



## **MARINE ENVIRONMENT WORKING GROUP**

### **TERMS OF REFERENCE**

#### **NOTE:**

This updated Marine Environment Working Group (MEWG) Terms of Reference (ToR) (Attachment 1) is being provided consistent with Commitment 164, and as an updated response to Technical Comments, QIA-01, DFO 3.4 NEW, PCA-02 and WWF-FWS-03.

This iteration of the Working Group ToR reflects comments received by Working Group Members and Observers on previous versions of the ToR. Copies of all comments received by Working Group members on a previous version of this ToR have been included as Attachment 2.

Baffinland has provided an updated ToR only for the MEWG, but notes that it is Baffinland's intention to have a consistent ToR among both the Terrestrial and Marine Environment Working Groups. Once this version has been reviewed and general agreement among Working Group members on the content of the ToR has been provided, Baffinland will issue a Final ToR for both the MEWG and TEWG.



## **MARINE ENVIRONMENT WORKING GROUP**

### **TERMS OF REFERENCE**

The Terms of Reference (ToR) have been developed pursuant to the Nunavut Impact Review Board (NIRB) Project Certificate No. 005 (PC 005), Term and Condition No. 077, for Baffinland Iron Mines Corporation's (Baffinland) Mary River Project (the 'Project'). The Marine Environment Working Group (MEWG) shall function as set out in these ToR which:

- Provide the framework under which the MEWG and its Members and Observers will operate;
- Outline the purpose of the MEWG; and
- Describe the main functions by which the MEWG will fulfill its purpose.

#### **1 PURPOSE OF THE MEWG**

- 1.1 The purpose of the MEWG is to consult with and provide advice and recommendations to Baffinland in connection with monitoring of effects on marine environment, developing and evaluating mitigation measures for protection of marine environment, and consideration of adaptive management components of relevant management plans.

#### **2 FUNCTIONS OF THE MEWG**

- 2.1 The MEWG's primary function is to consult with and provide advice to Baffinland with respect to its monitoring programs and mitigation measures, including its efforts to collect baseline data, monitor effects of the Project, and determine any adaptive management measures that may be required during the construction, operations, closure and reclamation of the Project.
- 2.2 In fulfilling its role the MEWG may:
- 2.2.1 Make recommendations and provide advice to Baffinland on any aspects of the Marine Monitoring Plan (MMP) which require the adoption of additional or revised monitoring programs and mitigation measures in order to comply with applicable regulatory requirements and/or to mitigate adverse Project effects;
  - 2.2.2 Establish cooperative arrangements between, or amongst, members of the MEWG and Inuit of the Qikiqtani Region in order to protect the environment and the traditional relationship of Inuit with the marine environment. Objectives of these arrangements may include, but are not limited to:
    - Develop and update baseline data from which the Project can be effectively monitored and managed;
    - Incorporate an integrated approach for monitoring and management of Project-

related environmental effects;

- Include meaningful participation of members of the MEWG and Inuit in all aspects of environmental monitoring programs in all phases of Project development, including decommissioning and reclamation; and
- Integrate Inuit traditional and current/local knowledge into the development and implementation of environmental effects monitoring programs and mitigation measures.

2.2.3 Collaborate on research programs, activities, or initiatives relating to the marine environment;

2.2.4 Review the MMP, its implementation, and suggest recommended changes;

2.2.5 Review and provide technical advice and directions for improvements relating to the following:

- monitoring reports and results provided to the MEWG by Baffinland;
- the assessment of potential impacts of the Project on the marine environment and marine wildlife;
- the effectiveness of mitigation measures implemented by Baffinland; and
- Baffinland's plans for the development and implementation of adaptive management and/or mitigation measures.

