

**Report on the Comprehensive Review of the First Ten Years of
Implementation of the *Eeyou Marine Region Land Claims Agreement***

Prepared by

Crown-Indigenous Relations and Northern Affairs Canada, in collaboration with the
Grand Council of the Crees (Eeyou Istchee) and the Cree Nation Government

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FOREWORD

The Minister of Crown-Indigenous Relations and the Grand Council of the Crees (Eeyou Istchee) and Cree Nation Government are pleased to present this report on the comprehensive review of the first ten years of implementation of the *Eeyou Marine Land Claims Agreement* (EMRLCA). This report was prepared pursuant to sections 13 and 14 of the [Eeyou Marine Land Claims Agreement Act](#)¹ (the “EMRLCA Act”) and paragraphs 2.48 to 2.56 of the EMRLCA.²

Subsection 14(1) of the EMRLCA Act requires that the Minister responsible for the implementation of modern treaties – the Minister of Crown-Indigenous Relations – undertake a comprehensive review of the implementation of the EMRLCA within ten years after the Act receives royal assent. Subsection 14(2) of the Act requires that the Minister table a report of this comprehensive review before each House of Parliament.

Under subsection 13(1) of the EMRLCA Act, the GCC(EI) may undertake its own review of the implementation of the EMRLCA, and submit its own report to the Minister, which would also be tabled before each House of Parliament.

While the EMRLCA Act offers the opportunity for the Parties to present two separate reports to Parliament, the Minister and the GCC(EI) have agreed to work collaboratively and present a joint report on the comprehensive review of the first ten years of implementation of the EMRLCA.

Consequently, this report provides an overview of the EMRLCA, including its historical context that led to its conclusion and ratification. This report also highlights the various activities undertaken by the Crees and Canada, as well as other parties and stakeholders, during the first ten years of implementation.

The implementation of modern treaties and self-government agreements by Indigenous, federal and provincial or territorial signatories is a key element in furthering renewed Nation-to-Nation, Inuit-Crown and Government-to-Government relationships consistent with principles of Indigenous self-governance and self-determination and the ongoing implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

This report highlights some of the main implementation challenges faced during this period, and provides the basis upon which the parties can explore solutions to address these challenges.

As such, this report and its findings, along with further consultations and considerations, will inform the renewal of the Implementation Plan for the subsequent ten-year period and provide guidance to the Parties in determining the amounts of funding that shall be provided under the Implementation Plan to implement the EMRLCA in the subsequent ten-year planning period, the whole in accordance with sections 8 and 9 of the Implementation Plan.

¹ S.C. 2011, c. 20.

² Under paragraph 2.48 of the EMRLCA, Canada and the Crees recognize and acknowledge that the EMRLCA provides a foundation for an ongoing relationship between the Parties in regard to the Eeyou Marine Region and commit to conducting a periodic review of the EMRLCA, starting on the tenth anniversary of its coming into force.

LIST OF ACRONYMS

CIRNAC	Department of Crown-Indigenous Relations and Northern Affairs Canada
CTA	Cree Trappers' Association
DFO	Department of Fisheries and Oceans
ECCC	Environment and Climate Change Canada
EMR	Eeyou Marine Region
EMRLCA	Eeyou Marine Region Land Claims Agreement or Agreement between the Crees of Eeyou Istchee and Her Majesty the Queen in Right of Canada concerning the Eeyou Marine Region
EMRWB	Eeyou Marine Region Wildlife Board
EMRIRB	Eeyou Marine Region Impact Review Board
EMRPC	Eeyou Marine Region Planning Commission
GCC(EI)	Grand Council of the Crees (Eeyou Istchee)
IPGs	Institutions of Public Government
JBNQA	James Bay and Northern Quebec Agreement
NILCA	Nunavik Inuit Land Claims Agreement
NLCA	Nunavut Land Claims Agreement
NIRB	Nunavut Impact Review Board
NMR	Nunavik Marine Region
NMRPC	Nunavik Marine Region Planning Commission
NMRIRB	Nunavik Marine Region Impact Review Board
NMRWB	Nunavik Marine region Wildlife Board
NSA	Nunavut Settlement Area

A. EXECUTIVE SUMMARY

The EMRLCA came into force on February 15, 2012, more than three decades after the signing of the *James Bay and Northern Quebec Agreement* (JBNQA). During the first ten years, the EMRLCA was implemented generally in accordance with its accompanying Implementation Plan. Some of the main accomplishments during this initial period include:

- The establishment of the Implementation Committee that meets on a regular basis to oversee the implementation of the EMRLCA and to serve as a forum to address ongoing implementation issues;
- The establishment of the EMRWB, EMRPC and EMRIRB;
- The construction of a new office building and staff housing in Waskaganish by the Cree Nation Government with Cree funds to accommodate the needs for office space of the EMRWB, EMRPC and EMRIRB and housing for their staff;
- Certain community consultations in the development of a draft land use plan for the EMR;
- The establishment of a wildlife research fund;
- Certain decisions by the EMRWB pertaining to wildlife management and conservation;
- The development of guidance documents and reference materials for the screening and review of project proposals in the EMR.

Some of the key objectives of the EMRLCA are to promote the social, economic, and cultural well-being of the Crees and to increase their participation in the planning and management of resources in the EMR. The fulfillment of these objectives requires that the Crees become more familiar and engaged with the new structures and systems established pursuant to EMRLCA.

From a more holistic perspective, the implementation of the EMRLCA has presented certain challenges identified by the Grand Council of the Crees (Eeyou Istchee) and the Cree Nation Government, particularly in terms of its integration with Cree realities and its harmonization with the JBNQA and existing structures and regimes already familiar to the Crees.

