



Transport
Canada

Transports
Canada



**TRANSPORT CANADA
TECHNICAL REVIEW COMMENT SUBMISSION
TO THE NUNAVUT IMPACT REVIEW BOARD
RESPECTING:**

**BAFFINLAND IRON MINES CORPORATION'S
MARY RIVER PROJECT
EARLY REVENUE PHASE PROPOSAL**

NIRB File # 08MN053

October 18, 2013



Transport
Canada

Transports
Canada



EXECUTIVE SUMMARY

Transport Canada is responsible for transportation policies and programs that promote all parts of the transportation system to work effectively and in an integrated manner, so as to provide Canadians with a sustainable transportation system that is safe, secure, efficient and environmentally responsible. The Department also has a responsibility to regulate associated transportation infrastructure, equipment and personnel in accordance with the legislation and regulations within the mandate of Transport Canada.

Transport Canada's Technical Review Comment Submission (the Submission) responds to the Nunavut Impact Review Board (NIRB) letter of August 15, 2013 requesting technical review comments on Baffinland Iron Mine Corp.'s (Baffinland or Proponent) Addendum to the Final Environmental Impact Statement (FEIS Addendum) submission for the Mary River – Early Revenue Phase (ERP) proposal. This submission summarizes Transport Canada's mandate, roles and responsibilities, including those defined by relevant conventions, legislation, regulations, guidelines and policies that are applicable to the Mary River project. Specific detail is provided with respect to marine transportation safety and security, and aviation safety. This information provides important context for the consideration of potential environmental impacts of the proposed project, as well as provides comments on Departmental mandate in accordance with the FEIS Terms and Conditions. The Department also makes several related recommendations for the NIRB to consider in its deliberations on the Project.

The Department has continued to work with the Proponent and other interested parties throughout this environmental assessment to assist in the development of mitigation measures and looks forward to continued dialogue and cooperation with all stakeholders, including the Proponent, to ensure that Transport Canada's areas of jurisdiction are being addressed.



Transport
Canada

Transports
Canada



SOMMAIRE

Transports Canada assume la responsabilité des politiques et des programmes du domaine des transports qui contribuent au fonctionnement de manière efficace et intégrée de toutes les parties du réseau de transport afin d'offrir aux Canadiens un réseau de transport durable qui est sécuritaire, sûr, efficace et respectueux de l'environnement. Le Ministère est également responsable de régir les infrastructures du réseau de transport connexes, l'équipement et le personnel conformément aux lois et aux règlements qui sont du ressort de Transports Canada.

Les commentaires découlant de l'examen technique de Transports Canada sont présentés par suite de la lettre envoyée le 15 août 2013 par la Commission du Nunavut chargée de l'examen des répercussions (CNER) pour demander des commentaires sur l'examen technique visant l'addenda de l'énoncé final des incidences environnementales soumis par la société Baffinland Iron Mine Corp. (Baffinland ou promoteur) pour la proposition concernant la phase de revenus initiaux du projet de Mary River. Les commentaires résument le mandat, les rôles et les responsabilités de Transports Canada, y compris ceux qui sont définis par les conventions, les lois, les politiques, les lignes directrices et les règlements applicables au projet de Mary River. Le résumé fournit des détails spécifiques relatifs à la sécurité et à la sûreté du transport maritime et à la sécurité aérienne. Ces renseignements donnent un contexte important lorsque l'on examine les incidences environnementales éventuelles du projet proposé, et expliquent le mandat du Ministère conformément aux modalités de la phase de revenus initiaux. Le Ministère fait aussi plusieurs recommandations pertinentes à prendre en compte par la CNER lors de ses discussions sur le projet.

Le Ministère a collaboré avec le promoteur et les autres parties intéressées dans le cadre de cette évaluation environnementale afin d'aider à élaborer des mesures d'atténuation, et il tient à poursuivre le dialogue et la coopération avec tous les intervenants, y compris le promoteur, afin de veiller à ce que ses secteurs de compétence soient pris en considération.

[illegible][illegible]



Table of Contents

[illegible]



DEFINITION OF ACRONYMS

AIRSS	Arctic Ice Regime Shipping System
AWPPA	<i>Arctic Waters Pollution Prevention Act</i>
CAR	Canadian Aviation Regulations
CLC	International Convention on Civil Liability for Oil Pollution Damage, 1992
CSA	<i>Canada Shipping Act, 2001</i>
CFTR	Cargo Fumigation and Tackle Regulations
CTA	<i>Coasting Trade Act</i>
DSIP	Delegated Statutory Inspection Program
DWT	Dead Weight Tonne
EEDI	Energy Efficiency Design Index
ERAP	Emergency Response Assistance Plan
FEIS	Final Environmental Impact Statement
FSC	Flag State Control
GHG	Green House Gas
IEEC	International Energy Efficiency Certificate
IMO	International Maritime Organization
IMSBC	International Maritime Solid Bulk Cargoes Code
IOPC	International Oil Pollution Compensation Funds
ISPS	International Ship and Port Facility Security
MARPOL	International Convention for the Prevention of Pollution from Ships
MCTS	Marine Communications and Traffic Services
MLA	<i>Marine Liability Act</i>
MTRB	Marine Technical Review Board
MTSA	<i>Marine Transportation Security Act</i>
MTSCP	Marine Transportation Security Clearance Program
MTSR	Marine Transportation Security Regulations
NASP	National Aerial Surveillance Program
NBRLUP	North Baffin Regional Land Use Plan
NIRB	Nunavut Impact Review Board
NORDREG	Northern Canada Vessel Traffic Services
NWPA	<i>Navigable Waters Protection Act</i>
NWPP	Navigable Waters Protection Program
OHF	Oil Handling Facility
OPEP	Oil Pollution Emergency Plan
SEEMP	Ship Energy Efficiency Management Plan
SOLAS	International Convention for the Safety of Life at Sea
SOPEP	Ship Oil Pollution Emergency Plan
SOPF	Ship-Source Oil Pollution Fund
TCMSS	Transport Canada Marine Safety and Security
TDGA	<i>Transportation of Dangerous Goods Act, 1992</i>
TDGR	Transportation of Dangerous Goods Regulations



