

PRESENTATION BY
MAKIVIK CORPORATION
ON BEHALF OF NUNAVIK INUIT

TO THE
VOISEY`S BAY MINE AND MILL
ENVIRONMENTAL ASSESSMENT PANEL

COMMENTS ON THE
DRAFT ENVIRONMENTAL IMPACT
STATEMENT GUIDELINES

Goose Bay

May 13, 1997

1. Introduction

Makivik Corporation was created in 1978, by provincial legislation, pursuant to the James Bay and Northern Quebec Agreement, signed in 1975. It legally represents all beneficiaries of that Agreement, who currently number approximately 8,600. Makivik Corporation represents the Nunavik Inuit with respect to matters of a social, cultural, economic, and political nature including areas related to treaty amendments and negotiations, environmental impact assessment, negotiating impact and benefit agreements with developers, research including the continuing development of the Nunavik Inuit land use and ecological knowledge data base, renewable resource development and a variety of local and regional economic development activities. It also represents Nunavik Inuit before the courts.

Makivik Corporation conducted the necessary research and prepared a Statement of Claim by Nunavik Inuit to Labrador and the Labrador offshore which was finalized and filed on October 27, 1992. (see Annex 1) This claim was accepted by the Federal government for treaty negotiations under the Comprehensive Claims Policy on June 23, 1993. A Negotiations Framework Agreement was signed on August 19, 1993.

The government of Newfoundland and Labrador has refused to recognize the Nunavik Inuit claim in Labrador and the offshore and has rebuffed all formal efforts by Makivik Corporation to establish a dialogue on these matters. In fact, it is the stated position of the government of Newfoundland and Labrador, that by arriving at an agreement with the Labrador Inuit concerning their claims in Labrador all "Inuit" claims to Labrador will be satisfied. It is our view that not only is this a dangerous position for the government of Newfoundland and Labrador to take insofar as

"certainty" to title is concerned, it is also legally and constitutionally incorrect.

In the face of this intransigence by the government of Newfoundland and Labrador, the federal government continued to encourage Nunavik Inuit to pursue an overlap agreement with the Labrador Inuit with respect to their respective overlapping areas of use and occupancy in Labrador and the Labrador offshore. Discussions with the Labrador Inuit Association, which began in 1993 towards reaching an agreement on overlapping interests ended when the Board of Directors of the LIA passed a resolution in May 1996 denying the claims of Nunavik Inuit to lands and resources in Labrador.

Efforts to establish communication with companies involved in mining activity also failed. This led Makivik Corporation, in the fall of 1995, to put all mining companies involved in exploration or pre-development activities in our area of interest on notice as to Nunavik Inuit Aboriginal Rights and Interests in Labrador and the offshore. Similar information was also publicized in all the major Canadian mining journals.

Events are moving quickly. Makivik Corporation is being compelled to take all steps necessary to protect the rights and interests of Nunavik Inuit in Labrador. In fact, on March 27, 1997 Makivik Corporation filed an Application for Judicial Review in Federal Court. In that Application Nunavik Inuit, represented by Makivik Corporation, are asking the Federal Court to make declarations respecting the duty to negotiate treaties in good faith and the application of that duty to all Ministers of the Crown; declaring that the Crown in Right of Canada by accepting for negotiations the Nunavik Inuit assertion of rights in and the resulting claims to Labrador and by commencing negotiations has recognized the

assertions of rights and resulting claim and engaged its responsibility to negotiate the treaty in good faith; that in permitting development to continue, in this instance the proposed Torngat National Park, the responsible Minister is in breach of the Crown's fiduciary duty to Nunavik Inuit; declaring the Crown has an obligation to treat with Nunavik Inuit before creating a park on the territory under negotiation; and that the creation of a National Park without the consent of Nunavik Inuit would be a violation of their treaty process and contrary to the Crown's duty to negotiate in good faith.

Appearing before you today to discuss the relationship between the proposed development of a nickel mine at Voisey's Bay and these other important events is consistent with all other efforts undertaken by Makivik in this regard. We must also stress that we are appearing without prejudice to Nunavik Inuit rights in the vicinity of the proposed project and under reserve of all our rights and recourses in that regard.

It is also important to point out our presence here today should in no way be viewed as an alternative for direct community input. As will be discussed later in the this presentation, it is our view that the Panel should have been mandated to consult directly with the affected Nunavik communities and Nunavik Inuit. Short of that, at a minimum, resources should have been made available to permit the presentation of information, analysis and development of positions to be conducted at the community level. Neither of these options were promoted. Makivik Corporation is before you today, therefore, to argue that without the direct involvement of Nunavik Inuit in your impact assessment and review process, your process is fundamentally flawed.

2. The Proposed Project and its Relationship to Other Events in Northern Labrador

The proposed Voisey's Bay Project has acted as a catalyst to set in motion a set of interconnected processes in northern Labrador. The outcome of this complex situation will have significant impacts on Nunavik Inuit. We are here today to talk about these broad questions relating to land use decisions in northern Labrador and the offshore. The consequences of these decisions and how the decision-making process plays itself out will have direct and immediate bearing on the rights, titles and interests of Nunavik Inuit in northern Labrador and indeed in the Ungava/Labrador peninsula as a whole.

Our primary objective in appearing before you today, is to request that you broaden the scope of this review process to include the consequential impacts of the proposed project on the development of the peninsula as a whole. This would include issues related to the expansion of mining exploration northwards, the momentum to establish a national park in the Torngat Mountain region, the land claims process, and interest of the Labrador Inuit in re-establishing a community in the vicinity of Hebron. All of these activities have consequences for Nunavik Inuit.

The proposed Voisey's Bay Project will thus have a variety of direct and indirect impacts on the ability of the many of the Inuit presently residing in Kuujjuaq, Kangiqsualujjuaq and the former residents of Killiniq (this community was closed by government in 1978) to continue their present use of, and plan for future activities in, the northern part of the Ungava/Labrador peninsula. The present population of Kuujjuaq and Kangiqsualujjuaq and the displaced Killiniq residents is over 2,000. The establishment of a national park in advance of a treaty with Nunavik Inuit will

have an impact; mineral staking and possible development further north has an impact; a new community in the Hebron region would have an impact; attempts to settle the land claims of other aboriginal groups in advance and without consideration of Nunavik Inuit rights and interests would have an impact.

The peninsula represents a territory which has been used for thousands of years by the ancestors of many of these residents. The peninsula is part of the historical and present day land use area of these communities, a fact which has been formally verified through a long term and systematic land use, occupancy and ecological knowledge study conducted by Makivik Corporation and Nunavik Inuit. The data from this study provides detailed maps of seasonal land use and occupancy over time for the entire Ungava/Labrador peninsula. (see Annex 2)

Makivik Corporation has always endorsed and promoted the principle that aboriginal people who could be impacted by a development project, be fully involved at all stages of a review process. It is our view that the Panel would not be in a position to take into account our views without the benefit of their early and direct involvement. Repeated, but unsuccessful attempts were, therefore, made to have representation in the planning stages for the review. For evidence of these attempts, we have attached copies of a letter sent to the responsible federal Ministers, the government of Newfoundland and Labrador, the Labrador Inuit Association and the Innu Nation on December 20, 1996 concerning the Draft Final memorandum of Understanding on Environmental Assessment of the Proposed Voisey's Bay Mining Development. (see Annex 3)

Makivik is especially concerned about the need for direct Nunavik Inuit involvement in defining the types and

scope of possible impacts and in so doing to define a much more appropriate study area. It has been our experience during the review of the proposed Great Whale River hydro-electric development project and the Raglan Mine, that there is an interest on the part of the proponent, to limit the study area geographically, and thereby create artificial borders within which impacts are supposedly contained. We are very pleased to see, in this case, that the Panel is mandated to consider the temporal and spatial boundaries of the Undertaking and the study area and we will address this in more detail later in the presentation.

The attached maps illustrate the historical and current use and occupancy of Nunavik Inuit in the Ungava/Labrador peninsula as established by existing studies. The information used to determine this boundary is derived from the Nunavik Inuit Land Use and Ecological Mapping Project. This project was begun in 1976. From 1976 to the mid-1980s all hunters in Nunavik were systematically interviewed concerning their land use, occupancy, life histories and ecological knowledge. A special computerized data-base and information system was established by Makivik Corporation to organize and process the data.

