Expert Panel Indigenous Presentation Session

Review of Environmental Assessment Processes

September 29, 2016

Midnight Sun Complex, Inuvik, NWT

Expert Panel:

Johanne Gélinas, Chair;

Doug Horswill;

Rod Northey;

Renée Pelletier.

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William Stor, Inuvialuit Game Council
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John Donihee, Inuvialuit Game Council
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OPENING REMARKS

Erin Groulx: Morning, and welcome, everyone. Welcome to the indigenous – the indigenous presentations session for the Expert Panel on the Review of Environmental Assessment Processes. My name's Erin Groulx (ph). I'm a member of the secretariat who is supporting the Panel. Just a few points before we get started today. There are a few other secretariat members in the room on the side table here, and also at reception and at the back. So if there are any questions, any one of them can help you.

I just want to note that this Expert Panel is an independent, non-governmental panel who's here today to hear from you about the environmental assessment processes and your views on the environmental assessment processes in Canada today. Please make sure that you silence your cell phones for respect of all the speakers. Also, I just want to note exits, emergency exits right on the side as well as through the front, and bathrooms are at the back of the room. You should be aware that this is going to be audio recorded, and a written transcript will be prepared and made available upon request, but it'll also help with some of the summaries that will be developed after – after the sessions in Inuvik.

Out of respect for the people scheduled to speak, please try and stick to the length of time you've been allocated and allow some time for the panel to ask some questions as well. If you haven't already checked in and you're interested in speaking today, you can register with the reception at the front of the room there, and we'll be sure to allocate some time for you.

Johanne Gélinas is the Chair of the Panel and will be facilitating this session. So over to Johanne.

Johanne Gélinas: Good morning, everyone. As you know by now, my name is Johanne Gélinas and I chair this Panel. I would like still to introduce my colleague, Renée Pelletier, Doug Horswill, and Rod Northey. So I think we are almost ready to start. I just want to go through our mandate, which I haven't had a chance to really introduce yesterday as we were doing the open dialogue session.

So this Panel was named by the Minister of Environment and Climate Change to – we change our script notes, so let's do it again. Minister McKenna was directed by the Prime Minister to three things: first, regain public trust; help get resources to market; and finally, to introduce new, fair processes. The Panel's mandate is to consider the goals and purpose of modern-day environmental assessment; communicate and engage directly with a broad section of indigenous people, interested group, organization, and individuals; and, develop recommendation to the Minister.

So I would like to introduce our first presenters. I will give the floor to Mr. Duane Smith, and I will invite you, Mr. Smith, to introduce your colleague before you get into your presentation. So welcome, and thank you very much for being here.

DUANE SMITH, INUVIALUIT REGIONAL CORPORATION

Duane Smith: I do have to hold it down? Oh, anyways. OK. Yeah. I always have to ask Howie because it's his system and we use Howie all the time.

But tuvlami (ph), good morning, hoop-la-kut (ph). Thank you for the opportunity, and welcome to this part of Canada. I understand for most of you it's your first time this far north. It's only five hours by jet from Edmonton, so you know, but again, welcome to Canada. We've provided some visual for you to give you some geographical perspective in regards to the region we come from, the im—from our perspective; the importance of the region geographically from a sovereign perspective of Canada as well, the importance of it to the circumpolar Arctic. But again, welcome. My name is Duane Smith. I am the Chair of the Inuvialuit Regional Corporation, which,

in concert with the Inuvialuit Game Council, is responsible for representing Inuvialuit rights and overseeing implementation of the Inuvialuit Final Agreement.

First, I'd like to introduce our delegation here today. With me I have Mr. Hans Lennie at the far left. He's the Vice Chair of the Inuvialuit Game Council, as well as beside him is Billy Stor, Inuvialuit Game Council member from Aklavik, also one of our elders. We are supported by Mr. Lindsay Staples right beside me here, who's the Chair of the Wildlife Management Advisory Council for the North Slope, which is also in the ISR. It's the northern part of the Yukon; as well as our legal counsel. Beside Billy is Mr. John Donihee as well as staff members behind me, Bob Simpson and Steve Baryluk.

Due to the short notice that we had, we did not get any funding in time for us to meaningfully prepare ourselves for this, as well as the short notice in regards to getting together with your schedule and you coming up here at such a early convenience, which is not something we're used to. So thank you for the opportunity again.

The IFA, as it's referred to, or the Inuvialuit Final Agreement, was the first comprehensive land claim agreement in the Northwest Territories, and the third such agreement in Canada. It was brought into force in 1984 by federal legislation. The IFA granted Inuvialuit title to large areas of land, recognized our rights within the Inuvialuit Settlement Region. And I don't know if Steve can switch to show you the different types of coverage we have within the Inuvialuit Settlement Region, but the green reflects the national parks that we've negotiated either through our land claim or directly with the federal government to have established, which reflects and demonstrates the importance of protecting significant sites within this region to our people as well as Canada. And then the orange or red reflects our private lands that we own surface and subsurface, and the yellow is where we own the surface lands, and then you've got other different areas that are also protected, either by bird sanctuaries or others, such as national historic sites.

Again, it's – the IFA granted us large areas of land and recognized our rights. The IFA also provided financial compensation and established a co-management regime which incorporates a robust and comprehensive environmental impact assessment framework, which has operated efficiently and effectively since the signing of this land claim. The goals set out in the IFA seek to balance Inuvialuit traditions and culture with the opportunities offered by the full implementation of the agreement. These goals find expression throughout the IFA. Any consideration of the role of environmental impact assessment under the IFA must be undertaken with these principles in mind. These are: to preserve Inuvialuit cultural identity and values within a changing northern society; enable Inuvialuit to be equal and meaningful participants in the northern and national economy and society; and, to protect and preserve the Arctic wildlife environment and biological productivity. The IFA is a land claim agreement protected by Section 35(3) of the Constitution Act 1982. Its terms stipulate that any

federal, territorial, or municipal law that is inconsistent or conflicts with the IFA is of no force or effect.

We appreciate the Panel coming to Inuvik to hear from us. The Canadian Environmental Assessment Act 2012 has actually created problems in relation to the IFA that need to be addressed. Inuvialuit have brought their concerns to Canada's attention on numerous occasions since the Act came into force without redress. Earlier this year Inuvialuit wrote to the Minister, indicating that CEAA 2012 should not apply in the ISR. It's actually not the first time. I've got copies of correspondence here going back and forth over the 32 years, roughly. It remains our position that the IFA EIA system should be exclusively applied to projects within our region. We do, however, recognize that some projects extend beyond our region, and that outside interests in certain projects necessitate federal attention. In such cases, Canada should work directly with the Inuvialuit to develop a joint process that respects the needs of Inuvialuit and Canada, and the features of co-management as established in the IFA.

Canada did not – did not consult Inuvialuit when it enacted CEAA 2012. As a result, that legislation is inconsistent with our land claim. By that I mean that no CEAA 2012 assessment or review on its own could satisfy the EIA requirements of the IFA. The IFA is clear. Until the EIA requirements of the agreement are satisfied, no licenses or permits may be issued. That means developments requiring review in the ISR will face duplication of EIA, extra cost, and confusion over processes until this problem is resolved. In addition, this duplication of EIA requirements has the effect of devaluing and compromising the IFA co-management system. This occurs because the Ministers responsible will be faced with two separate reports from different panels, and a likely end result is that Canada may prefer the product of its own legislative system. Such outcomes are not acceptable to the Inuvialuit, and they should not be acceptable to Canada either.

In this regard, Canada has been acting – has not been acting in good faith when it comes to respecting the IFA and the rights of the Inuvialuit. This duplication increases costs for proponents. Our region's economy struggles under the burdens of remoteness and high costs. Environmental assessment processes should not be impediment to the development that is needed to provide a better future for our communities, families, and beneficiaries.

Our IFA co-management system is comprehensive, rigorous, and well understood by our beneficiaries and communities. Inuvialuit negotiated an EIA system in the IFA that reflects the high value we place on our environment, our wildlife, our culture, and the health and economic wellbeing of our people. It has stood the test of time. Our system remains the only EIA process to complete the review of an offshore well in the Arctic. Sections 11, 12, and 13 of the IFA include the provisions that shape our EIA system. Many of these requirements are unique, owing to the ways we have traditionally and presently rely on the environment

within the region of our claim, and they apply on – on and offshore and in both NWT and the Yukon North Slope.