Transport
Canada

Transports
Canada



1. INTRODUCTION

1.1 Role of Transport Canada in the NIRB Review

During this detailed environmental assessment review under the NIRB Part 5 review, Transport Canada has participated through written submissions to NIRB, technical hearings and pre-hearing conferences. Transport Canada has jurisdictional responsibility for authorizing strategic components developed for the ERP portion of the Project, including the tote road watercourse crossings, floating and freight docks, Oil Pollution Emergency Plan (OPEP), ship loader, vessel and marine port security compliance, aerodrome certification, and transportation of dangerous goods. All of these components are to be in accordance with all applicable legislation and regulations within the Departmental mandate (or ensuring components are in compliance). Key relevant pieces of legislation include the *Aeronautics Act*, *Canada Shipping Act, 2001* (CSA 2001), *Arctic Waters Pollution Prevention Act* (AWPPA), *Marine Liability Act* (MLA), *Navigable Waters Protection Act* (NWPA), *Marine Transportation Security Act* (MTSA), and the *Transportation of Dangerous Goods Act* (TDGA).

2. TRANSPORT CANADA'S MANDATE, ROLES AND RESPONSIBILITIES

Transport Canada is responsible for transportation policies and programs that promote an integrated transportation system that is safe, secure, efficient and environmentally responsible. The Department also has a responsibility to regulate associated transportation infrastructure, equipment and personnel in accordance with the legislation and regulations within the mandate of Transport Canada. The following briefly describes specific relevant legislation, regulations and programs administered or adhered to by the Department that influenced the content of this submission.

2.1 Marine Transportation Safety and Security

The *Constitution Act, 1867* grants the federal government exclusive legislative jurisdiction over navigation and shipping, coastal fisheries and aids to navigation such as beacons, buoys and lighthouses. In the Arctic, the *Canada Shipping Act, 2001*, the *Arctic Waters Pollution Prevention Act* and the *Marine Liability Act* combine to provide Canada's operational regulatory regime governing marine safety and environmental protection issues.

Transport Canada is the lead federal department that regulates shipping, however it recognizes that other federal agencies and departments, such as Fisheries and Oceans Canada, the Canadian Coast Guard and Environment Canada, have distinct but interrelated responsibilities



for the management of marine transportation safety and environmental protection in the Arctic. Transport Canada works with these federal agencies and department to establish the regulatory framework and mechanisms which provide a coherent and consistent approach to aspects of marine transportation safety and environmental protection. The list below names the principal statutes, relevant to the Project, which Transport Canada enforces to help ensure that marine transportation is safe, secure and environmentally responsible.

2.1.1 *Canada Shipping Act, 2001 (CSA 2001)*

The CSA 2001 is the principal statute that governs safety in marine transportation and protects the marine environment. It applies to all vessels operating in Canadian waters and Canadian vessels worldwide.

Transport Canada is the lead federal regulatory agency responsible for the National Marine Oil Spill Preparedness and Response Regime. Part 8 of the CSA 2001 and its regulations and standards govern the regime, which is built upon the polluter-pay principle that makes the polluter liable for reasonable response costs associated with an oil spill. Part 8 of the CSA 2001 and its regulations require oil handling facilities (OHFs), such as the Proponent's proposed port facilities for the Project, to have emergency and prevention plans in place. Part 9 of the CSA 2001 sets controls to prevent pollution and to manage ballast water. Under this Part, the *Vessel Pollution and Dangerous Chemicals Regulations* set standards for vessel construction and onboard management to prevent pollution from oil, hazardous chemicals, sewage, garbage, and air emissions.

2.1.2 *Ship Energy Efficiency Management Plan (SEEMP)*

New energy efficiency standards were adopted by the International Maritime Organization (IMO) in July, 2011, which comprise of the Energy Efficiency Design Index (EEDI) for new vessels built after June 30, 2013, and the Ship Energy Efficiency Operating Plan for existing vessels. Canadian regulations to implement these international standards are now in place which require all vessels to carry a SEEMP. This can be a simple statement within a vessel's Safety Management System documents, or a more detailed stand-alone document.

The amendments set requirements for new vessels built after June 30, 2013, that trade internationally, to have calculated an EEDI and meet required efficiency targets set out in the July 2011 revisions to Annex VI to MARPOL. The EEDI value for a new vessel must be calculated for its International Energy Efficiency Certificate to be issued. Compliance is demonstrated by the International Energy Efficiency Certificate (IEEC).



