THE RULES OF ENGAGEMENT?
NEGOTIATED AGREEMENTS AND ENVIRONMENTAL ASSESSMENT IN THE NORTHWEST TERRITORIES, CANADA

By

Sandra Lukas-Amulung
B.Sc., University of Calgary, 1998

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We accept this thesis as conforming
to the required standard

.....
Dr. Lenore Newman, MEM Program Head
School of Environment and Sustainability

.....
Dr. Ben Bradshaw, Associate Professor of Geography
University of Guelph

.....
Paul Evans, P.Eng., MBA, Senior Vice President, Environment
Project Sponsor, EBA Engineering Consultants Ltd.

.....
Dr. Tony Boydell, Director
School of Environment and Sustainability

ROYAL ROADS UNIVERSITY
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Abstract

Increasingly in the Canadian North, developers engage in two parallel processes with no formal connection: the preparation of environmental assessments for public regulatory review; and the establishment of private negotiated agreements with Aboriginal communities. This uncoordinated system frustrates developers, communities, and regulators. While some assert that the public has no right to be concerned with private agreements, environmental assessments are conducted assuming these agreements will be signed. Indeed, overlap exists and some of it is problematic. For instance, some decision-makers interpret signed negotiated agreements as landowner 'consent' and look for signed agreements before issuing approvals. Opportunities, however, exist to improve this situation through use of integrative and iterative processes (whereby outputs from one inform the other) featuring more flexible timing and greater government involvement in the determination of select benefits. While such a system may maximise the public good, it is unclear if it will satisfy industry and Aboriginal stakeholders.

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Chapter 1 – Introduction

1.1 Research Context

The Northwest Territories (NWT) is one of three territories that cover Canada's sub-arctic and arctic frontier. The region is dominated by relatively young regulatory systems, a resource-based economy, and remote, primarily Aboriginal communities. Today, as in the early 20th century, resource developers face significant logistical challenges, such as long distances, sparse infrastructure, and difficult working conditions. Early mineral and energy exploration in the NWT started in earnest in the 1930s when prospectors began to stake claims on properties for base metals, precious metals, coal, and uranium. The first significant oil discovery occurred at Norman Wells in the 1930s (Government of Northwest Territories [GNWT], n.d.a). It was not until the threat of resource scarcity during the Second World War that the first major drive to access these resources took place. Over the decades, the lure of promising but largely unknown petroleum, precious metal, and diamond resources has fuelled sporadic interest and bursts of exploration and economic activity. The NWT regulatory environment has evolved with an industrial development pattern that has been intermittent, if not cyclical. This pattern of development has exerted influence on the NWT's governance structure and processes.

The regulatory system in the NWT includes territorial, federal, and Aboriginal co-management regulations and authorities. The NWT has reached partial devolution, in stages, from the control of the federal government; however, the federal Department of Indian and Northern Affairs Canada (INAC) continues to oversee Aboriginal employment, economic development, and other Aboriginal matters. This relationship continued to change through the 1980s and 1990s, adapting when Aboriginal groups

settled land claims. These land claims enabled Aboriginal peoples to exercise a measure of decision-making power over their traditional territories, natural resources, and activities affecting the land and water in the area. At present, for development on Aboriginal lands, there remain several levels of authority involved with environmental assessment (EA) and project review.

EA is the process of "identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made" (International Association for Impact Assessment, January 1999, p. 2). The term EA embodies an accepted set of practices that aim to integrate diverse views and interests about resource development. Indeed, EA aspires to be a purposeful, normative activity that incorporates science, values, and priorities into project design, making deliberate selections of approach and methods, and managing risk and uncertainty (Lawrence, 2003).

EA first emerged in the United States in the National Environmental Policy Act in 1969, setting a precedent that raised expectations for pre-development assessments (Gibson & Hanna, 2005). The origins of EA in the NWT are traced to the 1970s Berger Inquiry, a large-scale, high-profile project review for a pipeline to transport petroleum to markets in Canada and the United States (Berger, 1977). This review marked a significant expansion of the scope of traditional EA; for the first time, decision-makers went beyond evaluating environmental issues from an expert or bureaucratic point of view to include local Aboriginal perspectives and participation in the project review process. As a result, EA in the NWT now considers Aboriginal participation an essential component of project reviews. The Government of Canada and Aboriginal peoples began

to formalize this level of participation when ‘co-managed’ review boards were established as a result of Aboriginal Land Claim settlements in the Mackenzie Valley between 1984 and 1994 (Gibson & Hanna, 2005). As described by INAC, these boards include the federal, territorial, or provincial government along side indigenous communities, to provide decision-making authority on most matters related to the use and management of lands and resources (Indian and Northern Affairs Canada [INAC], 2004).

Notwithstanding the emergence of co-managed review boards and the use of EA processes that have been widely recognized as innovative and exemplary (e.g., see Armitage, 2005; Lawrence, 2003), many resource development proposals in the NWT over the last decade have included “…[private] contractual agreements between developers and local communities…struck outside of, but alongside, the [public] regulatory process” (Galbraith, 2005, p. 3). These agreements are known by many names – Impact and Benefits Agreements (IBAs), participation agreements (Kennett, 1999), benefit plans (Klein, Donihee, & Stewart, April 2004), *supra*regulatory agreements (Galbraith, Bradshaw, & Rutherford 2007) and others. For the research herein, the term ‘negotiated agreement’ (NA) is used for all contracts between resource developers and Aboriginal communities. Project-specific NAs provide an opportunity for developers to address key Aboriginal interests by preparing contracts that describe the mitigation of impacts and identify specific socio-economic benefits. Aboriginal interests typically include “environmental impacts and mitigation, impacts on wildlife harvesting, employment, business opportunities and contracts, and training” (Kennett, 1999, p. 10).

One of the first uses of NAs in the NWT came in 1996 as a result of an unusual order by then Indian and Northern Affairs Minister, Ron Irwin, requiring the international

mining company, BHP Billiton, to sign agreements with a number of regional Aboriginal communities following completion of their diamond mine EA, but preceding project permitting (Couch, 2002). This *ad hoc* strategy allowed 60 days for local Aboriginal communities and BHP to negotiate some form of agreement that would address Aboriginal interests and project EA recommendations from the review panel that fell outside of the scope of existing laws. NAs were formed, thereby, at least according to Couch (2002), enabling a more streamlined permitting process.

The rules surrounding the use of NAs are only slightly clearer today. Legislative requirements to strike NAs are specific in some cases and vague in others. In the Sahtu Region, for instance, the Comprehensive Dene & Metis Land Claim Agreement states (Section 21.1.2) that "a signed Agreement for Access" is required for oil and gas exploration (Sahtu Land and Water Board, n.d.), while in Nunavut, an Inuit Impact Benefit Agreement (IIBA) is required for all developments. In the Gwich'in and Inuvialuit Regions, however, developers are advised that a participation agreement, access agreement, and/or a cooperation agreement *may* be required to conduct projects (Gwich'in Land and Water Board, n.d.; INAC, 2002). Beyond these jurisdictions, NAs are officially considered voluntary, notwithstanding the fact that their use is increasingly becoming standard practice (Public Policy Forum, 2006). In light of this, some research has aimed to make sense of their emergence. For example, recent research has questioned whether EAs adequately or appropriately identify, predict, or address the negative effects of projects at the pre-development stage (Vanclay, 2000). Building on this, Galbraith (2005) evaluated several failings of the NWT's Mackenzie Valley Environmental Impact Review Board (MVEIRB) EA process with respect to its

identification and mitigation of, and follow up to, the potential impacts of resource development. Galbraith's research found that Aboriginal groups, and even governments, recognize inadequacies with EA, and are, therefore, using NAs to address these deficiencies (Galbraith et al., 2007).

In the NWT, the public regulatory process for reviewing resource development proposal outlines the environmental and socio-economic roles and responsibilities for industry, communities, and regulators. Regulatory jurisdictions in the Mackenzie Valley, as noted, have additionally specified NA requirements. While NAs may usefully address EA gaps as argued by Galbraith et al. (2007), they may also overlap and potentially interfere with the conduct of EA. Indeed, researchers (Galbraith et al., 2007) and analysts (Kennett, 1999; Klein et al., April 2004) have identified the ambiguous relationship between NAs and EA in the NWT as being problematic. Presumably, NAs capture the most relevant issues between developers and Aboriginal communities; however, the public and government cannot verify their content due to the confidentiality of the agreements, which means that NAs cannot be counted on to address society's broad environmental and socio-economic values and goals, especially in the long term. To extrapolate, are developers to infer that the emphasis of their efforts should be the path of least resistance, with the primary focus on NAs and secondary focus on EA? What are the 'rules of engagement' for resource developers? The international EA community recognizes the NWT as a relatively advanced EA process with respect to the integration of socio-economic assessment and consultation into EA (Gibson & Hanna, 2005). However, as noted, the NWT system is not without its flaws. The increasing tension

surrounding government decision-making processes and private NAs represent a challenge to effective, holistic project review (Klein et al., April 2004).

1.2 Research Questions, Aim, and Objectives

The above research context raises two important questions. How is the emergence of private NAs between resource development proponents and Aboriginal communities influencing and interfering with the EA process and the environmental regulation of resource development in the NWT? Following from this, what opportunities exist to integrate the negotiation of private agreements with the EA process to safeguard the broader public interest within the NWT regulatory review process?

This research responds to these questions. More exactly, it aims to identify the ways in which private NAs between resource development proponents and Aboriginal communities interact and interfere with the public EA process and regulatory review in the NWT, and to prescribe a model of integration that minimizes this interference. Consistent with this broad aim, three successive objectives of this research are:

- to identify and describe the current problematic overlap between NAs and EA in the NWT;
- to conceive of a number of normative project review models to strategically explore varying levels of integration between NA and EA processes; and
- to select and refine a preferred integrative model by convening a focus group of experts to evaluate the models developed in Objective 2.

Research in this area is desirable for industry since the unpredictable schedule for the review process can lead to time delays that can compromise the economic viability of a project in changing market conditions. The currently ambiguous ‘rules of engagement’

for mineral and oil and gas exploration approvals translate to uncertainty for the developer and uncertainty for the community. A greater understanding is desirable for Aboriginal communities, that want to understand the potential environmental and socio-economic effects, and possible benefits, that may accompany development. An improved process is desirable for regulators who are under pressure to conduct EA within the current regulatory framework without the benefit of knowing which matters may have been addressed in the project-specific NA. Recent development pressures have exaggerated ambiguities in the process and, consequently, the NWT has gained a reputation as an uneven battlefield for natural resource development.

This research also offers scholarly contributions. While scholarship on NAs is quickly emerging in parallel with their use, little has focussed on their interaction with the EA and project review process. Fidler and Hitch (2007) and Fidler (2008) effectively situate NAs within regulatory law, drawing attention to issues of justice and procedure. Galbraith et al. (2007) describe the rise of NAs in the context of EA, but make no reference to overlap and interference. More usefully, Kennett (1999) and Klein et al. (2004) identify the potential for problematic overlap between NAs and EA in the Canadian North, but offer little specific evidence and limited explanation. Hence, the research presented breaks new ground on the topic of NAs by describing problematic overlap of said agreements and EA, and by conceiving of improvements to the current situation. This exploration is needed to raise awareness and open debate about the direction of regulatory evolution in the NWT, and to design improvements to support future development activities.

1.3 Thesis Outline

This thesis follows in five further chapters. Chapter 2 provides an overview of the evolution of governance in the NWT, describing the unique features of the regulatory environment that allowed the rise of NAs, and may encourage their on-going use. Chapter 3 describes the multi-method action research approach used for this research and the logistics involved with the research interviews and workshop. Chapter 4 draws upon participant observation, interviews, and expert focus group feedback to identify and describe the current relationship between NAs and the EA process in the NWT. The research findings are then used to build, test, and refine a model of the current relationship between the NA and EA processes and identify key problematic overlap (Objective 1). Chapter 5 presents models of 'alternative' NA-EA relationships, with varying levels of integration, conceived to minimize interference between NAs and EA in the Mackenzie Valley, NWT (Objective 2). Chapter 5 also completes the research objectives, presenting an expert focus group's preferred model of NA and EA integration (Objective 3). Finally, Chapter 6 concludes the thesis, summarizing the research findings, highlighting the methodological and practical contributions of this research, and identifying future research needs.

Chapter 2 – Background: Resource Development Governance in the Northwest Territories (NWT)

This chapter provides an overview of the evolution of governance in the NWT. It describes the unique features of the regulatory environment that allowed the rise of NAs, and may encourage their ongoing use. The chapter concludes with a discussion of attempts to improve resource governance.

2.1 Jurisdictions

The NWT is one of three territories in Canada north of 60 degrees latitude (see Figure 2.1). To provide a reference for the population density and distribution, this 1,140,835 square kilometer territory is roughly two times the size of France and, according to the 2006 census, has a population of 41,464 people (Statistics Canada, 2009). People who report Aboriginal identity make up about half of the population at 20,635 people (Statistics Canada, 2009 March). The most populous centre is the capital city, Yellowknife, which has 18,700 residents. The remainder of the NWT's inhabitants live in hamlets, towns, outlying areas, and camps that are remote by any standard. These settlements are accessible by air and water, or winter/ice roads.

The NWT became part of Canada in 1870, beginning the federal government's long-distance administration of its territories from Ottawa, the nation's capital. In 1967, the territorial government was moved from Ottawa to Yellowknife, and responsibility for several programs was transferred with it. The 1979 election and appointments advanced the autonomy of the NWT government, but it was not until 1994 that the NWT formed a legislative assembly entirely through public election. Today, the federal government

retains control over water, land, forestry, and the development of all non-renewable resources including minerals and oil and gas (INAC, 2009).

Figure 2.1. The Northwest Territories, Canada.

The GNWT identifies Aboriginal "settlement areas and asserted territories" within its boundaries. These include four land claims, two reserves, four interim management agreement areas, and five asserted traditional territories that identify the current or historical use of lands by Aboriginal peoples (GNWT Centre for Geomatics, 2008). Local regulatory bodies created within the land claim agreements now govern land and water within regions with settled land claims areas. Given this and the broader inclusion of Aboriginal peoples, the process of resource exploration and development in the NWT is no longer a federal regulatory review process. Developers must consider Aboriginal interests and federal and territorial laws and regulations in their activities. In order to harmonize these processes to move forward with a project, developers must

identify the various interests involved with a proposed project through consultation and regulatory review. In effect, every project is a trans-jurisdictional project because of the range of governance institutions that exist: this is especially true for projects that are geographically 'transboundary.'

With respect to the control, management, and administration of natural resources, the NWT constitutes two geo-political jurisdictions: the Inuvialuit Settlement Region (ISR) in the north; and the Mackenzie Valley (comprised of the Gwich'in, Sahtu, Deh Cho, Tlicho, and Akaitcho Regions), in the south (see Figure 2.2).

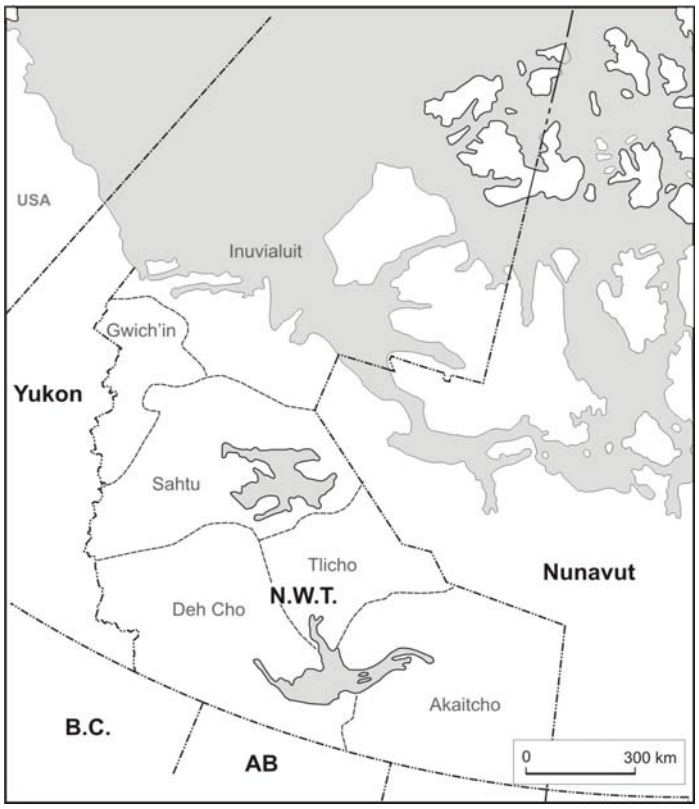

Figure 2.2. The Settlement Areas and Asserted Territories within the Northwest Territories.

The Inuvialuit of the northern NWT signed the Inuvialuit Final Agreement with the Government of Canada in 1984; thus, gaining title to 91,000 square kilometers of

land, financial compensation, social development funding, harvesting rights, and a role in environmental protection and conservation (INAC, 2007). Within the region, there are Crown lands (public lands) and non-renewable resources that remain under the federal government's control.

