



## NIRB Draft ROP (November 2018 version): Summary of Written Comments and the Board's Responses

### 1.0 BACKGROUND

In November 2018, the Nunavut Impact Review Board (NIRB or Board) commenced the consultation process on the updated and substantively revised set of the Board's Rules of Procedure (ROP) to govern the Board's conduct of various types of proceedings. The Board invited comments on the November 2018 consultation draft of the ROP (the draft ROP), with a comment period that closed on March 15, 2019. In addition to the formal request for comment, both before and after the close of the comment period, the Board has provided opportunities for parties to provide feedback regarding the draft ROP.

The summary table that follows lists the comments received and identifies the Board's response. Where the comment resulted in a change to the draft ROP, the Board has identified the changes to the draft ROP made by the Board in response. Where the comment did not result in a change to the draft ROP, the Board has provided a brief statement of the Board's rationale for not making a change to the draft ROP.

During the comment period, the Board received:

- 157 written comments that are relevant to the ROPs
- Comments from 4 Inuit Organizations: Nunavut Tunngavik Incorporated; Kitikmeot Inuit Association, Kivalliq Inuit Association; and the Qikiqtani Inuit Association
- Comments from 3 Governments: Government of Canada; Government of Nunavut; and Government of the Northwest Territories
- Comments from 2 Current Project Proponents: Agnico Eagle Mines Limited; and TMAC Resources Inc.

The Board thanks all parties for their thorough review of the draft ROP and the provision of extensive comments. The Board appreciates the efforts taken by all commenters to improve the quality of the Board's ROP by enhancing the clarity and completeness of the draft ROP. Reflecting both the written comments received and the Board's own internal review and revision process, the Board made over 200 substantive revisions to the draft ROP, including approximately 130 additions to the draft ROP and over 70 deletions from the draft ROP and has prepared a revised version of the ROP to reflect the feedback received. In March 2020, the global COVID-19 pandemic required the Board to modify the NIRB's processes to enhance the use of remote access technologies and incorporate public health measures into the Board's existing procedures for in-person proceedings. Select revisions to the draft ROP to reflect the Board's approach to these and future modifications were incorporated into the 2022 revised version of the draft ROP.

### 2.0 NEXT STEPS

The next steps for the finalization of the ROP are as follows:

Activity	Anticipated Date <sup>1</sup>
NIRB distributes the 2022 <i>Revised Draft</i> ROP for comments	March 29, 2023
In-person consultation on the 2022 <i>Revised Draft</i> ROP	April 28, 2023
NIRB receives written feedback on the 2022 <i>Revised Draft</i> ROP	June 30, 2023



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NIRB publishes notice <sup>1</sup> and finalized ROP	Tentatively October 2023
<sup>1</sup> Note: all dates are tentative and may be changed by the Board to reflect circumstances	

<sup>1</sup> As required under s. 38(5) of the *NuPPAA*.



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#	Section	Commenter	Date	Comments and Recommendations	Comment No. Rule No.	Board Action	Board Response
GENERAL (No Specific Draft ROP #)							
1.	Definitions – General Clarity of Language	Government of Nunavut	March 15, 2019	<p>Definitions should be fulsomely drafted, incorporating all defined terms found throughout a document. Various terms that appear to be defined terms are found in Part VI: Types of Board Proceedings. These terms should be included in the definition list to ensure parties using the Draft Rules have an accurate understanding of the term. The Government of Nunavut notes that marginal notes and headings do not typically form part of such a directive document but rather are for convenience alone. Definitions should not be created in marginal notes or headings (i.e. ss. 78-81 regarding scoping sessions).</p> <p>The GN recommends that the NIRB revise the Draft Rules to ensure a fulsome definition section.</p>	GN-01 Clarity of Language	Changes to draft ROP #2 and capitalization of undefined terms throughout the draft ROP	The Board notes that the draft ROPs are not statutory instruments and are not drafted in accordance with the drafting conventions applicable to statutes. However, this comment and other comments have resulted in the Board adding some defined terms to the definitions included in draft ROP #2, and also in revisions to the capitalization of terms used in some sections that were not defined.
2.	General	Agnico Eagle Mines Limited	March 15, 2019	Overall, appreciate the NIRB's efforts to incorporate lessons learned and changes to legislation with a desired goal of standardizing the process and providing clarity to all parties	Agnico Eagle introductory paragraph	No changes to the draft ROP to specifically address the comment	The Board intends for the draft ROP to provide sufficient updated direction regarding practice and procedure without fettering the Board's ability to address project or process specific guidance to reflect individual circumstances.



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3.	General	Agnico Eagle Mines Limited	March 15, 2019	Additional consultations with industry are required to ensure that industry has proper time to provide input on the proposed changes	Agnico Eagle introductory paragraph	Schedule revised to allow for additional opportunity to comment on second draft of revised Rules (to reflect comment received during first comment period)	Further consultation discussions with the NIRB, were added following the March 15, 2019 timeline, including at the Nunavut Mining Symposium Consultation April 2, 2019  An additional in-person consultation with stakeholders and rights holders on the revised 2022 revised version of the ROP has been scheduled for April 28, 2023 in Iqaluit
4.	General	Government of Nunavut	March 15, 2019	The Nunavut Impact Review Board's (NIRB) 2018 draft Rules of Procedure (the Draft Rules) are an important update to the current Rules of Procedure (the Former Rules). The Former Rules were drafted prior to the promulgation of the <i>Nunavut Planning and Project Assessment Act</i> . The Draft Rules are thus an appropriate step forward.	GN 01	No changes to the draft ROP to specifically address the comment	The Board's draft ROP were intended to reflect not only changes to the Board's obligations under the <i>Nunavut Agreement</i> and <i>NuPPAA</i> , but also developments in respect of procedural fairness and natural justice as well.
5.	General	Kivalliq Inuit Association	March 15, 2019	The KivIA has reviewed the document and has no comments related to revisions or recommendations at this time	Comment submission	No changes to the draft ROP to specifically address the comment	The Board appreciates the efforts of the KivIA in providing their response following their review of the ROP.
6.	General	Qikiqtani Inuit Association	March 15, 2019	The QIA is concerned with the use of the word "efficient" in the Board's stated goals of revising the Rules to make them more "effective and efficient", noting that the term efficiency is often shorthand for expedited/ speedy/ truncated. This meaning of "efficiency" can in fact be diametrically opposed to effectiveness.	QIA Comment on Page 2 of the draft ROP Draft ROP Part I: Power to Make Rules	No changes to the draft ROP to specifically address the comment	The Board acknowledges the concerns of the QIA and confirms that in the implementation of the draft ROP the Board does not intend to sacrifice effectiveness for expediency.



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7.	General	Kitikmeot Inuit Association	June 27, 2019	The Rules of Procedure are comprehensive; however, KIA is concerned that the level of detail provided in the Rules of Procedure could formalize the NIRB process in a manner that is inconsistent with the community context in which NIRB has operated to date. As a result, careful attention should be paid to the application of the Rules of Procedure. In particular, the application in practice of Rule 5 (the Board emphasizing flexibility and informality in all its Proceedings) and Rule 8 (the Board supplementing, varying or dispensing with these Rules) will be very important in order to ensure that hearings do not become highly formal proceedings that serve to reduce community engagement and understanding.	KIA – page 1; General and draft ROP #5 and #8	No changes to the draft ROP to specifically address the comment	The NIRB is mindful that in the implementation of the draft ROP, there is a significant need to balance the requirements for process certainty with the need for flexibility and informality.
8.	General Coordinated Process Guidance	TMAC Resources Inc.	March 15, 2019	The <i>Nunavut Agreement</i> and <i>NuPPAA</i> allows for coordinated process and joint hearings with NWB and NIRB however there is uncertainty as to when a request is made for a coordinated process, what criteria must be met to determine if a coordinated process is available and further, what criteria must be met for a 'fully coordinated process' (similar to the Sabina Back River Project [sic not a coordinated process]) vs. simply a 'coordinated process' (similar to the process undertaken for TMAC's Hope Bay Phase 2)	TMAC-DRP-02 General and draft ROP #121	No changes to the draft ROP to specifically address the comment	The Board did not intend to address this topic specifically in the draft ROP, but the NIRB and NWB have committed to issuing guidance documents regarding the co-ordinated process.



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9.	General Filing of List of Commitments	Government of Canada	March 15, 2019	<p>There is a need for a standard approach to filing of commitments, especially those obtained during public hearings. The NIRB should indicate the timeline for filing such commitments.</p> <p>NIRB should stipulate in the current Rules a timeline for the Proponent to file all commitments made to various parties during the Review of the project. For example, “The Proponent shall file, if applicable, a list of all commitments made to parties during the review at least “X” days prior to the start of the Final Public Hearing.”</p>	GoC - #4	No changes to the draft ROP to specifically address the comment	As the timing associated with fulfilling commitments, including filing of supplemental information to meet commitments is project-specific and subject to negotiation between the parties, the Board has not prescribed a timeline in the ROP, but as contemplated in draft Rules #92 and #93, the Board expects discussions of the commitments and timing of filing to be discussed during the Technical Meeting(s) for the file.
10.	General Phased Development	Agnico Eagle Mines Limited	March 15, 2019	Would like to see greater procedural flexibility and “scalability” built into the documents to address Phased Development	Agnico Eagle Comment No. 1	No changes to the draft ROP to specifically address the comment	More specific typical process flows of reconsideration, review and/or co-ordinated process will be included in updated topic-specific guidance documents, including a revised Guide to Proponents, rather than in the ROP.
11.	General Phased Development	TMAC Resources Inc.	March 15, 2019	Although documents state that they are applicable to the Proceedings conducted by the NIRB during ‘reconsideration of Project Certificate terms and condition’, no specific or unique guidance is provided in this regard. TMAC would like to see specific and/or unique process guidance provided by the NIRB.	TMAC-DRP-01	No changes to the draft ROP to specifically address the comment	As noted above, more specific typical process flows of reconsideration, review and/or co-ordinated process will be included in updated topic-specific guidance documents, including a revised Guide to Proponents, rather than in the ROP.
12.	General Process for Amendment of Project Proposal	Government of Canada	March 15, 2019	There is no process for a Proponent to amend a Project Proposal during the course of a Screening or Review. NIRB should consider adding clear provision(s) regarding the process for a Proponent to amend a Project	GoC - #2	No changes to the draft ROP to specifically address the comment	The consequences of amending a Project Proposal during the course of a Screening or Review will vary based on the scope of the changes, as set out under the <i>Nunavut Planning and Project Assessment Act</i> , ss.



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				Proposal and what happens to Proceedings as a consequence.			141-142 and the determination of significance of the proposed modification by the Nunavut Planning Commission. As such, the Board cannot prescribe a single path/process for Proponents or parties in the ROP that will result when a Proponent chooses to amend a Project Proposal.
13.	General Request for Rulings	GoC	March 15, 2019	<p>The "Request for Ruling" process (similar to the Mackenzie Valley Review Board Draft Rules of Procedure 28-37) is not currently included in the NIRB Rules of Procedure; however, its addition could prove to be useful in NIRB processes.</p> <p>For example: it could provide a platform for Proponents/Intervenors to request the NIRB to make a ruling on the expected depth of review of Management Plans as part of a Reconsideration process. Instead of formal requests through correspondence via mail or email, as is seen in current practices, the Request for Ruling would provide a structured format for the request, as well defined timelines for the responses/rulings from the NIRB, and would be included on the public record of information. The Rulings would also become part of the documentation to consider in the NIRB's decision-making.</p> <p>NIRB should consider adding Rule(s) for "Request for Ruling".</p>	GoC - #30	No changes to the draft ROP to specifically address the comment	If parties require a formal process to seek procedural guidance, the Rules applicable to Motions (Draft ROPs #42-#48) can govern the process, including giving parties an opportunity to reply within a specified time period.



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14.	Omissions of Information From the 2009 ROP	Government of Canada	March 15, 2019	<p>The 2009 Rules contained information on certain proceedings such as screening and technical review phases that have been removed from the current draft Rules.</p> <ul style="list-style-type: none"> <li>a. The 2009 Rules set out, for example, that a Project Proposal must comply with the applicable guidelines and that a notice of screening will only be issued once a compliant project proposal has been received. There was some value to this approach. If the draft Rules do not clearly establish that screening starts upon issuance of the notice, there could be disagreement as to whether the 45 days period established under subsection 92(3) of NuPPAA has been triggered.</li> <li>b. The former Rules also incorporated, by reference, some of the NIRB's guidelines. Incorporating guidelines into the Rules would provide certainty as to the consequences of non-compliance with the guidelines.</li> <li>c. The 2009 version of the Rules also set out that the filing of an EIS would trigger the technical review and incorporated, by reference, EIS related guidelines. There was also a specific provision for the filing of a motion by the Proponent to have the NIRB consider their Project Proposal</li> </ul>	GoC - #3	No changes to the draft ROP to specifically address the comment	<p>With respect to these items, the <i>Nunavut Planning and Project Assessment Act</i>, now addresses these questions directly and the ROP are not intended to duplicate these provisions (<i>NuPPAA</i> was not in force at the time the 2009 Rules were adopted). Specifically, with respect to Item (a), the commencement of screening and the NIRB's reporting timelines where the NIRB has requested additional information is referenced in s. 144 With respect to Item (b), s. 101(6) of <i>NuPPAA</i> prescribes that the proponent must submit an impact statement prepared in accordance with the guidelines. With respect to the Board being able to accept a project proposal as a final Impact Statement without issuing guidelines, the Board's authority for this is now contemplated in s. 101(2) of <i>NuPPAA</i>, and this authority does not need to be described in the ROP.</p>





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				as a Draft EIS.  Including these aspects in the Rules could provide clarity on NIRB's expectations regarding screenings and Reviews.			
15.	Technical Meeting/Public Hearing	Agnico Eagle Mines Limited	March 15, 2019	The IS Guidelines seek to streamline and standardize IS expectations for all participants and propose to issue only minimal project/industry-specific guidance to supplement the Standard IS Guidelines. This approach could be extended to the ROPs and the requirements of Technical Meetings and Public Hearings.	Agnico Eagle No. 4	No changes to the draft ROP to specifically address the comment	It was not the Board's intention to provide specific direction in the draft ROP with respect to how Board Proceedings may be scaled to reflect various types of assessments, including reconsiderations associated with phased developments. As the Board's processes for addressing these issues are expected to continually develop over time, the Board anticipates that this kind of guidance is better provided in Board guidance documents that can be regularly updated, such as an updated Guide to Proponents, a Co-ordinated Process Guide, etc.
COMMENTS ON SPECIFIC RULES OF THE NOVEMBER 2018 DRAFT RULES OF PROCEDURE (draft ROP)							
16.	Definitions Suggested Addition "Motion"	Government of Canada	March 15, 2019	The word "Motion" is not defined in the draft Rules. NIRB should consider adding the definition for "Motion"	GoC - #44 Draft ROP #2	No changes to the draft ROP to specifically address the comment	As the use of and content of a motion vary depending upon the type of Board guidance being requested by the motion, the Board is satisfied that by describing the type and content of specific motions throughout the relevant sections of the draft ROP, parties are able to understand motions in the appropriate context. See for example draft ROP #8 (motion for extension to timelines); #23 (motion for confidentiality); #42-48 (motions for a decision, Board Order, Procedural



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							Direction or other procedural guidance); #70 (adjournments); #114 (motions to object to the entry of Exhibits); and Rule #131 (motion to schedule a site visit).
17.	Definitions "Board"	Government of Canada	March 15, 2019	It is not clear if the definition of Board and NIRB include or exclude staff and the Chair acting through Procedural Directions / Board Orders.  NIRB should include language in the Rules to clarify if the definition of Board and NIRB includes or excludes staff and Chair acting through procedure directions/Board Orders.	GoC #5 Draft ROP #2 Definition of "Board"	Revised definition of "Board"	Definition revised to clarify that the Board's Chairperson is included in the definition of "the Board" when issuing a Board Order. However, in response to GoC's question, the Executive Director or delegate, in issuing a Procedural Direction is not exercising the Board's discretion or discharging the Board's decision-making power and therefore is not included in the definition of the "Board".
18.	Definitions "Community Representatives"	Qikiqtani Inuit Association	March 15, 2019	The language implies that NIRB itself chooses "community representatives" to participate in the Board's process. Is there any reason why NIRB would not allow communities to determine their own representatives to represent them at hearings etc. without discretion from the NIRB?	QIA comment on page 3 of the draft ROP Draft ROP #2 "Community Representatives"	Revised definition of "Community Representatives"	Definition revised to reflect that the process for identifying Community Representatives is that individuals are recommended by relevant organizations, but emphasizing that the NIRB still needs to confirm the participation of representatives. Given the responsibility NIRB assumes for community representatives during a proceeding and the NIRB's arrangement of travel, provision of expenses, etc., the Board does need to maintain their central role in confirming whether the representatives recommended by communities are willing and able to participate as required in the Board's proceedings.
19.	Definitions	Government of Canada	March 15, 2019	The definition gets into the details of how the community representatives are chosen.	GoC - #34	Revised definition of "Community"	Definition of "Community Representative" and process for selecting



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	"Community Representatives"			Typically, definitions are not meant to set legal standards. This is better done in the actual provisions of the Rules. Here, a reference to Draft ROP #101 would appear to be sufficient for the purpose of the definition. One risk with this approach is to create inconsistencies between the substantive aspect of the definition and the corresponding Rule.  Recommended revision: <i>"Community Representatives"</i> mean the representatives of potentially affected communities agreeing to participate in the Board's Proceedings. Typically, Community Representatives are chosen <b>as stipulated in Rule 101</b>	Draft ROP #2 "Community Representatives" and draft ROP #101	Representatives" and draft ROP #101	Community Representatives were revised in the definition in draft ROP #2 and the cross reference to process for selection was taken out of draft ROP #101. In the Board's view it is most appropriate to have the process for choosing Community Representatives clearly identified in the definition, not left to the section describing the Community Roundtable Session.
20.	Definitions "Community Representatives"	Government of Northwest Territories	March 15, 2019	The current scope of the definition is unclear and doesn't clearly include potentially affected communities outside of Nunavut. The definition should be revised to reflect that Community Representatives may also be residents in potentially affected communities outside of Nunavut.	GNWT #1 Draft ROP #2 Definition "Community Representatives"	Revised draft ROP #2 definition of "Community Representatives"	The definition of "Community Representatives" was revised to reflect that Community Representatives may come from potentially affected communities outside of Nunavut.
21.	Definitions "Designated Inuit Organization"	Qikiqtani Inuit Association	March 15, 2019	NIRB may want to indicate following item (b) in the definition of Designated Inuit Organization the following: "For greater clarity, this includes but is not limited to, QIA, KivIA, KitIA".	QIA Comment on page 4 of the Draft ROP #2 "Designated Inuit Organization" (b)	No changes to the draft ROP to specifically address the comment	The definition remains unchanged as it consistent with the term as defined under the <i>Nunavut Planning and Project Assessment Act</i> .
22.	Definitions "Hearing" and "Public Hearing"	Government of Nunavut	March 15, 2019	NIRB should not employ the definition within their own defining clause e.g. "Hearing" or "Public Hearing"	GN-01-Clarity of Language Draft ROP #2 "Hearing"/"Public Hearing"	Revised definition of "Hearing" to eliminate circular reference to a	The Board has removed the self-referencing definition in the term "Hearing", but notes the other use of the word "hearing" in the definition is descriptive of a process (e.g. hearing of