Demonstrating a surprising lack of respect for the IFA, Canada has also enacted legislation that results in the duplication of EIA processes on the Yukon North Slope, again within the ISR. In that area, both the Yukon Environment and Socio-economic Assessment Act, commonly referred to as YESAA, and the IFA EIA processes apply. This duplication should also be eliminated to reflect the IFA process and precedents. In our view, the best outcome from your review would be a recommendation to the Minister of Environment and Climate Change Canada to eliminate duplication of the environmental assessment regimes in the Inuvialuit Settlement Region, including on the North Slope, by limiting the application of CEAA 2012 or its successors in this region and recognizing the paramountcy (ph) of the IFA as provided for in the IFA as it applies to EIA within the Inuvialuit Settlement Region.

If Canada is truly seeking reconciliation with indigenous peoples, the nation-to-nation relationship begins with respect for and adherence to the letter and the intent of our comprehensive land claim agreements, not another broken treaty promise. In the context of your review, that means you should recommend to the Minister that any new federal EIA legislation or amendments to CEAA 2012 must limit the application of federal EIA systems in the ISR accordingly.

The presenters who follow will provide you with more detail. My colleagues from the Game Council will speak to their role in the co-management and the involvement of Inuvialuit harvesters in environmental decisions. Mr. Staples will speak to the co-management arrangements established in the IFA, and Mr. Donihee will address CEAA 2012 IFA overlap. Again, we did not have much lead time to prepare for your visit. It is our intention to follow up with a more detailed written submission covering the points addressed in this morning's presentations.

Thank you for coming to Inuvik. We do appreciate the opportunity to contribute to your review. We understand that your report will go to the Minister early next year, and that any legislative changes to CEAA 2012 will then be prerogative of the federal government. From the perspective of the Inuvialuit Final Agreement and the Inuvialuit rights, Canada's consultation obligations will only crystallize once a legislative proposal is communicated to us. We look forward to reading your report to the Minister. Again, (speaks in a native language without interpretation). Thank you very much.

Johanne Gélinas: Thank you very much, Mr. Smith. Just before we move with the other presenters, just to let you know that we will welcome at any time before the end of this year any written submission or complement of information that you may want to provide to us.

WILLIAM STOR, INUVIALUIT GAME COUNCIL

William Stor: Good morning, Panel. My name is Billy Stor. I'm a Director on the Inuvialuit Game Council for our community of Aklavik. Our Chair, Mr. Patrick Gruben, sends his regrets for not being able to be here today to present to the Panel. He's attending other wildlife matters outside the country on behalf of the Inuvialuit.

The Inuvialuit Game Council, or IGC as it's known, is a body established by the Inuvialuit Final Agreement to represent the collective interests of the Inuvialuit people with respect to wildlife issues. The IGC is made up of appointed representatives from six community-based hunters and trappers committees, or HTCs as they're known. The HTCs represent the interests of our local harvesters in all of our six communities. The Chair of the IGC is elected by the HTCs for a term of four years. The work of the IGC focuses largely on the third principle of the IFA mentioned earlier by Mr. Smith, namely to protect and preserve Arctic wildlife, environmental and biological productivity.

We will try not to repeat much of what the Chair of the IRC has already said, but we want to echo his call to eliminate duplication of environmental assessment regimes across the Inuvialuit Settlement Region. And hence, my co here will continue with the rest. Thank you.

HANS LENNIE, INUVIALUIT GAME COUNCIL

Hans Lennie: (Speaks in a native language without interpretation.)

Good morning. My name's Hans Lennie. I'm the Secretary-Treasurer of the Inuvialuit Game Council, and I'm the Vice President of the Inuvik Hunters and Trappers, appointed to the Game Council. I just want to briefly speak about the co-management structures stemming from the IFA that deal with the environmental assessments in the Inuvialuit Settlement Region, and give an overview of how the Inuvialuit have direct participation and involvement in the processes.

Each of our co-management boards established pursuant to the IFA have equal representation of government appointees and Inuvialuit appointees to make up the board. The Game Council – Inuvialuit Game Council has the responsibility to appoint Inuvialuit representatives to the co-management boards, with the intent of these appointees bringing traditional knowledge perspectives of the land and wildlife directly into the deliberations and decision makings of these boards. This includes the environment – Environmental Impact Screening Committee, EISC, and the Environmental Impact Review Board, EIRB, that consider development proposals in the region. In addition to the appointed representatives, the EISC and EIRB also have a

direct communication link with the HTCs in each community to allow them to provide comments and local perspectives on any proposed development under consideration.

The Inuvialuit Game Council feels that the IFA processes have established a comprehensive environmental impact assessment framework and are robust. The EISC and EIRB also have the confidence of the Inuvialuit that they appropriately consider and incorporate their views into the assessments they are under—that they are undertaking. CEAA 2012 and YESAA have led to unnecessary complications and duplications of processes in the Inuvialuit Settlement Region. The Inuvialuit Game Council on several occasions have written letters, including some jointly with the Inuvialuit Regional Corporation, to the federal Minister, expressing the difficulties that the Inuvialuit have with how the regulatory system is set up now and looking for ways to resolve this – this problem and strengthen the institutions cons—established under the IFA. Some of these letters go back as far – go back as far as early as 2009. Clearly, this – clearly, this review is an opportunity to address some of the issues that the Inuvialuit have previously raised with the federal government.

We'll now turn it over to Lindsay Staples and John Donihee to provide a more detailed look at these issues.

LINDSAY STAPLES, WILDLIFE MANAGEMENT ADVISORY COUNCIL (NORTH SLOPE)

Lindsay Staples: There we go. Good to go.

OK. Thank you, Panel, and welcome to Inuvik. If I could, I'd like to, Steve, just bring up a couple of the maps again, just to locate ourselves and the size of the area. So I guess my first point, quite simply, on – on this map, as you can see the six Inuvialuit communities on the right. And importantly, when we talk about the scope of screening and review, we're talking about land and water, we're talking about ocean, and a lot of it. So when we're talking about in particular development, as you're well aware, the offshore has been an area of great interest for – for many, many years, multiple decades, to the oil and gas industry. Next slide, please.

What's interesting about this slide is Mr. Smith indicated, as you can see, Inuvialuit private lands. And what I would not is, as you go across the coastline from west to east, you can see that essentially private lands occupy pretty much every square inch as you move from west to east. And in the Inuvialuit Agreement are very, very powerful provisions with respect to access. And those access provisions trigger negotiations and agreements with third parties regarding economic benefits. The IFA does not have an IBA, but it does refer to cooperation and participation agreements, and those are the agreements that provide mechanisms for environmental protection as well as economic benefits. But what triggers those largely

are access across these – across these lands. Next slide, please. One more, please. One more. Thanks.

And again, just to be mindful of third-party interests in the area, this is a map of the offshore. And those blocks you see out there are representative of exploration and production licenses that are held by various companies in the offshore. So again, just – I've done this just recognizing that not everybody from the south is aware of third-party interests, and I just wanted to make the point that there are – there are third-party interests that are well established, and indeed these interests are, in economic terms, very, very significant. If we see – go now to the org chart.

So last night Mr. Horswill was asking about the boxology, so to speak, for the regime here. And I'd just like to take a quick moment to make sure we're clear about what this org chart represents. So in the middle refers to the co-management groups. So we've got the screening and review committees at the top; the fisheries committee; and then the two wildlife committees. All of these committees have equal membership of government and Inuvialuit. So these are fully – there's equal weight to the – to the parties here. And the co-management groups, the Inuvialuit appointees to these committees are appointed by the Inuvialuit Game Council, and the government representatives are typically appointed by the Minister of the Environment. Importantly as well, I guess you could say the Inuvialuit organization has the overriding responsibility for all matters related to wildlife. Within the Inuvialuit world it's the Inuvialuit Game Council. The people who sit on that council are elected. And in each of the six communities there's a Hunters and Trappers Committee, and the – those committees are represented on the Inuvialuit Game Council.