2.1.3 International Energy Efficiency Certificate (IEEC)

All existing vessels are required by the Amendments to carry an IEEC, which is issued based on an existing vessel having a SEEMP. A new Canadian vessel that voyages only in Canada or the Great Lakes would not be issued this certificate, as they are exempt from the EEDI requirements. A new Canadian vessel voyaging internationally is required to have an EEDI calculated and subsequently would be issued this certificate.

2.1.4 Cargo Fumigation and Tackle Regulations (CFTRs)

The CSA 2001's Cargo Fumigation and Tackle Regulations (CFTRs) cover Canadian domestic requirements and obligations under the International conventions pertaining to the safe handling, storage and transportation of cargoes in marine mode.

2.1.5 Arctic Waters Pollution Prevention Act (AWPPA)

The AWPPA provides enhanced protection for vessels operating in Canadian jurisdiction north of 60° North latitude. It provides specific construction standards for vessels engaged in Arctic shipping, a system of shipping safety control zones, a ban on discharges of oil, hazardous chemicals, and garbage, and requirements for vessels to carry insurance to cover damages from any of these discharges.

While the provisions of the CSA 2001 and its associated regulations apply in all Canadian waters, vessels in Arctic waters north of 60° North and out to the 200 nautical mile limit of Canada's Exclusive Economic Zone, are also subject to the provisions of the AWPPA. There is one notable exception to provisions in the Arctic compared to elsewhere in Canada: discharge limits. The AWPPA prohibits discharges of oil, chemicals, garbage and other wastes generated onboard vessels, except untreated sewage which may be discharged. The AWPPA is based on the polluter pays principle. The following key regulations support the AWPPA:

- The *Arctic Shipping Pollution Prevention Regulations* which set requirements for how vessels operating in Arctic waters must be built and details conditions of the no-discharge regime. These regulations also establish vessel control systems for preventing a vessel from operating in ice conditions which exceed its capability.
- The *Arctic Waters Pollution Prevention Regulations* which include a civil liability regime for vessels to ensure there is insurance to cover damages should deposits of wastes occur.



2.1.6 *Marine Liability Act (MLA)*

The MLA is the principal legislation dealing with the liability of shipowners and vessel operators in relation to passengers, cargo, pollution and property damage and is based on polluter pay principle. It establishes uniform rules on liability and compensation by balancing the interests of shipowners and other parties involved in maritime accidents. The MLA sets out a regime that requires vessels operating in Canadian jurisdiction to carry insurance to pay for damages from oil spills. In the event of a conflict between the AWPPA and the MLA, the latter applies.

2.1.7 *Coasting Trade Act (CTA)*

The coasting trade refers to Canada's domestic marine trade and includes the carriage of goods and passengers between Canadian points and other marine activities of a commercial nature. The CTA supports domestic marine interests by reserving the coasting trade of Canada to Canadian registered ships, with limited exemptions. The legislation provides an administrative process to temporarily import a foreign vessel under a coasting trade license when a suitable Canadian registered vessel is not available.

2.1.8 *Marine Transportation Security Act (MTSA)*

Transport Canada is responsible for increasing the level of protection of Canada's marine transportation system against unlawful interference, terrorism attack, and terrorist exploitation of it as a conduit to attack our allies. The Department helps industry achieve compliance with marine security legislation and regulations through awareness, certification, inspection, and enforcement, and helps ports, marine facilities and vessels implement the International Ship and Port Facility Security (ISPS) Code through the *Marine Transportation Security Regulations* (MTSRs). As a partner in the Government of Canada's interdepartmental Marine Security Operations Centres, Transport Canada works to detect, assess, prevent, and respond to direct or indirect marine security threats.

The MTSA sets out a regime to protect and preserve the efficiency of Canada's marine transportation system against unlawful interference, terrorist attacks or use as a means to attack our allies. The MTSA came into force in 1994 as the legislative framework for securing the Canadian marine transportation system and applies to vessels and marine facilities operated in Canada, Canadian ships outside Canada and marine installations and structures. It does not apply to vessels and marine facilities under the authority of the Minister of National Defense or military vessels of a foreign country to the extent that the Minister of National Defence may exempt them from the application of this Act.

The MTSA provides the Minister of Transport with the authority to secure the marine transportation system by preventing unlawful interference with it and ensuring appropriate action is taken where that interference occurs.



The MTSA gives the Minister of Transport the authority to:

- Make regulations respecting the security of the marine transportation system.
- Direct a vessel to a certain place, to proceed out of Canadian waters (12 nautical miles from the coast), or to remain outside of Canadian waters when there are reasonable grounds to believe the vessel is a threat to the security of any person or thing.
- Formulate security measures for any vessel or port or facility where the security of persons or goods is not adequately protected. A measure may apply instead of, or in addition to, any provision of a regulation.
- Exempt any person, vessel or marine facility from any regulations, security measure or rule when the exemption is in the public interest and is not likely to affect marine security.
- Designate security inspectors who enforce compliance with the regulations.
- Issue administrative monetary penalties and other enforcement tools as required.

