reflect option of Minister or the Innu Government holding the hearings directly.

conditions, modify the draft amendment or reject the draft amendment and shall forthwith notify the other of the decision.

- 15.9.15 The Minister shall Consult the Innu Government prior to taking any action under 15.9.12 with respect to Water Use in Labrador Innu Lands.
- 15.9.16 A draft amendment as approved or modified under 15.9.14 shall be brought into effect and implemented in accordance with the procedures set out in Part 15.7.
- 15.9.17 If, pursuant to 15.9.10 (b) a public hearing is not held, the Minister or the Innu Government, as the case may be, may approve the draft amendment with or without conditions, modify the draft amendment or reject the draft amendment and shall forthwith notify the other of the decision.
- 15.9.18 The Minister shall Consult the Innu Government prior to taking any action under 15.9.17 with respect to Water Use in Labrador Innu Lands.
- 15.9.19 A draft amendment as approved or modified under 15.9.17 shall be brought into effect and implemented in accordance with the procedures set out in Part 15.7.
- 15.9.20 A commissioner appointed to execute the functions set out in 15.9.12 or 15.9.13 shall not simultaneously be a member or an employee of a municipal or city council or a regional authority, or an employee of Canada, the Province, the Innu Government or an Innu Community Government.

Part 15.10 Appeals

- 15.10.1 A decision of the Innu Government or the Minister regarding implementation of the Land Use Plan may be appealed by the Person aggrieved by such a decision pursuant to the appeal provisions of the *Urban and Rural Planning Act, 2000* (Newfoundland and Labrador), and this Part.
- 15.10.2 The Minister shall establish a board to hear appeals made under 15.10.1 and shall appoint to the board two (2) members from nominations provided by the Innu Government.
- 15.10.3 Appeals regarding the implementation of any Land Use Plan brought into effect pursuant to Part 15.7 within Labrador Innu Lands shall be heard by a panel of three (3) members of the board referred to in 15.10.2, a majority of whom shall be members nominated by the Innu Government.
- 15.10.5 A decision of the board referred to in 15.10.2 shall be final and binding, subject only to judicial review in accordance with 15.10.6.
- 15.10.6 Judicial review of a decision of the board referred to in 15.10.2 by the Supreme Court of Newfoundland and Labrador, Trial Division – General Division shall be available at the motion of a Person referred to in 15.10.1, the Innu Government or the Minister.

Part 15.11 Innu Government Jurisdiction

- 15.11.1 Subject to 15.11.2, the Innu Government may make laws in relation to:
- (a) land use and the regulation of development in Labrador Innu Lands;
 - (b) the acceptance, modification or rejection of the draft of the Land Use Plan referred to in 15.6.3 as it applies to Labrador Innu Lands;
 - (c) the substitution and approval of a Land Use Plan for Labrador Innu Lands;
 - (d) the implementation of the Land Use Plan in Labrador Innu Lands;
 - (e) the permitting of land uses in Labrador Innu Lands which conform to the Land Use Plan;
 - (f) the review and amendment of the Land Use Plan as it applies to Labrador Innu Lands; and
 - (g) the nomination of members of the board referred to in Part 15.10.
- 15.11.2 The jurisdiction of the Innu Government under 15.11.1 does not include the jurisdiction to make laws with respect to Water Use in Labrador Innu Lands under or in connection with the Land Use Plan.
- 15.11.3 The authority of the Innu Government to make laws in relation to the matters referred to in 15.11.1 must be exercised in a manner consistent with this Chapter and shall not amend any of the procedures set out in this Chapter.
- 15.11.4 Subject to 15.11.3, if there is a Conflict between an Innu Law under 15.11.1 and Provincial Legislation in relation to land use planning, the Innu Law prevails to the extent of the Conflict.

Chapter 16: Expropriation

Part 16.1 Definitions

16.1.1 In this Chapter:

"Expropriation Authority" means an authority authorized to Expropriate; and

"Expropriate" means the compulsory taking of land or any interest in land.

Part 16.2 Expropriation

16.2.1 Labrador Innu Lands shall not be Expropriated except in accordance with Federal Law or Provincial Law as modified by the provisions of this Chapter.

16.2.2 The Parties recognize the fundamental importance of maintaining the quantum and geographic integrity of Labrador Innu Lands and, as a result, Canada and the Province shall endeavor to avoid Expropriating Labrador Innu Lands.

16.2.3 Prior to making a decision to Expropriate Labrador Innu Lands, Canada or the Province shall:

(a) considering 16.2.2, ensure that lands other than Labrador Innu Lands are proposed for Expropriation if those other lands are reasonably available for the purpose for which the lands are intended to be Expropriated; and

(b) Consult the Innu Government.

16.2.4 An Expropriation Authority shall, prior to making a decision to Expropriate Labrador Innu Lands, make serious efforts, for a period of one hundred and eighty (180) days, unless the Expropriation Authority and the Innu Government agree to a different period, to transfer the Labrador Innu Lands to be Expropriated through a negotiated land transfer agreement, which could include consideration in the form of cash, lands, or both cash and lands, with the Innu Government, rather than by Expropriation.

16.2.5 The one hundred and eighty (180) day period or any agreed-upon period referred to in 16.2.4 shall commence the day on which the Innu Government receives the first offer in writing of the Expropriation Authority for the purposes of concluding a negotiated land transfer agreement under 16.2.4.

16.2.6 No Expropriation of Labrador Innu Lands is effective without the prior consent of:

(a) the Lieutenant-Governor in Council in the case of an Expropriation by a provincial Expropriation Authority; or

(b) the Governor in Council in the case of an Expropriation by a federal Expropriation Authority.

- 16.2.7 If a negotiated land transfer agreement in accordance with 16.2.4 is not possible, the Expropriation Authority shall serve written notice of the proposed Expropriation on the Innu Government, any Person claiming by, under or through the Innu Government, and any Person holding an interest in the portion of Labrador Innu Lands which is the subject of the proposed Expropriation.
- 16.2.8 If a piece or parcel of Labrador Innu Lands is to be Expropriated, the Expropriation Authority shall first offer compensation in the form of other lands of equivalent significance and value in the Labrador Innu Settlement Area outside Labrador Innu Lands, if such equivalent lands are reasonably available.
- 16.2.9 For the purposes of 16.2.8, the following lands are not reasonably available:
- (a) lands subject to third party interests; and
 - (b) lands occupied or used by the Expropriating Authority, Canada or its agents¹³², the Province or its agents, or by a municipal government, unless the Expropriating Authority, Canada or its agents, the Province or its agents, or a municipal government consents to have these lands used for the purposes of 16.2.8.
- 16.2.10 Notwithstanding 16.2.9 and for greater certainty, Canada or the Province, as applicable, that created a third party interest may, with the intention of making those lands available for the purposes of 16.2.8:
- (a) terminate that third party interest in accordance with the terms of that interest; or
 - (b) negotiate with the holder of that interest to secure:
 - (i) the voluntary termination of that interest; or
 - (ii) the consent of the interest holder to have that interest used for the purposes of 16.2.8.
- 16.2.11 Where two (2) or more parcels of land are available for offer pursuant to 16.2.8, the Expropriating Authority shall offer the parcels in an order that endeavors to respect to the greatest extent possible the geographic integrity of Labrador Innu Lands in the vicinity of the Labrador Innu Lands which are to be Expropriated.
- 16.2.12 The following shall be factors in assessing which of the parcels referred to in 16.2.11 respects to the greatest extent possible the geographic integrity of Labrador Innu Lands in the vicinity of the Labrador Innu Lands which are to be Expropriated:

¹³²Legal drafting. Canada suggests “agents” could be deleted here and be included in the general definitions of Canada and Province.

- (a) the contiguity of the parcels to the Labrador Innu Lands which will remain following the Expropriation; and
 - (b) Participant access to and over the parcels.
- 16.2.13 If, under 16.2.8, lands of equivalent significance and value are limited or not reasonably available, cash, lands, or both cash and lands shall be offered.
- 16.2.14 The Innu Government, a Person claiming by, under or through the Innu Government, or a Person holding an interest in the portion of Labrador Innu Lands which is the subject of the proposed Expropriation, shall not be required to take other lands offered under 16.2.8. In the event such lands are declined, cash, lands, or both cash and lands shall be offered.
- 16.2.15 If there is a Dispute over:
- (a) the value of the Labrador Innu Lands to be expropriated, or the value of the interest in the Labrador Innu Lands to be Expropriated;
 - (b) whether other lands offered pursuant to 16.2.8, 16.2.13, or 16.2.22 are of equivalent significance and value compared to the Labrador Innu Lands to be Expropriated;
 - (c) the amount or form of compensation, whether cash, lands or both cash and lands;
 - (d) costs; or
 - (e) interest on the compensation,
- the Dispute may be referred directly to Arbitration under Chapter 26 by any Disputant.
- 16.2.16 An Arbitrator shall consider the following matters when making an Arbitration Decision in respect of a Dispute referred to in 16.2.15:
- (a) loss of use of the Expropriated lands to the Innu Government, any Person claiming by, under or through the Innu Government, or a Person holding an interest in the portion of Labrador Innu Lands which is the subject of the proposed Expropriation;
 - (b) the adverse effect of the Expropriation on other Labrador Innu Lands;
 - (c) damage that may be caused to any unexpropriated interest in the Expropriated lands;
 - (d) nuisance, including noise and inconvenience to the Innu Government, any Person claiming by, under or through the Innu Government, or any Person holding an interest in the portion of Labrador Innu Lands which is the subject of the proposed Expropriation;

- (e) the cultural significance of, and attachment of Participants to, the portion of Labrador Innu Lands which is the subject of the proposed Expropriation;
- (f) the effect on Wildlife, Migratory Birds, Fish, Habitat, Aquatic Habitat and the Innu Domestic Harvest;
- (g) any particular or special value to Participants of the Expropriated lands;
- (h) any and all costs reasonably associated with the Expropriation and any related negotiations, mediation or Arbitration;
- (i) the market value of the Expropriated lands;
- (j) whether other lands are offered in compensation and, if so, the significance and value of those lands; and
- (k) any other matter that may be considered under applicable Federal Law or Provincial Law.

- 16.2.17 Ten (10) days after the service of the Expropriation notice on the Innu Government under 16.2.7, the Expropriated interest in Labrador Innu Lands is no longer vested in [Innu¹³³] and if the entire estate of [Innu] in Labrador Innu Lands under 5.8.1 is Expropriated, the lands cease to be Labrador Innu Lands.
- 16.2.18 Labrador Innu Lands that have been Expropriated but are no longer required for the purposes for which they were Expropriated may, with the consent of the Expropriation Authority and the Innu Government, be conveyed back to the Innu Government at an agreed return price, or, in the absence of agreement, at a return price determined by an Arbitrator in accordance with Chapter 26.
- 16.2.19 The Innu Government shall have a sixty (60) day right of first refusal to acquire the lands proposed for return under 16.2.18 commencing the day on which the written offer of the Expropriation Authority to return those lands is received by the Innu Government; and during those sixty (60) days negotiations may take place between the Expropriation Authority and the Innu Government with respect to terms of any such return of those lands, including the return price.
- 16.2.20 If within the sixty (60) day period referred to in 16.2.19, the Innu Government does not accept the lands which are proposed for return under 16.2.18 on agreed terms, or submit the matter to an Arbitrator under 16.2.18, then the Expropriation Authority shall be free to sell or transfer those lands to another Person on condition that any terms that the Expropriation Authority offers to or is willing to accept from another Person shall not be more favourable than any terms that the Expropriation Authority offered to the Innu Government.

¹³³ To be negotiated. linked to resolution of Part 5.8

- 16.2.21 During an Arbitration arising under 16.2.18, the Expropriation Authority shall justify any return price that is greater than the compensation, adjusted for inflation, paid by the Expropriation Authority for the Expropriated lands. Justification may include consideration of the fair market value of the lands proposed for return under 16.2.18 taking into account any improvements made to those lands subsequent to the Expropriation.
- 16.2.22 If at any time twelve (12) percent of the quantum of Labrador Innu Lands set out in 5.3.1 have been and remain Expropriated, no further Expropriation of Labrador Innu Lands shall occur unless the Expropriation Authority provides compensation that includes an amount of previously Expropriated Labrador Innu Lands equivalent in significance and value to the Labrador Innu Lands proposed for Expropriation.
- 16.2.23 Lands of equivalent significance and value acquired by the Innu Government pursuant to 16.2.8 or 16.2.13 or lands reacquired by the Innu Government pursuant to 16.2.18 shall be deducted from the 12% referred to in 16.2.22.
- 16.2.24 For greater certainty, lands transferred pursuant to a land transfer agreement referred to in 16.2.4 are not Expropriated lands and shall not be included in the calculation of the percentage of Labrador Innu Lands referred to in 16.2.22 that have been and remain Expropriated.
- 16.2.25 Notwithstanding 16.2.24, the parties to a land transfer agreement referred to in 16.2.4 may by agreement set a percentage to be included in the percentage of Labrador Innu Lands referred to in 16.2.22 that have been and remain Expropriated. However, that agreed-upon percentage, if any, shall not exceed the percentage that would have been applicable under 16.2.22 assuming that all the Labrador Innu Lands acquired pursuant to the land transfer agreement under 16.2.4 were Expropriated.
- 16.2.26 Lands acquired or reacquired by the Innu Government under 16.2.8, 16.2.13 or 16.2.18 shall be Labrador Innu Lands.

Chapter 17: Access Rights to the Labrador Innu Settlement Area Outside of Labrador Innu Lands

Part 17.1 **Definitions**

17.1.1 In this Chapter:

“Access Restriction” means any restriction on the right of access of Participants and their assignees for the purposes of 17.2.2(c)(ii) as established under Part 17.2;

“Existing Access Restrictions” means any existing restrictions on the right of access of Participants and their assignees established pursuant to 17.2.10 to 17.2.18 or modified pursuant to 17.2.18 to 17.2.26;

“Notice to Change Access Restrictions ” means the notice in writing provided to the Province by the Innu Government addressing the matters referred to in 17.2.21(a) to (c);

“Proposed Changed Access Restrictions” means the modified access restrictions, or the proposal to remove access restrictions, contained in the Notice to Change Access Restrictions addressing the matters referred to in 17.2.21(a) to (c);

“Notice of Proposed Access Restrictions” means the notice in writing provided to the Innu Government by the Province addressing the matters referred to in 17.2.11(a) to (c);

“Proponent” means a holder of an existing Tenure or a proposed holder of such a Tenure under Part 17.2; and

“Proposed Access Restrictions” means the access restrictions contained in the Notice of Proposed Access Restrictions addressing the matters referred to in 17.2.11(a) and (b).

Part 17.2 **Innu Domestic Harvesting Access Rights to the Labrador Innu Settlement Area Outside of Labrador Innu Lands**

17.2.1 Subject to 17.2.2 to 17.2.4, Participants, and their assignees under 7.2.17, 8.10.1, 9.9.1 and 11.5.1, shall have a free and unrestricted right of access, without the requirement of a permit or fee⁴³, to the lands and waters of the Labrador Innu Settlement Area outside of Labrador Innu Lands, for purposes of the exercise by them of their rights to:

- (a) Harvest Wildlife for the Innu Domestic Harvest under Chapter 7;
- (b) Harvest Migratory Birds for the Innu Domestic Harvest under Chapter 8;

- (c) Harvest Fish and Aquatic Plants for the Innu Domestic Harvest under Chapter 9; and
- (d) Harvest Forest Resources or Plants under 11.3.1 and 11.3.3.

17.2.2 The right of access under 17.2.1 does not apply:

- (a) to the lands and waters of any Tenure for residential or recreational residential use that is less than ten (10) hectares, for the duration of that Tenure;
- (b) where the right of access is contrary to the terms of a Tenure issued by the Province prior to the date of the ratification of the Agreement-in-Principle by all Parties, for the duration of that Tenure;
- (c) to the lands and waters of any Tenure where the exercise of a right to Harvest referred to in 17.2.1(a) to (d):
 - (i) has in accordance with Part 17.2 been determined to conflict with public health, [public] safety¹³⁴ or Conservation;
 - (ii) has in accordance with Part 17.2 been determined to be incompatible with the authorized use or disposition of that Tenure; or
 - (iii) is prohibited for other reasons set out in the Agreement; and
- (d) [on lands dedicated to military or national security purposes or areas temporarily being used for military exercises for the period of such temporary use, after notice of such dedication or use has been given to the Innu Government.]¹³⁵

17.2.3 Any restrictions on the rights of Participants and their assignees under 11.5.1, where the authorized use or disposition of a Tenure is for Forestry Activities or Forest Operations, shall be established or removed under 11.3.4 and 11.3.5, not under the provisions of Part 17.2. For greater certainty, any restrictions on the rights of access in 17.2.1, or any removal of any access restrictions imposed in relation to those rights, in relation to the Harvesting of Forest Resources or Plants under 11.3.3 where the authorized use or disposition of a Tenure is or would be for other than Forestry Activities or Forest Operations shall be imposed in accordance with Part 17.2.

¹³⁴ Legal drafting. Does “public safety” in this chapter include the term “safety” as used in this particular clause.

¹³⁵ To be negotiated. Canada proposes replacement language for 17.2.2 d) “on lands that are administered or occupied by the Minister of National Defence, or areas temporarily being used for military training from the time that notice has been given to the Innu Government until the temporary use is completed.” NL is seeking the prohibitions on access in relation to military activities as contained in other land claims agreements. Innu are seeking consultation prior to placement of access restrictions for these military purposes, including proposing that the same “development of access restrictions” model set out below in this chapter would apply to Canada in respect of military matters as for the Province.

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- 17.2.4 The exercise of the right of access under 17.2.1 shall not interfere with other authorized Water or Tidal Water uses or the ability of the Province or Canada to authorize uses of Water or Tidal Water, and is subject to the condition that, except on Provincial Crown land for which no Tenure has been issued, Participants and their assignees shall not, without the consent of the owner or occupier of the lands that are the subject of a Tenure, establish any permanent or seasonal camp or structure.
- 17.2.5 The Province shall provide to the Innu Government, on an ongoing basis, information respecting the alienation or other disposition of surface title to Provincial Crown land in the Labrador Innu Settlement Area outside Labrador Innu Lands; and shall notify the Innu Government of any emergency restrictions placed on, or in the circumstances other than emergencies, proposed to be placed upon Participants and their assignees in relation to such Tenures for reasons of public health, [public] safety, or Conservation.
- 17.2.6 If, after receipt of notice under 17.2.5, the Innu Government disagrees with a proposed restriction for public health, [public] safety or Conservation set out in that notice, then such a disagreement will be a Dispute between the Province and the Innu Government.
- 17.2.7 Save in the case of an emergency, any restriction of which the Innu Government is notified of pursuant to 17.2.5 shall not come into force until it is agreed to by the Innu Government or Dispute Resolution has terminated, whichever is the earlier.
- 17.2.8 In the case of an emergency restriction of which notice is given pursuant to 17.2.5 then the restriction shall come into effect upon the giving of the notice to the Innu Government, but that restriction may be terminated or modified as a result of the agreement of the Province and the Innu Government either pursuant to or independent of Dispute Resolution.
- 17.2.9 Canada shall provide to the Innu Government, on an ongoing basis, information respecting the alienation or other disposition of federal Crown land in the Labrador Innu Settlement Area.
- 17.2.10 If the Province proposes that the right of access set out in 17.2.1 should be restricted under 17.2.2(c) (ii) because a use of lands or waters in the Labrador Innu Settlement Area outside Labrador Innu Lands proposed to be made of a parcel of land by a Proponent in respect of those lands or waters would be incompatible with one or more rights to Harvest referred to in 17.2.1(a) to (d), the Province shall:
- (a) provide a Notice of Proposed Access Restrictions to the Innu Government; and
 - (b) within the time period specified in the Notice of Proposed Access Restrictions, seek to discuss with the Innu Government the Proposed Access Restrictions.
- 17.2.11 The Notice of Proposed Access Restrictions provided under 17.2.10 shall:

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- (a) specify the nature, extent, duration and conditions of the access restrictions proposed by the Province;
 - (b) subject to 17.2.3, identify which of the rights to Harvest referred to in 17.2.1(a) to (d) would be subject to those proposed access restrictions; and
 - (c) set out a time period for the discussions that may occur under 17.2.10(b) which in any case shall be no less than sixty (60) days unless otherwise agreed.
- 17.2.12 The Province and the Innu Government may agree in writing, within the time period referred to in 17.2.11(c), or within such further time period as they may agree,
- (a) to the Proposed Access Restrictions;
 - (b) to other Access Restrictions as may be agreed upon as a result of the discussions under 17.2.11(c) ; or
 - (c) that the terms of an Impacts and Benefits Agreement or any other agreement in writing as may be reached between the Proponent and the Innu Government will address the needs of the Proponent for the use or disposition of the parcel of land in question.
- 17.2.13 The Innu Government may, within sixty (60) days of receipt of the Notice of Proposed Access Restrictions, refer the Proposed Access Restrictions directly to Arbitration pursuant to Chapter 26.
- 17.2.14 If the Province and the Innu Government do not reach agreement under 17.2.12 or the Innu Government does not refer the Proposed Access Restrictions to Arbitration in accordance with 17.2.13, the access restrictions contained in the Notice of Proposed Access Restrictions shall become the Access Restrictions.
- 17.2.15 Subject to 17.2.3, an Arbitrator in any Arbitration commenced under 17.2.13 shall determine:
- (a) whether the proposed use of the lands and waters by the Proponent would be incompatible with one or more rights to Harvest referred to in 17.2.1(a) to (d); and if so
 - (b) the nature, extent, duration and conditions of the restrictions on access for the purposes of exercising the rights to Harvest identified in the Notice of Proposed Access Restrictions pursuant to 17.2.11(b), or such of those rights to Harvest as the Arbitrator may determine are incompatible with the proposed use or disposition of the parcel of land by the Proponent that will be required to allow that use or disposition to proceed.
- 17.2.16 The Arbitrator shall ensure that any restrictions on access for the purposes of exercising any one or more of the rights to Harvest identified in the Notice of Proposed Access Restrictions pursuant to 17.2.11(b) that it may determine are

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required under 17.2.15(b) shall only apply for as long as the land is in actual use and only to the extent necessary to permit the proposed use or disposition of the parcel of the land by the Proponent without incompatibility with that proposed use or disposition .

17.2.17 Unless and until modified under 17.2.18, or modified or removed under 17.2.19 to 17.2.26, the Access Restrictions established under 17.2.10 to 17.2.16 shall remain in place.

17.2.18 In the event the Province decides that any of the Existing Access Restrictions developed under 17.2.10 to 17.2.16 or 17.2.19 to 17.2.26 should be modified because of a change in use of lands or waters in the Labrador Innu Settlement Area outside Labrador Innu Lands proposed to be made of a parcel of land by a Proponent, then the provisions of 17.2.10 to 17.2.16 shall apply to any such modification proposed by the Province.

17.2.19 In the event the Innu Government decides that one or more of the Existing Access Restrictions, or any modifications thereof made under 17.2.18, should be removed or modified because the Proponent is not using the parcel of land for the uses in place or contemplated when the Existing Access Restrictions were established, or is not using the parcel of land in the manner or to the extent contemplated when the Existing Access Restrictions were determined, then the Innu Government may:

- (a) provide a Notice to Change Access Restrictions to the Province; and
- (b) within the time period specified in the Notice to Change Access Restrictions , seek to discuss with the Province modifications or removal of Existing Access Restrictions as identified in that Notice.

17.2.20 A Notice to Change Access Restrictions may not be provided to the Province under 17.2.19 any earlier than one (1) year after the latest of the following:

- (a) the date of the agreement between the Province and the Innu Government referred to in 17.2.12;
- (b) the date of the Arbitration Decision if the Existing Access Restrictions were the subject of Arbitration, if not reviewed under 26.6.11;
- (c) if an Arbitration Decision was reviewed under 26.6.11, the date of the decision of a court of last resort hearing such a review or any appeal therefrom; and
- (d) the date any modification of Existing Access Restrictions is finally determined under 17.2.18.

17.2.21 The Notice to Change Access Restrictions provided under 17.2.20 shall:

- (a) specify any Existing Access Restrictions, or any modifications thereof made under 17.2.18, that the Innu Government proposes be removed;

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- (b) specify the nature, extent, duration and conditions of any modified access restrictions proposed by the Innu Government;
- (c) subject to 17.2.3, identify which of the rights to Harvest referred to in 17.2.1(a) to (d) would be subject to the modified access restrictions; and
- (d) set out a time period for the discussions that may occur under 17.2.19(b) which in any case shall be no more than then sixty (60) days, unless otherwise agreed.

17.2.22 The Province and the Innu Government may agree in writing, within the time period referred to in 17.2.19(b), or within such further time period as they may agree,

- (a) to the Proposed Changed Access Restrictions;
- (b) to other Access Restrictions as may be agreed upon as a result of the discussions under 17.2.19(b) ; or
- (c) that the terms of an Impacts and Benefits Agreement will address the needs of the Proponent for the use or disposition of the parcel of land in question and that no Access Restrictions are required to be established under the process set out in Part 17.2; or
- (d) that the terms of an agreement, other than an Impacts and Benefits Agreement, reached between the Proponent and the Innu Government will address the needs of the Proponent for the use or disposition of the parcel of land in question and that no Access Restrictions are required to be established under the process set out in Part 17.2.

17.2.23 The Province may, within sixty (60) days of receipt of the Notice to Change Access Restrictions, refer the Proposed Changed Access Restrictions directly to Arbitration pursuant to Chapter 26.

17.2.24 If the Province does not engage in discussions under 17.2.19(b), or does not refer the Proposed Changed Access Restrictions to Arbitration under 17.2.23, the Access Restrictions contained in the Notice to Change Access Restrictions shall become the Access Restrictions.

17.2.25 In any Arbitration commenced under 17.2.23, an Arbitrator shall determine whether:

- (a) the Proponent is not using and is not reasonably expected to use the parcel of land in the upcoming year for the uses in place or contemplated when the Existing Access Restrictions, or any modifications thereof made under 17.2.18, were established, or is not using and is not reasonably expected to use the parcel of land in the upcoming year in the manner or to the extent contemplated when the Existing Access Restrictions were determined; and

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- (b) if so, whether the proposal to make the changes contained in the Proposed Changed Access Restrictions are appropriate given the determination under 17.2.25(a), or whether an alternative set of changes would be appropriate, provided that in making this determination, the Arbitrator shall not make a determination which would result in the rights of access by Participants and their assignees to exercise their rights to Harvest referred to in 17.2.1(a) to (d) being incompatible with the actual use or disposition of the parcel of land by the Proponent .

17.2.26 The Arbitrator shall ensure that any restrictions on access for the purposes of exercising any one or more of the rights to Harvest identified in the Notice to Change Access Restrictions that the Arbitrator may determine are required under 17.2.25(b) shall only apply for as long as the land is in actual use and only to the extent necessary to permit the proposed use or disposition of the parcel of land by the Proponent without incompatibility with that proposed use or disposition.

17.2.27 Subsequent to the Effective Date, all surface Tenures within the Labrador Innu Settlement Area issued after the date of the ratification of the Agreement-in-Principle by all Parties, all renewals of such Tenures , and all transfers or assignments of such Tenures shall, where the Province or Canada is the issuer of the Tenure, renewal, assignment or transfer, contain a condition to the following effect:

"This tenure is subject to rights of Participants and their assignees under the Labrador Innu Land Claims Agreement to access lands and waters in the Labrador Innu Settlement Area for purposes of exercising their rights to Harvest Wildlife, Migratory Birds, Fish and Aquatic Plants for the Innu Domestic Harvest or to Harvest Forest Resources or Plants in accordance with the Labrador Innu Land Claims Agreement, and the provisions of the Labrador Innu Land Claims Agreement relating to such right of access shall form a part of this tenure as if contained in this tenure".

17.2.28 Any of the rights to Harvest referred to in 17.2.1(a) to (d) shall, in addition to any restrictions that may be imposed in accordance with Part 17.2, be subject to such restrictions as may be placed upon the exercise of these rights to Harvest in accordance with other Chapters of the Agreement.¹³⁶

17.2.29 Subject to 17.2.28, the Province will not issue any Tenures in the Labrador Innu Settlement Area outside Labrador Innu Lands to any Person other than a Party for the purpose of that Person establishing or operating a non-commercial game reserve.

17.2.30 Nothing in 17.2.29 shall be interpreted or construed as limiting or restricting the ability of the Province, pursuant to Provincial Law, from:

- (a) establishing measures needed for Conservation, including, any measures with respect to Designated Species; or

¹³⁶ To be negotiated. NL prefers that 17.2.28 say "other Chapters" and Innu Nation and Canada prefer that the specific references be pinpointed.

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- (b) authorizing Commercial Wildlife Operations or Sports Fish Camps or both in accordance with the Agreement.

Interim Measure¹³⁷

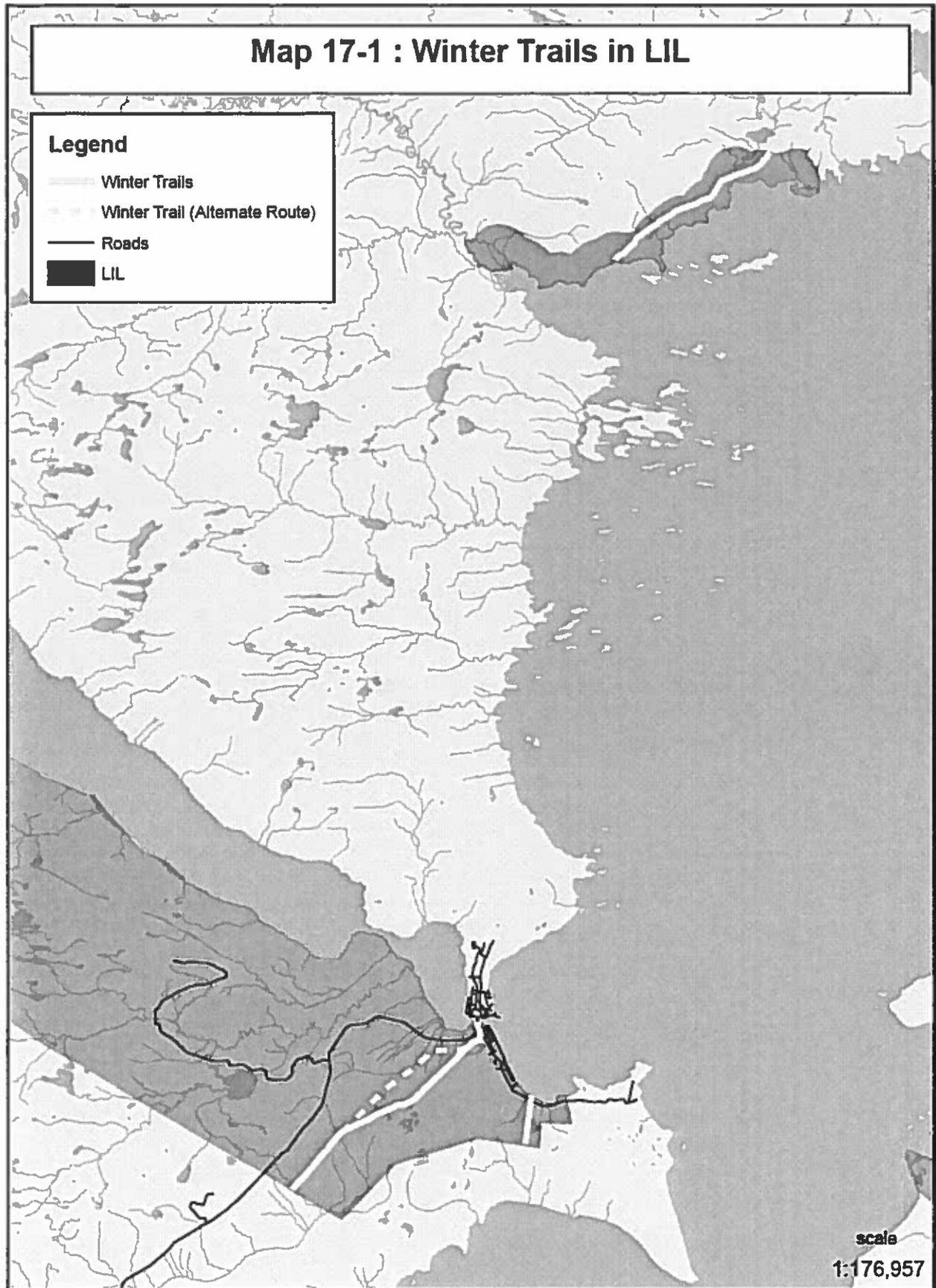
17.2.31 After the ratification of the Agreement-in-Principle by all Parties but prior to the Effective Date, all surface Tenures issued within the Labrador Innu Settlement Area, all renewals of such Tenures, and all transfers or assignments of such Tenures shall, where the Province or Canada is the issuer of the Tenure, renewal, assignment or transfer, contain a condition to the following effect:

“This tenure will be subject to rights of Participants and their assignees under any Labrador Innu Land Claims Agreement to access lands and waters in the Labrador Innu Settlement Area for purposes of exercising their rights to Harvest Wildlife, Migratory Birds, Fish and Aquatic Plants for the Innu Domestic Harvest or to Harvest Forest Resources or Plants in accordance with any Labrador Innu Land Claims Agreement, and the provisions of any Labrador Innu Land Claims Agreement relating to such right of access shall form a part of this tenure as if contained in this tenure.”

Part 17.3 General

- 17.3.1 Nothing in this Chapter shall derogate from or interfere with the public right of navigation in navigable waters.
- 17.3.2 The rights of access to the Labrador Innu Settlement Area outside of Labrador Innu Lands set out in this Chapter are in addition to rights of access to the Labrador Innu Settlement Area outside of Labrador Innu Lands provided for elsewhere in the Agreement.
- 17.3.3 Nothing in this Chapter shall be interpreted as creating any obligation on Innu Government, the Province or Canada to construct, maintain or repair or to provide for the construction, maintenance or repair of access routes or camping sites in the Labrador Innu Settlement Area outside Labrador Innu Lands.

¹³⁷ This interim measure to be moved into a separate and legally binding side agreement if there is ratification of AIP.



Chapter 17A: Access to Labrador Innu Lands and Related Provisions Regarding Providers of Public Utilities or Other Services

Part 17A.1.1 In this Chapter:

"Motor Vehicle" for the purposes of 17A.2.13(c) has the same meaning as the term "vehicle" as defined in the *Motorized Snow Vehicles and All-Terrain Vehicles Act* (Newfoundland and Labrador);

"Strip" means the parcel of land that extends fifteen (15) metres¹³⁸ backwards into Labrador Innu Lands from the boundary of Labrador Innu Lands where Labrador Innu Lands border Waters or Tidal Waters;

"Strip Alienations" means a transfer, conveyance, or any other form of disposition of the Strip which may be authorized by Innu Law.

Part 17A.2 Non-Participant Access to Labrador Innu Lands

17A.2.1 Subject to 17A.2.7, Accessible Lands are accessible to Non-Participants without notice, consent, or payment for non-commercial casual recreational purposes, or for the purposes of eco-adventure tours of ten (10) or fewer individuals plus a guide, excluding hunting and fishing for both purposes, provided that Non-Participants referred to in 17A.2.2 may, in accordance with those provisions, Harvest small game and Migratory Birds on Accessible Lands for personal, non-commercial use.