One of the main conclusions of this report is that the future implementation of the EMRLCA will require efforts and investments to build stronger relationships with the Cree coastal communities of Eeyou Istchee and among stakeholders, to support the Institutions of Public Government (IPG) in the continued fulfillment of their respective mandates, and to develop mechanisms to promote and support a certain level of operational harmonization between the structures and systems/regimes established respectively under EMRLCA and the JBNQA.

B. GENERAL OVERVIEW OF THE EMRLCA

The Crees of Eeyou Istchee and the Government of Canada are the Parties to the EMRLCA, which they signed on July 7, 2010. The Government of Nunavut signed the EMRLCA as an intervening party. The EMRLCA came into effect on February 15, 2012, with the coming into force of the EMRLCA Act.

The EMRLCA is a comprehensive land claims agreement and treaty within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.³ The EMRLCA and the EMRLCA Act prevail over other federal legislation to the extent of any inconsistency or conflict between them.⁴

The EMRLCA covers a settlement area, referred to as the Eeyou Marine Region (EMR), of approximately 61,270 square kilometres along the Quebec shore in the James Bay and southeastern Hudson Bay. The EMR forms part of the Cree homeland of Eeyou Istchee and remained outside the scope of the JBNQA of 1975 and of its settlement area in Northern Quebec. The Crees actively use and occupy the EMR. However, the Cree communities themselves, home to over 19,000 Cree residents, are located in the adjacent JBNQA settlement area in Northern Quebec, and are therefore outside the EMR.

All Cree individuals who are enrolled or eligible to be enrolled as Cree beneficiaries under the JBNQA are automatically enrolled as beneficiaries under the EMRLCA.⁵

The EMRLCA sets out the rights and interests of the Crees, including land and harvesting rights, and management systems and measures, in the EMR. The islands in the EMR represent approximately 1,650 square kilometres of land mass. The Crees own almost 1,050 square kilometres of islands, on which they have rights to the land and subsurface resources. The Government of Canada retains ownership of North Twin Island and a portion of South Twin Island, representing together approximately 200 square kilometres of land mass in the EMR. Canada also retains jurisdiction over the marine waters and ownership of the seabed in the EMR.

The EMR includes an overlapping area of interest for both the Crees and the Nunavik Inuit. In 2003, the Crees and the Inuit concluded an *Agreement relating to the Cree/Inuit Offshore Overlapping Interests Area between the Crees of Eeyou Istchee and the Nunavik Inuit* ("Cree/Inuit Offshore Overlap Agreement"), which is incorporated into both the EMRLCA and the Nunavik Inuit Land Claims Agreement (NILCA). This Overlap Agreement sets out the respective rights and interests of the Crees and Inuit, and the management systems and measures, in the area of the EMR and Nunavik Marine Area (NMR) where the Cree and Inuit have overlapping interests. For example, islands in this overlapping area cover an area of nearly 400 square kilometres and are jointly owned by the Crees and the Nunavik Inuit.

Wildlife Management System

The EMRLCA creates a wildlife management system for the EMR that, among other things, defines and protects Cree harvesting rights, is governed by and implements the principles of conservation, and reflects the primary role of the Crees in the harvest of wildlife and the importance of an effective role

³ EMRLCA, section 2.1.

⁴ Ratification Act, section 6.

⁵ EMRLCA, section 3.1.

for Crees in wildlife management. This wildlife management system provides for the establishment of the Eeyou Marine Region Wildlife Board (EMRWB) as a co-management body for wildlife in the EMR.⁶

The EMRLCA establishes two other co-management bodies, the Eeyou Marine Region Planning Commission (EMRPC), responsible for land use planning and monitoring, and the Eeyou Marine Region Impact Review Board (EMRIRB), responsible for the environmental impact assessment of development projects in the EMR.

The EMRLCA contains detailed provisions concerning protected areas, land-use planning, government employment and contracts, archaeology, ethnographic resources, capital transfers and implementation. The EMRLCA does not specifically address Aboriginal rights or matters that do not relate to or affect the use and ownership of lands or resources in Nunavut and in the area comprising Hudson Bay and James Bay, including Cree self-government in the EMR. Therefore, the provisions of the EMRLCA do not affect such rights or matters.

From a Cree perspective, the EMRLCA is a unique and more recent treaty and land claim agreement with a complex history, intertwined with that of the JBNQA and Nunavut. For the Crees, the context and history of both the JBNQA and Nunavut are essential to a proper understanding of the EMRLCA and of the main challenges involved in its implementation.

On the one hand, and particularly for the Cree Nation, the EMRLCA could be seen as the settlement of certain claims in Eeyou Istchee that remained outstanding at the time of signing the JBNQA in 1975. In fact, the EMRLCA was signed 35 years after the JBNQA treaty to settle claims in an area of the Cree homeland of Eeyou Istchee that remained outside the scope of the JBNQA.

On the other hand, and particularly for Canada and Nunavut, the EMRLCA could be seen as the settlement of certain outstanding claims in Nunavut that were outside the scope of the *Nunavut Land Claims Agreement* (NLCA) of 1993. The framework within which Canada and the Crees negotiated the EMRLCA, and many features of this agreement, were largely defined by the political and geographical realities that led to the parallel evolution of the Nunavut territorial government and of the NLCA.

The NLCA is by far the largest land claims agreement in Canada, covering one fifth of the Canadian land mass. The NLCA contained a commitment from the Government of Canada that eventually led to the creation of the government and territory of Nunavut, while settling Nunavut Inuit claims in the Nunavut Settlement Area (NSA), which represents the largest portion of the Nunavut territory. Some of the remaining portions of the Nunavut territory have since then become the Nunavik Marine Region (NMR) and the Eeyou Marine Region (EMR) established respectively under the Nunavik Inuit Land Claims Agreement (NILCA) and the EMRLCA.

