

CHAPTER 12

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CHAPTER 12

HARVESTING

12.1 INTRODUCTION

Harvesting is a cornerstone of life for most Aboriginal residents of the Project Review Area. Harvesting of wildlife, fish and marine mammals, and of berries, plants and wood, are of economic, cultural and recreational importance for men, women and children, especially in the smaller communities. The Panel heard concerns about Project impacts on harvesting at every community hearing without exception. In addition, the Panel held five days of hearings on harvesting matters.

This chapter summarizes the findings of previous chapters on the potential impacts of the Project on harvesting and then focuses on two key issues: the Proponents' plans for minimizing Project disruption of harvester access to resources and, should adverse impacts on harvesters occur as a result of the Project, the Proponents' provision for compensation. As there are different legal requirements and circumstances between the Northwest Territories (NWT) and Alberta, this discussion on compensation has been separated by jurisdiction. In addition, as a requirement of the *Inuvialuit Final Agreement*, the potential mitigations and liability of the Proponents are detailed from a worst-case scenario perspective with respect to the Inuvialuit Settlement Area. The description of worst-case scenarios is set out in Chapter 7, "Accidents, Malfunctions and Emergency Response."

Related issues arising from the review of the Project's impacts on harvesting are addressed in other chapters in this Report. Consideration of potential contaminants to country foods and the impacts of Project emissions and effluents (including those resulting from accidents and malfunctions) on the terrestrial and aquatic environment are found in Chapter 7, "Accidents, Malfunctions and Emergency Response" and Chapter 8, "Air and Water Quality." The impacts of marine traffic and dredging on fish and marine mammals are considered in Chapter 9, "Fish and Marine Mammals," and the impacts of Project activities and Project-related transport on wildlife and birds are considered in Chapter 10, "Wildlife." Potential impacts of the Project on the economic, social and cultural aspects of harvesting are discussed in Chapter 16, "Social and Cultural Impacts."

In these other chapters, the Panel concludes that, if the Proponents' commitments and the Panel's recommendations are implemented,

the Project would not likely have significant adverse impacts on the abundance and distribution of wildlife, and there would be no contaminant pathways by which there could be significant adverse impacts on the quality of country food. There could be short-term disruptions of normal harvesting activities in preferred locations during construction, notably of fishing in the vicinity of Fort Providence and of caribou hunting north of Inuvik and in the Parsons Lake area, but if mitigated as proposed, in the Panel's view, these would not likely be significant.

The Panel notes that a continued influx of population into the NWT, as a result of the Project or other developments, could result in increased harvesting pressure on fish stocks; however, the Proponents have committed to appropriate steps to minimize the contribution of their own activities to such an outcome.

In the Panel's view, however, the avoidance of potential impacts on harvesting activities related to cumulative impacts of the Project with other developments will require vigilance on the part of resource management agencies.

Having established that the Project would not likely significantly disrupt harvesting through reduced fish or wildlife abundance, by movement of fish or animals away from traditional harvesting areas, or by the contamination of country food, the Panel now turns to consideration of Project impacts on access to harvesting areas, the Proponents' wildlife compensation arrangements, and the worst-case scenario as required under the terms of the *Inuvialuit Final Agreement*.

12.2 IMPACTS ON HARVESTER ACCESS

12.2.1 PROPONENTS' VIEWS

The Proponents stated that, in order to construct and operate the Project, certain restrictions on harvesting activities, particularly the use of firearms, would be required for the safety of harvesters and Project workers at active work sites and permanent facilities. The potential impact of these restrictions would be to impede crossing the right-of-way on a temporary basis on some occasions, and to impose restrictions on the use of firearms for reasons of public safety on a temporary basis near active work sites and for the life of the Project near permanent facilities.

During construction, temporary restrictions would occur at construction camps, equipment lay-down areas, the pipeline right-of-way, borrow sources and barge landing sites. During operations (i.e. for the life of the Project), restrictions would apply to permanent, above-ground operating facilities, including production wells and gas conditioning facilities, the Storm Hills Pigging Facility, the Inuvik Area Facility, compressor stations, the Trout River Heater Station and the NOVA Gas

Transmission Ltd. (NGTL) Interconnect Facility. The spatial extent of these restrictions would "be limited to the immediate vicinity of the project structure, but will not limit access to an overall harvest area." In addition, "although plant harvesting can take place immediately adjacent to the access restricted area, a zone surrounding the restricted area would be established to preclude hunting." (J-IORVL-00258, pp. 36–37)

The Proponents noted the following points concerning restrictions on access by harvesters across the pipeline right-of-way during construction:

- Consultations with communities before installation of the pipeline would identify where harvesters need to cross the right-of-way and when. This would allow the Proponents to plan where breaks should be located and where the pipeline would be installed at specific times.
- No specific limitations on access are foreseen other than the need to consult with the affected harvesters to identify where they need to go on the land while the Proponents are working on the right-of-way.
- While a construction crew is in an area where pipe is strung out over a 35-km distance, harvesters would still be able to cross the right-of-way on a daily basis at some location within the area, except during a 24-hour period at a specific location during which the trench is open, the pipeline is being joined and welded together and placed in the ground, and the trench is being refilled.
- Consultations with harvesters would identify when that 24-hour period occurs relative to their usual crossing location.
- Through consultations, harvesters would be informed when and where workers would be in the area, and they would be encouraged to refrain from firearm activity during the full period when there are workers in the area.

The Proponents noted that, during construction of the pipeline and gathering system, movement across the right-of-way could be impeded for reasons of clearing, pipe stringing, installation, clean-up, pipe testing and, during operations, occasional maintenance. The greatest duration and extent of disruption would occur during the second year of construction, when the pipe would be strung, welded and installed, and this might occur over a distance of up to 35 km on any spread at any particular time, for up to two weeks at any one location.

During such times, limited delays could be experienced by those wishing to cross the right-of-way, but the Proponents suggested that these would generally be only an hour or so in duration. The Proponents assured the Panel that there would be safe access across the right-of-way for people, snowmobiles and all-terrain vehicles in remote areas, and, in most instances, this could occur almost immediately upon request to cross. According to the Proponents, the specific measures taken to ensure safe access would be:

- communicating Project activities, before and during construction, to local communities to increase awareness of the type, location and approximate timing of activity;
- identifying community access paths and incorporating them into Project plans; and
- locating breaks, averaging about 750 m apart, along the right-of-way to provide land users with a path across the right-of-way.

In order to minimize disruption of harvesting activities during the construction phase, the Proponents stated that they would develop Access Management Plans in consultation with affected communities. The Proponents described the principles for access management as using community guidance and involvement in developing the plans; maintaining communication with communities, particularly about the construction schedule; and adopting industry best management practices.

