



WWF-Canada
318 Creekside Village
Iqaluit, Nunavut
Canada X0A 0H0

Tel: (867) 222-2620
Toll-free: 1-800-26-PANDA
(1-800-267-2632)
Fax: (416) 489-3611
ca-panda@wwfcanada.org
wwf.ca

December 12, 2018

Honourable Jonathan Wilkinson
Minister, Fisheries and Oceans Canada
200 Kent St
Station 15N100
Ottawa ON K1A 0E6

Sent via Email: min@dfo-mpo.gc.ca

**RE: DFO Role in Nunavut Impact Review Board Assessment and Decision
pertaining to Baffinland's Mary River Iron Ore Project, Nunavut**

Dear Minister Wilkinson:

The World Wildlife Fund (WWF) is an international conservation organization that was established in 1961. Our mission is to stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature by conserving the world's biodiversity, ensuring that the use of natural resources is sustainable, and promoting the reduction of pollution and wasteful consumption. WWF has supported research and field projects in the Canadian Arctic since 1972, and currently has offices in both Iqaluit and Inuvik, along with experts and support staff working from our offices across Canada on Arctic initiatives.

WWF believes that conservation objectives in Nunavut can best be met in a way that encourages the promotion of community values and well-being as an integral part of the sustainable development of projects like Baffinland Iron Mines Corporation's (Baffinland) Mary River project. WWF has participated in the Nunavut Impact Review Board's (NIRB) ongoing environmental assessment and monitoring activities since the initial Review of the Mary River project, and we most recently submitted final written submissions to the NIRB for its consideration of Baffinland's Production Increase Proposal (PIP) application.

WWF has concerns with the decision rendered by Ministers Leblanc and Bennett on behalf of yourself and other responsible Ministers in response to the NIRB's recommendation that the PIP production increase component not be allowed to proceed, namely with the Ministers overruling that decision and instructing the NIRB to proceed with approval of the PIP via an amended Project Certificate. We bring the following specific concerns to your attention.

A. Integrity of Nunavut's Environmental Assessment Process

WWF has great regard for the integrated regulatory regime established through the Nunavut Agreement and the subsequent Nunavut Project Planning and Assessment Act (the legislation), and

we believe that the thorough land use, environmental assessment, and water licensing processes outlined and defined through the Nunavut Agreement and relevant pieces of federal legislation are adequate and effective means to determining the level and intensity of development that should be permitted within Nunavut. We also understand that the recommendations of the NIRB and other Institutions of Public Government (IPGs) regarding development proposals are informed both by Nunavummiut and Inuit appointed to the various organizations, as well as through the public consultation built into the various processes as required by the Nunavut Agreement and NUPPAA legislation.

WWF recognizes provisions of the Nunavut Agreement and legislation which grant the federal Ministers' authority over the NIRB assessment process, including the ability for the Minister(s) to override NIRB project assessment recommendations. While we agree with the importance of the Minister's oversight, WWF suggests that its application in this instance has introduced an unacceptable level of risk, specifically to the marine environment, associated with production increase activities.

We are concerned with the approach taken by the project Proponent and other stakeholders, namely to have approached the Ministers following the NIRB's assessment and decision report to request they consider additional information, and ultimately, contact which is perceived to have had some influence on the Ministers in their decision to override the NIRB's recommendation.

Our concern is that this course of action introduces an option for development proponents and other stakeholders potentially unhappy with recommendations of the organization legislated to conduct environmental assessment, to access political channels and introduce information not considered within the quasi-judicial process of the NIRB, with the intention of having an unfavourable recommendation overturned. WWF questions the value of participating in the NIRB or other IPG processes within Nunavut, of dedicating the time and resources of our experts to provide advice and opinion, if the weight given to that expertise, while carefully considered by the NIRB, is then disregarded by the Ministers' office in making a contrary determination.

The Ministers' letter commended the NIRB and its thorough process in considering the PIP application and at the same time overturned its recommendation; WWF has significant concern that the Proponent's pressure on the Minister to overturn NIRB recommendations may have the unintended effect of undermining the integrity of the NIRB's process, and eroding public faith in the process, and also increasing the likelihood that similar appeals will be levied by development proponents in the future.

B. Deficient Marine Mammal Monitoring Program and DFO Engagement

It is unclear from the Ministers' decision whether it considered that there is currently no robust marine mammal monitoring program in place for the Mary River project, and that the proposed Project Stabilization Approach referenced by QIA and BIMC as being central to the Project's moving forward, and referenced by the Ministers' decision, was not submitted for consideration by parties to the assessment of the PIP, including the NIRB.

WWF has raised concerns at every opportunity regarding the fact that BIMC does not have an effective marine mammal monitoring program in place for the Mary River project, and has also noted the urgent need for such a program to be in place to inform the understanding of current project effects, to update baseline conditions, and to inform adaptive management going forward. Furthermore, despite repeated calls for action from parties to the NIRB's ongoing monitoring of the Mary River project, BIMC has yet to develop indicators and thresholds to help determine the level of impact that may be occurring from ongoing marine-based project activities - 5 years after initial project approval. In our written submission to the NIRB regarding the PIP application, WWF stated:

"None of Baffinland's marine mammal monitoring programs has produced results capable of determining the significance of project impacts, nor have they sufficiently demonstrated that no impact is occurring.

Without indicators and thresholds in place, WWF has serious concerns with Baffinland's interpretation of monitoring program results. At best, with no measure to compare them against (i.e. threshold), program results should be deemed to be inconclusive. These results cannot be relied upon to accurately inform Baffinland's approach to the PIP addendum."

