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Technical Comments on Baffinland Iron Mines Corporation's "Production Increase Proposal Renewal" for the Mary River Project and Reconsideration of the Project Certificate No. 005

August 11, 2022

Submitted by email: info@nirb.ca

To: Karen Costello, Executive Director
Nunavut Impact Review Board
P.O. Box 1360
Cambridge Bay, NU | X05 0C0

Dear Ms. Costello,

This letter provides technical comments and advice on Baffinland Iron Mines Corporation's ("BIM" or "Baffinland") Production Increase Proposal Renewal (the "PIP Renewal") for the Mary River project (NIRB file no. 08MN053). The NIRB requested written comments from intervenors following its determination that formal reconsideration of Project Certificate No. 005 terms and conditions is warranted. Our comments are split into two sections: (1) technical comments on the PIP Renewal project and recommendations for amending the project certificate terms and conditions, and (2) process concerns related to reconsideration assessments resulting in insufficient consideration of current and potential ecosystemic impacts.

Oceans North has historically supported the responsible development of this resource and recognizes its prominence in the land selection process in the context of the Nunavut Agreement. We continue to believe that the mineral deposits at and adjacent to Nuluujaat have the potential to bring positive transformational change to the region and its inhabitants. However, it is increasingly obvious that we are at a precarious point in project development characterized by project economic uncertainty, tangible adverse ecological impacts and additional environmental uncertainty. There is an acute need for this broader impact review process to address these impacts directly. Regrettably, the division of the global review of this project into smaller processes has complicated and perhaps hindered public ability to focus on current and predicted impacts and their mitigation.

1. Technical Comments and Recommendations for Amendments to the Project Certificate

We urge the NIRB to consider the following points when assessing the PIP Renewal:

- i. What is the evidence that the proposed mitigations will be effective?
- ii. There are currently population level impacts on narwhal due to shipping activity. What changes are being proposed to ensure these population level impacts are mitigated and reversed?
- iii. Cumulative effects are not being monitored. Has this changed in the PIP Renewal application?

To assist the NIRB with its assessment, we have listed our key concerns related to the project certificate terms and conditions, followed by technical recommendations. **It is important to note that these concerns were detailed in our response to the initial PIP and PIP Extension proposal (see submission dated February 3, 2020).**

Cumulative Effects Monitoring

First and foremost, the current ecosystemic impacts strongly suggest that the current rate of shipping, possibly and cumulatively combined with other impacts, is not sustainable for narwhal. **Table 1** shows that based on current trends, renewing term and condition 179(a) at 6 mtpa could continue this significant, population-level impact on narwhal.

Table 1: Decline in Narwhal Population in Eclipse Sound

SURVEY YEAR	ABUNDANCE ESTIMATE	SOURCE
2013	10,489	Doniol-Valcroze et al. 2015
2016	12,039	Marcoux et al. 2019
2019	9,931	Golder 2020
2020	5,018	Golder 2021a
2021	2,595	Golder 2022

The extent of population decline in Eclipse Sound suggests that term and condition 110 has failed to achieve its objective, which is to implement a monitoring protocol that includes acoustical monitoring for **preventing** such ecosystemic impacts from project-related shipping. As explained in our previous submission, cumulative effects are not sufficiently accounted for in the current monitoring and reporting regimes under term and condition 110. Specifically, Baffinland has not described the impacts of regular project shipping over seasons and years (e.g. 2020 Annual Report, p. 368). As we continue to maintain, Baffinland's assessment methods appear to be based on the assumption that each individual transit results in no significant impacts, and that therefore the combined impacts of ship transits each day, season, and year are likewise insignificant. This erroneous assumption results in a conclusion unsupported by data collected over a meaningful timeframe and contradicts best practices in cumulative impact assessment.

