



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

Jurisdictional Responsibilities for Land Resources, Land Use and
Development in the Yukon Territory and Northwest Territories

Other Northwest Territories Federal Lands



Canada

Book Four

Jurisdictional Responsibilities
for Land Resources, Land Use
and Development in the Yukon Territory and Northwest
Territories

Book four
Other Northwest Territories Federal Lands

Land Management Division,

Northern Affairs Program

November 13, 1997

Preface

The Federal Government through the Minister of Indian Affairs and Northern Development is responsible for administering territorial lands and its resources in the Yukon Territory and the Northwest Territories through various Acts, including the Territorial Lands Act, and Regulations, Yukon Waters Act, Canada Petroleum Resources Act, Yukon Placer Mining Act, Yukon Quartz Mining Act, etc. Through the Land Claim process, jurisdictional responsibility over certain lands, resources and land uses has been transferred to various First Nations and to Aboriginal groups across the North.

In order to provide a clearer understanding of the jurisdictional framework that is evolving in the Yukon Territory and Northwest Territories, this set of guidelines has been prepared by the Land Management Division concerning “Jurisdictional Responsibilities for Land, Resources, Land Use and Development in the Yukon and Northwest Territories”. These guidelines consist of eight (8) chapters, each chapter describes the jurisdictional regime of a particular geographic region and provides the answers as to which governing bodies should be consulted when making application for specific surface and sub-surface leases, permits, licences, or claims, etc.

Michael Fish, Head of Land Transactions, directed and coordinated the compilation of the guidelines which were written by Bill Biggs and edited by Allan Macartney. Bill Biggs is a lawyer having worked as a Director, Treasury Board Secretariat, implementing federal government policies, legislation and reform in the area of real property management. Allen Macartney is a professional writer and editor having over eighteen years of research and writing experience.

Ian Sneddon
Chief, Land Management Division
Environment and Renewable Resources Directorate
Northern Affairs Program
DIAND

Dedication

This document recognizes the former managers of land resources in both territories and Ottawa, and their staffs, who contributed so much towards the solid framework for land resource management that exists in the North. Their names follow:

Regional Managers of Lands

Yukon Region

Tom Rettallack

Hiram Beaubier

Richard Spencer

Bob Freisen

Angus Robertson

Jack Nichols

Jennifer Guscott

Mark Zrum

Chiefs, Land Management

Headquarters

Bob Goudie

David Gee

Gord Evans

Ian Petrie

Chris Cuddy

Ian Sneddon

Regional Managers of Lands

Northwest Territories Region

Norm Adams

Joe Ganske

Will Dunlop

Floyd Adlem

Jim Umpherson

Howard Madill

Annette McRobert

Important Note to Users

This document has been prepared for convenient reference only. It has no official sanction. For all purposes of interpreting and applying the law, and the land claims agreements, consult the Acts passed by Parliament and the land claim agreements themselves.

Published under the authority of the
Minister of Indian Affairs and
Northern Development
Ottawa, 1998

QS-8574-007-EE-A1
Catalogue No. r34-8/3-1998e
ISBN 0-662-26956-x

© Minister of Public Works and Government Services Canada

Cette publication peut aussi être obtenue en français sous le titre :

*Partage des compétences en matière de ressources
foncières et d'utilisation et d'aménagement des
terres au Yukon et dans les Territoires du Nord-Ouest –
Autres terres fédérales dans les Territoires du Nord-Ouest – Publication no. quatre*

Introduction

Dramatic changes have occurred over the past fifteen years in the jurisdictional framework for land resources, land use and development in the Yukon Territory and the Northwest Territories. These changes are primarily a result of:

- ! federal legislation revisions;
- ! the impending creation of Nunavut;
- ! the finalization of Aboriginal land claim agreements; and
- ! the devolution of responsibilities from the federal to the territorial governments.

Jurisdictions will further change as these initiatives continue.

Jurisdictional responsibilities are described in this document as of August 31, 1996 for land resources, land use and development within the territories concerning:

- ! federal lands; and
- ! lands confirmed for Aboriginal groups under land claim agreement settlement legislation.

These responsibilities differ in some respects between the territories. Within each territory the responsibilities vary based on the particular land claim agreements involved. These variations are considered through the chapters of this document.

In each chapter, the jurisdictional regime for a particular geographic region are described, based on territory, then on the land claim agreements. For convenience, this document combines similar land claim agreements in the chapters relating to the Yukon First Nations and the Northwest Territories First Nations. Differences between the individual land claim agreements are noted where appropriate.

Each chapter dealing with land claim settlement areas, begins with a section on the settlement agreement. This section also describes the roles of administrative bodies (such as surface rights boards) established through the settlement agreements.

The second section of each chapter provides an overview of the region's general jurisdictional categories based on federal and Aboriginal land ownership. For example, there are three categories of land in the Yukon First Nation settlement areas in the Yukon Territory:

1. Settlement Lands to which the First Nations received title under their Land Claim Settlement Agreements;

2. Reserves under the *Indian Act*; and
3. Federal lands.

The remainder of each chapter analyses each region's land ownership categories. For the categories relating to settlement lands and federal lands, the jurisdictional regime is discussed under the following headings:

- ! Land Ownership;
- ! Land Use;
- ! General Access Rights;
- ! Non-Renewable Resources;
- ! Forestry and Plants;
- ! Water Use and Waste Deposit;
- ! Fish and Wildlife;
- ! Environmental Assessment; and
- ! Economic Development.

Note: Discussion of lands on reserves under the *Indian Act* is minimal. This text does not specifically examine lands administered by the territorial commissioners, nor does it discuss privately owned lands, or lands acquired by First Nations outside of the land claim settlement process.

Appendix A lists the legislation and the finalized land claim agreements examined in the preparation of this text. Legislation and land claim agreements are current as of August 31, 1996.