The Proponents further stated that Access Management Plans would be finalized for each of the regions of the study area. The Proponents stated that the types of restrictions that specific Project activities might place on land users was an area of discussion in the Access Agreement negotiations in the Sahtu. The Proponents explained that the Access Agreement includes a provision for the Proponents to provide detailed development plans that define when Project work would take place and what restrictions this would put on land users. These plans would require approval by the appropriate District Land Corporation. The Proponents noted that Access Management Plans would be very important throughout the construction process in order to identify “active trapping areas and other traditional harvesting sites, harvester access trails, and known wildlife trails...to minimize conflicts with land uses.” (David Kerr, HT V46, p. 4367)

The Proponents advised that NGTL would implement a similar Access Management Plan in northwestern Alberta as part of its Caribou Protection Plan, which it would review with the Dene Tha’ First Nation before submitting it to the appropriate regulatory authority for approval.

With respect to the nature and contents of the Proponents’ Access Management Plans, which are to be negotiated with representative groups in the various regions, the Proponents stated that they did not have a draft plan or contents list prepared. They indicated, however, that Access Management Plans would include:

- a communications component;
- a component that addresses safety concerns; and
- a description of the environment where work would take place, including the kinds of activities that would occur in that environment and what access restrictions the Proponents might require.

Most permanent facilities, such as compressor stations, would be fenced. Outside of these facilities, no access restrictions would apply. However, the normal considerations of public safety with respect to the use of firearms under applicable legislation would apply. Such restrictions could be enforced only by public authorities.

The Proponents made a number of specific commitments regarding:

- harvester access with respect to managing site access;
- identifying activities that restrict access;
- managing the interface between harvesting and the Project;
- removing temporary harvesting restrictions at construction sites;
- restricting access to permanent, above-ground operating facilities; and
- developing an Access Management Control Plan.

The Proponents filed additional commitments, which the Panel understands to be supplemented or modified by information and responses given during the hearings. These commitments can be summarized under three areas: nature of access restrictions, Access Management Plans and Agreements, and access management practices.

12.2.2 PARTICIPANTS’ VIEWS

Some harvester organizations stressed the need to ensure that the ability to harvest not be impaired by restrictions on access, as did a number of participants who spoke at Community Hearings. None suggested that the Proponents’ proposed mitigations were inappropriate or insufficient, or that Project activities, if implemented, would constitute a significant disruption to harvesting activities.

12.2.3 PANEL VIEWS

The Panel accepts that certain restrictions on access and the use of firearms are necessary for the safe construction and operation of the Project. The Proponents propose to take measures to minimize the disruption potentially caused by harvesters, which the Panel finds appropriate and reasonable. The Panel considers that these measures, if applied to the Project as Filed, would result in minimal and negligible disruption, with no significant adverse impacts on harvesting. Any exceptions experienced by individual harvesters could and should be addressed by the harvesting compensation measures set out elsewhere in this chapter. The Panel heard no evidence to suggest that these findings would not also apply to the Expansion Capacity Scenario.

12.3 HARVESTER COMPENSATION (NORTHWEST TERRITORIES)

12.3.1 EXISTING CONDITIONS

Section 13 of the *Inuvialuit Final Agreement* (IFA), which relates to harvesting compensation, identifies two types of harvest loss for which compensation is applicable:

- Actual wildlife harvest loss:
 - Individual harvesters who depend on harvesting for a material part of their income may obtain compensation for damage or loss of harvesting equipment and for loss or reduction of hunting, trapping or fishing income.
 - Individual harvesters who harvest for subsistence purposes may obtain compensation for damage to or loss of harvesting equipment and for any material reduction in wildlife take or harvest.
 - Types of compensation include the cost of temporary or permanent relocation, replacement of equipment, reimbursement in kind, provision of wildlife products, and payment in lump sum or by instalments.
- Future harvest loss:
 - Future harvest loss is defined as damage to habitat or disruption of harvestable wildlife having a foreseeable negative impact on future wildlife harvesting.
 - Any Inuvialuit group or community affected may seek recommendations from the Arbitration Board (a quasi-judicial arbitration body) with respect to remedial measures, including clean-up, habitat restoration and reclamation.

The IFA also includes an outline of procedures for obtaining compensation:

- Claims may be made individually or collectively, or through duly authorized representatives.
- Every claim must be made in writing by the claimant.
- The claimant and developer have 60 days, including appointment of a mediator, to attempt to settle the claim.
- If the claim is not settled within 60 days, the claimant may forward the claim in writing to the Arbitration Board, pursuant to the arbitration provisions of the land claim.
- The onus is on the claimant to prove the loss on a balance of probabilities.

The harvesting compensation sections of the *Gwich'in Comprehensive Land Claim Agreement* (Section 17) and the *Sahtu Dene and Metis Comprehensive Land Claim Agreement*

(Section 18) are identical to each other. Under these agreements, the types of loss or damage eligible for compensation include:

- loss or damage to property or equipment used in wildlife harvesting or to wildlife harvested;
- present and future loss of income from wildlife harvesting; and
- present and future loss of wildlife harvested for personal use or that is provided to others for personal use.

Within the Gwich'in and Sahtu Agreements, the types of compensation that may be provided include:

- a lump sum or periodic cash payment; or
- non-monetary compensation, such as replacement or substitution of damaged or lost property or equipment, or relocation or transportation of participants or equipment to a different harvesting locale.

Finally, the procedures for making claims outlined in the two Agreements are:

- claims must be made in writing; and
- the claimant and developer have 30 days to reach agreement, after which either party may refer the matter to arbitration, pursuant to arbitration provisions of the land claim.

In the absence of a land claim agreement in the Dehcho Region, no formal compensation agreements apply.

12.3.2 PROPONENTS' VIEWS

The Proponents' analysis of residual impacts of the Project on harvesting concluded that, for all cases where adverse impacts were identified, the effect attributes in all regions of the study area were:

- moderate or less in magnitude;
- regional or local in geographic extent; and
- short-term in duration.

Therefore, the Proponents concluded, based on their criteria for determination of significance, Project impacts on harvesting would not be significant.

However, in order to address specific cases where disruption of harvesting activities would occur in the short term, the Proponents stated they expected that compensation agreements would be negotiated by the Proponents with Hunters and Trappers Committees or other relevant authorities in the settled land claim regions, and the affected communities in the Dehcho Region, in order to address actual and potential future wildlife harvest loss resulting directly from Project construction and operations.

The Proponents supplemented the information provided in the Environmental Impact Statement (EIS) with presentations of their proposed plans for harvesting compensation. The Proponents stated that compensation would cover hunting and trapping activities and would allow harvesters affected by the Project to be compensated for damages resulting from Project activities. More specifically, the types of damages, losses or expenses covered would be similar to those identified in the land claim agreements:

- present and future loss of income;
- present and future loss of resources for personal use;
- cost of temporary or permanent relocation; and
- loss or damage to property or equipment used in harvesting.

