



Indian and Northern  
Affairs Canada

Affaires indiennes  
et du Nord Canada

***Final Report***

***Summative Evaluation of  
the First Nations Oil and Gas  
and Moneys Management  
Act Implementation***

***(Project Number: 1570-7/09087)***

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Evaluation, Performance Measurement,  
and Review Branch  
Audit and Evaluation Sector

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Canada 

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## ***List of Acronyms***

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<b>EPMRB</b>	Evaluation, Performance Measurement and Review Branch
<b>FNOGMMA</b>	<i>First Nations Oil and Gas and Moneys Management Act</i>
<b>FNLMA</b>	<i>First Nation Land Management Act</i>
<b>IMETA</b>	Indian Moneys, Estates and Treaty Annuities
<b>INAC</b>	Indian and Northern Affairs Canada
<b>IOGC</b>	Indian Oil and Gas Canada
<b>IRC</b>	Indian Resource Council
<b>PAA</b>	Program Activity Architecture
<b>RMAF/RBAF</b>	Results-based Management and Accountability Framework and Risk-based Audit Framework

# Executive Summary

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## Introduction

This evaluation was completed by the Evaluation, Performance Measurement and Review Branch with support from T.K. Gussman and DPRA Canada. It fulfills the Treasury Board's requirement for an evaluation of the implementation of *First Nations Oil and Gas and Moneys Management Act* (FNOGMMA) Program, prior to the renewal of its terms and conditions. The primary objectives of the evaluation are to assess the FNOGMMA Program with respect to the following overarching issues:

- Relevance;
- Design and delivery;
- Performance (progress towards achieving outcomes, demonstrations of efficiencies and cost-effectiveness); and
- Identification of future considerations.

The FNOGMMA provides First Nations with the opportunity to assume direct management and regulation of oil and gas exploration and exploitation, currently carried out on their behalf by Indian Oil and Gas Canada (IOGC); receiving and managing moneys derived from this activity; and/or assume the legal authority to control and manage (including but not limited to: expending, investing, and administering) its capital and revenue trust moneys currently held by the Crown in the Consolidated Revenue Fund on behalf of the First Nations. First Nations can elect to opt into one or both of these options.

Expected program outcomes include: improved economic development; greater utilization and value of community land and resources; First Nations governance, authority and control over lands; resources and the environment; opportunity for First Nations to opt out of certain provisions of the *Indian Act* and the *Indian Oil and Gas Act*, and; increased flexibility to react to economic opportunity and community needs.

## Methodology

The evaluation methodology undertaken included the following lines of evidence:

- A review of key sources of literature on governance and resource management in Aboriginal communities;
- A review of program documents and files;
- The completion of 21 key informant interviews; and
- The completion of two case studies, one in the White Bear First Nation, Saskatchewan, and one in the Siksika Nation, Alberta.

A major limitation of this methodology is that there was very limited input from First Nation and industry representatives. To date, FNOGMMA has involved four First Nation communities. However, during the evaluation one of these communities withdrew and the other three communities were terminated from the program. This inhibited input from First Nations that were directly involved to the two community case studies.

The evaluation team also attempted to contact stakeholders that were potentially knowledgeable about FNOGMMA, but that hadn't directly participated in the program. The participation of these stakeholders was entirely voluntary and, in most cases, they declined to be interviewed.

## **Key Evaluation Findings**

### *Relevance*

FNOGMMA is designed to be consistent with government policies and priorities regarding First Nation sectoral governance. It is also closely aligned with two of Indian and Northern Affairs Canada (INAC) Strategic Outcomes - The Land and The People - as well as INAC's Sustainable Development Strategy and departmental economic development programs. Moreover, federal legislation such as FNOGMMA can be viewed as supporting capacity development along the governance continuum, which may ultimately lead to comprehensive self-government arrangements. The money management section of FNOGMMA appears to be directly addressing First Nations' money management concerns; however, it remains unclear whether First Nations see the program as the most appropriate solution to current regulatory issues for oil and gas management.

### *Design and Delivery*

FNOGMMA was designed in cooperation with First Nations and appears to be designed in a manner that will facilitate the actualization of outcomes; however, in practice, the program is too rigorous and difficult for the participating First Nations. Identified barriers and concerns relating to the implementation of FNOGMMA include lack of an enforcement mechanism, loss of federal fiduciary responsibilities, environmental liability, the complexity of oil and gas regime and lack of community capacity. Furthermore, the current FNOGMMA budget does not allocate enough dedicated financial resources to the money management component of the program.

### *Performance (Progress towards Achieving Outcomes, Demonstrations of Efficiencies and Cost-Effectiveness)*

FNOGMMA has proven unsuccessful in meeting its intermediate and final outcomes. During the course of this evaluation, FNOGMMA's three pilot projects were cancelled and the fourth participating First Nation withdrew from the program. The approach to date has proven to be neither cost-effective nor efficient given the time and investment spent without realizing any results. This may in part be because First Nations are weighing the benefits with the financial and environmental liabilities of controlling oil and gas.

### *Identification of Future Considerations*

A number of lessons learned and best practices were identified with the intent of improving the effectiveness and efficiency of FNOGMMA implementation in the future. These include strategies such as ensuring a qualified labour force, pursuing strong partnerships, ensuring strong leadership and a long-term vision, identifying ways to mitigate funding and capacity concerns, as well as adopting lessons learned from the *First Nation Land Management Act* implementation.

**It is recommended that INAC:**

1. Based on the evaluation findings, INAC (specifically IOGC) should determine the feasibility of continuing with the implementation of the oil and gas management portion of FNOGMMA.
2. Before further implementation of the oil and gas management portion of FNOGMMA and to inform future implementation of the moneys portion of FNOGMMA, INAC should build on the evaluation findings and address the following targeted issues:
  - a. The needs of provinces for their participation in the implementation of FNOGMMA (specifically IOGC).
  - b. Improve its understanding of First Nation priorities and interests with respect to oil and gas management on reserves, the risk and benefits to First Nations opting into the FNOGMMA, and the relationship between FNOGMMA and the modernization of the *Indian Oil and Gas Act* as well as potential litigation as an alternative to FNOGMMA (specifically IOGC).
  - c. Take into consideration the lessons learned and best practices (particularly related to readiness, capacity development, and governance) of other optional legislation, including the *First Nation Land Management Act*, the *First Nation Commercial and Industrial Development Act*, and the *First Nation Fiscal and Statistical Management Act* (Individual Affairs Branch and IOGC).
3. INAC (Individual Affairs Branch and IOGC, if applicable) should develop a process for assessing the specific capacity needs of individual First Nations as well as risk factors that could affect their completion of the FNOGMMA process. This process should also include a method to develop mitigation strategies related to the identified capacity needs and potential success factors of individual First Nations.
4. INAC (Individual Affairs Branch and IOGC, if applicable) should incorporate FNOGMMA's long-term outcomes (particularly related to the broader economic, governance and capacity outcomes) and more details on program activities and outputs into a performance measurement strategy, which should then be implemented to track the performance of the program. Only if the objectives of the moneys and the oil and gas portions of FNOGMMA are dramatically different, should INAC consider separate authorities for the two components.

## ***Context to FNOGMMA Management Response and Action Plan***

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The concept of greater First Nation control of oil and gas was initially discussed at an all chiefs meeting leading to the creation, in 1996, of the oil and gas Pilot initiative.

Developed jointly by government and First Nations, the tools for the *First Nations Oil and Gas and Moneys Management Act* (FNOGMMA) were created. In December 2005, FNOGMMA received Royal Assent, coming into force April 1, 2006. The FNOGMMA voting regulations were completed in 2006 and environmental assessment regulations were completed in 2008.

Since then, oil and gas codes, laws and the transfer and payment agreements were developed. Progress has also been made on the development of the provincial enforcement agreements required under FNOGMMA s.43. However, the fact that FNOGMMA does not provide for immunity of provincial officials has proven to be a barrier to the conclusion of these agreements. Comparatively, both the *First Nations Commercial and Industrial Development Act* (FNCIDA) and the modernized *Indian Oil and Gas Act* (IOGA) include provincial immunity provisions. IOGC has been and continues to work with the provinces to resolve this issue, possibly through the use of other temporary indemnification vehicles.

The Pilot Transition Agreements, which provided authority to the Pilot First Nations (Siksika Nation, Blood Tribe, White Bear First Nation) for enhanced co-management, were extended several times at the request of the First Nations. They argued that they needed more time to conduct their ratification votes. Since no ratification votes were held, INAC did not extend the Transition Agreements past their January 31, 2010, termination date. Therefore, the pilot initiative was terminated with the intent of allowing the oil and gas management portion of FNOGMMA to be opened up to other interested First Nations. Since that time, Siksika Nation has submitted a Band Council Resolution (BCR) and accompanying business plan as per the FNOGMMA Oil and Gas Implementation Policy to re-enter the implementation process for FNOGMMA. Siksika Nation is expecting to hold a FNOGMMA ratification vote in fiscal year 2010-2011. Two other First Nations have also submitted unsolicited BCRs for the oil and gas option of FNOGMMA.

The strategic objectives related to economic development and First Nation governance are well articulated in the evaluation. There are, however, other objectives to the creation of FNOGMMA. They include:

- FNOGMMA is an integral aspect of the strategic vision of the management of oil and gas resources that received Cabinet support in June 2007, by providing a means for First Nations to move out of the confines of the modernized IOGA and into sectoral self-government. The objective of the modernization includes increased certainty and clarity that have implications related to reduced discretion

and flexibility. Without an available alternative option, barriers to this modernization may be created.

- Having an option such as FNOGMMA available may also provide an alternative to potential litigation where the range of opportunities for a First Nation may be limited by the *Indian Oil and Gas Act*.

Further discussion is therefore necessary to determine the next steps of the oil and gas component of FNOGMMA, as it interrelates with other initiatives in the modernization of INAC's strategic lands agenda to form a complete package.

The oil and gas industry is very complex and there may be a limited number of First Nations that are able to meet the entrance requirements of the oil and gas portion of FNOGMMA, but it can be an important option to those who meet the requirements and who wish to take on sectoral self-governance of oil and gas.

It should also be noted that, although the moneys management component of FNOGMMA has been opened up to all First Nations, the oil and gas management component was intended to be opened up once the Pilot First Nations had conducted their ratification votes. As a result, there has not yet been a meaningful measure of interest in the oil and gas component.

# Management Response and Action Plan

**Project Title: Summative Evaluation of the Implementation of the *First Nation Oil and Gas and Moneys Management Act***

**Project # 09087**

Recommendations	Actions	Responsible Manager (Title/Sector)	Planned Implementation/ Completion Dates
1. Based on the evaluation findings, INAC (specifically IOGC) should determine the feasibility of continuing with the implementation of the oil and gas management portion of FNOGMMA.	LED/IOGC will prepare materials to engage in a Senior Policy discussion on the options and feasibility of continuing with the implementation of the oil and gas management portion of FNOGMMA.	CEO, IOGC and A/DG Lands Mgmt Services, LED	Presentation to SPC June 22, 2010
2. Before further implementation of the oil and gas management portion of FNOGMMA and to inform future implementation of the moneys portion of FNOGMMA, INAC should build on the evaluation findings and address the following targeted issues: <ul style="list-style-type: none"> <li>a. The needs of provinces for their participation in the implementation of FNOGMMA (specifically IOGC).</li> <li>b. Improve its understanding of First Nation priorities and interests with respect to oil and gas management on reserves, the risk and benefits to First Nations opting into the FNOGMMA, and the relationship between FNOGMMA and the modernization of the <i>Indian Oil and Gas Act</i> as well as potential litigation as an alternative to FNOGMMA (specifically IOGC).</li> <li>c. Take into consideration the lessons learned and best practices (particularly related to readiness, capacity development, and governance) of other optional legislation, including the <i>First Nation Land Management Act</i>, the <i>First Nation Commercial and Industrial Development Act</i>, and the <i>First Nation Fiscal and Statistical Management Act</i> (Individual Affairs Branch and IOGC).</li> </ul>	<p>a. IOGC will engage the oil and gas producing provinces to confirm procedural or legislative changes required to facilitate the continued implementation of the oil and gas component of FNOGMMA.</p> <p>b. IOGC will conduct outreach to interested First Nations as well as actively promote the availability of the oil and gas management component to other First Nations that may be interested to gauge interest and potential uptake as well as to identify both benefits and potential issues that First Nations may foresee. Key to this outreach:</p> <ul style="list-style-type: none"> <li>- is the explanation of the new IOGA regime under development – that it is more prescriptive than the current regime with much less room to exercise discretion.</li> <li>- are enhancements / legislative changes which are contemplated.</li> </ul> <p>c. IOGC and IMETA will conduct an analysis of the other optional legislative programs to learn and understand if there are related ‘lessons learned’ or ‘best practices’ which can be used and transferred to the delivery of the moneys management and or the oil and gas management portions of FNOGMMA.</p>	<p>CEO, IOGC</p> <p>CEO, IOGC</p> <p>CEO, IOGC and Director, IMETA (IAB)</p>	<p>Confirm with oil and gas provinces by June 15, 2010</p> <p>Active outreach and promoting to oil and gas First Nations that may be interested over summer of 2010.</p> <p>March 31, 2011</p>
3. INAC (Individual Affairs Branch and IOGC if applicable) should develop a process for assessing the specific capacity needs of individual First Nations as well as risk factors that could affect their completion of the FNOGMMA process. This process should also include a method to develop mitigation strategies related to the identified capacity needs and potential success factors of individual First Nations.	<p>IOGC has developed a document entitled ‘Governance and Operational Guideline for Developing a Business Plan’ as part of the Oil and Gas Implementation Policy. Additionally, IMETA (IAB) developed a document entitled “FNOGMMA Moneys Management Implementation Policy” which contains a process and criteria for assessing financial management capacity of a First Nation.</p> <p>IOGC and IMETA will review and update their respective Implementation Policies as needed to include the specific capacity</p>	CEO, IOGC Director, IMETA (IAB)	<p>Preliminary Review completed by</p> <p>June 30, 2010</p> <p>Detailed Review</p>