17A.2.2 Subject to 17A.2.7, Non-Participant residents of Newfoundland and Labrador and Non-Participant non-residents of Newfoundland and Labrador shall, on the same terms, conditions and restrictions as such licences are issued by the Province or Canada, be issued a permit by the Innu Government to Harvest small game and Migratory Birds in Accessible Lands shown in green on Map 5-C of the Atlas, for personal, non-commercial use.

17A.2.3 The Innu Government may charge permit fees⁴³ for permits it issues pursuant to 17A.2.2, but such fees shall not exceed the fees charged by the Province or Canada, as the case may be, for a permit or licence to Harvest the relevant species.

17A.2.4 Subject to 17A.2.5, Non-Participant residents of Newfoundland and Labrador may Harvest berries in the Accessible Lands shown in purple on Map 5-C of the Atlas, for personal, non-commercial use.

17A.2.5 The issuance of licences referred to in 17A.2.2 and the right of Non-Participant residents of Newfoundland and Labrador set out in 17A.2.4 is subject to:

(a) the application of 17A.2.7 in Accessible Lands pursuant to 17A.2.1; and

¹³⁸ To be negotiated. Canada is requesting 33 metres instead of 15. Innu and NL to review.

- (b) Federal Law, Provincial Law and [Innu Law]¹³⁹ and measures established pursuant to Federal Law, Provincial Law and [Innu Law] for the purposes of Conservation, public health and public safety.

17A.2.6 Those portions of Labrador Innu Lands outside of Accessible Lands are not accessible to Non-Participants without the consent of the Innu Government, except as provided in the Agreement.

17A.2.7 At any time, the Innu Government may close Labrador Innu Lands to access by Non-Participants, or regulate access by Non-Participants to Labrador Innu Lands:

- (a) where access conflicts with Conservation, public health or public safety;
- (b) where such access is incompatible with the authorized use of the land, but only to the extent of and for the duration of any such incompatibility;
- (c) where designated as Innu heritage sites by the Innu Government; or
- (d) where access conflicts with the use of lands alienated in accordance with 17A.2.12.

17A.2.8 Restrictions or alienations under 17A.2.7 will not be used to deny reasonable access by Non-Participants to parts of Labrador Innu Lands or to navigable waters.

17A.2.9 The consent of or notice to the Innu Government is not required for access to Labrador Innu Lands and no fee⁴³, charge or rent may be imposed for access to Labrador Innu Lands if access to Labrador Innu Lands by a Non-Participant is necessary for the following purposes:

- (a) emergencies;
- (b) subject to 17A.2.7, crossing Labrador Innu Lands to access navigable waters, associated portages, and the Strip on either side of navigable waters for non-commercial casual recreational purposes;
- (c) subject to 17A.2.7, to travel by generally recognized routes, or practical alternate routes specifically designated by the Innu Government to exercise a right, interest or privilege on lands or waters adjacent to and outside of Labrador Innu Lands;
- (d) for navigation, but this right is limited to the Strip of Labrador Innu Lands bounding the Tidal Waters, navigable rivers and navigable lakes where such navigation is occurring;
- (e) subject to 17A.2.7, for Harvesting in Tidal Waters, navigable rivers and navigable lakes adjacent to and outside of Labrador Innu Lands for personal, non-commercial use under Federal Law or Provincial Law, but this right is limited to the Strip of Labrador Innu Lands bounding the Tidal Waters, navigable rivers and navigable lakes where such Harvesting is occurring.

¹³⁹ To be negotiated. In the context of discussions under 30.11.1.

- 17A.2.10 Nothing in 17A.2.9 creates a free right to use facilities for which user fees are charged.
- 17A.2.11 Subject to 17A.2.7, the Innu Government will not unreasonably deny access to any Person requesting and requiring access through the Strip for commercial purposes, and if needed for the commercial purpose, the Innu Government will designate reasonable routes of access through the Strip, all of which is subject to the payment of reasonable fees⁴³ for access to the Strip to the Innu Government by that Person.
- 17A.2.12 No Strip Alienations shall be issued by the Innu Government except in circumstances and by a process equivalent to that established by Provincial Legislation for the shoreline reserve of Provincial Crown lands in Labrador.
- 17A.2.13 Non-Participants exercising access rights under 17A.2.1 or 17A.2.9 shall not, without the consent of the Innu Government:
- (a) establish or erect any camps or structures on Labrador Innu Lands except for a tent for a temporary camp;
 - (b) cause harm or damage or undue disruption or disturbance to Labrador Innu Lands except to the extent that harm, damage, disruption, or disturbance is an incidental consequence of the exercise of the access rights provided for in 17A.2.1 or 17A.2.9, which include cutting or gathering of firewood where necessary for a temporary camp;
 - (c) operate a Motor Vehicle along the Strip where the Strip borders a Community or a designated traditional seasonal camp consisting of several tents or cabins during the season when the camp is occupied;
 - (d) interrupt or interfere with Participants' use, occupation or enjoyment of Labrador Innu Lands, except to the extent necessary for purposes of the access as provided for in the Agreement; or
 - (e) engage in any activity on Labrador Innu Lands other than those activities permitted under the Agreement or use Labrador Innu Lands for any purpose other than the purpose for which the right of access is granted.
- 17A.2.14 In accordance with Chapter 30, the Innu Government may enact as part of an Innu Law that violations of 17A.2.13 are offences under Innu Law, and may prescribe penalties for those offences.

Part 17A.3 Winter Trails

- 17A.3.1 Use of Winter Trails by Non-Participants are subject to the restrictions in 17A.2.13, any Innu Law enacted under 17A.2.14, and Part 17A.3.
- 17A.3.2 A Winter Trail may be used by Non-Participants for transportation by snowmobile, dog sled or foot while covered with snow during the period from December 1 in one calendar year to May 15 in the following calendar year. This period may be varied by written agreement of the Province and the Innu Government.

- 17A.3.3 The Innu Government may restrict the use of a Winter Trail only for reasons of Conservation, public safety and incompatible use. However, such restrictions shall only be in place for and to the extent necessary to achieve those purposes; and where such restrictions result in the closure of a Winter Trail for any period, a practical alternative routing shall be provided by the Innu Government for the period of closure. [The need for restrictions, the duration and extent of restrictions, and whether a route is a practical alternative may be referred by a Party to Dispute Resolution, including Arbitration under Chapter 26.]¹⁴⁰ Except in the event of an emergency, the Innu Government shall Consult the Province before restricting the use of a Winter Trail under this section.
- 17A.3.4 A Person who uses a Winter Trail assumes any and all risks associated with use of the Winter Trail and, for greater certainty, no suit, action, claim, demand or proceeding may be commenced or brought against the Innu Government, Canada or the Province [or any of their respective employees, agents or assigns]¹⁴¹ by any Person in respect of any injury, loss, damage, cost or expense of any kind caused by or resulting from access to or use of a Winter Trail.
- 17A.3.5 The Innu Government and the Province may agree to alter Map 17-1 of the Atlas when a Winter Trail has fallen into disuse.
- Part 17A.4 Access to Labrador Innu Lands by Persons providing Public Utilities and Other Services**
- 17A.4.1 For the purposes of Part 17A.4:
- (a) "Easement Lands" means that part of Labrador Innu Lands over which an easement is issued under 17A.4.8;
 - (b) "Charges" means any [taxes], royalties, rents, [imposts]¹⁴², fees⁴³, charges, assessments, other governmental levies or similar charges;
 - (c) "Infrastructure" means equipment and facilities and associated right-of-way for the transmission, distribution, delivery, or providing of electric power or energy, including but not limited to poles, anchors, guys, cables, wires, transformers and all other equipment for the operation of the transmission and distribution facilities owned or operated by Persons providing Public Utilities and also includes such infrastructure used by Persons providing Other Services;
 - (d) "Other Services" means attachment to or use of the Infrastructure of a Person providing Public Utilities, for the purpose of construction, operation or maintenance of underground and aerial facilities for the transmission of telecommunications, fibre optic and cable television

¹⁴⁰ To be negotiated.

¹⁴¹ Legal drafting. Potential deletion of square bracketed clause under consideration; turns on definition of Innu Government, Canada and the Province in Chapter 1, which could include these entities.

¹⁴² To be negotiated. NL wants these terms to remain. Canada thinks the definition of Charges should say "other than taxes".

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services and includes the activities of employees, contractors, agents and suppliers in providing such telecommunications, fibre optic and cable television services;

- (e) "Post-Effective Date Easement" means an easement issued under 17A.4.8 and containing the matters set out in 17A.4.9;
- (f) "Providers of Public Utilities or Other Services" means Persons who provide Public Utilities or Persons who provide Other Services;
- (g) "Public Utilities" means the transmission, distribution, delivery, or providing of power or energy to the public or a corporation for compensation and includes the activities of any Person providing such electric power or energy and the employees, contractors, agents and suppliers of that Person and for greater certainty, a reference in this Part to a "Person providing Public Utilities" shall be deemed to include a reference to the employees, contractors, agents and suppliers of that Person; and
- (h) "Utility Activities" means the activities referred to in 17A.4.2(a) and (b).

17A.4.2 Providers of Public Utilities or Other Services that provide Public Utilities or Other Services after the Effective Date by means of Infrastructure that did not exist in Labrador Innu Lands, whether wholly or in part, on the Effective Date, may enter, remain on or cross over Labrador Innu Lands for the purposes of carrying out the activities of :

- (a) constructing, installing, repairing, removing, decommissioning, restoring, replacing, operating and maintaining Infrastructure required for the provision of Public Utilities or Other Services; and
- (b) delivering and managing the delivery of Public Utilities or Other Services

in accordance with 17A.4.3 to 17A.4.21.¹⁴³

17A.4.3 Where a Person intends to provide Public Utilities by carrying out Utility Activities¹⁴⁴ after the Effective Date and outside lands that are the subject of a Surface Interest referred to in 5.11.1 or issued under 5.11.10,

¹⁴³ To be negotiated. In Nalcor's view, this Part should be a discrete and self-contained code respecting Public Utilities on LIL. If there are specific provisions that Innu Nation believes should override this Part, Nalcor needs to see these provisions to assess their impact. Innu view is that Public Utilities in LIL, like Public Utilities in NL or federal Crown land which are subject to laws of general application such as EA laws, land use planning laws, laws for protection of burial sites, should be subject to Innu laws regarding these matters.

¹⁴⁴ To be negotiated. Part 17A.4 as drafted in this version contemplates that a Person providing Other Services would not, itself, seek the Post-Effective Date Easement, but rather would use/shelter under the Easement of a Person providing Public Utilities. This is usually the way in which easements are obtained in NL. However, sometimes in fact an easement is or has been sought first by the Person providing Other Services (which are private companies), and then the Person providing Public Utilities "shelters" under that easement. The Parties to negotiate revisions to reflect the second situation, on the shared understanding that 17A.4 will not be revised to give an independent right to Persons providing Other Services to obtain a Post-Effective Date Easement under 17A.4.8 where a Person providing Public

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- (a) that Person shall first consult the Innu Government with respect to the proposed route through, and the location of the Infrastructure on, Labrador Innu Lands, and with respect to the proposed associated reasonable routes of access in Labrador Innu Lands to be used by Providers of Public Utilities or Other Services for the purposes of accessing that Infrastructure in order to carry out Utility Activities; and
- (b) such Providers of Public Utilities or Other Services shall not be required by the Innu Government to:
 - (i) pay with respect to any Utility Activities related to any Infrastructure on, use of Easement Lands and associated reasonable routes of access or other occasional use of Labrador Innu Lands as required by the Providers of Public Utilities or Other Services, including the payment of any Charges, except as otherwise provided in 17A.4.11(b) and 17A.4.12; or
 - (ii) except as otherwise provided in 17A.4.6, enter into an Impacts and Benefits Agreement in respect of any Utility Activities or with respect to the exercise of any of the rights and undertaking of any of the activities described in a Post-Effective Date Easement.

17A.4.4 Where a Person referred to in 17A.4.2 intends to provide Public Utilities or Other Services on or through Labrador Innu Lands or an Innu Community for the purposes of any Development in Labrador Innu Lands or any Major Development¹⁴⁵ undertaken after the Effective Date, and the Developer of such a Development or Major Development is required to enter into an Impacts and Benefits Agreement with the Innu Government pursuant to Part 21.5, the provision of such Public Utilities or Other Services shall be considered to form part of such Development or Major Development, and any and all Charges relating to access through or over, or for use of, Labrador Innu Lands for the provision of Public Utilities or Other Services to that Development or Major Development, as the case may be, shall be negotiated between the Innu Government and the Developer as part of any Impacts and Benefits Agreement. For greater certainty, the Providers of Public Utilities or Other Services providing Public Utilities or Other Services to the Development or Major Development shall not be required to negotiate and enter into an Impacts and Benefits Agreement with the Innu Government and shall not be liable to the Innu Government for any Charges relating to the provision of the Public Utilities or Other Services, or for access through or over, or for use of, Labrador Innu Lands by those Providers of Public Utilities or Other Services, except as provided for in 17A.4.12(b) and (c).

17A.4.5 Where a Person referred to in 17A.4.2 intends to provide Public Utilities or Other Services to a Development or a Major Development referred to in 17A.4.4, that Person shall not enter into an agreement to provide Public Utilities or Other

Utilities does not then shelter under that easement – Person providing Other Services in that case will be subject to the provisions of 5.11.

¹⁴⁵ Legal drafting. Parties to review in light of 17A.4.11(b).

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Services with the Developer of such a Development or Major Development which would come into effect before the conclusion of an Impacts and Benefits Agreement between the Innu Government and that Developer, and any such Impacts and Benefits Agreement shall include provision for any Public Utilities or Other Services to the Development or Major Development.

17A.4.6 For greater certainty, 17A.4.4 does not affect or alter the requirement for an Impacts and Benefits Agreement under Part 21.5 applicable to Providers of Public Utilities or Other Services providing Public Utilities or Other Services to a Development or Major Development for which an Impacts and Benefits Agreement is required under Part 21.5, if that Provider of Public Utilities or Provider of Other Services is also the Developer of that Development or Major Development.

17A.4.7 Notwithstanding the definition of 'Development' or 'Major Development' in this Agreement,

- (a) the provision of Public Utilities through, on, or over Labrador Innu Lands, a Community or the Labrador Innu Settlement Area; or
- (b) the provision of Other Services using Easement Lands that are the subject of a Post-Effective Date Easement issued to a Person providing Public Utilities through, on, or over Labrador Innu Lands, a Community or the Labrador Innu Settlement Area,

shall not in and of themselves be considered to be Developments or Major Developments for purposes of Part 21.5, and there shall be no requirement that an Impacts and Benefits Agreement in respect of the provision of Public Utilities and Other Services referred to in 17A.4.7(a) or (b) be concluded.

17A.4.8 Upon receiving a request from a Person providing Public Utilities, the Innu Government [or an Innu Community Government in the circumstances referred to in 17A.4.21]¹⁴⁶ shall, in a timely manner, issue an easement over Labrador Innu Lands to that Person:

- (a) pursuant to 17A.4.2, to permit the carrying out by Providers of Public Utilities or Other Services of all of the Utility Activities, provided that consultation has occurred under 17A.4.3 and that any applicable requirements under other provisions of this Agreement have been met; or
- (b) pursuant to 17A.4.4, to permit the carrying out by Providers of Public Utilities or Other Services of all of the Utility Activities, provided that an Impacts and Benefits Agreement, if required by Part 21.5, has been concluded between the Innu Government and the Developer.

17A.4.9 The Post-Effective Date Easement referred to in 17A.4.8 shall include:

¹⁴⁶ To be negotiated. Nalcor has a concern that an easement would be required from both Innu Government and Innu Community Government and would prefer to seek an easement from the Innu Government to ensure that there is consistency with respect to the process.

- (a) rights of access to Easement Lands, comprised of a corridor of a width no greater than the width that would be required had the Easement been issued by the Province on Crown lands, and any additional parcels of land that may be necessary for the location of the Infrastructure on Labrador Innu Lands ; and
- (b) rights to gain access to those Easement Lands by way of associated reasonable routes of access in Labrador Innu Lands.

17A.4.10 In the event that there is a disagreement between the Innu Government [or an Innu Community Government] and a Person requesting a Post-Effective Date Easement arising in connection with the issuance of that easement, and in the event that the Innu Government [or an Innu Community Government] refuses to issue the Post-Effective Date Easement or fails to issue it in a timely fashion, the Person providing such Public Utilities shall not be bound by or required to refer the matter to Dispute Resolution and is not prohibited in any manner from pursuing any available legal recourse or remedy.¹⁴⁷

17A.4.11 In addition to the terms and conditions referred to in 17A.4.9(a) and (b), the terms and conditions of a Post-Effective Date Easement shall include the same terms and conditions included by the Province in easements it grants to Persons providing Public Utilities in similar circumstances in Labrador, except that:

- (a) the Post-Effective Date Easement shall not be for a fixed term but shall remain in effect for as long as the Person requesting a Post-Effective Date Easement under 17A.4.8 requires the Easement Lands, and shall not be subject to any requirement of renewal by the Innu Government [or an Innu Community Government], provided that the Innu Government [or an Innu Community Government] may unilaterally amend the terms and conditions of that Post-Effective Date Easement to conform with any revised terms and conditions included by the Province in easements granted to Persons providing Public Utilities in similar circumstances in Labrador upon providing the Person providing Public Utilities with written notice of such revised terms and conditions [at least two (2) years before such revised terms and conditions are intended to take effect]¹⁴⁸ ; and
- (b) where the easement is issued to a Person requesting a Post-Effective Date Easement that intends to provide Public Utilities to a Person, other than to:

¹⁴⁷ To be negotiated. PUB does not currently have jurisdiction to hear such disputes. Nalcor has concerns with complicated process that could inordinately delay the resolution or issuance of an easement and proposes this language to ensure that the issuance of the easement is not subject to undue delay. This clause may be redundant in light of 5.11.9. Nalcor also has a global concern that easements may be required from 2 distinct Innu governments (Innu Government and Innu Community Government) and suggest that Innu Government be empowered to provide an easement in LIL including in Innu Communities.

¹⁴⁸ To be negotiated. Square bracketed text is Nalcor proposal. Innu proposal is "within the timeframe that such notice would be provided by the Province under similar circumstances."

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- (i) the Innu Government,
- (ii) [an Innu Community Government],
- (iii) a Participant,
- (iv) any Person at the request of the Innu Government [or an Innu Community Government], or
- (v) a Developer of a Major Development referred to in 17A.4.4

outside Labrador Innu Lands via that Post-Effective Date Easement, the Innu Government [or an Innu Community Government] may only impose those Charges associated with the issuance of that Post-Effective Date Easement that the Province would normally charge, and such Charges shall not exceed the amount normally charged by the Province as part of the issuance of an easement to a Person providing Public Utilities in similar circumstances in Labrador, subject to [17A.4.4(a)] and 17A.4.12.

17A.4.12 The Innu Government, [and Innu Community Governments with respect to 17A.4.12(b) and (c)], may impose Charges for :

- (a) the use of Specified Materials by Persons referred to in 17A.4.8, in accordance with 5.19.7 and 5.19.8;
- (b) the use and enjoyment by Persons referred to in 17A.4.8 of office space, buildings or the like in Labrador Innu Lands that are not located on the Easement Lands; and
- (c) subject to 5.19.12 to 5.19.14 and the terms and conditions of a Post-Effective Date Easement, reasonable and appropriate costs, including the costs of demolition, incurred by the Innu Government [or an Innu Community Government] for the remediation and clean up of Labrador Innu Lands or structures in or on Labrador Innu Lands, in the event a Person providing Public Utilities or Other Services causes damage, undue disruption or disturbance to Labrador Innu Lands or structures in or on Labrador Innu Lands, [except to the extent that such harm, damage, disruption or disturbance is an inevitable consequence of the undertaking of any of the Utility Activities]¹⁴⁹;

17A.4.13 Notwithstanding 17A.4.12(a),

- (a) where a Person referred to in 17A.4.8 is providing Public Utilities or Other Services by means of a Post-Effective Date Easement to lands outside the Labrador Innu Settlement Area, an Economic Major Development Impacts and Benefits Agreement Area or a Hydroelectric Major Development Impacts and Benefits Agreement Area, and no Impacts and Benefits Agreement is required under Part 21.5, the Innu Government

¹⁴⁹ To be negotiated. Innu disagree with Nalcor's proposed addition of these words.

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may impose Charges for the extraction of Specified Materials from Labrador Innu Lands and the use of those Specified Materials on the Easement Lands in an amount not exceeding the amount that the Province would charge as Charges for comparable use of those Specified Materials outside Labrador Innu Lands, notwithstanding 5.19.7 and 5.19.8; provided that

- (b) the Innu Government shall not impose any Charges for the extraction and transportation of any Specified Materials from Labrador Innu Lands for use in lands adjacent to those portions of the cross-hatched areas in Map 5-L of the Atlas and in either but not both of Map 5-M or 5-N of the Atlas as determined under 5.3.12 for the construction, operation, maintenance, repair, restoration, replacement or improvement of HVdc electrode lines and associated Infrastructure required for the Lower Churchill Project.

17A.4.14 The Innu Government [or an Innu Community Government in the circumstances referred to in 17A.4.21] shall not:

- (a) include in a Post-Effective Date Easement any terms and conditions which are inconsistent with the terms and conditions required under 17A.4.11; or
- (b) authorize any uses of the Easement Lands by a Participant or any other Person which would interfere with the use and enjoyment of the Easement Lands by Providers of Public Utilities or Other Services without the prior written consent of the Person to which the Post-Effective Date Easement was issued, which consent shall not unreasonably be withheld;
- (c) authorize any uses of the reasonable routes of access associated with the Easement Lands, if those uses would unreasonably interfere, for a period longer than seven (7) days, with the use and enjoyment by Providers of Public Utilities or Other Services of those routes of access, without prior Consultation with the Person to which the Post-Effective Date Easement was issued and without providing a reasonable alternative route of access to the Easement Lands; or
- (d) authorize any uses of the reasonable routes of access associated with the Easement Lands, if those uses would unreasonably interfere, for a period shorter than seven (7) days, with the use and enjoyment by Providers of Public Utilities or Other Services of those routes of access, without prior written notification to the Provider of Public Utilities or Other Services.

17A.4.15 Persons referred to in 17A.4.8 shall:

- (a) use commercially reasonable efforts to confine their Utility Activities to the Easement Lands;

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- (b) keep their Infrastructure in good repair and condition and carry out Utility Activities in such a manner as to minimize interference with the Easement Lands;
- (c) not cause damage or undue disruption or disturbance to Labrador Innu Lands except to the extent that such harm, damage, disruption or disturbance is an inevitable consequence of the undertaking of any of the Utility Activities ; and
- (d) not engage in any activity within the Easement Lands or use resources therein for any purpose not authorized by the terms of the Post-Effective Date Easement.

17A.4.16. Except as otherwise provided in 17A.4.11(b) and 17A.4.12, no Charges will be levied by the Innu Government [or by an Innu Community Government in the circumstances referred to in 17A.4.21] , against Persons referred to in 17A.4.8 with respect to access by those Persons to the Easement Lands, or with respect to the undertaking of any of the Utility Activities.¹⁵⁰

17A.4.17 Except as otherwise provided in 17A.4.11(b) and 17A.4.12 and where an Impacts and Benefits Agreement has been concluded as required by Part 21.5 between the Innu Government and the Developer,

- (a) the Impacts and Benefits Agreement shall include provision for the extension or modification of Public Utilities or Others Services; and
- (b) where a Post-Effective Date Easement is extended or modified in order to allow Providers of Public Utilities or Other Services to provide Public Utilities or Other Services to a Development in Labrador Innu Lands, a Major Development in the Labrador Innu Settlement Area outside Labrador Innu Lands, a Major Development within an Economic Major Development Impacts and Benefits Agreement Area, or within a Hydroelectric Major Development Impacts and Benefits Agreement, no other Charges in respect of the existing Public Utilities or Other Services or their extension or modification will be payable to the Innu Government [or an Innu Community Government] by those Providers of Public Utilities or Other Services.

17A.4.18 Where a Person referred to in 17A.4.2 intends to provide Public Utilities or Other Services to a Development or a Major Development referred to in 17A.4.17, that Person shall not enter into an agreement with the Developer of such a Development or Major Development which comes into effect before the conclusion of an Impacts and Benefits Agreement between the Innu Government and that Developer, and any Impacts and Benefits Agreement shall include provision for any Public Utilities or the Other Services to the Development or Major Development.

¹⁵⁰ To be negotiated. Innu question whether this clause is necessary given it may already be covered by other provisions of 17A.4; i.e. it may be redundant. Nalcor disagrees.

- 17A.4.19 [Innu Laws shall not impair, interfere with, delay or otherwise adversely affect the ability of Persons referred to in 17A.4.8 to carry out Utility Activities or to access or use Labrador Innu Lands for Utility Activities, and Participants and their assignees under 7.2.17, 8.10.1, 9.9.1 and 11.5.1 shall not exercise rights under this Agreement in such a way as to interfere with, impede, obstruct or prevent in any manner the access to Labrador Innu Lands or the access and use and enjoyment of the Easement Lands by Persons referred to 17A.4.8.]¹⁵¹
- 17A.4.20 The recognition or vesting of a right under this Agreement in the Innu Nation, [a First Nation]¹⁵², the Innu Government, [an Innu Community Government], or a Participant, or the exercise by the Innu Nation, [a First Nation], the Innu Government, [an Innu Community Government] or a Participant [or any of their respective successors or permitted assigns] of a right recognized by or vested under this Agreement on or within a Surface Interest referred to in 17A.4.22, or on or within Easement Lands does not:
- (a) create, cause, result in or give rise to any additional or higher duty of care on the part of Providers of Public Utilities or Other Services providing Public Utilities or Other Services under a Post-Effective Date Easement or under a Surface Interest referred to in 17A.4.22, being owed to the Innu Nation, the Innu Government [or any Innu Community Government, a First Nation] or a Participant or any of their respective successors and permitted assigns, other than that which Providers of Public Utilities or Other Services providing Public Utilities or Other Services under a Post-Effective Date Easement or under a Surface Interest referred to in 17A.4.22 would owe to a non-Participant accessing or using an easement or other Surface Interest held by Providers of Public Utilities or Other Services elsewhere in the Province without the consent of those Providers of Public Utilities or Other Services. For greater certainty, the legal status and rights of, and duty owed by Providers of Public Utilities or Other Services providing Public Utilities or Other Services under a Post-Effective Date Easement or under a Surface Interest referred to in 17A.4.22, to the Innu Nation, [a First Nation,] the Innu Government [or any Innu Community Government,] or to a Participant and their respective successors and permitted assigns accessing or using lands which are the subject of a Post-Effective Date Easement or a Surface Interest referred to in 17A.4.22 shall be equivalent to the legal status and rights of, and duty of care owed by, Providers of Public Utilities or Other Services to a non-Participant that has, without the consent of Providers of Public Utilities or Other Services, accessed or used lands that are the subject of an easement or other Surface Interest issued elsewhere in the Province to Providers of Public Utilities or Other Services;

¹⁵¹ To be negotiated. The Providers referred to in 17A.4.1 will be subject to appropriate Innu Laws which as set out in footnote 143 are to be determined. This provision will be reviewed and finalized after that determination is made.

¹⁵² Legal drafting. Reference here to First Nations and Innu Community Governments is a drafting matter to be addressed once Self Government chapter is completed. Innu and Canada agree to deletion of "First Nation" throughout this clause; NL has under review.

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- (b) create, cause, result in or give rise to or impose any duty, responsibility or liability for any injury, loss of life, damage to person or property or any loss of any kind suffered by or resulting to the Innu Nation, the Innu Government, [a First Nation, an Innu Community Government] or a Participant or their respective successors and permitted assigns from any act or omission by Providers of Public Utilities or Other Services providing Public Utilities or Other Services under a Post-Effective Date Easement or under a Surface Interest referred to in 17A.4.22 and their employees, contractors, agents and suppliers except to the extent provided for in 17A.4.20(a); or
- (c) [create, recognize, confer or impose any duty on the part of Providers of Public Utilities or Other Services providing Public Utilities or Other Services under a Post-Effective Date Easement or under a Surface Interest referred to in 17A.4.22, other than that required by Federal Law or Provincial Law, or to facilitate the exercise by the Participant of his or her rights under the Agreement.]¹⁵³

17A.4.21 [Where an easement relates to Infrastructure within an Innu Community that is for the purposes of providing Public Utilities or Other Services within that Innu Community, the Innu Community Government shall issue the Post-Effective Date Easement, in accordance with the provisions of Part 17A.4.]

17A.4.22 Where Providers of Public Utilities or Other Services are providing Public Utilities or Other Services pursuant to a Surface Interest issued by the Province that is in existence on the Effective Date, the Province shall assign its rights and obligations under that Surface Interest to the Innu Government, and:

- (a) subject to 17A.4.23, that Surface Interest shall continue in accordance with its terms and conditions;
- (b) if the holder of that Surface Interest has a right to apply for a renewal or extension of that Surface Interest under the terms and conditions of that Surface Interest or the Provincial Legislation under which that Surface Interest was held immediately prior to its assignment under 17A.4.22, and the holder of that Surface Interest chooses to renew or extend that Surface Interest prior to its expiration, the holder shall make application to the Innu Government to renew or extend that Surface Interest;
- (c) the Innu Government shall renew or extend that Surface Interest if the holder of that Surface Interest has satisfied the terms and conditions of the lease, licence or permit;
- (d) subject to 17A.4.23, the Innu Government shall not impose any additional terms and conditions upon the renewal or extension of that Surface Interest which are inconsistent with the terms and conditions of the original Surface Interest, and shall not impose any new or additional Charges as a condition of the renewal or extension;

¹⁵³ Legal drafting. To review this text in light of similar text in Chapter 28 and the Upper Churchill Redress Agreement.

- (e) the Surface Interest, once renewed or extended, shall not be subject to any additional or further requirement of renewal or extension by the Innu Government but shall remain in effect for as long as the Person providing Public Utilities or Other Services requires the Surface Interest in order to provide Public Utilities or Other Services, after which time the Surface Interest shall be deemed to have terminated and shall vest fully in the Innu Government upon its termination;
- (f) subject to 17A.4.23, upon renewal or extension, the Person providing the Public Utilities or Other Services shall not be subject to pay any Charges except as required by the terms of the Surface Interest that has been assigned to the Innu Government; and
- (g) in the event of a dispute with respect to the renewal or extension of the Surface Interest by the Innu Government, the holder of the Surface Interest shall not be bound by or required to refer the matter to Dispute Resolution and is not prohibited from pursuing any available legal recourse or remedy.

17A.4.23 Notwithstanding 17A.4.22 (a), (d) and (f), the Innu Government may unilaterally amend the terms and conditions of Surface Interests referred to in 17A.4.22 at any time so that they conform with any revised terms and conditions included by the Province in Surface Interests granted to Persons providing Public Utilities in similar circumstances in Labrador upon providing that Person with written notice of such revised terms and conditions [at least two (2) years before such revised terms and conditions are intended to take effect].

17A.4.24 Where Providers of Public Utilities or Other Services have Infrastructure in Labrador Innu Lands prior to the Effective Date and this infrastructure is not the subject of a Surface Interest issued or created by the Province prior to the Effective Date, then those Persons may temporarily enter, remain on or cross Labrador Innu Lands to deliver, manage, repair, remove, restore, replace, operate and maintain the Infrastructure related to the provision of the Public Utilities or Other Services, and such Persons exercising access under this 17A.4.24 may be required by the Innu Government to obtain a Surface Interest, and in such a case, the Innu Government shall issue a Surface Interest that provides for the rights set out in this 17A.4.24, and which Surface Interests, once issued, shall be subject to 17A.4.22 (c) to (g), and may be amended pursuant to 17A.4.23.

17A.4.25 Non-Participants exercising access to Labrador Innu Lands under 17A.4.24 shall use, to the greatest extent possible, generally recognized travel routes and camp sites, or other practical travel routes and camp sites that may be designated by the Innu Government, whether year round or seasonal, and Winter Trails under Part 17A.3.

Part 17A.5 Federal and Provincial Government Access

17A.5.1 Members of the judiciary, officers of the courts and peace officers may enter, cross or remain on Labrador Innu Lands to carry out their duties.

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- 17A.5.2 Members of Parliament or the House of Assembly or candidates for election to either of those bodies, together with their employees, volunteers or agents, may enter, cross or remain on Labrador Innu Lands to campaign in an election or to carry out their duties.
- 17A.5.3 (a) Canadian Forces personnel may enter, cross or remain on Labrador Innu Lands to carry out activities related to national defence and security in accordance with Federal Law;
- [(b) Members of foreign armed forces serving with, or under the operational control of the Canadian forces may enter and cross Labrador Innu Lands to carry out training activities.]¹⁵⁴
- 17A.5.4 Notwithstanding 17A.5.3:
- (a) the Department of National Defence and Canadian Forces personnel have no greater rights to conduct military manoeuvres on Labrador Innu Lands than they have with respect to privately owned lands under Provincial Law or Federal Law; and
- (b) access to Labrador Innu Lands for manoeuvres other than those under section 257 of the *National Defence Act (Canada)* shall occur only after the conclusion of an agreement with the Innu Government respecting timing, notice to Persons in the area affected, compensation for damages and other matters relating to the manoeuvres.
- 17A.5.5 Employees, contractors and agents of the Province, Canada and Crown corporations¹⁵⁵, and Canadian Forces personnel may enter, cross and remain on Labrador Innu Lands, and, subject to the Agreement, use resources necessary for that access in order to:
- (a) deliver public programs and projects;
- (b) manage, repair or maintain public works and services;
- (c) carry out inspections under Federal Legislation or Provincial Legislation;
- (d) carry out duties under or enforce Federal Law or Provincial Law;
- (e) respond to emergencies; and
- (f) carry out the terms of the Agreement.

¹⁵⁴ To be negotiated. Canada proposes 17A.5.3(b).

¹⁵⁵ Legal drafting. Canada would like to ensure other organizations fulfilling federal mandates are captured.

- 17A.5.6 Persons exercising access under Part 17A.5 shall not be required to obtain the consent of or notify the Innu Government, or pay for that access, including the payment of any fee⁴³, charge or rent for that access.
- 17A.5.7 Notwithstanding 17A.5.1, 17A.5.2, 17A.5.3 and 17A.5.5, if a Person referred to in those sections requires the continuous use and occupancy of Labrador Innu Lands for more than two (2) years for a purpose stated in those sections, that Person shall obtain a permit or other interest in the land from the Innu Government and pay the applicable fee⁴³, charge or rent.¹⁵⁶
- Part 17A.6 General**
- 17A.6.1 Persons exercising rights of access to Labrador Innu Lands under Part 17A.4 or Part 17A.5 shall not:
- (a) hunt, trap or fish on Labrador Innu Lands¹⁵⁷; or
 - (b) Harvest Forest Resources or Plants on Labrador Innu Lands unless and only to the extent required for the purpose for which they are exercising access rights under Part 17A.4 or 17A.5.
- 17A.6.2 Nothing in this Chapter shall derogate from or interfere with the public right of navigation in navigable waters.
- 17A.6.3 The rights of access to Labrador Innu Lands set out in this Chapter are in addition to rights of access to Labrador Innu Lands provided for elsewhere in the Agreement.
- 17A.6.4 Remedies or penalties established by Innu Law under 5.10.1¹⁵⁸ regarding trespass upon private property apply to a Non-Participant exercising access to Labrador Innu Lands in a manner or for a purpose not permitted under the Agreement.
- 17A.6.5 A Non-Participant exercising access to Labrador Innu Lands under the Agreement shall not create or establish new routes of travel or permanent camping sites without the consent of the Innu Government.
- 17A.6.6 Nothing in this Chapter shall be interpreted as creating any obligation on Innu Government, the Province or Canada to construct, maintain or repair or to provide for the construction, maintenance or repair of access routes or camping sites referred to in this Chapter.
- 17A.6.7 Subject to 17A.3.4, Persons exercising a right of access to Labrador Innu Lands under this Chapter have no right of action against the Innu Government for any

¹⁵⁶ To be negotiated. whether certain uses should not be subject to a fee.

