



SUMMARY OF THE
EEYOU MARINE REGION LAND CLAIMS AGREEMENT
(THE “OFFSHORE AGREEMENT”)

PREPARED FOR THE CREE OF EEYOU ISTCHEE RATIFICATION VOTE
OF THE CREE OFFSHORE AGREEMENT

This Summary of the proposed Cree Offshore Agreement was prepared to inform the general Cree population and eligible voters about the proposed Agreement. It is intended to make some information on the Agreement accessible to a wider audience and it is not intended to be used for legal interpretation of the Agreement. For more precise and complete information on the Agreement please consult the full document. Any views expressed in this document are for information purposes only and are without prejudice to any rights of the Crees.



GCC

Canada

SUMMARY OF THE EYYOU MARINE REGION LAND CLAIMS AGREEMENT (THE “OFFSHORE AGREEMENT”)

Background on Negotiations

This proposed Eeyou Marine Region Land Claims Agreement (the “Offshore Agreement”) is the conclusion of negotiations on the rights and obligations of the Crees and Canada in the offshore area of Eeyou Istchee that first began during the period from 1974 to 1977, around the time of the negotiation of the *James Bay and Northern Quebec Agreement* (the “JBNQA”). In the 1977 discussions, it was initially proposed that the regime for governing the offshore would resemble the one under the JBNQA, with different categories of land. The wildlife, impact review and planning regimes applying in the offshore would be the ones imported from the JBNQA. At that time, however, there was no agreement between the Crees and Canada on details of the settlement or on compensation.

In 1993, the federal government and the Tunngavik Federation of Nunavut completed an Aboriginal land claim treaty that also called for the creation of the public Nunavut Territorial Government (set up in 1999). By 1998 Canada was also negotiating with the Nunavik Inuit of northern Quebec for an agreement to address Inuit rights in their offshore area. The time was now right to also stake out Cree rights to the offshore. In 1998-1999, preliminary discussions were undertaken to determine whether negotiations were possible. This eventually led to the negotiation and conclusion of the current Offshore Agreement.

The Offshore Agreement is a Treaty

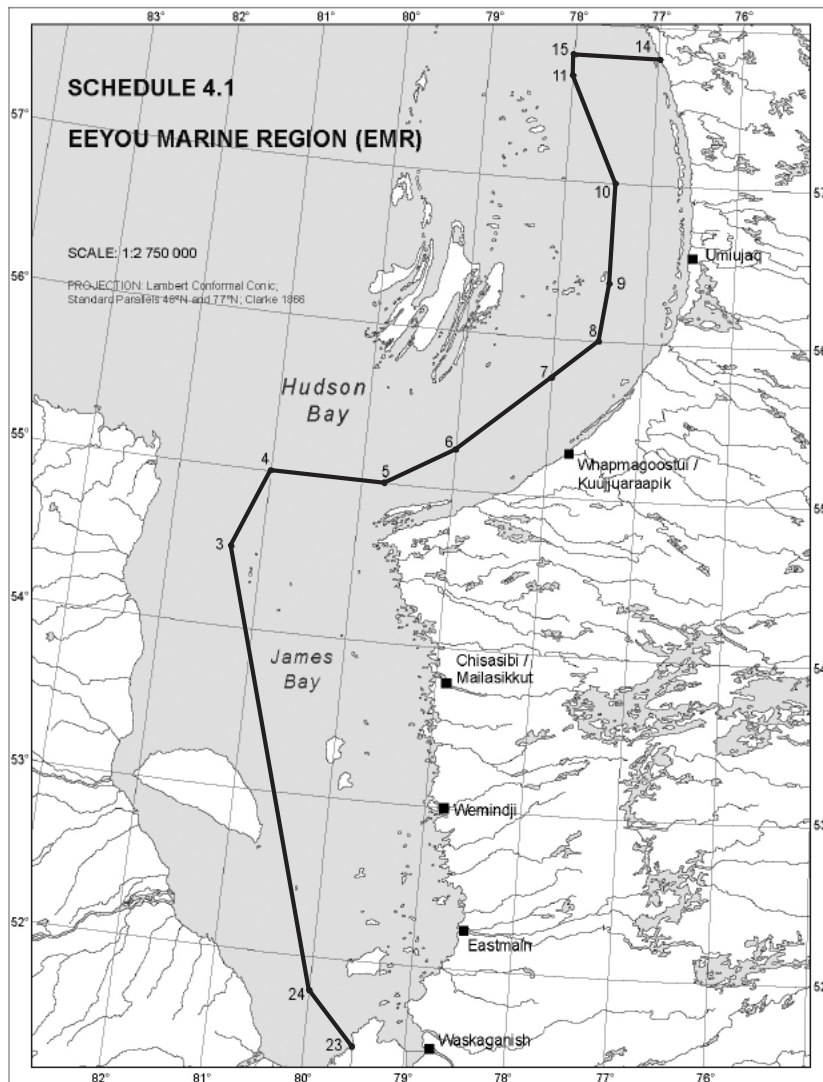
This Treaty, like other Canadian treaties with Aboriginal peoples, basically acknowledges Cree ownership and other rights to certain areas in the offshore and it is also a recognition by the Crees that certain Canadian laws apply in these areas. This Treaty is a means for Canada to recognize and define the scope of Cree rights and the ways in which the areas covered by the Treaty will be governed by Canada and the Crees. Treaty rights and existing Aboriginal rights in Canada are protected by the Constitution of Canada, the law that is an important foundation of how Canada is organized. Constitutional protection means that laws passed by provincial legislatures and Parliament cannot violate the rights recognized under the Treaty except when there is valid and sufficient justification and only where there has been appropriate consultation with the Aboriginal party. All federal and Nunavut laws and regulations of general application will apply in the Eeyou Marine Region. However, the Offshore Agreement and the Implementation Agreement protect Cree rights against any present or future laws of Canada or Nunavut that may violate such rights.