As a signatory to the *International Convention for the Safety of Life at Sea* (SOLAS Convention 1974, as amended from time to time), Canada is party to this international treaty on safe commercial shipping. The SOLAS Convention, however, also sets out special measures for commercial shipping security, and as such, is the source of most, if not all, the rules and regulations that govern the security of the world's marine transportation system.

2.1.9 Marine Transportation Security Clearance Program (MTSCP)

The MTSCP was initiated in January 2003 with a commitment to introduce background checks of workers at marine facilities and ports. The purpose of the MTSCP is to reduce the risk of security threats by preventing unlawful interference with the marine transportation system by conducting background checks on marine workers who perform certain duties or who have access to certain restricted areas. The MTSCP enhances the security of the marine transportation system, benefiting the public, passengers, marine workers, and operators of vessels, ports and marine facilities. Transport Canada collects all the personal information for the administration of the MTSCP and is responsible for this information, which is needed to confirm and validate the identity of the applicant and to facilitate identification during the background checks.

2.2 Navigable Waters Protection Act (NWP)

The *Navigable Water Protection Act* (NWP) is a federal law designed to approve works on waterways while protecting the common law public right of navigation. The NWP sets out a regime to approve works built in, on, over, under, through or across navigable water in Canada. Transport Canada administers the NWP through the Navigable Waters Protection Program.



It is anticipated that the amendments to the NWPA will come into force in April 2014, under a new legislative name entitled the *Navigation Protection Act* (NPA). The NPA will apply primarily to works constructed or placed in, on, over, under, through, or across a schedule of clearly listed major waterways. Only those waters that are specifically listed under the NPA will be actively regulated for the placement/construction of new works. The NPA will also enable proponents of works in unlisted waterways to opt into the regime and seek approval of their proposed work, to give them additional legal certainty if the common law right of navigation is likely to be infringed.

The NWPA currently remains in force and therefore, provisions for approvals of proposed works related to navigable waters will continue to apply under the NWPA up to and until the NPA takes effect. Transport Canada will continue to fulfill its role within these existing processes, regardless of whether projects are in scheduled or non-scheduled waters.

2.3 *Transportation of Dangerous Goods Act, 1992 (TDGA)*

The transportation of dangerous goods by air, marine, rail and road is regulated under the federal *Transportation of Dangerous Goods Act, 1992*. The *Transportation of Dangerous Goods Regulations* (TDGR), adopted by all provinces and territories, establishes the safety requirements for the transportation of dangerous goods. The TDGA 1992 and its regulations are focused on preventing hazardous incidents when dangerous goods are imported, handled, offered for transport or transported.

2.4 *Aviation Safety*

Transport Canada is responsible on behalf of the Minister of Transport under the *Aeronautics Act*, for the regulation of aeronautics and the supervision of all matters connected with aeronautics. Commercial aircraft operations are regulated under Part VII and Aerodrome operations are regulated under Part III of the *Canadian Aviation Regulations* (CARs). In addition to aeronautical publications provided by Nav Canada, Transport Canada publishes guidance information for pilots in the *Aeronautical Information Manual*.

All aerodromes are subject to CAR 301 and registered aerodromes are monitored primarily for safety and currency of published information. Aviation weather provided in support of instrument approaches by service providers other than Nav Canada is inspected for compliance with the regulations of CAR 804 and requirements of exemptions authorizing their operation. Once an aerodrome applies for scheduled air service or meets any other condition for certification as an airport then it must meet the requirements of CAR 302 and its associated standards.



3. TRANSPORT CANADA ERP SPECIFIC COMMENTS

Transport Canada has structured its technical review comments to meet the submission requirements specified by NIRB on September 16, 2013. For the following comments listed in tabular format, Transport Canada has provided references or justifications for the specific issues noted, and recommendations. These comments also include the consideration of terms and conditions contained within the Mary River Project Certificate which may require reconsideration or amendment in light of the issue identified. For sections of the tables where Transport Canada does not provide a comment, not applicable (NA) has been included.

3.1 Marine Safety

Comment Number	3.1.1
Subject / Topic	Milne Inlet Oil Pollution Prevention Plan
Reference (Volume, Section, Page, Paragraph)	2013 OPEP for Milne Inlet
Summary (include Baffinland's conclusion if relevant and conclusions of commenting party)	<p>Transport Canada is the lead federal regulatory agency responsible for the National Marine Oil Spill Preparedness and Response Regime. Part 8 of the CSA 2001 and its associated regulations and standards govern the regime, which is built upon the polluter-pay principle. Part 8 and its regulations require oil handling facilities (OHFs) to have emergency plans and prevention plans. Transport Canada has reviewed the 2013 Oil Pollution Emergency Plan (OPEP) for Milne Inlet and finds it is in compliance with the regulatory requirements.</p> <p>Transport Canada also notes that the Proponent has entered into a contractual agreement with Oil Spill Response Limited of Southampton, UK (OSR) for managing large spills.</p>
Importance of issue to Impact Assessment	Compliance with Part 8 of CSA 2001



Detailed Review Comment <ul style="list-style-type: none">Gap / IssueDisagreement with FEIS / Addendum ConclusionReasons for Disagreement with FEIS / Addendum conclusion	The present ERP addendum contains the 2012 OPEP for Milne Inlet. Transport Canada has reviewed the 2013 Milne Inlet OPEP submitted by the Proponent on June 25 th , 2013, which is the most current and updated version.
Recommendation	The Proponent should include the 2013 Milne Inlet OPEP as part of the overall ERP proposal.
Existing Terms and Conditions requiring reconsideration or amendment in light of the issue identified	Not Applicable (NA)
New Terms and Conditions required in light of the issue identified	NA