As illustrated by the information contained by these maps, Inuit who currently reside in Kangiqsualujjuaq, Kuujjuaq and the former residents of Killiniq have extensive land use and occupancy in northern Labrador. The maps also illustrate that our land use and occupancy patterns extend to the Voisey's Bay area. To set the record straight at the onset of this presentation, Makivik Corporation has always represented the Voisey's Bay area as part of a larger pattern of land use and occupancy. When Makivik submitted the Statement of Claim to Labrador in 1992, the accompanying map reflected decisions made by Nunavik Inuit to consolidate overlapping territories with other aboriginal peoples in

Labrador within the context of negotiating a treaty agreement which acknowledged present day realities. The map which accompanies the Statement of Claim represents what the Nunavik Inuit consider to be their core area of interest in northern Labrador and the offshore. This map was never intended to represent the entirety of Nunavik Inuit land use and occupancy in this area. The submission itself clearly states that:

The maps show a land use pattern that extends from an area to the southeast of the present-day settlement of Kangiqsualujjuaq, north to the Killiniq region and then along the Labrador coast to an area south of the present-day community of Nain. In more recent times the northern area of the coast formed the primary region of seasonal occupancy for the Inuit of Nunavik. Land use along the coastal zone of Ungava and Labrador was interconnected by the use of the interior; a use that was structured by the large river and valley systems that gave access to the inland areas and facilitated overland movements of peoples between the coasts. (pg.13)

Since the mid-1980s the Makivik data-base continues to be developed and applied around specific needs and events. The environmental assessment of the proposed mining development at Voisey's Bay is such an event.

3. Nunavik Inuit Concerns

In the case of this proposed project, Nunavik Inuit are extremely concerned that the Terms of Reference for the Panel Review appear to limit the consultation process only to a public which currently resides within the boundaries of the Province of Newfoundland and Labrador, and has limited the public meetings to locations within the Province. Participating in the scoping exercise, therefore, is made more difficult and onerous for us.

Furthermore, given that Nunavik Inuit have an on-going treaty process based on an accepted Statement of Claim to parts of the peninsula and the offshore, Makivik is also concerned that the Terms of Reference imply that the "Inuit" views can be obtained through public meetings within Labrador only and by collaborating with the Labrador Inuit Association. If this myopic approach is carried over to the balance of the review process, there is will be a serious gap in the understanding of the broader impacts of this proposed project as well as a serious prejudice to Nunavik Inuit. To be clear, it is our position that the Labrador Inuit Association does not represent Nunavik Inuit or Nunavik Inuit rights and interests in Labrador, and has no mandate to transact Nunavik Inuit rights or represent Nunavik Inuit interests.

The identity of many Nunavik Inuit remains intimately connected with the Ungava/Labrador peninsula. As a consequence we have a legitimate role to play in all decisions concerning how the peninsula is to be used, developed and managed. The environmental assessment of the proposed Voisey's Bay Project is an important event which will, itself, impact the future of the peninsula. Nunavik Inuit are part of that future.

We recognize that these are sensitive issues and that we expose ourselves to the accusation of attempting to use this forum to air concerns which are more political than technical. We are not simply a public interest group or a collection of interested individuals when it comes to decisions that affect an important part of our homeland. As already stated, we are an aboriginal people with recognized title and interests in northern Labrador and are currently engaged in a treaty process with the Federal government concerning those matters.

Despite refusals to allow our involvement at an earlier stage in the process, the fact remains that Nunavik Inuit have a demonstrated interest in the Ungava/Labrador peninsula. Given current standards for the conduct of environmental impact assessment in Canada there is the need for Nunavik Inuit involvement if the assessment process is to be truly representative and legitimate. Unfortunately it appears that the Panel has no mandate to "come to us", so we have had to "come to you".

We sought funding, on a without prejudice basis, through the Participant Funding Program for the following tasks in order to bring to the Panel recommendations that were based on a thorough review, by the affected communities and Makivik, of all available information :

1. Review of the Nunavik Inuit land use and ecological mapping data base and compiling materials relevant to the peninsula in a format appropriate for community work.
2. Compile information related to the proposed project.
3. Develop a information package for consultations and animation within the communities of Kuujjuaq and Kangiqsualujjuag.

4. Travel to the two communities in order to review these materials with a selected group of individual representing various elements in the community (i.e., elders and local experts with particular knowledge of the area, business people, women, youth, social and health care workers, community leaders, etc.)

5. Develop a document, maps or other materials which can then be used by community representatives when they appear before the Panel to articulate their concerns, offer specific information and perspectives and make concrete recommendations concerning the Draft Guidelines.

6. Travel to Nain to attend the public meetings.

While we appreciate that CEAA has recognized Nunavik Inuit have a role to play in the scoping process by providing funding, it should be noted that the level of funding was wholly insufficient to enable Makivik to carry out its original work plan and directly involve the affected communities in this process. Despite this limitation we are in a position to provide you with specific recommendations which address deficiencies in the Draft Guidelines as they relate to the concerns and legitimate interests of Nunavik Inuit and the need to involve us directly in the process.

If these recommendations are accepted and incorporated into the Final Guidelines, there will then be an opportunity for Nunavik Inuit to voice their individual and collective concerns directly to the proponent during the preparation of the Environmental Impact Statement .

4. Recommendations for Consideration by the Panel

The proposed Voisey's Bay Project is part of a larger planning scenario for northern Labrador. The decision by the Proponent to pursue this project has resulted a stepped-up land claims process with the Labrador Inuit and the Innu; accelerated interest in creating a national park in the Torngat Mountains area, re-energized interest in the possibility of a relocation by Labrador Inuit back to the Hebron area; and precipitated active mineral staking deep into northern Labrador.

The proposed project is a key piece in a complex regional planning/development puzzle. The Draft Guidelines acknowledge that there is a relationship between the Project and land claim negotiations in 5.1.2. We are very concerned, however, that unless there is an explicit instruction to do so in the Final Guidelines, that the Proponent will limit consideration and analysis to land claims of the LIA and Innu Nation. We argue that for the purposes of this review, we are ... "*an affected Aboriginal party*". Once having accepted this principle, the requirement for full involvement flows.

Furthermore, the position of Makivik Corporation has always been that a treaty, or other arrangements acceptable to Nunavik Inuit must be in place before any development project can proceed in any area what they have aboriginal rights, titles and interests.

**Recommendation No. 1 The Final
Guidelines state explicitly that for the
purposes of this review, Nunavik Inuit
are an affected Aboriginal party.**

Similarly, there must be a clear statement that the scope of the review include the role that the proposed project has on regional development and planning for the Ungava/Labrador peninsula. The parallel events of land claims, impact and benefit agreements, national park planning, community relocations, and increased mining exploration must all be adequately considered by the proponent. These events, we argue, are linked.

For example, the current interest by the Labrador Inuit in establishing a national park in the Torngat Mountains as a means of protecting this region from other forms of development, is known to be, in part, a response to mining activities further south. A national park is seen as a type of "sanctuary" where Labrador Inuit could be assured unthreatened access for subsistence activities. This becomes particularly relevant if there is to be a new community established in the vicinity of Hebron. The park area would then be much more accessible as a hunting territory to the members of that new community.

We argue that this falls within the mandate of the Panel and is in fact a requirement if the EIS is to meet the basic criteria in Section 2.0 "The EIS as a Basis for Public Review". Particularly, 2.0 (e) requires that the EIS provide information concerning "*the short and long-term cumulative effects of the Project in Combination with other projects or activities that been or will be carried out*".

**Recommendation No. 2 The Final
Guidelines require the proponent to
document these events and analyze them
in relationship to the proposed project
and to Nunavik Inuit rights and
interests.**

Recommendation No. 3 The proponent should also be instructed to document the recent evolution of claim staking activity north of Voisey's Bay with suitable commentary on the location of major geological features driving the exploration process.

We also argue that this approach is consistent with and required by the instructions of the Panel to apply the Principle of Sustainable Development and .." *to ensure that all potential effects of the Project are examined as part of an interrelated system rather than as isolated units.*" It is our view that sustainable development also requires a "people-centered approach" of development which aims at providing a sustainable economic base while fostering social, cultural and material well-being. This cannot be achieved when political boundaries and policy decisions override the realities of how people occupy and use territory.

In order for the Panel to be confident that the requirement for full and open consultation in 3.2 is met by the EIS, the Final Guidelines must make explicit mention of Nunavik Inuit and the interplay between land claims, national park planning and mining development. The definition and scope of the study area, peoples affected must be broadened to include the northern portion of the Ungava/Labrador peninsula and Nunavik Inuit.