What Hans Lennie spoke to, though, is another, I guess you could say, dimension from this chart that's missing, and that is the role of the Inuvialuit Regional Corporation. And part of my discussion today is about sustainability, and it's more than simply environmental protection; it is about economic benefits and opportunities for Inuvialuit in the – in the ISR. And so with respect to those economic interests, those overriding economic interests, as well as being, I guess you could say, ultimately the keeper of the IFA, the Inuvialuit Regional Corporation plays a role that I can under—I cannot understate the significance of. It's large. In terms of the government-to-government relationship with Canada, in the final – it's a measure of last resort. In the final analysis it's the IRC that would be representing all Inuvialuit on matters of, for instance, breaches of the claim or on bilateral agreements that would affect the rights and interests of the Inuvialuit from a claims perspective – very similar to the IGC. You could put basically the name Inuvialuit Regional Corporation in there, and again, the board of that corporation are all elected. And as the communities of Hunters and Trappers Communities, each community has a community corporation, and those are elected position. And the people from the community corporations find their way into the Inuvialuit Game Council.

My simple point being is that this is an integrated regime organizationally. And importantly, from the standpoint of community interests and community rights, they're entrenched in the system. And you can see how those rights percolate basically from the left side there through into the – into the middle, which is the co-management system.

So with that, that's in a sense the region and who the players are from a IFA perspective. Our discussion today, or our presentation today I think is probably going to be a departure from what you've heard in almost every other meeting that you've held. And that is we're looking at CEAA 2012 through the lens of the Inuvialuit Final Agreement, not the other way around. So all of our remarks are essentially through the lens of the IFA. The standing of the IFA, the importance of it, its entrenchment in Section 35 – we've talked about that, so it's enough to say that it's an agreement of substantial standing. And any portions of that agreement under Section 3(3) of the IFA, any – the IFA is paramount with regard to any other legislation where there's an inconsistency between the IFA and that legislation.

Having said that, that does not offer complete protection, based on the experience of the last so many years. And so we can see, for instance, as – as Mr. Smith has indicated, that there are these inconsistencies and there are these overlaps between the – between the IFA and CEAA 2012 that, you know, never should have been permitted.

Our intention of trying to limit the application of CEAA now and in the future in the ISR are on several grounds. First off, the IFA and the provisions that apply to the E – to environmental assessment are protected, as I've said, under Section 35 of the Constitution. Secondly, the IS—IFA satisfies the basic purposes of CEAA in a manner, in our view, superior to CEAA, and in a manner that CEAA fails to. And I'll speak more about that, as will Mr. Donihee shortly. The IFA-based EA processes have a performance record that has established solid Inuvialuit public and industry confidence in the fairness and efficiency of the process. And I think you can go to any of these interests or parties and I think you would find that there's really solid support for the process.

And then finally, the IFA is enabling legislation allowing the IFA regime to adapt to new thinking and best practices in the conduct of EA. I think I spoke to you last night briefly about how the Inuvialuit is a really short agreement compared to most other land claim agreements, but it's because it's enabling more than prescriptive. And that's one of the things that I think gives the agreement its weight. In contrast, there are elements of CEAA 2012 that are restrictive, and we don't believe those provisions to be very helpful in the context of modern-day EA.

I think it's also worth keeping in mind that this was an agreement that was negotiated in 1984, well before environmental assessment legislation in Canada, certainly modern-day legislation. And what's remarkable is that so

many dimensions or aspects of the IFA still prove superior to a number of elements of CEAA 2012 that was legislated 28 years later. The purposes of CEAA, as stated in CEAA 2012 – to protect the environment; to promote cooperation and coordination with other jurisdictions; to promote coordination and communication and cooperation with aboriginal peoples; to be efficient; to promote sustainable development; and, to encourage the study of cumulative effects – our view would be that, in so many respects, notwithstanding our agreement with these purposes, that CEAA 2012 just does not provide the legs to accomplish those purposes, and in fact, in many respects, frustrates those purposes. And I think, again, we would suggest that the IFA and the EA provisions that apply there satisfy the purposes to a much greater extent than the provisions of CEAA 2012 does.

So with respect to the removal of CEAA 2012 from the ISR as it applies to projects exclusively in the ISR, we would argue, I think, that the IFA EA screening – the EA – the IFA regime overall accomplishes those basic CEAA purposes in a manner superior to CEAA.

With respect to the IFA attributes that are worth noting, Mr. Smith indicated the Section 1 basic principles of the IFA. The Panel is well aware of the basic three pillars of sustainability. I think you could look at those three basic principles of the IFA and recognize that those are the basic principles of sustainability. What the IFA is able to do is accomplish the implementation and work towards all three of those pillars without disadvantaging one pillar over another. So it's a comprehensive approach. And I think, because the IFA was drafted and legislated – well, I should say legislated – in 1984, it predated the Brundtland Commission and predated the terminology of sustainability and sustainable development, but the IFA is deeply committed to sustainable development. And while much of our discussion here is focused on environmental conservation and protection, we do not want to lose sight of the importance of the economic benefits and the economic participation that Inuvialuit expect with respect – with regard to development in the ISR.

The IFA provides for the consideration and treatment of direct socioeconomic and socio-cultural effects on people, on the human environment. And we would regard that as just a very, very basic element of modern DA – modern duh-ee-uh (ph) in something that unfortunately CEAA 2012 and its precursors have yet to fully satisfy. What's also important are the broad scope of Inuvialuit rights in the Inuvialuit Final Agreement, and I think some of us touched on this briefly last night. But these rights are more than about harvesting rights; they're also about management rights. And those management rights are largely accomplished through the organizational regime that was established under the IFA. And having those management rights is critical to Inuvialuit having not just a strong voice but essentially a capital-C control over development in the area, and how the environment is affected, as well as the economic opportunities that are available to the Inuvialuit.

And one thing I would like to emphasize is that these relationships that the Inuvialuit have generally – and our co-management committees have generally with developers are not restricted or not limited to the screening and review processes. There is a revolving door of development interests coming to the Game Council and coming to the IRC quite outside of the screening and review process. So these are ongoing conversations. And to be candid, I don't think it would be an overstatement to suggest that the relationship between the Inuvialuit and the oil and gas industry, for example, is a more sophisticated relationship than the relationship between, for instance, the territorial governments and those same – those same interests. Industry understands full well the importance of the screening and review process and Inuvialuit interests in the ISR, and don't simply pay lip service to those int—to those rights and interests but work to have a close working relationship with the Inuvialuit.

Just very briefly, we talked a little bit last night about integration and coordination. And again, the vehicle – the co-management arrangements are the vehicle for accomplishing that coordination, and indeed are vehicles for reducing jurisdictional complexity in the ISR. It's not my intention to do it today, but we could have a little seminar on jurisdictional complexity in the ISR, and it's as complex as any place in Canada, I can assure you, when it comes to the oceans management, the management of navigable waters, the management of our national parks and territorial parks, the management of wildlife that don't respect territorial boundaries, so we have federal wildlife and wildlife that's – that falls under territorial jurisdiction. Left to their own devices, and if one was to remove the IFA from this area, our management systems, whether for development or for wildlife or for the environment, would be greatly diminished. These instruments, these institutional instruments in this centre core here of, if you will, the boxology, are actually critical to overcome and reducing jurisdictional complexity. And there – I could give you many examples that would speak to that.

I know that the Panel as well has a mandate to consider and think deeply about the nation-to-nation relationship, reconciliation, UNDRIP, and so on. Again, one can go back to the basic provisions established in 1984, and all of those commitments that Canada has internationally as well as the commitments that it's made politically in the last nine, ten months are satisfied through the Inuvialuit Final Agreement and the institutional arrangements that are there.

As well, we talked briefly last night, and I know the Panel has a real interest in regional environmental assessment and cumulative effects assessment. And I can say to that – and it won't be a part of my presentation. I know there was interest expressed last night in a number of these initiatives that have unfolded over the last 15 years. Going back to 1991 and the Beaufort Sea Steering Committee that was created out of the review board's review of the Kulluk and Isserk proposals by Gulf and by Imperial Oil, those reviews led to the creation of the Beaufort Sea Steering Committee, which was to give close attention to contingency planning and

emergency response to oil and gas blow-outs, as well as to look closely at the adequacy of the regulatory regime in Canada to address such circumstances. And one of the results of the Beaufort Sea Steering Committee process and report was the elimination of the Canadian Oil and Gas Lands Administration. That review was a major contributor to the decision by Canada to eliminate that particular institution.

