



December 13, 2016

The Honourable Carolyn Bennett
Minister of Indigenous and Northern Affairs
10 Wellington, 21st Floor
Gatineau, QC K1A 0H4

James Eetoolook
Acting President, Nunavut Tunngavik Inc.
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Sent via email: minister@aadnc-aandc.gc.ca; carolyn.bennett@canada.gc.ca;
jeetoolook@tunngavik.com

Re: Notice from the Nunavut Impact Review Board With Respect to Three Screening Exemption Agreements under Schedule 12-1(7) of the Nunavut Agreement and Pursuant to Section 230(3) of the Nunavut Planning and Project Assessment Act

Dear Honourable Minister and Mr. President;

As set out in Schedule 12-1, item 7 of the *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada* (the Nunavut Agreement) and reflecting the requirements of s. 230 of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14 (*NuPPAA*) applicable to these types of agreements, the Nunavut Impact Review Board (NIRB or the Board) provides this notice to the Minister of Indigenous and Northern Affairs (INAC) and Nunavut Tunngavik Incorporated (NTI) that the NIRB has entered into the enclosed Screening Exemption Agreements:

- Parks Canada (PC) Nunavut Agreement Schedule 12-1(7) Screening Exemption Agreement for Research and Collection Permits in National Parks;
- Government of Nunavut-Culture and Heritage (GN-CH) Nunavut Agreement Schedule 12-1(7) Screening Exemption Agreement for Archaeological and Palaeontological Research Permits; and
- Government of Nunavut – Department of Environment (GN-DoE) Nunavut Agreement Schedule 12-1(7) Screening Exemption Agreement for Authorizations issued under the *Wildlife Act* (Nunavut).

As established under Article 12, Schedule 12-1, Item 7 of the Nunavut Agreement, these Screening Exemption Agreements define, with the agreement of the NIRB and the relevant Ministers, categories of activities or projects that may be exempted from the requirement to undergo screening by the NIRB. As outlined in greater detail below in the Procedural History

and Comments sections of this correspondence, the Board has provided notice, invited comment and revised the three agreements as required by s. 230 of NuPPAA, which states:

Schedule 3 — proposed agreement

230 (1) Before entering into an agreement under item 7 of Schedule 12-1 to the Agreement, the Board must notify the designated Inuit organization and either the federal Minister or the territorial Minister, as the case may be, in writing of the classes of physical works and activities that are the subject of the proposed agreement.

Comments

(2) The recipient of a notice referred to in subsection (1) may, within 120 days after receiving the notice, provide the Board with comments in writing on the proposed agreement.

Notice

(3) After taking into account any comments received under subsection (2), the Board must notify the designated Inuit organization and either the federal or the territorial Minister, as the case may be, in writing of the agreement, if any, that has been entered into.

Amendment to Schedule 3

(4) The federal Minister must, by order, amend Schedule 3 to add, delete or amend a description of any class of works or activities exempted from screening under an agreement referred to in subsection (3).

Accordingly, having reached agreement with PC, GN-DoE and GN-CH in respect of these agreements, providing notice of, and circulating drafts of the Screening Exemption Agreements, providing at least a 120 day comment period on the each of the Screening Exemption Agreements and revising the Screening Exemption Agreements as required to take into account the comments received, the Board is now, by this correspondence, advising the Minister and Nunavut Tunngavik Incorporated that the enclosed Screening Exemption Agreements have been entered into by the NIRB and PC, GN-CH and GN-DoE. Further the NIRB is providing the Agreements to the Minister as set out under NuPPAA, s. 230(4), for inclusion in *Schedule 3: Classes of Works and Activities Exempt from Screening*.