We argue that there must be a clear, unambiguous and consistent standard for the participation of all aboriginal peoples who will be affected by the project, through a consultation process. This standard must then be reflected in the Final Guidelines so that the proponent is aware that without the involvement of Nunavik Inuit, the impact

statement will be deficient and any resulting authorization flawed and vulnerable to challenge.

**Recommendation No. 4: The Final
Guidelines should explicitly state that
Nunavik Inuit be part of all stages of
the consultation process on the same
basis as other Aboriginal peoples,
including those represented by the LIA
and Innu Nation, including for the
purposes of section 5.1.2.**

**Recommendation No. 5: The Final
Guidelines should require that a
mechanism be established for monitoring
the consultation process throughout the
EIA.**

The Proponent, in 3.2 is required to "demonstrate an understanding of Aboriginal rights, interests, values and concerns and to recognize and respect them in planning and carrying out its proposed activities. Aboriginal and Settler people who have traditionally used the area must be consulted." It erroneous, therefore, in 3.2 (b) to imply that the working with LIA and Innu Nation is the vehicle for developing this consultation process.

As acknowledged in 3.5 of the Draft Guidelines, the appreciation for, and understanding of, aboriginal knowledge is evolving. It is our view that beyond the obvious importance of having aboriginal peoples contribute to an improved understanding of the physical and social environment, that the EIS must also seek to give expression to how all aboriginal peoples of the region view the future development of the peninsula. We argue that this can only be achieved by first acknowledging the interplay between the

proposed project and other planning and development activities and by involving all aboriginal peoples with a history in the region equally.

**Recommendation No. 6: The Final
Guidelines should be clear that Nunavik
Inuit are contemplated in Section 3.5
and that without their involvement, the
requirement to fully consider local
Aboriginal knowledge and expertise will
not be fulfilled.**

Furthermore, the Terms of Reference for the Panel Review direct the scoping exercise to "*seek Innu and Inuit views about traditional ecological knowledge to be used for EA purposes, how traditional ecological knowledge should be obtained and how it should be evaluated*". As mentioned earlier, Makivik Corporation, on behalf of Nunavik Inuit has developed an extensive data base on Inuit environmental and ecological knowledge from a on-going research program begun in 1976. This data base is controlled by a protocol for access and use that has been developed directly with the communities and individual Inuit. We have much to contribute to this topic. It is responsibility of the Panel to facilitate our involvement as an "affected Aboriginal party".

**Recommendation No. 7: The Final
Guidelines must direct the proponent to
involve Nunavik Inuit in making
decisions on how their knowledge is
obtained and evaluated.**

We are also very concerned about the obvious bias in favour of the LIA and the Innu Nation as expressed in the Draft Guidelines. We consider the reports prepared by the LIA and the Innu Nation, referenced in section 1.1 of the

Draft Guidelines, to be a valuable and excellent source for the purposes of seeking expression of Aboriginal knowledge, values, norms and priorities. We object strongly, however, to the later inference that by working with the LIA and the Innu, the proponent can satisfy the all requirements related to issues of Aboriginal knowledge.

For all the reasons stated above, we argue that the Final Guidelines should direct the Proponent to include the entirety of the Ungava/Labrador peninsula when defining the spatial boundaries of the impact area.

**Recommendation No. 8: The Final
Guidelines should contain explicit
instructions that the spatial boundaries
of the Project area and wider impact
area may extend beyond the boundaries of
the province.**

In Section 8.0 *Existing Environment and Assessment of Impacts*, the Draft Guidelines correctly instruct the Proponent that the study area for these purposes must correspond to the spatial boundaries as defined according to Section 6.0. If the Final Guidelines contain instructions which reflect our concerns as identified above, then the detailed instructions will apply to the Ungava/Labrador peninsula and involve Nunavik Inuit as an affected Aboriginal group. The same will hold true for the issues of Mitigation, Monitoring and Follow-up described in Sections 9, 10 and 11 of the Draft Guidelines.

Finally, but certainly of primary important, is the question whether or not the project should proceed at all. Our previous comments are based on an understanding that the process is not just about what conditions will be attached to the proposed project, but whether or not the proposed project

should be authorized. Our full involvement will assist the Panel in answering that question.

Thank you for your consideration of these important matters.

Annexes

1. The Inuit of Nunavik Statement of Claim to Labrador
2. Composite Maps of Nunavik Inuit Land Use and Occupancy in Labrador
3. Letter from Makivik Counsel dated December 20, 1996 to the Federal Government, the Government of Newfoundland and Labrador, the Labrador Inuit Association and the Innu Nation concerning *Nunavik Inuit Rights and Interests in Labrador/Exclusion of Nunavik Inuit from the MOU Regarding the Environmental Assessment of the Voisey's Bay Project.*

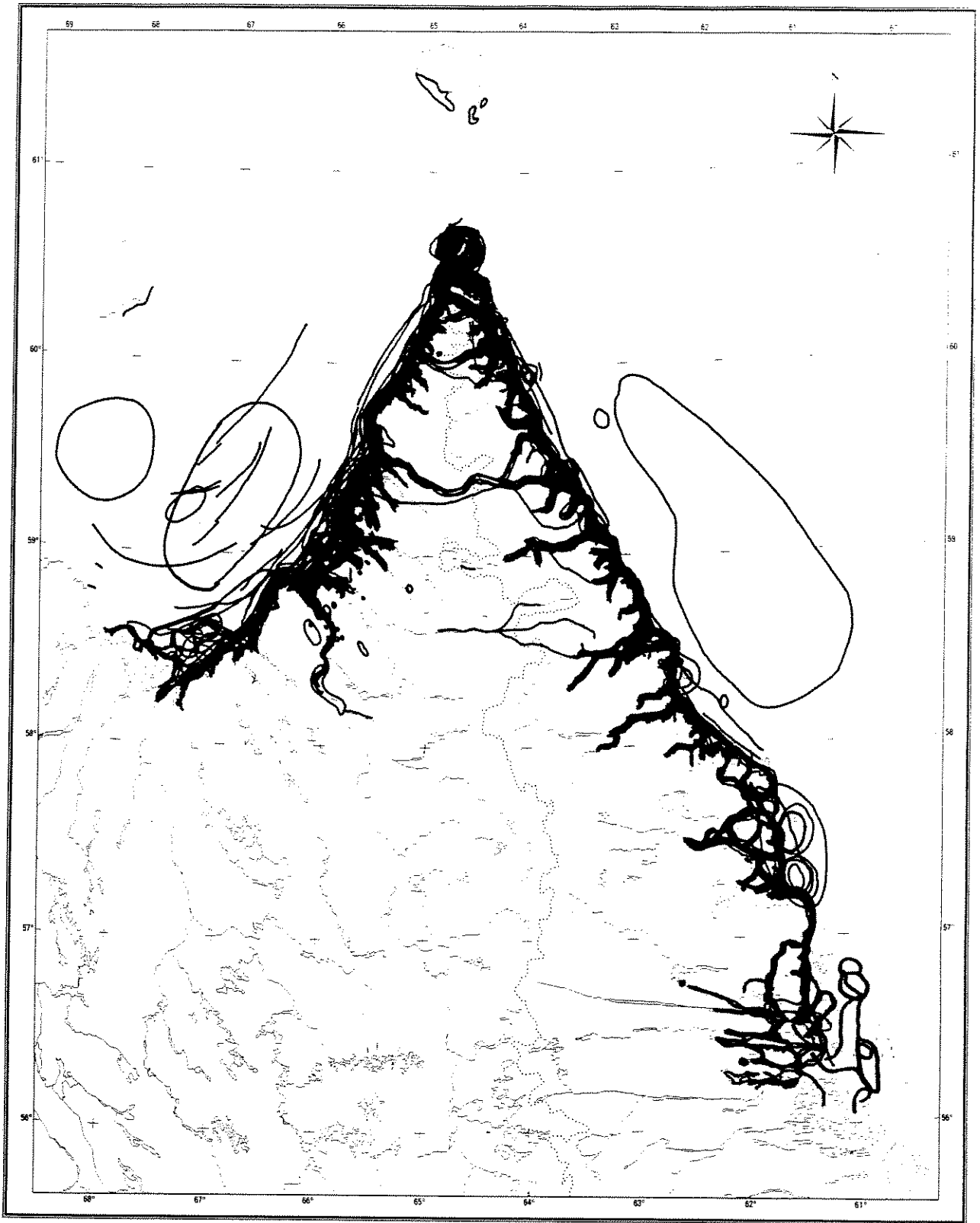
Annex 1

The Inuit of Nunavik
Statement of Claim to Labrador

(separate document)

