CHAPTER 16

The New Federal Impact Assessment Act and Arctic Shipping: Opportunities for Improved Governance

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Abstract

This chapter explores opportunities to improve the governance of shipping and related activities in the Canadian Arctic waters through the application of the federal Impact Assessment Act (IAA). It considers a range of activities potentially associated with shipping in the Arctic and their key associated impacts, such as vessels used in fishing and aquaculture, supply vessels for northern communities and industries, shipping related to the transportation of resources extracted in the Canadian Arctic, shipping related to energy projects, tourism related shipping, and the Arctic as a shipping route for global trade. The chapter then considers the role each of four distinct assessment processes under the IAA could make to the governance of shipping. Given the prevalence of other assessment processes in the Canadian Arctic, the chapter then considers how the IAA’s processes will interact with existing assessment processes beyond the IAA, such as those at territorial and Indigenous levels of government.

Keywords

impact assessment – environmental assessment – co-management – Arctic – shipping – Canada – federal

1 Introduction

This chapter explores opportunities to improve the governance of shipping and related activities in Canadian Arctic waters through the application of the federal Impact Assessment Act (IAA).

Arctic waters, for the purposes of this chapter, will consist of the waters within the NORDREG Zone, including the portion

1 Impact Assessment Act, SC 2019, c 28, s 1 [IAA].
of Hudson Bay below 60°. When the IAA was passed in 2019, it represented a significant departure from past approaches to federal impact assessments. Most notable for purposes of this chapter is that the scope of the assessment changed fundamentally from assessments focused primarily on biophysical impacts to considering a broad range of biophysical, social, health, cultural and economic impacts and benefits of proposed activities.

The chapter considers a range of activities potentially associated with shipping in the Arctic, such as vessels used in fishing and aquaculture, supply vessels for northern communities and industries, shipping related to the transportation of resources extracted in the Canadian Arctic, shipping related to energy projects, tourism and other passenger related shipping, and the Arctic as a shipping route for global trade. The chapter considers the role that each of four distinct assessment processes under the IAA could make to the governance of shipping. Given the prevalence of other assessment processes in the Canadian Arctic, the chapter then considers how the IAA’s processes will interact with assessment processes beyond the IAA, such as those at territorial and Indigenous levels.

The first two processes under the IAA with potential implications for shipping in the Arctic are project level assessments. One is the assessment process for designated projects, which includes any project listed in a regulation under the IAA and associated activities. The chapter explores which of the projects currently listed may have relevance to Arctic shipping, and whether other activities with shipping implications could be considered for addition to the designated project list or ad hoc designation by the Minister of the Environment (the Minister). We also offer an overview of the assessment process requirements for designated projects. The other project level process relates to the assessment requirements for projects on federal lands.

The two other processes in the IAA deal with higher tier assessments rather than with individual projects. One of these offers opportunities for sectoral or other strategic assessments to inform project level assessment decisions. Examples include a strategic assessment of particularly pressing issues such as potential shipping routes, a strategic assessment of shipping in the Canadian Arctic more broadly, or of a particular type of activity or industry sector, such as fishing, mining, or energy production. The other higher tier process provides for regional assessment. Regional assessment could be developed at a range

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2 Northern Canada Vessel Traffic Services Zone Regulations, SOR/2010-127, s 2 [NORDREG].
4 Physical Activities Regulations, SOR/2019-285. There are opportunities to include broader issues in project assessments. For example, an assessment of a marine terminal could consider shipping routes as part of the assessment of the marine terminal.
5 IAA (n 1), ss 81–91.
of possible scales, from the whole Arctic region to specific areas such as the Beaufort Sea or Hudson Bay, all the way to a small area of particular focus.6

1.1 Activities with Implications for Arctic Shipping

Dawson et al. suggest that the Arctic may be the region most dependent on the marine transportation industry in Canada.7 In considering the application of the IAA to shipping activities in the Canadian Arctic, there is potentially a huge range of human activities that can influence shipping in Canadian Arctic waters. This section offers a high-level overview of some of the key activities that either are taking place in the Canadian Arctic, or that can be anticipated to be proposed in the foreseeable future, that could be subject to assessment processes. These activities are considered broadly in two categories, land-based activities that have implications for Arctic shipping, and ocean-based activities.

Starting with land-based activities, marine terminals and associated infrastructure are an obvious category of activity to consider. Marine terminals in national parks of any size, and marine terminals outside national parks for vessels over 25,000 DWT are included as designated projects under the IAA. Port developments can be critical to ensure adequate infrastructure to respond to emergencies, including environmental emergencies such as spills of cargo and fuel from ships. Port developments can include a range of elements, from emergency and spill response to inland transportation infrastructure to support the port, storage facilities such as tank farms and fuel supply to measures to improve access to a port in harsh winter conditions, and places of refuge for ships in need of assistance. Of course, port infrastructure can also lead to an increase in ship traffic, on the basis of ‘if you build it, they will come.’ Port developments may be proposed for a particular purpose, such as improved safety and emergency response, or improved supply of existing communities, but may affect shipping in many other ways, such as an increase in tourism, transit of commercial vessels through the area, or other commercial activity enabled by improved port facilities. Currently there are multiple proposals for ports in the Canadian Arctic, most notably in Tuktoyaktuk, Northwest Territories8 (NWT) and in Qikiqtarjuaq and Chesterfield Inlet, Nunavut.9

6 Id., ss 92–103.
Marine terminals and associated port developments are of course not the only land-based activity with the potential to affect shipping in the Canadian Arctic. Increased settlement in Arctic communities and a range of commercial activities can also lead to an increase in Arctic shipping patterns. Another example would be tourism in the form of cruise ships. In 2016, history was made when the Crystal Serenity, carrying a complement of around 1000 passengers and 600 crew, completed a voyage through the Northwest Passage. This was the first ever attempt by a cruise ship to complete this voyage, and one that has been repeated since by Crystal Cruises. The first bulk carrier completed a voyage through the passage in 2013.10

Among other land-based activities with clear connection to shipping are mining, oil and gas exploration and other resource extraction industries. A recent example is the assessment of the expansion of Baffinland’s Mary River Mine, which was expected to cause a significant increase in shipping in the region.11 Such industrial activities also tend to lead to an influx of workers, who in turn will depend in part on supply vessels for the provision of food and other essentials. The activities themselves will require supplies that may have an impact on shipping patterns. Finally, these industries ultimately extract resources that will be required to be shipped to markets, usually outside the Arctic region.12 Other land-based activities with implications for shipping are Arctic settlements in need of supplies ranging from fuel to building materials and food.

In addition to land-based activities, there are a number of ocean-based activities that can be expected to have implications for Arctic shipping patterns.


12 Dawson et al. (n 7), pp. 15–26.
Some are existing activities. Given the fundamental changes underway in Arctic waters as a result of climate change, many new activities that are currently not feasible can be expected in the foreseeable future. Among ocean-based activities that have implications for Arctic shipping are trans-Arctic shipping routes, fishing, aquaculture, offshore renewable energy production, offshore oil and gas exploration, seabed mining, marine scientific research and the creation and management of marine and land-based protected areas.