PROCEDURAL HISTORY

SUMMARY OF THE SCREENING EXEMPTION AGREEMENTS:

a) Parks Canada Schedule 12-1(7) Agreement

This Screening Exemption Agreement allows for activities requiring a Research and Collection Permit issued by Parks Canada to be exempted from NIRB screening. A Research and Collection Permit issued by the Parks Canada is required for all archaeological, natural, and social science research that involves fieldwork, natural object and/or archaeological object collection in National Parks, National Marine Conservations Areas or National Historic Sites in

the Nunavut Settlement Area. The purpose of this Screening Exemption Agreement was to limit duplication and overlap by allowing research and collection activities which fall within the scope of normal park operational activities, and which do not have potential significant environmental or social impacts beyond the boundaries of a park, to proceed without a NIRB screening. The Screening Exemption Agreement is also a mechanism to help ensure that if permits are sought for undertakings that could have potential adverse effects that these types of project proposals would be referred to the NIRB for screening under Article 12, Part 4 of the Nunavut Agreement and ss. 86-89 of NuPPAA.

Since 2008, Parks Canada and the NIRB have had a screening exemption agreement of this type in place on substantially the same terms and conditions as the current Agreement. The Agreement has been renewed or extended for several periods from 2008 and onward.

Pursuant to the Screening Exemption Agreement, Parks Canada is required to comply with the following main conditions:

1. Where Parks Canada has concerns regarding potential cumulative ecosystemic and socio-economic effects associated with the works or activities proposed in an application for authorization that is exempted, the agency can refer the project proposal to the NIRB for screening (clause 2.2 of the Exemption Agreement);
2. Where public concern has been expressed in respect of the works or activities proposed in the application for authorization that is exempted, Parks Canada may send the project proposal to the NIRB for screening (clause 2.3 of the Exemption Agreement);
3. Parks Canada will, on an annual basis, provide the NIRB with a) copies of the Research and Collection Permits issued by Parks Canada in the previous year; and b) a report which notifies the NIRB of any particular concerns regarding potential adverse impacts of proposed or authorized projects from the previous year.

On December 7, 2015 the NIRB invited comments on this Screening Exemption Agreement for a period of 120 days, with the comment period closing on April 11, 2016. As set out in more details in the Summary of Submissions section that follows, the Board received comments from various parties identifying concerns and/or recommendations to amend the Screening Exemption Agreement.

b) Government of Nunavut-Culture and Heritage and the NIRB Schedule 12-1(7) Agreement

This Screening Exemption Agreement allows for archaeological and paleontological research permits classified as Class 1 and Class 2 permits issued by GN-CH under the *Nunavut Archaeological and Palaeontological Sites Regulations*, SOR/2001-220.

Since 2003 at various times and for various periods of time, the Government of Nunavut-Culture, Language, Elders and Youth (now the department of Culture and Heritage) and the NIRB have had exemption agreements of this type on substantially the same terms and conditions as the current Agreement. This Agreement was most recently renewed in 2011.

The purpose of the Screening Exemption Agreement was to limit duplication and overlap by allowing minor archaeological and paleontological research permits to be issued in a timely manner without requiring screening by the NIRB. The Screening Exemption Agreement is also a mechanism to help ensure that permits associated with undertakings that could have potential adverse effects would be referred to the NIRB for screening under Article 12, Part 4 of the Nunavut Agreement and ss. 86-89 of NuPPAA.

Pursuant to the Screening Exemption Agreement, the GN-CH is required to comply with the following main conditions:

1. Where the GN-CH has concerns regarding potential cumulative ecosystemic and socio-economic effects associated with the works or activities proposed in an application for authorization that is exempted, the GN-CH may send the project proposal to the NPC to forward to the NIRB for screening (clause 2.2 of the Exemption Agreement);
2. Where public concern has been expressed in respect of the works or activities proposed in the application for authorization that is exempted, the GN-DoE may send the project proposal to the NPC to forward to the NIRB for screening (clause 2.3 of the Exemption Agreement);
3. GN-CH will provide the NIRB with an annual report that a) provides a list of permit applications received; b) identifies the outcome of the application; and c) informs the NIRB about any particular proposals from the previous year (clause 4.0);
4. GN-CH will strictly enforce the statutory requirements requiring permit-holders whose permits are exempted from the NIRB screening by the Exemption Agreement to restore sites to their original state upon completion of the project (clause 4.2)

