

NIRB ASSESSMENT AND DECISION

After a thorough assessment of all material provided to the Board (please see *Procedural History* and *Project Activities* in **Appendix A**), in accordance with the principles identified within Section 12.4.2 of the NLCA, the decision of the Board as per Section 12.4.4 of the NLCA is:

12.4.4 (a): the proposal may be processed without a review under Part 5 or 6; NIRB may recommend specific terms and conditions to be attached to any approval, reflecting the primary objectives set out in Section 12.2.5.

RECOMMENDED PROJECT-SPECIFIC TERMS AND CONDITIONS (pursuant to Section 12.4.4(a) of the NLCA)

The Board is recommending the following or similar project-specific terms and conditions be imposed upon the Proponent through all relevant legislation:

General

1. Defense Construction Canada Ltd. (the Proponent) shall maintain a copy of these Project-Specific Terms and Conditions at the site of operation at all times.
2. The Proponent shall ensure that all field operations staff are aware of the Proponent's commitments.
3. The Proponent shall forward copies of all permits obtained and required for this project to the Nunavut Impact Review Board (NIRB), prior to the commencement of the project.
4. The Proponent shall be notify the NIRB of any changes in operating plans or conditions associated with this project prior to any such change.
5. The Proponent shall operate the site in accordance with all applicable Acts, Regulations and Guidelines.

Water and Wastewater

6. The Proponent shall not extract water from any fish-bearing waterbody unless the water intake hose is equipped with a screen of appropriate mesh size to ensure that there is no entrapment of fish. Small lakes or streams should not be used for water withdrawal.
7. The Proponent shall not use water, including constructing or disturbing any stream, lakebed or the banks of any definable water course unless approved by the Nunavut Water Board.

Wildlife

8. The Proponent shall ensure that there is no damage to wildlife habitat in conducting this operation.
9. The Proponent shall not harass wildlife. This includes persistently worrying or chasing animals, or disturbing large groups of animals. The Proponent shall not hunt or fish, unless proper Nunavut authorizations have been acquired.
10. The Proponent shall not disturb or destroy the nests or eggs of any birds. If nests are encountered and/or identified, the Proponent shall take precaution to avoid further interaction and or disturbance.

11. The Proponent shall cease activities that may interfere with migration or calving of caribou or muskox, until the caribou or muskox have passed or left the area.
12. The Proponent shall ensure all project staff are trained in appropriate bear/carnivore detection and deterrent techniques.

Physical Environment

13. The Proponent shall not move any equipment or vehicles unless the ground surface is in a state capable of fully supporting the equipment or vehicles without rutting or gouging.
14. The Proponent shall control all movements of heavy machinery, vehicles and equipment within the hazardous material management area to prevent the dispersion of potentially hazardous dust and materials into the environment.
15. The Proponent shall ensure the site for stockpiling and processing of quarried material is contaminant free prior to project activities taking place.
16. Following remediation activities, the Proponent shall ensure that the ground surface is prepared to promote vegetation establishment wherever possible. If seed mixes are used, only appropriate native seed mixes should be used.

Storage and Management of Waste, Hazardous Waste and other Hazardous Materials

17. The Proponent shall install and operate an incineration device capable of meeting the emission limits established under the *Canada-Wide Standards (CWS) for Dioxins and Furans* and the *CWS for Mercury Emissions*. The use of a dual-chamber, forced air incinerator is required.
18. The Proponent shall incinerate all combustible wastes daily, and remove the ash from incineration activities and non-combustible wastes from the project site to an approved facility for disposal.
19. The Proponent shall keep camp wastes inaccessible to wildlife at all times.
20. The Proponent shall recover and recycle material wherever practical.
21. The Proponent shall ensure that all hazardous materials be removed from the project site and disposed of in accordance with the *Environmental Protection Act*, *Nunavut Territorial Regulations and Guidelines*, and *Nunavut Hazardous Waste Disposal Manual*.
22. The Proponent shall ensure that workers follow established protocols for working with hazardous material and contaminated soils.
23. The Proponent shall ensure that no waste oil is incinerated on site. All waste oil must be transported off site and disposed of at an approved facility. A waste manifest must accompany the shipment of all waste oil and the Proponent must register with the Government of Nunavut – Department of Environment. The Proponent is advised to contact the Manager of Pollution Control and Air Quality at (867) 975-7748 to obtain a manifest if hazardous waste is generated during project activities.
24. The Proponent shall ensure that all containers with contaminated wastes stored on site are removed on an annual basis.
25. The Proponent shall ensure that any exposed soil piles are covered to prevent migration due to wind and surface runoff.