Annex 2

Composite Maps of Nunavik Inuit Land Use
and Occupancy in Labrador



THE INUIT OF NUNAVIK

Composite Land Use for the Ungava-Labrador Peninsula

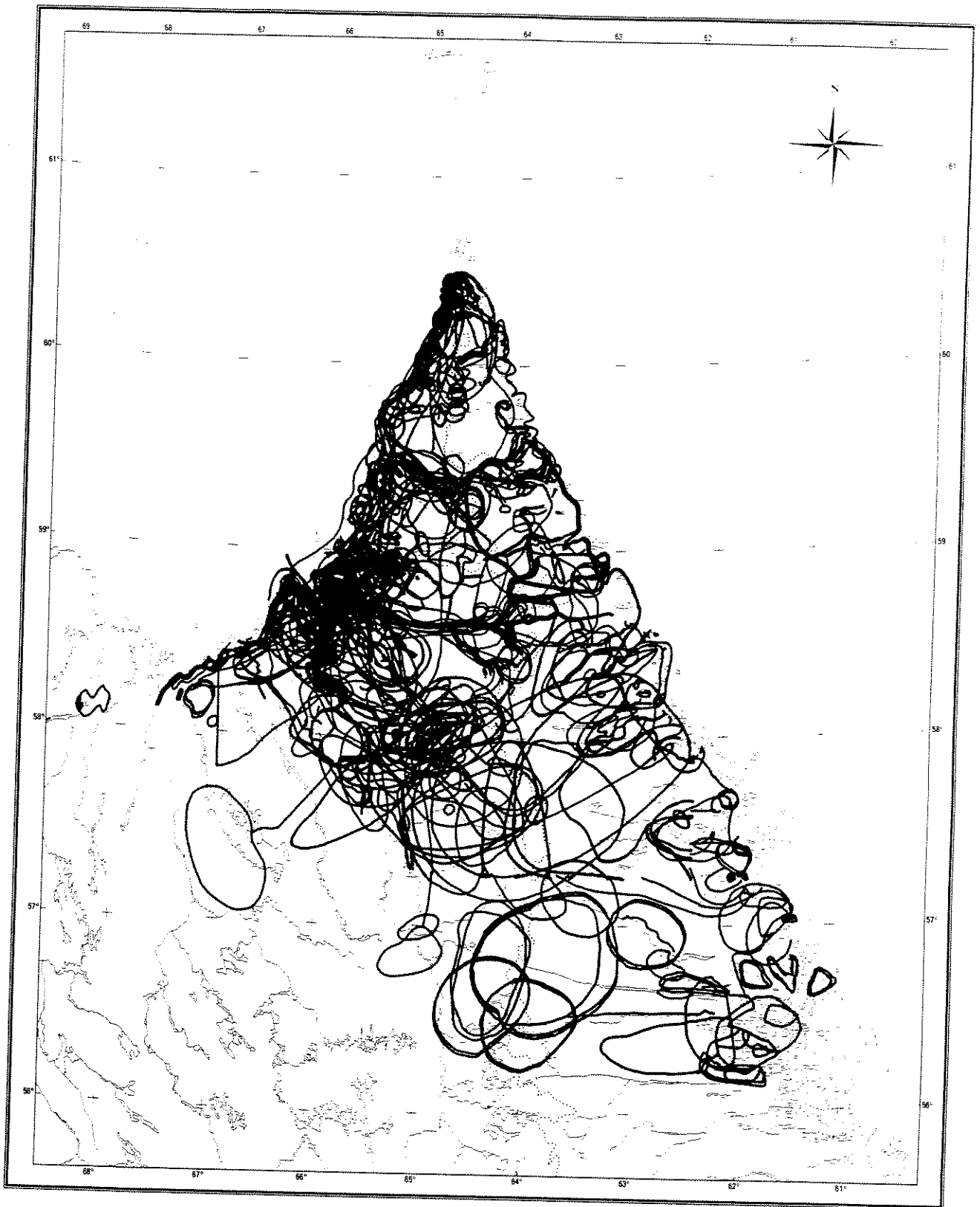
1920 - 1995

MARINE MAMMALS

NOTE: The scale and configuration of all information shown hereon are approximate only and are not intended as a guide for survey work.

Approximate Scale: 1:2,250,000

Produced by Makvik Corporation #R00
February 1996



THE INUIT OF NUNAVIK
 Composite Land Use for the Ungava-Labrador Peninsula

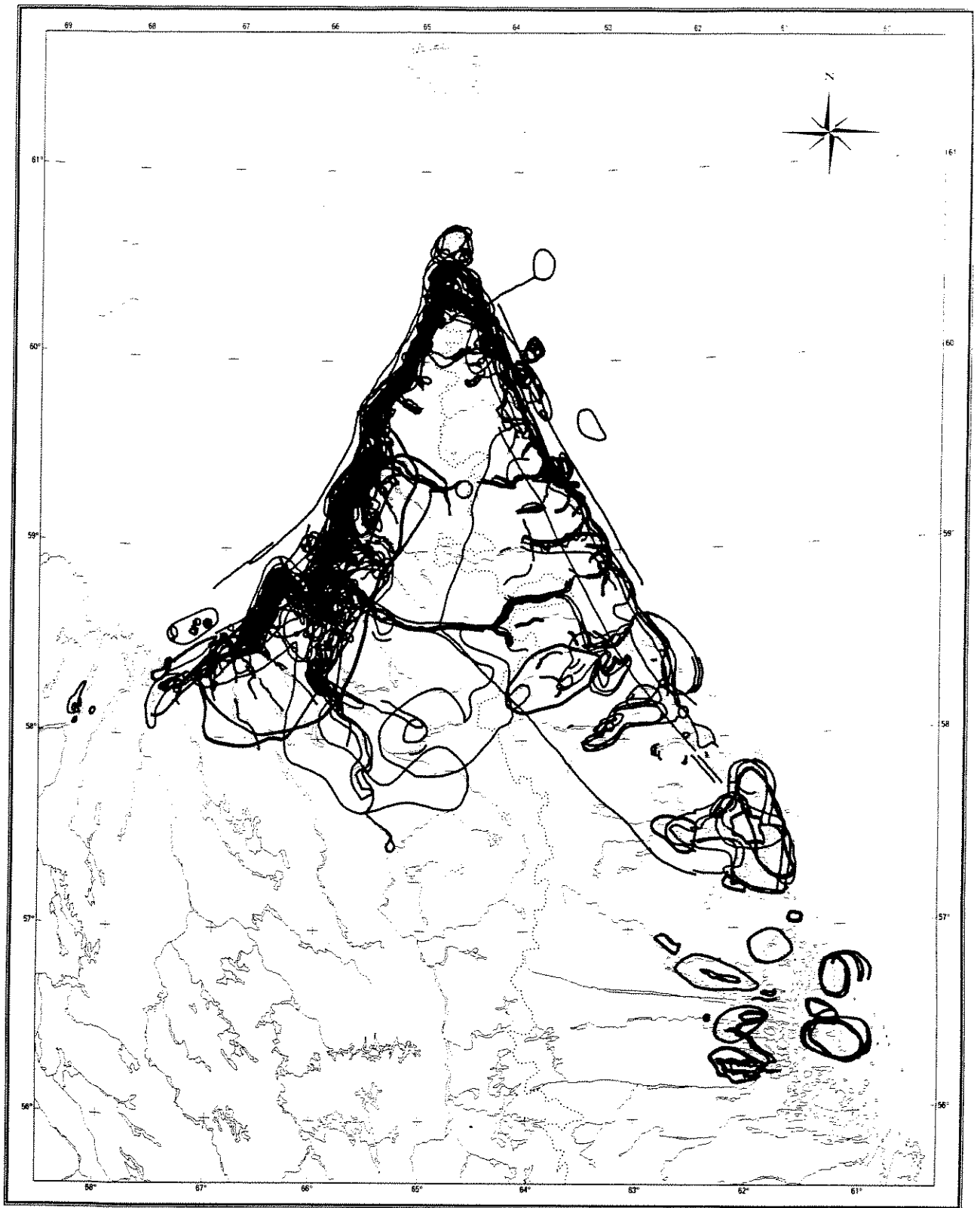
1920 - 1995

LAND MAMMALS

NOTE: The scale and configuration of all information shown hereon are approximate only and are not intended as a guide for survey work.

