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**INSTITUTING a *Federal
Framework for the
Management of Modern Treaties*
(Implementation Management Framework)**

May 2011

Canada

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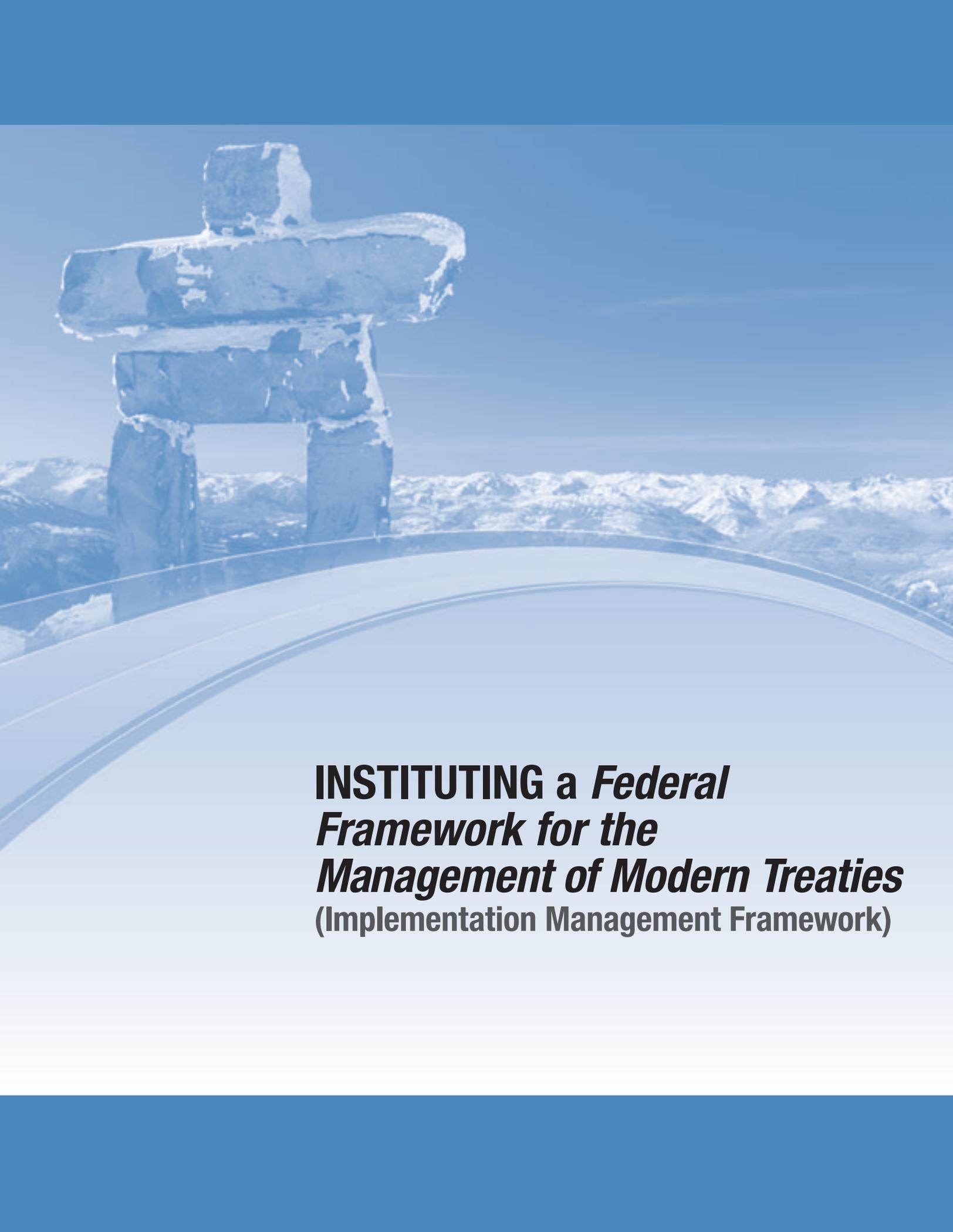
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EXECUTIVE SUMMARY – IMPLEMENTATION MANAGEMENT FRAMEWORK

The *Federal Framework for the Management of Modern Treaties* (Implementation Management Framework) strengthens the management of modern treaty implementation across the federal government by improving coordination and decision making between departments. It helps federal officials to fulfill Canada's modern treaty responsibilities in a coordinated, consistent and timely manner by:

- ❖ improving information sharing;
- ❖ improving oversight;
- ❖ clarifying accountabilities and responsibilities; and
- ❖ facilitating timely and efficient decision-making.