¹⁵⁷ Legal drafting. This is not intended to prohibit taking of samples for research purposes for research or to enforce laws.

¹⁵⁸ To be negotiated. This change under review by Province.

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loss suffered or damage arising therefrom, except where such loss or damage results from a danger negligently created by the Innu Government, its employees or agents.

17A.6.8 A Non-Participant may not enter, cross or remain on Labrador Innu Lands without the consent of the Innu Government, except as permitted under the Agreement.

17A.6.9 A Non-Participant exercising access to Labrador Innu Lands under the Agreement shall provide notice to the Innu Government prior to engaging in that access unless:

- (a) the Innu Government has dispensed with the requirement to do so;
- (b) it is not reasonable to do so; or
- (c) otherwise specifically exempted in the Agreement.

Part 17A.7 Further Negotiations

17A.7.1 The generally recognized routes referred to in 17A.2.9 (c) will be reviewed by the Parties once every ten (10) years, with the first review occurring ten (10) years after the Effective Date; and on each review Canada, the Province, and the Innu Government may agree to add new routes, remove existing routes, or modify existing routes.

17A.7.2 Prior to the Agreement, the details of the circumstances and the process by which the Innu Government may issue Strip Alienations, as noted in 17A.2.12, shall be negotiated.

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Chapter 18: Innu Heritage, Archaeology and Ethnographic Material

Part 18.1 Definitions

18.1.1 In this Chapter:

“Archival Record” means a record of historical value and includes any correspondence, memorandum, book, plan, map drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics;

“Innu Ethnographic Material” means any object created by, traded to, commissioned by or given as a gift to an Innu person or Innu community, or that originated from an Innu community and that has past and ongoing importance to the Innu culture or spiritual practices, but does not include Archaeological Material, Archival Records, or any object traded to, commissioned by, or given as a gift to another Aboriginal people;

“Innu Human Remains” means skeletal and other corporal remains [of people related to contemporary Labrador Innu.]¹⁵⁹

“List” means the list of Innu Burial Sites and Places of Religious Significance to Innu in the Labrador Innu Settlement Area outside Labrador Innu Lands, provided to the Permitting Authorities pursuant to 18.6.1, as may be amended or supplemented from time to time pursuant to 18.6.2;

“Permit Holder” means a Person authorized to carry out an Archaeological Activity under a written permit issued by the appropriate Permitting Authority in accordance with this Chapter;

“Permitting Authority” means

- (a) the Innu Government, in Labrador Innu Lands;
- (b) Canada, in respect of lands under the control and administration of Canada¹⁶⁰;
- (c) the Province, except for the lands referred to in (a) and (b);

“Private Property” means moveable property to which a Person, other than the Innu Government, or an agency or subdivision of the Innu Government, can

¹⁵⁹ To be negotiated. Canada proposes following replacement language: “that are determined to be the remains of Innu”.

¹⁶⁰ Legal drafting. Canada considering whether “in the Labrador Innu Settlement Area outside Labrador Innu Lands” should be added to the end of this clause.

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demonstrate ownership in Law other than by discovery or through title to or an interest in land;¹⁶¹

“Significant Religious Material” means Innu Archaeological Material or Innu Ethnographic Material used by shamans and other powerful Innu people in the exercise of Manitushiu to communicate with animal masters, other beings and shamans, including but not limited to the teueikan (drum), large shishikuan (rattle), mishtikue (ceremonial caribou-hide robe), nitutshikan (power-containing objects including but not limited to charms, healing necklaces, ceremonial carrying cords and belts, special knives), the tushkapatshikan (telescope), and kushapatshikan (shaking tent) and matutishan (steam tent) structures;

“Standards” means standards for the safekeeping of Archaeological Material and Innu Ethnographic Material established pursuant to Part 18.14;

“The Rooms Corporation” means The Rooms Corporation of the Province, including, for greater certainty, all of its divisions;

“Unlisted Burial Site” means a Burial Site not identified on the List;

“Unlisted Place of Religious Significance” means a place not identified on the List that has religious significance.

18.1.2 Only Parts 18.1, 18.10, and 18.12, apply to the Canadian Museum of Civilization Corporation and its successors and assigns.

Part 18.2 Innu Government Jurisdiction

18.2.1 The Innu Government may make laws in relation to:

- (a) Archaeological Activities in Labrador Innu Lands;
- (b) the protection, preservation and maintenance of Archaeological Sites in Labrador Innu Lands;
- (c) the protection, retention, preservation and maintenance of Archaeological Materials found in Labrador Innu Lands after the Effective Date;
- (d) the designation, identification, preservation and maintenance of historically significant buildings, including the establishment of a registry of historically significant buildings, in Labrador Innu Lands other than buildings under the control and administration of Canada; and
- [(e) the designation, identification, preservation and maintenance of Innu historic sites on Labrador Innu Lands.

¹⁶¹ Legal drafting. Canada proposes deleting this definition in connection with proposed changes to 18.2.4.c) i) and iii) – the only places it is employed – as a way to eliminate the need for this definition.

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18.2.2 Nothing in 18.2.1(d) and (e) confers jurisdiction on the Innu Government to make laws in relation to:

- (a) the designation or commemoration of a National Historic Site of Canada in the Labrador Innu Settlement Area; or
- (b) any matter pertaining to a National Historic Site of Canada in the Labrador Innu Settlement Area outside of Labrador Innu Lands.]¹⁶²

18.2.3 If there is a Conflict between an Innu Law under 18.2.1 and a Federal Law or Provincial Law, the Federal Law or Provincial Law prevails to the extent of the Conflict.

18.2.4 The Innu Government may make laws in relation to:

- (a) the protection or disturbance of Innu Burial Sites or Places of Religious Significance to Innu in Labrador Innu Lands;
- (b) the excavation, investigation, preservation, protection, and reburial or other disposition of Innu Human Remains found in Labrador Innu Lands;
- (c) the retention, preservation and maintenance of:
 - (i) Innu Ethnographic Materials in Labrador Innu Lands that are owned by the Innu Government, an Innu Community Government or [an Innu Government Entity]¹⁶³; and
 - (ii) Innu Government records; and
 - (iii) Archival Records in Labrador Innu Lands that are owned by the Innu Government, an Innu Community Government or [an Innu Government Entity];

whether the Innu Ethnographic Materials or Archival Records are in Labrador Innu Lands because they were created in and not removed from Labrador Innu Lands, or whether the same are acquired by the Innu Government, an Innu Community Government or [an Innu Government Entity].

18.2.5 If there is a Conflict between an Innu Law under 18.2.4 and a Federal Law or Provincial Law, the Innu Law prevails to the extent of the Conflict.

18.2.6 Notwithstanding 18.2.5, if there is a Conflict between a Federal Law or Provincial Law in relation to public health or public safety and an Innu Law under 18.2.4, the Federal Law or Provincial Law prevails to the extent of the Conflict.

¹⁶² To be negotiated. Canada proposes adding "or c) any matter pertaining to a National Historic Site in Labrador Innu Lands that the Innu Government does not administer"; Province and Innu have Canada's proposals under review.

¹⁶³ To be negotiated. Under review by NL.

Part 18.3 General Provisions regarding Archaeological Permits and Archaeological Records in the Labrador Innu Settlement Area

- [18.3.1 Before any work, other than work under an approved [work plan]¹⁶⁴, involving excavation or drilling or any other form of significant ground disturbance is authorized by the Innu Government or the Province in the Labrador Innu Settlement Area, the Permitting Authority shall determine whether a historic resource impact assessment is required based upon the advice of an individual with appropriate qualifications and training. If the Permitting Authority determines that this historic resource impact assessment is required, then an assessment for the presence of Archaeological Material must be undertaken in accordance with the terms and conditions of a permit issued by the Permitting Authority to a Permit Holder after review of the proposed permit application by an individual with appropriate qualifications and training. The results of this assessment for the presence of Archaeological Material shall be provided in writing to the Permitting Authority.]¹⁶⁵
- 18.3.2 No Person may carry on an Archaeological Activity in the Labrador Innu Settlement Area unless that Person is a Permit Holder.¹⁶⁶
- 18.3.3 For greater certainty, a Permit Holder may be required to obtain other authorizations required by Federal Legislation or Provincial Legislation.
- 18.3.4 An application for a permit authorizing an Archaeological Activity in the Labrador Innu Settlement Area may be denied where the Permitting Authority reasonably believes¹⁶⁷ the applicant previously has not complied with¹⁶⁸ Federal Legislation or Provincial Legislation governing Archaeological Activities or any term or condition of a permit in relation to an Archaeological Activity or an Archaeological Site in Canada or elsewhere.
- 18.3.5 In the Labrador Innu Settlement Area, the applicable Permitting Authority shall require [under the terms of permits issued under 18.3.1 or 18.3.2, and under any alterations to permits made under 18.4.2, 18.4.3, 18.5.4 or 18.5.5]¹⁶⁹, that a Permit Holder:
- (a) protect and conserve Archaeological Material and Archaeological Sites to the extent possible in view of the activities authorized by the permit;

¹⁶⁴ To be negotiated. Consider whether term should be defined.

¹⁶⁵ To be negotiated: Under review by NL and Innu Nation.

¹⁶⁶ To be negotiated. Under review by NL and Innu regarding an exception for not requiring permits for researchers working with Archaeological Material or where the Archaeological Material is being conserved in a lab. Canada has a concern given definition of Archaeological Activity refers to Archaeological Material.

¹⁶⁷ To be negotiated. Canada proposes “knows that”.

¹⁶⁸ To be negotiated. Canada proposes “contravened”.

¹⁶⁹ To be negotiated. Canada proposes to delete words in square brackets.

- (b) provide a full and detailed record and report to the Permitting Authority, and if required by the Permitting Authority, include a non-technical report of all Archaeological Activities carried out and all Archaeological Material and Archaeological Sites found or studied;
- (c) deliver to the Permitting Authority possession of all Archaeological Material discovered or recovered, except where the Permitting Authority requires that any Archaeological Material be left in its original or natural position within an Archaeological Site, and all associated records, according to the terms and conditions of the permit;
- (d) encourage Innu participation in Archaeological Activities;
- (e) restore any place disturbed during an Archaeological Activity to the condition that existed before the commencement of the Archaeological Activity to the extent reasonably possible;
- (f) avoid any disturbance of a Burial Site or a Place of Religious Significance to Innu unless authorized by the permit;
- (g) fulfil the terms and conditions of the permit within the timeframe stipulated in the permit;
- (h) at the request of the Innu Government, except in the case of an emergency situation and prior to conducting an Archaeological Activity, travel to the Innu Community closest to the site of the Archaeological Activity to explain and discuss the activities to be carried out;
- (i) at the request of the Innu Government, upon completion of the Archaeological Activity, or as soon as possible thereafter, travel to the Innu Community closest to the site of the Archaeological Activity to explain and discuss the activities completed, and where the condition of the Archaeological Material permits, to provide a reasonable opportunity for residents of that Community to examine the Archaeological Material that has been removed for archaeological analysis; and
- (j) comply with 18.3.8 and 18.7.1.

[18.3.6 In the Labrador Innu Settlement Area outside of Labrador Innu Lands, a Permitting Authority may, with the consent of the Innu Government, exempt a Permit Holder, in whole or in part, from the requirements of 18.3.5(h), 18.3.5(i) or both.]¹⁷⁰

18.3.7 Nothing in 18.3.5 prevents the Permitting Authority from attaching such additional terms or conditions to a permit as the Permitting Authority may be authorized to attach.¹⁷¹

¹⁷⁰ To be negotiated. Canada questions whether this provision is necessary given that "at the request of government" is included in provisions 18.3.5 (h) and (i)

¹⁷¹ To be negotiated. Canada proposes: Nothing in 18.3.5 prevents the Permitting Authority from amending or cancelling a permit, where the Permit Holder contravenes a term or condition or any applicable Federal Law or Provincial Law.

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- 18.3.8 A Permit Holder carrying out Archaeological Activity in the Labrador Innu Settlement Area shall provide a copy of required reports, forms, and records under 18.3.5 to each of the Innu Government, the Province and Canada.
- 18.3.9 A Permit Holder may not enter privately held land to conduct an Archaeological Activity in the Labrador Innu Settlement Area without the permission of the owner or occupant of the land unless expressly permitted to do so by a Permitting Authority under 18.3.10.
- 18.3.10 A Permitting Authority may authorize a Permit Holder to enter privately held land to conduct an Archaeological Activity in the Labrador Innu Settlement Area without the permission of the owner or occupant of the land if either the owner or occupant cannot be located after the Permit Holder has made reasonable efforts to do so, or if the owner or occupant refuses entry, and;
- (a) the Permitting Authority reasonably believes a Person, other than a Permit Holder, may be undertaking activity that may result in the disturbance of an Archaeological Site or Archaeological Material; or
 - (b) the Permitting Authority believes on reasonable grounds that an emergency exists.
- 18.3.11 For purposes of 18.3.10(b), an emergency shall be deemed to exist if:
- (a) a Person is wilfully ignoring Provincial Legislation, [Federal Legislation]¹⁷² or Innu Law or the terms or conditions of a permit in respect of an Archaeological Activity, any Archaeological Material or an Archaeological Site;
 - (b) any Archaeological Material or an Archaeological Site is in immediate danger of being destroyed or being disturbed contrary to Provincial Legislation, [Federal Legislation] or Innu Law or the terms or conditions of a permit; or
 - (c) the time required to obtain the permission of the owner or occupant of the land would increase the danger of any Archaeological Material or an Archaeological Site being destroyed or disturbed contrary to Provincial Legislation, [Federal Legislation] or Innu Law or the terms or conditions of a permit.
- 18.3.12 Where the Permitting Authority reasonably believes a Person may be undertaking an activity which may result in the disturbance of an Archaeological Site or Archaeological Material, it may designate a peace officer to enter privately held land in the Labrador Innu Settlement Area without a permit and without the permission of the owner or occupant to seize any tool, implement, equipment or other object being used or which the peace officer has reasonable grounds to believe is being used in contravention of 18.3.2 or Innu Law made in accordance with 18.2.1, and, in consultation with a qualified archaeologist, to seize any Archaeological Material which has been disturbed.

¹⁷² To be negotiated. Canada's role in 18.3.9-18.3.12.

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- 18.3.13 [On the Effective Date]¹⁷³, Canada and The Rooms Corporation shall provide the Innu Government with a copy of their respective inventories for Archaeological Sites in the Labrador Innu Settlement Area, including Archaeological Site record forms and inventory maps.
- 18.3.14 Canada and The Rooms Corporation shall provide the Innu Government with an inventory of the Archaeological Material found in the Labrador Innu Settlement Area that is owned by Canada and the Province, upon request by the Innu Government.
- 18.3.15 Without restricting 18.3.5(h) and 18.3.5(i) [and subject to Part 2.22]¹⁷⁴, each Government shall treat and use records of each Archaeological Site in the Labrador Innu Settlement Area in a manner that will protect, preserve and maintain the Archaeological Site to which the records relate, including by keeping the records confidential.
- 18.3.16 [Subject to 2.22,]¹⁷⁵ each Government, upon the request of another Government, shall provide copies of any reports in its control concerning any Archaeological Activities, Archaeological Materials or Archaeological Sites in the Labrador Innu Settlement Area that the requesting Government does not possess.
- 18.3.17 Within the Labrador Innu Settlement Area outside Labrador Innu Lands, the applicable Permitting Authority shall notify the Innu Government as soon as possible after it becomes aware of the discovery of material acquired as a result of a permitted activity or otherwise that it [reasonably believes]¹⁷⁶ to be Significant Religious Material.

Part 18.4 Archaeological Permits in Labrador Innu Lands

- 18.4.1 Upon receipt of an application for a permit to conduct Archaeological Activity in Labrador Innu Lands, the Innu Government shall ensure that the application is reviewed by an individual with appropriate qualifications and training, and
- (a) except in an emergency situation, the Innu Government shall
- (i) forward a copy of the application forthwith to the Provincial Permitting Authority, and [C]onsult the Provincial Permitting Authority about whether or not a permit should be issued, and if so, the terms and conditions to be attached to it; and

¹⁷³ To be negotiated. Timing of when this obligation (whether on or after the Effective Date) takes effect is to be considered. Intent is that this clause creates a one-time obligation.

¹⁷⁴ To be negotiated. Innu concern is that geographic coordinates should remain confidential. Canada to redraft.

¹⁷⁵ To be negotiated. Canada proposes this addition.

¹⁷⁶ To be negotiated. Canada proposes to change to "determines".

- (ii) within thirty (30) days of receipt of the application, decide either to refuse to issue the permit or to issue it with such terms and conditions, in addition to those set out in 18.3.5, as it deems necessary; or
 - (b) in an emergency situation, the Innu Government may act without first [C]onsulting the Provincial Permitting Authority, but as soon as possible thereafter, shall inform the Provincial Permitting Authority of, and provide reasons for, the action taken.
- 18.4.2 The Innu Government, after [C]onsulting the Provincial Permitting Authority, may alter the terms or conditions of a permit to conduct Archaeological Activity in Labrador Innu Lands, or cancel a permit if the Permit Holder contravenes a term or condition of the permit or any applicable Provincial Legislation or Innu Law.
- 18.4.3 Notwithstanding 18.4.2, the Innu Government may cancel or alter the terms or conditions of a permit prior to [C]onsulting with the provincial Minister in an emergency situation, and shall inform the Minister of, and provide the reasons for, the cancellation or alteration as soon as possible thereafter.
- 18.4.4 The Innu Government shall notify the Provincial Permitting Authority in writing of any issuance of, cancellation of, or alteration to the terms or conditions of, a permit to conduct Archaeological Activity in Labrador Innu Lands.
- Part 18.5 Archaeological Permits In the Labrador Innu Settlement Area Outside of Labrador Innu Lands**
- 18.5.1 The applicable Permitting Authority shall review and assess applications for permits to conduct Archaeological Activity within the Labrador Innu Settlement Area outside Labrador Innu Lands in accordance with this Chapter and Provincial Legislation or Federal Legislation.
- 18.5.2 Upon receipt of an application for a permit to conduct Archaeological Activity within the Labrador Innu Settlement Area outside Labrador Innu Lands,
- (a) except in an emergency situation, the applicable Permitting Authority shall:
 - (i) forward a copy of the application forthwith to the Innu Government and shall Consult the Innu Government about whether or not a permit should be issued, and if so, the terms and conditions to be attached to it; and
 - (ii) within thirty (30) days of receipt of the application, decide either to refuse to issue the permit or to issue it with such terms and conditions, in addition to those set out in 18.3.5, as it deems necessary; or
 - (b) in an emergency situation, the applicable Permitting Authority may act without first [C]onsulting the Innu Government, but as soon as possible thereafter, shall inform the Innu Government of, and provide reasons for, the action taken.

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- 18.5.3 The applicable Permitting Authority, after Consulting the Innu Government, may alter the terms or conditions of a permit to conduct Archaeological Activity within the Labrador Innu Settlement Area outside Labrador Innu Lands or cancel a permit if the Permit Holder contravenes a term or condition of the permit or any applicable Law.
- 18.5.4 Notwithstanding 18.5.3, the Permitting Authority may cancel or alter the terms or conditions of a permit to conduct Archaeological Activity within the Labrador Innu Settlement Area outside Labrador Innu Lands in an emergency situation without first Consulting the Innu Government, but as soon as possible thereafter, shall inform the Innu Government of, and provide reasons for, the action taken.
- 18.5.5 The applicable Permitting Authority shall notify the Innu Government in writing of any issuance of, cancellation of, or alteration to the terms or conditions of, a permit to conduct Archaeological Activity within the Labrador Innu Settlement Area outside Labrador Innu Lands.

Part 18.6 Innu Burial Sites and Places of Religious Significance in the Labrador Innu Settlement Area outside of Labrador Innu Lands

- 18.6.1 A list of Innu Burial Sites and Places of Religious Significance to Innu in the Labrador Innu Settlement Area outside Labrador Innu Lands shall be identified by the Innu Government and provided to the Permitting Authorities in the Labrador Innu Settlement Area outside Labrador Innu Lands on the Effective Date.
- 18.6.2 The List provided under 18.6.1 shall not be definitive and may be amended or supplemented by the Innu Government.
- 18.6.3 The Innu Government shall provide the List as amended or supplemented pursuant to 18.6.2 to the Permitting Authorities in Labrador Innu Settlement Area outside Labrador Innu Lands as soon as possible .
- 18.6.4 If at the time of issuance by a Permitting Authority in the Labrador Innu Settlement Area outside Labrador Innu Lands of a permit authorizing disturbance of an Innu Burial Site or a Place of Religious Significance to Innu, the Permitting Authority does not have knowledge under 18.6.1 or 18.6.3 that the site or place is on the List, the obligations to Consult contained in 18.6.5 and 18.7.4 shall not apply.
- 18.6.5 The applicable Permitting Authority in the Labrador Innu Settlement Area outside Labrador Innu Lands:
- (a) except in an emergency situation, shall [C]onsult the Innu Government prior to issuing a permit authorizing a disturbance of a site or place identified in the List, for the purpose of attempting to reach agreement on whether the site or place may be disturbed and if so on what terms and conditions. If agreement cannot be reached within thirty (30) days, or such other time as the Permitting Authority and the Innu Government may agree, on whether the site or place may be disturbed, including terms and

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conditions for the disturbance, the Permitting Authority shall decide and shall give the Innu Government written reasons for its decision; or

- (b) in an emergency situation, may issue a permit without first [C]onsulting the Innu Government, but as soon as possible thereafter, shall Consult with the Innu Government about whether the permit should be cancelled or altered.

- 18.6.6 A disagreement as to whether a site or place contained in the List is an Innu Burial Site or a Place of Religious Significance to Innu or the spatial extent of such a site or place shall not be referred to Dispute Resolution under Chapter 26, but may be referred by a Permitting Authority for a [final decision]¹⁷⁷ to a qualified individual appointed jointly by the Innu Government and the other relevant Permitting Authority.
- 18.6.7 If the Innu Government and relevant Permitting Authority cannot agree on the appointment referred to in 18.6.6 within thirty (30) days from the start of discussions[, the chairperson of the Dispute Resolution Board]¹⁷⁸ shall, make the appointment.
- 18.6.8 The individual appointed under 18.6.6 or 18.6.7 shall decide whether the site or place is an Innu Burial Site or a Place of Religious Significance to Innu [or]¹⁷⁹ the spatial extent of the site or place.
- 18.6.9 The decision referred to in 18.6.8 is binding on the Innu Government and relevant Permitting Authorities and is not subject to any appeal or review.
- 18.6.10 The Permitting Authorities outside Labrador Innu Lands shall hold confidential the List except to the extent that disclosure is required by Law or, if approval of the Innu Government is provided to such a Permitting Authority, which approval may not be unreasonably withheld. It shall be unreasonable for the Innu Government to withhold its approval if the proposed recipient of information contained on the List is prepared to sign a confidentiality agreement with the Innu Government on reasonable terms.¹⁸⁰

¹⁷⁷ Legal drafting – final for the time being.

¹⁷⁸ To be negotiated in light of the fact that there is no DR Board.

¹⁷⁹ Legal drafting – and/or versus or.

¹⁸⁰ To be negotiated. Canada proposes redrafting as follows: "Subject to 2.22, the Permitting Authorities outside Labrador Innu Lands shall hold confidential the List." Or that it be deleted. We cannot modify ATIP.

- Part 18.7 Human Remains, Unlisted Burial Sites and Unlisted Place of Religious Significance in the Labrador Innu Settlement Area¹⁸¹**
- 18.7.1 A Permit Holder in the Labrador Innu Settlement Area shall immediately cease Archaeological Activity and notify the Permitting Authority when during the course of Archaeological Activity:
- (a) human remains are encountered;
 - (b) human remains or other physical evidence are encountered that suggests that a site is an Unlisted Burial Site; or
 - (c) physical evidence is encountered that suggests that a site is an Unlisted Place of Religious Significance.
- 18.7.2 [As soon as possible after notification pursuant to 18.7.1, the Permitting Authority will notify the criminal investigating authorities of the discovery of any recent human remains.] ¹⁸²
- 18.7.3 Further disturbance in the vicinity of the encounter referred to in 18.7.1 shall be discontinued until authorized by the Permitting Authority.
- 18.7.4 [If the Permitting Authority outside Labrador Innu Lands has reason to believe that an Archaeological Site in the Labrador Innu Settlement Area is or encompasses either an unidentified Innu burial site or an Unlisted Place of Religious Significance and that that Innu burial site or Unlisted Place of Religious Significance may be threatened by an Archaeological Activity, the Permitting Authority, after Consulting the Innu Government except in an emergency situation, may cancel or alter the terms or conditions of an existing permit authorizing the Archaeological Activity.
- 18.7.5 If agreement cannot be reached pursuant to 18.7.4 within thirty (30) days on whether the permit should be altered or cancelled, or such other time as the Permitting Authority and the Innu Government may agree, the Permitting Authority shall decide and shall give the Innu Government written reasons for its decision.] ¹⁸³

¹⁸¹ To be negotiated. Overlap matters to be addressed.

¹⁸² Legal drafting. Canada question: who are the "criminal investigating authorities"? Canada proposes the following replacement language: "The Permitting Authority shall comply with Federal Legislation and Provincial Legislation related to the encounter referred to in 18.7.1."

¹⁸³ To be negotiated. Canada proposed amalgamating 18.7.4 and 18.7.5 in the following way: "Except in an Emergency Situation, if the Permitting Authority in LISA outside LIL has reason to believe that an Unlisted Burial Site may contain Innu Human Remains or an Unlisted Place of Religious Significance may be threatened by an Archaeological Activity, the Permitting Authority, after Consulting the Innu Government, may cancel or amend the terms or conditions of the permit authorizing the Archaeological Activity. The Consultation shall be for the purpose of attempting to reach agreement on the cancellation or

18.7.6 If Consultation with the Innu Government did not occur pursuant to 18.7.4 before cancellation or alteration of the terms and conditions of an existing permit because of an emergency situation, the Permitting Authority shall as soon as possible after cancellation or alteration Consult with the Innu Government about the action taken, including as to whether the permit should be restored if cancelled or the alteration reversed.

18.7.7 [If a Permitting Authority determines that human remains or other physical evidence associated with these human remains which suggests a site in the Labrador Innu Settlement Area is an Unlisted Burial Site or an Unlisted Place of Religious Significance, may be removed from that Archaeological Site, the Permitting Authority shall determine whether the cultural affiliation of the human remains, the Unlisted Burial Site or Unlisted Place of Religious Significance:

- (a) is Innu or that there is a reasonable belief that it may be Innu;
- (b) is not Innu; or
- (c) cannot be determined;

and shall notify the other Permitting Authorities, in writing, of the results of its determination.]¹⁸⁴

amendment of the terms or conditions. If agreement is not reached within thirty (30) days from the start of Consultation, the Permitting Authority shall give the Innu Government written reasons for the decision.”

Innu counter proposed the following:

18.7.4 Except in an [Emergency Situation], if the Permitting Authority in the Labrador Innu Settlement Area outside Labrador Innu Lands has reason to believe that an Unlisted Burial Site that may contain Innu Human Remains or an Unlisted Place of Religious Significance may be threatened by an Archaeological Activity, the Permitting Authority, after Consulting the Innu Government, may cancel or amend the terms or conditions of the permit authorizing the Archaeological Activity. The Consultation shall be for the purpose of attempting to reach agreement on the cancellation or amendment of the terms or conditions.

18.7.5 If agreement is not reached within thirty (30) days from the start of Consultation under 18.7.4, or such other time as the Innu Government and the Permitting Authority may agree, the Permitting Authority shall give the Innu Government written reasons for the decision.

NL has under review.

¹⁸⁴ To be negotiated. Canada proposes redrafting as follows: “If it is determined, under 18.7.2, that the human remains or Burial Site is not the subject of a police or coroner investigation and if a Permitting Authority determines that human remains may be removed from an Archaeological Site, the Permitting Authority shall determine whether the human remains are:

- (a) Innu Human Remains;
- (b) not Innu Human Remains; or
- (c) unidentifiable;

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- 18.7.8 [If a Permitting Authority makes a determination pursuant to 18.7.7(a) that
- (a) the human remains are Innu Human Remains;
 - (b) the Unlisted Burial Site is an Innu Burial Site;
 - (c) the Unlisted Place of Religious Significance is a Place of Religious Significance to Innu; or
 - (d) there is a reasonable belief that the cultural affiliation of the human remains or of the Unlisted Burial Site or Unlisted Place of Religious Significance is Innu; then it shall transfer possession of the human remains or physical evidence associated with these human remains to the Innu Government unless, after Consulting the Innu Government, the Permitting Authority determines that the human remains or physical evidence associated with these human remains are to be returned to the Archaeological Site from which they came.]¹⁸⁵
- 18.7.9 If it is determined under 18.7.7 a) that Innu Human Remains are to be removed from an Innu Burial Site, the Innu Government may seek a reburial or other disposition of the Innu Human Remains outside Labrador Innu Lands by agreement with:
- (a) Canada, in the case of lands under the administration and control of Canada; or
 - (b) the Province, in the case of other lands in Newfoundland and Labrador.
- 18.7.10 If a Permitting Authority makes a determination pursuant to 18.7.7(b) or (c), and the Permitting Authority determines that the human remains or physical evidence associated with those human remains are not to be returned to the Archaeological Site from which they came:
- (a) the Innu Government and the Province shall jointly determine how to deal with those human remains or physical evidence associated with those human remains that were removed from an Archaeological Site in Labrador Innu Lands;
 - (b) if the Permitting Authority makes a determination pursuant to 18.7.7(c), the Province, after Consulting the Innu Government, shall determine how to deal with those human remains or physical evidence associated with

and shall notify the other Permitting Authorities, in writing, of the results of its determination.”

Canada accepts that “or physical evidence associated with these human remains” can be added.

Canada also accepts that a parallel clause dealing with Unlisted Places of Religious Significance and Places of Religious Significance to Innu should also be addressed in a separate clause.

¹⁸⁵ To be negotiated. Canada proposes replacing “reasonably believes” with “determined to be” and to address overlap matters.

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those human remains that were removed from an Archaeological Site in Labrador Innu Settlement Area outside Labrador Innu Lands, other than on lands referred to in 18.7.10(c); and

- (c) Canada shall determine how to deal with those human remains or physical evidence associated with those human remains that were removed from an Archaeological Site on lands under the administration and control of Canada, outside Labrador Innu Lands. Canada may, where the human remains are unidentifiable, Consult with the Innu Government.

18.7.11 If one or both of the other Permitting Authorities disagrees with a determination under 18.7.7, the issue may be referred by a Permitting Authority for a [final decision]¹⁸⁶ to a qualified individual appointed jointly by the Innu Government and the other relevant Permitting Authority.

18.7.12 If the Permitting Authorities cannot agree on the appointment referred to in 18.7.11 within thirty (30) days from the start of discussions[, the chairperson of the Dispute Resolution Board shall]¹⁸⁷, upon the request of a Permitting Authority, make the appointment.

18.7.13 The individual appointed under 18.7.11 or 18.7.12 shall make the determination [about cultural affiliation of the Burial Site or Unlisted Place of Religious Significance]¹⁸⁸ referred to in 18.7.7.

18.7.14 The decision referred to in 18.7.13 is binding on the Permitting Authorities and is not subject to any appeal or review.

Part 18.8 Emergency Situations¹⁸⁹

18.8.1 For the purposes of 18.3.4(h), 18.4.1, 18.4.3, 18.5.2, 18.5.4, 18.6.5 and 18.7.4, an emergency situation shall exist only if:

- (a) there is an [unplanned]¹⁹⁰ event or activity that would likely result in the [unplanned] destruction of or significant injury or damage to Archaeological Material or an Archaeological Site, a Burial Site, Place of

¹⁸⁶ Legal drafting – final for the time being.

¹⁸⁷ Canada proposes replacing with “Supreme Court of Newfoundland and Labrador, Trial Division”.

¹⁸⁸ To be negotiated. Innu proposal b/c there are three determinations referred to in 18.7.7.

¹⁸⁹ Legal drafting – Innu & NL considering CAN’s proposal to replace this Part with a definition of “Emergency Situations” for this Chapter.

¹⁹⁰ To be negotiated. Canada proposes inserting “unplanned” before “event or activity”; Innu propose maintaining “unplanned” before “destruction”.

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Religious Significance to Innu, Unlisted Place of Religious Significance or human remains; and

- (b) the time required to Consult would exacerbate the potential for such destruction or damage.

Part 18.9 Title to Archaeological Material

- 18.9.1 The title to all Archaeological Material found in Labrador Innu Lands after the Effective Date is vested in the Innu Government.
- 18.9.2 The Innu Government shall not sell or alienate Archaeological Material referred to in 18.9.1, or lend that Archaeological Material for longer than renewable five year periods.
- 18.9.3 The title to and management of all Archaeological Material found in the Labrador Innu Settlement Area outside Labrador Innu Lands after the Effective Date, other than on lands subject to 18.9.5, is vested jointly in the Innu Government and the Province.¹⁹¹
- 18.9.4 With respect to Archaeological Material referred to in 18.9.3, neither the Innu Government nor the Province, without the prior written agreement of the other, shall:
- (a) sell, alienate, lend or dispose of possession of, that Archaeological Material;
 - (b) seek or submit to sever or partition title to that Archaeological Material; or
 - (c) make use of that Archaeological Material so as to cause a physical alteration to it or to diminish its integrity or value.
- 18.9.5 [The title to and management of all Archaeological Material found in the Labrador Innu Settlement Area outside Labrador Innu Lands after the Effective Date, on lands under the administration and control of Canada, is vested jointly in the Innu Government and Canada.
- 18.9.6 With respect to Archaeological Material referred to in 18.9.5, neither the Innu Government nor Canada, without the prior written agreement of the other, shall:
- (a) sell, alienate, lend or dispose of possession of, that Archaeological Material;
 - (b) seek or submit to sever or partition title to that Archaeological Material; or
 - (c) make use of that Archaeological Material so as to cause a physical alteration to it or to diminish its integrity or value.]¹⁹²

¹⁹¹ To be negotiated. Canada has under review – overlap issue. NB - Archaeological Material is not specific to the Innu.

¹⁹² To be negotiated. Canada to propose alternatives to “joint ownership” of Archaeological Material found in LISA outside LIL on lands under the administration and control of Canada and also has under review regarding potential overlap issue.