Table of Contents

Notes and Legend

4.1 Land Ownership

4.1.1 General

4.2 Land Use

4.2.1 General

4.2.2 *Territorial Lands Act*

4.2.3 Territorial Land Regulations

4.2.4 Territorial Land Use Regulations

4.2.5 *National Parks Act*

4.2.6 *Aeronautics Act*

4.2.7 *Public Harbours and Port Facilities Act*

4.2.8 *Fishing and Recreational Harbours Act*

4.2.9 *Historic Sites and Monuments Act*

4.2.10 Northwest Territories Archaeological Sites Regulations

4.2.11 *Government Property Traffic Act*

4.2.12 *Emergencies Act*

4.2.13 *Bridges Act*

4.2.14 Nunavut Land Claims Agreement

4.2.14.1 Nunavut Planning Commission

4.2.14.2 Nunavut Impact Review Board

4.2.14.3 Outer Land Fast Ice Zone - East Baffin Coast

4.2.15 *Mackenzie Valley Resource Management Act* (proposed)

4.3 General Access Rights

4.3.1 General

4.4 Non-renewable Resources

4.4.1 General

4.4.2 Canada Mining Regulations

4.4.3 Territorial Coal Regulations

4.4.4 Territorial Quarrying Regulations

4.4.5 Territorial Dredging Regulations

4.4.6 *Canada Petroleum Resources Act*

4.4.7 *Canada Oil and Gas Operations Act*

4.5 Forestry and Plants

4.5.1 General

4.6 Water Use and Waste Deposit

4.6.1 General

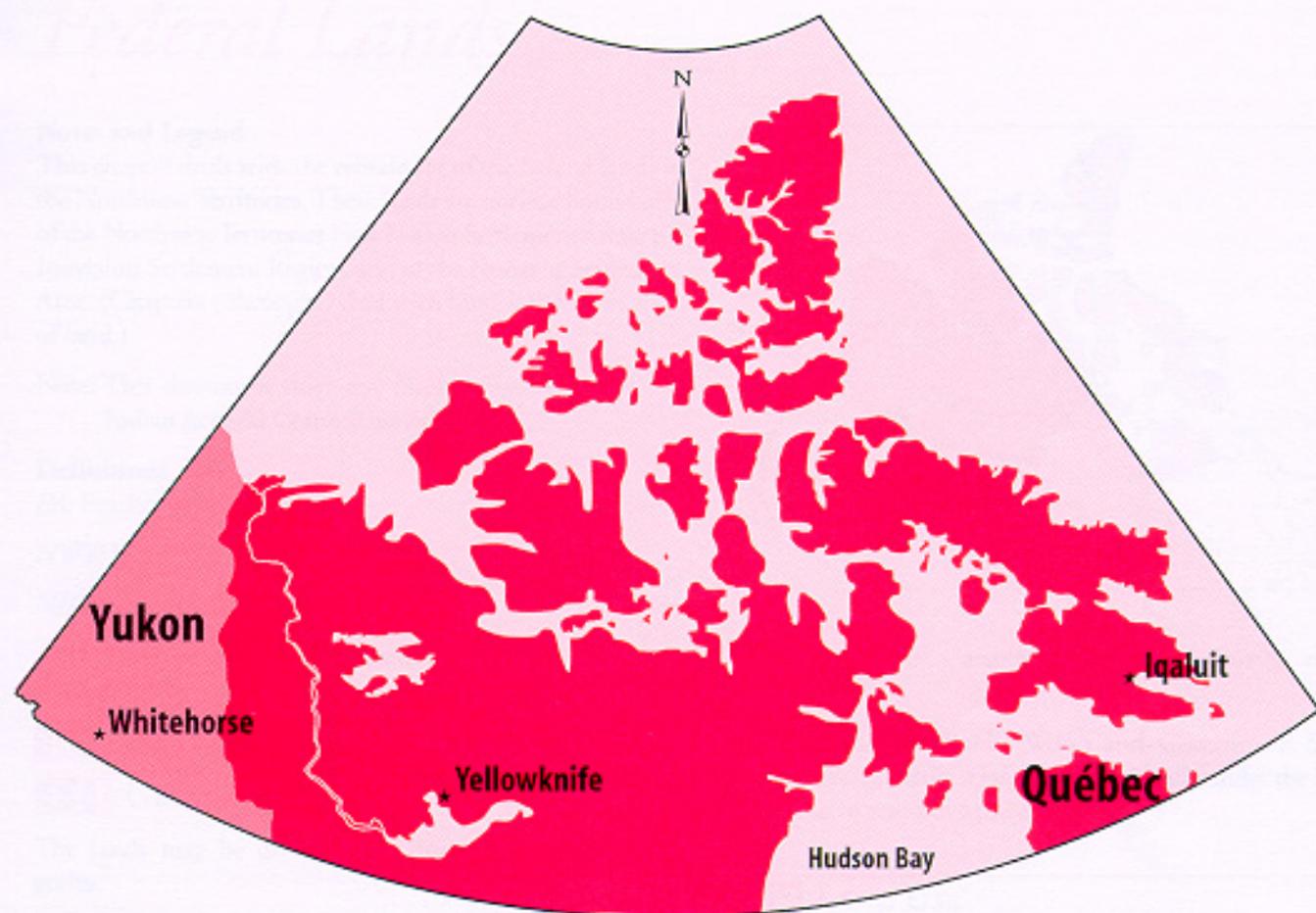
4.6.2 *Northwest Territories Waters Act*

- 4.6.3 *Navigable Waters Protection Act*
- 4.6.4 *Canada Water Act*
- 4.6.5 *Dominion Water Power Act*
- 4.6.6 *Arctic Waters Pollution Prevention Act*
- 4.6.7 Nunavut Land Claims Agreement
- 4.6.8 *Nunavut Waters Act* (proposed)

- 4.7 Fish and Wildlife
 - 4.7.1 General
 - 4.7.2 *Canada Wildlife Act*
 - 4.7.3 *Migratory Birds Convention Act*
 - 4.7.4 *Fisheries Act*
 - 4.7.5 Nunavut Land Claims Agreement
 - 4.7.5.1 Outer Land Fast Ice Zone - East Baffin Coast

- 4.8 Environmental Assessment
 - 4.8.1 General
 - 4.8.2 *Canadian Environmental Assessment Act*

- 4.9 Economic Development
 - 4.9.1 General



Other Northwest Territories Federal Lands

Book four

Other Northwest Territories Federal Lands

Notes and Legend

This chapter deals with the remainder of the federal lands in the Northwest Territories. These lands are outside boundaries of the Northwest Territories First Nation Settlement Areas, the Inuvialuit Settlement Region, and of the Nunavut Settlement Area. (Chapters 5 through 7 deal with these latter three areas of land.)

Note: This document does not discuss reserves under the Indian Act and Commissioner's lands.