The Mackenzie Valley, in the central and southern NWT, has distinct governance systems as compared with the ISR. As will be discussed further in subsequent sections, governance over the environment and natural resources in the Mackenzie Valley is a function of the outcomes of both Aboriginal land claim settlements and the introduction of legislation in the 1990s. The Gwich'in and Sahtu settled comprehensive land claims in 1992 and 1993, respectively (see Figure 2.2). These settlements called for new legislation to coordinate the regulation of land and water use throughout the Mackenzie Valley, and create decision-making entities and public boards that would, among other things, carry out EAs and review proposed developments (Armitage, 2005). In 1998, despite unsettled land claims in the southern NWT, the Mackenzie Valley Resource Management Act (MVRMA) was brought into force as a common regulation to administer the lands and waters of the Mackenzie Valley.

In the Gwich'in, Sahtu, and Tlicho Regions of the Mackenzie Valley (see Figure 2.2), land claims have been settled. The new governance model created under the land claims includes Land and Water Boards comprised of bureaucrats and Aboriginal representatives supported by technical and administrative staff. The entry point for resource developers is the Land and Water Board. Besides the three aforementioned Boards, the Mackenzie Valley Land and Water Board administers resource projects in the Deh Cho, Akaitcho, and asserted traditional territories in the southern NWT.

Co-management board composition is determined by the terms of the land claim agreements. “This implies an arrangement that involves the sharing of power and responsibility among government and First Nation groups, and therefore an explicit opportunity for different groups to represent their interests in the decision-making arena” (Armitage, 2005, p. 192). Land and water boards conduct an initial review or “screening” of a proposed project and have the authority to authorize projects to proceed to regulatory permitting, with specific terms and conditions. During screening, if the Board determines that a “development *might* have a significant adverse impact on the environment or *might* be a cause of public concern” (Armitage, 2005, p. 195) the Board refers the project to a more rigorous review under a full EA. If the screening process finds that the proposed project will not likely result in significant environmental effects, applicable regulatory agencies will process applications and issue licences, permits, and authorizations. The Boards play a crucial role early in the EA process for proposed development activities.

2.2 Environmental Assessment (EA) in the Mackenzie Valley

The Mackenzie Valley, the jurisdiction under the MVRMA, has seen many mineral and oil and gas projects over the past few decades. The most noteworthy of these are three diamond mines: BHP Billiton’s Ekati; Rio Tinto’s Diavik; and the DeBeers’ Snap Lake Mine. These mines produce 15% of the world’s rough diamonds and make Canada the third largest diamond producer by value in the world. Diamond related activity accounts for 50% of the NWT’s gross domestic product. Diamond mine production surpassed expectations, reaching $1.4 billion in 2007 (GNWT, n.d.b).

The region’s EA process has been widely recognized as “an innovative framework for integrative environmental planning, management, and impact assessment”

(Armitage, 2005, p. 197). Galbraith (2005) identifies the strengths of EA in the Mackenzie Valley as its "comprehensive definition of environment, meaningful use of traditional knowledge and local knowledge, use of EA as a learning tool, and employment of a fair and rigorous decision-making process" (p. 93). Of course, as with other EA processes, it has its limitations. In the NWT, EA has fallen short of these ideals. Galbraith (2005) found that developers and regulatory bodies have demonstrated an inability to build local employment and business capacity, inconsistency in delivering benefits to local communities, and inadequate EA follow up (e.g., review of hiring targets, long term environmental monitoring outlined in EA terms, and cumulative effects research).

Couch (2002) provides further review of EA limitations, arguing that project EAs in the NWT have tried to fill gaps for policy and/or regional planning; have catalyzed the creation of new governance institutions; and have focused on social impacts more than environmental impacts because of public interest during the project review. Although Couch finds EA in the NWT successful, the aforementioned project-specific actions have the potential to set precedents and in doing so, influence governance. He perceives limitations with NWT EA including the potential discord in the worldviews of transnational corporations and local Aboriginal people and the implications of these worldviews on decision-making. Echoing Couch, Armitage (2005) states that

> administrative complexity, a legal orientation to the assessment proceedings, and a Euro-Canadian decision-making approach are not always consistent with the intent of the land claims, nor with efforts to ensure that First Nations communities are full participants in the decision-making process (p. 208).

Two of the three diamond mines, and all other large development projects since 1998, have been subjected to EA under the MVRMA. Beyond EA under the MVEIRB, there is one more level of assessment available for the largest projects, the environmental impact review, which is a multi-year project assessment conducted by a panel of experts. Projects need not go through all stages of review, and in practice, the majority of projects are approved at the screening level.

The NWT's story of regulatory frustration is exemplified by an oil and gas project, the proposed $16.2 billion Mackenzie Gas Project (MGP) put forward by a proponent group comprised of Imperial Oil Resources Ventures Limited Partnership, ConocoPhillips Canada (North) Limited, ExxonMobil Canada Properties, Shell Canada, and the Mackenzie Valley Aboriginal Pipeline Limited Partnership. The goal is to construct a pipeline to carry natural gas 1,220 kilometers from the Beaufort Delta south to Alberta. The MGP is now in its fifth year under regulatory review (Northern Gas Project Secretariat, 2005), with a decision expected in 2010. The original regulatory review duration was estimated at 10 months. Nevertheless, petroleum exploration projects are completed each year and growth is expected in the future, with $613 million committed to exploration in 2007, and a record-setting $1.2 billion commitment made by BP in 2008 for an exploration area offshore in the Beaufort Sea (INAC, 2008). To provide context for the size of the MGP, the operations and construction of the Diavik diamond mine (2003-2008) was $4 billion (Rio Tinto, 2009), and Snap Lake was $1.1 billion (DeBeers Canada, 2008).

These mega projects provide sufficient evidence that the NWT's natural resources are significant and that transnational corporations are interested in developing them. All of the above projects involve NAs and EA at a foundational level.

2.3 The Missing Ingredient? Negotiated Agreements

Lawrence (2003) emphasizes the importance of "well-defined, focused, consistently applied, open, and transparent systems" in order to maintain the efficiency and effectiveness of EA. In the absence of these qualities, the EA system comes under pressure, and participants may consider "other means of building environmental values and perspectives into public decision-making" (p. 30). In the NWT context, 'other means' might include NAs and other *supra*regulatory agreements. Do projects need NAs? Kennett (1999) argues that it would be ideal to regulate mining, through an exclusively, "public regulatory process that that does not require 'topping up' through project-specific [NAs]" (p. 93). However, if the public regulatory process is insufficient to address locals' concerns and needs, and this appears to be true in the NWT, then it is understandable that affected parties have experimented with different approaches, including NAs.

NAs seem to be the 'missing ingredient' in project review in the NWT because they are intended to offset the failings of the EA process. These agreements, when paired with a well-designed and well-implemented EA, could enhance the overall process (Galbraith et al., 2007). The combined EA-NA process fills policy and regional deficiencies; makes for more conciliatory EA deliberations; and has the ability to resolve an array of interdependent environmental, social, legal, and economic issues in the NWT (Couch, 2002).

Of course, as is argued in this dissertation, the relationship between NAs and EA is not entirely smooth. Klein et al.'s (2004) review of the situation found that NAs affect EA goals and practice in the North, especially with respect to socio-economic impact assessment. Their work takes issue with private NA contents, for instance proposed mitigation of socio-economic and cultural impacts for large developments, which are typically omitted from the EA. By accepting NAs on faith, decision-makers could unduly burden developers with broad *supra*project socio-economic matters. Consequently, the EA could neglect to assess adequately socio-economic issues in Aboriginal communities.

Given the imperfect situation around NAs and EA, some efforts have been made in the region to reform the regulatory system. Local participants, including Aboriginal communities, government, and the public cannot initiate system improvements under the pressure of development proposals. Time does not allow for it, and neither do the economic agendas of corporations nor government officials seeking economic development for a resource rich, population poor territory. Industry does not have the wherewithal to "improve the system" nor is it their responsibility, yet NAs drag industry into the realm of policy and planning. The dialogue that might yield mutually beneficial solutions is prevented because the conversation arises only when the pressure and the stakes are too high. With the power dynamics of big business versus Aboriginal communities, the risks of discussing development in the open forum could be daunting, if not insurmountable. Yet, the concerns are close to the surface on several fronts, and they emerge in the media, conferences, and meetings of Aboriginal and industry interest groups.

There is a great deal of interest in improving governance in the NWT. Analysts, consultants, academics, and others formulate ideas for improvement. INAC has undertaken the Northern Regulatory Improvement Initiative to improve governance in northern Canada. IBAs (one type of NA) are one of the areas identified. Under the umbrella of this initiative, McCrank (May 2008), states in his *Road to Improvement: The Review of the Regulatory Systems Across the North* that, "Impact and Benefit Agreements have developed in an unregulated environment. These types of arrangements may very well provide a useful vehicle in the process of resource development. However, there is no regulation … that would establish standards in keeping with the type and scale of activity" (p. 21). In his recommendations, McCrank tasks the federal government with generating an official policy on the purpose, scope, and nature of IBAs. GNWT (2009) responded that INAC has been drafting this policy for years and should inform the public of its status. Moving forward, INAC supports the concept of "…creating additional certainty for developers on Impact and Benefit Agreements" (GNWT, 2009, p. 21).

The experience in the history of the NWT shows that the solutions for the future are unlikely to come exclusively from the outside. In the midst of this ambiguity, each project review, whether mineral or oil and gas, tests the review process; therefore, each development creates precedent and figures prominently into the development of the NWT regulatory system. It is, therefore, critical to open the dialogue on the NA-EA relationship.

Chapter 3 – Approach to the Research

The research presented herein constitutes a novel field of investigation and, accordingly, there are a limited number of scholarly examples for the approach and methods appropriate to it. The approach of multi-method action research (AR), adapted from the approaches used by Galbraith (2005) and Prno (2007) was deemed suitable for the objectives of this research program; this approach is described below.

3.1 The Approach of Others

The limited literature focussed on NAs and EA identify examples of how to study the overlap between NAs and EA. Leknes (2001) reviewed the petroleum development approvals granted in Norway between 1985 and 1997 in order to identify the issues that represent potential conflict between companies and the public. He interviewed company representatives and regulators to establish issue categories and classify the project decision-making processes. O'Fairchellaigh (1999) used case studies from Australia to describe the preparation of socio-economic impact assessments for mining projects that take place outside of the government-mandated processes. Most recently and in the NWT, Prno (2007) and Galbraith et al. (2007) investigated mining developments in the Mackenzie Valley by engaging in preliminary conversations, researching regulatory archives, and conducting key informant interviews to gain knowledge about NAs. These research designs were successful in describing issues with current governance structures and investigating the issues experienced by developers, stakeholders, and regulators.

3.2 Multi-method Action Research

The research presented herein originates from a problematic real-world situation involving real organizations, and its driving force is the impetus for practical change;

these characteristics define AR (Avison, Lau, Myers, & Nielsen, 1999), which offers the broad methodological approach for this project. AR deepens the participants' understanding of social processes and develops strategies to bring about improvement (Noffke & Somekh, 2004). Multi-method action research is a cyclical process that is well suited to complex, problematic situations. The problematic situation under investigation is the intersection between a formal governance system and an emergent, allegedly problematic, informal process. Multi-method action research employs linked approaches that provide feedback to the research questions and objectives from different perspectives, inaccessible by any single technique. Action research is therefore well suited to the complexities of this investigation. Avison et al. (1999) present an effective analogy to explain the utility of AR. They state that the solution for a punctured tire may easily be identified and implemented, whereas the solution for poverty requires real-world examples, feedback from experience, and modification of theory in response to the feedback obtained.

The action research herein gathers the required data using multiple methods, as advocated by Druckman (2005), for research on conflict and related matters. This multi-method approach includes: (a) participant observation; (b) interviews; and (c) focus group techniques. The following section describes the data collection and analysis methods used to explicitly address the research objectives identified in Chapter 1.

3.3 Data Collection and Analysis

Following from precursor NWT studies by Galbraith et al. (2007) and Prno (2007), the research uses background research, participant observation, key informant interviewing, and focus group inquiry, in what is becoming an increasingly standardized

approach to the relatively novel field of NA research. The following section describes the research objectives in more detail.

3.3.1 Identify and describe the current problematic overlap between negotiated agreements (NAs) and environmental assessment (EA).

The purpose of Objective 1 is to identify and describe the current problematic overlap. Consistent with the multi-method approach, two techniques were used to achieve this – participant observation and key informant interviews. Participant observation involves the researcher becoming immersed and acting as a listener/recorder of events. This approach yields a greater depth of knowledge than would be possible from the outside looking in (Vinten, 1994). Participant observation was conducted as part of the researcher's career as an industry environmental consultant. This role includes advising natural resource developers in project design, community engagement, and regulatory processes. The researcher's perception of the relationship between NAs and EA emerged as the culmination of project experiences in the NWT, Yukon, and Nunavut from 2003 to 2009. These early observations, on commencement of formal research, progressed to informal interviews, and for a selection of key informants, formal interviews.

Over the period of 2007 to 2009, the researcher conducted six formal interviews with key informants. Interviews were semi-structured, using a questionnaire to help guide, but not restrict, the discussion and to ensure coverage of the key points. Key informants are defined in this study as people who are expected to hold specific insights into the function served by NAs and/or EA in the NWT. Key informants are not considered a representative sample of participant categories, such as industry, Aboriginal communities, government, and/or the public. Accordingly, the findings of this study

represent key informant views about projects, governance, desirable outcomes, and reflections on benefits, outcomes, and ongoing challenges. In reporting on interview findings, this dissertation refrains from making inordinately broad generalizations.

Identifying problematic overlap between NA and EA required information from industry, Aboriginal communities, and government. Because of the limited number of developments and even more limited number of people involved with NAs and EA, this researcher estimates that only a few dozen people have direct relevant experience with NAs and EA in the NWT. Initial inquiries took the form of informal conversations with potential informants. The researcher identified some key informants through informal interviews and others through snowball sampling – using informants' insider knowledge to identify cases or other interviewees that would be useful to include in the study (Tashakkori & Teddlie, 2003). One criterion for all interviewees was that participants had to be willing to, "make their experience public not only to other participants, but also to other persons interested in and concerned about the work and the situation" (Vinten, 1994, p. 31). The interview guides used to address Objective 1 are included in Appendix A. In order to encourage open expression of concerns with the current situation, interviewees participated under the conditions of confidentiality and anonymity; therefore, a list of interviewees for Objective 1 is not included in this dissertation.

The researcher engaged with the key informants to inquire about project stories, problems, and wanted changes. This input shaped, and iteratively tested, a prior conceptualization of the NA-EA relationship. Key informant input was summarized, and the problematic elements identified were considered as inputs to the development of Objective 2, the development of conceptual models to improve the situation.

Interview data analysis was completed using a modified form of meaning condensation described by Kvale (1996). This form of interview analysis entails the abridgement of the meanings expressed by focus group experts into brief statements.

> Five steps are involved in this empirical phenomenological analysis: First, the whole interview is read through to get a sense of the whole. The, the natural "meaning units" as expressed by the subjects are determined by the researcher. Third, the theme that dominates a natural meaning unit is stated as simply as possible. The researcher here attempts to read the subject's answers without prejudice and then thematize the statement from her viewpoint as understood by the researcher (Kvale, 1996, p. 194).

This approach was applied to the formal interview data set. Meaning condensation addressed the needs of this study by helping reduce large amounts of information into more succinct formulations. In reporting the data, key informant responses were not classified or categorized by sector or role for three reasons. First, the key informants are not, by design, considered a representative sample of some stakeholder group. Second, several of the key informants span multiple groups, such as a former regulator-consultant and an academic-EA professional. Third, the number of natural resource exploration activities in the NWT is small enough that detailed labelling or descriptions could easily violate the confidentiality with the interviewees. In addition, key informants remained confidential and anonymous to enable them to share views about the NWT process, which might be controversial, unpopular, or could cause difficulty for the key informant in their workplace or community role.

3.3.2 Conceive of a number of models to explore varying levels of integration between negotiated agreements (NAs) and environmental assessment (EA) processes.

Objective 2 of this research program explores opportunities to coordinate or develop an integrative NA-EA process by developing a variety of conceptual models to

minimize the interference between them. Objective 2 built on a generic conceptualization of the current relationship between NAs and EA developed for the prior research objective; a series of alternative conceptual models were developed to illustrate a range of sequences, interactions, lines of communication, and regulatory requirements. Each model represents a possible solution for problematic EA-NA overlap in the NWT.

The models are process charts generated by the researcher. The value of the models is to provide a visual framework to help organize thoughts and facilitate discussion of the abstract, novel governance concepts of NA-EA integration. "Frameworks identify and relate elements of structure or contexts, interactive processes, and dynamics … enabling an investigator to get his or her "mind around a topic" (Druckman, 2005, p. 30-31). Beyond the researcher's own use of the models, the study required a common point of reference that would allow participants to support, refute, and develop the structure, processes, and dynamics of the NWT system in Objective 3.