18.9.7 [Any act or instrument contrary to this part is void and of no effect.]¹⁹³

Part 18.10 Export, Sale or Alienation of Innu Ethnographic Material

18.10.1 In the event that the export out of Canada of Innu Ethnographic Material is not prohibited by Federal Legislation, or in the event of the intended sale of Innu Ethnographic Material within Canada,

- (a) if the Innu Government owns Innu Ethnographic Material that is in its public collections, or owns Innu Ethnographic Material that is not in its public collections but which the Innu Government is of the reasonable opinion is of significant cultural importance to Innu or of significant value for the information it may give about Innu, and intends to sell or alienate title to that Innu Ethnographic Material, the Innu Government:
 - (i) shall notify Canada and the Province including providing notice of the terms of the offer under which the Innu Government is willing to sell or alienate title; and
 - (ii) shall not sell or alienate title to that Innu Ethnographic Material to anyone other than Canada or the Province or both during the ninety (90) days after it has so notified Canada and the Province, to give Canada or the Province or both the opportunity to accept the offer or to negotiate to buy or acquire title to Innu Ethnographic Material; and
- (b) if Canada or the Province owns Innu Ethnographic Material and intends to sell or alienate title to that Ethnographic Material, Canada or the Province:
 - (i) shall notify the Innu Government including providing notice of the terms of the offer under which Canada or the Province are willing to sell or alienate title; and
 - (ii) shall not sell or alienate title to that Innu Ethnographic Material to any party other than the Innu Government during the one hundred and eighty (180) days after it has so notified the Innu Government, to give the Innu Government the first opportunity to accept the offer, or to negotiate to buy or acquire title to that Innu Ethnographic Material.

Part 18.11 Repatriation of and Access to Innu Archaeological Material and Innu Ethnographic Material¹⁹⁴

18.11.1 At the request of the Innu Government, the Province shall provide assistance to the Innu Government in the recovery of Innu Archaeological Material, Innu

¹⁹³ To be negotiated. Canada has under review.

¹⁹⁴ Legal drafting. Canada proposes title change for this Part: Innu Archaeological Material and Innu Ethnographic Material: Access, Loans and Transfers.

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Ethnographic Material, and Archival Records that are of cultural importance to Innu or of value for the information such Records may give about Innu, where such Material or Records originate from Labrador and are held in foreign countries.

18.11.2 Nothing in 18.11.1 imposes:

- (a) a financial obligation on the Province; or
- (b) an obligation to provide assistance if, in the sole discretion of the Province, following discussion with the Innu Government, it is not reasonable to do so.

18.11.3 From time to time, at the request of the Innu Government, Canada shall use reasonable efforts to facilitate access by the Innu Government to Innu Archaeological Material and Innu Ethnographic Material originating from Labrador that are held in other Canadian public collections.

18.11.4 Canada or the Province or both, may transfer their legal interests in Innu Archaeological Material and Innu Ethnographic Material which are in their permanent collections in accordance with applicable federal or provincial policies and procedures.

18.11.5 The Innu Government may request from the Province and Canada loans of:

- (a) Innu Archaeological Material originating from Labrador;
- (b) Innu Ethnographic Material originating from Labrador;
- (c) Archaeological Material, other than Innu Archaeological Material, originating from the Labrador Innu Settlement Area; or
- (d) ethnographic material, other than Innu Ethnographic Material, originating from the Labrador Innu Settlement Area.

[18.11.6 Requests pursuant to 18.11.5 shall not be refused unless:

- (a) the Innu Government is unable to maintain the material in accordance with the Standards;
- (b) the condition of the material prohibits its movement;
- (c) the material is currently on loan to another party;
- (d) ownership of the material is under dispute;
- (e) the Province or Canada is unable to loan the material because of some term or condition of an agreement regarding the acquisition of the material;
- (f) the material is currently the subject of active display or [scholarly] research by or in the institution which is holding the material, or
- (g) to maintain the integrity of the collection.

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18.11.7 Where the Innu Government requests a loan under 18.11.5 but the material is currently on loan to a third party, the Innu Government shall have priority over others to borrow the material once returned, subject to any contractual rights of additional third parties to obtain a subsequent loan from Canada or the Province.

18.11.8 The Province or Canada may request from the Innu Government loans of the materials referred to in 18.11.5 (a) - (d). The Innu Government shall not refuse such requests unless one or more of the factors referred to in 18.11.6 (a)-(g) applies.

18.11.12 The Innu Government, Canada and the Province shall provide reasonable access by the public, including the scientific community, to Archaeological Material from the Labrador Innu Settlement Area and to Innu Ethnographic Material from the Labrador Innu Settlement Area that is in their possession, commensurate with public and scientific interest.

18.11.13 The Innu Government, Canada and the Province shall not unreasonably deny requests by third parties for loans of Innu Archaeological Material and Innu Ethnographic Material. It shall not be unreasonable for a Government to deny requests for loans where the borrower is not subject to a similar obligation to make loans to third parties.

18.11.14 When complying with requests under 18.11.5 and 18.11.8, the Government granting the request may establish reasonable terms or conditions for:

- (a) the presentation or transportation of the material;
- (b) the duration or termination of the loan or possession, and
- (c) where Standards have not been established, for the protection of the material.]¹⁹⁵

18.11.15 Unless the Innu Government, Canada or the Province agree otherwise, no transfer shall take place under Part 18.11 until Standards are established

Part 18.12 Transfers from the Canadian Museum of Civilization Corporation¹⁹⁶

18.12.1 The Canadian Museum of Civilization Corporation shall transfer to the Innu Government, without condition, all its legal interests in, and possession of, the Innu Archaeological Material and Innu Ethnographic Material which will be set out in a schedule to be negotiated before the Agreement¹⁹⁷ is reached:

- (a) as soon as practicable following a request by the Innu Government;

¹⁹⁵ To be negotiated. Within this proposal CAN proposes to delete "scholarly" in 18.11.6 f)

¹⁹⁶ Legal drafting. Innu propose altering title to better reflect contents of Part 18.12.

¹⁹⁷ To be negotiated. The Innu to provide CMC with a list for the purpose of proceeding with consultations between CMC and the Innu.

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- (b) if there is no request by the Innu Government, five (5) years after the Effective Date; or
 - (c) by any other date agreed to by the Canadian Museum of Civilization Corporation and the Innu Government.
- 18.12.2 The transfer under 18.12.1 is deemed to occur when the Innu Archaeological Material and Innu Ethnographic Material arrive at a location for delivery designated in writing by the Innu Government.
- 18.12.3 If the Innu Government does not designate a location for delivery, the Canadian Museum of Civilization Corporation shall deliver the Innu Archaeological Material and Innu Ethnographic Material set out in the Schedule to the address for the Innu Government set out in 2.x.x.
- 18.12.4 The Canadian Museum of Civilization Corporation:
- (a) shall continue to hold the Innu Archaeological Material and Innu Ethnographic Material set out in the Schedule under the same terms and conditions as they are held on the Effective Date, until they are delivered to the Innu Government;
 - (b) shall not be liable for any loss or damage to Innu Archaeological Material and Innu Ethnographic Material set out in the Schedule unless the loss or damage results from dishonesty, gross negligence, or malicious or willful misconduct of its employees or agents; and
 - (c) shall determine the transportation arrangements for, and transport, the Innu Archaeological Material and Innu Ethnographic Material set out in the Schedule in accordance with the prevailing practices of the Canadian Museum of Civilization Corporation for transportation of Archaeological Material and ethnographic material to museums.
- 18.12.5 The Innu Government may request from Canadian Museum of Civilization loans of Innu Archaeological Material and Innu Ethnographic Material originating from Labrador under the Canadian Museum of Civilization loans policy.
- 18.12.6 From time to time, at the request of the Innu Government or the Canadian Museum of Civilization, the Innu Government and Canadian Museum of Civilization will negotiate and attempt to reach custodial agreements¹⁹⁸ in respect of:
- (a) Innu Archaeological Material originating from Labrador; and
 - (b) Innu Ethnographic Material originating from Labrador;

¹⁹⁸ To be negotiated. Innu wish to discuss criteria relating to the entry into custodial agreements and to ensure that they will be accorded priority over non-Innu requests for these materials. As well, in a separate part, similar to LILCA, provisions could be added to address Innu Archival Records.

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- 18.12.7 Custodial agreements under 18.12.6 shall:
- (a) respect Innu Laws and practices relating to Innu Archaeological Material and Innu Ethnographic Material; and
 - (b) comply with Federal Legislation and the statutory mandate of the Canadian Museum of Civilization.
- 18.12.8 Custodial agreements under 18.12.7 may set out:
- (a) Innu Archaeological Material and Innu Ethnographic Material to be in the possession of the Innu Government and those to be in the possession of the Canadian Museum of Civilization;
 - (b) conditions of maintenance, storage and handling of Innu Archaeological Material and Innu Ethnographic Material;
 - (c) conditions of access to and use, including study, display, and reproduction, of Innu Archaeological Material and Innu Ethnographic Material and associated records by the public, researchers and scholars;
 - (d) provisions for incorporating new information into catalogue records and displays of Innu Archaeological Material and Innu Ethnographic Material; and
 - (e) provisions for enhancing public knowledge about the Innu through the participation of Participants in public programs and activities at the Canadian Museum of Civilization.
- 18.12.9 The Canadian Museum of Civilization will make available to the Innu Government copies of original Archival Records pertaining to the Innu that are not subject to third party agreements.
- 18.12.10 On the Effective Date, Canada and The Rooms Corporation shall provide the Innu Government with a list of the Innu Ethnographic Material in their permanent collection and under their control.

Part 18.13 Standards for the Safekeeping of Archaeological Material and Innu Ethnographic Material

18.13.1 The Innu Government, Canada and the Province shall negotiate for the purpose of concluding an agreement on Standards for the safekeeping of

- (a) Archaeological Material collected during an Archaeological Activity in the Labrador Innu Settlement Area [and after the Effective Date]¹⁹⁹, and Innu Ethnographic Material from the Labrador Innu Settlement Area; and
- (b) any materials loaned under 18.11.5 and 18.11.7.

Such negotiations shall include a mechanism for development of case-specific standards. If an agreement cannot be reached in 180 days after negotiations begin, or a longer period if agreed to by the Parties, the matter shall be referred to Dispute resolution under Chapter 26, unless otherwise agreed to by the Parties.

18.13.2 An Arbitrator appointed to resolve a Dispute under 18.13.1 shall have expertise in the matter under Dispute to assist in establishing Standards.

18.13.3 [The Innu Government, Canada and the Province shall comply with or ensure compliance with the Standards in relation to the materials referred to in 18.13.1(a) and (b) that is in their possession or control or which is transferred temporarily from their possession or control, or, if the standards of the federal and provincial agencies for which these Governments are responsible are at least as stringent as the Standards, shall comply with or ensure compliance with those standards. If there is disagreement about whether the standards of the federal and provincial agencies are at least as stringent as the Standards, if an Arbitrator is selected, it shall appoint a specialist who has expertise in the matter or matters under Dispute.]²⁰⁰

18.13.4 The Standards may be reviewed from time to time and amended by written agreement of the Innu Government, Canada and the Province.

Part 18.14 Consultation

18.14.1 Canada and the Province shall Consult the Innu Government prior to introducing Federal Legislation or Provincial Legislation affecting Archaeological Material, Archaeological Activities, Archaeological Sites, and Innu Ethnographic Material in the Labrador Innu Settlement Area and matters regarding dispositions referred to in 18.7.9.

18.14.2 The Innu Government shall Consult Canada and the Province prior to making an Innu Law under Part 18.2.

¹⁹⁹ To be negotiated.

²⁰⁰ To be negotiated. Canada's position is language in LILCA (scope of application of Standards to federal collection).

Part 18.15 Historically Significant Buildings

- 18.15.1 The Innu Government may, after Consulting the Province , designate buildings in the Labrador Innu Settlement Area outside Labrador Innu Lands, other than buildings under the control and administration of Canada, that are of historical significance to Innu.
- 18.15.2 A building designated under 18.15.1 shall be declared by the Provincial Minister to be a provincial cultural resource for purposes of Provincial Law.
- 18.15.3 The Provincial Minister shall Consult the Innu Government:
- (a) before entering into an agreement for the care or preservation of a building designated under 18.15.1 or the care or preservation of the site where the building is located; and
 - (b) before consenting to a request to move, destroy, damage, deface, obliterate, alter, add to, mark, interfere with or remove from Newfoundland and Labrador a building designated under 18.1.
- 18.15.4 The Innu Government, in the Labrador Innu Settlement Area outside the Communities, and each Community Government within its boundaries, shall be deemed to be municipal authorities for purposes of easements or covenants referred to in section 30 of the *Historic Resources Act* (Newfoundland and Labrador).

[Part 18.16 Contracting and Employment

- 18.16.1 Archaeological Activities shall be considered work, economic activities and opportunities for business and employment for purposes of Parts [21A.5]²⁰¹ – 21A.8 of Chapter 21A.]

Part 18.17 Archival Records

- 18.17.1 If the Innu Government requests from Canada:
- (a) the loan for exhibition purposes of original Archival Records that are created or owned by Canada; or
 - (b) copies of such Archival Records for research or study purposes,
- the request shall be treated on at least as favorable a basis as similar requests from other institutions.

²⁰¹ To be negotiated. To be reviewed when Chapter 21A is negotiated. Innu want to ensure that Archeological activities can be the subject of opportunities for employment and business IBAs under Chapter 21.

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18.17.2 If the Innu Government requests from The Rooms Corporation:

- (a) the loan for exhibition purposes of original Archival Records that are owned and controlled by the Rooms Corporation; or
- (b) copies of such Archival Records for research or study purposes,

the request shall be treated on at least as favorable a basis as similar requests from other institutions.

Part 18.18 Innu Public Holidays²⁰²

18.18.1 The Innu Government may establish holidays and cultural leave for Innu employed in Labrador Innu Lands and the Communities that shall be accommodated by employers to the same extent that such employers have a duty to accommodate employees under Federal Legislation and Provincial Legislation. Nothing in this Part confers any jurisdiction on the Innu Government in relation to public holidays established under Federal Legislation or Provincial Legislation. For greater certainty, nothing in this Part derogates from a defense or exception available to an employer under Federal Legislation or Provincial Legislation respecting the duty to accommodate.

Part 18.19 Memorandums of Understanding (MOUs)²⁰³

18.19.1 The Province and the Innu Government may enter into MOUs for:

- (a) archaeological permitting outside the Labrador Innu Settlement Area;
- (b) Significant Religious Material found outside the Labrador Innu Settlement Area;
- (c) known Places of Religious Significance to Innu outside the Labrador Innu Settlement Area;
- (d) Innu Burial Sites outside of the Labrador Innu Settlement Area;
- (e) Innu Human Remains found outside the Labrador Innu Settlement Area where such Innu Human Remains are not in known Innu Burial Sites; and
- (f) Innu Government involvement in addressing Unlisted Burial Sites and Unlisted Places of Religious Significance outside the Labrador Innu Settlement Area;

but those MOUs shall not form part of the Agreement; and are not intended to be treaties or land claims agreements and are not intended to recognize or affirm aboriginal or treaty rights within the meaning of s 25 and 35 of the *Constitution Act, 1982*.

²⁰² To be negotiated. NL is OK with this section. Innu note it was agreed to in LILCA and want to see it in this Agreement as well.

²⁰³ To be negotiated. Innu are prepared to negotiate MOU(s) on matters set out in 18.19.1 in respect of federal lands. Canada has under review.

Labrador Innu Land Claims Agreement Innu Heritage, Archaeology and Ethnographic Material

- 18.19.2 The Province and the Innu Government agree that if either notifies the other government of their desire to enter into an MOU in relation to one or more of the matters referred to in 18.19.1(a) to (f), these parties shall commence negotiations on those matters.

Chapter 19: Place Names

Part 19.1 Definitions

19.1.1 In this Chapter:

"Board" means the Newfoundland and Labrador Geographical Names Board under the *Geographic Names Board Act* (Newfoundland and Labrador);

"Place" includes a location, geographic feature and land mark; and

"Working Group" means the working group established pursuant to 19.3.1 of this Chapter.

Part 19.2 Place Naming in Labrador Innu Lands

19.2.1 Subject to this Chapter, the Innu Government has the exclusive right to select and recommend to the Minister new and replacement Place names:

- (a) for Places in Labrador Innu Lands; and
- (b) for Places that do not have official names that are situated on a boundary of Labrador Innu Lands or that extend within and outside Labrador Innu Lands or that run through Labrador Innu Lands.

19.2.2 The Innu Government, in carrying out its powers under 19.2.1, shall Consult the Board and may collaborate with the Geographical Names Board of Canada.

19.2.3 The Innu Government shall provide the Minister, the Board and the Geographical Names Board of Canada with notice of a selection and recommendation made under 19.2.1(a) or (b).

19.2.4 The Minister shall, subject to 19.2.5, and within ninety (90) days of receipt of notice provided under 19.2.3, approve the new or replacement Place names selected and recommended by the Innu Government pursuant to 19.2.1(a) or (b) for publication in the *Newfoundland Gazette*.

19.2.5 The Minister may only reject a new or replacement Place name recommended pursuant to 19.2.1(a) or (b) if it is defamatory or obscene. If the Minister decides to reject a Place name for either of these reasons, the Minister shall provide the Innu Government with written reasons within ninety (90) days of receipt of notice provided under 19.2.3.

19.2.6 The Innu Government may seek reconsideration of the Minister's decision under 19.2.5 by providing written submissions to the Minister within sixty (60) days of receiving written reasons under 19.2.5, and the Minister shall consider these submissions and decide whether to accept the new or replacement Place name recommended pursuant to 19.2.1(a) or (b) and notify the Innu Government of the decision within sixty (60) days of receipt of written submissions from the Innu Government under 19.2.6.

- 19.2.7 If after considering the submissions of the Innu Government provided under 19.2.6, the Minister decides to reject the new or replacement name recommended pursuant to 19.2.1(a) or (b), or if the Innu Government does not seek reconsideration under 19.2.6, the Innu Government may select and recommend another Place name.
- 19.2.8 The Innu Government has the exclusive right in Labrador Innu Lands to recognize alternative Place names, which shall not become official Place names unless published in the *Newfoundland Gazette*.
- Part 19.3 Place naming in the Labrador Innu Settlement Area, outside of Labrador Innu Lands**
- 19.3.1 Within three (3) months of the Effective Date, the Minister and the Innu Government shall establish a Working Group comprised of three (3) persons; one appointed by the Minister, one appointed by the Innu Government, and a chairperson mutually appointed by the Minister and the Innu Government. Subject to 19.2.1(b), the Working Group shall consider and recommend to the Board new or replacement Innu Place names for Places in the Labrador Innu Settlement Area wholly or partially outside Labrador Innu Lands that the Innu Government appointee to the Working Group demonstrates are of significance to the Innu.
- 19.3.2 In making recommendations to the Board, the Working Group shall take into account the guiding principles of the Board.
- 19.3.3 The Working Group shall complete its work within two (2) years of its establishment.
- 19.3.4 Following the disbanding of the Working Group, subject to 19.2.1(b), the Innu Government may recommend to the Board the establishment of new or replacement Place names for Places in the Labrador Innu Settlement Area wholly or partially outside Labrador Innu Lands that the Innu Government demonstrates are of significance to the Innu.
- 19.3.5 Recommendations under 19.3.1 and 19.3.4 shall include the rationale and appropriate background for each Place name recommended to the Board.
- 19.3.6 The Board, upon receipt of the recommendations pursuant to 19.3.1 or 19.3.4, shall, taking into account the integral role that Place names play in the living history of the Innu people and in accordance with the *Geographical Names Board Act* (Newfoundland and Labrador), consider and make a recommendation to the Minister concerning the approval of the Place names recommended by the Working Group or the Innu Government.
- 19.3.7 Subject to 19.4.1, the Minister shall Consult the Innu Government on recommendations made by the Board concerning new or replacement Place names in the Labrador Innu Settlement Area wholly or partially outside Labrador Innu Lands prior to approving or rejecting any of the recommended new or

replacement Place names. The Innu Government shall give its advice to the Minister within ninety (90) days of being Consulted.

Part 19.4 General

19.4.1 The Minister shall not replace any Innu Place name existing in the Labrador Innu Settlement Area including Labrador Innu Lands, which was approved and published in the *Newfoundland Gazette* prior to the Effective Date, without the consent of the Innu Government.

19.4.2 The Innu Government is the final authority on the spelling and pronunciation of Innu aimun Place names in Labrador.

19.4.3 If there is a vacancy on the Board, the Innu Government may propose to the Minister one or more nominees to fill that vacancy; the Minister shall consider but is under no obligation to fill any such vacancy with any nominee proposed by the Innu Government.

19.4.4 Proposals or recommendations for new or replacement Place names in the Labrador Innu Settlement Area shall be coordinated through the Board.

19.4.5 If a Place name is changed pursuant to this Chapter, the previous name may be used together with the new name for a transitional period not exceeding ten (10) years.

19.4.6 Notwithstanding 19.2.8 and 19.4.7, if a law, contract, summons, information, writ or other legal document affecting legal rights uses an alternative Place name referred to in 19.2.8 or a previous Place name referred to in 19.4.5, that document shall not be deemed to be invalid merely because of the use of that alternative or previous Place name.

19.4.7 A new Place name or a replaced Place name approved by the Minister for publication in the *Newfoundland Gazette* is the Place name for all official purposes throughout Canada and shall be used by all government departments and agencies, having regard for standard cartographic drafting considerations in the preparation of maps and other publications.

Part 19.5 Interim Measure

19.5.1 For two (2) years after the signing of the Agreement in Principle or until the Effective Date, whichever ever occurs first, no new or replaced Place name in the Labrador Innu Settlement Area will be approved by the Minister until the Innu Nation has first been consulted.

Chapter 20: Fiscal Relations

Part 20.1 Fiscal Relations In the Agreement

- 20.1.1 Prior to the Agreement, the Parties will address fiscal matters including provisions to be included in the Agreement regarding the ongoing fiscal relationship among the Parties.
- 20.1.2 The fiscal matters to be addressed pursuant to 20.1.1 will include:
- (a) matters that shall and matters that may be taken into account in negotiating a Fiscal Financing Arrangement;
 - (b) Canada and the Province's prevailing fiscal policies, taking into account that Canada is developing a new fiscal policy to support the delivery of programs and services; and
 - (c) the components of a Fiscal Financing Arrangement including own source revenue.
- 20.1.3 [The Parties acknowledge that they each have role in supporting the Innu Government through direct or indirect financial support or through access to public programs and services as set out in the Fiscal Financing Arrangement.]²⁰⁴
- 20.1.4. Unless otherwise agreed by the Parties in a Fiscal Financing Arrangement, the establishment of the Innu Government, the recognition of Innu Government law-making authority under the Agreement and the exercise of Innu Government law-making authority does not create or imply any financial or legal obligation or responsibility on the part of any Party for the costs of, or associated with, the Innu Government, its institutions and infrastructure or for the exercise of Innu Government law-making authority, including the provision of programs and services to Innu.
- 20.1.5 Any financial obligation which a Party may assume under a Fiscal Financing Arrangement is subject to the appropriation of funds for that purpose:
- (a) in the case of Canada, by the Parliament of Canada;
 - (b) in the case of the Province, by the Newfoundland and Labrador House of Assembly;
 - (c) in the case of the Innu Government, by the Innu Government; and
- Canada and the Province will seek such appropriation of funds.

²⁰⁴ To be negotiated. Innu and NL comment: The respective roles of the Parties will be set out in the Fiscal Financing Arrangement and not in the Agreement. Canada comment: As per the Inherent Right Policy, Canada's position is that financing self-government is a shared responsibility among federal, provincial and Aboriginal governments.

Chapter 21: Economic Development

Part 21.1 Definitions

21.1.1 In this Chapter:

“Carry-Over Amount” means any amount not disbursed in a given year from the amount available to be disbursed from the Innu Economic Development Fund in that year;

“Construction” includes site preparation in respect of a Development;

“Innu Economic Development Fund” means the fund as established pursuant to Part 21.10;

21.1.2 For greater certainty, the calculation of the capital and employment thresholds to determine if a Development is a Major Development includes employment and capital expenditures during the Construction phase of that Major Development.

Part 21.2 General

21.2.1 Except as provided in this Chapter, nothing in this Chapter:

- (a) affects the economic opportunities available to Participants, Innu Businesses, or the Innu Government under other chapters of the Agreement; or
- (b) imposes financial obligations on the Parties.

Part 21.3 Revenue Sharing

21.3.1 Except in any area that the Labrador Innu Settlement Area overlaps the Labrador Inuit Settlement Area,²⁰⁵ the Innu Government is entitled to receive, and the Province shall pay to the Innu Government, an amount equal to twenty-five (25) percent of the Revenue from Subsurface Resources in Labrador Innu Lands.

21.3.2 Except in any area that the Labrador Innu Settlement Area overlaps the Labrador Inuit Settlement Area, the Innu Government is entitled to receive, and the Province shall pay to the Innu Government, an amount equal to:

- (a) fifty (50) percent of the first two (2) million of Revenue in a fiscal year; and
- (b) five (5) percent of any Revenue in a fiscal year that is in excess of the two (2) million of Revenue referred to in 21.3.2(a),

²⁰⁵ To be negotiated. Innu wish to add to 21.3.1 and 21.3.2 the words “in which area or areas entitlement to revenue will be determined by the provisions of the Innu Overlap Agreement with the Labrador Inuit.” NL is of the view that since it did not negotiate and is not a party to the overlap agreement, NL cannot agree to this text. The rights under the overlap agreement are what they are.

from Subsurface Resources in the Labrador Innu Settlement Area outside Labrador Innu Lands. For purposes of this section, Revenue excludes the Revenue from the Voisey's Bay Project.

Part 21.4 Arrangements Respecting Revenue Sharing

21.4.1 Payments due to the Innu Government under Part 21.3 shall be determined in respect of the Revenue attributable to periods after the Effective Date. Where the Revenue is determined for a period commencing before the Effective Date and ending after the Effective Date, the Revenue shared under Part 21.3 shall be calculated by the ratio of the number of days after the Effective Date to the total number of days in the period.

21.4.2 Payments by the Province to the Innu Government in respect of the amounts to be paid under Part 21.3 shall be calculated on the basis of the amount of the Revenue received by the Province in each month and shall be paid by the Province to the Innu Government on the first (1st) business day following the twentieth (20th) day of the month after the month in which the Revenue is received by the Province.

21.4.3 For purposes of determining the amounts to be paid under 21.4.2:

- (a) an instalment paid on account of the Revenue receivable by the Province is deemed to be Revenue received by the Province at the time it is paid; and
- (b) any Revenue receivable by the Province from an agent of or corporation controlled by the Province is deemed to be Revenue received by the Province at the time the Revenue becomes receivable.

21.4.4 The amount of Revenue to be shared under Part 21.3 shall be determined without reference to any credit or any other adjustment in computing the Revenue that is:

- (a) determined with reference to other taxes or amounts that are not Revenue eligible for sharing under Part 21.3; or
- (b) in respect of exploration activity that does not relate to Subsurface Resources that give rise to the Revenue to be shared.

21.4.5 If, as a result of the application of 21.4.4(b), the Revenue entitlement of the Innu Government under Part 21.3 exceeds the actual Revenue received by the Province from Subsurface Resources in Labrador Innu Lands and the Labrador Innu Settlement Area, payment of the excess amount may be deferred for up to five (5) years, with interest payable at the prime rate of the Bank of Canada that may be set from time to time, plus two (2) percent.

21.4.6 For purposes of determining the Revenue entitlement of the Innu Government under Part 21.3, in the event any Person makes a payment to the Province on

account of Revenue subject to sharing under Part 21.3 and amounts payable under other Provincial tax legislation and the amount cannot reasonably be attributed to any particular [legislation]²⁰⁶, the payment shall be prorated on the basis of the amount owed on all outstanding tax accounts at that time.

- 21.4.7 The Province shall provide to the Innu Government, within six (6) months from the end of the Province's fiscal year, a detailed statement, verified by the auditor general for the Province in accordance with the *Auditor General Act* (Newfoundland and Labrador), disclosing the basis upon which payments to the Innu Government under Part 21.3 were calculated.
- 21.4.8 Any amount due under Part 21.3 shall be a debt due by the Province to the Innu Government and shall bear interest from the due date at the prime rate of the Bank of Canada that may be set from time to time, plus two (2) percent.
- 21.4.9 Any overpayment by the Province under Part 21.3 shall be a debt due to the Province by the Innu Government and shall bear interest from the twentieth (20th) day after the date of notice of the overpayment to the Innu Government at the prime rate of the Bank of Canada that may be set from time to time, plus two (2) percent.
- 21.4.10 If the Innu Government disagrees with a calculation or a payment made to it under Part 21.3, the Innu Government shall refer the dispute to Arbitration under the Dispute Resolution Chapter.
- 21.4.11 If the Province amends, repeals, replaces or suspends any Provincial Legislation establishing the Revenue shared with the Innu Government under 21.3.1, and if the Revenue received by the Innu Government under 21.3.1 is reduced as a result of the amendment, repeal, replacement or suspension of that Provincial Legislation, the Innu Government shall remain entitled to, and shall be paid, the same level of Revenue it would have received if the Provincial Legislation establishing the Revenue shared with the Innu Government under 21.3.1 had not been amended, repealed, replaced or suspended.
- 21.4.12 Resource royalty sharing arrangements between the Innu Government and one or more overlapping Aboriginal groups shall not impose cumulative financial obligations on the Province.

Part 21.5 Impacts and Benefits Agreements

- 21.5.1 Subject to 21.5.17 and 21.5.18:
- (a) no Development, nor any part, phase or stage of such a Development; or
 - (b) any expansion of a Development that existed prior to the Effective Date; and

²⁰⁶ To be negotiated.

- (c) for greater certainty, no Development, nor any part, phase or stage of such a Development involving, during any five (5) year period, either more than two hundred and fifty (250) person years of employment or capital expenditures of more than fifty (50) million dollars in constant 2005 dollars,

may commence in Labrador Innu Lands until an Impacts and Benefits Agreement has been agreed to, or in the circumstances referred to in 21.5.18, has been established by an Arbitrator in accordance with this Part.

- 21.5.2 Subject to 21.5.16, 21.5.17, and 21.5.18, no Major Development, nor any part, phase or stage of a Major Development, may commence until an Impacts and Benefits Agreement has been concluded in accordance with this Part or has been established by an Arbitrator in accordance with this Part.
- 21.5.3 Any expansion of a Development that existed in Labrador Innu Lands prior to the Effective Date is subject to the requirements of this Part, but only in respect of the expansion.
- 21.5.4 Any expansion of a Development that existed in the Labrador Innu Settlement Area outside Labrador Innu Lands prior to the Effective Date, and which prior to the Effective Date was not a Major Development, is subject to the requirements of this Part, but only in respect of the expansion, and only if the expansion will result in the Development, as expanded, involving, during any five (5) year period, either more than two hundred and fifty (250) person-years of employment or capital expenditures of more than fifty (50) million dollars in constant 2005 dollars.
- 21.5.5 A [Developer] of a Major Development in the Labrador Innu Settlement Area outside Labrador Innu Lands is subject to Chapter 10 unless agreed otherwise in an Impacts and Benefits Agreement.
- 21.5.6 An Impacts and Benefits Agreement may provide for any matter connected with a Development in Labrador Innu Lands or Major Development that could have a detrimental impact on Participants or that could reasonably confer a benefit on Participants, including any matter identified in Schedule 21-A.
- 21.5.7 The negotiation of an Impacts and Benefits Agreement shall be based on the following considerations:
 - (a) the benefits shall be consistent with and promote the cultural goals of Participants;
 - (b) the nature and extent of the benefits shall be related to the nature, scale, cost, and profitability of the Development or Major Development and the nature and extent of its impacts on Participants;
 - (c) the benefits shall not place an excessive burden on the Developer or undermine the viability of the Development or Major Development;

- (d) any negative impacts on the Environment, Participants or the rights of Participants under the Agreement shall be avoided, mitigated or compensated in a manner consistent with the nature, scale, cost, and profitability of the Development or Major Development; and
 - (e) an Impacts and Benefits Agreement shall give priorities to Participants but shall not preclude other residents of Newfoundland and Labrador from obtaining benefits from the Development or Major Development.
- 21.5.8 In making an Arbitration Decision with respect to an Impacts and Benefits Agreement for a Major Development or with respect to an Arbitration under 21.5.18, the Arbitrator shall base that Arbitration Decision upon the considerations set out in 21.5.7.
- 21.5.9 An Impacts and Benefits Agreement may require the Developer to meet requirements which exceed those set out in Federal Legislation or Provincial Legislation.
- 21.5.10 A Developer who proposes a Development in Labrador Innu Lands or a Major Development shall, at the earliest reasonable opportunity:
- (a) give written notice of the proposed Development or Major Development to the Innu Government;
 - (b) start the negotiation of an Impacts and Benefits Agreement in respect of the proposed Development or Major Development and, in any event, start the negotiation upon receipt of written notice to do so from the Innu Government ; and
 - (c) make efforts to conclude an Impacts and Benefits Agreement.
- 21.5.11 An Impacts and Benefits Agreement shall be a contract under Provincial Law and shall not form part of the Agreement.
- 21.5.12 If an Impacts and Benefits Agreement with respect to a Major Development has not been concluded at the time when a permit or authorization is issued with respect to the Major Development, the permit or authorization may be issued subject to the condition that it is of no force or effect, and that no Construction of the Major Development may commence, until the conclusion of an Impacts and Benefits Agreement or, subject to 21.5.16, the expiry of the Arbitration period referred to in 21.5.13.
- 21.5.13 If an Impacts and Benefits Agreement has not been concluded within ninety (90) days from the date of the last permit or authorization required for the Major Development to commence, the Innu Government , the Developer or the Province [and Canada]²⁰⁷ may refer any unresolved issue relating to the content, terms or conditions of the Impacts and Benefits Agreement, including any consideration under 21.5.7 or any matter under 21.5.6 that is in Dispute, to

²⁰⁷ To be determined whether Canada should be added here.

Arbitration and the Arbitration Decision shall be made within ninety (90) days from the date of referral.

21.5.14 If a [Developer] of a Major Development or the Innu Government considers that the other party is not negotiating in good faith within the first ninety (90) days from the date of the last permit or authorization required for the Major Development to commence, the Developer or the Innu Government may immediately refer any unresolved issue relating to the content, terms or conditions of the Impacts and Benefits Agreement to Arbitration and the Arbitration Decision shall be made within ninety (90) days from the date of referral.

21.5.15 Nothing in this Part prevents or is to be construed as preventing the Innu Government and a [Developer] of a Major Development from referring any or all questions relating to the content, terms or conditions of an Impacts and Benefits Agreement to Arbitration and, in that event and if 21.5.12 applies, the Arbitration Decision shall be made within ninety (90) days from the date of referral.

21.5.16 If an Arbitration Decision under 21.5.13, 21.5.14 or 21.5.15 is not made within ninety (90) days from the date of referral, the Province [and Canada] may, after Consulting the Innu Government and subject to 21.5.19, authorize Construction of the Major Development to commence if the Developer has obtained all necessary approvals and if:

- (a) the Developer and the Innu Government agree; or
- (b) the delay in completing the Arbitration would, in the opinion of the Minister, jeopardize the Major Development.

The Province [and Canada] shall give written notice to the Arbitrator and the Innu Government of such an authorization.

21.5.17 The Developer and the Innu Government may agree that an Impacts and Benefits Agreement is not required for a Development in Labrador Innu Lands or a Major Development.

