

NUNAVUT IMPACT REVIEW BOARD

PHASE 2 DEVELOPMENT PROJECT PROPOSAL - MARY RIVER IRON
ORE MINE NIRB FILE NUMBER 08MN053

HEARING

VOLUME 6

Pond Inlet, Nunavut

January 30, 2021

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1 Proceedings taken at Atakaalik Community Hall,
2 Pond Inlet, Nunavut.

3

4 NUNAVUT IMPACT REVIEW BOARD

5 K. Kaluraq Chair of Hearing

6 M. Qumuatuq Panel Member

7 C. Emrick Panel Member

8

9 NUNAVUT IMPACT REVIEW BOARD STAFF (POND INLET)

10 T. Meadows Legal Counsel

11 K. Costello Executive Director

12 K. Gillard Manager, Project Monitoring
13 and Acting Director Technical
14 Services

15 C. Barker Technical Advisor

16 P. Evalik Environmental Administrator

17 B. Beattie Environmental Technologist

18 F. Emingak Junior Technical Advisor

19

20 NUNAVUT IMPACT REVIEW BOARD STAFF (IQALUIT)

21 K. Morrison Manager, Impact Assessment

22 G. Daoust Technical Advisor

23 E. Adjun Outreach Coordinator

24 O. Evalik Senior finance Officer

25

26

1	NUNAVUT IMPACT REVIEW BOARD STAFF (BY PHONE)	
2	T. Arko	Technical Services
3	S. Amuno	Technical Advisor
4		
5	PROPONENT	
6		
7	BAFFINLAND IRON MINES CORPORATION (IQALUIT)	
8	B. Armstrong	Legal Counsel
9	C. Kowbel	Legal Counsel
10	M. Lord-Hoyle	Vice-President, Sustainable
11		Development
12	L. Kamermans	Director, Sustainable
13		Development
14	J. Tigullaraq	Head of Northern Affairs
15	A. Moore	Manager, Government Relations
16		and Public Affairs
17		
18	BAFFINLAND IRON MINES CORPORATION (POND INLET)	
19	B. Penney	President, Chief Executive
20		Officer
21	U. Hanson	Vice President, Community and
22		Strategic Development
23		
24	BAFFINLAND IRON MINES CORPORATION (REGISTERED SPEAKERS)	
25	L. Duke	Legal Counsel
26	A. McLeod	EDI Environmental Dynamics Inc.

1	E. Malcolm	Sustainability Specialist
2	C. Murray	Baffinland Iron Mines Corporation
3	C. Moore	Intrinsik
4	C. Devereaux	Baffinland Iron Mines Corporation
5	C. Merkosak	Baffinland Iron Mines Corporation
6	C. Legault	Fednav Limited
7	D. Jarrat	Stantec
8	D. Del Cardo	Genessee Wyoming Canada
9	E. Malcolm	Baffinland Iron Mines Corporation
10	F. van Biljon	Hatch Engineering
11	F. Pittman	Baffinland Iron Mines Corporation
12	J. McClintock	Wood Plc
13	J. Krizan	EDI Environmental Dynamics Inc.
14	M. Winterbottom	Golder Associates Ltd.
15	M. Clark	Baffinland Iron Mines Corporation
16	M. Austin	JASCO Applied Sciences
17	M. Settingington	EDI Environmental Dynamics Inc.
18	P. Abgrall	Golder Associates Ltd.
19	P. Osbourne	Golder Associates Ltd.
20	P. Rouget	Golder Associates Ltd.
21	R. Cook	Knight Piésold
22	S. Wallace	Stantec
23	S. Borcsok	Baffinland Iron Mines Corporation
24	S. Douville	Baffinland Iron Mines Corporation
25	T. Keane	Fednav Limited
26	T. Sewell	Baffinland Iron Mines Corporation

1	V. Corning	Stantec
2		
3	INTERVENORS	
4		
5	NUNAVUT TUNNGAVIK INCORPORATED (REGISTERED SPEAKERS)	
6	A. Yuan	Legal Counsel
7	N. Gonzalez	Legal Counsel
8	J. Eetoolook	Interim President
9	D. Lee	Wildlife Biologist
10	P. Irngaut	Director
11	B. Dean	Assistant Director
12	D. Kunuk	Chief Operating Officer
13	H. Uniugsaraq	Chief Administrative Officer
14	C. Lyall	Executive Assistant
15		
16	QIKIQTANI INUIT ASSOCIATION (REGISTERED SPEAKERS)	
17	L. Land	Legal Counsel
18	P.J. Akeeagok	President
19	J. Ottenhof	Director, Lands and Resource
20		Management
21	R. Paton	Director, IQ & Engagement
22	S. Williamson-Bathory	Special Advisor
23	L. Barnabas	Portfolio Lead
24	A. Macdonald	The Firelight Group
25	R. Olsen	The Firelight Group
26	S. Leech	The Firelight Group

1	J. Higdon	Freshwater and Marine Specialist
2	B. Stewart	Freshwater and Marine Specialist
3	J. Ash	Arktis Solutions
4	N. Jewitt	Arktis Solutions
5	M. Hemp	Qikiqtani Inuit Association
6	C. Spencer	Qikiqtani Inuit Association
7		
8	HAMLET OF POND INLET (REGISTERED SPEAKERS)	
9	J. Arreak	Mayor of Pond Inlet
10	F. Tester	Technical Advisor
11	C. Sangoya	Pond Inlet Hunters and
12		Trappers Organization
13	J. Merkosak	Resident Advisor in IQ
14	J. Aloofoo	Elder Advisor
15	L. Quassa	Community Representative
16	J. Kiyoopik	Youth Representative
17		
18	MITTIMATALIK HUNTERS AND TRAPPERS ORGANIZATION	
19	(REGISTERED SPEAKERS)	
20	E. Murphy	Legal Counsel
21	K. Julta	Legal Counsel
22	M. Bradley	Legal Counsel
23	J. Zyla	Woodward & Company
24	L. Mar	Woodward & Company
25	E. Ootoovak	President
26	E. Inuarak	Vice President

1	A. Hanson-Main	Technical Advisor
2	Dr. V. Vergara	Marine Expert
3	E. Solomon	IQ Expert
4	S. Elverum	IQ Expert
5	J. Simonee	Community-Based Monitoring Witness
6	V. L'Hereault	Community-Based Monitoring Witness
7		
8	IGLOOLIK WORKING GROUP AND IGLOOLIK HUNTERS AND	
9	TRAPPERS ASSOCIATION (REGISTERED SPEAKERS)	
10	P. Ivalu	Chairperson, Igloolik Working
11		Group
12	M. Recinos	Igloolik Working Group
13	J. Quassa	Igloolik Working Group
14	J. Malliki	Igloolik Hunters and Trappers
15		Association
16	D. Irngaut	Igloolik Hunters and Trappers
17		Association
18	P. Awa	Hamlet of Igloolik
19	N. Piugattuk	Elder Advisor
20	M. Ivalu	Community Representative
21	W. Immaroitok	Youth Representative
22		
23	HAMLET OF SANIRAJAK (REGISTERED SPEAKERS)	
24	J. Audlakiak	Mayor of Sanirajak
25	L. Primeau	Chief Administrative Officer
26	V. Curley	Hamlet of Sanirajak

1	D. Arvaluk	Hamlet of Sanirajak
2	T. Kuppaq	Hamlet of Sanirajak
3	J. Kaernerker	Community Representative
4		
5	HAMLET OF ARCTIC BAY AND IKAJUTIT HUNTERS AND TRAPPERS	
6	ASSOCIATION (REGISTERED SPEAKERS)	
7	L. Idlout	Legal Counsel
8	O. Eegeesiak	Hamlet of Arctic Bay
9	M. Koonoo	Arctic Bay Hunters and
10		Trappers Association
11	O. Naqitarvik	Elder Advisor
12		
13	HAMLET OF CLYDE RIVER AND CLYDE RIVER HUNTERS AND	
14	TRAPPERS ASSOCIATION (REGISTERED SPEAKERS)	
15	J. Natanine	Hamlet of Clyde River
16	W. Bernauer	Hamlet of Clyde River
17	S. Aipellee	Clyde River Hunters and
18		Trappers Association
19	O. Audlakiak	Clyde River QIA Women
20	S. Palituq	Elder Advisor
21	J. Palituq	Youth Community Representative
22		
23	AMARUQ HUNTERS AND TRAPPERS ASSOCIATION (REGISTERED	
24	SPEAKERS)	
25	M. Mike	Amaruq Hunters and Trappers
26		Association

1	Jeetaloo Kakee	Elder Advisor
2		
3	HAMLET OF RESOLUTE BAY (REGISTERED SPEAKERS)	
4	M. Idlout Amarualik	Resolute Bay Hunters and
5		Trappers Association
6	S. Idlout	Hamlet of Resolute Bay
7		
8	GOVERNMENT OF NUNAVUT (REGISTERED SPEAKERS)	
9	E. Stockley	Legal Counsel
10	M. Kinney	Legal Counsel
11	N. O'Grady	Avatiliriniq Coordinator
12	G. Karlik	Assistant Deputy Minister
13		Department EDT
14	J. Onalik	Deputy Minister EDT
15	S. Pinksen	Assistant Deputy Minister DOE
16	J. Elliott	Project Manager Impact Assessment
17		DOE
18	J. Ringrose	Qikiqtani Regional Wildlife
19		Biologist
20	E. Zell	Manager, Environmental Assessment
21		and Regulation EDT
22	A. Robinson	Manager, Land Use and
23		Environmental Assessment DOE
24	S. Atkinson	Wildlife Consultant
25	A. Cyr-Parent	Senior Advisor
26		

1 NORTHERN PROJECTS MANAGEMENT OFFICE (REGISTERED
2 SPEAKERS)

3 L. Dyer Director General, Northern Projects
4 Management Office

5 A. Shafi Technical Support, Northern
6 Projects Management Office

7 S. Qazi Technical Support, Northern
8 Projects Management Office

9 S. Hitchcox Northern Projects Management
10 Office

11

12 DEPARTMENT OF JUSTICE (REGISTERED SPEAKERS)

13 S. Gruda-Dolbec Legal Counsel

14

15 CROWN-INDIGENOUS RELATIONS NORTHERN AFFAIRS CANADA
16 (REGISTERED SPEAKERS)

17 S. Dewar Director, Resource Management

18 K. Henrikson Regional Director General

19 F. Ngwa Manager, Impact Assessment

20 A. Chaikine Senior Environment Assessment
21 Specialist

22 D. Abernethy Regional Socio-economic Analyst

23 M. Hopkins Director General, Natural
24 Resources and Environment

25 K. Pawley Manager, Environmental Assessment

26

1	J. Walsh	Senior Environmental
2		Assessment Analyst
3	J. Neary	Environmental Assessment Analyst
4	K. Ma	Regional Environmental
5		Assessment Coordinator
6		
7	FISHERIES AND OCEANS CANADA (REGISTERED SPEAKERS)	
8	G. Bernard-Lecaille	Senior Biologist, Fish and
9		Fish Habitat Program, Arctic
10		Region
11	A. Sorckoff	Fish and Fish Habitat Protection
12		Biologist
13	A. Beattie	Team Lead, Mining Oil and Gas
14		North
15	M. Marcoux	Marine Mammal Expert, DFO Science
16	K. Howland	Aquatic Invasive Species Expert,
17		Oceans Canada Science Group
18	T. Hoggarth	Regional Director, Aquatic
19		Ecosystems
20	C. Matthews	Research Scientist
21	J. Paulic	Science Advice Liaison
22	J. Shead	Aquatic Invasive Species Biologist
23	K. Hedges	Research Scientist
24	P. Hall	Environmental Specialist
25	S. Bailey	Research Scientist
26	S. Nudds	Physical Scientist (Oceanographer)

1	S. Ferguson	Research Scientist
2	S. McLennan	Manager, Arctic Projects and
3		Governance
4	T. Seal	Junior Project Officer
5		
6	PARKS CANADA (REGISTERED SPEAKERS)	
7	A. Stoddart	Environmental Assessment
8		Scientist
9	J. Chisholm	Ecologist Team Leader
10	A. Maher	Resource Conservation Manager,
11		Nunavut Field Unit
12	J. Bastick	Environmental Assessment
13		Specialist
14	J. Boon	Field Unit Superintendant,
15		Nunavut Field Unit
16	L. Jonart	Project Manager, Tallurutiup
17		Imanga National Marine
18		Conservation Area, Nunavut
19		Field Unit
20		
21	TRANSPORT CANADA (REGISTERED SPEAKERS)	
22	J. Barker	Regional Environmental Advisor
23	A. Gudmunson	Regional Manager Environmental
24		Programs
25	J. Johar	Manager Marine Safety and Security
26	J. Cram	Manager Rail Safety Engineering

1	M. O'soup Bushie	Major Resource Development
2		Projects & Aboriginal Consultations
3		
4	ENVIRONMENT AND CLIMATE CHANGE CANADA (REGISTERED	
5	SPEAKERS)	
6	A. Graham	Environmental Coordinator
7	M. Fairbairn	Regional Director
8	B. Asher	Technical Expert, Air Quality
9	R. Holt	Technical Expert, Air Quality
10	M. Parsons	Technical Expert, Air Quality
11	C. Kabanguka	Environmental Emergencies Expert
12	J.F. Dufour	Technical Expert, Water Quality
13	K. Patel	Technical Expert, Water Quality
14	M. Tobin	Technical Expert, Water Quality
15	A. Wilson	Technical Expert, Water Quality
16	R. Ejeckam	Senior Mining Project Officer
17	N. Cote	Executive Director
18		
19	HEALTH CANADA (REGISTERED SPEAKERS)	
20	M. Gale	Regional Manager
21	K. Buset	Impact Assessment Program
22		Manager
23	W. Wilson	Impact Assessment Coordinator
24	T-T. Nguyen	Engagement Specialist
25	N. Lyrette	Environmental Specialist
26		

1 NATURAL RESOURCES CANADA (REGISTERED SPEAKERS)
2 P. Unger Senior Environmental
3 Assessment Officer
4 R. Johnstone Deputy Director, Explosives
5 Safety and Security Branch,
6 Lands and Minerals Sector
7
8 IMPACT ASSESSMENT AGENCY OF CANADA (REGISTERED
9 SPEAKERS)
10 Y. Stoimenova Policy Analyst
11 T. Frezza Manager, Legislation
12
13 NUNAVUT INDEPENDENT TELEVISION NETWORK (REGISTERED
14 SPEAKERS)
15 I. Gilles Legal Counsel
16 L. Tulugarjuk Chairperson, Executive Director
17 Z. Kunuk Founder and Director
18 C. Kunnuk Nunavut Independent Television
19 Network
20 L. Lipsett Technical Advisor
21 M. Malliki Jr. Nunavut Independent Television
22 Network
23
24 WORLD WILDLIFE FUND (REGISTERED SPEAKERS)
25 A. Dumbrille Lead Specialist, Marine Shipping
26 and Conservation

1	P. Okalik	Lead Specialist, Arctic
2	B. Laforest	Senior Specialist, Arctic
3		Species and Ecosystems
4	E. Keenan	Specialist, Eastern Arctic
5		
6	OCEANS NORTH (REGISTERED SPEAKERS)	
7	C. Debicki	Legal Counsel
8	A. Joynt	Senior Policy Advisor
9	G. MacDonald	Arctic Research Specialist
10	J. Jones	Scripps Institution of Oceanography
11		
12	INTERPRETERS/TRANSLATORS	
13	V. Dewar	Language Translator
14	R. Katsak	Language Translator
15	T. Arnajaallak	Language Translator
16	J. Peter	Language Translator
17	J. Tucktoo	Language Translator (Iqaluit)
18		
19	A. Vidal, CSR(A)	Official Court Reporter
20	S. Burns, CSR(A), RPR,	Official Court Reporter
21	CRR	
22	<hr/>	
23		
24		
25		
26		

1 (PROCEEDINGS COMMENCED AT 9:03 AM)

2 Opening Remarks

3 THE CHAIR: Good morning, everyone. I
4 hope you all had a good night's rest.

5 My name is Kaviq Kaluraq. I am the Chair of the
6 Nunavut Impact Review Board or NIRB. On behalf of the
7 Board, I would like to welcome everyone back to Day 6
8 of the Nunavut Impact Review Board's resumed public
9 hearing associated with its assessment of Baffinland
10 Iron Mines Corporation's Phase 2 development proposal
11 related to the Mary River Iron Ore Mine Project.

12 Welcome to everyone attending in Pond Inlet and
13 Iqaluit and those joining us by Zoom or on the phone.
14 We will be starting our morning with an opening prayer
15 with Jayko Allooloo.

16 Opening Prayer

17 THE CHAIR: Thank you, Jayko Allooloo.

18 As everyone who has been attending here in Pond
19 Inlet and in the hub in Iqaluit knows, due to the
20 COVID-19 pandemic, the Nunavut Impact Review Board has
21 put in place additional procedures for those attending
22 in person to keep us all safe and in compliance with
23 local public health requirements.

24 These measures allow the Board to have 80 people
25 join us in Iqaluit and 100 people in Pond Inlet. As
26 you can see, we are all wearing masks inside both

1 venues, and the Board has posted all of our enhanced
2 COVID-19 practices in English and Inuktitut as you
3 enter the hall, and we require everyone to comply with
4 these requirements so that we can ensure we all remain
5 safe and healthy.

6 The COVID-19 pandemic has also meant that
7 approximately 200 people are joining us -- joining the
8 proceedings either on Zoom or by phone. We're grateful
9 to everyone taking the time to participate in whatever
10 platform you're able.

11 For all parties, no matter where you are, please
12 wait for me to turn the microphone over to you as I am
13 often giving the interpreters time to finish before our
14 AV technicians switch to your feed.

15 When you speak, please say your name and identify
16 your organization that you will be speaking for, and be
17 mindful of our interpreters as you go so that we can
18 ensure the Board has an accurate record of these
19 proceedings.

20 Please note that simultaneous interpretation of
21 the proceedings is available throughout these meetings
22 with interpreters here in Pond Inlet and an additional
23 interpreter is available in Iqaluit to assist
24 with logistics for the designated community
25 representatives.

26 Receivers are available from the sign-in table at

1 each in-person location, and language-specific
2 information has been provided for those participating
3 online in both Pond Inlet and Iqaluit. The receivers
4 are using the following channels: Channel 0, floor;
5 Channel 1, English; Channel 2, Inuktitut. If you are
6 at an in-person location and are having trouble hearing
7 the proceedings, please let one of the NIRB staff know,
8 and they will assist you. Any issues with the online
9 feed can be communicated to Keith Morrison.

10 For those attending in person in Pond Inlet and
11 Iqaluit, there are sign-in sheets at the table as you
12 come in. I ask everyone to sign in on these sheets, if
13 you have not already done so. This will ensure that
14 NIRB can provide an accurate record of hearing
15 participants and allow for adherence to public health
16 measures. The NIRB is required to gather contact
17 information for everyone attending in Iqaluit and Pond
18 Inlet. This information will only be used for contact
19 tracing purposes.

20 Those participating through the online feed should
21 have preregistered to receive the information, but if
22 you did not preregister, please contact Cory Barker to
23 indicate your participation.

24 In addition to the video feed for participants on
25 Zoom, the Board is working with the Nunavut Independent
26 Television Network to arrange to broadcast the live

1 feed from Pond Inlet and Iqaluit through the Arctic
2 Co-op and Shaw Direct cable TV and Uvagut TV. These
3 additional broadcasting measures are intended to enable
4 community members to view the technical sessions and
5 community roundtable of the public hearing from their
6 own home.

7 As I noted yesterday, there are several media
8 outlets, including CBC, Nunatsiaq News, Canadian Press,
9 and other outlets all following these proceedings via
10 Zoom. The Board appreciates the interest and
11 participation by the media covering these proceedings
12 and extending the proceedings to audiences within and
13 outside Nunavut.

14 The Board reminds the media and all participants
15 that the Board is not able to provide specific comment
16 on matters before them. However, the Board urges all
17 media and commenters to refrain from making assumptions
18 or assertions about the procedural actions or future
19 decision-making by the Panel that do not reflect the
20 actual record.

21 Because the Board is engaged in the
22 decision-making process for the Phase 2 development
23 project, the Board and staff will not provide comments
24 or answer specific questions on this matter until the
25 Board's public hearing report is issued publicly. I
26 remind everyone that until the public hearing record

1 closes for this file, the Panel has not decided
2 anything in respect of the project. As I said on Day 1
3 of our proceedings, the Panel is here to listen, and
4 parties implying the Panel has already made up our mind
5 is untrue and misrepresents the Board's process.

6 For the safety and convenience of everyone here
7 with me in Pond Inlet, the washrooms are located
8 outside this room in the lobby area and exits are
9 located through the main doors to the lobby and on both
10 sides of the room. However, to exit the room during
11 breaks, we ask that you use the main lobby entryway.
12 In Iqaluit, NIRB staff will give you information about
13 the washrooms and emergency exits at your location.

14 Throughout these proceedings, I will be chairing
15 the meetings from the hall here in Pond Inlet. To my
16 left is Catherine Emrick, and to my right is Madeleine
17 Qumuatuq. We are the three-member Panel responsible
18 for decision-making in respect of the Phase 2
19 development project.

20 The Panel is supported in Pond Inlet, Iqaluit, and
21 on the phone by several members of the Board staff and
22 our legal counsel. In the interest of time, I won't
23 reintroduce them to you, but if you need assistance,
24 please look for the people with the NIRB badges, and
25 they'll help you out.

26 Before we turn to the questioning of Baffinland

1 with respect to the marine environment, recognizing
2 that at the conclusion of our proceedings today we are
3 halfway through our 12 days together and that we are
4 behind schedule, parties have requested the Panel
5 provide additional guidance as to how the remaining
6 seven days of our hearing time will unfold.

7 Firstly, the Board has asked Baffinland to present
8 shortened versions of their remaining two presentations
9 back-to-back so that intervenors can ask questions
10 about both presentations when their time comes.

11 Secondly, as the Board has done previously, we'll
12 be grouping several of the presentations by intervenors
13 who are regulatory authorities together for more
14 efficient questioning.

15 Thirdly, for intervenors who have outstanding
16 questions to Baffinland associated with the
17 presentations up to the marine environment, to ensure
18 we get your questions on the record, intervenors will
19 be able to file those questions in writing with the
20 Board and Baffinland either as an exhibit before the
21 intervenor presents or if the intervenor would like to
22 wait until after the community roundtable concludes to
23 hear whether their questions have already been asked by
24 community members. The intervenor can file their
25 outstanding questions along with their closing
26 statements on February 15, 2021.

1 While the Board recognizes that at all intervenors
2 prefer to raise their questions in spoken form during
3 the technical sessions at the public hearing, the Board
4 is committed to all voices being heard by the Board,
5 including the questions, comments, and knowledge that
6 will be shared with the Board by the community
7 members -- community and members of the public during
8 the upcoming community roundtable that will begin next
9 week.

10 Lastly, we have been asked by several parties to
11 consider extending the public hearing by a couple of
12 days or to sit on Sundays. The Board has now confirmed
13 this is not possible logistically and recognizing the
14 exceptional efforts of all participants but
15 particularly our Elders, interpreters, and AV
16 technicians who are already sitting for very long days
17 and evenings. Tomorrow will be our day of rest. To
18 thank our interpreters, I would just like to give a
19 round of applause to thank you for your efforts.

20 We are looking forward to the continuation of
21 productive discussions ahead.

22 As I indicated yesterday, the last three
23 presentations by Baffinland are topics that were not
24 presented during the public hearing proceedings in
25 November 2019. As a result, the Board is not putting a
26 limit on the questions that intervenors may ask.

1 And now I return to questions from the intervenors
2 in relation to the unresolved technical issues arising
3 from the marine environment presentation. Starting
4 where we left off yesterday, the Hamlet of Pond Inlet,
5 Frank Tester.

6 Hamlet of Pond Inlet Questions Baffinland Iron Mines
7 Corporation

8 MR. TESTER: Thank you, Madam Chair, Frank
9 Tester, technical advisor, Hamlet of Pond Inlet.

10 As I recall, I had asked a question yesterday, and
11 having asked the question, the proceedings ended, and
12 it was now over to Baffinland to address the question
13 that I had asked.

14 THE CHAIR: Yes. I hope you rested well,
15 Frank. I think you asked a question that many parties
16 were wanting to ask but didn't ask, about when we were
17 going to rest for the night.