The Oceans Act gave rise to an organization, and Mr. Smith can speak to it and others, the – what's called the Beaufort Sea Partnership, which is essentially a tool, an institutional tool, working within our system here and alongside of it to implement the Canada Oceans Act. It's a partnership in which industry, conservation NGOs are at the table, Inuvialuit – there's a long list of partners. But again, it's another tool to deal with the – and simplify the jurisdictional complexity in the area.

And then finally, one unique attribute of the IFA that I'd just like to bring to your attention is the provision in the IFA as it applies to screening and review for the consideration of worst case scenarios. We spoke and discussed a little bit last night about scenario building. The IFA requires the building of a worst case scenario by proponents in the offshore to look at the catastrophic consequences on wildlife, on habitat, and on the Inuvialuit, and a full costing-out of that worst case scenario such that the appropriate financial tools would be in place to cover the full cost of restoration of habitat to pre-catastrophic event conditions, as well as the full compensation of Inuvialuit in the event of loss of harvest, which obviously is a food security issue as well as an economic issue. So it's a really unique – it's a really unique feature of the agreement, and, with respect to risk management, is a really critical feature of the IFA.

So finally, I guess I'll just – I'd like to close by indicating that we do experience – there are challenges in implementation of the agreement and in the functioning of the screening committee, the review board, and these other institutions. And there are these frustrations and challenges that we've endured along the way that, in some respects, are actually breaches of the agreement. Mr. Smith talked about the lack of consultation repeatedly. CEAA – the enactment of CEAA 2012 is one; the enactment of the Yukon Environmental and Socioeconomic Assessment Act is another. They produce duplication of process. They can produce results from those screening and review processes that result in different decisions and different recommendations. And they defeat the purposes of the very legislation that created the duplication. The purposes of those legis—of those legislation is to reduce duplication. And certainly, Mr. Northey, you're well aware of the YESAA standing review process. You were involved in it, and so was I. It was a very dispiriting exercise. And I would hope that – I would hope that this panel actually is able to achieve what that particular – what that standing committee – standing committee was not able to achieve.

Finally, funding is a huge issue for these institutions, and we've seen a great diminishment in funding of this – of our institutions over the last

decade and more. These institutions are powerful institutions. They're clear on the mandate, they've got a strong record. But as we discussed last night ever so briefly, Canada has really failed to meet the financial requirements of these institutions in a timely way – in a timely manner. We are working under 2004 funding levels, and that's – that's a tragedy. And we have been working for over a decade to see these – to see these levels addressed. I can report that, as a result of most likely a new mandate as a result of last November's election, that we have a new federal team that we're now into beginning to address these – these funding shortfalls.

But I do want to make the point that, you know, all of this good work does not happen without great cost, particularly in this part of the world. And I think the panellists should be well aware that the cost of convening meetings, of bringing Inuvialuit to participate in these organizations is a staggering expense. You know, if we were to go back and look at the map, a simple round trip plane fare between Yellowknife and Ulukhaktok in the top right, where – it's the most furth—it's the community furthest to the right on the map. Round trip between Yellowknife and that community is $3000. That doesn't cover the cost of a plane schedule that is infrequent. It's not every day. So there's the hotel costs, with people who participate in these committees having to stay in their homes additional amounts of time and so on. So funding for this whole regime is critical to making it work.

And with that, thank you very much.

Johanne Gélinas: Thank you.

JOHN DONIHEE, INUVIALUIT GAME COUNCIL

John Donihee: I believe the mic is working now. Thank you, Madam Chair. My name is John Donihee. I've had the privilege of acting as counsel to Inuvialuit, both Game Council and the Joint Secretariat, for almost two decades now. And I'm very pleasure to have the chance to bat in the clean-up position here this morning for the Panel. I'm going to bring the focus back down a little. I'm going to tighten it up again a little bit because I do want to go back to say a few things about the points that Mr. Smith made and that were repeated by our colleagues from the Game Council about their concerns about duplication between the current federal environmental assessment legislation and the Inuvialuit Final Agreement.

And you know, in listening to the presentation, I was trying to put myself into your position. You know, it's a very detailed framework that we're talking about, and obviously you've had relatively little time to try to absorb it. The question that sort of comes to my – came to my mind as I was listening was, well, you know, if the IFA is paramount to federal legislation, why is duplication a problem. Why does it exist? And I do want to answer that question for you. And simply put, the reason is historical.

As we've said on several occasions last night and again this morning, the Inuvialuit Final Agreement, the agreement in principle, which is the step before you get to a final agreement, was 1978. And the IFA itself was brought into law by federal legislation in 1984. The EARP Guidelines Order of course was – I don't have to explain ERP to you guys, I don't think, but Environmental Assessment Review Process Guidelines Order – dated in June 1984.

The point being – the point I'm making is simply Inuvialuit had to negotiate their environmental impact assessment provisions, found in Sections 11, 12, and 13 of the IFA before there was any federal legislation in place. And so in that sense, we've said several times that it's – it was groundbreaking. I think it was and continues to be groundbreaking environmental assessment legislation. And it was – the agreement itself is elegant, in my view, in terms of the way that it anticipated future federal action in this way and allowed for it, integrated the federal system if and when it was going to be applied in the Inuvialuit Settlement Region with what Inuvialuit were doing under their own land claim, and provided for collaboration and working together when that was possible.

And I will just say, you know, the way it works is every – well, every development that is proposed in the Inuvialuit Settlement Region must be screened. The term development is defined very broadly in the IFA. As you heard last night, there can be exemptions from that, and those exemptions – the exemption list is developed by the co-management tribunal called the Environmental Impact Screening Committee. So government members and Inuvialuit members sit down and say what sorts of developments could take place within the Inuvialuit Settlement Region, the ISR, that are really of such minimal size and potential impact that we just don't even need to see them in our system. There is a – there is a set of guidelines produced by the screening committee, one appendix of which is an exemption list. Otherwise, any development that's not on that list is screened.

And so that's how our system is triggered. And once it's triggered, the screening committee basically, in the course of 60 to 90 days, will review a project description, they'll conduct the kind of community engagement and – or insist on the kind of community engagement and consultation that we discussed with you last night, and they will make a decision on the question of whether or not there will be a significant adverse – there could be a significant adverse effect from this development. If the answer is yes, then the screening committee has a choice to make. But if it's a project of sufficient magnitude to require further review, one of the choices – I'm not going to say much about it, simply, you know, suggest some mitigation measures and ask the regulators to put – you know, to apply them. But if it goes to a review, there's a discretion established in the agreement, and it's vested in the screening committee. And the screening committee decides whether they want that review to be conducted by the Environmental Impact Review Board, another institution – co-management institution under the IFA, or whether a federal authority is competent to conduct the review in a way that's – would satisfy Inuvialuit interests and needs.

And there is experience, the most obvious and recent one, I suppose, being the Mackenzie gas project. There is experience of situations where Inuvialuit decided they would rather move it on to a federal review. There were other very good reasons with the MGP: it was a trans-boundary project of very, very significant magnitude, and the Inuvialuit Game Council negotiated with the Canadian Environmental Assessment Agency an MOU that ensured that the special features of impact assessment, particularly those features that Lindsay was speaking to a few moments ago in Section 13 that deal with the worst case scenario and the requirements to look more specifically at wildlife impacts, were going to be considered and included in the mandate of the panel, the joint review panel established for the MGP.

So I just raise that. There's an example of how that collaboration, which was allowed for when the agreement was negotiated in 1984, or came into force in 1984, there's an example of how that collaboration worked. And the important thing about the collaboration is simply that there was – the two parties, Inuvialuit representatives and Canada's representatives, sat down and developed an agreement that ensured that the federal EIA would meet all of the requirements of the IFA.

The rest of the reviews that have been done – there haven't been that many, but the rest that have been done under the IFA system have been conducted by the Environmental Impact Review Board. And in most of those – because this system goes back 35 years, there were – some of those reviews took place at a time when there wasn't a federal system to trigger. And some of them took place at a time when the federal system existed. Example of that: the review done of the road between Inuvik and Tuktoyaktuk. And that was done as a substituted review under the previous CEAA legislation.