21.5.18 [If the Governor-in-Council declares a military or national emergency, a Development in Labrador Innu Lands or a Major Development that, in the sole discretion of Canada, is declared to be connected to the military or to that national emergency may commence prior to the conclusion of an Impacts and Benefits Agreement, but if an Impacts and Benefits Agreement has not been concluded within ninety (90) days from the start of Construction of the Development or Major Development, either the Developer or the Innu Government may refer any unresolved issue relating to the content, terms or conditions of the Impacts and Benefits Agreement to Arbitration.]²⁰⁸

21.5.19 If, under 21.5.16 or 21.5.18, a Development or Major Development commences prior to the conclusion of an Impacts and Benefits Agreement, an Arbitrator shall

²⁰⁸ To be negotiated. Canada has under review.

ensure that benefits received by Participants under the Arbitration Decision include compensation, which may be in the form of replacement benefits, for the benefits lost through commencement of the Development or Major Development prior to the conclusion of the Impacts and Benefits Agreement.

- 21.5.20 A Developer may not split a Major Development into parts, phases or stages for purposes of avoiding the application of 21.5.2.
- 21.5.21 If a court of competent jurisdiction is satisfied on the balance of probabilities that a Developer has split a Major Development into parts, phases or stages for purposes of avoiding the application of 21.5.2, the court may, upon application of the Innu Government, enjoin the Developer from commencing or from continuing to operate. Nothing in this section prevents a court from making any other order or award in respect of an application by the Innu Government.
- 21.5.22 A [Developer] who proposes a Development, other than a Major Development, in the Labrador Innu Settlement Area outside Labrador Innu Lands shall, at the earliest opportunity, Consult the Innu Government about the proposed Development and about matters in relation to the proposed Development that are set out in Schedule 21-A.
- 21.5. 23 (a) Notwithstanding anything to the contrary in the Agreement, but subject to 21.5.23 (b), and subject to agreements entered into in confidence to deter events that could reduce the maximum Innu three (3%) percent share of after debt net cash flow payable herein, in any Impacts and Benefits Agreement between a Developer of a Major Development in a Hydroelectric Major Development Impacts and Benefits Agreement Area and the Innu Government, the maximum share of the Innu Government in any profits attributable to the hydro-electric generation facility or facilities will be equal to three (3%) percent of annual after debt net cash flow, to be calculated on the same basis as the annual after debt net cash flow royalty provided for in Chapter 7 of the Lower Churchill Innu Impacts and Benefits Agreement.
- (b) In the event a Major Development in a Hydroelectric Major Development Impacts and Benefits Agreement Area is undertaken by a Developer that is not wholly owned or controlled by the Province, deductions with respect to after debt net cash flow in respect to "cost of equity financing after first commercial power" or "cost of equity financing at first commercial power" as provided for in Chapter 7 of the Lower Churchill Innu Impacts and Benefits Agreement shall include interest only on the equity financing that is provided either directly or indirectly by the Province.
- 21.5.24 Notwithstanding anything to the contrary in the Agreement, CF(L)Co is not subject to the provisions of this Part for any Development it undertakes within the Western Labrador Economic Major Development Impacts and Benefits Agreement Area.
- 21.5.25 The provisions of this Part that relate to a Major Development in the Labrador Innu Settlement Area outside Labrador Innu lands apply to any Development in

the Donner Area that involves, during any five (5) year period, either more than two hundred and fifty (250) person-years of employment or capital expenditures of more than fifty (50) million dollars in constant 2005 dollars.

Part 21.6 Co-ordination of Economic Development Policies

21.6.1 The Innu Government may develop economic development policies and macro plans for Labrador Innu Lands dealing with matters including:

- (a) local economic development activities, including tourism;
- (b) programs and services for purposes of promoting economic development; and
- (c) Innu Government enterprises and public works.

21.6.2 The Innu Government shall consult the Province with respect to proposed economic development policies and macro plans of the Innu Government developed under 21.6.1.

21.6.3 In developing and amending economic development policies and macro plans that apply to the Labrador Innu Settlement Area, the Province shall:

- (a) consult the Innu Government; and
- (b) take into account, as it considers reasonable, the objectives of:
 - (i) promotion of the marketing of renewable resource products Harvested by Participants and Innu Businesses, and goods manufactured from those products;
 - (ii) providing business and economic training and education assistance to Participants so as to enable them to participate more effectively in the economy of Newfoundland and Labrador;
 - (iii) encouraging the employment of Participants in the Labrador Innu Settlement Area;
 - (iv) assisting Participants to develop skills, expertise and commercially viable businesses and enterprises in relation to exploration for and the production and exploitation of resources in the Labrador Innu Settlement Area;
 - (v) promoting the growth and commercial viability of Innu Businesses and identifying possible sources of financial, technical and other business assistance or advice for Innu Businesses;
 - (vi) encouraging research and the creation and maintenance of a comprehensive data base with respect to resources capable of

production or exploitation in the Labrador Innu Settlement Area and making that information, data and research available to Participants and Innu Businesses; and

(vii) supporting the traditional Innu economy.

21.6.4 If, in the opinion of the Minister, it is reasonable to do so, the Province shall use or amend economic development policies, plans, programs and services that apply to the Labrador Innu Settlement Area to:

- (a) increase access to on-the-job training, apprenticeship, acquisition, improvement and upgrading of skills, and other job-related programs for Participants;
- (b) increase opportunities for Participants to receive training and experience for purposes of successfully establishing, operating and managing businesses; and
- (c) implement the other provisions of this Part.

21.6.5 The Province shall, upon the request of the Innu Government, promote business opportunities for and projects undertaken by Participants and Innu Businesses in the Labrador Innu Settlement Area by:

- (a) subject to 2.22, providing access to all information available in relation to specific projects or ventures;
- (b) making available appropriate contacts and sources of information; and
- (c) ensuring expeditious consideration or approval of applications by Participants and Innu Businesses for project financing or venture capital.

21.6.6 The Innu Government and the Province shall meet once every year for the first three (3) years from Effective Date, and then every three (3) years thereafter, or more frequently if they agree, to review the effectiveness of any economic development policies, plans, programs and services that apply to the Labrador Innu Settlement Area.

Part 21.9 Innu Economic Development Fund

21.9.1 An economic development fund shall be established by the Innu Government on the Effective Date to support Innu participation in economic development opportunities that may arise, either directly or indirectly, as a result of the Agreement.

21.9.2 Canada shall contribute \$10.3 million to an Innu Economic Development Fund in accordance with 23.4.1(a).²⁰⁹

²⁰⁹ Legal drafting. Canada will propose language to clarify that this is not a contribution to a trust.

- 21.9.2 The Innu Government may contribute to the Innu Economic Development Fund to help ensure its long term viability.
- 21.10 Innu Economic Development Board**
- 21.10.1 An Innu Economic Development Board shall be established by the Innu Government to manage, administer and ensure the long term viability of the Innu Economic Development Fund.
- 21.10.2 The Innu Economic Development Board shall consist of a board of directors, including a chairperson to be appointed by the Innu Government, each of whom:
- (a) must meet the qualifications determined by the Innu Government; and
 - (b) shall be appointed for staggered terms for the initial directors, and for subsequent terms as determined by the Innu Government from time to time, and may be reappointed to office.
- 21.10.3 The Innu Government shall
- (a) review and approve the annual budget of the Innu Economic Development Board; and
 - (b) determine the salary and benefits or other remuneration to be paid to directors of the Innu Economic Development Board.
- 21.10.4 The Innu Economic Development Board may hire the employees necessary for the conduct of its business.
- 21.10.5 The Innu Economic Development Board may, in its sole discretion, determine whether to make disbursements from the Innu Economic Development Fund in any given quarter, and may reject or request additional information before making a decision in accordance with the guidelines set out in Schedule 21-B.
- 21.10.6 Subject to 21.10.7, all decisions of the Innu Economic Development Board shall be by consensus of the directors.
- 21.10.7 If a decision cannot be decided by consensus after reasonable efforts have been made to achieve consensus, the chairperson may declare that the decision be decided by a vote in accordance with 21.10.8.
- 21.10.8 If a decision of the Innu Economic Development Board is decided by vote, the decision shall be decided by a majority of the votes cast and the chairperson shall vote only in order to break a tie.

Schedule 21-A**Matters Appropriate for Negotiation and Inclusion in an Impacts and Benefits Agreement (21.5.6) or for Consultation by Developers (21.5.22)**

- Preferential employment and training of Participants.
- Involvement of Participants [or delegates of the Innu Government]²¹⁰ in the management and operation of the Development or Major Development.
- Joint venture arrangements or other business arrangements between Innu Businesses and the Developer.
- Participation of Participants [or delegates of the Innu Government] in the ownership of the Developer carrying out the Development or Major Development and participation in the ownership of a Development in Labrador Innu Lands.
- Income sharing arrangements with the Developer.
- Employment conditions that are consistent with the values and culture of Participants.
- Language in the work place.
- Research.
- Scholarships.
- Relationships with unions.
- Compensation.
- Performance bonds.
- Special concerns relating to Environmental protection, Harvesting by Participants, Wildlife, Migratory Birds, Fish, Plants, Aquatic Plants and Habitat and any disruption to the Environment
- Social and cultural protection, including protection of Archaeological Material and Archaeological Sites.
- Environmental rehabilitation.
- Monitoring, including short term and long term monitoring, of the Development or Major Development.
- Preferential contracting opportunities for Innu Businesses.

²¹⁰ To be negotiated.

- Implementing and enforcing the Impacts and Benefits Agreement.
- Resolution of disputes.
- Use of infrastructure and facilities related to the Development or Major Development by Participants.
- Any other matters that the Innu Government and the Developer consider to be relevant to the needs of the Development or Major Development and those of Participants.

**Schedule 21-B
Innu Economic Development Fund (Part 21.9)**

Purpose of the Innu Economic Development Fund

1. The objective of the Innu Economic Development Fund is to support and maximize Innu participation in economic development opportunities that may result, either directly or indirectly, from the Agreement.

Applications for Disbursements from the Innu Economic Development Fund

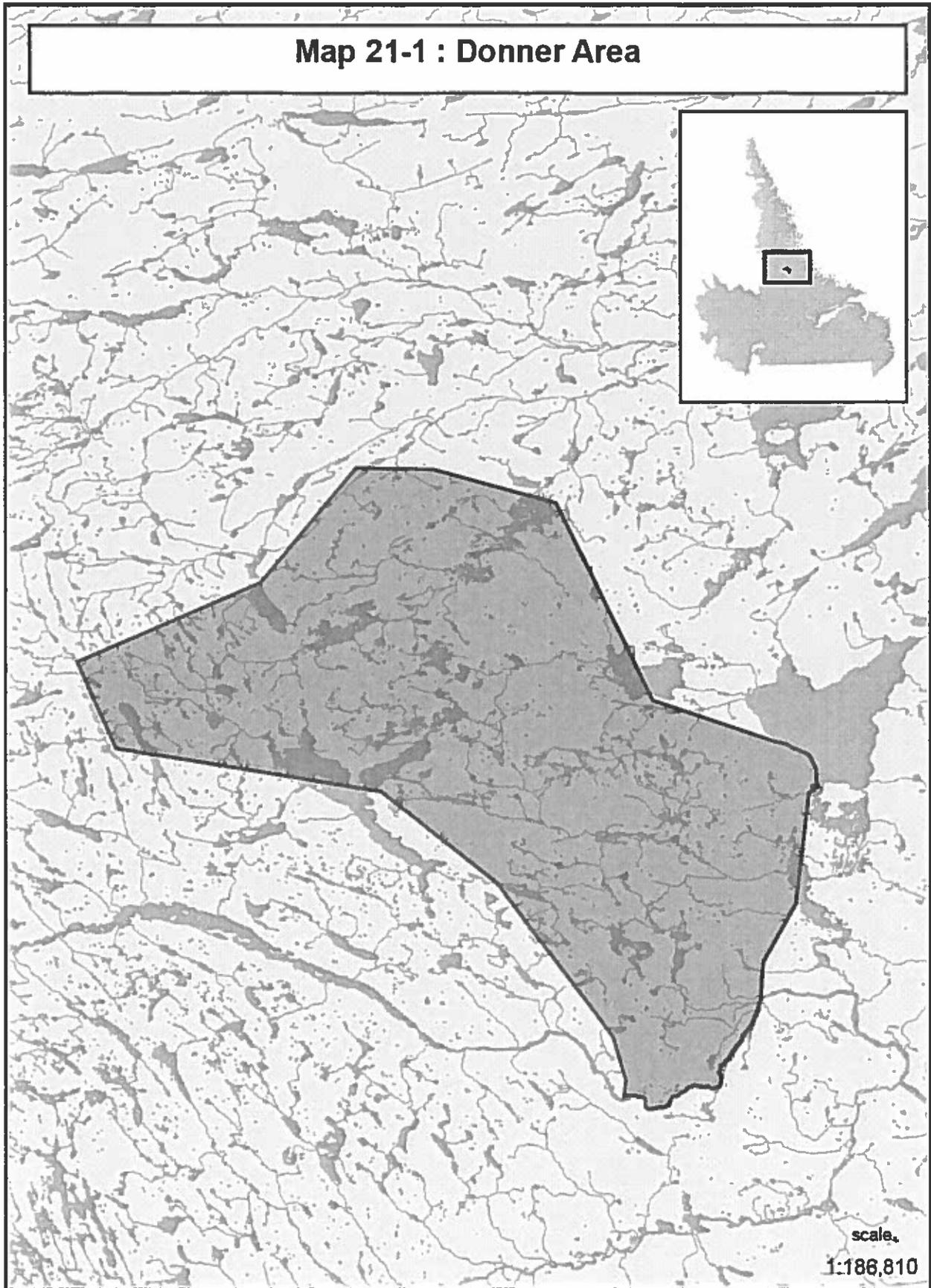
2. Applicants will be required to submit proposals in writing to be considered for disbursements from the Innu Economic Development Fund.
3. Applicants will be required to submit evidence of eligibility as a Participant or an Innu Business, including, in the case of an Innu Business, proof of registration with the Innu Business Registry maintained by the Innu Business Registrar.
4. Applicants must demonstrate in their proposals why funding is required and address each of the following criteria for each specific economic development initiative for which disbursements from the Fund are being sought:
 - (a) management capacity and experience;
 - (b) business planning, including the proposed management, operations, marketing, and financial aspects of the initiative;
 - (c) expected positive benefits and any negative impacts of the initiative to Participants, the Communities, or the Environment;
 - (d) measures to maximize benefits and mitigate negative impacts;
 - (e) the anticipated time frame for the initiative;
 - (f) a budget; and
 - (g) other sources and uses of funds.
5. Eligible proposals will be reviewed and ranked according to criteria established by the Innu Economic Development Board.

Disbursements from the Innu Economic Development Fund

6. Disbursements from the Innu Economic Development Fund may be made to Participants or Innu Businesses for the following purposes:
 - (a) providing loans;
 - (b) providing matching funds to access other sources of funding;

- (c) providing guarantees to secure loans and access other forms of business financing;
 - (d) carrying out business planning, technical assessments or feasibility studies;
 - (e) supporting skills development;
 - (f) conducting negotiations towards Impacts and Benefits Agreements;
 - (g) establishing partnerships or joint ventures; and
 - (h) contributing towards infrastructure necessary to carry out economic development activities;
7. Disbursements from the Innu Economic Development Fund in any given year shall not exceed \$1M, excluding any Carry- Over Amounts.
8. The outstanding principal value of loans from the Innu Economic Development Fund made to Participants or an Innu Business, or to any combination of Participants or Innu Businesses operating as a single joint venture, alliance or consortium shall not exceed [\$100,000]²¹¹ for loans repayable on a fixed term, or [\$50,000] for loans repayable on any other term.
9. In any year in which the amount disbursed from the Innu Economic Development Fund totals less than \$[1M], any difference between the amount available to be disbursed in that year and the amount actually disbursed in that year may be carried forward and disbursed in subsequent years.
10. Any growth or appreciation in the value of the Innu Economic Development Fund due to income from interest or investments by the Innu Economic Development Fund shall be added to the principal of the Innu Economic Development Fund and may be disbursed in accordance with this Schedule.
11. Any disbursements from the Innu Economic Development Fund shall be reviewed and made in accordance with the process and criteria for economic development initiatives.
12. Disbursements from the Innu Economic Development Fund may be made quarterly by the Innu Economic Development Board on the basis of proposals received from eligible applicants. The Innu Economic Development Board shall call for proposals sixty (60) days prior to making any disbursements from the Innu Economic Development Fund in that quarter.

²¹¹ Innu want the effect of inflation on these amounts to be accounted for.



Chapter 21A: Government Contracting and Employment

Part 21A.1 Definitions

21A.1.1 In this Chapter:

“Federal Public Service” means those portions of the public service of Canada set out in Part I *of Schedule I to the *Public Service Staff Relations Act* (Canada); and

“Provincial Public Service” means those portions of the public service of Newfoundland and Labrador specified in Schedule A to the *Public Service Commission Act* (Newfoundland and Labrador) and includes a body or an agency considered to be a portion of the public service and added to that Schedule under section 3 of that Act.

Part 21A.2 Contracting and Employment of Participants by the Province

21A.2.1 If the Province contracts for work or the supply of goods or services in Labrador Innu Lands with or without calling for tenders, proposals by qualified Innu Businesses shall be considered and, if an Innu Business submits a competitive bid that meets required terms and conditions, it shall be awarded the contract by the Province.

21A.2.2 If the Province contracts for work or the supply of goods or services in the Labrador Innu Settlement Area outside Labrador Innu Lands, with or without calling for tenders, proposals by qualified Innu Businesses shall be considered and, if an Innu Business submits a competitive bid that meets required terms and conditions, it shall be given fair consideration.

21A.2.3 When Provincial Public Service employment is available in Labrador Innu Lands, other than a position set out in subsections 4(a) through (k) of the *Public Service Commission Act* (Newfoundland and Labrador), whether that employment opportunity is subject to an internal or public competition, qualified Participants who apply shall be awarded the position on a representative basis that reflects the ratio of Participants ordinarily resident in Labrador Innu Lands to the total number of individuals ordinarily resident in Labrador Innu Lands. In the event that no qualified Participant applies, the position may be awarded to a qualified Non-Participant.

21A.2.4 When Provincial Public Service employment is available in the Labrador Innu Settlement Area outside Labrador Innu Lands, qualified Participants shall be given [fair / priority consideration²¹²] for those employment opportunities.

²¹² To be negotiated. Innu want priority consideration and NL want Fair consideration.

- 21A.2.5 Once every year for the first three (3) years post Effective Date, and then every three (3) years thereafter, or at other intervals agreed to by the Innu Government and the Province, the Innu Government may make formal recommendations to the Province with respect to:
- (a) strategies to qualify Participants and Innu Businesses to take advantage of business opportunities in both the public and private sectors in the Labrador Innu Settlement Area;
 - (b) developing or implementing strategies to increase the employability and employment of Participants in the private sector in the Labrador Innu Settlement Area and in the Provincial Public Service in accordance with 21A.2.3 and 21A.2.4;
 - (c) strategies to increase the promotion and retention of Participants within the Provincial Public Service; and
 - (d) other initiatives for purposes of implementing 21A.2.1 through 21A.2.4.
- 21A.2.6 A Minister who receives a recommendation under 21A.2.5 shall make a decision to accept, vary or reject the recommendation and shall notify the Innu Government of the decision with reasons in writing within thirty (30) days from the date of the decision.
- 21A.2.7 For greater certainty, nothing in 21A.2.5 prevents the Innu Government from making, at any time, informal recommendations to the Minister with respect to any matter referred to in 21A.2.5.
- [Part 21A.3 Contracting of Participants by Canada²¹³**
- 21A.3.1 The Innu Business Registrar shall prepare and maintain a comprehensive list of Innu Businesses, together with information on goods and services they would be in a position to supply in relation to contracts offered by Canada. This list shall be considered by Canada in meeting its obligations under this Chapter.
- 21A.3.2 In inviting bids on contracts for the acquisition of goods or services by Canada in the Labrador Innu Settlement Area, Canada shall provide notice of Canada's intention to solicit bids to the Innu Government and [, where practicable and consistent with sound procurement practices]:

²¹³ To be negotiated. Canada has Parts 21A.3 and 21A.4 under review.

- (a) use the registry of Innu Businesses to meet its obligations under this Part and provide all reasonable opportunities for Innu Businesses to submit competitive bids;
- (b) set the date, location, and terms and conditions for bidding so that Innu Businesses may readily bid;
- (c) invite bids by commodity groupings, permit bids for goods and services for a specified portion of a larger contract package and design construction contracts so as to increase the opportunity for smaller and more specialized Innu businesses firms to bid;
- (d) subject to Canada's international legal obligations, include the following, as appropriate, in the bid criteria:
 - (i) the existence of the head office, administrative offices or other facilities in the Labrador Innu Settlement Area;
 - (ii) the undertaking of commitments, under the contract, with respect to on-the-job training or skills development for Participants.

21A.3.3 When Canada contracts for the procurement of goods or services in the Labrador Innu Settlement Area, Innu Businesses shall, subject to meeting the technical and administrative conditions of the request for goods or services, be given priority consideration.

Part 21A.4 Employment of Participants by Canada

21A.4.1 When Federal Public Service employment opportunities exist in the Labrador Innu Settlement Area, Canada is committed to awarding those opportunities so as to achieve a representative Federal Public Service in the Labrador Innu Settlement Area that reflects the ratio of Participants ordinarily resident in the Labrador Innu Settlement Area to the total number of individuals ordinarily resident in the Labrador Innu Settlement Area.

21A.4.2 Canada shall remove employment barriers for Participants in relation to Federal Public Service positions in the Labrador Innu Settlement Area by reviewing job qualifications and recruitment procedures and removing inappropriate requirements in respect of cultural factors, experience or education.

21A.4.3 Once every year for the first three (3) years post Effective Date, and then every three (3) years thereafter, or at other intervals agreed to by the Innu Government and Canada, the Innu Government may make formal recommendations to the Minister with respect to the following as they apply to the Labrador Innu Settlement Area:

- (a) developing and implementing programs and strategies related to:
 - (i) human resource development, including training;
 - (ii) business, commercial and industrial activities; and
 - (iii) strengthening and maintaining the traditional Innu economy;
- (b) identifying or implementing strategies to increase the employability and employment of Participants in the private sector and in the Federal Public Service under 21A.4.3 and 21A.4.4;
- (c) developing strategies to increase the promotion and retention of Participants within the Federal Public Service; and
- (d) participation by the Innu Government in mechanisms established by Canada to promote or support economic growth and improvement, including:
 - (i) identifying or implementing strategies to qualify Innu Businesses to take advantage of business opportunities in both the public and private sectors in the Labrador Innu Settlement Area; and
 - (ii) determining other initiatives for purposes of implementing this Part.
 - (iii) the employment of Participants labour, engagement of professional services offered by Participants, and use of Innu Business suppliers in carrying out the contracts.

21A.4.4 A Minister who receives a recommendation under 21A.4.5 shall make a decision to accept, vary, or reject the recommendation and shall notify the Innu Government of the decision with reasons in writing within thirty (30) days from the date of the decision.

21A.4.5 For greater certainty, nothing in 21A.4.4 prevents the Innu Government from making, at any time, informal recommendations to the Minister with respect to any matter referred to in 21A.4.4.]

Chapter 22: Voisey's Bay Project²¹⁴

Part 22.1 Definitions

22.1.1 In this chapter:

"Closure" means Termination and compliance with and the completion of all Rehabilitation plans approved by Newfoundland and Labrador and Canada; the commencement of all post-Rehabilitation monitoring and maintenance measures required by or pursuant to Legislation of Newfoundland and Labrador and Canada; and the implementation of any additional measures required by Newfoundland and Labrador and Canada following Consultation with the Innu Government, which are intended to ensure the long-term environmental safety of the Voisey's Bay Area;

"Consult" means to provide:

- (a) to the Person being consulted, notice of a matter to be decided in sufficient form and detail to allow that Person to prepare its views on the matter;
- (b) a reasonable period of time in which the Person being consulted may prepare its views on the matter, and an opportunity to present its views to the Person obliged to consult; and
- (c) full and fair consideration by the Person obliged to consult of any views presented.

"Developer" means Inco and the Voisey's Bay Nickel Company Limited and their respective successors, permitted assigns, nominees, contractors and agents;

"Environmental Management Agreement" means the agreement dated July 22, 2002 between the Innu, as represented by the Innu Nation, the Inuit as represented by the Labrador Inuit Association, Canada and Newfoundland and Labrador regarding the environmental management of the undertaking as defined in that agreement, and includes any agreed amendments thereto;

"Inco means" Inco Limited, a corporation organized and existing under the *Canada Business Corporations Act*, the parent company of Voisey's Bay Nickel Company Limited;

"Labrador Innu and Inuit Lands" means those co-owned Lands which may arise pursuant to section 22.4.8(b);

²¹⁴ This chapter is subject to modifications and/or clarifications which may be necessary to reflect the consensus reached in the Agreement.

"Labrador Innu and Inuit Settlement Area" means those Lands which may arise pursuant to section 22.4.13;

"Labrador Inuit Association" means the body corporate duly organized and existing under that name under laws of Newfoundland and Labrador, and includes its successors and assigns;

"Labrador Inuit Final Agreement" means the final land claims agreement between the Inuit, as represented by the Labrador Inuit Association, Canada and Newfoundland and Labrador;

"Labrador Inuit Lands" means those lands as so defined, delineated and characterized by the Labrador Inuit Final Agreement;

"Labrador Inuit Settlement Area" means that area so defined, delineated, and characterized by the Labrador Inuit Final Agreement;

"Land" means lands, including lands under Water;

Nunatsiavut Government means the government so defined, identified and characterized by the Labrador Inuit Final Agreement;

"Overlap Agreement" means any written agreement between the Innu Nation or the Innu Government and the Labrador Inuit Association or the Nunatsiavut Government regarding any overlapping issues noted in this chapter;

"Person" includes an individual, a partnership, a corporation, a trust, an unincorporated association, government or any agency or political subdivision of government, or other entity and their respective heirs, executors, administrators and other legal representatives, and for greater certainty includes the Developer, all Subsequent Developers and Newfoundland and Labrador;

"Rehabilitation" means any measure that is required pursuant to Legislation of Newfoundland and Labrador or Canada, as applicable, that is intended to:

- (a) restore as close as is reasonably possible the site to its original condition and/or to the satisfaction of the Minister;
- (b) render the site suitable for a use that the Minister considers appropriate;
- (c) achieve one or more of the above objectives;

"Site Closure" means either:

- (a) the completion of Rehabilitation in respect of a parcel of Land within the Voisey's Bay Area following Termination, or

- (b) the completion of Rehabilitation in respect of a parcel of Land within the Voisey's Bay Area prior to Termination if the Parties agree that a site closure may take place with respect to the subject parcel of Land prior to Termination pursuant to section 22.4.18;

"Subsequent Developer" means any Person undertaking all or any part of the Voisey's Bay Project and their respective successors, assigns, nominees, contractors and agents, but does not include the Developer;

"Subsequent Development" means any part of the Voisey's Bay Project not undertaken by the Developer;

"Subsequent Impacts and Benefits Agreement" means the agreement, whether reached through arbitration or not, between a Subsequent Developer and any one of the following: (i) the Innu Nation; (ii) the Innu Nation and the Mushuau Innu First Nation and Sheshatshiu Innu First Nation established pursuant to the *Indian Act* as represented by their respective Band Councils; (iii) the Innu Government; or (iv) the Innu Government and the Mushuau Innu First Nation and Sheshatshiu Innu First Nation established pursuant to the *Indian Act* as represented by their respective Band Councils, and includes any agreed amendments thereto;

"Subsurface Resources" means Minerals, Petroleum, Quarry Materials and Geothermal Resources;

"Quarry Material" means a substance used in its natural form for construction or agricultural purposes and includes:

- (a) clay, sand, gravel, stone, topsoil, soil, marl, peat and peat moss; and
- (b) a mineral, rock or stone capable of being cut or polished for use as an ornament, personal adornment or decoration;

"Revenue" means:

- (a) any Tax that is received by Newfoundland and Labrador under the *Mining and Mineral Rights Tax Act*, the *Petroleum and Natural Gas Act*, the *Quarry Materials Act* or the *Mineral Act*;
- (b) any Tax that is received by Newfoundland and Labrador under any Newfoundland and Labrador Legislation to replace or amend the *Mining and Mineral Rights Tax Act*, the *Petroleum and Natural Gas Act*, the *Quarry Materials Act* or the *Mineral Act* or to levy a new or additional Tax in respect of Subsurface Resources in the province;
- (c) any amount that is received by Newfoundland and Labrador under a Tax

collection, Tax rental, revenue sharing or other similar arrangement with Canada or any other jurisdiction in respect of a Tax in respect of Subsurface Resources in the province; and

- (d) any interest or penalty that is received by Newfoundland and Labrador in respect of a Tax or an amount referred to in paragraphs (a), (b) or (c);

Tax means:

- (a) a tax, royalty, rent, fee, excluding a fee levied for administrative purposes, or payment in the nature of a royalty in respect of a Subsurface Resource; and
- (b) any other amount that is payable for a right to explore for or exploit a Subsurface Resource or a right of entry or user relating to a right to explore for or exploit a Subsurface Resource;

Termination means five (5) years following permanent cessation of mineral production in saleable quantities by all Persons in the Voisey's Bay Area, but, in any event, termination shall not occur until a period of thirty (30) years has elapsed from the commencement of mineral production in saleable quantities in the Voisey's Bay Area;

Tidal Waters means any part of the sea and any part of a river within the ebb and flow of the sea at ordinary spring tides;

Total Allowable Catch (TAC) means the total quantity of a species or stock of Fish which may be harvested [as established by the Minister²¹⁵/under this Agreement²¹⁶];

Total Allowable Harvest (TAH) means the total quantity of a species of Wildlife, Plant or Aquatic Plant which may be harvested [as established by the Minister/under this Agreement];

Voisey's Bay Area means the area, including Land and resources, within the boundaries set out in Map 22-1 of the Atlas (shown for illustrative purposes only in Schedule 22-A) ;

Voisey's Bay Impacts and Benefits Agreement@ means the agreement between the Developer and the Innu, as represented by the Innu Nation, and includes any agreed amendments thereto;

²¹⁵Canada's proposed wording.

²¹⁶Innu's proposed wording.

Voisey's Bay Nickel Company Limited means the corporation organized and existing under that name under the *Corporations Act* of Newfoundland and Labrador, a wholly owned subsidiary of Inco; and

Voisey's Bay Project means the activities carried out by the Developer or Subsequent Developer, and the physical infrastructure located within the Voisey's Bay Area, associated with exploration, mining, extracting, milling, concentrating and producing Subsurface Resources located within the Voisey's Bay Area. These activities and physical infrastructure in the Voisey's Bay Area include, without limiting the generality of the foregoing, construction, exploration, mining, milling, concentrating, quarrying, transportation and shipping of the concentrate, operation of the port at Anaktalak Bay, airstrips, roads, and other infrastructure and related facilities, reclamation, Rehabilitation and all aspects of Closure.

Water means water flowing in a natural channel and water in a lake or other body of inland waters on the surface or underground and includes ice and all inland ground waters but does not include Tidal Waters.

Part 22.2 General

- 22.2.1 Lands and resources in the Voisey's Bay Area shall be governed by the regime established in this chapter and shall not be subject to any other chapter of this Agreement, except where otherwise specifically provided.
- 22.2.2 Except where otherwise provided in this chapter, laws of general application apply to the Voisey's Bay Project and to Lands and resources in the Voisey's Bay Area.
- 22.2.3 The Definitions chapter, General Provisions chapter and Dispute Resolution²¹⁷ chapter shall apply to the Lands and resources in the Voisey's Bay Area.
- 22.2.4 For greater certainty, and except as otherwise provided in this chapter, the Voisey's Bay Area is not Labrador Innu Lands or part of the Labrador Innu Settlement Area.
- 22.2.5 Until the Land has been transferred pursuant to 22.4.8 (a) or (b), or designated pursuant to 22.4.11 or 22.4.13, certain provisions of the Place Names chapter, Water Management and Innu Water Rights chapter, Harvesting Compensation chapter and Wildlife, Fisheries, Forest Resources and Plants and Migratory Birds chapters,²¹⁸ to be determined by the Parties prior to initialling the

²¹⁷Parties to review the Dispute Resolution chapter to ensure there is no conflict between this provision and the specific provisions in Part 5 dealing with dispute resolution respecting the negotiation of Subsequent Impacts and Benefits Agreements.

²¹⁸ Innu note that applicability of EA chapter should be added to this list. Compare LILCA 8.3.9. NL does not necessarily agree that this addition is needed.

agreement-in-principle, will apply to the Voisey's Bay Area as they would apply to the Labrador Innu Settlement Area.²¹⁹

22.2.5 This chapter may be amended to reflect the provisions of an Overlap Agreement.

Part 22.3 Revenue Sharing - Voisey's Bay Project

22.3.1 The Innu Government is entitled to receive, and Newfoundland and Labrador shall pay to the Innu Government an amount equal to 5% of any Revenue from the Voisey's Bay Project. These amounts shall be transferred to the Innu Government on a quarterly basis.

22.3.2 If Newfoundland and Labrador amends, repeals, replaces or suspends any Legislation that establishes Revenue, which under section 22.3.1 is to be shared with the Innu Government, and if the Revenue received by the Innu Government under section 22.3.1 would be reduced below the amount that the Innu Government would have received under section 22.3.1, based upon the Legislation in effect on the effective date of the Memorandum of Agreement respecting the Voisey's Bay Project between Newfoundland and Labrador and the Innu of Labrador as represented by the Innu Nation, as a result of the amendment, repeal, replacement or suspension, the Innu Government shall remain entitled to, and shall be paid, the same level of Revenue it would have received if the Legislation establishing the Revenue shared with the Innu Government under section 22.3.1 had not been amended, repealed, replaced or suspended.

Part 22.4 Status of Lands in the Voisey's Bay Area

22.4.1 In the Voisey's Bay Area, for the duration of the Voisey's Bay Project:

- (a) Participants are entitled to enter the Voisey's Bay Area to exercise harvesting rights for the purposes of the Innu Domestic Harvest and may camp in the Voisey's Bay Area. These rights may be restricted or limited by Canada and Newfoundland and Labrador to provide for public health, safety or conservation. Canada and Newfoundland and Labrador shall Consult the Innu Government before imposing restrictions or limitations associated with Conservation. If for any species of Wildlife, Plant or Aquatic Plant, or stock or species of Fish for which a TAC or TAH is established, or if for any species of Wildlife, Plant or Aquatic Plant or stock or species of Fish or Forest Resource for which no TAC or TAH is established and as a result of any other restriction or limitation associated with Conservation, the available harvest is less than the aggregate of:

²¹⁹Need to wait until these chapters are more fully developed to identify the relevant provisions that will apply

- (i) the Innu Domestic Harvest; and
- (ii) the quantity needed by members of a group of aboriginal people other than the Innu who harvest that species of Wildlife, Plant, Aquatic Plant or Forest Resource, or stock or species of Fish for food, social and ceremonial purposes under a treaty right,

then unless the parties to the Overlap Agreement agree otherwise
- (iii) Canada and Newfoundland and Labrador shall allocate to Participants, when a TAC or TAH has been established, a proportion of the available harvest equivalent to the Participants proportion of the TAC or TAH prior to the establishment of the TAC or TAH; or
- (iv) Canada and Newfoundland and Labrador shall allocate to Participants, where restrictions or limitations other than a TAC or TAH have been established, a proportion of the available harvest which will be based on the harvest levels of that species or stock provided to Participants prior to the restriction or limitation.

If the parties to the Overlap Agreement cannot agree to the apportionment between them of the reduced harvest as a result of the establishment of any TAC or TAH or as a result of any restrictions or limitations associated with Conservation, the dispute may be submitted by either party to arbitration under the terms of the Overlap Agreement, to be decided in accordance with the applicable apportionment principles in (iii) or (iv).