The Offshore Agreement

The Offshore Agreement is a very technical legal document and is the result of 10 years of negotiations. Many of the terms are especially defined for the purposes of this Offshore Agreement. These terms are capitalized throughout the Agreement and they are defined in Chapter 1 or at the beginning of certain other chapters.¹

When necessary during the negotiation process, the Cree leadership and the concerned Cree trappers were consulted on the proposals that led to the present Offshore Agreement. The Offshore Agreement is modeled on the Nunavik Inuit Land Claims Agreement (NILCA).

The Offshore Agreement applies to an area known as the Eeyou Marine Region (EMR), or in other words, the area of the offshore that the Crees have traditionally occupied and used.



¹ Chapters 5, 18, 19, 21, 24, 25, 26 and 27 of the Offshore Agreement.

The northern extremity of this area extends to the boundary of Quebec just north of Cotter Island in Hudson Bay and the southern part runs to the Ontario-Quebec boundary near Chiyask Bay in southern James Bay.² The southern boundary reflects the limit of Cree traditional harvesting lands in the JBNQA but does not affect any claims that the Crees of Eeyou Istchee might have in Ontario. The Crees may continue to hunt and fish outside of this offshore settlement area in James Bay and Hudson Bay, but the EMR is the area of traditional and primary interest to the Crees.

The EMR does not overlap with the Nunavut Land Claims Agreement settlement area but it is wholly within the Territory of Nunavut and is therefore subject to Territorial legislation, as is currently the case.

The Offshore Agreement also incorporates an Overlap Agreement with the Inuit of Nunavik which is set out in both this Offshore Agreement³ and the NILCA. In the overlap area there are three (3) zones: the Cree Zone, the Joint Zone and the Inuit Zone. The three zones also form part of the NILCA offshore settlement area. In the Cree Zone, the Inuit have harvesting rights and they own nine (9) islands near Chisasibi. In the Joint Zone, the Crees and Nunavik Inuit jointly own the islands and have equal harvesting rights. In the most northern zone, the Inuit Zone, the Cree have harvesting and other rights and the Nunavik Inuit are the land-owners. The limits of these three zones were agreed upon by the Crees and Inuit of all the concerned communities.