So you know, that's how it worked. And the – the backstop, I suppose, to Inuvialuit concerns when it comes to either a substituted review, as they then were, or a review done by Canada is Section 11(36) of the agreement, which basically says that no license or permit can be issued under any federal legislation or territorial legislation unless the Inuvialuit EIA system's requirements have been satisfied. OK? So it doesn't matter who does the review. Because of the paramountcy of the land claim, that has to be satisfied. Those special concerns about wildlife and the particular goals of the IFA need to be satisfied before environmental assessment is done in the region – is finished in the region.

So you know, the answer, I guess, to go – to circle back to the question I asked about, you know, if the IFA is paramount, how can duplication exist. Well, the answer is simply that, at the time that it was negotiated, the agreement anticipated federal legislative initiatives, provided for them, but insisted that, if there was going to be a federal review of some sort done, that the IFA requirements would always have to be taken care of. And so from 1984 until 2012, we had a collaborative – a

collaborative system, where, depending on resourcing, the nature of the project, nature of the issues, you know, Inuvialuit had a choice. And I do want to come back and emphasize the discretion as to which system is going to be used is vested in the screening committee. It's a co-management committee's choice that chooses which way the process goes from there.

So that was where we were at in – until 2012. And the best way to indicate, I think, what happened after that is to give you a little bit of detail about an actual experience that we've had here, and that involved a proposal by Imperial Oil, Exxon Mobil, and BP Explorations to drill the deepest well that ever would have been drilled. It didn't – the project did not go forward, but to drill the deepest well ever drilled in the – in the Beaufort Sea on leases that they had bid for. And under the federal oil and gas legislation, they had a timeframe that they had to meet in order to get a well spudded or else they could lose their deposits and lose these oil and gas rights. So there was pressure on the oil companies to drill this well, and they came to us in September of 2013. They went to the NEB at the same time because the project was subject to the Canadian Oil and Gas Act, COGOA, approval. And they didn't trigger a NEB process. They engaged with them, but they didn't actually file the application for the drilling approval, but that alerted the NEB to the fact that this was going to come along. And then they came to the Inuvialuit and they filed a project description, which is what triggers our screening process. And so it was game on at that stage.

And you know, EIRB and – and so the screening was conducted. It was going to be a very big project. It required purpose-built drill ships drilling over two years. Suffice to say the screening committee forwarded it to the EIRB for a review. The project also triggered the designated project regulations under CEAA 2012, and as you know, that then required an environmental assessment to be conducted by the National Energy Board as part of its regulatory review once the application was filed, within a – within a 12-month period. So that was the situation in 2013/2014, was that the Inuvialuit system was triggered. There was a review underway. And EIRB and NEB staff began a process of exploring the possibilities of collaboration. We did understand that both tribunals would have to conduct their own proceedings, but nevertheless we were looking for ways to harmonize information requirements, activities, and the other things to try to reduce the duplication.

You know, some of these points won't surprise you, but I mean, the NEB process is very formal. It involves sworn evidence under CEAA 2012, requirements that participants show that they're directly affected, and of course there was these tight timelines I mentioned. You know, the EIRB requirement is simply to be expeditious. Beyond that, you know, it's a very open pro—and welcoming process that's conducted informally in order to encourage Inuvialuit to participate, to share their views, their values, and their traditional knowledge. The NEB could not substitute the EIRB in this EA process because of the terms of CEAA 2012. And Section 26 of CEAA 2012 does allow for a limited delegation of the tasks of a party conducting an EA or a review, but of course they can't delegate that final decision making.

So we then started talking with the National Energy Board about the possibility of a delegation. We said we're going to conduct community hearings regardless; this is – this is what we're good at. You know, you want to get that information because of the requirements of CEAA 2012. Why don't you delegate the responsibility to us to go out, do these hearings, and come back and report to you on that, and then you can go on with the rest of your process. And NEB refused that offer, and primarily I think – I don't want to put any words into their mouths, but primarily because I believe they were concerned about the difference in the evidence gathering process, and probably, although they never said it, you know, the quality perhaps of unsworn community evidence, you know, all the things that lawyers worry about when they – you know, they advise their clients about judicial reviews and all those kinds of things. Right? So – so they said no, we won't even delegate anything to you.

So where did that leave us? Well, the EIRB was required to conduct a review, and planned a process which would meet IFA requirements and was appropriate, in our view, to the development, the communities, and the region. We of course would have ensured that we addressed all of the unique requirements of the IFA. NEB didn't want to delegate any part of the process to us, and they couldn't substitute. And the NEB couldn't address the Section 13 requirements that Lindsay mentioned because it's not within their mandate or jurisdiction. So we had to do that through our process. They were considering – NEB was considering – a process – a hearing process within the constraints of CEAA 2012, and, in our view, it wasn't likely to be particularly welcoming to Inuvialuit in this region. The EIRB did not have intervener funding. And of course, as I said earlier, 1136 of the IFA would have prevented the NEB from making its decision. Dependent on whether they had a hearing or not, the decision might either have gone to their Minister or it could have been a board decision under COGOA. But – but regardless of who the decision maker was for the COGOA portion of this exercise, that decision could not be made until the EIRB had finished its process and sent a report on to the decision makers. And because of the terms of the IFA, decision makers in this particular instance weren't just the NEB; it would probably have included the Minister of INAC. And depending on shore-based facilities and that kind of thing, it could easily have included Ministers of the territorial government as well. So you know, the decision makers that we had to send a report to were broader as well.

Well, I guess all I will say, you know, is that, fortunately for the reputation of Canada and environmental impact assessment in general, the project was put on hold. I mean, what we were looking at was two separate hearings, you know, running through the same communities. They would have had to be on different schedules. You know, consultation overload at the community level would have been a real problem. Inuvialuit of course – only some of them would have been allowed to participate, presumably, in an NEB process, although they are very flexible when they get north of 60. It really – well, I – I was trying to think of words to kind of summarize, you know, the results of our experience with that, and I have to say to the Panel that polite words escaped me. You know, this kind of thing just shouldn't happen.

And there we are, and, as Mr. Smith said, there we are simply because, at the time that CEAA 2012 was enacted, Canada simply didn't even bother to talk to the Inuvialuit. They didn't pay any attention to the fact that there was a system in place here that had been here for 35-odd years. It had resulted in collaborative initiatives to conduct very detailed impact assessments of very large projects, and all that had been done successfully.

Before I finish on CEAA 2012 – I don't want to take too much more time – I would just say, you know, some of the reasons that you're unlikely to ever see a referral from the screening committee to a CEAA 2012 panel include the fact of course that the wildlife species that are covered by CEAA 2012 are those under federal jurisdiction – fish, marine mammals, migratory birds, and SARA listed species – but if you take a look at Section – Subsection 14(6) of the IFA, you will see that special rights were granted to Inuvialuit, exclusive rights and preferential rights, to harvest wildlife. And you know, this is what the Inuvialuit focused on. They focused on grisly and polar bears; they focused on muskoxen; they focused on fur bearers; they focused on, you know, the animals that they have harvested traditionally and that are important to their traditional economy, and, as Lindsay said earlier, to food security. Inuvialuit have a 35,000 square miles of land that they own in fee simple, and they have the exclusive rights to harvest all wildlife on those lands.

So when you take a look at what – the wildlife that CEAA 2012 protects, it's quite possible, you know, that you could have had a project in, you know, assessed in – under CEAA 2012 in the ISR that wiped out a species that was exclusively grant—you know, rights to which were exclusively granted to the Inuvialuit under the land claim, and that wouldn't even have qualified as an environmental effect under that legislation. Now, I don't want to get in an argument with Mr. Dorothy (ph) about Section 5(2) of CEAA 2012. I'd just say that I recognize the fact that there might be some ways to back in to those things in CEAA 2012. But if you're sitting as a member of the screening committee, worried about the effects that a project like that might have on wildlife that are important to Inuvialuit, and you have a choice as to whether to send that review to the EIRB or to a CEAA 2012 panel or – or an agency, I guess a responsible authority like the NEB, you're not sending it anywhere except to your own organization. You're going to – you're going to trust your own system.