	needs of First Nations and address the risk and success factors that could affect individual First Nation completion of the FNOGMMA process; and a method to develop viable mitigation strategies.		completed by Oct. 2010
4. INAC (IAB and IOGC if applicable) should incorporate FNOGMMA's long-term outcomes (particularly related to the broader economic, governance and capacity outcomes) and more details on program activities and outputs into a performance measurement strategy, which should then be implemented to track the performance of the program. Only if the objectives of the moneys and the oil and gas portions of FNOGMMA are dramatically different, should INAC consider separate authorities for the two components.	IOGC and IMETA will develop a Performance Measurement Framework for FNOGMMA. This will include a logic model and performance measurement indicators for the desired outcomes and outputs, taking into account any program changes resulting from the previous recommendations.	CEO, IOGC and Dir. PCS, IOGC Director, IMETA (IAB)	Completed by Jan. 31, 2011

The Management Response and Action Plan for the Evaluation of the Implementation of the *First Nation Oil and Gas and Moneys Management Act* was approved by the Evaluation, Performance Measurement and Review Committee on September 24, 2010.

# 1. Introduction

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## 1.1 Overview

This summative evaluation was undertaken by Indian and Northern Affairs Canada (INAC), Evaluation, Performance Measurement and Review Branch (EPMRB) with support from T.K. Gussman and DPRA Canada. It fulfills the Treasury Board's requirement to evaluate programs prior to the renewal of their terms and conditions, and it is intended to inform:

- Future planning and programming decisions for the *First Nation Oil and Gas and Moneys Management Act* (FNOGMMA); and
- The potential for separate authorities for the oil and gas management and the moneys management components of FNOGMMA.

## 1.2 Program Profile

### 1.2.1 Background and Overview

FNOGMMA, developed in partnership with First Nations, is a federal legislation that came into force April 1, 2006<sup>1</sup>. Work toward FNOGMMA began in the mid-1990s following a proposal from the First Nations Indian Resource Council<sup>2</sup>. The Act provides First Nations with the opportunity to achieve sectoral-governance over oil and gas exploration and exploitation, and/or control and management of their trust moneys. First Nations can opt into one or both of these options.

First Nations that opt into the oil and gas component receive contribution funding for developing laws, codes and agreements, capacity development and training, community consultation and ratification. First Nations that opt into the moneys component receive the contribution funding for developing laws, codes and agreements, community consultation and ratification.

A First Nation wishing to opt into FNOGMMA must pass through the following six phases:

- **Phase 1:** Expression of an intent to opt into FNOGMMA by submitting a Band Council Resolution.
- **Phase 2:** Development of an oil and gas code, draft oil and gas laws, a financial code, a provincial agreement (if required), the Transfer and/or Payment Agreement and a banking or trust agreement.
- **Phase 3:** Conducting community information sessions.
- **Phase 4:** Community ratification vote to approve transfer of oil and gas and/or moneys management.
- **Phase 5:** First Nation assumes legal responsibility for oil, gas, and/or moneys management through Schedule 1 and / or 2 of FNOGMMA.
- **Phase 6:** First Nation is operating under FNOGMMA.

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<sup>1</sup> Although the FNOGMMA came into effect in 2006, the funding was delayed for two years. This was due to the fact that other work needed to be completed prior to First Nations being able to opt into the FNOGMMA.

<sup>2</sup> Indian Resource Council is an Aboriginal organization representing over 130 First Nations with oil and gas interests.

Appendix A details the expected results for each of these phases. First Nations opting into oil and gas were expected to pass through the six phases in two to three years, while those opting into moneys management were expected to go through all the phases in six months to one year.

Since 2006, four First Nations have received support from INAC:

- Oil and Gas and Moneys: Blood Tribe (Alberta), Siksika Nation (Alberta), and White Bear First Nation (Saskatchewan) (referred to as ‘the pilots’ through this report); and
- Moneys: Frog Lake First Nation (Alberta).

Over the course of the evaluation, the three oil and gas pilots were cancelled and the First Nation involved in moneys management withdrew. Since the pilots were cancelled, four additional First Nations began the FNOGMMA process for moneys management and have now reached Phase 2. However, they have not been included in the scope of this evaluation, having joined after the completion of field work. This development resulted in a limited participation of First Nations in the evaluation process.

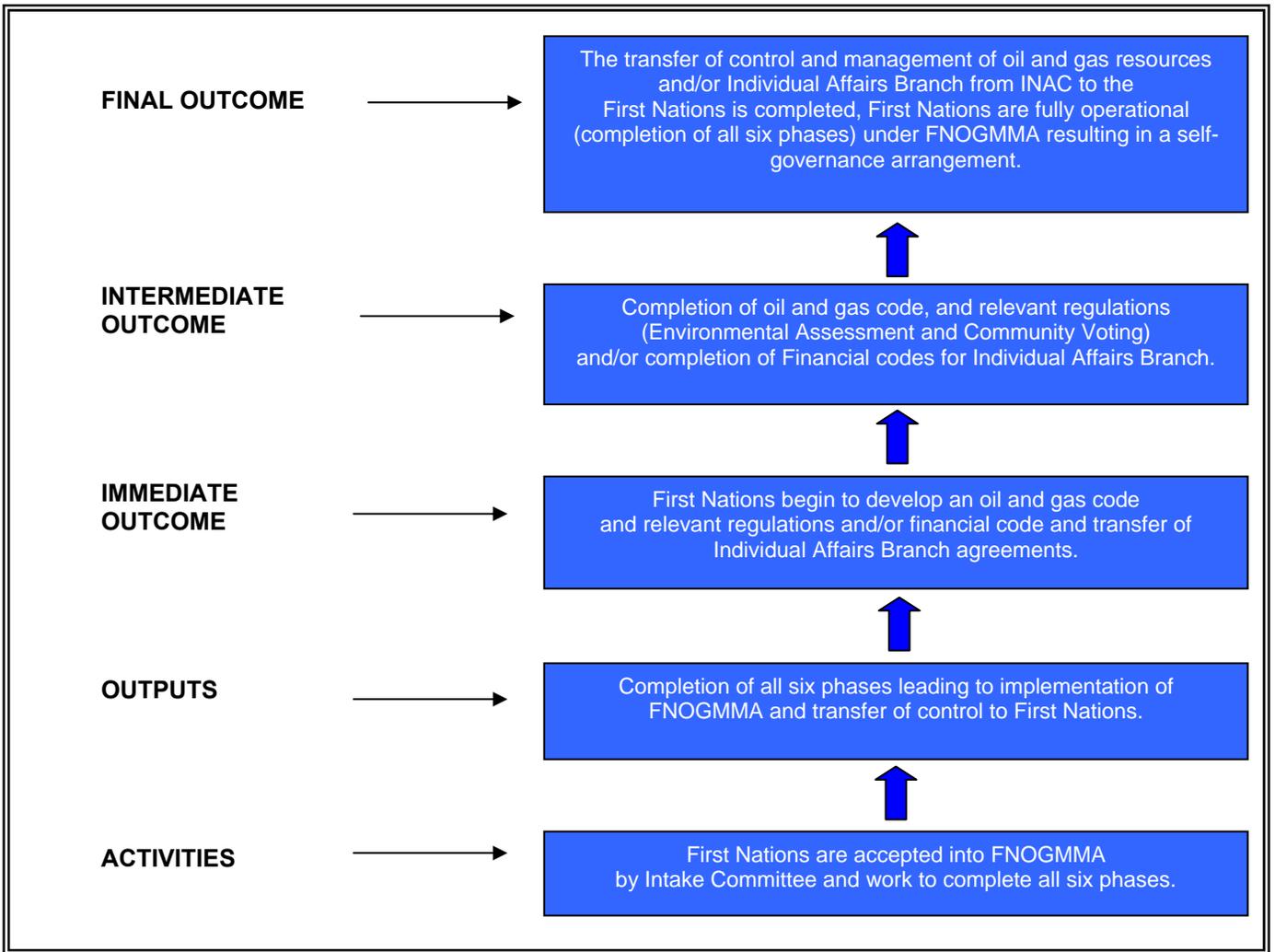
### ***1.2.2 Program Expected Outcomes***

There are a number of broader intended outcomes associated with opting into FNOGMMA, including: improved economic development (and associated infrastructure) in communities; greater utilization and value of community land and resources; opportunity for more or improved community economic and other infrastructure; First Nations governance, authority and control over their money, lands, resources and the environment; and, the opportunity for certain provisions of the *Indian Act* and the entire *Indian Oil and Gas Act* to be replaced by a more contemporary legislation that promotes self-governance and accountability.

It is also expected that this new approach (i.e., management of oil and gas and moneys under FNOGMMA as opposed to the *Indian Act* and *the Indian Oil and Gas Act*) will provide First Nations with more flexibility. This new approach will, in turn, allow participating First Nations to respond quickly to community needs, thereby improving the quality of life of on reserve members. According to Indian Oil and Gas Canada (IOGC), this is particularly notable because the *Indian Oil and Gas Act* is currently being modernized in such a way that there will be less flexibility to respond to individual First Nation circumstances.

The program’s Results-based Management and Accountability Framework and Risk-based Audit Framework (RMAF/RBAF) includes a logic model (see Figure 1) that identifies the linkages between program activities (First Nation acceptance into FNOGMMA), outputs (completion of all six phases leading to implementation), and outcomes (immediate, intermediate, and final).

**Figure 1: Program Logic Model**



**1.2.3 Program Management, Key Stakeholders, and Beneficiaries**

**Responsibilities of the FNOGMMA Intake Committee**

The FNOGMMA Intake Committee is responsible for making recommendations to the Minister to approve the entry of a First Nation into FNOGMMA, and to add a First Nation to Schedule 1 and/or 2 of the Act (i.e., transfer control of oil and gas an/or moneys management to the First Nation). It is also intended to manage the allocation of the budget to address the intake levels for the two parts of FNOGMMA and provide executive oversight for the implementation of projects. The committee is co-chaired by the Assistant Deputy Minister Lands and Economic Development and the Assistant Deputy Minister Resolution and Individual Affairs. It also includes the Executive Director of IOGC, and members at the Director General and Director levels.

## **Responsibilities of the IOGC FNOGMMA Steering Committee**

The IOGC FNOGMMA Steering Committee, with support from INAC regional offices, is responsible for the management and delivery oversight for the oil and gas related activities under FNOGMMA.

Specifically, the committee is responsible for:

- Reviewing each Band Council Resolution and business plan as per the Implementation Policy as well as recommending to the FNOGMMA Intake Committee for approval;
- Establishing funding agreements with First Nations and monitoring their terms and conditions; and
- Facilitating First Nation progress through the FNOGMMA phases. This committee is chaired by the Executive Director of IOGC and includes the IOGC Team Lead, other IOGC managers and INAC Lands representatives.

## **Responsibilities of the Individual Affairs Branch, Indian Moneys, Estates, and Treaty Annuities Directorate**

Individual Affairs Branch, Indian Moneys, Estates and Treaty Annuities Directorate is responsible for overseeing activities related to moneys management, such as reviewing Band Council Resolutions, assessing First Nation financial management practices and infrastructure, making recommendation to the Intake Committee to accept First Nations in the FNOGMMA process, working with the First Nation and INAC regional offices to enter into a Payment Agreement, and preparing recommendations for Ministerial Orders to transfer control of moneys to the First Nation.