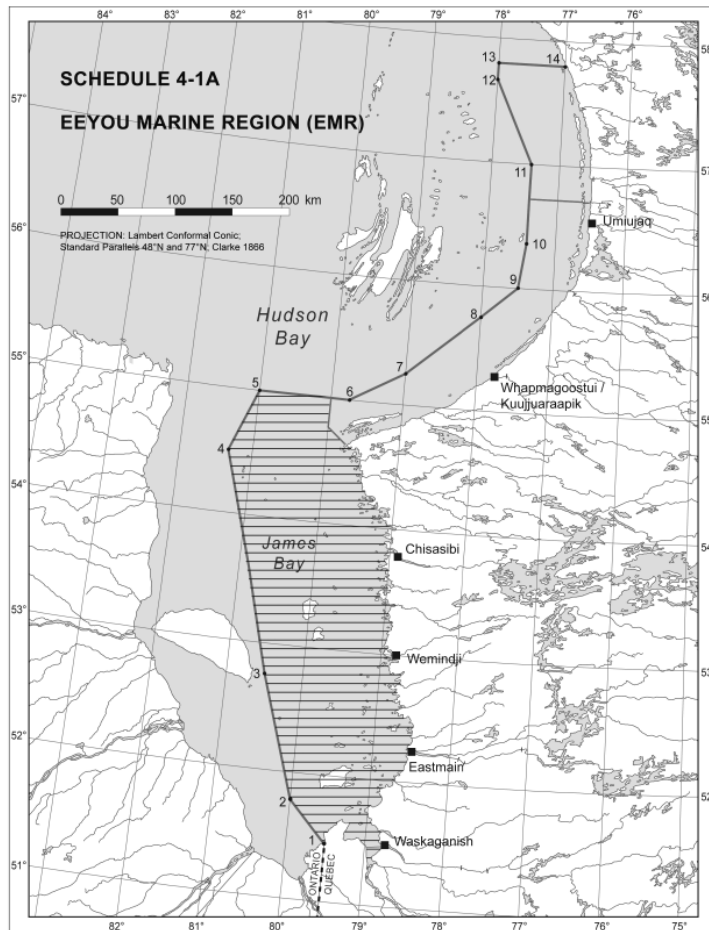
The boundary between the EMR and Quebec is not determined in this Agreement. It was simply agreed that the regime under the Offshore Agreement finishes on the coast of Quebec where the regime under the JBNQA begins. Cree rights along the Quebec shore will be defined under either the JBNQA or the Offshore Agreement, with no legal, administrative or geographic gap between the two regimes. The Government of Quebec was consulted and is supportive of the Agreement.

² Chapters 4 and 5.

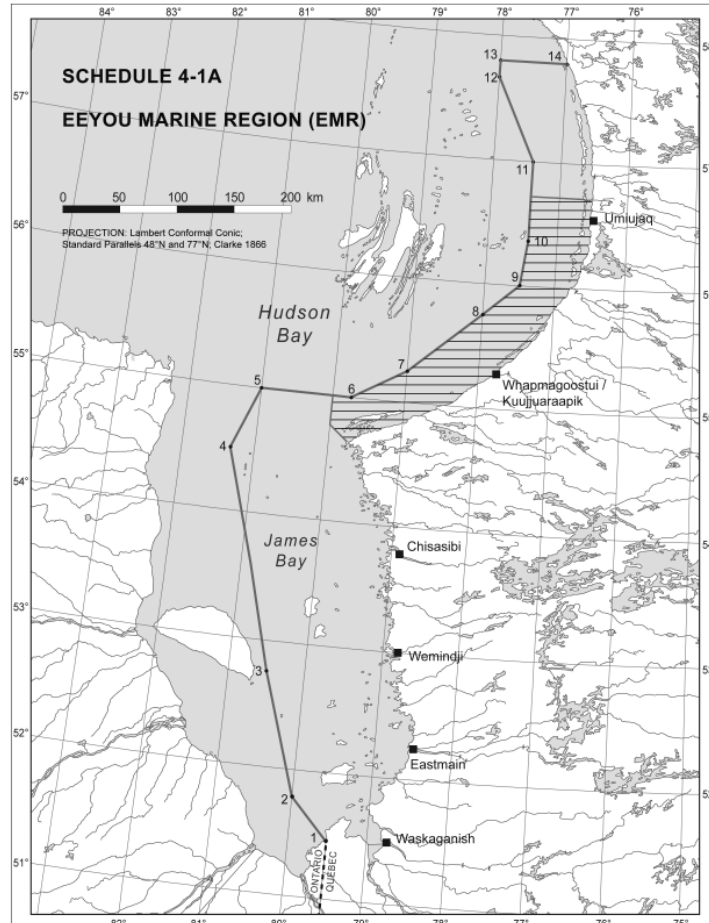
³ Chapter 30 and Schedule 30-1.

