

PART IV DEVELOPMENT AND ECONOMIC OPPORTUNITIES

CHAPTER 18 DEVELOPMENT IMPACT

18.1 Definitions

18.1.1 In this chapter:

« *Certificat* » "**Certificate**" means a certificate issued by the EMRIRB pursuant to subsections 18.5.12 and 18.6.17;

« *Écosystémique* » "**Ecosystemic**" means anything relating to the complex of a natural community of living organisms and its environment functioning as an ecological unit in nature;

« *Ministre* » "**Minister**", unless otherwise specified, means the federal or territorial Minister having the jurisdictional responsibility for authorizing a project to proceed; however, the governments of Canada and Nunavut may, within their respective jurisdictions, designate a single Minister to be responsible for the EMRIRB and to perform all functions assigned to "the Minister";

« *Réapprovisionnement ordinaire des communautés* » "**Normal Community Resupply**" means marine transportation whose primary purpose is the delivery to communities in Eeyou Istchee of foodstuffs, household goods, construction materials for housing and other community-oriented facilities, and related goods and materials;

« *Promoteur* » "**Proponent**", in respect of a Project Proposal, means the Person that proposes the project.

18.2 Eeyou Marine Region Impact Review Board (EMRIRB)

Establishment

18.2.1 An Eeyou Marine Region Impact Review Board (EMRIRB) is hereby established as an institution of public government.

Responsibility for the operation of the EMRIRB shall vest in the members of the EMRIRB.

Functions

- 18.2.2 The primary functions of the EMRIRB shall be:
- a) to screen Project Proposals in order to determine whether or not a review is required;
 - b) to gauge and define the extent of the regional impacts of a project, such definition to be taken into account by the Minister in making his or her determination as to the regional interest;
 - c) to review the Ecosystemic and socio-economic impacts of Project Proposals;
 - d) to determine, on the basis of its review, whether Project Proposals should proceed, and if so, under what terms and conditions, and then report its determination to the Minister; in addition, the EMRIRB's determination with respect to socio-economic impacts unrelated to Ecosystemic impacts shall be treated as recommendations to the Minister; and
 - e) to monitor projects in accordance with the provisions of section 18.7.
- 18.2.3 In light of Chapter 19, the mandate of the EMRIRB shall not include the establishment of requirements for socio-economic benefits.
- 18.2.4 The EMRIRB shall carry out such other functions as are identified or contemplated in this Agreement, and such additional functions as may be agreed to from time to time by a GDO and Government or as may be set out in Legislation.

Primary Objectives

- 18.2.5 In carrying out its functions, the primary objectives of the EMRIRB shall be at all times to protect and promote the existing and future well-being of the residents in the EMR, and of the coastal Cree communities of Eeyou Istchee and of their members and to

protect the Ecosystemic integrity of the EMR. The EMRIRB shall take into account the well-being of residents of Canada outside the EMR.

Membership and Mode of Appointment

18.2.6 The EMRIRB shall be a board composed of five (5) members, one (1) of whom shall be the chairperson. The members shall be appointed as follows:

- a) two (2) members shall be appointed by the federal Minister responsible for Indian and Northern Affairs, upon nomination by the GDO;
- b) one (1) member shall be appointed by a Minister of the government of Canada;
- c) one (1) member shall be appointed by the Minister responsible for Renewable Resources of the government of Nunavut;
- d) from nominations agreed to and provided by members appointed under a) to c) above, the chairperson shall be appointed by the federal Minister responsible for Indian and Northern Affairs in consultation with the government of Nunavut and the GDO; and
- e) in the nomination and appointment of a chairperson, preference shall be given to residents of Eeyou Istchee where candidates equally qualify.

For greater certainty, a member appointed under paragraphs a) to c) above may be appointed as the chairperson, and in such circumstance that member shall be replaced on the EMRIRB in the manner provided in subsection 18.2.10.

18.2.7 In the initial appointment of the EMRIRB members, one (1) member under paragraph 18.2.6 a), one (1) member under paragraph 18.2.6 b) shall be appointed for three (3) years, and the other members under paragraphs 18.2.6 a) and c) shall be appointed for four (4) years. Thereafter, all appointments shall be for a term of three (3) years, except that any member appointed to replace any member whose term has not expired shall be appointed for the balance of the term of his or her predecessor.

- 18.2.8 The chairperson shall be appointed for a three (3)-year term.
- 18.2.9 Members of the EMRIRB may be removed from office at any time for cause. A cause of removal may include circumstances where a member of the EMRIRB misses two consecutive meetings of the EMRIRB with at least thirty (30) days between both meetings.
- 18.2.10 Where a vacancy occurs, a replacement member may be nominated and appointed pursuant to the provisions of subsection 18.2.6 for the remainder of the term of the former member.
- 18.2.11 Members of the EMRIRB may be reappointed.
- 18.2.12 Members of the EMRIRB shall perform their duties in accordance with:
- a) an oath following the form set out in Schedule 18-2, taken and subscribed before assuming office, before an officer authorized by law to administer oaths;
 - b) relevant Legislation relating to conflict of interest, provided that no board member who is Cree shall be considered biased solely because the member is a Cree; and
 - c) the terms of this Agreement.
- 18.2.13 Additional members may be appointed from time to time in the same manner and ratio as set out in paragraphs 18.2.6 a), b) and c). Such members may be appointed for a specific purpose, or for a term not exceeding three (3) years.
- 18.2.14 The EMRIRB may constitute itself into panels consisting of two (2) or more EMRIRB members. Such panels shall be composed of an equal number of Government and GDO nominees. The EMRIRB may delegate to a panel all or any powers of the EMRIRB, including the right to hold hearings.