Comment Number	3.1.2
Subject / Topic	Port Facilities
Reference (Volume, Section, Page, Paragraph)	Volume 3, Section 2.3.6 – page 19
Summary (include Baffinland's conclusion if relevant and conclusions of commenting party)	The Proponent has indicated that two ship loaders with the capacity of 3500t/hr will be provided for loading ore.
Importance of issue to Impact Assessment	Compliance with regulatory requirements.
Detailed Review Comment <ul style="list-style-type: none">Gap / IssueDisagreement with FEIS / Addendum Conclusion	A ship loader falls under the definition of category 5 lifting appliances under Part 3 (Tackle) of the Cargo Fumigation and Tackle Regulations (CFTR). Please note that under s.301(3) of the CFTR, as an alternative to compliance with sections 302 to 359 of the CFTR, the Minister of Transport



<ul style="list-style-type: none">Reasons for Disagreement with FEIS / Addendum conclusion	<p>may allow the lifting appliances to be operated in accordance with:</p> <ul style="list-style-type: none">any regulations of the province in which the lifting appliance is being operated;standards of the International Standards Organization; orstandards of the Deutsches Institut Fur Normung e. V. (DIN) <p>which would result in an equivalent or greater level of safety to that provided for by the CFTR requirements.</p> <p>There are requirements which are applicable to mechanical, electrical, hydraulic and pneumatic systems that are part of a lifting appliance. These requirements include safety factors, testing, thorough examination, inspection certification, maintenance and repair.</p> <p>Lifting appliances shall be tested, thoroughly examined and certified by competent persons who may not necessarily be Marine Safety inspectors.</p> <p>Loading, stowage and transportation of iron ore shall be done in accordance with the International Maritime Solid Bulk Cargoes Code (IMSBC).</p>
Recommendation	The Proponent is required to comply with the Cargo Fumigation and Tackle Regulations (CFTR) and the International Maritime Solid Bulk Cargoes Code (IMSBC).
Existing Terms and Conditions requiring reconsideration or amendment in light of the issue identified	NA
New Terms and Conditions required in light of the issue identified	NA



Comment Number	3.1.3
Subject / Topic	<i>Arctic Waters Pollution Prevention Act</i>
Reference (Volume, Section, Page, Paragraph)	Volume 8, page 18, Section 3.5.2.2
Summary (include Baffinland's conclusion if relevant and conclusions of commenting party)	A reference is made to "ship discharges of bilge water", which would be a violation of the <i>Arctic Waters Pollution Prevention Act</i> .
Importance of issue to Impact Assessment	Compliance with regulatory requirements.
Detailed Review Comment <ul style="list-style-type: none">• Gap / Issue• Disagreement with FEIS / Addendum Conclusion• Reasons for Disagreement with FEIS / Addendum conclusion	In the arctic, there is a prohibition on discharge of waste from vessels.
Recommendation	<p>Vessels transiting to/from Milne Inlet and employed within the port are to comply with the <i>Arctic Waters Pollution Prevention Act</i> (AWPPA) and the <i>Canada Shipping Act, 2001</i> (CSA 2001), and their associated regulations.</p> <p>The AWPPA prohibits discharges of oil, chemicals, garbage and other wastes generated onboard vessels.</p>
Existing Terms and Conditions requiring reconsideration or amendment in light of the issue identified	NA
New Terms and Conditions required in light of the issue identified	NA



Comment Number	3.1.4
Subject / Topic	Air Emissions
Reference (Volume, Section, Page. Paragraph)	Volume 1, page 93, Section 10.3
Summary (include Baffinland's conclusion if relevant and conclusions of commenting party)	Green House Gas (GHG) emissions from vessels have not been mentioned in the ERP proposal.
Importance of issue to Impact Assessment	Compliance with regulatory requirements.
Detailed Review Comment <ul style="list-style-type: none">• Gap / Issue• Disagreement with FEIS / Addendum Conclusion• Reasons for Disagreement with FEIS / Addendum conclusion	New energy efficiency standards for vessels are now in place.
Recommendation	As per the new energy efficiency standards, vessels are required to carry Ship Energy Efficiency Management Plans (SEEMPs) and International Energy Efficiency Certificate.
Existing Terms and Conditions requiring reconsideration or amendment in light of the issue identified	NA
New Terms and Conditions required in light of the issue identified	NA



Comment Number	3.1.5
Subject / Topic	Terms and Conditions
Reference (Volume, Section, Page. Paragraph)	NIRB Project Certificate 005 – Mary River Project Proposal; Marine Environment, Marine Water/Ice and Sediment Quality, page 41, Term and Condition # 95.
Summary (include Baffinland's conclusion if relevant and conclusions of commenting party)	NA
Importance of issue to Impact Assessment	NA
Detailed Review Comment <ul style="list-style-type: none">• Gap / Issue• Disagreement with FEIS / Addendum Conclusion• Reasons for Disagreement with FEIS / Addendum conclusion	NA
Recommendation	NA
Existing Terms and Conditions requiring reconsideration or amendment in light of the issue identified	<p>Term & Condition No. 95 states that "The Proponent shall meet or exceed all regulatory regulations and requirements as they apply to the practice of overwintering a fuel vessel at Steensby Inlet, with reporting to the NIRB and Transport Canada."</p> <p>NIRB has identified responsible Parties as the Proponent and Transport Canada. Please note there is no mention of over-wintering associated with Milne Port in the submitted documents.</p>
New Terms and Conditions required in light of the issue identified	NA