And that's why, even with the provisions of the IFA, duplication can exist. And I suggest to you that it will continue to exist unless or until federal legislation takes a broader view of what environmental effects are from an impact assessment standpoint, or, better yet, based on the suggestions made by Mr. Smith, and – which I believe make perfect sense from a legal standpoint – Canada backs away and says you've got a good system there, let's just go with that one unless there's something unique about a project that requires the federal government to be involved here, something that's trans-boundary or in the national interest or something like that. Such an outcome would be entirely consistent with the way that Canada treats

beneficiaries of every other land claim agreement in the northern territories. There are some differences with some of the land claims from Quebec and Labrador because they were negotiated in a provincial context.

But the point I would make is that, you know, we have a legislated system in the sense that there's an agreement, and that agreement was given the force of law by the settlement legislation for the Inuvialuit Final Agreement. And what I want to emphasize for you is that's federal legislation. You know, we talked last night. There's no division of powers issues here. You know, it's just a matter of the federal government deciding which system it prefers to have operate. And I guess for all of the reasons that you've heard from us, what we're saying to you is that we believe that the system that the federal government should prefer is the one that gives honour to the promises it made to Inuvialuit when it settled its treaty in 1984, and that we think that doing that will empower this system, the Inuvialuit system, through the land claim. That's consistent with the reconciliation themes that run through the Prime Minister's mandate letter to Minister McKenna, and it's consistent with the reconciliation as the Supreme Court of Canada has identified those needs in the Tsilhqot'in decisions and others.

So that's where we're hoping Canada will end up at the end of this. We're truly hoping that, you know, as a result of our efforts, you can bring this message to Ottawa. We realize you're making a report and recommendations. We truly appreciate the opportunity to explain these things to you. And I think with that, Madam Chair, if the Panel has questions, we'd be happy to try to address them.

QUESTIONS FROM PANEL MEMBERS TO PREVIOUS SPEAKERS

Johanne Gélinas: I'm sure my colleagues will have questions. Just by curiosity, when you were sending those requests to the federal government to have either a recognized – having your process recognized as a substitution process, what were the answers that you were getting from the government?

John Donihee: As I said, the system in the IFA – well, one thing I would say is that, before the Minister indicated that she was going to appoint your Panel and there would be a wholesale review of CEAA 2012, the Environmental Impact Review Board engaged with the Agency and there was a conversation initiated about a Memorandum of Understanding that would – could just be sort of on the shelf and there ready in a situation where there was a project that was within the Minister's authority, where substitution would be possible, and that would facilitate substitutions between the Agency and Minister and Inuvialuit, much as was done when we did the review of the – of the Tuk Highway under the old legislation.

But when it became apparent that there was going to be a much broader review done, then Inuvialuit wrote to the Minister and said we don't want an MOU; we – you know, that's a stopgap solution, and we want – we want to solve the whole problem. So I just want to point that out. There was that – that in the background, but the views of Inuvialuit at the moment are as expressed by Mr. Smith, and that is, you know, we'd like – we'd like the – a full and lasting solution, and not one that's going to depend on the discretion of the Minister to decide whether or not substitution is good this time or not. We would never know and not be able to plan for it. So one – that's one point in answer.

The other point really is that there is a subsection in the agreement, Section – Subsection 1137, which was placed there in '84, and it – and I would say it facilitated, or perhaps anticipated, the possibility of future federal legislation. So without quoting it to you, it allowed for Canada to execute, I suppose, proceed with its own policies and environmental assessment activities in the envi—Inuvialuit Settlement Region in concert with, I guess, but we weren't trying – you know, the Inuvialuit had to draft an agreement that allowed Canada to do what it had to do and had the Constitutional authority to do. And that's what 1137 allows for. And there've been some ongoing debate, I guess, among council about, you know, how 1137 ought to be interpreted. Our view of it is simply that it allowed for CEAA, for example, the ERP Guidelines Order, CEAA 2012, but you know, as long as those systems worked collaboratively with or – you know, you could make these things work seamlessly together, there wasn't a problem. But as soon – but 1137 never ex—anticipated the kind of duplication and conflict and problems that resulted from this narrowing of the federal perspective on impact assessment that's reflected in CEAA 2012.

So af—you know, the conversation, if you will, about what to do about impact assessment in the Inuvialuit Settlement Region has really been engaged since about 2013, when we started to realize that, you know, as we got the referral for the Imperial Oil well review, we started to realize that, as I said earlier, just not a – not a good outcome for anybody. This wasn't the way it ought to be, and Inuvialuit pointed out that, in their view, 1137 does leave a role for the federal government, but we're suggesting that that role ought to be limited to taking care of trans-boundary, you know, and national interest matters because the IFA system can handle everything else and has done so for a long time.

Johanne Gélinas: This MOU would have been good only for project under CEAA, not NEB?

John Donihee: That's correct.

Johanne Gélinas: OK. And other question of curiosity. Did NEB offered you to have a panel member from the community?

John Donihee: No, they didn't, not at the time. They – in fact, our – I must say our – you know, our efforts to find solutions with them were very positive. You know, they – they – I mean, it wasn't – we weren't standing back and sniping at each other. We really did try to focus on what could be done. But the – the problem, I believe, was just that, you know, by this time, it was late 2013, 2014. The NEB panel which had been appointed to handle this matter was really concerned about the challenges that might come to the way that they were doing things. I think the Gateway hearings were on at the time. And they were simply reluctant, you know, to – to accommodate the northern system, for fear perhaps that, within their own – within their own system, they might be facing some kind of a challenge as a result.

So – but no, they – I realize that, for example, with MGP, there was an NEB panel – an NEB member, board member, appointed to the joint review panel, and nothing like that was offered in the context of this offshore well.

Johanne Gélinas: (Off microphone)

Doug Horswill: The sense I have of – of what we've learned today comes at two levels: one, how CEAA interacts with the processes available to you through the IFA here; but in our own thinking at a second level, and that's, given a system that sounds to be quite integral and effective except for a few issues you've raised like funding, which is obviously an important one, but a system that seems to work, what can we learn that might be applied on the context of south of 60, where land issues are different, and obviously populations are broader, and so on and so forth. So I was wondering, Lindsay and John and Billy and anybody else who would like to, could you sort of give us your top-of-mind thoughts of what we can take away from your experience that we might be able to think about in a south of 60 context?

Lindsay Staples: I think one of the largest messages would be – and I know the Panel's interested in this – is the scope of the assessment. The scope of the assessment that we're undertaking under the IFA are extremely broad. The – and we have had some successes, Mr. Donihee alluded to, in these conversations or discussions, for instance around the Mackenzie Gas project, and the – ultimately setting the – you know, the terms and conditions for that review. And I think the IFA played a really – had a really significant influence in the scope of that review. And I think that one of the – one of the contributions that it made was with respect to not simply participating or engendering a process; it was focused on making the bads less bad. In this part of the world, there's a real interest and need to look at the goods as well, and the – and so what – what – in those negotiations, based on the three principles in the IFA that were really the basis for the argument, those three pillars of sustainability, if you will, I think it's fair to –

[TECHNICAL DIFFICULTIES]

…table and say what are we left with when you look at the positives and the negatives. And one of the contributions I think that that particular exercise made, notwithstanding the unfortunate time that it took, was the – or a question I think that's actually central to – in the Inuvialuit world and that is germane to the review board process here, which is, at the end of the day, do these projects net out positive or negative. It's not just simply that we've got a long list of what the goods are and a long list – how does it shake out? When you look at the trade-offs between the positives and the negatives, the enhancements and the mitigations, what are you left with at the end?

And that – there was a really simple question that panel ended up putting for itself. At the end of the day, are people better off with this project or without it? Really simple question. What was helpful was that – what was helpful was being able to kind of transparently answer that question. It wasn't simply a one-liner that says it's in the national interests and we're going to go forward. And you've got that kind of black box of what constitutes the national interest. There was a set of criteria for evaluating those trade-offs, and it was transparent and systematically addressed.