Head Office, Meetings

- 18.2.15 The head office of the EMRIRB shall be in Eeyou Istchee.

- 18.2.16 The EMRIRB shall, whenever feasible, meet in Eeyou Istchee.
- 18.2.17 The EMRIRB shall conduct its business in Canada's official languages as required by Legislation or policy and, upon request by any member, also in the Cree language.
- 18.2.18 The chairperson may convene a meeting of the EMRIRB at his discretion and shall convene such a meeting within twenty-one (21) days of receipt, from any three (3) members, of a written request indicating the purpose of such meetings.

Quorum, Voting

- 18.2.19 All decisions of the EMRIRB shall be decided by a majority of the votes cast.
- 18.2.20 Each member other than the chairperson shall have one (1) vote on any matter requiring a decision of the EMRIRB. If there is a tie vote, the chairperson shall vote on the matter.
- 18.2.21 Three (3) members of the EMRIRB, including a member appointed pursuant to paragraph 18.2.6 a), shall comprise a quorum.
- 18.2.22 Vacancies in the EMRIRB shall not impair the right of the remainder to act.

By-laws and Rules of Procedure

- 18.2.23 In establishing by-laws, rules and procedures the EMRIRB shall, to the extent possible consider and take into account the by-laws and rules of the Nunavut Impact Review Board and the Nunavik Marine Region Impact Review Board.
- 18.2.24 Subject to subsection 18.2.23, the EMRIRB, may make and shall publish its by-laws and rules of procedure respecting:
- a) the calling of meetings of the EMRIRB;

- b) the conduct of business at meetings of the EMRIRB including the requirements with respect to physical presence and the use of teleconferencing or like facilities;
- c) the establishment of special and standing committees of the EMRIRB, and the fixing of quorums for meetings thereof;
- d) the carrying on of the work of the EMRIRB, the management of its internal affairs, and the duties of its officers and employees;
- e) the procedures for making representations and complaints to the EMRIRB;
- f) the procedures and guidelines for collecting information and opinions;
- g) the procedures to be used and the admission of evidence at public hearings before the EMRIRB or the EMRIRB panels;
- h) the establishment of standard guidelines for preparation of impact statements;
- i) the form of an impact statement and the number of copies to be made available; and
- j) generally, the manner of conducting any business of or before the EMRIRB;

Co-ordination with adjacent institutions

18.2.25 Subject to this Agreement, the EMRIRB may coordinate the discharge of its powers, functions or duties with other similar institutions having jurisdiction over areas adjacent to the EMR.

18.2.26 The EMRIRB shall make best efforts to coordinate the discharge of its powers, functions or duties with adjacent institutions.

Public Hearings

18.2.27 In designing its by-laws and rules of procedure for the conduct of public hearings, the EMRIRB shall:

- a) to the extent consistent with the broad application of the principles of natural justice and procedural fairness, emphasize flexibility and informality, and, specifically
 - (i) allow, where appropriate, the admission of evidence that would not normally be admissible under the strict rules of evidence, and
 - (ii) give due regard and weight to the tradition of Cree oral communication and decision-making; and
- b) with respect to any classification of intervenors, allow full standing to a GDO.

18.2.28 The EMRIRB shall have the power to subpoena witnesses, documents and things in carrying out its responsibilities.

18.2.29 The EMRIRB shall conduct its public hearings in Canada's official languages as required by Legislation or policy and, upon request of any member, applicant or intervenor, also in the Cree language.

18.2.30 All necessary steps shall be taken by way of notice, dissemination of information, and scheduling and location of hearings to provide and promote public awareness of and participation at hearings.

Officers and Employees

18.2.31 The officers and employees necessary for the proper conduct of the EMRIRB, including experts or anyone having technical knowledge, may be appointed, and shall be remunerated by the EMRIRB recognizing that secondment of government staff may be appropriate in certain cases.

18.2.32 Such officers and employees shall be responsible to, and under the direction and control of the EMRIRB.

18.2.33 All officers and employees of the EMRIRB shall conform to the same rules respecting conflict of interest as members of the EMRIRB.

Costs of the EMRIRB

- 18.2.34 The costs of the EMRIRB shall be the responsibility of Government. The EMRIRB shall prepare an annual budget subject to review and approval by Government.