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						"hearing" as a form of Proceeding	witnesses and evidence) and remains as is. This definition is consistent with the Board's previous approach to defining this term.
23.	Definitions "Hearing" and "Public Hearing"	Government of Nunavut	March 15, 2019	<p>It is not clear what a "hearing" or "public hearing" is as the NIRB uses the same word to define the word being defined. For example, a <b><u>Hearing</u></b> or <b><u>Public Hearing</u></b> means any form of <b>hearing</b> associated... [emphasis added]. To enhance clarity, it would be helpful for the NIRB to define the concept. For example, is a hearing a component of a proceeding where parties are given the opportunity to provide their views?</p> <p>We are of the view that defining the concept of hearing or public hearing would help clarify the difference between a proceeding and a hearing.</p>	GoC - #35, GoC - #36 Draft ROP #2 "Hearing"/"Public Hearing"	Revised definition of "Hearing" to eliminate circular reference to a "hearing" as a form of Proceeding	The Board has removed the self-referencing definition in the term "Hearing". As the terms "Hearing" or "Public Hearing" are used interchangeably a single definition is used for both.
24.	Definition "Impact Statement" or "Environmental Impact Statement"	Qikiqtani Inuit Association	March 15, 2019	The terminology in the definition of Impact Statement <i>"recommended mitigative actions of any project proposal expected to have significant environmental consequences"</i> is somewhat problematic. If the objective of the process is to promote and protect the well-being of Inuit and their environment, a sub-objective of impact assessment under NIRB should be to develop the best possible, most protective and beneficial projects. This requires that mitigation be in place to reduce ALL residual adverse effects wherever possible, not merely those estimated to have significant environmental consequences.	QIA Comment on page 5 of the Draft ROP #2 "Impact Statement" (IS) or "Environmental Impact Statement" (EIS)	Revisions to draft ROP #2 "Impact Statement" (IS) or "Environmental Impact Statement" (EIS)	The Board has revised the definition of "Impact Statement" (IS) or "Environmental Impact Statement" (EIS) in draft ROP #2 to better reflect the terminology used in the November 2018 consultation draft of Standard IS Guidelines.



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				Suggest replace "significant" with "residual" here. This is not an academic change; we know that proponents are highly unlikely to find significant adverse effects of their own accord.			
25.	Definitions “Impact Statement” and “Environmental Impact Statement”	Government of Nunavut	March 15, 2019	NIRB should not use multiple terms where a single term should suffice. One term either EIS or IS should be selected and used throughout.	GN-01-Clarity of Language Draft ROP #2 Definitions of “Impact Statement” and Environmental Impact Statement”	No changes to the draft ROP to specifically address the comment	Both Environmental Impact Statement and Impact Statement are used in the draft ROP to denote that in the past, (e.g. current NIRB Rules of Procedure and Environmental Impact Statement Guidelines) the Board had used the term “environmental impact statement”, so addenda and updates to previous “environmental impact statements” may occur. The Board’s preferred terminology more recently is “impact statement”, as that term is used in the <i>Nunavut Agreement</i> and the <i>Nunavut Agreement and the Nunavut Planning and Project Assessment Act</i>
26.	Definitions “Information Requests”	Qikiqtani Inuit Association	March 15, 2019	<p>The Board's editorial privilege over IRs may not be in the interests of an open and transparent process. In other jurisdictions, the assessment body does not have control over whether to issue an IR from a party to the proponent or another party.</p> <p>Another, and perhaps even more important, issue may be the lack of Board willingness to gauge the adequacy of Proponent responses to IRs. The process should be slowed down or even put on hold if the Proponent is deemed to not have responded meaningfully to party IRs. Currently, much of the response material</p>	QIA comment #3 on page 5 of the Draft ROP #2 Definition of “Information Requests” and IR process in general	No changes to the draft ROP to specifically address the comment	This guidance is most appropriately placed in technical guidance documents that can be more easily updated than the ROPs, in order to reflect developing best practices of the Board and parties. These comments will be considered in the Board’s updates to the discussion of the Information Request process in both the Board’s Guide to Authorizing Agencies and Guide to Proponents.



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				is truncated, dismissive, or reiterative of materials already reviewed by the parties. What will the Board do to make the IR part of the process more meaningful?			
27.	Definitions “Information Requests” and IR process in general	Qikiqtani Inuit Association	March 15, 2019	On the issue of IRs, the Board should commit to providing written reasons or decision for not issuing any draft IRs, back to the party which drafted the IRs, with the right for the party to challenge said ruling.	Qikiqtani Inuit Association comment on page 12 of the Draft ROP	No changes to the draft ROP to specifically address the comment	As noted above, the Information Request process issues are more appropriately addressed in technical guidance documents from the Board. Comments on the Board’s current practices will be considered in the updates to the discussion of the IR process in both the Board’s Guide to Authorizing Agencies and Guide to Proponents.
28.	Definitions “Information Requests” and IR process in general	Agnico Eagle Mines Limited	March 15, 2019	Guidance to intervenors could be standardized, as well as the process by which the NIRB reviews and distributes the IRs it receives	Agnico Eagle No. 3 Draft ROP #2 Definition of “Information Requests” and IR process in general	No changes to the draft ROP to specifically address the comment	As noted in response to both comments of the QIA about Information Requests above, this guidance is most appropriately placed in technical guidance documents. This comment will be considered in the updates to the discussion of the IR process in both the Board’s Guide to Authorizing Agencies and Guide to Proponents.
29.	Definition “Interested Corporation or Organization”	Government of Canada	March 15, 2019	Under <i>NuPPAA</i> , this definition is only relevant to NIRB proceedings in the context of the preparation of EIS Guidelines (subsection 101(4) of <i>NuPPAA</i> ). The fact that the definition of “Party” and “Intervenor” in the draft Rules includes Interested corporations could mean that they are <i>de facto</i> considered as a party or that there is some form of presumption that they will get such status if they request it.	GoC #37 Draft ROP #2 Definitions of “Interested Corporation or Organization”, “Intervenor”, “Party”	No changes to the draft ROP to specifically address the comment	It is clear from draft Rules #58-60 and the reference in the definition of “Intervenor” that intervention status is granted as set out under draft ROP #58-#60, and that an Interested Corporation or Organization would not automatically be granted <i>de facto</i> Intervenor status. Inclusion of “Interested Corporation or Organization” in the definition of “party” only denotes that an Interested Corporation or Organization may become involved in



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				<p><i>NuPPAA</i> is unlikely to have intended this result given the narrow statutory implications attached to the “Interested Corporation” status. If all that is meant is that an interested corporation can apply for party or intervenor status as any other person could do, then it is probably better to remove any reference to Interested Corporation unless it is directly relevant to the question of how Interested Corporations are to exercise their rights under section 101 (4) of <i>NuPPAA</i>.</p> <p>NIRB should consider removing any reference to “Interested Corporation” from this definition if all that is meant is that an interested corporation can apply for party or intervenor status as any other person could do, unless it is directly relevant to the question of how Interested Corporations are to exercise their rights under section 101(4) of <i>NuPPAA</i></p>			Board Proceedings, which could include participation in the preparation of Guidelines.
30.	Distinction between defined term “Intervenor” and undefined “formal Intervenor”	Government of Canada	March 15, 2019	<p>Use of the term "Formal Intervenor" and "Intervenor" in other places throughout the document is likely to cause confusion.</p> <p>The definition seems to include information that would be better suited for a footnote.</p> <p>The NIRB should consider:</p> <ul style="list-style-type: none"> <li>Ensuring consistent use of defined and non-defined terms to avoid confusion/different interpretations.</li> </ul>	GoC #38 Draft ROP #2 “Intervenor” Draft ROP #58-#60 “formal Intervenor”	No changes to the draft ROP to specifically address the comment	The definition of “Intervenor” is broader than “formal Intervenor” to denote that an individual or organization that may not seek formal intervention status as required under Draft ROP #58-60, may still request to participate in a limited capacity as an Intervenor during Board Proceedings (for example a school group who wishes to make a presentation to the Board during a Public Hearing). In such a case, the Board may grant the request to participate, and be identified as an “Intervenor”, but the full rights of



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				<ul style="list-style-type: none"> <li>Putting the following in a footnote rather than a definition: “The term may refer to [...] any member of the public who applies for and is granted Intervenor status</li> </ul>			participation afforded to a formal Intervenor would not be granted.
31.	Definitions “Inuit Qaujimaningit” and “Inuit Qaujimajatuqangit”	Qikiqtani Inuit Association	March 15, 2019	<p>There are two separate definitions provided for the same term here; the first sentence which outlines guiding principles of ISVs; and the second, which is broader and closer to what we understand Inuit mean when they talk about IQ. If anything, the first sentence should go after the second sentence as a "for example". We also recommend that any definition of this term include reference to Inuit laws and norms, not just principles.</p> <p>QIA would like to have further discussions with NIRB about the definition and, more importantly, integration of IQ into NIRB assessments.</p>	QIA comment on page 6 of the draft ROP #2 “Inuit Qaujimaningit” and “Inuit Qaujimajatuqangit”	Revisions to the definitions of “Inuit Qaujimaningit” and “Inuit Qaujimajatuqangit	Both definitions have been updated to reflect the definitions adopted by the Board in the Strategic Environmental Assessment of potential oil and gas development in Baffin Bay and Davis Strait (July, 2019). Specific additional consultations with the Qikiqtani Inuit Association and IQ knowledge holders with respect to integrating IQ into NIRB assessments is welcome in future outside the specific consultations on the draft ROP.
32.	Definitions “Inuit Qaujimaningit”	Government of Canada	March 15, 2019	<p>The word “both” in the definition of “Inuit Qaujimaningit” appears to introduce a list of three concepts; “both” can probably be deleted.</p> <p>GoC recommended the following revision: “Inuit Qaujimaningit” means <del>both</del> Inuit Traditional Knowledge (and variations thereof, or Inuit Qaujimajatuqangit)...</p>	GoC #39 Draft ROP #2 “Inuit Qaujimaningit”	Revisions to the definitions of “Inuit Qaujimaningit” and “Inuit Qaujimajatuqangit	The definition has been revised to reflect the updated definitions of Inuit Qaujimajatuqangit and Inuit Qaujimaningit adopted by the Board in the Strategic Environmental Assessment of potential oil and gas development in Baffin Bay and Davis Strait (July, 2019)





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33.	Definitions “Inuktitut”	Government of Canada	March 15, 2019	The definition presented seems to be that of “Inuktitut”. NIRB should consider the Nunavut Tunngavik Incorporated AGM resolution of Oct 18-20, 2016 concerning common terminology and determine if the definition should be changed to “Inuktitut”.	GoC #40 Draft ROP #2 “Inuktitut”	Revisions to the definition of “Inuktitut”	The term “Inuktitut” is used because it is included in s. 2 of <i>NuPPAA</i> , but the NIRB has added “Inuktitut” to reflect the direction of Nunavut Tunngavik Incorporated and the GoC.
34.	Definitions “Minister”	Government of Canada	March 15, 2019	The definition contains run-on sentence, which the NIRB should consider breaking up for clarity.  NIRB should consider breaking-up the sentence to read:  <i>Unless otherwise specified, means the federal or territorial Minister having the jurisdictional responsibility for authorizing a project to proceed. Where there are multiple Ministers, the Government of Canada and Government of Nunavut may, within their respective jurisdictions, designate a single Minister to be responsible for NIRB and to perform all functions assigned to “the Minister”.</i>	GoC #41 Draft ROP #2 “Minister”	Revised definition of “Minister”	The punctuation in the definition of “Minister” has been revised to take out the semi-colon and replace it with a period after “a project to proceed”.
35.	Definitions “Minister”	Government of Canada	March 15, 2019	Federal minister and territorial minister are given precision in the <i>NuPPAA</i> definitions and the NIRB should reflect the <i>NuPPAA</i> definitions in draft ROP #2.	GoC #42 Draft ROP #2 “Minister”	No changes to the draft ROP to specifically address the comment	The definition largely reflects the definition of “the Minister” in place under the <i>Nunavut Agreement</i> since the Board’s inception. Further, there are many context specific distinctions included in the definitions of “federal Minister” and “territorial Minister” that are tied to sections within <i>NuPPAA</i> that are not relevant to the more generic term “the Minister” that is used in the draft ROPs.



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							Introducing this context and complexity from NuPPAA into the ROP is unnecessary.
36.	Definitions “Monitoring Program”	Government of Canada	March 15, 2019	<p>The definition is almost, but not quite identical to the <i>NuPPAA</i> definition. It is not clear if the subtle difference intended. If not, it would be preferable to simply define this term as “<i>a monitoring program established under section 135 of NuPPAA, as may be amended from time to time</i>”.</p> <p>NIRB should consider reverting to the definition of a Monitoring Program under NuPPAA section 135 or simply define this term as “a monitoring program established under section 135 of NuPPAA, as may be amended from time to time”.</p>	GoC #43 Draft ROP #2 “Monitoring Program”	No changes to the draft ROP to specifically address the comment	The definition of Monitoring Program reflects not only the requirements of the <i>Nunavut Agreement</i> and the <i>NuPPAA</i> (as the <i>Nunavut Agreement</i> continues to govern the Board’s Monitoring Program activities in addition to the <i>NuPPAA</i> ), but also the way that the Board has defined Monitoring Programs in Project Certificates as well.
37.	Definitions “Panel”	Nunavut Tunngavik Incorporated	March 15, 2019	Although the draft ROP #2 contains a definition of “Panel”, there is no discussion of when the NIRB would sit as a Panel. Could the NIRB give an indication of instances where it envisions that the formation of a Panel could be called for?	NTI #1 Draft ROP #2 “Panel”	No changes to the draft ROP to specifically address the comment	The Board’s discretion regarding sitting in Panels is very broad and should not be limited by the ROP but rather by the Board’s internal governance policies. NIRB can provide NTI with follow up information regarding the factors considered by the Board to decide that Panels may be necessary as set out in the current Board Governance policy.
38.	Definitions “parties”	Government of Canada	March 15, 2019	<p>The Rules do not clearly draw the distinction between intervenor and party status. It is not clear either if and how a party’s right differs from an intervenor’s rights.</p> <p>The definition of “party”/ “parties” has been significantly broadened compared to what it is in the 2009 version of the rules. A party now</p>	GoC #6 Draft ROP #2 “party” or “parties”	Revision to the definition of “Intervenor” to eliminate circular reference to “party”	The distinction between parties and “Intervenors” is addressed in the definition of “Intervenor” adopted under the draft Rules, which specifies that Intervenors are parties that have been granted standing to be formal participants. The Board has revised the



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				<p>would be any participant involved in a NIRB proceeding and includes a very broad and non-exhaustive list of organisations and persons, including “the public”. While the rules should not prevent anybody from participating in NIRB proceedings, especially in community meetings and hearings, there would be a benefit to having a narrower category of participants with a recognized status giving them rights under the rules.</p> <p>It is more intuitive to limit party status to those who have been formally given standing. Moreover, Rules 9 and 132 appear to treat the parties and the public as distinct (“...the parties and the public...”)</p>			<p>definition of Intervenor slightly to remove the circular reference to formal “party” and substituted “participant” instead. With respect to the inclusion in draft ROP #9 and #132 of references to both “parties” and “the public” recognizes that parties are defined as <u>participants</u> in the Board’s processes (which may include members of the public), but the notices provided by the Board under these two rules will also be more generally made available to members of the public who are <u>not</u> participating in the Board’s processes as parties.</p>
39.	Definitions “project proposal” and “project”	Government of Canada	March 15, 2019	<p>The 2018 Rules of Procedure contain both definitions of “Project Proposal” from the Nunavut Agreement (with added text) and “Project” from NuPPAA.</p> <p>There is no need to include both definitions in the Rules. Including the definition of “Project Proposal” in the Rules of Procedure brings confusion to the interpretation of the Rules when compared with NuPPAA and should be removed. The term “project proposal” is used in the Act, as described in section 76, to mean the document which contains a description of the project. Using it differently in these rules will confuse their interpretation.</p>	GoC - #7 Draft ROP #2 “project proposal” “project” ROP #79 and ROP #88	Revision to draft ROP #79	<p>The Board is bound by both the definition of “project proposal” in the <i>Nunavut Agreement</i> and the definition of “project” in the <i>Nunavut Planning and Project Assessment Act</i>. As both of these terms are used with reference to the works, activities and undertakings assessed by the Board, Proponents and parties use both terms and it would not be appropriate to not reference both definitions. ROP #88 is correct in referencing the definition of project proposal as defined under the <i>Nunavut Agreement</i>.</p> <p>The Board acknowledges that the reference to “project proposal” under draft ROP #79 denotes a “project</p>



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				<p>NIRB should only use the NuPPAA definition of “Project” in the 2018 Rules of Procedure.</p> <p>The rules should also be reviewed to see when the term “project proposal” is used to mean the document containing the description of the project, or when it is used to mean the proposed project. For instance, in rule 88, the meaning appears to be “proposed project”, as it is the project which could affect a community, not a document describing the project. In rule 79, “project proposal” likely means the document that contains a description of the project, as that is where the scope of the project, including its components and activities, would be set out.</p>			proposal” submitted to the Commission under s. 76 of the <i>NuPPAA</i> and has revised the draft ROP #79 to clarify this.
40.	Definitions “project proposal”	Government of Canada	March 15, 2019	<p>The definition is a run-on sentence, which the NIRB should consider breaking up for clarity.</p> <p>NIRB should consider breaking-up the sentence to read:</p> <p>“...means a physical work that a Proponent proposes to construct, operate, modify, decommission, abandon or otherwise carry out, or a physical activity that a proponent proposes to undertake or otherwise carry out, such work or activity being within the Nunavut Settlement Area, except as provided in Article 12, Section 12.11.1 of the <i>Nunavut Agreement</i>. It does not include the construction, operation or maintenance of a building or the provision of a service, within a</p>	GoC #45 Draft ROP #2 “project proposal”	No changes to the draft ROP to specifically address the comment	For consistency, the definition in the draft ROP is directly from the <i>Nunavut Agreement</i> as it was amended to reflect <i>NuPPAA</i> .