- (b) The Innu Government and Canada may enter into an agreement with respect to fishing activities within the Voisey's Bay Area.

- 22.4.2 Rights of Participants pursuant to 22.4.1(a) shall be exercised in a manner that respects the requirements of the Developer and Subsequent Developers to safely and efficiently construct, operate and carry out Closure of the Voisey's Bay Project. At the same time, the Developer and Subsequent Developers shall operate in a manner which respects that Participants are entitled, pursuant to 22.4.1(a), to harvest in the Voisey's Bay Area for the duration of the Voisey's Bay Project.
- 22.4.3 The Developer or Subsequent Developer shall not be granted title in fee simple to Lands or Subsurface Resources in the Voisey's Bay Area.
- 22.4.4 Newfoundland and Labrador and Canada shall ensure Rehabilitation of the Voisey's Bay Area prior to Closure. Once a piece or parcel of Land within the Voisey's Bay Area is transferred pursuant to 22.4.8 (a) or (b), whether prior to or subsequent to Termination, Newfoundland and Labrador and Canada shall not

incur any additional or further responsibility or obligation to the Innu Government to ensure, carry out or otherwise provide for any additional inspection, rehabilitation, restoration, reclamation or remediation of the Voisey's Bay Area or any part of the Voisey's Bay Area or any Lands that were at any time within the Voisey's Bay Area unless otherwise provided in this Agreement. Notwithstanding the preceding provisions of this section, and for greater certainty, Newfoundland and Labrador and Canada shall, after transfers of Land made pursuant to 22.4.8 (a) or (b), have the authority to require the Developer or a Subsequent Developer to comply with Rehabilitation measures or post-Rehabilitation monitoring and maintenance measures required by or pursuant to Legislation of Newfoundland and Labrador and Canada or any additional measures required by Newfoundland and Labrador and Canada following Consultation with the Innu Government as part of Closure. The Innu Government shall provide reasonable access as necessary to Labrador Innu Lands or to Labrador Innu and Inuit Lands in order to permit Newfoundland and Labrador and Canada to exercise this authority.

- 22.4.5 Except for purposes of the Voisey's Bay Project, prior to Closure, Newfoundland and Labrador shall not alienate or transfer Land in the Voisey's Bay Area to any Person other than the Innu Government without the written consent of the Innu Government.
- 22.4.6 Newfoundland and Labrador is not obliged to transfer any Lands in the Voisey's Bay Area to the Innu Government under 22.4.8(a) or to designate any Lands in the Voisey's Bay Area under 22.4.11 if such a transfer or designation would:
- (a) be contrary to the provisions of an Overlap Agreement;
 - (b) in the absence of an Overlap Agreement, affect any rights that another aboriginal group might have in the Voisey's Bay Area under section 35 of the *Constitution Act, 1982*; or
 - (c) be contrary to the Interim Measures Agreement respecting the Voisey's Bay Project between Canada, Newfoundland and Labrador and the Labrador Inuit Association executed on July 31, 2002.
- 22.4.7 The areas of Land and Water, and the resources, including Subsurface Resources, in the Voisey's Bay Area are not and will not become Labrador Innu Lands, Labrador Innu and Inuit Lands, Labrador Innu Settlement Area or Labrador Innu and Inuit Settlement Area unless a transfer under 22.4.8(a) or (b), or a designation under 22.4.11 or 22.4.13, is effected.
- 22.4.8 (a) Subject to 22.4.6, after Termination and Rehabilitation, Newfoundland and Labrador shall offer upon a Site Closure, and the Innu Government at any time after that Site Closure, up to and including six months after Closure, shall have the right to obtain without condition and without fee or charge, title to any part of the parcel of Land which is the subject of that Site Closure as Labrador Innu Lands unless it has been otherwise

transferred or designated in accordance with this chapter or transferred or designated pursuant to the Labrador Inuit Final Agreement. Each time such an offer has been made, the Innu Government may accept either the whole parcel or any part of the parcel that is on offer as Labrador Innu Lands;

- (b) After Termination and Rehabilitation, Newfoundland and Labrador shall offer jointly to the Innu Government and Nunatsiavut Government upon a Site Closure, and the Innu Government and Nunatsiavut Government at any time after that Site Closure, up to and including six months after Closure, shall have the right to obtain without condition and without fee or charge, a form of co-ownership title to any part of the parcel of Land which is the subject of that Site Closure as Labrador Innu and Inuit Lands, if so provided in an Overlap Agreement and unless it has been otherwise transferred or designated in accordance with this chapter or transferred or designated pursuant to the Labrador Inuit Final Agreement. Each time such an offer has been made, the Innu Government and Nunatsiavut Government may jointly accept either the whole parcel or any part of the parcel that is on offer as Labrador Innu and Inuit Lands.

22.4.9 Lands held by the Innu Government as a result of a transfer under section 22.4.8(a) shall cease to be the Voisey's Bay Area and shall become Labrador Innu Lands and be subject to all provisions of this Agreement applicable to Labrador Innu Lands. Such Lands shall be in addition to the quantum of Labrador Innu Lands set out in this Agreement.

22.4.10 Lands held jointly by the Innu Government and Nunatsiavut Government as a result of a transfer under section 22.4.8(b) shall cease to be the Voisey's Bay Area and shall become Labrador Innu and Inuit Lands and shall be subject to such arrangements as may be established under the Order-in-Council referred to in 22.4.15 transferring those lands as Labrador Innu and Inuit Lands.

22.4.11 Subject to 22.4.6, after Termination, the Innu Government has the option at any time after a Site Closure, up to and including six months after Closure, to select the parcel of Land or part thereof which is the subject of that Site Closure to be designated as Labrador Innu Settlement Area unless it has been otherwise transferred or designated in accordance with this chapter or transferred or designated pursuant to the Labrador Inuit Final Agreement.

22.4.12 Lands designated under section 22.4.11 shall cease to be the Voisey's Bay Area and shall become Labrador Innu Settlement Area and be subject to all provisions of this Agreement applicable to the Labrador Innu Settlement Area outside Labrador Innu Lands. Such Lands shall be in addition to the quantum of Labrador Innu Settlement Area set out in this Agreement.

22.4.13 After Termination, Newfoundland and Labrador shall offer jointly to the Innu Government and Nunatsiavut Government upon a Site Closure, and the Innu

Government and Nunatsiavut Government at any time after that Site Closure, up to and including six months after Closure, shall have the right to select any part of the parcel of Land which is the subject of that Site Closure as a form of co-settlement area to be designated as Labrador Innu and Inuit Settlement Area, if so provided in an Overlap Agreement and unless it has been otherwise transferred or designated in accordance with this chapter or transferred or designated pursuant to the Labrador Inuit Final Agreement.

- 22.4.14 Lands designated under section 22.4.13 shall cease to be the Voisey's Bay Area and shall become Labrador Innu and Inuit Settlement Area and shall be subject to such arrangements as may be established under the Order-in-Council referred to in 22.4.15 designating those lands as Labrador Innu and Inuit Settlement Area.
- 22.4.15 A transfer or designation of the Voisey's Bay Area or any part or parts of the Voisey's Bay Area under 22.4.8(a) or (b), 22.4.11 or 22.4.13 shall be done by Order-in-Council without fee or charge to the Innu Government.
- 22.4.16 Any Lands within the Voisey's Bay Area not alienated, transferred or designated under 22.4.5 to 22.4.15 within five (5) years of Closure or such longer period as Newfoundland and Labrador and the Innu Government may agree in writing, shall be considered provincial Crown Land under laws of general application.
- 22.4.17 Subject to 22.4.19, no liability or responsibility attaches to the Innu Government in respect of the cost of rehabilitating the Voisey's Bay Area or any part of the Voisey's Bay Area or for any loss or damage suffered as a result of pollution in, or contamination of, the Voisey's Bay Area or any part of the Voisey's Bay Area prior to Closure or, thereafter, as a result of the Voisey's Bay Project.
- 22.4.18 The Parties may agree from time to time that a Site Closure may take place with respect to a particular parcel of Land within the Voisey's Bay Area prior to Termination. If such an agreement is reached, then sections 22.4.8 (a) and (b), 22.4.11 and 22.4.13 are hereby amended in respect of that Site Closure so that Termination is not a condition precedent to the triggering of the rights and other provisions in those sections, but all the remaining provisions of 22.4.8 (a) and (b), 22.4.11 and 22.4.13 shall remain unchanged.
- 22.4.19 Notwithstanding any other provision of Part 4, where there is infrastructure in the Voisey's Bay Area that belongs to the Developer or a Subsequent Developer, the Parties acknowledge that the Innu Government or the Innu Government jointly with another Person may acquire that infrastructure by agreement with the Developer or a Subsequent Developer. Therefore, before approving any Rehabilitation plans for the Voisey's Bay Area within their respective jurisdictions, Canada and Newfoundland and Labrador shall Consult the Innu Government as to any infrastructure or facilities in the Voisey's Bay Area which the Innu Government may wish to have left in place for this purpose. If any infrastructure is acquired from the Developer or a Subsequent Developer by the Innu Government or the Innu Government jointly with another Person and it is to be

retained on Lands in the Voisey's Bay Area, the Lands on which the infrastructure are located may only be transferred pursuant to section 22.4.8 (a) or (b) and the following shall apply:

- (a) No liability attaches to Newfoundland and Labrador or Canada as a result of a transfer made pursuant to section 22.4.8 (a) or (b);
- (b) If the Innu Government or the Innu Government jointly with another Person no longer intends to retain the infrastructure referred to in this section, the Lands transferred under section 22.4.8 (a) or (b) and the infrastructure acquired under this section shall be Rehabilitated by the Innu Government or the Innu Government jointly with another Person as the case may be, in conformity with the Rehabilitation requirements applicable to the Developer or a Subsequent Developer with respect to those Lands and infrastructure prior to such a transfer, unless the Innu Government and Newfoundland and Labrador otherwise agree.

22.4.20 If Newfoundland and Labrador intends to issue a surface interest, a mining lease or a Quarry Materials permit in the Voisey's Bay Area to any person other than the Innu Government and any part of the boundary delineating the proposed surface interest, mining lease or Quarry Materials permit abuts or is in reasonable proximity to a boundary between the Voisey's Bay Area and Labrador Innu Lands, the boundary of the abutting or proximate surface interest, mining lease, or Quarry Materials permit shall be surveyed to the mutual satisfaction of the Innu Government and Newfoundland and Labrador at no cost to the Innu Government.

Part 22.5 Voisey's Bay Impacts and Benefits Agreement

22.5.1 [Text of former 22.5.1 not needed for AIP. Part 5 to renumbered.]

22.5.2 The Innu are entitled to preferences with respect to training, employment and contracting opportunities related to the Voisey's Bay Project. These preferences shall be established under and set out in the Voisey's Bay Impacts and Benefits Agreement. Upon execution of the Voisey's Bay Impacts and Benefits Agreement, and subject to disclosure to Newfoundland and Labrador of the provisions of the Voisey's Bay Impacts and Benefits Agreement respecting training, employment and contracting preferences, Newfoundland and Labrador shall, if it concludes that such preferences are reasonable, introduce Legislation if necessary to ensure that the provisions of the Voisey's Bay Impacts and Benefits Agreement are lawful under provincial law. For purposes of this section, preferences shall be considered reasonable if non-Aboriginal Persons have opportunities to participate in training, employment and contracting opportunities related to the Voisey's Bay Project.

22.5.3 The Voisey's Bay Impacts and Benefits Agreement shall be a contract between the Innu Nation and the Developer and any Subsequent Impacts and Benefits

Agreement shall be a contract between the Innu Nation or Innu Government and a Subsequent Developer, and may be amended by agreement between them.

22.5.4 If a Subsequent Developer applies for a mining lease under the *Mineral Act*, Newfoundland and Labrador shall require the Subsequent Developer to execute a Subsequent Impacts and Benefits Agreement in accordance with 22.5.5 to 22.5.11 before issuing that mining lease. Canada agrees that Subsequent Developments shall not commence until Newfoundland and Labrador has issued a mining lease.

22.5.5 When Newfoundland and Labrador is ready to issue a mining lease under the *Mineral Act* with respect to Subsurface Resources in the Voisey's Bay Area and a surface rights lease under the *Lands Act* with respect to lands in the Voisey's Bay Area to a Subsequent Developer, Newfoundland and Labrador shall give written notice to the Innu Government and the Subsequent Developer that the leases are ready for delivery to the Subsequent Developer.

22.5.6 The negotiation of any Subsequent Impacts and Benefits Agreement shall be guided by the following principles:

- (a) the nature and extent of benefits shall be related to the nature, scale, cost and profitability of the Subsequent Development as well as its impacts on the Innu;
- (b) benefits shall not undermine the viability of the Subsequent Development;
- (c) benefits shall not preclude the ability of other residents to obtain benefits from the Subsequent Development;
- (d) benefits shall be consistent with and promote Innu cultural goals;
- (e) negative impacts on the environment and Innu rights under this chapter shall be avoided, mitigated or compensated in a manner consistent with the nature, scale, cost and profitability of the Subsequent Development;
- (f) mechanisms shall be provided to foster effective communication, consultation and co-operation between the parties to the Subsequent Impacts and Benefits Agreement;
- (g) benefit arrangements shall provide for capacity-building and sustainable development for the Innu; and
- (h) benefit arrangements shall, in keeping with the above principles, facilitate Innu business and employment opportunities in a manner which will contribute to the economic and social development of the Innu.

- 22.5.7 If a Subsequent Impacts and Benefits Agreement has not been concluded within 120 days of the date of notice under section 22.5.5, those matters in dispute between the Innu Nation or Innu Government and the Subsequent Developer, and any relevant documentation, shall be referred to an arbitration panel within 5 days of the establishment of the arbitration panel pursuant to section 22.5.8 and the arbitration panel shall resolve the dispute taking into account the factors set out in 22.5.6 (a) to (h).
- 22.5.8 The arbitration panel referred to in section 22.5.7 shall consist of one individual nominated by the Innu Nation or Innu Government and one individual nominated by the Subsequent Developer. The Innu Nation or Innu Government and the Subsequent Developer will nominate their respective arbitrator within 125 days of the date of notice under section 5.5, if arbitration under section 22.5.7 is required. These two nominees shall then select a third arbitrator by mutual agreement within 5 days following the nomination of the second nominated arbitrator. These three arbitrators will comprise the arbitration panel.
- 22.5.9 Unless otherwise agreed by the Innu Nation or Innu Government and the Subsequent Developer, an arbitration decision shall be made within 90 days of the comprising of the arbitration panel and receipt of relevant documentation.
- 22.5.10 If an arbitration decision is not made within the 90 day period referred to in section 22.5.9, or any other period agreed by the Innu Nation or Innu Government and the Subsequent Developer under 22.5.9, and subject to section 22.5.11, the Minister, after Consultation with the Innu Nation or Innu Government, may issue any authorizations required to permit the Subsequent Development to commence, including the authorizations referred to in section 22.5.5:
- (a) if the Subsequent Developer and the Innu Nation or Innu Government agree; or
 - (b) if the delay in completing the arbitration would, in the opinion of the Minister, jeopardize the viability of the Subsequent Development.
- 22.5.11 If, under section 22.5.10, the Subsequent Development commences prior to the making of an arbitration decision under section 22.5.9, the arbitration panel shall ensure that benefits received by Innu under the arbitration decision include compensation, which may be in the form of replacement benefits, for the benefits lost through the commencement of the Subsequent Development prior to the making of an arbitration decision under section 22.5.9.
- 22.5.12 Subject to the provisions in this Part 5, the arbitration provided for in this Part 5 will be conducted in accordance with the *Arbitration Act, RSN, 1990, c. A-14*, as amended.

22.5.13 The Voisey's Bay Impacts and Benefits Agreement is binding only upon the Innu Nation and the Developer, and any Subsequent Impacts and Benefits Agreements are binding only upon the Innu Nation or Innu Government and any Subsequent Developers. Innu entitlement to any benefits which may be negotiated as part of the Voisey's Bay Impacts and Benefits Agreement or any Subsequent Impacts and Benefits Agreements are distinct from, and independent of, any Participant rights pursuant to this Agreement. Unless otherwise agreed by the Parties, completion or satisfaction of the terms and conditions of the Voisey's Bay Impacts and Benefits Agreement or any Subsequent Impacts and Benefits Agreements does not qualify, limit, discharge or otherwise relieve any Party of any of its obligations under this Agreement.

22.5.14 A transfer pursuant to 22.4.8 (a) or (b), or a designation pursuant to 22.4.11 or 22.4.13 shall not derogate from, abridge, remove, terminate, void, or in any manner affect the obligations of the Developer under the Voisey's Bay Impacts and Benefits Agreement, or of any Subsequent Developer under a Subsequent Impacts and Benefits Agreement, or under any laws of general application.

Part 22.6 Environmental Management & Assessment

22.6.1 The environmental management of all or part of the Voisey's Bay Project that is part of the undertaking as defined in the Environmental Management Agreement shall be conducted in accordance with the provisions of the Environmental Management Agreement.

22.6.2 If the Environmental Management Agreement does not apply to all or part of the Voisey's Bay Project, Newfoundland and Labrador and Canada shall Consult with the Innu Government about measures to be taken to conserve, protect and rehabilitate the environment in relation to all or part of the Voisey's Bay Project to which the Environmental Management Agreement does not apply, including the implementation of measures:

- (a) pertaining to the enforcement of all administrative regulatory requirements, and the terms and conditions of all permits in relation to all or part of the Voisey's Bay Project to which the Environmental Management Agreement does not apply;
- (b) to ensure that the Developer or Subsequent Developer prevents or mitigates the adverse environmental effects of all or part of the Voisey's Bay Project to which the Environmental Management Agreement does not apply; and
- (c) to consider Innu knowledge, scientific information and the precautionary principle in environmental management of all or part of the Voisey's Bay Project to which the Environmental Management Agreement does not apply.

- 22.6.3 If, before Closure, any physical activity or undertaking is proposed for the Voisey's Bay Area that was not environmentally assessed pursuant to the Memorandum of Understanding on Environmental Assessment of the Proposed Voisey's Bay Mining Development between the Innu Nation, Labrador Inuit Association, Canada and Newfoundland and Labrador dated January 30, 1997, and an environmental assessment is required under Legislation of Canada, the relevant authority shall Consult the Innu Government and may enter into an agreement to establish a process by which the environmental effects would be assessed.
- 22.6.4 For any proposed project in the Voisey's Bay Area that requires an environmental assessment pursuant to Legislation of Newfoundland and Labrador and which is outside the scope of the undertaking as defined in the Environmental Management Agreement, Newfoundland and Labrador shall Consult the Innu Government prior to making any decision in accordance with the *Environmental Assessment Act*. Newfoundland and Labrador will provide for one Innu representative on any public review panel that may be established for any such proposed project.
- 22.6.5 Newfoundland and Labrador will Consult the Innu Government following the environmental assessment of any proposed project, described in 22.6.4 in relation to permits, leases, licences and all other authorizations issued by Newfoundland and Labrador with respect to that proposed project.

Part 22.7 Consultation with Respect to the Voisey's Bay Project and Voisey's Bay Area

- 22.7.1 With respect to the Voisey's Bay Project or any activity in the Voisey's Bay Area, Canada and Newfoundland and Labrador shall provide to the Innu Government on a timely basis, subject to Legislation relating to the disclosure of information and the consent of the Developer or a Subsequent Developer, a copy of all applications made by the Developer or a Subsequent Developer for any lease, license, permit, approval or other authorization required by Legislation of Canada or Newfoundland and Labrador, as well as any plans, reports, or other documents submitted by the Developer or a Subsequent Developer with respect to the application that are required by Legislation of Canada or Newfoundland and Labrador where such applications, plans, reports or other documents have not been provided to the Innu Nation under the provisions of the Environmental Management Agreement.
- 22.7.2 Canada and Newfoundland and Labrador shall Consult the Innu Government prior to deciding any application, except for those applications covered by the Environmental Management Agreement, for any lease, license, permit, approval or other authorization required by federal or provincial law or issuing any order pertaining directly to or having a significant impact on the matters addressed in this chapter, including any proposed conditions to be attached thereto or any amendment thereof.

22.7.3 Canada and Newfoundland and Labrador shall provide to the Innu Government, on a timely basis and subject to Legislation relating to the disclosure of information, a copy of all leases, licences, permits, approvals or other authorizations required by Legislation of Canada or Newfoundland and Labrador pertaining to the Voisey's Bay Project and the Voisey's Bay Area, except where provided to the Innu Nation under the provisions of the Environmental Management Agreement. As of the Effective Date, Canada and Newfoundland and Labrador shall provide to the Innu Government a copy of all of the above as of March 31, 1999.

22.7.4 In the case of matters referred to in 22.7.2, Consultation will not be required in the event of an emergency, but the Innu Government shall be provided with notice thereof and be provided with reasons for the decision or action as soon as possible after the lease, license, permit, approval or other authorization has been issued.

Part 22.8 Consultation Regarding Shipping

22.8.1 Canada shall, with respect to shipping activities within the Voisey's Bay Area or shipping to and from the Voisey's Bay Area related to the Voisey's Bay Project, and Newfoundland and Labrador shall, with respect to shipping activities in the Voisey's Bay Area related to the Voisey's Bay Project, provide the Innu Government on a timely basis, subject to Legislation relating to the disclosure of information and the consent of the Developer or Subsequent Developer:

- (a) a copy of all applications made by the Developer or Subsequent Developer for any lease, license, permit, approval or other authorization required by Legislation of Canada or Newfoundland and Labrador, as well as any plans, reports or other documents submitted by the Developer or Subsequent Developer with respect to the application that are required by Legislation of Canada or Newfoundland and Labrador; and
- (b) a copy of all leases, licenses, permits, approvals or other authorizations issued pursuant to such applications under Legislation of Canada or Newfoundland and Labrador

except where provided to the Innu Nation under the provisions of the Environmental Management Agreement. As of the Effective Date, Canada and Newfoundland and Labrador shall provide to the Innu Government a copy of all such leases, licenses, permits, approvals or other authorizations issued under Legislation of Canada or Newfoundland and Labrador as of March 31, 1999.

22.8.2 With respect to shipping activities within the Voisey's Bay Area or shipping to and from the Voisey's Bay Area related to the Voisey's Bay Project, and without limiting the generality of 22.8.1, Canada shall Consult with the Innu Government in relation to the following matters:

- (a) the establishment by Canada of marine navigation services;
- (b) subject to 22.8.3, the issuance of approvals or exemptions under the *Navigable Waters Protection Act*; and
- (c) hydrographic surveys along the shipping routes to and from the Voisey's Bay Project related to the Voisey's Bay Project

unless such matters are subject to consideration by the board established under the provisions of the Environmental Management Agreement.

22.8.3 In the case of matters referred to in 22.8.2, Consultation will not be required in the event of an emergency, but the Innu Government shall be provided with notice thereof and be provided with reasons for the decision or action as soon as possible after the approvals or exemptions have been provided.

22.8.4 Canada and Newfoundland and Labrador shall Consult the Innu Government prior to providing advice to the Developer or Subsequent Developer regarding:

- (a) all significant elements of the marine transportation management plan relating to the Voisey's Bay Project, including but not limited to winter shipping, shipping routes, oil spill emergency response plans, search and rescue plans, concentrate loading procedures, navigational aids and pilotage requirements; and
- (b) any voluntary agreements which may be reached in relation to shipping by the Developer or Subsequent Developer, including without limitation an agreement supporting the applicable principles of the Arctic Ice Regime Shipping System

unless such matters are subject to consideration by the board established under the provisions of the Environmental Management Agreement.

22.8.5 Subject to Legislation relating to the disclosure of information and the consent of the Developer or Subsequent Developer, the marine transportation management plan and any other voluntary agreements shall be provided to the Innu Government, except where provided to the Innu Nation under the provisions of the Environmental Management Agreement.

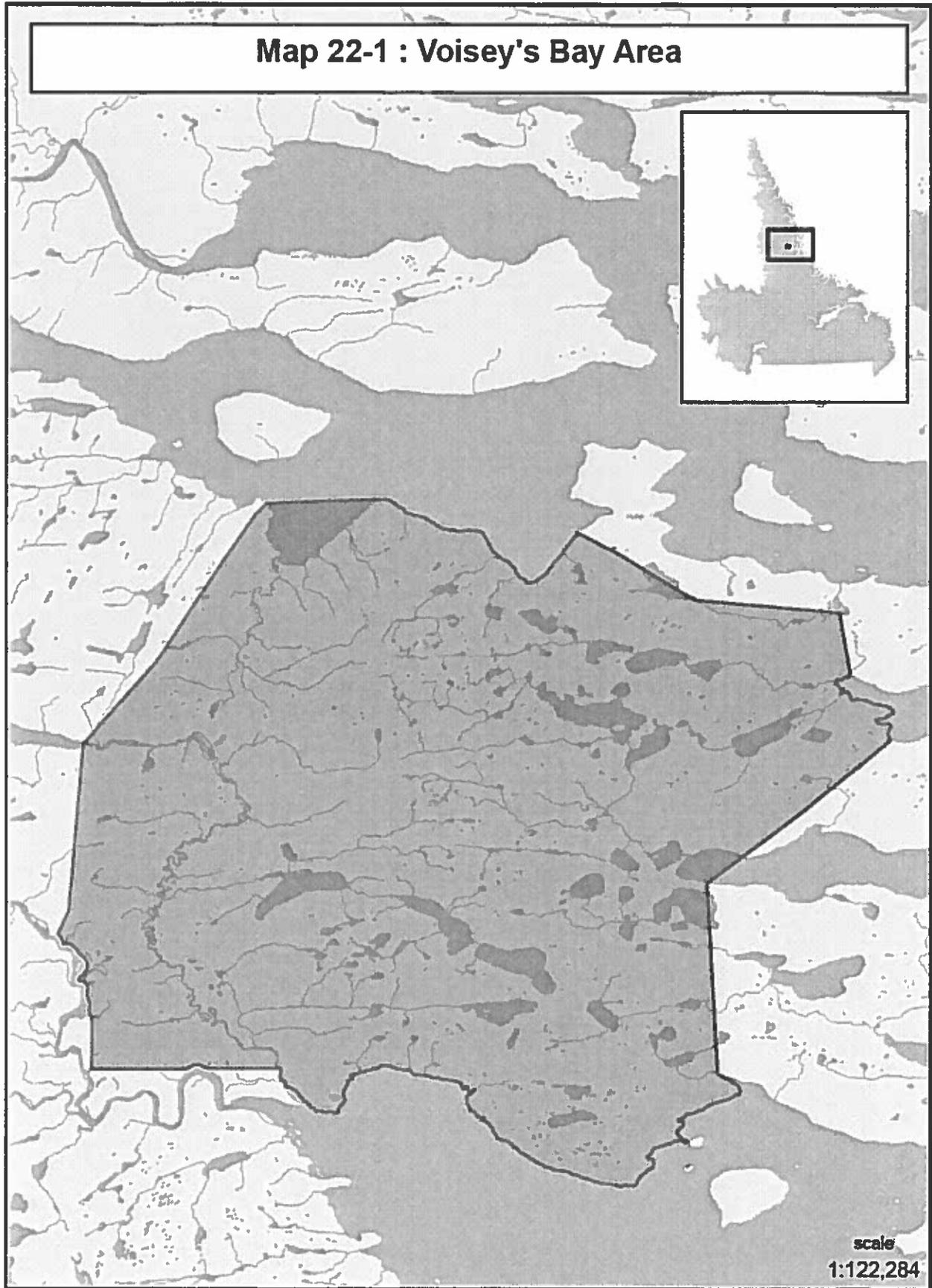
22.8.6 In relation to the Voisey's Bay Project, Canada shall Consult with the Innu Government:

- (a) on any conditions that might be required of a Developer or a Subsequent Developer for authorization pursuant to subsection 35(2) of the *Fisheries Act, R.S.C., 1985, c. F-14*; and
- (b) before issuing an authorization pursuant to subsection 35(2) of the *Fisheries Act, R.S.C., 1985, c. F-14*.

Part 22.9 Archaeology²²⁰

- 22.9.1 Newfoundland and Labrador shall transfer title to the Innu Government of all artifacts of Innu origin, including Innu human remains, which have been or may be found in the Voisey's Bay Area.
- 22.9.2 Any known burial site or other site of potential religious or spiritual significance to the Innu discovered by the Developer, a Subsequent Developer or any other Person in the Voisey's Bay Area shall not be disturbed except in accordance with a permit issued by Newfoundland and Labrador after Consultation with the Innu Government or pursuant to the requirements of the Archaeology chapter.
- 22.9.3 Except as provided in this section, Newfoundland and Labrador shall not issue any permit authorizing a Person to carry on an archaeological investigation in the Voisey's Bay Area without first Consulting the Innu Government. In circumstances where the Minister believes on reasonable grounds that an emergency exists, Newfoundland and Labrador may authorize a Person to carry out an archaeological investigation in the Voisey's Bay Area without first Consulting the Innu Government and in such a case Newfoundland and Labrador shall, at the earliest possible opportunity, notify the Innu Government and provide it with appropriate information. For purposes of this section, an emergency shall be deemed to exist where:
- (a) there is an unplanned critical situation that has the potential to result in the destruction of or significant injury or damage to an historic resource; and
 - (b) reasonable steps to Consult the Innu Government have been taken and have proved unsuccessful, or the time required to Consult would exacerbate the potential for such destruction or damage.
- 22.9.4 The costs of any conservation, removal and/or preservation of Innu artifacts, or in the case of burial sites, relocation and reburial in accordance with the requirements of the Innu Government, shall be the responsibility of the Developer or a Subsequent Developer.

²²⁰ This part will be redrafted during AIP negotiations in order to fit with the Innu Heritage, and Archaeology and Ethnography Chapter. NL does not necessarily agree that redrafting will be required.



Chapter 23: Financial Payments

Part 23.1 General

23.1.1 Canada shall make payments to the Innu Government in accordance with this Chapter.

Part 23.2 Capital Transfer Payments

23.2.1 A provisional schedule of payments will be negotiated prior to the initialling of the Agreement such that:

- (a) the provisional schedule will provide for a first payment on the Effective Date and subsequent payments on each anniversary date;
- (b) the present value of the amounts in the provisional schedule will equal \$117.9 million; and
- (c) the present value referred to in 23.2.1 (b) will be calculated using as a discount rate, the most recent appropriate Consolidated Revenue Fund Lending Rate available prior to the signing of the Agreement, less one eighth of one percent.

23.2.2 A final schedule of payments will be calculated prior to the Effective Date by multiplying each amount in the provisional schedule of payments by the value of the Canada Final Domestic Demand Implicit Price Index (FDDIPI) for the latest quarter available prior to the Effective Date for which FDDIPI has been published by Statistics Canada, and by dividing the resulting product by the value of FDDIPI for the first quarter of 2011.

23.2.3 If the period between the signature of the Agreement and the Effective Date exceeds fifteen (15) months, each amount in the provisional schedule will be adjusted in the same way as provided for in the Labrador Inuit Land Claims Agreement.

23.2.4 Payments shall be made to Innu Government in accordance with the final schedule of payments, which shall be incorporated into the Agreement immediately prior to the Effective Date.

Part 23.3 Negotiation Loan Repayment

23.3.1 Prior to the signing of the Agreement, the outstanding amount of negotiation loans of Innu Government shall be determined up to the time of signing the Agreement and serve to establish a provisional schedule of repayments of the negotiation loans in accordance with 23.3.2 to 23.3.5.

23.3.2 A provisional schedule of payments for the repayment of negotiation loans shall be negotiated prior to the signing of the Agreement such that:

- (a) the provisional schedule of repayments will provide for a first repayment on the Effective Date and subsequent repayments on each anniversary date;
- (b) the present value of the amounts listed in the provisional schedule will equal the outstanding amount of negotiation loans (principal plus accrued interest) as at the date of signature of the Agreement as described in 23.3.1; and
- (c) the present value referred to in 23.3.2 (b) shall be calculated using as a discount rate, the most recent appropriate Consolidated Revenue Fund Lending Rate available prior to the signing of the Agreement, less one eighth of one percent.

23.3.3 A final schedule of payments for the repayment of negotiation loans shall be negotiated prior to the Effective Date in the same manner as described in 23.3.2 to include the total outstanding loan amounts as of the Effective Date.

23.3.4 Canada shall set off and deduct from a payment made by Canada under Part 23.2 the amount of a repayment to be made under Part 23.3 on the same date.

23.3.5 Except as provided in Part 23.3, terms and conditions of the negotiation loans shall remain unaffected.

Part 23.4 Other Funds

23.4.1 On the Effective Date, Canada shall provide to the Innu Government:

- (a) an Innu Economic Development Fund of \$10.3 million;
- (b) a Training and Capacity Fund of \$10.3 million; and
- (c) a Heritage Fund of \$10.3 million.

23.4.2 The amounts listed in 23.4.1 shall be adjusted using the same method as set out in 23.2.2.

Part 23.5 Loans Against Capital Transfer

23.5.1 Prior to the Agreement, provisions addressing the potential for loans from Canada to the Innu Government against the then unpaid balance of the payments referred to in Part 23.2 will be negotiated.

Chapter 24: Taxation

In this Chapter: (Definitions to be moved to the Interpretation Chapter)

"Direct" has the same meaning, for the purposes of distinguishing between a direct tax and an indirect tax, as in class 2 of section 92 of the *Constitution Act, 1867*;

"Indian" has the same meaning as "Indian" in the *Indian Act* (Canada);

"Reserve" has the same meaning as "reserve" in the *Indian Act* (Canada);

["Innu Capital" means all land, cash and other assets transferred to the Innu Government or an Innu Community Government or recognized as owned by the Innu Government or an Innu Community Government under this Agreement;]²²¹

"Person" includes an individual, a partnership, a corporation, a trust, an unincorporated association or other entity, a government or any agency or political subdivision thereof, and their heirs, executors, administrators and other legal representatives;

["Successor Legislation" includes any Provincial Legislation to amend or replace, in whole or part, Part VII of the *Revenue Administration Act* (Newfoundland and Labrador), the *Petroleum and Natural Gas Act* (Newfoundland and Labrador), the *Quarry Materials Act* (Newfoundland and Labrador) or the *Mineral Act* (Newfoundland and Labrador), or to levy a new or additional amount in respect of a Subsurface Resource that is a tax, royalty, rent, fee⁴³, excluding a fee⁴³ levied for administrative purposes, or other payment in the nature of a royalty, and, where the Province enters into a tax collection, tax rental or similar arrangement with Canada or any other jurisdiction in respect of Revenue shared under Parts 21.3 and 22.3, any such arrangement.]²²²

Part 24.1 Direct Taxation Powers

24.1.1 The Innu Government may make laws in relation to:

- (a) Direct taxation of Participants within Labrador Innu Lands in order to raise revenue for Innu Government purposes; and

²²¹ To be negotiated. Federal and NL approach is the square bracketed language (LILCA language). Innu view is that "Innu Capital" should include amounts transferred to the Innu Government under the Upper Churchill Redress Agreement, Lower Churchill IBA and future IBAs.

²²² To be negotiated. NL approach is the square bracketed language (LILCA language). Innu view is that "Successor Legislation" should be defined more broadly to include Provincial Legislation levying amounts in respect of hydro and forestry resources.

- (b) the implementation of any taxation agreement entered into between it and Canada or the Province, or both.