Some of these activities, such as offshore aquaculture or offshore renewable energy exploration, may be a long way off or may never become technically or economically feasible. Other activities, such as offshore oil and gas development, are currently subject to a moratorium, and may never again be approved in the Canadian Arctic region in light of concerns about local environmental impacts and global efforts to decarbonize. However, if they are proposed, their approval would have considerable implications for Arctic shipping and assessment. Other activities, such as trans-Arctic shipping, tourism, fishing, marine scientific research and marine protection are already taking place or under active consideration in the Canadian Arctic, and can be expected to continue and increase in the future.

The question of the federal role in dealing with this range of activities in the Canadian Arctic is less of a constitutional issue than it is a question of the evolving relationship between the federal government and the relevant territorial and Indigenous governments and Indigenous organizations in the region. Nevertheless, the constitutional division of powers between the federal and provincial levels of government have clearly been influential in the development of these relationships, as has section 35 of the Constitution with respect to Indigenous communities and organizations. Ultimately, there are many issues that arise from these activities for which the federal government has responsibility. Most directly, in light of the focus of this chapter, the federal government has responsibility for navigation and shipping, as well as jurisdiction over many of the potential biophysical impacts of shipping and related activities, such as marine pollution, and the protection and management of aquatic, endangered and migratory species to name a few. Of course, other elements such as occupational health and safety and workers’ compensation,
are under provincial jurisdiction. Ultimately, courts have applied the double aspect principle and cooperative federalism to deal with this complex picture of overlapping jurisdiction.

The potential for environmental degradation of the Arctic marine and coastal ecosystems due to shipping is well known. Environmental concerns in the Arctic region are heightened as a result of the extreme fragility of the ecosystems found there. The species that make the Arctic marine environment their home are highly specialized to the cold temperatures and ice-covered oceans, meaning that the ability of Arctic ecosystems to evolve and adapt to changes is low. In the context of climate change, the Arctic's vulnerability to oil pollution and invasive species impacts is compounded by ongoing changes to environmental conditions resulting from changes to the climate system.

The reality of maritime shipping is that some degree of pollution and consequent environmental degradation is inevitable as ships spill and leak oil as part of regular operations, and even where zero discharge rules exist such as under the Arctic Waters Pollution Prevention Act, monitoring and enforcement of this is challenging. Ultimately, the pollution risk from shipping increases with the amount of vessel traffic in a given area. There are several important factors that make the Arctic especially vulnerable to damages from oil spills, including vulnerable species, highly specialized ecosystems, extreme remoteness, and difficult conditions for cleanup efforts. Oil contains elements that are toxic to many forms of animal and plant life meaning that oil in the environment, either through large discharge events or prolonged leaks, can have

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16 Gulas et al. (n 15), pp. 53–61, at 55.

17 WWF Canada (n 10).

18 Lindgren et al. (n 15), pp. 125–168, at 131.


anything from acute to long-term effects on aquatic life and the function of ecosystems.\textsuperscript{21} These factors suggest that an oil spill poses a significant and serious risk to the Arctic marine environment and the people who live in the region.\textsuperscript{22}

Lindgren et al. found that 34 percent of global hydrocarbon pollution in marine regions resulted from shipping. Broken down further, only 9.8 percent of global discharges to the sea are the result of accidental spills from events such as groundings, collisions or explosions that release enormous amounts of oil.\textsuperscript{23} The remaining 24 percent of shipping related discharges to the sea, representing the largest source of oil discharged to the sea from human activity, result from operational discharges from routine operations. Routine operations, like discharges of bilge water, cleaning of tanks and bunkering, are responsible for the majority of small oil spills, and small continuous leaks are common on older ships. Small leaks can come from propeller shaft bearings, for example.\textsuperscript{24} Rules in the Arctic are more stringent than elsewhere, so the contribution of operational discharges in the region would be expected to be well below the global average, but this has not been tested.\textsuperscript{25}

Projections of expected increase in trans-Arctic shipping and significantly longer shipping seasons are common place.\textsuperscript{26} Receding summer sea ice, while it represents one of the most dramatic depictions of climate change on the

\textsuperscript{21} Lindgren et al. (n 15), pp. 125–168, at 140–141.
\textsuperscript{22} Dawson et al. (n 7), pp. 15–26.
\textsuperscript{23} Lindgren et al. (n 15), pp. 125–168.
\textsuperscript{24} Id., 125.
\textsuperscript{25} The impact of icebreaking is among the many shipping related impact that warrants consideration in assessments of shipping activities in the Arctic. Icebreaking is expected, for example, to contribute to Arctic ice loss that, in turn, can exacerbate the climate change effects by reducing ice albedo. See Adolf K.Y. Ng et al., “Implications of Climate Change for Shipping: Opening the Arctic Seas,” WIREs Climate Change (2018). See also Jackie Dawson et al., “Infusing Inuit and Local Knowledge into the Low Impact Shipping Corridors: An Adaptation to Increased Shipping Activity and Climate Change in Arctic Canada,” Environmental Science and Policy 105 (2020): 19–36, https://reader.elsevier.com/reader/sd/pii/S1462901119309451?token=EC2EF6421923CBC84F7762CD86CA8BD5BE633C57B9FA020179D838116928563A3EE349155856DCBE46E6F0C6E8613CB&originRegion=us-east-1&originCreation=20220626164948.
globe, at the same time has some in the shipping industry excited about the prospect of shorter shipping paths connecting Europe and China through the Arctic.27

2 Assessment Processes under the IAA

This section introduces four distinct assessment processes under the IAA that have the potential relevance for shipping related activities in the Canadian Arctic. We first introduce the standard project level assessment process for projects designated for assessment. We then consider separate project level assessment requirements in the IAA for projects on federal lands and projects outside Canada that are funded or otherwise supported by the federal government. This is followed by an overview of strategic and regional assessments, two processes included in the IAA that allow for assessment to go beyond individual projects to consider a broader range of issues and activities.

2.1 Assessment of Designated Projects

Projects can be designated for assessment either through a physical activity list in regulations or through ministerial discretion. This assessment process is most commonly initiated for projects on the physical activity list. The physical activity list regulation essentially creates a presumption that an impact assessment is required, but the Impact Assessment Agency of Canada (the Agency), which is the federal agency tasked with administering the IAA regime, has the ultimate power to determine, during the planning phase of the assessment, whether an assessment ultimately has to be carried out. For projects not on the list, the presumption is that no assessment is required. However, the Minister has the power to require an assessment either in response to a request to designate a project or on the Minister’s own initiative.28 The request can be made by anyone.