Definitions

FA: Final Agreement

NWT: Northwest Territories

NIRB: Nunavut Impact Review Board

DIO: Designated Inuit Organization

4.1 Land Ownership

4.1.1 General

The lands may be divided into three jurisdictional categories:

1. Federal lands administered by the Minister of Indian Affairs and Northern Development;
2. Federal lands administered by other federal Ministers; and
3. Federal lands owned or administered by agent Crown corporations.

The Minister of Indian Affairs and Northern Development administers most federal lands in this area. The Northern Affairs Program of the Department of Indian and Northern Development is responsible for managing these lands.

The exceptions (under the *Department of Indian Affairs and Northern Development Act*) include federal lands in the Yukon Territory and Northwest Territories administered by another Minister prior to October 1, 1966.

The Minister of Canadian Heritage administers national parks.

The Minister of Public Works and Government Services administers all federal lands not specifically under the administration of another Minister.

4.2 Land Use

4.2.1 General

The *Territorial Lands Act* governs (in general) land use activities on federal lands administered by the Minister of Indian Affairs and Northern Development. The Territorial Land Use Regulations under that Act require permits for certain activities. Sale and leasing of these lands are governed primarily by the *Territorial Lands Act* and the Territorial Lands Regulations. However, the sale and leasing of certain offshore areas (administered by the Minister of Indian Affairs and Northern Development) are governed by the *Federal Real Property Act* and the Federal Real Property Regulations under that Act.

The sale and leasing of federal lands administered by other federal Ministers are governed by specific legislation or the *Federal Real Property Act* and the Federal Real Property Regulations under that Act. However, the *Territorial Lands Act* governs the use and disposition of lands administered by the Minister responsible for the *Northern Pipeline Act*.

Specific legislation and Part X of the *Financial Administration Act* governs the sale and leasing of federal lands owned or administered by agent Crown corporations.

4.2.2 Territorial Lands Act

The *Territorial Lands Act* provides for a comprehensive regime for the use, disposition and protection of lands in the Yukon Territory and the Northwest Territories administered by the Minister of Indian Affairs and Northern Development. It also applies to lands administered by the Minister responsible for the *Northern Pipeline Act*.

The *Territorial Lands Act* specifically does not affect operations under the *Yukon Quartz Mining Act*, the *Yukon Placer Mining Act*, the *Dominion Water Power Act* or the *National Parks Act*.

Under the *Territorial Lands Act*, the Governor in Council has comprehensive powers over territorial lands. These powers include the right to:

- ! establish land management zones for protecting ecological balance or physical characteristics, and establishing regulations for using their surface lands;
- ! set apart and appropriate territorial lands for public purposes;
- ! authorize the acquisition of territorial lands for rights-of-way by railways, power companies or pipeline companies;
- ! regulate timber cutting in the Yukon Territory;
- ! authorize and regulate the disposition of territorial lands; and
- ! regulate mining rights leasing, with compensation to surface rights holders

The Governor in Council may also withdraw territorial lands from disposal. Note: The Governor in Council has restricted the disposal of various lands in the Northwest Territories pending the anticipated settlement of land claims and the development of future national parks.

The Act allows for instruments called “notifications.” These can be used to grant territorial lands, equivalent to grants by letters patent. The Act also contains various restrictions on selling and leasing lands, including a list of reservations to be included in grants of territorial lands. Selling lands suitable for muskrat farming is absolutely prohibited. Restrictions also apply to federal government employees and officers, and their ability to hold any interests in territorial lands.

Trespass on territorial lands by forfeited rights holders is also covered in the Act. *Territorial Lands Act* regulates include:

- ! Territorial Land Regulations;
- ! Territorial Land Use Regulations;
- ! Canada Mining Regulations (applicable only to the Northwest Territories);
- ! Territorial Coal Regulations;
- ! Territorial Dredging Regulations;
- ! Territorial Quarrying Regulations; and
- ! Yukon Timber Regulations (applicable only to the Yukon Territory).

4.2.3 Territorial Land Regulations

These Regulations, under the *Territorial Lands Act*, relate to selling and leasing territorial lands administered by the Minister of Indian Affairs and Northern Development. Under the regulations, the Minister may sell or lease these lands, with reservations additional to those in the *Territorial Lands Act* applying to leases. Special rules apply for grazing leases. The regulations limit the value of lands that can be sold on the Minister's authorization.

Note: These regulations do not apply to lands administered by the Minister responsible for the *Northern Pipeline Act*. Such sales or leases require Governor in Council authority.

4.2.4 Territorial Land Use Regulations

These Regulations (under the *Territorial Lands Act*) control land use operations on territorial lands administered by the Minister of Indian Affairs and Northern Development. Please note that these regulations do not apply to lands administered by the Minister responsible for the *Northern Pipeline Act*. Specifically, they also do not apply to:

- ! timber cutting operations conducted under the Yukon Timber Regulations;
- ! activities relating to prospecting, staking or locating a mineral claim, unless requiring the use of equipment or material normally needing a permit under the regulations;
- ! activities by territorial residents in the normal course of hunting, fishing or trapping; and
- ! lands where the Minister holds only subsurface rights.

Operations under the *Yukon Quartz Mining Act*, the *Yukon Placer Mining Act*, the *Dominion Water Power Act* or the *National Parks Act*, cannot be affected by the regulations, as noted above.

Under the regulations, special rules apply to fuel caches, excavations, water crossings, clearing of trails or rights-of-way, boundary monuments, archaeological sites, campsites, and emergencies.

4.2.5 National Parks Act

The *National Parks Act* sets out the regime for establishing and managing national parks, national marine parks, and national historic parks. The Minister of Canadian Heritage administers these parks, while the Canadian Parks Service is responsible for their management. The Act lists various parks, including Wood Buffalo National Park in the Northwest Territories and Alberta, and Northern Yukon National Park, Vuntut National

Park and the Kluane National Park (Reserve) in the Yukon Territory. Other lands reserved for national parks in the Yukon Territory and the Northwest Territories are described in 1974 and 1988 statutes amending the *National Parks Act*.

A Wildlife Advisory Board (relating to traditional hunting grounds within Wood Buffalo National Park) may be established under this Act.

Certain regulations under the Act govern the use and operation of national historic parks. These include activities related to wildlife and domestic animals. The regulations do not list national historic parks in the Yukon Territory or the Northwest Territories.