## **Program Beneficiaries**

First Nations that choose to opt into FNOGMMA are the primary beneficiaries of the program. As such, they are responsible for meeting specific financial criteria related to accountability, financial planning, financial review, disclosure and redress. Once operating under the oil and gas component of FNOGMMA, the First Nation would be responsible for oil and gas management, regulation and enforcement, including environmental protection for oil and gas activities. They would also assume responsibility for existing and future oil and gas contracts, as well as collecting and managing moneys related to those contracts. A First Nation that opts into the moneys management component of FNOGMMA would be responsible for moneys that are transferred under the Act.

## **Other Stakeholders**

Other potential stakeholders include: the Indian Resources Council, an Aboriginal organization representing over 130 First Nations with oil and gas interests; the oil and gas industry; the provinces; and the general public as it relates to the environmental impact of oil and gas activities.

### ***1.2.4 Program Resources***

The total estimates for the implementation of FNOGMMA were \$6.4 million for a three-year period from 2007-2008 through 2009-2010. The program was funded from existing INAC reference levels and limited to a three-year period ending 2009-2010 in order to align with the March 31, 2010, expiration of the funding authority: payments to support Indians, Inuit and Innu for the purpose of supplying public services in areas such as economic development.

Table 1 shows the estimates and actual/forecasted expenditures for FNOGMMA. The table is based on information derived from the program's foundation documents, and from Individual Affairs Branch and IOGC.

**Table 1: FNOGMMA Estimates and Actual/Forecasted Expenditures (2007/08 – 2009/10)**

	2007/08			2008/09			2009/10		
	Estimate	Actual		Estimate	Actual		Estimate	Forecast	
		IOGC	Moneys		IOGC	Moneys		IOGC	Moneys
<b>A-Base</b> (Operating Expenditures)		\$141,823			\$188,622			\$144,360	
<b>Total FNOGMMA Vote 1</b> (Operating Expenditures)	\$334,750		\$0	\$409,750	\$200,000	\$300,000	\$524,750	\$22,100	\$150,000
<b>Total FNOGMMA Vote 10</b> (Grants and Contributions)	\$1,867,340	\$978,018	\$0	\$1,454,400	\$838,000	\$182,000	\$1,754,400	\$671,779	\$456,000
<b>White Bear First Nation</b>		\$193,995			\$164,095	\$10,000		\$125,268	
<b>Siksika Nation</b>		\$495,467			\$412,367	\$10,000		\$290,383	
<b>Blood tribe</b>		\$288,556			\$152,256	\$10,000		\$196,128	
<b>Frog Lake First Nation</b>						\$152,000			
<b>Loon River First Nation</b>									\$152,000
<b>Cowessess First Nation</b>									\$152,000
<b>Thunderchild First Nation</b>									\$152,000
<b>Collective Working Group Table/Legal</b>					\$109,282			\$60,000	
<b>Sub-Total</b>	\$2,202,090	\$978,018	\$0	\$1,864,150	\$1,226,622	\$482,000	\$2,279,150	\$838,239	\$606,000
Accommodation	\$16,900			\$16,900			\$16,900		
<b>Grand Total (including IOGC and Moneys)</b>	<b>\$2,218,990</b>	<b>\$1,119,841</b>		<b>\$1,881,050</b>	<b>\$1,708,622</b>		<b>\$2,296,050</b>	<b>\$1,444,239</b>	

Note - Oil and Gas G&Cs were funnelled through Siksika to White Bear and Blood

## **2. Evaluation Methodology**

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### **2.1 Evaluation Objectives, Scope and Timing**

This evaluation was guided by the Summative Evaluation of the Implementation of the FNOGMMA Terms of Reference that were approved on September 24, 2009, by the Departmental Evaluation, Performance Measurement and Review Committee. The objectives of the study were to assess FNOGMMA with respect to the following issues:

- Relevance
- Design and Delivery
- Performance (progress towards outcomes and demonstration of efficiency and cost-effectiveness)
- Future Considerations

The scope of the evaluation includes FNOGMMA implementation activities undertaken by INAC Headquarters, the regions, IOGC, and participating First Nations for the fiscal years of 2007/08 to 2009/10.

FNOGMMA uses the authority: payments to support Indians, Inuit and Innu for the purpose of supplying public services in areas such as economic development, which expires March 31, 2010. Treasury Board Policy requires an evaluation to be conducted prior to the renewal of all programs' authorities; this summative evaluation meets this requirement.

### **2.2 Evaluation Approach and Method**

In order to ensure that the summative evaluation was comprehensive in nature, the evaluation team used multiple lines of evidence, described below, to inform its process. Because there is a limited amount of quantitative data available, the evaluation was based largely on qualitative information. In carrying out this evaluation, the evaluation team employed standard ethical guidelines for research on human subjects, and was guided by the Tri-Council policy statements on ethical research on human subjects and with Aboriginal communities<sup>3</sup>. The evaluation research matrix in Appendix B provides the specific evaluation questions and their associated lines of evidence.

#### **Literature Review**

The evaluation team reviewed 15 sources of literature related to Aboriginal management of natural resources (including oil and gas) and moneys. Particular attention was paid to identifying barriers, facilitators, success factors and best practices that have the potential to affect Aboriginal economic development; as well as to examining lessons learned by other jurisdictions that may influence future implementation of FNOGMMA. The identification and selection of these sources were based on the extent to which the literature highlighted implementation results (e.g., lessons learned / best practices) and addressed the evaluation issues.

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<sup>3</sup> Interagency Secretariat on Research Ethics. (2005). Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans. CIHR, NSERC, SHR, Ottawa, ON.

The majority of literature was obtained from the following websites / institutes / projects:

- Harvard Project on American Indian Economic Development
- American Indian Studies Center
- Centre for Aboriginal Economic Policy Research
- Institute on Governance
- Reconciliation Australia
- Standing Senate Committee on Aboriginal Peoples

The primary limitation of this line of evidence is that there is limited literature directly related to FNOGMMA, and as a result, the majority of the literature broadly addresses issues of community control/governance and economic development. Additionally, there is a dearth of literature related to how the direct control over First Nation moneys affects economic development in First Nation communities. This may reflect the fact that ‘moneys held in trust’ is a phenomena under the *Indian Act*, and is not commonly found in other jurisdictions.

### **Document / File / Data Review**

A review of 43 program files, documents and data sources was undertaken to provide insight into the evaluation themes relating to relevance, design and delivery, the efficiency of program delivery, and to a certain extent, cost-effectiveness. It also provided contextual information on the implementation of FNOGMMA and provided support and guidance for the other lines of enquiry associated with this summative evaluation. The types of documents, which were reviewed included:

- The program’s foundation documents
- Program RMAF/RBAF
- Terms of Reference
- Management Plans
- IOGC implementation policy and protocol

The limitations of this line of evidence include the following: (1) the quality of documents is dependant on the program; and (2) that the documents do not allow for expanded and in-depth explanations of program performance. Furthermore, the review is limited to program documents generated by INAC, and does not extend to First Nations documents. This is significant given that First Nations are responsible for developing a number of documents, which are critical to the FNOGMMA process.

### **Key Informant Interviews**

Key informant interviews were conducted to gather perceptions, opinions, and knowledge about the evaluation issues related to relevance, design and delivery, progress towards achieving outcomes, demonstration of efficiency and cost-effectiveness, as well as best practices and lessons learned. More specifically, participants were asked to comment on issues such as: the appropriateness of FNOGMMA in addressing the need of First Nations to achieve sectoral governance over oil and gas and/or moneys management; the degree to which the program design is sufficient to achieving the expected outcomes; the extent to which outcomes have been achieved; the cost-effectiveness of the program relative to outcomes; and the best practices / lessons learned.

A total of 21 interviews were conducted with individuals representing the following positions/departments/ organizations:

- Program staff;
- Senior management;

- Government officials from other INAC programs and other departments;
- Provincial and/or Industry oil and gas representatives; and
- Subject area experts that are involved in the FNOGMMA process.

A limitation of this line of evidence is that only 21 of the expected 36 interviews were conducted. This size makes it difficult to generalize the findings with any degree of certainty. Moreover, given the variety of positions/departments/organizations the interviewees were intended to represent, this further limits the capacity to speak about global experiences and perspectives. The evaluation team had identified a number of stakeholders that had not directly participated in the program, but that potentially had significant knowledge related to FNOGMMA. This included First Nation community representatives who are eligible but are not participating in FNOGMMA, individuals from First Nation organizations and individuals from organizations that represent private sector oil and gas companies. Overall, the evaluation team encountered difficulties in attempting to engage these participants and in the end the majority declined to be interviewed.

## **Case Studies**

The community case studies were expected to gather information on the relevance of the program to First Nation sectoral governance over oil and gas on reserve lands and/or First Nation moneys, the design and delivery of the six phases involved in the implementation of FNOGMMA, progress toward achieving expected results in each phase, demonstrations of efficiency and cost-effectiveness, and the identification of any best practices and/or lessons learned.

Each of the participating First Nations were invited to participate in a case study to document their experiences with respect to FNOGMMA. However, the evaluation team was limited to spending approximately one day with White Bear First Nation representatives and one day with Siksika Nation representatives. During these community visits, the evaluation team had the opportunity to interview Band Councillors, and Land, Petroleum and Environmental managers within the two participating communities. Some of the interviewees had participated in the FNOGMMA implementation process from the outset, including attending and participating in the initial training programs provided by the IOGC. Other participants included Council members who had been involved in the process and/or staff that recently took over the position from previous staff members.

The limitations of this line of inquiry include the fact that: (1) the evaluation team has to depend entirely on the voluntary participation of the First Nations; and (2) the scope of the research is limited to two participating First Nations, which does not represent the views of all First Nations.

## **2.3 Roles, Responsibilities and Quality Control**

### **Responsibilities of the Evaluation, Performance Measurement and Review Branch**

EPMRB was responsible for all matters concerning the technical requirements of this evaluation, including the work performed by the contractor (T.K. Gussman and DPRA Canada). The services provided by the contractor were subject to review and acceptance by EPMRB. Any proposed changes to the scope of the work were discussed with and confirmed by EPMRB. Furthermore, EPMB was responsible for conducting supplemental research, finalizing the evaluation report, developing recommendations, and conducting internal peer reviews of the methodology and final report for the evaluation, as per the EPMRB Quality Assurance Standard.

## **Responsibilities of the Contractor**

The contractor was responsible, in consultation with EPMRB, for planning, organizing and conducting the evaluation. Carrying out the evaluation process entailed that the contractor review relevant literature, review documents and data, interview key informants, and conduct community case study visits. Based on the findings from these various lines of evidence, the contractor was responsible for writing corresponding technical reports and then developing draft reports based on feedback received from EPMRB. Additionally, the contractor was responsible for taking part in meetings/conference calls with EPMRB to discuss evaluation progress, as well as to discuss findings and address any issues as they arose.

## **Responsibility of Working Group**

In order to facilitate the best and most informed results, this evaluation was, in addition to the standards of the evaluation team, also guided by the input of the working group established for this undertaking, which included Program Management from IOGC and the Individual Affairs Branch. This working group was informal, and its comments were not seen to be binding on the evaluation; rather it focused on providing input into the evaluation methodology and verifying factual information presented in the findings of the evaluation.

## 3. Evaluation Findings - Relevance

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The evaluation looked for evidence to address the following questions with respect to relevance:

- Is the program consistent with government priorities, INAC Land and People strategic outcomes and INAC's sustainable development strategy?
- To what extent does the program address a demonstrable need and is responsive to the needs of First Nations?
- To what extent was the program designed to address the identified needs?<sup>4</sup>

Discussion on each of these topics is presented under their respective sub-headings below. To support this discussion, the evaluation team reviewed published literature related to Aboriginal governance of resources and money, as well as government and program documents. The team also interviewed FNOGMMA program staff and managers from related INAC programs, INAC Senior Management, and conducted two community site visits to speak directly with First Nation communities.

FNOGMMA is designed to be consistent with government policies and priorities regarding First Nation sectoral governance. It is also closely aligned with two of INAC Strategic Outcomes - The Land and The People - as well as INAC's Sustainable Development Strategy and departmental economic development programs. Moreover, federal legislation, such as FNOGMMA, can be viewed as supporting capacity development along the governance continuum, which may ultimately lead to comprehensive self-government arrangements. The money management section of FNOGMMA appears to be directly addressing First Nations' money management concerns; however, it remains unclear whether First Nations see the program as the most appropriate solution to current regulatory issues for oil and gas management.