18 But before we go to Baffinland for their response
19 to your question, can you please restate your question
20 so that participants who are in attendance can hear.

21 MR. TESTER: Thank you, Madam Chair.

22 My question was based on the discussion that we've
23 had to date around the marine environment and questions
24 and comments previously made. I suggested that it
25 looks like we are in what I call "muddy waters",
26 meaning that there is a lot of uncertainty associated

1 with the research that's been done and conclusions that
2 may have been drawn.

3 My question was: Given that reality and given the
4 rating that Baffinland has assigned to the potential
5 effects on marine mammals, rather than rating this as
6 insignificant, would it be -- not be more appropriate
7 to assign a rating of uncertain or indeterminate or the
8 equivalent thereof? Thank you, Madam Chair.

9 THE CHAIR: Baffinland.

10 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

11 I'll ask Lou Kamermans to respond, please, Madam
12 Chair. Thank you.

13 THE CHAIR: Lou Kamermans.

14 MR. KAMERMANS: Lou Kamermans, Baffinland.
15 Thank you, Madam Chair.

16 So our approach to the effects assessment and
17 assessment of residual effects was provided in the
18 environmental impact statement guidelines for the
19 original project, and it remained the guidance with
20 respect to certainty. It remained the same for the
21 Phase 2 environmental impact statement. We outline
22 this in our environmental impact statement for Phase 2
23 reattaching our methodology from the original
24 assessment, which was in Volume II.

25 To sum this up, the Board requires the discussion
26 of uncertainty in relation to our effects assessments,

1 and our approach in the Phase 2 environmental impact
2 statement was to include sections that discussed
3 uncertainty. Also, if an effects prediction showed
4 that we could have a potentially significant effect, we
5 gave a certainty rating.

6 So to use the marine wildlife assessment as an
7 example, Section 3 discussed uncertainty related to the
8 assessment, but because we had not predicted any
9 potentially significant effects, there were no ratings
10 provided. That did not mean we did not discuss
11 certainty. That is there. That discussion has always
12 been there since our submission of the impact statement
13 in October 2018.

14 That discussion acknowledges the complex
15 environment we're working in, but it also acknowledges
16 the mitigations we've put forward to manage any
17 potential effects, and it considers a strong monitoring
18 we already carry out and propose to expand should
19 Phase 2 be approved.

20 That is how you deal with uncertainty in a
21 predictive exercise like an environmental assessment.
22 There is nothing we could have done in our assessment
23 to provide any more certainty. We fulfilled every
24 request of us throughout the review process to provide
25 more information in areas where intervenors felt there
26 was uncertainty. We have also continued to make

1 commitments to increased monitoring and additional
2 mitigations. So we stand by our effects assessment and
3 its conclusions as well our treatment of the concept of
4 uncertainty.

5 And just before Christmas, we provided an update
6 on this on December 18th to be submitted, a
7 significance memo, at the request of the Nunavut Impact
8 Review Board coming out of the prehearing conference,
9 and this memo outlines the rationale for our original
10 conclusions, all of the work we've done throughout the
11 review process to support those conclusions based on
12 discussions and requests from intervenors, and the
13 mitigations and monitoring programs we have in place to
14 move forward should Phase 2 be approved. Thank you.

15 THE CHAIR: Hamlet of Pond Inlet, Frank
16 Tester.

17 MR. TESTER: Thank you, Madam Chair. I
18 just want to point out that we have no evaluation yet
19 of the mitigation measures, and so, at this point, we
20 remain uncertain as to their effectiveness.

21 I want to follow up on the question that I just
22 asked, and my question is really for Baffinland marine
23 scientists. Uncertainty is something that all
24 scientists have to deal with, and I include myself in
25 that. What has interested me is the psychology of
26 dealing with uncertainty in situations where certainty

1 is an expected, desired, or advantageous outcome of how
2 one handles researched data, and I'm currently dealing
3 with this in relationship to work I'm doing with
4 messaging for a public health officer dealing with
5 COVID-19.

6 Let me frame my question by quoting from a paper
7 from the Journal of Environmental Management written by
8 Davidson, et al., and it's entitled: (as read)

9 The Role of Uncertainty and Subjective
10 Influences on Consequence Assessment By
11 Aquatic Biosecurity Experts.

12 This was a study that involved 84 Canadian, American,
13 and Australian scientists. So I'll just quote briefly
14 from it to set the -- the --

15 THE CHAIR: Frank, can you --

16 MR. TESTER: -- background for my --

17 THE CHAIR: -- pause --

18 MR. TESTER: -- question.

19 THE CHAIR: -- please.

20 NIRB, legal counsel.

21 MS. MEADOWS: Thank you, Madam Chair.

22 Teresa Meadows, legal counsel for the Nunavut Impact
23 Review Board.

24 Mr. Tester, you have not been affirmed yet. Are
25 we to take it that this is evidence that you are now
26 reading into the record? If so, we ask that you wait

1 until you have been affirmed.

2 MR. TESTER: This is not evidence. It's
3 just background. It sets the context for the question
4 that I wish to ask. I'm not submitting this or
5 indicating at this time that this is evidence.

6 THE CHAIR: You may proceed.

7 MR. TESTER: The -- the quote is this:
8 (as read)

9 To understand how uncertainty may affect
10 expert decision-making, they explored -- we
11 explored the presence and effects of
12 uncertainty on consequence assessment for
13 scientists and managers. Decision-making
14 under risk is influenced by a variety of
15 values, attitudes, norms, and biases. Both
16 scientists and managers assigned lower
17 consequence when faced with knowledge gaps
18 and other forms of uncertainty. This aligns
19 with an [quote] innocent until proven guilty
20 approach as opposed to a guilty until proven
21 innocent or precautionary approach.

22 My question is addressed to Baffinland's marine
23 scientists. Do you feel that the results of this
24 research, that is, the research that we've been
25 discussing -- sorry, the research that I just quoted --
26 may have relevance to the consequence assessment

1 associated with the work you have done on marine
2 mammals, particularly the relationship between shipping
3 and effects on narwhal?

4 THE CHAIR: Baffinland.

5 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

6 I'm going to ask Patrick Abgrall to respond, but
7 before I do, I'd like to just provide a clarification
8 to an inaccurate statement that was made by Mr. Tester.

9 We do, in fact, understand how the mitigation
10 measures that we've put in place are working. We have
11 now had two full years where we have implemented
12 transit restrictions in heavier ice conditions. We
13 have tested noise levels relative to the 9-knot speed
14 limit. We've tested how narwhal respond to travelling
15 at the speed limits we've set. We've increased our
16 tracking and compliance of our own mitigation measures.
17 And summaries of this have been filed with the Board
18 and are available to intervenors for their reference.

19 For those who do wish to look at the most recent
20 information, we filed on May 26th in Baffinland's
21 responses to the 2019 annual report comments in
22 September of 2020. Thank you. I'll now pass to
23 Patrick.

24 THE CHAIR: Patrick Abgrall.

25 MR. ABGRALL: Patrick Abgrall, Golder
26 Associates for Baffinland.

1 To continue on what Megan was saying in terms of
2 the mitigation measures that were put in place, it's
3 important to confirm that those mitigation measures are
4 informed by our very extensive monitoring program and
5 that these monitoring programs are informed by Inuit
6 knowledge.

7 It's also important to confirm and state that the
8 uncertainty that exists is limited based on the
9 conservativeness of the assessment methodology that we
10 used and the assumptions used in the program. So while
11 we recognize that there is uncertainty inherent in any
12 assessment, the data that we have collected through our
13 monitoring programs that is informed by Inuit knowledge
14 speaks for itself and especially in terms of the impact
15 on narwhal as we've demonstrated in the presentation
16 and through the videos that this -- these impacts are
17 short in duration and localized in area. Thank you.

18 THE CHAIR: Hamlet of Pond Inlet, Frank
19 Tester.

20 MR. TESTER: Thank you, Madam Chair. That
21 doesn't answer my question. The hamlet will deal with
22 this in a further submission to the Board.

23 My next question is this -- and the hamlet's
24 interest in this topic is related to food security.
25 Seals are the most important source of food for
26 Mittimatalingmiut. This is evident from any

1 conversation about food security in the community, with
2 char, and then narwhal in the absence of caribou meat
3 taking second and third place.

4 What we have is a detailed study of the impact of
5 shipping on narwhal. What we don't have is a detailed
6 study going into this NIRB process and with the Board
7 having to make a recommendation that is in any way
8 comparable to information on the potential impact of
9 shipping on narwhal.

10 Given the claimed importance given by Baffinland
11 to Inuit Qaujimajatuqangit, IQ studies that have been
12 detailed for us, and an excellent consultation process,
13 how is it that the most important source of food for
14 Mittimatalingmiut have -- has not been studied in
15 relationship to shipping effects? When it comes to
16 food security, the NIRB is going into its deliberations
17 with an empty plate. Why do we -- my question was:
18 Why do we not have a detailed study of the impact of
19 shipping on seal given its importance?

20 THE CHAIR: Baffinland.

21 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

22 I'll ask Patrick Abgrall to respond. Thank you.

23 THE CHAIR: Patrick Abgrall.

24 MR. ABGRALL: Patrick Abgrall, Golder
25 Associates for Baffinland.

26 Thank you for the question. I would just like to

1 mention that some of the questions that you were asking
2 towards seal monitoring was brought up by QIA, the
3 Qikiqtani Inuit Association, and Jeff Higdon, and in
4 response to increased Inuit concern, there is an
5 increase in seal monitoring being implemented. It is
6 important to understand that the monitoring programs to
7 date have focused on the conclusions of the impact
8 assessment and that the impact assessment on seal was
9 deemed to be of low magnitude with a high certainty,
10 which is what resulted in enhanced monitoring for
11 narwhal which was a higher concern to the community at
12 that time.

13 We are understanding from the community the
14 importance of seal monitoring and had been including it
15 and recording it to our aerial surveys in terms of seal
16 locations and with the ship-based observer program, and
17 it's also important to indicate that as part of the
18 consultations that Baffinland has had, that we are
19 avoiding seals with the spring shoulder season as
20 indicated through Inuit concerns. Thank you.

21 THE CHAIR: Hamlet of Pond Inlet, Frank
22 Tester.

23 MR. TESTER: Thank you, Madam Chair, and
24 thank you for that answer.

25 Hunters and others in the hamlet are also greatly
26 concerned about the impacts of icebreaking on both seal

1 and narwhal. In your presentation, we noticed a lack
2 of information about the relationship between killer
3 whales and narwhal in relation to icebreaking --

4 (AUDIO FEED LOST)

5 THE CHAIR: Frank Tester, your audio cut
6 out.

7 MR. TESTER: Sorry, Madam Chair. I'll
8 start the question again.

9 Hunters and others in the hamlet are also greatly
10 concerned about the impacts of icebreaking on seal and
11 narwhal. In your presentation, we noticed a lack of
12 information about the relationship between narwhal and
13 killer whales in relationship to icebreaking and
14 potential impacts on narwhal.

15 Narwhal are known to keep regular migration routes
16 and timing. They stay where there is still ice so that
17 they can be protected from their predators, primarily
18 killer whales, and research has shown that killer
19 whales avoid heavy sea ice. So as their movements are
20 dependent on ice conditions, with more breaks of the
21 pack ice from shipping, what are the possibilities that
22 killer whales might be able to move more freely and may
23 be able to access narwhal calving grounds in Milne
24 Inlet earlier in the season?

25 THE CHAIR: Baffinland.

26 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

1 I will pass to Phil Rouget, but I just wanted to
2 provide a quick summary from the last response and to
3 confirm and clarify that an assessment to seals has
4 been provided. Both the Technical Supporting Document
5 Number 24 and the icebreaking assessment have looked at
6 potential effects to seals. In both of these, the
7 confidence and the conclusions of the assessment remain
8 high because our shipping season is not overlapping
9 with sensitive key periods -- or, sorry, sensitive key
10 stages for seals.

11 With that, I will pass to Phil Rouget. Thank you.

12 THE CHAIR: Phil Rouget.

13 MR. ROUGET: Phil Rouget, Golder Associates
14 for Baffinland.

15 The effects of icebreaking on the acceleration of
16 sea ice breakout was fully assessed in the marine
17 effects assessment. The results of that assessment for
18 that icebreaking during the early shipping season would
19 not appreciably accelerate the rate of decay or
20 breakout of the ice during the breakout season.

21 Baffinland is committed to not enter the ice prior
22 to initial fracturing of the sea ice. Therefore,
23 there's no overall appreciation or -- of speedup or
24 acceleration of sea ice breakout. As a result, we are
25 confident that there will not be an opportunity for
26 orcas or killer whales to come into the regional study

1 area at an earlier time than normal, and, therefore, we
2 expect no difference on the overall impact of predation
3 in the regional study area on narwhal relative to
4 shipping. Thank you.

5 THE CHAIR: Hamlet of Pond Inlet, Frank
6 Tester.

7 MR. TESTER: Thank you, Madam Chair. I
8 simply want to note the continued use of conditional
9 language in answering questions like the one that I
10 just asked.

11 With regard to Slide 54, population estimates for
12 narwhals at a 95 percent confidence interval. I want
13 to refer to a paper by Taylor, et al., "Lessons From
14 Monitoring Trends in Abundance of Marine Mammals".
15 It's a paper that you may be familiar with.

16 The hamlet draws attention to the very, very large
17 range associated with data collected using aerial
18 surveys. The review paper to which I just referred
19 examined the ability of scientists to monitor trends in
20 marine mammal abundance using aerial methods and found
21 that for marine mammals like large whales, dolphins,
22 and porpoises, a critical decline in population could
23 not be detected 72 to 90 percent of the time.

24 With this in mind and looking at the range
25 estimates in Slide 54, what are we to make of the
26 likelihood of Baffinland's survey method picking up on

1 a serious problem before it is too late?

2 THE CHAIR: Baffinland.

3 MS. LORD-HOYLE: Megan Lord-Hoyle.

4 I'll ask Phil Rouget to respond. Thank you.

5 THE CHAIR: Phil Rouget.

6 MR. ROUGET: Thank you, Madam Chair. Phil
7 Rouget, Golder Associates for Baffinland.

8 I think what's important to remember here is that
9 aerial surveys are the best method we have for
10 estimating marine mammal abundance. So I would
11 disagree with the comment from the intervenor at the
12 start insinuating that the program lacks the -- the
13 statistical power to detect the change.

14 Aerial surveys are one of the best and most
15 statistically robust methods for estimating absolute
16 abundance of marine mammal population. They are
17 considered the scientific standard for this purpose and
18 used by the entire scientific community and government
19 for the purpose of informing stock assessment, stock
20 management, and environmental impact assessment.

21 They're the only tool used by Fisheries and Oceans
22 to estimate marine mammal population abundance
23 throughout the entire Arctic and to inform hunting
24 quotas to meet their mandate of ensuring population
25 integrity.

26 With respect to statistical power, we acknowledge

1 that visual-based aerial surveys are traditionally
2 associated with high variability. However, every
3 survey has uncertainty, and this is addressed
4 appropriately by disclosing the uncertainty in your
5 survey results by presenting the range of
6 your confidence intervals for the abundance estimates
7 and by reviewing your aerial survey results in concert
8 with findings from your other complimentary marine
9 monitoring program.

10 Further, it is critical to clarify that our 2019
11 and 2020 aerial survey programs were designed in a way
12 to improve survey precision. That is to say, lower the
13 level of variability. This is achieved a couple of
14 ways; first, by maximizing the use of high resolution
15 digital imagery in areas of high animal density to
16 provide a true count of animals in your survey area as
17 opposed to an estimate of animals over a wider area;
18 secondly, by running multiple surveys per season and
19 selecting the ones with the most optimal survey
20 conditions and data quality.

21 This is what we did. This is what was
22 accomplished, and, as a result, the precision went up
23 and, therefore, represent a very reliable estimate for
24 the stock in those years. Thank you. I'll pass it
25 back to Lou. Thank you.

26 THE CHAIR: Lou Kamermans.

1 MR. KAMERMANS: Lou Kamermans, Baffinland.

2 Thank you, Madam Chair.

3 Just to add to Phil's response, I think it's
4 important to highlight what we've provided in our
5 revised draft adaptive management plan, which shows
6 that we won't be relying on any single line of
7 evidence, and that we'll, in fact, be taking a broader
8 approach to this with the expanded role for the
9 Qikiqtani Inuit Association and the implementation of
10 that plan and in the implementation of the culture,
11 resource, and land-use monitoring program.

12 That monitoring program will include
13 Inuit-specific indicators and thresholds of acceptable
14 change and will link to the predefined responses in our
15 management plans. To give an example of how this could
16 work, we can use an instance that's already occurred.

17 In 2018 when Baffinland's shore-based monitoring
18 program was suspended and run from a vessel and it was
19 not found to produce the data we needed, we were told
20 by the Hamlet of Pond Inlet and community members that
21 they were seeing a very low abundance of narwhal. We
22 did not have the supporting data, but that did not stop
23 us from acting. The following year, we implemented
24 aerial survey programs to investigate the occurrence to
25 determine where the narwhal may have gone, but we also
26 implemented operational mitigations.

1 We began transit restrictions when shipping
2 through ice, and we implemented the setback from the
3 floe edge. All of these reduced potential noise
4 disturbance to narwhal and were within our power to do
5 without knowing precisely what had caused the effect
6 that was seen by the Hamlet of Pond Inlet in 2018 on
7 the presence of narwhal.

8 Water monitoring programs found through aerial
9 surveys in 2019 was that narwhal abundance did return
10 to levels that had been demonstrated before through
11 previous surveys, and that's also demonstrated in the
12 harvesting numbers that were also presented in our
13 presentation. So this is a good example of a system
14 that is just being formalized through the development
15 of the culture, resource, and land-use assessment -- or
16 monitoring program and how adaptive management would be
17 implemented as a result of the outcomes of that plan.
18 Thank you.

19 THE CHAIR: Hamlet of Pond Inlet, Frank
20 Tester.

21 MR. TESTER: Thank you, Madam Chair, and
22 thank you for those answers. I simply want to note
23 that increased certainty is certainly not reflected in
24 the confidence intervals that we were presented with.

25 And having followed aerial surveys since the late
26 1970s when I chaired the Polar Gas pipeline inquiry, I

1 note that just because aerial surveys are the only
2 method that we currently have for surveying populations
3 doesn't mean that this is a good method. It's just
4 that it's the only one that we have, and we haven't yet
5 identified anything that's better, and it is well
6 known -- and the literature confirms this -- that
7 surveying marine mammals by air is something that
8 involves a great deal of uncertainty and is very
9 problematic as a method, and their literature makes
10 that absolutely clear.

11 Yesterday Baffinland stated in response to the
12 experiences that Moses was relaying and his concerns
13 about using the thickness of blubber as an indicator,
14 that it was impossible to associate blubber thickness
15 with a single anthropogenic or human effect. You cited
16 climate change and effects on ice cover, food
17 availability in the Davis and Baffin straits,
18 et cetera, as possible and alternative explanations for
19 what was happening with the thickness of blubber.

20 My question is this: How is it that attempting to
21 count narwhal from the air as -- and using that as an
22 indicator is any different than using the thickness of
23 blubber? What conclusions can you derive from an
24 aerial survey about the impact that shipping is having
25 on narwhal populations? Are there not a long list of
26 considerations that could be affecting population

1 numbers of which shipping may only be one? In other
2 words, how is population -- how are population numbers
3 any different from blubber thickness as an indicator?
4 Are they not both important but different indicators of
5 something, if only they knew what it was, that's going
6 on? The -- the hamlet fails to understand Baffinland's
7 logic in this regard.

8 THE CHAIR: Baffinland.

9 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

10 I -- I don't think I heard a question but rather a
11 statement. Either way, Madam Chair, I'll ask Phil
12 Rouget to explain our different monitoring
13 methodologies and the purpose of the surveys for
14 clarification. Thank you.

15 THE CHAIR: Phil Rouget.

16 MR. ROUGET: Thank you, Madam Chair. Phil
17 Rouget, Golder Associates.

18 I'll start off by responding to Frank's initial
19 statement in that aerial surveys do not have the power
20 to detect change. As I had flagged in my previous
21 response, we have achieved high accuracy in our most
22 recent aerial survey estimates. I would encourage the
23 intervenor to review the power analysis results that
24 are presented in the aerial survey report submitted in
25 2019.

26 It clearly indicates that we have the power, over

1 90 percent power, to detect a 20 percent drop -- up to
2 a 20 percent drop in the narwhal population over a
3 consecutive period of two years based on a level of
4 accuracy that we achieved in the surveys we completed.
5 So to suggest that aerial surveys do not have the power
6 to detect change in the population is incorrect.

7 Second, there were about seven questions in there,
8 so I'll summarize generally our stance on the topic
9 presented by the intervenor. Madam Chair, please
10 provide me 30 seconds to address my co-presenters.
11 Thank you.

12 Thank you, Madam Chair. Phil Rouget, Golder
13 Associates.

14 Our approach to selecting indicators and
15 thresholds in associated response actions for the
16 marine mammal monitoring programs are designed
17 specifically to detect for project effects at multiple
18 levels. We have low-level, moderate-level, and
19 high-level indicators which allow us to track whether
20 there's changes occurring in the narwhal population as
21 a whole from project effects in combination with other
22 effects, but we also have more refined indicators and
23 thresholds that allow us to track potential changes in
24 narwhal behaviour and by extension narwhal population
25 that are specific to the project; that is to say,
26 project derived.

1 We look at multiple different response variables
2 related to behavioural disturbance specific to
3 shipping. This allows us to tell if we are having an
4 impact on animals at the project level. At a higher
5 level, we track changes in reproductive output of
6 narwhal as well as potential changes in the stock size,
7 as previously mentioned, to also give us an idea on the
8 health of the population that could be attributable to
9 the project in combination with other cumulative
10 effects. That paints a picture of how narwhal are
11 doing in the ecosystem when we see changes.

12 At the reproductive or stock level we're able to
13 cross-reference to our more specific studies looking at
14 behaviour and determine whether that's project-driven
15 or not. We feel this is an adequate approach to
16 characterizing project effects and dissecting them from
17 pressures ongoing on the animals from other sources.
18 We do not feel that we need additional indicators.
19 Thank you.

20 THE CHAIR: Hamlet of Pond Inlet, Frank
21 Tester. Before you proceed with your next question,
22 I'm going to remind you you are not under oath. So if
23 you're presenting evidence, it should be done after
24 you've been affirmed.

25 MR. TESTER: Thank you, Madam Chair. I --
26 thank you, Madam Chair. I understand that, and I

1 respect that. I'll, in the interest of time, leave
2 this issue for now and expect that Fisheries and Oceans
3 Canada will pursue it further.

4 My last question is this -- and this is a
5 hypothesis for which the Hamlet is seeking Baffinland's
6 opinion, that narwhal entering Eclipse Sound without
7 the presence of obvious human-induced interference,
8 shipping in this case, are depending on energy reserves
9 built up from winter feeding, and, incidentally,
10 hunters are not reporting that narwhal entering the
11 sound are skinnier than usual. Their observations are
12 on narwhal hunted later in the season.

13 The hypothesis is this: that they feed less in
14 the summer than in the winter, and they draw down on
15 their energy reserves. Normally they have enough
16 reserves upon leaving to make it back to winter feeding
17 grounds. Under normal conditions, they are at a
18 manageable margin in terms of energy budget.

19 The introduction of an element in shipping may be
20 just enough in terms of extra demands on energy
21 reserves to place narwhal at risk. That is at or over
22 a line in terms of thickness of body fat that puts them
23 at risk with regard to morbidity and mortality.

24 THE CHAIR: Frank, if you can --

25 MR. TESTER: And furthermore --

26 THE CHAIR: -- please pause.

1 MR. TESTER: Thank you, Madam Chair.

2 THE CHAIR: NIRB legal counsel.

3 MS. MEADOWS: Thank you, Madam Chair.

4 Teresa Meadows, legal counsel for the Nunavut Impact
5 Review Board.

6 It's very difficult to see how that is not
7 evidence. So, Mr. Tester, I understand that you
8 believe this to be background to your questions, but if
9 it's not evidence, it's very difficult for Baffinland
10 to reply to assertions, summations, background that is
11 not in evidence before the Board.

12 If you are referencing your comments and your
13 written comments that have already been provided, that
14 is one thing. If that is the case, then you can be
15 much briefer in your summary of this. If that is not
16 the case and this is not evidence that's before the
17 Board, please keep your background much more general
18 and your questions much more focused.

