



June 30, 2023

Mark Ings
A/Executive Director
Nunavut Impact Review Board
Cambridge Bay, NU

Via Email : info@nirb.ca

Government of Canada's Comments on the 2022 Revised Draft of the Rules of Procedure

Dear Mr. Ings,

Further to the Nunavut Impact Review Board's (the Board's) March 30, 2023 correspondence, the Government of Canada would like to provide comments on the 2022 Revised Draft of the Rules of Procedure.

The Northern Projects Management Office (NPMO) is responding on behalf of Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC), Environment and Climate Change Canada (ECCC), Fisheries and Oceans Canada (DFO), Health Canada (HC), and Transport Canada (TC). Natural Resources Canada, Parks Canada, and National Defence have reviewed the 2022 Revised Draft of the Rules of Procedure but do not have any comments at this time.

The Government of Canada looks forward to continued participation in the Board's process. If you have any questions related to this correspondence, please contact me at Kaitlyn.Bakker2@cannor.gc.ca or 867-765-8057.

Sincerely,

Kaitlyn Bakker
A/Senior Project Manager
Northern Projects Management Office
Canadian Northern Economic Development Agency

cc Kim Pawley, Manager, Environmental Assessment, Land Use Planning and Conservation, Crown-Indigenous Relations and Northern Affairs Canada
Eva Walker, Senior Environmental Assessment Officer, Environmental Protection Branch, Environment and Climate Change Canada
José Audet-Lecouffe, Senior Biologist, Central and Arctic Region, Fisheries and Oceans Canada



Cassidy Dutchak, Impact Assessment Specialist, Environmental Health Program,
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Transport Canada

Marie-Claude Martel, Impact Assessment Specialist, Natural Resources Conservation,
Parks Canada Agency

Roxane MacInnis, Senior Land Use Planner, Infrastructure and Environment Group,
National Defence

Specific Comments

Crown-Indigenous Relations and Northern Affairs Canada

Comment Number:	CIRNAC-01
Subject:	Italicizing legislation
Reference:	Part I: Introduction to the Nunavut Impact Review Board; The Jurisdiction of the Nunavut Impact Review Board; pg.1
Priority:	Low
Background/Rationale:	The full name of legislation in force (e.g., the <i>Nunavut Planning and Project Assessment Act</i>) should be italicized, but the short form (e.g., NuPPAA) should not.
Recommendation to Address Issues:	Remove italics from the short form “NuPPAA” throughout the Rules.

Comment Number:	CIRNAC-02
Subject:	Introduce short form “the Rules”
Reference:	Part I: Introduction to the Nunavut Impact Review Board; Power to Make Rules of Procedure; pg.2
Priority:	Low
Background/Rationale:	To make the document more concise, consider introducing the short form “the Rules” here to use in place of “Rules of Procedure” throughout the document.
Recommendation to Address Issues:	Introduce the short form “the Rules” at the first use of the term “Rules of Procedure” and use the short form thereafter: i.e., “...Rules of Procedure (the Rules)...”.

Comment Number:	CIRNAC-03
Subject:	Defining “Socio-economic”
Reference:	Part II: General; Definitions
Priority:	Low

Background/Rationale:	The term “socio-economic” was mentioned in a few instances in the Rules but was not included in the definitions. NIRB should consider including a definition of socio-economic effect for a better understanding of the Rules.
Recommendation to Address Issues:	Consider defining the term “socio-economic”.

Comment Number:	CIRNAC-04
Subject:	Definition of “Board or NIRB”
Reference:	Part II: General; Definitions; pg.4
Priority:	Low
Background/Rationale:	<p>“Board or NIRB” is defined to mean “the Nunavut Impact Review Board established as an Institution of Public Government pursuant to Article 12 of the Nunavut Agreement and s. 18 of NuPPAA and for the purposes of these Rules may also include a duly appointed Panel of the Board to which the Board has delegated its functions, and the Board’s Chairperson when issuing a Board Order.”</p> <p>“Board Order” is defined to mean “project-specific guidance issued by the Board’s Chairperson or delegate in consultation with the Board, or specific Panel, regarding the scope, procedures and process associated with the Board or Panel’s decision-making functions during the Board’s assessment of a project proposal or other Proceeding.”</p> <p>In the Definition of “Board or NIRB”, the final sentence should likely reflect the Board’s Chairperson’s delegate (as specified in Board Order).</p>
Recommendation to Address Issues:	Consider rephrasing the definition of “Board or NIRB” to reflect the above.

