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April 28, 2011

Your file *Votre référence*
NIRB File No. :08MN053

Our file *Notre référence*
06-HCAA-CA7-0084

Li Wan
Technical Advisor
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Via E-mail to:
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Dear Li Wan,

Subject: Fisheries and Oceans Canada's Response to Information Requests from the Qikiqtani Inuit Association (QIA)

Fisheries and Oceans Canada (DFO) offers the following responses to the information requests directed to the department in the Qikiqtani Inuit Association's (QIA) Information Request Submission regarding the Baffinland Iron Ore Mine's Ltd's Mary River Project.

IR Number: 6.3

It is requested that clarity be given as to how concerns over impacts to marine habitats and biota outside the RSA and LSA be considered.

DFO Response:

Fisheries and Oceans Canada will consider the impacts to marine habitats and biota outside the RSA and LSA in our technical review submissions.

IR Number 10.2

It is requested that clarity be provided as to whether it is reasonable to apply the same 10% threshold to assess the broad range of different impacts found in the DEIS.

DFO Response

Fisheries and Oceans Canada will be assessing various aspects of the project in both the freshwater and marine environment. The impact thresholds will vary depending on the VEC being assessed. During the technical review period DFO will determine whether the thresholds presented by the proponent are acceptable.

IR Number 18.3, 18.4, 18.5

18.3 It is requested that Interveners confirm if the aquatic baseline is sufficient for use in detecting whether changes are occurring and, if so, at what level?

18.4 It is requested that Interveners confirm whether natural variations be confidently differentiated from project-related effects?

18.5. It is requested that Interveners confirm if the designed monitoring program is robust enough to support the assessment of cumulative impacts by future projects

DFO Response

Fisheries & Oceans Canada has reviewed the adequacy of the data collected and noted that the level of data collected varies within both the freshwater and marine environment. A thorough review of the baseline data and proposed monitoring program will occur during the technical review period.

IR Number 19

It is requested that the Proponent and Interveners confirm whether there are additional guidelines that have been used in other jurisdictions for similar purposes?

DFO Response:

Fisheries & Oceans Canada has similar concerns to the QIA regarding the use of explosives in and near fish habitat. DFO is not aware of additional guidelines being used in other jurisdictions.

IR Number 33

It is requested that each Responsible Agency provide a summary of the project components that will require their attention according to the mandates authorized unto them by their governing jurisdictions. It is requested that each Responsible Agency provide context into their role in inspection, monitoring, and enforcement activities with respect to their act/regulation.

DFO Response:

On behalf of the Government of Canada, DFO is responsible for developing and implementing policies and programs in support of Canada's scientific, ecological, social and economic interests in relation to sea, coastal and inland fisheries, and oceans in general. DFO exercises this power through, among other things, administration of the *Fisheries Act*, and some aspects of the *Species at Risk Act*. Under the *Fisheries Act*, DFO is responsible for the management, protection and conservation of fish (which include marine mammals as defined by the *Fisheries Act*) and their habitats. The Minister of Fisheries and Oceans is also one of the competent ministers under the *Species at Risk Act* (SARA).

In general, DFO's primary focus in reviewing proposed developments in and around fishery water is to ensure that the works and undertakings are conducted in such a way

that the proponents are in compliance with the applicable provisions of the *Fisheries Act*. Of note, section 35 of the *Fisheries Act* prohibits the harmful alteration, disruption or destruction (HADD) of fish habitat without an authorization from the Minister of Fisheries and Oceans. Also, section 32 prohibits a person from killing fish by a means other than by fishing unless the person is authorized to do so. These authorizations may not be issued without a prior environmental assessment conducted by the Nunavut Impact Review Board as outlined by the Nunavut Land Claim Agreement.

DFO's Policy for the Management of Fish Habitat introduced in 1986 provides general guidance on the application of the habitat protection provisions of the *Fisheries Act* and applies to all projects that have the potential to harm fish habitat. The long-term objective of DFO is to achieve a net gain in the productive capacity of fish habitat for Canadian fisheries resources. A fundamental strategy for achieving this is to prevent the further loss of productive capacity in existing habitats. Productive capacity is defined in the Habitat Policy to mean the maximum natural capacity of habitats to produce healthy fish, safe for human consumption, or to support or produce aquatic organisms upon which fish depend.

In reviewing project proposals with the aid of the Habitat Policy, DFO applies the No Net Loss guiding principle, according to which DFO will strive on a project-by-project basis to maintain the productive capacity of habitats supporting fisheries resources. Under this principle, DFO works to ensure No Net Loss by working with proponents and other agencies to avoid impacts to fish and fish habitat, or by developing and applying mitigation measures, including, as a last resort, balancing unavoidable habitat losses through habitat compensation as a condition of an authorization to commit a HADD. The Habitat Policy also places emphasis on integrated resource planning and review of project proposals on an ecosystem basis, taking into account Fish Habitat Management plans and/or Fisheries Management Plans where they exist.

The SARA is intended to prevent Canadian indigenous species, subspecies and distinct populations of wildlife from being extirpated or becoming extinct; to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity; and to manage species of special concern to prevent them from becoming endangered or threatened. The Minister of Fisheries and Oceans is the competent minister for listed aquatic species that are fish (as defined in section 2 of the *Fisheries Act*) or marine plants (as defined in section 47 of the *Fisheries Act*).

Enforcement activities are carried out by Fishery Officers across Canada who conduct regular patrols on the land, on the sea and in the air. DFO also promotes compliance with the law through education and awareness activities that encourage Canadians to protect fishery resources and habitats.

IR Number 35

It is requested that each Responsible Agency with a permit, license or other approval commit to presenting their role in the project assessment and operational setting for the proposed project. To assist with this commitment, QIA will commit to working with all Responsible Agencies to facilitate effective community interactions.

DFO Response

DFO would like to thank the QIA for their offer to facilitate effective community interactions. DFO looks forward to working with the QIA in the development of a community engagement plan for the review of this project.

If you have any questions or further clarification is required please contact Derrick Moggy at 705-522-9909 or via email at derrick.moggy@dfo-mpo.gc.ca .

Sincerely



Derrick Moggy
Habitat Team Leader
Eastern Arctic Area

cc. Eric Kan, Fisheries and Oceans Canada
Beverly Ross, Fisheries and Oceans Canada
Georgina Williston, Fisheries and Oceans Canada