

**Questions from Oceans North to the Proponent and Intervenors in the Phase 2 Final Hearing
March 1, 2021**

Party	Q#	Question	References
<u>BIMC</u>			
BIMC	1a	Can the proponent confirm that part of the combined monitoring plan to be developed with the Department of Fisheries and Oceans and the Marine Environmental Working Group will focus on thresholds and indicators for other marine species such as walrus, beluga, and bowhead?	Proposed Term and Condition 109
BIMC	1b	What actions have been taken since 2015, the first year of shipping, to comply with Terms and Condition 109 to develop thresholds and indicators for narwhal, walrus, beluga, and bowhead within Phase 1?	Phase 1 Terms and Conditions, Proposed Phase 2 Terms and Conditions
BIMC	1c	The proponent mentioned that narwhal may be habituating to vessel noise since increased shipping began in 2015, and then responded to the Mittimatalik Hunters and Trappers Organization that they are considering studying habituation. Would the proponent classify the 2018 tagging data or the Bruce head visual data as behavioural responses that are habituating or habituated to shipping?	Hearing Transcript Pg. 1147
BIMC	2	The proponent, in this hearing, has acknowledged that there are other pressures on narwhal. The proponent indicated that if, through thresholds or early warning indicators, a population level change is detected, that they can trace back to the behavioural responses in their monitoring program and make a connection to population level effects. How will that link be made? How would those behavioural responses be linked to population level effects?	Hearing Transcript pg 1471
BIMC	3a	The proponent has recently clarified that triggering adaptive management will happen in a tiered approach, including reducing ship numbers if necessary, and that conclusive evidence about the cause is not required before action is taken. It was also mentioned that Inuit will have their own tiered thresholds for adaptive management. If a threshold is triggered through Inuit-led monitoring, will action be taken right away, and will	Hearing Transcript

		Baffinland need to investigate the triggering of this threshold prior to taking adaptive management action?	
BIMC	3b	Currently, 10% drop in the proportion of calves to adults in the narwhal population is the threshold for what is considered to be a significant change, necessitating adaptive management action. This threshold was developed and agreed to be the Proponent and DFO. In regard to Early Warning indicators or thresholds, will the Inuit Stewardship plan enable Inuit to develop their own early warning indicators and include their own definitions of significance?	
BIMC	4a	Could the proponent please clarify if their cumulative effects assessment evaluated repeated daily exposures to underwater noise from inside the acoustically modeled ranges from project ships to a received sound pressure levels of 120dB ranges only?	
BIMC	4b	An unresolved technical issue concerns robust integration of existing empirical data from the monitoring programs. The video of the nursing narwhal calf is an important example of this. The proponent provided one distance measurement for this occurrence. Did the calf continue nursing at closer distances than shown in the video? From the monitoring data, what was the range of sound levels for that cow calf pair at the distances that the southbound transiting ship passed (3.9km being one of those distances)? Did the calf continue nursing at closer distances? Was there a difference in behaviour between bow and stern exposure? These are questions which can be answered from existing monitoring data collected by the Proponent.	
BIMC	4c	In the adaptive management plan, will the proponent move away from using assumptions about marine mammal disturbance, namely the predicted 120dB disturbance zone, to integrating and applying the data and findings from the years of acoustic and behavioural monitoring on this project?	
BIMC	4d	Can the proponent confirm their statements that sound levels below broadband received levels of 120dB are considered what they call 'quiet time?' And to confirm that they see this 'quiet time' occurring along the northern shipping route at all times except for <2hrs per day in the open water season and <5hrs per day in the shoulder season? What is the proponent's understanding of narwhal response to sounds less than 120dB?	

BIMC	5	<p>The proponent noted that narwhal that temporarily leave an area and then return, may not be as disturbed as another species, like a beluga, that stays away for a longer period. But is it also possible that due to the area being habitat that supports critical life cycle requirements, like nursing or shelter from predators, that narwhal may be returning to the area and enduring a larger effect, which may become significant over time? If the precautionary principle is to be applied to the management of this project, which assumption is more precautionary?</p>	Pg 902, 903 of transcript
BIMC	6a	<p>The Term and Condition 109 of the <i>current</i> project certificate states that surveys shall continue over a sufficient period to determine the extent to which habituation occurs for narwhal, beluga, bowhead, and walrus.</p> <p>Concern #17 of the Baffinland Audit Report records this commitment as met, citing an interview with the Environmental and Regulatory Compliance Manager that suggests the 2019 Annual Report will address the compliance of term and Condition 109.</p> <p>However the 2019 -2020 monitoring report does not mention habituation in the context of marine mammals.</p> <p>How has the proponent implemented this part of Term and Condition 109 for the existing certificate and how will it be implemented for Phase 2 if it has not yet been implemented for the current Phase?</p>	Term and Condition 109
BIMC	6b	<p>How will the Phase 2 monitoring programs differ from monitoring to date if the Proponent cannot currently make conclusive determinations about habituation for the populations of marine mammals in the regional study area for any of the species cited in Term and Condition 109?</p>	
BIMC	7	<p>In regard to the proposed agreement with the Hamlet of Pond Inlet to ramp up shipping; was the decision to ramp up over two years with 30 ships per year based on economics, or based on the effectiveness of monitoring programs to detect changes over each year? Sine the concern was environmental, was the decision based on environmental factors or economic factors?</p>	

