

Tara Arko

From: Kelli Gillard <kgillard@nirb.ca>
Sent: May-15-17 5:27 PM
To: Tara Arko
Subject: FW: RE: NIRB Project Specific Monitoring Framework for Projects regulated through a NIRB Project Certificate

Importance: High

FYI

From: D'Aguiar, Mark [mailto:Mark.D'Aguiar@dfo-mpo.gc.ca]
Sent: May-15-17 4:57 PM
To: Kelli Gillard (kgillard@nirb.ca)
Cc: Curtis, Martyn
Subject: FW: RE: NIRB Project Specific Monitoring Framework for Projects regulated through a NIRB Project Certificate
Importance: High

Dear NIRB (c/o) Kelli Gillard:

Subject: Comment Request for the Refining of the NIRB's Project Specific Monitoring Framework.

Further to the Nunavut Impact Review Board's (NIRB) April 20, 2017 letter requesting comments for the '*Refining of the NIRB's Project Specific Monitoring Framework*', in follow-up to the NU Mining Symposium, Fisheries and Oceans Canada (DFO) is providing the following written comments as part of the additional commenting period:

- **Identify the most significant barrier your organization experiences in participating in the NIRB's monitoring process.**
In general, Proponent's provide a general Annual Monitoring Report which is intended to apply to all interested parties (e.g. NIRB, Federal Departments, KIA). It can be very difficult for DFO to determine what information in that Report is related to DFO's mandate or is in response to *Fisheries Act* Authorization conditions as the Proponents tend to not respond directly to the DFO *Fisheries Act* authorization conditions. From that perspective, that is where we find the greatest limitation presently.

In addition, in general, proponents submit *Fisheries Act* authorization compliance letters or reports directly to DFO. Those letters detail how proponents monitor/met conditions of their *Fisheries Act* authorization. DFO finds this valuable for determining whether conditions of the authorization have been met.

- **Identify the most significant limitation to incorporating NIRB monitoring program terms and conditions into permits/authorizations, suggestions as to how these limitations can best be addressed by the NIRB.**

Not all of the NIRB's monitoring program terms and conditions can be incorporated into a *Fisheries Act* authorization. For some projects, a DFO *Fisheries Act* authorization might not be required and instead receive a DFO Letter of Advice.

Furthermore, *Fisheries Act* authorizations are issued for activities, undertakings or workings, that cause *serious harm* to fish and/or fish habitat and therefore, not all aspects of a project will be covered under a *Fisheries Act* authorization. If the Proponent can avoid or mitigate *serious harm* to fish, a Letter of Advice will be provided instead of issuing a *Fisheries Act* authorization.

Finally, The NIRB monitoring program terms and conditions might not align with DFO requirements. However, DFO may be able to incorporate some of the NIRB's monitoring program terms and conditions in their *Fisheries Act* authorization if they relate to DFO's mandate.

- **Are there mechanisms that could be used to more clearly establish communication between responsible authorities and the NIRB that would make it easier to collect and exchange the information from all the regulators with regulatory monitoring programs for a given Project?**

Having the Proponent respond, by way of the general NIRB's monitoring conditions/annual report, in a format that directly addresses each of the Regulators monitoring needs, would allow DFO and other Regulators to confirm their regulatory conditions/compliance/effectiveness results much more efficiently and accurately. For transparency, it would be beneficial if Responsible Authorities were able to post the documents required during the regulatory phase, which includes monitoring reports (e.g. final offsetting plans, *Fisheries Act* authorization, Fish-out plans) directly on to the NIRB website.

- **Considering the costs of monitoring, including items such as data collection, in-person meetings/working groups, and processing of data which aspects of a Proponent's monitoring program would you expect to be:**

(a) the most costly:

The most costly aspect of DFO's involvement in a monitoring program would be in-person meetings on site (e.g. travel expenses). As the Proponent is responsible for the costs associated with data collection and processing, such costs are not incurred by DFO. DFO would imagine that data collection and processing could be quite costly for a Proponent.