Further, compensation would be based on market values and estimated harvest loss and be referenced to current and historical records provided, either in the form of reimbursement in kind or through a cash payment.

The Proponents also described the form that agreements on compensation would take. During the hearings, the Proponents replaced the EIS's term "compensation agreements" with the term "compensation process." The Proponents noted that the compensation process would use the "definitions and compensation process outlined in the appropriate land claim agreements" and would include "working with applicable organizations to develop an agreed-upon process and procedure for harvester compensation." (J-IORVL-00681, p. 27)

The Proponents stated that, as a mitigation measure, they would communicate with appropriate organizations such as Renewable Resource Councils and Hunters and Trappers Committees, as well as individual harvesters, in order to identify any harvesters who might be affected by the Project, and that they would work together to reduce conflicts between harvesters and Project activities. In this way, the likelihood of damages and subsequent claims required under the compensation process would be reduced. The Proponents also affirmed that the harvesting compensation process would include a dispute resolution process.

The Proponents provided clarification concerning coverage of the compensation process, both in terms of types of harvesters covered as well as specific types of damage and costs covered:

- The compensation process would cover all types of harvesters — full-time, part-time and beginner — since the land claim agreements make no distinction of this type with regard to harvester compensation.
- In cases where harvesters have to spend more time and money on harvesting as a result of Project access restrictions, the compensation process would include reimbursement for cost of temporary or permanent relocation, which would cover physical relocation, for example, relocation of a cabin, as well

as increased harvester costs, for example, in time or gas or increased wear and tear on equipment arising from the need to move harvesting activities to alternative locations.

- Such temporary or permanent relocation could be the result of Project activities or Project impacts, whether the impacts were those identified in the EIS or those that were not predicted although identified by harvesters as the cause of relocation.
- In the event of an accident, compensation would be made for reduced harvesting of a species for reasons of quality, either in cash to obtain replacement meat from an alternative community or in cash for additional expenses required to access more distant areas that would allow harvesters to supplement their country foods in the future.

The Proponents provided additional information about the basis on which compensation would be determined. First, in cases of increased costs associated with additional effort to harvest, the burden of proof on harvesters could include written records and oral corroboration by other harvesters. Second, in reference to the Proponents' statement that compensation would be based on current and historical records, the matter of whether the ongoing collection of harvest data might be necessary for the purposes of compensation was raised, given that there are no longer any comprehensive harvest surveys conducted in the three land claim areas and that there never has been such a survey in the Dehcho Region. The Proponents responded that compensation for subsistence harvesting activities would be based on a discussion between the Proponents and individual harvesters "about what is a typical harvest for a year." (Dr. Dee Brandes, HT V46, p. 4399) Therefore, the Proponents stated, restarting or commencing harvest studies would not be necessary for the purposes of Project compensation.

The Proponents also stated that compensation for trappers would be based on the records of furs sold to market through the Government of the Northwest Territories' trapper support program. At the same time, recognizing that many trappers sell furs through unrecorded transactions, the Proponents noted that they were currently in discussions with Renewable Resource Councils, Hunters and Trappers Committees, and individual harvesters to help formulate "an anecdotal record that allows us to appreciate how we might facilitate our discussions with them in the future." (Dr. Brandes, HT V46, p. 4400)

With respect to the nature and status of the documents resulting from discussions with harvester organizations and individual harvesters on the compensation process, the Proponents assured the Panel that harvesting compensation would be provided based on the applicable sections of the land claim agreements in place — i.e. Section 13 of the IFA, Section 18 of the *Sahtu Dene and Metis Comprehensive Land Claim Agreement*, and Section 17 of the *Gwich'in Comprehensive Land Claim Agreement* — and that dispute resolution procedures would follow those outlined in these agreements.

With respect to the instrument that would be used to execute compensation arrangements, the Proponents indicated that compensation arrangements would be part of the discussion on access and benefits. The Proponents had previously suggested that there would be stand-alone compensation agreements. They clarified, however, that the compensation process would not be included in the negotiated Access Agreements and Benefits Agreements and that “the reason for this is that the negotiators clearly pointed out that our obligation to the harvesters is embedded in the land claim agreement,” with the further clarification that “the need for a further agreement to restate our obligation to the harvesters was unnecessary and redundant.” Instead, the Proponents noted, obligations under the land claim agreements would be supplemented by discussions with harvesters and harvester organizations “to put some better definition around how soon do we need to come out and talk to you with detailed plans, when do you go in and lay your traps, so that we can avoid you laying traps in an area where we would be working.” The Proponents further stated:

Thus, current discussions are focused on jointly coming to agreement on a process that we would use to facilitate our communication up front and the compensation in the event that there is damage and we need to compensate. Now, some of the land claimant groups have fairly established processes. And we’re not looking to re-invent the wheel, we’re simply looking to understand the process. (Dr. Brandes, HT V46, p. 4415)

The Proponents also noted that, while formal agreements are not necessary in the land claim regions, the Dehcho Region is “an anomaly” since there is no land claim agreement in place and the Interim Measures Agreement does not specify harvester compensation. (Dr. Brandes, HT V46, p. 4415) Therefore, the Proponents expect that they would enter into an agreement with the Dehcho Region that is specific to harvesters because they do not have the same level of definition within their Deh Cho Process to date.

With respect to the Proponents’ use of the terms “framework” and “a proposed process” to describe the compensation arrangements to be put in place in the various regions, the Proponents provided an example of a document from one of the regions resulting from the discussions. Specifically, the Proponents submitted a copy of the *Process for Harvester Mitigation and Compensation*, which was under negotiation for implementation in the Inuvialuit Settlement Region. The document restates the description of the compensation process outlined in the Proponents’ written and oral presentations at the hearings, including:

- consultation in advance of construction and operations activities to identify harvesters who are active in proposed Project areas and to mitigate disruption of harvesting activities;
- compensation for actual wildlife harvest loss or future harvest loss in accordance with Section 13 of the IFA;
- submission of claims in writing;

- compensation based on market values and estimated harvest loss, referenced to current and historical records where available; and
- a dispute resolution to follow arbitration procedures as outlined in the IFA.

The only new information provided in the document was a note that “the written claim should contain particulars in reasonable detail of the damage or loss for which compensation is being claimed” and inclusion of forms for harvester compensation and for settlement of claims. (J-IORVL-00938, pp. 2–3)

With respect to how the compensation discussions would produce a final draft and who approves it, the Proponents explained that they were not trying to develop formal compensation agreements as originally stated in the EIS, since the commitment to compensate harvesters is already established under the land claim agreements:

We actually are not trying to create an agreement, so to speak. The dilemma for us is that our obligation is to the harvesters and not all harvesters do their work through the organizations that are within their communities. And so what we are striving to achieve is that there is a process, that it’s well understood by all harvesters, and that it’s supported by all harvesters; and thus, we don’t foresee that we could have an approval mechanism...that would be appropriate for that circumstance. (Dr. Brandes, HT V52, p. 5032)

The Proponents further explained that, if they were to reach an agreement of some type with a Renewable Resource Council, a Hunters and Trappers Committee or the Inuvialuit Game Council, their understanding is that it would not necessarily bind all the harvesters because they would not be signatories to it.