Approximate Scale: 1:2,250,000

Produced by Mekovik Corporation ARD
 February 1998



THE INUIT OF NUNAVIK

Composite Land Use for the Ungava-Labrador Peninsula

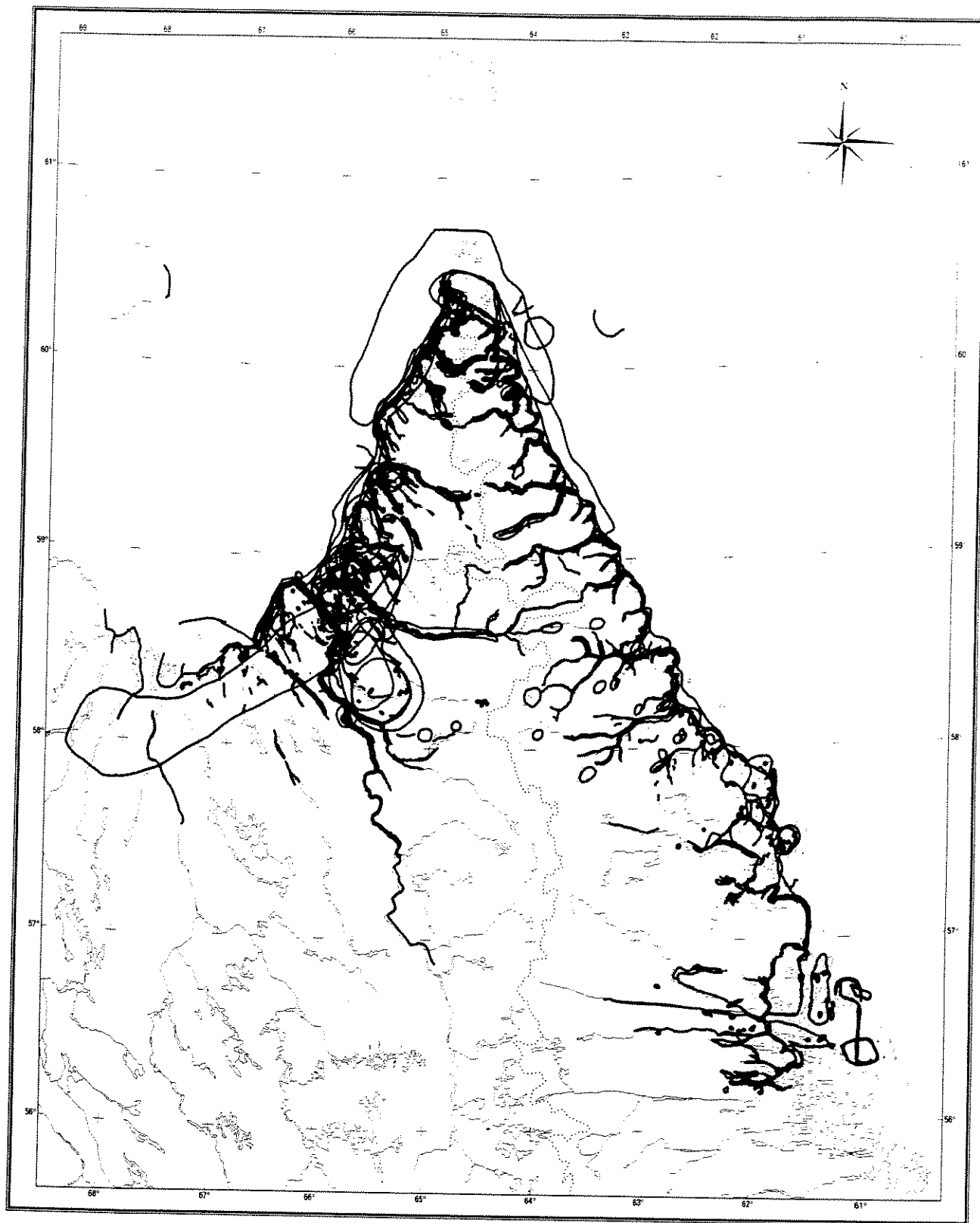
1920 - 1995

BIRDS

NOTE: The scale and configuration of all information shown hereon are approximate only and are not intended as a guide for survey work.

Approximate Scale: 1:2,250,000

Produced by Metron Corporation RRDD
February 1998



THE INUIT OF NUNAVIK

Composite Land Use for the Ungava-Labrador Peninsula

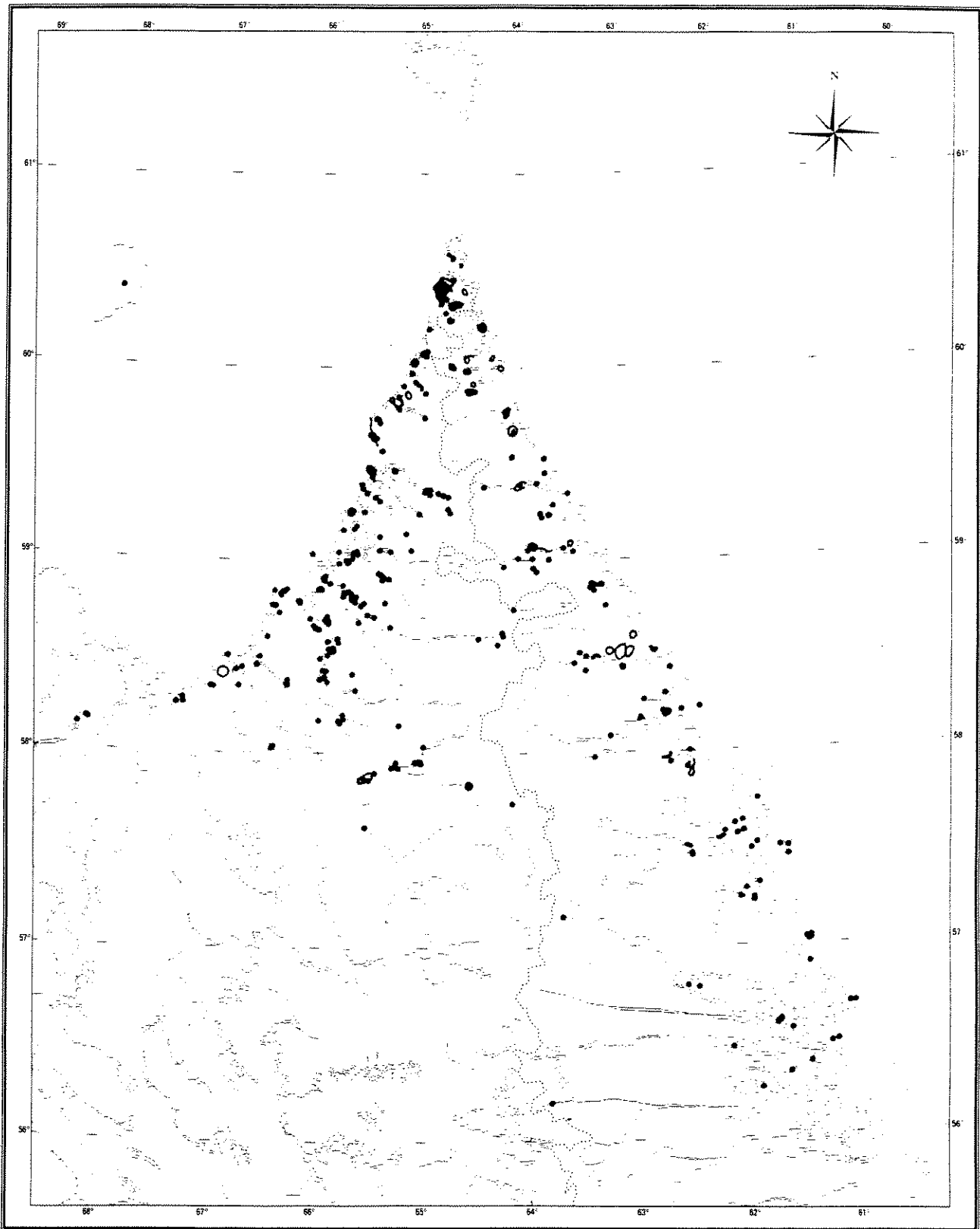
1920 - 1995

FISH

NOTE: The scale and configuration of all information shown hereon are approximate only and are not intended as a guide for survey work.