### 3.1 Consistency with Government Priorities

FNOGMMA seeks to modernize the oil and gas and money management legislation and regulations by providing the option to First Nations to opt out of the *Indian Oil and Gas Act* and certain provisions of the *Indian Act*. The program is designed to develop and support the governance and fiscal capacities related to the management of oil and gas and money held in trust. Furthermore, it is argued that this control over their land and resources will enable First Nations communities to "seize economic opportunities with the speed and flexibility of the private sector"; thereby making them more attractive to investors and financial institutions.

This directly aligns with the Federal Framework for Aboriginal Economic Development strategic priority of enhancing the value of Aboriginal assets through better management of business and community assets, as well as a modern land and resource management regime<sup>5</sup>. Furthermore, it directly addresses a number of barriers to economic development identified in the framework discussion guide, including inability to access capital, legislative and regulatory barriers, limited access to land and resources, and lack of governance capacity (amongst others).

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<sup>4</sup> This evaluation question is found under the design and delivery section of the Terms of Reference for this Evaluation.

<sup>5</sup> Government of Canada (2009). Federal Framework for Aboriginal Economic Development.

## 3.2 Alignment with Departmental Objectives and Initiatives

Although FNOGMMA is a fairly small program, it touches on a number of broader departmental initiatives, namely INAC's strategic objectives, sustainable development, economic development, and self-government. The relative alignment between FNOGMMA and each of these initiatives is discussed below.

### INAC's Strategic Objectives

The Program Activity Architecture (PAA) articulates the Department's strategic objectives and how program activities support those objectives. When FNOGMMA was initially passed, the program aligned with the "implement sectoral governance initiatives" sub-activity of the "First Nation governance over land, resources and the environment" program activity of the land strategic outcome. The land strategic outcome at this time was "Sustainable use of lands and resources by First Nations, Inuit and Northerners". According to the 2010-11 PAA, FNOGMMA sits under the same strategic outcome and program activity; the only difference being that First Nation oil and gas management is now identified as its own sub-activity.

The moneys management component of FNOGMMA is not accounted for under the same program activity or sector as the oil and gas portion. As currently structured, the moneys management component is delivered by the Individual Affairs Branch, which is represented by the sub-activity "management of moneys" under the "managing individual affairs" program activity that supports the People strategic outcome "individual and family well-being for First Nations and Inuit".

These two strategic outcomes are consistent with FNOGMMA program objectives, since First Nations opting into FNOGMMA achieve sectoral-governance over oil and gas and/or moneys management. It is also expected that First Nations will have more flexibility in managing their oil, gas and/or moneys, which will allow them to quickly respond to community needs, thereby, improving the quality of life of on reserve members. Hence, the evaluation has found that FNOGMMA is closely aligned with the two Strategic Outcomes where they are located within the 2010-2011 PAA.

### Sustainable Development

FNOGMMA's objectives (i.e., increased First Nations control through management of their own institutions, implementation of many Aboriginal self-government agreements, and improved community well-being) are aligned with INAC's Sustainable Development Vision that "...a majority of First Nations and Inuit communities will effectively manage their own institutions with strong governance structures." With respect to Aboriginal peoples, the vision more specifically states:

- Land claims and issues such as management and access to natural resources and land tenure have been largely settled through negotiations. Community planning and development will be long-term, locally driven, and comprehensive.
- As First Nations, Inuit, and Northerners gain greater autonomy and build capacity, the types of services they will require from the federal government will change. As communities become healthier, safer, and economically and environmentally stable, a smaller department will likely emerge.
- A major focus of the Department will be the implementation of the many Aboriginal self-government agreements. INAC will also be a strong advocate for Aboriginal and northern

peoples, and will play a more active role as a facilitator to develop partnerships to work more cooperatively on Aboriginal and northern issues, while respecting traditions, governance structures, language, gender and culture.

Although in principle, FNOGMMA supports these broader vision statements, and despite the fact that the Strategy identifies commitments directly related to many INAC programs, the departmental Sustainable Development Strategy makes no direct reference to FNOGMMA.<sup>6</sup>

### **Economic Development Initiatives**

In support of the New Aboriginal Economic Development Framework, INAC has played a lead role in developing a Performance Measurement Strategy for the initiative. This approach represents a significant departure from the former approach to federal policy and program development in the area of Aboriginal economic development. Its approach is broader, as it considers economic development in the context of conditions that facilitate or impede economic opportunities, such as laws and regulations. It also recognizes that the federal government does not have exclusive responsibility for, or control over, Aboriginal economic outcomes, and must work in partnership with Aboriginal peoples and their communities, provinces, territories, and the private sector<sup>7</sup>.

The New Aboriginal Economic Development Framework Performance Measurement Strategy identifies six key activity areas, two of which are directly related to FNOGMMA (build community/institutional capacity and good governance, and enable/increase access to and control of lands and resources). Despite the fact that FNOGMMA is aligned with this initiative, the Performance Measurement Strategy doesn't identify FNOGMMA and how it can contribute to the outcomes of the framework.

### **Self-Government**

Through the 1995 Inherent Right Policy, the Government of Canada recognizes the inherent right of self-government as an existing Aboriginal right under Section 35 of the *Constitution Act, 1982*. The Policy states that recognition of the inherent rights is based on the view that the Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, language and institutions, and with respect to their special relationship to their land and resources.

There is an expectation, reflected in self-government agreements and stated in the 1995 Inherent Right Policy, that implementation of self-government will enable practical progress, restore dignity to Aboriginal peoples and empower them to become self-reliant. Self-government is expected to help bring improvements to community programs and services, and ultimately to the lives of community members, because they will be designed and managed by people in the communities that understand local needs and local culture. At the same time, it is recognized that the transition to self-government is a complex process and that the delivery of effective programs and services is a major challenge under any circumstances.

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<sup>6</sup>INAC (2006). Sustainable Development Strategy 2007-10.

<sup>7</sup>INAC (2009). Performance Measurement Strategy: The New Federal Framework for Aboriginal Economic Development.

Therefore, federal legislation such as FNOGMMA can be viewed as supporting capacity development along the governance continuum, which may ultimately lead to comprehensive self-government arrangements.

### **3.3 First Nation Oil and Gas and Moneys Management Needs, Barriers and Concerns**

In order to assess First Nation needs related to FNOGMMA, the evaluation team examined oil and gas and moneys potential, barriers within the existing regulatory structure for oil and gas and moneys management, the potential for FNOGMMA to address those barriers, and First Nation participation in the program. Each of these topics is described under their respective headings below.

#### **Oil and Gas and Moneys Potential**

There are currently over \$1 billion of First Nations revenues (i.e., Individual Affairs Branch), held by Canada for the use and benefit of First Nation in the Consolidated Revenue Fund (this does not include Individual Affairs Branch held for individuals). While the typical First Nation manages annual budgets of approximately \$5 million, fewer than 20 First Nations have Indian money accounts exceeding that amount in the Consolidated Revenue Fund.

Indian oil and gas producing lands represent an estimated one percent of all petroleum producing lands in Canada<sup>8</sup>. Petroleum development is responsible for over 90 percent of Individual Affairs Branch now held in First Nation capital accounts, and petroleum producing First Nations account for over 80 percent of all First Nations with capital accounts exceeding \$1 million. First Nation oil and gas potential is evidenced by the fact that 1,784.6 thousand cubic meters of oil and 11,787 million cubic meters of gas were extracted from First Nation reserves between 2007-08 and 2009-10. Furthermore, IOGC collected \$466.6 million in royalties for oil and gas activities during the same time period<sup>9</sup>.

#### **Barriers and Needs Relating to the Current Management of Oil and Gas and Moneys**

The legal and regulatory environments, access to lands and resources, and deficits in capacity have been identified as barriers to economic development in Aboriginal communities<sup>10</sup>.

The *Indian Act* is the basis for the existing regulatory regime on First Nations' land and governs almost every aspect of economic activity undertaken on those lands. Legislative and regulatory barriers, particularly those associated with the *Indian Act*, have been identified as impeding the ability of on reserve First Nations' communities to develop their economies and attract investments<sup>11 12</sup>. The Office of the Auditor General of Canada has described the process as cumbersome and complex<sup>13</sup>. As an example, when First Nations attempt to access the royalties and bonuses resulting from resource extraction activities on their land, they must first apply to the Minister to gain access to the revenue. The Minister, after receiving the request, must make a decision as to whether or not to release the

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<sup>8</sup> FNOGMMA Foundation Documents (2004).

<sup>9</sup> IOGC. (n.d.). Operational Statistics.

<sup>10</sup> Government of Canada (2009). Federal Framework for Aboriginal Economic Development.

<sup>11</sup> St. Germain, G. & Sibbeston, N. (2007). Sharing Canada's Prosperity – A Hand Up. Not a Handout. Final Report. Special study on the involvement of Aboriginal communities and businesses in economic development activities in Canada. Standing Senate Committee on Aboriginal Peoples, March 2007.

<sup>12</sup> Report to the Auditor General of Canada – November 2003 – Chapter 9.

<sup>13</sup> Ibid.

funds. This process can be time consuming and can have an impact on the implementation of activities/projects for which First Nations planned to use their revenue.

With respect to oil and gas, INAC has indicated the need to update current regulations covering First Nations' oil and gas resources. This was highlighted in the 2007-2008 to 2009-10 Indian Oil and Gas Canada Management Plans, where it was noted that there is a “need to modernize the *Indian Oil and Gas Act* and Regulations”. According to interviewees, the *Indian Oil and Gas Act* was originally intended to be temporary, and yet until the amendments received Royal Assent in 2009, there had been no significant prior amendments. As this regime is modernized, it will result in a decrease in flexibility to respond to individual First Nation concerns. According to interviewees, this could result in an increase demand for a more flexible alternative such as FNOGMMA.

Limited human capacity has been identified as a barrier to Aboriginal economic development throughout both the domestic and international literature. This includes governance, administration, and education skills, as well as a means to build capacity internally<sup>14 15 16 17</sup>.

### **Ability to Address Challenges and Barriers through FNOGMMA**

The Standing Senate Committee on Aboriginal Peoples commented on the importance of legislation such as FNOGMMA for the development of Aboriginal economies. The 2007 Report states that:

...recent developments in institution building, such as the *First Nations Fiscal and Statistical Management Act*, the *First Nations Land Management Act*, the *First Nations Oil and Gas and Money Management Act*, and the *First Nations Commercial and Industrial Development Act* have been primarily the culmination of efforts spearheaded by Aboriginal people themselves. These notable achievements are attempts by Aboriginal people to design new institutional arrangements, addressing the structural causes of market failure on their lands, including: uncertainty over land tenure, narrow decision-making authority, investment facilitation, the absence of clear policies and procedures, and effective regulatory regimes<sup>18</sup>.

These legislative initiatives were noted as complementing the network of Aboriginal economic development and financial institutions that Aboriginal people have worked hard to establish.

Under the FNOGMMA moneys that were held in trust are for the use and benefit of the First Nation, are transferred to the band<sup>19 20</sup>, which means that the Minister of Indian Affairs and Northern Development no longer has control over the money. This process allows First Nations to tailor their control and management over their moneys in order to respond to and address community needs and aspirations. This directly addresses the barriers identified in the 2003 Office of the Auditor General Report, and the barriers associated with the complexity of the *Indian Act* by eliminating the ministerial approval

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<sup>14</sup> Government of Canada (2009). Federal Framework for Aboriginal Economic Development.

<sup>15</sup> Cornell, Stephen & Joseph P. Kalt (eds.). “What Can Tribes Do? Strategies and Institutions in American Indian Economic Development.” Los Angeles, CA: American Indian Studies Center, University of California.

<sup>16</sup> Dodson, M. and D.E. Smith. 2003. “Governance for Sustainable Development: Strategic Issues and Principles for Indigenous Australian Communities.” CAERP Working Paper No. 250/2003. Canberra, AU: CAERP, ANU.

<sup>17</sup> St. Germain, G. & Sibbeston, N. (2007). Sharing Canada's Prosperity – A Hand Up. Not a Handout. Final Report. Special study on the involvement of Aboriginal communities and businesses in economic development activities in Canada. Standing Senate Committee on Aboriginal Peoples, March 2007.

<sup>18</sup> Ibid. p. 49.

<sup>19</sup> FNOGMMA Moneys Management Implementation Policy, 2006. Paragraph 4.3.

<sup>20</sup> *First Nation Oil and Gas and Moneys Management Act*, 2005. Paragraph 60.

process. It also further enhances First Nations access to capital and political sovereignty over the decision making with respect to the use of their money.

The oil and gas portion of FNOGMMA grants law-making authority over oil and gas activities on reserve. Once a Band has opted into this portion of the Act, it will gain genuine control over its oil and gas resources, including revenue-raising jurisdiction.