- 24.1.2 The Agreement will address the powers of an Innu Community Government to make laws in relation to Direct taxation.
- 24.1.3 The powers of the Innu Government and an Innu Community Government under 24.1.1 and 24.1.2 shall not limit the taxation powers of Canada or the Province.
- 24.1.4 The Agreement will provide for the consistency of Innu Laws with Canada's international legal obligations in relation to taxation.

Part 24.2 Taxation Powers Agreements

- 24.2.1 From time to time, at the request of the Innu Government, Canada and the Province, together or separately, [may]²²³ negotiate and attempt to reach agreement with the Innu Government respecting:
- (a) the extent to which the Direct taxation law-making authority of the Innu Government under 24.1.1(a) may be extended to apply to Persons other than Participants, within Labrador Innu Lands; and
- (b) the manner in which the taxation powers of the Innu Government will be coordinated with existing federal or Provincial tax systems.
- 24.2.2 The Agreement will address similar matters to those addressed in 24.2.1 for the Innu Community Governments.

Part 24.3 Labrador Innu Lands

- 24.3.1 [Within Labrador Innu Lands, the Innu Government is not subject to taxation of land, or interests in land, on which there is no improvement or on which there is an improvement all or substantially all of which is used for a public purpose and not for a profitable purpose.
- 24.3.2 Within its Community, an Innu Community Government is not subject to taxation of land, or interests in land, on which there is no improvement or on which there is an improvement all or substantially all of which is used for a public purpose and not for a profitable purpose.]²²⁴

²²³ To be negotiated. Federal and NL approach is "may" (LILCA language). Innu prefer "shall".

²²⁴ To be negotiated. NL prefers the bracketed language (LILCA language). Canada prefers the bracketed language or the following approach:

- replacing the words "or on which there is an improvement all or substantially all of which is used for a public purpose and not for a profitable purpose" in 24.3.1 and 24.3.2 with: "or on which there is a designated improvement"
- and
- adding the following three new clauses after 24.3.2:

- 24.3.3 For greater certainty, the exemption from taxation in 24.3.1 and 24.3.2 does not apply to a taxpayer other than the Innu Government or an Innu Community Government nor does it apply with respect to a disposition of Labrador Innu Lands, or interests in those lands, by the Innu Government or an Innu Community Government.
- 24.3.4 For federal and Provincial income tax purposes, proceeds of disposition received by the Innu Government on expropriation of Labrador Innu Lands in accordance with Chapter 16 shall not be taxable.

"24.3.3 In 24.3.1 and 24.3.2, "designated improvement" means:

- (a) a residence of a Participant;
- (b) an improvement, all or substantially all of which is used for a public purpose or a purpose ancillary or incidental to the public purpose, including:
 - (i) a public governance or administration building, public meeting building, public hall, public school or other public educational institution, teacherage, public library, public health facility, public care facility, public seniors home, public museum, place of public worship, manse, fire hall, police facility, court, correction facility, public recreation facility, public park, or an improvement used for Innu cultural or spiritual purposes;
 - (ii) works of public convenience constructed or operated for the benefit of Participants, occupiers of Labrador Innu Lands or persons visiting or in transit through Labrador Innu Lands, including public utility works, public works used to treat or deliver water or as part of a public sewer system, public roads, public bridges, public drainage ditches, traffic signals, street lights, public sidewalks and public parking lots; or
 - (iii) similar improvements;
- (c) an improvement that is used primarily for the management, protection or enhancement of a natural resource, including a forest, fishery or Wildlife resource, other than an improvement that is used primarily in Harvesting or processing a natural resource for profit; and
- (d) forest resources and forest roads.

24.3.4 In 24.3.3(b), "public purpose" does not include the provision of property or services primarily for the purpose of profit.

24.3.5 For the purposes of 24.3.1, 24.3.2 and 24.3.3:

- (a) for greater certainty, Labrador Innu Lands include the improvements on those lands; and
- (b) an improvement is deemed to be on the land that is necessarily ancillary to the use of the improvement."

Innu would like to consider the two approaches further.

Part 24.4 Transfer of Innu Capital

24.4.1 A transfer under this Agreement of Innu Capital is not taxable and a recognition of ownership under this Agreement of Innu Capital is not taxable.

24.4.2 [For purposes of 24.4.1, an amount paid to a Participant is deemed to be a transfer of Innu Capital under this Agreement if the payment:

- (a) can reasonably be considered to be a distribution of a Capital Transfer received by the Innu Government; and
- (b) becomes payable to the Participant within ninety (90) days and is paid to the Participant within two hundred and seventy (270) days from the date that the Innu Government receives the Capital Transfer.]²²⁵

24.4.3 For federal and Provincial income tax purposes, Innu Capital is deemed to have been acquired by the Innu Government at a cost equal to its fair market value on the latest of:

- (a) the Effective Date; and
- (b) the date of transfer of ownership or the date of recognition of ownership, as the case may be.

Part 24.5 Provincial Royalties on Revenue Sharing

24.5.1 [Amounts received or receivable under Parts 21.3 and 22.3 and amounts received or receivable by the Innu Government under an Impacts and Benefits Agreement shall not be subject to taxation under Part VII of the *Revenue Administration Act* (Newfoundland and Labrador), the *Petroleum and Natural Gas Act* (Newfoundland and Labrador), the *Mineral Act* (Newfoundland and Labrador) or any Successor Legislation.]²²⁶

Part 24.6 Indian Act Tax Exemption and Transitional Exemption

24.6.1 Section 87 of the *Indian Act* (Canada) will have no application to a Participant as of the first day of the first calendar year that starts after the _____²²⁷ anniversary of the Effective Date.

²²⁵ To be negotiated. Canada and NL approach is the bracketed language (LILCA language). Innu view is that the exemption for amounts paid to Participants should include future payments to individuals from economic development, heritage, and training and capacity development funds.

²²⁶ To be negotiated. NL approach is the bracketed language (LILCA language). Innu view is that the provision should be broader to cover amounts received or receivable by the Innu Government or an Innu Community Government from the Upper Churchill Redress Agreement or Lower Churchill IBA, or in relation to the extraction or sale or lease of hydro, mineral or forestry resources from Labrador Innu Lands, and should refer to provincial legislation in respect of hydro developments and forestry.

²²⁷ To be negotiated. Federal approach is 8 years for transaction taxes and 12 years for other taxes, or

- 24.6.2 Subject to 24.1.1(a) and 24.2.1(a) and 24.6.3 to 24.6.6, as of the Effective Date, the following is exempt from taxation:
- (a) the interest of an Indian in Labrador Innu Lands that were a Reserve on the day before the Effective Date;
 - (b) the personal property of an Indian situated on Labrador Innu Lands that were a Reserve on the day before the Effective Date;
 - (c) an Indian with respect to the ownership, occupation, possession or use of any property mentioned in (a) or (b).
- 24.6.3 24.6.2 will cease to be effective as of the first day of the first calendar year that starts after the _____²²⁸ anniversary of the Effective Date.
- 24.6.4 24.6.2 will be interpreted to exempt an Indian with respect to a property or interest, or with respect to the ownership, occupation, possession or use thereof, in the same manner and under the same conditions in which section 87 of the *Indian Act* (Canada) would have applied, but for this Agreement, if the property were situated on, or the interest were in, a Reserve.
- 24.6.5 24.6.2 only applies to an Indian during the period that section 87 of the *Indian Act* (Canada) applies to the Indian.
- 24.6.6 If the Innu Government or an Innu Community Government imposes a tax within Labrador Innu Lands and concludes a tax agreement for that purpose with Canada or the Province as contemplated in 24.2.1, 24.6.2 does not apply to the extent that the Innu Government, Canada or the Province, as the case may be, imposes a tax that the particular taxation agreement specifies is applicable to Participants and other Indians within Labrador Innu Lands.
- 24.6.7 [Section 87 of the *Indian Act* (Canada) will have no application to the Innu Government or the Innu Community Governments.]²²⁹

Part 24.7 Tax Treatment Agreement

- 24.7.1 The Parties shall enter into a tax treatment agreement, which will come into effect on the Effective Date.
- 24.7.2 The tax treatment agreement will address the tax treatment of:

similar approach. Innu prefer a much longer transition period.

²²⁸ To be negotiated. Federal approach is 8 years for transaction taxes and 12 years for other taxes, or similar approach. Innu prefer a much longer transition period.

²²⁹ To be negotiated. Federal approach is the bracketed language. Provision may not be necessary if other provisions of the Final Agreement address the application of the *Indian Act*. Innu view is that the current exemption should continue to apply, whether in the form of the section 87 exemption or other exemption.

- (a) the Innu Government and Innu Community Governments;
- (b) corporations or other entities of the Innu Government and Innu Community Governments;
- (c) donations to the Innu Government and Innu Community Governments;
- (d) Innu Capital;²³⁰
- (e) Innu settlement trusts; and
- (f) other matters as agreed by the Parties.²³¹

24.7.3 Canada and the Province will recommend to Parliament and the House of Assembly of Newfoundland and Labrador, respectively, that the tax treatment agreement be given effect and force of law under Federal Legislation and Provincial Legislation.

Part 24.8 Agreements under this Chapter

24.8.1 An agreement under 24.2.1 or 24.7.1:

- (a) shall not form part of this Agreement;
- (b) is not intended to be a treaty or land claims agreement; and
- (c) is not intended and will not be construed so as to recognize or affirm or abrogate or derogate from Aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

²³⁰ To be negotiated. Federal approach is to address in the tax treatment agreement the tax treatment of transfers of Innu Capital, other than cash, between the Innu Government, Innu Community Governments and their controlled entities.

²³¹ To be negotiated. Innu view is that negotiations should address the application to the Innu Government and Innu Community Governments of provincial taxes, including the provincial portion of the HST, HAPSET, gasoline tax, tobacco tax, forestry tax and mining and mining rights taxes.]

Chapter 25: Overlapping Claims

(To be negotiated for Final Agreement)

Chapter 26: Dispute Resolution

Part 26.1 Definitions

26.1.1 In this Chapter:

“Party or Parties” means the Innu Government, Canada and the Province or one or more of them as the situation requires;

“Disputant” means a party to a Dispute.

Part 26.2 General

26.2.1 Except as otherwise provided, the Disputants participating in a Dispute resolution process under this Chapter may agree to vary a procedural requirement, including timelines, contained in this Chapter.

26.2.2 Disputants shall make good faith efforts to resolve Disputes promptly through informal discussion or negotiations before seeking recourse to mediation or Arbitration.

26.2.3 Disputants may at any time, by agreement, resolve their Dispute. Such agreement shall be recorded in writing, be signed by authorized representatives of each Disputant, and delivered to all Disputants as if the Dispute had proceeded to Arbitration. The signed agreement will terminate any Dispute resolution process that is underway.

26.2.4 All information exchanged by Disputants under a Dispute resolution process provided for in this Chapter shall be regarded as without prejudice communications for the purposes of settlement negotiations and shall be treated as confidential by Disputants and their representatives, unless otherwise required by Federal Law, Provincial Law or Innu Law.

26.2.5 While efforts are being made to attempt to resolve a Dispute by Disputants under a Dispute resolution process provided for in this Chapter, limitation periods provided for at Federal Law, Provincial Law or [Innu Law]²³² are suspended.

Part 26.3 Informal Discussion

26.3.1 Disputants will endeavour to resolve Disputes informally.

Part 26.4 Negotiations

26.4.1 “Disputant” in Part 26.4 means a Party.

26.4.2 If informal discussion under 26.3.1 among or between the Disputants does not resolve a Dispute, negotiations may be commenced by one of the Disputants providing a Notice of Dispute to the other Parties.

²³² To be negotiated.

- 26.4.3 The Notice of Dispute shall be delivered by one Party to the other Parties in accordance with the notice provisions of this Agreement and shall contain:
- (a) the issue or issues which the Party wishes to resolve;
 - (b) a summary of the facts relevant to the issue or issues as asserted by the Party and all additional relevant documentation;
 - (c) the Party's requested resolution or remedy to address the Dispute;
 - (d) an express intention to commence the negotiations process described in Part 26.4; and
 - (e) the name of the individual representative charged with the authority to negotiate a resolution of the Dispute.
- 26.4.4 The Party receiving a Notice of Dispute shall respond by delivering a reply to the other Parties within thirty (30) days of receipt of the Notice of Dispute in accordance with the notice provisions of this Agreement. The reply shall include:
- (a) a statement of those assertions of fact in the Notice of Dispute with which the Party receiving the Notice of Dispute agrees;
 - (b) a summary of the different or additional facts and all additional documentation relevant to the issue or issues as asserted by the Party receiving the Notice of Dispute;
 - (c) a suggested resolution or remedy to address the Dispute;
 - (d) an express agreement to engage in the negotiations process described herein;
 - (e) the name of the individual representative charged with the authority to negotiate a resolution of the Dispute.
- 26.4.5 A Party whose interests are not directly engaged by the Dispute described in the Notice of Dispute may choose to become a Disputant by giving written notice, setting out that Party's issues with respect to the Dispute and delivering a reply, under 26.4.4, to the other Disputants.
- 26.4.6 A Party that becomes a Disputant pursuant to 26.4.5 shall be entitled to participate in negotiations under Part 26.3.
- 26.4.7 The individual representatives of the Disputants in the negotiations referred to in 26.4.4(e) shall meet for negotiations within twenty-one (21) days of delivering the reply.
- 26.4.8 Each Disputant in negotiations shall bear its own costs unless they otherwise agree in writing prior to or after the commencement of negotiations.

- 26.4.9 Nothing in Part 26.4 prohibits a Disputant from making, on a without prejudice basis, a written offer of settlement relating to the Dispute prior to or during the course of negotiations.
- 26.4.10 A Disputant participating in negotiations may withdraw from the negotiations at any time.
- 26.4.11 Negotiations terminate when any of the following occurs:
- (a) the expiration of thirty (30) days after the first scheduled negotiations meeting;
 - (b) a Disputant participating in the negotiations withdraws from the negotiations under 26.4.10 and does not waive its right to terminate the negotiations;
 - (c) Disputants to the negotiations agree in writing to terminate the negotiations; or
 - (d) Disputants to the negotiations sign a written agreement resolving the Dispute.

Part 26.5 Mediation

- 26.5.1 Within thirty (30) days from the termination of negotiations under 26.4.11, except for termination under 26.4.11(d) or if termination under 26.4.11(c) includes agreement to not further pursue resolution of the Dispute, the Dispute which was the subject of those terminated negotiations:
- (a) shall be referred by Disputants to mediation in accordance with Part 26.5 if the Dispute falls under (a) or (c) of the defined term Dispute; or
 - (b) may be referred with the agreement of Disputants to mediation in accordance with Part 26.5 if the Dispute falls under (b) or (d) of the defined term Dispute.
- 26.5.2 Unless the Agreement provides otherwise, Disputes which are not subject to negotiations under Part 26.4:
- (a) shall be referred by Disputants to mediation in accordance with Part 26.5 if the Dispute falls under (c) of the defined term Dispute; or
 - (b) may be referred with the agreement of Disputants to mediation in accordance with Part 26.5 if the Dispute falls under (b) of the defined term Dispute.
- 26.5.3 All Disputants referring a Dispute to mediation under 26.5.1 or 26.5.2 shall mutually agree upon the mediator for the Dispute.
- 26.5.4 If agreement cannot be reached pursuant to 26.5.3, then the mediator shall be chosen by the Chief Justice, Supreme Court of Newfoundland and Labrador,

Trial Division – General Division, from a list comprised of, at most, two (2) nominees per party to the mediation.

- 26.5.5 Unless Disputants agree otherwise, the mediation shall be held in Newfoundland and Labrador.
- 26.5.6 Unless Disputants agree otherwise, the mediation shall be concluded within thirty (30) days of its commencement.
- 26.5.7 All costs, other than each Disputant's own costs, of mediation shall be shared equally among Disputants.
- 26.5.8 Any agreement reached through a mediation process under Part 26.5 shall be recorded in writing, signed by authorized representatives of each Disputant, and delivered to all Disputants and any Party who is not a Disputant.
- 26.5.9 A mediation agreement reached under Part 26.5 shall be binding only on Disputants to that mediation agreement.
- 26.5.10 If a mediation agreement is reached under Part 26.5 and accepted by the Disputants, the Disputants shall carry out the terms of the settlement as soon as possible or in accordance with any time frame set out in the mediation agreement.
- 26.5.11 Upon termination of the mediation, the mediator shall issue a letter to the Disputants stating whether the mediation was settled or not. If it has not been fully settled, the mediator shall also submit a non-binding mediation report:
- (a) setting out any outstanding issues;
 - (b) setting out a summary of the mediation, including the positions put forward and the efforts made by the Disputants to resolve the Dispute; and
 - (c) listing aspects of agreement among the Disputants.
- 26.5.12 During mediation, Disputants may agree to refer particular issues of disagreement to independent fact-finders, expert panels or other processes for opinions or findings that may assist them in the resolution of the disagreement.
- 26.5.13 Without limiting the generality of 26.2.4, in any legal proceeding, the Disputants shall not:
- (a) call a mediator or a Person employed or retained by the mediator as a witness; or
 - (b) refer to the mediation report referred to in 26.5.11.
- 26.5.14 For the purposes of 26.5.13, legal proceedings include Arbitration under Part 26.6.

- 26.5.15 No Arbitration proceedings shall commence until mediation proceedings have been terminated under Part 26.5.
- 26.5.16 Mediators shall not be appointed as arbitrators under Part 26.6.
- Part 26.6 Arbitration**
- 26.6.1 Disputes which the Agreement stipulates shall be resolved by Arbitration, or which Disputants agree shall be resolved by Arbitration, shall be referred to Arbitration under Part 26.6 in a written document signed by the Disputants:
- (a) if the Dispute has not been resolved informally, through negotiations or through mediation as provided for in this Chapter; or
 - (b) where the Agreement stipulates that the Dispute shall or may be resolved through Arbitration without first proceeding through negotiations or mediation or both, and the Dispute has not been resolved informally.
- 26.6.2 An Arbitration under Part 26.6 shall be conducted by a single Arbitrator.
- 26.6.3 All Disputants shall, by mutual agreement, choose the Arbitrator within thirty (30) days of referring the Dispute to Arbitration.
- 26.6.4 If agreement cannot be reached pursuant to 26.6.3, then an Arbitrator shall be chosen by the Chief Justice, Supreme Court of Newfoundland and Labrador, Trial Division - General Division, from a list comprised of, at most, two (2) nominees per Disputant.
- 26.6.5 Once an Arbitrator is chosen:
- (a) the Arbitrator shall give written notice of an Arbitration to any Party that is not a Disputant.
 - (b) a Party receiving notice under 26.6.5(a) may elect within thirty (30) days of receiving that notice to participate in the Arbitration as a Disputant.
- 26.6.6 In conducting any Arbitration process, the Arbitrator has the jurisdiction to:
- (a) determine all questions of procedure, subject to agreements Disputants may make regarding procedure;
 - (b) receive and take into account such written or oral evidence tendered by Disputants as the Arbitrator determines is relevant, whether or not that evidence is admissible in law;
 - (c) determine questions of fact, law and equity;²³³
 - (d) order a Disputant to furnish further details;

²³³ To be negotiated. Use of lower case law and equity in this clause to be reviewed.

- (e) order the production of documents by Disputants;
- (f) determine any question as to the Arbitrator's jurisdiction under the Agreement;
- (g) subpoena witnesses;
- (h) administer oaths or affirmations to witnesses;
- (i) make one or more interim awards including stop orders and orders in the nature of an injunction;
- (j) invite costs submissions and consider any offers of settlement made by a Disputant prior to or during the course of the Arbitration if awarding costs;
- (k) refer any question of law or equity to the Supreme Court of Newfoundland and Labrador, Trial Division – General Division;
- (l) award any remedy permissible at common law or equity, subject to the Agreement and the terms of any agreement by Disputants regarding the scope of remedies.

26.6.7 No Arbitrator may consider or rule on the validity of the Agreement or alter, amend, delete, add to or substitute any provision of the Agreement in any manner.

26.6.8 The Arbitrator shall provide an Arbitration Decision in writing to the Disputants, together with a recital of the facts upon which that Decision is based and the supporting reasons, within ninety (90) days of the referral of Dispute to the Arbitrator by the Disputants.

26.6.9 [Subject to 26.6.10 and 26.6.11, a decision or order of an Arbitrator shall be final and binding on the Disputants and on a Party who received notice under 26.6.5(b) and elected not to be a Disputant.]²³⁴

26.6.10 Except as explicitly permitted by section 26.6.11, an Arbitration Decision shall not be questioned, reviewed, prohibited or restrained by any Court on any ground whatsoever.

26.6.11 An Arbitration Decision may be reviewed by the Supreme Court of Newfoundland and Labrador, Trial Division – General Division, on the grounds that the Arbitrator:

- (a) acted without jurisdiction, acted beyond its jurisdiction or failed to act where it has a duty to act;

²³⁴ To be negotiated. Under review by NL; preferred by the Innu; the preferred federal position is to ensure that participation in an arbitration process should be at the election/agreement of the party, and that the results of the arbitration should be binding on those who elect to participate in the arbitration process (the disputants). Canada cannot agree to this provision as it is currently drafted.

- (b) failed to act in a manner consistent with the principles of natural justice or procedural fairness;
 - (c) based an Arbitration Decision on an error in law or on an erroneous finding of fact; or
 - (d) acted in any other way contrary to law.
- 26.6.12 An Arbitration Decision may be registered and enforced in the same manner as a judgment or order of the Supreme Court of Newfoundland and Labrador.
- 26.6.13 Unless the Arbitrator decides otherwise, Disputants shall each bear their own costs and pay equally all other costs of the Arbitration, [except the fees and disbursements of the Arbitrator which shall be paid for by the Province and Canada pursuant to the terms of an agreement implementing the Agreement]²³⁵.
- 26.6.14 Nothing shall prevent Disputants from making an offer of settlement relating to the Dispute during the course of Arbitration, but the offer shall be excluded from consideration in the Arbitration except for purposes of an award of costs under 26.6.6 (j).
- 26.6.15 If an Arbitration involves a Disputant other than a Party, all proceedings shall be in private and Disputants shall ensure that the Arbitration and the terms of the award are, subject to registration of the award in the Supreme Court of Newfoundland and Labrador, kept confidential unless Disputants otherwise agree. The obligation to maintain confidentiality under this section shall not affect judicial review under section 26.6.11 or prevent any Party from complying with the Agreement.
- 26.6.16 If an Arbitration involves only Parties, the Arbitrator, at the request of all participating Parties, shall:
- (a) hold the Arbitration in private; and
 - (b) hold as privileged and confidential any document or record produced in the course of the Arbitration.
- 26.6.17 The *Arbitration Act* (Newfoundland and Labrador) applies to any Arbitration conducted under this Chapter as modified by this Agreement.
- Part 26.7 Litigation**
- 26.7.1 A Disputant shall not litigate a Dispute if the Dispute must be or has otherwise been referred to Dispute resolution under this Chapter until the dispute resolution process applicable to the Dispute contained in this Chapter has been completed.
- 26.7.2 No Disputant or Party that is not a Disputant may apply to a court to attempt to delay, enjoin, prohibit or otherwise interfere with informal discussion,

²³⁵ To be negotiated. Clause agreed-to in bilateral chapter between NL and Innu; Canada does not agree with square bracket language.

negotiations, mediation or Arbitration that has been commenced under this Chapter but nothing in this section:

- (a) affects the ability of a Disputant or Party that is not a Disputant to prevent or remedy a breach of 26.6.7;
- (b) affects the powers of an Arbitrator under 26.6.6 (k); or
- (c) prevents judicial review of an interim or interlocutory Arbitration Decision under section 26.6.6 (i).

26.7.3 Nothing in this Chapter prevents a Disputant from commencing arbitral or judicial proceedings at any time:

- (a) to prevent the loss of a right to commence proceedings due to the expiration of a limitation period; or
- (b) to obtain interlocutory or interim relief that is otherwise available pending resolution of the Dispute under this Chapter.

Chapter 27: Implementation

Part 27.1 Definitions

27.1.1 In this Chapter:

"Implementation Committee" means the committee established pursuant to 27.1.1.

"Implementation Plan" means the plan referred to in 27.2.1.

Part 27.2 General

27.2.1 The Parties shall negotiate an Implementation Plan for implementation of the Agreement.

27.2.2 Following approval of the Agreement-in-Principle, the Parties shall establish an implementation planning working group that will be responsible for the development of:

- (a) the Implementation Plan; and
- (b) a list of activities to be completed by the Parties prior to the Effective Date.

27.2.3 The implementation planning working group shall consist of one member appointed by each Party, and additional representatives may participate in meetings to support or assist a member. The Parties will each appoint their first member of the implementation planning working group within ninety (90) days of the approval of the Agreement-in-Principle.

27.2.4 The Implementation Plan shall be initialled by the chief negotiators for the Parties at the same time as the Final Agreement is initialled.

Part 27.3 Implementation Plan

27.3.1 The Implementation Plan shall take effect on the Effective Date of the Agreement and has an initial term of ten (10) years, and may be revised, extended, replaced or terminated pursuant to 27.3.2 (f).

27.3.2 The Implementation Plan shall:

- (a) identify the activities to be undertaken to fulfil the obligations set out in the Agreement;
- (b) identify who is responsible for the activities referred to in 27.3.2(a);
- (c) identify how the activities referred to in 27.3.2(a) will be carried out;

- (d) identify the resources required to fulfil the obligations set out in the Agreement;
- (e) identify a process for the periodic review of the Implementation Plan; and
- (f) specify how the Implementation Plan may be revised, extended, replaced or terminated, as agreed by the Parties;
- (g) address other matters agreed to by the Parties.

27.3.3 The Implementation Plan shall not:

- (a) form part of the Agreement;
- (b) is not intended to be a treaty or land claims agreement, and is not intended to recognize or affirm Aboriginal or treaty rights, within the meaning of sections 25 or 35 of the *Constitution Act, 1982*;
- (c) create legal obligations unless otherwise agreed to by the Parties in the Implementation Plan;
- (d) alter any rights or obligations set out in the Agreement; and
- (e) be used to interpret the Agreement.

27.3.4 The Implementation Plan may provide that funding for certain identified activities shall be made available after the Agreement is signed and prior to the Effective Date.

Part 27.4 Implementation Committee

27.4.1 Within ninety (90) days of the Effective Date, the Parties shall establish an Implementation Committee, which shall exist for the life of the Implementation Plan or for such other period as agreed by the Parties.

27.4.2 The Implementation Committee shall consist of one member appointed by each Party, and additional representatives may participate in meetings to support or assist a member. The Parties will each:

- (a) appoint their first member on the Effective Date; and
- (b) fill vacancies as they arise.

27.4.3 Each member of the Implementation Committee shall serve as chairperson on a rotating basis in the order and with the frequency decided by the Implementation Committee.

27.4.4 The Implementation Committee shall oversee the implementation of the Agreement by:

- (a) monitoring the status of the Implementation Plan;

- (b) revising activities and funding levels identified in the Implementation Plan, to the extent authorized by the Implementation Plan;
- (c) attempting to resolve implementation issues, without in any way affecting the application of Chapter 26;
- (d) making recommendations to the Parties respecting the implementation of the Agreement beyond the initial ten (10) year period; and
- (e) providing the Parties with an annual report on the implementation of the Agreement.

27.4.5 The Implementation Committee shall establish its internal procedures.

27.4.6 The Implementation Committee shall meet as necessary, but, in any event, shall meet at least once (1) per calendar year.

27.4.7 All decisions of the Implementation Committee shall be by unanimous agreement.²³⁶

27.4.8 Each Party shall be responsible for its costs of participation on the Implementation Committee.

27.4.9 Canada shall be responsible for publishing the annual report referred to in 27.4.4(e).

²³⁶ To be negotiated. Innu propose "the Implementation Committee shall make decisions on a consensus basis".

Chapter 28: Lower Churchill Projects

Part 28.1 Definition

28.1.1 In this Chapter:

“Developer” means “Company” as defined in the Lower Churchill Innu Impacts and Benefits Agreement;

“Innu Party” means any one of (a) to (d) of the definition of Lower Churchill Subsequent Impacts and Benefits Agreement;

“Lands” includes lands under water;

“Subsequent Developer” means any Person, including the Developer, undertaking, commencing, continuing, resuming or reviving the construction, operation, maintenance or decommissioning of all or any part of the Lower Churchill Projects in the event that the Lower Churchill Innu Impacts and Benefits Agreement is terminated, and that Person’s successors and assigns;

“Lower Churchill Subsequent Development” means any part of the Lower Churchill Projects undertaken by a Subsequent Developer;

“Lower Churchill Subsequent Impacts and Benefits Agreement” means the agreement relating to a Lower Churchill Subsequent Development between or among a Subsequent Developer and any one of the following:

- (a) the Innu Nation, Mushuau Innu First Nation and Sheshatshiu Innu First Nation;
- (b) The Innu Nation, representing all the members of Innu Nation, Mushuau Innu First Nation and Sheshatshiu Innu First Nation; or
- (c) the Innu Government and the Innu Community Governments, representing the Innu as defined in (b) of the definition of “Innu”;
- (d) the Innu Government, representing the Innu as defined in (b) of the definition of “Innu”;²³⁷

“Person” includes an individual; a sole proprietorship; a partnership; a limited partnership; a corporation; a trust; a joint venture; an unincorporated association; a government or any agency or subdivision of a government; and their respective heirs, executors, administrators and other legal representatives;

²³⁷ To be negotiated. Identity of appropriate Innu parties to be included in this definition.

Part 28.2 General

28.2.1 Lands and resources, including water, in the Lower Churchill Project Area shall be subject to this Chapter, but shall not be subject to any other provision of this Agreement, except²³⁸:

- (a) Chapter 1;
- (b) Chapter 2;
- (c) Chapter 26, other than disputes referred to in Part 28.6.; and
- (d) as provided in 28.2.4, 28.3.1, 28.5.2 and 28.5.3.

28.2.2 Unless otherwise specifically provided, Federal Law and Provincial Law apply to the Lower Churchill Projects, any Lower Churchill Subsequent Development and the Lower Churchill Area, including, to the Lands and resources, including water, in the Lower Churchill Area.

28.2.3 For greater certainty:

- (a) the Lands and resources, including water, in the Lower Churchill Area are not and will not become Labrador Innu Lands, the Labrador Innu Settlement Area, Permit Free Hunting Area, Economic Major Development Impacts and Benefits Agreement Areas or Hydroelectric Major Development Impacts and Benefits Agreement Areas; and
- (b) the rights of Participants in the Lower Churchill Area, as set out in Part 28.3, shall continue whether or not the Lower Churchill Projects or any Lower Churchill Subsequent Development is ever constructed within the Lower Churchill Area.

28.2.4 Prior to the Agreement, the Parties shall determine which provisions of Chapter 19 will apply to the Lower Churchill Area as they would apply to the Labrador Innu Settlement Area outside Labrador Innu Lands.²³⁹

Part 28.3 Innu Domestic Harvest in the Lower Churchill Area

28.3.1 Subject to 28.3.2 and 28.3.3, in the Lower Churchill Area, Participants and their assignees under 7.2.17, 8.10.1, 9.9.1 and 11.5.1 shall have:

- (a) a right of access, without the requirement of a permit or fee⁴³, to the Lands and resources, including waters, of the Lower Churchill Area, for the purposes of the exercise by them of their rights to

²³⁸ Legal drafting. Parties may review drafting for clarity.

²³⁹ To be negotiated. Parties to consider provisions about overlap to be included in Chapter 25.

- (i) Harvest Wildlife for the Innu Domestic Harvest under Chapter 7;
- (ii) Harvest Migratory Birds for the Innu Domestic Harvest under Chapter 8;
- (iii) Harvest Fish and Aquatic Plants for the Innu Domestic Harvest under Chapter 9; and
- (iv) Harvest Forest Resources and Plants under 11.3.1 and 11.3.3; and

(b) the rights to Harvest set out in 28.3.1(a) (i) to (iv),

as though the Lower Churchill Area were part of the Labrador Innu Settlement Area outside Labrador Innu Lands.

- 28.3.2. For greater certainty, and Subject to 28.3.3 and 28.3.4, the right of access and the rights to Harvest referred to in 28.3.1 are subject to and are to be exercised in accordance with Innu Law, Federal Law and Provincial Law, restrictions, limitations, including limitations in respect of Harvesting locations, requirements and measures referred to in, or that may be established under this Chapter or under Chapters 7, 8, 9, 11 and 17 in respect of those access and Harvesting rights.
- 28.3.3 The right of access and the rights to Harvest referred to in 28.3.1 shall be exercised in a manner that does not interfere with the construction, operation, maintenance or decommissioning of the Lower Churchill Projects or any Subsequent Development or any part of the Lower Churchill Projects or any Subsequent Development.
- 28.3.4 The right of access and the rights to Harvest referred to in 28.3.1 shall be exercised in accordance with restrictions on access and harvesting as set out in, or that may be established from time to time under, the Lower Churchill Innu Impacts and Benefits Agreement or any Lower Churchill Subsequent Impacts and Benefits Agreement.
- 28.3.5 [The recognition or vesting of]²⁴⁰ a right, as provided for in this Chapter, in a Participant or his or her assignees, or the exercise by a Participant or his or her assignees of a right provided for in this Chapter of access to, or a right to Harvest in, any part of the Lower Churchill Area shall not:
- (a) create, cause, result in,²⁴¹ or give rise to any additional or higher duty of care on the part of the Province, the Developer or Subsequent Developer being owed to a Participant or his or her assignees, other than that which the Province, the Developer or Subsequent Developer would owe to a Non-Participant accessing or using the Lower Churchill Area without the

²⁴⁰ Legal drafting. Canada proposes to delete the words in square brackets.

²⁴¹ Legal drafting.

consent of the Province the Developer or Subsequent Developer. For greater certainty, the legal status and rights of, and the duty of care owed by the Province, the Developer or Subsequent Developer to, such Participant and the duty of care owed by the Province, a Developer or Subsequent Developer to such Participant or his or her assignees shall be equivalent to the legal status and rights of, and duty of care owed by the Province, the Developer or Subsequent Developer to a Non-Participant that has, without the consent of the Province, the Developer or Subsequent Developer, accessed or used the Lower Churchill Area;

- (b) create, cause, result in, or give rise to or impose any duty, responsibility or liability for any injury, loss of life, damage to person or property or any loss of any kind suffered by or resulting to a Participant or his or her assignees from any act or omission by the Province, the Developer or Subsequent Developer and their employees, contractors, agents and suppliers except to the extent provided for in 28.3.5(a);
- (c) create, cause, result in or give rise to or impose any liability upon the Province, the Developer or Subsequent Developer with respect to any loss, damage or injury to person or property arising out of the Developer's or Subsequent Developer's use of the Lands within the Lower Churchill Area for the regulation of the flow of, inundating and storing water on or over or affecting from time to time the Lands within the Lower Churchill Area consistent with the terms and conditions of Provincial Law or Federal Law or any authorization issued to the Developer or Subsequent Developer by the Province or Canada;
- (d) create, recognize, confer or impose any duty on the part of the Province, a Developer or Subsequent Developer other than that owed to a Non-Participant pursuant to Provincial Law or Federal Law with respect to the construction, maintenance, repair, removal, restoration, refurbishment, replacement or operation of the Lower Churchill Projects or to facilitate the exercise by the Participant or his or her assignees of the right of access or the rights to Harvest as provided for in this Chapter; or
- (e) make the easement or any road, trail or transmission corridor, whether temporary or permanent, within the Lower Churchill Area, a road or highway under any Provincial Law.²⁴²

28.3.6 Any restrictions or limitations on the right of access referred to in 28.3.1(a) provided for, established or removed under Chapter 17 shall only be provided for, established or removed in relation to Tenures in the Lower Churchill Area other than those Tenures in the Lower Churchill Area that are granted for purposes of the Lower Churchill Projects or any Lower Churchill Subsequent Development.