19 The second thing is, the interpreters are having a
20 great deal of difficulty keeping up with this highly
21 technical evidence. Thank you, Madam Chair.

22 THE CHAIR: Hamlet of Pond Inlet, Frank
23 Tester.

24 MR. TESTER: I thank you for that. I am
25 very conscious of the difficulty that interpreters may
26 have in keeping up with this, and I've been doing my

1 best. I'll try and do better.

2 Madam Chair, this is, in fact -- this has been
3 submitted as evidence and is found in a report that the
4 hamlet has already submitted and is registered with the
5 Nunavut Impact Review Board. I'm simply summarizing as
6 briefly as possible something that has been -- already
7 been submitted. So having said that, I'll -- I'll just
8 retrace my steps a bit and -- given that there's been a
9 break in the flow of logic here.

10 What we're saying is -- and this has been
11 discussed with Inuit in Pond Inlet -- that the
12 introduction of shipping adds another element to the
13 environment, which makes demands on the energy levels
14 and affects the body fat of narwhal and that this may
15 be just enough in terms of the extra demand on the
16 energy that narwhal are using to put them at risk.
17 That is at -- it is at or over the line in terms of the
18 thickness of body fat and puts them at risk with regard
19 to morbidity and mortality.

20 And, furthermore, given what we don't know, the
21 introduction of a sudden increase in ship traffic,
22 which is what would happen with Phase 2, could push
23 narwhal over the line, resulting in a dramatic collapse
24 in population reminiscent of the collapse of the cod
25 fishery, for example, in Newfoundland. This is a
26 hypothesis. This is something that I've discussed with

1 Inuit in Pond Inlet.

2 Do you have -- the question is this: Do you have
3 any reason to believe that this is in no way a
4 possibility with the introduction of Phase 2? Thank
5 you, Madam Chair.

6 THE CHAIR: Baffinland.

7 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

8 I'll ask Lou Kamermans to respond. Thank you.

9 THE CHAIR: Lou Kamermans.

10 MR. KAMERMANS: Lou Kamermans, Baffinland.

11 Thank you, Madam Chair.

12 I think it is a significant overstatement to put
13 on the record to say that what Baffinland has proposed
14 could lead to something as devastating as the collapse
15 of the cod fishery. I think that is pure hyperbole.

16 We understand the concern that people would have
17 shifting from our operation size now to what's been
18 proposed under Phase 2. What you're proposing is not
19 consistent with any of the assessments we've put
20 forward in any of the supporting information to our
21 responses to intervenors who have raised concerns with
22 respect to the potential effects on narwhal.

23 We understand the Hamlet of Pond Inlet has put
24 forward conditions for support with respect to the
25 Phase 2 proposal, and we respect those conditions and
26 the motives behind them. Yesterday we put on the

1 record our response to the Hamlet of Pond Inlet to
2 address this concern despite the fact that we do stand
3 by our assessments and our conclusions.

4 Regardless, we have offered to simulate an
5 increase in shipping that would avoid seeing the
6 project go from an upward limit of 83 vessels in a
7 season to 176. This would see increases in vessels 30
8 at a time for two years in a row to allow sufficient
9 monitoring to provide an understanding of the effects
10 that may be occurring before that vessel limit is
11 increased again.

12 So that's something we're looking forward to
13 hearing from the Hamlet of Pond Inlet on in terms of
14 their acceptability of that proposal, but I believe
15 that addresses the uncertainty that you're speaking to,
16 Frank -- the intervenor. My apologies. Thank you.

17 THE CHAIR: Hamlet of Pond Inlet, Frank
18 Tester.

19 MR. TESTER: Thank you, Madam Chair. The
20 hamlet in concert with QIA will be getting back to
21 Baffinland with regard to what has just been mentioned.

22 That will conclude our questions, and we'll deal
23 with these matters further -- in further submissions to
24 NIRB, but expect that -- in particular Fisheries and
25 Oceans will pick up some of these themes in their
26 questions. Thank you, Madam Chair.

1 THE CHAIR: Okay. We'll take those as
2 deferred questions for Fisheries and Oceans Canada as
3 well.

4 Before we proceed, let's take a 15-minute break.
5 (ADJOURNMENT)

6 THE CHAIR: Welcome back, everyone.
7 Before we continue questions to the proponent, NIRB
8 legal counsel.
9 Directional Update by Nunavut Impact Review Board Legal
10 Counsel

11 MS. MEADOWS: Thank you, Madam Chair.
12 Teresa Meadows, legal counsel for the Nunavut Impact
13 Review Board.

14 Madam Chair, there have been a number of questions
15 raised over the last few days with respect to
16 additional motions that parties may be wishing to bring
17 in relation to procedural direction that has been
18 issued by the Board during these hearings.

19 Madam Chair, to be able to discuss how those
20 motions may be presented to the Board, the Board will
21 be convening a teleconference at 12:30 Eastern time
22 amongst the registered intervenors and the proponent
23 and myself.

24 This teleconference will be -- the details will be
25 provided to legal counsel if a party is represented,
26 or, if not represented, to their designated

1 representative, whoever -- either their technical
2 advisor or their spokesperson.

3 In the Iqaluit hub, registered intervenors are
4 asked to see the Board staff to get the call-in
5 details. In the Pond Inlet hub, registered intervenors
6 are invited to come and see Karen Costello, and for
7 those intervenors whose representatives are on the
8 phone or attending by Zoom, please email me,
9 tmeadows@meadowslaw.ca, and I will provide you with
10 those call-in details.

11 The discussions will be focused solely on how
12 registered intervenors may bring -- and the proponent
13 may bring these procedural motions before the Board,
14 and so the Board will not be present and decisions will
15 not be made.

16 In addition, there will be consecutive
17 interpretation available in the Iqaluit hub for any
18 parties who require interpretation during the
19 teleconference.

20 Thank you, Madam Chair. Those are my procedural
21 matters.

22 THE CHAIR: Continuing with questions to
23 the proponent, are there any questions from
24 Mittimatalik people? Kaujak Komangapik.

25 Kaujak Komangapik (Elder) Questions Baffinland Iron
26 Mines Corporation

1 MS. KOMANGAPIK: My name is Kaujak Komangapik,
2 resident of Pond Inlet.

3 I will be asking a question, and I apologize -- if
4 I am delaying anything, I apologize beforehand.

5 Madam Chair, my question is: On November -- it
6 says the final shipping season will be November 15 when
7 Baffinland's ships make their last trip. That will be
8 my question. Will -- have you carefully -- has
9 Baffinland carefully reviewed the fact that
10 November 15th will be the final trip for shipping ore,
11 and I wonder if the people of Pond Inlet are fully
12 aware of that, or has organizations been informed about
13 that? I want clarification on that. And I -- I will
14 explain the rationale behind my question.

15 As residents of Pond Inlet, we have hunters who
16 are our children and grandchildren who wants to go out
17 seal hunting, especially for seal hunting. It appears
18 that it would be a safety issue. As Inuit, we rely on
19 seal for our diet. When -- during the shoulder season
20 when the ice first form in Pond Inlet, our hunters, our
21 grandchildren and children, start hunting for seal as
22 soon as the ice forms, and the ice conditions are
23 different. Some of them are thinner; some of them are
24 thicker.

25 Our Elders -- one of our Elders hunters tried to
26 deter young people only to go out seal hunting once the

1 ice is fully thick. Some of them do listen, but we, as
2 Inuit, do not always listen to our Elders. And even
3 though the Elders discourage hunters to wait for it --
4 wait a bit longer because the ice conditions are too
5 dangerous. Have you carefully looked at this and
6 informed the people of Pond Inlet about the last
7 shipping date? The reason being, this past fall when
8 the ice first formed, there were two incidences where
9 two snowmobiles went through the ice. It appears that
10 it's going to be a safety issue if the last iron ore
11 carrier ends on November 15th because the ship track
12 will leave behind thin ice, and once spring arrives and
13 the leads start to form, then there will be leads all
14 the way from the floe edge all the way up to Milne
15 Inlet. So it appears that leads would be formed that
16 seem to be very dangerous for hunters, so I will
17 explain the rationale behind my question.

18 I was raised in Arctic Bay, and there was --
19 Nanisivik mines were in operation. There used to be
20 icebreaking ships carrying materials. And during the
21 springtime -- and the ice was starting to thaw and
22 narwhal were migrating, and the people of Arctic Bay
23 went narwhal hunting in the springtime, and some of
24 them were caught in ice drifts and float away, and
25 sometimes they lost their hunting equipment, so I'm
26 trying to say this in a factual fashion.

1 And also, the hunters from Arctic Bay, Moses
2 Koonoo is in Iqaluit and also Olayuk Naqitarvik, they
3 probably remember that. So I just want to name them
4 for reference purposes.

5 My question is: November 14, have you fully
6 informed the people of Pond Inlet? Thank you, Madam
7 Chair.

8 THE CHAIR: Before we go to Baffinland for
9 a response, that's also a topic that the other
10 registered intervenors could provide a response to when
11 they provide their interventions. Baffinland.

12 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

13 I'll ask Lou Kamermans to provide a response.
14 Thank you.

15 THE CHAIR: Lou Kamermans.

16 MR. KAMERMANS: Lou Kamermans, Baffinland.
17 Thank you, Madam Chair, and thank you for sharing that
18 information.

19 I want to say to begin, the November 15th date was
20 always provided to give an idea of when we could ship
21 until, but what we're proposing will always determine
22 the length of our shipping season will be the ice
23 conditions. So we've committed not to break through
24 land-fast ice, so once -- once the ice has formed in
25 Eclipse Sound or Milne Inlet and attached to the
26 shoreline and it's continuous, and it's the ice that

1 can be used safely by the community, that -- we would
2 not ship through that. And so that's a big difference
3 between what we're proposing and what was seen at
4 Nanisivik.

5 Nanisivik involved some winter shipping where the
6 vessels went through land-fast ice, and when they go
7 through that ice they do leave those tracks, and
8 because the ice is attached to both shores, there's
9 nowhere for that ice to go so you wind up with that --
10 that track. So that's not what you would see with what
11 we're proposing.

12 Throughout the review we've discussed how we would
13 end the season and different concerns have been brought
14 to us. And so what we're proposing is that in addition
15 to not shipping through land-fast ice, that each year
16 we'll plan to end the season by October 31st, that all
17 the planning we do for each shipping season will be to
18 have a season that ends by October 31st, unless
19 land-fast ice appears sooner than that. Then we would
20 not go until the 31st. We'd be limited by the ice
21 conditions.

22 So this is to give the community a sense of
23 certainty that, you know, in November we would not be
24 planning to ship every year.

25 I want to be clear, though, we do want to be able
26 to ship past October 31st if the ice conditions allow

1 for it. So if no land-fast ice has appeared and it's
2 still mobile -- it's not shore-to-shore ice -- and if
3 we have experienced some downtime that wasn't
4 anticipated at Milne Port where we weren't able to get
5 all of our vessels out by the 31st, even though we
6 planned for it.

7 And so any shipping in that period would be
8 communicated to the Mittimatalik Hunters and Trappers
9 Organization and to the community more broadly through
10 our shipping monitors that work in the community to
11 communicate what we're doing.

12 One of the most important things we do each year
13 around our shipping season is we have meetings with
14 both the Hamlet of Pond Inlet and the Mittimatalik
15 Hunters and Trappers Organization, and this is so that
16 we can clearly describe what our plans are for the
17 season, when we plan to start shipping, when we plan to
18 end shipping, and what we expect or plan to implement
19 in terms of the mitigation measures we've talked about.
20 So transit restrictions, for instance, that reduce the
21 amount of potential noise disturbance to narwhal as
22 they're coming in to Eclipse Sound and Milne Inlet.

23 So those meetings will be important because
24 they'll help us communicate better with the community
25 every single year. We'll always be working together to
26 provide a better understanding of what our shipping

1 activities are going to look like, and so that they're
2 happening and that they're not going to interfere with
3 the Hamlet of Pond Inlet and the community's use of the
4 ice. That's -- we want to try to avoid that. And, of
5 course, the safety of everyone -- everyone in Pond Inlet
6 and our vessels is always a top priority.

7 And just one last thing. You mentioned the
8 narwhal and ending the shipping season. We have also
9 committed to run end of season annual clearance
10 surveys. So when the last vessel leaves, we will run a
11 survey of the shipping route to determine if any
12 narwhal are in a position where they could -- they
13 could be entrapped.

14 And, in that case, we would have the potential for
15 one of our icebreakers, a vessel that's capable of
16 going through the ice to potentially break them out, if
17 that's considered a safe option, but all of that would
18 be done working closely with the Department of
19 Fisheries and Oceans as well as the Mittimatalik
20 Hunters and Trappers Organization.

21 And so that -- when I talk about that clearance
22 survey, I mean we would be flying over the shipping
23 route and observing what the ice conditions looked like
24 and if there were any narwhal remaining in the area,
25 and if they had a clear path to leave based on the ice
26 conditions.

1 So I hope -- I hope that answered your question.
2 Qujannamiik.

3 THE CHAIR: Kaujak Komangapik.

4 MS. KOMANGAPIK: Thank you, Madam Chair. My
5 name is Kaujak Komangapik, resident of Pond Inlet.

6 Thank you, Baffinland, for the clarification, but
7 my question -- and I understand about the response and
8 the comments, and that doesn't seem to be a very good
9 answer. It appears that it's only pure speculation,
10 not official. And I already found out, like, this has
11 not really been asked and discussed about the ending
12 date of the shipping. But that's fine if I don't get a
13 response. Either way, it works and would be more
14 preferable if I'm answered.

15 My second question will be: It appears like
16 Baffinland is concentrating on narwhal only. We do not
17 rely on narwhal alone. We rely on seal, caribou, and
18 char, and also cod and other marine mammals and
19 halibut. We eat halibut as well. Has this -- have you
20 carefully looked at the seal issue and also
21 especially -- especially since we no longer have
22 caribou in our area. And also hunters -- our hunters
23 tried to harvest char, and they can hardly harvest
24 char. And right now, like, when we have seal meat as
25 our diet, have you carefully looked at the possible
26 impact on seals? That's my question.

1 For example, you, Baffinland, have been informed
2 that the narwhal are the main diet of Pond Inlet. No.
3 That is not the case. As Inuit -- as Inuit, we -- our
4 diet -- those of us who have country food diet
5 consisting of seals and use the skins for clothing. It
6 appears that seal skins are the only source of
7 traditional clothing. We eat the meat and utilize the
8 skin for clothing. Right now we rely on seal skins for
9 kamiks, wind pants, and others. And why? Because the
10 caribou calving grounds have been impacted.

11 For example, like, even though we need to make
12 clothing using caribou skins -- and I'll teach our
13 grandchildren about making caribou clothing -- but that
14 is no longer possible because we don't have caribou.
15 But we are provided some funds to purchase materials,
16 but there -- we purchase -- we can purchase ordinary
17 store-bought materials but -- since there are no more
18 caribou skins available, more discussion should ensue.

19 But as a listener, for example, it appears like
20 you, Nunavut Impact Review Board, is listening to your
21 operations and if you only say -- if you only speculate
22 that will not be the right path to take. And according
23 to Inuit traditional knowledge, for example, like
24 Charlie Inuarak, for example, and also Jeetaloo Kakee
25 are our Elders. If you only speculate, then we should
26 be taught or reprimanded instead of only pure

1 speculation. That's what Inuit Qaujimajatuqangit --
2 when it's not incorporated in the agreement.

3 So I just want to inform you about that. Thank
4 you, Madam Chair. I have no more questions. Have a
5 nice day. Thank you for coming to our community.
6 That's it.

7 THE CHAIR: Baffinland.

8 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.
9 Thank you.

10 I'd like to provide a couple of clarifications,
11 and thank you for raising your concern that this is
12 based on predictions and uncertainties, but I want to
13 confirm that the environmental assessment process is
14 based on predictions. Because this proposal is not in
15 operation yet, we do have to rely on our modelling
16 techniques and what we've learned about in the past to
17 help inform what we believe to be true in the future.

18 But I also want to share that we do have real
19 information about the project right now in its current
20 state, and we will continuously be collecting real-time
21 information both from Baffinland programs, but more
22 importantly from Inuit who are living close to the
23 project site and who will also be involved in Inuit-led
24 monitoring.

25 And I also want to acknowledge that you're
26 correct, we do speak very often about narwhal and the

1 impacts on narwhal, and the reasons for this are
2 largely because that's, in the past, often what we've
3 been asked about. We recognize the importance of
4 narwhal as a food source as well as its economic value
5 to the community, so it's been a lot of focus of our
6 conversations, but that shouldn't be believed to mean
7 that we haven't looked at the other animals that you
8 spoke about. We've also carefully considered and
9 monitored the other wildlife, caribou, char.

10 And in regards to seal, this is something we've
11 been more frequently hearing about over the last couple
12 of years, so we've been working on increasing our seal
13 monitoring, and we'll start new programs for seal
14 monitoring as early as this year, and they have been
15 included in our assessment for the Phase 2 proposal and
16 any potential impacts.

17 We're confident that we won't impact seal
18 population levels because of the timing of our shipping
19 season. We were trying to avoid those critically
20 sensitive life stages of seals, but we're also trying
21 to protect the environment from any contaminants that
22 may impact seals as a food source. So not just how
23 many seals there are but also the quality of the seals
24 and other wildlife.

25 So we are paying close attention to this, and
26 we'll continue to work with the communities and what

1 we're hearing to change or adjust our monitoring
2 programs to help inform Inuit on the questions that
3 matter most to them. Thank you.

4 THE CHAIR: Mittimatalik, Charlie Inuarak.
5 Charlie Inuarak (Elder) Questions Baffinland Iron Mines
6 Corporation

7 MR. INUARAK: I like it when we are called
8 Elders because you tend to sit down at your leisure.

9 Thank you, Madam Chair, for the opportunity to
10 speak. What Kaujak said is very accurate. That has
11 happened before, and that's why I said it's the truth.

12 When we're talking about the marine environment,
13 we are talking about the marine environment, and that's
14 where I always have some topics to discuss when we're
15 talking about marine environment because we always
16 rely -- when I used to be young, when I was travelling
17 on the water -- or the marine environment, and here I
18 am an Elder. So we won't be talking about narwhals
19 indefinitely, but we want to talk about narwhals while
20 we have the opportunity.

21 During the summertime, it is factual that there
22 are hardly any narwhal in our area. Sometimes there
23 are no narwhal at all for many days, and the people go
24 out hunting with their families when the ice recedes,
25 and those hunters bring their children, grandchildren,
26 great grandchildren, and also their children also have

1 wives. Based on their traditions, they go out hunting
2 to hunt for narwhals and other wildlife so they can --
3 and some of them will plan for the winter such as
4 trying to harvest seal so they'll have seal skins so
5 they can build kamiks for their children and
6 grandchildren. That's why they try to hunt seals for
7 their skins.

8 And it's entirely up to the woman, especially when
9 they get seals. She can seal it -- she can sell it
10 or -- but most of the time they keep the skins for
11 themselves so when the wintertime comes, their children
12 will have proper warm mitts and clothing. That is the
13 tradition of the hunters who are out hunting in the
14 summertime.

15 This past summer and last year, a lot of hunters
16 failed to harvest narwhal. They just basically spent
17 the time in that region. And they're -- when they are
18 not harvesting seals or marine mammals, then they just
19 return to the community empty-handed to purchase food
20 from the stores. They rely on the store-bought food,
21 and then most of them cook fish or seal or char. Their
22 diet -- like, they have to eat on a daily basis. This
23 past summer and also last year, the people did not
24 harvest narwhals, a lot of them.

25 They went to the area where Baffinland provided
26 some funds to Qikiqtani Inuit Association in the event

1 the hunters failed to harvest anything, if they lost
2 anything. If they failed to harvest anything, then
3 they could be compensated by QIA. It's very -- it's
4 not a very simple process to access those funds. Like,
5 they have been generously provided by Baffinland but
6 almost impossible to get paid. And, to date, some of
7 the hunters still have not been paid when they applied
8 since last summer. Like, the process should be
9 improved. The compensation process should be improved.

10 And also, we hunters and trappers have lots of
11 narwhal quotas in this area. They have lots of tags
12 available and sometimes one wants to go out to another
13 settlement to harvest narwhal. Like, during the
14 summertime we catch the narwhal skins, so it will be
15 good when the springtime arrives, and we will have a
16 feast of each skin. People try to go out hunting when
17 there's a time where you can catch your harvest. We --
18 Hunters and Trappers Association has lots of narwhal
19 tags, and it's almost impossible to go travel to
20 another community to harvest narwhal. Only after their
21 hunters and trappers organization approves this
22 request, then I go to Arctic Bay. And sometimes I get
23 approved, but sometimes other communities refuse
24 outsiders to harvest narwhal because they want to
25 ensure that their tags are not depleted.

26 So, Madam Chair, I encourage you, DFO should allow

1 individuals from one community to go to another
2 community to harvest wildlife or narwhal especially, so
3 that's one of our biggest concerns. That's why we are
4 angry about this. So we inform you -- like, because
5 Department of Fisheries and Ocean refuses -- won't
6 allow hunters from Pond Inlet to go to the other
7 communities to harvest narwhal. That should be
8 rectified.

9 So, Madam Chair, I am offering this to you so this
10 can be dealt with, because the mining will increase,
11 then the wildlife will further be depleted. So this
12 should probably -- should be carefully looked at. I
13 say that as an Elder.

14 And also -- I know I've been speaking quite a bit,
15 but, Madam Chair, I want to inform you. We created an
16 organization, a high Arctic organization that we will
17 be -- that -- we'll be intervenors next time you hear
18 some technical meetings and whatnot. Our reasoning is,
19 like, Baffinland provides huge amounts of funds for the
20 benefit of the Inuit, and they provide funds to
21 Qikiqtani Inuit Association, and the funds provided to
22 QIA, they are automatically locked in the bank. Right
23 now we can't access them. So that is one of our
24 biggest problems, and that's why we get angry as a
25 result because -- to Baffinland.

26 And also, Qikiqtani Inuit Association does not

1 provide us these royalties or benefits. This process
2 should be improved. Our organization and -- or the
3 fact that the communities will be more satisfied, maybe
4 we will send a letter to Nunavut Impact Review Board to
5 be recognized as intervenors so we can be included in
6 various discussions. I have one more comment.

7 When we make a request to get assistance, we wrote
8 to the mayor of Pond Inlet asking assistance from the
9 mayor of Pond Inlet. Maybe the mayor has the letter
10 from us requesting -- it's called Agreement 5, Hunter
11 Agreement 5. We want to partake in the discussion
12 pertaining to Agreement 5 because we are now an
13 organization, and the federal government has approved
14 our establishment, and we want to partake in discussion
15 of maybe Article 5.

16 And Kaujak was saying people rely on country food
17 otherwise their bodies deteriorate. They need country
18 food, and they get cold really quickly and get sick
19 easily; that we will try to rectify this, and thank you
20 for the opportunity, Madam Chair. That's it for me.

21 THE CHAIR: If any of the registered
22 intervenors want to respond, they can provide that in
23 their intervention after they've been sworn in.

24 Baffinland.

25 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.
26 Madam Chair, we won't be weighing in on any of the

1 conversations for other parties. I'll just speak to
2 how Baffinland is trying to address some of the
3 concerns that were raised.

4 We'll continue to monitor the environment. We'll
5 continue to change our operations to respond to what
6 we're seeing and hearing. We've provided some examples
7 of how we've changed our operations in direct response
8 to what we've heard from Pond Inlet describing lower
9 narwhal numbers during our shipping seasons.

10 We've also strengthened our commitments to involve
11 Inuit in the decision-making around how we change those
12 operations and have provided funding to the community
13 to help offset some of the experiences that are
14 changing through the Pond Inlet harvesters enabling
15 program as well as through the Tusaqtavut working
16 group. Thank you.

17 THE CHAIR: I don't want to make a mistake
18 in Inuktitut. I'm going to speak -- the Nunavut Impact
19 Review Board within its mandate cannot provide
20 recommendations about economic benefits. That's
21 carried by -- that would be through the Qikiqtani Inuit
22 Association as they -- they're the ones that negotiate
23 an impact benefit agreement, just a clarification on
24 that matter.