18.3 Relationship to the Land Use Planning Provisions

- 18.3.1 Where the EMRPC determines, pursuant to subsection 8.5.12, that a Project Proposal is in conformity with the land use plans, or a variance has been approved, the EMRPC shall, subject to subsections 18.3.2, 18.3.3 and 18.4.3, forward the Project Proposal with its determination and recommendations to the EMRIRB for screening.
- 18.3.2 Project Proposals falling within Schedule 18-1 shall be exempt from the requirement for screening by the EMRIRB. The EMRPC shall not forward such Project Proposals to the EMRIRB.
- 18.3.3 Notwithstanding subsection 18.3.2, the EMRPC may refer a Project Proposal falling within Schedule 18-1 to the EMRIRB for screening, where the EMRPC has concerns respecting the cumulative impact of that Project Proposal in relation to other development activities in a planning region.
- 18.3.4 The EMRIRB shall not screen Project Proposals that are not in conformity with land use plans, unless an exemption has been received under subsection 8.5.13 or a variance has been approved under subsection 8.5.12.
- 18.3.5 Subsections 18.3.1 to 18.3.4 shall apply where a land use plan has been approved pursuant to subsection 8.5.11. In the absence of an approved land use plan, all Project Proposals other than those that fall within Schedule 18-1, subject to subsection 18.3.3, shall be referred directly by the EMRPC to the EMRIRB for screening.

18.4 Screening of Project Proposals

- 18.4.1 Upon receipt of a Project Proposal, the EMRIRB shall screen the Project Proposal to determine whether it has significant impact

potential, and therefore whether it requires review under section 18.5.

18.4.2 In screening a Project Proposal, the EMRIRB shall be guided by the following principles:

- a) the EMRIRB generally shall determine that such a review is required when, in its judgment:
 - (i) the project may have significant adverse effects on the ecosystem, Wildlife habitat or Cree Harvesting activities;
 - (ii) the project may have significant adverse socio-economic effects;
 - (iii) the project will cause significant public concern; or
 - (iv) the project involves technological innovations for which the effects are unknown;
- b) the EMRIRB generally shall determine that such a review is not required when, in its judgment, the project is unlikely to arouse significant public concern; and
 - (i) the adverse Ecosystemic and socio-economic effects are not likely to be significant; or
 - (ii) the project is of a type where the potential adverse effects are highly predictable and mitigable with known technology; and
- c) in determining whether a review is required or not the EMRIRB shall give greater weight to the provisions of paragraph 18.4.2 a).

18.4.3 Any application for a component or activity of a Project Proposal that has been permitted to proceed in accordance with these provisions shall be exempt from the requirement for screening by the EMRIRB unless:

- a) such component or activity was not part of the original Project Proposal; or
- b) its inclusion would significantly modify the Project Proposal.

- 18.4.4 Upon receipt of a Project Proposal, the EMRIRB shall screen the Project Proposal and indicate to the Minister in writing and make public that:
- a) the Project Proposal may be processed without a review under section 18.5; the EMRIRB may recommend specific terms and conditions to be attached to any approval, reflecting the primary objectives set out in subsection 18.2.5;
 - b) the Project Proposal requires review under section 18.5; the EMRIRB shall identify particular issues or concerns which should be considered in such a review;
 - c) the Project Proposal is insufficiently developed to permit proper screening, and should be returned to the Proponent for clarification; or
 - d) the potential adverse impacts of the Project Proposal are so unacceptable that it should be modified or abandoned.

18.4.5 The EMRIRB shall carry out its responsibilities under subsection 18.4.4:

- a) where there is a legal requirement for a licensing authority to make a decision within a certain time period, within a time period that would allow the licensing authority to conform with that requirement;
- b) with the approval of the Minister, within a time period exceeding forty-five (45) days; or
- c) in any other situation, within forty-five (45) days.

18.4.6 Where the EMRIRB indicates to the Minister that a Project Proposal may be processed without review, the Project Proposal shall be processed under relevant Legislation, unless the Minister decides to refer it for such a review.

18.4.7 Within fifteen (15) days of receiving the EMRIRB determination that a Project Proposal may be processed without review, the Minister shall notify the EMRIRB if the Minister is referring or considering referring the Project Proposal for review. If the Minister does not notify the EMRIRB within this time period, the

Project Proposal may be processed without review. If the Minister notifies the EMRIRB that the Project Proposal is being referred or considered for referral for review, the Project Proposal shall not proceed. Following notification to the EMRIRB that the Minister is considering referring a Project Proposal for review, the Minister will either affirm the EMRIRB determination that the project proposal may be processed without review, refer the Project Proposal to the EMRIRB for review under section 18.5 or refer it to a federal panel for review under section 18.6.

Following the fifteen (15) day period, the EMRIRB shall advise the proponent that the Project Proposal may be processed without review or that it is being considered for referral.

18.4.8 Where the EMRIRB indicates to the Minister that a Project Proposal requires review, the Minister shall:

a) refer the Project Proposal to the Minister of the Environment of Canada for review, including a review of both socio-economic and Ecosystemic impacts, by a federal environmental assessment panel in accordance with section 18.6 where:

(i) the Project Proposal involves a matter of important national interest and a federal Minister determines that, for reasons stated in writing, the Project Proposal would be best reviewed under section 18.6, provided that:

A. a review pursuant to this subparagraph shall occur only on an exceptional basis and shall reflect the primary objectives of subsection 18.2.5;

B. such determination shall be made within ninety (90) days of the indication from the EMRIRB to the Minister that the Project Proposal requires review or within a further consecutive ninety (90) day period where the federal Minister notifies the EMRIRB in writing within the first ninety (90) days that such an extended period is required to make the determination; and

C. such determination shall be made following consultation with the Minister of the Environment of Canada, the territorial Minister responsible for the environment and the EMRIRB;

or:

(ii) the Project Proposal is to be carried out partly within the EMR and partly outside the EMR, unless the federal Minister, the Minister of the Environment of Canada and the EMRIRB agree that the Project Proposal will be reviewed pursuant to section 18.5; or

b) where a Project Proposal is not to be reviewed by a federal environmental assessment panel pursuant to paragraph a) above, refer the Project Proposal to the EMRIRB for a review of the Ecosystemic and socio-economic impacts in the EMR.