The Proponents also stated that:

the *Inuvialuit Final Agreement* and the land claims in the Gwich’in and the Sahtu Settlement Area are very clear in their wording, and they help harvesters to be comforted in knowing that should there be a loss experienced by them as a result of development, the developer is responsible to compensate them for that loss. (Dr. Brandes, HT V52, p. 5025)

Further, the Proponents reiterated that, for the Dehcho Region, where no settled land claim agreement is in place, the compensation process would be similar to regions that have established land claims.

The Proponents asserted that, even though formal compensation agreements would not be put in place, there would be an obligation for the Proponents to follow a compensation process outlined in the documents, since they help to define the obligations within the land claim agreements. The Proponents emphasized that, in the Dehcho Region, where there is no land claim agreement that specifies what the dispute resolute mechanisms are in relation to harvesting compensation claims, a dispute mechanism would be embedded within the Dehcho

compensation agreement. This Dehcho dispute resolution mechanism would be consistent with those regions that have settled land claims.

The Proponents stated that approaches similar to those for beneficiaries would be employed for harvesters who are not beneficiaries of the land claim agreements. This would be true for non-beneficiary harvesters if there were an impact on their trapping lines, their trapping returns or their hunting. However, the Proponents emphasized that access to arbitration provided for under land claim agreements might not be available to non-beneficiaries.

Finally, in relation to a date by which the compensation processes would be in place, the Proponents stated that they expected that discussions would be completed and the compensation process in place in the various regions at least six months in advance of construction beginning, and that the parties “would be at a point where harvesters understand and [the Proponents] understand what process we should be using to facilitate the mitigative measures and potentially the compensation measures.” (Dr. Brandes, HT V52, p. 5032)

The Proponents made a number of commitments in relation to harvesting compensation and, specifically, with respect to compensating harvesters for damages and loss of subsistence or commercial harvesting opportunities, establishing compensation terms and conditions, and negotiating specific terms and provisions of a wildlife harvesting compensation process.

12.3.3 PARTICIPANTS’ VIEWS AND RECOMMENDATIONS

A number of participants presented views and recommendations on harvesting compensation during the Panel’s hearings as well as through written filings to the Panel. Those views and recommendations focused on three main issues:

- the need for formal compensation agreements;
- the basis for determining compensation; and
- the types of compensation required to address Project impacts.

NEED FOR FORMAL COMPENSATION AGREEMENTS

In the Dehcho Region, both the Sambaa K’e Dene Band and Pedzeh Ki First Nation called for negotiated harvester compensation agreements to be in place prior to Project approval.

The Proponents agreed that, in the Dehcho Region, where there is no settled land claim in place and where the Interim Measures Agreement does not address harvesting compensation, there is a need to establish a formal agreement on harvesting compensation through negotiation with Dehcho communities, and the Proponents are committed to doing so.

Participants from the Gwich’in Settlement Area and the Sahtu Settlement Area called for the negotiation of regional compensation agreements with the involvement of community Renewable Resource Councils. The rationale, as stated by the Sahtu Renewable Resources Board, was that the land claim does not provide a process for individual harvesters to follow in seeking compensation; therefore, an agreement between the Proponents and the Renewable Resource Councils would be required to put such a process in place. The Sahtu Renewable Resources Board further stated that, while the individual harvester has responsibility to bring forth a claim, responsibility for support to the harvester falls on Renewable Resource Councils, which lack the personnel and funding needed to provide that support. Having an agreed-upon process within a compensation agreement would assist the Renewable Resource Councils with this responsibility.

Similarly, the Déline Renewable Resources Council stated that it is important that interested Renewable Resources Councils be enabled to negotiate a harvester compensation protocol with the Proponents. They explained that harvesters cannot afford the professional expertise required to negotiate an agreement. The concern of the Council is that the burden of proof for pursuing compensation falls on the harvester, who would be required to prepare and document the claim, negotiate the claim with the developer, and finally present the case before an arbitrator if not satisfied with the outcome. Most harvesters have no experience in these areas and would require professional help. Currently, however, there are no resources provided for this kind of assistance, and the compensation process in the land claim agreement does not provide for any dedicated funding.

Several participants commented on the burden on harvesters of the compensation process proposed by the Proponents. The Dehghah Alliance Society commented on the negotiation of a harvester compensation agreement between it and the Proponents. It considered the Proponents’ proposal unacceptable because it would place the onus and burden of proof on harvesters instead of the Proponents. Concern was also expressed by another participant that negotiations with harvester organizations not take away the rights of individual harvesters to compensation under the land claim agreement. At the same time, however, it was noted that harvesters generally have no experience in assigning a monetary value to lands and resources, and therefore it would be essential to ensure that harvesters receive assistance from the Renewable Resource Councils in dealing with compensation claims.

Previous experience with compensation to harvesters for losses caused by the impacts of oil and gas activities was described by Randal Pokiak in Tuktoyaktuk. He stated that the burden imposed on the harvester in making the claim can be excessive compared with the actual amount of compensation received. Therefore it acts as a disincentive to pursue compensation:

Now to claim \$150.00 for trap and the loss of opportunity then adding on the two days I lost in setting a claim and extra

two days I had to stay in town to get ready for my next trip was at my own time, the two days I spent with them was not considered by the O/G industry... After evaluating it all, the time and effort it took to claim \$150.00, I decided that from that time on it was more profitable to continue trapping and leave the O/G companies out of my life. (J-POKIA-00005, p. 64)

BASIS FOR DETERMINING COMPENSATION

Some participants asserted the need for continuing and ongoing harvest surveys and studies as part of the basis required to determine accurate and fair compensation. The Gwich'in Renewable Resources Board (GRRB) stated that the Proponents' reliance on older GRRB wildlife and harvesting studies would leave considerable doubt about the accuracy of forecast impacts in the EIS on valued components. The GRRB recommended that the Proponents, together with the Government of the Northwest Territories, the Government of Canada and the Gwich'in Tribal Council, provide adequate resources for the GRRB to continue conducting regular and ongoing wildlife and harvesting surveys to maintain an accurate database for assessing impacts of the Project during the development, operation and decommissioning phases. The GRRB further suggested that it is essential that the adequacy of compensation in any area, or for any harvesting group, be based on broadly comparable, species-relevant data about impacts.

The Sahtu Renewable Resources Board recommended that the Sahtu Settlement Harvest Study, including mandatory collection of all harvest statistics, be continued through all hydrocarbon and pipeline stages. It stated that this was essential for capturing and using information about subsistence harvesting for assessment, litigation and monitoring purposes.