So you know, in my mind, I think that it's – the scope of these reviews is absolutely critical. And under the federal system we've been far too narrow in our focus, you know, on the – on the negatives as they apply, you know, to the environment, and not enough on the positives, particularly as it relates to people. And in this region, which, as you're well aware, and – and Mr. Smith and, you know, my colleagues from the Inuvialuit community – these communities have been on a roller coaster ride of boom and bust for decades and decades and decades. And so, at the end of the day, what is going to be long lasting? What is going to be the legacies from these projects, large and small? And if we don't have EA processes that are driving toward positive legacies, it's hard to imagine how history's going to reverse itself, because it's not a pretty one.

John Donihee: I just have one suggestion. I think there are things that – particularly with respect to the way that environmental impact assessment does or does not accommodate aboriginal interests in the south very well, I think there are examples, and the Inuvialuit one is a good one but, you know, we talked yesterday about the arrangements in Yukon, Nunavut, and – and in Mackenzie Valley as well. There are things to be learned about how to do this and involve aboriginal people, build trust, you know, that are available – readily available, I think – from looking at the way the systems are structured in the north and some of the materials that they've developed on an ongoing basis to facilitate their proceedings.

But I would just encourage you not to – not to be afraid to think about the institutional side of impact assessment as well. You know, the – one of the reasons that Inuvialuit are comfortable with the results of impact assessments is, first of all, of course, it's done under their land claim primarily; but secondly, it's done by an institution that involves people from their communities. And you know, you can build

– you can build that trust that way. I realize that – I'm not urging you to, you know, run – suggest running across the country and setting up standing committees or something like that, but – but you know, the idea that you appoint a panel and the whole process is so project – it's all project driven, you know. And if you want to look forward and think about cumulative effects or think about sustainability, there may be institutional opportunities that can be worked out collaboratively with provincial interests, because obviously they have to be accommodated, and that will allow for that. It takes time for trust to develop, and I think you need to think about how to do that from an institutional standpoint too.

Lindsay Staples: If I could be permitted just one final quick comment to – with regard to the question, and that is with regard to, on the last point, about cumulative effects and the treatment of cumulative effects. And I think, as we discussed very briefly last night, there's a number of ways to get at that. But largely when we're looking at cumulative effects, we are looking across large landscapes. And I guess I would suggest to you that the experience here has been – not that the IFA has much explicitly to say about cumulative effects, but certainly there's been a strong orientation, as you heard last night – and we can give you more material on this – about approaching things at a regional landscape level. And so they may not be formally considered to be a cumulative effects assessment, but it is about looking across broad landscapes, it is about looking at future scenarios.

And – and I think it's the really simple notion that, if we could start to bring more information to the table across these larger landscapes – and I would suggest to you, and I think the Inuvialuit have pushed Canada quite hard on this, to say look, Canada, it's your role to be initiating these exercises, it's your role to be collecting this information, to do the research. It's not the role of the proponent, or to foist that on the part of – particularly in a basin opening exercise, it's logical that you would want to have a strategic level – strategic level planning. And of course that's what, you know, we're looking at in the offshore here, is our basic basin opening exercises.

So if any type of project which surely would warrant these kind of strategic level types of assessments and planning, it would have to be where large, large new country is being opened up, whether by a road – say a mining road, you know, into a deposit – or in the case of offshore drilling.

Duane Smith: If I may, Madame Chair, I just want to point out that I think one key point that you should be aware of is for indigenous peoples, or the Inuvialuit at the very least, when we look at an activity, we – you've heard from my colleagues from the Game Council how important it is in regards to the environmental and the wildlife and the sustainability of the ecosystem because we – we look at it as to how is that ecosystem going to be affected because we're a part of that. So anything that's going to have a negative effect is going to have an effect on us and our wellbeing in regards to

our nutrition, our culture, our health. So that's – that's how we look at these activities that take place.

The oil and gas map that we showed you only showed you the offshore. It didn't show you all of the onshore activity that has taken place in this region in the past. There's about 200 wells, roughly, that have been drilled in this region. And that might not seem like much coming from Alberta or that part of the country, but a well up here is anywhere from 40 to a hundred and something million, and now we're talking in the offshore, where it's way more than that. So you know, it's – it's not something that we take lightly, and we want to make sure that, if it's going to happen with our process, that we're not only going to get some of the benefits that we're entitled to under our land claim, but we're going to make sure that this activity has the minimum negative impact on the region to begin with before it even proceeds.

Johanne Gélinas: Thank you. Rod?

Rod Northey: I guess a few questions, just to try and get – and I think I was trying to understand, but one of the key points I took about this whole CEAA piece and what doesn't work is the wildlife question. And it seems to me it may not work at a few levels, and I'm just going to encourage you, when you do your written submissions, to try and get the full array of the problem. And I'll just say when you look at Section 5 of CEAA, as Mr. Donihee was talking about, it strikes me just off the top you've got a problem with what wildlife's in, what wildlife is not listed, big problem there, and then the whole fundamental question of what wildlife has positive or negatively reacted, and then what people use wildlife for, the socioeconomic. So all mixed into how you even define the environment, how you define people's effects or benefits from it, and positive and negative effects.

It seems to me a compelling case could be made by you guys, so I look forward to hearing it, on how CEAA doesn't really deal with that. And I think it would be very helpful to us, and I know, Mr. Donihee and Mr. Staples, a few of you go across the north. To the extent that point applies to Mackenzie Valley or elsewhere and could be made easily, we encourage you to suggest that. Because we are looking – I do want to say my biggest point is you've given us a legal brief, and we may not need a legal brief. We're encouraged to dream. And so I would ask you guys, amidst your work in this, not to be totally obsessed with the minutiae, but try to say where we should go, as my colleagues have said.

And – and I'm going to ask the Chair and others more specifically, if you had a pen again today, is there anything about what you have in the IFA and EA you would like to be done differently or better. And that could include funding and institutional, but we have a broad mandate.

Duane Smith: Well, if I may, thanks for the question. I should point out that, first of all, the IFA, you know, all signatories and parties to that agreement own that. It's

not just an Inuvialuit Final Agreement; it's a Government of Canada and it's a go—it's the territorial governments as well that all have the obligation to make sure that we're implementing this to the highest degree that we should be. We've also – just for your information, we've also signed over two years ago with the federal government, with devolution, the Inuvialuit signed an agreement with the federal government and the NWT to initiate offshore negotiations to what we think our rights are. And when you say that you want us to dream big as well, I guess, like you have the privilege to do with this review, well, our starting point is we think that we own everything in the offshore. So – including the air. But you know, we haven't – we haven't begun those negotiations yet, and we're still waiting because the federal government was supposed to initiate that 60 days after. So when you're asking that question, it's – we don't want to also predetermine what the negotiations would be in that regard.

I should say that, on the offshore, we did not have the opportunity to negotiate what we thought our offshore rights were as other land claims and other organizations across Canada have had the privilege to do so later on. It was just the timing, and because Canada wanted to have this done as expeditiously as they could to see offshore activity continue to the degree that it would after the signing of this agreement. So that's why we weren't able to negotiate that at that time. So it's taken us this long to get to that stage.

But in regards to the submission of the, you know, providing more detail in the significance of that, yes, we will make sure. It's being noted in regards to the written submission as well.

Lindsay Staples: If I may, I would – what – what I would add, if I had the opportunity to add a piece to the IFA, if you will, in light of what we've learned since it was signed, would be more attention to monitoring and follow-up. It strikes me one of the things that is really quite noteworthy in the Mackenzie Valley Resource Management Act, as distinct from the IFA, is the attention that it pays to monitoring, particularly the monitoring of cumulative effects. And I mean, you heard last night that we – we have initiated monitoring, and there's been ways to accomplish that, but it's hot hardwired into the agreement the way it is in the – the way it is in the Mackenzie Valley Resource Management Act that gave rise to the Cumulative Impacts Monitoring Program, what they call CIMP, you know, in the Valley. But people were clearly concerned about the possibility of uncontrolled – the pace and scale of development being difficult to control, and the ability of people and communities and the environment to respond. So those provisions for monitoring, particularly as it relates to cumulative effects, I think would be really noteworthy.