Comment Number:	CIRNAC-05
Subject:	Board Orders and Motions

Reference:	Part II: General; Definitions; pg.4 Part IV: Forms of Project-Specific Procedural Guidance; Board Orders; pgs.16-17 Part V: General Conduct of Board Proceedings; Motions; pgs. 20-22
Priority:	Medium
Background/Rationale:	“Board Order” is defined to mean “project-specific guidance issued by the Board’s Chairperson or delegate in consultation with the Board, or specific Panel, regarding the scope, procedures and process associated with the Board or Panel’s decision-making functions during the Board’s assessment of a project proposal or other Proceeding.”
Recommendation to Address Issues:	Recommend NIRB clarify that motions will, as a general rule, be decided by the full Board or Panel, in particular where the ruling may have a material impact on the rights and interests of participants in a Proceeding, and specify the limited circumstances in which it would be appropriate or necessary to deal with a motion through a Board Order.

Comment Number:	CIRNAC-06
Subject:	Community Representatives
Reference:	Part II: General; Definitions; pg.5
Priority:	Medium
Background/Rationale:	The draft revised Rules of Procedure refer to potentially affected communities, both within and outside Nunavut. Listed examples of how Community Representatives are recommended to NIRB tend to be Nunavut-focused.
Recommendation to Address Issues:	Consider expanding on the list of examples of how individual Community Representatives are typically recommended to include further outside-of-Nunavut context, by indicating that an analogous process may be used, in collaboration with a given community, to determine representatives.

Comment Number:	CIRNAC-07
Subject:	Impact Statement/Environmental Impact Statement definition
Reference:	Part II: General; Definitions; pg.6
Priority:	Medium
Background/Rationale:	Given that the Rules can apply to reconsiderations of Project Certificate terms and conditions, and addendums to impact statements are referenced later in the Rules, it would be worthwhile to acknowledge addendums in the definition.
Recommendation to Address Issues:	Recommend including reference to possible addendums to impact statements or environmental impact statements in the definition.

Comment Number:	CIRNAC-08
Subject:	Intervenor definition
Reference:	Part II: General; Definitions; pg.7
Priority:	Medium
Background/Rationale:	The definition of "Intervenor" refers, as an example, to participants residing outside of Nunavut that may be affected by the transboundary impacts of a project proposal under assessment by NIRB. There may also be participants residing outside of Nunavut that can be affected by non-transboundary impacts (e.g., Indigenous groups primarily residing outside of Nunavut with asserted and established Section 35 rights in Nunavut).
Recommendation to Address Issues:	Remove the term "transboundary" from the definition: "...participants residing outside of Nunavut that may be affected by the impacts of a project proposal..."

Comment Number:	CIRNAC-09
Subject:	Definition of "Inuktitut" or "Inuktut"

Reference:	Part II: General; Definitions; pg.7
Priority:	Low
Background/Rationale:	<p>“Inuktitut” or “Inuktut” is defined to mean “the forms of Inuit language in current usage in Nunavut, including Inuinnaqtun.” This definition suggests that Inuktitut is synonymous with Inuktut, which is not the case.</p> <p>The definition should read “Inuktut” means the forms of Inuit languages in current usage in Nunavut, including both Inuktitut and Inuinnaqtun”.</p>
Recommendation to Address Issues:	Consider revising the definition as suggested above.

Comment Number:	CIRNAC-10
Subject:	Providing written reasons
Reference:	Rules 9, 19; pgs. 11, 13
Priority:	High
Background/Rationale:	In certain cases, the requirements of natural justice, procedural fairness, and transparency will necessitate that reasons are provided in the public notification. This also applies to Rule 19, where, in addition to providing notice, the Board may also need to provide reasons for their refusal to file a Document.
Recommendation to Address Issues:	An addition be made to these rules to state that, in addition to providing notice, the Board will also provide written reasons, where appropriate.