Comment Number	3.1.6
Subject / Topic	Terms and Conditions
Reference (Volume, Section, Page, Paragraph)	NIRB Project Certificate 005 – Mary River Project Proposal; Other Terms and Conditions, Accidents and Malfunctions, page 70, Term and Condition # 177.
Summary (include Baffinland's conclusion if relevant and conclusions of commenting party)	NA
Importance of issue to Impact Assessment	NA
Detailed Review Comment <ul style="list-style-type: none">• Gap / Issue• Disagreement with FEIS / Addendum Conclusion• Reasons for Disagreement with FEIS / Addendum conclusion	NA
Recommendation	Term and Condition No. 177 should be amended as there may not be any foreign programs equivalent to Transport Canada's Marine Safety Delegated Statutory Inspection Program.
Existing Terms and Conditions requiring reconsideration or amendment in light of the issue identified	<p>Term and Condition No. 177 states that the Proponent shall enroll any foreign flagged vessels commissioned for Project-related shipping within Canadian waters into the relevant foreign program equivalent to Transport Canada's Marine Safety Delegated Statutory Inspection Program.</p> <p>Transport Canada suggests that No. 177 should read as follows:</p> <p>The Proponent shall enroll any Canadian flagged vessels commissioned for the project with Transport Canada's Delegated Statutory Inspection Program (DISP). As of January 1st, 2014, DSIP enrolment will be mandatory for all new Canadian vessels greater than 24 meters.</p>
New Terms and Conditions required in light of the issue identified	NA



3.2 Marine Security

Comment Number	3.2.1
Subject / Topic	Port Securities Transportation Act
Reference (Volume, Section, Page. Paragraph)	Marine Security Legislation Shipping and Marine Wildlife Management Plan, 4.4.1 Port Security, page 36 of 70
Summary (include Baffinland's conclusion if relevant and conclusions of commenting party)	Transport Canada is not familiar with the "Port Securities Transportation Act". The <i>Marine Transportation Security Act</i> (MTSA) and the Marine Transportation Security Regulations (MTSR) provide a means for Canada to maintain regulatory oversight on marine operations. The Proponent's Reference to "Port Securities Transportation Act" is not part of Canadian Marine Transportation Security legislation.
Importance of issue to Impact Assessment	If the Proponent is not aware of the Canadian Marine Transportation Security Legislation, non-compliance may result, which would trigger enforcement action.
Detailed Review Comment <ul style="list-style-type: none"> • Gap / Issue • Disagreement with FEIS / Addendum Conclusion • Reasons for Disagreement with FEIS / Addendum conclusion 	<p>The Proponent shall make reference to complying with Canada's legislation impacting Marine Security, such as the <i>Marine Transportation Security Act</i> (MTSA) and Marine Transportation Security Regulations (MTSR) which came into force as the legislative framework for securing the Canadian marine transportation system in 1994 (Regulations were adopted in 2004). The Act applies to vessels, ports and facilities in Canada and to Canadian vessels outside of Canada, as well as to marine installations and structures. The Act focuses on the Minister of Transport's authority to secure the marine transportation system by preventing unlawful interference with it and ensuring appropriate action is taken where that interference occurs.</p> <p>The MTSR were designed to set out a risk-based approach to achieving Canada's international obligations. In general, the MTSR set out a clear accountability structure for operators of vessels, ports and marine facilities who are required to adopt marine security requirements. The Proponent is required to designate a Company Security Officer/Marine Facility Security Officer, and have qualified and trained marine facility security officers; conduct security drills and exercises, have effective communication systems,</p>



	<p>complete a declaration of security prior to interfacing with a marine vessel, and keep accurate records to validate these legislative requirements. This only applies to vessels engaged in international voyages.</p> <p>The Proponent shall also reference requirements to have a security plan which will detail how they address Transport Canada's regulatory requirements for a certified occasional use marine facility, such as:</p> <ol style="list-style-type: none">1. Security Procedures for Access Control2. Security Procedures for Restricted Areas3. Security Procedures for Handling Cargo4. Security Procedures for Monitoring5. Security Threats, Breaches of Security and Security Incidents6. Audits and Amendments, and Other topics as required. <p>Foreign Flagged vessels and Canadian Vessels conducting international voyages, captured in Part 2 of the MTSRs, are subject to inspection by Marine Security Inspectors to validate compliance to Canada's marine security legislation.</p> <p>The Marine Transportation Security Clearance Program (MTSCP) was initiated in January 2003 with a commitment to introduce background checks of workers at marine facilities and ports. The purpose of the MTSCP is to reduce the risk of security threats by preventing unlawful interference with the marine transportation system by conducting background checks on marine workers who perform certain duties or who have access to certain restricted areas. The MTSCP will enhance the security of the marine transportation system, benefiting the public, passengers, marine workers, and operators of vessels, ports and marine facilities. The MTSCP is not a new program. Rather, it is an expansion of the existing Transportation Security Clearance Program, which has been in place at Canada's airports since 1985.</p>
Recommendation	<p>Removal of the Proponent's reference to the "<i>Port Securities Transportation Act</i>" and replace with Canada's Regulatory Marine Security Legislation; the MTSA and MTSR.</p>