### **3 COMPOSITION OF THE MEWG**

3.1 The MEWG consists of representatives from each of the member parties. The member parties of the MEWG are the following, all of whom shall be called a 'Member' in this ToR:

- Qikiqtani Inuit Association (QIA);
- Mittimatalik Hunters and Trappers Organization (MHTO);
- Government of Nunavut (GN);
- Fisheries and Oceans Canada (DFO);
- Environment and Climate Change Canada (ECCC);
- Parks Canada (PC); and

3.2 Makivik Corporation, at the election of Makivik to participate in the MEWG.

3.3 Voting Members for Recommendations will be determined on a case-by-case basis using the following criteria<sup>1</sup>:

3.3.1 The Member has the technical expertise to assist in making an informed decision regarding a Recommendation;

3.3.2 The Member, independent of joint submissions with other Parties, has provided technical

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<sup>1</sup> The MHTO and QIA will retain standing rights as voting members for all Recommendations put forward through the Working Groups.

input through the MEWG on the subject matter under consideration through the Recommendation; and

3.3.3 The Member is acting within their mandate over the subject matter under consideration through the recommendation.

3.4 In addition to the Members listed above, the following organizations have requested to participate in the MEWG as observers and are hereafter referred to as "Observers":

- World Wildlife Fund (WWF);
- Oceans North;
- Nunavut Impact Review Board (NIRB); and
- Canadian Northern Economic Development Agency (CANNOR)

3.5 Each Party (Members and Observers) must designate a maximum of two (2) representatives to participate in the MEWG. It is expected that these members will consistently participate to ensure continuity between meetings of the Working Groups and information shared. Should Parties wish to invite Technical Experts from their respective organizations, a request should be made to Baffinland following issuance of the Draft Agenda.

3.6 The roles of the MEWG Members and its Observers are outlined in Table 1 below.

**Table 1: Rights and Responsibilities of Parties in the MEWG**

Rights and Responsibilities	Member		Observer
	Voting	Non-Voting	
Receives correspondence from Baffinland to the Working Group	o	o	o
Provides comments on Draft Working Group Agendas	o	o	
Attends Working Group Meetings	o	o	o
Actively Participates in Discussions of the Working Group	o	o	
Receives Draft Reports for Review and Comment	o	o	o
Eligible to Submit Formal Recommendations to the Working Group	o	o	
Eligible to Participate in Consensus Decision Making Regarding Recommendations	o		
Eligible to Participate in Decision Making Regarding the Approval or Removal of Observers to the MEWG	o	o	
Eligible to provide presentations of interest (i.e. relevant research initiatives)	o	o	*At the approval of MEWG Members
Notes: MHTO and QIA will retain standing rights as voting members for all Recommendations put forward through the Working Groups			

3.7 As the responsible Party for ensuring the operation of the Working Group, Baffinland will act as

the 'Governing Party' to the Working Group. Accordingly, Baffinland will be responsible for:

- 3.7.1 Ensuring the Annual Schedule for the Working Group is maintained (see Section 6);
- 3.7.2 Covering costs associated with the operations of the Working Group (see Section 5);
- 3.7.3 Reviewing and responding to all Formal Recommendations submitted through the Working Group (see Section 7); and
- 3.7.4 Providing annual reporting to the NIRB on the operations and outcomes of the Working Group (see Section 8).

#### **4 MATERIALS TO SUPPORT THE MEWG**

- 4.1 When required, Baffinland will make best efforts to provide MEWG Members and Observers, with:
  - 4.1.1 Copies of the MMP and associated documentation;
  - 4.1.2 Copies of operational management plans associated with the Project Certificate;
  - 4.1.3 Copies of all monitoring reports produced by Baffinland relating to the MMP and in relation to the marine environment;
  - 4.1.4 Copies of all reports relating to interactions between the Project and marine wildlife and marine habitat; and
  - 4.1.5 Any other documentation reasonably required by the MEWG relating to the interaction between the Project and the marine environment.
- 4.2 A summary of the work and activities of the MEWG will be prepared by Baffinland and included in its Annual Report to the NIRB.

