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February 27, 2012

Your file Votre référence

Our file Notre référence
07-HCAA-CA7-00050

Mr. Li Wan
Technical Advisor
Nunavut Impact Review Board
29 Mitik P. O. Box 1360
Cambridge Bay, Nunavut
X0A0C0

Sent via email

Dear Mr. Wan:

Subject: Baffinland's January 2012 Application for NLCA 12.10.2(b) Exception and new Type B Water Licence Application to the Nunavut Water Board.

Fisheries and Oceans Canada (DFO) received the Nunavut Impact Review Board's (NIRB) letter dated January 13, 2012 regarding Baffinland's January 2012 Application for NLCA 12.10.2(b) Exceptions and the Nunavut Water Board's (NWB) new Type B Water Licence Application in support of the Mary River Project.

The proposal has been reviewed to determine whether it is likely to result in impacts to fish and fish habitat which are prohibited by the habitat protection provisions of the *Fisheries Act* or those prohibitions of the *Species at Risk Act* that apply to aquatic species. DFO has taken into consideration the questions posed by the NIRB and the NWB within the context of our mandate and regulatory responsibilities.

NLCA 12.10.2(b) Exception:

1. DFO has the following concerns with the conclusions in the 12.10.2 (b) application package regarding the environmental impacts, proposed mitigation, significance of impacts and the reasons which support this determination:
 - a. Baffinland has proposed a new water intake structure at 3km Lake, however no mitigation measures are proposed for the installation and operation of the new water intake at 3km Lake.
 - i. DFO recommends that the proponent follow the "DFO Freshwater Intake End f Pipe Guidelines, (1995)" to mitigate fish mortality which may be caused by impingement or entrainment of fish on the intake structure. These guidelines can be found at the following website <http://www.dfo-mpo.gc.ca/habitat/role/141/1415/14155/pipe/index-eng.asp>.

- ii. Further, the following measures should be incorporated into the plan to reduce impacts to fish habitat:
 - 1. Time the installation of the water intake according to the Nunavut In-Water Construction Timing Windows (<http://www.dfo-mpo.gc.ca/regions/central/habitat/os-eo/provinces-territoires-territoires/nu/os-eo21-eng.htm>)
 - 2. Isolate any in-water trench work to contain suspended sediment and prevent it from entering the surrounding waters.
 - 3. Sediment and erosion control measures should be implemented prior to work and maintained during the work phase, to prevent entry of sediment into the water or the movement of re-suspended sediment into the lake.
 - 4. Sediment and erosion controls measures should be left in place until all disturbed areas have been stabilized.
 - 5. All disturbed areas should be stabilized and re-vegetated as required upon completion of work.
 - 6. Only clean material free of fine particulate matter shall be placed in the water.
- b. As DFO noted during our technical review of the Draft Environmental Impact Statement (DEIS), there is limited baseline data on marine mammals in Foxe Bain and Hudson Strait that has resulted in a higher level of uncertainty in the impact predictions associated with the project. Although the marine shipping associated with this application is significantly reduced, DFO notes that there is no mitigation measures or monitoring proposed for the marine shipping (sealift and fuel delivery) and marine geotechnical drilling components of the proposal.
 - i. DFO recommends that the following mitigation and monitoring elements be further developed and implemented for the marine shipping associated with this application:
 - 1. The inclusion of a monitor to observe for marine mammals along the shipping route, i.e. Marine Mammal Observer;
 - 2. Maintain a constant route that avoids known sensitive areas for marine mammals; and,
 - 3. Maintain a constant speed to reduce noise levels and reduce speeds to 18.5 km/h (10 knots) in areas having concentrations of marine mammals.
- 2. DFO feels that appropriate methodology has been utilized in the 12.10.2 (b) application package to develop conclusions and does not have any additional concerns with the methodology.
- 3. DFO does not have issue with the quality and presentation of the information in the 12.10.2(b) application package.
- 4. DFO has noted that the scope of proposed pre-development works has been greatly reduced in the new application. Therefore, DFO does not have concerns regarding the

extent and permanence of the proposed infrastructure or the reversibility of the potential impacts.

5. It is DFO's opinion that the approval of the works proposed in Baffinland's January 2012 Application for NLCA 12.10.2 (b) Exceptions will not have the effect or appearance of fettering any further or final decision by the Board relating to the larger project under review.

Type B Water Licence Application:

DFO has also reviewed the NWB new Type B water licence application and has the followings comments as they relate to the protection of fish and fish habitat:

1. DFO does not have a concern with the scope of activities proposed in the water licence application or the term requested for the new licence.
2. DFO has reviewed the management plans submitted with the application and feels they are generally adequate to prevent negative impacts to fish and fish habitat. However, DFO was not able to verify the conceptual water intake drawing (Attachment 5 drawing # E337697-0000-07-042-0001) referenced in section 13 of the water licence application, nor the measures to reduce the impacts impacts to fish and fish habitat associated with the installation and operation of the water intake.
 - a. DFO requests a copy of the water intake drawing be submitted for review prior to construction.
 - b. DFO recommends that the "DFO Freshwater Intake End of Pipe Guidelines (1995)" be incorporated into the design of the intake structure to mitigate fish mortality which may be caused by impingement or entrainment of fish on the intake structure. These guidelines can be found at the following website <http://www.dfo-mpo.gc.ca/habitat/role/141/1415/14155/pipe/index-eng.asp>.
 - c. Further, the following measures should be incorporated into the plan to reduce impacts to fish habitat:
 - i. Time the installation of the water intake according to the Nunavut In-Water Construction Timing Windows (<http://www.dfo-mpo.gc.ca/regions/central/habitat/os-eo/provinces-territoires-territoires/nu/os-eo21-eng.htm>)
 - ii. Isolate any in-water trench work to contain suspended sediment and prevent it from entering the surrounding waters.
 - iii. Sediment and erosion control measures should be implemented prior to work and maintained during the work phase, to prevent entry of sediment into the water or the movement of re-suspended sediment into the lake.
 - iv. Sediment and erosion controls measures should be left in place until all disturbed areas have been stabilized.
 - v. All disturbed areas should be stabilized and re-vegetated as required upon completion of work.

- vi. Only clean material free of fine particulate matter shall be placed in the water

DFO appreciates the opportunity to participate in the review of Baffinland's NLCA 12.10.2(b) Exception Application and new Type B Water Licence Application for the Mary River Project.

Should you have any questions or require further clarification regarding DFO's comments, please contact me directly by telephone at (705) 522-9909 or by e-mail at Derrick.Moggy@dfo-mpo.gc.ca.

Yours sincerely,



Derrick Moggy
Habitat Team Leader, Eastern Arctic Area

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