⁶ EMRLCA, section 10.2

C. BACKGROUND AND HISTORICAL CONTEXT

1. The James Bay and Northern Quebec Agreement (JBNQA)

The JBNQA is the first modern treaty and comprehensive land claim agreement with Indigenous groups in Canada. It was negotiated as a result of legal proceedings undertaken by the Cree and the Nunavik Inuit against Quebec, Hydro-Québec and Canada to stop the massive James Bay Hydroelectric Project in Northern Quebec and to protect Cree and Nunavik Inuit rights, the environment and their traditional way of life. It continues to serve as the living foundation of modern Cree treaty rights. In 2010, the Supreme Court of Canada called the JBNQA, “*an epic achievement in the ongoing effort to reconcile the rights and interests of Aboriginal peoples and those of non-Aboriginal peoples in Northern Quebec*”.⁷

The Cree traditional territory of Eeyou Istchee is located primarily in Northern Quebec, where the JBNQA applies, and includes the islands and marine area along the eastern shore of James Bay and southeastern Hudson Bay, as well as an area in Ontario adjacent to Quebec.

Since 1975, the parties to the JBNQA have concluded 28 Complementary Agreements to amend and modernize many of its provisions. Since the signing of the JBNQA, the Crees have concluded more than 80 major agreements with Quebec, Canada and industry, and dozens of laws have been adopted or amended to implement the JBNQA and subsequent agreements. These agreements and legislation have created a unique legal environment, and have established a comprehensive-self-government regime, for the Crees of Eeyou Istchee.

2. Negotiations of Offshore Claims

As part of the negotiations that led to the JBNQA, discussions took place between the Government of Canada and the Crees on certain matters of federal jurisdiction, including the islands off the Quebec shore in the James Bay and southern Hudson Bay. Unfortunately, no formal agreement on these offshore claims could be reached by the time the JBNQA was concluded in November 1975 or in the following years.

Negotiations continued after the signing of the JBNQA, and by January 1977, the parties reached agreement on most substantive issues. The parties exchanged various proposals, which contemplated essentially a regime for selected offshore islands largely mirrored on the JBNQA.

While the Crees began to work on the implementation of the JBNQA, Canada pursued a parallel course of negotiations on the settlement of aboriginal claims in Arctic Canada and the creation of the Nunavut territorial government. This led to the signing of the NLCA in 1993, which, in turn, led to the creation of the Nunavut territory and the Nunavut territorial government in 1999.

In 1986, the Government of Canada announced significant amendments to its Comprehensive Land Claims Policy, which thenceforth expanded the scope of claim negotiations in offshore areas.

⁷ *Québec (Attorney General) v Moses*, [2010] 1 SCR 557 at para 14.

In 1993, the Government of Canada signed a Framework Agreement with the Makivik Corporation regarding the offshore claims of the Nunavik Inuit, which extended into James Bay and overlapped the Cree offshore claims. In 2003, the Crees and the Nunavik Inuit signed the Cree/Inuit Offshore Overlap Agreement, which was later incorporated into their respective land claims agreement with Canada, being the EMRLCA and the NILCA.

In 2008, the Nunavik Inuit and Canada signed the NILCA.

The NLCA sets out a structure and co-management system, which was in large part the basis for future negotiations with the Cree for the offshore area. The structure and management system within the NLCA did not reflect or mirror the regime established under the JBNQA, which includes the designation of “Category I lands” and “Category- II lands”, Cree harvesting rights and the establishment of the Hunting, Fishing, Trapping Coordinating Committee under Section 24 of the JBNQA.

The Crees and Canada reached agreement over the “Cree offshore area” in January 2009. Negotiators initialled the agreement in June 2009. In March 2010, the Cree Nation approved the agreement, following extensive consultations in the Cree communities and among the Crees. The agreement was signed on July 7, 2010, and became known as the EMRLCA. It came into force on February 15, 2012.

D. IMPLEMENTATION OF THE EMRLCA

1. Overview

In the initial ten-year planning period, the Parties have implemented the EMRLCA generally in accordance with the activity-based implementation process set out in the EMRLCA Implementation Plan. The Parties established the Implementation Committee, they made the required organizational arrangements to enable the EMRPC, EMRWB and EMRIRB to begin their operations and fulfill their respective mandates, and carried out a number of activities as detailed below.

The implementation of the EMRLCA has presented certain challenges for the Crees, particularly in terms of its harmonization with the JBNQA and the structures and regimes familiar to the Crees. Some of the key objectives of the EMRLCA are to promote the social, economic, and cultural well-being of the Crees and to increase their participation in the planning and management of resources in the EMR.

Over the years, the Crees have become familiar with the unique framework and the various structures, systems and regimes established by the JBNQA and related legislation and agreements regarding the planning and management of land and resources, the protection of the environment and the development of the territory in the most central part of the Cree traditional territory of Eeyou Istchee.

The EMRLCA has required the Crees to become familiar with a new framework and new structures, systems and regimes, mostly aligned with federal and Nunavut laws and institutions, for the planning and management of land and resources in a relatively smaller part of Eeyou Istchee. From a Cree perspective, the EMRLCA has required efforts to implement and harmonize together two fundamentally and structurally different treaties and land claim agreements straddling their traditional homeland of Eeyou Istchee. The boundary of northern Quebec, which divides the Cree homeland of Eeyou Istchee

and marks the separation between the EMRLCA and the JBNQA treaties, adds another layer of complexity for the Crees in the implementation of the EMRLCA.