It is of course difficult to predict with certainty which of the activities designated under the IAA, if proposed in the Arctic region, would involve significant shipping activity. Our aim here is to highlight some of the types of activities that could be involved, not to offer a definitive list. Some, such as aquaculture

27 See Lasserre in this volume.
28 IAA (n 1), s 9. The power to designate is fairly broad, however, the expectation is that assessments that go beyond individual activities will be assessed under the processes for strategic or regional assessments rather than under the designated project assessment process.
facilities, are only triggered if they are proposed in a national park or protected area. Others trigger the IAA regardless of where they are proposed. Activities listed include a broad range of energy projects, from fossil fuel-based energy to nuclear and renewable energy, including related infrastructure such as pipelines and transmission lines. Also included are a range of mining activities, and transportation infrastructure such as roads, railways, airports, and marine terminals.29

The process for conducting an impact assessment for designated projects consists of a number of phases, including the planning phase, the assessment and review phase, the decision-making phase and the post approval follow-up phase (Figure 16.1). The process is outlined in detail in the growing literature on the new IAA, so a brief overview will suffice for purposes of this chapter.30

The planning phase is one of the innovations of the IAA. Its aim is twofold, to determine whether an assessment is needed, and, assuming one is needed,
to plan the details of the assessment, including through consultations with potentially affected Indigenous communities, other jurisdictions with impact assessment requirements (including Indigenous organizations), and the public. A key outcome of the planning process is the release of Tailored Impact Statement Guidelines (TISG) to offer direction to project proponents on the content of the Impact Statement it has to prepare to initiate the assessment phase of the process. The planning phase is limited to 180 days, leaving limited time for the planning phase to fulfill other important planning roles, such as the identification of information needs from government actors, and the design of an effective public participation plan.\(^{31}\)

Ultimately, the Agency, which leads the planning phase, has to plan an assessment that considers the factors set out in section 22 of the Act. Factors listed in section 22 include both positive and negative effects of the proposed project, and cover a broad range of biophysical, social, economic, health and cultural effects of the proposed project, including mitigation measures, cumulative effects, alternatives, accidents, impacts on Indigenous communities and the rights of Indigenous peoples. Included in the factors is also the requirement to take into account project-specific and regional assessments conducted by an Indigenous governing body.\(^ {32}\) The assessment has to inform a number of key determinations that need to be made under section 63 of the Act as part of the ultimate public interest determination, including the extent to which the project contributes to sustainability, the impact it will have on rights and interests of Indigenous communities, the impact it will have on Canada’s ability to meet its climate commitments and environmental obligations, and the significance of adverse effects of the project that are within federal jurisdiction.\(^ {33}\)

Following the conclusion of the planning phase, the proponent has up to three years to prepare its impact statement and initiate the assessment phase. In the meantime, the Minister has to decide whether the assessment is to be carried out by way of an Agency led process or by an independent review panel. With some exceptions, the Agency led assessment has to be carried out within 300 days of the commencement of the assessment phase, and the assessment by a review panel has to be carried out within 600 days, subject to time stoppages and extensions available under the Act. The substantive requirements of the assessment are similar, as are the decisions the assessments will inform. The key legislative differences between the processes are the timelines and

\(^{31}\) Id., 57–59.

\(^{32}\) IAA (n 1), s 22(1)(q) and (r), respectively.

\(^{33}\) Id.
the entity responsible for carrying out the assessment and filing the assessment report. Special rules apply to assessments carried out when the Canadian Energy Regulator, the Canada Nuclear Safety Commission, or the Offshore Petroleum Boards are involved as regulators of the proposed project. In practice, the nature and level of public engagement is likely to differ significantly depending on the process option chosen.\(^\text{34}\)

At the conclusion of the assessment phase, a final report is prepared by the Agency or the review panel and submitted to the Minister or Cabinet for a project decision. The report has to inform the key determinations noted above that must be made under section 63 of the Act, and ultimately the report informs the public interest determination and the terms and conditions under which a proposed project may be approved. One of the terms and conditions of approval will be the implementation of a follow-up program designed during the course of the assessment.\(^\text{35}\)

### 2.2 Assessment of Projects on Federal Lands

There are two categories of projects that require some form of assessment even if they are not designated for assessment under the process described in the previous section. We refer to these as federal projects because these are projects that are either proposed by or substantially supported by the federal government that may require assessment under the IAA. One category of federal projects involves projects on federal lands. This is the category of projects most relevant to this chapter.\(^\text{36}\) There are a number of fundamental differences between the assessment requirements for designated projects and those for projects on federal lands. We highlight the key differences in this section.\(^\text{37}\)

At the start, these requirements apply to projects on federal land, so it is important to consider the definition of federal land, and what it means in an Arctic context. Federal land includes all land owned by the federal government, including any offshore area that is not part of a province (or territory), including Canada’s internal waters, territorial sea, the continental shelf and the exclusive economic zone. Also included under federal lands are lands that are set aside for bands under the Indian Act, which would primarily have relevance in areas of the Arctic within provincial boundaries, notably the Hudson

\(^{34}\) Doelle and Sinclair eds. 2021 (n 3), p. 61.

\(^{35}\) Id., 67.

\(^{36}\) The other category not relevant here involves projects outside Canada that are supported in some way by the federal government, usually in the form of federal funding.

Bay area. Specifically excluded from the definition are lands that are under the administration and control of one of the three territorial governments, which, in the case of Nunavut, includes the offshore. No reference is made in the definition to lands that are subject to comprehensive land claims agreements or self-government agreements with Indigenous peoples. In the Canadian Arctic this leaves a complex mosaic, with some marine waters, particularly in the Western Arctic, and potentially some national parks and land set aside under the Indian Act considered federal land, and the remainder, particularly lands administered by the three territories, considered non-federal.38

The trigger for projects on federal lands is similar to the trigger under the Canadian Environmental Assessment Act, 2012 (CEAA 2012). At the core is a definition of project that is quite broad for activities carried out in relation to a physical work. For such activities proposed on federal land, the assumption is that the requirements in sections 81–91 of the Act apply, unless the project is excluded in some way. For other activities not related to a physical work, the assessment requirements in this part only apply if the activity is designated by the Minister.39

The scope of an assessment under this part is similar to CEAA 2012 in the sense that environmental effects are limited to biophysical impacts and their socioeconomic consequences, plus impacts on Indigenous peoples. The process requirements are minimal. There is a requirement to post a notice before making a project determination, and a requirement to post a notice of the determination made. There is no requirement to consider public input, but when input is sought, a notice has to be posted inviting such input.40

In short, the process is largely discretionary and in the hands of the federal project decision-maker. There are no legislative process requirements beyond notice, there is no guaranteed public participation, no participant funding, and no legislated role for Indigenous communities, though the duty to consult of course remains, as does the government’s commitment to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Having said this, some federal decision-makers to whom these provisions apply have their own established assessment processes, as they had similar assessment responsibilities under CEAA 2012.41

The project decision involves two steps, also based on the decision-making process in CEAA 2012. First, the federal authority in charge of the federal

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38 IAA (n 1), s 2.
39 See id., ss 81–91.
40 See id., ss 84, 86, 89.
41 Kneen (n 37), p. 393.
decision that triggered the assessment determines whether the project is likely to cause significant adverse environmental effects. In case of a determination that the project is likely to cause significant adverse environmental effects, Cabinet then determines whether these effects are justified in the circumstances. In case of a conclusion that the project is not likely to cause significant adverse effects, the final decision is made by the federal authority without having to go to Cabinet.\footnote{42}