BIMC	8	What efforts have been made to engage with community-based monitoring groups and with programmes such as the NTI IMMP to improve upon or expand the monitoring of project impacts?	
BIMC	9	Baffinland previously described its offer of annual payments to affected communities of \$1,200,000.00 to be a figure calculated based on seasonal ship transits to and from Milne Inlet and in recognition both of shipping-related impacts on communities and communities' desire for direct benefits. Does Baffinland consider its offer of annual payments of \$1,200,000.00 per affected community to violate the Nunavut Agreement? Where does Baffinland now stand in relation to this offer?	
BIMC	10	To what extent do capital expenditures on and related to the Phase 2 expansion impact Baffin's current (1) profitability and (2) financial viability?	
BIMC	11	To what extent do capital expenditures on and related to the Phase 2 expansion impact Inuit subsurface royalties and projected royalties at deposit 1?	
BIMC	12	When did Baffinland first plan for what is now described as "operational flexibility" (i.e. shipping over 12 mtpa via Milne Inlet)?	
CIRNAC	1	<p>Throughout the hearing, we have heard issues from Hunters and Trappers Associations about the hearing process, registry access, consultation, and access to resources to deal with a project of this magnitude. The stated principles respecting the Government of Canada's relationship with Indigenous peoples states that reconciliation is a fundamental purpose of Section 35 of the Constitution. In the CIRNAC presentation, on slide 3, CIRNAC stated that "participant funding facilitates informed engagement."</p> <p>Please provide a summary of the amount of participant funding that has been provided to Inuit groups such as HTAs and communities for the Phase 2 review. Please provide a detailed explanation of how this level of funding is adequate for this magnitude of project, as well as how this statement is consistent with the testimony from various HTAs heard during the Phase 2 Final Hearings (Jan 25-Feb5). Please explain how the Government of Canada's determination on its duty to consult will be informed by these comments from Hunters and Trappers Associations and communities, as well as how this coincides with the Government of Canada's commitment to reconciliation?</p>	<p>CIRNAC Final Presentation - Baffinland Phase 2 Final Hearing</p> <p>Hearing Transcript pgs 85,86, 120, 125, 690, 825, 1155, 1187-1189, 1224, 1266, 1419, 1742, 1959.</p>

CIRNAC	2a	In Crown-Indigenous Relations and Northern Affairs Canada's Final Written Statement for Phase 2, it was stated that CIRNAC had determined that IQ was properly incorporated into the Phase 2 proposal. Please clarify how that determination was made, as well as any direct interaction with Inuit that aided in that determination.	Crown-Indigenous Relations and Northern Affairs Canada's Final Written Statement – Phase 2
CIRNAC	2b	With consideration to comments from the Mittimatalik HTO, the Hamlet of Pond Inlet, as well as other HTA and community intervenors, does CIRNAC remain satisfied regarding the inclusion of IQ into the impact prediction/assessment process?	Hearing Transcript
CIRNAC	2c	How will CIRNAC continue to monitor or be involved in ensuring that IQ is incorporated into the future commitments that the proponent has made?	
CIRNAC/ Justice Canada	3	Baffinland previously described its offer of annual payments to affected communities of \$1,200,000.00 to be a figure calculated based on seasonal ship transits to and from Milne Inlet and in recognition both of shipping-related impacts on communities and communities' desire for direct benefits. Does the Government of Canada consider Baffinland's offer of annual payments of \$1,200,000.00 per affected community to violate the Nunavut Agreement?	
CIRNAC	4	<p>The Phase 2 environmental assessment process has seen two documents submitted to proceedings which explicitly detail Baffinland Iron Mineral Company's intentions to ship 18Mt through Milne Port, rather than 12Mt. These documents are prepared by Baffinland (Preliminary Offering Circular, 2018) and parent company ArcelorMittal (2019 SEC form 20-f filing, filed with NIRB September 8, 2020) for distribution among investors and submission to the Securities and Exchange Commission. The environmental assessment process is one explicitly invoking foresight and long-term vision, with the <i>NIRB Draft Standard Guidelines for Preparation of an Impact Statement</i> (2018) stipulating that description of Project phases and future development are to be included.</p> <p>With this context, does CIRNAC not identify the Proponent's plans to ship 18Mt through Milne as being "relevant" information that should be considered in this process, given that this information is considered by Baffinland to be relevant to investors providing funding for this Project?</p>	
CIRNAC	5	A well-established principle in case law associated with the Crown Duty to Consult relates to the requirement that the Crown must respond to new information presented	