#### **5 COSTS**

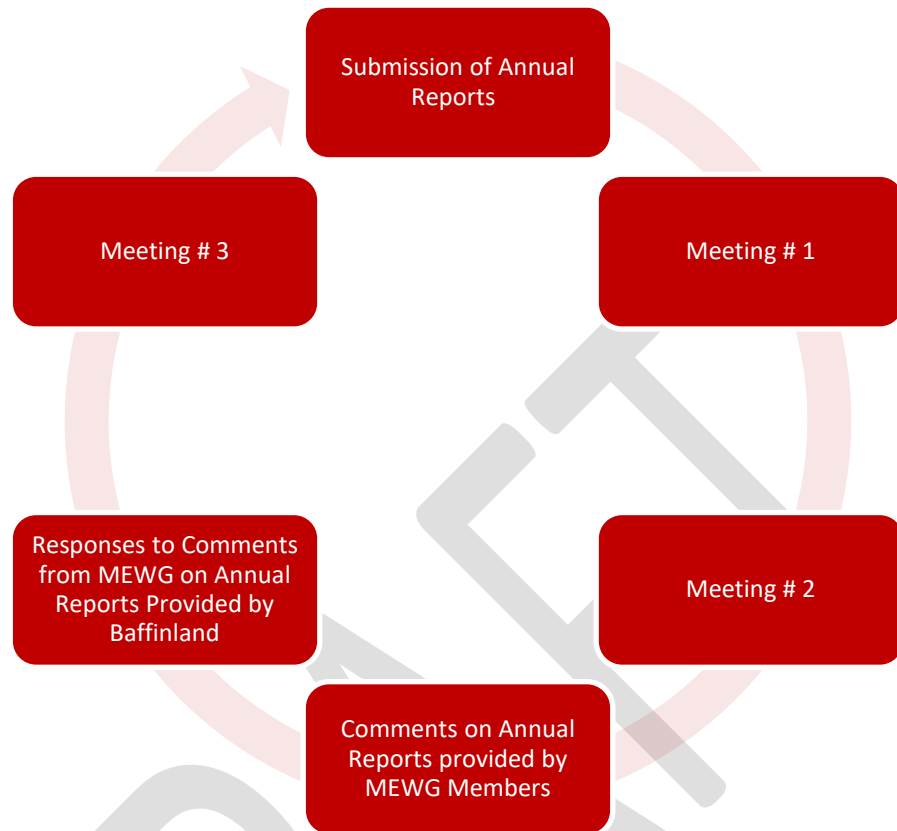
- 5.1 Unless otherwise agreed to by Baffinland, each Member will be responsible for its own costs of participation at the MEWG, including travel costs. Baffinland will be responsible for incidental costs of meetings such as venue, printing and interpretation services (if required).
- 5.2 Baffinland will cover the costs associated with travel, accommodations and incidentals, including an agreed upon daily honorarium for MHTO Member participation.

#### **6 ANNUAL SCHEDULE**

To the extent possible, the MEWG will follow the Annual Operating Schedule as outlined in Figure 1. Details regarding meetings of the MEWG and provision of comments on the annual reporting are provided in Section 6.1 and 6.2 that follow.

Recommendations under review by the MEWG will be dealt with ad-hoc in accordance with the review timeline as outlined in Section 7, but may also be integrated into discussions at any of the Working Group

Annual Meetings identified in Section 6.1.



**Figure 1: Working Group Annual Operating Schedule**

#### 6.1 Working Group Meetings

In fulfilling its duties, the Working Group will hold 3 regularly scheduled working sessions per year, two (2) of which will be in-person, rotating between Iqaluit and Ottawa. The working sessions will be focused on the following topics:

##### **Meeting # 1 (April):**

The focus of Meeting # 1 will be to review and discuss key results of monitoring programs from the previous field season. An overview of key results captured in the draft monitoring reports will be provided by Baffinland and its technical consultants. Meeting # 1 will also include a review of operational highlights (e.g. key operational activities) from the previous year. The intention of this meeting is to provide the Working Group with a preliminary overview of what has been reported on in advance of the Working Groups review and comment on the Annual Monitoring Reports.

##### **Meeting # 2 (June):**

The focus of Meeting # 2 will be for Baffinland and its technical consultants to present an overview of the planned monitoring programs for the upcoming field season. Baffinland will present to the Working Group critical aspects of the program design (e.g. programs being proposed, timing, sampling effort) and

opportunities to solicit feedback from the Working Group will be provided.