Cree Lands

Under the proposed Offshore Agreement, the Crees will be recognized to have exclusive and full ownership of most of the islands in Eastern James Bay south of Long Island, as illustrated below.



The Crees currently have joint ownership with the Inuit of Nunavik, as recognized in the Overlap Agreement between the Crees and the Nunavik Inuit and in the NILCA, to all islands in the Joint Zone, and that will also be recognized through this proposed Offshore Agreement.



Under the proposed Offshore Agreement, Canada will retain ownership of North Twin Island and a portion of South Twin Island, as well as Bear and Grey Goose Islands.

Cree lands will be owned exclusively by the Crees, including all subsurface rights. These islands will be held by the Cree Regional Authority or a future Cree Nation Government on behalf and for the benefit of the Cree Nation as a whole. Ownership of the waters and of the tidelands and seabed will remain with Canada under the terms of the Offshore Agreement. These Cree lands cannot be sold or transferred to any third party. However, long-term leases of up to seventy-five (75) years may be granted by the Crees on specific parcels of land.

Any proponent intending to develop a project in the EMR, including on Cree lands, will have to conform with the regimes and processes established under the Offshore Agreement including the regimes for the protection of wildlife, the land use planning and the impact review of development projects. This is in addition to any other requirements contained in applicable laws.

Access to Cree Lands and Potential Development

The Crees will collectively own roughly eighty percent (80%) of the land mass in the EMR in the form of fee-simple tenure. Nunavut will register these lands as Cree lands. No one can take or occupy any of the Cree lands for an extended period of time without the permission of the Crees. The Crees can continue to use and occupy the islands as they have always done. Non-Crees may be granted leases to those islands for a set period of time but up to a maximum of seventy-five (75) years. Non-Crees passing through the area can seek shelter on an island or rest for a period of time, but cannot organize regular commercial trips to the Cree islands or establish permanent shelters without permission. When they temporarily occupy an area on an island, they must not interfere in any way with traditional Cree activities.

Canada, however, retains certain limited rights to occupy Cree land for reasons related to government priorities. For example, Canada, in exceptional circumstances, could move to expropriate or occupy an island or an area on a Cree Island for certain governmental purposes if it could not work out mutually acceptable terms for both parties. Canada must also compensate or replace such lands if long-term occupation is foreseen and when they are finished with them must allow the Crees the chance to take back possession of such lands.

Development projects can take place in the EMR but Cree consent will be required in most cases. Also, the Offshore Agreement provides a number of specific requirements before such projects can take place. Firstly, the proponent of the project must ensure that the project development conforms with the land use plan of the area or that the plan is amended to allow for the project to take place.

The land use plan for the EMR will be developed with the full participation of the Crees and it will set out what uses may be made of certain areas in the offshore. It is expected that the plan will be developed and adopted soon after the Offshore Agreement comes into force and that most of the area will be initially reserved for traditional activities excluding the potential for industrial or commercial activities. Future development activities will only be allowed if the land use plan is amended by a planning commission to be established under the Offshore Agreement and on which half the members will be Cree representatives.⁴

Another important requirement under the Offshore Agreement is for project proponents to submit their proposal to a rigorous impact assessment and review process.⁵ For this purpose an Impact Review Board on which half of the members will be Cree representatives will be established upon the coming into force of the Offshore Agreement.

⁴ Chapter 8.

⁵ Chapter 18.

