

ENVIRONMENTAL IMPACT ASSESSMENT UNDER THE WESTERN ARCTIC (INUVIALUIT) LAND CLAIM

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Abstract: In 1984, the Canadian Government signed a comprehensive aboriginal land claim with the Inuvialuit (Inuit of the Western Arctic), this land claim, the Inuvialuit Final Agreement (IFA), is designed to achieve the protection of Arctic wildlife, environment and biological productivity; the preservation of Inuvialuit cultural identity and values; and the equal and meaningful involvement of Inuvialuit in the northern and national economy. One significant feature to the Inuvialuit Final Agreement is the establishment of 2 co-management agencies to deal with environmental screening and review in the Inuvialuit Settlement Region, the Environmental Impact Screening Committee and the Environmental Impact Review Board. Together, these bodies comprise an Environmental Impact Screening and Review Process. This process examines all proposed development activities occurring in the Inuvialuit Settlement Region. Since the establishment of this Environmental Impact Screening and Review Process in 1986, Operating guidelines and procedures have been developed and published, >150 development proposals have been screened, and 2 public reviews dealing with offshore drilling programs have been conducted. The process has made the application of Inuvialuit traditional knowledge, derived from its Inuvialuit membership and through local community consultation, and important part of environmental assessment in the region.

Resumen: En el año 1984, el gobierno de Canadá firmó un derecho de tierra comprensivo para los indígenas Inuvialuit (inuit del ártico oeste). El Acuerdo final de Inuvialuit, está diseñado para lograr la protección de la vida silvestre del Ártico, el ambiente y su productividad biológica, la preservación de la identidad y valores culturales de los Inuvialuit, e involucrar en forma igual y significativa los Inuvialuit en la economía noroccidental y nacional. Una característica significativa del Acuerdo Final de Inuvialuit es el establecimiento de dos agencias de manejo que revisen los asuntos ambientales en la región de colonización de los Inuvialuit. Las dos agencias son: el Comité de Revisión del Impacto Ambiental y la Junta de Revisión del Impacto Ambiental. En conjunto, esos cuerpos comprenden un proceso de revisión del impacto ambiental.

El proceso examina todas las propuestas del desarrollo de actividades que ocurren en la región de colonización. Desde el establecimiento de este proceso de revisión del impacto ambiental en el año 1986, los rendimientos y procedimientos de operación han sido desarrollados y publicados: más de 150 propuestas de desarrollo han sido revisadas, y dos revisiones públicas que tratan sobre programas de perforación petrolera fuera de la costa, han sido elaborados. El Proceso ha hecho que la aplicación de los conocimientos tradicionales de los Inuvialuit, derivado de la membresía de Inuvialuit y a través de la consulta a las comunidades locales, una parte importante para la asesoría ambiental en la región.

Key words: co-management, environmental assessment, Inuvialuit, review, screening, traditional knowledge, Western Arctic.

In 1984, the Canadian Government signed a comprehensive aboriginal land claim with the Inuvialuit. The contents of this agreement are detailed in the Western Arctic Claim: The Inuvialuit Final Agreement (Indian Affairs and Northern Development [IAND] 1984). We describe the environmental screening and review process set out in the Agreement and evaluate the success of the process from 1986 to 1993.

The authors are grateful to their colleagues, both past and present, on the Environmental Impact Screening Committee and the Environmental Impact Review Board and to the staff of their Joint Secretariat in Inuvik, Canada for their support and advice in the preparation of this manuscript.

BACKGROUND

The area encompassed the IFA totals approximately 1,000,000 km² and is situated in the northwest corner of Canada. The area is called the Inuvialuit Settlement Region (ISR).

The ISR includes 6 communities: Paulatuk, Holman, Sachs Harbour and Tuktoyuktuk that are inhabited primarily by the Inuvialuit; Aklavik, inhabited by the Inuvialuit and their Indian neighbours the Gwich'in and Inuvik, the government centre and largest community that is inhabited by Inuvialuit, Gwich'in, and non-natives. Most of the onshore areas within the ISR and the southern Beaufort Sea were subject to intensive oil and gas exploration from the late 1960s, after the discovery of the Prudhoe Bay oilfield, until the late 1980s when the world price for petroleum fell back from its peak. In the early years of oil and gas exploration (1968 to 1984) the federal government issued all the permits and licenses required by the companies to operate in the IAR. Government officials consulted the communities and through occasional visits to the communities and through letters to the elected community officials. This consultation was not deemed adequate by the Inuvialuit. The Inuvialuit desired more control over development activities within their traditional hunting territory because they believed these activities threatened the wildlife upon which they depended.

Early in this exploration period Inuvialuit hunters and trappers voiced concerns about the land use practices of the companies. These concerns led to the federal government introducing environmental land use regulations for the Northwest Territories and the Yukon in 1972. These regulations were still administered exclusively by federal officials.

In 1973, Canada announced a new policy that permitted northern native groups, among others in Canada, to seek compensation in the form of a comprehensive land claim for the land they believed the federal government had taken from them. In 1977, the Inuvialuit began to negotiate such a land claim. In 1978, an agreement-in-principle was reached, but it was not ratified by the Parliament of Canada because of changes in the federal government. In 1984 a second agreement, was reached. The IFA was ratified by the passage of the Western Arctic (Inuvialuit) Claims Settlement Act (Canada 1984).

