



NIRB File No.09UN052
DFO File No. NU-09-0003
TC File No. 8200-T-11419.1
EC File No. 4543-2-02896

August 20, 2009

Honourable Gail Shea
Minister of Fisheries and Oceans
c/o Amy Lui, Habitat Management Biologist
Fisheries and Oceans Canada
Burlington, ON

Via email: amy.lui@dfo-mpo.gc.ca

Re: Application exempt from Screening: Fisheries and Oceans Canada's amendment request for the "Pangnirtung Small Craft Harbour Development" project

Dear Amy Lui:

On August 11, 2009 the Nunavut Impact Review Board (NIRB or Board) received notification from Fisheries and Oceans Canada (DFO) regarding an amendment to DFO's "Pangnirtung Small Craft Harbour Development" project.

Please be advised that the original project proposal (NIRB File No. 09UN052) was received by the NIRB from DFO on June 22, 2009. The proposal was screened in accordance with Part 4, Article 12 of the Nunavut Land Claims Agreement (NLCA). On July 24, 2009 the NIRB issued a 12.4.4(a) screening decision to the Minister of DFO, indicating the proposed project may proceed subject to project-specific recommended terms and conditions. Project components/activities included the following:

- Dredging of marine area;
- Disposal of dredged sediments;
- Culvert installation on a freshwater stream;
- Installation of floating docks;
- Construction of marshalling areas;
- Extension of existing breakwater;
- Construction of new breakwater; and,
- Use of existing fueling infrastructure.

DFO is proposing to amend its *Fisheries Act* authorization application (DFO) and Class-B Water License (Nunavut Water Board) to include the following additional components/activities:

- Reinstating a crossing of the Duval River in Pangnirtung for the purpose of transporting rock from the existing quarry to the harbour for construction materials.

The current amendment information and the original NIRB screening file, NIRB File No. 09UN052 are available from NIRB's ftp site at the following link:

<http://ftp.nirb.ca/SCREENINGS/ACTIVE%20SCREENINGS/09UN052-DFO%20-%20Pangnirtung%20Harbour/1-SCREENING/01-APPLICATION/>.

Please note that Section 12.4.3 of the NLCA states that:

“Any application for a component or activity of a project proposal that has been permitted to proceed in accordance with these provisions shall be exempt from the requirement for screening by NIRB unless:

(a) such component or activity was not part of the original project proposal; or

(b) its inclusion would significantly modify the project.”

On August 12, 2009 NIRB distributed the current amendment request to a regional distribution list, requesting submission of any comments or concerns related to the application by August 19, 2009. The following is a summary of comments received from parties regarding the proposed amendment:

Environment Canada (EC)

- EC is of the opinion that the requested amendment is not likely to significantly change the general scope of the original project activities;
- EC recommends that suitable erosion control measures be implemented to prevent the deposition of sediment into any fish bearing waters as a result of the reinstatement of the Duval River crossing; and
- EC further recommends that stream bank disturbances be minimized and all disturbed areas be stabilized upon completion of the project.

Transport Canada (TC)

- TC has no concerns with the proposed works on the Duval River in Pangnirtung

After completing a review of the information provided and the comments received, the NIRB is of the understanding that the proposed amendment does not change the general scope of the original project activities, and the exceptions noted in NLCA 12.4.3(a) and (b) do not apply. Therefore, this application is exempt from screening as per Section 12.4.3 of the NLCA and the activities therein remain subject to the terms and conditions recommended in the original July 24, 2009 Screening Decision Report (attached).

If you have any questions or concerns, feel free to contact NIRB's Director of Technical Services, Ryan Barry, at (867) 983-4608 or rbarry@nirb.ca.

Best regards,



Stephanie Autut
Executive Director

cc: Rick Kiriluk, DFO (rick.kiriluk@dfo-mpo.gc.ca)
Phyllis Beaulieu, NWB (licensing@nunavutwaterboard.org)

Attachment: NIRB Screening Report Decision, File No. 09UN052 (July 24, 2009)

- 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 Section 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. Fisheries and Oceans 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 forward copies of all authorizations (licenses, permits, letters of approval, etc.) obtained and required for this project to the Nunavut Impact Review Board (NIRB) prior to the commencement of the project.
3. The Proponent shall operate in accordance with all commitments stated in correspondence provided to NIRB, including:
 - a. NIRB Part 1 Summary Application Form (submitted June 22, 2009)
 - b. NIRB Part 2 Project Specific Information Requirements Form (submitted June 22, 2009)
4. The Proponent shall operate the site in accordance with all applicable Acts, Regulations and Guidelines.

Water

5. 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 shall not be used for water withdrawal.
6. The Proponent shall not use freshwater, including constructing or disturbing any stream, lakebed or the banks of any definable water course unless approved by the Nunavut Water Board.
7. The Proponent shall ensure no waste construction materials enter the water or are left on the ice.
8. The Proponent shall ensure only clean materials, free of fine particulates, are used for in-water works associated with this project.

Waste

9. The Proponent shall keep all garbage and debris properly contained and inaccessible to wildlife until disposed of. All wastes must be disposed of in an approved waste management facility.