Various regulations under the Act control activities in national parks, including building permits, business licensing, camping, domestic animals, fire protection, fishing, garbage, aircraft operations, grazing, traffic and parking, signs, leasing and licensing of park lands, water and sewer use, resort subdivisions, and wildlife. Specific provisions relating to parks in the Yukon Territory and the Northwest Territories are found in the following regulations:

- ! National Park Fishing Regulations (various parks);
- ! National Parks General Regulations (Wood Buffalo, Kluane and South Nahanni);
- ! National Parks Lease and Licence of Occupation Regulations (1991) (Wood Buffalo); and
- ! National Parks Town, Visitor Centre and Resort Subdivision Designation Regulations (Wood Buffalo).

In addition, the Wood Buffalo National Park Game Regulations control wildlife, fishing and game activities (including firearms), over-snow vehicle and aircraft operations. The regulations also restrict seasonal access to the Whooping Crane Nesting Area.

4.2.6 Aeronautics Act

This Act regulates aeronautics in Canada. While the Minister of Transport is primarily responsible for the Act, the Minister of National Defence also has certain responsibilities. Under the Act, the Governor in Council may make regulations that restrict use and development of lands adjacent to, or in the vicinity of, a federal airport. Please note that these zoning regulations apply to privately-owned land, and the Act contains provisions for entry and removal of obstructions. Zoning regulations have been made for the following airports in the Northwest Territories:

- ! Aklavik;
- ! Hall Beach;
- ! Arviat;
- ! Hay River;

!	Baker Lake;	!	Holman;
!	Cambridge Bay;	!	Igloolik;
!	Chesterfield Inlet;	!	Inuvik;
!	Coppermine;	!	Norman Wells;
!	Coral Harbour;	!	Rankin Inlet;
!	Fort Liard;	!	Repulse Bay;
!	Fort McPherson;	!	Resolute Bay;
!	Fort Norman;	!	Sachs Harbour;
!	Fort Resolution;	!	Spence Bay;
!	Fort Simpson;	!	Tuktoyaktuk;
!	Fort Smith;	!	Whale Cove;
!	Gjoa Haven;	!	Wrigley; and
		!	Yellowknife.

4.2.7 *Public Harbours and Port Facilities Act*

The Minister responsible for the *Public Harbours and Port Facilities Act* administers federal public harbours and port facilities not managed by a port corporation, a harbour commission, or another Minister. The Act regulates harbour and facility-related activities. Although the Act does not list harbours or facilities, Nanisivik (in the Northwest Territories) is mentioned in one of the regulations under the Act. Iqaluit in the Northwest Territories was de-listed as a public harbour in June 1996.

4.2.8 *Fishing and Recreational Harbours Act*

This Act regulates the use, management and maintenance of certain harbours in Canada. It is administered by a designated federal Minister. The Fishing And Recreational Harbours Regulations relate to activities at these harbours. Several harbours in the Northwest Territories are currently under this Act.

4.2.9 *Historic Sites and Monuments Act*

The Minister of Canadian Heritage may establish and administer historic museums and sites, under this Act. The Historic Sites and Monuments Board of Canada advises the Minister on establishing and administering of historic museums and places.

4.2.10 Northwest Territories Archaeological Sites Regulations

The Northwest Territories Archaeological Sites Regulations (under the *Northwest Territories Act*) govern activities at archaeological sites in all three jurisdictional categories. Please note that provisions also relate to archaeological sites in the *Territorial Lands Act*.

4.2.11 *Government Property Traffic Act*

The *Government Property Traffic Act* regulates traffic and parking operations on federal lands. The Government Property Traffic Regulations under the Act are based primarily on provincial traffic statutes. These regulations, however, do not apply to certain lands, including Indian reserves and territorial lands under the *Territorial Lands Act*. The Act's Airport Traffic Regulations regulate traffic and parking at specified airports, including several in the Yukon Territory and Northwest Territories.

4.2.12 *Emergencies Act*

This Act regulates federal responses to emergencies and the compensation payable for these responses. Under the Act, government may requisition, use or dispose of real property in an emergency.

4.2.13 *Bridges Act*

This Act regulates bridges built by any federally incorporated company. The Minister of Public Works and Government Services administers the Act.

4.2.14 Nunavut Land Claims Agreement

4.2.14.1 Nunavut Planning Commission

The Nunavut Land Claims Agreement establishes the Nunavut Planning Commission. The Commission develops land use plans to direct resource use and development in the Nunavut Settlement Area. Please see 7.1.3 for more information.

Until the Nunavut Planning Commission is established, land use planning in the Nunavut Settlement Area will be conducted according to the 1983 Basis of an Agreement for Land Use Planning in the Northwest Territories, subject to any interim changes agreed to by the Tungavik Federation of Nunavut and government.

Land use planning provisions apply to both land and marine areas within the Nunavut Settlement Area and the Outer Land Fast Ice Zone. For purposes of the land use planning provisions, “land” is defined to include water and resources, including wildlife.

4.2.14.2 Nunavut Impact Review Board

The Nunavut Land Claims Agreement establishes the Nunavut Impact Review Board (NIRB). It is to screen project proposals to determine, among other things:

- ! whether a review is required; or
- ! terms and conditions of project proposals for proceeding.

Please see 7.1.3 for more information.

No licence or approval allowing a project to proceed shall be issued until the NIRB completes its screening and review, and issues a project certificate.

NIRB on request by government or request by DIO with consent of government, will review a project proposal located outside the Nunavut Settlement Area that may have significant adverse effects on the Nunavut Settlement Area.

The development impact provisions apply to:

- ! land and marine areas within Nunavut Settlement Area;
- ! Outer Land Fast Ice Zone;
- ! shipping associated with project proposals in Nunavut Settlement Area (with some exceptions);
- ! national defence facilities and activities. There may be exceptional exemptions for national security confidentiality or urgency.

4.2.14.3 Outer Land Fast Ice Zone – East Baffin Coast

Various sections of the Nunavut Land Claims Agreement apply to the Outer Land Fast Ice Zone. In addition, Inuit will have the right to continue to use open waters in the Zone for domestic harvesting of species other than marine mammals. Inuit do not need licences for these activities but are subject to other management regulations imposed by government consistent with article 15, part 3 of the Lands Claim Agreement. Fisheries in the Zone shall be managed so as not to deplete marine mammal populations.