On February 3, 2016 the NIRB invited comments on this Screening Exemption Agreements for a period of 120 days, the comment period closed on June 3, 2016. As set out in more detail in the Summary of Submissions section that follows, the Board has received comments from various parties regarding concerns and/or recommendations to amend the Screening Exemption Agreement.

c) Government of Nunavut, Department of Environment and the NIRB Schedule 12-1(7) Agreement

This Screening Exemption Agreement allows for specific types of wildlife research permits and wildlife harvesting or handling projects issued by GN-DoE under the *Wildlife Act* to be exempted from the requirement for NIRB screening under the Nunavut Agreement and NuPPAA. The exemption would apply only to the following permits:

Animal Husbandry Licence, Big Game Guide Licence, Big Game Outfitter Licence, Dealer's Licence, Exemption Permit, Export Permit, Harvesting Instruction Licence, Import Permit, Licence to Harvest Wildlife, Live Possession Licence, Taxidermy Licence, Wildlife Observation Licence, or Wildlife Research Permit.

The Screening Exemption Agreement does not apply to any project proposal that is subject to Species at Risk Licences issued under the *Wildlife Act*.

Since 2008, the GN-DoE has had exemption agreements of this type on substantially the same terms and conditions as the current Agreement. The purpose of the Exemption Agreement was to limit duplication and overlap by allowing minor wildlife research and handling projects to be issued in a timely manner. The Screening Exemption Agreement is also a mechanism to help ensure that permits associated with undertakings that could have potential adverse effects would be referred by the GN-DoE to the NIRB for screening under Article 12, Part 4 of the Nunavut Agreement and ss. 86-89 of the NuPPAA.

Pursuant to the Screening Exemption Agreement, the GN-DOE is required to comply with the following main conditions:

1. Where the GN-DoE has concerns regarding potential cumulative ecosystemic and socio-economic effects associated with the works or activities proposed in an application for authorization that is exempted, the GN-DoE may send the project proposal to the NPC to forward to the NIRB for screening (clause 2.2 of the Screening Exemption Agreement);
2. Where public concern has been expressed in respect of the works or activities proposed in the application for authorization that is exempted, the GN-DoE may send the project proposal to the NPC to forward to the NIRB for screening (clause 2.3 of the Screening Exemption Agreement);
3. The GN-DoE will provide the NIRB with an annual report that provides a list of authorized proposals from the previous year and notifies the NIRB of any concerns regarding potential adverse impacts of proposed or authorized proposals (clause 4.1 of the Screening Exemption Agreement).

On February 29, 2016 the NIRB invited comments on this Screening Exemption Agreement for a period of 120 days, with the comment period closing on June 28, 2016. As set out in more detail in the Summary of Submissions section that follows, the Board has received comments from various parties regarding concerns and/or recommendations to amend the Screening Exemption Agreement.

SUMMARY OF COMMENT SUBMISSIONS

In response to the NIRB's requests for comments, several parties submitted comments, concerns and recommendations with respect to the Screening Exemption Agreements circulated for comment. Below is a summary of the submissions received by the NIRB.

Kitikmeot Inuit Association (KIA)

Previously, on February 17, 2015 the KIA responded to NIRB's request for comments on the Parks Canada Screening Exemption Agreement and indicated they had no concerns.

On June 10, 2016 KIA responded to the NIRB's request for comments on the GN-DoE Screening Exemption Agreement indicating that the KIA had concerns with respect to the bulk storage of hazardous materials and harvesting of wildlife that may occur concurrently with GN-DoE permits or authorizations. In particular, KIA was concerned that the list of GN-DoE permitted activities could include caches of fuel on Inuit Owned Lands. The KIA was also concerned with wildlife harvesting of participants that may be conducted while performing activities exempted from screening. Other than these concerns, the KIA submitted that it had no further issues or comments with respect to the GN-DoE Screening Exemption Agreement.