3.3.3 Select and refine a preferred integrative model.

A group of experts that included academics, EA authorities, consultants, and regulators, was called upon to review the outputs from Objective 1 and Objective 2 in a collaborative focus group setting. The experts brought a new perspective to the research, since the majority of them had not participated in Objective 1. The expert workshop had two purposes: to review the model of current overlap between NAs and EA in the NWT; and to select and refine a preferred model of integration or coordination between NAs and EA based on the models developed in Objective 2.

This study uses the term "focus group" to refer to, "a social process through which participants co-produce an account of themselves and their ideas, which is specific

to that time and place" (Barbour & Schostak, 2004, p. 43). The social process used in this research was based upon the Stanfield (2002) method that guides workshop sessions through the following steps: develop the problem context; brainstorm a variety of ideas; cluster and then name the ideas; and symbolize the resolve of the group. The resolve enables reflections on the process and summarizes the workshop results.

The purpose of the workshop was to: (a) review and verify the current relationship model; (b) identify desirable changes to the current system; (c) challenge the alternative conceptual models; and (d) prescribe characteristics of a practical, idealized model, along with its associated recommendations and contingencies. The workshop included the opportunity to create a novel model, if deemed necessary by the participants. The desired outcome of the workshop was to prepare a single preferred integrative model for NWT project reviews in order to achieve some degree of coordination between NAs and EA.

Focus groups might act as an unintended consensus-building exercise, which may be disadvantageous when different or opposing perspectives of individuals are more important than the collective. However, this research, in seeking to develop an integrative project review model, sees consensus as a preferred result. It therefore aims to cultivate a workshop outcome that,

> …articulates the common will of the group. Consensus is a common understanding, which enables a group to move forward together, Consensus is reached when all participants are willing to move forward together even if not everyone agrees on all of the details. (Stanfield, 2002, p. 155)

The experts were selected based on their demonstrated leadership in attempting to understand, coordinate, or in some way reconcile practical EA challenges associated with

socio-economic assessment, NAs, IBAs, supraregulatory agreements, and GNWT socio-economic agreements (SEAs). Most affiliate with the pre-existing IBA Research Network. Several had recently published in this topic area. Others were NWT EA authorities who contributed applied knowledge and insights from practice. The workshop avoided industry and Aboriginal stakeholders, who, because of their vested interests, could inhibit the progress of the focus group discussion. Providing an opportunity for focus group experts to arrive at a consensus was the ideal outcome.

3.4 Research Logistics

The completion of the research required, first, completion of an ethics review, and second, the execution of the various research objectives.

3.4.1 Ethical considerations.

The research was conducted under the terms of the Royal Roads University Research Ethics Policy (Royal Roads University, 2007, January 17). The university's Ethics Review was required because the research involved data collected from human subjects. This project received ethical review approval on April 15, 2008. Accordingly, in the conduct of interviews and the focus group, the researcher obtained participants' free, prior, and informed consent to engage in research activities. In Objective 1, participant confidentiality and anonymity were used. In Objective 2, experts were given the option to appear in the participant list in Appendix B. However, confidentiality and anonymity were maintained in reporting all of the information presented in this dissertation.

Social science research in the NWT also requires an Aurora Research Institute (ARI) license pursuant to the *NWT Scientists Act* (Aurora Research Institute, n.d.). Licencing facilitates research with residents of the NWT by subjecting the proposed

research questions, objectives, and methods to critique by Aboriginal community organizations. The ARI approval allowed key informants and focus group experts to contribute to this study. In compliance with the terms of the licence, the researcher will supply a copy of this dissertation and a brief summary of key findings to ARI and to community organizations that requested follow-up documentation.

3.4.2 Execution of the research.

Over the course of more than ten years of employment in the environmental industry, the researcher has observed the project review process through a combination of business and research-motivated interactions. In these situations, the researcher became informed of project review events, and narratives as told through the eyes of industry, Aboriginal, and government participants.

In all, 24 key informants were interviewed over 10 months. This consisted of 18 informal interviews and six formal interviews. Informal interviews were undertaken opportunistically to follow up on participant observations of events that occurred during the period of this study, or years earlier. These interviews helped test the researcher's conceptions about the NA-EA overlap and broaden the range of possible solutions.

The activities that constituted an informal interview were an introduction to this investigation of the NA-EA relationship in the NWT, the informant providing verbal consent to participate, and the researcher providing assurance of confidentiality and anonymity to the informant. Key informants included industry executives, consultants, Aboriginal authorities, academics, current and former bureaucrats, and Canadian and international EA authorities. The informal interviews lasted 10 minutes to one hour. The researcher recorded notes about comments or examples either during or after the

conversation. Subsequent to the informal interview, if a key informant's clarification was needed, the researcher followed up by phone or in-person in a subsequent interaction. What differentiated the informal interviews from formal interviews was the setting. The supplemental information was collected in the context of impromptu, yet valuable, asides to: business activities in Calgary, Vancouver, Norman Wells, and Inuvik; industry and professional association conferences in Calgary, Inuvik, Red Deer, and Perth, Australia; and academic activities in Victoria and Yellowknife.

The researcher selected six key informants involved in natural resource development for formal interviews. The interviewees included an industry negotiator, a chief executive officer, an Aboriginal industry representative to the GNWT, a former federal and territorial regulator turned consultant, an academic, and a socio-economic consultant. The interviews were conducted between April 2008 and May 2009, and were typically one to one and a half hours in duration. The interview locations included the key informant's office, a place of their choosing such as a coffee shop, or in one situation, over the telephone. The researcher took handwritten notes during the interview. The interview notes were transposed into interview write-ups that were emailed to the key informants for verification and clarification as required. Notes and participant consent forms were kept in a locked filing cabinet in the researcher's residence. Any comments or revisions received from informants have been included in the official interview documentation and reported findings.

One workshop was conducted to bring together a group of experts to conceptualize a normative model for the integration of NAs with the EA process and for NWT regulatory reviews. The collaborative focus group setting was used to elicit

responses from those who have observed NAs interacting with EA, and to co-create a model that minimizes problematic overlap. The focus group consisted of academics, consultants, and government officials from the NWT, Ontario, Manitoba, Alberta, and British Columbia (see the List of Workshop Participants in Appendix B). The experts were provided with a briefing package so that they could review the research objectives and the alternative NA and EA models in advance of the session. The workshop was held on January 9, 2009, in the Mackenzie Valley Environmental Impact Review Board office, in Yellowknife, NWT, with seven participants present and two participants who joined in via teleconference. One dedicated recorder took handwritten notes. Two other participants contributed their notes, and the researcher took notes when it did not interfere with facilitation responsibilities.

The workshop commenced with introductions, and then the researcher presented for 20 minutes on Objective 1, current NA-EA overlap. The experts then engaged in a one and a half hour round table discussion. The second session started with a working lunch and a 20-minute presentation introducing the Objective 2 alternative models. For the remaining three hours, the focus group developed a preferred model for NA-EA integration, explored the context around the NA-EA relationship, and identified recommendations and contingencies to support improvements to the current situation.

3.5. Limitations of the Research

This study recognizes the following limitations. The findings of the study, especially the prescription for an improved NA-EA process, may have no practical use. The prescription, in particular, may be too idealistic to be implemented. One major challenge for all research on IBAs (NAs) is that the contents of these agreements are

unknown. This uncertainty, though considerably narrowed by highly experienced experts, and the inclusion of a range of perspectives, does not eliminate the informed but speculative evaluation of NA-EA overlap. Bias is also a limitation. Some level of bias will be present because of the views of the researcher and the participants. This research is not intended to represent the views of all NWT natural resource development participants, but rather to contribute to the knowledge about the NA-EA process.

Chapter 4 – Current Overlap Between Negotiated Agreements (NA) and Environmental Assessment (EA) in the NWT

This chapter draws upon insights from participant observation, informal and formal key informant interviews, and an expert focus group to identify and describe the current overlap between NAs and EA in the NWT. These findings enable the researcher build, test, and refine a model of the overlap between the NA and EA processes. Following the introduction of the model, the three key phases of NA-EA overlap within the NWT system are identified. Current problematic overlap in the NWT is described as existing in no less than four situations between NAs and the EA process. In particular, problematic interactions occur with: the roles and responsibilities of the developer and Aboriginal community leadership; the decision-maker's discretion to interpret negotiated agreements as landowner 'consent'; allocation of responsibility for socio-economic effects; and the lack of a reference or authority to resolve issues of overlap. Finally, this chapter provides rationale for narrowing the 'problematic' NA-EA overlap from its earlier, broader application to the NWT to a specific focus on the Mackenzie Valley. Namely, since findings indicated that the project review process in the Inuvialuit Settlement Region has less overlap and is less apt to experience problematic NA-EA interactions, it makes sense to focus the investigation of *problematic* overlap to the Mackenzie Valley, NWT.

4.1 Conceptual Relationship Between Negotiated Agreements (NAs) and Environmental Assessment (EA)

In principle, NAs and EA are, or should be, characterized as dichotomous pathways on the natural resource development path. In practice, however, it would seem

that these processes overlap in at least three key phases: the scoping stage, which determines what will be included and excluded from EA and NAs; the deliberation stage, which encompasses EA's environmental, social, and economic investigations and NA consultations; and the resolution stage where environmental regulators prepare the project decision, and developers and Aboriginal authorities sign-off on project-specific NAs. Figure 4.1 depicts these three phases of overlap.

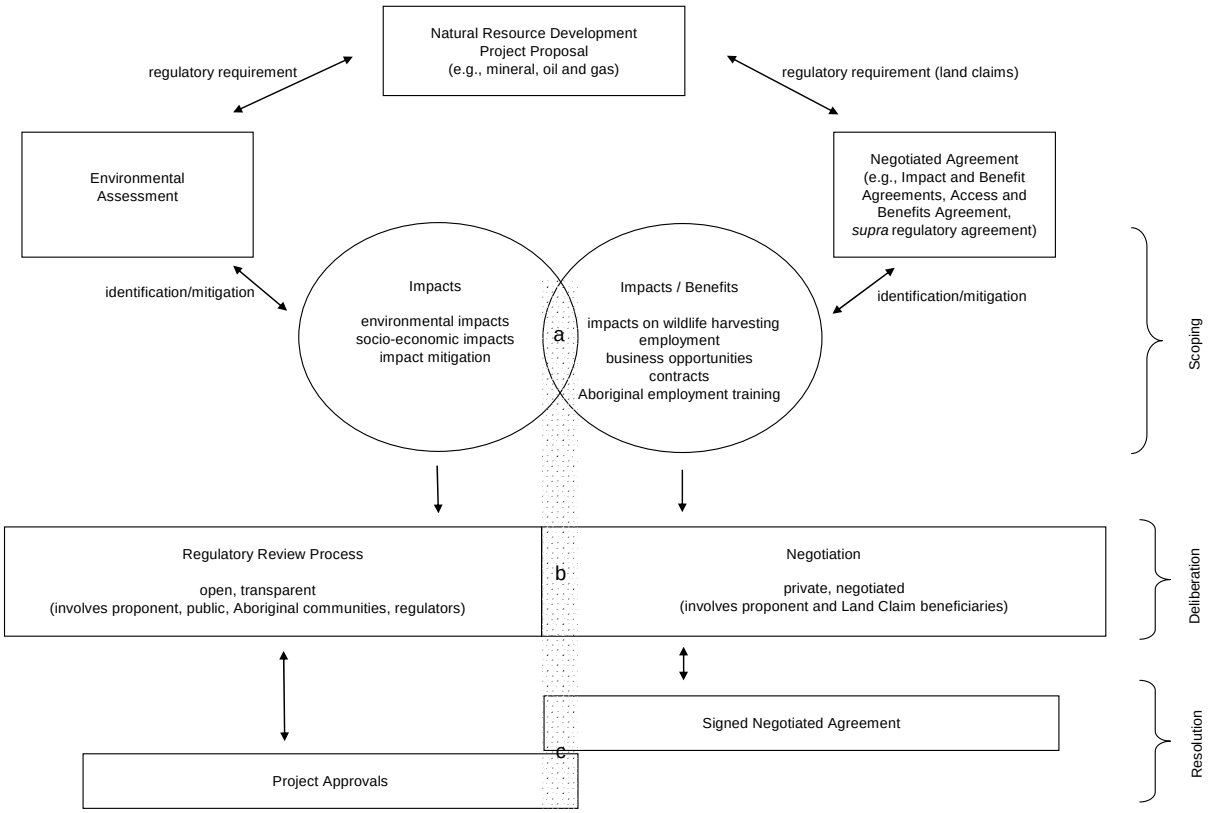

Figure 4.1. A conceptualization of the overlapping relationship between negotiated agreements (NAs) and environmental assessment EA) in the Northwest Territories. Potential overlaps are indicated by the shaded area. The overlaps in the environmental assessment and negotiated agreements processes exist in: (a) the scoping stage, when project impacts and benefits are identified; (b) the deliberation stage, when regulatory review of the EA and the negotiation of the NAs occur; and (c) the resolution stage, when project approvals are granted and NAs are signed.

General perceptions about the connections between NA and the regulatory process were dominated by the view that natural resource development in the NWT includes, and would continue to include, EA and NAs; that is, the two processes are becoming standard practice. In an expansion on the participant observation and informal key informant interviews, the formal interviews enabled the researcher a deeper level of inquiry. Closer critique identified that the NA-EA interaction is not uniform across the NWT. Although NAs are used in the Inuvialuit Settlement Region, the interviewees most familiar with that region stated that NAs almost always precede the environmental project review process, thereby reducing opportunities for interplay or active interference. Conversely, those most familiar with the Mackenzie Valley emphasized the abundance of problematic overlap experienced there. Based on this finding, the research direction focus shifted to identifying more specifically problematic overlap in the Mackenzie Valley.

Table 4.1 summarizes the key informant's views about the current relationship between NAs and the EA process and the robustness of the model of this relationship, Figure 4.1.

Table 4.1

Summary of Key Informant's[a] Reviews of the Relationship Between Negotiated Agreements (NAs) and the Environmental Assessment (EA) Process in the Mackenzie Valley, NWT

System Characteristic / Phenomenon	Agree	Disagree	Uncertain, or Had Not Considered the Concept
There exists a relationship between NAs and the EA process in the Mackenzie Valley.	4	1	1
The relationship between NAs and the EA process in the Mackenzie Valley is largely uncoordinated.	6	0	0

The uncoordinated (and undefined) nature of the relationship between NAs and EA in the Mackenzie Valley has problematic implications.	4	1	1
Figure 4.1 represents the current relationship between NAs and the EA process for exploring this phenomenon.	4	0	2

[a]Key informant responses from formal interviews only.

Interviewees either found value in the depiction of this phenomenon or had not previously considered such a relationship. None objected to the relationship as conceived. The now-confirmed existence of overlap begs the question, "Why do natural resource developers and Aboriginal communities participate in EA and choose to enter into the parallel NA process?" As was described in Chapter 2, EA is required by law, under the MVRMA. Interviewees and the focus group confirmed that indeed, NAs are strongly rooted in expectations and are (with one noted exception in the Sahtu Region) not a statutory requirement, but they could hardly be considered optional. The community's expectation to create NAs is, however, strong enough that developers continue to consider such agreements in any NWT pre-development plan. As will be described in this chapter, industry too sees business logic to creating NAs.

Once the focus group reviewed the model of the Figure 4.1 NA-EA relationship, discussion about the goals and aspirations of NAs helped define the potential for Overlap A, overlap in the scope of NAs versus EA. The 'scope' overlap between NAs[1] and the EA processes is, to the knowledge of the focus group, rarely if ever deliberately discussed by developers, government, and Aboriginal leadership, confirming that Overlap A

[1] The notion of a single NA, as currently depicted in Figure 4.1, is somewhat of a simplification. NAs might include a number of voluntary sub-agreements that fall under the umbrella term NA. Sub-agreements establish incremental accord between the proponent and the local community throughout the process. These earlier sub-agreements may outline communication and EA process expectations, and can help to build towards the successful completion of a larger and more comprehensive NA.

(Figure 4.1) exists and remains undefined in most projects. Some of the overlapping effects relate to the environment (e.g., wildlife harvesting), but most relate to effects of a socio-economic nature. The majority of focus group experts agreed that the scope or character of NAs depends mostly upon the developer's interpretation of corporate social responsibility and local participation. If NAs have variable content, then which ones are more likely to result in Overlap A?

In practical terms, any socio-economic NA component could overlap with EA. "Socio-economic Impact Assessment, in the Mackenzie Valley context, is systematic analysis used during the [EA] process to identify and evaluate the potential social, economic and cultural impacts of a proposed development on individuals, families, and communities" (MVEIRB, 2006, p. 5). The basic NA, as identified by interviewees and the focus group, is a contract for a local labour force and local suppliers. The experts expanded the definition of benefits to include cultural and socio-economic enhancements that may be included in some NAs. 'Enhancements' could provide endowment funds for future generations, foster traditional use activities, and protect sacred places. It is important to note that basic protection of sacred places, heritage resources, and traditional land use are considered in the consultation and biophysical assessment components of EA.