**Meeting # 3 (November):**

The focus of Meeting # 3 will be for Baffinland and its technical consultants to provide an overview of responses to comments received by the Working Group on the Draft Annual Monitoring Reports and key changes (if relevant) that were incorporated into the Final Reports as a result of comments provided. An initial discussion on potential required changes to the following years monitoring programs or operational mitigations as a result of comments received will also be held. A discussion regarding any disagreement on the 'status of compliance' with Terms and Conditions related to the marine environment will also be held.

Additionally, the Working Group may elect to hold additional meetings in the first quarter (January to March) of each year. These meetings will be topic-specific, and could include:

- Development and review of 5 year monitoring program schedules
- Presentations from Working Group members on relevant regional research initiatives
- Review of non-annual relevant materials (i.e. documentation as listed in Section 4)
- Presentations from non-Working Group members on relevant research initiatives (i.e. community-based monitoring programs)

**6.2 MEWG Meeting Materials and Minutes**

- 6.2.1 Correspondence, documentation and meetings of the MEWG will be conducted primarily in English. However, members agree that MEWG meetings will require simultaneous translation when unilingual MHTO members are present and that copies of meeting materials (i.e. presentations, final agendas, final meeting minutes and executive summaries of reports) will be provided in both English and Inuktitut.
- 6.2.2 Baffinland will provide a draft agenda to the Working Group twenty-eight (28) days in advance of the Working Group Meeting.
- 6.2.3 Working Group members will provide comments on the Draft Agenda fourteen (14) days in advance on the Working Group Meeting.
- 6.2.4 A final agenda and any Meeting Materials (e.g. copies of presentations) will be provided to the Working Groups seven (7) days in advance of the Working Group meeting.
- 6.2.5 Baffinland will review with Working Group members at the end of each meeting, time permitting, the list of action items as agreed to. Where time does not permit at the meeting, the list of action items will be provided within 7 days following the completion of the meeting.
- 6.2.6 Baffinland will provide draft meeting minutes to MEWG Members within fourteen (14) days of the completion of the meeting.
- 6.2.7 MEWG Members will provide comments on draft meeting minutes within fourteen (14) days

of receipt of the draft meeting minutes.

- Comments will not include follow-up questions by the Parties.
- Comments will not include editorial revisions.
- Each Party will be responsible for correcting any statements of their respective organizations, but will not provide comments on behalf of other Parties.

6.2.8 Final meeting minutes, issued in both English and Inuktitut will be provided back to the Working Group within 30 days.

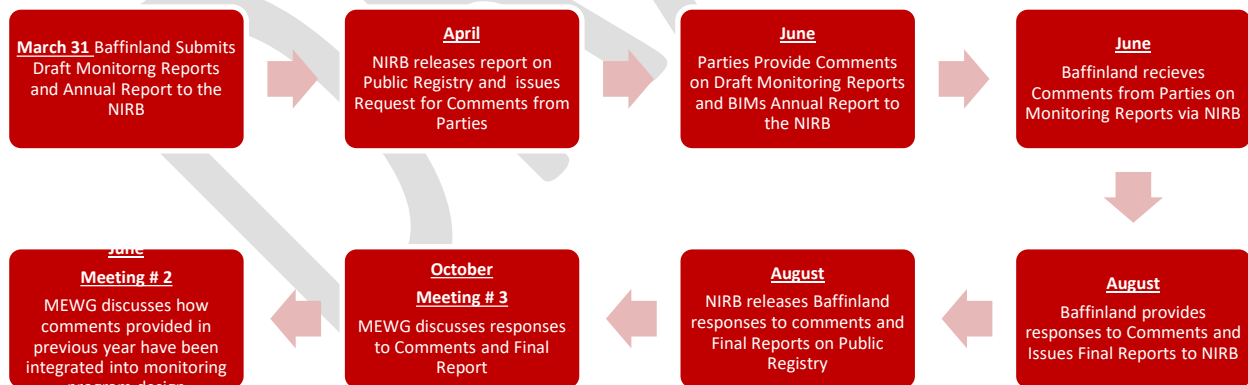
6.2.9 Baffinland will include official minutes of MEWG meetings as part of its Annual Report to the NIRB.