Moreover, under the Offshore Agreement project proponents will be required to negotiate impact benefit agreements with the Crees.⁶ The Offshore Agreement also sets up a Wildlife Compensation Process to which hunters may apply in order to receive compensation when certain development projects negatively impact wildlife.⁷

Hunting, Fishing and Trapping in the EMR

The Offshore Agreement outlines the principles and objectives for wildlife management in the EMR.⁸ These principles and objectives recognize the importance of wildlife to the Cree way of life and ensure the health of wildlife populations through protection and restoration of their habitats and restrictions (quotas) on hunting wildlife populations, when necessary, to protect them.

Cree Harvesting Rights

Under the proposed Offshore Agreement, the Crees will have the right to continue harvesting in the EMR without any licence or permit, and without having to pay any fee. In time, Crees may be required to carry identification cards or firearm permits. Government may also require harvest reports for the purpose of wildlife management and protection. Crees will continue to have the right to harvest where and how they have always done so within the EMR. Outside of the EMR in the whole of James Bay, Crees may continue to harvest subject to the laws of general application.

Any existing quotas on the harvesting of wildlife (such as polar bears and belugas) will remain in place. For all species that do not have established quotas, the Crees can harvest what they need up to the full level of their economic, social and cultural needs, as they always have done. The only limitation on this is when conservation measures are established by the Wildlife Board for certain species at which point a quota or other restriction may come into force. As may be recalled, this was done for Brant geese some years ago and has since ended as they are plentiful once again.

Cree harvesting rights also include the right to establish traditional camps and to use all equipment reasonably needed or traditionally used to harvest. Rules set up under international law could eventually establish certain criteria for harvesting equipment but this is something to be dealt with in the future.

⁶ Chapter 19.

⁷ Chapter 20.

⁸ Chapter 10. For Wildlife Management regime see also Chapters 11 to 17.

As in the JBNQA, certain species in the EMR will be reserved for the exclusive use by the Crees, although it must be pointed out that no one but Crees can hunt or fish on the islands except when the Cree consent to someone else doing so. Rights over these reserved species include the right to harvest for commercial purposes, except in relation to commercial fisheries. These species include:

- Mink, ermine, weasels, marten, fisher, otter, skunk and wolverines
- Beaver
- Lynx
- Foxes
- Polar bear
- Black bear
- Muskrat
- Porcupine
- Woodchuck
- Wolves
- Whitefish (ones that do not spawn in Quebec)
- Sturgeon
- Suckers
- Burbot
- Mooneye and goldeye
- Collection of eiderdown from eider duck nests
- All migratory birds and their eggs

Crees also have the exclusive right to harvest for commercial purposes certain species, including:

- Caribou
- Willow ptarmigan
- Rock ptarmigan
- Arctic hare
- Snowshoe hare
- Spruce grouse

Crees also have the exclusive right of keeping in captivity and husbandry certain species, including:

- Caribou
- Willow ptarmigan
- Rock ptarmigan
- Muskoxen
- Arctic hare
- Snowshoe hare
- Spruce grouse

Cree Trappers Association

The Offshore Agreement outlines the role of the Cree Trappers Association (CTA) including the local Cree Trappers Associations in wildlife management in the EMR.⁹ The role of the CTA was not formally recognized in the JBNQA. Over the years, the CTA has defined its role to a great extent and it currently works with the Cree Regional Authority and the Governments of Quebec and Canada on such activities. Under this Offshore Agreement the CTA will be formally given certain responsibilities in the EMR.

Among other things, the CTA will:

- Be regularly consulted by the Wildlife Board;
- Consult its members and recommend wildlife management measures;
- Have a role in monitoring the harvesting activities and ensure that harvesters are aware of and implement any special measures;
- Allocate and enforce basic need levels when quotas are applied.

Implementation funding to the CTA to fulfil these new responsibilities (approximately \$500,000 per year) will be provided by the government through the Wildlife Board.

Under the Offshore Agreement, a Wildlife Board will be established as an institution of public government. This Wildlife Board is similar to the Nunavik Inuit Wildlife Board and the Nunavut Wildlife Management Board. While these boards are independent, it is intended that they will work cooperatively when required to manage migratory and shared wildlife.