The view of the Proponents, as noted, was that restarting or commencing harvest studies would not be necessary for determining and settling compensation claims.

A participant in Fort Good Hope noted that there is a lack of specific information on harvester compensation in Section 18 of the *Sahtu Dene and Metis Comprehensive Land Claim Agreement*. He said that there are "no set rates per se for the individual trapper to go by," nor is there "some sort of scale that both industry and the trapper can use to come to terms rather than go to arbitration." (Roger Boniface, HT V22, p. 2062) In addition, no funding was allocated under Section 18 for implementation of the compensation provisions. This participant suggested that, while it may have been possible previously for each trapper to come to an arrangement on compensation with individual exploration companies that might have created more limited, seasonal impacts, much more would be required to make a compensation claim for the impacts created by the permanent presence of the pipeline and associated activities.

The Dehcho Harvesters Council rejected the Proponents' approach that compensation be dealt with on an individual basis. Instead, it recommended that the:

condition of license include the need for the project management team to cease their current approach of compensation to harvesters as individuals and be required to deal with the First Nations as governments in dealing with all aspects of the project within First Nation territory. (J-DHC-00017, p. 4)

TYPES OF COMPENSATION REQUIRED TO ADDRESS PROJECT IMPACTS

The third issue addressed by participants was the types of compensation that would be required to address impacts of the Project.

The Liidlii Kue First Nation described its experience with the Norman Wells oil pipeline as causing animals to relocate to new areas away from the pipeline, requiring harvesters to travel farther to find animals. They made the following recommendations concerning specific forms and coverage of compensation:

- compensate harvesters for loss of wild foods based on the cost of groceries;
- allow harvesters access to their traplines and trails; and
- compensate harvesters adequately for lost trapping income.

The Dehcho Harvesters Council also made the following recommendations on specific areas of Project impact that it sought to have addressed through harvesting compensation:

- that impact, access benefits and compensation be paid to Dehcho harvesters to recover the cost of any environmental impact, destruction or damage caused as a result of the Project (for example, loss of traditional foods, fur and fish); and
- that financial compensation be paid on an annual basis to the Regional Harvester's Management Board to provide it capacity to support financial needs of harvesters and their families to deal with potential loss of equipment, shelters, destroyed trails, emotional distress, spiritual distress and added costs to maintain their lives as harvesters through the need to open new trails.

A number of participants proposed to the Panel that the impacts of the Project would be of greater magnitude and longer duration than suggested by the Proponents' significance determination in the EIS. In particular, the Sambaa K'e Dene Band disputed the Proponents' evaluation and conclusions regarding potential impacts of the Project on harvesting activities. The Sambaa K'e Dene Band stated that it strongly believes that "these impacts will be adverse, of high magnitude during construction and [of] moderate magnitude during operations, and long-term (i.e. extending beyond the construction phase)." Given this assessment of Project impacts, the Sambaa K'e Dene Band opposed the compensation regime proposed by the Proponents. It stated that the compensation regime appeared to suggest that "compensation will only be provided where, during the actual construction process, there is evidence of harvesters

and trappers being adversely affected.” It asserted that compensation must be “based on a clear understanding of the nature and extent of project impacts.” (J-SKDB-00032, p. 2)

In their closing remarks, the Dehcho First Nations emphasized their view that damages from the Project will continue throughout the life of the Project through the impacts of operations on animal habitat and behaviours. Therefore, the Dehcho Harvesters Council recommended that compensation for impacts on harvesting include programs for the maintenance of traditional culture. The Gwich’in Renewable Resources Board, like the Dehcho Harvesters Council, also recommended the need for compensation to address the maintenance of traditional knowledge and culture.

The Déline Renewable Resources Council stated that the problem with the harvester compensation system provided for under the land claim agreements is that it provides only for monetary compensation or possibly in-kind compensation. The Council suggested that compensation should also include programs addressing loss of livelihood, loss of culture and loss of other values not mentioned specifically in the land claim.

The need to utilize compensation to provide programs that address the longer-term impacts of the Project in terms of loss of livelihood and culture was addressed in the submission by Randal Pokiak of Tuktoyaktuk. He pointed out that “most Inuvialuit that stay and live in the ISR still depend on the wildlife resource as food to feed their families.” He further stated:

This includes when those on the wage economy take their holiday period during the warm spring season to take the opportunity to teach their children the value and importance and techniques of harvesting the wildlife, as well as teaching culture and traditions while out on the land. (J-POKIA-00005, p. 38)

According to Mr. Pokiak’s submission, during development such as that proposed by the Project, “the impact directly on harvesters is not considered properly or effectively and is unsatisfactory at the present time in the view of this harvester.” He further submitted that the impacts of development in the area will not be limited to the Project itself, but rather “once the MGP and the three Anchor Fields gets the green light, the threshold door will be kept wide open for more pipelines that will expand into the other parts of the ISR creating more impacts and competition for harvesters and the wildlife resources for habitat space on the land and offshore.” He also stated in his submission that, among all the Inuvialuit, harvesters will be culturally, socially, environmentally and financially impacted the most, and that the land will be “alienated from their normal use during all of the phases of the MGP until the area is restored to its natural state.” He continued: “Before that restoration takes place and the wildlife returns, a lifetime will pass by, possibly two lifetimes, even if each person lives to an old age, it could be that it will never be fully restored.” (J-POKIA-00005, p. 83)

His submission suggested that, once the oil and gas interest is gone, many Inuvialuit will wish to revert back to dependence on

hunting, fishing and trapping, since “no matter what happens in the ISR these are the things most dependable and will continue to provide for Inuvialuit survival.” (J-POKIA-00005, p. 40) Therefore, he stated, the long-term impacts of the pipeline and the subsequent induced development on the maintenance and transmission of traditional knowledge between generations must be considered.

12.3.4 PANEL VIEWS AND RECOMMENDATIONS

The Panel notes that most of the impacts identified by participants appear to be contemplated within the compensation process proposed by the Proponents, i.e. loss of country foods; loss of trapping income; loss of equipment, shelters and trails; and additional costs required to open new trails or harvest in new areas. However, it appears that impacts such as emotional distress and spiritual distress go beyond the types of impact contemplated by the Proponents and by the land claim agreements.

The Panel is of the view that a regime for compensating harvesters whose livelihood is adversely impacted by the Project must be in place prior to Project approval. The compensation regime should provide not only for fair and equitable outcomes, but also for a simple and efficient process. Both outcome and process should be well understood by harvesters in advance of the Project. The regime should apply to all harvesters in the Project Review Area, whether or not they are currently the beneficiaries of a comprehensive land claim agreement.

The Panel considers that the sum of the Proponents’ commitments, both specified in writing and stated orally in the hearings, in large measure fulfills these requirements. The resulting regime would, in the Panel’s understanding, be consistent with the requirements of existing land claim agreements in the NWT and provide for greater clarity with respect to both process and coverage than is actually specified in those agreements.