18.4.9 Where the EMRIRB indicates to the Minister that a Project Proposal should be returned to the Proponent for clarification, the Minister shall return the Project Proposal to the Proponent for clarification and resubmission to the EMRIRB to be dealt with in accordance with paragraph 18.4.4 a), b) or d).

18.4.10 Where the EMRIRB indicates to the Minister that a Project Proposal should be modified or abandoned, the Minister, after Consultation with the EMRIRB, shall:

a) return the Project Proposal to the Proponent for modification and resubmission to the EMRIRB to be dealt with in accordance with subsection 18.4.4;

b) where it appears to be in the national or regional interest that a Project Proposal be reviewed, refer the Project Proposal for review as provided in paragraph 18.4.8 a) or b) accompanied by written reasons for that decision; or

c) inform the Proponent that the Project Proposal should be abandoned.

18.5 **Review of Project Proposals by the EMRIRB**

18.5.1 In sending a Project Proposal for review, the Minister may identify particular issues or concerns which the EMRIRB shall consider in such a review. This shall not limit the EMRIRB from reviewing any matter within its mandate.

18.5.2

When a Project Proposal has been referred to the EMRIRB by the Minister for review, the EMRIRB shall, upon soliciting any advice it considers appropriate, issue guidelines to the Proponent for the preparation of an impact statement. It is the responsibility of the Proponent to prepare an impact statement in accordance with any guidelines established by the EMRIRB. Where the original Project Proposal submitted by the Proponent for screening contains the information required for an impact statement, the EMRIRB may accept the original Project Proposal instead of requiring the preparation of an impact statement. Where appropriate, an impact statement shall contain the following:

- a) project description, including the purpose and need for the project;
- b) anticipated Ecosystemic and socio-economic impacts of the project;
- c) anticipated effects of the project on the Environment and vice versa;
- d) steps which the Proponent proposes to take including any contingency plans, to avoid and mitigate adverse impacts;
- e) steps which the Proponent proposes to take to optimize benefits of the project, with specific consideration being given to expressed community and regional preferences as to benefits;
- f) steps which the Proponent proposes to take to compensate interests adversely affected by the project;
- g) the monitoring program that the Proponent proposes to establish with respect to Ecosystemic and socio-economic impacts;
- h) the interests in Lands, Water or Seawater which the Proponent has secured, or seeks to secure;
- i) options for implementing the Project Proposal;
- j) anticipated effects of the project on Wildlife and the use of Wildlife by Crees;
- k) report on discussions carried out and agreements reached with concerned Cree communities;

- l) a summary of the provisions and the main conclusions of the impact statement; and
- m) any other matters that the EMRIRB considers relevant.

Hearings

18.5.3 The EMRIRB may conduct its review by means of correspondence, public hearings or such other procedures as it deems appropriate to the nature of the project and range of impacts.

Time Frames

18.5.4 The Minister may propose priorities and reasonable time frames for completion of the reviews.

Matters Taken into Account

18.5.5 The EMRIRB shall, when reviewing any Project Proposal, take into account all matters that are relevant to its mandate, including the following:

- a) whether the project would enhance and protect the existing and future well-being of residents of the EMR, of individuals using the EMR, of the coastal Cree communities of Eeyou Istchee and of their members taking into account the interests of other Canadians;
- b) whether the project would unduly prejudice the Ecosystemic integrity of the EMR;
- c) whether the Project Proposal reflects the priorities and values of the individuals resident in or using the EMR and of the coastal Cree communities of Eeyou Istchee and of their members;
- d) steps which the Proponent proposes to take to avoid and mitigate adverse impacts;
- e) steps the Proponent proposes to take, or that should be taken, to compensate interests adversely affected by the project;

- f) posting of performance bonds;
- g) the monitoring program that the Proponent proposes to establish, or that should be established, for Ecosystemic and socio-economic impacts, including tracking the effectiveness of the steps referred to in paragraphs d) and e) above; and
- h) steps which the Proponent proposes to take, or that should be taken, to restore Ecosystemic integrity following project abandonment including a procedure of community input for developing and implementing close out plans.

EMRIRB Report

18.5.6 After reviewing the Project Proposal, the EMRIRB shall make public and issue a report to the Minister and the Proponent containing:

- a) its assessment of the project and its impacts;
- b) its determination as to whether or not the project should proceed based on its assessment under paragraph a) above; and
- c) in the event the project were to proceed, terms and conditions reflecting the primary objectives set out in subsection 18.2.5.