Protected Areas

Under the proposed Offshore Agreement, different types of protected areas could be established in the EMR¹⁰ such as:

- National Marine Conservation Areas
- National Parks
- Territorial Parks
- Migratory Bird Sanctuaries
- National Wildlife Areas
- Marine Protected Areas under the *Federal Oceans Act*

⁹ Chapter 12. The CTA was consulted on these provisions during negotiation.

¹⁰ Chapter 6.

To be established, a particular process must be followed and certain conditions described in the Offshore Agreement must be met, such as obtaining Cree consent and ensuring Cree participation throughout the process.

In principle, the Crees would participate in the planning and management of any new protected areas and harvesting rights for the Crees in these protected areas would continue unaffected. Prior to establishing a new protected area, the government must first conclude an impact and benefit agreement with the Crees which could provide employment opportunities and other benefits associated with the presence of the protected area.

Certainty Provisions

The Offshore Agreement acknowledges that certain Cree rights derive from the ancient rights of the Cree people, but it also sets out that some Cree rights under the Treaty also arise from the laws of Canada. The Offshore Agreement does not try to distinguish between these rights, as all rights set out in the Agreement have equal legal status and receive equal legal protection. The Treaty guarantees the Cree rights to lands and natural resources as set out in the text and limits any changes or expansion of the Cree treaty rights set out in this Offshore Agreement that are not agreed-to by the parties.

The Offshore Agreement defines Cree rights to land, harvesting and natural resources. It recognizes that these rights derive from the original use and occupation of the EMR by the Crees. The certainty provisions set out how these Cree rights in the EMR operate within the Canadian legal system.

Both Canada and the Crees will benefit from defining how the lands and natural resources can be used in the EMR.

Except for Cree Aboriginal rights to land and natural resources in the EMR, these provisions do not affect other Cree Aboriginal rights, such as the right to self-government.

Co-Management Regimes

This Offshore Agreement does not affect any developments to the structures of Cree government that may occur in the future. It does, however, set up three (3) co-management boards that operate under the terms of the Agreement with Cree representations equal to the combined representation from Canada and Nunavut on each Board (for example, two (2) Cree representatives, one (1) Federal and one (1) Nunavut representative). These Boards are similar to those set up under the NLCA and the NILCA. The Boards are explained more fully below, but they are: the Eeyou Marine Region Land Use Planning Commission, the Eeyou Marine Region Wildlife Board and the Eeyou Marine Region Impact Review Board.

Eeyou Marine Region Wildlife Board¹¹

The Wildlife Board will have three (3) Cree members, one (1) Nunavut member and two (2) appointed by Canada. The Board will be established as the main instrument for managing wildlife in the EMR. Its operation costs (approximately \$1 million per year) will be covered by the government and paid directly to the Board. The Board will also work closely with the Cree Trappers Association in carrying out its mandate.

The Wildlife Board will be involved in research on wildlife in the EMR and it will manage a special \$5 million Wildlife Research Fund provided by Canada on the effective date of the Agreement. This research fund is expected to last for ten (10) years.

Certain decisions of the Wildlife Board may be subject to review and approval by the government. The rules governing the review of such decisions are set out in the Offshore Agreement.

The Crees may become involved in the coordinated management of marine species over the entire James Bay and Hudson Bay (outside the EMR).

Land Use Planning¹²

Land use planning in the EMR will be managed through a new Planning Commission, located in Eeyou Istchee with Cree (2), Nunavut (1) and Canada (1) representatives. Costs for its ongoing operations (approximately \$225,000 per year) will be assumed by the government.

The responsibilities of the Planning Commission will be to:

- Establish policies, objectives and goals for the EMR;
- Document the present uses of the area;
- Develop a land use plan to guide and direct resource use and development in the EMR;
- Implement the land use plan;
- Determine if development projects conform to the land use plan;
- Monitor development projects to ensure their conformity with the land use plan.

¹¹ Chapter 13.

¹² Chapter 14.