Fuel and Chemical Storage

26. The Proponent shall locate all fuel and other hazardous materials a minimum of thirty-one (31) metres away from the high water mark of any water body and in such a manner as to prevent their release into the environment.
27. The Proponent shall inspect and document the condition of all large fuel caches (in excess of 20 drums) on a weekly basis. The Proponent shall examine all fuel and chemical storage containers immediately upon delivery for leaks. All containers must be marked with the Proponent's name. All leaks should be repaired immediately.
28. The Proponent shall use secondary containment or a surface liner (drip pans, fold-a-tanks, etc) at all refuelling stations. The Proponent shall ensure that appropriate spill kits are located at every fuel cache
29. The Proponent shall ensure that all on site personnel are properly trained in fuel and hazardous waste handling procedures as well as spill response procedures. All releases of harmful substances, regardless of quantity, are immediately reportable to the 24 hour Spill Line at (867) 920-8130 or Environment Canada's 24-hour Emergency pager (867) 766-3737, where the release:
 - is near or into a water body;
 - is near or into a designated sensitive environment or sensitive wildlife habitat;
 - poses an imminent threat to human health or safety; or
 - poses an imminent threat to a listed species at risk or its critical habitat.
30. The Proponent shall ensure that appropriate secondary containment or surface liners are used for all fuel transfers on the project site.
31. The Proponent shall store all chemicals in such a manner that they are inaccessible to wildlife.

Other

32. The Proponent should, to the extent possible, hire local people and consult with local residents regarding the project activities in their region.
33. The Proponent should conduct community consultation throughout the duration of the project to ensure that community members are kept well informed about the activities, results, and plans regarding the site and are active participants in the remedial action plan development.
34. Any changes to this project may be deemed by NIRB to be outside the original scope of the project and may be considered a new project requiring screening.

Monitoring and Reporting Requirements

In addition, the Board is recommending the following:

1. The proponent shall submit a comprehensive annual report with copies provided to the Indian and Northern Affairs Canada and the NIRB by March 31 of each year of permitted activities. The annual report must contain, but not be limited to, the following information:
 - a. Summary of activities undertaken for the year and a workplan for the following year;
 - b. List of the volumes/weights and types of non hazardous materials disposed of on site, the mean of the disposal of;
 - c. List of the volumes/weights and types of hazardous materials shipped offsite for disposal;

- d. Descriptions of any wildlife encounters and actions/mitigation taken;
 - e. Summary of local hires and initiatives;
 - f. Description of site-visits with community members (if conducted), and by inspectors with results and follow-up actions;
 - g. Site photos and updated site maps;
 - h. Details of marine and overland transportation utilized;
 - i. Discussion of how it has complied with all Project-Specific Terms and Conditions and how the terms and conditions are achieving their purpose.
2. The Proponent shall maintain a record of wildlife observations while operating within the project area. The reports should include locations (i.e., latitude and longitude), species, number of animals, a description of the animal activity, and a description of the gender and age of animals if possible. Prior to conducting project activities, the Proponent should map the location of any sensitive wildlife sites such as denning sites, calving areas, caribou crossing sites, and raptor nests in the project area, and identify the timing of critical life history events (i.e., calving, mating, denning and nesting). Additionally, the Proponent should indicate potential impacts from the project, and ensure that operational activities are managed and modified to avoid impacts on wildlife and sensitive sites.