4.2.15 Mackenzie Valley Resource Management Act (proposed)

Note: *The Mackenzie Valley Resource Management Act* (proposed) will be introduced in the fall 1997 session of the new Parliament.

This proposed statute would apply to the Mackenzie Valley in the Northwest Territories unless otherwise specified. The Mackenzie Valley is bounded on the south by 60 degrees latitude (but not including Wood Buffalo National Park), on the north by the Inuvialuit Settlement Region, on the west by the Yukon Territory, and on the east by Nunavut.

Land Use Planning

Part II of the Bill contains provisions relating to land use planning. These provisions would not generally apply to:

- ! national parks;
- ! lands acquired for an historic site or monument; or
- ! lands within local government boundaries.

The Bill establishes the Gwich'in Land Use Planning Board for the Gwich'in settlement area and the Sahtu Land Use Planning Board for the Sahtu settlement area. These Boards establish land use plans that become effective upon approval by the First Nation and government. A land use plan would bind First Nations, federal and territorial governments and anyone else issuing licences or other authorizations relating to the use of land or waters or the deposit of waste. This includes the establishment of national parks and the acquisition of historic sites or monuments. On request, a planning board would determine whether an activity was in accordance with a land use plan. This decision would be subject only to judicial review by the Northwest Territories Supreme Court.

Land and Water Regulations

Parts III and IV of the Bill deal with land and water regulations. These provisions would not generally apply to:

- ! the use of land or waters; or
- ! the deposit of waste within national parks or lands acquired for an historic site or monument. However, authorities within these excepted areas would consult with land and water boards, and vice versa.

The land provisions would also not apply within local government boundaries to the extent local government regulates the use of land.

The Bill establishes the Mackenzie Valley Land and Water Board for the Mackenzie Valley. It also establishes two permanent regional panels:

- ! the Gwich'in Land and Water Board for the Gwich'in settlement area; and
- ! the Sahtu Land and Water Board for the Sahtu settlement area.

Other regional panels may be established as required. The regional panels' jurisdiction would be generally limited to uses of land and waters and deposits of waste likely to have an effect only within the settlement area.

These Land and Water Boards would regulate use of land and waters for the optimum benefit of area residents and all Canadians. The Boards would have jurisdiction over all uses of water and deposits of waste for which a licence is required under the *Northwest Territories Waters Act*, and takes the place of the Northwest Territories Water Board. The provisions of the *Northwest Territories Waters Act* continue (as amended by the legislation) to incorporate features of the land claims.

The Boards would have the right to require compensation when a use of waters or deposit of waste (from inside or outside of the region) in a national park or on an historic site or monument lands, would substantially affect water in, or adjacent to, settlement areas.

All licences or other authorizations issued by a Board would be subject to the provisions of an approved land use plan, and the environmental review process. Decisions of a Board would generally be final and binding.

A provision in Part III would grant the public and government a conditional right of access to construction materials situated on settlement lands, or municipal lands in settlement areas. Part III also contains provisions granting certain Aboriginal water rights.

Environmental Assessment

Part V of the Bill would set up a process for reviewing proposals for development in the Mackenzie Valley. This would include:

- ! preliminary screening;
- ! an environmental assessment; and
- ! an environmental impact review.

Proposals relating to Indian reserves, settlement lands, the establishment of national parks and the acquisition of lands for historic sites or monuments would all submit to this process. The Part V process would mainly replace the application of the *Canadian Environmental Assessment Act in the Mackenzie Valley*, except under specific circumstances such as transboundary or “national interest” applications.

Under the Bill and aside from emergencies, environmental review requirements would have to be met prior to:

- ! the issuing of a permit, licence or other authorization under federal or territorial law; or
- !
- ! the taking by a First Nation or a government of any irrevocable action relating to a development not requiring such an authorization.

Part VI of the Bill deals with impact monitoring and environmental audits.

Part VII of the Bill contains various transitional provisions relating to permits and licences (issued previously under the *Territorial Lands Act and the Northwest Territories Waters Act*) and to environmental reviews already in progress.

4.3 General Access Rights

4.3.1 General

No legislation regulates general public access rights to federal lands. Therefore, the common law governs these. However, specific access rights are granted under various pieces of legislation relating to activities on federal lands, as mentioned in other sections of this chapter.

4.4 Non-renewable Resources

4.4.1 General

The Canada Mining Regulations govern general mining activities, other than:

- ! oil and gas;
- ! coal;
- ! stone;
- ! sand and gravel; and
- ! other substances covered by other regulations under the *Territorial Lands Act*.

Because these regulations were promulgated under both the *Territorial Lands Act* and the *Public Lands Grants Act* (now replaced by the *Federal Real Property Act*), they apply to mining activities under all three jurisdictional categories of federal lands in the Northwest Territories.

Mining activities governed by other *Territorial Lands Act* regulations include:

- ! Territorial Coal Regulations;
- ! Territorial Quarrying Regulations; and
- ! Territorial Dredging Regulations.

Mining-related activities on federal lands administered by the Minister of Indian Affairs and Northern Development may require permits under the Territorial Land Use Regulations of the *Territorial Lands Act*.

Petroleum activities under all three jurisdictional categories in the Northwest Territories are governed by the *Canadian Petroleum Resources Act* and the *Canada Oil and Gas Operations Act*. Regulations under the now-repealed *Canada Oil and Gas Act* still apply as long as they are consistent with the *Canadian Petroleum Resources Act*.

4.4.2 Canada Mining Regulations

These regulations under the *Territorial Lands Act* and the *Public Lands Grants Act* (now replaced by the *Federal Real Property Act*) apply to mining on federal lands in the Northwest Territories, except mining for:

- ! oil and gas;
- ! coal;
- ! stone;
- ! sand and gravel; and
- ! other substances regulated by other regulations under the *Territorial Lands Act*.

The Canada Mining Regulations are also subject to legislation respecting radioactive ores. Under the regulations, individuals and Northwest Territories-registered companies may be given licences to prospect and record claims, and leases of recorded claims. They may apply for certificates of work. Various excepted lands include:

- ! lands governed by the *National Park Act*;
- ! lands where minerals have already been granted or leased by the Crown;
- ! lands set apart, or where entry is prohibited under the *Territorial Lands Act*;
- ! lands administered by the Ministers of National Defence, Natural Resources, or Transport (unless consented to by the appropriate Minister);
- ! lands where the surface right has been granted or leased by the Crown, unless consent or authorization has been received; and
- ! railways or other rights-of-way on recorded claims unless consent or authorization has been received.