Duane Smith: If I could – sorry, you just reminded me, Lindsay, but we have been struggling, and yes, it's a capacity issue, in regards to how do we address data gathering. Previous governments didn't recognize that as research or science, but we've always stressed the need to continue to gather this information because those are key indicators on how you understand the ecosystem and activities. As well as documenting our traditional knowledge, indigenous knowledge, much better, and doing

that with us due to the lack of capacity again. That's always – never been fully addressed because the funding and the adequacy has barely met the, you know, keeping the lights on to some degree, and staff occupying positions at a bare minimum. But there's other areas. I mean, we – we can go into further detail in regards to capacity, but they're all supplemental on how we're trying to deal with it.

I mean, you look at the commitment and the allocation the government has given to further trying to document what's in the offshore within this region just demonstrates the lack of knowledge and understanding that the government has or doesn't have within the Beaufort Sea. We're in – we're in the process of developing that framework as we speak. And when they did that the previous four years, it just demonstrated again, you know, we're starting to understand what's out there, but it just – it was like just opening a crack in the door and now we realize there's a lot more things that we need to learn in our own back yards here.

Rod Northey: A couple more questions. Thank you. That – actually the offshore was going to be my next question, just to try and understand something. So the – and more generally, one of the criteria, perhaps the only one that you directly alluded to as to why you might ever want the feds back in on something if it was accepted, your premise of IFA being paramount – I shouldn't say your premise, but if it's accepted you do it in your regime, was trans-boundary. I just wonder whether you might consider some other criteria, and one of the ones that did strike me was just scale of a development. And I appreciate, Mr. Smith, very much your point about who knows what.

But I do invite you – you were asking us to try and figure out how to deal with this, and one of the things that I'm struck by is, if you have something that is really massive, what is it you want done? Is it a – if I could call it this way – a referral to the feds, which is one of the options you have, but I think you guys spent a fair amount of time explaining to us how CEAA '92 allowed you to do substitutions, which you now don't have so easily available, and I wonder if you could revisit the concept of what a substitution is. And similarly, CEAA '12, although maybe imperfect, talks about doing a bit more – different kinds of cooperative arrangement. So I think, to the extent, to be very blunt, that funding might be a very important issue for the scale of a review, what kind of joint review would you like where you get the funding and have some measure of control? What is it that you seek? So that's – that I'll say. I'm not looking, Mr. Smith, with respect, whether you could answer that. Maybe you could answer that right now, but if you could think about that, because we are listening very carefully to what you say the problems are.

Duane Smith: Well, I mean, we have had scenarios that have been discussed with us in the past by different oil and gas companies. They are scenarios, you know, a pipeline to Prudhoe Bay as an example on the offshore, taking the gas from here rather than through the Mackenzie Gas Pipeline but shipping it. So we've had these types of scenarios and discussions already, but you know, we – I'm still of the

view and the opinion that, given the proper capacity, our review process – our review; it's not – like I was pointing out, it's us as Canadians with the meaningful engagement of the Inuvialuit. I mean, you know, the federal government does have representation on there as well. I still think that the review process under our land claim can conduct that. We have made arrangements with the National Energy Board in the past to provide us with added capacity to deal with issues so we have these MOUs to give us the expert skill set where – where it's required.

Rod Northey: Alright. Now another can of worms, just because none of you have mentioned it. Section 67 of CEAA talks about determinations on federal land, which has a very uncertain scope but appears to be quite possibly – possibly very broad and involving multiple authorities. Could you just advise – and again, I'm not looking for it – maybe Mr. Donihee knows the answer to this right now, but whether there is any concern on your part about a provision like that, that is sitting in CEAA with almost no attention and no prior discussion, that applies broadly to all federal decisions on federal lands; and, if you are concerned with that, what you might have to say about where we should go with that provision.

John Donihee: …say that we'll have to take that one under advisement, but we're certainly happy to do it.

Johanne Gélinas: Wait. One last question about how you communicate your decisions when you come through a decision about a project to the certainly. And how do you do the follow-up for the conditions which are attached to a permit?

John Donihee: If there were a review done by the Environmental Impact Review Board, the report is very much like a report that would come from a CEAA panel. It would be released publicly at the same time as it was forwarded to the appropriate federal or territorial authorities for decision. The IFA provides for a couple of options for the decision makers if they want to do some tweaking, or they could send the matter back for further assessment if they felt that something had been missed. But assuming that, you know, we come to the end of that process, you know, the requirement then is for the federal authorities to issue a decision, I guess, based on what they've accepted, what they haven't accepted. And – and then it goes on to the regulators, generally, for them to implement the recommended mitigation measures and that sort of thing in whatever regulatory instruments are being issued.

There's a follow-up – and it might be better perhaps to hear from Steve Baryluk. There is a follow-up. There has been ongoing work done, for example, on the Tuk Road by our FJMC, Fisheries Joint Management Committee in particular. And you know, as the activity takes place on Inuvialuit lands and in the region, the HTCs and the – and the co-management organizations that are – that are there on an ongoing basis become actively involved then in the implementation of the recommended – recommended mitigation, and – and also, they get directly involved in monitoring, you know, to see whether or not the effects of – the predicted effects have

been actually reduced by the mitigation or not. And – and so there's a management process that goes on after that. So I hope that helps.

Duane Smith: Yeah, if I – sorry for intervening, but I think John has taken the very high-up – if there's a project proposed by the industry, there is a obligation under our process that they have to go around to the communities to consult with them. So there's that process first. If and when it is referred to the review board, then the review board will also be going around to the communities themselves to hear their views in regards to the project as well. And as John said, when it reaches the final stages of a report, it'll go to the appropriate Minister. But that Minister, if they are to make any amendments to the recommendations, has a certain timeframe to respond back to us as to why they may have rejected or amended certain recommendations, and then it goes back and forth again as well. I think that's what you were trying to get at.

Johanne Gélinas: And I was also thinking about the last stage, how you get back to the community and explain the decision that was made.

Duane Smith: There's a part of it where the Inuvialuit Regional Corporation also, under our land claim process, if a proponent wants to develop an activity within our region, we have to negotiate the benefits and impacts. So we would also be going back to our communities and working that out eventually, and explaining to them so that they understand we have reached a compromise, and if the communities themselves are satisfied with this. But like we said, at the end of the day, it's a report and with the recommendations that go to the Minister, who has the final yes or no on if this should proceed or not, based on those recommendations.

Lindsay Staples: And in addition, I think in the context of thinking about follow-up and monitoring, that, you know, there are arrangements that, you know, can emerge from our review board recommendations or simply commitments from companies or proponents that emerge during the course of a hearing for community monitors or environmental monitors with respect to follow-up programs and basically monitoring the commitments that have been made.

Duane Smith: Yeah, if – just under our – how the highway is developing, it – any activity actually – there will be an obligation of the company to have wildlife monitors put in place, and they operate 24/7, summer or winter, to basically keep the wildlife away from the area, keep the people protected. There's a few bears around here. But it's more to protect the animals from the people, really, so that they don't get affected. But then there's also the environmental monitors, which our – our land administration will work out with the developer as well, where they're monitoring the activity of the development. If there's spills, as an example, from vehicles, they can stop the vehicle, those sorts of things, and tell them that they can't use that one until you've put it back into a shape that it should be operating in. For the highway, as an example, there was a requirement for them to use new equipment, so that alleviated that issue

right off the bat. But I mean, there are environmental monitors that also provide daily reports not only to the companies but to the governments but – and ourselves as well.

Johanne Gélinas: Steven (ph), you want to add something?

Steven Baryluk: Yeah, thank you, Madam Chair. Just – and again, an additional response to your question about how things are communicated back to communities. At times there are also, like, plain language summaries developed, which are sent to communities, so they're not getting the long, technical reports. They get something that's a bit more digestible to a – to a layman to help them understand decisions that were made as well. And as John mentioned, for the follow-up, the monitoring, the co-management boards pick up a lot of the job of monitoring whether the recommendations are being implemented or not.

Johanne Gélinas: Thank you. I would like to thank you all, gentlemen, for your time –

[TECHNICAL DIFFICULTIES]

-- quality of your presentation, and we look forward to have written notes, even though if we have everything –

[TECHNICAL DIFFICULTIES]

-- on record, we are looking forward to –

[TECHNICAL DIFFICULTIES]

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