Overlap B (Figure 4.1) represents the 'deliberation' phase interaction between regulatory review and the private negotiation of agreements. In the view of the focus group, it would be ideal for developers and communities to co-create project mitigation and benefits through EA and NAs. In regular practice, however, conflict is common to

Overlap B and may affect the relationship between developers and communities throughout the project lifecycle.

Overlap B provides an opportunity for NA and EA deliberations to influence one another through the actions of developers and communities; the degrees of gap and overlap between the processes are, however, unknown to EA decision-makers and regulators who have a responsibility to protect the public good. Since NAs are confidential, the main concern they present is with gaps; that is, that mitigation measures developed in isolation could result in a gap between EA and NA, with inadequate assessment and incompatible mitigation and compensation strategies to address negative project effects. Some focus group experts felt that overlaps were problematic in that the duplication was wasted effort, while other experts saw that making several agreements for the same important issue was not problematic as it could usefully offer a measure of contingency.

If there is confusion with the role of NAs in mitigating socio-economic effects, then it is reasonable to ask whether NAs factor in to EA decision-making. Focus group experts stated that review boards, specifically the MVEIRB, hardly consider project benefits per se; instead, they focus on the potential for the project to cause significant adverse environmental effects. This suggests that EA deliberations, culminating in an EA decision, do not rely on outcomes of the NA process. One focus group expert noted, however, that the MVEIRB commonly requires a developer to implement a follow-up program regarding socio-economic effects. Conceivably, this would require developers to report jointly the NA and EA outcomes, as they comprise the ‘net effect’ of EA mitigation and NA benefits.

The focus group recognized the existence of Overlap C (Figure 4.1), the 'resolution' phase. During this phase, the sequencing of NA sign-off and the EA decision is a significant cause for concern in the Mackenzie Valley. Overlap C is particularly relevant to the situations where regulators require evidence of a signed NA prior to issuing project approvals. This varies by region, and leaves statutory interpretation in the hands of the local Land and Water Board authorities.

The interviewees found that Figure 4.1 depicts scoping, deliberating, and resolving NA and EA elements in a way that reflects their experiences and could enable discussion of potential interactions and interference. The focus group experts universally agreed that there is overlap between NAs and EA in the contemporary Mackenzie Valley, largely consistent with Figure 4.1. The current scoping ambiguities, NA-EA deliberation interplay, and interlinked resolution phases result in tensions, uncertainty, and frustration for developers, Aboriginal communities, and government.

Detailed discussion with formal interviewees and experts elicited suggestions to make Figure 4.1 a more robust representation of the current situation in the Mackenzie Valley. Experts stated that the NA and EA processes do not necessarily transpire in tandem; indeed, there are many variations possible within the Mackenzie Valley. Other suggestions included down-grading the notation about a 'regulatory requirement' for NAs, since most land claims do not require NAs. Experts recommended reducing the breadth of the umbrella statement 'NA' to appreciate the differences between petroleum and mining benefits and governing statutes. An interviewee suggested extending the model to the 'implementation' phase, which follows the NA sign-off and regulatory project approvals.

4.2 Problematic Overlap

When does overlap become *problematic* overlap? Problems of social policy have been termed 'wicked problems'; they are problems that cannot be definitively described or satisfactorily solved. There are no optimal solutions for wicked problems, "…at best they are re-solved – over and over again" (Rittel & Webber, 1973, p. 160). The problematic overlap between NAs and EA can be treated as a wicked problem, and those who seek to 're-solve' it might act, as Rittel and Webber (1973) recommend, not with the aim of finding the truth, or a once-and-for-all solution, but with the aim of improving some characteristics of the situation.

This section on problematic overlap begins with an example of the risks developers face in the Mackenzie Valley. One industry key informant described unnecessary risk associated with doing oil and gas exploration. In the past five years, companies have paid tens, even hundreds of millions of dollars to INAC for exploration licences. Exploration licences grant the company the right to conduct exploration on a parcel of land in the NWT. The exploration licence alone, however, does not entitle the company to access to the lands. To obtain access, they must complete NAs with the local communities, and they must, at a minimum, complete a screening level EA appropriate to the size and scale of the proposed project. If the NA is not completed, and/or the community refuses to participate in the EA process (or its subcomponents, such as the often contentious collection and integration of traditional knowledge), the company cannot drill an exploration well; as a result, the company loses 25 percent of their investment, with the funds absorbed by INAC. A key informant described one such dispute. For the project in question, the developer's negotiations with the community

broke off, paralyzing the NA and EA. There is no regulatory framework to provide a reference for dispute resolution. There is no authority or arbiter to break the stalemate. The only resort was to assemble an *ad hoc* arbitration panel to try to resolve the issue. The informant felt that the system, as it currently operates, put the company at a disadvantage, making industry vulnerable to being held hostage to meet community negotiation demands or forfeit large amounts of money. From industry's perspective, the financial obligation of NAs, even without encountering obstacles such as those described above, is significant. The following section describes the four key problematic NA-EA overlaps that occur in the Mackenzie Valley.

4.2.1 Roles and responsibilities.

The industry and community roles bridge the NA and EA processes. Since it is often the same people in each process, this bridge creates a knowledge link between them. The dual roles of these parties could be problematic, and although there may be many reasons, two are presented below. First, developers may have an advantage in having greater knowledge about the proposed undertaking and its potential effects. Typically, developers hire consultants to conduct the project EA; therefore, in the role of 'client,' the developer has editorial and technical review privileges for the EA and socio-economic assessment reports. The developer has an influence on, and access to the findings before these documents are released to communities, government, and the public. If relevant EA findings are not shared and NAs are negotiated in an information vacuum, communities could be at a distinct negotiating disadvantage.

Second, concurrent NA and EA processes affect the Aboriginal community's capacity to participate. Typically, the same group of community leadership and elders are

called upon to participate in negotiations, consultation, socio-economic studies, and traditional environmental knowledge studies. Problematically, this tends to draw down the resources, energy, and patience of those involved. The realities of limited resources might result in a community investing in only those processes that benefit them most, and/or the process that is sequenced first. As identified in Chapter 2, the Euro-Canadian EA decision-making framework may not align with the worldviews of the Aboriginal communities. Aboriginal participants have commented to EA authorities "we have taken care of this in the IBA." Decision makers have also noted community leadership expressing the belief that if you have an IBA, you do not need to participate in EA.

On the other hand, NA grievances can be taken up by communities through their participation in public consultation and EA intervention. As a simplified overview of the project process, in the Mackenzie Valley, projects must undergo environmental screening to assess the potential for the project to cause an impact on the environment and the potential for public concern (Armitage, 2005). The screening may be sufficient or the project may warrant escalation to more detailed study and scrutiny under a full EA. Public concern influences governing EA bodies to escalate a project from a less onerous 'environmental screening' to a full EA. Public concern might delay a project by two to three years, which is sufficient to render some projects unviable. Careful consideration of public concern has potential benefit for the practice of *holistic* EA in the Mackenzie Valley; however, this feature of the Mackenzie Valley system could also be seen as creating an incentive for the developer to work with local communities to address concerns using NAs.

4.2.2 Evidence of a signed negotiated agreement (NA) required by environmental assessment (EA) authorities.

Most jurisdictions do not strictly require NAs, although some regional Boards refer to them in regulatory guidance documents. One expert stated that, in practice, the Sahtu Land and Water Board issues water licences and land use permits after it receives proof of signed access and benefit agreements. In taking this action, the Board is not concerned with the contents of the agreement, only whether the developer has the landowner's 'consent' to proceed. Hence, the extensive use of NAs throughout the Mackenzie Valley can be primarily attributed to expectations among Aboriginal signatories and developers that recognize business logic to their use. There are at least two drivers for communities and industry to complete early NA sign-off, as described below.

In the view of communities, developers can address Aboriginal concerns regarding development plans through either NAs or the EA process, and probably through the two. As to their preferred sequence, the focus group noted that generally, communities favour early negotiation. Completing substantive NAs before regulatory approvals helps keep decision-making power in the local community, rather than deferring project decisions to regional Boards.

The Aboriginal interest in early negotiation is compatible with industry's interests. NA consultation and negotiation usually start at the earliest stage of exploration planning, and may even end before EA begins[2]. From the developer's perspective, when NAs are completed at the start of the development process they serve to build certainty

[2] Oil and gas projects under the Canadian Oil and Gas Operations Act (COGOA) require an access agreement and benefits plan (a form of negotiated agreement) to be in place before work on the land begins.

around ongoing investment in the project. At this stage, the developer's motivation is to minimize the time it takes to secure any private agreements, complete screening or EA, and obtain regulatory approvals (land use permits and water licences). If the cost of negotiating NAs and working within the agreed upon terms is less than the estimated cost of a delayed project, then a developer may see an NA as a means to move the project forward. This raises tension around the prospect and the perception of 'chequebook diplomacy' as an industry tactic. Whether there is tension or not, certainty is desirable for developers who aim to assess and reduce risk to their development schedule as quickly as possible. Developers are willing to negotiate for certainty.

4.2.3 Socio-economic effects are addressed within negotiated agreements (NAs) and environmental assessment (EA).

Most, but not all, NA terms are private so it is impossible for government or the public to review the coverage of socio-economic concerns by anything other than public EA documentation. One interviewee stated that the EA ultimately must satisfy the public interest, and the NA cannot be counted upon to fulfill a community's socio-economic needs. Another industry informant commented on the terms of the agreements, arguing that, although NAs are confidential, "There are no secrets or tricks. Community needs and interests are at the forefront of what is agreed upon." Regarding the role of the regulator, an interviewee explained,

> This issue is with the ability of a regulator to decide what mitigation measures are warranted in the public interest. The regulator needs to decide a process...and the companies need to decide what to put in their EA and what not.

The majority of the experts considered mitigation the domain of EA, and compensation, sometimes in the form of offsetting benefits the domain of NA. Some focus group experts felt that *compensation* for the effects on social or economic well-being in the project area should not be considered a project *benefit* at all, and that benefits should be completely separated from either mitigating or compensating for negative effects. Following this logic, EA decisions should, therefore, evaluate the developer's plan to mitigate the significant adverse effect(s) of the project, without the inclusion of alleged or disclosed NA terms.

4.2.4 No reference or authority for negotiated agreements (NAs).

A great deal of the uncertainty with the project process is attributed to the lack of an authority or reference for NAs. Difficulty arises from the interaction of NAs with other pre-project regulatory activities. It is, in part, a product of overlapping local, regional, territorial, and federal regulatory jurisdictions in the Mackenzie Valley. The complicating factor seems to be that the negotiation process interacts with the EA processes of consultation and socio-economic assessment, as well as interpretation of land claims, land tenure, and permitting. The experience of industry is that the jurisdictions of some territorial and federal authorities and regulators are too narrowly defined and, in other cases, the jurisdictions are overlapping, thereby rendering authorities unable to provide oversight or guidance. One key informant sympathized with the challenge regulators face, stating that EA authorities and regulators must operate within their own jurisdiction. They might work to make sure that the EA and the socio-economic impact assessment have adequately evaluated the project and provided appropriate mitigation. However, "many EAs are filled with 'will do' statements, and

some try to relegate socio-economic mitigation to the IBA." Presently, the authorities may only adjudicate EA, and provide feedback to ensure that the public portion of the developer's plan is complete. Regulators cannot pass judgment on an NA.

Government is seen as unlikely to step in. One consultant's view is that NAs between industry and Aboriginal communities "…took one headache away from the government, one that they won't want to take back." Evidence of this approach came from an industry negotiator who identified that, in one natural resource development experience, the Aboriginal peoples wanted the Crown to be party to negotiations, but the Crown refused to participate. To move forward, this developer advised, "…the best you can do is cobble some kind of benefit agreement together and then try to pull the Crown to the table, or settle with them later." A focus group expert commented that, in engaging in NAs, companies are taking on the responsibility for environmental adaptive management that would otherwise fall to government or a monitoring agency.

Industry has demonstrated strong interest in clarifying the respective roles of government and industry with respect to NAs. One focus group expert stated that, "…98 percent of the money from developments is going to the federal government…"[3] Based on this, should the federal government be compelled to participate in the clarification of government and industry roles and responsibilities? One informal interviewee, who leads oil and gas exploration in the Deh Cho, Sahtu, and Inuvialuit Regions of the NWT, has resolved that negotiating agreements in stronger and better-

[3] Another industry key informant attested that he could understand why NAs are necessary in the NWT. The land tenure system in the NWT does not provide benefits for development. The benefits flow to Ottawa. This is unlike the situation for landowners south of 60° latitude. In southern Canada, such as the province of Alberta, private lands with local county governance systems collect tax on developments, and land owners benefit directly. It was this informant's view that it is therefore appropriate for proponents to provide funds and benefits such as employment to northern communities to compensate for the negative effects of natural resource development. This informant felt that NA terms are not unduly burdensome given the relative impact on otherwise undisturbed areas.

defined regulatory regimes (such as the ISR) is quicker and easier as compared to areas with unsettled land claims or disjointed administrations. This suggests that region-specific clarification would help to improve the situation.

4.3 Summary

The results of current overlap can be viewed from many perspectives. The summary of this chapter presents hypothetical industry 'best' and 'worst' scenarios (see Table 4.2) to illustrate two circumstances that could arise from problematic NA-EA overlap in the Mackenzie Valley.

Table 4.2

Hypothetical Industry 'Best' and 'Worst' Scenarios Illustrating Four Problematic Negotiated Agreement (NA) and Environmental Assessment (EA) Overlaps

'Best' Scenario	'Worst' Scenario	Problematic Overlap
EA process identifies, predicts, and evaluates effects. NAs are established to support community and project-specific gaps in the EA system. Communities, government, and developers have adequate resources to participate fully in EA and NA processes.	The developer and community leadership sign NA, but are faced with the perception that a small portion of the population benefits from the agreement.	The roles and responsibilities of the developer and Aboriginal community leadership may see the same parties creating NAs and participating in the EA process. The community, given limited capacity to participate, selects the process they believe will result in the greatest local decision-making authority, the NA.
Resource developer and Aboriginal community have signed NA(s) and are in agreement over EA findings. Developer's EA and permit submissions are approved by government with community support.	NA is signed-off before EA. Subsequent community concern and conflict develop. Community attempts to address project concerns during EA consultation. Land and Water Board must decide if screening authorization can be issued considering community concerns. Or, EA is completed before NA. Community seeks NA terms to resolve project effects identified by EA.	At their discretion, decision-makers may require evidence of a signed NA before issuing project screening or EA decision. Decision-makers interpret the signed NA as landowner 'consent' to proceed with development.

EA process mitigates and/or compensates for the negative effects of development. NAs provide 'benefits' such as contracts and training. In some instances, the process identifies and implements social and cultural enhancement opportunities.	The EA process and NAs fail to adequately identify, avoid, mitigate, or compensate for socio-economic effects of resource development.	It is unclear which process, NAs or the EA, is responsible for identifying, mitigating or compensating for the negative socio-economic effects of resource development. Lack of coordination contributes to this uncertainty.
Industry and community establish informal, private agreements to complement EA process. Authorities observe, but do not intervene with the overlap of parallel formal EA and informal NA processes.	Conflict occurs in attempting to complete EA project review and/or NAs. Overlap of federal, territorial, and regional regulatory jurisdictions, land claim settlement issues, and land tenure matters lead to confusion and delay. Industry concludes that the Mackenzie Valley is a risky investment environment.	There is no reference or authority to resolve NA-EA overlap. The system lacks statutes, regulations or guidelines to delineate the NA-EA relationship.

Based on the participant observations, informal and formal interviews, and the expert focus group, the research identified the existence of no less than four problematic overlaps between NAs and the EA process. In particular, problematic interactions occur with: the roles and responsibilities of the developer and Aboriginal community leadership; the decision-maker's discretion to interpret negotiated agreements as landowner 'consent'; allocation of responsibility for socio-economic effects; and the lack of a reference or authority to resolve issues of overlap. This description of the EA-NA process in the Mackenzie Valley is the starting point for developing improvements for the future. Following from this finding, what opportunity exists to improve the situation?

Chapter 5 – Alternative Relationships Between Negotiated Agreements (NAs) and Environmental Assessment (EA) in the Mackenzie Valley, NWT

This chapter presents models of 'alternative' NA-EA relationships conceived to minimize interference between NAs and EA in the Mackenzie Valley, NWT. This chapter reports an expert focus group's review of the alternative models and identifies their preferred model and associated recommendations to improve the current system. Following from the findings of Chapter 4, which identified that the NWT's Mackenzie Valley project review process has a much greater potential for problematic overlap than the ISR, the selection of a preferred model and the associated recommendations for its use focus on improvements to the current situation in the Mackenzie Valley.

5.1 Conceptualizing Alternatives

Given problematic overlap between EA and NAs in the Mackenzie Valley, as described in the prior chapter, a number of alternative relationships between the two processes was conceived with the aim of minimizing problematic overlap. Some of the models may be reminiscent of real-world governance processes, but any such comparison is irrelevant in this process; the alternative models are presented free of any encumbrances posed by current regulatory realities. The various models (Figures 5.1 through 5.7) contain the same structural components of scoping, deliberation, and resolution as shown in Figure 4.1, unless a figure omits one or more of these steps by design.