The Regulations also cover staking and recording claims, and resolving disputes. Special rules relate to:

- ! entry, prospecting or locating claims on lands granted or leased to a surface holder;
- ! discharge of harmful substances from mining activities;
- ! rights-of-ways over mining properties for electrical and telecommunications lines; and
- ! claims in the Northwest Territories mistakenly located under the *Yukon Quartz Mining Act*.

4.4.3 Territorial Coal Regulations

Under the *Territorial Lands Act*, these regulations control coal exploration and mining on federal lands administered by the Minister of Indian Affairs and Northern Development in the Yukon Territory and the Northwest Territories. Land exceptions include:

- ! municipal lands;
- ! Indian reserves;
- ! lands reserved for national parks, game sanctuaries, and military or other public purpose;
- ! lands reserved under the *Dominion Water Power Act*; and
- ! lands lawfully occupied for mining purposes.

Special rules apply to lands where the surface rights are owned or lawfully occupied by another. In addition, the regulations allow Aboriginal peoples in isolated portions of the territories to take, with permission, small quantities of coal.

4.4.4 Territorial Quarrying Regulations

These regulations (under the *Territorial Lands Act*) govern the taking of sand, gravel and other granular materials from federal lands in the territories administered by the Minister of Indian Affairs and Northern Development. The regulations describe the regime for permits, leasing, staking, fees and royalties. Special rules allow residents of the Yukon Territory and the Northwest Territories to take certain quantities of sand, gravel, stone and loam for their personal use.

4.4.5 Territorial Dredging Regulations

Regulations (under the *Territorial Lands Act*) allow the Minister of Indian Affairs and Northern Development to issue leases for the exclusive right to dredge for minerals in submerged river beds in the Yukon Territory and the Northwest Territories. “Minerals” means precious and base minerals; peat, clay, sand and gravel are excluded. These regulations set out the system for staking leased property, and for paying fees and royalties. The regulations allow dredging lease holders to cut some timber for dredging operations. Dredging operations must not interfere with the general public right to navigation. Special rules govern conflicts between:

- ! operations under the dredging regulations; and
- ! activities of claim holders under the *Yukon Placer Mining Act*.

4.4.6 Canada Petroleum Resources Act

This Act regulates the issuance of petroleum interests and the licensing for petroleum exploration, production and subsurface storage in:

- ! federal lands in the Yukon Territory;
- ! federal lands in the Northwest Territories; and
- ! submarine areas not within the territories, out to the 200 mile limit.

The Ministers responsible for the Act are the Ministers of Natural Resources and of Indian Affairs and Northern Development, for the natural resources of which they administer respectively. The Act does not affect constitutionally-protected Aboriginal and treaty rights, or any rights under the Inuvialuit Final Agreement.

Under the Act, the issuance of interests, and petroleum-related activities, can be prohibited on specified lands or in certain circumstances (such as emergencies). Any lands withdrawn or set aside under the *Territorial Lands Act* are deemed to be prohibited under the *Canada Petroleum Resources Act*.

The Canada Oil and Gas Land Regulations, made under the now-repealed *Canada Oil and Gas Act*, continue in effect until new regulations are made unless they conflict with the *Canada Petroleum Resources Act*. These regulations include provisions relating to entry on federal lands by persons holding petroleum licences, permits and leases.

Regulations made under the *Canada Petroleum Resources Act* relate to:

- ! environmental research in regions, including several in the Yukon Territory and the Northwest Territories (the Environmental Studies Research Fund Regions Regulations);
- ! royalty calculations (the Frontier Land Petroleum Royalty Regulations); and
- ! the registration of petroleum interests (the Frontier Lands Registration Regulations).

4.4.7 *Canada Oil and Gas Operations Act*

This Act regulates exploration and drilling for production, conservation, processing and transportation of oil and gas in the Yukon Territory, the Northwest Territories and in Canadian submarine areas. The Act is intended to promote (related to oil and gas exploration and exploitation):

- ! safety;
- ! environmental protection;
- ! oil and gas conservation; and
- ! joint production agreements.

The Ministers responsible for the Act are the Ministers of Natural Resources and of Indian Affairs and Northern Development, for the natural resources of which they administer respectively.

Under the Act, the National Energy Board (or its delegate) may issue petroleum-related operating licences, or authorize related works and activities, and impose terms and conditions on them. Specific provisions also apply that relate to entry on lands for petroleum exploration and for activities related to an operating licence. Some of these provisions do not apply to First Nation lands in the Yukon Territory.

The Act also sets up an Oil and Gas Committee for inquiries, hearings and appeals. Various regulations under the Act relate to different aspects of oil and gas operations, including installations, diving, drilling, spills and geophysical operations.

4.5 Forestry and Plants

4.5.1 General

The territorial government is responsible for forest management in the Northwest Territories, and is governed by the territorial *Forest Management Act*. Timber activities on federal lands in the Northwest Territories administered by the Minister of Indian Affairs and Northern Development are specifically excluded from governance by the *Territorial Lands Act*.

4.6 Water Use and Waste Deposit

4.6.1 General

The *Northwest Territories Waters Act* and its water regulations govern water use and the deposit of waste in water in all three jurisdictional categories. The Northwest Territories Water Board issues licences for water and waste deposit activities.

Migratory Bird Regulations under the *Migratory Birds Convention Act*, 1994 deal with oil waste deposits or other substances harmful to migratory birds in any waters or area frequented by these birds. Please see 4.7.3 for more information.

Various provisions of, and regulations under, the *Fisheries Act* relate to fish habitat protection and pollution prevention in Canadian waters. Please see 4.7.4 for more information.

4.6.2 Northwest Territories Waters Act

This Act came into force on June 15, 1993. It replaces the *Northern Inland Waters Act* for the Northwest Territories. References to the former Act in legislation are deemed to be references to the new Act, and licences issued under the *Northern Inland Waters Act* continue to remain in force.