25 Continuing with questions to the proponent,
26 Mittimatalik Hunters and Trappers Organization, Eric

1 Ootoovak.

2 Mittimatalik Hunters and Trappers Organization

3 Questions Baffinland Iron Mines Corporation

4 MR. OOTOOVAK: Thank you, Madam Chair.

5 Mr. Murphy --

6 THE CHAIR: Mittimatalik Hunters and

7 Trappers Organization, Eamon Murphy.

8 MR. MURPHY: Mittimatalik Hunters and

9 Trappers Organization, Eamon Murphy.

10 Good morning, Madam Chair, and thank you.

11 Madam Chair, in terms of the order of our team, I
12 will be beginning. I will pass the microphone over to
13 Mr. Ootoovak and Mr. Inuarak. It will then go to
14 Dr. Valeria Vergara, then on to Ms. Amanda Hanson-Main,
15 and then back to myself for final questions.

16 Madam Chair, before we begin with our questions, I
17 have a few comments. I want to make it clear on the
18 record that Mittimatalik Hunters and Trappers
19 Organization has a very serious concern with the way in
20 which the manner of questioning has been changed twice
21 this week, first on Wednesday by limiting questions and
22 now this morning by directing the questions that
23 haven't been asked be in writing.

24 Madam Chair, there's been no opportunity for the
25 parties to provide any input into the Board's direction
26 on this. On the questions that are outstanding nor in

1 the manner in which presentations will be made moving
2 forward. If we heard you correctly this morning, the
3 presentations may be lumped together. We don't know
4 whether that means our presentation will be joined with
5 another, nor do we know when that presentation will
6 happen.

7 And, Madam Chair, with respect to your direction
8 that remaining questions that haven't been asked be
9 done in writing, with great respect, that doesn't take
10 into account the Inuit oral tradition that is required
11 for the Board to make its decision.

12 Madam Chair, it's a requirement under the Nunavut
13 Agreement for Inuit oral participation to be full and
14 complete. It's also a requirement of this Board's
15 rules of procedure, and, Madam Chair, we're very
16 concerned that the sudden change in direction on the
17 way in which questions are to be asked is a significant
18 breach of procedural fairness and also a significant
19 prejudice to my client.

20 And so we have an oral motion that we wish to
21 bring under Rule 7.6 of the Board's rules of procedure.
22 We understand that there's a meeting at 12:30 to
23 discuss motions; however, we want to make it clear to
24 the Board and to all the parties that our motion is an
25 oral motion. It must be heard on the record. It must
26 be heard by this Board, all the parties, and all the

1 community members that are listening. We believe it's
2 been a very significant curtailment of Mittimatalik's
3 Hunter and Trapper Organization's right and ability to
4 participate in the hearing by having been told that
5 their questions must proceed in writing for those
6 questions that haven't been asked this week.

7 So I'm prepared to provide that oral motion to you
8 now. If we must wait until the meeting at 12:30, I
9 want to make it clear that that motion must happen
10 today, Madam Chair. It must be heard today by the
11 Board before we break for the remainder of the weekend,
12 and when I am --

13 THE CHAIR: NIRB legal counsel.

14 MR. MURPHY: Madam Chair, may I proceed?

15 MS. MEADOWS: Madam Chair, Teresa Meadows,
16 legal counsel for the Nunavut Impact Review Board.

17 Mr. Murphy, the hearing of oral motions or indeed
18 the management of any motions that have arisen in the
19 course of these proceedings, the process and the item
20 on the agenda is determined by the Board and not by the
21 participants applying for those motions. The purpose
22 of the discussion at lunchtime is to discuss the
23 process for bringing forward these motions. You will
24 have an opportunity at that time to advise that you
25 require it to be brought in an oral form before the
26 Board and during these proceedings.

1 At this point, however, the questioning and the
2 discussion of the motions has not been added to the
3 agenda, and the Board requires you to observe the rules
4 that have been laid out in terms of dealing with this
5 procedural motion. Additional direction will be
6 provided by the Board following our meeting and our
7 discussion.

8 We do understand your position, and your ability
9 to argue an oral motion will be considered following
10 the discussions with all of the other intervenors.

11 Madam Chair, with respect to the question to --
12 from the intervenor regarding changes to their
13 presentation, Madam Chair's remarks were very clear
14 that it was with respect to regulatory authorities and
15 not other intervenors, so your presentation rights have
16 not been affected. They are -- remain as they were
17 directed on the agenda. Thank you, Madam Chair.

18 THE CHAIR: Mittimatalik Hunters and
19 Trappers Organization, Eamon Murphy.

20 MR. MURPHY: Qujannamiik, Madam Chair.
21 Thank you, Ms. Meadows.

22 We just wanted to make it clear that -- to the
23 parties that are participating that we have this oral
24 motion to bring, and we think it's important that
25 everybody hears that. It's why I mentioned it a few
26 minutes ago, and I appreciate your comments, and we'll

1 be prepared to bring that motion as soon as we receive
2 further direction from you, but we -- we would ask very
3 strongly that it happen today before the -- before we
4 break for the weekend.

5 Madam Chair, I'd like to pass this over to
6 Mr. Ootoovak. He is going to begin for Mittimatalik
7 Hunters and Trappers Organization. Qujannamiik.

8 THE CHAIR: Mittimatalik Hunters and
9 Trappers Organization, Eric Ootoovak.

10 MR. OOTOOVAK: Eric Ootoovak, (INUKTITUT
11 SPOKEN - NO TRANSLATION). Thank you, Madam Chair.

12 I respect you as a Chairperson because I am not.
13 I support you and respect you. I'm going to speak
14 English.

15 The Mittimatalik Hunters and Trappers Organization
16 is the designated body under the Nunavut Act, and
17 that's responsible to oversee the oversight of
18 harvesting rights by Inuit. This means that we have a
19 solemn duty to carefully manage the constitutionally
20 protected harvesting rights of Inuit.

21 We carry great responsibility that we do not
22 believe we can fulfill in the present circumstances of
23 this hearing.

24 On Monday, under the agenda Item Number 3(i)
25 "Identification of Objections and Motions", we were not
26 presented with an opportunity to raise our objections

1 during this oral proceeding. Madam Chair, we expected
2 to be able to raise this objection on Day 1 of the
3 technical session, not the very last day.

4 Given our role to manage harvesting rights, the
5 Mittimatalik Hunters and Trappers Organization would
6 like to raise our strong objection that Nunavut Impact
7 Review Board has decided to proceed with this hearing
8 despite our prior motion and the support of many
9 organizations around the table here.

10 Iksivauta, this assessment has been incredibly
11 difficult for Mittimatalik Hunters and Trappers
12 Organization to participate in. Despite the limited
13 participation funding awarded, we have not been fully
14 resourced in order to engage effectively. Well, far
15 from it, actually. We had to pursue two different
16 additional grant funding arrangements to properly
17 prepare for this hearing. It's been so hard on us,
18 Iksivauta, because we have a lot at stake to consider
19 with this Phase 2 proposal.

20 As you see, our team of experts and legal counsel
21 are not present here. They cannot properly support us.
22 This process is unfair to us first because we can't
23 have our technical advisor, experts, or legal counsel
24 here in person, force you to not be in a
25 (INDISCERNIBLE) effective participation, Iksivauta.

26 Even if we were able to travel -- even if they

1 were able to travel here today, travel during the
2 second wave of COVID-19 is not advisable across Canada.
3 In fact, on Friday before the proceedings started, our
4 Prime Minister said Canadians should avoid travel of
5 any kind, including domestic travel.

6 Iksivauta, the two weeks of isolation ahead of
7 these hearings is an acceptable demand of people, and
8 one could -- and one we could not afford to
9 accommodate. There is no hotel rooms available here in
10 Pond Inlet. Home (INDISCERNIBLE) for people coming --

11 THE CHAIR: NIRB legal counsel.

12 MS. MEADOWS: Thank you, Madam Chair.

13 Teresa Meadows, legal counsel for the Nunavut Impact
14 Review Board.

15 While the Board definitely recognizes that all
16 parties who are participating have had significant
17 sacrifices in order to be able to be here and in order
18 to be able to attend these proceedings and participate
19 in these proceedings, with the greatest of respect, the
20 Board has already made the ruling that these hearings
21 will be underway.

22 The Board considered the motion of the
23 Mittimatalik Hunters and Trappers Organization, but
24 will not be reconsidering that while we are currently
25 present.

26 We ask, with the greatest of respect -- and we do

1 understand that the people of Mittimatalik have a great
2 deal to say. They have a great deal of knowledge to
3 share with the Board. They have many questions. The
4 Board is here now, and the Board is listening. To
5 revisit the decision to be here, the time has passed.
6 The Board asks that the Mittimatalik Hunters and
7 Trappers Organization please proceed with your
8 questions on the marine environment. Thank you, Madam
9 Chair.

10 THE CHAIR: Mittimatalik Hunters and
11 Trappers Organization, Eric Ootoovak.

12 MR. OOTOOVAK: Qujannamiik, Iksivauta.
13 Eric Ootoovak, Mittimatalik Hunters and Trappers
14 Organization.

15 I just want to make it clear that this is not a
16 motion, Iksivauta. It's an objection.

17 THE CHAIR: NIRB legal counsel.

18 MS. MEADOWS: The Mittimatalik Hunters and
19 Trappers Organization objections are indeed motions
20 under our rules, and as your legal counsel has already
21 indicated that the Mittimatalik Hunters and Trappers
22 Organization will be bringing a motion with respect to
23 questioning, the Mittimatalik Hunters and Trappers
24 Organization has already brought a motion to suspend
25 the hearing, and the Mittimatalik Hunters and Trappers
26 Organization -- at this point, the statement that you

1 are making is actually an appeal of that decision, of
2 the Nunavut Impact Review Board's decision. The Board
3 is present, is available to be hearing from the
4 communities and from all of the registered intervenors
5 that are around the table, and at this point the
6 prehearing conference decision that was issued in
7 October 30th coming out of the prehearing conference
8 and community roundtable made it clear that written
9 motions were required.

10 The Mittimatalik Hunters and Trappers Organization
11 did bring a written motion. The Board has considered
12 that motion to suspend the hearing and has made the
13 decision to proceed with these proceedings now.

14 Again, I ask that the Mittimatalik Hunters and
15 Trappers Organization please provide your questions on
16 the marine environment. The motions will be dealt with
17 separately, and we will be discussing the process for
18 doing so in the teleconference today at 12:30. Thank
19 you, Madam Chair.

20 THE CHAIR: Mittimatalik Hunters and
21 Trappers Organization, Eric Ootoovak.

22 MR. OOTOOVAK: Eric Ootoovak, Mittimatalik
23 Hunters and Trappers Organization. Thank you,
24 Chairperson.

25 Nunavut Impact Review Board's rules of proceedings
26 state that if we were not to attend this hearing, it

1 would constitute a waiver of all objections to the
2 agreements -- orders -- or rulings reached in this
3 proceeding, and if it's for this reason we -- that we
4 attend. So, in closing, I would like to make it clear
5 that we are proceeding under the protest and duress.
6 Mittimatalik Hunters and Trappers Organization submits
7 our objections to proceedings for this reason.

8 And for questioning -- more questions, I'll -- I'm
9 going to first pass it to Mr. Inuarak. Once he's done
10 asking questions, it will be my turn to make it clear.
11 Thank you, Iksivauta.

12 THE CHAIR: Mittimatalik Hunters and
13 Trap -- NIRB legal counsel.

14 MS. MEADOWS: Thank you, Madam Chair.
15 Teresa Meadows, legal counsel for the Nunavut Impact
16 Review Board. Thank you.

17 Your objection has been noted on the record.

18 THE CHAIR: Mittimatalik Hunters and
19 Trappers Organization, Enookie Inuarak.

20 MR. INUARAK: Thank you, Chairperson.
21 Enookie Inuarak from Mittimatalik Hunters and Trappers.

22 While we go to questions, I would like to mention
23 again about what was discussed. Moses Koonark, the
24 deputy mayor, was talking about narwhals, that they
25 don't have enough fat. Although there was some
26 questions answered or comments answered by Baffinland

1 in regards to the winter feeding grounds, if that is
2 the case, then the ones in Arctic Bay and in Clyde
3 River, the narwhals that are going there as well as to
4 Kuuaqtu [phonetic], they should be skinny as well.

5 So when Pond Inlet makes statements and
6 observations that when they're saying that the narwhal
7 are skinny, and the other communities are not saying
8 that same observation, so would that need for more
9 research? So I mention that.

10 The question -- if you go to Slide 55, if you
11 could put it on the screen there. It's a presentation
12 by Baffinland.

13 On Slide 55, it talks about how many narwhals are
14 caught every year, so I want to ask Baffinland in
15 regards to these numbers, can they be broke down when
16 the narwhals be caught, whether it would be in the
17 spring, whether it be in the summer, or in the fall,
18 and where the narwhals that are caught are located
19 because this question is: In the springtime at the
20 floe edge there is narwhal caught. We have two floe
21 edge hunting areas on the north side towards
22 Arctic Bay. In the summertime when the narwhals go
23 through -- so when the narwhals are travelling in the
24 summer, we go to those particular areas where the
25 narwhal is going to pass through. We know that these
26 are good hunting grounds for narwhal and where they

1 should be and in the fall as well.

2 So in terms of breaking down where and when
3 narwhals are caught, I would like to ask that question.

4 THE CHAIR: So this question by Enookie
5 Inaurak talking about the community, perhaps the
6 community hunters can also answer that question as
7 well, so feedback that can be provided to the Board by
8 the community during the community roundtable.

9 Baffinland.

10 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

11 Thank you for the question, and we do have a
12 presentation of this data in one form up to 2015, and
13 that information was provided in our food security
14 assessment report, but I think what's really important
15 to note here is that this data is not Baffinland data.
16 It is -- it has been provided to us from the Department
17 of Fisheries and Oceans as reported to them directly by
18 the Mittimatalik Hunters and Trappers Organization. So
19 the data is actually from Mittimatalik Hunters and
20 Trappers Organization, so the presentation by breakdown
21 of season and where they were caught would be dependent
22 on if the organization were collecting and reporting
23 that information themselves. Thank you.

24 THE CHAIR: Mittimatalik Hunters and
25 Trappers Organization, Enookie Inuarak.

26 MR. INUARAK: Thank you, Chairperson.

1 Enookie Inuarak from the Hunters and Trappers
2 Association.

3 It is unfortunate that you cannot provide the full
4 information. There would be some indication that in
5 the summer, in the spring, and in the fall -- so for
6 those that are caught in the summer, there is something
7 very significant to note that there are less -- a lot
8 less narwhals in the summertime.

9 To continue, in Slide 38 there's -- in the
10 presentation there is also a breakdown of months or the
11 number of ships are noted. So in August there is 68;
12 in September there is 66. In 2019 there were 76 ships,
13 ore carriers. In 2020, there were 72 ore carriers. So
14 in August it says there were 68. So there is four less
15 from 2020 with the ships travelling. So in one
16 month -- if there are that many in one month, within a
17 month period and in the previous years, so if the
18 numbers are basically the same from the previous years,
19 so the effect is very significant to our wildlife and
20 how the environment is affected and for the Inuit being
21 affected and our traditional way of life being
22 affected.

23 So in one month -- there will be a large increase
24 just within one month. There's a concern. And you
25 keep saying that you are not affecting and you are
26 not -- this project is not affecting.

1 So yesterday when you talk with your Panel, there
2 was a question -- is it good that -- it's okay if I say
3 her name? Madeleine Qumuatuq asked a question
4 yesterday, Are those -- if the animal were to
5 completely disappear because there are effects being
6 talked about, if they were to completely disappear,
7 what mitigation or what benefits would Baffinland be
8 providing?

9 So Baffinland indicated -- Megan Lord-Hoyle talked
10 about benefits that would be provided. Money would be
11 broken into the affected communities and gas to the
12 harvesters. There was a mention of those.

13 Chairperson, if we are going to lose our
14 wildlife -- I'm just trying to make it a very -- a
15 summary, trying to make it shorter.

16 My first question would be: Has there been
17 research done -- if the wildlife is being affected and
18 they actually do move and we don't have any wildlife
19 around here, is there research on how -- what our loss
20 would be like? This is our question.

21 So in quick form, our tradition -- our traditional
22 knowledge, our seal skin and caribou skin -- ability to
23 work on those types of skins and also food preparation,
24 being able to learn about the land, knowing about our
25 environment, our air. And dogs, looking after dogs,
26 team dogs, and also -- so dog teams are being fed with

1 seal and other things like narwhal.

2 So our cultural loss, Inuit Qaujimajatuqangit
3 knowledge, and also for our body as well in terms of
4 health, mental health, and our language. So these
5 things that relate to wildlife, the language lost in
6 regards to -- so it's separate from traditional or
7 cultural knowledge and also the best food in the
8 Arctic.

9 So if there's a loss to wildlife -- these are the
10 effects that are from the loss of wildlife. So I'll
11 shorten that.

12 If Phase 2 is to go ahead and there's an increase
13 to the shipping, there would be a greater impact. So
14 for the narwhals that are disappearing, what -- what am
15 I going to teach my children? So my children, if they
16 are grown, they will have limited knowledge. What are
17 they going to teach their children? So this is a big
18 concern. In terms of Inuit Qaujimajatuqangit, we could
19 disappear completely.

20 So the question to Baffinland is this -- and also
21 to Qikiqtani Inuit Association: The best food and the
22 things that you have learned and other wisdoms that you
23 have learned from your previous traditions, your
24 clothing, if they would be affected? The things
25 that -- the benefits that you are providing here, the
26 benefits that you're talking about, are they sufficient

1 to replace that loss? If you were to lose your
2 language and your knowledge about things and your food
3 and your clothing, if you are going to lose those sorts
4 of things in that same instance, the benefits that you
5 are providing, is it sufficient?

6 So the question to Qikiqtani Inuit Association in
7 terms of your negotiations to Baffinland, and you
8 negotiated and agreed to it, is that sufficient? If
9 we're going to have such a loss, is that going to be
10 sufficient to cover our loss?

11 So to Nunavut Tunngavik and Qikiqtani Inuit
12 Association, to the Government of Nunavut, please
13 understand clearly that we are deeply concerned, and
14 they should be concerned as well. Yes. We want
15 employment. We know that a few people work there. We
16 already know that, that only a few people would work
17 there. We are not iron mine -- we're not all miners,
18 so the whole community will be affected and the
19 generations after them will be affected. We need to
20 consider that. Thank you, Chairperson.

21 THE CHAIR: Before we go to our response
22 from Baffinland, we're going to break for lunch and
23 reconvene at 1:15.

24 _____

25 PROCEEDINGS ADJOURNED UNTIL 1:15 PM

26 _____

1 (PROCEEDINGS COMMENCED AT 1:16 PM)

2 MS. COSTELLO: Good afternoon, ladies and
3 gentlemen. My name is Karen Costello, Nunavut Impact
4 Review Board staff.

5 The Panel has advise that we will reconvene at
6 1:30. Thank you.

7 (ADJOURNMENT)

8 MS. COSTELLO: Good afternoon. Karen
9 Costello, Nunavut Impact Review Board staff.

10 The Panel has asked me to advise that there will
11 be an additional 15-minute hold. They will return in
12 15 minutes if there is any additional delay required.
13 Thank you.

14 (ADJOURNMENT)

15 THE CHAIR: Welcome back, everyone.

16 Before we continue with questions to the proponent
17 and questions -- sorry, questions to the proponent,
18 NIRB legal counsel.

19 Decision Regarding an Oral Motion to be made by the
20 Mittimatalik Hunters and Trappers Organization

21 MS. MEADOWS: Thank you, Madam Chair.

22 Teresa Meadows, legal counsel for the Nunavut Impact
23 Review Board.

24 So, Madam Chair, as you heard this morning, the
25 Mittimatalik Hunters and Trappers Organization wishes
26 to bring an oral motion and wishes to have that motion

1 heard urgently before the Board.

2 Madam Chair, the schedule and agenda did not have
3 the Board sitting for an evening session tonight.
4 However, recognizing the urgency and pressing nature of
5 the motion, the Board is directing all parties to be
6 prepared to return here at 6:30 where the Board will
7 hear the oral motion of the Mittimatalik Hunters and
8 Trappers Organization, the responses to the oral
9 motion, and any other oral motions the parties are
10 prepared to bring will be handled -- will be heard
11 tonight so that the Board has an opportunity to
12 consider the matters that are raised in those oral
13 motions tomorrow when the Panel is not sitting and when
14 the hearing is adjourned. Thank you, Madam Chair.

15 THE CHAIR: Okay. Continuing with
16 questions to the proponent regarding the marine
17 environment response from Baffinland.

18 MS. LORD-HOYLE: Megan Lord-Hoyle, I'll ask
19 Udlu Hanson to respond. Thank you.

20 THE CHAIR: Udlu Hanson.

21 MS. HANSON: Thank you, Chair.

22 Thank you, Enookie, for your question, and -- and
23 the way I'd like to -- to answer it is in broader
24 general terms because I'll be explaining the -- all the
25 benefits in the socio-economic presentation, but I
26 guess where I wanted to start was in what seems to be

1 coming up over the last few days about losing wildlife
2 and losing narwhals and seals.

3 There is no expectation from Baffinland to lose
4 narwhals or seals or wildlife. Actually, quite often
5 our CEO says if that's what would happen, then we
6 shouldn't be doing it. We've done the research. You
7 ask about have we done the research about benefits and
8 whether or not they'll be sufficient. Yes. There's a
9 lot of research that we have done, and you've heard a
10 lot of it this week. I'll get into that as well.

11 But what I wanted to talk about were the benefits
12 first and how -- the benefits really could be
13 interpreted in a couple different ways. The benefits
14 we provide are to accommodate and recognize changes in
15 hunting experiences. It's not to compensate you for
16 losing wildlife. The wildlife compensation fund is to
17 help people who require assistance because of changes
18 in their hunting experiences. We believe there will be
19 changes. We believe there will be impacts.

20 But those changes are predicted, and they will be
21 monitored, and we will use mitigating measures that
22 will be developed with Inuit, and we will try to
23 minimize the impacts and at all costs try and avoid
24 them, obviously. But, again, the benefits and
25 royalties are not to make up for losing wildlife.

26 In one of your last comments, you say the whole

1 community will be affected and generations after. I
2 can't help but think that -- I sure hope so. I was
3 once told by a mayor that you can tell who works for
4 Baffinland in the communities. You can tell by, in
5 most cases, the Ski-Doos or the boats or whatever
6 happens to be outside that they would use for
7 harvesting.

8 Change is scary. The unknown is even scarier. As
9 I -- as I noted, we've done the research, and we've
10 included research on the impacted communities with
11 regards to food insecurity, overcrowded houses, high
12 unemployment rates. So we should ask: Should change
13 be avoided? When I said I hope that there's change, I
14 hope that this project would affect positive change.

15 What if we are right about the adaptive management
16 plan, and what if Inuit are at the decision-making
17 about all the mitigating measures and monitoring and
18 research? So far, our predictions have been correct
19 about wildlife and about the environment.

20 Maybe we didn't do a great job. I know we didn't
21 do a great job in ensuring that people understood what
22 we predicted those changes to be. But what if our
23 predictions about royalties are correct? \$2 billion.
24 1.4 billion -- billion, not million -- billion to go to
25 Nunavut Tunngavik Incorporated. 1 billion to go to
26 Qikiqtani Inuit Association. 679 million to go to the

1 Government of Nunavut.

2 We have the opportunity for Inuit to be the
3 decision-makers with the adaptive management plan with
4 the Inuit communities. We have the opportunity for
5 Inuit to be the drivers of change, the positive change
6 that I was talking about, not government, not the
7 Government of Nunavut, not the government -- the
8 federal government, but Inuit, and I love that question
9 yesterday asked by the Elder -- I really thought that
10 question about, When you say "Inuit", who do you mean?
11 In this case, for Inuit to be the drivers of change.

12 We can think about Inuit in the communities,
13 Inuit -- Inuit who work -- who work at the mine or
14 don't. I mean, Inuit in the communities. Inuit will
15 hold the wealth and will be resourced stewards of the
16 land. Qujannamiik.

17 THE CHAIR: Mittimatalik Hunters and
18 Trappers Organization, Enookie Inuarak.

19 MR. INUARAK: Thank you, Madam Chair, and,
20 Baffinland, for your answer. Enookie Inuarak,
21 Mittimatalik Hunters and Trappers Organization.

22 Maybe in English. When you -- with wealth, Inuit
23 do have wealth in the culture in our ways, and when you
24 talk about billions, is that comparable? And also in
25 Inuktitut, the royalties and benefits you mentioned,
26 when they're not arriving to the Inuit who are

1 impacted, is that not a concern? Like, those who are
2 not impacted are the holders of these benefits. Is
3 that correct? Is that adequate or right? I'm not
4 trying to argue, but we need to set these plans
5 properly, and the -- and the adapted management will be
6 used to move forward. And when they're incomplete and
7 there's a public hearing at the same time -- in English
8 I will -- how can we be certain when adaptive
9 management are not in place but overall just generally
10 mentioned? Qujannamiik.