RECOMMENDATION 12-1

The Panel recommends that the Governor-in-Council, pursuant to section 8 of the Territorial Lands Act, as a condition of disposing of any federal Crown land required for the Mackenzie Gas Project, require the Proponents to conclude a harvester compensation agreement for each of the Inuvialuit Settlement Region, the Gwich’in Settlement Area, the Sahtu Settlement Area and the Dehcho Region of the Northwest Territories.

The Panel further recommends that in each of the above noted regions the agreements be concluded with a single harvester organization that acts on behalf of all harvesters in the region, that the Government of Canada provide funds to each regional harvester organization to negotiate harvester compensation agreements with the Proponents, and that each agreement address, at a minimum, the following:

- *the scope of coverage (what is eligible for compensation);*
- *eligibility criteria (who is eligible for compensation);*

- *categories of remedies available and choices available to the claimant;*
- *the specific process for making compensation claims (the steps required of the claimant and of the Proponents);*
- *the information required to substantiate a claim (both burden of proof and extent of loss);*
- *roles and responsibilities of each party to the agreement in processing and, if necessary, adjudicating compensation claims;*
- *any additional resources that may be required by Aboriginal authorities that have responsibilities for assisting harvesters with their claims;*
- *the time frame for reviewing and awarding a claim;*
- *the process for communicating and informing harvesters about the compensation program;*
- *provision for mediation;*
- *a dispute resolution mechanism;*
- *the enforceability of the agreement; and*
- *any other matter of importance to either party to the agreement.*

RECOMMENDATION 12-2

The Panel recommends that the National Energy Board, as a condition of any certificate or approvals it might issue in relation to the Mackenzie Gas Project, require the Proponents to file the completed harvester compensation agreements (referred to in Panel Recommendation 12-1) with the National Energy Board six months prior to the commencement of construction and to communicate the substance of each agreement with all affected harvesters no later than two months after filing the completed agreement.

As noted, the Proponents intend to extend harvester compensation benefits to individuals who are not beneficiaries of settled land claim agreements. These benefits are to be the same as the harvester compensation benefits that beneficiaries are entitled to in the land claim agreements. The Proponents would be responsible for communicating this effectively.

With the implementation of Panel Recommendations 12-1 and 12-2, the Panel is of the view that the Project would not likely cause significant adverse impacts on harvester livelihood and income. Further, the Panel considers that these recommended arrangements would also provide an adequate basis for addressing the impacts of possible future developments, if applied to the proponents of those developments, and the Panel therefore recommends the following:

RECOMMENDATION 12-3

The Panel recommends that the Government of Canada, when disposing of federal Crown land for the purposes of oil and gas development in the Northwest Territories, require the proponent to comply with the same or equivalent conditions, mitigation measures or commitments with respect to harvester compensation agreements as govern the Proponents of the Mackenzie Gas Project.

Some participants recommended that harvest studies be undertaken as a basis for documenting harvester compensation claims. The Proponents stated that they would not require such studies for the compensation process. The Panel therefore finds that it is not necessary to pursue further harvest studies in the context of the Project. The Sahtu Renewable Resources Board's recommendation was more broadly framed, however, and was not restricted to the Project. Depending on the compensation policies of other developers, harvest studies might be required. However, the Panel did not hear any specific evidence to that effect, or that such studies are required for monitoring and follow-up programs. Therefore the Panel cannot comment further on that recommendation.

The Panel acknowledges the concern expressed by some participants that future developments (of which the Project may be a key part) may cumulatively and adversely affect the ability to maintain harvesting as a livelihood and a way of life, and to maintain the Traditional Knowledge and culture necessary to its success. Several participants spoke of the need for programs to provide for the maintenance and transfer of Traditional Knowledge and culture between Elders and youth, administered by harvester organizations. They suggested that such programs should be included as a kind of compensation. Some also suggested that compensation should cover emotional and spiritual distress. In the Panel's view, such programs are not properly part of a wildlife compensation regime. The Panel does not consider that emotional and spiritual distress could be effectively quantified in relation to the Project and does not support the view that the Proponents should be liable for such distress. The Panel would consider such programs an enhancement rather than a Project-specific mitigation. The social and cultural aspects of harvesting are discussed in Chapter 16, "Social and Cultural Impacts."

12.4 HARVESTER COMPENSATION (ALBERTA)

12.4.1 EXISTING CONDITIONS

The Alberta Trappers' Compensation Program is a program jointly funded by government and industry that provides a framework for compensating trappers of Registered Fur Management Areas for trapping-business losses related to industrial activity and cabins lost to naturally caused forest fires.

The only registered trapline in the vicinity of the Northwest Alberta Facilities is held by members of the Dene Tha' First Nation.

12.4.2 PROPONENTS' AND NOVA GAS TRANSMISSION LTD.'S VIEWS

In northern Alberta, harvester compensation would be the responsibility of NGTL. The Proponents noted that in Alberta there is already legislation in place that deals with compensation for trappers and establishes the Alberta Trappers' Compensation Program. NGTL's construction activities would be subject to this legislation's provisions, although NGTL explained that its compensation program would not necessarily be limited to the requirements of the Alberta Trappers' Compensation Program.

NGTL further stated that the matter of trappers' compensation is addressed in a Community Cooperation Protocol Agreement between NGTL and the Dene Tha' First Nation. Since it is a private agreement, its contents were not disclosed to the Panel. However, NGTL provided the Panel with a brochure that outlined how the NGTL compensation program works. Under the Trapper Compensation and Engagement Program, trappers are classified into three categories:

- full-time active trappers;
- part-time hobby trappers; and
- trapline owners who do little if any trapping.

The NGTL program provides for negotiation of compensation with the senior holder of a trapline within the framework of three elements:

- **Project notification:** A registered letter is sent to affected trappers in advance of any project that may affect a trapline, with a payment to cover review of the material.
- **Pre-construction consultation/negotiation:** Meetings are held with each affected trapper to discuss potential impacts and determine a fair payment schedule, with payments to cover meetings, expenses for adjusting trapping activities, and reasonable compensation for disturbance.
- **Post-construction fur loss negotiation/compensation:** Compensation is provided for fur loss based on actual fur loss, auction prices, a five-year average revenue of the trapper and his or her current trapping classification, and fur affidavits and receipts from the Government of Alberta's Fish and Wildlife Division.

The statement in NGTL's application to the Alberta Energy and Utilities Board was that the Dene Tha' First Nation's position is that NGTL's Trapper Compensation Program is inadequate. Also noted was that "the final compensation program will be developed through negotiations as part of the Community Cooperation Protocol Agreement and the Project-specific Participation Agreement." (J-IORVL-00599, p. 39) With respect to the areas of the compensation program that the Dene Tha' First Nation found inadequate, NGTL indicated that it and the Dene Tha' First Nation were re-establishing a sub-table of the negotiation table to look at harvester compensation but that these negotiations had not yet commenced.