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				municipality, that does not have ecosystemic impacts outside the municipality and does not involve the deposit of waste by a municipality, the bulk storage of fuel, the production of nuclear or hydro-electric power or any industrial activity.”			
41.	Definitions “Public Registry”	Government of Canada	March 15, 2019	<p>The “Public Registry” should allow for both physical and online records.</p> <p>NIRB should consider adding wording which includes both physical and online records.</p>	GoC #46 Draft ROP #2 “Public Registry”	No changes to the draft ROP to specifically address the comment	The definition reflects s. 202 (1) of <i>NuPPAA</i> , which emphasizes that the Board’s obligation is to provide online accessibility to the public registry via the internet. Although the Board may, in circumstances where internet access is unavailable, produce hard copies of documents filed online with the Board, the focus of the Board’s online registry project has been to ensure that the registry is available via the internet, and the Board does not keep both physical and online copies of all Documents posted to the public registry.
42.	Application of the Rules	Government of Canada	March 15, 2019	<p>Inclusion of a, b, and c in the rules may no longer be required, unless there are still projects to which the transition rules of s. 235 still apply (noting that if ss. 235(2) applies then so does the Act and there is no need to reference the <i>Nunavut Agreement</i>).</p> <p>Sub-rule (c) indicates that the Rules may or may not apply to the reconsideration of a project certificate depending on the scope and scale of the modification under review. If this section absolutely must stay in (we are of the view the Rules are not the place to be</p>	GoC - #8 Draft ROP #4	No changes to the draft ROP to specifically address the comment	There are previously approved projects that continue to be governed by the <i>Nunavut Agreement</i> alone, as set out in the transitional provisions of the <i>NuPPAA</i> . Accordingly, the scope of these provisions is still required. With respect to the application of the draft ROP to reconsiderations of Project Certificate terms and conditions, the Board will not address these technical details in the draft ROP. The Board will provide guidance documents regarding the manner in which



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				<p>outlining what proposed modifications constitute a reconsideration), then remove the phrase “dependent on the scale and scope of a modification proposal” as it introduces uncertainty as to whether the Rules apply to reconsiderations or not. If not removing that phrase, it would be beneficial for the rules to provide more specificity around when they will apply to the NIRB’s reconsideration of the Terms and Conditions of an existing Project Certificate. This might be done by listing factors to take into account to determine when the scope and scale will be such that the rules should not apply.</p> <p>If it is necessary to leave a, b, and c, then remove the phrase in c “dependent on the scale and scope of a modification proposal” as it introduces uncertainty as to whether the Rules apply to reconsiderations or not. If they do not, then where would a proponent or any other parties find certainty as to the rules that govern the NIRB’s proceedings for reconsiderations?</p> <p>At a very minimum, if keeping Rule 4(c) as is, revise it to provide more specificity around when it will apply to the NIRB’s reconsideration of the Terms and Conditions of an existing Project Certificate. This might be done by listing factors to take into account to determine when the scope and scale will be such that the rules should not apply.</p>			the Board will assess the scale and scope of reconsideration applications to provide greater certainty to Proponents and other parties regarding the Board’s approach to and process for conducting reconsiderations. In the Board’s view, this guidance is more appropriate provided in process-specific guidance in respect of reconsiderations and does not belong in the ROPs.



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43.	Application of the Rules	Government of Canada	March 15, 2019	Going forward these Rules only need to refer to federal panels under <i>NuPPAA</i> . The reference to the <i>Nunavut Agreement</i> should be removed.	GoC - #9 Draft ROP #5	No changes to the draft ROP to specifically address the comment	The reference to the <i>Nunavut Agreement</i> remains applicable, because the coming into force of <i>NuPPAA</i> does not replace the <i>Nunavut Agreement</i> ; and accordingly the appointment of a future federal panel to undertake a review would be governed by <u>both</u> the applicable provisions of the <i>Nunavut Agreement</i> and the <i>NuPPAA</i> referenced in the Rule.
44.	Power to Dispense with the Rules	Government of Canada	March 15, 2019	The benefit of having Rules is to create a procedural framework upon which the parties can rely in navigating the NIRB's proceedings. This creates certainty for the parties. Rigid application of the Rules has the potential however to prevent the NIRB from effectively dealing with the unique circumstances of each project. There is a benefit in giving the NIRB discretion to depart from the standards set in the Rules. We would, however, recommend that the NIRB give parties notice of its intent to do so or of requests made to it to enable parties to make submissions before a decision is made. This would enable the NIRB to make a better informed decision and further support procedural fairness and transparency. Rule 9 provides for notices of changes to be provided after the change is made. This is important as well, but it would be beneficial to provide an opportunity to parties to make submissions before a change is considered and decided upon.	GoC #10 Draft ROP #7	No changes to the draft ROP to specifically address the comment	At the outset it should be noted that the Board's departure from the Rules is an exceptional circumstance, as the Board has prepared the draft ROP with the expectation that the ROP will generally apply to Board Proceedings. However, when circumstances arise that require more flexibility, discretion to depart from the Rules may be necessary. As noted in draft ROP #9, the notification of Board-initiated changes to the Rules must be provided in a manner that, in the Board's opinion, "best reflects the circumstances, the requirements of natural justice and procedural fairness and transparency." Recognizing that the circumstances leading to, and range of possible departures from the Rules may vary considerably, it is not reasonable to expect that written submissions of parties in advance of even minor departures would be warranted in all cases. The section of draft ROP #9 quoted above recognizes that, in some cases, where the



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				The Board should give parties advance notice of its intent to dispense with or vary its Rules, Board Orders, or Procedural Directions or of requests made to it to enable parties to make submissions before a decision is made.			rights of parties and the reasonable expectations of the parties may be affected, natural justice and procedural fairness may dictate that the Board would provide advance notice of the Board's intention to vary the Rules and may also require that affected parties be invited to make submissions to the Board regarding the departure from the Rules. Consequently, when circumstances warrant, the Board would provide advance notice and invite submissions as the GoC comment recommends.
45.	Power to Dispense With or Vary the Board's Procedural Guidance	Qikiqtani Inuit Association	March 5, 2019	While it may not change the Rules of Procedure themselves, QIA requested the Board issue guidance to parties on under what conditions a request for variance by a party would be considered, and recommended that the Board provide a form that could be filled out, and process rules for any consideration of a request for ruling.	QIA comment on page 10 of the draft ROP #7	No changes to the draft ROP to specifically address the comment	As noted in the Board's response to GoC - #10 above, there may be a wide range of circumstances and extents in terms of a request to vary the Rules, or other form of procedural guidance offered by the Board. Consequently, the Board will not specify in the draft ROP a "one size fits all" approach to the process for the Board's consideration of a variance request, as the process chosen must be appropriate in the circumstances and reflect considerations of natural justice and procedural fairness.
46.	Extensions after Deadlines	Government of the Northwest Territories	March 15, 2019	The draft ROP #8 indicates that the Board may grant an extension or abridgement to a deadline/timeline even after the deadline or timeline has passed. GNWT recommended that the Board should ensure a level of reasonableness when considering requests that are received after deadlines to ensure a fair and timely process prevails.	GNWT #5 Draft ROP #8	No changes to the draft ROP to specifically address the comment	As set out in draft ROP #6, the Board's interpretation and implementation of all ROP, including draft ROP #8, are to be governed by the "the broad application of the principles of natural justice and procedural fairness" and should "result in the just, expeditious and fair consideration of every Proceeding".





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							Consequently, the Board's consideration of extension requests after a deadline/timeline is governed by reasonableness and the requirement that the Board's decision should deliver a just, expeditious and fair process.
47.	Conflict	Government of Canada	March 15, 2019	Draft ROP #7 also talks about the possibility to dispense with or vary <b><u>other form of procedural guidance</u></b> [emphasis added]. NIRB should clarify where such procedural guidance stands in relation to the hierarchy established by Draft ROP #10.	GoC - #11 Draft ROP #7 and Draft ROP #10	Revisions to draft ROP #10	The term "or general procedural guidance" used in draft ROP #10 was intended to denote procedural guidance given in the Board's Guides specifically, so for clarity the Board has added or "other form of procedural guidance" to reflect the wording used in draft ROP #7. Examples of "other forms of procedural guidance" could include items such as a general process flow diagram, standard Agenda, etc.
48.	Non-Compliance	Qikiqtani Inuit Association	March 15, 2019	Draft ROP #11 non-compliance rules need to extend into non-compliance with requests for further information in the form of information requests. The Board has, and should clearly state that it has, the discretion to suspend the EA if IR responses are deemed inadequate.	QIA comment #2 on page 10 of the draft ROP Draft ROP #11	No changes to the draft ROP to specifically address the comment	The Board considers the wording of the current draft ROP #11 to be adequate to capture this power of the Board to set its own procedure and suspend or adjourn a Proceeding in these circumstances. The current wording of draft ROP #11(a) provides that parties' failure to comply with an "other form of procedural direction" (which could include failing to comply with the Board's direction regarding responses to Information Requests as forwarded by the Board) could result in a suspension or adjournment of any Proceeding.



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49.	Content and Form of Documents Filed with the Board	Government of Canada	March 15, 2019	Draft ROP #13 does not identify any requirements on "Content".  NIRB should consider moving "Content" to next section heading (i.e. "Content, Filing, and Distribution of Documents") and rename this section "Form of Documents Filed with the Board".	GoC - #12 Draft ROP #13 and #14 Headings	Revised Draft ROP #13 and #14 Headings	The Headings before draft ROP #13 and #14 have been revised as recommended by the GoC, to better reflect the Rules that follow the headings.
50.	Filing and Distribution of Documents	Government of Canada	March 15, 2019	Draft ROP #15 does not capture what happens when documents are filed late or are deemed incomplete. NIRB should consider adding process for late document filing or incomplete documents.	GoC - #13 Draft ROP #15	No changes to the draft ROP to specifically address the comment	The Board has addressed both the potential for extending or abridging timelines (which may apply to timelines and content of Documents) under draft ROP #8 and also of non-compliance with procedural guidance (which may apply to timelines and content of Documents) under draft ROP #11. Consequently, no specific guidance on a process to address the late filing of submissions or associated with filing incomplete submissions was considered to be necessary.
51.	Document Requirements	Nunavut Tunngavik Incorporated	March 15, 2019	Could the requirement to provide numerous printed copies for distribution not be applicable to community-level parties, as it may place undue stress on limited resources?	NTI #2 Draft ROP #16	No changes to the draft ROP to specifically address the comment	The requirements to make hard copies available for community members is an important part of ensuring community engagement in assessments and recognizes that, at present, community members may have no, or only limited access to electronic copies of materials. Consequently, hard copies must be provided, as they may be the only materials accessible to community members. Where parties have problems making hard copies, the NIRB assists, to the extent possible.



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52.	Document Requirements – NIRB Discretion to Refuse to File Documents	Government of Canada	March 15, 2019	To ensure transparency, Draft ROP #19 should require the NIRB to give reasons in writing for not posting a document.  Draft ROP #19 does not make provision for the NIRB to refuse filing incomplete documents on the registry (e.g. incomplete EIS after conformity check).	GoC - #14 Public Registry Draft ROP #19	Revisions to draft ROP #19	The Board agrees that when the NIRB refuses to file or consider a Document the Board should provide written notice of the Board's refusal to the party providing the Document, and has amended Rule #19 to specify this. The Board recognizes that sometimes incomplete Documents may be posted by the Board to solicit comments on completeness, but agrees that the Board should retain the discretion to refuse to file incomplete documents.
53.	Document Requirements – NIRB Discretion to Refuse to File Documents	Government of Nunavut	March 15, 2019	Draft ROP #19 is insufficiently detailed because it does not set out how a party may satisfy the Board that a document does not fall into one of the categories of documents that the NIRB may refuse to file. When the NIRB exercises its discretion to refuse to post a Document for one of the stated grounds, the NIRB is making a decision that should be in writing and provided to the affected party.	GN-02 Public Registry Draft ROP #19	Revision to draft ROP #19	As noted in the response to NTI #2 that follows, the NIRB's refusal to file a Document is a rare occurrence and involves a very context-specific analysis, so detailing how a party may pre-emptively address these grounds for refusal before filing is not feasible in the ROP. However, as noted in response to GoC - #14 above, the Board agrees that when the NIRB refuses to file or consider a Document the Board should provide written notice of the Board's refusal to the party providing the Document, and has amended Rule #19 to specify this.
54.	Document Requirements – NIRB Discretion to Refuse to File Documents	Nunavut Tunngavik Incorporated	March 15, 2019	Under Rule #19(c) the Board may refuse to file documents Where the potential for harm to the Board and its Proceedings, the parties, communities or the public associated with filing the material outweighs the public interest in the Board filing or considering the Documents. Could the NIRB, in very broad terms, elaborate on the nature of documents	NTI #2 Draft ROP #19(c)	No changes to the draft ROP to specifically address the comment	The basis for the Board's exercise of discretion under this section is a legal test of prejudice versus probative weight, which is a very contextual analysis and does not lend itself well to a listing or other kind of elaboration. The Board is rarely called upon to exercise this discretion. For NTI's information,



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				that might warrant the triggering of this clause?			<p>examples of materials that NIRB has refused to post on the registry in the past include:</p> <ul style="list-style-type: none"> <li>- Comment materials defaming or impugning the personal reputation of various participants in the review;</li> <li>- Personal comment or opinion in relation to a proponent, industry or person that is irrelevant to the NIRB Proceedings and prejudicial to the proponent, industry or person</li> </ul>
55.	Document Requirements – NIRB Discretion to Refuse to File Documents	Qikiqtani Inuit Association		<p>For greater clarity or as a separate line item, the Board should have the discretion to refuse to file on the public registry documents that have confidential information, most particularly IQ information that the affected communities do not want to see on the public record, but which those affected parties would like the Board to consider in its Proceeding.</p> <p>Provisions for the Board, a party, and the proponent to have access to those documents under confidential cover, may be critical. How does the Board address confidentiality?</p> <p>Also for greater clarity, the Board may choose to request confidential financial documentation to be kept under confidential cover, where issues of project economic</p>	QIA comments #1 and #4 on page 13 of the draft ROP Draft ROP #19(c) and Draft ROP #23	No change to Draft ROP #19; revisions to draft ROP #23	The Board has revised draft ROP # 23 to allow for both the party wishing to file a Document containing confidential information AND a party who subsequently wishes to assert that there is confidential information in a document that has already been posted may bring a motion to request all or part of the Document not be posted (or be removed from the public registry if already posted).



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				<p>feasibility are relevant to the Board's assessment and decision process.</p> <p>The Board needs to consider a scenario where party A files the document, but party B, upon receipt of it, finds that it has confidential or private information in it. This could be the case where a Proponent files a document with IQ in it, without the express consent by an affected community or individual IQ holder, to issue that document. In such a case, the request for a ruling will come AFTER the filing of the document, and may require the Board to retroactively withdraw the document. A very real scenario that Board needs to address in these RofP.</p>			
56.	Public Registry	Qikiqtani Inuit Association	March 15, 2019	<p>As a general note, currently public access to NIRB via the “registry” is quite inaccessible and confusing to navigate. The registry has to be useful and accessible to Inuit, as suggested by the NEB seismic testing decision being quashed by Supreme Court of Canada in Clyde River case due to inaccessibility of process to local community members.</p> <p>The current state of the registry provides a significant barrier to the appropriate and efficiency review of files it contains. Project files with multiple folders with identical folder names create a structure that is near-impossible to navigate. The search function is of no assistance unless searching by document ID number.</p>	QIA comment #2 on page 13 of the Draft ROP Draft ROP Heading “Public Registry”	No changes to the draft ROP to specifically address the comment	Accessibility and logistical issues with the registry are specific to the current on-line registry system and are not issues that would be addressed in the ROP. However, the Board appreciates the feedback of the QIA regarding the on-line public registry project and this feedback from the users of the on-line system are being considered by the Board on an on-going basis to improve the system. Specifically, initiatives to improve search functionality and standardize folder structures are underway.