Transport
Canada

Transports
Canada



	The Proponent is required to comply with the MTSA and MTSR, and submit security assessment information and a marine facility security plan to the Minister for approval, and meet all other applicable requirements prior to SOLAS and non-SOLAS vessel interfaces.
Existing Terms and Conditions requiring reconsideration or amendment in light of the issue identified	NA
New Terms and Conditions required in light of the issue identified	NA

Comment Number	3.2.2
Subject / Topic	Security and Operational Incidents
Reference (Volume, Section, Page, Paragraph)	Addendum to Final Environmental Impact Statement, June 2013, Section 1.0 Introduction, page 21-pg 38 section 3.3 – 6.0
Summary (include Baffinland's conclusion if relevant and conclusions of commenting party)	The Proponent include additional threats in Emergency Response and Spill Contingency Plan, under the headings of Security and Operational Incidents to be all inclusive.
Importance of issue to Impact Assessment	NA
Detailed Review Comment <ul style="list-style-type: none"> Gap / Issue Disagreement with FEIS / Addendum Conclusion Reasons for Disagreement with FEIS / Addendum conclusion 	The Proponent has completed a detailed "Emergency Response and Spill Contingency Plan" for the Company, and has added a Security Section 3.3, as well a section on Operational Incidents which detail procedures for Bomb Threat.
Recommendation	The Proponent include a contingency plan for handling eco-terrorism and cyber threats in Section 3.3 and incorporate the MTSR requirements.



	The Proponent include in the Operational Incidents, a plan for pandemic and public health hazards.
Existing Terms and Conditions requiring reconsideration or amendment in light of the issue identified	NA
New Terms and Conditions required in light of the issue identified	NA.

Comment Number	3.2.3
Subject / Topic	Bulk Ore Sample 2014
Reference (Volume, Section, Page. Paragraph)	Marine Transportation Security Regulations, Part 3 Addendum to Final Environmental Impact Statement, June 2013 Vol. 3, Appendix 3A 2013 Work Plan, Page 11 Section 8.0
Summary (include Baffinland's conclusion if relevant and conclusions of commenting party)	The Proponent makes reference to undertaking a second "bulk ore sampling" in 2014 during open water season.
Importance of issue to Impact Assessment	The Proponent must comply with the MTSR requirements early in 2014, instead of 2015/16.
Detailed Review Comment <ul style="list-style-type: none">Gap / IssueDisagreement with FEIS / Addendum ConclusionReasons for Disagreement with FEIS / Addendum conclusion	<p>The Proponent stated in Appendix 3A that an addendum to the 2013 Work Plan would be submitted by April 2013, and to date, TC has not been informed of this addendum. Should a bulk sample be conducted for 2014, the Proponent will immediately be classified as an occasional use marine facility (more than one Part 2 vessel interface, and less than 10).</p> <p>The Proponent must comply with the MTSR requirements, Sections 315 and 358, and when a threshold of over 10 vessel interfaces are reached, the marine facility must become a certified marine facility.</p>



Recommendation	<p>The Proponent must make application to be classified as an occasional use marine facility as soon as a bulk sample work plan is known to be scheduled and if the date is prior to 2015/16.</p> <p>A security assessment must be conducted for the Milne Inlet marine facility, before any SOLAS or non-SOLAS vessel interface occurs.</p> <p>The Proponent must complete the necessary security procedures and designate a Marine Facility Security Officer along with other stipulated requirements, such as communications, security exercises and drills. This only applies to international voyages.</p>
Existing Terms and Conditions requiring reconsideration or amendment in light of the issue identified	NA
New Terms and Conditions required in light of the issue identified	NA



3.3 Aerodrome

Comment Number	3.3.1
Subject / Topic	Aviation
Reference (Volume, Section, Page. Paragraph)	NA
Summary (include Baffinland's conclusion if relevant and conclusions of commenting party)	As the site at Milne Inlet is currently being used as a private airstrip and is a non-registered aerodrome, Transport Canada has no information about its facilities or services. If the aerodrome is located within a built up area, or applies for scheduled air service, or if it is in the public interest and furthers the safe operation of the aerodrome, it will need to meet certification standards.
Importance of issue to Impact Assessment	Registered Aerodrome
Detailed Review Comment <ul style="list-style-type: none">• Gap / Issue• Disagreement with FEIS / Addendum Conclusion• Reasons for Disagreement with FEIS / Addendum conclusion	NA
Recommendation	Once the airstrip is relocated the new site should be constructed as close as possible to TP 312 standards and registered with Transport Canada. This service will allow its location and information to be published in the CFS. Only after a site is registered and/or certified can instrument approach procedures be developed to its runways, if required.
Existing Terms and Conditions requiring reconsideration or amendment in light of the issue identified	NA
New Terms and Conditions required in light of the issue identified	NA



Transport
Canada

Transports
Canada



4. SUMMARY OF TRANSPORT CANADA'S RECOMMENDATIONS

- The Proponent should include the 2013 Milne Inlet Oil Pollution Emergency Plan (OPEP) as part of the overall ERP proposal.
- The Proponent is required to comply with the Cargo Fumigation and Tackle Regulations (CFTR) and the International Maritime Solid Bulk Cargoes Code (IMSBC).
- Vessels transiting to/from Milne Inlet and employed within the port are to comply with the *Arctic Waters Pollution Prevention Act* (AWPPA) and the *Canada Shipping Act, 2001* (CSA 2001), and their associated regulations.