Despite this being the Proponent's third amendment application to the original project approval, requirements within the existing Project Certificate Terms and Conditions, and WWF having made repeated requests for it to have done so, the indicators and thresholds required to inform adaptive management of the project have not been developed by Baffinland to date for any marine mammal VECs. Without having identified the markers that can be measured to tell us whether a behavior or response is above or below an established threshold, there is no way to know whether a project activity is having an impact, and no way to know whether adaptive management techniques are having a remedial effect.

Further, none of Baffinland's marine mammal monitoring programs has produced results capable of determining the significance of project impacts, nor have they sufficiently demonstrated that no impact is occurring.

WWF suggests that the Ministers' decision to allow the PIP and associated increased marine shipping, despite the NIRB's recommendation, and the lack of indicators, thresholds and effective monitoring program, places the onus for potential impacts of the PIP squarely with the Ministers responsible for overturning the NIRB recommendation. To that end, WWF specifically recommends that DFO dedicate senior science and marine experts to monitoring programs for the Mary River project, to review and comment on BIMC's ongoing monitoring programs and to make significant contributions to the monitoring framework being developed by NIRB. It is necessary, now that the Minister's office has overridden the environmental impact assessment recommendation for this project, to provide much-needed expertise and oversight in determining what impacts will occur from the PIP, not only in the name of science and conservation, but for Nunavummiut and Inuit harvesters who will be significantly impacted by any changes to marine mammal population abundance and distribution as a result of the PIP.

This seems especially important given that DFO's own Final Written Submission to the NIRB for the PIP cited uncertainty with regard to BIMC's conclusions of no significant impact to marine mammals

from increased shipping. Specifically, DFO noted that while BIMC's FEIS Addendum for the PIP concluded that "with the application of existing mitigation, the environmental effects are anticipated to remain not significant," and it "acknowledg[ed] the monitoring plans that are currently in place, [...] a thorough assessment would be required to determine if the proposed changes will be adequately mitigated through the current monitoring and mitigation plans. In the absence of a thorough assessment and detailed information, DFO does not have adequate information to thoroughly assess the conclusions provided by Baffinland."¹ The DFO submission also recommended BIMC conduct further assessment and modelling related to impacts of shipping on marine mammals, and that it provide updated plans for modelling to address shipping increases (ibid.). Given that the Minister's departmental marine mammal experts expressed concern with BIMC's unsupported conclusions regarding impact, and the Minister proceeded to override the NIRB's recommendation that the potential harm to marine mammals was too great to support the PIP's going ahead, WWF suggests that DFO consider playing a significantly larger role in ongoing monitoring and support of the marine mammal monitoring program undertaken as part of the Mary River development.

Of additional concern to WWF is the lack of DFO engagement at Marine Environment Working Group meetings, for instance at the meeting held in September 2018, DFO had no staff in attendance either in person, or via teleconference. Having no representation by Canada's marine mammal experts, the department with regulatory authority over the Fisheries Protection Program at such an important meeting of other experts and parties to the process is entirely unacceptable. Looking forward, as BIMC's monitoring program is requiring significant improvement, and at the same time, the NIRB's monitoring framework is undergoing development, it is critical that DFO ramp up its involvement and participation on all fronts relating to the Mary River project. There is a need for DFO to have senior level staff and consistent marine mammal expert participation and engagement at the Marine Environment Working Group and throughout all other aspects of the monitoring programs if the Mary River project has any hope of achieving practical adaptive management going forward.

Conclusion

WWF is encouraged by the federal government's recent announcement regarding the creation of an Arctic region under the department of Fisheries and Oceans and believes that future work on the Mary River file provides an excellent opportunity for DFO to demonstrate its dedication and willingness to engage and address local issues as outlined within our comments.

WWF would also note, within the NIRB's Final Hearing Report for the original Mary River file, it stated that maintaining a precautionary approach would require "the NIRB, BIMC and all parties with regulatory and monitoring responsibilities for the Project to commit to an ongoing role for the life of the Project in relation to monitoring, assessing the effectiveness of measures designed to maximize positive effects and prevent or limit adverse effects and ensuring that these measures are reviewed and adapted where necessary to reflect the actual project effects being observed."² WWF highlights this again for the Minister's information, with sincere hope that your department's level

¹ DFO-FPP Final Written Submission to NIRB Comment 3.1, page 13

² NIRB Final Hearing Report for the Mary River Project, September 2012.

of effort directed to the Mary River project will increase substantially now, especially in light of the Minister's having exerted authority in the project development and the creation of the Arctic regional office.

As the Phase 2 discussions and public hearings get underway for this project, the performance audits captured under 179 c) of the revised project certificate which provide DFO with the mandate to monitor and assess compliance with environmental management commitments, will be crucial in determining the future of any new and expanded project activity.

We look forward to continuing to work with DFO and all parties toward the sustainable development of the Mary River iron ore mine and appreciate your consideration of the foregoing comments.

Respectfully,

A handwritten signature in black ink, appearing to read "Paul Crowley". The signature is fluid and cursive, with the first name "Paul" and last name "Crowley" clearly distinguishable.

Paul Crowley
Vice President, Arctic
WWF Canada

cc: Gabriel Nirlungayuk, Regional Director General, DFO Arctic Region
Ryan Barry, Nunavut Impact Review Board
Hon. Joe Savikataaq, Premier of Nunavut
Hon. Dominic Leblanc, P.C., Q.C., M.P.
Hon. Carolyn Bennett, M.D., P.C., M.P.
Hon. Amarjeet Sohi, P.C., M.P.
Hon. Marc Garneau, P.C., M.P.
Hon. Catherine McKenna, P.C., M.P.
Hon. Hunter Tootoo, P.C., M.P.