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57.	Public Registry	Qikiqtani Inuit Association	March 15, 2019	The Board should commit to a timeline under draft ROP #22 from receipt of a document until it is on the public registry, and a timeline (from receipt) for decisions on whether a document is: a. relevant to the proceeding; or b. confidential and treated as such.	QIA comment #3 on page 13 of the Draft ROP Draft ROP #22	No changes to the draft ROP to specifically address the comment	Unfortunately the limits of technology and resources can limit the Board's timing in terms of posting information to the public registry. Consequently, the Board cannot commit to a prescribed service timeline for posting Documents in the draft ROP. In general, the Board endeavours to post submissions within one (1) business day of receipt, but technological or resource limits can impact this timing. With respect to the second aspect of the comment, as the scope and complexity of questions regarding relevance of Documents and/or confidentiality and privacy assertions are likely to vary considerably, the Board cannot prescribe a timeline for decision-making in respect of these issues, and needs to retain discretion to set the timing and processes associated with the Board's consideration of such requests on a case by case basis.
58.	Public Registry	Government of Canada	March 15, 2019	Draft ROP #22 does not define a timeframe for the NIRB to post information to the public registry. NIRB should consider adding a timeframe for transparency.	GoC - #15 Draft ROP #22	No changes to the draft ROP to specifically address the comment	Unfortunately as noted in response to the QIA's comment above, the Board cannot commit to a prescribed service timeline for posting in the draft ROP because a number of factors outside the Board's control can affect the timeframe for posting.
59.	Public Registry – Motion for Confidentiality	Qikiqtani Inuit Association	March 15, 2019	The current wording of draft ROP #24 indicates that the Board will only advise "the party" bringing a motion to prevent posting on the NIRB registry due to confidentiality or	QIA comment on page 14 of the draft ROP Draft ROP #24	Revision to draft ROP #24	To reflect the changes to draft ROP #23 to allow for parties other than the party proposing to file a Document to assert confidentiality or privacy, the Board has



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				<p>privacy concerns. For transparency and fairness, "all parties" should be informed regarding the Board's decision. The Board may also want to identify what it will do for procedural fairness in instances where an affected community files a document that it intends only the Board and the Proponent to have access to, and whether the Board would even consider such a filing.</p> <p>In other words, will the Board consider putting into the record of an EA, any document that is confidential and for its, the party, and the proponent's eyes only, or will it not consider any evidence that not all parties can access? Clarity required here.</p>			<p>revised the wording to reflect that all relevant parties (not just the party bringing the motion) will be advised of the Board's decision.</p> <p>The Board has not supplemented the draft ROPs to prescribe a particular process for the Board's provision of limited access to Documents outside the public registry in any given circumstances. As the scope, complexity and timing of the assertions of confidentiality or privacy may vary considerably, the requirements of natural justice and procedural fairness will also vary considerably, and will need to be considered by the Board on a case by case basis. The specific questions posed in the comment would need to be argued by the parties to such a motion in the specific circumstances of the request, and cannot be answered by the Board in the abstract.</p>
60.	Public Registry -- Motion for Confidentiality	Government of Nunavut	March 15, 2019	Draft ROP #23 and #24 set out the procedure for party seeking to assert confidentiality and draft ROP #23 indicates that the Board requires the party to bring a motion to support this request, but does not cross-reference whether the Board's general requirements of motions, as laid out in draft ROP #42-#48 are applicable to such a motion. GN recommended either a cross-reference or specifying if unique procedural rules should govern such a motion.	GN-02 Public Registry Draft ROP #23, #24, #42-#48	Revision to draft ROP #23 to cross-reference the applicability of the general requirements of motions (draft ROP #42-#48)	It was the Board's intention that, unless otherwise directed by the Board, a motion under this section would be dealt with in accordance with the general rules applicable to motions, namely draft ROP #42-#48. This clarification has been added to Draft ROP #23.



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61.	Public Registry Access and Notification Requests	Government of Nunavut and Government of the Northwest Territories	March 15, 2019	<p>Draft ROP #25 appears to change the general rules for access to public registry (i.e. searchable 24/7 by anyone without requiring an account with the NIRB) and now limits access to parties who must either make an account or make a Document access request. GN noted it is unclear why the general rights to access have been altered in this way.</p> <p>GNWT noted that the current wording of draft ROP #25 seems to imply that an account is needed to view public registry documents, which is not currently the case.</p>	GN-02 Public Registry GNWT 6 Draft ROP #25	Revision to draft ROP #25 to clarify that general rights of access without an account or request to the NIRB continue to exist	This section was not intended to affect the existing general access to the registry without a specific access request. It was intended to apply only to a party wishing to receive direct notification and access to project-specific documentation by the NIRB without having to do their own general search of the registry
62.	Public Registry Access and Notification Requests	Government of Canada	March 15, 2019	<p>Draft ROP #25 does not define a timeframe for NIRB to complete the task of providing access or issuing the notifications requested.</p> <p>NIRB should consider adding timeframe for transparency.</p>	GoC - #16 Draft ROP #25	No changes to the draft ROP to specifically address the comment	Recognizing that generally 24/7 access to Documents on the NIRB registry exists, and that, as noted in response to GoC - #15 above, technology sometimes limits the timeframe for the NIRB to respond, the Board cannot commit to a prescribed service timeline in the ROP.
63.	Forms of Project-Specific Procedural Guidance	Government of Canada	March 15, 2019	<p>In draft ROP #26 the references to the <i>Nunavut Agreement</i> do not appear necessary for (a) and (b). And GoC questions whether there are there still projects described in (c) and (d) to which the transition rules of s. 235 of the <i>NuPPAA</i> still apply (noting that if ss. 235(2), applies, so does the Act and there is no need to reference the <i>Nunavut Agreement</i>)?</p> <p>References to the <i>Nunavut Agreement</i> could be removed.</p>	GoC #17 Draft ROP #26(a)-(d)	No changes to the draft ROP to specifically address the comment	The references to the <i>Nunavut Agreement</i> remain applicable in draft ROP #26(a)-(d), because the coming into force of <i>NuPPAA</i> supplements but does not replace the Board's processes as established under the <i>Nunavut Agreement</i> . Consequently, the Board's conduct of screenings, reviews, project monitoring and reconsiderations is governed by the framework established under the <i>Nunavut Agreement</i> , as that framework is implemented under <i>NuPPAA</i> .





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64.	Forms of Project-Specific Procedural Guidance	Government of Canada	March 15, 2019	<p>Rule 30 states “Any Board Order or Procedural Direction shall be filed on the public registry” but it is unclear if “other form of procedural guidance” should also be posted on the public registry.</p> <p>NIRB should clarify if other form of NIRB procedural direction would also be posted on the public registry.</p>	GoC #18 Draft ROP #30; Draft ROP #20	Additional rule following draft ROP #20 (revised Rule #21) (general public registry contents) and deletion of Draft ROP #30	The Board has added a new rule following Draft ROP #20 to more clearly describe that subject only to limited exceptions, all forms of procedural guidance issued by the Board in writing will be posted on the public registry (to include Board Orders, Procedural Direction (as previously set out in Draft ROP #30) and “other procedural guidance”), and has deleted draft ROP #30 (which was specific to Board Orders and Procedural Directions) as it is now included in the in the revised ROP #21 in the Public Registry section of the revised ROP.
65.	Board Orders	Government of Canada	March 15, 2019	<p>Draft ROP #31(d) should acknowledge Parks Canada Agency’s role as the “gatekeeper” for projects in parks/marine national conservation areas/historic sites under their jurisdiction – where they replace the Nunavut Planning Commission. GoC recommends that the following should be added:</p> <p>The process and extent of coordination of the NIRB’s Proceedings with the Nunavut Planning Commission, Parks Canada, and/or Nunavut Water Board;</p>	GoC #19 Draft ROP #31	Draft ROP #31 revised	The original listing reflects the coordination with the NPC and NWB expressly prescribed in ss. 192-193 of <i>NuPPAA</i> , but the Board has revised Draft ROP #31 to reflect that coordination with Parks Canada, although not prescribed by legislation, may also occur and may be the subject of a Board Order.
66.	Procedural Direction	Government of Canada	March 15, 2019	Draft ROP #32(f) gives the Executive Director the power to issue a Procedural Direction to provide information about “ <i>whether and/or how the Board may conduct a Monitoring Program, or any aspect of a Monitoring Program</i> ”. We question whether the	GoC #20 Draft ROP #32(f)	Draft ROP #32(f) revised	As the GoC comment correctly identifies, the Executive Director’s powers are limited to the procedural aspects of carrying out a Monitoring Program or any aspect of a Monitoring Program that the Board directs. The wording of Draft #32(f)



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				<p>Executive Director should decide whether and/or how the Board may conduct a Monitoring Program, or any aspect of a Monitoring Program as provided by Draft ROP # 32(f). This seems to be an issue better left to the Board as opposed to the Executive Director.</p> <p>NIRB should revise Rule 32 such as to grant the Board the power to decide whether and/or how a Monitoring Program or any aspect of a Monitoring Program may be conducted.</p>			has been revised to better reflect the limited scope of the Executive Director's powers.
67.	Procedural Direction	Qikiqtani Inuit Association	March 15, 2019	<p>The Board should provide further clarity on whether complying with a Procedural Direction is mandatory and how it will be enforced by the Board, especially for the item described in draft ROP #32(e).</p> <p>In addition, the Board should add "Proponent IR responses" to the list of submissions that will be reviewed by the Board for adequacy of response, and could be subject to enforceable "Procedural Direction".</p>	QIA comment on page 17 of the draft ROP Draft ROP #32(e)	No changes to the draft ROP to specifically address the comment	<p>The Board has addressed the requirement to comply with Procedural Direction under draft ROP #11 (non-compliance) by stating that non-compliance with the Rules, a specific Board Order or a Procedural Direction or other form of procedural guidance can result in an adjournment, suspension or any "other steps the Board considers just and reasonable in order to conduct a fair Proceeding."</p> <p>With respect to the suggested addition to "Proponent IR responses", the Board has not included that addition because the Board does not review IR submissions to parties for adequacy.</p>
68.	Interpretation and Application of	Government of Canada	March 15, 2019	Draft ROP #33(a) is missing the notion of also being accepted in a court of law.	GoC #47 Draft ROP #33	No changes to draft ROP	The language in this section is brought forward from Article 12, Section 12.2.24(a)(i) of the <i>Nunavut Agreement</i> ,



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	Rules in Respect of Proceedings			NIRB should consider adding "or in a Court of law" after "under the strict rules of evidence".			and s. 26(3)(a) of <i>NuPPAA</i> and is, in the Board's view, an intentionally broader reference than the rules of evidence that may be adopted by the courts. The Board recognizes that courts are not the only tribunals that may choose to be bound by the strict rules of evidence, quasi-judicial tribunals, commissions of inquiry, legislatures and other administrative decision-makers may impose strict rules of evidence as well. Accordingly, the Board may not adhere to the strict rules of evidence as adopted by any of these other entities, and is not solely indicating that the Board may diverge from the strict rules of evidence only as adopted by a Court of law.
69.	Burden of Proof	Qikiqtani Inuit Association	March 15, 2019	Use of this terminology in the context of IQ is problematic and potentially disrespectful. It invites scenarios where IQ of an Elder may be held up against evidence of three scientists; if the evidence disagrees, the balance of probabilities is on the side of the three scientists. Some provision for respectful weighting of lived experience of Inuit over thousands of years should be included here.	QIA comment #2 on page 18 of the draft ROP Draft ROP #34	No changes to draft ROP	As noted in draft ROP #33(b), draft ROP #40 and #41, and the Board's obligations under Article 12, Section 12.2.24(a)(i) of the <i>Nunavut Agreement</i> , and s. 26(3)(a) of <i>NuPPAA</i> , the Board is bound to give due regard and weight to the presentation of information from Inuit knowledge holders, and the Board has demonstrated that the consideration of Inuit Qaujimajatuqangit and Inuit Qaujimaningit is to be considered when the Board is considering "sufficient and appropriate information" to support a parties' position.



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70.	Burden of Proof	Qikiqtani Inuit Association	March 15, 2019	It is also important to know that the balance of power and money is in the hands of the Proponents, rather than affected communities. There will inevitably be LESS evidence available from affected communities in all but the most extreme of scenarios. How will the Board deal with this "evidence volume disparity"?	QIA comment #2 on page 18 of the draft ROP Draft ROP #34	No changes to the draft ROP to specifically address the comment	As provided for in draft ROP #33, reviewing the information, Documents and evidence considered by the Board on the balance of probabilities is an inquiry clearly within the scope of the Board's jurisdiction and requires the Board to weigh many factors, including general natural justice and procedural fairness principles and specific obligations of the NIRB that are unique and established under the <i>Nunavut Agreement</i> and <i>NuPPAA</i> . The Board is well aware of the potential for the "evidence volume disparity" to exist, but measures of the sheer volume of information provided by one party in a Proceeding is not determinative of the balance of probabilities inquiry. As the draft ROPs make very clear the Board's various obligations when conducting this analysis, additional more scenario-specific guidance is not helpful, as it could be viewed as fettering the Board's broad discretion.
71.	Burden of Proof	Nunavut Tunngavik Incorporated	March 15, 2019	While the Rules establishing the burden of proof (#34) and the Board's weighing of conflicting evidence (#35) are consistent with the general rule of evidence entails that a party alleging something must prove it, there is also - in the context of environmental decision-making - a broadly accepted shift in the allocation of the burden of proof towards	NTI #4 Draft ROP #34 and #35	Draft ROP #34 supplemented with additional text	Draft ROP #34 revised to expressly reference the Board's consideration of the precautionary principle in the weighing of evidence



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				the proponent of a potentially harmful activity. NIRB's draft Standard guidelines for the preparation of an impact statement allude to this in section 2.4, by specifying that "when the precautionary principle applies, it is the Proponent who bears the burden of proof to show that despite this uncertainty, the potential for adverse environmental impacts can be mitigated or reversed" (p. 3, para. 1). Could the NIRB clarify whether this shift of the burden of proof applies to submitting parties and/or to the NIRB's weighing of conflicting evidence?			
72.	Burden of Proof; Relevance and Weight of Information	Government of Canada	March 15, 2019	In draft ROP# 34 and Draft ROP#36 the Board references the admission of "information" and "Documents". CIRNAC would suggest using the term evidence instead of the terms "information" and "documents".	GoC - #48 and #49 Draft ROP #34 and #36	No changes to draft ROP	As indicated in the discussion of GoC - #47 in respect of draft ROP #33, the Board may receive materials in a Proceeding (information and Documents) that do not constitute "evidence" under the strict rules of evidence. Information and Documents provided by parties may, and often would constitute evidence, but that is not always the case. Consequently, in the Board's view, the use of the terms "information" and "Documents" more clearly express what parties may be relying upon during a Proceeding.
73.	Relevance and Weight of Information	Government of Canada	March 15, 2019	In draft ROP #37 the Board uses the term "expert information" and the GoC recommends using the term "expert evidence".	GoC - #49 and #50 Draft ROP #37	Revision to draft ROP #37	As noted above, in some circumstances the Board may receive information from parties, including experts that may not meet the definition of "evidence", consequently the broader term "information" has been used.



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				<p>Rule 37 contains a run-on sentence, which the NIRB should consider breaking up for clarity.</p> <p>NIRB should consider breaking-up the sentence to read:</p> <p><i>"If a party wishes to have the technical, scientific, ecological, cultural, Inuit Qaujimaningit, Traditional Knowledge or community knowledge expertise of a witness considered to constitute "expert" evidence, the Board requires the party to file a summary of the background of that witness, including qualifications, relevant education and/or experience with the Board. The summary should be filed as an attachment to relevant written submissions or, if appearing at a Public Hearing, the background statement about the witness must be filed with the Board at least 15 days prior to the commencement of the Public Hearing."</i></p>			With respect to the run-on sentence identified in GoC - #50, the Board has broken draft ROP #37 into two sentences.
74.	Relevance and Weight of Information	Qikiqtani Inuit Association	March 15, 2019	Suggested additional text to draft ROP #39: "In addition, the Board may choose to waive Rules 37 and 38 for other holders of IQ."	QIA comment #1 on page 19 Draft ROP #39	No changes to the draft ROP to specifically address the comment	Under draft ROP #7, the Board retains the discretion to waive any of the Rules, and so an IQ knowledge holder who is not an Elder can request such a waiver in appropriate circumstances. The basis for the all encompassing waiver of the requirements in Rules #37 and #38 contained in draft ROP #39 is indicative of the recognition of the status of Elders in the Board's Proceedings, and this recognition of status is not broadly



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							applicable to other categories of witnesses.
75.	Inuit Qaujimaningit and Traditional Knowledge	Qikiqtani Inuit Association	March 15, 2019	Suggested addition: "Any submission that claims to be informed by IQ shall provide evidence that the holders of the IQ have reviewed and agreed with not only the information provided, but also any estimations/determinations made on the basis of that IQ."	QIA comment #2 on page 19 Draft ROP #40	No changes to the draft ROP to specifically address the comment	In the Board's experience, the focus of concerns from holders of IQ regarding the presentation of IQ in its proper context and with the agreement of the IQ holders is in relation to IQ information as provided in the Impact Statement (IS) or possibly technical comments on the IS from Intervenor. This has been a focus of the relevant sections of the Standard IS Guidelines and has, in some cases, been the specific subject of project-specific Board direction. This level of detail is more appropriately provided in the IS Guidelines and project-specific or submission-specific guidance.
76.	Inuit Qaujimaningit and Traditional Knowledge	Nunavut Tunngavik Incorporated	March 15, 2019	NIRB's 2009 Rules of Procedure (Rule 12.2, p. 11) allowed - in special circumstances - for an Elder to file a submission orally, through the recording and transcribing assistance of NIRB staff. Although this clause only related to comments that effectively withdrew the commenter from the given proceedings, might the NIRB consider accommodating - in special circumstances - the standard submission of Elders in a similar fashion?	NTI #5 Draft ROP #40	No changes to the draft ROP to specifically address the comment	The wording of the current rule is: "The Board will encourage the submission and consideration of any relevant Inuit Qaujimaningit and Traditional Knowledge, including oral history, at any stage of its Proceedings." As such the draft ROP is broader than the previous rule, allowing for the Board to take steps to encourage the submission of information in all forms (which could include verbal submission provided outside the public Proceeding) at any stage of Proceedings.
77.	Inuit Qaujimaningit and Traditional Knowledge	Qikiqtani Inuit Association	March 15, 2019	Suggested addition: " <i>The Board may choose to alter the location, nature, and procedures of a Proceeding or a Hearing within it, to</i>	QIA comment #3 on page 19 Draft ROP #41	No changes to the draft ROP to	The ability of the Board to "make arrangements" under the current wording of draft ROP #41, coupled with the Board's