\section{Regional and Strategic Assessments}

The IAA has separate provisions for the conduct of regional and strategic assessments. The Act does not include definitions of regional or strategic assessments, and the line between them is not clearly drawn in the Act or guidance to date, so we deal with them together in this section.\footnote{43}

Regional assessments are not defined; however, the Act does offer some indication of the types of assessments contemplated. As a starting point, the Act suggests that there are three categories of regional assessments. One category would be assessments of regions that are entirely on federal lands. A second category would be assessments of regions that are completely outside federal lands. A third category are assessments of regions that are partly on and partly outside federal lands.\footnote{44}

Ultimately, regional assessments can be carried out in each of the three categories identified, so they are not determinative of whether a federal regional assessment will be carried out. Having said this, it seems clear that the categories are motivated by the recognition that carrying out a regional assessment on federal lands will be less complex than one in the other two categories. In practical terms, it seems likely that regional assessments in categories two and three are more likely to be carried out if the other jurisdictions are willing to cooperate in the conduct of a regional assessment. In the Canadian Arctic, this means cooperation with either a territorial government, co-management boards, or an Indigenous organization under a land claims agreement.\footnote{45}

Strategic assessments are also not defined in the Act. Again, there are some indications of what types of assessment are contemplated. The Act specifically identifies the possibility of conducting a strategic assessment of proposed or

\footnote{42}Id.

\footnote{43}See IAA (n 1), ss 92–103.

\footnote{44}See discussion of the definition of federal lands in the previous subsection.

\footnote{45}At present there are no self-government agreements finalized across Nunavut, the North Slope, or the Inuvialuit Settlement Region/NWT. In light of the Arctic focus of the book, we are not discussing Nunavik or Nunatsiavut in this chapter.
existing federal policies, plans and programs that are relevant to the conduct of assessments. Section 95 makes it clear, however, that a strategic assessment can be carried out with respect to any issue that is relevant to an assessment of a designated project or class of designated projects. Not expressly included are issues that are relevant to the assessment of federal projects under sections 81–91 of the IAA.46

3 The IAA and Other Assessment Regimes in the Canadian Arctic

There are several assessment regimes in the Canadian Arctic other than the IAA. They exist under territorial legislation and land claims agreements, and they typically have significant, if not primary, roles to play in impact assessment in the Arctic. For the most part, these regimes are based on a co-management model, whereby the assessment regime is a requirement under a land claims agreement and the reviewing body is composed of individuals appointed by the Indigenous treaty party and the federal and territorial governments, respectively. However, in most situations the responsible federal minister is the final decision-maker.47 Beyond these formal assessment regimes, there are various ways in which strategic or regional assessment could be undertaken; examples of these are discussed further below.

3.1 Project-Level Assessment in the Western Arctic: Inuvialuit Settlement Region, Yukon, and Northwest Territories

In most of the Western Arctic, project-specific assessment is governed by the Inuvialuit Final Agreement48 (IFA) and the Impact Assessment Act.49 Unlike in the Nunavut context discussed below, the IAA can indeed apply in the

46 IAA (n 1), s 95. These provisions are new to the federal assessment process, so while there are examples of strategic and regional assessments carried out elsewhere, there is not enough experience to draw on federally to predict how these discretionary provisions will be exercised.


Inuvialuit Settlement Region, which includes much of the Beaufort Sea (see Figure 16.2). However, the IAA would only be triggered according to its own terms described above in this chapter (i.e., a project listed in the regulations or specific designation by the Minister). Where a proposed project triggers the IAA, the assessment may be integrated with the IFA regime to provide a single assessment process that meets all applicable requirements. Alternatively, the IAA provides for the IFA regime to be substituted for the IAA process with approval of the federal Minister. As noted above, the IAA also requires that the IAA process takes into account findings from any parallel Indigenous-led assessment.

Aside from the Mackenzie Gas Project, which proceeded by Joint Review Panel and did not have a shipping component, there are no examples of the legislated federal impact assessment regime being deployed in the Inuvialuit Settlement Region (i.e., not under the IAA or its predecessors). However, there are at least two proposals in the very early stages that could change this situation, both of which would have significant shipping dimensions. One is focused on developing natural gas fields in the offshore, as well as associated pipelines and two offshore liquefaction and tanker loading platforms far off Tuktoyaktuk. The other is a long-standing proposal to

50 IFA (n 48), Article 11(32). See also Crown-Indigenous Relations and Northern Affairs Canada (n 49); Figure 16.2.
develop a deep water port at Tuktoyaktuk. Subject to the federal Minister of the Environment exercising ministerial discretion and a screening decision under the IAA, these projects would attract application of the IAA by virtue of new marine terminals and expansion of existing marine terminals being on the IAA project list. They would also attract application of the IFA regime, and, in practical terms, these assessments would likely be integrated. It is foreseeable that the Inuvialuit would take a leadership role, considering the relatively broad jurisdiction provided to an “Indigenous Governing Body” under the IAA, and given that Inuvialuit have expressed a preference to not have the IAA apply in the Inuvialuit Settlement Region at all. What this means, however, is that the broad-based assessment regime of the IAA, including its broad scope of factors, would have to be part of such an integrated assessment, which could make it more comprehensive than if it were only under the IFA.

In the Yukon, similar to the Nunavut context discussed below, the Yukon Environmental and Socio-economic Assessment Act (YESAA) explicitly states that the Impact Assessment Act does not apply in the Yukon. As such, for land-based (but potentially shipping related) projects in the North Slope of the Yukon (see Figure 16.2) there would be interrelated processes between the IFA regime and an assessment under YESAA. The North Slope is given special explicit treatment in YESAA, which in basic terms creates a crosswalk to the IFA regime. For example, section 90(2) requires that the reviewing body under YESAA also takes into consideration “the need to protect the rights of the Inuvialuit” under the IFA, and “may take into consideration any matter that it considers relevant.” However, it is the IFA regime that takes over the process in contexts where the Inuvialuit Screening Committee refers to the

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58 See Duane Ningaqsiq Smith and John Lucas, “Re: Brief to the Standing Committee on Environment and Sustainable Development regarding Bill C-69 An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts” (Letter to Standing Committee on Environment and Sustainable Development, Our Commons Committee Brief, Ottawa, 6 April 2018), https://www.ourcommons.ca/Content/Committee/421/ENVI/Brief/BRg9837758/br-external/InuvialuitRegionalCorporation-e.pdf.

59 Yukon Environmental and Social-Economic Assessment Act, SC 2003, c 7, s 6 [YESAA].

60 Id., ss 90–91.

61 Id., s 90(2).
project to the Inuvialuit Environmental Impact Review Board. In practical terms, a project with land- and marine-based activities and shipping dimensions would likely be of a magnitude that it would be referred to the Inuvialuit Environmental Impact Review Board, and thus the IFA process would take over. On a related and similar point, it should also be noted that, in contrast to the application of YESAA, on the NWT side of the territorial border the Mackenzie Valley Resource Management Act (MVRMA) does not apply in the Inuvialuit Settlement Region.