### 6.3 Annual Monitoring Report Review

6.3.1 Working Group Members will be provided a copy of Draft Annual Monitoring Reports on March 31 of each year<sup>2</sup>, concurrent with submission of Baffinland's Annual Report to the NIRB.

6.3.2 Comments provided on the draft reports by Working Group members will be submitted concurrent to any comments provided by the Parties on Baffinland's Annual Report to the NIRB. The timeline for which will be set annually by the NIRB (typically 30 days).

6.3.3 Baffinland will subsequently provide responses to comments from Working Group members on both the Annual Report to the NIRB and Draft Monitoring Reports, as well as copies of the Final Annual Monitoring Reports as instructed annually by the NIRB (typically 30 days).



**Figure 2: Annual Report Review Schedule**

<sup>2</sup> Unless alternate timing for submission of the Annual Reports is issued by the NIRB.



## **7 RECOMMENDATIONS BY CONSENSUS**

- 7.1 Any Recommendations made by the Working Group must be officially designated<sup>3</sup> as such and clearly stated in writing. Recommendations for consensus-based decision making must be put forward by Working Group members that have a relevant mandate and technical expertise or Inuit traditional knowledge. Recommendations must be Evidence based and include a discussion of supporting Inuit current and local knowledge, monitoring data, relevant peer-reviewed scientific and technical literature or examples from other comparable operations.
- 7.2 Recommendations are intended to be primarily focused on mitigation or adaptive management measures designed to protect the marine environment, monitoring of effects on the marine environment, and/or adaptive management plans.
- 7.3 Recommendations will be reviewed by Members of the Working Group and Baffinland in accordance with the following process.
- 7.3.1 Draft recommendations from the sponsoring Party will be sent to all MEWG Members, including Baffinland, of which there will be a 30-day review period for Members to provide comments and input into the draft recommendation being put forward for consideration.
- The sponsoring Party may incorporate feedback from other MEWG Members, as appropriate, to be reflected in final recommendations.
  - Final Recommendation will be sent by the sponsoring Party to all MEWG members, including Baffinland, within 30-days of receiving feedback from the Working Group.
  - Upon submission of final recommendations to Baffinland, Baffinland will be provided with a 60-day response period to address final recommendations.
  - Baffinland will provide an evidence-based response to substantiate its position whether to incorporate recommendations made by the MEWG and will include a consideration of operational and financial limitations. This response will also include a discussion of efforts made to seek feedback or additional guidance from the Inuit Committee and how this advice was taken into consideration in Baffinland's response.
- 7.3.2 If recommendations made by the Working Group has been agreed to by Baffinland, Baffinland will submit an Action Plan and Timeline for implementing the Recommendation within 120 days.
- 7.3.3 If recommendations made by the Working Group members have not been agreed to by Baffinland, the Recommendation will be circulated to voting members of the Working Group for consideration.
- 7.3.4 Each voting member<sup>4</sup> will have a 30-day period to review the final Recommendation and