A copy of this wildlife record or report should be submitted annually at the end of the operational season to a Regional Wildlife Biologist and the nearest Conservation Officer.

Other NIRB Concerns and Recommendations

In addition to the project-specific terms and conditions, the Board is recommending the following:

General

All Authorizing Agencies shall notify the NIRB of any changes in operating plans or conditions associated with this project prior to any such change.

Indian and Northern Affairs Canada

Indian and Northern Affairs Canada (INAC) impose mitigation measures, conditions and monitoring requirements pursuant to the Federal Land Use Permit, which require the Proponent to respect the sensitivities and importance of the area. These mitigation measures, conditions and monitoring requirements should be in regard to the location and area; type, location, capacity and operation of facilities; use, storage, handling and disposal of chemical or toxic material; wildlife and fisheries habitat; and petroleum fuel storage.

INAC should also consider the importance of conducting regular Land Use Inspections, pursuant to the authority of the Federal Land Use Permit, while the project is in operation. The Land Use Inspections should be focused on ensuring the Proponent is in compliance with the conditions imposed through the Federal Land Use Permit.

Regulatory Requirements

The Proponent is also advised that the following legislation may apply to the project:

1. The *Fisheries Act* (<http://laws.justice.gc.ca/en/showtdm/cs/F-14///en>).
2. The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (<http://www.canlii.org/ca/sta/n-28.8/whole.html>).
3. The *Migratory Birds Convention Act* and *Migratory Birds Regulations* (<http://laws.justice.gc.ca/en/showtdm/cs/M-7.01>).
4. The *Species at Risk Act* (<http://laws.justice.gc.ca/en/showtdm/cs/S-15.3>). Attached in **Appendix B** is a list of Species at Risk in Nunavut.
5. The *Nunavut Wildlife Act* which contains provisions to protect and conserve wildlife and wildlife habitat, including specific protection measures for wildlife habitat and species at risk.
6. *Nunavut Act* (<http://laws.justice.gc.ca/en/showtdm/cs/N-28.6>). The Proponent must comply with the proposed terms and conditions listed in the attached **Appendix C**
7. The *Transportation of Dangerous Goods Regulations*, *Transportation of Dangerous Goods Act* (<http://www.tc.gc.ca/tdg/menu.htm>), and the *Environmental Protection Act* (<http://laws.justice.gc.ca/en/C-15.31/text.html>) The Proponent must ensure that proper shipping documents accompany all movements of dangerous goods. The Proponent must register with the GN-DOE Manager of Pollution Control and Air Quality at 867-975-7748.
8. The *Aeronautics Act* (<http://laws.justice.gc.ca/en/A-2/>).
9. The *Navigable Waters Protection Act (NWPA)* (<http://laws.justice.gc.ca/en/N-22/index.html>).

Validity of Land Claims Agreement

Section 2.12.2

Where there is any inconsistency or conflict between any federal, territorial and local government laws, and the Agreement, the Agreement shall prevail to the extent of the inconsistency or conflict.

Dated _____ December 18, 2008 _____ at Sanikiluaq, NU.



Lucassie Arragutainaq, A/Chair

Appendix A

Procedural History and Project Activities

Procedural History

On November 5, 2008, the Nunavut Impact Review Board (NIRB or Board) received Defence Construction Canada's (The Proponent) *PIN-2, Cape Young DEW Line Site Cleanup and Remediation* project proposal from Indian and Northern Affairs Canada (INAC). NIRB has assigned this project proposal file number **08DN081**. This project is located in the Kitikmeot Region, for which there is no approved land use plan; therefore this proposal did not require a conformity determination from the Nunavut Planning Commission.

Upon a preliminary completeness check, NIRB determined there was insufficient information to conduct a Part 4 Screening. On November 18, 2008 NIRB requested the Proponent provide the required information on or before December 3, 2008. On November 20, 2008 NIRB received the required supplementary information from the Proponent and commenced the Part 4 Screening for this project proposal.