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	Traditional Knowledge			<i>accommodate the needs of Elders or holders of relevant IQ."</i>		specifically address the comment	discretion under draft ROP #7 is broader than the suggested addition to draft ROP #41 and would allow for the Board to take any steps considered appropriate to hear from any Elder or holder of relevant IQ. The Board has not amended the draft ROP, as the suggested revision could be viewed as limiting the Board's broad discretion to make appropriate arrangements.
78.	Inuit Qaujimajatuqangit and Traditional Knowledge	Nunavut Tunngavik Incorporated	March 15, 2019	NTI commends the NIRB for drafting this progressive rule (indicating that the Board may make arrangements to hear from any Elder, IQ or TK knowledge holder at any time the Board considers appropriate in a Proceeding) particularly considering that rule 43.1 of NIRB's 2009 Rules of procedure only contemplated receiving oral evidence from Elders at the beginning, during or at the conclusion of proceedings	NTI #6 Draft ROP #41	No changes to the draft ROP to specifically address the comment	The Board did intend for draft ROP #41 to be broader than the Board's 2009 ROP #43.1 to support the Board's efforts to receive Elder, IQ or Traditional Knowledge from knowledge holders in the form and time in the Board's Proceedings that is best for the knowledge holder.
79.	Motions	Government of Canada	March 4, 2019	<p>There is an apparent inconsistency between draft ROP #43(a) and draft ROP #42. Draft ROP #42 seems to allow for filing of motion during a public hearing whereas draft ROP # 43(a) does not.</p> <p>Given (b) defines an exception to the rest of draft ROP # 43, it should be separate for readability and to avoid confusion.</p> <p>GoC recommends that the NIRB:</p>	GoC - #51 Draft ROP #42 and #43	No changes to the draft ROP to specifically address the comment	There is no inconsistency between these Rules when read in concert with all the Rules governing Motions in this section. Draft ROP #42 is the general rule that governs all forms of motions parties may file with the Board and allows for both "motions filed by a party in advance of the oral component of a Proceeding" (Rules #43-#46) OR a motion brought during the oral component of a Proceeding (Rules #47 and #48). The exception in draft ROP #43(b) still assumes that the motion is "filed by a party in advance of the oral





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				Clarify that draft ROP #43 does not apply to draft ROP #42.  Separate draft ROP #43(b) a section of its own (ex: draft ROP #44).			component of a Proceeding” (i.e. not during a Public Hearing), but is not filed at least 28 days prior to the start of the Public Hearing component of the Proceedings.
80.	Motions	Qikiqtani Inuit Association	March 15, 2019	Suggest additions to draft ROP #43(f) and #45 (e) to specify: <i>"if applicable and within the boundaries of any confidentiality provisions..."</i>	QIA comments #1 and #2 on page 20 of the draft ROP Draft ROP #43(f) and #45(e)	Revisions to draft ROP #43(f) and #45(e)	Recognizing that motions may involve assertions of privacy and confidentiality by parties, the Board has revised both draft ROP #43(f) and ROP #45(e) to reflect these issues.
81.	Motions	Government of Canada	March 15, 2019	Rule 47 gives NIRB the discretion to allow a party to bring a motion or present information during an oral component of a proceeding. One would expect that the party presenting an oral motion during the hearing would have to present justification for presenting the motion less than 28 days before the hearing. However, the wording of Rule 47 does not clearly state so.  NIRB revise the wording of Rule 47 to stipulate the need for a party presenting an oral motion during the hearing to present justification for presenting the motion less than 28 days before the hearing.	GoC - #21 Draft ROP #47	No changes to the draft ROP to specifically address the comment	In draft ROP #47, the Board requires that if an oral motion is allowed, the party making the motion must provide the information about their motion as required under draft ROP #43, and draft ROP #43(b) requires information demonstrating why the motion was not filed at least 28 days before the Public Hearing and demonstrating why the motion should be accepted by the Board as filed in a timely manner.
82.	Motions	Government of Canada	March 15, 2019	Rule 48 states <i>"the Board may dispose of an oral motion in accordance with the oral directions of the Board provided during the Proceeding and/or as provided by the Board subsequently in writing"</i> . It is, however, not clear what this Rule provides for. Are the "oral directions" meant to refer to the Board	GoC #22 Draft ROP #48	No changes to the draft ROP to specifically address the comment	The current wording reflects that the Board may provide additional oral directions to deal with an oral motion subsequently in writing (e.g. specifying that parties may be given an opportunity to provide submissions on the motion after the conclusion of the oral



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				<p>decision on the motion or to directions issued separately, in order to somehow guide decision-making on the motion? Does this mean that a motion can be disposed of orally during the hearing or in writing after the hearing?</p> <p>NIRB should revise Rule 48 to clarify if the “oral directions” refer to the Board decision on the motion or to directions issued separately in order to guide decision-making on the motion.</p>			Proceeding) or alternatively may actually render a decision with respect to the motion and convey that decision orally during the Proceeding. Given that the range and scope of oral motions can vary considerably during a Proceeding, the scope of draft ROP #48 must include the Board’s discretion to issue directions about the motion and/or to render a decision in oral form during the Proceeding when appropriate.
83.	Transcripts	Government of Canada	March 15, 2019	<p>For transparency, transcripts should be required unless technology does not allow it.</p> <p>NIRB should provide transcripts, unless unable to do so, in which case there should at least be a summary of proceedings for transparency.</p>	GoC - #52 Draft ROP #50	No changes to the draft ROP to specifically address the comment	Given the range of formality associated with the oral components of Proceedings (from scoping sessions through to Public Hearings), the Board views it as appropriate to retain the discretion to direct that written transcripts be provided in appropriate cases. In addition to issues with respect to technology for recording audio during Proceedings, generating written transcripts also necessitates the in-person presence of a transcriptionist during the Proceeding in order to ensure accuracy of the transcripts (e.g. ensuring that speakers are properly identified, ensuring interpretation is properly recorded, ensuring identification of materials presented in visual form and relied upon by a speaker are provided, etc.). The production of written transcripts in informal settings is not warranted. The Board’s practice is to



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							provide written transcripts associated with in-person Public Hearings (as noted under draft ROP #52(g)) and to provide written summaries of the attendees, agendas, discussions and outcomes of other Proceedings.
84.	Transcripts	Qikiqtani Inuit Association	March 15, 2019	<p>Draft ROP #51 should be revised to add a timeline following the close of Proceedings: QIA suggests adding the following after the conclusion of the oral component of Proceedings ". and at least XX days (e.g. 14) prior to the close of the Public Record for a Proceeding."</p> <p>QIA also asked: What about situations where a party takes issue with the written transcript's accuracy? What does the Board do then? Please clarify herein.</p>	QIA comment on page 21 of the draft ROP Draft ROP #51	No changes to the draft ROP to specifically address the comment	<p>As the timing of the posting of the transcript can vary depending on the length and complexity of a Proceeding, the Board cannot commit to specific filing timelines. The Board's general practice of closing the Public Hearing Record at the close of the oral component of an in-person Public Hearing would not allow for the filing of the transcript prior to the close of the Public Hearing Record.</p> <p>In terms of comments on the accuracy of the written transcript, written transcripts are produced for the Board by professional transcriptionists based on the audio files (including simultaneous interpretation) recorded during the Proceeding. If substantive errors in the transcription are noted by a party, they are encouraged to identify such to the Board who will follow up with the transcriptionist who may issue corrections.</p> <p>As with any tribunal, the correction of errors on the face of the record is inherent within the Board's jurisdiction, and the</p>



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							Board has not referenced this jurisdiction in specific Rules.
85.	Transcripts	Kitikmeot Inuit Association	June 27, 2019	Draft ROP #51 provides that the Board shall make final written transcripts available on the public registry within a reasonable time after the conclusion of the oral component of Proceedings. In KIA's view, the final transcripts should also be made available on the public registry before written final arguments are submitted or decisions are made by the Board.	KIA Transcripts Draft ROP #51	No changes to the draft ROP to specifically address the comment	As the timing of the posting of the transcript can vary depending on the length and complexity of a Proceeding, the Board cannot commit to specific filing timelines. The Board's general practice of closing the Public Hearing Record at the close of the oral component of an in-person Public Hearing would not generally allow for the filing of the transcript prior to the close of the Public Hearing Record. However, the final transcript is typically posted within 14 days of the conclusion of the oral proceedings in a Public Hearing, and as such, it is posted before the Board's decision-making is completed (which is typically conducted within 45 days of the close of the Public Hearing Record).
86.	Record of Proceedings	Government of Canada	March 15, 2019	Definitions [descriptions] in draft ROP#52 (a) and (b) do not include "Final Written Submissions" or "Responses to Final Written Submissions".	GoC - #53 Draft ROP #52	Revisions to draft ROP #52(a) and (b)	The Board did not intend for the listing of types of written and oral submissions provided by the Proponent or formal Intervenor to the Board in this draft ROP to be an exhaustive list (stating "written and oral submissions...including"). However, for clarity the Board has added in "responses to final written submissions" to revised draft ROP #52(a) and "final written submissions" under revised draft ROP #52(b). The Board has not capitalized these terms as they are not defined within the Rules.



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87.	Record of Proceedings	Qikiqtani Inuit Association	March 15, 2019	The Board should provide clarification on whether third party research documentation, referred to by a party and a copy of which is provided to the Board for the public registry, will be considered part of the evidence and the "record of proceedings" would be useful.	QIA comment on page 22 of the draft ROP Draft ROP #52(b)	Revisions to draft ROP #52(a) and (b)	The Board did not intend for the listing of materials in draft ROP #52 (a) and (b) to be exhaustive lists (stating "written and oral submissions ... including"). However for clarity, the Board has added a clause to both (a) and (b) to reference research or other information prepared by a third party and relied upon by a Proponent (draft ROP #52(a) or an Intervenor (draft ROP #52(b)).
88.	Translation Requirements	Government of Northwest Territories	March 15, 2019	GNWT notes that the current wording of the draft ROP #54 does not make it clear that parties translation obligations should not be so broad as to direct a party to translate materials if the party is not responsible for producing the information.	GNWT #2 Draft ROP #54	Revision to draft ROP #54	The NIRB recognizes that parties should not be obligated to translate materials that they are not filing with the Board, but notes that there may be situations where a party did not "produce" the information, Documentation, but intends to rely on the information, Documentation, and in such a case, the Board may require the party filing such material to translate the materials in whole or in part.
89.	Translation Requirements	Government of Canada	March 15, 2019	Rule 54 States " <i>The Board may direct a party to arrange for the translation of any information and documentation into Inuktitut or any other languages deemed necessary by the Board</i> ". This Rule should be reviewed and nuanced.  Section 37(2) of NuPPAA provides that the NIRB must conduct public hearings in Canada's both official languages in accordance with the Official Languages Act, as well as in Inuktitut upon demand by a member, a proponent or an intervenor.	GoC #23 Draft ROP #54	No changes to the draft ROP to specifically address the comment to address this issue	The wording of the current provision uses the permissive "may" to capture the nuances referenced by GoC. The current wording is sufficiently flexible to allow for the Board to take into account the legislative provisions cited by the GoC, the individual circumstances of parties, the applicable language obligations, and the importance of community and public engagement in any given circumstances.



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				<p>Section 37(4) provides that, in any proceeding, the NIRB must ensure that a witness giving evidence will be able to be heard in either official languages or in Inuktitut and that the witness will not suffer any disadvantage as a result of this choice.</p> <p>Pursuant to those provisions, people and organisations other than federal departments have a right to communicate with the NIRB, make submissions to the NIRB and testify in front of the NIRB in Inuktitut, English or French, without having to use a second language among them.</p> <p>It is our view that the ability of the NIRB to require a party to arrange for translations is limited in respect of documents and information submitted to the NIRB. The matter might be different if a proponent or another party is required by the NIRB to conduct consultations outside of the actual NIRB proceeding.</p> <p>NIRB should review and nuance Rule 54 to take into account the fact that the NIRB's ability to require a party to arrange for translation may be limited in respect of documents and information submitted to the NIRB.</p>			
90.	Notice of Proceedings	Government of Canada	March 15, 2019	Rule 55 states <i>"As required under the Nunavut Agreement and the NuPPAA, and in accordance with the requirements of</i>	GoC #24 Draft ROP #55	Revision to draft ROP #55	The Board has revised draft ROP #55 to delete "interested" parties, as "interested" is not necessary; the Rule



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				<p><i>procedural fairness, the Board shall provide adequate public notice of Proceedings to the Proponent, <b>interested parties</b>, and the public in the form required by <b>regulatory requirements</b> and in a manner that encourages participation in Board Proceedings</i> [emphasis added].</p> <p>It is not clear who the “interested parties” are, as opposed to the “parties” as defined in the definitions section. If this is not clarified, there is a risk there will always be a level of ambiguity as to who should be notified.</p> <p>Further, it is unclear what “regulatory requirements” the Board is referring to under this Rule.</p> <p>Recommended revision: “As required under the Nunavut Agreement and the NuPPAA, and in accordance with the requirements of procedural fairness, the Board shall provide adequate public notice of Proceedings to <b>parties</b> in a form and manner that encourages participation in Board Proceedings.”</p>			<p>applies to “parties”. With respect to the “regulatory requirements”, however the Board is not only referring to the provisions of the <i>Nunavut Agreement</i> and the <i>NuPPAA</i>, as the Board contemplates that when the Board is coordinating Proceedings with the authorities such as the Nunavut Water Board there may also be applicable notice requirements arising under other regulatory enactments, such as the <i>Nunavut Waters and Nunavut Surface Rights Tribunal Act</i> and <i>Nunavut Waters Regulations</i>.</p>
91.	Formal Intervenor	Government of Canada	March 15, 2019	<p>Rule 58 states “<i>The Board shall, without request, allow full standing as formal Intervenor to all Authorizing Agencies</i>”.</p> <p>A designated Inuit organization (DIO) should also be given full standing automatically in accordance with 26(3)(b) of NuPPAA, irrespective of whether it fits the definition of</p>	GoC #25 Draft ROP #58	Revisions to draft ROP #58	Draft ROP #58 has been revised to clarify that Designated Inuit Organizations have standing without request, even if not exercising authority to issue a permit, lease, licence or approval.



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				<p>“Authorizing Agency” or not, or whether it has authority to issue a permit or other approval.</p> <p>Recommended revision: The Board shall, without request, allow full standing as formal Intervenor to all Authorizing Agencies and designated Inuit organization(s)</p>			
92.	Formal Intervenor	Government of Northwest Territories	March 15, 2019	Although the draft ROP #58 specifies that full standing is automatically granted to all “Authorizing Agencies”, it is unclear how the Board or parties are aware of which Authorizing Agencies will be participating in a Board Proceeding. The draft ROP #58 should be amended	GNWT #3 Draft ROP #58	No changes to the draft ROP to specifically address the comment	The identification of Authorizing Agencies is undertaken by the Board at the initial stages when the project proposal has been referred to the NIRB for screening/reconsideration and the Proponent files an application. Once the relevant Authorizing Agencies have received notice of the application, the level and extent of the participation of a specific Authorizing Agency is determined by that Authorizing Agency and is not typically controlled by the Board unless the Board issues a summons to an Authorizing Agency under draft ROP #61-63.
93.	Formal Intervenor	Government of Canada	March 15, 2019	<p>GoC notes that draft ROP #59(b) is redundant as (a) captures "the nature" of the applicant's intended participation, in the requirement for “a brief summary of the reasons for interest in the Proceeding.”</p> <p>NIRB should consider including “the nature” in (a) and removing it from (b)</p>	GoC - #53 Draft ROP #59	No changes to the draft ROP to specifically address the comment	The NIRB does not agree that the “nature and scope of participation” is captured in the summary of reasons for interest in the Proceeding. The information solicited in draft ROP #59(a) is about the applicant and the basis for their interest and draft ROP #59(b) is about the nature of the applicant’s participation, including limits on their expertise, mandate and ability to participate in the Proceedings. For example, an applicant under draft ROP





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							#59(a) may indicate that the applicant is interested in participating in a Proceeding because they are a guiding/outfitting company operating near to the project, but in describing the nature and scope of their participation in draft ROP #59(b) would be expected to identify that they will only be interested in participating in technical sessions concerning potential effects on wildlife and discussion of land-based transportation corridors and that they cannot participate during in-person components of the Proceedings conducted during the summer season.
94.	Formal Intervenor	Government of Canada	March 15, 2019	<p>There is inconsistency in terminology regarding the request for “formal Intervenor status”, but then refers to "applicants" instead of requestors.</p> <p>NIRB should consider correcting for consistency, by either using "<i>Request for Intervenor status / Requestor</i>", or "<i>Application for Intervenor status / Applicant</i>."</p>	GoC - #55 Draft ROP #59 and #60	Revisions to draft ROP#59 and #60	The Board has revised draft ROP #59 and #60 to reflect that the Board process requires an “application” for formal Intervenor status by an “applicant”.
95.	Formal Intervenor	Government of Canada	March 15, 2019	<p>There is a run-on sentence in (d), which the NIRB should consider breaking up for clarity.</p> <p>NIRB should consider breaking-up the sentence to read:</p> <p><i>Accept the intervention request in writing, and advise the applicant and all parties that the Board has accepted the intervention request. The Board will also advise the applicant as to upcoming timelines and process requirements</i></p>	GoC - #56 Draft ROP #60	Revision to draft ROP #60	The Board has revised draft ROP #60(d) into two parts.



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				<i>applicable to formal Intervenor and associated with the next steps in the Board's consideration of the project proposal.</i>			
96.	Formal Intervenor	Government of Canada	March 15, 2019	<p>Draft ROP #60 (b) uses the terms “proponent” and “intervenor” while 60 (d) uses “parties”. It is not clear if both mean the same thing. If not, who is excluded from either of 60 (b) or 60 (d)?</p> <p>NIRB should revise Draft ROP #60 to eliminate the ambiguity.</p>	GoC - #57 Draft ROP #60(b) and (d)	No changes to the draft ROP to specifically address the comment	The use of the terms “Proponent”, “Intervenor” and “parties” is not inconsistent or ambiguous. Draft ROP #60(b) is intended to apply to a narrower subset of “parties” because comments regarding an intervention application will generally be solicited from Proponents or existing Intervenor only, while notice that an intervention application has been accepted as provided for in Draft ROP #60(d) will be provided to a broader range of participants as included in the definition of parties, including the public and Interested Corporations or Organizations who may not be Intervenor.
97.	Formal Intervenor	Kitikmeot Inuit Association	June 27, 2019	Rule 60(c) permits the Board to dismiss an intervention request and does not allow for reply by the party seeking intervenor status. This is procedurally unfair and should be revised to allow for reply argument	KIA page 1, second bullet Draft ROP #60	No changes to the draft ROP to specifically address the comment	The requirements of procedural fairness in respect of a specific intervention request may vary considerably to reflect factors such as the nature and extent of an applicant's interest in respect of a given proceeding, the scope of their proposed intervention, etc. Whether procedural fairness requires a given applicant for intervention status to have a right of reply to the Board's dismissal of an intervention will also vary, and will not be required in all cases. Consequently, a right of reply has not been prescribed in the draft ROP.



