



SCREENING DECISION REPORT NIRB FILE NO.: 07DN069

NIRB File No.: 07DN069
INAC File No.: N2007X0038

December 7, 2007

Honourable Chuck Strahl
Minister of Indian and Northern Affairs Canada
Indian and Northern Affairs Canada
Gatineau, QC

Via email: Strahl.C@parl.gc.ca

Re: Screening Decision for Defense Construction Canada's FOX-3, Dewar Lakes DEW Line Site Clean Up Project Proposal

Dear Honourable Chuck Strahl:

The primary objectives of the Nunavut Land Claims Agreement are set out in section 12.2.5 of the Land Claims Agreement. This section reads:

In carrying out its functions, the primary objectives of NIRB shall be at all times to protect and promote the existing and future well-being of the residents and communities of the Nunavut Settlement Area, and to protect the ecosystemic integrity of the Nunavut Settlement Area. NIRB shall take into account the well-being of the residents of Canada outside the Nunavut Settlement Area.

Section 12.4.4 of the Nunavut Land Claim Agreement states:

Upon receipt of a project proposal, NIRB shall screen the proposal and indicate to the Minister in writing that:

- 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;
- b) the proposal requires review under Part 5 or 6; NIRB shall identify particular issues or concerns which should be considered in such a review;
- c) the proposal is insufficiently developed to permit proper screening, and should be returned to the proponent for clarification; or
- d) the potential adverse impacts of the proposal are so unacceptable that it should be modified or abandoned.

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 12.4.4(a) of the NLCA

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

General

1. Defense Construction Canada (the Proponent) shall maintain a copy of the Project 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 NIRB, prior to the commencement of the project.
4. The NIRB shall be notified of any changes in operating plans or conditions associated with this project prior to any such change.
5. The Proponent shall submit a comprehensive annual report with copies provided to the NIRB by March 31st of each year. Annual reports will be provided until the project has been completed. The report must contain, but not be limited to, the following information:
 - A summary of activities undertaken for the year;
 - A work plan for the following year;
 - An update on the extent of contamination on-site and supporting documentation;
 - Descriptions of any wildlife encounters and actions/mitigation taken;
 - A summary of local hires and initiatives;
 - A summary of site-visits by inspectors with results and follow-up actions;
 - A summary of site-visits with community members (if conducted);
 - Site photos and updated site maps;
 - A summary of marine and overland transportation utilized;
 - A summary of how the Proponent has complied with all project Terms and Conditions and how the terms and conditions are achieving their purpose.
6. The Proponent should, to the extent possible, hire local people and consult with local residents regarding the project activities in their region.
7. The Proponent shall 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.

Water and Wastewater

8. The Proponent shall discharge surface water and waste water in accordance with requirements of the water license.
9. The Proponent shall not construct or disturb any stream, lakebed or the banks of any definable water course unless authorized by the Department of Fisheries and Oceans.

Wildlife

10. The Proponent shall ensure that there is no damage to wildlife habitat in conducting this operation. Deliberate feeding of any wildlife is absolutely prohibited. The Proponent shall not hunt or fish, unless the appropriate permits and licenses are acquired. Harassment of wildlife is prohibited. This includes persistently worrying or chasing animals, or disturbing large groups of animals.
11. The Proponent shall ensure that minimum flying altitudes of 610 m above ground level for nesting migratory birds, and 1100 m where (i) birds are known to concentrate (moulting/brooding areas), and (ii) identified caribou calving and post-calving areas are implemented. In addition, a minimum horizontal distance of 1500 m from any observed concentrations of birds shall be maintained.
12. The Proponent shall document any wildlife observations in the general vicinity of their operation, noting locations and frequencies, and modify activities accordingly to avoid wildlife when possible. Special note should be taken of any designated *Species at Risk* (see Appendix B) observed in the project area. These wildlife observations shall be reported to a Regional Wildlife Biologist and the nearest Conservation Officer at the end of each operational season.

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 movement 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. Following remediation activities, the Proponent shall ensure that the ground surface is prepared to facilitate vegetation establishment where possible. If seed mixes are used, only arctic seed mixes appropriate for the eastern arctic should be used.

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

16. 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.
17. The Proponent shall keep camp wastes inaccessible to wildlife at all times.
18. The Proponent shall recover and recycle material wherever practical.
19. 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*.
20. The Proponent shall ensure that workers follow established protocols for working with hazardous material and contaminated soil and conducting all on site works.