Nunavut Tunngavik Incorporated (NTI)

On February 15, 2016 NTI responded to NIRB's invitation to comment and provided comments on both the Parks Canada Screening Exemption Agreement and on the GN-CH Screening and Exemption Agreement. NTI was mainly concerned with the two Screening Exemption Agreements as they relate to permits that may allow for the disturbance, excavation or removal of archaeological specimens or sites.

With respect to the scope of the Parks Canada Screening Exemption Agreement applicable to research and collection permits, NTI was concerned with the effect of the Screening Exemption Agreement on archaeological projects such as the HMS Erebus and HMS Terror. In referring to the Government of Canada's recent amendment to the National Historic Sites Order to bring the HMS Erebus and HMS Terror National Historic Site (NHS) under Parks Canada legislation, NTI indicated that these actions would mean Parks Canada research activities concerning the HMS Erebus and HMS Terror NHS would be exempted from the Government of Nunavut's archaeological permit requirements, with the exception of research activities relating to the discovery of human remains. Given this context, NTI submitted that the combination of the removal of the GN's jurisdiction and the proposed Screening Exemption Agreement with Parks Canada could result in the removal of these Parks Canada archaeological research and collection activities from public notice and comment.

Although NTI noted that, as indicated by the NIRB, Parks Canada research projects within the HMS Erebus and HMS Terror NHS will not be exempt from screening until such time as an Inuit Impact Benefit Agreement (IIBA) is in place, the NTI still expressed concern that an IIBA negotiated between the Designated Inuit Organization and Canada may not contain analogous notice and consultation opportunities for local Inuit as are set out under the NIRB's process. Therefore, NTI expressed the view that the NIRB's screening process provided under Article 12 of the Nunavut Agreement provides the best mechanism for ensuring adequate notice and Inuit participation in respect of these types of archaeological activities.

NTI also indicated that while the Inuit Heritage Trust (IHT) would be expected to receive applications for Parks Canada permits under Article 33 of the Nunavut Agreement, IHT is nevertheless concerned about capacity to provide notice and consult with Inuit on permit

applications, as it is not funded to do so. Reflecting these limits on IHT's ability to conduct consultations, NTI also stressed its concerns that if Parks Canada permits are to be exempted from NIRB screening there will be no mechanism to ensure that notice and an opportunity to consult on these applications will be carried out. On this basis NTI recommended that permits that would authorize disturbance, excavation or removal of archaeological specimens or sites should be excluded from the Screening Exemption Agreement with Parks Canada.

With respect to the Screening Exemption Agreement between the NIRB and GN-CH, NTI expressed concerns that the current wording of the Agreement would allow permitted activities under Class 2 permits which could authorize activities that may cause disturbance, excavation or removal of archaeological specimens or sites without NIRB screening. NTI indicated that without the NIRB providing notice of this type of project proposal during a screening, the public may not be notified of the project proposal and may not have an opportunity to express their concerns to GN as a result.

Indigenous and Northern Affairs Canada (INAC)

On June 3, 2016 INAC provided comments with respect to the Screening Exemption Agreements between GN-DoE and NIRB and GN-CH and the NIRB. INAC submitted that having reviewed the draft agreements, the Department had no comments or concerns regarding the scope and classes of physical works and activities being exempted from NIRB screening under the terms of these Agreements.

INAC, however, indicated that the Screening Exemption Agreements should be modified to more expressly state that as established under amendments to Article 11, Section 11.5.9A of the Nunavut Agreement and s. 76(1) of NuPPAA, project proposals must be submitted by the project proponent directly to the Nunavut Planning Commission (the Commission or NPC), regardless of whether a land use plan is in effect. In addition, INAC submitted that the GN-CH and GN-DoE Screening Exemption Agreements should acknowledge that under Article 12, Sections 12.3.2 and 12.3.6 and ss. 78(1) and 85(1) of NuPPAA, it is the Commission's responsibility to verify whether the project proposal is exempt from screening and to only forward those projects that are not exempt from screening under Schedule 12-1 and Schedule 3 of NuPPAA to the NIRB.