2. Government of Canada

a. Role of CIRNAC

Modern treaties are entered into by the Government of Canada on behalf of the Crown as a whole. Consequently, the Crown in right of Canada is accountable for the decisions and actions taken to implement its obligations as set out in modern treaties. All federal departments and agencies must conduct their affairs in a manner that is consistent with Canada's modern treaty obligations and the honour of the Crown. In order to manage the responsibilities of the Crown as a whole, the federal government is committed to a "whole-of-government" approach as part of implementing modern treaties.⁸

The Minister of Crown-Indigenous Relations is responsible to work with treaty partners on the implementation of modern treaties and land claims agreements, including of their spirit and intent.⁹ As such, and consistent with a "whole-of-government" approach, the Department of Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) is primarily responsible in regard to treaty partners for the implementation of Canada's treaty obligations. Where the involvement of particular federal departments or agencies is required, CIRNAC seeks to facilitate communications and the research of mutually satisfactory solutions between such departments or agencies and treaty partners.

During the first ten years of implementation of the EMRLCA, CIRNAC coordinated and participated in the works of the Implementation Committee and held several meetings in regard to funding to ensure proper and timely implementation of the EMRLCA. Additionally, CIRNAC coordinated and organized various meetings with other government departments and bodies with specific implementation responsibilities under the Agreement. CIRNAC representatives worked collaboratively with partners to resolve many implementation issues.

CIRNAC provided support for the operations of the EMR institutions of public government (IPGs) by setting up contribution agreements and by reviewing work plans, budget proposals, activity reports, and financial statements required to issue annual payments. CIRNAC processed the appointment of members, including the chairpersons, on the EMR IPGs, and continues to work to reduce the process timeline for such appointments. When necessary, CIRNAC collaborated with its partners to resolve funding and capacity issues for the EMR IPGs.

⁸ Statement of Principles on the Federal Approach to Modern Treaty Implementation: <https://www.rcaanc-cirnac.gc.ca/eng/1436288286602/1539696550968>.

⁹ Minister of Crown-Indigenous Relations Mandate Letter dated December 16, 2021: <https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-crown-indigenous-relations-mandate-letter>.

b. Capital Payments

CIRNAC made the annual capital transfer payments, for a total amount of \$69,362,510, to the Recipient of Payments, as set out in Chapter 22 of the EMRLCA. The Cree Nation Government was designated as the Recipient of Payments for the purposes of these capital transfer payments.

c. Negotiation Loan Repayment

Under Chapter 22 of the EMRLCA, Canada initially deducted from each annual capital transfer payment an amount for the repayment of the negotiation loan to the Crees. In 2018, Canada changed its policy resulting in the elimination of the use of loans to support comprehensive land claim negotiations and substituting them with non-repayable contribution funding. In 2019, a further policy change resulted in the forgiveness of outstanding comprehensive land claim negotiation loan debt and the reimbursement of negotiation loan debt repaid.

Consequently, CIRNAC paid an amount of \$546,416 to the Cree Nation Government as a reimbursement of the negotiation loan debt that had been previously deducted from the annual capital transfer payments to the Crees.

d. Implementation funding

During the first ten years of implementation, CIRNAC provided, on behalf of the Government of Canada, the following implementation funding:

GCC(EI): a one-time implementation funding payment of \$6,000,000 pursuant to paragraph 25.5.1 of the EMRLCA.

Government of Nunavut: a total of \$4,489,209 to assist the Government of Nunavut in fulfilling its responsibilities under the EMRLCA, pursuant to section 5.3 of the Implementation Plan.

e. Operational funding for EMR IPGs

During the first ten years of implementation, CIRNAC provided, on behalf of the Government of Canada, the following funding through annual contribution agreements with each entity:

EMRPC: a total of \$2,728,212 to support operations and functions as set out in Chapter 8 of the EMRLCA.

EMRWB: a total of \$7,691,950 to support operations and functions as set out in Chapter 13, including funding for the CTA to fulfill its functions set out in Chapter 12 of the EMRLCA.

EMRIRB: a total of \$2,322,503 to support operations and functions as set out in Chapter 18 of the EMRLCA.

In addition, during the initial period of implementation and pending the formal organization of the EMR IPGs, CIRNAC provided an amount of \$706,724 to the Cree Nation Government to support activities related to an interim secretariat for the EMR IPGs.

f. Wildlife Research Fund

Following the coming into force of the EMRLCA, CIRNAC set aside an amount of \$6,019,579 to be administered by the EMRWB, directly or through a trust set up for that purpose, for the establishment of a Wildlife Research Fund to pay for the conduct of wildlife research in the EMR, as contemplated at paragraph 13.3.2 of the EMRLCA. For practical purposes, and pending the formal organization of the EMRWB, this amount was paid and kept in trust by the Cree Nation Government for and on behalf of the EMRWB.

g. Department of Fisheries and Oceans (DFO)

During the first ten years of implementation of the EMRLCA, DFO's implementation activities focused primarily on the operationalization of a coordinated approach to wildlife management in the EMR as issues emerged. This required working with partners such as the *Ministère des Forêts, de la Faune et des Parcs du Québec* and the EMRWB to respond to requests for access to fish or marine mammals and establish or clarify the respective roles of the organizations. Other activities include the following:

- Ensuring coordination between the Nunavik Marine Region Wildlife Board and the EMRWB regarding the Joint Cree/Inuit Zone when a decision from either wildlife management board had impacts on this area;
- Patrolling by DFO Conservation and Protection officers of the waters of the EMR, primarily the Joint Cree/Inuit Zone, on several occasions;
- Ensuring that the EMRWB was informed of any consultations that occurred that had a potential impact on its mandate and functions;
- Holding consultations in several Cree communities respecting the Harbour Seal (*Lacs des Loups Marins*) subspecies and Lake Sturgeon, two species that may be designated/protected under the *Species at Risk Act*.

h. Environment and Climate Change Canada (ECCC)

During the first ten years of implementation, ECCC worked closely particularly with the EMRWB and the EMRIRB on the implementation of the wildlife management regime and the impact review process for proposed development projects in the EMR as provided for under the EMRLCA.