18.5.7 Upon receipt of the EMRIRB report, the Minister shall:

- a) accept the report of the EMRIRB as to whether or not the project should or should not proceed, including terms and conditions;
- b) where the EMRIRB has determined that a project should proceed, reject that determination on the basis that the Project Proposal is not in the national or regional interest; the Proponent shall be so advised by the EMRIRB; or
- c) where the EMRIRB has determined that a project should proceed, reject the report on the grounds that:

- (i) any of the terms and conditions are more onerous than necessary or insufficient to mitigate to an acceptable level the Ecosystemic and socio-economic impacts; or
- (ii) the terms and conditions are so onerous that they would undermine the viability of a project that is in the national or regional interest;

and in such situations the EMRIRB shall reconsider the terms and conditions under which the project should be approved in light of the Minister's reasons;

- d) where the EMRIRB has determined that a project should not proceed, reject that determination on the grounds that the project should have been approved because of its importance in the national or regional interest; thereupon, the Minister shall refer the report back to the EMRIRB to consider terms and conditions which should be attached to any project approval; or
- e) where the report is deficient with respect to Ecosystemic and socio-economic issues, refer the report back to the EMRIRB for further review or public hearings; upon such further review or hearings, the EMRIRB shall submit a further report to the Minister which shall be accepted or rejected in accordance with paragraphs a), b), c) or d) above.

18.5.8 Upon considering or reconsidering the terms and conditions of a project approval further to paragraphs 18.5.7 c) or d), the EMRIRB shall:

- a) within forty-five (45) days, or such time as agreed upon with the Minister, make any alterations it considers appropriate;
- b) refer its revised report back to the Minister; and
- c) make its revised report available to the public.

18.5.9 Upon receipt of a revised EMRIRB report under subsection 18.5.8, the Minister shall:

- a) accept the terms and conditions; or

- b) reject or vary the terms and conditions, in whole or in part, on the grounds set out in subparagraph 18.5.7 c) (i) or (ii).

- 18.5.10 The Minister shall supply the EMRIRB with written reasons for every decision. The EMRIRB shall make these reasons public.
- 18.5.11 Notwithstanding subsections 18.5.7 and 18.5.9, the EMRIRB's determination with respect to socio-economic impacts unrelated to Ecosystemic impacts shall be treated as recommendations to the Minister, which may be accepted, rejected or varied by the Minister without limitation to the grounds set out in subsections 18.5.7 and 18.5.9.
- 18.5.12 Upon completion of the process described in subsections 18.5.1 to 18.5.11 where it has been determined that a project should proceed, the EMRIRB shall issue a project Certificate including any terms and conditions which have been accepted or varied by the Minister.

18.6 Review by a Federal Environmental Assessment Panel

- 18.6.1 Where the Minister under paragraph 18.4.8 a) decides to refer a Project Proposal to the Minister of the Environment of Canada for public review by a federal environmental assessment panel, the panel shall conduct its review in accordance with the provisions of section 18.6 and with any other procedures, principles and general practices that provide at least the same opportunity for an open and comprehensive public review as was provided by the *Environmental Assessment and Review Process Guidelines Order* (S.O.R./84-467, 22 June, 1984).

Membership on Panels

- 18.6.2 For a Project Proposal within the EMR, the Minister of the Environment of Canada shall be free to appoint members to a panel in accordance with the Minister's general practice, except that at least one quarter (1/4) of the panel members shall be appointed from a list of nominees given to the Minister of the Environment of Canada by the GDO, and at least one quarter (1/4) from a list of nominees given to the Minister of the Environment of Canada by the appropriate Minister of the

government of Nunavut. Nothing shall prevent the GDO or the Minister of the government of Nunavut from nominating candidates who are already members of the EMRIRB.

18.6.3 When a Project Proposal would take place both inside the EMR and an adjacent area used by another aboriginal group or groups, at least one quarter (1/4) of the panel members shall be appointed from nominees of the GDO and the other relevant aboriginal group or groups, in accordance with any agreement between the GDO and the other aboriginal group or groups.

18.6.4 Members of panels shall:

- a) be unbiased and free of any potential conflict of interest relative to the Project Proposal under review; for greater certainty no panel member who is a Cree shall be considered biased solely because the panel member is a Cree; and
- b) have special knowledge and experience relevant to the anticipated technical, environmental or social effects of the Project Proposal under review.

Guidelines

18.6.5 Once constituted, a panel may issue to the project Proponent a set of guidelines for the preparation of a statement by the Proponent on Ecosystemic and socio-economic impacts. Any such guidelines shall, where appropriate, require the statement to contain information with respect to those matters listed in subsection 18.5.2. The EMRIRB shall review the guidelines and provide input into their development.

18.6.6 The panel shall ensure that the EMRIRB has adequate opportunity to review the Proponent's impact statement prior to commencement of public hearings, and the panel shall take into account any recommendations or concerns that the EMRIRB has identified.

Hearings

18.6.7 In the conduct of its public hearings under these provisions, a panel shall be bound *mutatis mutandis* by subsections 18.2.25,

18.2.27 and 18.2.28. The panel's powers, including any powers of subpoena, shall not be less than those available to federal environment assessment and review panels established under Laws of General Application.