		<p>in the environmental assessment process with flexibility when considering the depth and scope of consultation (<i>Haida Nation v British Columbia (Minister of Forests)</i>, [2004]; <i>Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)</i>, [2004]).</p> <p>Over the course of this environmental assessment, new information has emerged, changing the understanding of the development trajectories for this project. It is apparent that the Proponent intends to ship 18Mt through Milne Port, rather than 12Mt. This is inconsistent with the long-term project stage plans detailed in the Proponent's <i>Phase 2 FEIS Addendum</i>.</p> <p>How does CIRNAC intend to promote modifying the nature of the assessment process in order to ensure that their responsibilities regarding Duty to Consult are fulfilled?</p>	
DFO	1a	Are the monitoring programs as they are currently implemented and integrated for Phase 1 sufficient to determine a finding of no significant impacts to ringed seal populations from project-related shipping?	Baffinland 2019 Annual Report to NIRB
DFO	1b	Are the proposed marine monitoring programs for Phase 2 sufficient to detect significant changes to narwhal populations as well as impacts to Inuit harvesting rights?	Phase 2 Proposal
DFO	1c	<p>Is the current monitoring program and reporting structure (and assumed Phase 2 reporting structure) sufficient to detect significant behavioural impacts to narwhal?</p> <p>Is the current monitoring program and reporting structure sufficient to measure the cumulative effects of repeated behavioural impacts on narwhal?</p> <p>Is the current monitoring program and reporting structure sufficient to determine if the cumulative effects of behavioural impacts to narwhal from project-related shipping are the cause of significant changes to the narwhal population?</p>	<p>2019 Annual Monitoring Report</p> <p>Phase 2 Proposal</p>
DFO	1d	<p>The Draft LGL Aerial Survey Report states that</p> <p><i>"... there were about 11 times more narwhals when no vessels were present compared to when more than two vessels were present."</i></p>	Mary River Project 2015 Annual Report to the NIRB March 2016 - LGL DRAFT Report FA0059-2

		<p><i>“Results from both the extensive and photographic surveys indicate that narwhal numbers are reduced during periods with large vessel activity. It is uncertain how these statistically significant differences translate into biological significance for narwhals. However, there were no detectable changes in the spatial-temporal pattern of narwhal occurrence in their summering areas and no significant changes in their relative abundance from year-to-year. There are also indications that narwhal avoidance of large vessels may be temporary.”</i></p> <p>How do the findings of this preliminary study influence the importance of cumulative effects assessment and cumulative effects monitoring? What is the potential impact of repeated daily displacement occurring over years to decades? Does the marine mammal monitoring program adequately assess this long-term, decadal scale of cumulative impacts of this evident displacement?</p>	<p>15 March 2016 Page 52, 74-78</p>
DFO	2	How does DFO integrate Inuit Qaujimajatuqangit regarding seal mating and the need for quiet during freeze up into their discussions of monitoring and effects assessment with the proponent?	Phase 2 Final Hearing Transcript
DFO	3	<p>Slide 6 of the Golder Integration report on marine mammals for the MEWG (Nov 2016) states the following questions as guidelines to developing a marine mammal monitoring programme:</p> <p>1. Will marine mammal distribution and abundance change as a result of BIM shipping activity along the northern shipping route during the open-water season?</p> <p>(a) What is the spatial-temporal distribution of marine mammals in the absence of shipping?</p> <p>(b) How far away from the ship will marine mammals avoid it?</p> <p>(c) What is the duration of avoidance for a single ship passage?</p> <p>(d) What received sound levels from ore carriers result in marine mammal avoidance? Or do mammals respond to the approaching vessel rather than just the received noise levels?</p> <p>(e) Will marine mammals habituate to regular and frequent ship passages?</p> <p>(f) If yes to (e), how long will it take marine mammals to habituate?</p> <p>(g) What natural factors influence narwhal distribution and abundance, independent of shipping?</p>	<p>Golder Integration report on marine mammals for MEWG Nov 2016</p>