International Agreements¹³

This Offshore Agreement provides that the Crees will be involved in discussions leading to government positions on international wildlife agreements dealing with wildlife harvested in the EMR. Also, the Wildlife Board will be involved in the negotiation or amendment of inter-jurisdictional agreements within Canada on wildlife.

The proposed Offshore Agreement provides that harvesting in the EMR must conform with the terms of international agreements on wildlife that were in existence before the Agreement came into force.

Cree Consultation¹⁴

Under the proposed Offshore Agreement, the government will consult the Crees on issues directly affecting the EMR, for instance:

- Before allowing mineral exploration or development in the EMR;
- Before authorizing the construction and operation of pipelines and oil rigs;
- Before finalizing a strategy for the management of marine areas;
- In the development and implementation of plans for the management of marine areas;
- Before authorizing tidal or hydroelectric energy production.

Development and Impact Benefit Agreements¹⁵

A new Impact Review Board, located in Eeyou Istchee with Cree (2), Nunavut (1) and Canada (1) representatives, will screen and review projects and recommend if and under what conditions projects would proceed. The ongoing operation costs of the Impact Review Board (approximately \$250,000 per year) will be covered by the government.

The functions of the Impact Review Board will include:

- Screening development proposals to determine if impact review is required;
- Reviewing impacts of project proposals that are subject to review;
- Recommending whether projects should proceed and under what conditions;
- Monitoring projects and terms and conditions of project certificates.

In exceptional circumstances, projects may be reviewed by a federal panel with Cree participation.

¹³ Chapter 17.

¹⁴ Chapter 9.

¹⁵ Chapters 18-19.

Proponents of major development projects in the EMR will have an obligation to negotiate with the Crees in view of concluding an Impacts and Benefits Agreement (IBA) in relation to such projects.

Wildlife Compensation¹⁶

Under the proposed Offshore Agreement, Crees will have the right to be compensated for any loss of property, income or harvested wildlife, present or future, caused by certain development activities in the EMR.

Rights and Access to Programs

The rights of Crees as Aboriginal peoples and Indians will not be affected by the Treaty. Crees can continue to exercise such rights. Moreover, the Crees will be able to continue to participate in international forums at the United Nations or elsewhere as they have always done. Canada also states in the Treaty that the Crees can benefit from international agreements to which Canada is a party.

Within Canada, there is nothing in the Treaty that restricts the Crees from accessing and benefiting from the programs that apply to them, including those under the *James Bay and Northern Quebec Agreement* and *Cree/Naskapi (of Quebec) Act*.

Government Employment and Contracts¹⁷

Under the proposed Offshore Agreement, the Crees will generally have priority for government employment opportunities in the EMR. Support and assistance will also be provided to Cree enterprises in competing for certain government contracts for goods and services in the EMR.

Public Services

This Offshore Agreement does not provide separately for public services; in part, this is because such services are already provided to the Crees under the terms of the JBNQA, and also in part because there are not any Crees who have permanent domiciles in the EMR. The practicalities of providing public services in the EMR, as might be required from time to time, will have to be resolved with the authorities that have responsibilities and means for providing them. Such matters will be resolved outside the terms of this Treaty.

The services that are presently the most likely to be the subject of such arrangements are police and rescue services and perhaps income security. Under the terms of this Treaty Canada accepts that public services such as policing, search and rescue services, health and social services, education services and income security programs may be provided in the EMR by the same institutions that provide these services under the *James Bay and Northern Quebec Agreement*.

¹⁶ Chapter 20.

¹⁷ Chapter 21.

Periodic Review

With the passage of time some obligations of Government and Cree rights may be overtaken by gradual changing circumstances in the EMR or by the evolution of laws and the rules for government programs. In the early treaties between Canada and Aboriginal Peoples the effectiveness of the treaty was sometimes eroded and was not resolved to the satisfaction of one or both parties for many years. To avoid this possibility Canada and the Crees agreed to meet every ten (10) years to review the Offshore Agreement and to discuss what is working and what is not working and to amend the Agreement if necessary.