(b) most important:

With several teleconference attendance options being available, data collection would be the most important aspect of the Monitoring Program the Proponent and DFO. The data collected during the monitoring phase can be used to verify the Proponents predictions generated during the EA phase and to ensure compliance with the *Fisheries Act* authorization; during operations and in the closure and reclamation phase. If the monitoring data indicate that any adverse impacts have, or are likely to occur, DFO and the Proponent would work to ensure the monitoring plans are adapted and actions are taken to address and correct any identified issues.

(c) best "value" for the costs incurred:

The best value, despite the cost, is to conduct in-person site visits during the exploratory phase (baseline), during operations, and during closure. While Annual Monitoring Reports do provide a photographic record, an in-person site visit provides a better overview of a project's impacts in their entirety, and serves to potentially notify the Department of issues not captured in the Annual Report.

Conducting baseline studies and on-site visits prior to development is essential for Regulators to analyze and comprehend pre-development conditions. This information can help Regulators during monitoring to determine the full extent of impacts that result from construction, operation, and closure.

- **which aspects of the monitoring program do each agency consider that they receive the least/most information from current monitoring processes.**

In general, Proponents provide a general Annual Monitoring Report which is intended to apply to the requirements of all interested parties (e.g. NIRB, Federal Departments, KIA). It can be challenging for DFO to determine what information in that Report are directly linked to *Fisheries Act* authorization conditions, as Proponents typically do not provide responses that directly address the authorization conditions. From that perspective, that is where we find the least information.

The information that would be most relevant to DFO's mandate is typically within monitoring reports provided to the Nunavut Water Board. However, as indicated previously, the Proponent does not respond directly to DFO, rather responses are via a general monitoring report that DFO needs to sort through. This can be

unnecessarily time consuming and may not provide the answers DFO requires. Much of the required information is received during DFO's own regulatory process, as proponents are required to submit monitoring reports and compliance letter to DFO.

· **Which aspects of monitoring do they find most useful:**

The photographic record can be extremely useful such that even if we are able to make an in person site visit happen, additional monitoring photos can provide a record of positive and/or negative changes over time. An in-person site visit is the most useful aspect of monitoring, however logistically; we may only conduct one site visit per year. It is understood that many events can occur within that time. DFO finds it very beneficial when a Proponent provides a monitoring report directly in response to DFO's monitoring requirements and *Fisheries Act* authorization conditions rather than sifting through a general Annual Monitoring Report. It is also very useful if a Proponent provides monitoring reports throughout the year after milestones are met, rather than annually (e.g. during and after the completion of a fish out; during and upon completion of the construction of a dike and associated lake dewatering).

· **In future refinements of monitoring programs, what issues would they like to see monitored more closely to inform their agency and other ongoing EA processes:**

DFO would like to see:

- a photographic record added to fish-out data (there has been some confusion on species identification, so photos would help DFO immensely);
- as noted above, more regular monitoring reports after milestones;
- reports directed to the department or agency that requested them rather than generalized annual reports;
- more collaboration between all monitoring parties to coordinate site visits, to share data and notify each other of potential issues that may concern them.

· **Given direction that the NIRB, Nunavut Planning Commission, and Nunavut Water Board coordinate to reduce duplication, what are some opportunities that Parties would request that the NIRB consider in planning for coordination? What are some challenges that parties have found with coordination processes undertaken to date especially with regards to project monitoring?**

Regulators are required to review various reports and provide comments to various boards for each of these reports. This can be challenging as some of the information contained in the reports is redundant and is duplicated from one submission to another. For example, the annual monitoring reports submitted to the NWB and NIRB. Therefore this increases workloads for the regulating department.

Multiple NIRB/NWB processes for proposed projects occurring simultaneously such that departmental capacity prevents full participation.

· **Often the reporting timelines specified in NIRB's monitoring program are intended to line up with the timelines for other regulatory reporting; is this truly a good fit or are there better ways to coordinate monitoring activities, align comment periods, etc.**

Assuming the Proponents supply the required regulatory responses specific to each of the Regulator's mandate, on-time and with sufficient detail (quantity and quality of information), aligning the timelines across all interested parties in a group annual report could work.

Please feel free to contact DFO should you have any questions/concerns.

Mark D'Aguiar

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