Approximate Scale: 1:2,250,000

Produced by Masivik Corporation RR02
February 1998



THE INUIT OF NUNAVIK

Composite Land Use for the Ungava-Labrador Peninsula

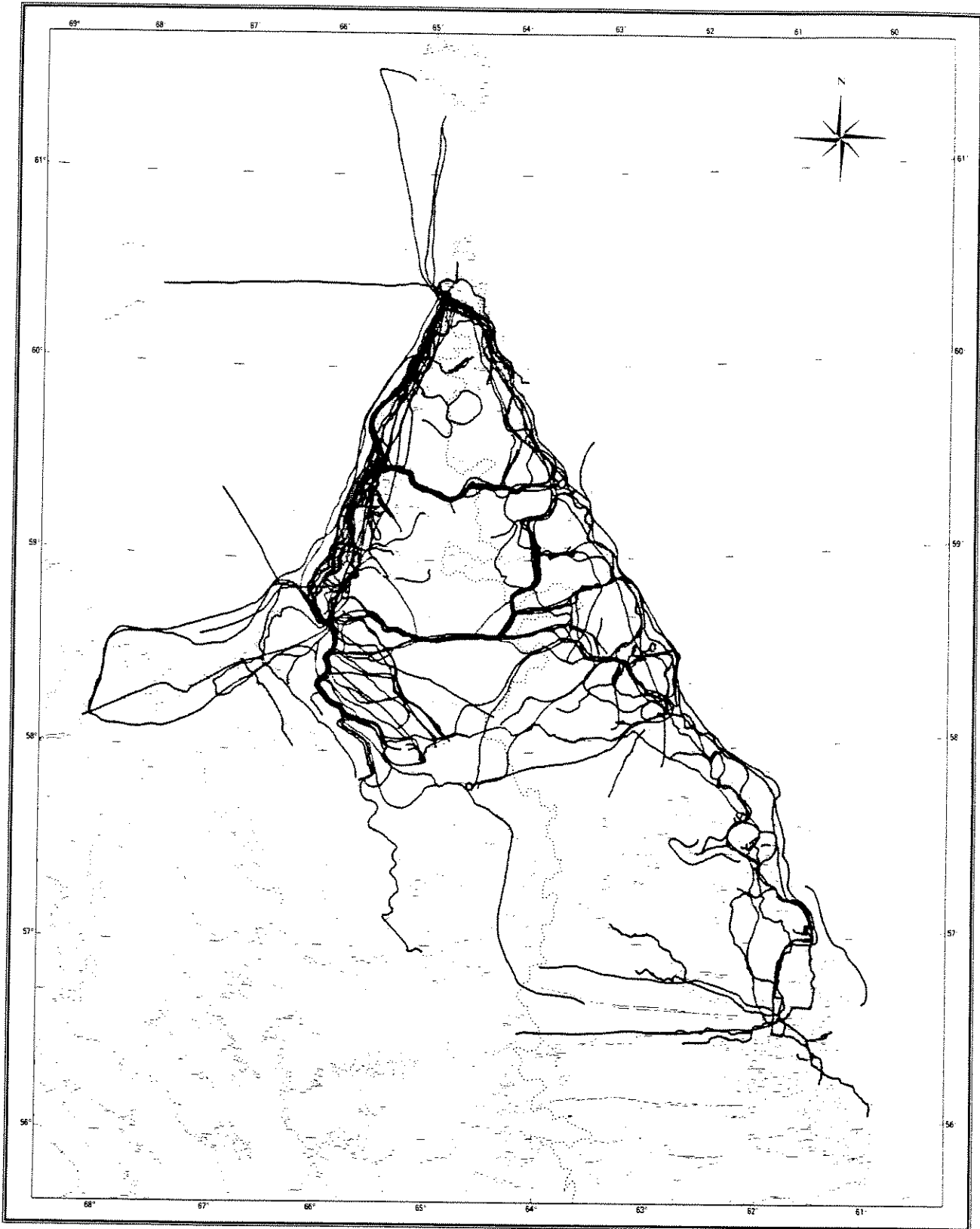
1920 - 1995

LIVING SITES

NOTE: The scale and configuration of all information shown herein are approximate only and are not intended as a guide for survey work.

Approximate Scale: 1:2,250,000

Produced by Maxxent Corporation RRDD
February 1998



THE INUIT OF NUNAVIK

Composite Land Use for the Ungava-Labrador Peninsula

1920 - 1995

TRAVEL ROUTES

NOTE: The scale and configuration of all information shown hereon are approximate only and are not intended as a guide for survey work.

Approximate Scale: 1:2,250,000

Produced by Manvik Corporation RRDC
February 1996

Annex 3

Letter from Makivik Counsel dated
December 20, 1996 concerning
Nunavik Inuit Rights and Interests in
Labrador / Exclusion of Nunavik Inuit from
the MOU Regarding the Environmental Assessment of the
Voisey's Bay Project

HUTCHINS. SOROKA & DIONNE

AVOCATS - BARRISTERS & SOLICITORS

PETER W. HUTCHINS
PAUL DIONNE
ANJALI CHOKSI
DAVID SCHULZE

DIANE H. SOROKA
FRANKLIN S. GERTLER
DAVID KALMAKOFF

CONSEIL-COUNSEL
CAROL HILLING

245, RUE ST-JACQUES
SUITE 400
MONTREAL, QUEBEC, CANADA
H2Y 1M6
TELEPHONE: (514) 849-2403
FAX: (514) 849-4907
E-Mail 102028.3013@compuserve.com

December 20, 1996

Without Prejudice

By Fax and Mail

The Honourable Sergio Marchi
Minister of the Environment
10 Wellington
28th floor
Hull, Quebec
K1A 0H3

**Re: Nunavik Inuit Rights and Interests in Labrador/Exclusion of
Nunavik Inuit from the MOU Regarding the Environmental
Assessment of the Voisey's Bay Project
Our file: 7234**

Dear Minister,

We represent Makivik Corporation with respect to Nunavik Inuit Aboriginal rights, titles and interests in that part of their territory found in Labrador and the Labrador offshore, including lands, waters and ice. Letters identical to this letter are being sent to the Honourable Ronald Irwin and the Honourable Fred Mifflin.

This letter is not a response to the invitation issued on November 22, 1996 by the Canadian Environmental Assessment Agency ("the Agency") to the "public" to "comment" on the "Draft Final Memorandum of Understanding on Environmental Assessment of the Proposed Voisey's Bay Mining Development" (the "MOU"), but rather further notice of concerns of a much more fundamental nature.

* Societe en nom collectif/General Partnership

The Honourable Sergio Archi
December 20, 1996
page 2

HUTCHINS, SOROKA & DIONNE

Our clients are not "members of the public" who can be simply asked to comment. They have constitutionally entrenched rights and interests which must be satisfactorily addressed before development can proceed. The Government and the Crown in right of Canada have a fiduciary duty to ensure the vindication of those rights, notably through a fair and effective process. Canada certainly cannot engage in favouritism by preferring the interests of one Aboriginal people to those of another. In proceeding as is proposed, Canada is at least implicitly accepting claims asserted by the Labrador Inuit Association and the Innu Nation over those of Nunavik Inuit in areas of overlap.

The inequitable and flawed nature of the process by which the MOU was reached, the process for naming panel members, and the process of environmental assessment ("EA") it describes, together with the lack of progress on our clients' accepted comprehensive Aboriginal rights claim to parts of Labrador and to the Labrador offshore, are such that our clients are now actively considering legal proceedings.

Our clients seek the withdrawal of the draft MOU and new discussions regarding the EA of the Voisey's Bay project ("the project") which would include as equal partners Makivik Corporation for Nunavik Inuit as well as all other interested Aboriginal peoples. Any other approach would be highly prejudicial to our clients' rights and not in keeping with the fiduciary obligations of Canada.

There has been considerable previous correspondence between our clients and various Ministers and representatives of the Governments of Canada and of Newfoundland and Labrador, the proponents of the Voisey's Bay project and other Aboriginal groups with interests in the area. That correspondence has been generally concerned with six matters: (1) the lack of progress in the negotiation of the accepted Nunavik Inuit comprehensive Aboriginal rights claim to parts of Labrador and to the Labrador offshore; (2) government acquiescence in allowing development to proceed

The Honourable Sergio Marchi
December 20, 1996
page 3

HUTCHINS, SOROKA & DIONNE

during treaty negotiations; (3) refusal of the Government of Newfoundland and Labrador to cooperate in the Nunavik Inuit treaty process; (4) the demand of our clients for full participation in all discussions and all agreements regarding the Voisey's Bay project; (5) the demand of our clients for full participation in all discussions, feasibility work and agreements regarding the proposed Torngat National Park; and (6) the need for early and comprehensive environmental and social impact assessment of all aspects of the Voisey's Bay project.