11 THE CHAIR: Baffinland.

12 MS. LORD-HOYLE: Megan Lord-Hoyle. I'll ask
13 Udlu Hanson to respond. Thank you.

14 THE CHAIR: Udlu Hanson.

15 MS. HANSON: Thank you, Chair. I heard a
16 couple questions in there. Thank you very much.

17 In terms of wealth, I already think Inuit are the
18 richest in the world. We're rich in culture. We're
19 rich with our connection to the land. We're rich in
20 our relationships with ourselves, with -- with our
21 Elders. But I also believe we can be rich in -- with
22 money. We can have it all. I understand that there's
23 concern from the communities about not being able to
24 see the benefits of the mine, the benefits of the
25 project.

26 You know, Baffinland just recently started to

1 develop the -- the direct benefits sheets because we
2 understood we were doing such a poor job of explaining
3 what benefits we're providing to the communities. So
4 we -- we actually have them on the registry, and I'm
5 not going to go through all of them because what you
6 feel is what you feel. We can't try and convince you
7 that we've -- we have been providing you with
8 benefits -- the company has been providing the
9 communities with benefits.

10 But what -- what we can say is that the Inuit
11 Certainty Agreement outlines far more benefits, and
12 what the Qikiqtani Inuit Association has said and
13 negotiated in the Inuit Certainty Agreement is that
14 they will have a special agreement with the communities
15 under a community direct agreement. I'm not sure of
16 the wording. I don't want to get myself in trouble
17 here. I'm looking over at the Qikiqtani Inuit
18 Association. But there is wording in the -- in the
19 Inuit Certainty Agreement that says that the
20 communities will receive direct benefits.

21 My last point on that is the Nunavut Agreement was
22 designed in a way that benefit will be shared by all.
23 The Nunavut Tunngavik Incorporated organization created
24 the resource revenue sharing policy. The Qikiqtani
25 Inuit Association as a designated Inuit organization
26 negotiates on behalf of Inuit that impact benefit

1 agreements.

2 So for Baffinland, we don't have a say on how
3 communities are to be directly benefitted. There's --
4 we can only negotiate with Qikiqtani, and -- and I
5 honestly believe that's the way it should be.

6 The last question you had was: How can we be
7 certain about the adaptive management plan when there's
8 no details? It was designed that way because we -- the
9 Qikiqtani Inuit Association did not want to -- and
10 I'm -- I'll leave it to them to explain it, but this is
11 how it was explained to us, and we fully agree. We
12 don't -- we didn't want to negotiate all the details.
13 We want the impacted communities to help us work out
14 all the details of that plan, all the details of the
15 committees. So we look forward to doing that. We want
16 it to be what you want it to be. But what it does is
17 it commits Baffinland. We're committed to that
18 management plan.

19 THE CHAIR: Mittimatalik Hunters and
20 Trappers Organization, Enookie Inuarak.

21 MR. INUARAK: Thank you, Madam Chair.

22 Baffinland. Enookie Inuarak, Mittimatalik Hunters
23 and Trappers.

24 The discussions, there will be more questions
25 with -- from hunters and -- other hunters and trappers,
26 and so I'll pass that onto our Chair. Thank you, Madam

1 Chair.

2 THE CHAIR: Eric Ootoovak.

3 MR. OOTOOVAK: Eric Ootoovak, Mittimatalik
4 Hunters and Trappers. Thank you, Madam Chair.

5 First of all, I would say -- I won't ask a new
6 question. We are dealing with a difficult issue. Many
7 questions have been raised and responded to, but I will
8 have questions on those that have not been responded
9 to. And the recent responses and -- and as some we
10 heard this morning, I will have questions on those.
11 Thank you.

12 First of all, with respect to -- this is not
13 really directed to Mary River. Qikiqtani will have
14 their response. However, the reports on -- on page --
15 when you look at page 6 -- my apologies -- page 7, on
16 review and assessment of Inuit Qaujimajatuqangit, IQ,
17 and on looking at the page 41 regarding Imiliit, why --
18 the question have been: Why is that the best response?
19 I have had that question before, but no responses were
20 given when we ask those questions on difficult issue
21 what we were discussing.

22 We're -- as Inuit, we are part of the Nunavut Land
23 Claims Agreement. As First People, we are stewards of
24 our land and our -- and our waters, and Inuit must be
25 prioritized when -- when this impacts Nunavut or our
26 Nunavut area, and the -- and we have to be prioritized

1 in particular in the agreement, Article 15. I will be
2 dealing with waters regarding Imiliit.

3 THE INTERPRETER: I don't know what that is in
4 English.

5 MR. OOTOOVAK: Since -- since Baffinland
6 arrived, our hunters have been reduced in their -- in
7 their use of the waters in the area. So the question
8 to this in particular to Qikiqtani and Nunavut
9 Tunngavik -- or including Nunavut Tunngavik, Inuit,
10 they, as First People in the agreement, it says that
11 Inuit will be prioritized when it comes to hunting
12 activities or interests.

13 The Qikiqtani Inuit Association, are you going to
14 prioritize Inuit interests as Baffinland before we --
15 before you make your decision? We -- we know Lancaster
16 Sound will be turned into a reserve, and I include --
17 we included Imiliit, and we wanted that included in
18 (INUKTITUT SPOKEN - NO TRANSLATION) we call -- it's
19 called a protected area because it's an important
20 hunting ground.

21 When Baffinland arrive, they basically told --
22 told us where to go on the site. So I have a question
23 directly to that. Imiliit. If that can be responded
24 to. Thank you.

25 THE CHAIR: The interpreter doesn't have
26 the name for Imiliit. Can you spell that in English.

1 MR. OOTOOVAK: Qujannamiik, Iksivauta. Eric
2 Ootoovak, Mittimatalik Hunters and Trappers
3 Association.

4 I believe you asked what Imiliit is or Nunavut
5 Agreement is. It's namely Section 15.1.1.

6 THE CHAIR: Sorry. Move on. Baffinland
7 response.

8 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

9 And I believe the English word for Imiliit is
10 Ragged Island. It's the anchorage area that Baffinland
11 currently uses and proposes to continue using for
12 Phase 2.

13 This is a topic of discussion that has been
14 ongoing between us for a number of years now, and we
15 have not been able to find a mutually satisfactory
16 resolution. I believe there were also questions to the
17 Qikiqtani Inuit Association and Nunavut Tunngavik
18 Incorporated that I will not speak to.

19 We first made changes to our operation in this
20 area in the middle of the season of 2017. Prior to
21 that time, we had no restrictions to our operations for
22 how we would use anchorages or what we call "drifting
23 areas". So that meant any vessels that were coming in
24 waiting to go down to port -- is that -- because
25 there's limited space and anchorages at port, we had to
26 have vessels waiting before they could come down there.

1 They could stay on anchor at Ragged Island where
2 there's three anchorages, or they could just remain
3 drifting in Eclipse Sound.

4 This caused considerable concern for the
5 community. It was interfering with a travel area and
6 hunting area. So midway through that season, we put a
7 restriction that no more than three vessels, ore
8 carriers, fuel tankers, sea lifts -- it didn't matter
9 what kind of vessel -- could be in that area, either on
10 anchorage or drifting, but the total could not exceed
11 three.

12 At the time this was discussed, the Mittimatalik
13 Hunters and Trappers Organization suggested that a
14 motion be passed that this be put in place for a number
15 of years so we could see how that was working. But to
16 my knowledge, I don't think that happened, but instead
17 we continued conversations around finding other
18 suitable locations.

19 In 2019 and '20, Baffinland prepared some options
20 analysis that were proposed by the Mittimatalik Hunters
21 and Trappers Organization for other areas that could be
22 used, including Guys Bight in Eric's harbor, and we
23 sent a memo to this effect to the hunters and trappers
24 organization, other communities, and the Board in 2020
25 that essentially laid out the reasons why we couldn't
26 find another location to be suitable at this time.

1 To allow us to take advantage of the existing
2 shipping season that we have and that we have proposed
3 for Phase 2, we continue to need a location that is
4 somewhat close to the port site that will allow for a
5 constant stream of vessels to be loaded. With
6 additional restrictions on our operations -- each
7 additional restriction puts us more and more at risk of
8 not being able to transport what we are permitted to do
9 or what we're proposing to do.

10 Those are the operational constraints that we are
11 under, and we understand the constraints that the
12 community is under, so we've communicated that we'd
13 like to continue looking for other suitable options,
14 and if we can find one, then we could look at changing
15 that anchorage location.

16 So we -- we do want to continue working with you,
17 but at this time, we are continuing to propose to use
18 the Ragged Island through the Phase 2 proposal. Thank
19 you.

20 THE CHAIR: Mittimatalik Hunters and
21 Trappers Organization, Eric Ootoovak.

22 MR. OOTOOVAK: Eric Ootoovak, Mittimatalik
23 Hunters and Trappers. Thank you, Madam Chair.

24 I asked the question here mainly because Ragged
25 Island, we have three using the anchorage, and -- and
26 these are huge ships, Madam Chair. The wildlife that

1 we depend on for food are constantly being harassed by
2 the noise involved, and they constantly have to move,
3 and we have seen them constantly moving, the narwhals,
4 during the summer, and the seals. Those that feed on
5 the bottom, when they're constantly hearing noise,
6 sometimes cannot -- cannot locate their food source.

7 We don't have whales that are relaxing, and
8 they're -- we don't have them active in -- in one area
9 but constantly moving away. That -- that was my main
10 question for -- for your note, Madam Chair.

11 And related to this question in qallunaagtitu
12 which -- on page 38, the number of ships involved in
13 the area, it says "other ships". When we were briefed
14 and without any discussions or without privilege of any
15 presentation or consultation, other ships, as we have
16 understood it, will -- will see two icebreakers in the
17 area when we were being briefed by Baffinland, and the
18 first ships that -- to arrive are two icebreakers
19 and -- and two carriers, I believe, in qallunaagtitu.

20 Upon that, the following -- 'A', if Phase 2 is
21 approved, and the icebreaker is on the way to Milne
22 Inlet and -- and if you understood me, they were across
23 each other in the area as it was suggested, and with
24 that and including Ragged Island, we would have no
25 problem that it no longer be an anchorage, and my other
26 question concerns on page 36, on the considerations on

1 shipping activities, Baffinland on annual basis have
2 put meetings before shipping season starts and
3 constantly calls and communicates with hunters and
4 trappers asking what -- inquiring about whether the
5 floe edge have no more hunting activity, and this is an
6 annual question raised.

7 When -- back in September, the committee met. I
8 didn't see it in the -- in the report. I did say then,
9 during the whole time that ice is there, they were
10 Inuit utilized. Even when the ice becomes quite
11 hazardous, we still utilize it while we wait for sea
12 mammals.

13 And -- and at the time -- at that time when
14 narwhals are coming in without -- without -- before the
15 whales are being bothered, and we utilize the area all
16 the way up to time when the ice breaks up, and
17 Baffinland had always began since -- since they started
18 to -- wanting to use the route, and you have to
19 realize, icebreakers make the biggest noises in the --
20 in the water.

21 As per Inuit knowledge, Inuit impacted still are
22 yet -- Baffinland have not taken that seriously, I want
23 to say, Madam Chair. We have -- we have none
24 mentioning this, what we constantly been raising, and I
25 always say we utilize the area the whole time the ice
26 is there. Baffinland was -- should I ask when are they

1 going to start listening to us recommending that the
2 ice -- until the time the ice breaks up, you can
3 utilize the area. So when is Baffinland going to
4 listen to the hunters and trappers? That is my
5 question, Madam Chair.

6 THE CHAIR: Baffinland.

7 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

8 I'd like first to ask Melanie Austin to respond to
9 some of the comments around noise at Ragged Island, and
10 then I'll ask Lou to speak to the question that was
11 just asked. Thank you.

12 THE CHAIR: Melanie Austin.

13 MS. AUSTIN: Thank you, Madam Chair.

14 Melanie Austin from JASCO for Baffinland.

15 I can comment about the noise of vessels at anchor
16 near Ragged Island. So the amount of sound from a
17 vessel tends to be louder when the vessels are moving
18 faster, and quite little sound is generated when the
19 vessels are sitting still or moving very slowly.

20 We did do some studies using modelling to predict
21 how much noise would be made by vessels that are on
22 anchor, including at Ragged Island, and we determined
23 that there would be very little sound that would mainly
24 come from the power-generating equipment on the vessel
25 only.

26 We also have deployed an acoustic recorder to

1 record underwater sounds at Ragged Island in 2019 and
2 the early part of 2020. So we have measurements that
3 confirm this prediction that the sounds from the
4 vessels at anchor are quiet. Thank you.

5 THE CHAIR: Lou Kamermans.

6 MR. KAMERMANS: Lou Kamermans, Baffinland.
7 Thank you, Madam Chair.

8 Could I request that Slide 37 from the marine
9 presentation be put on the screen please. So this is
10 meant to show the type of ice conditions that we could
11 be shipping in during the spring period. So I stated
12 earlier we would not break land-fast ice. We do not
13 plan at any point break land-fast ice. That -- that
14 will always be one of the triggers we use to start the
15 shipping season. So what that means is we will always
16 be shipping in some form of mobile ice, ice that is not
17 attached to the shore anymore.

18 Now, I understand that doesn't mean Inuit aren't
19 still using the ice and couldn't still use the ice, and
20 what happened this past year, which was raised, was
21 when we notified the Mittimatalik Hunters and Trappers
22 Organization that we were going to commence shipping,
23 which is a standard practice of ours -- we -- we are
24 always looking at ice conditions before the season
25 starts, and when we think that we're going to be in a
26 position soon where all the land-fast ice is broken,

1 we -- we provide a notification, as far in advance as
2 we can, to let the Mittimatalik Hunters and Trappers
3 Organization know our shipping season could begin.

4 This year we were told once we released that
5 notification that there were still people on the ice.
6 So we investigated this, and -- and this is one of the
7 reasons why we have shipping monitors in the community,
8 that it helps with this communication, and it helps us
9 investigate these items, and what we found was there
10 were some people down Eclipse Sound west of the
11 community that were on the coast but were not actually
12 using the ice.

13 This is an example of something that -- that we
14 can operationalize. We understand that we could be in
15 a position to ship when ice conditions in front of Pond
16 Inlet are still close enough or compact enough that
17 people can use it. That doesn't mean our activities
18 are necessarily overlapping with the community of Pond
19 Inlet. We just need to make sure they're not for the
20 safety of -- of the community and for the safety of our
21 vessels.

22 So just to give an idea, the image on the left of
23 this screen shows ice at nine-tenths concentration.
24 It's no longer fast to the shore, but it's breaking,
25 and it's degrading, and you can see the water. I'm
26 sure this ice could still be used when it's in front of

1 the community of Pond Inlet if there were a way to
2 access it. But I think our communication policy and
3 program that we work on with the hunters and trappers
4 organization, as well as the Hamlet of Pond Inlet, can
5 make sure we avoid any conflict with land use.

6 It should also be noted that our shipping lane is
7 much closer to Bylot Island than it is to Pond Inlet.
8 It's up to 20 kilometres between the two shores. It's
9 also worth noting that breakup happens over 14 to
10 16 days on average. So we can go from where we are
11 going through conditions like on the -- the image on
12 the far left of the screen to the image in the middle
13 of the screen quite quickly. And as we transition from
14 the nine-tenths to the six-tenths to the three-tenths,
15 you can see it's getting much more open, and -- and
16 there's clearly no overlap in the ability for us to be
17 interfering with land use on ice.

18 So in response to the Hamlet of Pond Inlet's
19 proposal with respect to icebreaking as a -- as a
20 condition to move forward with Phase 2, we have
21 proposed a system that would guarantee communication in
22 the weeks following up to us beginning shipping. It
23 would make sure we're in constant contact every day so
24 we can understand if the ice is still being used by
25 people from Pond Inlet, and if there were -- and if
26 there were potential for us to be able to ship at the

1 same time, we would be able to investigate whether we
2 needed to hold off until it was safe to make the
3 transits.

4 So safety is always a top priority for Baffinland.
5 I think we already have a system set up of working
6 together around the beginning of the shipping season,
7 and this can continue under Phase 2 to keep everybody
8 safe. Thank you.

9 THE CHAIR: Mittimatalik Hunters and
10 Trappers Organization, Eric Ootoovak.

11 MR. OOTOOVAK: Eric Ootoovak, Pond Inlet
12 Hunters and Trappers Association. Thank you, Chair.

13 So in terms of the north, I'm not going to go into
14 that. We -- the technical people have ability to do
15 this. Thank you, Lou. He's teaching us. As an Inuk,
16 he's telling me how the ice breaks. So perhaps the
17 Inuit don't have knowledge how the ice breaks and how
18 it is utilized?

19 Slide 27, for the ballast water. It's in regards
20 to ballast water, and there's a presentation in here.
21 It talks about invasive species. I'm not going to get
22 into the invasive species. I'm just talking about
23 those living organisms that are called riders, and we
24 know that they always exist, and they are -- sometimes
25 they are called "worm-like creature". They're not
26 called worm -- "invasive species". They're called

1 worm-like creature.

2 So how many from -- that are not from this area
3 have been found in our waters? What you would call it?
4 Non-native species, how many have been found? That is
5 my question.

6 THE CHAIR: Baffinland.

7 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

8 I'll ask Marina Winterbottom to respond. Thank
9 you.

10 THE CHAIR: Marina Winterbottom.

11 MS. WINTERBOTTOM: Thank you, Madam Chair.

12 Marina Winterbottom, Golder Associates for Baffinland.

13 We have found no confirmed invasive species
14 through our extensive monitoring of the marine
15 environment, and the reason is is that Baffinland has
16 implemented world-class mitigation and monitoring of
17 ballast water and hulls -- and hulls of ships that far
18 exceeds regulatory requirements and far exceeds what
19 other ports in Canada are doing to monitor and manage
20 invasive species.

21 Mitigations such as open-ocean ballast water
22 exchange far away from coastal areas and treatment of
23 ballast water greatly reduces the potential for
24 introduction. On top of that, Baffinland has committed
25 to ship biofouling surveys committed to developing a
26 trigger list of high-risk species with DFO and

1 continues to -- to monitor the -- the receiving
2 environment for early warnings of establishment of
3 non-indigenous or invasive species. So I have great
4 confidence in our ability to mitigate and monitor for
5 this potential introduction. Thank you.

6 THE CHAIR: It's 3:00. Let's take a
7 15-minute break.

8 (ADJOURNMENT)

9 THE CHAIR: Welcome back, everyone.
10 Please take your seats. We'll reconvene.

11 Continuing with questions to the proponent.

12 Mittimatalik Hunters and Trappers Organization, Eric
13 Ootoovak.

14 MR. OOTOOVAK: Eric Ootoovak, from HTO
15 Mittimatalik. Thank you, Madam Chair.

16 Thank you, Ms. Winterbottom.

17 Madam Chair, I will speak English because it has
18 no titles in Inuktitut.

19 From your near perfect hard to argue with what you
20 call "robust monitoring program", I spoke about the
21 riders, like, under the ships, and I'm going to ask you
22 to repeat your answer, but from the 2019 -- Department
23 of Fisheries and Oceans requested Baffinland for two
24 new species found by Baffinland. One was
25 crassicorophium bonellii and monocorophium insidiosum.
26 I'll provide those guys with proper spelling of this.

1 Two new species.

2 THE CHAIR: Baffinland.

3 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

4 It is correct that two previously unidentified species
5 have been found, but they have been confirmed that
6 they're not invasive species. Thank you.

7 THE CHAIR: Mittimatalik Hunters and
8 Trappers Organization, Eric Ootoovak.

9 MR. OOTOOVAK: Eric Ootoovak (INUKTITUT
10 SPOKEN - NO TRANSLATION). Qujannamiik, Iksivauta.
11 It's obvious. I knew they were going to tell me not
12 the whole truth.

13 But, secondly, this is my last question, Madam
14 Chair. I think they're kona [phonetic] -- native,
15 those two species. This morning I asked -- an Elder
16 here asked a question concerning the fish, Arctic char,
17 and Baffinland, in English, they are committed to
18 monitoring fully from the Milne Inlet, River Koluktoo,
19 and Tugaat, and the person that was asking questions
20 talking about Arctic char and to Megan Lord-Hoyle. And
21 I haven't heard the concern where the lake is situated
22 with the Arctic char. They only mentioned three
23 mentions in 48A. Yes. I know Lou wrote a note last
24 week how HTO and Mittimatalik would do the utmost,
25 monitoring fully, and it was sent to us when we were
26 out on a trip.

1 I'm asking that -- how will they -- doing
2 monitoring again on Arctic char? Is that a commitment
3 from the Baffinland? Thank you, Madam Chair.

4 THE CHAIR: Baffinland.

5 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.
6 Yes. That's a firm commitment. Thank you.

7 THE CHAIR: Mittimatalik Hunters and
8 Trappers Organization Valeria Vergara.

9 DR. VERGARA: Thank you, Madam Chair.
10 Valeria Vergara, marine mammal expert advisor for the
11 Mittimatalik Hunters and Trappers Organization.

12 I would like it start with shipping and
13 behavioural disturbance.

14 On the Technical Supporting Document 24,
15 Baffinland indicates that after mitigation --

16 THE CHAIR: Valeria. Dr. Vergara.

17 DR. VERGARA: Yes.

18 THE CHAIR: Can you please slow down for
19 the interpreters.

20 DR. VERGARA: Sure. Sorry, Madam --

21 THE CHAIR: Some of the terms take time to
22 translate. Yeah. If you can slow down, please.

23 DR. VERGARA: Understood. Thank you, Madam
24 Chair.

25 On the Technical Supporting Document 24,
26 Baffinland indicates that after mitigation, the

1 behavioural effects on narwhal are not significant.

2 So we have some questions around the uncertainty
3 surrounding these predictions of non-significance. Our
4 understanding is that Baffinland's disturbance
5 threshold, which is 120 decibels -- decibels basically
6 measure loudness -- and the avoidance threshold which
7 is 135 decibels that were used in the Phase 2 addendum
8 are not specific to narwhal. In fact, the document on
9 assessment of icebreaking operations during shipping
10 season states on page 29 that these thresholds are
11 based on very species-limited studies.

12 So we'd like to ask the proponent to explain how
13 Baffinland has integrated its seven years of monitoring
14 studies of narwhals to confirm that these thresholds
15 used, which are absolutely critical to the effects
16 predictions of non-significance in the Phase 2
17 addendum, how these thresholds are suitable for
18 predicting the effects of project shipping on narwhals.

19 And we would really appreciate it if the proponent
20 could please point to specific evidence that
21 demonstrates that these are valid precautionary
22 thresholds or criteria to use. Thank you, Madam Chair.

23 THE CHAIR: Baffinland.

24 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

25 I'll ask Phil Rouget to respond. Thank you.

26 THE CHAIR: Phil Rouget.

1 MR. ROUGET: Thank you, Madam Chair. Phil
2 Rouget, Golder Associates for Baffinland.

3 The marine mammal assessment using acoustic
4 disturbance threshold of 120 decibels, as pointed out
5 by the intervenor, this threshold is based on best
6 available science to date for all marine animals -- for
7 all marine mammals.

8 The origin of the 120 disturbance threshold is
9 based on several different noise exposure studies of
10 baleen whales, mainly gray whales and bowhead whales in
11 the Arctic and looked at the receive levels at which
12 those animals -- the majority of those animals would
13 respond adversely to the noise source.

14 So we use these as benchmarks for all marine
15 mammals in terms of a -- that are considered
16 conservative thresholds for which we expect to see
17 noise exposure if that threshold was exceeded.

18 With baleen whales and any larger whale, we know
19 that they have very sensitive hearing range in the
20 lower frequency range, such as that of shipping. This
21 particular threshold is not weighted to account for
22 the -- for those animals that belong to the
23 mid-frequency or high-frequency cetacean group, such as
24 narwhal who don't hear very well in the low frequency
25 range. Because the majority of underwater sound
26 created by shipping is below 200 hertz, this is well

1 below the assumed peak hearing sensitivity for narwhal,
2 which is well above 1 kilohertz. That is why we have
3 confidence that the disturbance threshold that we're
4 using is conservative for narwhal, meaning it likely
5 overrepresents the actual disturbance effect.