In particular, ECCC and the EMRWB collaborated actively on questions related to the protection and management of migratory birds and species at risk. ECCC consulted the EMRWB regarding activities stemming from the implementation of the *Species at Risk Act* relative to migratory birds and terrestrial species that are present in the EMR. ECCC and the EMRWB also worked together on bird monitoring and research projects.

ECCC worked collaboratively with the EMRWB and the NMRWB on the establishment of a Total Allowable Take and Non-Quota Limitations for the Southern Hudson Bay sub-population of polar bears. Together, they participated in the works of the Polar Bear Administrative Committee and of the Polar Bear Technical Committee. ECCC also kept the EMRWB informed of its decisions and activities concerning Polar Bear management in the Eeyou Marine Region, Quebec and at the national level.

3. GCC(EI) and Cree Nation Government

During the first ten years of implementation, the GCC(EI) and Cree Nation Government carried out a number of activities to support the implementation of the EMRLCA. These included participating in the appointment of representatives on the EMR IPGs, supporting activities related to an interim secretariat of the EMR IPGs pending their formal organization, and providing general support and advice for the implementation of the EMRLCA. The Cree Nation Government built with Cree funds a new office building and housing for staff in Waskaganish to accommodate the needs for office space and staff housing of the EMRWB, EMRPC and EMRIRB.

The Cree Nation Government regulates access to Cree Lands and is responsible, where required, to provide authorization to enter and remain on Cree Lands. In the EMR, the Cree Nation Government, acting as the GCC(EI) Designated Organization or GDO, owns for the Crees most of the islands in the Eastern James Bay and Southern Hudson Bay from Long Island going South. The Cree Nation Government, acting as GDO, has joint ownership with the Nunavik Inuit of most of the islands from Long Island North to Umiujaq. Ownership includes the subsurface mineral rights in the islands owned by the Cree Nation Government for the Crees, or jointly owned by the Cree Nation Government, for the Crees, and by the Nunavik Inuit.

4. EMRLCA Implementation Committee

Following the coming into force of the EMRLCA, the Parties established the Implementation Committee contemplated in section 25.4 of the EMRLCA. The Implementation Committee is composed of four senior officials, one representing the Government of Canada, one representing the government of Nunavut and two (2) representing the GCC(EI)/Cree Nation Government.

The Implementation Committee has held regular meetings to discuss implementation priorities and matters. During the first ten years, the IC met on an average of twice a year, apart from special meetings convened to discuss funding matters. The Implementation Committee held fewer meetings during the Covid-19 pandemic, and such meetings were held virtually. These meetings provided a venue to discuss the distinct obligations of the Parties and of the Government of Nunavut under the EMRLCA, including with respect to the jurisdiction, establishment and operations of the EMR IPGs.

The Implementation Committee provides an ideal forum for the Parties and the Government of Nunavut to work collaboratively on operational and technical aspects of implementation, including support for the EMR IPGs, and recurring matters such as the status of board appointments, status of IPG budget/work plans and reports.

a. Support for the Eeyou Marine Region Institutions of Public Government

The Implementation Committee provided support to the EMR IPGs, particularly at the beginning of their operation, including in regard to board governance, board nomination and appointment process. During the implementation period, the Implementation Committee reviewed strategies to reduce the timeline of board appointments by Canada and to address challenges faced by the EMR IPGs in finding candidates to fill positions. The Implementation Committee continues to work on improving the board appointment process to prevent the interruption of these entities' operations due to lack of a quorum.

The Implementation Committee has provided ongoing support to the EMR IPGs with the submission of their annual work plans and budgets to Canada. The Implementation Committee has also assisted the IPGs with supplementary funding requests and unexpended reinvestment plans when applicable.

The Implementation Committee has provided support to the EMRPC with staffing and funding challenges that resulted in delays in the preparation of a draft land-use plan for the EMR. In 2019, the EMRPC carried out consultations with Cree communities on a draft land-use plan. The Implementation Committee will continue to work with the EMRPC in the preparation and adoption of a land-use plan for the EMR.

b. Reports on Implementation

Every two years, the Implementation Committee is required to provide to the Parties and the Government of Nunavut a report on the implementation of the EMRLCA, in accordance with paragraph 25.4.3(e) of the EMRLCA. The Implementation Committee prepared and made public a first report for the period 2011-12 to 2013-14. The Implementation Committee is presenting a second report covering the period from 2014-15 to 2020-21. Delays in presenting bi-annual reports were a result of shifting priorities of the members of the Implementation Committee, then followed by COVID pandemic.

c. Recommendations for future planning periods

The Implementation Committee can make recommendations to the Parties in regard to the renewal of the Implementation Plan and of the funding amounts that shall be provided under that Plan to implement the EMRLCA in the subsequent ten-year period (2023–2033), in accordance with paragraph 25.4.3f) of the EMRLCA and sections 8 and 9 of the Implementation Plan.

One such recommendation is the creation of a working group, initially comprised of Cree and federal representatives, to carry out a review of past experience and assessment of future needs. As part of this exercise, the working group is expected to engage with and seek input from the Government of Nunavut and the EMR IPGs.

5. Land Exchange Agreement

On September 15, 2020, Cree and federal representatives concluded a Land Exchange Agreement regarding the designation of Bear and Grey Goose Islands as "Cree Lands", in exchange for a transfer to

Canada of Cree Lands of equivalent size jointly selected by the Crees and Canada on South Twin Island, the whole in accordance with paragraph 5.8.7 of the EMRLCA.