The overall consensus of the interview participants is that FNOGMMA is an instrument geared toward helping First Nations maximize return on their finite resources by encouraging development, and in return, reduces some of the natural resource responsibility currently assumed by the federal government. FNOGMMA was also identified as a possible means of reducing the financial and environmental liabilities, as well as minimizing the fiduciary responsibilities of the federal government. The legislation is viewed as having the potential to assist First Nations to manage their resources in a way that allows them to respond (in a timely and appropriate manner) to their individual and industry needs. It is also seen as a mechanism for promoting sectoral government since it has the potential to provide First Nations with control over oil and gas and moneys management, and provides opportunities for the sustainable management of non-renewable resources.

### **First Nation Participation in FNOGMMA**

Work toward FNOGMMA began in the mid-1990s following a proposal from the Indian Resource Council (IRC), which represents First Nations across Canada that have oil and gas production on their land, including those that have the potential for production. IRC's mandate is to support First Nations in their efforts to attain greater management and control of their oil and natural gas resources, and help coordinate federal, provincial and industry oil and gas initiatives to enhance economic benefits realized by the First Nations<sup>21</sup>.

Although the initial proposal came from the IRC, the legislation was developed in partnership with the three pilot First Nations. One interviewee mentioned that support from the IRC waned in recent years, however, the evaluation team was unable to secure an interview with an IRC representative to discuss their priorities and support for FNOGMMA.

During the implementation of FNOGMMA, participation was limited to the three pilot First Nations and one band who wanted to opt into the moneys management component of the Act only (Frog Lake). Interviewees said that participation was intentionally limited, so that the stakeholders (INAC and potential First Nations) could see how the FNOGMMA was working before other First Nations got involved. As such, IOGC didn't actively seek additional oil and gas participants between 2007-08 and 2009-10. Nonetheless, two First Nations have submitted Band Council Resolutions (the Beaver Lake Cree Nation in March 2009 and the Onion Lake First Nation in March 2010) that formally express interest in opting into the oil and gas component of the Act. Furthermore, interviewees indicated that the Siksika Nation has informally stated that they intend to hold a FNOGMMA community ratification vote in the summer of 2011. Overall, interviewees felt that it is possible that roughly eight to ten First Nations may choose to opt-in in the future.

Interviewees generally felt that there was more potential for First Nation in the moneys management component of FNOGMMA participation (roughly 20-30 bands may in the future) compared to oil and gas. In fact, it was due to an increased interest in the moneys management component of FNOGMMA

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<sup>21</sup> Indian Resource Council website. [www.indianresourcecouncil.ca](http://www.indianresourcecouncil.ca)

that a decision was made in 2008 to allow Frog Lake to begin the process before the pilots were completed. Going forward, six First Nations having informally expressed interest and seven First Nations formally expressing interest in the money's management component of the Act (four of which have already begun the process (namely, Loon River, Cowessess, Ermineskin and Thunderchild)). Unlike IOGC, the Individual Affairs Branch actively sought participation in the money management component by preparing an information package and conducting information sessions during the 2008-09 and 2009-10 fiscal years.

## **4. Evaluation Findings – Design and Delivery**

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The evaluation looked for evidence to address the following questions with respect to design and delivery:

- To what extent has the program identified expected outcomes and collected performance information against those outcomes?
- Is the program being delivered as plan?
- Are the roles and responsibilities of INAC and program stakeholders clear?

In order to address these questions, the discussion in this section is structured around whether FNOGMMA has been implemented as intended, the appropriateness of FNOGMMA's design, the appropriateness the funding structure, clarity of roles and responsibilities, and the appropriateness of reporting requirements. To support this analysis the evaluation team reviewed program documents, conducted interviews with program staff and managers from related INAC programs, INAC Senior Management, and conducted two community site visits to speak directly with First Nation communities.

Overall, the evaluation found that although FNOGMMA was designed in cooperation with First Nations and appears to be designed in a manner that will facilitate the actualization of outcomes; in practice, the program is too rigorous and difficult for the participating First Nations. Identified barriers and concerns relating to the implementation of FNOGMMA include lack of an enforcement mechanism, loss of federal fiduciary responsibilities, environmental liability, the complexity of oil and gas regime, and lack of community capacity. Furthermore, the current FNOGMMA budget does not allocate enough dedicated financial resources to the moneys management component of the program.

### **4.1 Implemented as Originally Intended**

The First Nations Oil and Gas and Moneys Management Initiative or “Pilot Project” began in 1995 in response to the expressed interest of several First Nations who wished to gain more control and flexibility over oil and gas resources that were administered on First Nation's lands. The pilot project was intended to gradually transfer management and control over oil and gas on the lands of five First Nations: Blood (Kainaiwa) Tribe, Alberta; Siksika Nation, Alberta; White Bear First Nation, Saskatchewan; Horse Lake First Nation, Alberta; and Dene Tha' First Nation, Alberta. As of the start of this evaluation, only the Blood Tribe, Siksika Nation and White Bear First Nation were participating in FNOGMMA. The pilot project was guided by a steering committee composed of representatives from: the participating First Nations, INAC, IOGC, and IRC.<sup>22</sup>

The objectives of the First Nation Pilots were as follows:

- To enable the three Pilot Project First Nations to achieve full management and control of their oil and gas resources through the creation of new legislation.
- To provide the three Pilot Project First Nations with the capacity, training and expertise to manage and administer their own oil and gas resources.

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<sup>22</sup> Tiedemann, M. (2005). Bill C-54: *First Nations Oil and Gas and Moneys Management Act*.

- To develop a communication process, so that the members of the Pilot Project First Nations are well informed about the Pilot Project and the objective to move into Full Management and Control.
- To create employment and economic development opportunities arising from the First Nation being a party to the First Nations Oil and Gas Pilot Project.
- To develop a model, which First Nations, other than the three Pilot First Nations, may follow to achieve full management and control of their oil and gas resources<sup>23</sup>.

The First Nation Pilots were to be carried out in three distinct phases:

**Co-Management Phase** – This phase began on October 1, 1995, and expired on March 31, 1998. In this phase, IOGC and the participating First Nation shared administrative duties and responsibilities for making decisions.

**Enhanced Co-Management Phase** – This phase began on April 1, 1998, and expired on March 31, 2005. This phase focused on completing the necessary capacity building and training needed for the First Nations to enter into full management and control. During this phase, the responsibilities of administering the oil and gas resources are shared between the First Nation and IOGC (however, IOGC maintains all authorities under the existing *Indian Oil and Gas Regulations 1995*).

**Full Management and Control Phase** – FNOGMMA, enabling legislation (Bill C-54) supporting this initiative, was passed in November 2005. Once a First Nation has held a successful vote of the membership ratifying FNOGMMA, the First Nation would assume full management and control of their oil and gas resources and moneys management. It was assumed that the participating First Nations would have full control and management by 2005.

During the course of the evaluation, FNOGMMA's three pilots were cancelled because none of the First Nations participants had held a ratification vote by January 31, 2010. The fourth participating First Nation, Frog Lake, withdrew from the program.

Some interviewees indicated their belief that FNOGMMA is being delivered in the way it was originally planned. They pointed to the fact that the implementation process is being carried out in a collaborative manner, as intended, with both the government and First Nations communities involved. According to the 2009-2010 IOGC Management Plan, the development of agreements and documents required for the ratification votes have been developed in partnership with First Nations.

The pilot project was viewed by some participants to be a benchmarking/learning process that would provide insight into the overall timing of the process (and each individual phase) and set out consistent approaches (i.e. the ways in which FNOGMMA addresses other programs, the process of developing business plans), which would be used to make improvements to the current processes before the next set of First Nations work their way through FNOGMMA.

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<sup>23</sup> WBFN. White Bear First Nations; *The First Nations Oil and Gas and Moneys Management Act (FNOGMMA)*.

## 4.2 Appropriateness of Design

Some interviewees noted that FNOGMMA was designed in cooperation with the pilot First Nations and that it does appear to be designed to facilitate the realization of its outcomes. However, the evidence suggests that participants found the design of the program to be difficult, rigorous and cumbersome. This, at least in part, reflects the fact that oil and gas management is a complex regime that involves a high degree of specialization and technical understanding. This finding may be supported in part by the fact that at the start of the evaluation process, the three pilots had been involved in the process for more than a decade and had been granted three extensions in the hopes that this extra time would allow them to proceed through the six phases.

Generally speaking, the following comments were made about the ability of FNOGMMA to achieve its intended outcomes:

- Under FNOGMMA, there is a need for First Nation – Provincial Agreement to allow for the provinces to enforce oil and gas laws on reserves. The Act already allows for incorporation by reference of provincial laws and for the First Nation to have an agreement for the provincial officials to enforce those laws; however, to date, FNOGMMA participants have not been able to establish an agreement.
- If the provinces are to be involved, due to capacity considerations, FNOGMMA should be a one-size-fits-all undertaking as opposed to one in which processes are First Nation-specific.
- Although First Nations should begin assuming more responsibilities, the federal government needs to ensure the necessary capacity and resources are available to assume those responsibilities.
- There is not enough adequate funding to see more than two new First Nations through the process in a fiscal year. By opening up FNOGMMA to new First Nations, more lessons can be learned and as such, the program can be improved upon.

A number of respondents noted that it is far too early in the process to arrive at any concrete decisions as to whether the program is designed in such a manner that it allows for the accomplishment of intended goals. They noted that it is necessary for the pilot phase to be completed before decisions can be made and conclusions drawn. Nonetheless, interviewees and community case study participants identified a number of barriers, risks and concerns associated with the implementation of FNOGMMA. These include the following:

### ***Relinquishing of federal fiduciary responsibilities:***

There is a general and prevailing concern that once a shift has been made from the *Indian Act* to FNOGMMA, the level of federal accountability will change. At the moment the federal government is responsible for ensuring that the needs and concerns related to First Nations are appropriately addressed. The realization of FNOGMMA would result in the federal government relinquishing its fiduciary responsibilities toward participating First Nations in the area of oil and gas and/or moneys management. First Nations will then be responsible for assuming all associated environmental and financial liabilities and risks. First Nations are fearful that such a shift in responsibilities will result in them being locked into their management regime and unable to reverse their situations should conflicts or challenges arise with the management of resources.

***Changing regulatory regimes:***

At the moment, activities related to oil and gas development have a clearly identified regulator (i.e. the IOGC and through them, the province) and well established/consistent approaches and laws related to licensing and leasing on reserve. According to some interviewees, the current regime is functioning fairly well, and FNOGMMA has the potential to complicate matters, especially given that a new regulator (i.e. each First Nations community on which the resource exists) is being introduced into the process. It is possible that the processes and laws being implemented may in fact be specific to each First Nation community. With a shift to First Nations' control, it may become necessary to determine whether industry (i.e. private companies) is willing to work with, and within, the confines of the new regime(s); particularly given that the bureaucracy associated with this new regime is undefined.

***Limited community capacity:***

There is a need to build capacity within First Nation communities to ensure that communities are fully able to assume the responsibilities required to appropriately manage their land and resources. It was noted that there are capacity challenges in areas such as: skills necessary to responsibly administer FNOGMMA; knowledge related to the development and implementation of appropriate laws and financial processes; the ability to address environmental and sustainability-related issues (i.e. conservation of oil and gas resources); and the ability to negotiate and enforce appropriate licenses with oil and gas companies.

The lack of a solid governance base and support from leadership within the community also has the potential to impede the implementation of FNOGMMA and ultimately, the process of communities managing their own resources (oil and gas and money) in a manner that would be economically beneficial for the community.

***Limited understanding of FNOGMMA:***

Very few community members have participated in the community consultation sessions. As a consequence, there is concern that membership does not clearly understand the process, the Act or required community roles and responsibilities.

***Potential role of the provinces in oil and gas management, particularly with respect to enforcement:***

During the passing of the FNOGMMA legislation, it was decided that individual First Nations would be solely responsible for entering into an agreement with the provinces for the enforcement of oil and gas laws, and that there would be not be a need for the federal government to be a party to those agreement in any way. However, in practices these agreements were difficult to achieve, which has resulted in uncertainty as to how the enforcement role would be fulfilled. Furthermore, government documents point to the need to amend Saskatchewan legislation to provide authority for the province to enter into agreements with the FNOGMMA participating First Nations.

Interviewees noted the importance of clearly articulating the role of the province should First Nations take over control of oil and gas management. Moreover, the responsibilities to be assumed by the provinces and the federal government and the provinces and the First Nations (e.g., enforcement of codes, laws and agreements) must be clearly delineated.

### 4.3 Appropriateness of the Funding Structure

FNOGMMA financial resources were divided between the IOGC and Individual Affairs Branch to reflect the program delivery structure. The initial forecasts estimated that Individual Affairs Branch would require roughly \$550K per year and that IOGC would require roughly \$1,300K per year. During the timeframe of the evaluation, IOGC spent roughly \$1M per year, which is fairly consistent with the initial estimates. Individual Affairs Branch, on the other hand, was not given a mandate to begin spending in the first year (as evidenced by no expenditures in the first year), but has seen a steady growth with roughly \$200K in expenditures the second year and \$600K in the third. Refer to Table 1 on page 6 for a detailed breakdown of funding between IOGC and Individual Affairs Branch.