Stringent Precautionary Principle

The project certificate explicitly requires the application of a stringent version of the precautionary principle to certain terms and conditions. To date, this principle has not been sufficiently applied. As per the NIRB's Public Hearing Report, "Mary River Project: Early Revenue Phase Proposal" (March 2014, p. 20), a given item was to be identified as requiring a heightened approach to the precautionary principle on the basis of the following factors:

- (i) the seriousness or reversibility of potential adverse impacts;
- (ii) the likelihood that should the impacts occur, they could be mitigated or reversed;
- (iii) the jurisdictional authority of the NIRB; and
- (iv) public concern.

Based on the evidence, a reasonable conclusion is that project impacts are resulting in narwhal abandonment of the Project area — an area overlapping with traditional and present-day harvesting — and therefore impacts to marine life meet the criteria for the application of a more stringent precautionary approach. That includes the development of early warning indicators as required by terms and conditions 110 and 112.

This stringent version of the precautionary principle requires adaptive management strategies which are to be "highly responsive to early warning signs that risks may materialize, and that rather than waiting for impacts to be noted before mitigation measures are triggered, thresholds and triggers will be set to require responses long before adverse impacts are likely" (NIRB Project Certificate No.005, p.10). Therefore, adaptive management and early warning indicators, which remain largely undeveloped, should be created and reviewed before increasing the rate to 6 mtpa.

Currently, the Mary River project's operations represent an undue risk to the marine environment. This is inconsistent with the stipulations of the stringent precautionary principle and objectives of terms and conditions 110 and 112. Allowing the Proponent to increase the volumes of ore shipped without first ameliorating the management deficiencies will only amplify this risk to narwhal further.

Recommendations

Based on these concerns, our recommendations are as follows:

1. **Term and Condition 110 (Cumulative Effects Monitoring):** Validating the impacts of cumulative effects should begin with the integration of the results of the presently separate marine mammal and acoustic monitoring programs. The current approach stands as a failure to appropriately incorporate consideration of cumulative effects into this process and represents a major flaw in the impact assessment's conclusions.

2. **Terms and Conditions 99-128:** Full application of the precautionary principle to this set of terms and conditions, with particular attention to terms and conditions 109-112, directed at protection of marine wildlife and habitat. Adaptive management plans and early warning indicators, which remain incomplete, should be created and fully reviewed prior to increasing the rate once again to 6 mtpa.
3. **Term and Condition 179(a) and (b):** Based on the process deficiencies and the observed impacts of this project on narwhal and corresponding impacts on Inuit harvesting, we recommend the NIRB return the Mary River project certificate to permit 3.5 mtpa production with the operational contingency to 4.2mtpa, transportation via Milne Tote Road, and shipping via Milne Inlet. This will provide all parties with additional time to (1) provide input on the PIP Renewal project, (2) monitor ongoing impacts of production and shipping, and (3) develop and implement technical amendments that can improve the monitoring program, including early warning indicators.

2. Process Concerns

We have previously provided comments on the reconsideration process for the PIP, highlighting our position that a reconsideration is required, as well as our concerns regarding the current project impacts. As stated in our last submission, we believe “[t]he proposed modifications are neither consistent nor in compliance with the current terms and conditions because the current project is not in full compliance” (p. 2). Therefore, the NIRB should consider amending the terms and conditions to ensure they achieve their stated objectives.

We would also like to clarify our underlying concerns with the reconsideration process. The review process is highly consequential for the technical assessment and management of the PIP Renewal project. Our concerns are informed by evidence of the project’s adverse ecosystemic impacts, dialogue with local Nunavummiut, including Hunters and Trappers Organizations, and the technical flaws from previous reconsideration assessments.

Our position is that another reconsideration process may be insufficient to thoroughly assess the PIP Renewal unless such a process can accommodate a full assessment of current and anticipated impacts. Further, the reliance on reconsiderations has fragmented this impact assessment process and has not sufficiently anticipated the ecosystemic impacts of the project. In turn, this raises serious concerns of project splitting, which harms the technical and consultative aspects of this process and will likely impact the effectiveness of mitigation and adaptive management measures for the PIP Renewal.