CIRNAC representatives facilitated communications with other federal departments involved in this land exchange, particularly the Department of National Defence. The Surveyor General Branch of Natural Resources Canada carried out the required legal surveys on South Twin Island to enable the Crees and Canada to proceed with the land exchange, which had been contemplated by the Parties at the time of signing the EMRLCA. Cree and federal representatives have agreed on the required consequential amendment of the EMRLCA. On June 2, 2022, Canada adopted the required Orders in Council to give effect to the land exchange. A formal amendment of the EMRLCA is contemplated in order to confirm the designation of Bear Island and Grey Goose Island as “Cree Lands”.

Under the terms of the Land Exchange Agreement, Canada remains responsible for any residual contamination associated with the operation of Doppler relay radar stations on Bear Island, and the possible presence of unexploded ordnance (UXOs) on Grey Goose Island. Canada will continue to work in collaboration with the GCC(EI)/Cree Nation Government and the concerned Cree communities to carry out the required measures and activities to inform any visitors to Grey Goose Island of the potential risk of UXOs.

6. Government of Nunavut

The Government of Nunavut is a party of the Implementation Committee and the islands within the Eeyou Marine Region fall within its jurisdiction. The Government of Nunavut has a number of implementation responsibilities such as board nominations for the EMRIRB and EMRIPC and appointments to the EMRWB, land registry activities, research and establishment of marine protected areas to name a few.

7. EMR IPGs

During the early stages of the implementation of the Agreement, the GCC(EI) provided administrative capabilities to the EMRLCA Institutions of Public Government. During this period, the GCC(EI) provided professional services to accelerate the hiring of staff, leasing of office space, arrangement of staff housing, purchasing of supplies and office furnishings. The GCC(EI) and Canada also worked with the chairpersons of the three Institutions of Public Government to provide support to develop their work plans and budgets.

a. EMRPC

The EMRPC was established as an Institution of Public Government pursuant to Chapter 8 of the EMRLCA. It began to operate in 2013, following the appointment of its members. The EMRPC established its head office in Waskaganish, along with the EMRWB and EMRIRB.

The EMRPC is currently composed of five (5) members, all appointed for a term of three (3) years by the Minister of Crown-Indigenous Relations. The GCC(EI) recommends the appointment of two (2)

members, and the Governments of Canada and Nunavut each recommend the appointment of one (1) member. These four (4) members recommend the appointment of the fifth member as the chairperson.

The main responsibilities of the EMRPC include the establishment of broad planning policies, objectives and goals for the EMR, and the development of land use plans to guide and direct resource use and development in the EMR. Among other things, the EMRPC must identify planning regions, and objectives and goals that apply to such regions. It carries out consultations and gathers information to help inform the land-use plans. It is also responsible to determine whether a project proposal in the EMR is in conformity with a land-use plan, and to monitor projects to ensure that they remain in conformity with the applicable land use plans.

The EMRPC has carried out consultations with the Cree communities with a view to developing a draft land-use plan for the EMR. In February 2019, the EMRPC published reports that outline what each community feels is important to them about the EMR, the issues they are facing, and their vision for the future of the EMR. However, some of the technical work has been delayed as a result of the Covid-19 pandemic that started in 2020.

The EMRPC carried out or participated in certain consultations with its counterparts in the NMR and the NSA, respectively the Nunavik Marine Region Planning Commission and the Nunavut Planning Commission.

For more information on the EMRPC and its activities, please consult their website at: <https://www.eeyoumarineregion.ca/planning-commission/>.

b. EMRWB

The EMRWB was established as an IPG pursuant to Chapter 13 of the EMRLCA. It began to operate in 2013, following the appointment of its members. The EMRWB established its head office in Waskaganish, along with the EMRPC and EMRIRB.

The EMRWB is currently composed of seven (7) members, all appointed for a term of three (3) years. The GCC(EI) appoints three (3) members, the federal minister responsible for fish and marine mammals and the federal minister responsible for the Canadian Wildlife Service each appoint one (1) member, and the Nunavut minister responsible for Wildlife appoints one (1) member. These six (6) members provide nominations from which the minister responsible for fish and marine mammals appoints a chairperson.

The EMRWB has primary responsibility in regard to wildlife management decisions in the EMR. It is the main instrument of wildlife management and the main regulator of access to wildlife in the EMR.

The EMRWB has averaged five meetings per year, and has faced staffing challenges, in terms of recruitment and retention of qualified personnel.

Total Allowable Take and Non-Quota Limitations

Among other things, the EMRWB is responsible to establish Total Allowable Take (TAT) and Non-Quota Limitations (NQL) for various species in the EMR. The EMRWB worked in collaboration with the NMRWB

to establish a TAT and NQL for the Eastern Hudson Bay beluga. In 2020, the EMRWB and NMRWB conducted a joint public hearing in Nunavik and Eeyou Istchee to gather information for the preparation of the next Beluga Management Plan (2020–2026). The Plan outlines measures to respect the Inuit harvesting rights to hunt beluga, while supporting the conservation efforts for the Eastern Hudson Bay Beluga.

In 2015, the EMRWB worked in collaboration with the NMRWB to establish a TAT and NQL for the Southern Hudson Bay sub-population of polar bears, a decision that the federal Minister of Environment modified subsequently. In 2016, the Makivik Corporation filed an application for a judicial review in the Federal Court (Trial Division) contesting the decision of the federal Minister of Environment to override the determination of the Boards.

Makivik brought its application for a judicial review on several grounds, including particularly some related to the Minister’s jurisdiction and the reasonableness or correctness of her decision. The GCC(EI) became a party to the proceedings in support of Makivik’s application and highlighted the importance of the honour of the Crown in treaty interpretation and implementation.

In October 2019, the Federal Court dismissed Makivik’s application and declined to make the declarations sought by Makivik and the GCC(EI).¹⁰ Both filed an appeal to the Federal Court of Appeal.