6 The reality is that low frequency hearing of
7 narwhal is very poor, and they simply cannot hear well
8 in the range that ship noise creates its noise,
9 particularly if the ship is distant.

10 We have submitted as exhibits several slides,
11 which help visualize this. We would ask that those be
12 pulled up, if possible, to help frame this
13 conversation.

14 MS. MEADOWS: Madam Chair.

15 THE CHAIR: NIRB legal counsel.

16 MS. MEADOWS: Teresa Meadows, legal counsel
17 for the Nunavut Impact Review Board.

18 Mr. Rouget, are you referring to the additional
19 slides that were provided by Baffinland and were marked
20 but have not yet been entered into the public hearing
21 record that were visual aids for reference in relation
22 to Slides 44 and 47?

23 THE CHAIR: Baffinland, Phil Rouget.

24 MR. ROUGET: Thank you, Madam Chair. Yes,
25 that's correct.

26 THE CHAIR: NIRB legal counsel.

1 MS. MEADOWS: Thank you, Mr. Rouget.

2 The parties have not yet had an opportunity to
3 advise whether or not they are going to object to those
4 new slides being added to the slide deck, and we were
5 proposing to deal with that later this evening. So if
6 you can perhaps defer that answer until the Board has
7 had an opportunity to determine whether or not those
8 slides will be admissible. Thank you, Madam Chair.

9 THE CHAIR: Baffinland, Phil Rouget.

10 MR. ROUGET: Thank you, Madam Chair.

11 Acknowledged, and we can refer to those at a later
12 point should they be approved to share with all the
13 viewers.

14 I think I have covered most of my answer other
15 than stating that the 120-decibel threshold is the
16 standard that's applied in all examples of industrial
17 projects throughout North America. It's used
18 extensively on both our coasts as well as the Arctic
19 Ocean and by the US government as well as the Canadian
20 government.

21 There's about 30 years of research that's been put
22 in by the scientific community acknowledging that that
23 is the best threshold we have at our fingertips. We do
24 acknowledge that it's not species specific. We are
25 looking at our own data to establish whether that is an
26 appropriate threshold for narwhal, and all evidence

1 points that it is, in fact, a reasonable threshold for
2 this purpose. Thank you. Oh, I'd like to pass it back
3 to Megan Lord-Hoyle, if possible. Thank you.

4 THE CHAIR: Megan Lord-Hoyle.

5 MS. LORD-HOYLE: Megan Lord-Hoyle. That's
6 okay, Madam Chair. I think we'll leave it here. Thank
7 you.

8 THE CHAIR: Mittimatalik Hunters and
9 Trappers Organization, Valeria Vergara.

10 DR. VERGARA: Thank you, Phil, for that
11 response.

12 So I think that response really confirms that the
13 project monitoring has not been able to inform whether
14 the --

15 THE CHAIR: Dr. Vergara, we're getting
16 feedback noise. Can you please make sure your
17 interpretation is off.

18 DR. VERGARA: Thank you. My interpretation
19 is off. How is this?

20 THE CHAIR: Do you have headphones plugged
21 in or something?

22 DR. VERGARA: I don't have headphones
23 plugged in, but I can try with headphones. Would that
24 help?

25 THE CHAIR: Yes, please. We're getting
26 feedback noise. Good, please proceed.

1 DR. VERGARA: Okay. How is this? Is this
2 good sound?

3 THE CHAIR: Yes, please proceed.

4 DR. VERGARA: Thank you, Madam Chair.

5 So the response, I think, confirms that the
6 project monitoring has not been able to inform whether
7 these thresholds are appropriate, really, and one thing
8 that I'd like to point out is that these thresholds can
9 be immensely variable as there are many, many other
10 factors that can affect a whale's response to noise.
11 The age of the animal, the status of the animals, the
12 location, the behaviour, the group composition, the
13 habitat, the ice conditions, even whether an animal is
14 used to the ship noise or not. The proponent mentions
15 some of these factors on page 29 of the assessment of
16 icebreaking operations.

17 During yesterday's presentation when an animation
18 was shown of tagged narwhals in relation to active
19 shipping, it was noted that there was a lot of
20 variation in individual responses to shipping, and I do
21 not doubt that that's the case. So my question is:
22 Could you please tell us what proportion of the Eclipse
23 Sound stock was tagged during this tagging study and
24 whether, in your opinion, these proportion of tagged
25 animals represents the great range of variability that
26 can exist in behavioural responses to noise? Thank

1 you, Madam Chair.

2 THE CHAIR: Baffinland.

3 MS. LORD-HOYLE: Megan Lord-Hoyle, I'll ask
4 Phil Rouget to respond. Thank you.

5 THE CHAIR: Phil Rouget.

6 MR. ROUGET: Thank you, Madam Chair. Phil
7 Rouget, Golder Associates.

8 First, I'd just like to point out that the
9 intervenor's first comment -- I do not agree with that
10 first comment. Quite the opposite. As stated
11 previously, our data shows that the 120 disturbance
12 threshold is a suitable threshold for application with
13 these animals.

14 In response to the second question, we tagged a
15 total of 20 animals for which the tagging data is based
16 on. We acknowledge that that represents a small
17 proportion of the total stock size. That's the world
18 we live in when we do marine mammal science. We see
19 very similar types of responses amongst individuals,
20 variability exists at the level of the individual, but
21 even when we take into account the variable responses
22 between individuals and amongst individuals, none of
23 the responses consist of large-scale avoidance or
24 displacement.

25 Sometimes they don't respond. Sometimes they
26 respond but the response is very subtle and the animals

1 return back to their normal behaviour shortly after the
2 exposure. We would probably be concerned if of the 20
3 animals even one of those animals demonstrated leaving
4 the area altogether during ship exposure and not coming
5 back for a prolonged period after exposure. That never
6 occurred.

7 So we feel confident, based on the data that we
8 have, that there are no extreme responses to ship noise
9 to date, and we plan on carrying on further monitoring
10 to see if animals' responses become any more acute or
11 chronic following the increase of shipping under a
12 Phase 2 scenario. Thank you.

13 THE CHAIR: Mittimatalik Hunters and
14 Trappers Organization, Valeria Vergara.

15 DR. VERGARA: Thank you, Phil, for that --
16 for that response.

17 Going back to the 120, for example, threshold and
18 the very small proportion of animals tagged in relation
19 to the Eclipse Sound stock, 0.02 percent of the Eclipse
20 Sound stock is not represented of the potential large
21 range of variability observed, so I appreciate, Phil,
22 that, you know, you've taken into account the
23 variability observed with 20 animals, but is it still
24 possible that behavioural reactions might occur at
25 low -- a population level so, you know, if you had
26 looked at more individuals, lower levels of sound than

1 the threshold used? Thank you, Madam Chair.

2 THE CHAIR: Baffinland.

3 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

4 Phil Rouget to respond. Thank you.

5 THE CHAIR: Phil Rouget.

6 MR. ROUGET: Thank you, Madam Chair. Phil
7 Rouget, Golder Associates for Baffinland.

8 I'll start off by acknowledging that it is
9 possible that some animals would respond to noise
10 levels below 120. We haven't seen it yet in our data,
11 but we would expect it. Disturbance thresholds are not
12 set for the lowest possibility of a response. They're
13 intended to be set to reflect the probability of a
14 response amongst a population.

15 So even if we were to have animals responding at
16 levels below 120, we would want to establish that
17 there's a higher probability of the population
18 responding at that particular level before we were to
19 change that disturbance threshold. So it's possibility
20 versus probability where the confusion is happening.

21 If we were to use the same logic you're presenting
22 on the low sample size of tagging data and implying
23 that it has little relevance because it represents such
24 a small proportion of the population, then we would be
25 rewinding decades in the field of science. We learn an
26 incredible amount from tagging data because of its

1 accuracy and high resolution. We understand responses
2 by animals are variable, that's why the goal is to tag
3 as many as possible, but there are limitations because
4 of the difficulty and invasiveness of attaching tags to
5 animals.

6 So we feel confident with the level of tagging
7 information that we have and how it speaks to our
8 conclusion. Would we like to tag more? Yes. That
9 would give us more confidence, but we feel comfortable
10 in the data we see and how it ties within our impact
11 prediction. Thank you.

12 THE CHAIR: Mittimatalik Hunters and
13 Trappers Organization, Valeria Vergara.

14 DR. VERGARA: Thank you, Phil, for that --
15 oh, I'm sorry. I'm forgetting to say my name first.
16 Valeria Vergara on behalf of the Mittimatalik Hunters
17 and Trappers Organization. Thank you for that
18 response.

19 What I'm trying to do here is point to the fact
20 that there is a high level of uncertainty, exactly, in
21 these predictions. I'm by no means suggesting that
22 Baffinland should be tagging more narwhal. I am
23 pointing to the uncertainty.

24 And my next question is regarding this assumption
25 just mentioned during your initial response, Phil, that
26 there is a small overlap in frequencies between narwhal

1 and vessel noise.

2 Section 2.1.4 of the Technical Supporting
3 Document 24 actually determines that auditory masking
4 impacts were not significant. So in terms of the
5 frequencies of the vessel noise itself, on pages 34 and
6 41 of that Technical Supporting Document 24, Baffinland
7 states that: (as read)

8 Shipping noise generally dominates ambient
9 noise at frequencies from 20 to 300 hertz.

10 Above 300 hertz, shipping sounds may or may
11 not be significant depending on the level of
12 wind-dependent ambient noise.

13 And I was quoting there.

14 Phil mentioned something similar in his response
15 in terms of the frequency of shipping noise.

16 This citation is very outdated. It is from
17 Richardson, 1995. There has been a lot of work on
18 shipping noise frequencies since then. Is Baffinland
19 aware that at the time when they submitted the
20 Technical Document 24 in 2018, there was actually
21 published recent scientific evidence that vessel noise
22 at distances of up to 3 kilometres extends to much
23 higher frequencies that are used by toothed whales.
24 Thank you, Madam Chair.

25 THE CHAIR: Baffinland.

26 MS. LORD-HOYLE: Megan Lord-Hoyle.

1 I'll ask Melanie Austin to respond.

2 THE CHAIR: Melanie Austin.

3 MS. AUSTIN: Thank you, Madam Chair.

4 Melanie Austin from JASCO for Baffinland.

5 I would start by acknowledging and agreeing that
6 vessel noise can extend above 300 hertz. That is a
7 general statement that you've quoted and does describe
8 where the majority of vessel noise would exist, and I
9 also agree that there is some overlap between the
10 frequencies of sound generated by ships and the
11 frequencies where whales like narwhal communicate. But
12 that overlap occurs where the shipping noise is reduced
13 and that frequencies -- where there's relatively less
14 communication -- use of those frequencies.

15 To address concerns around uncertainty in
16 predicting and assessing impacts from effects such as
17 masking for which there is no strong thresholds and for
18 which there is the uncertainty that you've raised, we
19 addressed this in the assessment through making
20 conservative assumptions. For example, in predicting
21 the sound fields or the area in the water that will
22 be -- experience high sound levels from shipping, we
23 make those predictions assuming the loudest possible
24 sound levels emitted by the vessels and considering the
25 environmental factors such as the temperature in the
26 water, which was raised yesterday that would make the

1 sound travel the furthest so that we have conservative
2 estimates to the effects in light of the acknowledged
3 uncertainty. Thank you.

4 THE CHAIR: Mittimatalik Hunters and
5 Trappers Organization, Valeria Vergara.

6 DR. VERGARA: Valeria Vergara, Mittimatalik
7 Hunters and Trappers Organization. Thank you, Melanie,
8 for that response.

9 In regards to the statement that narwhals
10 generally communicate at higher frequencies than vessel
11 noise -- this is also stated in Slide 47 -- it also
12 says there that they may use natural anti-masking
13 strategies. So this is a bit -- I find this is a bit
14 of an incorrect generalization. You may agree with me
15 that narwhal do not always communicate at higher
16 frequencies than vessel noise. We know that there is a
17 lot of variation in the frequencies used by an
18 individual and that this variability depends on the
19 various call types that they use and the various
20 context in which they use those calls, and we know for
21 belugas, that the most closely related species to
22 narwhal, that frequencies used by calves and mothers to
23 stay in contact with each other, which is fundamental,
24 overlap greatly with the frequencies produced by vessel
25 noise and that we also know that little calves, which
26 are the most vulnerable class in a population, would

1 not be able to use anti-masking strategies if they are
2 anything -- if narwhals are anything like beluga
3 calves, and Baffinland often uses belugas as proxies
4 for narwhals, then this would be the case as well, we
5 would have to assume.

6 So my question is: What has informed Baffinland's
7 statement that most narwhal calls occur at higher
8 frequencies than vessel noise? Thank you, Madam Chair.

9 THE CHAIR: Baffinland.

10 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

11 I'll ask Melanie Austin to respond. Thank you.

12 THE CHAIR: Melanie Austin.

13 MS. AUSTIN: Thank you, Madam Chair.

14 Melanie Austin from JASCO for Baffinland.

15 I can start by saying that we have several years
16 of underwater acoustic recordings, which we have used
17 to look at the shipping noise and the frequencies where
18 it occurs as well as the changes in the natural sounds
19 from winds -- wind and waves that occur -- can occur in
20 the same frequency ranges that we're discussing. We
21 also examine our data to look at the calls made by the
22 narwhal and examine the frequencies where that occurs
23 and where there is overlap.

24 And while there are some whistles particularly
25 that occur in the lower frequency range -- again, I
26 repeat that it is at the upper range of the vessel

1 noise where the vessel sounds are quieter. I would
2 just like to point out that we do acknowledge that
3 mother-calf communications and relationships are
4 important -- and we recognize that -- and that is why
5 the calf ratio is one of the indicators that are
6 tracked through the monitoring.

7 So, again, the confidence that we have in the
8 amount of overlap between vessel noise and narwhal
9 vocalizations comes from our data. Thank you.

10 THE CHAIR: I would like to remind the
11 intervenor that she has not yet been affirmed, and so
12 the statements she's making are not admissible as
13 evidence in these proceedings. So if you can please
14 confine your intervention to questions, not evidence.

15 Mittimatalik Hunters and Trappers Organization,
16 Valeria Vergara.

17 DR. VERGARA: Thank you, Melanie, for that
18 response. I will just note that there is extensive
19 scientific literature indicating that narwhal
20 vocalizations range in frequency from as low as
21 405 hertz and up, but I will leave this line of
22 questioning for now.

23 I would like to go to -- refer to a video shown
24 yesterday on Slide 57 that presented drone footage of
25 narwhal nursing and resting while a vessel was
26 transiting southbound. The video evidence did not show

1 the vessel, but the slide indicated that there was a
2 distance of less than 3,900 metres from the vessel to
3 the mother calf there, so that's nearly 4 kilometres.
4 That's a rather long way.

5 We know that the sound levels decrease as the
6 distance increases between a ship and a narwhal, for
7 example. This is called transmission loss. So my
8 question is: Isn't there a possibility that ships and
9 mother-calf pairs intersect at closer distances and
10 that we would see more pronounced effects. Does the
11 proponent have drone footage of nursing mother-calf
12 pairs at closer distances still displaying this very
13 calm behaviour? Thank you, Madam Chair.

14 THE CHAIR: Ms. Valeria Vergara, to
15 clarify, you can provide your questions, but statements
16 should be reserved to the intervention after you've
17 been sworn or affirmed. So you can provide your
18 questions, just not statements that would be put
19 forward to the Board as evidence.

20 Baffinland.

21 MS. LORD-HOYLE: Megan Lord-Hoyle.

22 I'll ask Melanie Austin to respond. Thank you.

23 THE CHAIR: Melanie Austin.

24 MS. AUSTIN: Thank you, Madam Chair.

25 Melanie Austin. May I pass this question to Phil

26 Rouget to answer?

1 THE CHAIR: Phil Rouget.

2 MR. ROUGET: Thank you, Madam Chair. Phil
3 Rouget, Golder Associates.

4 I think the commentary is taking us down an
5 unnecessary rabbit hole, and we're missing a bit of the
6 story here.

7 The point of the narwhal tagging study was to
8 determine the distance over which narwhal demonstrate a
9 response to shipping. We picked over 11 different
10 response variables to evaluate this, and the data
11 collectively shows us that the distance we see any
12 evidence of disturbance onset in narwhal is between
13 1 and 5 kilometres.

14 We know from the tagging data that the relative
15 proportion of time that narwhal occur within that range
16 is low. It's approximately 2 percent of the total
17 time. We don't anticipate that this level of response
18 that we're seeing in the frequency over which it would
19 occur under a Phase 2 scenario would result in
20 decreased fitness in narwhal at the individual or stock
21 level or mother-calf pairs.

22 We only started implementing drone footage into
23 our program in 2020, and we're in the process of still
24 working that data up, and so in response to your
25 question, we cannot answer at the current time how many
26 incidences we have of mother-calf pairs at closer

1 distances to the ship.

2 We're confident in our impact predictions related
3 to disturbance because of the numerous knowingly
4 effective mitigation measures that Baffinland has
5 committed to, including the speed restrictions
6 throughout the entire regional study area, the limited
7 number of transits during the shoulder season, the
8 setback area at the floe edge, as well as several other
9 shipping mitigations as described in the shipping and
10 marine wildlife management plan. We'll continue to
11 monitor looking both at masking and disturbance effects
12 moving forward, including effects on mother-calf pairs.

13 We know the area is important for mother calves;
14 we've heard that from the Inuit. We're concerned also,
15 but our data currently tells us that we don't have to
16 have a concern at this point. Thank you.

17 THE CHAIR: Mittimatalik Hunters and
18 Trappers Organization, Valeria Vergara.

19 DR. VERGARA: Valeria Vergara on behalf of
20 the Mittimatalik Hunters and Trappers Organization.

21 Thank you, Phil, for clarifying that and for
22 answering my question.

23 I'm glad that you mentioned speed restrictions.
24 Baffinland has indicated that mitigation measures such
25 as speed restrictions will reduce noise and that,
26 therefore, as indicated on Slide 46, the residual

1 effects are not significant.

2 So reducing the speed of a ship does make a ship
3 quieter, but the issue here is that narwhal will be
4 repeatedly exposed to multiple ship transits, sometimes
5 four vessels at once, which produces higher noise
6 levels.

7 Baffinland is proposing to now increase shipping
8 to 352 ore carrier transits plus icebreaker and other
9 vessels, presumably increasing the total to over 400
10 transits.

11 On the 2019 assessment of icebreaking operations,
12 Baffinland looks at combined sound levels assuming the
13 worst-case scenario of two icebreakers escorting two
14 carriers. But we still do not know the impact on
15 narwhal when that happens day after day after day.
16 There are large uncertainties around this. It is not
17 known, for example, how long it would take for a
18 narwhal if they do move away to come back or if they
19 would habituate. So the question: Has Baffinland
20 considered the cumulative impacts of repeated daily
21 multiple ship transits on marine mammals? And, if so,
22 could you please detail how you did this. Thank you,
23 Madam Chair.

24 THE CHAIR: Baffinland.

25 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

26 Yes, we have, and I'll ask Melanie Austin to

1 explain the assessment. Thank you.

2 THE CHAIR: Melanie Austin.

3 MS. AUSTIN: Thank you, Madam Chair.

4 Melanie Austin from JASCO for Baffinland.

5 The question is have we considered repeated
6 exposures throughout the day for multiple vessel
7 transits, and the answer is yes. We have assessed the
8 repeated exposure from individual vessel transits.
9 We've calculated the number of hours in a day based on
10 conservative estimates of the sound exposure, including
11 all types of project vessels as well as non-project
12 vessels that may be in the regional study area, and we
13 have found that there would be substantial portions of
14 the day for -- during which narwhal would not be
15 exposed to noise that would cause them disturbance. We
16 repeated these calculations for a typical or average
17 day of shipping as well as for the worst -- or maximum
18 case for a busy day of shipping when there would be an
19 increased number of transits.

20 For an average day, our calculations showed
21 22 hours available to narwhal without noise disturbance
22 and 19 hours during the shoulder season when there
23 would be icebreaker transits. This is based on
24 conservative estimates, and our measurements to date
25 confirm that that is conservative. Thank you.

26 THE CHAIR: Mittimatalik Hunters and

1 Trappers Organization, Valeria Vergara.

2 DR. VERGARA: Valeria Vergara on behalf of

3 the Mittimatalik Hunters and Trappers Organization.

4 Thank you, Melanie, for that response.

5 To clarify, I was not talking about the effects of

6 multiple ships in a day -- in a single day, but rather

7 about the chronic effects of daily exposure, so day

8 after day after day throughout a shipping season

9 lasting from July 1st to 15th November.

10 Do you think that the lack of assessment of the

11 cumulative effects of daily exposure may contribute to

12 the uncertainty in the effects assessment? Thank you,

13 Madam Chair.

14 THE CHAIR: Baffinland.

15 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

16 I'll ask Phil Rouget to respond.

17 THE CHAIR: Phil Rouget.

18 MR. ROUGET: Thank you, Madam Chair. Phil

19 Rouget, Golder Associates for Baffinland.

20 The answer to that question is no. We do not

21 believe that the effective repeated exposure over the

22 entire season will have implications at the population

23 level based on the level of mitigation that we've

24 proposed, the conservatism built into the modelling and

25 the assessment, and given the low severity responses

26 we've observed to date with the same narwhal in the

1 specific project area we're concerned about.

2 We are not saying there's no uncertainty. There
3 is always some level of uncertainty, and that's
4 addressed through the conservative assumptions as well
5 as through the extensive monitoring programs, which we
6 proposed to test impact prediction.

7 We feel confident in the mitigation that we're
8 currently using -- it's shown to be working -- and we
9 have adaptive management measures available if the
10 results for our monitoring programs show we are seeing
11 impacts beyond those predicted. That's how we handle
12 uncertainty. Thank you.

13 THE CHAIR: Mittimatalik Hunters and
14 Trappers Organization, Valeria Vergara.

15 DR. VERGARA: Thank you, Madam Chair.
16 Valeria Vergara on behalf of Mittimatalik Hunters and
17 Trappers Organization.

18 I have two more questions. The first one is
19 regarding a comment made yesterday about the ability of
20 narwhal to habituate being well documented. We were a
21 bit puzzled by that, as this contradicts what was
22 stated in numerous places in the Technical Supporting
23 Document 24 and in the icebreaking assessment from
24 2019.

25 After seven years of monitoring narwhal's response
26 to shipping, Baffinland acknowledges that they still do

1 which they describe habituation of narwhal relative to
2 shipping operation. Habituation is something we are
3 considering in our study design. It's a challenging
4 metric to monitor because you need to have tagging data
5 that extends over a long enough time series to allow
6 the animal to have adequate interactions with vessels
7 to be able to establish habituation.

8 The justification of non-significant impacts
9 related to disturbance are justified based on our
10 monitoring data to date in light of the mitigation
11 measures that we have proposed and based on Inuit
12 knowledge that's been shared with us and our multiple
13 lines of evidence, strategy in terms of looking at how
14 narwhal are responding to shipping using different
15 monitoring strategies, aerial, shore-based studies,
16 underwater noise monitoring, tagging, ship based.
17 Collectively, monitoring data supports our results. We
18 do not believe there will be effects at the population
19 level, and, therefore, we have qualified that potential
20 effect as non-significant. Thank you.

21 THE CHAIR: Mittimatalik Hunters and
22 Trappers Organization, Amanda Hanson-Main.

23 MS. HANSON-MAIN: Thank you, Chairperson. It's
24 Amanda Hanson-Main.

25 So, Baffinland, your assessment of impacts on
26 Inuit harvesting in Technical Supporting Document 25

1 references some, I think, incorrect information similar
2 to what Mr. Ottenhof from the Qikiqtani Inuit
3 Association pointed out yesterday. Specifically, we
4 note that this supporting document references 132 ore
5 carriers per year, not 176. It also state 140 vessels
6 total, not 208, as your slides from this week would
7 indicate. There is also nothing about the number of
8 icebreaker transits per year.

9 Can you confirm that the updated numbers,
10 specifically, 176 ore carriers and 208 vessels, are the
11 correct numbers and that they don't include the number
12 of icebreaker transits per year? Qujannamiik.

13 THE CHAIR: Baffinland.

14 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

15 Yes. This was answered yesterday, and, as stated,
16 these numbers were corrected in December 2019 and have
17 been on the record since that time. Thank you.