28.3.7 In the event that a sustainable forest management plan is required to be prepared under the *Forestry Act* (Newfoundland and Labrador) in order to proceed with the Lower Churchill Projects or any Lower Churchill Subsequent

²⁴² To be negotiated. NL feels (e) is necessary, but the Innu disagree.

Development, the provisions of Part 11.3 shall apply to the preparation of that plan as though it were a Forest Resource Management Plan for a Forest Management District outside of Labrador Innu Lands.

28.3.8 The Board, the [Fisheries Advisory Committee]²⁴³ and the Migratory Birds Advisory Committee shall have no roles or responsibilities in respect of the Lower Churchill Project Area, but in recommending a Total Allowable Harvest or a Total Allowable Catch under Chapters 7, 8 or 9, the Board and the Fisheries Advisory Committee and the Migratory Birds Advisory Committee shall consider the number of any stock or species that may be available for Harvest in the Lower Churchill Project Area.

Part 28.4 ²⁴⁴Designated Species in the Lower Churchill Area

28.4.1 The Province and the Innu Government shall cooperate with each other in preparing any Recovery Strategy or Strategies required for Designated Species occurring in the Lower Churchill Area.

28.4.2 If a Recovery Strategy is prepared for Designated Species occurring in the Lower Churchill Area, the Province and the Innu Government shall negotiate a Stewardship Agreement, which shall address matters connected with the implementation of the Recovery Strategy for the Designated Species, and may include provisions related to:

- (a) steps to be taken by the respective Parties in the implementation of the Recovery Strategy for the Designated Species;
- (b) cooperation and information-sharing between the Parties on matters of mutual interest related to the Stewardship Agreement including the incorporation of Innu environmental knowledge;
- (c) financial matters associated with the implementation of the Recovery Strategy in the Lower Churchill Projects Area; and
- (d) any other matter agreed upon by the Parties.

28.4.3 The Province may enter into agreements with the Innu Government with respect to preparing and implementing any Recovery Strategy for any species that is a Designated Species within the Lower Churchill Area within the area that extends 0.5 kilometre from the outer boundary of the Lower Churchill Area, but those agreements:

- (a) shall not form part of the Agreement;
- (b) are not intended to be treaties or land claims agreements; and

²⁴³ To be negotiated. Under review by Canada.

²⁴⁴ To be negotiated. Inclusion of Listed Species in Part 28.4 is to be considered and reviewed.

- (c) are not intended to recognize or affirm aboriginal or treaty rights within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.

28.4.4 The Province and the Innu Government agree that if either notifies the other of their desire to enter into an agreement in relation to matters set out in 28.4.3, the Province and the Innu Government shall commence negotiation on those matters.

Part 28.5 Archaeology and Human Remains

28.5.1 The Province shall transfer title to the Innu Government of all Innu Archaeological Material which has been or may be found in the Lower Churchill Area.

28.5.2 Parts 18.5 and 18.8 apply to the Lower Churchill Area as if the Lower Churchill Area was Labrador Innu Settlement Area outside Labrador Innu Lands.

28.5.3 Prior to the Agreement, the Parties will negotiate provisions for the honouring of the Places of Religious Significance to Innu in the Lower Churchill Area that are likely to be negatively affected by the Lower Churchill Projects or by any Lower Churchill Subsequent Development. The costs of implementing such provisions shall be negotiated pursuant to Chapter 27 .

28.5.4 Responsibility for the costs of conservation, removal or preservation of Innu Archaeological Material found in the Lower Churchill Area, or in the case of Burial Sites, relocation and reburial of human remains found in the Lower Churchill Area, shall be the responsibility of the Developer or Subsequent Developer.

28.5.5 The Province is the [Permitting Authority]²⁴⁵ within the Lower Churchill Area.

Part 28.6 Lower Churchill Innu Impacts and Benefits Agreement and Lower Churchill Subsequent Impacts and Benefits Agreement

28.6.1 Subject to 28.6.3, any Lower Churchill Subsequent Development shall not commence until a Lower Churchill Subsequent Impacts and Benefits Agreement has been concluded by agreement or by arbitration under Part 28.6.

28.6.2 Participants are entitled to preferences with respect to training, employment and contracting opportunities related to the Lower Churchill Projects or any Lower Churchill Subsequent Development. These preferences have been established under and set out in the Lower Churchill Innu Impacts and Benefits Agreement or will be established under and set out in any Lower Churchill Subsequent Impacts and Benefits Agreement. Subject to disclosure to the Province of the provisions of any of these agreements respecting training, employment and contracting preferences, the Province shall introduce Provincial Legislation to ensure that these provisions are lawful and enforceable under Provincial Legislation. Such Provincial Legislation shall include the protection of training, employment and contracting preferences under Provincial Legislation.

²⁴⁵ Legal drafting. Intention is to refer to Permitting Authority as used in Chapter 18.

- 28.6.3 If the Developer is the Subsequent Developer, the Lower Churchill Subsequent Development shall not proceed until a Lower Churchill Subsequent Impacts and Benefits Agreement is agreed to or resolved through dispute resolution under the provisions of the Lower Churchill Innu Impacts and Benefits Agreement that apply in the event of termination of the Lower Churchill Innu Impacts and Benefits Agreement.
- 28.6.4 The Lower Churchill Innu Impacts and Benefits Agreement and any Lower Churchill Subsequent Impacts and Benefits Agreement shall be a contract under Provincial Law.
- 28.6.5 When the Province is ready to issue any Permit that would allow the construction phase of any Lower Churchill Subsequent Development to proceed, the Province shall give written notice to the Innu Government and the Subsequent Developer that the Permit is ready for delivery to the Subsequent Developer.
- 28.6.6 Subject to 28.6.3, the negotiation, or arbitration if any, of any Lower Churchill Subsequent Impacts and Benefits Agreement shall be based on the considerations set out in 21.5.5 and may provide for the matters referred to in 21.5.4.
- 28.6.7 If a Lower Churchill Subsequent Impacts and Benefits Agreement has not been concluded within 120 days of the date of notice under 28.6.5, or such longer period as the Innu Parties and the Subsequent Developer may agree, those matters in dispute between the Innu Parties and the Subsequent Developer, and any relevant documentation, shall be referred to an arbitration panel within fifteen (15) days of the establishment of the arbitration panel pursuant to 28.6.8.
- 28.6.8 The arbitration panel referred to in 28.6.7 shall consist of one (1) individual nominated by the Innu Parties and one (1) individual nominated by the Subsequent Developer. The Innu Parties and the Subsequent Developer will nominate their respective arbitrator within 150 days of the date of notice under 28.6.5, if arbitration under 28.6.7 is required. These two (2) nominees shall then select a third arbitrator by mutual agreement within thirty (30) days following the nomination of the second arbitrator. These three (3) arbitrators will comprise the arbitration panel.
- 28.6.9 Unless otherwise agreed by the Innu Parties and the Subsequent Developer, an arbitration decision shall be made within ninety (90) days of the establishment of the arbitration panel pursuant to 28.6.8.
- 28.6.10 If an arbitration decision is not made within the ninety (90) day period referred to in 28.6.9, or any other period agreed by the parties to the arbitration, then 21.5.13 and 21.5.16 apply to the Lower Churchill Subsequent Development as if it were a Major Development for the purposes of those sections.
- 28.6.11 Subject to Part 28.6, the arbitration provided for in Part 28.6 will be conducted in accordance with the *Arbitration Act* (Newfoundland and Labrador).

Part 28.7 Consultation with respect to the Lower Churchill Projects and Lower Churchill Subsequent Development

- 28.7.1 The Province and Canada shall, upon the request of an Innu Party to the Lower Churchill Innu Impacts and Benefits Agreement or any Lower Churchill Subsequent Development Impacts and Benefits Agreement, supply that Innu Party with the proposed terms and conditions for any environmental Permits required for the construction, operation or decommissioning of the Lower Churchill Projects or any Lower Churchill Subsequent Development.
- 28.7.2 The Province and Canada shall consult the Innu Government prior to issuing any of the Permits referred to in 28.7.1, including with respect to any proposed terms and conditions to be attached to such Permits, all in accordance with an environmental management agreement that shall be concluded prior to the issuance of any Permits to allow the construction of the Lower Churchill Projects or any Lower Churchill Subsequent Development.
- 28.7.3 Prior to the issuance by the Province or Canada of any environmental Permits required for the decommissioning of the Lower Churchill Projects or any Lower Churchill Subsequent Development, the Parties shall conclude a decommissioning environmental management agreement, pursuant to which the Province and Canada shall consult the Innu Government prior to issuing any such Permits, including with respect to any proposed terms and conditions to be attached to such Permits, all in accordance with that decommissioning environmental management agreement.

Chapter 29: Species at Risk, Endangered Species

(To be negotiated for Final Agreement)

Chapter 30: Labrador Innu Self-Government

Part 30.1 Definitions

30.1.1 In this Chapter:

“Administrative Agreement” means an agreement entered into pursuant to 30.11.6.

“Environment” means the components of the earth and includes:

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

“Environmental Emergency” means an uncontrolled, unplanned, accidental or unlawful release of a substance into the Environment, or the reasonable likelihood of such release, that:

- (a) has or may have an immediate or long-term harmful effect on the Environment;
- (b) constitutes or may constitute a danger to the Environment on which human life depends;
- (c) constitutes or may constitute a danger to human life or health;

Part 30.2 General

30.2.1 On the Effective Date, the Innu Government is established and becomes the successor of the Innu Nation²⁴⁶ for the purposes of this Agreement.

30.2.2 On the Effective Date, the Innu Community Governments are established on the Effective Date and shall replace the Band Councils.²⁴⁷

30.2.3 The structure of the Innu Government and Innu Community Governments shall be set out in the Agreement [and/or the Labrador Innu Constitution]²⁴⁸.

²⁴⁶ To be negotiated. Parties to review reference to “Innu Nation” in this Agreement.

²⁴⁷ To be negotiated. Tied to Taxation Chapter.

²⁴⁸ To be negotiated. Canada suggests referencing both the Agreement and the Innu Constitution. Innu note that the structure could be set out in both. NL would agree to referencing both if “consistent” is used in 30.3.2.

- 30.2.4 The Agreement shall include transition provisions, including those that address:
- (a) first elections for the Innu Government and Innu Community Governments;
 - (b) transfer of rights, assets, obligations and liabilities from the Innu Nation and Band Councils to the Innu Government and Innu Community Governments; and
 - (c) address transition from *Indian Act* (Canada) Bylaws to Innu Laws.

Part 30.3 The Labrador Innu Constitution

- 30.3.1 Innu shall establish the Labrador Innu Constitution.
- 30.3.2 The Labrador Innu Constitution shall be effective as the fundamental law of Innu to the extent that it is [consistent]²⁴⁹ with the Agreement.
- 30.3.3 The Labrador Innu Constitution shall be approved by the Innu prior to or at the same time as and is subject to the same requirements as the ratification vote of the Agreement.
- 30.3.4 The Labrador Innu Constitution shall provide for the following matters:
- (a) the establishment of a government for Innu and Labrador Innu Lands, to be known as the Innu Government, and the legislative and executive institutions of the Innu Government, including their composition, powers, and duties;
 - (b) the establishment of a local government for each of the Communities and matters related to their organization and administration, to be known as the Innu Community Governments;
 - (c) a guarantee of the right of Innu to participate in the institutions of Innu Government and Innu Community Governments;
 - (d) a requirement that the executive officers and the members of the legislative institutions of the Innu Government and the Innu Community Governments be responsible to Innu in accordance with principles of democracy;
 - (e) the establishment of the qualifications of and procedures for the selection of the executive officers and the election of members of the legislative institutions of the Innu Government and the Innu Community Governments;
 - (f) a requirement that the Innu Government and the Innu Community Governments be financially accountable to Innu, including the

²⁴⁹ To be negotiated. The Innu prefer to have "not inconsistent with" in connection with Innu cultural considerations. NL prefers "consistent with" as in LIA. See also 30.3.5(e).

establishment of a system of financial administration with standards comparable to those generally accepted for governments in Canada;

- (g) a requirement that the Innu Government and the Innu Community Governments establish rules respecting conflict of interest for executive officers, members of legislative institutions and officials and employees of the Innu Government and the Innu Community Governments that are comparable to those generally accepted for governments of similar size in Canada;
- (h) the establishment of procedures for challenges of an Innu Law; and
- (i) the amendment of the Labrador Innu Constitution by Innu, in accordance with principles of democracy.

30.3.5 The Labrador Innu Constitution may provide for:

- (a) the exercise of the jurisdictions and authorities of the Innu Government and the Innu Community Governments as set out in the Agreement or any of their respective capacities, rights and powers;
- (b) the relationships among the Innu Government and the Innu Community Governments;
- (c) the recognition of Innu customary law and the application of Innu customary law to Innu with respect to any matter within the jurisdiction and authority of the Innu Government and the Innu Community Governments as set out in the Agreement on condition that any recognition or application of Innu customary law shall be proclaimed, published and registered in accordance with Part 30.6; and
- (d) an Innu charter of human rights; and
- (e) [not inconsistent with]²⁵⁰ the Agreement, any other matter Innu may determine.

30.3.6 Subject to residency, age and other requirements under the Labrador Innu Constitution or under Innu Law, Participants are eligible to vote in Innu Government elections and to hold office in the Innu Government.

Part 30.4 Legal Status of Innu Government

30.4.1 The Innu Government and the Innu Community Governments are legal entities with the capacity, rights, powers and privileges of a natural person and may:

- (a) enter into contracts and agreements;

²⁵⁰ To be negotiated. The Innu prefer to have "not inconsistent with" in connection with Innu cultural considerations. NL prefers "consistent with" as in LIA. See also 30.2.3.

- (b) acquire and hold property or any interest therein and sell or otherwise dispose of that property or interest;
- (c) raise, borrow, invest and expend money;
- (d) sue and be sued;
- (e) form corporations and other legal entities under Federal Legislation or Provincial Legislation; and
- (f) do other things ancillary to the exercise of the capacities, rights, powers and privileges set out in 30.4.1.

Part 30.5 Registry of Laws

30.5.1 The Innu Government shall:

- (a) maintain a public registry of the Labrador Innu Constitution, Innu Laws, including Innu customary laws in respect of matters within the jurisdiction of the Innu Government, and Innu Community Laws;
- (b) provide Canada with copies of the Labrador Innu Constitution, Innu Laws and Innu Community Laws and any amendments to any of them in one of Canada's official languages as soon as practicable after they come into effect;
- (c) provide the Province with copies of the Labrador Innu Constitution, Innu Laws and Innu Community Laws and any amendments to any of them in English as soon as practicable after they come into effect; and
- (d) establish procedures for the proclamation and publication of Innu Laws.

30.5.2 Each Innu Community Government shall establish procedures for the proclamation and publishing of Innu Community Laws and maintain, in each Community, a public registry of Innu Community Laws.

Part 30.6 Delegation

30.6.1 The Innu Government may delegate the exercise of any of its law-making authorities to:

- (a) a school board, legal entity or [institution of the Innu Government];
- (b) an Innu Community Government;
- (c) Canada or the Province;
- (d) a municipality, school board, or other legal entity established by Canada or the Province; or
- (e) another Aboriginal government in Newfoundland and Labrador.

- 30.6.2 The Innu Government may delegate the exercise of any of its capacities, rights, powers and privileges, other than law-making authorities, to:
- (a) an agency, official, school board, legal entity or institution of the Innu Government;
 - (b) an Innu Community Government or any of its officials;
 - (c) Canada or the Province;
 - (d) a municipality, school board, or other legal entity established by Canada or the Province; or
 - (e) another Aboriginal government in Newfoundland and Labrador.
- 30.6.3 Any delegation by the Innu Government under 30.6.1 (b) to (e) and 30.6.2 (b) to (e) shall be effective only upon the written agreement of the delegate and may be terminated on written notice.
- 30.6.4 Any delegation under 30.6.1 and 30.6.2 shall be made in such a manner so as to retain public accountability to Innu electorate.
- 30.6.5 The Innu Government may receive a delegated authority by agreement, including a law-making authority.
- 30.6.6 Any delegation of authority to the Innu Government under 30.6.3 shall be effective only upon the written agreement of the Innu Government.
- 30.6.7 The terms and conditions of any delegation under Part 30.6 shall be set out in a written agreement.
- 30.6.8 The delegation of Innu Community Government authorities shall be set out in the Agreement [and/or the Innu Constitution]²⁵¹.
- Part 30.7 Boundaries of the Communities**
- 30.7.1 On the Effective Date, the boundaries of each of the Communities will be set out in a Map of the Atlas.
- 30.7.2 The boundaries of an Innu Community may be expanded [to adjacent lands]²⁵² at the request of an Innu Community Government with the consent of:
- (a) the Innu Government, for Labrador Innu Lands;
 - (b) the Province, for Provincial Crown Lands; or

²⁵¹ To be negotiated. Innu are proposing the addition of reference to the Innu Constitution. NL proposes outlining this provision similar to 30.6.1 in the Final Agreement. Canada – minimum requirements are set out in 30.6.1; NL ok subject to conclusion of issues in footnote at 30.3.2.

²⁵² To be negotiated. Innu propose to delete words in brackets. Under review by Province.

- (c) Canada, for lands under the administration and control of Canada

Part 30.8 General Provisions Respecting Innu Government Legislative Jurisdiction

30.8.1 The Innu Government may incorporate by reference within an Innu Law, and an Innu Community Government may incorporate by reference within an Innu Law, any Federal Legislation or Provincial Legislation in respect of a matter within its jurisdiction under the Agreement.

30.8.2 For greater certainty, the authority of the Innu Government to make laws in respect of a matter set out in the Agreement includes the authority to make laws and to do other things that are ancillary or necessarily incidental to exercising its authority to make laws.

30.8.3 The Innu Government may make laws in relation to privacy and access to information held by the Innu Government.

Part 30.9 International Legal Obligations

30.9.1 The Agreement shall address the issue of consistency of Innu Laws and Innu Government actions with Canada's international legal obligations.

Part 30.10 Powers of the Innu Government in relation to Environmental Protection

30.10.1 The Innu Government may make laws for and in relation to the protection of the Environment in Labrador Innu Lands.

[30.10.2 An Innu Law under 30.10.1 shall not apply to any undertaking in existence on the Effective Date, except to:

- (a) any undertaking where, after the Effective Date, there are or may reasonably be expected to be one of more of the following:
 - (i) significant increases in the quantities of contaminants discharged from that undertaking; or
 - (ii) significant changes in the nature of contaminants discharged from that undertaking;
- (b) any undertaking where, as a result of any proposed change, after the Effective Date, there are other negative effects upon any one or more of the following:
 - (i) land, water or air, including all layers of the atmosphere;
 - (ii) organic or inorganic matter or living organisms; or
 - (iii) any part or combination of the preceding components of the earth and the interrelationships between two (2) or more of them; and
- (c) any undertaking that is located in a Community^{253, 254}

²⁵³ To be negotiated. NL to identify any undertakings which it is concerned about in relation to this

30.10.3 If there is a Conflict between an Innu Law under 30.10.1 and a Federal Law or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.

30.10.4 The Innu Government may enter into agreements with any Person for the prevention of, preparedness for, response to and recovery from an Environmental Emergency occurring in Labrador Innu Lands.

Part 30.11 Innu Government Laws

30.11.1 Prior to the Agreement, the Parties will negotiate the following law-making authorities of the Innu Government and Innu Community Governments:

- (a) Innu Government legislative jurisdictions, including conflict of laws;
- (b) Innu Community Government legislative jurisdictions, including conflict of laws;
- (c) local matters, including the provision of programs and services, in Labrador Innu Lands and the Communities;
- (d) establishment of governing structures, including the administration, management and operation of Innu Government and Innu Community Governments;
- (e) Innu Government and Innu Community Government assets;
- (f) elections and leadership selection processes;
- (g) administration and enforcement of justice, including enforcement of Innu Laws and Innu Community Laws;
- (h) policing;
- (i) Innu Court, including advocacy and appearance before Innu Court and other dispute resolution services;
- (j) corrections and correctional facilities;
- (k) Innu language and culture;
- (l) training by the Innu Government for Innu Participants;
- (m) education;

provision.

²⁵⁴ To be negotiated. Canada proposes that prior to the Agreement a list be prepared identifying the current undertakings to which these provisions would apply.

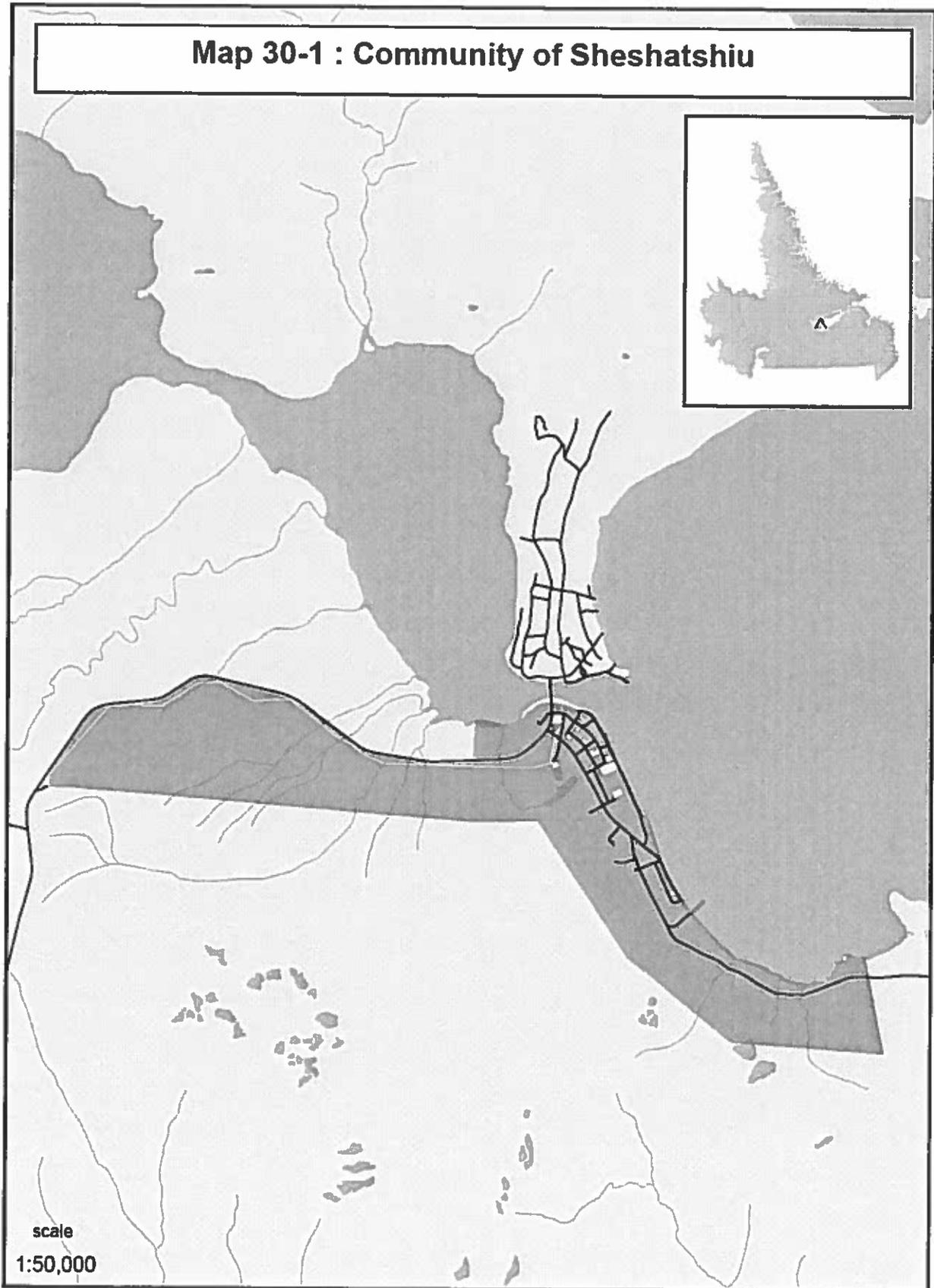
- (n) income support;
- (o) social, family, youth and children's services;
- (p) adoption and child welfare;
- (q) health;
- (r) solemnization of marriage;
- (s) family relationships, including matrimonial real property and domestic contracts;
- (t) housing, including landlord and tenant relations;
- (u) property rights on Labrador Innu Lands and Community Lands;
- (v) succession, wills and estates;
- (w) licensing, regulations and operation of businesses located on Innu lands;
- (x) Innu Government programs and services outside Labrador Innu Lands;
- (y) intergovernmental cooperation and other arrangements;
- (z) management of public works and infrastructure;
- (aa) public utility easements;
- (bb) alcoholic beverages and the detention of intoxicated persons;
- (cc) intoxication and control of intoxicants;
- (dd) gambling, gaming and lotteries;
- (ee) relations with individuals who are not Innu Participants;
- (ff) fire protection and fire protective services;
- (gg) emergency preparedness and emergency measures;
- (hh) buildings and structures;
- (ii) cemeteries and crematoria;
- (jj) guardianship and trusteeship;
- (kk) in addition to the law-making authorities set out in 5.10.1, other authorities related to the use, management, administration, control and protection of Labrador Innu Lands;

- (ll) management and administration of rights or benefits of Participants not already addressed in the Agreement-in-Principle;
 - (mm) land use planning, zoning and development;
 - (nn) the protection of Water supplies, including prevention and remediation of erosion;
 - (oo) discharge of firearms, other weapons and explosives;
 - (pp) control or prohibition of the transport of dangerous substances;
 - (qq) agriculture; and
 - (rr) other matters that may be agreed to by the Parties.
- 30.11.2 Law-making authorities negotiated under 30.11.1 will be in addition to law-making authorities set out in the other Chapters of the Agreement.
- 30.11.3 Where the Parties agree, the Agreement will contain the results of the negotiations pursuant to 30.11.1.
- 30.11.4 The Innu Government may establish programs and services in order to promote or participate in economic development or tourism.
- 30.11.5 The Agreement will provide for a mechanism that will set out the procedure for the orderly transition for the exercise of the law-making authorities that shall be exercised by the Innu Government set out in 30.11.1 and in other chapters of the Agreement.
- 30.11.6 For greater certainty, the determination of the scope of the law-making authorities in relation to the subject matters set out in 30.11.1 and included in the Agreement and the scope of the law-making authorities set out in other Chapters of the Agreement shall include determining the matters that are excluded from the law-making authorities and determining any limits that may be placed on the law-making authorities.
- 30.11.7 The Innu Government may enter into Administrative Agreements with Canada, the Province or both to provide for the management, administration and delivery of social or other programs and services to Participants and, where agreed, other persons.
- 30.11.8 An Administrative Agreement shall:
- (a) be legally binding;
 - (b) not be a treaty within the meaning of s. 35 of the *Constitution Act 1982*; and
 - (c) not limit, abrogate or derogate from the law-making authorities of the Innu Government or Innu Community Governments as set out in the Agreement

or from the treaty [or Aboriginal rights to self-government]²⁵⁵ of the Innu under s. 35 of the *Constitution Act, 1982*.

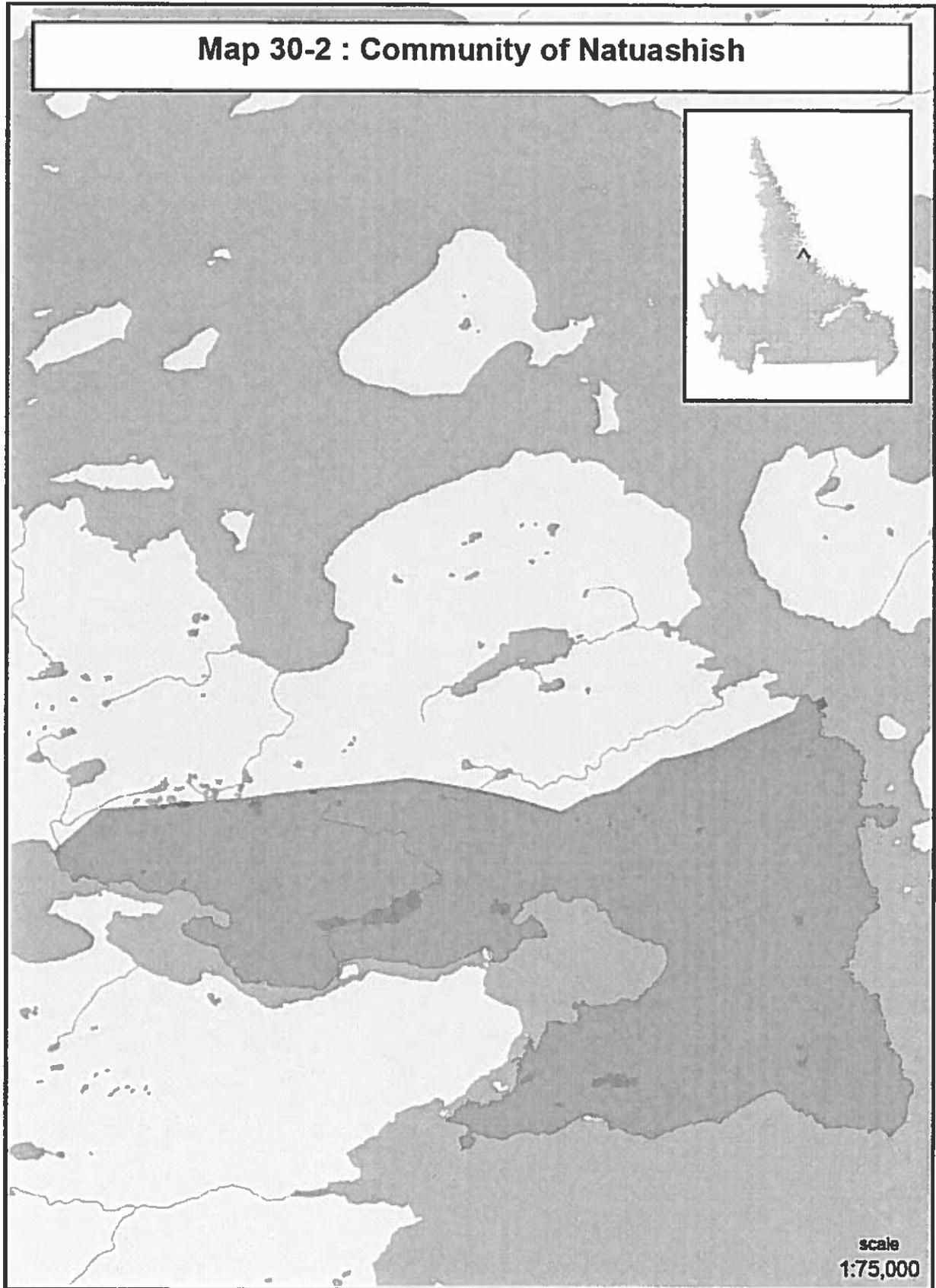
30.11.9 Administrative Agreements shall contain termination provisions to address situations in which Agreed Upon Programs and Services are provided to Participants and, where agreed, other persons under Fiscal Financing Arrangements entered into pursuant to Chapter 20.

²⁵⁵ To be negotiated. The Parties to review following the results of self-government and certainty negotiations.



Labrador Innu Land Claims Agreement

Labrador Innu Self-Government



Labrador Innu Land Claims Agreement

Labrador Innu Self-Government

Chapter 31: Approval of the Agreement-in-Principle

Part 31.1 Definitions

31.1.1 In this Chapter:

“Eligible Voter” means a person who:

- (a) is registered on the Innu Nation voters list, which will list individuals ordinarily resident in or affiliated with Sheshatshiu or Natuashish; and
- (b) is of the full age of eighteen (18) years or older on the date on which the approval vote is held.

Part 31.2 General

31.2.1 Once the Agreement-in-Principle has been initialed by the negotiators of the Innu Nation, Canada and the Province it shall be submitted to the Parties and the Parties shall consider it for approval.

31.2.2 The Agreement-in-Principle shall be signed by the Parties when they have approved it in accordance with this Chapter.

31.2.3 The Parties acknowledge that:

- (a) the Upper Churchill Redress Agreement among the Province, Nalcor Energy, Innu Nation, Mushuau Innu First Nation and Sheshatshiu Innu First Nation;
- (b) the Lower Churchill Innu Impacts and Benefits Agreement; and
- (c) this Agreement-in-Principle

are being voted on by the members of the Innu Nation in the same vote. If the three agreements referred to in a) to c) are not approved by the members of the Innu Nation in this vote, none of these agreements shall have been approved by the members of the Innu Nation.

Part 31.3 Innu Approval Process

31.3.1 The Innu Nation board of directors shall submit the Agreement-in-Principle to a vote pursuant to 31.3.3 within three (3) months of the initialing of the Agreement-in-Principle by negotiators of the Innu Nation, Canada and the Province.

31.3.2 The members of the Innu Nation will have approved the Agreement-in-Principle if:

- (a) a majority of the Eligible Voters for Sheshatshiu vote, and at least sixty percent (60%) of these Eligible Voters that actually vote, vote in favour of approving the Agreement-in-Principle; and
- (b) a majority of the Eligible Voters for Natuashish vote, and at least sixty percent (60%) of these Eligible Voters that actually vote, vote in favour of approving the Agreement-in-Principle.

31.3.3 The vote of the members of the Innu Nation on the Agreement-in-Principle shall be by secret ballot.

31.3.4 Polling stations shall be located in Sheshatshiu, Natuashish, and other locations as may be determined by the Innu Nation.

31.3.5 The Innu Nation board of directors shall forthwith declare that the Agreement-in-Principle has been approved and shall forthwith direct the duly authorized officers of the Innu Nation to sign the Agreement-in-Principle if it is approved by the members of the Innu Nation in a vote conducted in accordance with this Part.

31.3.6 The Innu Nation will have approved the Agreement-in-Principle when the Agreement-in-Principle is signed by the duly authorized officers of the Innu Nation.

Part 31.4 Government Approval Process

31.4.1 Canada and the Province shall consider the Agreement-in-Principle for approval once the Innu Nation has declared the Agreement-in-Principle approved pursuant to 31.3.5.

31.4.2 Canada will have approved the Agreement when the Agreement-in-Principle is signed by a Minister as authorized by Cabinet.

31.4.3 The Province will have approved the Agreement-in-Principle when the Agreement-in-Principle is signed by a Minister as authorized by Cabinet.

Labrador Innu Land Claims Agreement

Approval of the Agreement-in-Principle

Signed at _____, Newfoundland and Labrador on the _____ day
of _____ 2011

For Innu Nation, on behalf of the Innu of Labrador:

Witness

Grand Chief Joseph Riche

Witness

Deputy Grand Chief George Rich

Witness

Witness

For Her Majesty the Queen in right of Newfoundland and Labrador:

Witness

The Honourable Kathy Dunderdale
Premier

Witness

The Honourable Nick McGrath
Minister for Intergovernmental and
Aboriginal Affairs and Minister
Responsible for Labrador Affairs

For Her Majesty the Queen in right of Canada:

Witness

The Honourable John Duncan
Minister of Indian Affairs and
Northern Development




Newfoundland
Labrador

Canada