Under the Act, no person shall use waters in a water management area, or deposit waste in any waters, except in accordance with a licence or the regulations issued under the Act. The Act defines “water” to mean all inland waters (surface or subsurface) in the Northwest Territories. This prohibition does not apply to:

- ! domestic users;
- ! instream users;

- ! flood or fire control uses;
- ! activities authorized under the *Dominion Water Power Act*; or
- ! in the case of waste deposit, waters included in a water quality management area established under the *Canada Water Act*, or its regulations.

The Act states that the property, and the right to the use and flow of all waters, vests in the Crown, subject to rights granted under the *Dominion Water Power Act*.

The Northwest Territories Water Board (established under the Act) ensures conservation, development and use of waters in a way that provides optimum benefit for all Canadians, and particularly for residents of the Northwest Territories. The Board may issue licences for water use and waste deposit. Special rules exist for licences issued for lands within a water quality management area under the *Canada Water Act*.

The Act gives a limited expropriation right to water licence applicants. This right does not apply in the Yukon Territory to settlement land or Tetlit Gwich'in Yukon Land.

For the protection of waters or other reasons, under the Act the Governor in Council can prohibit the disposition of lands administered by the Minister of Indian Affairs and Northern Development.

The Governor in Council (under the regulations) established these Northwest Territories water management areas:

- ! Great Slave Lake, and waters and river basins draining into it;
- ! Great Bear Lake, and waters and river basins draining into it;
- ! Great Bear River, and its tributaries and river basins;
- ! the Mackenzie River, and its tributaries and river basins;
- ! lands in James Bay, Hudson Bay, Ungava Bay and the Hudson Strait;
- ! the Arctic Islands;
- ! waters and river basins on the mainland draining into Hudson Bay or Foxe Basin;
and
- ! all other waters and river basins draining into the Arctic Ocean or adjacent waters.

These regulations allow the use of water and deposit of waste in these areas without a licence if certain criteria are met, or otherwise with a licence.

4.6.3 *Navigable Waters Protection Act*

The *Navigable Waters Protection Act* regulates certain activities that could interfere with navigation on waterways, such as putting up structures (including cables), dumping fill, or excavating material. The Act also regulates obstacles or obstructions on navigable waters or waters flowing into them. Regulations under the Act relate to bridges, ferry cables and works on navigable waters. The Canadian Coast Guard, in the Department of Fisheries and Oceans, administers the Act.

4.6.4 *Canada Water Act*

The *Canada Water Act* sets up water resource and quality management regimes in certain waters in Canada. Contact the Department of Environment, which is responsible for the Act, with any questions concerning which lands would fall under one of these regimes.

4.6.5 *Dominion Water Power Act*

This Act regulates “water-powers” (essentially any energy that may be commercially produced by flowing or falling water) on federal lands. A licence issued under this Act includes all lands (including transmission lines), required for developing or working the water-power. The Minister of Indian Affairs and Northern Development is responsible for this Act.

Note: For some time, licences under the *Northern Inland Waters Act* (or its successors: the *Yukon Waters Act* and the *Northwest Territories Waters Act*) have been used for developing hydro-electric power in the territories. However, long-term licences issued under the *Dominion Water Power Act* may still be in force.

4.6.6 *Arctic Waters Pollution Prevention Act*

This Act regulates:

- ! deposits of waste,
- ! any works that may deposit waste, and
- ! shipping safety control zones in Canadian arctic waters, or on the mainland or islands in the Canadian arctic where waste may enter these waters. Regulation delegates certain authorities (given by the Act to the Governor in Council) to the Ministers of Transport, Natural Resources, and Indian Affairs and Northern Development.

The Arctic Waters Pollution Prevention Regulations allow for the deposit of waste in certain circumstances, with reporting requirements and limitations on liability. The Shipping Safety Control Zones Order and the Arctic Shipping Pollution Prevention Regulations relate to shipping in the arctic.

4.6.7 Nunavut Land Claims Agreement

Article 20 of the Nunavut Land Claims Agreement concerns projects or activities outside the Nunavut Settlement Area, but within the Northwest Territories (as it existed on the Agreement's ratification date). If such a project substantially affects the quality, quantity or flow of water flowing through Inuit owned lands, the competent water authority cannot approve the project or activity unless:

- ! the applicant has entered into a compensation agreement with the Designated Inuit Organization; or
- ! upon failure of negotiations, either party refers compensation to be determined jointly by the Nunavut Water Board and the competent water authority, or, if there is still a failure to determine, by a judge of the appropriate court. The competent water authority may approve the project or activity when reference is made for a joint determination.

The same factors and payment/costs provisions apply as in the case on Inuit Owned Lands.

This provision applies where a body of water delineates the boundary of Inuit owned lands and the water body is not located entirely on Inuit owned lands.

4.6.8 Nunavut Waters Act (proposed)

Note: This legislation was before the House at the dissolution of Parliament in April 1997.

The summary attached to this Bill reads as follows:

“This enactment implements the water management provisions of the land claims agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada. It establishes a new institution of public government, the Nunavut Water Board, the members of which are appointed by the Minister of Indian Affairs and Northern Development.

The Nunavut Water Board is given powers that are similar to those given to the Northwest Territories Water Board pursuant to the *Northwest Territories Waters Act*. The Board's primary function is to license uses of water and deposits of waste. The Board is required, in the exercise of that licensing power, to consider

any detrimental effects of a potential use of waters or a deposit of waste on other water users and is to hold, where appropriate, public hearings.

The enactment incorporates the particular requirements of the Agreement. The main one is that the Board is prohibited from issuing, renewing or amending a licence in respect of a use of waters or a deposit of waste that may substantially alter the quality, quantity or rate of flow of waters through Inuit-owned land unless the applicant has entered into an agreement with the Inuit to compensate for any loss or damage that may be caused by the alteration or the Board has made a determination of the appropriate compensation. The enactment also recognizes the special rights of Inuit in water on or flowing through their land.

The Nunavut Water Board is required to work closely with the Nunavut Planning Commission in the development of land use plans that affect water and the Nunavut Impact Review Board in relation to the assessment of environmental and socio-economic impacts of water-related project proposals in Nunavut.”

Note: The Bill does not govern the use of water or deposit of waste in national parks. The Bill would apply to all of the lands that will comprise the territory under the *Nunavut Act*.

4.7 Fish and Wildlife

4.7.1 General

Fish and wildlife are regulated by the *Canada Wildlife Act*, the *Migratory Birds Convention Act*, 1994, the *Fisheries Act*, and certain sections of the Nunavut Land Claims Agreement.