18 THE CHAIR: Karen Costello.

19 MS. COSTELLO: Thank you, Madam Chair. Karen
20 Costello, Nunavut Impact Review Board staff.

21 We'd like to remind speakers to mute notifications
22 on the electronic devices at their locations as they
23 are broadcast through the Zoom transmission. Thank you
24 very much, Madam Chair.

25 THE CHAIR: Mittimatalik Hunters and
26 Trappers Organization, Amanda Hanson-Main.

1 MS. HANSON-MAIN: Qujannamiik, Iksivauta.
2 (INUKTITUT SPOKEN - NO TRANSLATION) my notifications.

3 Thank you for that clarification and comment,
4 Megan. Your technical supporting document also says
5 that: (as read)

6 Limited shipping may occur within the
7 shoulder seasons. [And] Critical to the
8 success of that shipping will be discussions
9 with the community.

10 You're proposing one or two caravans. I'd just like to
11 get clarification. One or two caravans every 24 hours
12 in the shoulder seasons noting that greater than
13 six-tenths of ice and between four and six-tenths ice
14 would restrict those presentations. That was in your
15 presentation. Can you confirm that, please?
16 Qujannamiik.

17 THE CHAIR: Baffinland.

18 MS. LORD-HOYLE: Megan Lord-Hoyle.

19 I believe it was that there is one transit, and
20 whether that's a convoy or a single vessel, it's one
21 transit in a 24-hour period with greater than
22 six-tenths ice. Thank you.

23 THE CHAIR: Mittimatalik Hunters and
24 Trappers Organization, Amanda Hanson-Main.

25 MS. HANSON-MAIN: Qujannamiik, Iksivauta. Thank
26 you, Megan.

1 We also note that your final environmental impact
2 statement refers to Phase 2 as an "incremental increase
3 in shipping". But, to confirm, an increase from 83 to
4 176 ore vessels, that's not incremental; is it? Is
5 that a hundred percent of an increase? Qujannamiik.

6 THE CHAIR: Baffinland.

7 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

8 I think this question was answered by Lou
9 yesterday, and it's just about double the amount of
10 vessels, just over double. Thank you.

11 THE CHAIR: Mittimatalik Hunters and
12 Trappers Organization, Amanda Hanson-Main.

13 MS. HANSON-MAIN: Qujannamiik, Iksivauta.

14 On your Slide 55 showing the narwhal harvest data
15 by Mittimatalik hunters over many years, I think Phil
16 last night said that this showed the numbers of narwhal
17 harvested over time and that it was increasing. Let me
18 know if that's not correct.

19 Also, does this slide show that harvesting by
20 Mittimatalingmiut has not been impacted by the Mary
21 River Project? Qujannamiik.

22 THE CHAIR: Baffinland.

23 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

24 Lou Kamermans to respond.

25 THE CHAIR: Lou Kamermans.

26 MR. KAMERMANS: Lou Kamermans, Baffinland.

1 Thank you, Madam Chair.

2 We did not make any link between our project and
3 the numbers in that bar graph. What we did was make
4 observations about what can be seen in that graph and
5 what it shows in terms of landed catch.

6 With respect to our project, which started
7 shipping in support of construction in 2013 and then
8 began operational shipping in 2015, what could be said
9 is in those years until 2019, we saw progressively more
10 vessels calling on Milne Port each year.

11 And in that same time, harvesting has been higher
12 than it has in the past. It does fluctuate from one
13 year to the next. It also shows what was confirmed by
14 Inuit Qaujimagajatuqangit in community feedback with
15 respect to the low narwhal numbers in 2018, but it also
16 shows them returning in 2019 with respect to harvest
17 numbers.

18 If this slide says anything with respect to our
19 project, considering that shipping has been increasing
20 every year since 2013 but the harvest numbers can go up
21 and down, there is no obvious correlation between lower
22 harvest, higher harvest, and our project increasing
23 shipping.

24 I think it shows there is more of a story going on
25 in the north than our project and harvesting. It shows
26 we're in a dynamic environment and that further needs

1 to be looked into. This is why yesterday I also
2 indicated that this would be a good indicator to track
3 as part of an expanded culture, resource, and land-use
4 monitoring program and start to provide greater context
5 for the results of our monitoring programs and what's
6 being seen by the communities. Qujannamiik.

7 THE CHAIR: Mittimatalik Hunters and
8 Trappers Organization, Amanda Hanson-Main.

9 MS. HANSON-MAIN: Qujannamiik, Iksivauta. Thank
10 you, Lou.

11 Your technical supporting Document 25 notes that
12 increasing -- pardon me: (as read)

13 Considering incremental increase in shipping
14 associated with Phase 2, available narwhal
15 harvest data were reviewed to understand if
16 the current project has negatively affected
17 narwhal harvests. [And it also says]

18 Since the operation of the project, there has
19 been an increase in successful harvest by
20 Pond Inlet. While 2013 to '15 is a short
21 period of time, it appears that narwhal
22 harvests have not decreased as a result of
23 the project over this time.

24 Can you explain or clarify whether a decrease in
25 narwhal harvest numbers could be attributed to the
26 project over time. Qujannamiik.

1 THE CHAIR: Baffinland.

2 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

3 No. I think that decline in narwhal harvests
4 could be attributable to a number of things, and, as
5 Lou pointed out, it would require further
6 investigation. Thank you.

7 THE CHAIR: Mittimatalik Hunters and
8 Trappers Organization, Amanda Hanson-Main.

9 MS. HANSON-MAIN: Qujannamiik, Iksivauta. Thank
10 you, Baffinland.

11 Your environmental impact statement also says
12 that: (as read)

13 The Phase 2 proposal will not result in
14 adverse effects to marine mammals,
15 according to your assessment in Technical Supporting
16 Document 24 [sic].

17 It also says: (as read)

18 Since the project is not predicted to result
19 in decreases in marine mammal populations,
20 and Pond Inlet's narwhal harvest from 2013 to
21 '15 are at the highest level since 2000, the
22 Phase 2 proposal is unlikely to affect the
23 harvesting of marine mammals. [It further
24 says] With the appropriate mitigation in
25 place, the potential impact on the quantity
26 of marine mammals harvested by level of

1 effort is determined to be of low magnitude
2 and not significant.

3 So assuming you would consider perhaps a more
4 appropriate time frame, which you didn't or you
5 haven't, what is the appropriate mitigation to make
6 sure that this outcome is maintained if you do find
7 that impacts are occurring to mammals or to harvest,
8 and, please, if you can, refer to Inuit
9 Qaujimajatuqangit when you provide that answer.
10 Qujannamiik.

11 THE CHAIR: Baffinland.

12 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

13 I believe, if I understood the question correctly,
14 it was what could we do if we see a decline in narwhal
15 harvesting attributed to the project, and there are a
16 number of options that we have and that we've committed
17 to. This is going to be more fully defined when Inuit
18 are involved in developing additional thresholds for
19 our adaptive management plan, and that will inform the
20 different actions that we can take. But actions that
21 we've already committed to involve maintaining shipping
22 operations, reducing shipping operations, ceasing or
23 stopping activities. It could also include additional
24 mitigation measures such as use of additional convoys,
25 changing shipping routes. There's a number of
26 operational changes that are open to us, depending on

1 the cause of what it is that we're seeing.

2 There's other options such as additional support
3 programs. We already have a support program in place
4 to assist hunters who may be further out while they're
5 hunting in different locations or need to spend more
6 time hunting.

7 An example, which we have referenced multiple
8 times is 2018. Something that is seen in Slide 55 of
9 the presentation is that in 2018, we do see a decrease
10 in landed catch reported by the Mittimatalik Hunters
11 and Trappers Organization, and that data reflects
12 exactly what it is that we were hearing from the
13 community that year. We heard throughout the season
14 that there were less narwhal.

15 Coincidentally, that season is also the shortest
16 open-water season on record. A very heavy ice year.
17 That means ice stayed late at the beginning of the
18 season and started forming very early in the season.

19 Also, coincidentally, that year we didn't have all
20 of our monitoring programs up and running. The
21 following year, in response to what Inuit were sharing
22 with us and before we had even seen the information
23 provided by the Department of Fisheries and Oceans on
24 landed catch numbers, we instituted additional shipping
25 operations, which does have an impact on our operation.

26 There are many options that are available to us.

1 There are options that Baffinland can put forward, and
2 through the processes that have been committed to and
3 will be in place, there is options that Inuit will
4 suggest to us and guide us on how we can also adapt.
5 Thank you.

6 THE CHAIR: Mittimatalik Hunters and
7 Trappers Organization, Amanda Hanson-Main.

8 MS. HANSON-MAIN: Qujannamiik, Iksivauta,
9 Qujannamiik, and thank you to Megan for that reply.

10 I appreciate that you raised these mitigations.
11 We heard you say earlier today in response to a
12 question from our chairperson that each restriction
13 brings us closer to not being able to transport ore as
14 we propose or as we need to.

15 We also heard Udloriak today say that the adaptive
16 management plan was designed without details because
17 Baffinland didn't want to negotiate details without
18 Inuit.

19 Are you suggesting now that you can reduce or stop
20 shipping in response to Inuit concerns? And when will
21 we have certainty about those mitigation measures --
22 are you suggesting that you can reduce or stop shipping
23 in response to Inuit concerns about harvest, and when
24 will we have details that will provide certainty about
25 your ability to effectively mitigate and manage these
26 impacts? Qujannamiik.

1 THE CHAIR: Baffinland.

2 MS. LORD-HOYLE: Megan Lord-Hoyle, Baffinland.

3 That is correct. I did say that we can reduce or
4 stop shipping activities. Perhaps if I didn't, what I
5 should have added to that was we can't do that without
6 an impact to us. That would, of course, impact our
7 operations financially. It could potentially impact
8 our employees. So these mitigation measures that we've
9 committed to and we have agreed to are not without
10 serious consequences. That's in light of the serious
11 consequences we want to avoid for Inuit, and we do not
12 believe that we will reach those levels.

13 We believe in the fundamentals of our assessment
14 and the conclusions of our assessment, and that we can
15 operate this project in the manner that we've developed
16 and with all the protection measures in place.

17 And to expand on what Udloriak Hanson had said
18 earlier, there is a draft adaptive management
19 framework -- sorry, a draft adaptive management plan,
20 and there are details in that plan, but there are some
21 important details that need to be finalized.
22 Specifically, those points with strong Inuit
23 involvement, and we've committed to finalizing that
24 plan six months post-project approval, should it be
25 granted, which is not an uncommon practice, but it's
26 done so that we have Inuit involvement. Thank you.

1 THE CHAIR: Mittimatalik Hunters and
2 Trappers Organization, Amanda Hanson-Main.

3 MS. HANSON-MAIN: Qujannamiik, Iksivauta.
4 Qujannamiik. Thank you, Megan.

5 Would you agree that determining project effects
6 on marine mammals is not quite the same thing as
7 determining impacts on Inuit harvesting of marine
8 mammals? Would you agree with that? Qujannamiik.

9 THE CHAIR: Baffinland.

10 MS. LORD-HOYLE: Megan Lord-Hoyle, I'll ask
11 Lou Kamermans to respond.

12 THE CHAIR: Lou Kamermans.

13 MR. KAMERMANS: Lou Kamermans, Baffinland.
14 Thank you, Madam Chair.

15 I would agree with that statement. It's also
16 consistent with our food security assessment where we
17 took an approach that did not just look at one factor;
18 it looked at four. This is consistent with the most
19 recent research studies and strategies done by the
20 coalition on food security, which is a very
21 well-studied subject.

22 In short, you know, availability of wildlife is
23 certainly critical to food security and to harvesting
24 and to harvesting rights, but there's also
25 considerations related to access. Can you access the
26 food? Is it healthy?

1 So I would agree there is more than one factor,
2 and I would also advise that we have studied that,
3 we've assessed it, and we've considered all of those
4 variables in coming to the conclusions we did. Thank
5 you.

6 THE CHAIR: Before we break for supper,
7 tonight we will be returning to hear oral motions,
8 including objections and seeking procedural direction
9 from the Board as allowed under Rule 7.6 of the Board's
10 rules of procedure.

11 We will begin with the oral motion of the
12 Mittimatalik Hunters and Trappers Organization, and
13 we'll ask all registered intervenors and Baffinland to
14 provide replies to the oral motion. The Board will
15 then proceed to a discussion of the three exhibits
16 offered by Baffinland that were marked by the Board but
17 have not yet been entered.

18 We will close tonight's session with the
19 registered intervenors and Baffinland being given an
20 opportunity to bring any oral motions including
21 objections and seeking procedural direction from the
22 Board and responses to such motions, and we'll
23 reconvene at 6:30.

24 We have an interpreter who joined us today,
25 Jacopoosie Peter. See you guys after supper break.

26

1

2 PROCEEDINGS ADJOURNED UNTIL 6:30 PM

3

4 (PROCEEDINGS COMMENCED AT 6:36 PM)

5 THE CHAIR: Good evening.

6

7 Welcome back to our evening session on Day 6 of
8 the Nunavut Impact Review Board's resumed public
9 hearing associated with its assessment of Baffinland
10 Iron Mines Corporation Phase 2 development proposal
11 related to the Mary River Iron Ore Mine Project.

12 As the NIRB's legal counsel indicated this
13 afternoon, tonight is an oral hearing in respect of
14 motions, including objections and requests for the
15 Board's procedural directions. This process is allowed
16 for under the Board's rules of procedure, Rule 7.6,
17 which states: (as read)

18 If a matter arises during an oral hearing
19 that requires a decision or order of the
20 Board, a party may bring the matter before
21 the Board by making a motion orally. The
22 Board shall dispose of an oral motion in
23 accordance with such procedures as the Board
24 may order.

25 Before we turn to this evening's agenda, just a couple
26 of quick housekeeping matters. Simultaneous
interpretation of the proceedings is available in both

1 Pond Inlet and Iqaluit. The receivers are using
2 Channel 0, floor; Channel 1, English; Channel 2,
3 Inuktitut.

4 This process is allowed for under the Board's
5 rules of procedure Rule 7.6. For the first item on
6 tonight's agenda is to hear the oral motion of the
7 Mittimatalik Hunters and Trappers Organization followed
8 by the responses from registered intervenors and
9 Baffinland to the motion.

10 Now I turn to Eamon Murphy to present to the Board
11 the decision or order your motion is seeking, the
12 grounds on which your motion is made, and evidence or
13 supporting information that the Mittimatalik Hunters
14 and Trappers Organization wishes to present in support
15 of the motion.

16 Eamon Murphy.

17 Submissions by Mittimatalik Hunters and Trappers
18 Organization (Motion) (Mittimatalik Hunters and
19 Trappers Organization)

20 MR. MURPHY: (INUKTITUT SPOKEN), Madam
21 Chair. Mittimatalik Hunters and Trappers Organization,
22 Eamon Murphy. We submit this oral motion to the Board
23 under Rule 7.6 of the Board's rules of procedure.

24 Our motion is for an order that this Board ensure
25 full and meaningful oral participation by all
26 intervenors, including Inuit organizations, hunter and

1 trapper organizations, hamlets, and government bodies
2 in the Board's technical review of Baffinland's
3 project.

4 By varying the Board's earlier direction from
5 today that intervenors submit any outstanding questions
6 in writing at the time of their final submissions and
7 the Board's direction that Baffinland can answer those
8 questions in writing at the time of Baffinland's final
9 submissions, to instead order that you allow the
10 remaining technical sessions to complete, including
11 allowing intervenors to ask all remaining questions
12 orally during the technical sessions with no
13 restriction on the number of questions and require
14 Baffinland to respond orally during the technical
15 sessions as originally directed by this Board.

16 Further, to provide direction to all parties about
17 the remaining technical sessions in the hearing and
18 extend the timeline for the hearing to ensure that
19 intervenors have sufficient time to question Baffinland
20 orally on all of its presentations and for the
21 intervenors to complete their presentations in the
22 technical sessions, including sufficient time for oral
23 questions and responses on intervenor presentations
24 during the technical sessions.

25 I just want to be clear, Madam Chair, that while
26 we're requesting that the Board schedule additional

1 time to complete the technical sessions, we do not
2 suggest that the community roundtables be restricted in
3 any way. We ask that the Board be mindful of ensuring
4 that the community roundtables have the benefit of the
5 technical sessions to consider.

6 Our grounds for the motion. First, we'll start
7 with the facts. As you know, Mittimatalik Hunters and
8 Trappers Organization is an intervenor in this hearing.
9 It has the responsibility to the harvesting rights
10 among its members and for its members. The project
11 before you is the largest resource development in
12 Nunavut with the longest proposed life span of any
13 project in Nunavut.

14 The project's located within the heart of the area
15 that Mittimatalik Hunter and Trapper Organization
16 members reside in and exercise their rights in. And
17 because of this, it has the potential to significantly
18 impact the seal, narwhal, caribou, and fish that the
19 Mittimatalik Hunter and Trapper Organization members
20 depend on for the exercise of their harvesting rights.

21 The organization is an elected body. It's
22 entrusted to bring evidence based on Inuit traditional
23 knowledge and to bring that evidence before this Board
24 in a systematic and procedural way. Finally, the
25 harvesting rights managed by the Mittimatalik Hunter
26 and Trapper Organization are treaty rights protected by

1 Section 35 of the Constitution Act, 1982.

2 Madam Chair, leading to this hearing, there were
3 several communications by the Board discussing the
4 process for presentations and questions. Firstly, in
5 the Board's prehearing conference decision report dated
6 October 30th, 2020, the Board indicated it may limit
7 the time allotted to individual intervenors for
8 questioning, and it may focus the first round of
9 questioning on each topic during the technical session
10 of those intervenors who filed technical review
11 comments in relation to the topic being discussed. The
12 Board went on to say that more specific guidance on
13 these points will be provided in advance of the public
14 hearing when the agenda logistics and venues can be
15 confirmed.

16 The Board did not provide any further specific
17 guidance on these points, and so on December 7th, 2020,
18 the Board wrote to the parties and circulated a draft
19 public hearing agenda for this hearing.

20 The draft agenda indicated that there would be --
21 and I quote -- (as read)

22 Specific time for Baffinland to present
23 updates to topics previously presented. Then
24 continue with the outstanding technical
25 presentations. Following completion of
26 Baffinland's presentations, intervenors will

1 be provided their opportunity to present
2 before the Board. Following Baffinland's
3 presentation, time will be provided for
4 intervenors and the Board members to ask
5 questions of the proponent.

6 THE CHAIR: You need to slow down for the
7 interpreters.

8 MR. MURPHY: Qujannamiik, Madam Chair.

9 The point being, Madam Chair, there were no limits
10 on the time allotted for questions nor limits on the
11 number of questions in either the cover letter or the
12 draft agenda. In the December 7th cover letter to the
13 agenda, the draft agenda, the Board invited the parties
14 to comment on the draft agenda by December 18th, 2020.
15 Mittimatalik Hunters and Trappers Organization wrote to
16 the Board on December 18th and made a number of
17 comments, three of which are relevant for the purposes
18 of this oral motion.

19 The first comment was to note that the time set
20 aside for the hearing was too short and that based on
21 the number of intervenors and the magnitude of the
22 project, the Board should schedule the hearing for a
23 minimum of three weeks.

24 We also suggested that the time set aside for
25 Baffinland's presentations was too short for both the
26 presentations and intervenor questions in the two days

1 scheduled, and Mittimatalik Hunters and Trappers
2 Organization specifically asked whether the Board would
3 restrict questions or time for questions and noted the
4 Board's rules did not place time restrictions on
5 questions. The Board did not reply to Mittimatalik
6 Hunters and Trappers Organization about restricting
7 time or questions.

8 Finally the Board wrote to the parties on
9 January 18th, 2021, and circulated a final public
10 hearing agenda. The final agenda did not place time
11 limits on questions nor limit the number of questions.
12 After we had provided comments on the draft agenda but
13 before the final agenda was issued, Canada submitted a
14 letter to the Board indicating that it was relying on
15 the hearing as part of its consultation process.

16 On January 8th -- this was the date of the
17 letter -- Canada noted in relation to this hearing:
18 (as read)

19 The process provides the Crown opportunities
20 to consider information about indigenous
21 concerns and potential adverse effects on
22 asserted or established Section 35 rights,
23 which of course Mittimatalik have. [And
24 Canada also said] Canada sends notification
25 encouraging participation of Inuit.

26 This hearing began on January 25th. By the beginning

1 of the third day, the hearing was already more than one
2 day behind the final agenda. The Board started
3 proceedings by noting that due to concerns about time,
4 the intervenors would be limited to three questions
5 during an initial round of questions, and then the
6 Board would return to each party for a second round of
7 questions.

8 By the end of the third day, the Board advised
9 that parties would have only two additional questions
10 for a total of five questions.

11 Also at the outset of Day 3, the Board announced
12 the change to the final agenda and advised that
13 participants -- pardon me -- advised the participants
14 that the proponent would be presenting three
15 presentations consecutively for a total of 124 pages of
16 material after which time the intervenors would have
17 their five allotted questions.

18 One of these presentations, Madam Chair, the human
19 health risk assessment, had not been -- previously been
20 delivered during the November 2019 hearing and was new
21 information. The restriction on questions remained in
22 place until the start of Day 5 at which time the
23 parties were advised there would be no restrictions on
24 questions on the remaining presentations not previously
25 presented in November 2019.

26 Today, on the sixth day of the hearing, the Board

1 advised that any questions that parties were not
2 allowed to ask earlier in the week should be submitted
3 in writing and responded to in writing at the end of
4 the hearing after the close of the oral evidence. In
5 other words, questions that were restricted on Days 3
6 and 4 and the start of Day 5 would not be asked as part
7 of the oral hearing.

8 At the time of this motion, intervenors have not
9 finished questioning Baffinland on the marine
10 presentation. Mittimatalik Hunters and Trappers
11 Organization has raised with the Board that the sudden
12 changes in the process have been unfair and prejudicial
13 to Mittimatalik Hunters and Trappers Organization's
14 participation. Several other parties have raised
15 similar concerns.

16 Mittimatalik Hunters and Trappers Organization has
17 spent a significant amount of time preparing questions
18 for the proponent and other parties during this part of
19 the process, and, furthermore, they have hired experts
20 and legal counsel to assist with the questions.
21 Mittimatalik Hunters and Trappers Organization has
22 participated to the fullest extent possible knowing
23 that Canada considers this hearing to be part of their
24 consultation process and knowing that Canada ultimately
25 will make the decision about whether Phase 2 will
26 proceed.

1 I will now discuss the law that is applicable.

2 Madam Chair, under the Nunavut Agreement, which is a
3 treaty enshrined under Section 35 of the Constitution
4 Act, 1982, the Nunavut Impact Review Board has (AUDIO
5 FEED LOST). Article 12.2.24 says: (as read)

6 In designing its bylaws and rules of
7 procedure for the conduct of public hearings,
8 NIRB shall, to the extent consistent with the
9 broad application of the principles of
10 natural justice and procedural fairness,
11 emphasize flexibility and informality and
12 specifically [this is (ii) of that article]
13 give due regard and weight to the tradition
14 of Inuit oral communication and
15 decision-making.

16 Rule 43.1 of the Board's rules of procedure
17 encapsulates Article 12.2.24.

18 Finally, under the rules of procedure of the
19 Board, Rule 49 provides that the Board is required to
20 allow questioning of the proponent by parties opposite
21 in interest. There is no limit on the time for such
22 questioning. As we provided in our previous motion to
23 the Board dated January 26th, 2020, the Board must
24 adopt a process in this proceeding that is procedurally
25 fair. This requires the Board to ensure that all of
26 the parties are given an opportunity to present their

1 case fully and fairly.

2 The Board owes a high level of procedural fairness
3 to Mittimatalik Hunters and Trappers Organization in
4 this hearing as the project has the potential to
5 significantly and adversely impact their rights.

6 So, first, we say, Madam Chair, procedural
7 fairness is lacking. For the Board to suddenly limit
8 Mittimatalik Hunters and Trappers Organization and
9 others in their questions and then require those
10 questions to be made in writing after this portion of
11 the hearing is over while providing no notice of these
12 changes and providing no prior indication in the draft
13 agenda or final agenda that it may do so is a breach of
14 procedural fairness.

15 This curtailment of the meaningful participation
16 of intervenors is exacerbated since there is no
17 restriction on the ability of the proponent to have
18 multiple people provide answers to the same question
19 and by allowing the proponent unilateral flexibility to
20 modify the manner in which their material is presented
21 and in a way that's not in keeping with the final
22 agenda that was released.

