

NUNAVUT PLANNING COMMISSION
DRAFT NUNAVUT LAND USE PLAN

October 8, 2021

WRITTEN SUBMISSIONS OF
MITTIMATALIK HUNTERS AND TRAPPERS ORGANIZATION

Counsel for the Intervenor Mittimatalik Hunters and Trappers Organization (MHTO)

Woodward & Co. Lawyers LLP
Barristers & Solicitors
2nd Floor, 1022 Government Street
Victoria, BC V8W 1X7

Attention: Eamon Murphy
Tel (250) 383-2356
Fax (250) 380-6560
Email: eamon@woodwardandcompany.com

TABLE OF CONTENTS

1. OVERVIEW	1
2. SUBMISSIONS.....	1
A. NUNAVUT DRAFT LAND USE PLAN	1
B. INTENTION TO PARTICIPATE.....	2
C. MITTIMATALIK HUNTERS AND TRAPPERS ORGANIZATION	3
D. CRITICAL AREAS	5
E. KEY SPECIES	6
I. NARWHAL.....	6
II. CARIBOU.....	9
III. SEAL.....	11
IV. ARCTIC CHAR	12
F. INUIT QAUJIMAJATUQANQIT.....	13
G. DUTY TO CONSULT AND ACCOMMODATE	13

1. OVERVIEW

The MHTO provides these written submissions as part of its ongoing participation in the Nunavut Planning Commission's land use planning process. In particular, MHTO is participating in these proceedings given that the final Nunavut Land Use Plan will replace the present North Baffin Regional Land Use Plan ("NBRLUP"), which covers the geographic area of reliance and use by MHTO members. Furthermore, the MHTO has been experiencing the impacts of the NPC's conformity decisions to date in respect of mining projects in the North Baffin region, and requests that the Commission incorporate MHTO's comments in preparing a final Land Use Plan. The MHTO has spent significant time and resources participating in prior land use planning processes, but the NPC has given little weight to MHTO's input, and indeed the MHTO is concerned that the land users it represents have been ignored in favour of development on North Baffin Island. The MHTO's prior submissions about the impact of development on the North Baffin Region have been accurate, and MHTO submits that it is not too late for the Commission to ensure that a final Land Use Plan protects the constitutional harvesting rights of the Inuit of the North Baffin Region.

2. SUBMISSIONS

A. NUNAVUT DRAFT LAND USE PLAN

1. The development of land use plans is the responsibility of the Nunavut Planning Commission ("NPC"). The Nunavut Land Use Plan ("NLUP") is a legal requirement under Article 11.5.1 of the *Nunavut Agreement* and Part 2 of the *Nunavut Planning and Project Assessment Act* to guide and direct short-term and long-term development in the Nunavut Settlement Area and reflect the priorities and values of residents.¹
2. The NPC recently issued a request for comments on the 2021 Draft Nunavut Land Use Plan ("DNLUP") with a submission deadline of October 8th 2021. The MHTO is responding to the NPC's request for comments as an Inuit harvesting association under the Nunavut Agreement.²
3. Since 2000, the NPC has implemented two approved regional land use plans, the North Baffin Regional Land Use Plan ("NBRLUP") and the Keewatin Regional Land Use Plan ("KRLUP"). When the NLUP is finalized and approved, it will repeal and replace both the NBRLUP and KRLUP.

¹ *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada (as amended)*, (1993), ss. 5.7.1, 5.7.3, online (pdf): <https://www.tungavik.com/documents/publications/LAND_CLAIMS_AGREEMENT_NUNAVUT.pdf> [Nunavut Agreement]; *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2.

² *Nunavut Agreement*, ss.5.7.1 to 5.7.15.

4. In 2018, NPC issued a conformity decision for Baffinland’s Mary River Mine Phase 2 Expansion (“**Phase 2**”) under the NBRLUP. In our submission, the previous conformity decision should not be taken as a given that Phase 2 conforms with the NLUP. Phase 2 remains an unapproved proposal and the NPC – through a NLUP - must ensure that it upholds its legislative mandate, the constitutional rights of Inuit, and ensure the protection of critical species habitat, critical harvesting areas, and Inuit travel routes. The NLUP must adequately designate and protects critical species habitat and harvesting areas to mitigate the impacts the Mary River Mine is already having in the region. To put it another way, the NPC must not fetter its ability to regulate proposed projects – such as Phase 2 - under the NLUP.