These concerns have now become critical in view of the recent events related to the Voisey's Bay project. That development appears to be set to proceed before our clients' rights are addressed and their consent is obtained through an appropriate treaty or at least through an agreement with the proponent on impacts and benefits. It also seems that the assessment process will not be comprehensive and responsive to the rights of our clients.

Exclusion from Negotiations and the MOU Regarding Environmental Assessment

One aspect of our client's concerns, as expressed in the relevant correspondence (see notably our letters of April 23 and May 23, 1996 to Michel Dorais and our letters of April 29 and May 23, 1996 to you and federal Ministers Irwin, Manley, McLellan and Mifflin), has been the ongoing and systematic exclusion of Makivik Corporation and the Nunavik Inuit from exchange of information, discussions, meetings, negotiations and agreements regarding the environmental assessment of the Voisey's Bay project ("the project"). In this last respect, we refer most recently to our letter of October 28, 1996 addressed to you and to the President of the Canadian Environmental Assessment Agency ("the Agency"), which is still without any substantive answer. That letter dealt with the process for the naming of members of the EA review panel for the project and with the exclusion of the Nunavik Inuit from equal treatment.

The Honourable Sergic archi
December 20, 1996
page 4

HUTCHINS, SOROKA & DIONNE

The "answer" our clients have now had to their concerns came in the form of two faxes from Agency Vice President Paul Bernier revealing the product of months of closed and secret negotiations which excluded Nunavik Inuit. The faxes included the November 22, 1996 statement of Premier Brian Tobin, "Four Party MOU Reached on Joint Public Review of Proposed Voisey's Bay Project", the Agency news release of the same date "Public Comment Invited on the Draft Agreement for Joint Public Review of Proposed Voisey's Bay Project", and the November 21, 1996 "Draft Final Memorandum of Understanding on Environmental Assessment of the Proposed Voisey's Bay Mining Development" and Schedule 1 and the Annex thereto. (We have now also obtained Schedule 2: Description of the Undertaking off the Internet.)

The outcome of the EA of the Voisey's Bay project is now apparently regarded as so certain for the proponent as to allow announcement of the siting of a giant smelter complex at Argentia, Newfoundland. That smelter would not be built but for the Voisey's Bay project and is in fact part of the same project or undertaking.

Prejudice to Nunavik Inuit

The prejudice to the rights of Nunavik Inuit and breach of Canada's fiduciary obligations associated with the process by which the MOU was negotiated, the public statement and news release surrounding its announcement and the process for naming the public review panel are multifaceted.

First, the MOU was negotiated without our clients' consent with respect to mineral development in territory (lands, waters and ice) in which they have Aboriginal rights, titles and interests. Beyond this immediate prejudice, the Voisey's Bay project as favoured by this MOU cannot help but to accelerate the general pace of development and southern access to northern Labrador, also without the consent of or addressing the rights

The Honourable Sergio Marchi
December 20, 1996
page 5

HUTCHINS, SOROKA & DIONNE

of our clients.

Second, the MOU was negotiated surreptitiously without the benefit of the participation of our clients as to the substance and process of the EA of the Voisey's Bay project. This is reflected in the news release reference to "five months of extensive negotiations" and Premier Tobin's statement that the MOU "is the culmination of a series of discussions and meetings involving the Government of Newfoundland and Labrador, the Government of Canada, the Labrador Inuit Association (LIA) and the Innu Nation over the past several months". Nunavik Inuit have a constitutional right to participate in this process and Canada has a constitutional duty to ensure and promote this participation.

Third, as seen, the MOU clearly and unconstitutionally involves Canada in favouring the rights and interests of one Aboriginal people over another. This does not come close to respecting the Federal Government's own stated policy as set out in the *Federal Guidelines for the Settlement of Overlapping Comprehensive Claims or Treaties*. While the guidelines deal specifically with settlement of comprehensive claims or treaties, the position that Canada has adopted with respect to the MOU clearly favours and encourages the treaty process with the Labrador Inuit Association and the Innu Nation at the expense of and in flagrant disregard of our clients' rights and treaty process.

The Government of Canada's policy states that the government will not conclude a treaty unless the Aboriginal party to the treaty has negotiated in good faith and made all reasonable efforts to conclude an Aboriginal Overlap Agreement (Part III, section 5). The Labrador Inuit Association and the Innu Nation have not negotiated with the Nunavik Inuit in good faith and have certainly not made reasonable efforts to conclude an agreement with Nunavik Inuit.

The Government of Canada's policy specifically states that the Federal

The Honourable Sergio Archi
December 20, 1996
page 6

HUTCHINS, SOROKA & DIONNE

Government should not take sides on the matter of overlaps. Canada undertakes that where the interests of Aboriginal parties are too geographically intertwined to allow for effective separate treaty negotiations with each party, the Federal Government may withdraw from treaty negotiations unless the parties agree to negotiate jointly or can agree on substantive resolution of overlap issues (Part III, section 6). Rather than withdrawing from the process, Canada, in participating in the MOU, has engaged itself further to advantage the LIA and the Innu Nation and to disadvantage our clients.

The Supreme Court has directed on a number of occasions and very recently that in such matters the Crown must act with integrity and avoid sharp dealing. Mr. Justice Cory in *R. v. Badger*, [1996] 1 S.C.R. 771 recently provided a useful summary of jurisprudence on the matter of "the honour and integrity" of the Crown:

Interpretations of treaties and statutory provisions which have an impact upon treaty or aboriginal rights must be approached in a manner which maintains the integrity of the Crown. It is always assumed that the Crown intends to fulfil its promises. No appearance of "sharp dealing" will be sanctioned. See *Sparrow, supra*, at pp. 1107-8 and 114; *R. v. Taylor* (1981), 34 O.R. (2d) 360 (Ont. C.A.), at p. 367.

Badger, supra at p. 793

These principles apply not only to Aboriginal/Crown treaty interpretation but to other instruments having a potential impact on Aboriginal rights. Chief Justice Lamer in *Van der Peet v. The Queen*, Supreme Court of Canada (Judgment August 21, 1996), clearly stated as much, mentioning specifically statutory provisions:

The Crown has a fiduciary obligation to aboriginal peoples with the result that in dealings between the government and aboriginals the honour of the Crown is at stake. Because of this fiduciary relationship, and its implication of the honour of the Crown, treaties, s. 35(1), and other statutory and constitutional provisions protecting the interests of aboriginal

The Honourable Sergi Marchi
December 20, 1996
page 7

HUTCHINS, SOROKA & DIONNE

peoples, must be given a generous and liberal interpretation: *R. v. George*, [1966] S.C.R. 267, at p. 279. This general principle must inform the Court's analysis of the purposes underlying s. 35(1), and of that provision's definition and scope.

Van der Peet, supra par. 24

These directions from the Supreme Court of Canada must be applied to the particular instance of the Crown favouring one Aboriginal people over another in a dispute. The Federal Court in *Roberts v. The Queen* (19 September 1995), No. T-2652-85 (F.C.T.D.) has addressed just such a situation. Mr. Justice Teitelbaum stated in that case:

The dispute in the case before me is in essence between two Indian Bands, each claiming possession of each other's reserve. It would seem to me that the Crown has a duty to balance and reconcile the interests of both the Cape Mudge Indians and the Campbell River Indians and to resolve their conflict regarding the use and occupation of the Laichkwiltach reserves. In resolving this conflict, the Crown's duty would be not to favour the interests of one band over the interest of the other. In my view, the Crown owes a duty to both bands.

...

The Crown's duty in the case before me was to balance the interests of the two bands and avoid taking sides in their dispute.

Roberts, supra at p. 204

The Government of Canada has accepted to negotiate Nunavik Inuit Aboriginal rights and titles in Labrador. The Crown's fiduciary obligation toward Nunavik Inuit is definitely engaged. The honour of the Crown in its dealings with Nunavik Inuit is engaged. In this instance, Nunavik Inuit have a right to expect that the statutory provisions of the *Canadian Environmental Assessment Act* ("CEAA") be interpreted and applied in such a way as to protect their Aboriginal interests as much as

The Honourable Sergio Marchi
December 20, 1996
page 8

HUTCHINS, SOROKA & DIONNE

those of the parties with whom Canada has chosen to conclude the MOU. Excluding Nunavik Inuit from the negotiations leading up to the MOU and from the MOU itself constitutes just that "sharp dealing" which the Courts have declared to be totally unacceptable.