Fuel and Chemical Storage

10. The Proponent shall submit a comprehensive Spill Contingency Plan to NIRB prior to the commencement of the project. Copies of this plan must be readily available on site, and all project personnel, contractors and sub-contractors must be made familiar with the appropriate response procedures in the event of a spill.
11. 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.
12. The Proponent shall store all fuel and chemicals in such a manner that they are inaccessible to wildlife.
13. The Proponent shall use secondary containment or a surface liner (drip pans, fold-a-tanks, etc) at all fuel-transfer and refueling stations.
14. The Proponent shall ensure that an adequate supply of spill kits, shovels, barrels, sorbents and pumps are maintained on site at all times.
15. The Proponent shall ensure that all on site personnel are properly trained in fuel and hazardous waste handling procedures and spill response procedures. All spills of fuel or other deleterious materials of any amount must be reported immediately to the 24 hour Spill Line at (867) 920-8130

Wildlife

16. 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.

Physical Environment

17. The Proponent shall implement suitable erosion and sediment suppression measures on disturbed areas before, during and after construction until vegetation or other appropriate measures are established in order to prevent sediment from entering any waterbody.
18. The Proponent shall ensure construction materials used to build structures are not taken from the shoreline or below the high water level of any waterbody. Any boulders located within the footprint of any fixed wharf crib or pile should be relocated to a similar depth adjacent to the work site.
19. The Proponent shall ensure that an erosion control cloth or equivalent is placed between the rock and the back-fill material to contain sediments and help prevent undermining.

Other

20. The Proponent should, to the extent possible, hire local people and to consult with local residents regarding their activities in the region.

Other NIRB Concerns and Recommendations

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

1. Prior to issuance of any authorization or approval for ocean disposal of dredged sediments related to this project, Environment Canada shall forward the project proposal to NIRB in accordance with Section 12.4.1 of the NLCA.
2. All authorizing agencies shall notify the NIRB of any changes in operating plans or conditions associated with this project prior to any such change.

3. Any activity related to this project proposal, and outside the original scope of the project as described in the applications submitted to the NIRB, will be considered a new project and should be submitted to the NIRB for Screening.

Regulatory Requirements

The following authorizations have been identified as requirements for this project:

- **Navigable Waters Protection Act Authorization** – Transport Canada (*applied for*)
 - For works in waters used for navigation (recreational boating, fishing vessels, etc.)
- **Class B Water License** – Nunavut Water Board (*applied for*)
 - For culvert installation on a freshwater stream
- **Fisheries Act Authorizations** – Fisheries and Oceans Canada (*applied for*)
 - For impacts to fish habitat
- **Disposal At Sea Permit** – Environment Canada (*may be required*)
 - For potential disposal-at-sea of dredged materials

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. The *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 *Navigable Waters Protection Act (NWPA)* (<http://laws.justice.gc.ca/en/N-22/index.html>).
8. The *Canada Shipping Act* (<http://laws.justice.gc.ca/en/showtdm/cs/C-10.15>) which contains regulations regarding transfer of fuel and oil from vessels to shore-based fuel farms.
9. The *Arctic Waters Pollution Prevention Act* (<http://laws.justice.gc.ca/en/showtdm/cs/A-12>) which contains provisions related to the deposition of wastes in arctic waters.

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 ____ July 24, 2009 ____ at Sanikiluaq, NU.



Lucassie Arragutainaq, Chairperson

Attachments: Appendix A: Procedural History and Past Activities
Appendix B: Species at Risk in Nunavut
Appendix C: Archaeological and Palaeontological Resources Terms and Conditions for Land Use Permit Holders.

Appendix A

Procedural History and Project Activities

Procedural History

On June 22, 2009 the Nunavut Impact Review Board (NIRB) received Fisheries and Oceans Canada's (DFO) "Pangnirtung Small Craft Harbour Development" project proposal from DFO – Small Craft Harbours Branch. NIRB assigned this project proposal file number 09UN052.

This project proposal was distributed to community organizations in Pangnirtung, as well as to relevant federal and territorial government agencies, and Inuit organizations. NIRB requested that interested parties review the proposal and provide the Board with any comments or concerns by July 16, 2009 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, (providing any recommended mitigation measures); and
- Any matter of importance to the Party related to the project proposal.

On or before July 16, 2009, NIRB received comments from the following interested parties:

- **Environment Canada (EC)**
- **Government of Nunavut – Culture Language Elders and Youth (GN-CLEY)**
- **Transport Canada (TC)**
- **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 proposed to take place from August 1, 2009 to October 31, 2011 within the hamlet of Pangnirtung, South Baffin region. The objective of the proposed construction is to upgrade the existing docking facility in Pangnirtung into a small craft harbour capable of accommodating larger vessels.

The proposed project activities include:

- Dredging of marine area;
- Disposal of dredged sediments (potentially at sea, to be determined);
- Culvert installation on a freshwater stream;
- Temporary isolation/dewatering of tidal flats areas to permit in-water construction;
- Installation of floating docks;
- Construction of marshalling areas;
- Extension of existing breakwater;
- Construction of new breakwater; and,
- Use of existing fueling infrastructure.

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 (Eastern High Arctic –	Special Concern	Pending	DFO

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

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.

¹ s. 51(1)

² P.C. 2001-1111 14 June, 2001

“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.