Relevant Factors

18.6.8 The panel, when assessing any Project Proposal, shall take into account all matters that are relevant to its mandate, including as appropriate those matters listed in subsection 18.5.5.

Report

18.6.9 Upon completion of its review, the panel shall forward its report to the Minister of the Environment of Canada and the Minister, who shall make it public and who shall forward a copy to the EMRIRB.

18.6.10 Upon receipt of the report of the panel, the EMRIRB shall have sixty (60) days to review the report and forward its findings and conclusions to the Minister with respect to Ecosystemic and socio-economic impacts in the EMR. The EMRIRB may identify deficiencies in the panel report, additional terms, conditions and mitigative measures that should be attached to any project approval, additional data requirements, and any other conclusions deemed pertinent by the EMRIRB including whether or not the Project Proposal should proceed. In so doing, the EMRIRB shall be guided by the primary objectives set out in subsection 18.2.5.

18.6.11 Upon receipt of the panel report and the recommendations of the EMRIRB, the Minister shall:

- a) accept the report with the terms and conditions proposed by the panel insofar as they apply to the EMR;
- b) accept the report insofar as it applies to the EMR with modifications proposed by the EMRIRB; or
- c) reject the panel report or any part thereof insofar as it applies to the EMR on the following grounds:
 - (i) the Project Proposal should be rejected on the grounds that the Project Proposal is not in the

regional or national interest, in which case the Proponent shall be so advised by the Minister;

- (ii) the Project Proposal should be allowed to proceed because of its importance in the national interest, in which case the EMRIRB shall consider the terms and conditions with respect to the EMR which should be attached to any approval; or
- (iii) any of the terms and conditions are more onerous than necessary or insufficient to mitigate to an acceptable level of Ecosystemic or socio-economic impacts of the project, in which case the EMRIRB shall thereupon reconsider the terms and conditions with respect to the EMR in light of the Minister's objections.

18.6.12 In considering or reconsidering the terms and conditions of a project approval, the EMRIRB shall, within thirty (30) days or such other period as agreed upon with the Minister, report back to the Minister, with respect to the terms and conditions which should be attached to any project approval.

18.6.13 Upon receipt of the EMRIRB's report further to subsection 18.6.12, the Minister shall:

- a) accept the terms and conditions; or
- b) reject or vary the terms and conditions, in whole or in part, on the grounds that:
 - (i) any of the terms and conditions are more onerous than necessary or insufficient to mitigate to an acceptable level the Ecosystemic and socio-economic impacts in the EMR; or
 - (ii) the terms and conditions with respect to the EMR are so onerous that they would undermine the viability of a project which is in the national interest.

18.6.14 The Minister shall supply the EMRIRB with written reasons for every decision insofar as such decision applies to the EMR.

- 18.6.15 The role of the EMRIRB with respect to any federal environmental assessment panel report shall be confined to those parts of that report that are applicable to or affect the EMR.
- 18.6.16 Notwithstanding subsections 18.6.11 and 18.6.13, the panel's report or the EMRIRB's determination with respect to socio-economic impacts unrelated to Ecosystemic impacts shall be treated as recommendations to the Minister, which may be accepted, rejected or varied by the Minister without limitation to the grounds set out in subsections 18.6.11 and 18.6.13.
- 18.6.17 Upon completion of the process described in subsections 18.6.1 to 18.6.16, the EMRIRB shall issue an EMRIRB project Certificate including any terms and conditions which have been accepted or varied by the Minister.

18.7 **Monitoring**

Project Monitoring

- 18.7.1 The terms and conditions contained in:
- a) an EMRIRB project Certificate issued pursuant to subsection 18.5.12 or 18.6.17;
 - b) a recommendation of the EMRIRB pursuant to paragraph 18.4.4 a); or
 - c) any approvals issued by the Nunavut Water Board,
- may provide for the establishment of a monitoring program for that project which may specify responsibilities for the Proponent, the EMRIRB or Government.
- 18.7.2 The purpose of a monitoring program set up pursuant to subsection 18.7.1 shall be:
- a) to measure the relevant Ecosystemic and socio-economic impacts of projects in the EMR and on the Cree coastal communities of Eeyou Istchee and their members;

- b) to determine whether and to what extent the land or resource use in question is carried out within the predetermined terms and conditions;
- c) to provide the information base necessary for agencies to enforce terms and conditions of land or resource use approvals; and
- d) to assess the accuracy of the predictions contained in the project impact statements.

18.7.3 Without limiting the generality of subsection 18.7.2, the monitoring program set up pursuant to that section may include:

- a) a requirement that regulatory agencies and the Proponent supply the EMRIRB with reports and information respecting project operations and impacts, and the implementation of mitigative measures;
- b) a requirement for a periodic evaluation by the EMRIRB of monitoring programs for projects;
- c) based on paragraph b) above, a requirement that the EMRIRB compile a report on the adequacy of the monitoring program and on the Ecosystemic and socio-economic impacts of the project; and
- d) considerations related to the cumulative impacts.

18.7.4 Responsible Government agencies and departments shall continue to fulfill their responsibilities for monitoring and data collection. Any monitoring responsibilities assigned to the EMRIRB shall not be a duplication of those functions.