Transportation and Storage of Contaminated Solid Wastes

21. The Proponent shall ensure that all containers with contaminated wastes stored on site are removed on an annual basis.
22. The Proponent shall ensure that any exposed soil piles are covered to prevent migration due to wind blowing and surface runoffs.

Fuel and Chemical Storage

23. Any 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.
24. The Proponent shall ensure that appropriate secondary containment or surface liners are used for all fuel transfers on the project site.
25. The Proponent shall store all chemicals in such a manner that they are inaccessible to wildlife.

Regulatory Requirements

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

1. Section 36(3) of the *Fisheries Act* (<http://laws.justice.gc.ca/en/showtdm/cs/F-14///en>) which states that no person shall deposit or permit the deposit of a deleterious substance in any type in water frequented by fish or in any place under any conditions where the deleterious substance may enter such a water body.
2. The *Migratory Birds Convention Act* and *Migratory Birds Regulations* which state that no person disturb or destroy the nests or eggs of migratory birds, and that no person shall deposit or permit to be deposited oil, oil wastes or any other substance harmful to migratory birds in any waters or any area frequented by migratory birds (<http://laws.justice.gc.ca/en/showtdm/cs/M-7.01>)
3. *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. The Proponent should consult the Species at Risk Public Registry (<http://www.sararegistry.gc.ca/>) to identify any Species at Risk within the project location. Further, the Proponent shall develop monitoring plans for each relevant Species at Risk in accordance with any applicable status reports, recovery strategies, action plans, and management plans posted on the Species at Risk Public Registry and in consultation with the Government Organization with Primary Management Responsibility. Monitoring plans should record the locations and frequency of observing species of special concern and note any actions taken to avoid contact or cause disturbance to the species, its residence, or its critical habitat.
4. The *Nunavut Act* (<http://laws.justice.gc.ca/en/showtdm/cs/N-28.6>) which requires that no person alter or disturb any archaeological or palaeontological sites in Nunavut unless permission is first granted through the permitting process. If any archaeological or palaeontological sites are found they should

remain undisturbed and their location should be reported to the Government of Nunavut Department of Culture, Language, Elders and Youth. The Proponent must comply with the proposed terms and conditions listed in the attached **Appendix C**.

5. 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>) which presents the requirements for the handling, storing, managing and transportation of dangerous goods, including hazardous wastes, fuel and contaminated material. The Proponent must ensure that proper shipping documents accompany all movements of dangerous goods. The Proponent must register with GN-DOE by contacting Robert Eno at 867-975-7748 or reno@gov.nu.ca.
6. Article 13.7.1 of the NLCA and Section 173(1) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, state that no person shall use water or dispose of waste into water without the approval of the Nunavut Water Board (NWB). The Proponent is encouraged to contact the NWB prior to engaging in any activities to determine if a license is required (<http://www.nunavutwaterboard.org/en/home>).

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 7, 2007 _____ at Sanikiluaq, NU.



Lucassie Arragutainaq, A/Chair

Appendix A – Procedural History and Project Activities

FILE HISTORY

On October 31, 2007 the Nunavut Impact Review Board (NIRB or Board) received Defense Construction Canada's *FOX-3, Dewar Lakes DEW Line Site Clean Up* project proposal from Indian and Northern Affairs Canada (INAC). NIRB assigned this project proposal file number 07DN069.

This project is located in the central area of Baffin Island. The nearest community is Qikiqtarjuaq which is approximately 300 km to the east. The site clean up operation period is planned for each summer (June to October) from the year 2008 to 2011.

On November 8, 2007 NIRB distributed the application for comment to interested Federal and Territorial Agencies as well as municipalities most affected by FOX-3, Dewar Lakes DEW Line Site Clean Up project.

On or before November 22, 2007, the NIRB did not receive any comments regarding this project proposal.

PROJECT ACTIVITIES

The proposed activities for this project involve the following components:

- Construction and operation of a temporary camp;
- Demolition of existing facilities;
- Remediation of the existing landfills;
- Construction of new landfills;
- Excavation of contaminated soils;
- Removal of surface debris around the site;
- Development of borrow areas;
- Land farming operation; and
- Grading and restoration of the site.

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)	Special Concern	Pending	DFO

population)			
Beluga Whale (Eastern High Arctic – Baffin Bay population)	Special Concern	Pending	DFO
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 –
Government of Nunavut – Department of Culture, Language, Elders and Youth
Standard Terms and Conditions**



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]

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

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

“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.