As a result, INAC recommended revisions to Section 2 of the GN-CH and GN-DoE Screening Exemption Agreements to confirm that s. 76(1) of NuPPAA requires that a project proponent submit their project proposal directly to the NPC.

INAC also recommended that informal discussions between officials from INAC, NIRB, GN and NPC be conducted to establish some clarity around the scope of activities governed by the Agreements and to ensure some consistency in interpreting and implementing the amended Nunavut Agreement, NuPPAA and the Screening Exemption Agreement.

Fisheries and Oceans Canada (DFO)

On April 25, 2016 DFO provided comments with respect to the GN-DoE Screening Exemption Agreement. DFO did not request any changes to the GN-DoE Screening Exemption Agreement, but wanted to set out the following points of clarification. DFO wished only to ensure that all

parties understood that the Screening Exemption Agreement does not apply to a species that is a fish, as defined in section 2 of the *Fisheries Act* or a marine plant, as defined in section 47 of the *Fisheries Act*. In addition DFO wished to clarify that as DFO is the competent minister for listed aquatic species under the *Species at Risk Act*, this Screening Exemption Agreement would also not apply to any activity, including project proposals affecting a species listed as Endangered or Threatened under the *Species At Risk Act*, which prohibits the killing, harming, harassing, capturing or taking of such a listed species at risk, as well as the destruction of their residence of critical habitat.

REVISIONS TO THE SCREENING EXEMPTION AGREEMENTS TO REFLECT COMMENTS

a) Parks Canada and the NIRB Schedule 12-1(7) Agreement

While the Board recognized NTI's concerns that the notice and consultation associated with archaeological research and collection permits that may be conducted by IHT, Parks Canada and/or the Designated Inuit Organization under an IIBA may not be the same as would be associated with a NIRB screening, the amendment suggested by NTI to require screening of all "archaeological permit activities that may allow for the disturbance, excavation or removal of archaeological specimens or sites" would result in such a significant reduction from the current scope of the Screening Exemption Agreement, it would be questionable as to whether an Agreement would still be worthwhile. With this Screening Exemption Agreement, and its current scope having been in place since 2008, the Board has received no reporting information from Parks Canada that suggests the current scope appears to be too broad and that project proposals with the potential for significant effects are being routinely exempted from screening under the Agreement.

The Board noted before renewing this Agreement last year that based on the reporting data provided, the Board was confident that exempting Research and Collection Permits from screening in accordance with the current scope of the Agreement is in keeping with the objects of Article 12 of the Nunavut Agreement. It is important to remember that the mandate of the Board does not, extend to assessing the adequacy of other parties' consultation processes, such as IHT's and Parks Canada's engagement in public notice and Inuit and public consultation. In addition, although the Board can encourage Parks Canada and the Designated Inuit Organizations to address public notification and consultation issues in any IIBA concluded for these project proposals governed by the Screening Exemption Agreement, the parties must be free to adopt the processes they consider to be appropriate as warranted by the circumstances of a specific IIBA.

On this basis, no changes to the draft of the Screening Exemption Agreement with Parks Canada and circulated for comment were proposed by the NIRB.

b) Government of Nunavut-Culture and Heritage and the NIRB Schedule 12-1(7) Agreement

In respect of this Screening Exemption Agreement, NTI's concerns mirrored the concerns expressed about the Parks Canada Screening Exemption Agreement. While the Board recognizes NTI's concerns that the notice and consultation associated with archaeological research and collection permits issued by GN-CH may not be the same as would be associated

with a NIRB screening, the amendment suggested by NTI to require screening of all “archaeological permit activities that may allow for the disturbance, excavation or removal of archaeological specimens or sites” would result in such a significant reduction from the current scope of the Screening Exemption Agreement, it would be questionable as to whether an Agreement would still be worthwhile. As with the Parks Canada Screening Exemption Agreement, based on the reporting the Board has reviewed from GN-CH under previous Screening Exemption Agreements with the same scope, the Board was confident that GN-CH was not using the Agreement to exempt from screening activities with the potential for significant ecosystemic and/or socio-economic effects. On this basis, the Board found there was no rationale for narrowing the scope significantly by adopting NTI’s suggested revision to the scope.