18.7.5 Any monitoring program established for a project under subsection 18.7.1 shall be designed so as to avoid duplication of duties and to facilitate coordination of monitoring activities and may, in addition to any other relevant matters, provide for the factors to be monitored and the specifications for such program.

General Monitoring

18.7.6 There is a requirement for general monitoring to collect and analyze information on the long-term state and health of the Ecosystemic and socio-economic environment in the EMR.

Government, in co-operation with the EMRPC, shall be responsible for developing a general monitoring plan and for directing and coordinating general monitoring and data collection. The EMRPC shall:

- a) in accordance with the plan, collate information and data provided by, amongst others, GDOs, industry, Government departments and agencies;
- b) in accordance with the plan, report periodically on the Ecosystemic and socio-economic environment of the EMR; and
- c) use the information collected under paragraphs a) and b) above to fulfill its existing responsibilities under Chapter 8.

18.7.7 The EMRPC may delegate any or all of its functions under subsection 18.7.6 to members of the EMRPC or officers or employees of the EMRPC.

18.8 Flexibility in Relation to Certificates

18.8.1 EMRIRB project Certificates may contain terms and conditions expressed to come into force at some time in the future or on the happening of any particular event or contingency.

18.8.2 The EMRIRB may on its own account, or upon application by a GDO, the Proponent, or other interested Persons, reconsider the terms and conditions contained in the EMRIRB Certificate if it is established that:

- a) the terms and conditions are not achieving their purpose;
- b) the circumstances relating to the project or the effect of the terms and conditions are significantly different from those anticipated at the time the Certificate was issued; or
- c) there are technological developments or new information which provide a more efficient method of accomplishing the purpose of the terms and conditions.

- 18.8.3 Where the Minister determines that any of the conditions in paragraphs 18.8.2 a), b) or c) have been established, the EMRIRB shall reconsider the terms and conditions contained in a Certificate, and the EMRIRB shall produce a report of its reconsideration. The Minister may accept, reject or vary that report only on the grounds specified in subsection 18.6.13. The EMRIRB shall amend its Certificate to reflect any changes as accepted, rejected or varied by the Minister.
- 18.8.4 For greater certainty, subsection 18.5.4 applies to a reconsideration by the EMRIRB pursuant to subsections 18.8.2 or 18.8.3.

18.9 **Implementation**

- 18.9.1 Subject to subsection 18.9.3, the terms and conditions of EMRIRB project Certificates shall be implemented by all Government departments and agencies in accordance with their authorities and jurisdictional responsibilities.
- 18.9.2 Without limiting the generality of subsection 18.9.1, the terms and conditions of EMRIRB project Certificates shall, in accordance with the authorities and jurisdictional responsibilities of Government departments and agencies, be incorporated in relevant permits, certificates, licences or other Government approvals that the Proponent may require. Government departments and agencies shall discuss with the EMRIRB how best to implement the terms and conditions of EMRIRB project Certificates and may provide the EMRIRB with drafts of permits, certificates, licences and other Government approvals.
- 18.9.3 Where an independent decision of a regulatory board contains terms and conditions at variance with the terms and conditions of an EMRIRB project Certificate, the regulatory board shall provide reasons to Government and to the EMRIRB justifying the difference. The Governor in Council shall consider both the independent decision of the regulatory board and the EMRIRB project Certificate. The EMRIRB project Certificate shall prevail unless:
- a) with respect to an independent decision of a regulatory board where Government does not have the authority to vary that decision, it is in the national or regional interest that the project proceed;

- b) with respect to any other independent decision of a regulatory board, the project is considered to be in the national or regional interest and the acceptance of the terms and conditions in the EMRIRB project Certificate would undermine the viability of the project; or
- c) an amendment to the EMRIRB project Certificate is accepted pursuant to subsection 18.8.3.

If the EMRIRB project Certificate does not prevail, the appropriate terms and conditions contained in the EMRIRB project Certificate shall be amended accordingly.

18.9.4 In this section, "independent decision of a regulatory board" means a decision made by a statutory body in the exercise of regulatory or licensing powers in the course of which the body is not subject to specific direction or control by Government; a decision does not cease to be an independent decision of a regulatory board merely because that decision is subject to a general direction whether by guidelines, Regulations or directives or to approval, variance or rescission by Government.

18.9.5 A decision ceases to be an independent decision of a regulatory board for the purposes of this section where Government has varied such a decision prior to considering the conflict between the decision and the EMRIRB project Certificate.

18.9.6 Where there is conflict between any EMRIRB project Certificate and a decision of a regulatory board not falling within subsection 18.9.3, the EMRIRB project Certificate shall prevail.

18.9.7 A licence, permit, certificate or other Government approval which implements or incorporates any term or condition of an EMRIRB project Certificate may not be called into question in a court of law on the grounds that the issuing agency thereby fettered its discretion or otherwise acted without jurisdiction, when implementing any term or condition of an EMRIRB project Certificate.

18.9.8 Nothing in subsections 18.9.1 to 18.9.7 shall preclude any regulatory or Government agency from reviewing a project and imposing additional or more stringent terms and conditions, or from refusing to issue a licence or approval that would be required in order to allow a proposed project to proceed.

18.9.9 The duty to implement referred to in subsection 18.9.1 does not include an obligation on Government to amend Legislation.