This is by virtue of YESAA, id., s 91(2) which states, “[w]here a project located on the Yukon North Slope is referred to the Review Board by the Screening Committee... the provisions of this Part relating to assessments and decision documents cease to apply in respect of the project” (note that this “Part” is referring to YESAA “Part 2 – Assessment Process and Decision Documents”).


FIGURE 16.2  Map identifying the boundaries of the Inuvialuit Settlement Region
SOURCE: IFA JOINT SECRETARIAT
3.2 **Project-level Assessment in the Eastern Arctic: Nunavut**

The process for project-specific assessment in Nunavut is set out in Article 12 of the Nunavut Land Claims Agreement (Nunavut Agreement), which provides a comprehensive impact assessment regime that takes into account ecosystemic and socioeconomic impacts of proposed projects. The Nunavut Impact Review Board (NIRB) is responsible for implementation of impact assessment (IA) in Nunavut, as detailed in Article 12. Since coming into force in 2015, the *Nunavut Planning and Project Assessment Act* (NuPPAA) provides additional detail and structure for IA in the Nunavut context for both IA and land use planning. NuPPAA is explicit in stating that the *Impact Assessment Act* does not apply in the Nunavut Settlement Area and the Outer Land Fast Ice Zone.

However, if a NIRB screening decision determines that a review of the proposed project is required, the responsible minister has discretion under section 94(1) to refer the project to a “federal environmental assessment panel” or a “joint panel.” Such discretionary referral is constrained by specific parameters such as a project involving a matter of national interest, a project being carried out partly outside the designated area, and consultation with the territorial minister and NIRB. The national interest dimension is additionally constrained through subsection 94(2) which stipulates that the Minister may only refer the project to a federal panel on the national interest dimension.

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64 See also Lalonde and Bankes in this volume.
67 Nunavut Agreement (n 65), Article 12.2.
68 *Nunavut Planning and Project Assessment Act*, SC 2013, c 14, s 2 [NuPPAAA].
70 IAA (n 1), s 7. Note that these areas are both explicitly defined in Articles 3 and 16 of the Nunavut Agreement (n 65), respectively.
71 Pursuant to the process set out in NuPPAA (n 68), ss 86–98.
72 The definition of responsible minister is set out in section 73(1) as follows: (a) the federal minister or the territorial minister, as the case may be, who has the jurisdictional responsibility for authorizing a project to proceed; or (b) the Minister of Northern Affairs, if there is no federal minister or territorial minister who has the responsibility referred to in paragraph (a).
73 NuPPAA (n 68), s 94(1). The details of a Federal Environmental Assessment Panel and associated process are explicitly set out in sections 115–133. In such a situation, it is the federal Minister of the Environment who is responsible for the federal environmental assessment panel process.
basis “on an exceptional basis”.

Further, NuPPAA is explicit in stating that NIRB must be the review body “if the only activity relating to a project to be carried out outside the designated area is the transportation of persons or goods” (i.e., shipping), “unless that Minister determines that the transportation of persons or goods is a significant element of the project and that it is more appropriate for the review to be conducted by a federal environmental assessment panel or a joint panel.” In short, relevant NuPPAA provisions steer project-specific IAs toward being conducted by NIRB, not a federal panel, and even where a federal panel is the reviewing body, that review would not be conducted under the IAA as the IAA is explicitly ousted from application in Nunavut.

Nevertheless, though it has yet to happen in practice, the IAA may still be relevant in a few ways. First, if a project is to be carried out partly outside the Nunavut Settlement Area and beyond the Outer Land Fast Ice Zone, and the transportation of goods is a significant element of the project that warrants a federal review, then presumably the IAA could apply. While the regime offers a very narrow pathway to this process, this could be the case in federal waters in Baffin Bay and Davis Strait, which would be very relevant from an Arctic shipping perspective.

Second, notwithstanding the IAA not applying in Nunavut, if a project is in fact referred to the federal Minister of the Environment for a “federal environmental assessment panel” to conduct the review, presumably that federal panel would be structured in the likeness of review panels under the IAA, even though all aspects of this process option are explicitly laid out in NuPPAA, and NuPPAA would be the governing statute. Those provisions include, for example, rules pertaining to panel composition, scoping, consultation, public and Indigenous participation, factors to consider, traditional and community knowledge, final determinations, and approval conditions.

Third, NIRB has broad powers to consider a range of factors, including “any other matter within the Board’s jurisdiction that, in its opinion, should be considered,” meaning that NIRB could take into account factors set out in the IAA but not explicitly set out in NuPPAA, such as climate change and sustainability considerations.

Finally, there is potential for projects on federal

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74 Id., s 94(2).
75 Id., s 94(3).
76 For the general context about these waters see Oceans North, “Baffin Bay & Davis Strait,” https://www.oceansnorth.org/en/where-we-work/baffin-bay-davis-strait/.
77 NuPPAA (n 68), ss 115–133.
78 Id.
79 Id., s 103(1)(p).
80 IAA (n 1), ss 22(1)(i), 22(1)(h).
land as defined in the IAA to trigger the federal Act. However, the process requirements are so minimal and the scope so narrow that they would most likely be met without a separate federal process.81

There is an additional, and perhaps practically most important, basis for the incorporation of IAA considerations into NIRB led assessments. This comes from the responsible Minister’s ability to find that a NIRB report is deficient "with respect to issues relating to the ecosystemic and socio-economic impacts of the project,"82 and to then require the NIRB to conduct further review, including holding a public hearing, on issues identified by the Minister. In cases where the responsible minister is the federal Minister, as was the case for the Mary River Project discussed below, it is reasonable to expect that the federal Minister would require consideration of issues set out in the IAA, such as climate change and sustainability.