Comment Number:	CIRNAC-11
Subject:	Typo
Reference:	Formal Intervenors; Rule 67(d); pg. 26
Priority:	Low

Background/Rationale:	The use of “accepted the intervention” in Rule 67(d) may be confusing and could be rephrased. See recommended change to the Rule text below.
Recommendation to Address Issues:	Suggest modifying Rule 67(d) as follows: “Accept the intervention application in writing, and advise the applicant and all Parties that the Board has granted the applicant Intervenor status. The Board may also advise the applicant as to upcoming timelines and process requirements applicable to formal Intervenor status and associated with the next steps in the Board’s assessment of the project proposal.”

Comment Number	CIRNAC-12
Subject:	Pre-Hearing Conference
Reference:	Part VI: Types of Proceedings; Pre-Hearing Conference; pgs. 34-35
Priority:	Low
Background/Rationale:	Rule 105 describes potential matters for discussion during the Pre-Hearing Conference. Paragraph (a) refers to the identification of any deficiencies in the Proponent’s information supplied to date, such as gaps in the DEIS, FEIS, or Addendums thereto. NIRB’s public guidance material on the Review stage (NIRB Guide 3: Review) situates the Pre-Hearing Conference prior to submission of the FEIS; reference to identification of information gaps in the FEIS during a Pre-Hearing Conference may therefore potentially be confusing in the absence of further clarification.
Recommendation to Address Issues:	As needed, consider clarifying when the Pre-Hearing Conference may take place, and whether there may be more than one Pre-Hearing Conference for a given assessment process.

Comment Number:	CIRNAC-13
Subject:	Pre-hearing conference

Reference:	Pre-Hearing Conference: Rule 104; pg. 34
Priority:	Low
Background/Rationale:	<p>Draft Rule # 104 states: “In order to facilitate the Board’s Public Hearing processes, the Board may hold a Pre-Hearing Conference with the Proponent, Intervenors, Community Representatives and/or members of the public to assess whether, recognizing the information and Documents about the project proposal received by the Board to date, the project proposal can move forward into the Public Hearing stage”.</p> <p>The above statement could be rephrased for better understanding: “...assess whether the information and documents about the project proposal received by the Board to date are adequate for the project proposal to move forward into the Public Hearing stage.”</p> <p>Moving on to the next stage, the public hearing, should involve more than just ‘recognizing’ the information and documents; it involves all the activities listed in the Draft ROP # 105 (a to e).</p>
Recommendation to Address Issues:	Consider rephrasing Rule 104 as suggested above. NIRB may also wish to consider specifying the standard to be met to proceed with the public hearing.

Comment Number:	CIRNAC-14
Subject:	Delegation of conduct for Pre-Hearing Conference
Reference:	Part VI: Types of Board Proceedings; Pre-Hearing Conference; Rule 106; pg. 36
Priority:	Medium
Background/Rationale:	Rule 106 indicates that, for an in-person Pre-Hearing Conference, the Board’s Chairperson may delegate the conduct of the meeting to a Board Member, the Executive Director, Director of Technical Services, or Senior Technical Advisor. Further, for a Pre-Hearing Conference held by teleconference/videoconference, the Board’s Chairperson may delegate the conduct of the meeting to the Board’s staff.

Recommendation to Address Issues:	Reasons for the differentiation of delegation of conduct for in-person versus remote Pre-Hearing Conferences under this rule are unclear. Recommend NIRB clarify its intent, as needed.
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Comment Number:	CIRNAC-15
Subject:	Procedural Directions
Reference:	Part VI: Types of Board Proceedings; Monitoring; Rules 141 and 142; pg. 45
Priority:	High
Background/Rationale:	Rules 141 and 142 state that “The Board or Monitoring Officer” may issue Procedural Directions. This is inconsistent with the definition of “Procedural Direction” as “project-specific guidance issued by the Board’s Executive Director or designate”.
Recommendation to Address Issues:	Address current inconsistency between the definition of “Procedural Direction” and Rules 141 and 142.