B. INTENTION TO PARTICIPATE

5. MHTO participated in the 2016 DNLUP hearings and has confirmed its intention, by letter dated September 28th, 2021, to participate in the 2021 DNLUP Public Hearings. The MHTO is participating in the 2021 DNLUP Public Hearings because the final NLUP will impact the ability of MHTO members to use the land and marine environment for harvesting and members’ ability to transmit their culture to future generations.
6. By way of background, MHTO has also been participating in the ongoing environmental assessment and monitoring processes related to Baffinland's Phase 2 expansion as MHTO is deeply concerned about the impacts of Phase 2 on MHTO members’ harvesting rights. Phase 2 is currently being considered for approval by the Nunavut Impact Review Board (“**NIRB**”). In MHTO’s submission, the NPC must have in mind the ongoing impacts of Baffinland’s mining and transportation activities, and be anticipating the potential Phase 2 impacts on the constitutionally protected harvesting rights of MHTO members. In drafting the 2021 DNLUP, the NPC must consider the critical importance of integrated land use planning to sustainable land use and those areas of key importance identified under the DNLUP (ie., caribou, floe edges, etc.).
7. Phase 2 is a real and ongoing example of the effect that the NPC’s planning and subsequent conformity decisions and plan amendments/exemptions have on Inuit communities, and subsequently, the NPC should guard against providing blanket exemptions for mining projects that may expand and otherwise have lasting impacts on Valued Components³ and Inuit rights.
8. Therefore, MHTO’s written submissions will include an overview of the impacts of Baffinland’s operations to date, and their proposed Phase 2 expansion, on marine and

³ As that term is used in the DNLUP.

terrestrial areas of critical importance to MHTO members and the broader impacts on key species and land use in the North Baffin Region.

9. MHTO respectfully reminds the NPC that per the *Nunavut Agreement*, “the public planning process shall provide an opportunity for the active and informed participation and support of Inuit and other residents affected by the land use plans”.⁴ Therefore, MHTO reiterates its requests for the NPC to establish hearing dates in Pond Inlet or, alternatively, Iqaluit in order to adequately engage the public on this newest iteration of the NLUP. Due to the overlap of the NLUP hearing in Rankin Inlet with the Phase 2 hearing before NIRB, MHTO is very concerned about its ability to meaningfully participate in the 2021 DNLUP. Further, the lack of funding for MHTO to partake in the DNLUP process is an ongoing issue. We request the NPC give due consideration to these issues in light of the requirements of the *Nunavut Agreement*.

C. MITTIMATALIK HUNTERS AND TRAPPERS ORGANIZATION

10. Since time immemorial, MHTO members have harvested on the lands and waters surrounding Pond Inlet. MHTO members are reliant on harvesting marine mammals, such as narwhal and seal, and terrestrial mammals, such as caribou, for their food, their economy, and their culture.
11. Pursuant to section 5.7.1 of the *Nunavut Agreement*, MHTO oversees the exercise of harvesting by its members. MHTO is responsible for, among other things, the regulation of harvesting practices and techniques among members, and the management of harvesting among members.⁵ The *Nunavut Agreement* is a treaty, and the harvesting rights enshrined within it are treaty rights protected under section 35 of the *Constitution Act, 1982*.⁶
12. The *Nunavut Agreement* recognizes Inuit wildlife harvesting rights and rights to participate in decision-making concerning wildlife harvesting.
13. The preamble to the *Nunavut Agreement* provides that the parties have negotiated the Agreement based on and reflecting the following objectives:
 - (a) to provide for certainty and clarity of rights to ownership and use of lands and resources, and of rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore; and

⁴ *Nunavut Agreement*, s.11.2.1(d).

⁵ *Nunavut Agreement*, ss. 5.7.1, 5.7.3; 2021-01-18 MHTO Intervention: Public Hearing for Mary River Phase 2 Proposal, p. 5 (Filing ID 332616)

⁶ *Clyde River (Hamlet) v. Petroleum GeoServices Inc.*, 2017 SCC 40, [2017] 1 S.C.R. 1069 at paras 2, 7, 22.