An example in the Nunavut context of a project-specific review with shipping dimensions is the Mary River Project. This large iron ore mining project was approved in 201283 after a lengthy, comprehensive review by NIRB under Nunavut Agreement Article 12.84 The project, situated in northern Baffin Island near the community of Pond Inlet, includes exploration, construction, operation, closure, and reclamation of an open-pit mine and associated infrastructure for extraction, transportation and shipment of iron ore (including ports).85 From a shipping perspective, the ore is transported to Europe via a shipping route through Eclipse Sound, Pond Inlet and Baffin Bay.86

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81 See discussion above on projects on federal lands.
82 NuPPAA (n 68), s 104(3).
84 Note that this project predated NuPPAA. Prior to NuPPAA there was an amendment to the Nunavut Agreement to explicitly clarify that CEAA "and any successor legislation replacing that Act" did not apply in the Nunavut context. See Nunavut Tunngavik, "Article 12.12.7–Canadian Environmental Assessment Act," https://nlca.tunngavik.com/?page_id=1475. For context and analysis of the Nunavut regime in the early days after the Nunavut Agreement was finalized, see Michael J Hardin and John Donihee, eds., Mineral Exploration and Mine Development in Nunavut: Working with the New Regulator Regime (Canadian Institute for Resources Law, 1997).
was assessed entirely by NIRB, not by a federal environmental assessment panel or a joint panel.\textsuperscript{87} 

In the time since the Mary River project was approved, the proponent has made several amendments,\textsuperscript{88} and then sought approval for “Phase 2.”\textsuperscript{89} The second phase proposed an increase in extraction to a total of 12 million tonnes per annum road and rail haulage, infrastructure development at the Milne Port, and increased marine shipping.\textsuperscript{90} Similar to the initial process, NIRB led the Phase 2 assessment. There was no federal panel, though federal departments provided input to the process and seemed to play an influential role, which is not surprising given their capacity and expertise.\textsuperscript{91} The IAA has not been applied to date (nor was CEAA 2012), and it is unlikely to be applied going forward. Despite Phase 2 being a very large mining project, it was not determined to be a project of national significance under NuPPAA and it was not otherwise referred to the relevant federal minister to establish a federal panel. This is presumably owing to the above-described explicit outing of the IAA and the very narrow pathway for any triggering of the IAA regime in the Nunavut context. Ultimately, NIRB recommended that the Phase 2 not be allowed to proceed, finding that the proposal “cannot proceed in a manner that will protect and promote the existing and future well-being of residents and communities of the Nunavut Settlement Area, and Canada in general, and would not be protective of the ecosystemic integrity of the Nunavut Settlement Area.”\textsuperscript{92} That NIRB recommendation was accepted by the responsible ministers in a final decision released in November 2022, meaning that Phase 2 is not permitted to proceed at this time due to unacceptable impacts.\textsuperscript{93}

3.3 Strategic and Regional Environmental Assessments in the Canadian Arctic

A strategic environmental assessment or regional environmental assessment of shipping in the Canadian Arctic would not be the first assessment in the
region to go beyond the project-specific level. The discussion below presents two recent examples, one from the Western Arctic and one from the Eastern Arctic. Both serve as informative examples; however, both resemble relatively narrow approaches to these types of assessments, thus leaving room and potential need for further assessments under the IAA or otherwise.

The Beaufort Regional Environmental Assessment (BREA) was a four-year process focused on a specific sector in a specific region, namely, offshore oil and gas development in the Beaufort Sea. Its purpose was to generate a basis for “a more efficient and effective environmental assessment regime through the development of regional information to address issues that are likely to recur in individual project-level environmental assessments.” BREA did not take place under a specific statute. Rather, the process was launched by the federal government in 2010, led by the then Department of Aboriginal Affairs and Northern Development Canada (AANDC), and was carried out in partnership with the Inuvialuit, industry, government, regulators, and researchers. At a practical level, the process included six working groups focused on nine research areas, none of which were directly focused on shipping. Key BREA findings were released in 2016.

A subsequent phase of the process began in 2016, led by the Inuvialuit Regional Corporation, the Inuvialuit Game Council and Crown-Indigenous Relations and Northern Affairs Canada in the form of the Beaufort Region Strategic Environmental Assessment (BRSEA). BRSEA built on BREA as a “proactive planning tool in which hypothetical future industrial development scenarios are assessed to provide an understanding of the mechanisms

95 Id., xi.
97 Id. The nine research areas: baseline fish information; coastal and marine birds; bird, fish, and marine mammal information; worst-case environmental design limits for ice; sea ice types and extreme ice features; coupled ocean-ice-atmosphere modeling and forecasting; offshore geohazards and coastal processes; web-based geospatial analysis tool; community priorities. The six working groups: Cumulative Effects Working Group; Climate Change Working Group; Social, Cultural, and Economic Indicators Working Group; Oil Spill Preparedness and Response Working Group; Waste Management Working Group; Information Management Working Group.
98 BREA (n 94), p. 150.
through which adverse and positive effects could occur, the potential outcomes (e.g., adverse effects and positive benefits), and applicable management approaches, as well as important information gaps and research needs.”

As such, it too was focused on a single sector in a single region.

Following the federal government’s announcement of a moratorium on oil and gas development in the Canadian Arctic, the NIRB led a strategic environmental assessment focused on potential oil and gas activities in Baffin Bay and Davis Strait. This matter was formally referred to the NIRB by then Indigenous and Northern Affairs Canada pursuant to section 12.2.4 of the Nunavut Agreement, and NIRB issued a final report in July 2019. The purpose was to develop “an improved understanding of potential types of oil and gas related development activities that could one day be proposed within the Canadian waters of Baffin Bay and Davis Strait outside of the Nunavut Settlement Area (NSA), along with their associated adverse effects, benefits, and management strategies.” Ultimately, NIRB issued a number of detailed recommendations, including that the federal government extend the five-year moratorium.


This SEA was not focused on any particular project, but it did include types of oil and gas projects that could be proposed. In this way, this SEA was an approach that included elements of regional assessment (i.e., focus on Baffin Bay and Davis Straight) and sector-specific strategic assessment (i.e., oil and gas). Its focus was narrow, as it did not consider a broad range of activities beyond oil and gas. However, viewed in relation to shipping in Canada’s Arctic, it offers a potentially useful model as it is foreseeable that a future strategic assessment could be sector specific (i.e., shipping and associated on-land infrastructure) in a specific geographic region (Canada’s Arctic, or sub-regions).

It should also be noted that the Nunavut Agreement and NuPPAA include a comprehensive land-use planning regime that plays a role analogous to regional assessment. This takes the form of a conformity assessment whereby a proposed project must proceed through a threshold step to determine whether the proposal conforms with the relevant land-use plan. In practical terms, a project proponent must submit a proposal to the Nunavut Planning Commission, and the Commission then determines whether the project conforms to the requirements of any approved land use plans. If it does, then it can proceed to the project-specific process described above. At the time of writing, a draft Nunavut wide land-use plan had been released by the Nunavut Planning Commission, which does include content on marine shipping.

4 Discussion

In this section, we consider the potential for the four assessment processes under the IAA to be part of the governance and decision-making process for considering the impact of shipping on ecological and social systems in the Arctic. We first reflect on the role of the designated project process, and then proceed to projects on federal land, followed by strategic and regional assessments.

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108 Id.
110 Id., 42, and tables 4 and 5.
4.1 The Designated Project Assessment Process

The designated project process, if it were to be applied in the Western Arctic, would offer the opportunity to consider the full range of implications of shipping in the Arctic associated with any project assessed. The assessment would include benefits and negative impacts, and would assess a broad range of biophysical, economic, social, cultural, and health impacts. The Act specifically requires consideration of gender-based analysis, impacts on Indigenous peoples, and impacts on climate commitments and environmental obligations, among others. The public interest determination to be made at the end of the process is informed by determinations on the contribution of the project on sustainability among other elements. In short, when the process is triggered, it provides every opportunity to broadly consider the shipping element of any proposed new project. As noted in the above discussion about the Nunavut context, by virtue of final decisions resting with a federal minister, the factors in the IAA may also influence assessments even where the IAA is not formally triggered.