Finally, and perhaps most damaging, the process of negotiation, the news release and the MOU are highly prejudicial because they send a false but unequivocal message to the various federal responsible authorities in the EA of the Voisey's Bay Project, the Agency, the Government of Newfoundland and Labrador, the proponent, financial markets, the private sector and the public in general that the Government of Canada as represented by you and Ministers Irwin and Mifflin regard only the claims of the LIA and the Innu Nations as being valid and relevant.

These last two facets of the prejudice and breach of fiduciary obligations are clearly evident in a number of aspects of the news release and the MOU with its attachments.

For example, in the news release it is said that "Environment Minister Sergio Marchi and Indian Affairs and Northern Development Minister Ron Irwin are pleased that all parties were able to reach agreement ...". This flies in the face of Minister Irwin's solemn undertakings with respect to reaching a treaty with our clients.

With respect to the MOU, the overarching concern of our clients is their exclusion from status as parties therein. Specific instances and outcomes of that partial approach include:

- Reference in the first recital on p. 2 of the MOU and in the second paragraph of Schedule 2: Description of the Undertaking to the

The Honourable Sergio Marchi
December 20, 1996
page 9

HUTCHINS, SOROKA & DIONNE

undertaking being carried out in land and water areas that are "subject to comprehensive land claims negotiations currently underway ...", without reference to the accepted claim of our clients.

- Reference in the news release and in the MOU to the process contemplated by the MOU as being the sole (single) process to apply (preamble and s. 2.1).
- The provision in s. 2.2 which effectively excludes the results of our clients' negotiations from being given effect through future amendments to the MOU.
- The closed process for the selection and appointment of panel members by the four "parties", without our client's participation (MOU ss. 3.3 and 3.4).
- The special status and rights of participation provided to some Aboriginal groups and not to others, in terms of support services and the location of meetings, offices and hearings and the substance of the EA (e.g. MOU, ss. 2.6, 2.7, 2.11, 4.1, 4.2, 6.2, Schedule 1 - Terms of Reference, s. 3 (guaranteed consideration of only some Aboriginal views and reports), s. 4, s. 10).

In this overall context, the purported saving clause for Aboriginal, treaty, constitutional and other rights in subsection 6.1 of the MOU provides little protection and certainly does not fulfil the fiduciary obligations of Canada not to engage in favouritism. There are limits to the practical ability of such a clause to provide effective protection

The Honourable Sergio Marchi
December 20, 1996
page 10

HUTCHINS, SOROKA & DIONNE

from the important negative implications of the negotiation and conclusion of the MOU.

Preliminary Concerns Regarding the MOU and the Proposed Environmental Assessment

Outside of the fundamental process concerns set out above, our clients' most serious concerns with respect to the MOU and the environmental assessment it proposes as such relate to the scope of the project or undertaking to be assessed. Our clients have always insisted on the need for early and comprehensive environmental and social impact assessment of all phases and aspects of the proposed developments, which, of course, include exploration, mining, processing, shipping and smelting metal ore and all works, undertakings and activities associated therewith. We refer in this connection to their letters of April 23, 1996 to Michel Dorais and of April 29, 1996 to the various federal ministers already mentioned. The proposed assessment falls short in a number of respects.

(i) Ongoing exploration

First, the assessment apparently is not intended to extend, as it must, to the ongoing exploration activities of the Voisey's Bay Nickel Co. Those exploration activities are described in the September 26, 1996 "Voisey's Bay Mine/Mill Project, Project Description Report" submitted to the Department of Fisheries and Oceans.

It is said there that "[e]xploration will continue throughout the life of the mine" (p. 2) and that "proven reserves may be expected to increase" and "affect the rate of production, the location of proposed mining infrastructure, and the life of operation." (p. 5). The activity involved is not inconsequential. During "the next four years VBNC proposes to spend an estimated \$20 million on exploration activity" to inter alia "identify additional mineral resources ... continue regional exploration". (p. 10).

Nonetheless, and without explanation, it is stated for the purposes of assessment that the "project does not include on-going exploration activities" (p. 17). Despite lip service to comprehensive EA through "the establishment of a single, effective and efficient process" this unjustified exclusion is apparently continued in the MOU. The definition of "undertaking" in s.1 of the MOU does not refer to exploration and incorporates the Schedule 2: "Description of the Undertaking", which is also silent in this regard.

(ii) Segmentation

To exclude the exploration activity connected to the Voisey's Bay project is to segment the assessment of the undertaking as it exists and to fail to carry out assessment as early as is practicable. This is contrary to good assessment practice. Comprehensive assessment is the only approach that ensures that all the impacts of a project are taken into account. Furthermore, under the CEEA all undertakings relating to the mine and mill proposed by the proponent and which are likely to be carried out in relation to those works (ss. 2 ("project") and 15(3)) must be assessed.

The proposed exploration activities in conjunction with the mine and mill have a high potential for significant direct environmental effects and effects on the impacts of the mine, mill and shipping operations. This is because exploration itself may affect large areas, resulting in environmental disturbance, social impacts and the opening up of new territory to development. It is also because the results of the exploration will affect the rate and rhythm of production from the mine and mill, the energy, labour and other inputs required and the volume of shipments. Of course, exploration will also affect the anticipated life of the mine and the time over which impacts may be expected.

Second, and still with respect to the scope of the project and the issue of

The Honourable Sergio Marchi
December 20, 1996
page 12

HUTCHINS, SOROKA & DIONNE

segmentation, to be early and comprehensive the proposed assessment should include the smelter at Argentina. The impact of the smelter would potentially be considered in the study of "cumulative environmental effects" as referred to in s. 16 of CEEA and item 10 of the Annex to Schedule 1 to the MOU. However, its consideration should be explicitly required. The smelter has clearly entered the planning stage and is one of the undertakings proposed in relation to the Voisey's Bay project. It is so closely related thereto that the whole forms a single project. Given the desire expressed in the MOU to ensure a single, effective and efficient assessment process, full assessment of ongoing exploration and of the mine, mill and smelter as a whole is the only appropriate approach.

The connections are manifold. A few examples illustrate the point. Without the mine and mill, the smelter would simply not be built. Conversely, proceeding with the mine and mill will make pressure for the smelter virtually irresistible. The smelter design and operation will affect decisions which must be made regarding the rate of production of the mine and mill, the volume and schedule throughout the year of shipments from the port at Edward's Cove and the shipping route chosen. The smelter will have pollution, social, and economic consequences far beyond Argentina. Once the investment is committed for Argentina, the pressure to continue and expand production from the Voisey's Bay mine and mill over as many years as possible will be strong, both for reasons of profit (recovery of fixed costs) and for reasons of maintaining employment in Argentina.

Conclusion

The rights of our clients must be appropriately addressed before the development planned for territory over which they assert Aboriginal rights and title can proceed. As a first step, our clients must be given equal treatment in a revamped MOU and process of EA with respect to the Voisey's Bay project, including all exploration and

The Honourable Sergio Marchi
December 20, 1996
page 13

HUTCHINS, SOROKA & DIONNE

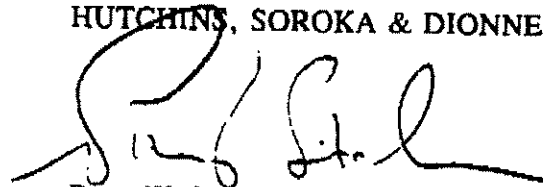
the mine, mill and smelter. At this stage, the issues at stake are of a fundamental nature. Polishing the process for EA under the MOU cannot remedy the fundamental flaws in the approach being adopted by Canada, Newfoundland and Labrador, the Labrador Inuit Association, the Innu Nation and the project proponent.

This letter is written without prejudice to and under reserve of all of the rights and remedies of our clients' in this matter. In particular, and without restricting the foregoing, nothing herein is intended to constitute a formal comment on, analysis of, or response to the Agency by our clients with respect to the "draft final" MOU, or an acknowledgment of the legitimacy or adequacy of the process of EA it proposes.

We look forward to your prompt and favourable reply.

Yours truly,

HUTCHINS, SOROKA & DIONNE



Peter W. Hutchins

PWH/gr

cc: The Honourable Brian Tobin
The Honourable Kevin Aylward
Legal Counsel for the Innu Nation
Legal Counsel for the Labrador Inuit
Association
Sam Silverstone, Counsel,
Makivik Corporation