However, the Board did note that it was advisable to modify the draft of the Screening Exemption Agreement to ensure that the role of the Nunavut Planning Commission as the recipient of project proposals under both the amended provisions of the Nunavut Agreement and NuPPAA is clearly expressed, and as was requested by INAC, the Screening Exemption Agreement was amended to add a section to the preamble as follows:

AND WHEREAS Articles 11 and 12 of the Nunavut Agreement and ss. 76, 78 and 85 of NuPPAA require that all project proposals (regardless of whether a land use plan is in place) must be submitted by a proponent directly to the Nunavut Planning Commission, and that the Commission must verify whether the project proposal is exempt from screening;

This was the only substantive amendment to the draft of the Screening Exemption Agreement between NIRB and GN-CH circulated for comment as required under s. 230 of NuPPAA.

c) Government of Nunavut, Department of Environment and the NIRB Schedule 12-1(7) Agreement

As with the GN-CH Screening Exemption Agreement, the Board recommended that to ensure that the role of the Nunavut Planning Commission as the recipient of project proposals under both the amended provisions of the Nunavut Agreement and NuPPAA was clearly noted, and as was requested by INAC, the draft Screening Exemption Agreement was amended to add a section to the preamble as follows:

AND WHEREAS Articles 11 and 12 of the Nunavut Agreement and ss. 76, 78 and 85 of NuPPAA require that all project proposals (regardless of whether a land use plan is in place) must be submitted by a proponent directly to the Nunavut Planning Commission, and that the Commission must verify whether the project proposal is exempt from screening;

In addition, recognizing the comments and concerns of the Kitikmeot Inuit Association (KIA) with respect to the potential for this Agreement to exempt fuel caches (or other activities with potential effects) from screening, it was recommended that Section 4.1 (Monitoring and Reporting) of the Screening Exemption Agreement be amended to require that GN-DoE provide the NIRB with an annual report that:

- Notifies the NIRB of any particular concerns regarding potential adverse impacts of proposed or authorized project proposals from the previous year, *including, but not limited to any concerns expressed by the Regional Inuit Organization regarding potential impacts of permitted activities on Inuit Owned Lands.*

CONCLUSION

On this basis, the NIRB amended the Screening Exemption Agreements as set out above and has entered into the Screening Exemption Agreements enclosed with this correspondence. Please note that, upon signing, these Screening Exemption Agreements came into effect under the Nunavut Agreement and the Screening Exemption Agreements remain in effect unless terminated as provided in the Agreements.

The NIRB would appreciate receiving notification when these Screening Exemption Agreements are added to Schedule 3 of the NuPPAA.

In the interim, if you have any questions regarding the Screening Exemption Agreements or the Board's process associated with the development of the Agreements, please contact the Board's Executive Director, Ryan Barry, at (867) 983-4608 or via e-mail at rbarry@nirb.ca.

Sincerely,



Elizabeth Copland
Chairperson
Nunavut Impact Review Board

Enclosed (3):

1. Parks Canada Nunavut Agreement Schedule 12-1(7) Screening Exemption Agreement for Research and Collection Permits in National Parks
2. Government of Nunavut-Culture and Heritage Nunavut Agreement Schedule 12-1(7) Screening Exemption Agreement for Archaeological and Palaeontological Research Permits
3. Government of Nunavut – Department of Environment Nunavut Agreement Schedule 12-1(7) Screening Exemption Agreement for Authorizations issued under the Wildlife Act (Nunavut).

cc: Andrew Nakashook, Nunavut Planning Commission
Sharon Ehaloak, Nunavut Planning Commission
Brian Aglukark, Nunavut Planning Commission
Distribution List