23 Madam Chair, all parties were provided a draft
24 agenda and then a final agenda, neither of which set
25 limits on questions or time limits for asking
26 questions. Mittimatalik Hunters and Trappers

1 Organization prepared for this hearing based on the
2 final agenda. Further and importantly, we urge the
3 Board to set aside more time for the hearing and for
4 questions, and we indicated that the Board's proposed
5 agenda was too short and did not provide enough time
6 for presentations and questions.

7 Now, the Board declined to implement our
8 suggestions, but we submit you cannot now expect the
9 intervenors to bear the consequences of that. Madam
10 Chair, by restricting Mittimatalik Hunters and Trappers
11 Organization's ability to present oral questions, the
12 Board is curtailing the ability of the organization to
13 meaningfully participate in the hearing process. Inuit
14 culture is an oral culture, and the ability to
15 communicate questions about the project to Baffinland
16 orally is of significant importance to Inuit.

17 Further, oral questions allow for the ability to
18 follow up and ask questions to clarify responses. It
19 has been mentioned a number of times by a number of
20 parties that Baffinland's initial responses are not
21 providing the information that is being sought.

22 The initial limitation of five questions and now
23 the limitation of only written questions does not allow
24 for this critical process of follow-up and
25 clarification. This has left the Mittimatalik Hunters
26 and Trappers Organization without the information it

1 needs to understand the impacts of the project and the
2 proposed mitigation and adaptive management measures.

3 Furthermore, having parties able to ask oral
4 questions ensures that the evidence has been properly
5 tested by cross-examination. Cross-examination has
6 been referenced by the Supreme Court of Canada as:
7 (as read)

8 A faithful friend in the pursuit of justice
9 and an indispensable ally in the search for
10 truth.

11 It's also been referred to by the Supreme Court as an
12 essential component of the right to make full answer
13 and defence. (as read)

14 At times [said the Supreme Court] there will
15 be no other way to expose falsehood, to
16 rectify error, to correct distortion, or to
17 elicit vital information that would otherwise
18 remain forever concealed.

19 Madam Chair, I should note that I am happy to provide
20 the case citations to the two cases I have just
21 referenced from the Supreme Court of Canada, and I will
22 do that to Ms. Meadows and anybody else that would like
23 to see those.

24 The restriction and curtailment on oral questions
25 by this Board does not serve the interest of the Board
26 in making an informed decision or the interest of

1 intervenors and community members in better
2 understanding the impacts of the project. This is
3 prejudicial to Mittimatalik Hunters and Trappers
4 Organization, and it's procedurally unfair.

5 Since the beginning of the hearing, it has been
6 evident that more time is needed to be able to carry
7 out this hearing in a manner that allows the
8 intervenors to question Baffinland, including on all
9 topics that are critically important to Mittimatalik
10 Hunters and Trappers Organization's harvesting rights
11 they manage and to present their positions fully and
12 fairly.

13 The Board should ensure that the schedule can
14 accommodate full oral participation by intervenors so
15 they may ask their questions on the record of
16 Baffinland, of government bodies, and of other
17 intervenors on all the topics that may impact them with
18 responses by Baffinland and other parties during the
19 oral hearing.

20 Madam Chair, the project is a massive undertaking
21 that is going to significantly impact Mittimatalik
22 Hunters and Trappers Organization and other communities
23 for years, if not generations. An extension of the
24 hearing to allow full information to be sought and
25 proper testing of the evidence is warranted.

26 Madam Chair, I'm just about done. I just have a

1 couple more submissions. The risk of prejudice to
2 Mittimatalik Hunters and Trappers Organization is
3 significant. As I mentioned, Canada is using this
4 process as part of their consultation process and has
5 encouraged Inuit to participate. If Mittimatalik
6 Hunters and Trappers Organization and other Inuit are
7 restricted in their participation, they face a real
8 risk. Canada will proceed towards a decision, a
9 decision which may significantly impact
10 constitutionally protected rights without having the
11 full benefit of my client's participation in this
12 hearing.

13 My client has raised throughout the review process
14 concerns about the lack of information provided by
15 Baffinland on topics that affect their harvesting
16 rights. Mittimatalik Hunters and Trappers Organization
17 in some circumstances do not have enough information to
18 understand the impacts of the project, and in other
19 circumstances Baffinland has not provided support for
20 its conclusions that there will be no significant
21 impacts.

22 Importantly, in my client's view, Baffinland has
23 not assessed impacts to their harvesting rights taking
24 into account how they use the land and water and
25 developed mitigation measures directed at those impacts
26 on harvesting rights.

1 So, Madam Chair, Mittimatalik Hunters and Trappers
2 Organization is prepared to ask oral questions of
3 Baffinland, other Inuit organizations, and all
4 intervenors on topics that are critical to the impacts
5 of the project on their members.

6 We are very concerned that the initial restriction
7 on questions and now the requirement to submit
8 questions in writing will prevent Mittimatalik Hunters
9 and Trappers Organization and all other Inuit
10 participants from getting the information they need to
11 understand the impacts of the project. The result,
12 Madam Chair, is a process that is not meaningful, a
13 process that does not allow for the level of engagement
14 required by the duty to consult and accommodate.

15 In conclusion, Madam Chair, given the impact to
16 Mittimatalik Hunters and Trappers Organization and
17 other intervenor participation, we request that the
18 Board allow parties to ask all questions orally on all
19 the topics presented by Baffinland and other
20 intervenors and have them answered orally on the
21 record. This is the only way to respect the oral
22 tradition of Inuit and to be procedurally fair.

23 We further ask the Board to extend the timeline
24 for the hearing so that the technical sessions can be
25 completed with the benefit of oral questions on all
26 topics presented by Baffinland. The additional days

1 should not be at the expense of the community
2 roundtable sessions. Qujannamiik, Madam Chair.

3 THE CHAIR: And now I turn to the replies
4 to the motion of the registered intervenors and
5 Baffinland. Specifically, the Board is asking whether
6 your organization supports the motion, does not support
7 the motion, or takes no position with respect to the
8 motion and why. For parties who are represented by
9 legal counsel, I will be asking your legal counsel to
10 reply.

11 First, Qikiqtani Inuit Association, Lorraine Land.
12 Submissions by Qikiqtani Inuit Association (Motion)
13 (Mittimatalik Hunters and Trappers Organization)

14 MS. LAND: Thank you, Madam Chair.
15 Lorraine Land, legal counsel for the Qikiqtani Inuit
16 Association.

17 Are you able to hear me?

18 THE CHAIR: Yes. You may proceed.

19 MS. LAND: Thank you.

20 Madam Chair, the Qikiqtani Inuit Association
21 supports this motion brought by the Mittimatalik Hunter
22 and Trapper organization for the order allowing parties
23 to ask questions orally and have them answered orally
24 on all topics and for the order extending the timeline
25 for the hearing so that the technical sessions can be
26 completed with the benefit of all oral evidence.

1 The Qikiqtani Inuit Association submits that
2 accepting the relief that is being requested by the
3 Mittimatalik Hunter and Trappers organization is
4 consistent with the Board's obligations to ensure a
5 proper environmental assessment of all impacts based on
6 both western science and Inuit Qaujimajatuqangit.

7 The Qikiqtani Inuit Association appreciates the
8 unique challenges that are facing the Board in this
9 current review. This project is unprecedented in
10 Nunavut in its scope and in its impact. There are
11 complex issues and a volume of technical evidence.
12 There are extensive terrestrial and marine issues, and,
13 of course, there are many Inuit community parties who
14 are all eager to fully participate because this project
15 directly affects them and because they have critical
16 Inuit oral evidence to provide to you, the Board.

17 The Qikiqtani Inuit Association is an experienced
18 party dealing with these types of reviews and has
19 access to substantial technical resources, and yet the
20 Qikiqtani Inuit Association itself has challenges
21 keeping up with this process.

22 For the community parties with fewer resources and
23 less access to western science experts and to have so
24 much Inuit knowledge to share with you, the Board,
25 those challenges are much more serious. In the face of
26 those challenges, the Qikiqtani Inuit Association is

1 aware that you, the Board, play a crucial role. You as
2 Board members are responsible for assessing the
3 environmental impacts for this project, and through the
4 Nunavut Agreement, you are also responsible for a
5 significant part of the Crown's deep consultation
6 obligations, which have been delegated to you in your
7 process.

8 That is a responsibility for both the process
9 requirements of deep consultation and accommodation.
10 In other words, you bear the responsibility for also
11 addressing the substance of ensuring that those impacts
12 on Inuit rights are properly addressed through proposed
13 mitigation, monitoring, and management structures.

14 Board Panel Members, the Qikiqtani Inuit
15 Association is concerned based on the past six days of
16 evidence and procedure that the Board will be
17 improperly constraining its jurisdiction if the Board
18 does not vary the current agenda as it will not be able
19 to meet those requirements.

20 If the Board does not allow the remainder of the
21 technical meeting to proceed in a way that allows for
22 full testing of the proponent's evidence that's based
23 on both western science and Inuit Qaujimajatuqangit
24 perspectives, then you will miss key evidence, and if
25 the review process proceeds in a way that prejudices
26 Inuit participation by constraining Inuit oral

1 questions and evidence, then there are serious
2 consequences for both proper environmental review and
3 proper deep consultation and accommodation obligations.

4 In the view of the Qikiqtani Inuit Association,
5 limiting the available time for the technical meeting
6 will mean that the Board will not be able to meet its
7 unique jurisdictional responsibilities. The Board has
8 considerable flexibility in its rules to accommodate
9 the process concerns that you have heard raised this
10 week by every single Inuit party, and, indeed, the
11 Board's procedural flexibility is required by the
12 Nunavut Agreement which sets out constitutionally
13 protected guarantees. That includes the guarantee that
14 the Board, as one of the institutions of public
15 government in Nunavut, has procedures that respect both
16 western and Inuit evidence and which protect Inuit
17 rights.

18 And, of course, that procedural flexibility is
19 also reflected in your governing legislation and in the
20 rules, as you've heard in previous submissions during
21 this hearing.

22 The Qikiqtani Inuit Association submits to you,
23 Board Members, that only if you ensure that this
24 process for the review allows for culturally
25 appropriate Inuit participation and only if it fully
26 canvasses Inuit oral evidence will you be able to make

1 the proper evidence-based decisions that are required.

2 So these are both process issues and they are
3 substance issues that affect the eventual content of
4 your final decision and recommendations to the minister
5 about what is the appropriate management, monitoring,
6 and mitigation required for this Phase 2 proposal.

7 Right now it is clear that although the technical
8 meeting was supposed to conclude today, we are not
9 finished with Baffinland's evidence. We have not
10 finished even half of the intervenor's questions on
11 marine issues. We haven't even begun to review
12 Baffinland's presentation on some matters which were
13 not even canvassed in previous phases of the hearing
14 because of time constraints, and we all feel the
15 pressure that these technical reviews must be complete
16 yet, plus all the intervenors' evidence, plus the
17 community roundtable, which must all happen and where
18 there is also key Inuit oral evidence.

19 The Qikiqtani Inuit Association, therefore,
20 supports the M-H -- the Mittimatalik Hunter and
21 Trappers Organization motion as it would ensure all
22 parties that the Board will not constrain either
23 critical evidence in the technical meeting or Inuit
24 evidence in the community roundtable evidence.

25 And, finally, Madam Chair and Board Members, the
26 Qikiqtani Inuit Association points out that in the

1 event that there is a legal challenge based on either
2 inadequacies in this process, including whether Inuit
3 knowledge was properly accommodated or if there is a
4 legal challenge about the substance of the evidence
5 because the evidence is constrained from being added to
6 the record as a result of procedural barriers, that
7 will result in a great cost to all the parties and
8 further project delay and perhaps even a requirement to
9 re-conduct the assessment, which is not a helpful
10 outcome.

11 So the Qikiqtani Inuit Association thanks the
12 Board for your hard work and for the opportunity to
13 address these procedural matters and respectfully
14 request that you grant the motion that is brought by
15 the Mittimatalik Hunter and Trappers Organization.
16 Thank you, Madam Chair.

17 THE CHAIR: Nunavut Tunngavik
18 Incorporated, Neida Gonzalez.
19 Submissions by Nunavut Tunngavik Incorporated (Motion)
20 (Mittimatalik Hunters and Trappers Organization)

21 MS. GONZALEZ: Thank you, Madam Chair. Neida
22 Gonzalez, legal counsel, Nunavut Tunngavik.

23 Can I just -- can you let me know if you can hear
24 me?

25 THE CHAIR: Yes, you may proceed.

26 MS. GONZALEZ: Okay. Nunavut Tunngavik

1 supports the motion and agrees that the Board should
2 order that the remaining technical sessions be
3 completed, including allowing intervenors to ask all
4 remaining questions orally during the technical
5 sessions with no restriction on the number of
6 questions, and require Baffinland to respond orally
7 during the technical sessions as originally directed by
8 this Board.

9 Nunavut Tunngavik submits that the technical
10 session should proceed in a matter that facilitates a
11 full understanding of the evidence and does not limit
12 Inuit oral evidence. This means requiring full
13 presentations by the proponents and intervenors and not
14 limiting the ability of Inuit to ask questions and make
15 oral submissions and also ensuring that all questions
16 are addressed during the oral in-person public hearing.

17 Nunavut Tunngavik also requests that the community
18 roundtable occur based on the full evidence garnered at
19 the technical sessions. Nunavut Tunngavik recognizes
20 that this request to complete the technical sessions
21 before moving forward with the community roundtable is
22 not a small request and that it will require the Board
23 to overcome logistical challenges and allocate
24 additional resources to this review process.

25 Taking the challenges into account, Nunavut
26 Tunngavik submits it is critical that the technical

1 sessions be fully completed in an oral and in-person
2 format to allow Inuit to hear all the evidence,
3 understand that evidence, and be able to test the
4 evidence in a manner that respects Inuit oral
5 traditions and is also in keeping with the Nunavut
6 Agreement in deep consultation requirements.

7 It is vital that the Board safeguard the integrity
8 of this public hearing process.

9 THE CHAIR: Ms. Gonzalez, you need to slow
10 down for the interpreters.

11 MS. GONZALEZ: Yes. Thank you.

12 THE CHAIR: You may proceed.

13 MS. GONZALEZ: It is vital that the Board
14 safeguard the integrity of this public hearing process
15 and ensure a full and proper review of the Phase 2
16 proposal by completing the technical sessions with full
17 Inuit engagement.

18 Nunavut Tunngavik also submits that the Board's
19 disposition of the motion to amend the public hearing
20 of January 15th indicates that community
21 representatives would be able to receive answers to any
22 questions that could arise during an intervenor's
23 presentation during these technical sessions and that
24 they would have the benefit of attending all the
25 technical sessions. The current agenda for the
26 community roundtable relies on the community

1 representatives having participated in completed
2 technical sessions, and NTI submits that this
3 commitment should be honoured.

4 Nunavut Tunngavik respects the Board's
5 decision-making authority in this matter and submits
6 that it is appropriate taking into account the
7 flexibility and the Board's process to ensure that the
8 technical sessions are completed in an oral, in-person
9 format, and that the public hearing be extended as
10 necessary. Qujannamiik.

11 THE CHAIR: Hamlet of Pond Inlet, Frank
12 Tester.

13 Submissions by Hamlet of Pond Inlet (Motion)
14 (Mittimatalik Hunters and Trappers Organization)

15 MR. TESTER: Thank you, Madam Chair.

16 The Hamlet of Pond Inlet supports this motion in
17 its entirety. The hamlet appreciates and understands
18 the very considerable challenge this motion presents
19 for the Board, and given acceptance of the motion, it
20 is committed to working cooperatively with the Board in
21 exercising its responsibilities. Thank you.

22 THE CHAIR: Community of Igloolik,
23 Igloolik Working Group, Igloolik Hunters and Trappers
24 Association, Peter Ivalu.

25 Submissions by Community of Igloolik, Igloolik Working
26 Group, Igloolik Hunters and Trappers Association

1 (Motion) (Mittimatalik Hunters and Trappers
2 Organization)

3 MR. IVALU: Am I on?

4 THE CHAIR: You can proceed.

5 MR. IVALU: Thank you. Thank you, Madam
6 Chair. My apologies.

7 Our technical advisor for Igloolik Working Group,
8 Merlyn Recinos, will speak to the motion. Thank you,
9 Madam Chair.

10 THE CHAIR: Community of Igloolik,
11 Igloolik Working Group, Igloolik Hunters and Trappers
12 Association, Merlyn Recinos.

13 MR. RECINOS: (AUDIO FEED LOST) Chair,
14 Merlyn Recinos, Igloolik Working Group, Community of
15 Igloolik and hunters -- Igloolik Hunters and Trappers
16 Association.

17 Madam Chair, Igloolik Working Group and the
18 community of Igloolik and the hunters and trappers
19 association fully supports this motion. Furthermore,
20 we want to comment that oral communication is how Inuit
21 have been communicating, passing traditions,
22 and (INDISCERNIBLE) over thousands of years. It's
23 extremely important for them understanding as well that
24 the Government of Canada is planning to utilize these
25 meetings as consultation. It is extremely important
26 for Inuit not to be limited and to fully participate in

1 this proceedings.

2 It's Inuit in this communities that have the
3 more -- the most to lose. Therefore, it should be them
4 who we should be given the most to say to ensure that
5 we're hearing what they have to say. We're impeding
6 for them to speak by limiting them in regards to their
7 harvesting rights, their land rights. Therefore, the
8 community of Igloolik, Igloolik Working Group, and
9 Igloolik Hunters and Trappers Association fully
10 supports the motion.

11 We do understand, Madam Chair, that this is going
12 to be challenging for the Board, but it is extremely
13 important for our community and our Inuit in our
14 community to fully participate. Thank you, Madam
15 Chair.

16 THE CHAIR: Sanirajak Hunters and Trappers
17 Organization.

18 Submissions by Sanirajak Hunters and Trappers
19 Organization (Motion) (Mittimatalik Hunters and
20 Trappers Organization)

21 MS. EEGEESIAK: Thank you, Chairperson.
22 Okalik Eegeesiak from the hunters and trappers
23 organization.

24 The Sanirajak Hunters and Trappers does not have
25 legal counsel just so you are aware. As the technical
26 advisor for the Sanirajak Hunters and Trappers

1 Organization, at the outset, I expressed the limited
2 resources the hunters and trappers organization has,
3 the limited capacity to analyze documents, limited
4 capacity to navigate through thousands of documents
5 through the Nunavut Impact Review Board registry and --
6 and -- okay. I'll repeat that last part. The limited
7 capacity to navigate through thousands of documents
8 through the Nunavut Impact Review Board registry and
9 limited time to --

10 (VIDEO AND AUDIO FEED LOST)

11 THE CHAIR: I think we just lost the feed.
12 We'll just wait while the techs resolve the issue.

13 It looks like the feed has been restored.

14 Sanirajak Hunters and Trappers Organization,
15 Okalik Eegeesiak.

16 MS. EEGEESIAK: Thank you, Chairperson.
17 Okalik Eegeesiak, hunters and trappers in Sanirajak.

18 I would just like to point out that the Sanirajak
19 Hunters and Trappers Organization --

20 (VIDEO AND AUDIO FEED LOST)

21 THE CHAIR: It looks like we lost the feed
22 again.

23 Karen Costello.

24 MS. COSTELLO: Thank you, Madam Chair. Karen
25 Costello, Nunavut Impact Review Board staff.

26 Staff on the ground in Iqaluit are advising that

1 there's major internet issues within Iqaluit right now.
2 I'm just wondering if we should just pause for ten
3 minutes, maybe take a -- I know it disrupts the flow
4 but perhaps pause for ten minutes to allow it to be
5 resolved. Thank you, Madam Chair.

6 THE CHAIR: Yes. While they're resolving
7 the feed issues in Iqaluit, let's take a ten-minute
8 break.

9 (ADJOURNMENT)

10 THE CHAIR: Welcome back, everybody. It
11 looks like we're connected to Iqaluit again.

12 Going back to where we left off, Sanirajak Hunters
13 and Trappers Organization, Okalik Eegeesiak.

14 It looks like we lost the feed again. Karen
15 Costello.

16 MS. COSTELLO: Thank you, Madam Chair. Karen
17 Costello, Nunavut Impact Review Board staff.

18 I've been advised that they are changing out
19 cables in Iqaluit right now. Thank you, Madam Chair.

20 THE CHAIR: Welcome back, everyone.
21 Sanirajak Hunters and Trappers Organization, Okalik
22 Eegeesiak.

23 MS. EEGEESIAK: I'll just start from where --
24 from the beginning. It was very short anyway.

25 Sanirajak Hunters and Trappers Organization does
26 not have legal counsel. As technical advisor for the

1 Sanirajak Hunters and Trappers Organization, at the
2 outset, I express the limited resources that hunters
3 and trappers organization has, that the limited
4 capacity to analyze documents, the limited capacity to
5 navigate through thousands of documents in the Nunavut
6 Impact Review Board registry -- there is no
7 interpretation coming through.

8 THE CHAIR: We have interpretation. It's
9 going through.

10 MS. EGEESI AK: Is it going through here in
11 Iqaluit?

12 THE CHAIR: NIRB staff, Keith Morrison.

13 MR. MORRISON: Keith Morrison from Iqaluit.

14 We apparently are getting no sound over
15 interpretation. Oh, I think we have it now.

16 Sorry. They are working on it. We are slowly
17 getting channels back. We are just testing to see if
18 Inuktitut translation is back. Stand by. Stand by.
19 Still working, stand by.

20 THE CHAIR: Karen Costello.

21 MS. COSTELLO: Thank you, Madam Chair. Karen
22 Costello, Nunavut Impact Review Board staff.

23 I've been advised by staff on the ground in
24 Iqaluit that it seems to be a major issue. Every time
25 they try to reboot, it crashes. They're also having
26 full communication issues with their -- with their cell

1 phones. They're not able to text or anything like
2 that, so I just wanted to pass that information along
3 for your consideration. The issue may not be resolved
4 very quickly. Thank you, Madam Chair.

5 THE CHAIR: The Board is going to recess
6 for a few minutes while we come up with a plan to
7 address the technical issue and how to go forward with
8 hearing the oral motions.

9 (ADJOURNMENT)

10 THE CHAIR: Welcome back, everyone. Can
11 we please confirm that we're connected to Iqaluit
12 through audio feed.

13 UNIDENTIFIED SPEAKER: Hi.

14 THE CHAIR: Recognizing that we're facing
15 significant technical difficulties with the connection
16 from Iqaluit, we are going to recess for tonight and
17 reconvene with listening to the oral motions on Monday
18 morning. So we will continue with responses to the
19 motion Monday. NIRB legal counsel?

20 MS. MEADOWS: Thank you, Madam Chair.
21 Teresa Meadows, legal counsel for the Nunavut Impact
22 Review Board.

23 Madam Chair, I have circulated to legal counsel
24 the notice of motion for the Arctic Bay Hunters and
25 Trappers Association that was received just before we
26 started this evening's session. We will try to make

1 that available to any party who requires it who has not
2 already been provided with it, but, unfortunately,
3 we'll not be able to post it on the NIRB website until
4 Monday when staff are back in -- into the office in
5 Cambridge Bay.

6 So that motion will also be discussed as an oral
7 motion for parties who have not had a chance to review
8 it on Monday when we reconvene. Thank you, Madam
9 Chair.

10 THE CHAIR: Thank you to all the
11 participants for attending this evening during the oral
12 motions proceeding. Recognizing that we're facing
13 technical difficulties, we will resume the hearing on
14 Monday -- Monday morning at 9 AM, and we'll pick up
15 where we left off listening to oral motions. Enjoy
16 your day off tomorrow. Hope you all rest well. Good
17 evening.

18 _____
19 PROCEEDINGS ADJOURNED UNTIL 9:00 AM, FEBRUARY 1, 2021
20 _____

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1 CERTIFICATE OF TRANSCRIPT:

2

3 We, Sandra Burns and Andres Vidal, certify that
4 the foregoing pages are a complete and accurate
5 transcript of the proceedings taken down by us in
6 shorthand and transcribed from our shorthand notes to
7 the best of our skill and ability.

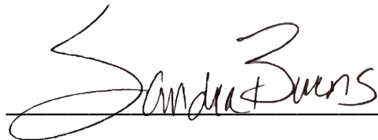
8 Dated at the City of Edmonton, Province of
9 Alberta, this 17th day of February 2021.

10

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12

13



14

Sandra Burns, CSR(A), RPR, CRR

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Official Court Reporter

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Andres Vidal, CSR(A)

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Official Court Reporter

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