On November 24, 2008 this project proposal was distributed to the community of Kugluktuk and to interested federal and territorial agencies, and Inuit organizations. NIRB requested that interested parties review the application and provide their comments to the NIRB by December 15, 2008 regarding:

- Whether the project proposal is likely to arouse significant public concern; and if so, why;
- Whether the project proposal is likely to cause significant adverse eco-systemic and socio-economic effects; and if so, why;
- Whether the project is of a type where the potential adverse effects are highly predictable and mitigable with known technology, (please provide any recommended mitigation measures); and
- Any matter of importance to the Party related to the project proposal.

On or before December 15, 2008, NIRB received comments from the following interested Parties (see Comments and Concerns):

- Kitikmeot Inuit Association (KIA)
- Government of Nunavut – Culture, Language, Elders and Youth (GN-CLEY)
- Fisheries and Oceans Canada (DFO)

All comments provided to NIRB regarding this project proposal can be viewed on NIRB's ftp-site, at the following location: <http://ftp.nirb.ca/SCREENINGS/COMPLETED%20SCREENINGS/>

Project Activities

This project is a clean-up and remediation of a former Distant Early Warning (DEW) Line site located in the West Kitikmeot Region. The nearest community to the project area is Kugluktuk, approximately 150 km to the South.

The proposed major activities for the program involve the following components:

- Demolition of existing facilities;
- Remediation of existing landfills;
- Construction of two new landfills;

- Excavation of contaminated soils;
- Removal of surface debris;
- Grading and restoration of land surfaces;
- Installation of a construction camp to accommodate up to 60 people
 - Average of 50 people on site at one time
 - Peak number of people on site from mid-July to late August
- Use of existing airstrip and roads for equipment transport, movement and access to work areas;
- Quarrying;
- Use of heavy machinery (excavators, tractors, loaders, etc.)
- Storage and offsite disposal of hazardous contaminated soils and hazardous waste;
- Construction of Tier II soil disposal facility; and
- Site monitoring following remediation.



Appendix B

SPECIES AT RISK IN NUNAVUT

This list includes species listed on one of the Schedules of SARA (*Species at Risk Act*) and under consideration for listing on Schedule 1 of SARA. These species have been designated as at risk by COSEWIC (Committee on the Status of Endangered Wildlife in Canada). This list may not include all species identified as at risk by the Territorial Government.

- Schedule 1 is the official legal list of Species at Risk for SARA. SARA applies to all species on Schedule 1. The term “listed” species refers to species on Schedule 1.
- Schedule 2 and 3 of SARA identify species that were designated at risk by the COSEWIC prior to October 1999 and must be reassessed using revised criteria before they can be considered for addition to Schedule 1.
- Some species identified at risk by COSEWIC are “pending” addition to Schedule 1 of SARA. These species are under consideration for addition to Schedule 1, subject to further consultation or assessment.

Schedules of SARA are amended on a regular basis so it is important to periodically check the SARA registry (www.sararegistry.gc.ca) to get the current status of a species.

Updated: January 3, 2007

| Species at Risk | COSEWIC Designation | Schedule of SARA | Government Organization with Lead Management Responsibility ¹ |
|--|-------------------------|------------------|--|
| Eskimo Curlew | Endangered | Schedule 1 | EC |
| Ivory Gull | Endangered ² | Schedule 1 | EC |
| Peregrine Falcon (subspecies anatum) | Threatened | Schedule 1 | Government of Nunavut |
| Ross's Gull | Threatened | Schedule 1 | EC |
| Harlequin Duck (Eastern population) | Special Concern | Schedule 1 | EC |
| Felt-leaf Willow | Special Concern | Schedule 1 | Government of Nunavut |
| | | | |
| Peregrine Falcon (subspecies tundrius) | Special Concern | Schedule 3 | Government of Nunavut |
| Short-eared Owl | Special Concern | Schedule 3 | Government of Nunavut |
| Fourhorn Sculpin | Special Concern | Schedule 3 | DFO |
| | | | |
| Peary Caribou | Endangered ³ | Pending | Government of Nunavut |
| Beluga Whale (Eastern Hudson Bay population) | Endangered | Pending | DFO |
| Beluga Whale (Cumberland Sound population) | Threatened | Pending | DFO |
| Beluga Whale (Western Hudson Bay population) | Special Concern | Pending | DFO |
| Beluga Whale | Special Concern | Pending | DFO |