Non-overlapping project review processes are shown in Figures 5.1 and 5.2. Figure 5.1 temporally sequences the EA and regulatory review prior to the commencement of NA scoping, negotiations, and sign-off. This model envisions the

completion of project approvals and permitting as the starting point for the NA process[4]. The temporal separation of these steps means that regulators would not include or consider NA elements outcomes in the decision-making or permitting process. This model would allow EA results to inform the NA process, and end the interplay that might take place between concurrent EA and NA processes.

Figure 5.2 maintains the sequenced approach, but reverses the order in which NA and EA are addressed. In this model, NAs are completed prior to the scoping and assessment of environmental and socio-economic project effects; indeed, the signing of the NA signals the commencement of EA activities. The NA is assumed to be confidential in this model and all others presented, so NA outcomes will not inform the scope of the subsequent EA. With this model, resolving potential EA and NA overlaps and gaps relies on the voluntary input of the developer and Aboriginal communities who are party to the bilateral NA.

[4] It is necessary to distinguish NAs (private bilateral agreements between proponent and Aboriginal communities), from the other agreements that may be formed in the pre-development process. The other agreements of relevance here are sub-agreements (e.g., communications agreement, environmental assessment agreements) that are usually, but not always, bilateral; and SEAs, prepared by the GNWT as terms of the project approval. Sub-agreements often mark the earliest contact between the proponent and the community. They can contain incremental agreements about how to move forward together. Socio-economic agreements include the GNWT SEAs, often created by the GNWT for the project to describe terms for engaging in natural resource development in the NWT. The GNWT Minister will typically complete SEAs after the Board decisions about the project are made (i.e., Land and Water Co-management Board, or Environmental Impact Review Board). These associated socio-economic agreements are beyond the scope of this research.

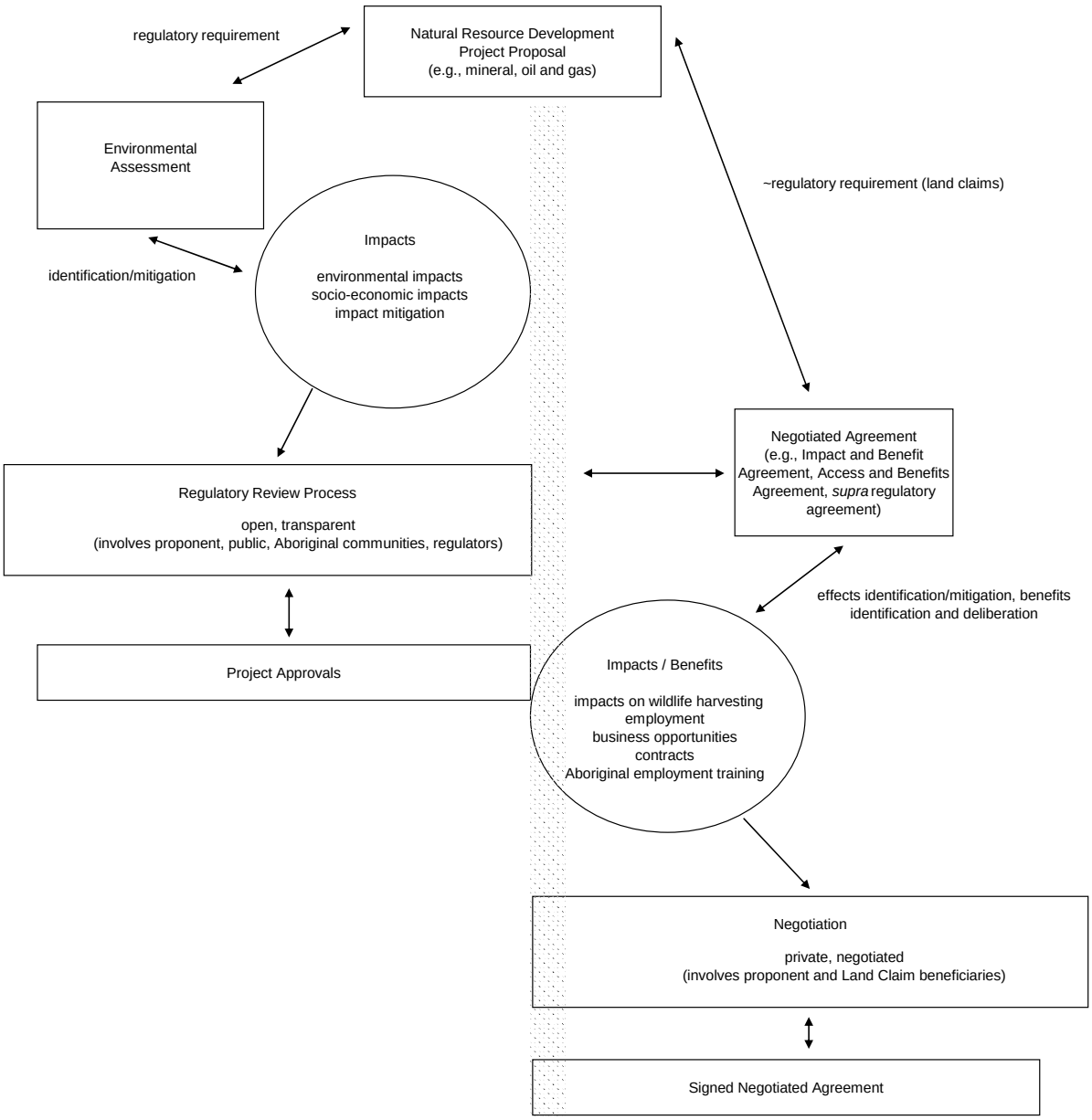

Figure 5.1. Conceptual model of a chronologically sequenced environmental assessment (EA)-negotiated agreement (NA) process, wherein the completion of the EA marks the commencement of negotiations.

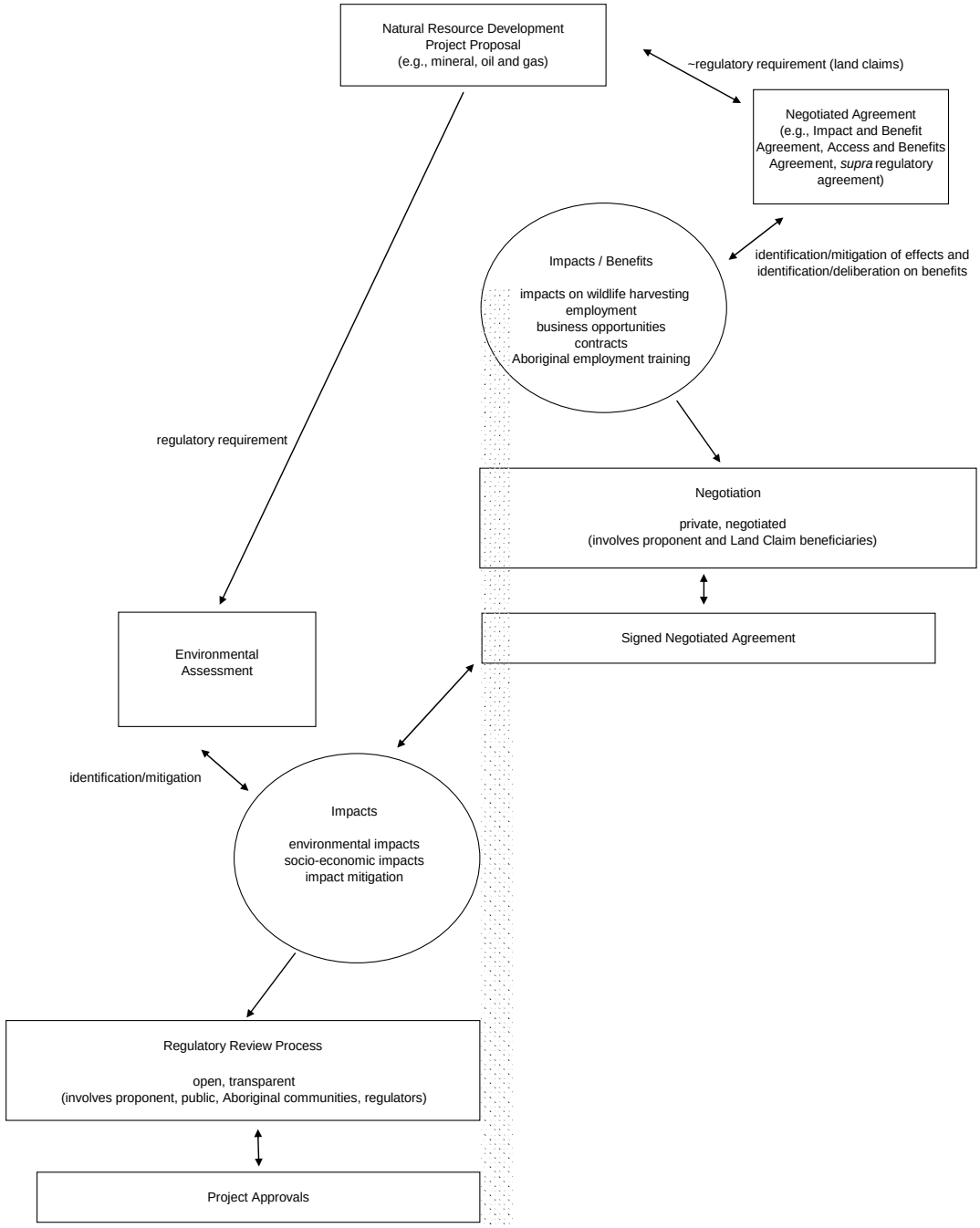

Figure 5.2. Conceptual model of a chronologically sequenced negotiated agreement (NA) - environmental assessment (EA) process, wherein the signing of the NA(s) marks the beginning of the EA.

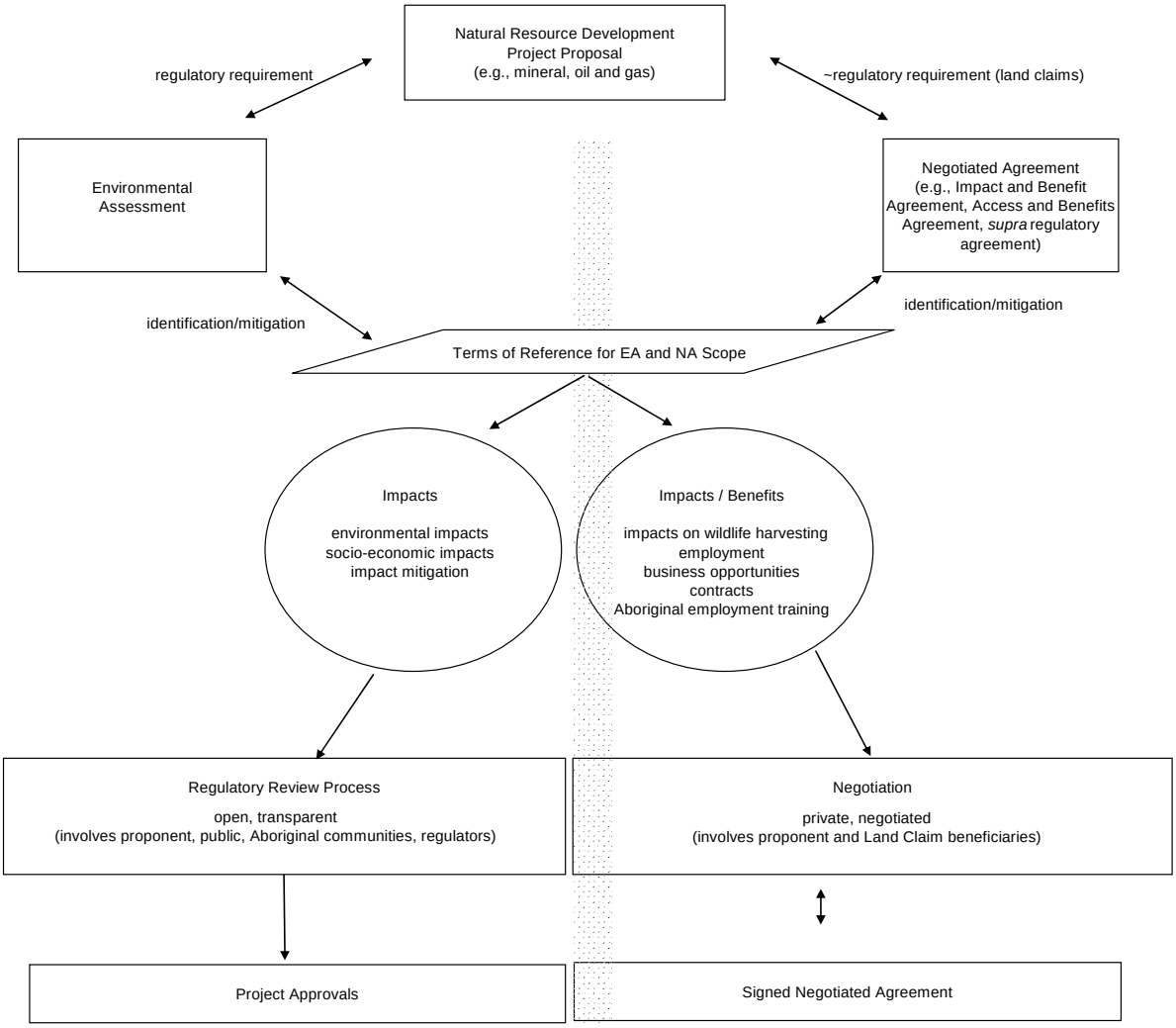

Figure 5.3. Conceptual model of linked environmental assessment (EA) and negotiated agreements (NAs) with the scope of each process delineated at the outset within project-specific terms of reference.

Figures 5.4 and 5.5 explore radical departures from the current regulatory environment in the Mackenzie Valley, since EA and NAs are considered standard practice for natural resource developments. This pair of models considers the effect of eliminating EA (see Figure 5.4) or eliminating NA (see Figure 5.5). The former shows government, Aboriginal authorities, and industry engaging in a negotiated process that identifies benefits, mitigates project effects, and issues project approvals. The widely

accepted process of EA is not employed in this system, which reflects the controversial view that it has been too ineffective in this context to warrant its continued usage.

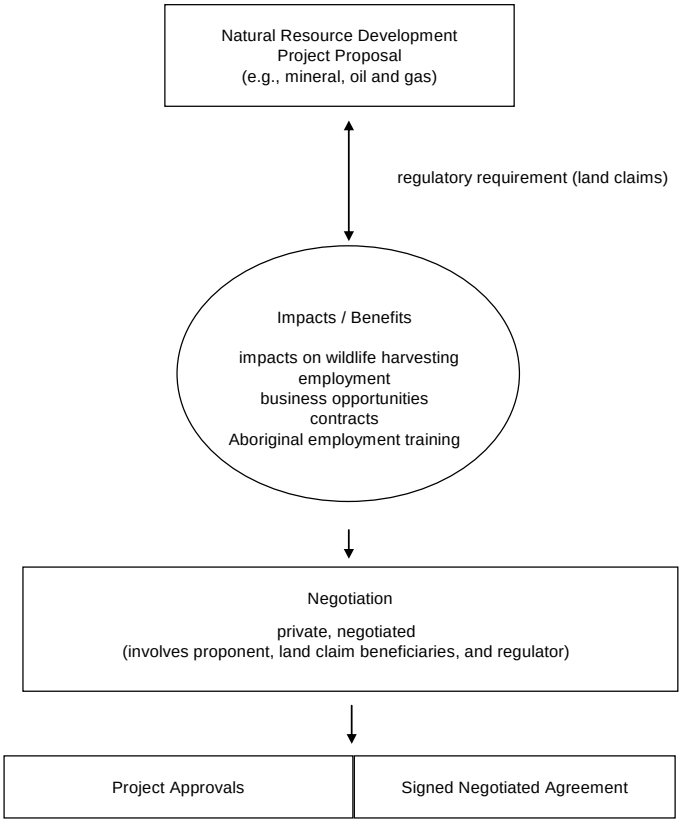

Figure 5.4. Conceptual model of a project review process based solely on negotiated agreements (NAs).

Figure 5.5 shows a strictly EA-based project review process. In one sense, this could be seen as similar to the NWT before the emergence of NAs[5]. It is assumed in this model that the conduct of EA would be exemplary, or at least more effective than it has

[5] This approach would be similar to the oil and gas regime in the 1970s, prior to the Canadian Petroleum Resources Act and Canadian Oil and Gas Operations Act (COGOA), which made NAs mandatory for oil and gas activities; and the mineral exploration regime prior to the rise of voluntary IBAs (Kennett, 1999).

been in the recent past (see Galbraith et al., 2007), especially with respect to the need to build trust, identify benefits, enhance local capacity, and ensure follow up.