NGTL advised the Panel that its application to the Alberta Energy and Utilities Board contained a commitment that the final compensation program would be developed through negotiations as part of the Community Cooperation Protocol Agreement.

12.4.3 PARTICIPANTS' VIEWS

The Dene Tha' First Nation filed, and subsequently withdrew, the following recommendation:

- In order to ensure that the Dene Tha' First Nation is able to exercise its traditional practices and rights in the NWT and Alberta, the Panel should recommend that any authorizations issued by Canada and Alberta must be conditional upon:
 - Imperial Oil Resources Ventures Limited and NGTL negotiating compensation with Dene Tha' First Nation trappers for any adverse impacts to their livelihood; and
 - Imperial Oil Resources Ventures Limited and NGTL not restricting access to Dene Tha' First Nation hunters, trappers and gatherers.

12.4.4 PANEL VIEWS AND RECOMMENDATIONS

The Panel understands that NGTL has committed to develop a final trapper compensation program through negotiations with the Dene Tha' First Nation on a Project-specific participation agreement in accordance with the Community Cooperation Protocol Agreement. The Panel also understands that these negotiations would result in a final harvester compensation program that would supplement or replace NGTL's Trapper Compensation and Engagement Program, which was found to be inadequate by the Dene Tha' First Nation.

The Panel endorses NGTL's commitment to negotiate and conclude a harvester compensation agreement with the Dene Tha' First Nation and encourages NGTL to do so prior to the commencement of construction of the Northwest Alberta Facilities. The Panel notes that, while members of the Dene Tha' First Nation may be able to access the Alberta Trappers' Compensation Program administered by the Alberta Trappers' Association, that program relates only to furbearers and does not address the broader economic, social or cultural impacts associated with harvester losses. In the Panel's view, the Dene Tha' First Nation should have access to a Project-related harvester compensation process similar to that which the Proponents have committed to implementing in the NWT, and that it would be NGTL's responsibility to provide for this with respect to the Northwest Alberta Facilities.

RECOMMENDATION 12-4

The Panel recommends that the Government of Alberta, as a condition of disposing of any provincial Crown land required for the Northwest Alberta Facilities, require NOVA Gas Transmission Ltd. to conclude a harvester

compensation agreement with the Dene Tha' First Nation prior to the commencement of construction of the Northwest Alberta Facilities.

The Panel further recommends that NOVA Gas Transmission Ltd. conclude the harvester compensation agreement with the Dene Tha' First Nation, or other harvester organization that acts on behalf of all harvesters in the region that might be affected by the Northwest Alberta Facilities, that Indian and Northern Affairs Canada provide funds to the Dene Tha' First Nation or other harvester organization to negotiate the harvester compensation agreement with NOVA Gas Transmission Ltd., and that the agreement address, as a minimum, the following:

- *the scope of coverage (what is eligible for compensation);*
- *eligibility criteria (who is eligible for compensation);*
- *categories of remedies available and choices available to the claimant;*
- *the specific process for making compensation claims (the steps required of the claimant and of NOVA Gas Transmission Ltd.);*
- *the information required to substantiate a claim (both burden of proof and extent of loss);*
- *roles and responsibilities of each party to the agreement in processing and, if necessary, adjudicating compensation claims;*
- *any additional resources that may be required by Aboriginal authorities that have responsibilities for assisting harvesters with their claims;*
- *the time frame for reviewing and awarding a claim;*
- *the process for communicating and informing harvesters about the compensation program;*
- *provision for mediation;*
- *a dispute resolution mechanism;*
- *the enforceability of the agreement; and*
- *any other matter of importance to either party to the agreement.*

RECOMMENDATION 12-5

The Panel recommends that the appropriate regulatory authority, as a condition of any licence or authorization it might issue in relation to the Northwest Alberta Facilities, require NOVA Gas Transmission Ltd. to file the concluded harvester compensation agreement (referred to in Panel Recommendation 12-4) six months prior to the commencement of construction of the Northwest Alberta Facilities and to communicate the substance of the agreement to all affected harvesters no later than two months after filing the completed agreement.

The Panel also notes that the Dene Tha' First Nation entered into a Settlement Agreement with the federal Crown in November 2006 as settlement of litigation in relation to the Project. In that agreement, Canada provided \$25 million to the Dene Tha' First Nation to, among other things, assist it to address the socio-economic impacts of the construction and operation of the Project. As the Dene Tha' First Nation will have considerable input into the disposition of those monies, it would

be in a position to establish a program, perhaps in conjunction with the provisions of the compensation program with NGTL, to compensate for a broader range of impacts arising from wildlife losses suffered by their membership arising from the Project.

12.5 WORST-CASE SCENARIOS IN THE INUVIALUIT SETTLEMENT REGION: MITIGATION AND POTENTIAL LIABILITY OF THE PROPONENTS

The Panel is required by Annex 2 to Schedule 1 of the *Joint Review Panel Agreement (JRPA)* to recommend in respect of the Inuvialuit Settlement Region:

- a) Terms and conditions relating to mitigation measures that would be necessary to minimize any negative impact on wildlife harvesting, as referred to in paragraph 13(11)(a) of the IFA, including, as far as is practicable, measures to restore wildlife and its habitat to its original state and to compensate Inuvialuit hunters, trappers and fishermen for the loss of their subsistence or commercial harvesting opportunities; [and]
- b) An estimate of the potential liability of the Proponents, determined on a worst case scenario, taking into consideration the balance between economic factors, including the ability of the Proponents to pay, and environmental factors, as referred to in paragraph 13(11)(b) of the IFA.

Section 7 of the JRPA states: "For greater certainty, the establishment of the Environmental Impact Review pursuant to this Agreement does not diminish any financial responsibility or liability for damages Canada or the Proponents may have under sections 13(13) to 13(16) of the IFA."

This section describes proposed mitigation measures on wildlife harvesting with respect to worst-case scenarios in the Inuvialuit Settlement Region as well as the potential liability of the Proponents. A description of the worst-case scenarios as agreed to by the Proponents and the Inuvialuit Game Council is set out in Chapter 7, "Accidents, Malfunctions and Emergency Response."