Environment and Climate Change Canada

Comment Number	ECCC-01
Subject	Filing and Distribution of Documents
References	Part III – Providing Documents to the Board, Section 15. Page 12 (PDF 16)
Priority	Medium
Background/Rationale	<p>Environment and Climate Change Canada (ECCC)'s Environmental Protection Operations Directorate, responsible for responding to requests from the Nunavut Impact Review Board (NIRB or Board), operates primarily out of Yellowknife in the mountain time zone.</p> <p>Section 15 of the Rules of Procedure state that “<i>Documents filed with the Board are deemed to have been filed when received by the Board, unless received after the close of the Board’s regular business hours, in which case the Documents are deemed to have been filed with the Board in the Board’s next business day.</i>”</p> <p>ECCC is seeking clarity on what is deemed to be the Board’s regular business hours and whether submissions received after these hours, but still within the calendar day, will be considered late, and possibly inadmissible.</p>
Recommendation to Address Issues	ECCC requests that the NIRB provide clarity on this section and revise to include the Board’s business hours and the consequences of submitting after these hours, but within the same calendar day. The NIRB may also want to consider including specific times for deadlines to avoid any confusion.

Comment Number	ECCC-02
Subject	Formats for Participation in board processes – remote participation
References	<p>1) Part VI: Forms of Project – Specific Procedural Guidance, Board Orders, Section 31 I and (i); Pages 16-17 (PDF 20 to 21)</p> <p>2) Part V: General Conduct of Board Proceedings, Participation by Teleconference/Videoconference During In-Person Proceedings, Section 66 to 69.; Page 26 to 27 (PDF 30 to 31)</p>
Priority	High

Background/Rationale	<p>ECCC has a broad mandate covering multiple valued components considered within various Environmental Impact Assessment (EIA) processes across Canada. ECCC relies on internal experts across the country to provide recommendations on proposed projects. This expertise is consolidated and communicated to the Board by an Environmental Assessment (EA) Coordinator during Northern project reviews.</p> <p>ECCC acknowledges the expense to the Board and logistical issues around providing videoconference and teleconference options for meetings and hearings put on by the Board. However, there is also considerable expense and logistical issues in having multiple ECCC experts attend meetings and hearings in person.</p> <p>ECCC, where logistically and financially feasible, prioritizes in-person attendance. However, in certain circumstances it is not possible to have all subject matter experts and EA coordinators attend in-person meetings and hearings. Remote participation (video/teleconference) would allow ECCC to provide advice without delay to the Board during a hearing/meeting. Remote participation also supports the Government of Canada's priority for accessibility and inclusion.</p> <p>If video/teleconference technology is not available for a specific hearing/meeting, ECCC recommends that a call-in only telephone line be offered to allow experts to hear questions or issues firsthand.</p>
Recommendation to Address Issues	<p>ECCC requests that the Board provide a video/teleconference line to allow for parties to participate in the meetings and hearings virtually, if and when the technology is available. Should video/teleconference participation not be available, ECCC requests the Board provide a call-in only telephone line to allow remote participants to listen in on hearing proceedings.</p>

Comment Number	ECCC-03
Subject	Public Hearings Conducted in Communities – Schedule
References	Part VI Types of Board Proceedings - Public Hearings Conducted in Communities – Venue and Schedule, Section 114 page 37 (PDF 41)
Priority	High
Background/Rationale	<p>In ECCC's experience, hearings or meetings may run longer than planned on any given day in order to adhere to the scheduled agenda. It is understood that these situations are not intentional and occur generally under exceptional circumstances.</p>

	There may be health and safety concerns for participants attending these meetings around working late.
Recommendation to Address Issues	ECCC requests that NIRB consider incorporating health and safety practices for meetings and hearings, which provide provisions if and when hearings run late. These provisions could include rescheduling or providing additional days if there is a need to continue beyond the scheduled time.