| | | | |
|--|------------------------------|---------|-----------------------|
| (Eastern High Arctic – Baffin Bay population) | | | |
| Bowhead Whale (Hudson Bay-Foxe Basin population) | Threatened ⁴ | Pending | DFO |
| Bowhead Whale (Davis Strait-Baffin Bay population) | Threatened ⁴ | Pending | DFO |
| Porsild's Bryum | Threatened | Pending | Government of Nunavut |
| Atlantic Walrus | Special Concern | Pending | DFO |
| Narwhal | Special Concern | Pending | DFO |
| Rusty Blackbird | Special Concern | Pending | Government of Nunavut |
| Barren-ground Caribou (Dolphin and Union population) | Special Concern ³ | Pending | Government of Nunavut |
| Grizzly Bear | Special Concern | Pending | Government of Nunavut |
| Polar Bear | Special Concern | Pending | Government of Nunavut |
| Wolverine (Western Population) | Special Concern | Pending | Government of Nunavut |

¹ Environment Canada has a national role to play in the conservation and recovery of Species at Risk in Canada, as well as responsibility for management of birds described in the Migratory Birds Convention Act (MBCA). Day-to-day management of terrestrial species not covered in the MBCA is the responsibility of the Territorial Government. Populations that exist in National Parks are also managed under the authority of the Parks Canada Agency. EC = Environment Canada, DFO = Department of Fisheries and Oceans

² Designated as Endangered by COSEWIC in April 2006 and it is expected that the category of concern in SARA will also be changed from Special Concern to Endangered.

³ Peary Caribou was split into three separate populations in 1991: Banks Island (Endangered), High Arctic (Endangered) and Low Arctic (Threatened) populations. The Low Arctic population also included the Barren-ground Caribou - Dolphin and Union population. In May 2004 all three population designations were de-activated, and the Peary Caribou, *Rangifer tarandus pearyi*, was assessed separately from the Barren-ground Caribou (Dolphin and Union population), *Rangifer tarandus groenlandicus*. The subspecies *pearyi* is composed of a portion of the former "Low Arctic population" and all of the former "High Arctic" and "Banks Island" populations, and it was designated Endangered in May 2004. Although SARA lists Peary Caribou on Schedule 2 as three separate populations, the most current designation is the COSEWIC designation of the subspecies *pearyi* as Endangered.

⁴ The "Eastern and Western Arctic populations" of Bowhead Whale were given a single designation of Endangered in April 1980 by COSEWIC. These were split into two populations to allow separate designations in April 1986. The Eastern population was not re-evaluated in April 1986, but retained the Endangered status of the original "Eastern and Western Arctic populations". The Eastern Arctic population was further split into two populations (Hudson Bay-Foxe Basin population and Davis Strait-Baffin Bay population) in May 2005, and both these populations were designated as Threatened. Both these populations are under consideration for addition to Schedule 1. Although SARA lists the Eastern Arctic population as Endangered (Schedule 2), the most current designation is the COSEWIC designations of the Hudson Bay-Foxe Basin and Davis Strait-Baffin Bay populations as Threatened.