18.9.10 The EMRIRB and the EMRPC shall, unless they specify otherwise, receive copies of all approvals, regulatory or otherwise, for projects for which the EMRIRB has issued a project Certificate.

18.10 **Enforcement**

Projects Not to Proceed

18.10.1 No licence or approval that would be required in order to allow a proposed project to proceed shall be issued in respect of a project that is to be screened by the EMRIRB until the screening has been completed and, if a review pursuant to section 18.5 or 18.6 is to be conducted, until after that review has been completed and an EMRIRB project Certificate has been issued by the EMRIRB pursuant to this chapter.

Exceptions

18.10.2 Notwithstanding subsection 18.10.1, where a Project Proposal has been referred for review pursuant to section 18.5 or 18.6, approvals or licences for exploration or development activities related to that project may be issued if:

- a) the activity falls within Schedule 18-1; or
- b) the activity can, in the judgment of the EMRIRB, proceed without such a review.

Continuing Responsibilities

18.10.3 Where permits, certificates, licences or other Government approvals which implement or incorporate the terms and conditions of an EMRIRB project Certificate have been issued, the responsible Government department or agency shall continue to be responsible for the enforcement of the permit, certificate, licence or other Government approval.

- 18.10.4 Responsible Government departments and agencies shall apply effective techniques at their disposal for enforcement under subsection 18.10.3 and in applying such techniques, they shall not be confined to prosecution or to the suspension of any permit, certificate, licence or other Government approval.

Standing

- 18.10.5 In addition to any Person that is recognized by Laws of General Application as having standing to seek a court determination, a GDO shall have standing before an appropriate court:
- a) to seek a determination as to whether any term or condition contained in an EMRIRB project Certificate has been implemented, and any remedy deemed appropriate by the court if the term and condition has not been implemented;
 - b) to obtain a court order compelling a Person to do or prohibiting a Person from doing whatever that Person is, by any licence, approval, permit or contract implementing any terms or conditions of an EMRIRB project Certificate, required to do or prohibited from doing; or
 - c) to seek judicial review of decisions and orders, whether interim or final, made pursuant to this chapter.

18.11 Transboundary Impacts

Transboundary Impacts

- 18.11.1 The EMRIRB may upon request by Government or, with the consent of Government, upon request by a GDO, review a Project Proposal located outside of the EMR which may have significant adverse Ecosystemic or socio-economic effects on the EMR.
- 18.11.2 Without limiting the jurisdiction of the EMRIRB as set out in this chapter, Government, assisted by the EMRIRB, shall use their best efforts to negotiate agreements with other jurisdictions to provide for collaboration in the review of Project Proposals which may have significant transboundary Ecosystemic or socio-economic impacts.

- 18.11.3 The provisions of subsections 18.11.1 and 18.11.2 do not give the EMRIRB legal authority over a project located outside of the EMR.

18.12 **Application**

Geographic Application

- 18.12.1 This chapter shall apply to the EMR including Cree Lands.
- 18.12.2 This chapter shall apply to both Land and Marine Areas within the EMR. Shipping associated with Project Proposals in the EMR shall be subject to this chapter. However, Normal Community Resupply or individual ship movements not associated with Project Proposals shall not be subject to sections 18.4, 18.5 and 18.6.
- 18.12.3 This chapter applies to the installations, facilities and activities required for the purpose of national defence. However, such installations, facilities and activities will be exempted from these provisions on an exceptional basis upon certification by the Minister of National Defence that an exemption is required in the interests of national security for reasons of confidentiality or urgency.

Limitations

- 18.12.4 No term or condition which contravenes any standard established by any federal or territorial environmental or socio-economic Laws of General Application, may be imposed pursuant to this chapter.
- 18.12.5 Decisions made pursuant to this chapter shall be designed, implemented and interpreted in a manner consistent with Part III.

No Statutory Defence

- 18.12.6 The issuance of an EMRIRB project Certificate shall not provide a defence of statutory authorization to an action in tort.

Canadian Environmental Assessment Act

- 18.12.7 The *Canadian Environmental Assessment Act*, S.C., 1992, c 37, and any successor Legislation replacing that Act, shall not apply within the EMR.

SCHEDULE 18-1

TYPES OF PROJECT PROPOSALS EXEMPT FROM SCREENING

(SUBSECTIONS 18.3.2, 18.3.3, 18.3.5, 18.10.2)

1. Land use activities not requiring a permit or authorization from Government.
2. Land use activities requiring only a Class B permit under the *Territorial Land Use Regulations*, C.R.C., c. 1524 as it reads on the Effective Date of this Agreement.
3. All construction, operation and maintenance of all buildings and services within an established community, except for bulk storage of fuel, power generation with nuclear fuels, or hydro power and any industrial activity.
4. All hotels, motels or tourist facilities of twenty (20) beds or less in all.
5. Water uses that do not require a public hearing under subsection 13.7.3 of Nunavut Land Claims Agreement.
6. Prospecting, staking or locating a Mineral claim unless it requires more than a Class B permit mentioned in point 2 above.
7. Such other categories of activities and projects as may be agreed upon by the EMRIRB and the appropriate Minister.