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Oceans North Comments on the Nunavut Impact Review Board 2022 Revised Draft Rules of Procedure

Mark Ings, Acting Executive Director
Nunavut Impact Review Board
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Cambridge Bay, NU X0B 0C0
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Dear Mr. Ings,

Thank you for the opportunity to provide comment on the 2022 Revised Draft Rules of Procedure for the Nunavut Impact Review Board.

Our comments focus on the importance of transparency, fairness, and community inclusion in NIRB procedures, as well as the importance of integrating Inuit and scientific expertise into the Board's decision making. Appendix A contains our comments in the NIRB's preferred format. Appendix B is referred to in Comment ON-02.

Sincerely,

Amanda Joynt

Amanda Joynt
Senior Policy Advisor
Oceans North

APPENDIX A: Oceans North Technical Review Comments

Comment Number ON-01	
Subject:	Information Requests (IR)
Reference:	Section 2 - Definitions Section 11 – Non-compliance Section 100 – Technical Meetings
Priority:	Information requests and disagreements regarding disclosure must be resolved in a timely manner to maintain confidence in NIRB processes.
Background/Rationale:	There are unresolved information requests in multiple projects under NIRB’s assessment and monitoring responsibilities. IRs need to be settled prior to approvals. For example, a cumulative effects assessment cannot be predicated on future commitments to provide relevant information to parties. Understanding the monitoring and adaptive management programs prior to a project’s start is key to determining whether there will be significant effects or whether regulators will be in a position to make such a determination at all.
Recommendation to Address Issues:	<p>Currently information requests are referenced in other sections. We recommend a distinct section on Information Requests that outlines who is responsible for resolving these requests and how.</p> <p>In instances where there is disagreement with respect to the satisfactory resolution of an information request, we recommend that the Board make a determination, relying on evidence and expert opinion. It may be wholly appropriate to provide a degree of deference to the applicable government department or group with the “subject matter” expertise, mandate and/or authority. This should be a procedural step within the initial written submissions and subsequent IRs. The technical meeting should provide a venue for finalizing any remaining information requirements, but prior to the technical meeting the validity and completeness of IRs should be determined by the Board and based on evidence and opinions of experts relevant to the specific IR. If the board chooses to not align with the conclusions of the intervening authority on the subject, it should provide a written reason why.</p>

Comment Number: ON-02	
Subject:	The Appropriateness of Proceedings Documents to NIRB Assessments
Reference:	Content, Filing and Distribution of Documents (Section 19) Section 124, 125 – Objection to Filing Exhibits
Priority:	This comment is made in reference to the importance the Board’s role in ensuring that documentation submitted to the Public Registry and/or present at Public Hearings or other public meetings within NIRB assessments is reliable and free of improper attempts to influence the Board or public.
Background/Rationale:	Previous documents displayed at NIRB public hearings were not found on the Public Registry and conveyed a tone that was perceived as an attempt to influence community members or intervenors with extrinsic, untested opinions and arguments. An example of this is included in Appendix B.
Recommendation to Address Issues:	All displays, including pamphlets and posters, must be submitted to the Public Registry and reviewed by NIRB prior to any public hearings or meetings. NIRB’s review should consider the accuracy of the documents, any disagreements regarding this accuracy amongst Intervenors, and the applicability of the content to NIRB’s mandate. We recommend that a Party, believing that an exhibit meets the criteria outlined in Section 19, should be able to file a Motion with the Board to have this exhibit removed from the Public Registry or not placed on the registry. Section 19 should outline this procedure.