Appendix C
Archaeological and Palaeontological Resources Terms and Conditions
for Land Use Permit Holders



BACKGROUND: Archaeology

As stated in Article 33 of the Nunavut Land Claims Agreement:

The archaeological record of the Inuit of Nunavut is a record of Inuit use and occupancy of lands and resources through time. The evidence associated with their use and occupancy represents a cultural, historical and ethnographic heritage of Inuit society and, as such, Government recognizes that Inuit have a special relationship with such evidence, which shall be expressed in terms of special rights and responsibilities. [33.2.1]

The archaeological record of Nunavut is of spiritual, cultural, religious and educational importance to Inuit. Accordingly, the identification, protection and conservation of archaeological sites and specimens and the interpretation of the archaeological record is of primary importance to Inuit and their involvement is both desirable and necessary. [33.2.2]

In recognition of the cultural, spiritual and religious importance of certain areas in Nunavut to Inuit, Inuit have special rights and interests in these areas as defined by Article 33 of the Nunavut Land Claims Agreement. [33.2.5]

BACKGROUND: Palaeontology

Under the Nunavut Act¹, the federal Government can make regulations for the protection, care and preservation of palaeontological sites and specimens in Nunavut. Under the *Nunavut Archaeological and Palaeontological Sites Regulations*², it is illegal to alter or disturb any palaeontological site in Nunavut unless permission is first granted through the permitting process.

Definitions

¹ s. 51(1)

² P.C. 2001-1111 14 June, 2001

As defined in the *Nunavut Archaeological and Palaeontological Sites Regulations*, the following definitions apply:

“archaeological site” means a place where an archaeological artifact is found.

“archaeological artifact” means any tangible evidence of human activity that is more than 50 years old and in respect of which an unbroken chain of possession or regular pattern of usage cannot be demonstrated, and includes a Denesuline archaeological specimen referred to in section 40.4.9 of the Nunavut Land Claims Agreement.

“palaeontological site” means a site where a fossil is found.

“fossil” includes:

- (a) natural casts
- (b) preserved tracks, coprolites and plant remains; and
- (c) the preserved shells and exoskeletons of invertebrates and the eggs, teeth and bones of vertebrates.

Terms and Conditions

- 1) The permittee shall not operate any vehicle over a known or suspected archaeological or palaeontological site.
- 2) The permittee shall not remove, disturb, or displace any archaeological artifact or site, or any fossil or palaeontological site.
- 3) The permittee shall immediately contact the Department of Culture, Language, Elders and Youth (867) 934-2046 or (867) 975-5500 or 1 (866) 934-2035 should an archaeological site or specimen, or a palaeontological site or fossil be encountered or disturbed by any land use activity.
- 4) The permittee shall immediately cease any activity that disturbs an archaeological or palaeontological site encountered during the course of a land use operation, until permitted to proceed with the authorization of the Department of Culture, Language, Elders and Youth, Government of Nunavut.
- 5) The permittee shall follow the direction of the Department of Culture, Language, Elders and Youth and DIAND in restoring disturbed archaeological or palaeontological sites to an acceptable condition.
- 6) The permittee shall provide all information requested by the Department of Culture, Language, Elders and Youth concerning all archaeological sites or artifacts and all palaeontological sites and fossils encountered in the course of any land use activity.
- 7) The permittee shall make best efforts to ensure that all persons working under authority of the permit are aware of these conditions concerning archaeological sites and artifacts, and palaeontological sites and fossils.
- 8) The permittee shall avoid the known archaeological and/or palaeontological sites listed in Attachment 1.

9) The permittee shall have an archaeologist or palaeontologist perform the following functions, as required by the Department of Culture, Language, Elders and Youth:

- a. survey
- b. inventory and documentation of the archaeological or palaeontological resources of the land use area
- c. assessment of potential for damage to archaeological or palaeontological sites
- d. mitigation
- e. marking boundaries of archaeological or palaeontological sites
- f. site restoration

The Department of Culture, Language, Elders and Youth shall authorize by way of a Nunavut Archaeologist Permit or a Nunavut Palaeontologist Permit, all procedures subsumed under the above operations.