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98.	Summons	Government of Canada	March 15, 2019	Draft ROP #61e uses “information or documents” to describe what would normally be considered as “evidence” in proceedings. We recommend using “evidence” instead of the terms “documents and information”.  NIRB should replace “documents and information” with “evidence”	GoC - #58 Draft ROP #61	No changes to the draft ROP to specifically address the comment	As indicated in the discussion of GoC - #47 - #50 in respect of draft ROP #33, the Board may solicit materials in a Proceeding (information and Documents) that do not constitute “evidence” under the strict rules of evidence. Although the Board recognizes that often the Board will be seeking information and Documents that constitute evidence, that may not always be the case. Consequently, in the Board’s view, the use of the terms “information” and “Documents” more clearly express what the Board may seek to elicit under a Proceeding.
99.	Summons	Government of Canada	March 15, 2019	Draft ROP # 63 states “ <i>The person/party to whom a Board summons is directed shall receive a copy of the summons....</i> ”[emphasis added]. It is not clear to the GoC if this is meant to impose an obligation on the receiving party (the summoned party “shall receive”), or if the Board is trying to say that it has to follow rules for service in serving the summons. In the latter case, the Rules should read: “the NIRB shall serve a copy of the summons in accordance...”.	GoC - #59 Draft ROP #63	Revision to draft ROP #63	Revised to clarify that draft ROP #63 involves the Board’s obligation to serve the summons.
100.	Summons	Kitikmeot Inuit Association	June 27, 2019	Draft ROP#61-63 allow the Board to issue a summons to a person/party requiring them to provide information or Documents to the Board. KIA suggests that as a practical matter and as a first step, the Board may want to simply request that a party provide information or documents to the Board.	KIA page 2, bullet 1 Draft ROP #65	Revision to draft ROP #65	Draft ROP #65 was revised to add in the requirement that the Board be satisfied that the party with the information or Documents is not likely to provide the information or Documents without a summons to reflect that the Board’s normal practice of soliciting relevant



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							information and evidence from parties with a simple request will be the Board's first and preferred approach.
101.	Board Retention of Experts	Qikiqtani Inuit Association	March 15, 2019	<p>With respect to whether parties are to be given an opportunity to respond to the submissions provided by an expert retained by the Board as provided for under draft ROP #65 the QIA noted: submissions in response to ANY written submission; why would the Board's expert be exempt? In fact, the ability to file a response to the Board's expert is made doubly important by the likelihood that the Expert has behind the scenes access to the Board in camera. Suggest removing draft ROP #65(b) or state that participants clearly have the right to file submissions in response to the expert's written submissions on the public record.</p> <p>Again rules of fairness suggest that if someone puts evidence on the record, they should be subject to questioning at the hearing. if not, then not. But special rules like this should not be made. Please revise.</p>	QIA comment #1 and #2 on page 26 of the draft ROP Draft ROP #65	No changes to the draft ROP to specifically address the comment	<p>At the outset, the Board wishes to highlight that the QIA's assumption that it is likely "that the Expert has behind the scenes access to the Board in camera" is not an accurate reflection of the Board's existing and standard practices with respect to the Board's use of third party experts.</p> <p>That issue aside, however, the current wording in Rule #65 does NOT exempt the Board from receiving comments from parties on any expert evidence put forward by the expert, nor does it exempt the expert from being subject to questioning if procedural fairness in the circumstances dictates these requirements. Rather, the Rule prescribes that the Board will issue project-specific guidance so that all parties are aware of the applicable Board processes and their participation rights with respect to a third party expert. The draft ROP is not more prescriptive because the Board recognizes that there are a range of circumstances in which the Board may retain a third party expert that vary considerably from a narrow retainer (e.g. the expert to provide comment on a single point in a single submission filed with the Board) to a more broad retainer of a third party</p>



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							expert to provide subject matter expertise with respect to an industry, (e.g. the expert retained by the Board to develop reasonable oil and gas development scenarios during the Strategic Environmental Assessment). The circumstances and scope of retainer will dictate what natural justice and procedural fairness requires in terms of the participation rights of parties. In the past, in the rare circumstances where the Board retains a third party expert, parties have been given very extensive participation rights in respect of the retainer of the third party expert, including the opportunity to recommend neutral third parties that they would accept to act in this capacity, to comment on the scope of the expert's retainer and to recommend timing, scope and format of the materials filed by the expert with the Board. Rather than attempt to prescribe the participation rights of parties and limit these rights to written responses to the expert's written submissions and questioning of the expert, the Board has prescribed that the Board will address such matters in a specific Board Order where the full circumstances of the retainer can be taken into account.
102.	Board Retention of Experts	Government of Canada	March 15, 2019	Draft ROP #64(b) is missing the notion of timelines for submissions. NIRB should	GoC - #60	Revision to draft ROP #65(a) and (b)	Revised both draft ROP #65 (a) and (b) to reference that the Board Order regarding



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				consider adding "and timelines to do so" before the semi-colon.	Draft ROP #65(a) and (b)		the retention of an expert should include Board guidance about the timelines for the expert's filing of written submissions, as well as timelines for parties to file response submissions
103.	Board Retention of Experts	Kitikmeot Inuit Association	June 27, 2019	Draft ROP #65 suggests that where NIRB engages an expert, the Board retains discretion to determine whether participants can file written submissions in response to the expert's report and/or question the expert. The KIA notes that Participants should be advised regarding the expert's role and responsibilities, what advice the expert is giving and have the opportunity to respond, including the opportunity to ask questions of the expert.	KIA, page 2, second bullet Draft ROP #65	No changes to the draft ROP to specifically address the comment	As noted in the Board's response to the Qikiqtani Inuit Association's comment 1 and 2 on page 26 of their submission (above), the Board recognizes that in each circumstance when the Board retains an expert, the specific circumstances will dictate the role and responsibility of the experts retained and the participation rights of parties. Consequently, the Board has not prescribed specific roles for experts in general or participation rights. Rather, the applicable ROP indicate that the Board will address such matters in a specific Board Order where the full circumstances of the retainer can be taken into account.
104.	Participation by Teleconference/ Videoconference During In-Person Proceedings	Government of Canada	March 15, 2019	<p>The NIRB's use of the expression "well in advance" in draft ROP #67 is subjective. A more objective approach would provide better guidance to parties. Perhaps the Rules should simply provide that the NIRB will set a deadline for such requests at some point in the review process.</p> <p>NIRB should consider revising this rule by simply indicating that the NIRB will set a deadline for such requests during the review process.</p>	GoC - #61 Draft ROP #67	No changes to the draft ROP to specifically address the comment	Nothing in the current Rule precludes the Board from setting a specific timeline to receive this notice in a given case, but the Board notes that in the absence of such project-specific direction, this subjective term has been used to reflect that the Board needs sufficient lead time to accommodate such requests, but that the circumstances giving rise to such a request may vary considerably and can affect how much lead time a party can reasonably be expected to provide.



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105.	Continuing Proceedings in the Absence of a Party	Government of Canada	March 15, 2019	Given the consequences of proceeding without a party, it's important that if the NIRB excuses a party [from attending the oral component of a Proceeding] it be done in writing. NIRB should consider adding that the NIRB must provide the decision to “excuse a party” in writing.	GoC – #62 Draft ROP #69	Revision to draft ROP #69	The Board accepts this comment and has revised draft ROP #69 to add that if the Board excuses a party from attending the oral component of a Proceeding the Board will do so in writing.
106.	Adjournments	Government of Canada	March 15, 2019	There are no powers or processes for adjournment of proceedings. NIRB should consider adding a process to allow the Board to make adjournments, and to allow for other parties to request adjournments.	GoC - #1; Draft ROP #70	Revisions to draft ROP #70	Draft ROP# 70 provides a mechanism for the Board to, on its own initiative, or on a motion by a party to adjourn a Proceeding. Based on feedback regarding draft Rule #23 the Board has clarified that a motion for an adjournment will be governed by the general rules applicable to Board motions (draft ROP #42-48).
107.	Questions of Law or Jurisdiction	Government of Canada	March 15, 2019	Arguably, draft ROP #71 and #72 bring very little value as draft ROP #71 is already covered by NuPPAA and draft ROP #72 is already covered under draft ROP #70 [the Board’s general power to adjourn].  NIRB should consider removing draft ROP #71 and 72.	GoC - #63 Draft ROP #71 and #72	No changes to the draft ROP to specifically address the comment	Recognizing that there may be procedural implications for parties involved in Board Proceedings if the Board exercises the power to refer a question to the Courts and/or suspend or continue Proceedings as a result, the Board sees value in including these specific Rules in the draft ROP.
108.	Questions of Law or Jurisdiction	Government of Nunavut	March 15, 2019	GN recommended that draft ROP #72 should be revised to set out a procedure for parties affected by the suspension or continuation of a Proceeding under draft ROP #71 (a reference by NIRB to the Nunavut Court of Justice) to make submissions regarding the decision to suspend. Specifically GN recommended adding clauses that give: affected parties a right to make submissions regarding the	GN-03 Questions of Law or Jurisdiction Draft ROP #71 and #72	No changes to the draft ROP to specifically address the comment	The Board agrees that in the exercise of the Board’s discretion in respect of Proceedings, the Board is bound by the obligations of natural justice and procedural fairness to parties affected by these processes. However, the Board also notes that the precise content and scope of these obligations are not only context-specific (dependent on the circumstances



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				decision to suspend or continue a proceeding; and imposing an obligation on the Board to issue the Board's suspension/continuation decision in writing.			in each case), but also continue to evolve with case law developing over time. Consequently, the draft ROP does not prescribe specific obligations for specific exercises of the Board's discretion throughout the draft ROP, but notes as set out under draft ROP #6 that the interpretation of the rules must be "consistent with the <i>Nunavut Agreement</i> , the <i>Nunavut Planning and Project Assessment Act</i> and the broad application of the principles of natural justice and procedural fairness"
109.	Types of Board Proceedings	Government of Canada	March 15, 2019	NIRB should mention that what it decides to use as a proceeding will be dependent on many factors, will be at their discretion and will be in line with what will best suit the NIRB's consideration of the matter.  NIRB should consider adding wording at the end of the section to include all of these factors	GoC - #64 Draft ROP #76	No changes to the draft ROP to specifically address the comment	The Board's primary purpose in the selection of the type of Proceedings necessary to support the Board's consideration of a matter has already been defined in the draft ROP # 77 that follows draft ROP #76 and the Board does not consider additional guidance to be necessary.
110.	Types of Board Proceedings	Qikiqtani Inuit Association	March 15, 2019	With respect to use of "Proceeding" in draft ROP #77 in the statement: " <i>At key points through the Board's consideration of a project proposal or other Proceeding</i> ", QIA recommended that, the term "project proposal or other Board decision-making process" be used (included in the definition of "Proceeding"); as that phrase would also seem to make more sense in this phrase.	QIA comment on page 28 of the draft ROP Draft ROP #77	Revision to draft ROP #77	The Board agrees with the suggested revision and draft ROP #77 has been revised to replace "Proceeding" with "or other Board decision-making process".





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111.	Scoping Sessions and Community Information Sessions	Qikiqtani Inuit Association	March 15, 2019	<p>The Board may want to recognize that it will direct its staff to be flexible to gather scoping information from affected communities in whatever format they are most comfortable in, which may or may not include a public forum.</p> <p>Same thing for community information sessions. Not everyone will be comfortable speaking in front of the proponent, for example.</p>	QIA comment #1 on page 29 of the draft ROP Draft ROP #79	No changes to the draft ROP to specifically address the comment	As already included within the general requirements of draft ROP #33, and the provisions of the draft ROPs specific to Inuit Qaujimaningit and Traditional Knowledge (draft ROP #40 and #41), the Board, and by extension, Board staff when carrying out the Board's directions, have the flexibility to gather information from affected communities and Inuit and other Traditional knowledge holders in a manner that encourages participation, and the Board's receipt and consideration of relevant information, Documents and evidence. It is unnecessary to expressly reference this flexibility in respect only of this type of Proceeding.
112.	Scoping Sessions and Community Information Sessions	Qikiqtani Inuit Association	March 15, 2019	In respect of the summary reports referenced under draft ROP #81 (Scoping Session) and draft ROP #85 (Community Information Session), the Board should likely make clear that anyone can make comments on the comprehensiveness and accuracy of said summary reports, in filings on the public record.	QIA comment # 2 and #3 on page 29 of the draft ROP Draft ROP #81 and #85	No changes to the draft ROP to specifically address the comment	The ability of parties and members of the public to comment on the accuracy of materials, including summary reports, produced by the Board is a general right and is not limited to these specific kinds of filings. Expressly noting this ability in only one or two rules could be misinterpreted as meaning that the Board will only accept such comments/corrections if offered in respect of these two types of reports.
113.	Community Information Sessions	Government of Canada	March 15, 2019	There appears to be an inconsistency between draft ROP #32 and #84. Under draft ROP #32, Procedural Directions are issued by the Executive Director but under ROP #84 it references that "the Board" is responsible for issuing Procedural Directions.	GoC - #65 Draft ROP #84	Revisions to draft ROP #80 and #84	Draft ROP #80 also has the same wording "Procedural Directions issued by the Board". Consequently, draft ROP #80 and draft ROP #84 have been revised to remove "issued by the Board" after Procedural Directions to eliminate the



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							apparent inconsistency with draft ROP #32.
114.	Project-Specific EIS or IS Guidelines Review	Government of Canada	March 15, 2019	<p>Draft ROP #88 stipulates that EIS or IS Guidelines Workshops would be conducted in a community potentially affected by the project. We are of the view that the NIRB should allow for a possibility of holding such workshops in a central location convenient to all (similar to draft ROP #91)?</p> <p>NIRB should consider adding the concept of holding EIS or IS Workshop in a central location convenient to all.</p>	GoC - #66 Draft ROP #88	No changes to the draft ROP to specifically address the comment	Recognizing that the Board is obligated under s. 101(4) of <i>NuPPAA</i> to solicit written and oral comments on the draft Guidelines from “affected municipalities, residents of the designated areas and the general public”, the Board may not be able to fulfill this obligation by holding the workshop in a central location convenient to the Proponent and Intervenor. Therefore, the Board has not included this as an alternative location for the Guidelines Review.
115.	Project-Specific EIS or IS Guidelines Review	Qikiqtani Inuit Association	March 15, 2019	If the Board is being truly transparent and accountable, QIA suggests they provide "reasons for decision" documents with each final EIS or IS Guidelines, indicating where - if they did not adopt certain requirements sought by parties - they clearly identify their reasons for not doing so. The Board requires parties and the Proponent be thoughtful and provide evidence to support their estimations and opinions; so too should the Board.	QIA comment on page 30 of the draft ROP Draft ROP #89	No changes to the draft ROP to specifically address the comment	Recognizing that the nature and format of comments received on Project-specific EIS or IS Guidelines may vary from questions and comments in oral form in communities to specific technical comments, the Board has not prescribed in the Rules the type and format of response to comments that the Board will employ. The Board recognizes that ss. 101(4) and (5) of <i>NuPPAA</i> require the Board to solicit <b>and</b> take into account comments received. Consequently the Board’s evidence of the “consideration of input” may include a written response to written comments received, but could also include oral responses to oral comments, etc. The Board will demonstrate the Board’s consideration of



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							input received in a manner that is appropriate to the circumstances.
116.	Technical Meeting	Government of Canada	March 15, 2019	<p>Draft ROP #92 and #93 there is inconsistency in the strength of the language used between #92 and #93:</p> <p>Rule 92: <i>"During the Technical Meeting, the Board's staff, in consultation with the Proponent and parties participating in the Technical Meeting, <b>may</b> record commitments made..."</i></p> <p>Rule 93: <i>"At the conclusion of, or following the Technical Meeting, the Board <b>shall</b> review the commitments and timing recorded in the initial draft of the Commitments List with the Proponent and all participating parties to finalize the Commitments List. The final Commitments List associated with a Technical Meeting <b>may</b> be issued by the Board in writing either as a separate document or as an Appendix to the Board's Pre-Hearing Conference Decision Report."</i></p> <p>NIRB should consider using consistent action verbs (e.g. must or shall) to ensure responsibilities under the Rules are clear.</p>	GoC - #68 Draft ROP #92 and #93	No changes to the draft of ROP	There is no inconsistency, as the language in draft ROP #92 is the permissive "may" to denote that there is flexibility in terms of which parties may record the commitments made during the Technical Meeting. This reflects that during Technical Meetings, although the Board may record commitments, the Proponents, Intervenor and other parties may also provide the Board with the wording of relevant commitments. This can occur when the Technical Meeting is conducted via facilitated break out groups dealing with specific topics and Board staff may not be present to record commitments that result from such sessions. In contrast, the mandatory wording "shall" in draft ROP #93 denotes that regardless of whether it is the Board or some other party that initially records the commitments during the Technical Meeting, the Board is responsible for reviewing the commitments and timing recorded in the initial draft of the commitments list with the parties at the Technical Meeting.
117.	Technical Meeting	Qikiqtani Inuit Association	March 15, 2019	In draft ROP #93 the Board uses "may" in <i>"The final Commitments List associated with a Technical Meeting <b>may</b> be issued by the Board"</i>	QIA comment #1 and #2 on page 31 of the draft ROP Draft ROP #93	No changes to the draft ROP to specifically address the comment	The permissive wording used in draft ROP #93 recognizes that following a Technical Meeting the Board may be provided with listings of commitments with wording