It was noted by interviewees that the current budget needs to be realigned so that more funding is allocated to the moneys management side of the equation. This sentiment reflects the fact that more First Nations have expressed an interest in participating in the moneys management component and that participation was limited until the pilots were completed.

The allocation of contribution funding is designed to address the developmental and operational needs of First Nations that opt into the legislation, and to assist them in working through the six phases of FNOGMMA (the sixth phase being full management and control of the oil and gas or moneys resources). Table 2 provides a breakdown of available funding per phase. Funding in Phase 2 to 5 is intended to cover costs associated with community consultation, training, and capacity building. Operational funding, on the other hand, is designed to address costs associated with co-managing all transactions associated with the administration of the oil and gas resources<sup>24</sup>.

Table 2: Funding per First Nation by FNOGMMA Phase

Phase	Activity Funded	Oil and Gas Management	Moneys Management
2	Developmental	\$105K + \$50k for capacity development*	\$100K
3	Community Consultation	\$150K	\$52K
4	Community ratification	\$120K	\$120K
5	Transitional	\$188K*	
6	Operational	2007-08 - \$450K* 2008-09 - \$600K* 2009-10 - \$600K*	

Note that \* applies only to the FNOGMMA pilots.

One interviewee noted that funding *per se* is not the issue, but rather the length of time it is taking for each pilot to move through the phases.

### 4.4 Clarity of Roles and Responsibilities

Program RMAF/RBAF outlines the FNOGMMA governance structure within INAC. This includes three key streams of accountabilities:

- Executive Authority and Oversight, which resides with the Minister of INAC. The FNOGMMA Intake Committee, reporting to the Minister of INAC through the Assistant Deputy Minister of

<sup>24</sup> Government of Canada. (2005). *Aboriginal Horizontal Framework*. City and Publication Details [Unknown].

Lands and Economic Development and Assistant Deputy Minister of Resolution and Individual Affairs, will support the Minister with Executive Oversight duties, review and recommend intake applicants, and manage and direct the Management and Delivery bodies.

- FNOGMMA Management and Delivery – Oil and Gas is managed by IOGC via the FNOGMMA Steering Committee with support from INAC Region and Individual Affairs Branch, Estates and Treaty Annuities (IMETA) for financial information and documents.
- FNOGMMA Management and Delivery – Moneys is managed by Indian Monies, Estates and Treaty Annuities Directorate, with support from INAC regional moneys management staff for initial and ongoing direct contact with First Nation applicants.

First Nations that choose to opt into FNOGMMA are responsible for meeting specific financial criteria related to accountability, financial planning, financial review, disclosure and redress. Once First Nations are operating under the oil and gas component of FNOGMMA, they are responsible for oil and gas management, including environmental protection, regulation and enforcement. Additionally, they assume responsibility for any existing and future oil and gas contracts, as well as collecting and managing moneys related to those contracts. A First Nation that opts into the moneys management component of FNOGMMA is responsible for its moneys that are transferred under the Act.

As noted in the FNOGMMA RMAF/RBAF, the participation in FNOGMMA requires that the First Nation have appropriate mechanisms in place to ensure they are accountable to their membership in the control and management of oil and gas activities and related revenues and/or moneys. More specifically, the oil and gas code, financial code and the transfer and/or payment agreement provide an accountability framework for the management of oil and gas and related revenues, and/or moneys management and the duties and obligations of the First Nation government to their membership. Furthermore, the First Nations are required to report to their membership annually on revenue derived from oil and gas activities, and the moneys received. Financial statements must be prepared and audited in accordance with the standards of the Canadian Institute of Chartered Accountants.

Interviewees noted that the roles and responsibilities of the provinces with respect to oil and gas management under FNOGMMA are not stipulated in the Act<sup>25</sup>. While the expectation appears to be that the provinces would continue to act in an enforcement role once oil and gas responsibilities were devolved to the participating First Nations, such agreements were never formally put in place. Interviewees acknowledged that there needs to be a better understanding of provincial roles and responsibilities if First Nations are to take over control and management of oil and gas resources on their lands. Moreover, it was noted that provincial support with respect to enforcement of oil and gas laws is required to make FNOGMMA work.

More than half of the Interviewees indicated that the roles and responsibilities of the key stakeholders involved in the FNOGMMA implementation are clearly articulated. They noted that:

- The program's foundation documents demonstrate an understanding of roles and responsibilities.
- Roles and responsibilities are well defined between the Region and Headquarters.

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<sup>25</sup> FNOGMMA does stipulate that (42) oil and gas laws may incorporate by reference laws of the province in which the managed area is located as they are amended from time to time, and that (43) an oil and gas law may, in accordance with an agreement between a First Nation and the government of the province in which its managed area is located, (a) specify the respective responsibilities of the First Nation and the province for the administration and enforcement of oil and gas laws; and (b) provide for access by officers of the First Nation and the province, respectively, to the managed area for the enforcement of oil and gas laws.

- The role of First Nations is clear particularly in the schedules to the framework.
- The role and responsibilities of First Nations are set out in their individual agreements.
- Roles and responsibilities within the legislation are well defined; however, objectives are evolving during the pilot phase.

## **4.5 Performance Measurement and Reporting Requirements**

FNOGMMA's performance measurement plan was outlined in the program's RMAF/RBAF, where the program committed to collecting performance information related to each of the six phases of opting into FNOGMMA. Appendix C presents the detailed performance indicators for FNOGMMA. Interviewees stated that the IOGC was asking First Nations annual financial reports for FNOGMMA related expenditures. At the moment, the IOGC reviews reports, intervenes when necessary, and provides insight and assistance to First Nations as and when necessary. It was mentioned that performance data collection is not actively being pursued during the pilot phase, though there are plans to require data collection once the pilot phase is complete.

With respect to the existing performance measurement strategy in the FNOGMMA RMAF/RBAF, a comparison of the logic model and the expected outcomes and timeframes shows some level of disconnect. This seems to stem from the fact that FNOGMMA logic model is overly simplistic. Performance measurement for FNOGMMA would benefit from the inclusion of inputs, a more detailed description of program activities, program outputs and program outcomes in the logic model. Additionally, linking the outputs and outcomes to specific indicators (and possibly data sources) would assist with the measurement of program effectiveness and efficiency.

## 5. Evaluation Findings – Performance

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The evaluation looked for evidence to address the following questions with respect to performance:

- To what extent have intended outcomes been achieved as a result of the program?
- Have there been unintended (positive or negative) outcomes? Were any actions taken as a result of these?
- Are there more cost-effective ways to achieve the programs outcomes? What are the lessons learned from other self-government initiatives?
- How efficient is the program? How does its design and efficiency compare to similar programs?

In order to address these questions, the discussion in this section is structured around the achievement of outcomes, demonstration of cost-effectiveness and demonstration of efficiency. To support this analysis, the evaluation team reviewed program documents, conducted interviews with program staff and managers from related INAC programs, INAC senior management, and conducted two community site visits to speak directly with First Nation communities.

Overall, the evaluation found that FNOGMMA has proven unsuccessful in meeting its intermediate and final outcomes. During the course of this evaluation, FNOGMMA's three pilot projects were cancelled and the fourth participating First Nation withdrew from the program. The approach to date has proven to be neither cost-effective nor efficient given the time and investment spent without realizing the intended results. This may in part be because First Nations are weighing the benefits with the financial and environmental liabilities of controlling oil and gas.

### 5.1 Achievement of Intended Outcomes

Interviewees remarked that at the present time, FNOGMMA remains a conceptual agreement/framework since it has yet to be fully implemented. They noted that:

- No First Nation has become operational under the legislation;
- No agreement has been established with the provinces; and
- No system has been put in place over the course of the past 14 years, yet a significant amount of resources have been expended.

After the evaluation field work was complete, the pilot projects were terminated due to the fact the First Nations failed to ratify FNOGMMA through a vote by January 31, 2010. The First Nations involved in moneys management component withdrew from the process in late 2009. If these First Nations wish to opt back into FNOGMMA process, they will be required to make application to do so, pursuant to the Implementation Policies. This essentially means they will be placed in queue behind others who have already begun the process and the Department could not fund them for work that has already been funded under the FNOGMMA. Thus, it can be stated that FNOGMMA has proven unsuccessful in achieving its intermediate and final outcomes:

**Intermediate Outcome:** Completion of oil and gas code, and relevant regulations (Environmental Assessment and Community Voting) and/or completion of financial codes for Individual Affairs Branch.

**Final Outcome:** The transfer of control and management of oil and gas resources and/or moneys management from INAC to the First Nations is completed. First Nations are fully operational (completion of all six phases) under FNOGMMA resulting in a self-governance arrangement.

Interviewees and case study participants did, however, note that some achievements have occurred over the course of the program.

- Since FNOGMMA was enacted, the four participating First Nations progressed to Phase 3 of the process. That is, the four participating First Nations introduced FNOGMMA to their membership and began to develop the materials necessary to accurately explain the Act and its relative benefits to the community.
- The four participating First Nations had an active role in developing the codes, laws and agreements (e.g., oil and gas codes). Although they were not ratified through a community vote, in the future, these documents can be used as templates or models for other First Nations to help facilitate the development of their codes, laws and agreements.
- Participating First Nations gained a greater understanding as to the development of trust agreements, as well as knowledge on the oil and gas industry such as the economic terms and conditions under which an oil and gas company will invest in development projects.
- Training was undertaken under the co-management phase of the Pilot Project (i.e., before FNOGMMA came into force in 2006) to increase First Nations' knowledge and skills related to oil and gas management. The three pilots have engaged in training sessions with 21 out of 25 people completing the course. It should be noted that there is a strong tendency for people who receive training to move on from the community and as a result, new training is constantly required. Furthermore, through the co-management regime, pilot First Nations gained significant experience in managing their oil and gas without taking the risks associated with a complete transfer under FNOGMMA.

Interviewees also noted that the consequences associated with the pilots not achieving Phase 6 include:

- The Crown will retain responsibility for oil and gas resources and moneys management.
- Fewer First Nations might choose to enter into the FNOGMMA process.
- Damaged federal-First Nations relationships and continued mistrust.
- Loss of First Nation opportunity to develop entrepreneurial skills and to capitalize on timely economic development ventures.

Without FNOGMMA, First Nations will be without a vehicle to move them toward control of oil and gas and moneys management. Some interviewees raised concerns on the impacts this might have on current efforts to modernize the *Indian Oil and Gas Act* and that First Nations may choose to pursue litigation options as an alternative (particularly for the moneys management component of FNOGMMA).

## **5.2 Cost-Effectiveness of the Program**

Given that the implementation of FNOGMMA was still taking place at the time of the key informant interviews, respondents remarked that it was difficult to assess whether FNOGMMA is meeting its immediate, intermediate, and final outcomes in relation to the resources spent and therefore, it was not

possible to assess the cost effectiveness of the program. Nonetheless, the evaluation found that the program has implemented two distinct of strategies for cost-effectiveness.

In an effort to reduce duplication when a First Nation is operating under the *First Nation Land Management Act* (FNLMA), FNOGMMA works to ensure that a FNOGMMA Financial Code is in concurrence with existing financial management rules and procedures within a First Nation's Land Code such as those developed under the FNLMA. FNOGMMA also has a process in place to identify if the First Nation is exercising full or partial authority to control, manage, or expend revenue moneys under Section 69 of the *Indian Act*.<sup>26</sup>

Furthermore, FNOGMMA has structured its funding criteria so that funding is provided to First Nations on an incremental basis and is subject to the successful completion of the preceding phase in the FNOGMMA process. In other words, the funding for FNOGMMA is based on the completion of deliverables, opposed to the time that a First Nation is operating under the FNOGMMA process (i.e., a First Nation that takes three years to complete Phase 3 gets the same amount of funding as a First Nation that takes six months to complete the same phase). This way, the program is able to take action should a First Nation fail to complete steps required for becoming operational into FNOGMMA.

Despite these two cost-effective strategies, FNOGMMA's inability to achieve outcomes has limited its cost-effectiveness. In part, this may be explained by the risk and benefits a First Nation would accrue if they choose to opt in to FNOGMMA. Some interviewees felt that FNOGMMA presents no real benefits compared to the *Indian Oil and Gas Act*. This is so, especially given that there can be significant environmental and financial liabilities associated with controlling oil and gas activities, and because a First Nation could opt into the moneys portion only, effectively gaining control of the oil and gas profits, without taking on the risk of managing oil and gas activities. However, other interviewees felt that this could change depending on how satisfied First Nations are with the modernized *Indian Oil and Gas Act* regime.