The NIRB applied reconsideration processes to assess four amendment proposals to the Mary River project. Reconsideration can be an effective form of adaptive management if used to assess reasonable amendments to project activity and/or scope. However, reconsideration processes are not well-defined in statute or rules of procedure. Further

complicating this matter, the operating project at Mary River was itself a reconsideration of a different project. Reconsideration is a relatively expedited assessment process, with far fewer statutory requirements than a full impact review. Consequently, reconsideration is susceptible to technical flaws if applied to significant amendments that may constitute a new project.

The original project, the Early Revenue Proposal (ERP), constitutes a major divergence from the proposal that went through a full review process. The change to transportation and shipping routes—from Steensby Inlet to Milne Inlet—was a significant change to scope and activity, yet the NIRB determined reconsideration, rather than a review, was necessary at that stage and for the subsequent PIP, PIP Extension, and PIP Renewal proposals. The consequences for process and assessment have been substantial. We believe a full impact review of the proposed project activity and scope would have ensured a more thorough and accurate assessment of the current and potential ecosystemic impacts.

In turn, we are concerned that the splitting of the project scope triggers reconsideration rather than a full impact review, avoiding the more rigorous statutory requirements of a full review. **Table 2** illustrates the fragmentation of the assessment process through reconsideration.

Table 2: Impact assessment fragmentation of the Mary River Project

Proposal	3.5-4.2 mtpa	6 mtpa	12 mtpa	18 mtpa	30 mtpa
Phase 1 ^	Horizontal Lines	Horizontal Lines	Horizontal Lines	Horizontal Lines	
ERP ^	Vertical Lines				
PIP *	Vertical Lines	Vertical Lines			
PIP Extension ^	Vertical Lines	Vertical Lines			
Phase 2 *	Vertical Lines	Vertical Lines	Vertical Lines		
PIP Renewal (?)	Vertical Lines	Vertical Lines			

Orange = Steensby Route | Green = Milne Route | Horizontal Lines = NIRB Impact Review | Vertical Lines = NIRB Reconsideration | ^ = NIRB recommended approval | * = NIRB recommended rejection | ? = NIRB determination TBD

Lastly, we share concerns that the current reconsideration process does not provide for adequate consultation and accommodation of rightsholders. While public hearings were held for the ERP and Phase 2 proposals, they were not held for the initial PIP, PIP Extension, and PIP Renewal. Although the NIRB has discretion to determine process for each proposal, the proponent has not adequately mitigated significant adverse impacts on narwhal since the initial PIP, which in turn impacts Inuit rights and interests. We agree with the Mittimatalik Hunters & Trappers Organization, who submitted that evidence of the project’s effects on harvesting rights “requires proper consideration in a full review process, including consideration of whether these impacts warrant refusal of the increase in production and varying the existing conditions for the Mary River project to provide additional protections to mitigate the effects to Inuit rights” (July 4, 2022, p. 8). In addition, as noted by the MHTO and Mayor of Clyde River, Baffinland had ample opportunity to apply for the PIP Renewal earlier but neglected to do so. The failure to apply for the PIP Renewal in a timely manner should not result in an expedited process.

Conclusion

We believe the reconsideration process has led to gaps in the assessment of the ecosystemic impacts of the Mary River project, and that at this time, a highly expedited reconsideration process is not sufficient for thoroughly assessing the PIP Renewal project. To date, the fragmented assessment process contributes to deficiencies in monitoring and a lack of understanding of significant and adverse ecosystemic effects, particularly on marine mammals. We are also concerned that this process does not provide for adequate consultation and accommodation of affected rights and interests. At minimum, we urge the NIRB to consider our recommendations aimed at monitoring cumulative effects and implementing early warning indicators. A stringent application of the precautionary principle to this project requires the improvement of these adaptive management plans before the project returns to 6 mtpa.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Christopher Debicki', with a long horizontal flourish extending to the right.

Christopher Debicki
Vice President, Policy Development and Counsel
Oceans North