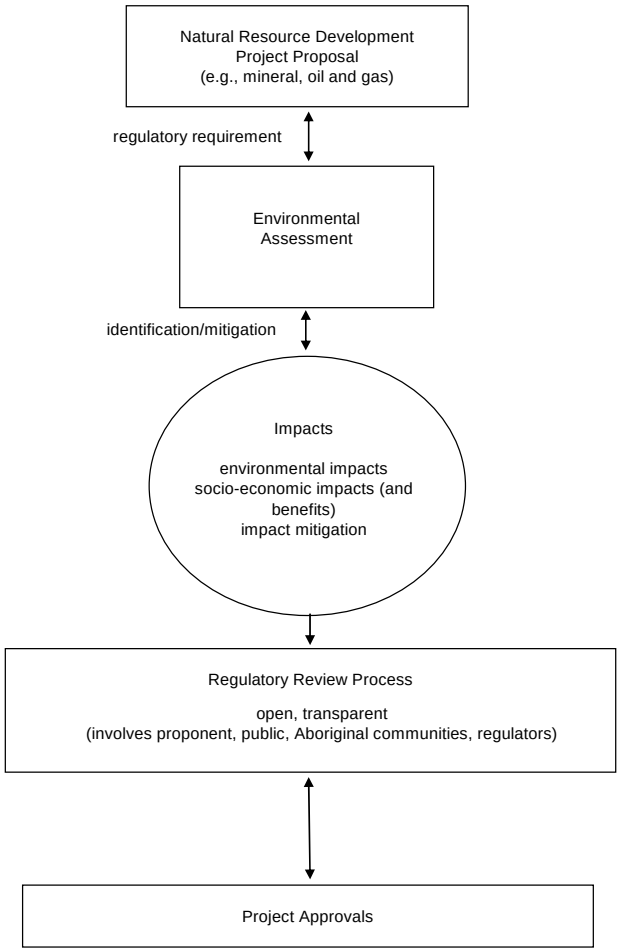

Figure 5.5. Conceptual model of a project review process based solely on environmental assessment (EA).

Figure 5.6 splits the responsibility for managing the effects and benefits of a project. In this model, the developer predicts and addresses project effects through EA, and the Crown brokers project benefits and ensures that communities receive these benefits. While resource royalty/revenue sharing with Aboriginal communities has been

initiated in British Columbia, and is being discussed in Ontario, much still needs to be worked out with respect to arriving at a suitable share and the implications of revenue sharing for current government transfers to Aboriginal communities. This model poses even further complications if the Crown also delivers benefits beyond resource revenues, such as employment, Aboriginal business opportunities, and training.

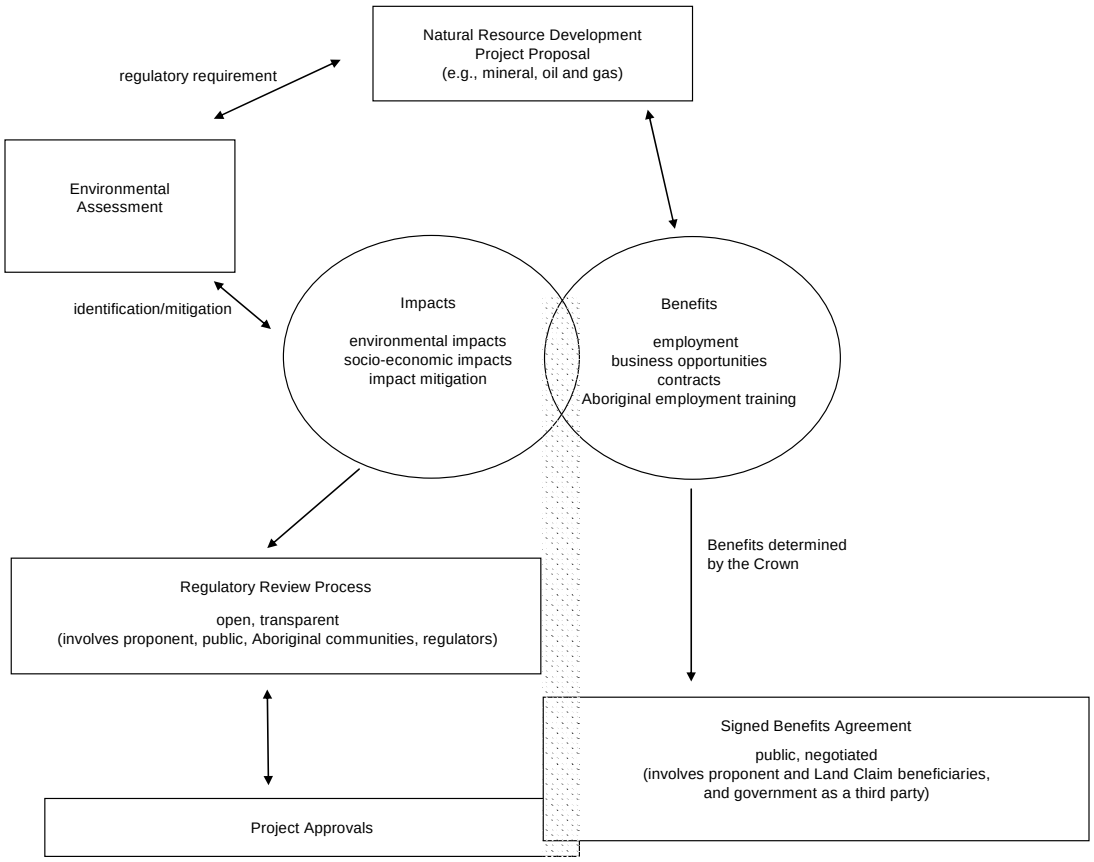

Figure 5.6. Conceptual model of a project review process with environmental and socio-economic impacts addressed through the proponent's environmental assessment (EA), and potential socio-economic benefits identified by the Crown.

Figure 5.7 suggests the possibility of isolating the processes of EA and NA. Figure 5.7 is reminiscent of Figure 4.1, but with some important assumptions. Isolation of

EA and NA would require government agencies to remove themselves entirely from the formalization of NA acceptance. This approach would entail issuance of project approval or permits without proof of NA completion. Further, industry negotiators and project managers, leadership within Aboriginal organizations, and co-management board members would need to be mutually exclusive to either the NA or EA process. The individuals with multiple roles on typical projects in the Mackenzie Valley would have to narrow their involvement to one process, either EA or NA, to prevent knowledge transmissions between project review and NA processes. Would this be achievable or desirable in the Mackenzie Valley?

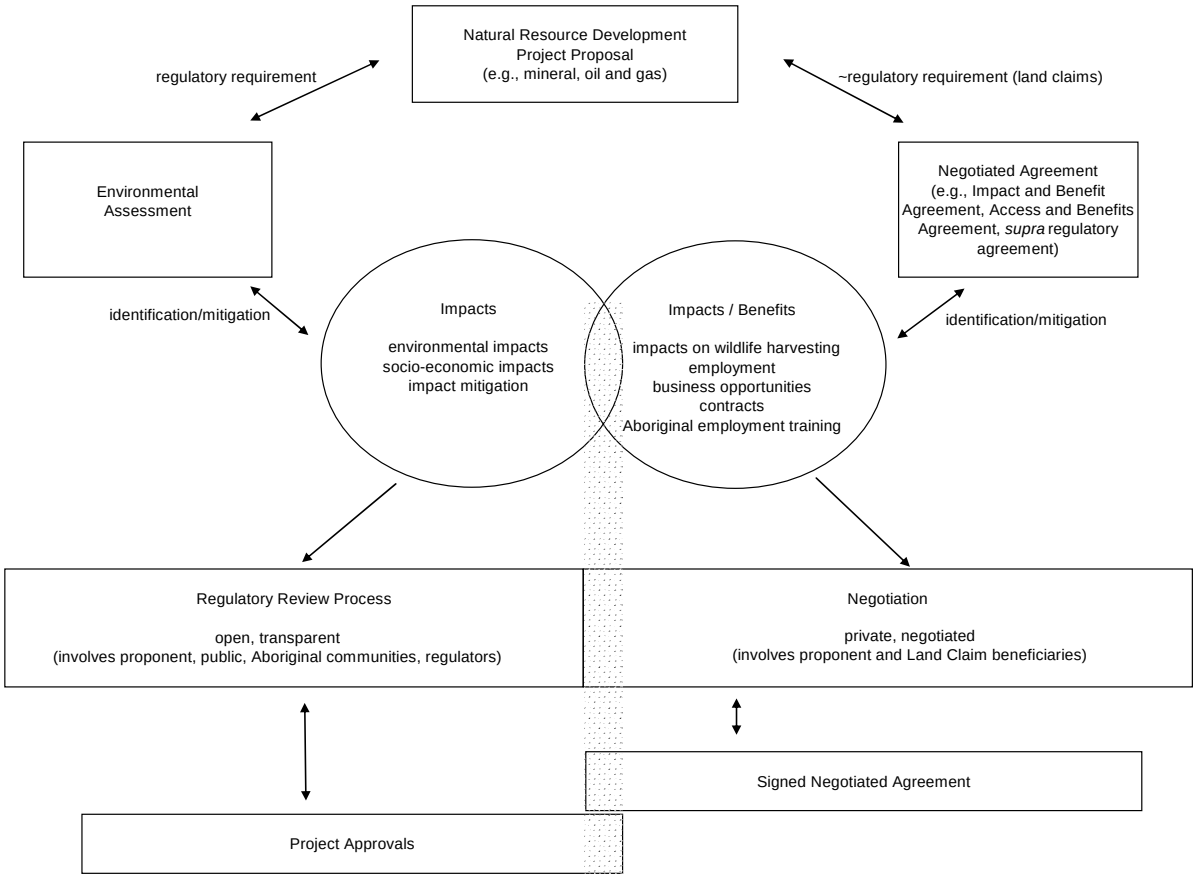

Figure 5.7. Conceptual model of isolated environmental assessment (EA) and negotiated agreement (NA) processes with unknown degrees of overlap.

5.2 The Experts' Preferred Model

Beyond identifying problematic overlap between EA and NAs in the Mackenzie Valley, the primary aim of the expert workshop was to review alternative conceptual relationships between EA and NAs in the Mackenzie Valley and identify that which is best suited to reduce current problematic overlap. Before evaluating the strengths and weaknesses of the alternative models, the focus group reflected on the values that might underlie or inform their judgments and preferences. Several experts volunteered elements of preference including: valuing relationships; maintaining the independence of NA and EA; avoiding duplication of effort; sharing information between processes; upholding the rule of law; preserving (or enhancing) the integrity of EA; encouraging iterative development approaches; and building trust and respect. Industry and Aboriginal stakeholders who have vested interests in particular models will undoubtedly echo many of these values, and may hold others.

As the discussion turned to the strengths and weaknesses of the alternative conceptual models, one expert usefully drew attention to the argument of George Box, who suggested, "all models are wrong, but some are useful." This helped the group to recognize that they were striving to identify a preferred model that nevertheless would be far from complete or perfect.

All of the governance models (Figures 5.1 through 5.7, and recurring references to the current situation as depicted in Figure 4.1) generated discussion and led participants to present NA and EA examples from practice. The focus group ultimately dismissed Figures 5.1, 5.2, 5.4, and 5.5 because these models were deemed too rigid and narrowly defined for implementation in the Mackenzie Valley. In Figures 5.1 (EA

completed before NA) and 5.2 (NA completed before EA), the models were largely deemed unrealistic. As was discussed earlier, leaving the negotiation of agreements until after the completion of an EA results in a loss of negotiating power for Aboriginal communities and hence this sequence will not be seen as appropriate for many projects[6]. Further, completing EA before NA misses the relationship-forming interactions that could provide important local and cultural input into the project planning process. A focus group expert noted that the intense investigative activities of EA, if conducted without an NA, could be seen as overstepping the boundaries of the local Aboriginal community. To help remedy this issue, initial consultation and negotiations are now customary to secure an agreement to assess the environmental and socio-economic setting of the proposed project. The converse relationship, where the developer completes a NA before the EA, was deemed problematic from a 'public good' point of view because the absence of EA information creates uncertainty for all stakeholders about the main issues associated with the proposed development, making it premature to suggest mitigation or compensation measures in a NA. Further, concern was expressed from focus group experts about the possibility of an established NA limiting or 'gagging' community objections in the EA process, even where such processes revealed likely significant adverse effects[7].

The second pair of models that the focus group set aside represents the extreme ends of the NA-EA relationship spectrum: eliminating EA and using only NAs

[6] This sequencing was exemplified by the Voisey's Bay mine and mill development project, which was the subject of a complete EA in Newfoundland and Labrador in the late 1990s in advance of the establishment of a NA; one focus group participant regarded this process as ideal, at least for that time and place.

[7] This view reflects belief in a corporate strategy that was said to have occurred more in the 'old days' – agreements with gag orders. These agreements supposedly stated that once benefits were agreed upon, the community would not raise opposition to the project within regulatory processes like EA and permitting.

(Figure 5.4), and eliminating NAs and using only EA (Figure 5.5). The focus group deemed neither situation plausible or suitable in the Mackenzie Valley. The idea of an EA-only project review system invokes an idealized view of EA practice, which would perfectly predict, evaluate, mitigate, monitor, and further mitigate all project effects. Most experts agreed that this was not possible; as has been long argued, EA alone is not sufficient to meet the needs of the project review process in the Mackenzie Valley. This is reflected in that Aboriginal peoples regularly secure legal contracts with project developers, such as access agreements, to enforce corporate accountability for supposedly standard EA practices like monitoring and follow up[8]. The idea of NA-only project review was also deemed inappropriate by the focus group experts owing to concerns, as noted above, about the importance of identifying likely effects via EA, and the concern that NAs might simply focus on socio-economic benefits with less consideration to environmental concerns. This concern seems justified in light of the process followed for the Ikhil Gas Pipeline in the ISR, which one focus group expert described as quickly permitted and constructed with minimal EA but a fair number of 'private negotiations.'

The models that the group identified as most likely to improve the Mackenzie Valley situation were ones that maintain the independence of NA and EA processes, avoid duplication of effort, and encourage iterative NA-EA interactions. The experts created a short list of models along with recommendations for further refinement, and a novel model that links NAs, EA, and other Mackenzie Valley project agreements. The

[8] In the NWT under the MVRMA, a NA is, in the strictest interpretation, not a legal requirement except for mining in the Sahtu Region. Companies that choose not to prepare NAs may encounter difficulty in meeting community expectations or earning their 'social licence to operate.' One workshop contributor's current research shows that there is a bimodal distribution of corporations: one group that always strikes NAs, and another group that refuses to strike NAs. To compensate, in this latter group, proponents "camp out on the community's doorstep," investing intensively in consultation with the community. The intent seems to be to exceed the legal requirements for consultation, thereby eliminating the need for NAs.

focus group found that Figures 5.3, 5.6, and 5.7 were most useful in that: Figure 5.3 deliberately scopes NA and EA at the outset; Figure 5.6 requires the developer to address environmental and socio-economic effects in the EA, and the Crown to broker select project benefits; and Figure 5.7 maintains NA and EA as independent and somewhat interactive processes.

Expanding on the above rationales, the focus group experts argued that, with the Figure 5.3 model, the developer, local communities, the GNWT, and the federal government, particularly INAC, have an opportunity to identify and establish their respective roles, responsibilities, and intentions for NAs and EA at the outset. Experts felt this process might also encompass GNWT socio-economic agreements and transboundary Aboriginal treaty-to-treaty negotiations related to projects. The drawbacks of this approach include the timing and feasibility of brokering agreements, a process that becomes ever more difficult as more parties are added to the process. This approach appears to place responsibility on the developer to sort out disjointed local governance regimes, which is a task that is outside the scope of their project interest. Experts identified that after the deliberation stage, regulators should be informed of what has been covered in the NA. An extension of this concept would seek to disclose as much detail about the terms of the NA as possible to the public. This would help reduce the ambiguity and suspicions that have been seen to cause tension, conflict, and project delays. Disclosure would directly assist with resolving duplication and potential gaps in EA, and increase the efficiency and effectiveness of efforts to resolve important outstanding issues. The main disadvantage is the divergence of NA and EA deliberations after the scoping stage (as Figure 5.3 suggests); the interaction should be ongoing. Open

communication (formal or informal) of plans, intentions, and feedback between developer, Aboriginal authorities, and government on NA and EA terms of reference was seen as useful. If the EA and NA processes diverge, then goodwill and opportunities for industry and communities to build partnerships would likely be missed.

Figure 5.6 depicts negotiations for benefits as a responsibility of the Crown, assigning the GNWT and/or INAC to protect the public interest in the reconciliation of social, economic, and environmental interests. Integral to this model was the definition of project benefits. Possible benefits in this conceptual regime included a royalties-only view, and a broader socio-economic or social welfare mandate. One participant related the sentiment that the GNWT is responsible for social welfare and has, in effect, deferred or abdicated some of that responsibility to industrial IBAs. Improvement to the situation of placing such responsibility on corporate entities could be some level of institutionalized NAs, with the GNWT securing and delivering benefits. This would involve trust in government to negotiate agreements that would fulfil local needs, as well as the 'public good.' Aspects of such a process currently exist in the form of the GNWT's practice of negotiating SEAs, which may include a cash-funding component such as a training fund or commitments to training, employment, and business opportunities. The final significant problem with this conceptual model is, if the Crown takes primary responsibility for determining benefits, the developer and community would lose the valuable opportunity to develop a relationship and an understanding of their respective interests and concerns, thus hampering the normative planning aspects of EA and NA deliberations. One focus group expert noted that when the GNWT brokers agreements, the local communities are rarely party to negotiations or the final agreement.