Comment Number	ECCC-04
Subject	Public Hearings Conducted in Communities – Location and Attendance
References	Public Hearings Conducted in Communities – Venue and Schedule, Section 113
Priority	Medium
Background/Rationale	<p>Accommodation and travel logistics in some communities can be limited and difficult to manage. Occasionally there have been situations where parties are unable to secure accommodations or flights for meetings or hearings.</p> <p>ECCC also notes this can be addressed by allowing video and/or teleconference options at a hearing or meeting.</p>
Recommendation to Address Issues	ECCC requests that the Board consider limiting the number of participants attending a hearing or meeting from any one party, should there be limited availability for flights and/or accommodation, in order to allow participation by all parties. This could be managed by offering video and/or teleconference options.

Fisheries and Oceans Canada

Comment Number	DFO-01
Subject	Reconsideration process
References	NA
Priority	Medium
Background/Rationale	The reconsideration process is unclear to DFO as it relates to the Rules of Procedure. Reconsiderations of major projects have been frequent since the implementation of NuPPAA and as such should have a clear and detailed process in place. This process should be part of the rules of procedures or available separately on NIRB's website.
Recommendation to Address Issues	DFO recommends including additional details to describe how NIRB determines the process for reconsiderations in the Rules of Procedure. DFO recommends NIRB consider including this information on their website.

Comment Number	DFO-02
Subject	Reconsideration scope
References	NA
Priority	Medium
Background/Rationale	The process used to define the scope of the review during reconsideration is unclear to DFO. The way new regulations or new scientific evidence are considered during scoping should be clearly defined. The scope should allow inclusion of Terms and Conditions identified by parties as outdated.
Recommendation to Address Issues	DFO recommends defining the scoping process, identifying criteria which would justify broadening the scope, describing how NIRB considers parties' comments and potentially requesting parties to identify which Terms and Conditions are outdated.

Comment Number	DFO-03
Subject	Coordination with Nunavut Water Board during Reconsideration
References	NA
Priority	Medium
Background/Rationale	An amendment to the water licence can be concurrent to a reconsideration when a Project Certificate and Water Licence exist for the project. Concurrent processes can be extremely

	confusing to parties, lead to mistakes in terms of version control and potentially duplicate reviewing efforts.
Recommendation to Address Issues	DFO recommends defining how NIRB coordinates with NWB during reconsideration.

Health Canada

Comment Number	HC-01
Subject	Continuing Proceedings in the Absence of a Party
References	Part II: General, Citation 79, PDF pg. 30
Priority	Medium
Background/Rationale	<p>Citation 79 states that “Unless the absence of a party is excused by the Board, failure of a Party to attend the oral component of a Proceeding after receiving notice of the time and place of the Proceeding, in accordance with the notice requirements of the <i>Nunavut Agreement</i>, <i>NuPPAA</i> or a specific Board Order or Procedural Direction, shall constitute a waiver of that Party’s subsequent objections to the process, agreements, orders or rulings resulting from the Proceeding.”</p> <p>In the situation that a Party is unable to participate in the oral Proceeding in-person or through teleconference and video conference attendance, the opportunity to provide written comments up to a specific date after the Proceeding could provide a feasible alternative.</p>
Recommendation to Address Issues	<p>HC recommends the following to the Board:</p> <ol style="list-style-type: none"> 1. Provide information on the circumstances in which the Board would consider an absence excusal from the oral Proceedings. 2. Consider the option of allowing Parties to provide written comments within a specific timeframe following the oral Proceedings if they are unable to attend in person or join via technology, for reasons beyond their control. Building in this flexibility could help ensure the Board still benefits from broad and inclusive engagement with participating Parties.

Transport Canada

Comment Number	TC-01
Subject	Filing of Commitment List
References	N/A - Not in draft rules
Priority	High
Background/Rationale	<p>Proponent commitments are key to the resolution of some issues raised by participants throughout the course of reviews and assessments. In addition, commitments can significantly cut down on the number of issues that have to be addressed at the final hearing. Having a clear date when commitments have to be available to hearing participants would save time and resources.</p> <p>There is a need for a standard approach to the filing of commitments. The NIRB should indicate the timeline for the filing of commitments.</p>
Recommendation to Address Issues	<p>TC appreciates NIRB's previous response to the Government of Canada's 2019 comment on this subject but remains of the view the ROP should stipulate a timeline for a Proponent to file all commitments made to parties during the Review of a 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>