It builds on a pre-existing federal committee structure that supports the negotiation of modern treaties (federal caucus and federal steering committee) and includes:

- ❖ regional, officials-level caucuses to provide structured interdepartmental forums to ensure collaborative, consistent and effective fulfillment of implementation activities undertaken in the regions;
- ❖ a national, officials-level interdepartmental caucus to provide strategic policy and operational guidance to regional implementers and senior management across departments; and
- ❖ a senior (ADM) level steering committee to provide direction to federal departments and agencies on modern treaty implementation; the committee's executive will be responsible for providing direction on strategic and fiscal issues.

BACKGROUND – COMPREHENSIVE LAND CLAIMS AND SELF GOVERNMENT AGREEMENTS

Comprehensive land claim agreements (also referred to as modern treaties) are constitutionally protected modern treaties that set out ongoing legal, political and economic relationships and commitments among Aboriginal parties, the federal government and provincial/territorial governments. Since the Comprehensive Land Claims Policy's inception in 1973, 22 modern treaties have been negotiated, resolving Aboriginal claims to 40% of Canada's land mass. Many of these treaties include or are associated with self-government agreements.

Canada's Comprehensive Land Claims and Inherent Right of Self-Government policies require implementation plans to accompany all agreements. Implementation plans for most agreements involve between 100 and 200 obligations for each party. In many agreements, the federal government is responsible for more than 50% of all obligations, the majority of which are ongoing. Successful implementation of agreements is essential to provide certainty for resource development, and to ensure delivery of programs and services essential to the health and safety of self-governing communities.

Comprehensive land claim agreements cover a wide range of subjects that affect many federal departments and agencies, including: title and management of settlement lands; wildlife and aquatic resources management; parks and conservation areas; environmental review and monitoring processes; forestry, land and water management; mining; heritage resources; economic development; government contracting and procurement; taxation and capital transfers; public sector employment; agreement implementation processes; and dispute resolution mechanisms. Self-government agreements provide for new Aboriginal governance structures and new jurisdictional and programming arrangements for health, education, social services and infrastructure matters. New intergovernmental fiscal relationships are also created, with attendant federal obligations and responsibilities that are shared across several federal departments and agencies. Although modern treaties typically cover certain issues and provisions, there can be considerable variation in priorities and circumstances from region to region, and across agreements.

MODERN TREATY MANAGEMENT

Modern treaties represent the foundation of new, progressive relationships with Aboriginal governments and signatory organizations. They strengthen the participation of Aboriginal citizens in the Canadian federation, and encourage strong and self-reliant communities. Fulfilling the terms of agreements effectively is essential in providing certainty for resource development in settlement areas, and ensuring the delivery of programs and services vital to the health and advancement of Aboriginal beneficiaries and citizens of self-governing communities.

The federal Crown as a whole is accountable for fulfilling Canada's obligations under modern treaties. This responsibility is shared across various departments and agencies, and carried out by federal government officials in regional offices and at headquarters. Indian and Northern Affairs Canada is responsible for coordinating implementation on behalf of the Government of Canada. Departments and agencies are responsible for implementing aspects of agreements that fall within their mandates. The collaboration and engagement of all departments and agencies with implementation responsibilities is thus required to make implementation work.

MODERN TREATY MANAGEMENT – KEY CHALLENGES

Because modern treaties have come into effect incrementally over the past 30 years, implementation is being managed on a treaty-by-treaty basis, as federal implementers have noted. In the past, there was a perception that implementation requirements could be addressed through normal government business. Departments have put front-line staff in place—generally implementation and funding officers, and negotiators—to support transactional implementation activities. The federal government has proven its ability to work together with its partners to implement initial, one-time and transactional obligations, and set up the structures required for modern treaties.

However, experience has shown that, over time, the administration of modern treaties is more complex and resource-intensive than was originally anticipated, and that agreements are difficult to implement

through regular government business. For example, agreements:

- ❖ include provisions that require multiple departments to work together on implementation;
- ❖ include provisions to revisit initial assumptions periodically through the review and renewal of fiscal financing agreements and implementation plans that support both the land and governance components of modern treaties; and
- ❖ may give rise to circumstances where the terms and conditions of existing departmental programs and policies do not fulfill the requirements of agreement provisions.

