INAC’s Mandate

• Indigenous and Northern Affairs Canada (INAC) is one of 34 federal government departments responsible for meeting the Government of Canada's obligations and commitments to First Nations, Inuit and Métis, and for fulfilling the federal government's constitutional responsibilities in the North.

• INAC supports Indigenous people (First Nations, Inuit and Métis) and Northerners in their efforts to:
  ➢ improve social well-being and economic prosperity;
  ➢ develop healthier, more sustainable communities; and
  ➢ participate more fully in Canada's political, social and economic development to the benefit of all Canadians

• INAC coordinates the negotiation and implementation of land claims and self-government agreements on behalf of the Government of Canada. Over 30 federal departments and agencies have responsibilities under these agreements. INAC is also responsible for managing the obligations in historic treaties.

• In relation to the work of the National Energy Board, the Minister’s roles in land management and environmental assessment may come into play.
INAC’s Responsibilities – South

• The Minister’s responsibilities include:
  ➢ Negotiation and implementation of land claims and self-government agreements; and
  ➢ Providing land management services to more than 600 First Nations, covering more than 2,800 reserves with over 3 million hectares of reserve land across Canada (Constitution Act of 1867, Indian Act).
  ➢ Land management generally includes activities related to the ownership, use and development of land for personal, community and economic purposes.

• Land management activities which may relate to the role of the National Energy Board include:
  ➢ Preparing transactions for reserve surrenders and designations
  ➢ Approving and enforcing leases, licenses and permits on reserve lands.

• Of note - the First Nations Land Management Regime provides interested First Nations with powers to manage their reserve land and resources under their own land codes. The sections of the Indian Act dealing with land, resources and environment no longer apply to First Nations operating under their own land codes.
INAC’s Responsibilities – North

• The Minister’s responsibilities include:
  ➢ Administering the legislation that governs the three territories (Yukon Act, Northwest Territories Act & Nunavut Act);
  ➢ Elements of the Canada Petroleum Resources Act and the Canada Oil and Gas Operations Act in the North (the National Energy Board is responsible for the administration of certain provisions of these acts);
  ➢ Negotiation and implementation of land claims and self-government agreements with regional, community and transboundary Indigenous groups and territorial/provincial governments; and
  ➢ Devolution of land and resource responsibilities to the territorial governments.

• In relation to the role of the National Energy Board, INAC may also play a role in environmental reviews in the North conducted under the National Energy Board Act for interjurisdictional pipeline projects, or under the Canada Oil and Gas Operations Act for oil and gas projects.
Aboriginal Rights

• Derive from specific Aboriginal customs, practices or traditions that were integral to the group’s distinctive culture
   In the case of First Nation / Inuit, before European contact, (Van der Peet, SCC 1996), or
   in the case of Métis, before the Crown’s effective control over the area (Powley, SCC 2003),

• Require reasonable continuity between the pre-contact and modern day practices, customs or traditions

Important: Aboriginal rights are site and fact-specific.
Aboriginal Title

• Aboriginal title is a subset of Aboriginal rights.

• Based on an Aboriginal group’s occupation of lands before the assertion of European sovereignty over the same area. Occupation must be:
  - sufficient (context specific),
  - exclusive (or shared exclusive), and
  - continuous (where present occupation is relied on as proof).

• Key cases:
  - Delgamuukw, SCC 1997
  - Tsilhqot’in, SCC 2014)
Aboriginal Title (continued)

- The Supreme court of Canada has suggested that Aboriginal title confers rights such as:
  - the right to decide how land will be used;
  - enjoyment and occupancy;
  - possession;
  - the right to the economic benefits of the land; and
  - the right to proactively use and manage the land.

- **Important restriction:** It is a group interest. Can only be sold to the Crown and cannot be encumbered in ways that would prevent use and enjoyment by future generations.
Treaty Rights

Treaty rights arise through solemn agreement with the Crown.

- **Historic / Pre-1975 Treaties:**
  - Signed from the 1700s to 1923 with First Nations across Canada (mainly in the Prairies, NWT, central and eastern Canada).
  - Depending on the treaty, rights range, for example, from hunting, fishing and trapping rights to trade for a moderate livelihood (e.g. Marshall, SCC 1999).

- **Modern / Post-1975 Treaties:**
  - initiated in 1975 in areas where historic treaties were not settled.
  - are more detailed agreements, addressing a broad range of rights -- from harvesting rights (fishing, hunting, plant gathering etc.) to self government provisions, subsurface and surface rights over specific tracts of land.
  - Canada is currently implementing 29 comprehensive land claims and self-government agreements (also called "modern treaties"), covering over 40% of the nation's land mass. These agreements are negotiated between the Indigenous group, Canada and the province or territory.
Duty to Consult

• INAC supports other government departments in their approaches to Indigenous engagement and consultations in the context of major project reviews and other government activities.

  ➢ Advising on the legal *duty to consult* with First Nations, Inuit and Métis under Section 35 of the *Constitution Act, 1982*.

  ➢ Provides advice, coordination, tools and information on Aboriginal and Treaty Rights in support of identifying and consulting with Indigenous groups.

  ➢ Seeks out opportunities to work with stakeholders to achieve more coordinated, efficient and effective consultation processes.

• The *Updated Guidelines for Federal Officials to Fulfill the Duty to Consult* (March 2011), state in Guiding Principle No. 6:

  The Government of Canada will use and rely on, where appropriate existing consultation mechanisms, processes and expertise, such as environmental assessment and regulatory approval processes in which Aboriginal consultation will be integrated… (http://www.aadnc-aandc.gc.ca/eng/1100100014664/1100100014675)
Consultation and Accommodation Protocols

List of protocols:

- Dene Tha' First Nation Consultation Protocols (2007);
- Algonquins of Ontario Tripartite Consultation Process Interim Measures Agreement (2009);
- Terms of Reference for a Mi’kmaq-Nova Scotia-Canada Consultation Process (2010);
- Mi’kmaq – Prince Edward Island – Canada Consultation Agreement (2011);
- Mi’gmaq – Quebec – Canada Interim Tripartite Agreement on Mi’kmaq Consultation and Accommodation (Gaspé region) (2011);
- Canada, Province of New Brunswick and Mi’kmaq and Maliseet of New Brunswick Interim Agreement (2011);
- Lax kw’alaams and Metlakatla – Prince Rupert Port Authority protocol (2011); and
Considerations

• The federal *Speech from the Throne* of 2015 underscored that "Indigenous peoples will be more fully engaged in reviewing and monitoring major resource development projects".

• Environmental assessments can also help safeguard and protect Aboriginal rights, interests and areas of concern - environment, heritage and culturally significant areas - which is key to shaping nation-to nation relationships, operationalizing good governance and putting reconciliation into action.

• Indigenous groups have indicated that the resources provided by the federal government are not sufficient to allow expertise and time to effectively participate in the review of major resource projects and in the monitoring of such projects.

• The Canadian Environmental Assessment Agency, Natural Resources Canada, Fisheries and Oceans Canada, and Transport Canada are providing funding for Indigenous participation in the components of the review of environmental and regulatory processes.
Annexes
Annex A: Pre-1975 Treaties

Traités pré-1975
Pre-1975 Treaties
Annex B: Modern Treaties

Modern Treaties and Self-Government Agreements
(effective date)
Annex C: Indigenous Reserves Map