Figure 5.7 conceptualizes NAs and EA without prescribing specific timing for scoping, deliberation, and resolution. Several focus group experts identified that, from their experience, the preferred system is one that does not constrain the sequencing of NA and EA, supports a project-specific scope definition between NA and EA, enables an iterative communication linkage between NA and EA, and is largely not confidential[9]. More precisely, the preferred model for NA and EA integration: allows flexibility in the temporal NA-EA sequencing of scoping, deliberation, and resolution; involves government in the determination of select benefits, while leaving some benefits to private, bilateral NAs; and includes iterative interaction between NA and EA, using outputs from one to inform the other.

Figure 5.8 is the researcher's synthesis of the preferred NA-EA relationship described by the focus group. Focus group experts stated that guidelines or an iterative process overview would help developers, Aboriginal communities, and government to clarify expectations for the pre-development EA and NA processes. An iterative process of on-going communications and building upon a shared understanding is represented here by the flexible spring structure in the centre of the diagram. Over time, it was felt that it might be possible for the GNWT to prepare legislation for the minimum requirements for NAs. The focus group experts stated that more project examples should be completed and studied before requirements are either prescribed or legislated.

[9] One example of a positive iterative project was the Wuskwatim hydroelectric generation project in Manitoba. Manitoba Hydro and the Nisichawayasihk Cree Nation reached a negotiated agreement early, worked together to design the project based on criteria for economic, environmental and social sustainability, and then co-authored the EA (Nisichawayasihk Cree Nation & Manitoba Hydro, 2003). That said, focus group experts suggested that it can be difficult for communities to form agreements or participate early in the process if they are not familiar with the type of development being proposed. Thus, the Wuskwatim approach might not be suitable in all cases.

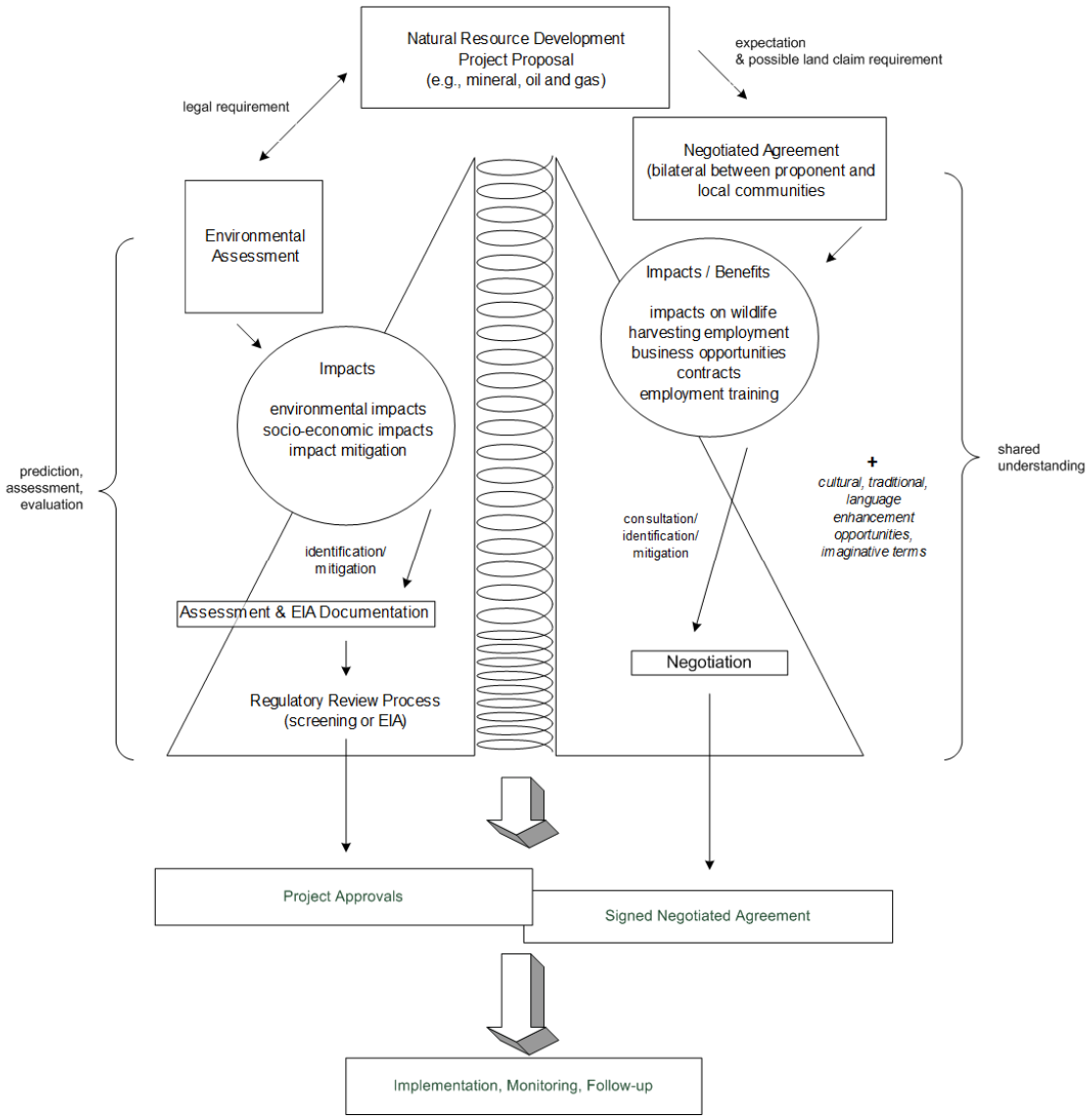

Figure 5.8. Preferred conceptual model of environmental assessment (EA) and negotiated agreement (NA) integration, based on a synthesis of the characteristics identified by the focus group.

Table 5.1 summarizes the recommendations associated with the experts' preferred EA-NA model, including elements of the conceptual models depicted in Figures 5.3, 5.6, and 5.7. The focus group recommends ongoing, collaborative communication between industry, Aboriginal communities, and government throughout the project lifecycle. They

also recommend definition of roles for and responsibilities of all parties involved in a project. The focus group encourages government to maintain flexibility with NA-EA coordination, sequencing, and confidentiality, so that the project review process might accommodate a wide range of project and community needs and interests in the Mackenzie Valley.

Table 5.1

Recommendations to minimize interference between negotiated agreements (NAs) and environmental assessment (EA) in the Mackenzie Valley, NWT

Element	Recommended Approach
Coordination	• Advise establishing a bilateral NA-EA coordination plan or strategy as early as possible.
Interaction / Information Sharing	• Prefer interaction between NAs and EA as opposed to low levels or interaction or isolation of NA-EA processes. • Identify contextual considerations that may influence EA-NA relationship. • Build relationships. • Attempt to employ open communication of EA findings and NA terms. • Advise interaction that is iterative and extends beyond implementation through project monitoring, follow up, and adaptive management.
Sequencing	• Prefer flexible sequencing to prescriptive sequencing. • Starting with NA sub-agreements will help define approach. • EA should inform longer term, larger scope NAs.
Regulatory Clarification	• The Mackenzie Valley system is evolving. Not suitable to prescribe a set NA process at this time. Must consider that NAs are tied into the larger issue of Land Claim Settlement. • There is room for more government participation in NAs, such as issuing information about NA expectations, and possible future development of minimum NA requirements and legislation. • Priorities are clarification of roles for all parties involved. • Clarify the 'domain' of socio-economic NAs, with particular attention to their relationship with GNWT SEA benefits.
Confidentiality	• Prefer reduced confidentiality about the terms of NAs. • Privacy should be maintained for some parts of NAs such as sacred Aboriginal knowledge and financial information.

Before concluding this chapter, it should be noted that none of the figures were deemed ideally suitable or even representative of the current reality by the focus group experts because of their 'start-point to end-point' characterization. The experts felt that, beyond the scope of the project review process, the public process (including EA, monitoring, and follow up), and the private, negotiated process are best viewed as a circular process, as depicted in Figure 5.9. This approach has the ability to address changing conditions. In particular, it would accommodate the introduction of new personalities, which have in the past compromised existing agreements when leadership transitions take place in the developer organization or the community.

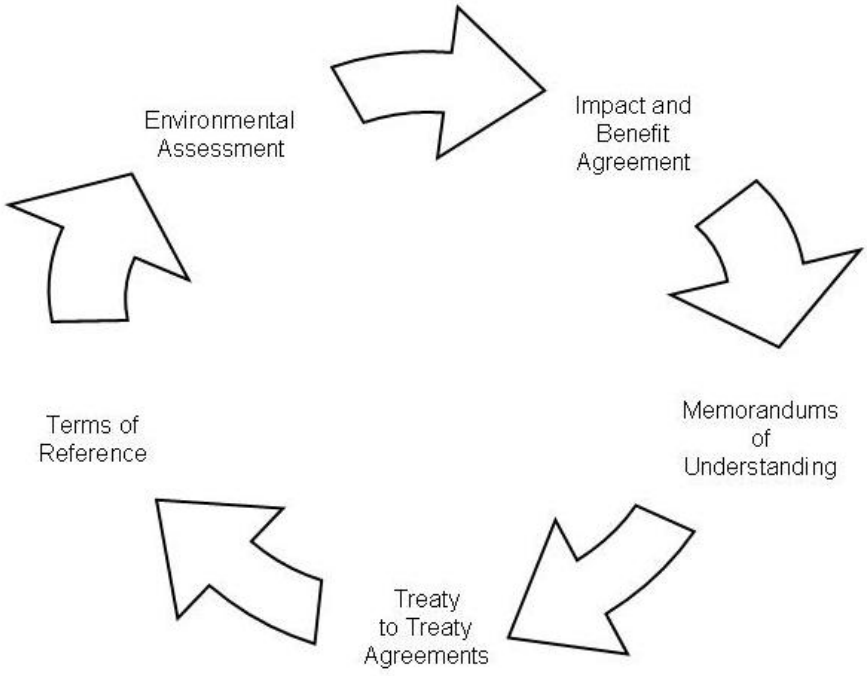

Figure 5.9. An integrative model of Northwest Territories natural resource project assessments and negotiated agreements (NAs) developed through on-going negotiation and re-negotiation over the duration of the project.

Additionally, some of the focus group experts thought that this circular process should be contextualized within the larger institutional arrangements governing land use in the Mackenzie Valley. As expressed in Figure 5.10, NAs and memorandums of understanding (MOUs) fall under larger legislative rules, and ultimately, the Canadian Constitution and Land Claim Agreements. This ranking suggests that from a formal legal perspective, NAs (contract law) or MOUs would not threaten the Constitution, the MVRMA, or the process of EA if taken to court. Yet, to the understanding of the focus group, the effect of NAs on EA in the Mackenzie Valley is much greater than their legal standing would suggest. Without any test NA-EA conflict in law to date, the accommodation of NAs informally exerts significant pressure on EA.

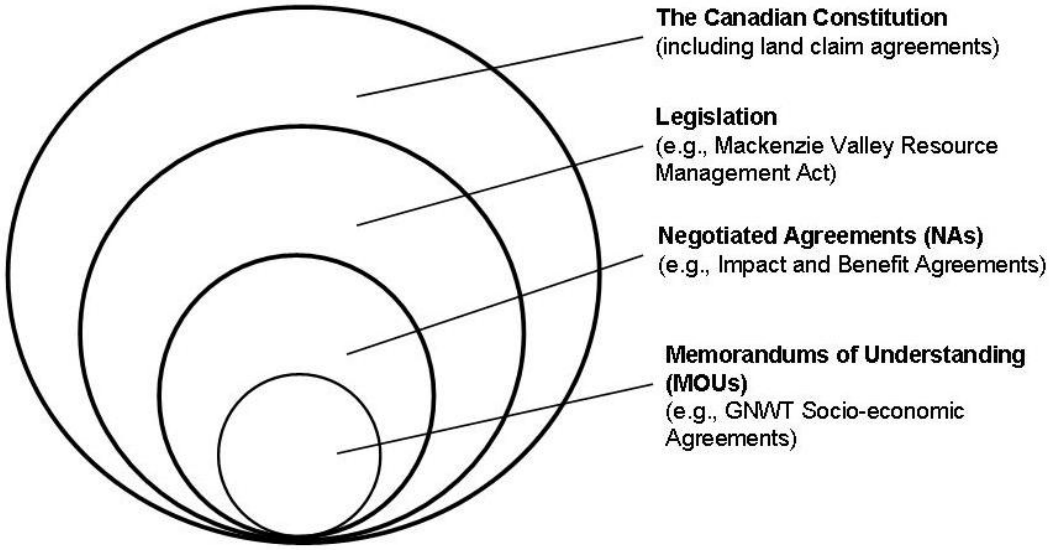

Figure 5.10. A depiction of the governance hierarchy in the Mackenzie Valley.

5.3 Summary

This chapter identified several alternative models of integration between EA and NA. An expert focus group evaluated and refined the alternative conceptual models,

preparing a preferred model of NA-EA integration. This preferred model (Figure 5.8) depicts an iterative process of ongoing communication between the parties conducting EA and those participating in NAs. The recommendations associated with this model include developing an integrative NA-EA coordination strategy at the beginning of the project; attempting to share information between processes by communicating EA findings and (as appropriate) NA terms; fostering patterns of NA-EA coordination that extend into implementation, monitoring, follow up, and adaptive management. Concerning regulatory clarification, the expert focus group stated that government should be more involved in NAs. In particular, government (federal and/or territorial) could issue information about NA expectations. Government could look to possible future development of minimum NA requirements and legislation. However, experts argued that while a prescriptive process might be suitable in the future, the NA-EA relationship is evolving, and it would not be suitable to formalize an integrative process at this time.

Chapter 6 – Summary and Contributions

6.1 Thesis Summary

Growing resource development pressures of late in the NWT, and particularly the Mackenzie Valley, have exaggerated ambiguities in the region's project review process. Given limited action, to date, to address the ongoing concerns of industry, Aboriginal communities, the public, and civil servants, the Mackenzie Valley has gained a reputation as a battlefield for natural resource development. Moving forward with mineral or petroleum exploration and development at present in the Mackenzie Valley requires developers to engage in the *de facto* standard processes of EA for regulatory project review and the negotiation of private bilateral NAs (including IBAs) with Aboriginal communities. The undefined relationship between NAs and EA increases tension surrounding government decision-making processes, and brings into question the integrity of the formal EA process. Uncertainties generated by the interplay between NAs and the EA process represent a challenge to the legitimacy of project reviews in the Mackenzie Valley.

Although some constituencies assert that public processes like EA have no right to concern themselves with private NAs, in practice, EAs in the NWT are now being conducted with the assumption that such agreements will be signed. McCrank (May 2008), states in his government commissioned report, *Road to Improvement: The Review of the Regulatory Systems Across the North* that

> Impact and Benefit Agreements have developed in an unregulated environment. These types of arrangements may very well provide a useful vehicle in the process of resource development. However, there is no regulation … that would establish standards in keeping with the type and scale of activity (p. 21).

As a starting point for understanding the key issues that have emerged recently in the Mackenzie Valley, this research sought to: (1) identify and describe current overlap between NAs and the EA process; (2) conceive of a number of alternative project review models with varying levels of integration of EA and NAs; and (3) identify and refine a preferred model based on the opinions of a group of experts.

Completion of Objective 1 drew on participant observation, interviews, and expert focus group feedback to build, test, and refine a model of the current relationship between the EA and NA processes. These findings, presented in Chapter 4, identified and described overlap between NAs and the EA process in the NWT. The research found that in the Inuvialuit Region, project review typically involves completion of NAs before the EA process; however, in the Mackenzie Valley, concurrent NA-EA processes occur more frequently and are more often characterized by problematic overlap and NA-EA interference. Overlap occurs during three phases of project review: scoping; deliberation; and resolution. The research identified the existence of no less than four problematic overlaps between NAs and the EA process. In particular, problematic interactions occur with: the roles and responsibilities of the developer and Aboriginal community leadership; the decision-maker's discretion to interpret negotiated agreements as landowner 'consent'; allocation of responsibility for socio-economic effects; and the lack of a reference or authority to resolve issues of overlap.

Given this problematic situation, consistent with Objective 2, a number of alternative relationships between EA and NAs were conceived. As presented in Chapter 5, these models envisioned various temporal sequences and degrees of coordination between NAs and EA as well as various roles and responsibilities for industry,

government, and Aboriginal communities, with the purpose of presenting options to minimize interference between NAs and EA in the Mackenzie Valley.