As discussed above, the application of the designated project assessment process in the Arctic is limited by the physical activities list and the interplay with territorial and co-management assessment processes. The list does not include a number of activities that may become viable in the longer term, such as aquaculture outside national parks and offshore renewable energy projects other than tidal energy. More immediately, thresholds for listed mining, transportation and energy related activities will exclude smaller projects. Of course, the ministerial discretion to designate projects not listed does provide an opportunity to fill this gap, as does the possibility of amending the list.\textsuperscript{111}

More fundamentally, the application of the designated project assessment process is limited through the interplay between the IAA and the territorial assessment processes discussed above. In the Western Arctic, other than the Yukon North Slope, the IAA, including its designated project process, generally does apply. However, its application is of course shaped by the exercise of harmonization powers that include potentially not requiring a federal assessment even for listed projects, and opportunities for substitution, delegation and joint assessments. In the Eastern Arctic, the default is that the IAA does not apply. As discussed above, there may be opportunities for federal assessments in certain circumstances, particularly panel reviews, but past practice would suggest that these opportunities will be limited. There are also opportunities in the case of the NuPPAA for the responsible minister to consider issues set out in the IAA, such as climate change, impacts on Indigenous communities

\textsuperscript{111} IAA (n 1), s 9.
and gender-based analysis plus (GBA+), if they feel there are deficiencies in the environmental impact statements related to these issues.

4.2 The Federal Projects Assessment Process

As outlined above, there are very few process requirements for so-called federal projects, which for purposes of this chapter is about projects on federal land. Federal land does not include land under the administration of one of the three territorial governments. This will exclude many land-based projects in the Arctic from the IAA’s assessment requirement for projects on federal lands. This is consistent with the exclusion of the application of the IAA in the Yukon and Nunavut.

Where projects are proposed on federal lands in the Arctic, the assessment requirement under sections 81 to 91 would apply to impose some minimal process obligations along with a requirement to make a determination whether the proposed project is likely to cause significant adverse biophysical effects, and, if so, whether such effects are justified in the circumstances. Ultimately, these provisions may serve as a safeguard in case a project on federal lands is not subject to a territorial or Indigenous assessment process, but it is unlikely to add any meaningful process requirements.

It is important to note that while the potential for project level assessments under the IAA to play a significant role in the assessment of shipping related projects is relatively limited, this does not mean the federal government has relinquished its decision-making responsibility. This is apparent from the requirements for projects on federal lands, but is also inherent in the relationship between territorial, co-management, and federal processes outlined in section 4 of the Act. The bottom line is that the federal government still makes project decisions. If the new IAA is the new standard for how federal decisions about major projects are to be made to ensure they are in the public interest, it would be reasonable to expect that federal decision-makers would consider some—if not most—of the same questions set out in section 63 of the IAA when deciding whether to exercise their powers, duties and functions with respect to proposed projects assessed under a territorial or Indigenous assessment process in the Arctic. Thus, while the IAA may strictly speaking not apply to many of the projects, it could still serve as a standard for federal decision-making by considering whether projects make a net contribution to sustainability, and contribute to Canada’s climate commitments and environmental obligations, for example.\textsuperscript{112}

\textsuperscript{112} For discussion of the IAA as a potential basis for reform of northern assessment regimes, see David V. Wright, “Bill C-88 Elimination of the MVRMA ‘Superboard’: Small Step or Start
As with the IAA itself, what is currently missing is meaningful guidance on how such determinations would be made by federal decision-makers, and what the public interest means in an Arctic-specific context with primarily Indigenous populations. Put another way, in the present context there is a need for the federal government, territorial governments, and Indigenous organizations and governments to take stock of the different regimes and clarify how to improve integration and harmonization of the different regimes. This could take the form of a strategic assessment of policies and programs, further discussed below. Given Canada’s “full support” for the UNDRIP and new federal UNDRIP implementation legislation, it is reasonable to expect that next steps also ought to be consistent with and guided by the objectives and provisions of the Declaration.

4.3 The Strategic and Regional Assessment Processes

It is with respect to strategic and regional assessments that the most promising opportunities for the application of the IAA arise. Given the discretionary nature of the IAA provisions for regional and strategic assessments, it matters less whether these provisions have formal application in a given part of the Canadian Arctic. In that regard, the limits imposed on the application of the IAA in the Yukon and Nunavut would extend to sections 92–103 of the IAA. In other parts of the Arctic, the provisions for strategic and regional assessments would seem applicable, including with respect to any ocean-based activities in Arctic waters.

However, perhaps the more important consideration is that similar to the project level assessment provisions of the IAA, there is potential for strategic and regional assessments carried out under the IAA to serve as role models for similar assessments in the Arctic region. The examples discussed above illustrate the appetite for higher tier assessments in the region, even if the processes themselves were far from perfect.


115 United Nations Declaration on the Rights of Indigenous Peoples Act (n 13).
There is certainly significant potential for well-designed and executed regional assessments, either under the IAA or outside the parameters of the Act, to contribute to sustainable Arctic shipping. Regional assessment would be particularly helpful in this regard if they were done at a manageable scale, and included all existing and potential human activities, and included a range of reasonable future development scenarios that allowed participants to see the interaction among these activities, where they complement each other, where they conflict with each other, and how they individually and collectively affect the health and resilience of ecosystems. Such regional assessments would hold the promise of building some level of agreement on the ideal mix of human activities to serve the social, cultural and economic needs of Arctic communities while ensuring the health and resilience of the natural systems they depend upon. They would consider both the impacts and benefits of various shipping related activities and position decision-makers better to consider whether specific shipping activities should be allowed, at what scale and under what circumstances.

There is similarly potential for strategic assessments to contribute to a better understanding of where, how, and under what conditions shipping can maximize its contribution to sustainability in the Canadian Arctic. While the distinction between regional and strategic assessments under the IAA is not clear, a key difference appears to be that strategic assessments are not regionally focused, and their mandate is more constrained than regional assessments. Still, the strategic assessment process offers opportunities to consider specific industry sectors and their potential to make a net contribution to sustainability in the Canadian Arctic, while minimizing negative impacts on natural systems and local communities. Among the issues that could be addressed in strategic assessments are a range of operational impacts, such as vessel source pollution, invasive species, underwater noise, icebreaking, conflict with Indigenous peoples land use, water pollution from operational fuel, and air and land pollution in the form of emissions and black carbon. Another set of challenges includes impacts related to accidents, which would include the consideration of appropriate spill responses, and potentially the ban of certain vessels or cargo from sensitive areas.