12.5.1 PROPONENTS' MITIGATIONS

During the course of the proceedings, the Proponents made several commitments relating to mitigation measures to minimize any negative impacts on wildlife harvesting in the Inuvialuit Settlement Region. These include commitments to:

- control the speed of heavy-lift ships and barges;
- use marine mammal monitors during transit;

- advise marine captains to be vigilant about watching for whales;
- dredge after the annual beluga harvest;
- conduct aerial reconnaissance flights to identify aggregations of marine mammals before transit of heavy-lift vessels and barges;
- ensure that flight plans include minimum altitudes to comply with permit conditions in the Inuvialuit Settlement Region;
- develop species protection plans for barren ground caribou, grizzly bear and wolverine;
- avoid encounters with caribou when caribou are present or moving through an area;
- provide funds for telemetry for barren ground caribou and range condition studies;
- develop protocols for managing and/or avoiding interactions between bears and humans;
- conduct pre-construction surveys to identify active bear dens;
- enhance off-site habitat, or implement restoration and wildlife enhancement programs, if required;
- maintain contact with Hunters and Trappers Committees, Wildlife Management Advisory Committees and government agencies to advise them of incidents involving wildlife;
- hire wildlife monitors or environmental monitors from local communities;
- ensure that a wildlife monitor is on-site during drilling to assess potential wildlife conflicts;
- design waste management plans to avoid attracting grizzly bears and wolverines to Project sites;
- prevent or control impacts on wildlife and wildlife habitat before drilling and construction begins in the Inuvialuit Settlement Region;
- comply with the *Beaufort Sea Beluga Management Plan* and the proposed regulations for the Tarium Niruyutait Marine Protected Area;
- prepare detailed wildlife management plans before drilling and construction begins in the Inuvialuit Settlement Region based on the Panel’s review, Traditional Knowledge and community consultations; and
- manage Project activities in the barren ground caribou winter range between October and January to limit interaction with caribou, to the extent practical.

12.5.2 ESTIMATE OF POTENTIAL LIABILITY

The Joint Secretariat — Inuvialuit Renewable Resources Committees filed figures and tables summarizing the number of species harvested in each 10-km by 10-km grid within a 15-km radius of each well blowout and 5 km of each pipeline rupture scenario. The data provided by the Joint Secretariat was collected for the Inuvialuit Harvest Study, which was conducted from 1988 to 1997. The information filed with the Panel included the reported harvest quantities for the Inuvialuit Harvest Study time period rather than an estimated total based on harvester response rates. Harvesting location was identified by harvesters on a map within a grid 10 km by 10 km.

Early in the Panel’s proceedings, the value for each species harvested was provided by the Joint Secretariat. Subsequently, the Joint Secretariat confirmed that the values, as initially filed, remain current. With respect to grizzly bear, the value is based on the dollar amount received by an Inuvialuk for leading a sport hunter on a grizzly bear hunt.

12.5.3 PANEL VIEWS AND RECOMMENDATION

The Panel is of the view that the commitments made by the Proponents as mitigation measures necessary to minimize any negative impact on wildlife harvesting in the Inuvialuit Settlement Region are adequate.

For each blowout or pipeline rupture, the Panel calculated the value of harvest loss for an average year using the harvest data and monetary value supplied by the Joint Secretariat. These harvest values for each worst-case scenario are summarized in Table 12-1.

The assumptions made in the calculation of potential liability of the Proponents with respect to harvest compensation include:

- the number of animals harvested is based on the 1988–1997 period, when the harvest data was collected;

Table 12-1 Value of Harvest Loss

Worst-Case Scenario	Value of Harvest Loss/Year (\$2007)
Niglintgak blowout	12,000
Taglu blowout	7,600
Parsons Lake North blowout	18,500
Parsons Lake South blowout	22,000
Taglu lateral rupture	6,000
Storm Hills lateral rupture	11,200

Source: Panel calculation based on harvest data and harvest values provided by the Joint Secretariat

- the harvest value is based on the 2007 figures provided by the Joint Secretariat;
- calculations assume that the scenarios would prevent hunting or fishing for a period of one year; and
- no account has been made for limitations of the harvest survey.

The higher values for Parsons Lake and Storm Hills reflect the fact that more caribou are harvested in these areas.

Table 12-1 lists the value of harvested species for one year within a radius of 15 km for a blowout and within a radius of 5 km for a pipeline rupture. The figures contain no provision for future harvest loss due to the destruction of prime bird habitat or nesting and breeding birds or their chicks or eggs. Therefore, in order to account for these factors, the Panel recommends that the potential liability be increased by a factor of five for Taglu and Niglintgak to compensate Inuvialuit hunters, trappers and fishermen for the loss of their subsistence or commercial harvesting opportunities over several years, while the bird population rebuilds and caribou re-establish occupancy of the area. Table 12-2 lists the resulting potential liability for harvest compensation after this calculation has been made.

Table 12-3 estimates the maximum costs to the Proponents for recovery and clean-up of the worst-case scenarios. This assumes

that a relief well would be necessary to stop the blowouts at the Anchor Fields and that up to 1 km of pipe would have to be replaced at each pipeline rupture. Cost estimates come from the development costs estimates of each *Development Plan Application* and were modified to reflect the increased cost for each Anchor Field and the gathering system as reflected in the May 2007 *Supplemental Information — Project Update*. The Panel is of the view that these cost estimates include landscape restoration costs.

In order for the Panel to comply with the requirements of the IFA, the Panel makes the following recommendation:

RECOMMENDATION 12-6

The Panel recommends that the National Energy Board include as conditions of any certificate or approvals it might issue in relation to Mackenzie Gas Project facilities in the Inuvialuit Settlement Region:

- *the specific commitments as set out in Section 12.5.1 of this Report that the Proponents have made with respect to mitigating negative impacts on wildlife harvesting in the Inuvialuit Settlement Region; and*
- *evidence of financial responsibility in a form and amount satisfactory to the National Energy Board to cover the liability from individual Proponents as described in the estimates for the worst-case scenario in the Inuvialuit Settlement Region and as set out in Section 12.5.3 of this Report.*

Table 12-2 Potential Liability for Harvest Compensation

Worst-Case Scenario	Proponent	Potential Liability (\$2007)
Niglintgak blowout	Shell Canada Limited	60,000
Taglu blowout	Imperial Oil Resources Limited	38,000
Parsons Lake blowout	ConocoPhillips Canada (North) Limited (75%) and ExxonMobil Canada Properties (25%)	22,000
Gathering lines rupture	Imperial Oil Resources Ventures Limited	11,000

Source: Table 12-1

Table 12-3 Cost Estimates for Recovery and Clean-Up

Worst-Case Scenario	Proponent	Potential Liability (\$2007)
Niglintgak blowout	Shell Canada Limited	30,000,000
Taglu blowout	Imperial Oil Resources Limited	30,000,000*
Parsons Lake blowout	ConocoPhillips Canada (North) Limited (75%) and ExxonMobil Canada Properties (25%)	40,000,000
Gathering lines rupture	Imperial Oil Resources Ventures Limited	6,000,000

Note:

* The Panel predicted that the cost estimate for recovery and clean-up at Taglu would be the same as for Niglintgak.

Source: Adapted from J-CPCNL-00002, Section 14, p. 5, J-SCL-00010, Section 14, p. 5, J-IORVL-00953, Section 7, p. 4