The Federal Court of Appeal rendered its judgment on September 21, 2021.¹¹ It set aside the judgment of the Federal Court and declared that, in participating in the decision-making process under the NILCA to determine the polar bear quotas and other harvesting limitations, the Crown failed to interpret and implement that process in accordance with the honour of the Crown.

In particular, the Federal Court of Appeal found that the Minister was required to be forthcoming with the Boards and to fully disclose to them her reasons for varying one of their decisions, something that she failed to do in this case. The Court held that this is important so that the Boards could properly reconsider their decisions in the light of the reasons provided by the Minister, as part of the decision-making process under the NILCA, which mirrors the decision-making process in the EMRLCA.

In deciding to exercise its discretion to grant a formal declaration in this case, the Federal Court of Appeal considered that such a declaration would help to underline the importance of the Crown’s honouring its section 35 obligations as part of the reconciliation process. It would also, in the Court’s opinion, help to avoid similar failures in the NILCA processes in the future. By extension, the same would apply to the EMRLCA processes.

Cree Trappers’ Association

The Cree Trappers’ Association (CTA) was established pursuant to Sub-Section 28.5 of the JBNQA. Its mandate and responsibility consist, among other things, in protecting and promoting the interests and values of Eeyou/Eenou trappers, traditional pursuits, and governance of hunting territories in Eeyou

¹⁰ *Makivik Corporation et al. v. Canada*, 2019 FC 1297 (T-1994-16).

¹¹ *Makivik Corporation et al. v. Canada*, 2021 FCA 184 (lead file A-447-19).

Istchee. The CTA is a rare example of an institution contemplated under the JBNQA, and known to the Crees, whose mandate has been formally extended to the EMR by virtue of the EMRLCA.

For more information on the CTA and its mandate and activities, please consult their website at <https://creetrappers.ca/>.

Each year, the EMRWB provides to the CTA a part of the funding it receives from Canada to enable it to carry out the functions and responsibilities set out in Chapter 12 of the EMRLCA. These include, among others, acting as a consultative body and recommending wildlife management measures in the EMR on behalf of its members; controlling and monitoring harvesting practices and techniques among the Crees; and generally overseeing the management of Cree harvesting in the EMR.

Among other things, the EMRWB and the CTA held a Strategic Planning Workshop in 2019 that led to the signing of a collaborative agreement between the EMRWB and CTA to set out the framework for their collaborative work in the EMR.

As an example of collaboration, the EMRWB and the CTA conducted polar bear safety workshops in the Cree communities and held consultations regarding Cree knowledge on polar bears that will inform the Quebec Polar Bear Management Plan. Four thousand brochures were distributed to the EMR communities to inform members about polar bear safety. The EMRWB also conducted an environmental stewardship workshop and data collection on species at risk in the EMR.

Wildlife Research Fund

The EMRWB participates in wildlife research and manages a Wildlife Research Fund (initially \$5 million) to support wildlife research in the EMR and consider research projects that inform the EMRWB's critical decisions on wildlife management.

Between 2015 and 2021, the Fund was an effective way of involving Crees in wildlife research and has allowed the financing of valuable research and monitoring in the EMR, including research projects involving bird survey and research infrastructure (Motus Tower). During that period, the EMRWB undertook various wildlife research activities and carried out consultations with the five coastal Cree communities to obtain feedback regarding wildlife research priorities in the EMR between 2016 and 2018. These consultations led to the adoption of a five-year comprehensive research plan in 2019 to analyze eelgrass bed habits in James Bay, as well as assessments of and plans for local fisheries.

The EMRWB issues a call for proposals annually, and assesses the research projects to be funded in the upcoming and their impact on the EMRWB's mandate and wildlife conservation and management. The EMRWB also conducts data collection work on species at risk such as the Red Knot and Yellow Rail.

For more information on the EMRWB and its activities, please consult their website at: <https://www.emrwb.ca/>.

c. EMRIRB

The EMRIRB was established as an Institution of Public Government pursuant to Chapter 18 of the EMRLCA. It began to operate in 2013, following the appointment of its members. The EMRIRB established its head office in Waskaganish, along with the EMRPC and EMRWB.

The EMRIRB is currently composed of five (5) members, all appointed for a term of three (3) years. The Minister of Crown-Indigenous Relations appoint two (2) members upon the nomination by the GCC(EI), and the Governments of Canada and Nunavut each appoint one (1) member. These four (4) members recommend the appointment by the Minister of Crown-Indigenous Relations of the fifth member as the chairperson. According to the by-laws, the EMRIRB shall meet at least twice a year. However, the EMRIRB has exceeded this minimum and has met four to five times a year.

The main responsibilities of the EMRIRB include the screening and review of project proposals, and the monitoring of projects, in the EMR regarding their environmental and socio-economic impacts.

For example, in 2013–2014, the EMRIRB carried out the screening of the Arctic Fibre project proposal, which consisted in the laying on the seabed of a fibre-optic cable from Asia to the United Kingdom through the Northwest Passage, and potentially through the Hudson Bay to Montreal and New York.

The EMRIRB developed various public guidance booklets to assist project proponents and the public in the various processes involved in the screening and review of project proposals in the EMR. In 2016, the EMRIRB, NMRIRB, and Nunavut Impact Review Board (NIRB) signed a Memorandum of Understanding (MOU) to ensure greater collaboration and coordination between the three Boards in regard to their respective functions and areas of jurisdiction. The EMRIRB has attended various national and international events such as the Arctic Net Conference, a global forum of research leaders on Arctic research, and the International Association for Impact Assessment conference.

For more information on the EMRWB and its activities, please consult their website at: <https://www.eeyoumarineregion.ca/impact-review-board/>.