### 5.3 Efficiency of the Program

The FNOGMMA Program has built in efficiency standards for the activities that INAC is responsible for undertaking. The FNOGMMA Implementation Policy outlines estimated service standards in working days for each stage in the process for the assessment, negotiation, approval and implementation of FNOGMMA payment requests.<sup>27</sup> Although these standards do not clarify the length of time it would take for a First Nation to go through the six phases and become operational under FNOGMMA, they do clearly set efficiency targets for the day to day activities of the program.

Administrative/reporting requirements were viewed by interview participants as being quite straightforward and focusing upon the type of information that both the regulators and industry need in order to develop, evolve, and ensure process efficiency. It was also noted that the service standards are clearly defined in the Act as are the roles of representatives from Headquarters and the regions.

With respect to resource utilization and time required for First Nations to produce the outputs that they are responsible for within the FNOGMMA process, interviewees commented that:

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<sup>26</sup>FNOGMMA Moneys Management Implementation Policy, 2006.

<sup>27</sup> FNOGMMA Moneys Management Implementation Policy, 2006.

- FNOGMMA is a six-phase process and as such, requires a significant amount of time to move through the phases. Given the number of phases and the complexity of information (particularly with respect to oil and gas management), more time may actually be required to move through each phase.
- There is a lack of timely and appropriate input into the process from key stakeholders.
- There is a lack of understanding on the part of the federal government about the costs associated with producing materials required to educate the membership and to conduct the community consultation sessions. More resources need to be allocated to help ensure that the membership is adequately informed before they participate in a ratification vote.
- First Nations have been saying that there is a need for additional training in order to build sufficient oil and gas management capacity in the communities.

Overall, there was an expectation that it would take two years for a band to go through the six phases of FNOGMMA for oil and gas and six months for moneys management. This evaluation assessed progress over three years (between 2007-08 and 2009-10) and found that none of the four participating bands met these timelines. Frog Lake withdrew from the moneys process in November 2009 after 1.5 years and completing Phase 3. The three pilots were terminated on January 31, 2010, (roughly three years since the legislation was passed and 14 years since the pilots began) because Phase 4 (conducting a community vote) was not completed.

## 6. Evaluation Findings – Lessons Learned and Alternatives

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The identification of lessons learned and best practices were derived from all lines of evidence. The intent of identifying these strategies is the belief that they may help to improve the effectiveness of FNOGMMA implementation process in the future. Examples of these strategies include:

### ***Qualified labour force***

A labour force that is educated, skilled and motivated is considered an integral component to successful economic development. Capable individuals are able to identify economic opportunities, develop and take advantage of those opportunities, and provide the leadership required to bring about success<sup>28 29</sup>.

### ***Toolbox creation***

Interviewees and case study participants spoke about developing a First Nation's toolbox, which will assist them with designing laws, engaging membership and communicating with government and industry. For example, under the *First Nation Land Management Act*, INAC developed model codes that could be adopted and tailored to the specific needs of each First Nation. An evaluation of the program found that this approach helped to expedite the process and the efficiency of program<sup>30</sup>.

### ***Leadership and long-term vision***

Strong and stable leadership is identified as one of the most important foundations upon which economic development is based. Leadership that has a vision and a strategic plan regarding how that vision will be operationalized is more likely to experience success<sup>31</sup>. A report published by the Institute on Governance notes that long-term planning is crucial for sound development. Long-term planning is said to signal to all interested parties that development is a priority and that the community in question, has a strong commitment towards moving forward. Additionally, long-term planning tends to create a more stable environment for stakeholders in all sectors in which to have a dialogue about future development priorities and opportunities<sup>32 33 34</sup>.

### ***Partnerships with key stakeholders***

Interviewees and case study participants identified the pursuit of partnerships as an important best practice. In particular, they discussed the need to establish and maintain partnerships with federal and provincial officials that will assist with the implementation process and help keep First Nations

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<sup>28</sup> St. Germain, G. & Sibbeston, N. (2007). *Sharing Canada's Prosperity – A Hand Up. Not a Handout*. Final Report. Special study on the involvement of Aboriginal communities and businesses in economic development activities in Canada. Standing Senate Committee on Aboriginal Peoples, March 2007.

<sup>29</sup> Cornell, Stephen & Joseph P. Kalt (eds.). "What Can Tribes Do? Strategies and Institutions in American Indian Economic Development." Los Angeles, CA: American Indian Studies Center, University of California.

<sup>30</sup> INAC and Land Advisory Board Resource Centre (KPMG). *First Nations Land Management Summative Evaluation*: Final Report. November 16, 2007.

<sup>31</sup> St. Germain, G. & Sibbeston, N. (2007). *Sharing Canada's Prosperity – A Hand Up. Not a Handout*. Final Report. Special study on the involvement of Aboriginal communities and businesses in economic development activities in Canada. Standing Senate Committee on Aboriginal Peoples, March 2007.

<sup>32</sup> Ibid.

<sup>33</sup> Cornell, Stephen & Joseph P. Kalt. (1998). "Sovereignty and Nation-Building: The Development Challenge in Indian Country Today – PRS 98-25." Cambridge, MA: Harvard Project on American Indian Economic Development.

<sup>34</sup> Institute of Governance. (1999, October). "Understanding Governance in Strong Aboriginal Communities– Phase One: Principles and Best Practices From the Literature." Ottawa, ON: Institute of Governance.

involved in the program. Case study respondents also discussed the need to develop and sustain strong networks with other First Nations participating in the program so as to facilitate the sharing of knowledge and resources. The literature highlights the fact that developing partnerships with industry has proven to be a factor in successful Aboriginal economic development. These partnerships often result in access to external financial and human capital as well as providing opportunities for community members to build their own capacity (e.g., provides community members with the chance to learn how business operates and progresses to a point where they can assume management positions)<sup>35</sup>.

### ***Identification of ways to mitigate funding and capacity development concerns***

INAC has provided both funding and training for the establishment of resource centres, which could be accessed by First Nations' if they had questions related to FNOGMMA. In Alberta, the IRC can hire experts to address oil and gas related questions and in Saskatchewan, the Federation of Saskatchewan First Nations has the capacity to provide resource centres. There may be an opportunity for FNOGMMA to better partner with these broader organizations to help leverage their capacity.

### ***First Nations Land Management Act best practices and lessons learned***

The FNLMA and its associated regime 'represents a new flexible model for autonomy and operational performance, developed by First Nations people in concert with the federal government, for First Nations people'. It is optional legislation that provides authority to First Nations to manage their own land (much in the same way the FNOGMMA provides authority to management oil, gas and/or moneys). Some of the best practices identified in a summative evaluation of the initiative<sup>36</sup> include:

- Information sessions for First Nations that are considering the FNLMA regime are important so that First Nations make informed decisions about opting into the regime. However, they should go beyond the merits for the FNLMA regime and discuss the challenges associated with opting in to ensure that the 'big picture' is understood.
- The evaluation recommended establishing a process to identify potential factors that could affect progress before a First Nation enters into the FNLMA process. This would allow the program to develop strategies to mitigate those issues before they begin. For example, the evaluation identified the following major factors: delays in timing of Contribution Funding Agreement (roughly six months on average), delays in start up due to approval process for entry into FNLMA (roughly six months on average); legacy issues (such as boundary disputes); survey issues; environmental issues (such as contamination); and competing priorities within the First Nation communities.
- Carry out a needs assessment to identify capacity needs and issues. Develop a supporting action plan to address these identified concerns and implement it. Key informants interviewed during the FNOGMMA evaluation suggested that the single biggest success factor is the existing capacity within the First Nations communities. In the case of FNLMA, there were a number of First Nations who were fairly advanced at land management prior to the Act being passed. This helped ensure a community of practice and got the initiative off the ground.
- Identify options for increasing active participation of key stakeholders. In the case of FNLMA, there are a number of stakeholders that play a support role to First Nation land managers. These

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<sup>35</sup> St. Germain, G. & Sibbeston, N. (2007). Sharing Canada's Prosperity – A Hand Up. Not a Handout. Final Report. Special study on the involvement of Aboriginal communities and businesses in economic development activities in Canada. Standing Senate Committee on Aboriginal Peoples, March 2007.

<sup>36</sup> INAC and Land Advisory Board Resource Centre (KPMG). *First Nations Land Management Summative Evaluation: Final Report*. November 16, 2007.

include INAC, Natural Resources Canada, a Resource Centre and a Land Advisory Board. Each stakeholder plays a unique and critical role in supporting the First Nations. The evaluation found that good working relationships between the various stakeholders were critical to the success of the initiative (particularly in the development phase when the Land Code is being drafted).

## 7. Conclusions

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This evaluation has revealed that implementation of the *First Nations Oil and Gas and Moneys Management Act* has not been successful in achieving its intermediate and final outcomes. Although pilot First Nations have been involved in the FNOGMMA process for more than 14 years, none of the communities has moved beyond Phase 3 of the six-phased implementation approach. Consequently, FNOGMMA remains a conceptual agreement/framework since it has yet to be fully implemented. As of the writing of this report, IOGC had reassumed full responsibility for oil and gas management from the three pilot First Nations (White Bear First Nation, Siksika Nation and Blood Tribe) due to the fact that they had not proceeded to a ratification vote by January 31, 2010. Additionally, the First Nation (Frog Lake) participating in the moneys management component of FNOGMMA had withdrawn from the program.

FNOGMMA is designed to be consistent with government policies and priorities regarding First Nation sectoral governance and is closely aligned with two of INAC's Strategic Outcomes – The Land and The People – as well as INAC's Sustainable Development Strategy and departmental economic development programs and self-government. The moneys management section of FNOGMMA appears to be directly addressing First Nations' moneys management concerns; however, it remains unclear whether First Nations see the program as the most appropriate solution to current regulatory issues for oil and gas management.

With respect to implementation, the oil and gas regime (and consequently the program) appears to be too rigorous, complicated and burdensome for First Nations who have limited capacity to carry out the required roles and responsibilities. Additionally, there are other associated challenges such as changing regulatory regimes and potential environmental liability that impede the actualization of FNOGMMA. Furthermore, First Nations have expressed concern with the idea that in the event that FNOGMMA is realized, the federal government may relinquish its fiduciary responsibility to participating First Nations with respect to oil and gas and/or moneys management. As such, the First Nations would assume all of the associated environmental and financial risks and liabilities.

The current funding regime for FNOGMMA is structured in such a way that the majority of resources are allocated to the oil and gas component of the program. This assignment of funds does not reflect the fact that there is a limited number of First Nations interested in, and able to participate in, the oil and gas component of FNOGMMA, and that the moneys management component of FNOGMMA has attracted more First Nations interest. A more appropriate allocation of financial resources is required so that INAC can focus more time and energy on First Nations interested in managing their moneys.

To date, FNOGMMA has proven to be neither cost-effective nor efficient. The sheer complexity of the oil and gas regime coupled with limited First Nation capacity to manage oil and gas means that a significant amount of time and investment is needed to propel First Nations through the phases.

A number of lessons learned and best practices associated with FNOGMMA specifically, and First Nations economic development and self-governance more generally, may help to improve the effectiveness and efficiency of the FNOGMMA implementation process in the future, if adopted. These include such strategies as ensuring a qualified labour force, pursuing strong partnerships with government and industry, ensuring strong leadership and a long term community vision, and identifying ways in which to mitigate funding and capacity concerns.

## 8. Recommendations

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1. Based on the evaluation findings, INAC (specifically IOGC) should determine the feasibility of continuing with the implementation of the oil and gas management portion of FNOGMMA.
2. Before further implementation of the oil and gas management portion of FNOGMMA and to inform future implementation of the moneys portion of FNOGMMA, INAC should build on the evaluation findings and address the following targeted issues:
  - a. The needs of provinces for their participation in the implementation of FNOGMMA (specifically IOGC).
  - b. Improve its understanding of First Nation priorities and interests with respect to oil and gas management on reserves, the risk and benefits to First Nations opting into the FNOGMMA, and the relationship between FNOGMMA and the modernization of the *Indian Oil and Gas Act* as well as potential litigation as an alternative to FNOGMMA (specifically IOGC).
  - c. Take into consideration the lessons learned and best practices (particularly related to readiness, capacity development, and governance) of other optional legislation, including the *First Nation Land Management Act*, the *First Nation Commercial and Industrial Development Act*, and the *First Nation Fiscal and Statistical Management Act* (Individual Affairs Branch and IOGC).
3. INAC (Individual Affairs Branch and IOGC, if applicable) should develop a process for assessing the specific capacity needs of individual First Nations as well as risk factors that could affect their completion of the FNOGMMA process. This process should also include a method to develop mitigation strategies related to the identified capacity needs and potential success factors of individual First Nations.
4. INAC (Individual Affairs Branch and IOGC, if applicable) should incorporate FNOGMMA's long-term outcomes (particularly related to the broader economic, governance and capacity outcomes) and more details on program activities and outputs into a performance measurement strategy, which should then be implemented to track the performance of the program. Only if the objectives of the moneys and the oil and gas portions of FNOGMMA are dramatically different, should INAC consider separate authorities for the two components.