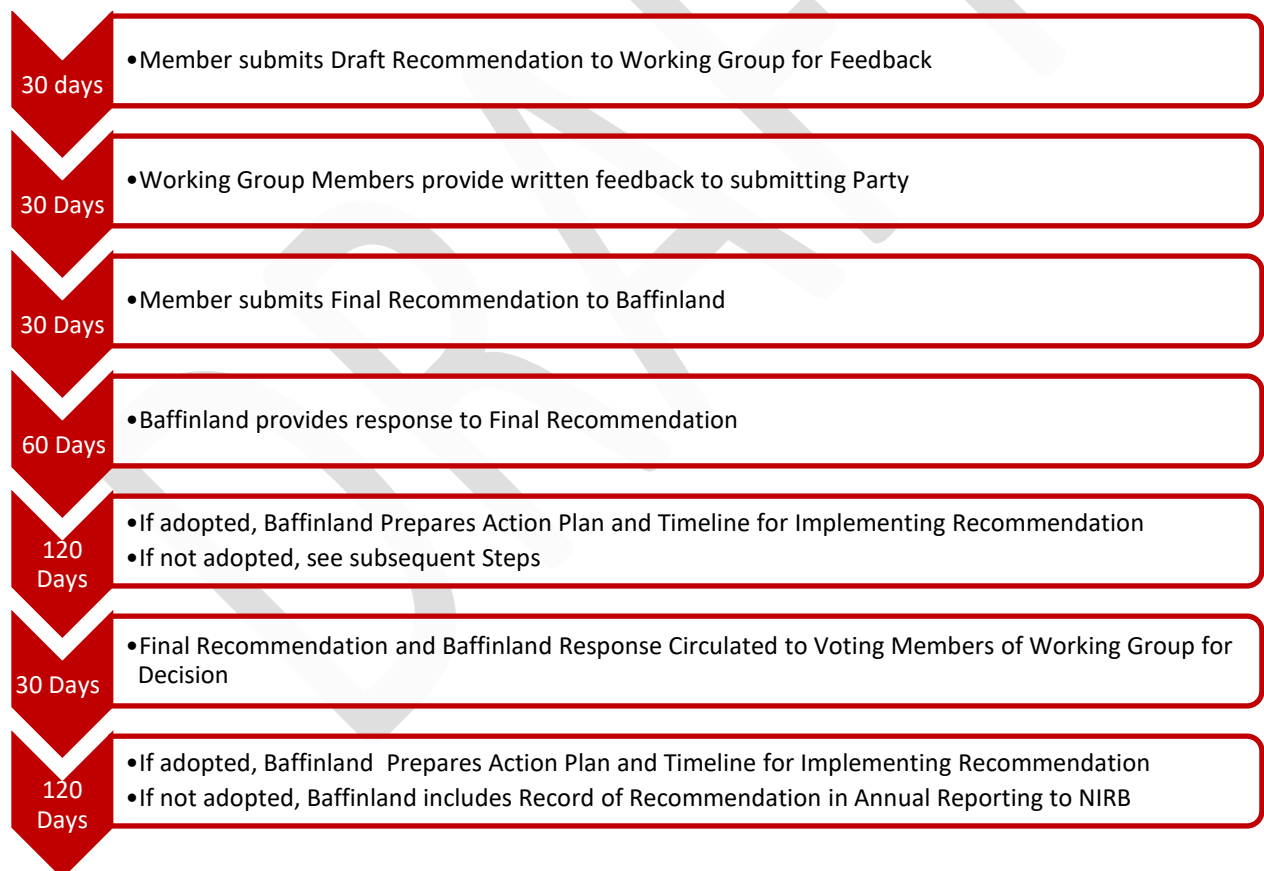
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<sup>3</sup> For the purposes of s. 5.2, "officially designated" means each of the Member Parties has affixed its signature to the advice, decision or recommendation. The signature may be provided by: an employee of the Member Party or has been given authority on behalf of the Member Party, as stated in writing by the Member Party they represent, to provide advice, decisions or recommendations. For the purposes of the Working Group an electronic signature is considered acceptable.

<sup>4</sup> Baffinland and the sponsoring Party will not be included as a 'voting member'.

Baffinland's response and clearly indicate whether or not they are supportive of the proposed Recommendation, or an iteration thereof. If it is determined by consensus of the voting members<sup>5</sup> that the Recommendation be implemented by Baffinland, a final action plan will be issued within 120-days.

- 7.3.5 In the event Baffinland continues to object to the Recommendation, or an iteration thereof, for several reasons, including but not limited to concerns regarding conflicting advice with other oversight groups, health and safety, operational limitations, or financial viability, Baffinland will provide the rationale to the NIRB as part of annual monitoring and reporting cycles. If deemed appropriate, the NIRB would then be in a position to provide final direction through their Annual Monitoring Report for the Mary River Project and associated Board Recommendations.
- 7.4 A record of all Recommendations from the Working Group, Baffinland's responses to all Recommendations, and any subsequent actions taken, as relevant, will be reported in Baffinland's Annual Monitoring Report to the NIRB per PC 005 Term and Condition No. 077.