In fulfilment of Objective 3, these various models were subjected to scrutiny by focus group of experts in Yellowknife, NWT, on January 9, 2009. The experts reviewed the alternative models and identified those that were deemed best suited to reducing current problematic overlap. The focus group ultimately dismissed the models that were deemed too rigid and narrowly defined for implementation in the Mackenzie Valley. None of the models were deemed ideally suitable, but the models identified as most likely to improve the situation (Figures 5.3, 5.6, and 5.7) were ones that maintain the independence of NA and EA processes, reduce duplication of effort, encourage iterative NA-EA interactions, and are largely not confidential. During the course of the workshop, focus group experts generated characteristics for a novel conceptual model and a set of associated recommendations. Based on the experts' input, Figure 5.8 was generated to amalgamate the most useful attributes of Figures 5.3, 5.6, and 5.7. The resultant process model: allows flexibility in the temporal sequence of scoping, deliberation, and resolution; involves government in the determination of select benefits, while leaving some benefits to private, bilateral NAs; and includes interaction between NA and EA iteratively using outputs from one to inform the other.

6.2 Contributions of the Research

The research presented herein offers both methodological and practical contributions.

6.2.1 Methodological.

The focus group method that was developed for the workshop provides a methodological contribution to the study of environmental governance processes. The research originated from a problematic real-world situation that includes multiple stakeholders, some of whom recognized that there was a problematic relationship between NAs and EA, and others who detected a problem, but had never previously considered the NA-EA *relationship* in any detail. Using a consensus-building approach, the group of experts collaboratively evaluated, selected, and refined a preferred model. The experts then created a novel conceptual model and models that elaborated on the governance context of the NA-EA phenomenon, providing important system-level perspectives to the research findings.

6.2.2 Practical.

The findings presented herein identify and seek to improve the relationship between NAs and EA in the Mackenzie Valley, NWT. While others have mentioned areas of concern with respect to NA-EA overlap (e.g., Galbraith et al., 2007; Kennett, 1999; Klein et al., 2004), this research represents the first systematic effort to identify all overlap based on consultation with key informants, and experts in a focus group. With respect to possible solutions to the problem, this could be implemented in two ways: one short term and one long term. In the short term, given the flexibility in the current regulatory system in the Mackenzie Valley, the preferred model of EA-NA integration could simply be embraced, adopted, and 'tested' by project developers seeking to make use of industry 'best practice.' In many ways, this model has been advocated by those, such as one focus group expert, who has long instructed industry regarding NAs to "start

really early and end really late." This statement recognizes the continued intensive efforts required to create bilateral NAs in the NWT. If industry were to adopt this best practice model of EA-NA integration, then an opportunity would emerge, consistent with arguments of the Macleod Institute (2003), for government agencies to draw on and learn from corporate experiences, and thereby refine the region's regulatory process to make such practices more universal. This reflects the long-term implementation possibilities stemming from the outcomes of the January 9, 2009 workshop. At a minimum, the findings of this research will contribute to planners' and policy makers' understanding of the concerns associated with Mackenzie Valley environmental decision-making processes, and promote review and revision of the 'rules of engagement.'

6.3 Further Research Needs

This research has sought to describe the overlap between NAs and the EA process in the NWT and identify a preferred model of integration that minimizes the interference between these processes. In these aims, the research has been successful; however, a number of research needs are evident. First, the preferred resolution needs to be brought to a broader group of stakeholders for their comments. The workshop did not include those with vested interests in the project review processes, such as might be the case with industry and Aboriginal stakeholders. A key research need is to provide these groups the opportunity to comment on, and further develop, a preferred or novel approach.

The preferred model generated by this research is most suited to the Mackenzie Valley, NWT, but this is still a broad area with heterogeneous settled and unsettled land claims. The model could be further 'localized' to incorporate the views of each region of

the NWT into a guideline or practice to help reduce NA-EA interference during the project review process.

Research into the NA-EA process is appropriate to clarify the needs associated with fitting an approach to "the type and scale of activity," as stated by McCrank (2008). At this early stage in the research into NAs, extractive resource projects were not differentiated by type or scale. Similar to the research undertaken here, it would be useful to first describe project review archetypes and then seek to identify a model, through engagement with industry, the Aboriginal community, government, and 'experts' to prepare a preferred model of application or integration.

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Appendix A – Key Informant Interview Guides

Research Task 1
Conceptualizing the Relationship Between EA and Negotiated Agreements
Key Informant Interview Guide – First Nations

A. Introduction:
- Brief introduction of myself
- Brief introduction of research (extension of work of Lindsay Galbraith in 2004 and Jason Prno in 2007)
- Complete Assurance of Participant Confidentiality & Consent Form (see attached)

B. (confirm) Respondent Background Information:
- Position title
- Role in organization
- In your position, have you had the opportunity to both negotiate [agreements] and contribute to EA (e.g., traditional environmental knowledge, traditional land use, and socio-economic studies)?

C. Substantive Questions:
- Past research and has suggested that in the NWT process there is a connection between the regulatory EA process and negotiated agreements (*incl. Impact Benefit Agreements, Benefit Plans, Participation Agreements*). In your mind, did researchers get this right?
- Which of these agreements are most familiar to you?
  [use response for the rest of the interview]
- In which region of the NWT?

These questions are about the relationship between [negotiated agreements] and the regulatory process. I am interested to know your thoughts. Where appropriate, I will ask you to provide examples.
- In your mind, does the informal and uncoordinated nature of EA and [negotiated agreement] preparation affect:
  i. The range of topics covered in an EA, or the depth to which each topic is investigated?
  ii. The duration, in terms of weeks, months, or years, of the environmental assessment or regulatory review?
  iii. The cost, measured in terms of finances, opportunity cost, or time invested in the regulatory process?

- In the NWT, regulators consider the “effect” of a project with respect to both the physical impact on the environment and the level of public concern.
  Do you have a view or judgment about the possibility that signed [negotiated agreements] represent tacit agreement for the project, and might act to reduce the scope of EA or regulatory review?
- Do you have a view/judgment on the problematic informal overlaps between EA and [NA] in the NWT?
  e.g. socio-economic effects included in EA and [NA], roles and requirements of Land and Water Boards, Indian and Northern Affairs Canada, *ad hoc* agreements “setting the bar”, competition, etc. If so, what is your view?
- I welcome any other comments, or thoughts that you have at this time. As well, if you think of something after this interview you can email it to me or phone me about it.

D. Conclude Interview:

- Could you recommend any other potential key informants that you think would be particularly useful to this research?
- Would I be able to send you an email if I think of something else?
- Thank yous
- I will get back to you soon with a summary of this interview. You will have an opportunity to review it and make changes if you wish. You will also be able to retract statements or the whole interview, should you wish to do so then, or at a later date.

Research Task 1
Conceptualizing the Relationship Between EA and Negotiated Agreements
Key Informant Interview Guide – Industry, Consultant or Regulator

A. Introduction:
- Brief introduction of myself
- Brief introduction of research (extension of work of Lindsay Galbraith in 2004 and Jason Prno in 2007)
- Complete Assurance of Participant Confidentiality & Consent Form (see attached)

B. (confirm) Respondent Background Information:
- Position title
- Role in organization
- In your position, have you had the opportunity to both negotiate [agreements] and contribute to EA? If yes, what was the nature of your involvement?

C. Substantive Questions:
- Past research and has suggested that in the NWT process there is a connection between the regulatory EA process and negotiated agreements (*incl. Impact Benefit Agreements, Benefit Plans, Participation Agreements*). In your mind, did researchers get this right?
- Which of these agreements are most familiar to you?
  [use response for the rest of the interview]
- In which region of the NWT?

These questions are about the perceived connections between [negotiated agreements] and the regulatory process. I am interested to know your thoughts. Where appropriate, I will ask you to provide examples.
- In your mind, does the informal and uncoordinated nature of EA and [negotiated agreement] preparation affect:
  i. The the range of topics covered in an EA, or the depth to which each topic is investigated
  ii. The duration, in terms of weeks, months, or years, of the environmental assessment or regulatory review?
  iii. The cost, measured in terms of finances, opportunity cost, or time invested in the regulatory process? Can you draw comparisons to your experience in other jurisdictions?

- In the NWT, regulators consider the "effect" of a project with respect to both the physical impact on the environment and the level of public concern.
  Do you have a view or judgment about the possibility that signed [negotiated agreements] represent tacit agreement for the project, and might act to reduce the scope of EA or regulatory review?
- Do you have a view/judgment on the problematic informal overlaps between EA and [NA] in the NWT?
  e.g. socio-economic effects included in EA and [NA], roles and requirements of Land and Water Boards, Indian and Northern Affairs Canada, *ad hoc* agreements "setting the bar", competition, etc. If so, what is your view?
- I welcome any other comments, or thoughts that you have at this time. As well, if you think of something after this interview you can email it to me or phone me about it.

D. Conclude Interview:

- Could you recommend any other potential key informants that you think would be particularly useful to this research?
- Would I be able to send you an email if I think of something else?
- Thank yous
- I will get back to you soon with a summary of this interview. You will have an opportunity to review it and make changes if you wish. You will also be able to retract statements or the whole interview, should you wish to do so then, or at a later date.

Appendix B – Workshop Participants: Yellowknife, January 9, 2009

Expert	*Affiliation*
Ben Bradshaw	Associate Professor, University of Guelph, Guelph, Ontario Chair, IBA Research Network
Courtney Fidler	M.A.Sc. Graduate Norman B. Keevil Institute of Mining Engineering, University of British Columbia
Lindsay Galbraith*	Consulting Environmental Planner, AECOM, Vancouver, British Columbia
Ginger Gibson	Researcher, University Of British Columbia
Martin Haefele	Environmental Assessment Coordinator, Mackenzie Valley Environmental Impact Review Board, Yellowknife, Northwest Territories
David Livingstone	Director of Renewable Resources and Environment, Indian and Northern Affairs Canada, Yellowknife, Northwest Territories
John Sinclair**	Professor, University of Manitoba, Winnipeg Manitoba Technical Advisor, Canadian Environmental Assessment Agency
Thomas Stubbs	Principal Consultant, Integrated Environments, Calgary, Alberta
Anonymous	

* participated in *Current Overlap* session via teleconference

** participated in *Preferred Model of Integration* session via teleconference

Appendix C – Assurance of Participant Confidentiality Forms

Research Task 1
Conceptualizing the Relationship Between EA and Negotiated Agreements
Assurance of Participant Confidentiality

My name is Sandra Lukas-Amulung and I am a graduate student in the School of Environment and Sustainability at Royal Roads University in Victoria, British Columbia. My credentials with Royal Roads University can be established by telephoning Dr. David Bell, Acting Director, School of Environment and Sustainability, at (xxx) xxx-xxxx.

I am conducting research on the relationship between environmental assessment and negotiated agreements, often termed Impact Benefit Agreements, benefit plans, participation agreements and cooperation agreements, under the supervision of Dr. Ben Bradshaw.

This document constitutes an agreement to participate in an interview for my research project. You are in a unique position to help interpret observations about the perceived connection between regulatory environmental assessments and private negotiated agreements within the Northwest Territories project review process. If you agree to participate, it would involve an interview that would take about 1 hour of your time. The interview will be recorded in hand-written format. Notes will be destroyed at the end of the study to ensure the confidentiality of your responses. An interview summary will be provided to you, so you have the opportunity to review it and make any changes to it. The information, where appropriate, will be summarized, in anonymous format, in the body of my final report. At no time will any specific comments be attributed to any individual unless specific agreement has been obtained beforehand. All documentation will be kept strictly confidential.

A copy of the final report will be housed at Royal Roads University and will be publicly accessible. If you are interested in the results of the study, you can contact me, or my supervisor, Dr. Bradshaw. The Aurora Research Institute will also be provided with a public record of this research.

There are no risks associated with the study. You are under no requirement to participate in this study and should feel free to decline. Even if you decide to participate, you may withdraw from the study at any time. You will not be penalized for not participating or for withdrawing. Nothing you say will ever be identified with you personally. Your participation and all information will be kept confidential.

I welcome any questions, comments, and suggestions before and after the interview.

Consent Form

By signing this letter, you give free and informed consent to participate in this project.

I agree to take part in this study, entitled *Rules of Engagement? NWT Negotiated Agreements and Environmental Assessments,* which has been explained to me. I have been given an opportunity to ask questions about the study. I understand that any questions I answer will be anonymous, and that my identity will not be disclosed at any point. I also understand that my participation is completely voluntary, and I may withdraw from the study at any time.

Name of Participant

Date

Signature of Participant

Interview No. _____

Research Task 2
Expert Workshop to Develop a Preferred Model(s) for the
NWT Project Review Process Regarding EA and Negotiated Agreements
Participant Agreement

My name is Sandra Lukas-Amulung and I am a graduate student in the School of Environment and Sustainability at Royal Roads University in Victoria, British Columbia. My credentials with Royal Roads University can be established by telephoning Dr. David Bell, Acting Director, School of Environment and Sustainability, at (xxx) xxx-xxxx.

I am conducting research on the relationship between environmental assessment and negotiated agreements, often termed Impact Benefit Agreements, benefit plans, participation agreements and cooperation agreements, under the supervision of Dr. Ben Bradshaw.

This document constitutes an agreement to participate in a workshop (focus group) for my research project. You are in a unique position to contribute to two objectives: first, to validate a model that describes the state of the NWT project review process, and second, to co-produce a preferred project review process model for the NWT. If you agree to participate, it would involve engagement in a workshop of 6-10 experts that would take about 8 hours of your time. In choosing to participate in the workshop, you waive anonymity and confidentiality among the workshop participants. The workshop proceedings will be recorded in hand-written format. Notes will be destroyed at the end of the study to ensure the confidentiality of your responses. A workshop summary will be provided to you, so you have the opportunity to review it and verify the accuracy of your contributions, or provide comments after the workshop. The information, where appropriate, will be summarized, in anonymous format, in the body of my final report. At no time will any specific comments be attributed to any individual unless specific agreement has been obtained beforehand.

A copy of the final report will be housed at Royal Roads University and will be publicly accessible. If you are interested in the results of the study, you can contact me, or my supervisor, Dr. Bradshaw. The Aurora Research Institute will also be provided with a public record of this research.

There are no risks associated with the study. You are under no requirement to participate in this study and should feel free to decline. Even if you decide to participate, you may withdraw from the study at any time. You will not be penalized for not participating or for withdrawing.

I welcome any questions, comments, and suggestions before and after the workshop.

Consent Form

By signing this letter, you give free and informed consent to participate in this project.

I agree to take part in this study, entitled *Rules of Engagement? NWT Negotiated Agreements and Environmental Assessments,* which has been explained to me. I have been given an opportunity to ask questions about the study. I understand that by participating in a focus group, I waive anonymity. I also understand that my participation is completely voluntary, and I may withdraw from the study at any time.

- ☐ I **agree** to have my name included in a list of key informants (participants) in an Appendix to the final report.
- ☐ I **decline** to have my name included in a list of key informants (participants) in an Appendix to the final report.

_____ _____

Name of Participant Date

_____

Signature of Participant

Interview No. _____

Appendix D – Aurora Research Institute Scientific Research Licence

SCIENTIFIC RESEARCH LICENCE

Licence # 14452N
File # 12 410 836

ISSUED BY: **Aurora Research Institute - Aurora College**
Inuvik, Northwest Territories

ISSUED TO: Ms. Sandra Lukas-Amulung
115, 200 Rivercrest Drive S.E.
Calgary, AB T2C 2X5
Tel: 403.723.6895

ON: 08-Jan-09

TEAM MEMBERS: Ben Bradshaw

AFFILIATION: Royal Roads University & Kiggiak-EBA Consulting

FUNDING: SSHRC, EBA Engineering Consultants Ltd. (Employer In-kind Support)

TITLE: The Rules of Engagement? NWT Negotiated Agreements and Environmental Assessment

OBJECTIVES OF RESEARCH:
The objectives of this research are to: describe the problematic overlap between NWT environmental assessment (EA) and negotiated agreements (NA); prepare several project review process models to explore possible relationships between NA and EA; evaluate the models and select a preferred model during an expert workshop; and assess the suitability of the preferred model using the views of First Nations and industry.

DATA COLLECTION IN THE NWT:
DATE(S): January 8 to March 31, 2009
LOCATION: Yellowknife, Inuvik, Tulita and Rae-Edzo (Behchoko)

Licence Number 14452 expires on 31-Dec-2009
Issued in the Town of Inuvik on 08-Jan-09

Andrew Applejohn
Director, Aurora Research Institute

Appendix E – List of Abbreviations

AR ..... Action Research

COGOA ..... Canadian Oil and Gas Operations Act

EA ..... Environmental Assessment

GNWT ..... Government of Northwest Territories

IBA ..... Impact and Benefits Agreement

IIBA ..... Inuit Impact and Benefits Agreement

INAC ..... Indian and Northern Affairs Canada

ISR ..... Inuvialuit Settlement Region

LWB ..... Land and Water Board

MVEIRB ..... Mackenzie Valley Environmental Impact Review Board

MVRMA ..... Mackenzie Valley Resource Management Act

NA ..... Negotiated Agreement

NWT ..... Northwest Territories

PA ..... Participation Agreement

SEAs ..... GNWT Socio-economic Agreements