## **Appendix A – Expected Results of FNOGMMA**

Oil and Gas Expected Results	Timeframes	Moneys Expected Results	Timeframes	
<b>Phase 1 – Entry</b>	First Nations requesting application material	INAC will respond as required	First Nations requesting application material	INAC will respond as required
	First Nation Band Council Resolutions requesting to opt into FNOGMMA	Provided by First Nation	First Nation Band Council Resolutions requesting to opt into FNOGMMA	Provided by First Nation
	Detailed Business Plan	Provided by First Nation	First Nations accepted to participate in FNOGMMA	Two First Nations accepted per year into moneys management component
	Timetable for delivery of documents	INAC will respond as required		
	First Nations accepted to participate in FNOGMMA	Two First Nations accepted per year into oil and gas component		
<b>Phase 2 – Developmental</b>	Transfer agreement signed	Within one to three years	Development of key documents: <ul style="list-style-type: none"> <li>• financial code;</li> <li>• banking or trust agreement; and,</li> <li>• Payment agreement</li> </ul>	Within one year
	Skills Development Begins	Within one to three years		
<b>Phase 3 &amp; 4 – Community Consultation and Ratification</b>	Band Council Resolution to conduct vote	Provided by First Nation	Band Council Resolution to conduct vote	Provided by First Nation
	Achieving ratification targets – successful vote	A one-time funding contribution will be provided to the First Nation to support the community ratification process. Within one to three years	Information sessions with membership	At least one session in accordance with FNOGMMA Voting Regulations
			Methodology of disseminating information to membership	In accordance with FNOGMMA Voting Regulations
		Achieving ratification targets – successful vote	A one-time funding contribution will be provided to the First Nation to support the community ratification process. Within one to three years	

Oil and Gas		Timeframes	Moneys	Timeframes
Expected Results			Expected Results	
Phase 5a – Transitional	Successful implementation of business plan - appropriate skills - appropriate staffing	Within one to three years	N/A	N/A
	Transfer of all records and contract data to First Nation	Within one to three years		
Phase 5 & 6 – Transfer/Payment and Operational	First Nations in Operational Phase	It is expected to take three years for a First Nation to go through all six phases and become operational under the oil and gas management provisions of FNOGMMA	First Nations in Operational Phase	It is expected to take one year for a First Nation to go through all six phases and become operational under the moneys management provisions of FNOGMMA
	Stats/trends on increased control and the difference FNOGMMA has made	Data can be gathered one year after First Nation becomes operational	% of reduced Crown liability	Data can be gathered one year after First Nation becomes operational

## Appendix B – Evaluation Matrix

Evaluation Issues / Questions	Lines of Evidence				Indicators
	Literature Review	Document, Date & File Review	Key Informant Interview	Case Studies	
<b>Relevance</b>					
Is the program consistent with government priorities, INAC Land and People strategic outcomes and INAC's Sustainable Development Strategy?		√	√		<ul style="list-style-type: none"> <li>a) Comparison of program objectives with government priorities.</li> <li>b) Comparison of program objectives with INAC Land and People Strategic Outcomes.</li> <li>c) Comparison of program objectives with INAC Sustainable Development Strategy.</li> </ul>
To what extent does the program address a demonstrable need and is responsive to the needs of First Nations?	√	√	√	√	<ul style="list-style-type: none"> <li>a) Description of First Nation oil and gas potential and Moneys held in Trust.</li> <li>b) Extent to which the current regulatory regime is a barrier to self-governance, the development of oil and gas and economic development in general.</li> <li>c) Extent to which program objectives address those barriers.</li> <li>d) First Nation concerns related to oil, gas and moneys management and the extent to which the program addresses those concerns.</li> <li>e) Extent to which First Nations are participating in or have expressed interest in participating in the program.</li> <li>f) Description of barriers to First Nation participation in FNOGMMA.</li> </ul>

Evaluation Issues / Questions	Lines of Evidence				Indicators
	Literature Review	Document, Date & File Review	Key Informant Interview	Case Studies	
Is there a legitimate, appropriate and necessary role for INAC in the program?		√	√	√	<ul style="list-style-type: none"> <li>a) Alignment of program objectives with INAC's mandate.</li> <li>b) Alignment of program objectives with federal government obligations and commitments related to First Nation self-governance and economic development.</li> </ul>
<b>Design &amp; Delivery</b>					
To what extent does the program design address the identified needs?		√	√	√	<ul style="list-style-type: none"> <li>a) Extent to which the phases for FNOGMMA implementation address the need identified in question 2.</li> <li>b) First Nations were consulted and their views were incorporated into program design.</li> <li>c) The requirements and funding for each phase of FNOGMMA are appropriate.</li> <li>d) Program is flexible enough to take advantage of individual First Nation circumstances.</li> <li>e) Risks to the achievement of expected outcomes have been assessed and mitigation strategies have been incorporated into program design.</li> </ul>
To what extent has the program identified expected outcomes and collected performance information against those outcomes?		√	√	√	<ul style="list-style-type: none"> <li>a) Logic model that articulates a causal relationship between program activities and the expected outcomes is in place.</li> <li>b) A performance measurement strategy - including indicators and targets - has been developed to track progress against expected outcomes.</li> <li>c) Performance information is being used to inform program decisions.</li> </ul>

Evaluation Issues / Questions	Lines of Evidence				Indicators
	Literature Review	Document, Date & File Review	Key Informant Interview	Case Studies	
Is the program being delivered as planned?		√	√	√	a) Consistency between documented program design and implementation. b) The extent and nature of program activities and outputs as well as the extent to which targets and criteria for activities and outputs were met. c) Description of factors that have affected program implementation.
Are the roles and responsibilities of INAC and program stakeholders clear?		√	√	√	a) Accountabilities to First Nations and the federal government are clearly defined. b) Roles and responsibilities are acted upon.
<b>Progress Towards Achieving Outcomes</b>					

Evaluation Issues / Questions	Lines of Evidence				Indicators
	Literature Review	Document, Date & File Review	Key Informant Interview	Case Studies	
<p>To what extent have intended outcomes been achieved as a result of the program?</p> <ul style="list-style-type: none"> <li>▪ First Nations are prepared for FNOGMMMA implementation.</li> <li>▪ First Nations have the necessary skills to manage their oil and gas resources and/or moneys.</li> <li>▪ First Nations have the necessary regulatory infrastructure to manage their oil, gas and moneys and encourage the development of oil and gas resources.</li> <li>▪ Communities support self-governance over their oil and gas resources and/or its moneys</li> <li>▪ First Nations governance over oil, gas and/or moneys.</li> <li>▪ A better climate for economic development and greater utilization / value of land and resources in First Nation communities.</li> </ul>		√	√	√	<p>For each of the following indicators, a description of the degree to which targets for intended outcomes have been met as well as factors affecting the achievement of outcomes.</p> <ul style="list-style-type: none"> <li>a) Degree to which First Nation Business Plans prepared the First Nations for the implementation of FNOGMMMA.</li> <li>b) Degree to which the necessary skills were developed to manage oil and gas and/or money.</li> <li>c) Degrees to which key documents (codes, laws and agreements): are in place; meet statutory obligations; give First Nations the necessary authority; and, where possible, align with neighbouring provincial regulations to encourage a positive business environment.</li> <li>d) Communities vote to opt into the <i>First Nation Oil and Gas and Moneys Management Act</i>.</li> <li>e) Extent to which First Nations are operating under FNOGMMMA.</li> <li>f) Perceptions on the utilization of Band moneys and oil and gas on reserves as well as the climate for economic development on reserves.</li> </ul>
<p>Have there been unintended (positive or negative) outcomes? Were any actions taken as a result of these?</p>		√	√	√	<ul style="list-style-type: none"> <li>a) Number of, extent of, and action taken to address unintended outcomes.</li> </ul>
<b>Demonstrations of Efficiency and Cost Effectiveness</b>					

Evaluation Issues / Questions	Lines of Evidence				Indicators
	Literature Review	Document, Date & File Review	Key Informant Interview	Case Studies	
Are there more cost-effective ways to achieve the programs expected outcomes? What are the lessons learned from other self-governance initiatives?	√	√	√	√	<p>a) Expected outcomes and risks form the basis for funding decisions.</p> <p>b) Program is being managed horizontally within and outside the Department</p> <ul style="list-style-type: none"> <li>▪ All the necessary players are participating in the program;</li> <li>▪ Related initiatives and delivery partners have been identified; and</li> <li>▪ The program is well-coordinated with related initiatives.</li> </ul> <p>c) Comparison of program design<sup>37</sup>/results with best practices from self-governance in general and sectoral governance (such as FNLMA).</p>
How efficient is the program? How does its design and efficiency compare to similar programs?		√	√	√	<p>a) Service standards have been clearly defined and include efficiency based indicators.</p> <p>b) Description of resource utilization/time to production of outputs</p> <p>c) Administrative/reporting requirements are proportional to level of risk.</p> <p>d) Comparison of program's design and efficiency with best practices from other INAC legislative projects (such as <i>First Nations Commercial and Industrial Development Act</i>).</p>
<b>Future Considerations</b>					
What are the best practices and lessons learned?	√		√		<p>a) Description of best practices drawn from literature.</p> <p>b) Interviewee perspectives on best practices and lessons learned.</p>

<sup>37</sup> Program design in this context speaks to the way in which INAC approach to transferring governance over natural resources/moneys on reserves (financial and legal support for each phase of FNOGMMA implementation).

## **Appendix C – Performance indicators for FNOGMMA**

### **Strategic Outcomes and Overall Performance Indicators**

Oil and Gas	Performance Indicator	Moneys	Performance Indicator
First Nation authority to manage, control and enter into contractual arrangements that meet the economic needs of their communities.	The transfer of control and management of oil and gas resources to First Nations opting into FNOGMMA	Empowerment of First Nation over economic investment opportunities and flexibility in the administration and management of moneys.	The transfer of control to First Nations of their moneys.  The number of First Nations in Operational Phase
First Nation management and control of oil and gas exploration and exploitation activities on their lands, enabling economic opportunities.	The number of First Nations in Operational Phase	Reduced Crown liability	% of reduced liability

### **Specific Performance Indicators by FNOGMMA Implementation Phase**

Oil and Gas	Performance Indicator	Moneys	Performance Indicator
<b>Phase 1 – Entry</b>	Understanding of roles and responsibilities, improved awareness	# First Nations requesting application material	Understanding of roles and responsibilities, improved awareness
	Informed decision making	# First Nation Band Council Resolutions requesting to opt into FNOGMMA	Informed decision making
	Defined implementation plan	Detailed Business Plan  Timetable for delivery of documents	First Nation transition to Developmental Phase
	First Nation transition to Developmental Phase	# First Nations accepted to participate in FNOGMMA	# First Nations accepted to participate in FNOGMMA

Oil and Gas		Performance Indicator	Moneys	Performance Indicator
Phase 2 – Developmental	Development of key documents	Documents completed Transfer agreement signed Average timeline	Development of key documents: • financial code; • banking or trust agreement; and • Payment agreement.	Documents completed Payment agreement signed
Phase 3 & 4 – Community Consultation and Ratification	Established communications process Informed consent	Band Council Resolution to conduct vote Achieving ratification targets – successful vote	Established communications process Informed consent	Band Council Resolution to conduct vote # Information sessions with membership Methodology of disseminating information to membership Achieving ratification targets – successful vote
Phase 5a – Transitional	Established framework for management of oil and gas	Successful implementation of business plan - appropriate skills - appropriate staffing	N/A	N/A
Phase 5 & 6 – Transfer/Payment and Operational	First Nation authority to manage, control and enter into contractual arrangements that meet the economic needs of their communities. First Nation management and control of oil and gas exploration and exploitation activities on their lands, enabling economic opportunities.	# First Nations in Operational Phase Stats/trends on increased control and the difference FNOGMMA has made Feedback from key stakeholders	Empowerment of First Nation over economic investment opportunities and flexibility in the administration and management of moneys. Reduced Crown liability	# First Nations in Operational Phase % of reduced liability Feedback from key stakeholders

<b>Oil and Gas</b>	<b>Performance Indicator</b>	<b>Moneys</b>	<b>Performance Indicator</b>