Two shipping related issues that are currently under consideration, that seem to us particularly important for inclusion in a strategic assessment on Arctic shipping, would be the establishment of low-impact shipping corridors and deep water ports. As Porta et al. note, questions about northern marine destination/transportation routes have persisted nearly four decades.116 The

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Northern Marine Transportation Corridors Initiative, now called the Northern Low-Impact Shipping Corridors Initiative, “seeks to minimize potential effects of shipping on wildlife, respect culturally and ecologically sensitive areas, enhance marine navigation safety, and guide investments in the North.”¹¹⁷ Levitt defines these corridors as “dynamic shipping routes throughout Canada’s North where the necessary infrastructure, marine navigational support, and emergency response services could be provided to ensure safer marine navigation, while respecting the sensitive northern environment and its ecological and cultural significance.”¹¹⁸ Dawson et al. outline the work of the Arctic Corridors and Northern Voices Project that is working to compile local and Indigenous knowledge from Arctic communities to help fill gaps in knowledge.¹¹⁹ The use of any established corridors is currently voluntary and a strategic assessment could help to encourage needed regulatory and policy initiatives to formally establish appropriate corridors. As important, the location of destination ports is a question very much in play, with some communities having now expressed interest in establishing deep water ports. An SEA aimed at considering existing and needed port infrastructure would certainly help to bring clarity to where ports should be located from a pan-Arctic perspective.

As a general observation, it is clear that there has been experience with higher tier assessments in the Arctic, however, the process has tended to be ad hoc, and the scope has tended to be narrow, as seen for example in the sector-specific BREA example discussed above. A more systematic and comprehensive approach to regional and strategic assessments has significant potential, and the provisions in the IAA have the potential to assist with efforts to move in this direction. However, it is important to note that much work remains at the federal level to realize the potential of regional and strategic assessments.¹²⁰

More generally, it may be time to revisit how the new federal IAA interacts with other assessment processes in the Arctic region. The federal government

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¹¹⁹ Dawson et al. 2020 (n 25). See also Dawson and Song in this volume.

¹²⁰ Jason MacLean, Bram Noble and Jill Blakley, “Strategic and Regional Environmental Assessments,” in Doelle and Sinclair, eds. (n 3), 372–387, at 381.
indicated in 2016 that in addition to reviewing CEAA 2012, it would also review the northern assessment regimes. That was never done. With the IAA now in place, and the complexity of the assessment regime explored in this chapter, this review is more important than ever.

Another assessment process with potential implications for the Arctic region on the horizon is the environmental assessment system currently being negotiated as part of the emerging Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ) regime under the United Nations Convention on the Law of the Sea. Negotiations were delayed by the COVID pandemic, but have now resumed. The environmental assessment regime is being designed for areas beyond national jurisdiction, but two issues currently under negotiation have potential implications for Canadian Arctic waters. One is the impact of projects in Canadian waters on the high seas. The other is the impact of activities on the high seas on Canadian waters. It remains to be seen to what extent these contentious issues will come within the scope of the BBNJ environmental assessment regime.\(^{121}\)

Another international dimension relates to the impact of activities in Canada on other coastal States in the Arctic region. For example, in the Mary River Project, the assessment of the expansion of the mine had to consider transboundary impacts in accordance with the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), particularly impacts of the project on Greenland. Denmark was identified as an affected party under the Convention and a report outlining potential impacts on Greenland was prepared as part of the assessment.\(^ {122}\)

5 Conclusion

This chapter highlights the relevant features and attributes of four assessment processes under the IAA. The IAA is far from perfect but has much to offer at the levels of project assessments and higher tier assessments for undertakings related to shipping in the Arctic. Ultimately, any attempts to apply the IAA in the shipping context will have to be sensitive to the complex territorial and


co-management assessment regimes that exist in the region, particularly given that the bases for those regimes are in constitutionally protected land claims agreements. Having said this, there is good reason to resist the temptation to just not apply the IAA in the Arctic. The IAA is reasonably well suited to the task of cooperative impact assessments given the broad statutory bases for cooperation and harmonization. This is particularly important with respect to other assessment processes that may be led by other jurisdictions in the Canadian Arctic, in particular Indigenous organizations, and includes a broad range of impact considerations beyond biophysical. In today’s context of reconciliation, attempts to renew nation-to-nation relationships, and government commitments to the implementation of UNDRIP, the deployment of impact assessments in the Arctic region ought to be approached as an opportunity to build trust and relationships toward a shared interest of long-term sustainability and prosperity.

With the continued recession of multiyear ice and the advent of longer shipping seasons there is no doubt about the potential for development in Canada’s Arctic region—development that will rely largely on shipping for the delivery and movement of goods. It is also clear that there has been little consideration of potential shipping impacts in IAs completed for projects that involve shipping. In fact, the inclusion of shipping impacts into IAs processes is uncommon, at least in a global context, even though many of the procedural and analytic tools used in IA could be of use when managing shipping practices, impacts and risks.¹²³ It is also clear that the Canadian Coast Guard and local communities have very limited capacity to respond to ship-based spills.¹²⁴ As a result, many local people have expressed their concerns about the potential for spills and accidents due to increased shipping, as well as the effects of shipping on marine mammals.¹²⁵

It is in response to this, that the IAA provides an opportunity to consider the impacts of shipping through each of the four assessment processes under the Act. As outlined above, there are critical decisions that need to be made regarding shipping in the Arctic that are particularly well suited for joint strategic or

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¹²³ Karin Andersson et al., “Methods and Tools for Environmental Assessment,” in Andersson et al., eds. (n 15), 265–293 https://doi.org/10.1007/978-3-662-49045-7. Impact assessments carried out by the NIRB in Canada have commonly included shipping-related impacts.

¹²⁴ Elise DeCola, Sierra Fletcher and Layla Hughes, Framework for the Development of Nunavut Community Oil Spill Response Plans: Report to WWF-Canada (March 2017); see also, Layla Hughes, Background Information for Community Oil Spill Response Planning in Pond Inlet, Resolute, Grise Fiord, and Arctic Bay: Report to WWF-Canada (March 2017), both at http://awsassets.wwf.ca/downloads/170405_oilspillresponseframeworknunavut_web.pdf.

¹²⁵ Dawson (n 7), p. 33.
regional assessments involving federal, territorial, Indigenous, and co-management assessment regimes. There are also important opportunities at the project level through federal lands provisions under the IAA and the involvement of federal ministers in project level decisions in the Arctic. This decision-making role provides discretion for the consideration of areas of impact of particular concern to the federal government and as required under the IAA.126

As such, there is the potential to improve governance for shipping in the Canadian Arctic through the application of the IAA at the project, regional and strategic levels, including through enhanced integration and harmonization between the IAA and other assessment regimes. This is especially so since the IAA identifies specific impacts that require consideration that territorial and co-management assessments currently do not, such as GBA+ and climate change, and that capacity for assessing impacts related to these is being built at the federal level. IA in the Arctic as it applies to shipping and related developments is going to require effort from all governments, local and Indigenous communities, and every research institution active in the Arctic given how rapidly change is actually occurring and the effects of such change on natural and human systems. In the present context, there is great potential for IA in general, and the IAA in particular, to become a well-utilized tool of governance and decision-making in the Arctic.127


127 Andersson et al. (n 123), pp. 265–293.