4.7.2 *Canada Wildlife Act*

The *Canada Wildlife Act* generally relates to the protection of wildlife in Canada. The Department of the Environment administers the Act, although the Minister responsible for the Northern Pipeline has certain responsibilities in relation to the pipeline. The Act helps to protect endangered species and permits the use of federal lands for wildlife conservation, including protected marine areas. The Act does not affect constitutionally protected Aboriginal and treaty rights.

Orders in Council under the Act have assigned administration of various properties in the territories to the federal Minister of the Environment for wildlife areas. However, in some cases the Minister of Indian Affairs and Northern Development administers the subsurface rights.

The Act’s Wildlife Area Regulations govern activities on wildlife areas; several are listed in these regulations.

4.7.3 Migratory Birds Convention Act

The *Migratory Birds Convention Act*, 1994 generally relates to the protection of migratory birds and their nests. It implements a 1916 Convention between Canada and the United States. The Act regulates hunting, possession and trade in birds and nests. The Department of the Environment administers the Act, although the Minister responsible for the Northern Pipeline has certain responsibilities in relation to the pipeline.

The Act's Migratory Bird Sanctuary Regulations establish and regulate activities at migratory bird sanctuaries. The regulations list several sanctuaries in the Northwest Territories; special rules apply to them. Please note that the Minister of the Environment and the Minister of Indian Affairs and Northern Development, may jointly administer some of these sanctuaries. As well, activities may be subject to both the Migratory Bird Sanctuary Regulations and regulations under the *Territorial Lands Act*.

The Act's Migratory Bird Regulations relate to the issuing of permits associated with migratory bird hunting and research. The regulations also deal with the deposit of oil wastes or other substances harmful to migratory birds in any waters or area frequented by migratory birds. Special rules apply to Aboriginal peoples and Northwest Territories residents. The regulations identify seasons and limits for areas in the Yukon Territory and in the Northwest Territories.

4.7.4 Fisheries Act

The Fisheries Act is the main federal instrument for regulating fishing in Canada. It applies to Canadian Fisheries Waters, which is defined as all waters in the fishing zones and territorial sea of Canada and Canadian internal waters. The Act regulates the fishery in all respects, including licensing, fish-ways, fish habitat protection, pollution prevention, marine plants harvesting, and fish propagation.

The two primary fish habitat protection provisions of the Act deal with works or undertakings that result (or are likely to result) in:

- ! an alteration of fish habitat (administered by the Department of Fisheries and Oceans) ; or
- ! the deposit of a substance harmful to fish in fishery waters (administered by the Department of the Environment).

Note: One provision in the Act relates to a public right to use vacant federal lands for certain fishing activities in specified circumstances.

Numerous regulations under the Act concern specific aspects of the fishery. These regulate such areas as:

- ! depositing harmful substances by processing facilities, such as pulp and paper mills, metal mines, and meat or poultry product plants (various regulations);
- ! importing fish or fish eggs into a province or territory (the Fish Health Protection Regulations); and
- ! contaminated fisheries (the Management of Contaminated Fisheries Regulations).

Regulations containing specific provisions relating to the Northwest Territories fishery are:

- ! the Fishery (General) Regulations: These regulate general fishing and related activities, including quotas, closure, limits, licensing, alterations to fish habitat, and obstructions to fish passage. Some special rules relate to the fish trade by Aboriginal peoples and to activities in the territories. These general regulations can be overruled by regulations relating to specific geographic areas.
- ! the Aboriginal Communal Fishing Licences Regulations: These allow Aboriginal organizations to obtain communal licences to carry on fishing and related activities in waters in, and adjacent to, the Yukon Territory and the Northwest Territories. They do not apply to such activities in national parks.
- ! the Marine Mammal Regulations: These regulate fishing for marine mammals and related activities in Canada and Canadian Fishing Waters. Various provisions relate to the harvesting of these mammals by Aboriginal peoples.
- ! the Atlantic Fishery Regulations, 1985: These regulate fishing and harvesting marine plants in certain areas in the Northwest Atlantic Ocean, Ungava Bay and Hudson Strait.
- ! the Northwest Territories Fishery Regulations: These regulate fishing and related activities (including crossings over streams, and certain logging and gravel removal activities) in waters in, and adjacent to, the Northwest Territories. The regulations contain licensing, closure and limits provisions for commercial, domestic and sport fisheries. Special rules apply for fishing by Aboriginal peoples.

4.7.5 Nunavut Land Claims Agreement

4.7.5.1 Outer Land Fast Ice Zone - East Baffin Coast

Various sections of the Nunavut Land Claims Agreement apply to the Outer Land Fast Ice Zone. In addition, Inuit will have the right to continue to use open waters in the Zone for domestic harvesting of species other than marine mammals. Inuit do not need licences for these activities but are subject to other management regulations imposed by government, consistent with the Agreement. Fisheries in the Zone will be managed so as not to deplete marine mammal populations.

4.8 Environmental Assessment

4.8.1 General

The *Canadian Environmental Assessment Act* regulates environmental assessments of projects on federal lands.

4.8.2 Canadian Environmental Assessment Act

This Act sets out the regime for screening, assessing and reviewing environmental aspects of any project involving the federal government. Please note that federal involvement includes granting leases, permits or licences that enable the project to be carried out. The Act may apply to activities on or in Canadian lands, waters and airspace, and to projects outside Canada which involve the federal government.

Its regulations relate to the following:

- ! required comprehensive studies for projects that may have significant environmental impacts. These include those projects in national parks or historic sites, wildlife and migratory bird sanctuaries (the Comprehensive Study List Regulations);
- ! activities not relating to physical works that may require an environmental assessment, These include various activities in the territories requiring permits or licences under such legislation as the *Yukon Waters Act*, the *Northwest Territories Waters Act*, the Territorial Land Use Regulations, the Northwest Territories Reindeer Regulations, and the Yukon Timber Regulations (the Inclusion List Regulations);
- ! projects not requiring an environmental assessment. Note: Modifying an existing drainage structure on federal land in the Yukon Territory or the Northwest Territories may require an assessment where it would not be required in the provinces (the Exclusion List Regulations); and

! projects outside Canada (the Projects Outside Canada Environmental Assessment Regulations).

4.9 Economic Development

4.9.1 General

There is no legislation containing general economic measures for federal lands in the Northwest Territories.