The AWPPA prohibits discharges of oil, chemicals, garbage and other wastes generated onboard vessels.

- As per the new energy efficiency standards, vessels are required to carry Ship Energy Efficiency Management Plans (SEEMPS) and an International Energy Efficiency Certificate (IEEC).
- Term & Condition No. 95 states that "The Proponent shall meet or exceed all regulatory regulations and requirements as they apply to the practice of overwintering a fuel vessel at Steensby Inlet, with reporting to the NIRB and Transport Canada".

NIRB has identified responsible Parties as the Proponent and Transport Canada. Please note there is no mention of over-wintering associated with Milne Port in the submitted documents.

- Term and Condition No. 177 should be amended as there may not be any foreign programs equivalent to Transport Canada's Marine Safety Delegated Statutory Inspection Program. Transport Canada suggests that No. 177 should read as follows:

The Proponent shall enroll any Canadian flagged vessels commissioned for the project with Transport Canada's Delegated Statutory Inspection Program (DISP). As of January 1st, 2014, DSIP enrolment will be mandatory for all new Canadian vessels greater than 24 meters.

- Removal of the Proponent's reference to the "*Port Securities Transportation Act*" and replace with Canada's Regulatory Marine Security Legislation; the *Marine Transportation Security Act* (MTSA) and Marine Transportation Security Regulations (MTSR).



Transport
Canada

Transports
Canada



The Proponent is required to comply with the MTSA and MTSR, and submit security assessment information and a marine facility security plan to the Minister for approval, and meet all other applicable requirements prior to International Convention for the Safety of Life at Sea (SOLAS) and non-SOLAS vessel interfaces.

- The Proponent include a contingency plan for handling eco-terrorism and cyber threats in Section 3.3 and incorporate the MTSR requirements.

The Proponent include in the Operational Incidents, a plan for pandemic and public health hazards.

- The Proponent must make application to be classified as an occasional use marine facility as soon as a bulk sample work plan is known to be scheduled and if the date is prior to 2015/16.

A security assessment must be conducted for the Milne Inlet marine facility, before any International Convention for the Safety of Life at Sea (SOLAS) or non-SOLAS vessel interface occurs.

The Proponent must complete the necessary security procedures and designate a Marine Facility Security Officer along with other stipulated requirements, such as communications, security exercises and drills. This only applies to international voyages.

- Once the airstrip at Milne Inlet is relocated, the new site should be constructed as close as possible to TP 312 standards and registered with Transport Canada. This free service will allow its location and information about the aerodrome to be published, and facilitate the development of instrument procedures should this be required.

5. TRANSPORT CANADA COMMENTS ON APPENDIX K – NORTH BAFFIN REGIONAL LAND USE PLAN (NBRLUP)

Transport Canada has the responsibility and authority to propose and enforce laws and regulations to ensure safe, secure, efficient and clean transportation. Transport Canada has reviewed the North Baffin Regional Land Use Plan (NBRLUP) Appendix K Marine and Terrestrial Transportation/Communications Corridor Guidelines and has found that aspects of the proposed transportation corridor may be considered under, but not limited to, the following, Acts and Regulations:

Arctic Waters Pollution Prevention Act



Canada Shipping Act, 2001
Coasting Trade Act
Marine Liability Act
Marine Transportation Security Act
Marine Transportation Security Regulations
Navigable Waters Protection Act
Transportation of Dangerous Goods Act
Transportation of Dangerous Goods Regulations

The Department may identify specific mitigation measures as it relates to the transportation corridor as further information and details on the transportation corridor become available during the ongoing environmental assessment review process.

6. CONCLUSION

The scope of comments and recommendations provided by Transport Canada in this submission to the NIRB reflects our mandate as defined by the relevant legislation, policies and conventions administered or adhered to by Transport Canada. In relation to this mandate, Transport Canada has provided several recommendations for the NIRB to consider in their deliberations on the ERP Proposal. If any new information is brought forward, the conclusions and recommendations provided in this submission may be considered and amended accordingly.

Transport Canada generally agrees with the conclusions in the ERP Addendum. The Proponent has identified compliance with the applicable regulations with the exception of observations that have been highlighted in our comments.

Transport Canada agrees that the ERP conclusions are supported by analysis, as the documentation provided reflects adherence to applicable regulatory requirements.

Transport Canada does not have any terms and conditions to add in regards to the submitted ERP proposal.

The Department has continued to work with the Proponent and other interested parties throughout the various stages of this environmental assessment to assist in the development of mitigation measures and looks forward to continued dialogue and cooperation with all stakeholders, including the Proponent, to ensure that Transport Canada's areas of jurisdiction are being addressed.