The federal government has found it difficult to work together in a coordinated fashion to resolve implementation challenges that arise from time to time, and to make adjustments in a timely and consistent way.

STRENGTHENING MODERN TREATY MANAGEMENT – THE IMPLEMENTATION CHANGE AGENDA

Given the number of treaties now in place, and the magnitude and importance of federal implementation responsibilities, the federal government is now developing a more coordinated and consistent approach to managing federal implementation obligations across government. This includes work in the following three areas:

- ❖ **Comptrollership:** Strengthening internal and cross-government monitoring and reporting mechanisms, including the development of an enhanced Treaty Obligation Monitoring System (TOMS);
- ❖ **Legal/Policy:** Developing guidelines for implementers across the federal government to provide practical advice and direction to federal officials who have implementation responsibilities, and informing them

of departmental roles and responsibilities. Developing issue-specific guidelines to assist federal officials in managing key implementation issues, such as alternate dispute resolution, reviews and annual reports; and

- ❖ **Management:** Establishing cross-government structures to improve management of the Government of Canada’s implementation responsibilities, improving coordination and cooperation between departments and agencies, and facilitating Canada’s decision-making processes.

The objective of this “change agenda” is to ensure that the federal government as a whole is upholding the honour of the Crown by fulfilling its modern treaty commitments in a coordinated, consistent and timely manner.

THE IMPLEMENTATION MANAGEMENT FRAMEWORK

Description and intended outcome

The Implementation Management Framework is a proposal to strengthen the management of modern treaty implementation across the federal government by improving cross-government coordination and decision-making. It is designed to assist Canada in fulfilling its modern treaty responsibilities in a coordinated, consistent and timely manner. In doing so, it seeks to:

- ❖ improve information sharing (between departments, headquarters and regions, implementers and senior management);
- ❖ improve treaty implementation oversight, including improved monitoring and reporting;
- ❖ clarify accountabilities and responsibilities; and
- ❖ facilitate timely and efficient decision-making.

Work is under way to develop a performance measurement strategy to assist officials in evaluating the implementation management framework.

The framework, as set out in Annex A, includes three structures to facilitate interaction between federal officials at the regional, headquarters and senior management levels.

Regional caucuses will provide structured interdepartmental forums to ensure collaborative, consistent and effective fulfillment of implementation activities undertaken in the regions.

- ❖ These caucuses will address issues that are specific to a particular region or treaty and may be addressed through existing departmental mandates, programs and authorities.

The mandate of the existing **Federal Caucus** will be expanded to provide a federal forum for the development of broad strategic policy, operational guidance, and support to regional operations and the senior-level steering committee.

- ❖ Federal Caucus will provide guidance and make recommendations to the Federal Steering Committee on issues that: cross regions or agreements; are not covered by existing mandates or program authorities; or require a financial decision by departments.

The **Federal Steering Committee on Self-Government and Comprehensive Claims** (FSC) will assume new responsibility to provide direction to federal departments and agencies on modern treaty implementation. The committee's executive will be responsible for providing direction on strategic and fiscal issues.

- ❖ The FSC will be expected to provide guidance and direction to departments and, as appropriate, make decisions or recommendations with respect to implementation mandates, and fiscal and policy issues.

Giving effect to the implementation management framework

In the absence of existing mechanisms to address implementation comprehensively across the federal family, the executive of the Federal Steering Committee for negotiations agreed to oversee the development of an implementation management framework. Over the past year, the implementation branch, in consultation with Federal Caucus, has developed the structure described above. Federal Caucus has also considered various options for giving effect to the framework, including the creation of a new committee structure to address implementation issues and the integration of implementation into the existing FSC structure.

There is consensus at the working level that the implementation management framework should be integrated into the existing FSC structure. It should be noted that the FSC is already mandated to address a limited range of implementation issues (e.g., approval of implementation plans, fiscal renewals).

For a pilot period of three years, the existing mandates of the Federal Steering Committee on Self-Government and Comprehensive Claims and of Federal Caucus will be expanded to include treaty implementation issues. In 2013, Indian and Northern Affairs Canada, together with departments with implementation responsibilities, will evaluate the effectiveness of integrating implementation into the Caucus/FSC structure.