Comment Number: ON-03	
Subject:	Media Participation and Transparency of Board Proceedings
Reference:	Sections 61-64 Section 76 Section 133
Priority:	It is important to ensure that impacted communities have timely, transparent, and appropriate access to information on NIRB proceedings.
Background/Rationale:	COVID-19 impacted the hearing process over the last few years. This has perhaps added to previous hearings being inconsistent and a lack of clear justification regarding limited media participation and transparency.
Recommendation to Address Issues:	<p>This section seems to focus on the control and management of information. We suggest focusing this section on how to enable community participation, transparency, and awareness of NIRB proceedings while still respecting concerns of privacy and confidentiality.</p> <p>Media participants and other organizations such as NITV may provide avenues through which transparency can be provided to community members that may not be able to participate in person. This is especially important during Community Roundtables and Public Hearings.</p> <p>We understand the expense and effort required to provide hybrid proceedings. We encourage the NIRB to continue efforts to provide this option to all communities and intervenors. As technology evolves, we hope that this becomes the norm and is integrated into the Rules of Procedure.</p> <p>When the NIRB is unable to provide hybrid meetings when requested, we suggest the Rules of Procedure require the NIRB to submit that reasoning to the Public Registry.</p>

Appendix B – Example of Proponent Material present at Public Hearing and Not Found on the Public Registry

Current Status

Through continued discussions with the Hamlet of Pond Inlet, Baffinland has developed new commitments to:

Support communities;
Further respect the environment; and
Build opportunities if the Phase 2 Project is approved.

These commitments were made in addition to those Baffinland had previously made, including the Inuit Certainty Agreement.

On December 30th, 2020 the Hamlet of Pond Inlet gave conditional approval to the Baffinland Phase 2 Project and required the following 3 commitments by Baffinland:

1. The Hamlet of Pond Inlet recommended that Baffinland adopt a phased approach, with yearly increments of 1.5 Million Tonnes Per Annum (MTPA) of iron ore. Baffinland has committed to a progressive shipping approach aligned with this request.
2. The Hamlet of Pond Inlet recommended the Phase 2 proposal only be approved to proceed if Baffinland commits to increase the number of Inuit employees within its workforce by 2.6% each year in the first four years of the Phase 2 Project. Baffinland is committed to surpassing this request by hiring 7 new employees, and providing paid training for 40 individuals per year for Pond Inlet.
3. The Hamlet of Pond Inlet recommended that the start of the shipping window for the Phase 2 Project be limited to a period in which landfast ice has dissipated along the shipping corridor for two weeks. Further the Hamlet of Pond Inlet recommended that the annual shipping period for the Project be determined by the Mittimatalik Hunter and Trappers Organization (MHTO). Baffinland has proposed to implement a revised start of shipping season procedure based on a number of key factors.

On October 21, 2021, the Hamlet resolved that it DOES NOT SUPPORT, and STRONGLY OPPOSES Baffinland's Phase 2 Project Proposal. As part of this resolution, the Hamlet also called for a moratorium on any further development or activity within the Tallurutiup Imanga National Marine Conservation Area that affects or can reasonably be understood to undermine the purposes for which the Conservation Area was created.

What does a “No” to Phase 2 mean for Pond Inlet?

- “No” to a new **Community Childcare Centre**.
- “No” to Baffinland Inuit employee childcare subsidies totaling not less than \$19.00 a day for every child under the age of 14.
- “No” to the creation of community based training programs.
- “No” to a Pond Inlet Research Station in partnership with the Université Laval.
- “No” to an increase in Inuit led monitoring committees and an Inuit Stewardship Plan.
- “No” to annual Hunter and Harvester Fund (\$500,000).
- “No” to 3 caribou monitoring stations built at site and 24 Inuit monitors.
- “No” to hiring 40 additional Pond Inlet employees every year for the next three years at minimum, potentially continuing thereafter.
- “No” to a community garage that would be used to train skilled trades people right here in Pond Inlet and which would provide repair and maintenance services to Mittimatalingmiut at only the cost of parts.
- “No” to new Baffinland community infrastructure including a Baffinland Office which would include 9 offices, a 20 seat classroom, an elders room and country kitchen and IQ engagement walls.
- “No” to 7 additional full time Baffinland positions based out of Pond Inlet.
- “No” to ongoing sponsorships donations to community organizations and people within Pond Inlet which have totaled more than \$500,000 since 2018 and which are more than \$200,000 in 2021 alone.

A “NO” means no additional investments in People and community of Pond Inlet

A “NO” means no additional implementation of Environmental Protection Measures