		Are these initial questions that were meant to form the marine mammal monitoring program being answered by existing monitoring? Please respond as to whether or not Baffinland's current monitoring program addresses these questions. What gaps or questions remain between the above monitoring questions and the current and proposed monitoring programs?	
DFO	4	What is the level of the current state of knowledge regarding the ecological significance of Milne Inlet during periods of ice cover to narwhal and ringed seal? How would the state of knowledge influence a precautionary approach to managing impacts on both narwhal and ringed seal?	
DFO	5a	In regard to Early Warning Indicators, please describe the benefits of multiple lines of evidence from a suite of early warning indicators versus one early warning indicator for one species of marine mammal. Will one early warning indicator serve the purpose of detecting a significant impact to the narwhal population?	
DFO	5b	<p>The Draft LGL Aerial Survey Report states that</p> <p><i>"There were about 11× more narwhals when no vessels were present compared to when more than two vessels were present. Despite this finding, and given the increase in vessel activity during 2015, the model term Year was not statistically significant, which indicates that there were no substantial differences in the overall density of narwhals in 2013, 2014 and 2015. These results suggest that while narwhals may be responding to large vessel transits by exhibiting temporary displacement and/or changes in behaviour that reduce sighting probability, large-scale decreases in their density and spatial-temporal distribution were not apparent."</i> Pg xiii</p> <p>In consideration of this statement, does DFO recommend an early warning indicator to monitor for significant population level effects resulting from repeated temporary displacement? Would this be a certain level of change in spatial-temporal distribution?</p>	<p>Mary River Project 2015 Annual Report to the NIRB March 2016 - LGL DRAFT Report FA0059-2 15 March 2016 Page 74-78</p>
DFO	6	The Term and Condition 109 of the <i>current</i> project certificate states that surveys shall continue over a sufficient period to determine the extent to which habituation occurs for	200630-08MN053- Baffinland Audit Report 179C-IT5

		<p>narwhal, beluga, bowhead, and walrus. The Phased 2 proposed Term and Condition is the same.</p> <p>Concern #17 of the Baffinland Audit Report records this commitment as met, citing an interview with the Environmental and Regulatory Compliance Manager that suggests the 2019 Annual Report will address the compliance of Term and Condition 109. However the 2019 -2020 monitoring report does not mention habituation in the context of marine mammals.</p> <p>Does DFO concur with the auditor's conclusion that pages 301-310 of the 2018 Annual Report to NIRB is satisfactory evidence that monitoring been conducted to determine the extent to which habituation occurs for narwhal, beluga, walrus, and bowhead?</p>	Term and Condition 109 (proposed and current)
DFO	7	<p>The proponent noted that narwhal which temporarily leave an area and then return may not be as disturbed as another species, like a beluga, that stays away for a longer period. Due to the area being habitat that supports critical life cycle requirements, like nursing or shelter from predators, is it possible that the importance of this critical habitat, may result in narwhal returning to the area and enduring a larger effect, which may become significant over time? If the precautionary principle is applied in this project's adaptive management, which assumption is more precautionary?</p>	Pg 902, 903 of transcript
NRCan	1	<p>Natural Resource Canada's mandate concerns the provision of jobs, prosperity, and opportunity. For residents in an area such as North Baffin with high unemployment and limited wage labour opportunities, each incremental increase in jobs is far more impactful in terms of increasing prosperity than jobs provided for residents of a region with greater employment options. Is it within Natural Resource Canada's mandate to promote an expansion of this Project on a time scale that affords the Inuit labour market a chance at maximizing benefits from Project employment?</p>	<p>p.26 of TSD 26, LMA p.28 of TSD 26, LMA p. ii, (in Summary of Key Findings) of TSD 26, LMA p.6-7 of TSD, LMA</p>
NRCan	2	<p>What steps has Natural Resource Canada taken to assess Baffinland's statements surrounding employment benefit impacts in North Baffin to ensure that Inuit have access to employment opportunities proportionate to the burden of environmental and social risk they assume related to the Project?</p>	<p>p.26 of TSD 26, LMA p.28 of TSD 26, LMA p. ii, (in Summary of Key Findings) of TSD 26, LMA p.6-7 of TSD, LMA</p>

NRCan	3	Given consultation requirements, norms surrounding Impact and Benefit Agreements, and the objectives of the environmental assessment regime in Nunavut, does Natural Resources Canada place any additional value on the potential creation of jobs for regional Inuit, in comparison to jobs for southerners?	p.26 of TSD 26, LMA p.28 of TSD 26, LMA p. ii, (in Summary of Key Findings) of TSD 26, LMA p.6-7 of TSD, LMA
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