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				<p>“. The QIA suggests that the wording should be “will.”</p> <p>In addition, a summary report by Board staff should be a requirement of the Technical Meeting, including this Commitments List, a list of outstanding issues, any additional requested information, and summary of relevant discussions related to outstanding issues.</p> <p>Parties who attended should have 7 days to review and comment on the draft Technical Meeting Summary Report.</p>			<p>agreed to by the parties that may not be reissued by the Board.</p> <p>The Board notes that the scale and scope of Technical Meetings and extent of participation from Intervenor and the public can vary significantly, and needs to be scalable to reflect the scope. Similarly, recognizing the variability in terms of scope, the opportunity for parties to respond to any Board guidance issued following a Technical Meeting may not be warranted in all circumstances and should not be prescribed as mandatory.</p>
118.	Pre-Hearing Conference	Kitikmeot Inuit Association	June 27, 2019	<p>Draft ROP #94 states that the Board may hold a Pre-Hearing Conference (PHC) to facilitate the Board’s Public Hearing processes and to assess whether the project proposal can move forward to the Public Hearing stage. While KIA notes that the purpose of a PHC is to facilitate the Board’s public hearing processes, KIA notes that the decision as to whether a project proposal can move forward to the Public Hearing stage should be made before the PHC.</p> <p>Draft ROP # 95(c) provides that the Pre-Hearing Conference may include discussion of the identification of any issues or outstanding Information Requests that parties are required to address prior to, or at the Public Hearing. In KIA’s view, by the time the Pre-</p>	KIA page 2, third and fourth bullets Draft ROP #94 and #95(c)	No changes to the draft ROP to specifically address the comment	As the Board’s Pre-Hearing Conference is often conducted in association with a Technical Meeting and Community Roundtable, it is not unusual for issues such as additional information requests, changes to preferred alternatives, consideration and modification of a project proposal to reflect the application of Inuit Qaujimajatuqangit shared during the Technical Meeting and/or Community Roundtable, effects on the process due to commitments coming out of the Board’s technical comment processes to affect the Board’s determination of whether additional information is required and/or whether a project proposal can move forward to the Public Hearing stage. Consequently, the Board’s decision regarding whether additional information



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				Hearing Conference occurs, there should be no outstanding Information Requests.			is required and/or whether a project proposal can move forward to a Public Hearing does not occur until after the completion of the PHC and is communicated to all parties in the Board's Pre-Hearing Conference Decision Report.
119.	Pre-Hearing Conference	Qikiqtani Inuit Association	March 15, 2019	Clarity is required to be included in Draft ROP #95(a) on whether the Board would issue an Order, a Procedural Direction, or some other ruling on what information is required prior to setting a hearing.	QIA comment #3 on page 31 Draft ROP #95(a)	No changes to the draft ROP to specifically address the comment	This is addressed in draft ROP #95(d) that specifies that if the Board determines additional Documents are required under draft ROP #95(a)-(c) that the Board will specify whether or not the project proposal can proceed to a Public Hearing if these additional Documents are provided. Further, the Board has specified in draft ROP #99 that unless otherwise directed by the Board, a Pre-Hearing Conference Report summarizing the results of the PHC and providing guidance regarding next steps in the Board's process shall be provided within 30 days of the close of the PHC.
120.	Pre-Hearing Conference	Government of Canada	March 15, 2019	Draft ROP #97 states <i>"Regardless of the format of the Pre-hearing Conference, other than the Board's Chairperson or delegate, the Board or Panel Members who are decision-makers for the file do not attend the Pre-Hearing Conference."</i>  It is unclear if this Rule is meant to convey that there is no requirement for the Board or Panel Members to attend the Pre-Hearing conference – without preventing it -, or to create a prohibition for any Board member	GoC - #97 Draft ROP #97	No changes to the draft ROP to specifically address the comment	Draft ROP #97 conveys that there is no requirement for the full Board or Panel Members to attend the Pre-Hearing Conference. It is not a prohibition, and the wording chosen reflects that attendance by the full Board or Panel Members of the PHC is the Board's standard practice, but the Rule does not establish a prohibition.



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				(apart from Chair or delegate) from taking part in the public hearing if they have attended the pre-Hearing Conference. In the latter case, it may be useful to provide more clarity by stating that the Board members “shall not” take part in the Pre-Hearing Conference or that a Board member who attended the Pre-Hearing conference “shall not” be on the final decision-making panel. We would be interested in better understanding the intent of the rule.			
121.	Community Roundtable Session	Qikiqtani Inuit Association	March 15, 2019	Again, we ask why NIRB is allowed to vet decisions by these organizations? Is it a concern that people will claim they have allegiance and support from an organization that they really don't represent? If that is the case and is a valid concern, then we withdraw our comment. Otherwise, this could look to an outside party like NIRB weeding out people they don't want speaking, and QIA doesn't think that is the message NIRB wants to send.	QIA comment on page 33 of the draft ROP Draft ROP #101 (and Draft ROP #2 definition of “Community Representatives”)	Revisions to draft ROP #2 definition of “Community Representatives” and revision to draft ROP #101	The definition of “Community Representative” in draft ROP #2 was revised to reflect that the process for identifying community representatives is that individuals are recommended by relevant organizations, but emphasizing that the NIRB still needs to confirm the participation of representatives. The basis for maintaining the NIRB’s confirmation of representatives recommended by others is NOT as suggested in the QIA’s comment, and rather reflects the responsibility NIRB assumes for community representatives during a proceeding and the NIRB’s arrangement of travel, provision of expenses, etc. As such, the NIRB has a central role in confirming whether the representatives recommended by communities are willing and able to participate as required in the Board’s proceedings.



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							The Board has also revised draft ROP #101 to eliminate the duplicated reference to how Community Representatives have been chosen, which is more appropriately placed in the definition.
122.	Community Roundtable	Government of Canada	March 15, 2019	<p>It is unclear whether there can be more than one community roundtable session, and whether several affected communities are to be at the same session.</p> <p>NIRB should consider rewording to allow for more than one session or clarifying that more than one community can be at the same roundtable.</p>	GoC - #72 Draft ROP #100-#102	Revision to draft ROP #102	Draft ROP #101 was revised to reflect that the Community Representatives from <u>all potentially affected</u> communities have a place at the table during the same Community Roundtable Session conducted as part of a PHC or Public Hearing.
123.	Community Roundtable	Nunavut Tunngavik Incorporated	March 15, 2019	Could the NIRB consider making the of comments, questions and perspectives shared by Community Representatives during the Community Roundtable summaries, or some variant of them, available on the public registry?	NTI#7 Draft ROP #102	Revision to draft ROP #102	Draft ROP #102 was revised to reflect that the information and Documents provided by Community Representatives, as well as the summary are to be considered by the Board. As indicated in ROP #102, the summary forms part of the Record of Proceedings, and so is attached as a summary table in the Board's Report on the Proceedings, and if the Community Roundtable is part of Public Hearing proceedings, the transcripts of all participants, including Community Representatives who speak on the record at the Public Hearing are available on the NIRB's public registry





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124.	Community Roundtable	Government of Canada	March 15, 2019	<p>The way draft ROP #102 is currently written makes it difficult to follow. GoC suggests the Rule be revised as follows:</p> <p><i>The Board shall gather comments, questions and perspectives shared by Community Representatives during the Community Roundtable. The Board's summary of the Community Roundtable shall form part of the Record of Proceedings considered by the Board during decision-making.</i></p>	GoC - #72 Draft ROP #102	Revisions to draft ROP #102	Draft ROP #102 was revised to break the sentence into two sentences for ease of readability.
125.	Community Roundtable	Qikiqtani Inuit Association	March 15, 2019	The summary reports (from a Community Roundtable) should be provided directly to each organization that sent a representative (as well as all parties to the EA), so they can confirm the accuracy of attributed statements. Also, the RoP should identify whether individual attribution to statements will be made in the report or not.	QIA Comment on page 34 of the draft ROP Draft ROP #102	No changes to the draft ROP to specifically address the comment	The Board's standard practice is to post this information on the public registry, and organizations who sent a Community Representative can request being provided with the summary as with any other document on the registry. The summary is generally intended to provide a high level summary of the general topics discussed, question raised and comments provided during the Community Roundtable only and is not attributed or intended to be a substitute for the transcript evidence. Where direct quotations are cited from the transcript in Board documentation, full attribution for the quotation is provided. This level of detail regarding the Board's context and approach to providing the summary is not appropriate to include in the ROP, as the Board's approach may change over time and to reflect individual circumstances. The context applicable to any specific





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							summary of a Community Roundtable is provided in the introduction to that summary in the documentation issued by the Board.
126.	Community Roundtable	Kitikmeot Inuit Association	June 27, 2019	Draft ROP #102 requires the Board to keep a summary of the Community Roundtable session and indicates that the summary shall form part of the Record of Proceedings. As the summary forms part of the Record, parties should have the opportunity to review and comment on the accuracy of the summary before it is finalized and forms part of the Record of Proceedings	KIA page 2, fifth bullet point Draft ROP #102	No changes to the draft ROP to address this comment specifically	As noted above, the summary table is typically provided to provide a high-level, unattributed and not verbatim listing of the issues raised, knowledge shared, questions, comments and concerns as expressed during the Community Roundtable. It is not intended to be a substitute for the transcript, and the context applicable to any specific summary of a Community Roundtable is provided in the introduction to that summary.
127.	Public Hearings Conducted in Communities – Venue and Schedule	Government of Canada	March 15, 2019	The wording “upon reasonable notice” in relation to changes to venue or scheduling is too vague. GoC recommends NIRB consider adding a timeline for this notice.	GoC - #73 Draft ROP #104	No changes to the draft ROP to address this comment specifically	The Board cannot prescribe a timeline, as what is reasonable notice in each circumstance will depend. Past examples of the requirement for the Board to change venues or schedules for a Public Hearing include situations where the community hall is urgently needed for a funeral, is closed due to an electrical black out, flooding or other issue, etc. In such cases, even very short notice of a change in venue/schedule may be reasonable.
128.	Public Hearings Conducted in Communities -- Process	Government of Canada	March 15, 2019	Draft ROP #107 is a run-on sentence, which the NIRB should consider breaking up for clarity.  Suggest breaking-up the sentence to read:	GoC - #74 Draft ROP #107	Revisions to draft ROP #107	Draft ROP #107 has been revised as recommended by the GoC.



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				<i>The informal component of this form of Public Hearing consists of a Community Roundtable session for Community Representatives (conducted as outlined in Rules 100 - 102) and members of the public, as well as a Public Evening Session. The Public Evening Session is a public meeting designed to allow interested persons and Elders from the community who may be unable to attend the Public Hearing during regular business hours to learn about the project proposal or other Proceeding and to communicate their views about the project proposal or other Proceeding in an informal setting</i>			
129.	Public Hearings Conducted in Communities – Order of Events at the Public Hearing	Government of Canada	March 15, 2019	<p>The language in draft ROP #108 (e), "explanation" of Elders does not seem appropriate.</p> <p>NIRB should consider revising bullet (e) to change "explanation" to "introduction". Or "explanation of Elder's role in the Hearing".</p>	GoC - #75 Draft ROP #108(e)	Revisions to draft ROP #108	Draft ROP #108(e) has been revised to reflect that the Board's explanation in respect of Elders involves their participation (e.g. can speak at anytime during the Proceedings provided that the Chairperson has acknowledged their indication they wish to speak and the Board is able to get a microphone to them) and also their role (respect for Elders and their role as Inuit Qaujimajatuqangit knowledge holders)
130.	Public Hearings Conducted in Communities – Presentation of Evidence	Qikiqtani Inuit Association		This is a more general comment regarding the submitting of documents for review prior to submission deadline dates. Proponents should be required to adhere to "milestone deadlines" prior to intervenor review submissions. All too often intervenors are hard at work performing a technical review of	QIA comment #1 on page 36 of the draft ROP Draft ROP Presentation of Evidence and	No changes to the draft ROP to specifically address the comment	While the Board agrees that the scenario described in the comment is not ideal, the draft ROPs do not generally provide prescriptive "one size fits all" process timelines for any steps in the Board's Proceedings, recognizing that considerations of flexibility and the



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				an EIS, expending resources and effort, when a Proponent submits a new or updated plan (e.g. a Roads Management Plan, or Wildlife Mitigation and Monitoring Plan), placing a greater burden on intervenors to review and compare the new document, within an already tight working period. NIRB should "close the gate" on Proponent submissions for consideration at the various stages of the Part 5 review, including Public Hearings. Completing a review, submitting a presentation to NIRB, and then receiving an updated Proponent document with substantial modifications is a hindrance to the effective and meaningful review of a project.	Exhibits (before draft ROP #109)		principles of natural justice and procedural fairness must be applied by the Board in each case to determine the appropriate process timelines, as well as the consequences associated with non-compliance with the Board's directions, including timelines. The draft ROPs provide the general framework within which the Board exercises its jurisdiction to establish the appropriate procedure in any given case. In general, the Board can deal with a Proponent or any other party who does not meet project-specific timelines, in accordance with draft ROP #8 (Board discretion to extend or abridge a timeline) and #11 (non-compliance). Under those provisions the Board can provide further project-specific direction that more properly reflects the circumstances than an automatic "closing of the gate" Rule.
131.	Public Hearings Conducted in Communities – Presentation of Evidence and Exhibits	Government of Canada	March 15, 2019	Draft ROP #110 is confusing, particularly because of the repetition of "or other Proceeding":  <i>"The presentation of evidence by a witness or a panel of witnesses at an in-person Public Hearing shall be limited to the scope of the project proposal or other Proceeding, the assessment of the project proposal or other Proceeding, technical comment submissions and any issues formulated by the Board for determination".</i>	GoC - #76 Draft ROP #110	No changes to the draft ROP to specifically address the comment	The use of "or other Proceeding" in draft ROP #110 references that the Board can hold an in-person Public Hearing to support the Board's decision-making in respect of matters other than an assessment of a project proposal. For example, the Board has held an in-person Public Hearing in support of a Strategic Environmental Assessment of the potential for oil and gas development in Davis Strait and Baffin Bay.



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				NIRB should review and clarify the language in this Rule.			
132.	Public Hearings Conducted in Communities – Presentation of Evidence and Exhibits	Qikiqtani Inuit Association	March 15, 2019	QIA suggests that Draft ROP #110 be revised to say "technical comment or other forms of written submission filed by the witness or party under the direct control of the witness", so that formal submissions other than technical comments (e.g. independent studies by the party), can be presented to the Board. In addition the draft ROP could say "provided that evidence is filed at least xx days prior to the Public Hearing, on the public record."	QIA comment #2 on page 36 of the draft ROP Draft ROP #110	No changes to the draft ROP to specifically address the comment	"Technical comment submissions" is not a defined term and the scope of what may be provided by a party in those submissions is not limited to the formal submissions filed by a party and these could include a third party report. Additionally, under the current wording of draft ROP #110, if a party wishes to rely on independent studies by a third party that are relevant to the assessment of the project proposal or other Proceeding nothing in the Rule would limit the presentation of that information, Documents or evidence by a witness.
133.	Public Hearings Conducted in Communities – Presentation of Evidence and Exhibits	Government of Canada	March 15, 2019	In draft ROP #111, the use of the wording "lead" evidence doesn't seem appropriate.  NIRB should consider replacing "lead" with "provide".	GoC - #77 Draft ROP #111	Revisions to draft ROP #111	Draft ROP #111 has been revised to replace "lead" with "provide", and this section overall has been revised by the Board to include, where appropriate the provision of information, Documents and evidence.
134.	Public Hearings Conducted in Communities – Presentation of Evidence and Exhibits	Kitikmeot Inuit Association	June 27, 2019	Draft ROP #111 and 112 provide that the Board may permit a party to lead new evidence at a Public Hearing. In KIA's view, permitting new evidence at this stage of the Proceeding is problematic and does not give other parties the opportunity to fully consider and respond to the new evidence being introduced.	KIA page 2, last bullet point Draft ROP #111 and #112	No changes to the draft ROP to specifically address the comment	While the Board's preference is for all relevant information, Documents and evidence to be provided in accordance with the timelines prescribed in advance of the Public Hearing, the Board also recognizes that there may be valid reasons for why new information, Documents and evidence may not be available until during the Public Hearing. For example, Inuit Qaujimajatuqangit or



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							other community knowledge may be shared during a Public Hearing that warrants a response; a party may be required to provide new evidence in response to a question from another party, the Board, a Community Representative or member of the public, etc. The nature and extent to which new information, Documents and evidence will be received by the Board, included on the Public Hearing Record for the file, and the requirements of procedural fairness in terms of participants' rights to reply in any given circumstance may vary. With respect to Documents offered to be filed on the Public Hearing Record, there is a process for the Board to consider objections from other parties to the filing of the Documents under draft ROP #113-#115. Parties requiring more time to review the Document may raise an objection to the Document being entered on the Public Hearing Record until such time as they have had an opportunity to review it under those rules.
135.	Public Hearings Conducted in Communities – Presentation of Evidence and Exhibits	Qikiqtani Inuit Association	March 15, 2019	As a general fairness issue, the Board would typically be expected to give parties time to review the Documents prior to allowing the witness to speak. Is that the case?	QIA comments 3 and 4 on page 36 of the draft ROP Draft ROP #112	No changes to the draft ROP to specifically address the comment	As noted above, the requirements of procedural fairness in any given circumstance may vary, as parties may not request/require time to review the Documents prior to speaking to them. For example, at many NIRB Public Hearings Documents submitted at the Public Hearing may be joint submissions of



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							parties that provide a record of their discussions and resolution of issues for the Board to consider. In such a case, participants may not require additional time to review the Documents before a witness speaks to them.
136.	Public Hearings Conducted in Communities – Presentation of Evidence and Exhibits	Government of Canada	March 15, 2019	<p>Draft ROP #112 states <i>“Parties wishing to rely on Documents not filed with the Board prior to the Public Hearing shall provide the Documents to the Board to be marked as formal Exhibits in the Public Hearing Record”</i>. There is no requirement for such parties to provide sufficient number of copies to be distributed to all parties when produced at a Public Hearing without having been filed.</p> <p>NIRB should include a requirement that documents produced at a Public Hearing (and have not been filed) be provided in a sufficient number of copies to be distributed to all parties at the Public Hearing.</p>	GoC #26 Draft ROP #112	Revisions to draft ROP #112	As defined in the draft ROP, the term “Documents” may include audio, video or written records. Consequently, the Board has revised the draft ROPs to provide that the Board may direct that hard copies of Exhibits be distributed or otherwise circulated (if in some other format) to the parties and public participating in an in-person Public Hearing.
137.	Public Hearings Conducted in Communities – Questioning	Kitikmeot Inuit Association	June 27, 2019	Draft ROP #116 provides that the questioning of a witness or panel of witnesses by another party shall be limited to the scope of the evidence provided by the witness/witnesses. Under this rule, KIA would be unable to ask Intervenors about the evidence of other Intervenors, which is unduly restrictive and will not result in a comprehensive testing of all of the evidence being introduced.	KIA p. 3, first bullet Draft ROP #116	No changes to draft ROP	The draft ROP sets out that the questioning is limited to the “scope” of evidence provided by the witness/witnesses. This does not limit the questions to a given witness/witnesses about their evidence only. If another party has provided evidence that is within the <u>scope</u> of the evidence provided by the witness/witnesses, they can be questioned about that other parties’ evidence. For example, if the scope of a witnesses’ testimony includes the