**Figure 3: Process for Rendering of Advice and Recommendations from the Working Groups**

<sup>5</sup> Consensus shall be reflected by votes of 50% +1 cast in favour of a motion/recommendation/decision.

## **8 COMMUNICATIONS, REPORTING AND COMMUNITY PARTICIPATION**

- 8.1 Annual Reports on the operations of the Working Group, including a copy of the Final Meeting Minutes will be provided for in Baffinland's Annual Report to the Working Group
- 8.2 All Recommendations made by the Working Group will be tracked and reported on to the NIRB and Working Group as required.
- 8.3 Baffinland and the QIA, in consultation with the MHTO, will seek to coordinate the work of the MEWG with programs for community participation and the Inuit Committee.
- 8.4 Baffinland will ensure that affected communities receive monitoring reports related to the implementation of the MMP in an effective and timely manner and that the results of the monitoring programs and mitigation measures are communicated in ways meaningful to Inuit.
- 8.5 Baffinland will provide the Inuit Committee with a copy of all Meeting Minutes and Recommendations of the Working Group and subsequent Action Plans from Baffinland.

## **9 REGULATORY REQUIREMENTS PREVAIL**

- 9.1 Nothing in these Terms of Reference will have the effect of altering the requirements of any legislative or regulatory requirements applicable to the Project.

### Project Certificate Condition No. 77

Category	Marine Environment - Working Group
Responsible Parties	The Proponent, Environment Canada, Fisheries and Oceans Canada, the Government of Nunavut, the Qikiqtani Inuit Association and interested parties
Project Phase(s)	All Phases
Objective	The MEWG will consult with, and provide advice and recommendations to the Proponent in connection with mitigation measures for the protection of the marine environment, monitoring of effects on the marine environment and the consideration of adaptive management plans. The role of the MEWG is not intended to either duplicate or to affect the exercise of regulatory authority by appropriate government agencies and departments.
Term or Condition	A Marine Environment Working Group (MEWG) shall be established to serve as an advisory group in connection with mitigation measures for the protection of the marine environment, and in connection with the Project Environmental Effects Monitoring program, as it pertains to the marine environment. Membership on the MEWG will include the Proponent, Environment Canada, Fisheries and Oceans Canada, Parks Canada, the Government of Nunavut, the Qikiqtani Inuit Association, the Mittimatalik Hunters and Trappers Organization, and other agencies or interested parties as determined to be appropriate by these key members. Makivik Corporation shall also be entitled to membership on the MEWG at its election. The MEWG members may consider the draft terms of reference for the MEWG filed in the Final Hearing, but they are not bound by them.

### Project Certificate Condition No. 183

Category	Project monitoring of impacts to marine mammals
Responsible Parties	The Proponent
Project Phase(s)	Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring
Objective	To address concerns associated with the potential for impacts to marine mammals, and compliance and enforcement of terms and conditions in Project Certificate No. 005 relating to ship-based observer programs, noise exposure assessment, and the identification of other mitigation measures that have the potential to further reduce potential impacts to marine mammals.
Term or Condition	The Proponent shall collaborate with the Marine Environment Working Group to develop impact avoidance or mitigation strategies for the protection of the marine environment. The Proponent shall implement any direction from the Department of Fisheries and Oceans for any avoidance or mitigation measures, including cessation of any activity, for the protection of the marine environment.

**Project Certificate Condition No. 184**

Category	Project monitoring of impacts to marine mammals
Responsible Parties	The Proponent
Project Phase(s)	Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring
Objective	To address concerns associated with the potential for impacts to marine mammals, and compliance and enforcement of terms and conditions in Project Certificate No. 005 relating to ship-based observer programs, noise exposure assessments, and the identification of other mitigation methods that have the potential to further reduce potential impacts to marine mammals.
Term or Condition	The Proponent shall collaborate with the Marine Environment Working Group to review the status of compliance with, and implementation of, all of the Terms and Conditions in Project Certificate No. 005 related to marine environmental protection.

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