Eligibility and Enrolment¹⁸

The Offshore Agreement is between Canada and the Crees of Eeyou Istchee. As such, the rights in this Agreement belong to all Crees, those that live on the coast and those that live inland. For the purposes of this Treaty a majority of all eligible Crees must indicate their acceptance of the Offshore Agreement for it to pass into law. Therefore, all Crees enrolled as beneficiaries under the *James Bay and Northern Quebec Agreement* will be automatically enrolled as beneficiaries under this Agreement.

Capital Transfer¹⁹

Under the terms of the proposed Offshore Agreement, Canada will provide a capital transfer of \$50 million to the Crees. Loans to the Crees for negotiating this Agreement will be deducted from the capital transfer.

Resource Royalty²⁰

The Crees will own subsurface resources on their lands. With respect to any subsurface resources found outside of Cree lands but within the EMR, the following will apply:

The Crees will have the right to receive a share of royalty payments made to government from the extraction of subsurface resources as follows:

- 50% of the first \$2 Million of resource royalty received by government in any particular year; and
- 5% of any additional resource royalty received by government in any particular year.

¹⁸ Chapter 3.

¹⁹ Chapter 22.

²⁰ Chapter 23.

Taxation²¹

The Crees will not be taxed on the value of the land vested in the Cree Regional Authority, on the capital transfer, on the implementation money and on any other assets or money received under the Offshore Agreement.

Also, there will be no property taxes levied on the value of Cree lands as long as these lands are held by the Cree Regional Authority or other Cree entities designated for this purpose. There will be no taxes levied on the residence of a Cree or a traditional camp, public buildings, public works, public infrastructures and any work that is used primarily for the management and protection of natural resources.

Implementation²²

The Offshore Agreement sets out the process to ensure proper and timely implementation.

An Implementation Plan has been developed and is appended to the Offshore Agreement. The Implementation Plan sets out the responsibilities of each party, the timelines and funding requirements for the initial ten (10) year period from the effective date of the Agreement.

An Implementation Committee will be established with members nominated by the Cree (2), Nunavut (1) and Canada (1). The Implementation Committee will be responsible to oversee and guide the implementation of the Offshore Agreement and of the Implementation Plan. It will also attempt to resolve implementation disputes between the parties and it will be expected to make recommendations for the implementation of subsequent ten (10) year periods.

Canada will provide the Crees with a one-time implementation payment of \$5 million to assist the GCC (EI) to implement the Offshore Agreement. Canada will provide funding for the implementation of the Agreement in accordance with the Implementation Plan, which includes the costs associated with the establishment and ongoing operation of the Wildlife Board, the Planning Commission and the Impact Review Board.

Archaeology and Ethnographic Resources²³

The Offshore Agreement set out the responsibilities for how archaeological projects will be conducted in the EMR and the rules concerning the ownership, maintenance and access to archaeological specimens and ethnographic resources.

²¹ Chapter 24.

²² Chapter 25.

²³ Chapters 26-27.

For instance, the Crees will be involved in the allocation of permits for archaeological investigations. When archaeological materials are found, the Crees will jointly own them and can determine what happens to them. Human and burial remains will only be disturbed with Cree consent, and the Cree may determine conditions for any removal, which may be held in the collection of the Museum of Civilization.

Grand Council of the Crees (Eeyou Istchee)²⁴

While the GCC(EI) has a number of responsibilities and obligations under this Offshore Agreement, it may designate a Cree organization or entity to be responsible for some specific functions or duties. Such organization or entity must operate with accountability and be democratically controlled by the Crees.

Other Aboriginal Peoples²⁵

Treaty rights in the proposed Offshore Agreement are *only* for the benefit of the Crees and, in the case of the overlap area, for the benefit of both the Crees and the Nunavik Inuit.

Dispute Resolution Processes²⁶

The Offshore Agreement contains certain dispute resolution mechanisms – mediation and arbitration – as an alternative to having to use the courts to resolve any eventual disputes over the interpretation and implementation of the Offshore Agreement.

Ratification²⁷

In order to come into effect, the Offshore Agreement must be ratified in a referendum and approved by over 50% of all Cree beneficiaries under the JBNQA eligible to vote.

²⁴ Chapter 28.

²⁵ Chapter 29.

²⁶ Chapter 31.

²⁷ Chapter 32.