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							potential for project effects on caribou, that witness can be questioned about that topic, including being questioned about the evidence provided by other parties about the potential for project effects on caribou.
138.	Public Hearings Conducted in Communities – Questioning	Qikiqtani Inuit Association	March 15, 2019	With respect to draft ROP #116 (applicable to questioning of witnesses) clarity is required: Does the Board allow for an Intervenor or the Proponent to object to a line of questioning, or is that only for the Board to determine?	QIA comment on page 37 of the draft ROP Draft ROP #116	No changes to draft ROP	The draft ROP and Board practice does not prescribe a specific process or requirements for parties to object to a line of questioning. As with any request for the Board's procedural direction during a Public Hearing, a party wishing to formally object to a line of questioning may make an oral motion under the general Rules (draft ROP #47 and #48) to ask the Board for procedural direction regarding limits. In addition, witnesses responding to questions also have the opportunity to limit their replies to the questions they consider to be within the appropriate scope of questioning.
139.	Public Hearings Conducted in Communities – Questioning	Qikiqtani Inuit Association	March 15, 2019	The Board may want to set rules about respectful questioning - if any – of Community Representatives by other parties, in the RofP. What is NIRB's policy in this regard, for Elders and for other community presenters?	QIA comment #2 on page 37 of the draft ROP Draft ROP #116	No changes to the draft ROP to specifically address the comment	As outlined in more detail in response to the Government of Canada's comment #78 below, procedural fairness dictates that Elders and knowledge holders are not excluded as a category from questioning. In terms of Rules about respectful questioning, this guidance is given in the Chairperson's remarks and may be provided during a Proceeding as is appropriate.
140.	Public Hearings Conducted in	Government of Canada	March 15, 2019	The role of in proceedings is to provide Inuit traditional knowledge, Inuit perspective and	GoC - #78 Draft ROP #116	No changes to draft ROP	Elders, Inuit Qaujimaningit, Inuit Qaujimajatuqangit or Traditional



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	Communities – Questioning			experience acquired over thousands of years living on and interacting with the environment. Although draft ROP #116 allows for questioning of witnesses during proceedings but does not specify if Elders and other Inuit knowledge holders are exempted from such questioning or not. It our view that Elders and other knowledge holders should be excluded from questioning.  NIRB should consider adding wording to ROP #116 to stipulating the exclusion of Elders and other knowledge holders from questioning			Knowledge holders are not excluded from questioning. It is not unusual for the Board Members and/or parties to ask questions to follow up and clarify the knowledge shared with the Board. The dictates of procedural fairness also require that the parties bearing the burden of proof during a Proceeding (very often the Proponent) is provided with an opportunity to question any party providing relevant information, documents or evidence to the Board, so excluding any category of witness from questioning would not be appropriate.
141.	Public Hearings Conducted in Writing	Government of Canada	March 15, 2019	Under draft ROP #120 it is unclear if there are any provisions under draft ROP #103-117 (Rules applicable to Public Hearings conducted in communities) which are applicable.  NIRB should consider adding reference if any provisions under 103-117 are applicable to hearings conducted in writing.	GoC - #79 Draft ROP #120	No changes to the draft ROP to specifically address the comment	In contrast to draft ROP #119, where there is an express reference to the applicability of the general Rules regarding the conduct of a Public Hearing in the community to Public Hearings conducted by Teleconference, draft ROP #120 does not reference these Rules because they are not applicable to a Public Hearing conducted in writing.
142.	Closing of the Public Hearing Record	Qikiqtani Inuit Association	March 15, 2019	As a general rule, QIA suggests that "immediate closure" of the public record after a hearing NOT be the default setting. Often, there are undertakings (another issue not raised in these RofPs) that need to be dealt with, and at minimum, parties should be allowed to make a closing argument and/or review the transcripts prior to closure of the public record. There has been history of the NWB keeping the record open following the	QIA comment on page 38 of the draft ROP Draft ROP #123	No changes to the draft ROP to specifically address the comment	The Nunavut Water Board's approach to closure of the Public Hearing Record is the same as the NIRB's. Both Boards keep the Public Hearing Record only if a party brings a motion and can establish that additional relevant information, Documents or evidence must be provided before the Board can engage in decision-making or, the Board determines that the Public Hearing Record must be





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				close of the hearing to accommodate late information to be added to the record. In addition, keeping the record open following the Meliadine Saline Effluent Discharge to Marine Environment public hearing allowed for key information resulting from a meeting between the proponent and HTO to be entered as evidence. This meeting was a product of discussion during the final hearing.			supplemented by additional relevant information, Documents or evidence. As the Board Members cannot engage in any decision-making until all relevant information, Documents and evidence have been provided and the Public Hearing Record has closed, delays in closing the Public Hearing Record are difficult for decision-makers and should be an exceptional circumstance, not the rule.
143.	Closing of the Public Hearing Record	Government of Canada	March 15, 2019	<p>Now that Project Certificate Terms &amp; Conditions are enforceable under NuPPAA, there should be a discussion of how to incorporate a “draft PC-T&amp;C” phase to the Rules of Procedure. In order to ensure that T&amp;Cs are written in a manner that is legally enforceable by enforcement agents (such as CIRNAC Field Inspectors), a revision phase of the wording for Terms &amp; Conditions between the NIRB and Authorizing Agencies could be a useful new Rule to incorporate into the Rules of Procedure.</p> <p>After the Closing of the Public Record (123.), and before the Project Certificate Workshop (126.):</p> <p>NIRB should consider including an additional Rule regarding the circulation of "draft" Project Certificate Terms &amp; Conditions for input from parties on the “enforceability” of the wording used in the Terms and Conditions</p>	GoC Draft ROP #123-125	No changes to the draft ROP to specifically address the comment	The Board has significant procedural fairness concerns with respect to any discussions with any parties regarding potential Terms and Conditions to be including in an eventual Project Certificate after the close of the Public Hearing Record and, ostensibly while the Board is either in decision-making or while the Board’s Report and Recommendations are being considered by the relevant Ministers. The appropriate time for the Board to receive and consider information regarding potential wording for terms and conditions or revisions to existing terms and conditions is during the Board’s Proceedings and in advance of the closing of the Public Hearing Record. This allows for the Board and other parties to discuss wording in a public venue. This type of information is routinely being submitted by Authorizing Agencies and Proponents as part of their comment submissions and



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							is most appropriately addressed during the Proceedings.
144.	Project Certificate Workshop	TMAC Resources Inc.	March 15, 2019	This section prescribes what the objective of a project certificate workshop is, however what criteria must be met for commentary or specific clarification to be incorporated into a Project Certificate remains uncertain. TMAC recommends that further discussion is warranted and specific guidance should be developed by the NIRB.	TMAC-DRP-03 Draft ROP #127	No changes to the draft ROP to specifically address the comment	To ensure that the Board retains flexibility in terms of how Project Certificates terms and conditions, commentary or clarification to aid in the implementation of a given Project Certificate is issued, the Board has not included this specific guidance in the draft ROP. The Board considers this kind of guidance to be more appropriate for inclusion in project-specific guidance documents.
145.	Project Certificate Workshop	Government of Canada	March 15, 2019	The wording in draft ROP #127(b) should reference “authorizing agencies” not “government departments and agencies”	GoC - #81 Draft ROP #127(b)	Draft ROP #127(b) revised	The Board agrees that the broader term “Authorizing Agencies” should be used and has revised the draft ROP #127(b) to replace the term “government departments and agencies” with the term “Authorizing Agencies”
146.	Project Certificate Workshop	GoC	March 15, 2019	Under the current wording of draft ROP #128, “government departments and agencies” need to provide the NIRB with information on how “Authorizing Agencies” will implement the project certificate.  “Authorizing agencies” as defined under the Rules include the DIOs.  GoC is of the view that government departments and agencies cannot be expected to talk on behalf of the DIO.  GoC recommends draft ROP #128 be revised as follows: In advance of the Workshop, the NIRB may request that designated Inuit	GoC #28 Draft ROP #128	Revisions to draft ROP #128	Draft ROP #128 revised to clarify that the NIRB may request all Authorizing Agencies, including Designated Inuit Organizations to speak to their specific roles in the implementation of the relevant Project Certificate terms and conditions.



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				organization(s), government departments and agencies, or any other body with authorities and jurisdictional responsibilities for the project provide the NIRB with a summary of how Authorizing Agencies intend to ensure that the permits, certificates, licences and other government approvals that the Proponent may require to carry out the project are consistent with the requirements in the Project Certificate.			
147.	Monitoring	GoC	March 15, 2019	<p>Draft ROP #129 states “<i>As required by Article 12, Section 12.7.2 of the Nunavut Agreement and s. 135 of the NuPPAA, the Board or the Monitoring Officer(s) responsible to fulfill the Board’s monitoring functions may issue Procedural Directions to the Proponent, Authorizing Agencies, or other party in respect of a project-specific Monitoring Program and/or implementation of a Project Certificate</i>”.</p> <p>We are of the view that this Rule might be outside the jurisdiction of the NIRB. In particular, Draft ROP #129 would make authorizing agencies as well as “other parties” subject to Procedural Direction on how a monitoring program is conducted. This may remove discretion of regulators to conduct their implementation responsibilities for the project certificate, including a monitoring program, as they see appropriate and therefore interfere with regulators’ statutory roles and responsibilities. Other parties likely</p>	GoC #28 Draft ROP #129	No changes to draft ROP	The wording chosen by the Board is permissive, and reflects that in the past there have been requests from Authorizing Agencies and parties such as Hunters and Trappers Organizations for the Board to provide direction regarding how a specific element of the Monitoring Program should be carried out, reported or monitoring data made available. In providing such direction, the Board recognizes that Authorizing Agencies have discretion in the implementation of their responsibilities and nothing in the current wording of this Rule would operate to fetter, bind or unduly interfere with the jurisdiction of an Authorizing Agency in carrying out their responsibilities for a Project.



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				do not have a role to play in monitoring programs.  NIRB should consider removing “Authorizing Agencies, or other parties” from the list of recipients of directions.			
148.	Monitoring	Kitikmeot Inuit Association	June 27, 2019	Draft ROP #129 and 130 allow the Board to issue a project-specific Procedural Direction to Authorizing Agencies (like KIA) about monitoring, and give the Board’s Monitoring Officer authority to issue Procedural Directions. In our view, the Board does not have the authority to issue a mandatory monitoring direction. The Monitoring Officer is Board employee, not an officer under a statute.	KIA page 3, second bullet Draft ROP #129 and #130		As noted in response to the GOC #28 in respect of Draft ROP #129, above the language in this section is permissive only, and does not denote the Board assuming jurisdiction to provide “mandatory monitoring direction”. The current wording of the Rule does not operate to fetter, bind or unduly interfere with the jurisdiction of the KIA or any other Authorizing Agency with respect to the fulfillment of their roles and responsibilities in respect of a Project governed by a NIRB issued Project Certificate.
149.	Site Visits	Qikiqtani Inuit Association	March 15, 2019	Missing in discussion is who would be invited for sure and what would happen if the Board doesn't invite intervenors, how long in advance notice would be given, and who would pay and manage logistics. Please clarify.	Qikiqtani Inuit Association comment on page 40 of the draft ROP Draft ROP #131	No changes to the draft ROP to specifically address the comment	As referenced by the Board in response to the Government of Canada’s comment #81 on Draft ROP #133, given the range of costs and logistical issues associated with a specific site visit, the Board is not addressing these specific issues in the draft ROP, but would include this information in the terms of reference for the site visit.
150.	Site Visits	Government of Canada	March 15, 2019	It is unclear if costs are covered for community members to participate in site visits.	GoC - #81 Draft ROP #133	No changes to the draft ROP to	With the recognition that the costs and logistics of site visits vary considerably from project to project, the Board cannot



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				NIRB should consider covering costs to allow a certain/limited number of community members/delegates to participate in site visits, and adding the wording to the Rule to reflect this.		specifically address the comment	commit to covering costs for community members to participate in site visits. Although the Board may provide funding support in appropriate cases, each circumstance is dealt with on a case by case basis and a specific commitment cannot be included in the draft ROP.
151.	Site Visits	Qikiqtani Inuit Association	March 15, 2019	Missing are rules about what the Board and its staff are required to do in any instance where they are in bilateral contact with the Proponent or an intervenor in the EA. In a fully transparent system, all such bilateral communication needs to be papered with a note to File describing what was talked about, and put on the public registry. Is NIRB committed to this?	QIA comment on page 41 of the draft ROP Draft ROP #134	No changes to the draft ROP to specifically address the comment	In respect of both general Board and staff interactions with either Proponents or Intervenor outside Proceedings, the Board and staff interactions with any parties, members of the public or members of the media are governed by the general requirements of procedural fairness and natural justice, including ensuring that such interactions do not create a reasonable apprehension of bias. These obligations are not created by and cannot be limited by the Board's ROP, and as such are not specifically addressed in the ROPs, as the requirements are context specific. With respect to interactions during site visits specifically, the Board's site visit reports document questions asked, any materials provided, and the content of discussions if the Board and staff may have been in the presence of the Proponent without other parties present.
152.	Site Visits	TMAC Resources Inc.	March 15, 2019	This section requires the Board to submit a report after each site visit but there is no prescribed timeline for the Board to deliver the report. TMAC recommends that the Rule	TMAC-DRP-04 Draft ROP #134	Draft ROP #134 revised	Draft ROP #134 has been revised to provide a timeline for when the Board's site visit report will be issued following the site visit.



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				provide a timeline for when the Board's Site Visit Report will be made available to the proponent upon conclusion of the site visit so the proponent has an opportunity to respond in a timelier and/or more meaningful way.			
EDITORIAL, STYLISTIC COMMENTS OR CORRECTIONS OF TYPOGRAPHICAL ERRORS							
153.	Various	Government of the Northwest Territories	March 15, 2019	<p>GNWT Highlighting a few of the general formatting or copy edit errors that were identified during the review of NIRB's draft Rules of Procedure:</p> <ol style="list-style-type: none"> <li>1. Suggest extending margin of the Table of Contents so that the page numbers are not squished next to long titles (e.g. first line and line for p.26).</li> <li>2. Fix formatting/spacing of 'request' in Rule 8 (p.10).</li> <li>3. "proceedings" should be capitalized in Rule 53 (p.22).</li> <li>4. Delete 'a' in front of 'formal Intervenor' in Rule 57(c) (p.23).</li> <li>5. "Final project-specific EIS" should have a lowercase 'f' in Rule 89 (p.30)?</li> <li>6. "Finalized EIS or IS Guidelines" should be "<i>Final</i> EIS or IS Guidelines" in Rule 89 (p.30).</li> <li>7. "Project Proposal" should be lowercase in Rule 98 (p.33).</li> <li>8. "Presentations" should be lowercase in Rule 108 (p.35-36).</li> <li>9. Rule 107 mentions "Public Evening Session" but Rule 108 mentions "Community Evening Sessions". The</li> </ol>	GNWT #7 Draft ROP Table of Contents Draft ROP #8, #53, #57(c), #89, #98, #107, #108, #121, #122, #134	Revisions to Draft ROP #8, #53, #57(c), #89, #98, #107, #108, #121, #122, #134	The Board has made the recommended corrections throughout.



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				<p>terms should be the same – pick either one.</p> <p>10. Add “Public” in front of “Hearings” in Rule 121 and 122 (p.38).</p> <p>11. Insert comma after “site visit” in Rule 134 (p.41).</p>			
154.	Various	Government of the Northwest Territories	March 15, 2019	<p>GNWT identified the following capitalized/upper case terms that are not defined within the Rules and recommended that the following terms should be defined terms or switched to lowercase:</p> <ul style="list-style-type: none"> <li>▪ Appendix</li> <li>▪ Site Visit Report</li> <li>▪ Exhibit</li> <li>▪ Exhibit List</li> <li>▪ Record</li> <li>▪ Public Evening Session</li> <li>▪ Community Evening Session</li> <li>▪ Community Roundtable Session</li> <li>▪ Commitments List</li> <li>▪ Technical Meeting</li> <li>▪ Workshop</li> </ul>	GNWT #8	Revisions to various draft ROP	<p>The Board has revised the following terms to lower case:</p> <ul style="list-style-type: none"> <li>▪ appendix;</li> <li>▪ site visit report</li> <li>▪ Exhibits list</li> <li>▪ commitments list</li> </ul> <p>The Board has defined the following terms (and left these terms in uppercase):</p> <ul style="list-style-type: none"> <li>▪ Exhibit</li> <li>▪ Public Hearing Record</li> </ul> <p>In the Board’s view, the following terms are defined via description in the relevant sections of the Rules and should therefore remain in upper case:</p> <ul style="list-style-type: none"> <li>▪ Public Evening Session</li> <li>▪ Community Roundtable Session</li> <li>▪ Technical Meeting</li> <li>▪ EIS or IS Guidelines Workshop</li> <li>▪ Project Certificate Workshop</li> </ul>



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							The Board has deleted the term “Community Evening Session” from draft ROP #108(k)
155.	Various	Government of Canada	March 15, 2019	GoC recommends that in general: <ul style="list-style-type: none"> <li>Run on sentences should be broken up throughout</li> <li>Inconsistencies in capitalization should be addressed;</li> </ul>	GoC -#31	Revisions to various draft ROP to reflect this type of non-substantive correction	Revisions throughout the draft ROP as identified in response to GNWT #8 above
156.	Technical Meeting	Government of Canada	March 15, 2019	There should be an “or” between “project proposal” and “in person”.  GoC recommends NIRB clarify intent by adding “or” between “project proposal” and “in person	GoC - #67 Draft ROP #91	Revision to draft ROP #91	Draft ROP #91 revised to add “or” as recommended by GoC.
157.	Pre-Hearing Conference	Government of Canada	March 15, 2019	Acronyms (i.e. EIS, IS) in draft ROP #95(b) are not defined.  NIRB should consider identifying and defining acronyms used in the Guidelines.	GoC - #69 Draft ROP #95	Revisions to draft ROP #95(a)	These acronyms are included under the draft ROP #2 definitions of “Environmental Impact Statement” or “Impact Statement” so the Board has revised the first reference in draft ROP #95(a) to the acronyms EIS and IS so that a party could consult the relevant definitions in draft ROP #2