Both the EMRPC and EMRIRB have faced challenges in regards to have sufficient and dedicated resources. These two organizations shared staff resources for the first 7–8 years of implementation but were able to retain dedicated resources for their respective organizations based on the availability of surplus and complementary funding from CIRNAC.

E. CONCLUSIONS, FINDINGS, AND FUTURE IMPLEMENTATION WORK

The Parties implemented the EMRLCA during its first ten years generally in accordance with the EMRLCA Implementation Plan. During this period, the implementation of the EMRLCA has brought to light certain challenges, particularly in terms of its harmonization with existing structures, systems and regimes created under the JBNQA and familiar to the Crees.

The EMRLCA provides the foundations for ongoing co-operation and partnership to advance reconciliation. Treaties, like the EMRLCA, are as much about building relationships as they are about the

settlement of ancient grievances, and the future is more important than the past.¹² The signing of a treaty is the beginning of a process, not a freezing in time of a fixed set of obligations.¹³

Therefore, this report also turns to the future and formulates directions to improve the implementation of the EMRLCA. This will require efforts and investments primarily to build stronger relationships with the Cree coastal communities of Eeyou Istchee and among stakeholders, and to increase the level of operational harmonization between the structures and regimes established under the EMRLCA and the JBNQA.

Implementing the EMRLCA

As a constitutionally protected treaty and nation-to-nation partnership, the EMRLCA must be interpreted and implemented in a manner that fosters reconciliation. It must be given a fair and liberal construction and interpretation to ensure the attainment of its objectives.¹⁴

The fulfillment of these objectives will require that the Crees become more engaged and familiar with the structures and regimes established under the EMRLCA. A higher level of operational harmonization between the EMRLCA and the JBNQA may help achieve such engagement and increased familiarity.

The Parties are hopeful that a fair amount of operational harmonization between the EMRLCA and the JBNQA could possibly be attained in the near future. For example, the Parties may wish to reexamine the by-laws and processes of the EMR IPGs to ensure that they properly integrate Cree values and realities and foster sufficient collaboration and coordination with institutions established pursuant to the JBNQA. The Parties may also need to consider certain amendments to the EMRLCA at some point.

Although the EMRLCA and the JBNQA do not strictly contemplate such a working relationship, nothing in these agreements explicitly prevents it. In fact, it could be beneficial that both agreements be implemented in a manner that fosters this kind of collaboration and coordination.

For example, many of the wildlife-related issues of concern for the EMRWB involve resources and harvesting activities located within the JBNQA territory in Northern Quebec and could benefit from greater collaboration and coordination with other organizations with similar mandates.

Another example is the provisions of Chapter 8 of the EMRLCA regarding land use planning, which could be implemented in a manner that promotes a greater engagement and participation of the coastal Cree communities and in a manner that integrates the EMR as part of the Cree traditional territory of Eeyou Istchee.

¹² *Beckman v. Little Salmon/Carmacks First Nation*, [2010] 3 SCR 103, at para. 10.

¹³ *Mikisew Cree First Nation v. Canada*, [2005] SCC 69.

¹⁴ *First Nation of Nacho Nyak Dun v. Yukon*, at para. 1 and 33. “[T]he treaty will not accomplish its purpose if it is interpreted by [officials] in an ungenerous manner or as if it were an everyday commercial contract.” See also. The Supreme Court of Canada has recognized that a modern treaty will not accomplish its purpose if it is interpreted by officials in an ungenerous manner or as if it were an everyday commercial contract. See also *First Nation of Nacho Nyak Dun v. Yukon*, [2017] 2 SCR 576, at para. 37: “Paying close attention to the terms of a modern treaty means interpreting the provision at issue in light of the treaty text as a whole and the treaty’s objectives.”

Institutions of Public Government and Engaging with Cree Communities

The Cree use of the coast, for travel and for hunting, is intimately tied to the use of coastal headlands, bays, and the estuaries of the many smaller rivers, which flow into James Bay. For the Crees, there is a need to be able to deal comprehensively and seamlessly with this coastal environment and with the institutions and regimes established under both the JBNQA and the EMRLCA.

Efforts and resources may be required to engage and build stronger relationships with the Cree coastal communities of Eeyou Istchee and among stakeholders, and to develop and implement measures and mechanisms to ensure that the IPGs have the necessary resources to fulfill their respective mandates as well as increase the level of operational harmonization between the EMRLCA and the JBNQA.

The Quebec boundaries, which divides the Cree homeland of Eeyou Istchee and marks the separation between the EMRLCA and the JBNQA treaty areas, adds another layer of complexity for the Crees. The Parties could consider opportunities to engage and collaborate with the Government of Quebec, and, together with it, potentially examining measures to promote and facilitate a more comprehensive and seamless management of the coastal area. This may include developing a closer working relationship with Quebec to address boundary issues and the status of certain islands and areas along the coast of Quebec. In this regard, the Parties could consider the opportunity to develop with Quebec a tripartite collaboration agreement, much like the *Canada-Quebec Collaboration Agreement for Establishing a Marine Protected Area Network in Quebec* signed in 2018.

Efforts and resources may also be required to provide training for skills and qualifications of Crees in various areas relevant to the implementation of the EMRLCA, and to implement initiatives and activities to increase the employment and retention of Crees in those areas. This may include measures such as the presence of facilities and physical installations, and the provision of housing and competitive work conditions to attract and retain qualified Cree candidates to work with the EMR IPGs.

Canada and the Cree may also consider whether additional funding is required for new positions to support efforts to build stronger relationships with the Cree communities and among stakeholders, to ensure that IPGs have the necessary resources to fulfill their mandates and to play an important role to increase the level of coordination and operational harmonization between the institutions and regimes established under the EMRLCA and the JBNQA, as well as other agreements such as NILCA and NLCA.