INUVALUIT FINAL AGREEMENT

The IFA is protected by the Constitution of Canada, and its enabling Act gives the IFA precedence over all other legislation in the event of a conflict between it and other acts. The goals of the IFA were to preserve Inuvialuit cultural identity and values within a changing northern society; to enable Inuvialuit to be equal and meaningful participants in the northern and national economy and society; and to protect and preserve the Arctic wildlife, environment, and biological productivity. The IFA meets these goals by granting land rights and economic benefits to the Inuvialuit and by establishing various bodies that permit the Inuvialuit and the government to jointly manage fish and wildlife and to carry out environmental screening and review.

ENVIRONMENTAL SCREENING AND REVIEW WITHIN THE ISR

The IFA set up 2 co-management bodies: the Environmental Impact Screening Committee (EISC) and the Environmental Impact Review Board (EIRB), for the purpose of environmental impact assessment. The EISC and EIRB have the same structure, each body has 7 members. The governments of Canada, Yukon and Northwest Territories recommend 1 member each. The Inuvialuit from each community and a full time chairman appoints 3 members. The chairman of each body is appointed by the Government of Canada, with the consent of the Inuvialuit.

Within the ISR the Environmental Impact Screening and Review Process is a 2 stage impact assessment process that screens all development proposals to determine whether there is the potential for significant negative environmental impact, and if there is, subjects that specific proposal to further detailed public assessment and review.

The IFA defines a development as

a)... any commercial or industrial undertaking or venture, including support and transportation facilities relating to the extraction of non-renewable resources from the Beaufort Sea, other than commercial wildlife harvesting; or b) any government project, undertaking or construction whether federal, territorial, provincial, municipal, local or by any Crown agency or corporation, except government projects within the limits of communities not directly affecting wildlife resources outside those limits and except government wildlife enhancement projects (IAND 1984:I)

No license or approval can be issued by any government regulatory or approval authority unless the provisions of the Environmental Impact Screening and Review Process have been complied with. Therefore, permission to proceed with any aspect of a proposed development must wait until the Inuvialuit, through their membership in the EISC and EIRB, have exercised their fight to meaningful participation in the impact assessment of the development.

The screening process is as follows.

1. The proponent of any activity in the ISR is encouraged to complete a community consultation program to identify and deal with local concerns and potential conflicts before submitting a project description to the EISC (EISC 1987),
2. The EISC determines whether or not the proposed activity actually needs to be screened. Not all submissions require screening.
3. The EISC seeks advice concerning the project's impacts from its own information network. This network includes government and community organizations, Inuvialuit bodies, joint management agencies, and resource staff. The Screening committee, as a matter of policy, seeks input from the Inuvialuit hunters and trappers in the communities to be impacted by the activity.
4. If a project submission is to be screened, a screening panel is established from among the members of EISC.

Most screening panels make a decision at the same meeting at which the panel is established. The EISC's Annual Activity Reports indicate that 98% of all projects submitted are processed within 60 days of submission.

The EISC can make 1 Of 3 decisions.

1. The development will have no significant negative impact and may proceed without further environmental impact assessment and review.
2. The development could have significant negative environmental impact and must be subject to further environmental impact assessment and review.
3. The development proposal has deficiencies of a nature that warrant a termination of its consideration by the EISC and the submission of another project description.

If the EISC decides that a proposal may cause significant negative environmental impact, the project can be referred to the EIRB for more detailed, public, environmental impact assessment. Of the 9 submissions referred to the EIRB only 2 advanced to the public review stage (EIRB 1989, 1990). The other projects have been withdrawn or restructured.

The EISC has the option of referring a project to another assessment body provided that the other body meets the following criteria. The review is conducted in public, with opportunity for Inuvialuit involvement. The process can recommend terms and conditions to the permitting agency, to set limits of liability if wildlife compensation issues are involved. If a project is referred to the Environmental Impact Review Board then the EIRB will establish a review panel from its regular members to conduct a review.

This review is carried out in public. Any organization or individual with an interest in the review is given the opportunity to comment before the review panel. The review panel seeks technical advice from third party consultants and makes that advice public. The review panel may ask government regulatory agencies to explain and justify their procedures and practices to the review panel.

The IFA requires that the review panel review all projects referred to it. On the basis of the evidence and information provided, the panel must recommend whether or not the development should proceed and, if so, on what terms and conditions, including mitigative and remedial measures. If wildlife habitat of wildlife harvesting activities are to be affected, the review panel must recommend specific terms and conditions relating to mitigative and remedial measures and estimate the potential liability of the developer based on a worst-case scenario for the project. The review panel may also recommend that the development should be subject to further assessment and review.

The government authority responsible for allowing the project to proceed must accept, reject, or modify the recommendation of the EIRB in writing, and make its determination public within 30 days of receiving the EIRB decision.

DISCUSSION

The screening and review process described above has been in operation for 7 years. Over 150 activities have been screened and 2 major reviews have been conducted.

Challenges do remain. They include the need to integrate the screening and review process with neighbouring review processes, the need to educate new prospective developers with respect to the requirements of the IFA and the continuing need to expeditiously deal with any new application.

We believe that the screening and review process established by the IFA has been successful in several respects, most significantly in involving Inuvialuit in the environmental screening process. It has brought the traditional knowledge of the local people and their views concerning the environment to the attention of developers and researchers and made them aware of government gaps in their regulatory network, protecting the wildlife of the ISR, and monitoring the activities of developers and researchers within the ISR.

The environmental screening process that we have described is a co-management model that ensures the meaningful involvement of the indigenous people in controlling development activities within their settlement region. Their traditional ecological knowledge is an integral component in the screening process and this enables a more balanced development regime to be flowed, which reflects the principles of wildlife conservation and sustainable use.

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