- (b) to provide Inuit with wildlife harvesting rights and rights to participate in decision-making concerning wildlife harvesting.⁷
14. Inuit have the right to harvest for economic, social and cultural needs and are granted the right to access lands, water and marine areas within the Nunavut Settlement Area for the purpose of harvesting, subject to the limitations set out in the agreement.⁸
15. Specifically, Article 5 recognizes and reflects, amongst other things, that “the legal rights of Inuit to harvest wildlife flow from their traditional and current use” and seeks to achieve the creation of a system of harvesting rights, priorities, and privileges that “reflects the traditional and current levels, patterns and character of Inuit harvesting” and “confers on Inuit rights to harvest wildlife sufficient to meet their basic needs.”⁹
16. Article 5 further creates a wildlife management system that “fully acknowledges and reflects the primary role of Inuit in wildlife harvesting”.¹⁰
17. Per the *Nunavut Agreement*, “the primary purpose of land use planning in the Nunavut Settlement Area shall be to protect and promote the existing and future well-being of those persons ordinarily resident and communities of the Nunavut Settlement Area taking into account the interests of all Canadians; special attention shall be devoted to protecting and promoting the existing and future well-being of Inuit and Inuit Owned Land”.¹¹
18. In the MHTO’s submission, the DNLUP process can and must uphold the constitutionally protected harvesting rights set out in the *Nunavut Agreement*. Indeed, MHTO is supportive of some of the limited use designations from the DNLUP process being applied to many areas of critical importance to MHTO members and the species and ecological processes that sustain our way of life. This includes the recommendations for limited use in Foxe Basin, the Narwhal Calving Areas of Scott Inlet, and Pond Inlet’s Narwhal Calving, Post-calving and Harvesting Area (“PINCHA”), which includes Navy Board Inlet, Tremblay Sound, Milne Inlet and Koluktoo Bay.¹² Eclipse Sound and Pond Inlet are also critical areas for Inuit travel and for harvesting of narwhal and seal, as well as for narwhal migration at critical periods (early summer in/early fall out).

⁷ These objectives are directly quoted from the *Nunavut Agreement*, Preamble.

⁸ *Nunavut Agreement*, s. 5.6.1-5.6.3; s. 5.7.16-5.7.18.

⁹ *Nunavut Agreement*, s. 5.1.2-5.1.3.

¹⁰ *Nunavut Agreement*, s. 5.1.3.

¹¹ *Nunavut Agreement*, s.11.2.1(b).

¹² NPC, “Nunavut Land Use Plan: 2021 Options and Recommendations” (Draft, 2021), at 284; 179, online(pdf):

<https://www.nunavut.ca/sites/default/files/2021_options_and_recommendations_document_english.pdf> [DNLUP Recommendations].

19. The Nunavut Agreement stipulates that the DNLUP planning process shall be systematic and integrated with all other planning processes and operations, including the impact review process.¹³ The information submitted herein includes relevant data from the impact review process for Phase 2 that must be integrated into the decision-making of the NPC.
20. On balance, the MHTO submits that land use planning in North Baffin has not been successful; in particular, the approval of Phase 2 by a ministerial exemption in 2018 was a failure in land use planning to address valid concerns of Inuit. As such, MHTO implores the NPC to carefully consider the information submitted herein to ensure that the North Baffin area is not further harmed by Baffinland’s proposed expansion, including the construction of a northern railway and continued ice-breaking and increased shipping activities in the North Baffin. The NPC effectively ignored the MHTO’s prior submissions about shipping and rail to date, and the impacts on harvesting rights from shipping in Eclipse Sound, Pond Inlet, and Milne Inlet have already been considerable and will worsen should Phase 2 be approved. However, in the MHTO’s submission, it is not too late for the NPC to uphold the *Nunavut Agreement* by “protecting and promoting the existing and future well-being of Inuit and Inuit Owned Land.”
21. Therefore, in the following sections, the MHTO will describe some of the impacts seen to date, provide the context for the NPC’s further planning, and help explain why it is inappropriate for the NPC to delegate the responsibility for managing and protecting Inuit rights to development proponents; this responsibility remains with the NPC.

D. CRITICAL AREAS

22. The areas directly impacted by the proposed Phase 2 expansion have been used by Inuit for generations and are highly valued. The areas contain numerous important sites that support harvesting of country foods, including marine mammals (including ringed seal and narwhal), terrestrial mammals (including caribou), fishing, and Inuit cultural continuity. These include, but are not limited to:
 - (a) Important wildlife habitat for supporting hunting and trapping activities, including important calving areas for both narwhal and caribou in the marine and terrestrial environments respectively;
 - (b) High value fish habitat;
 - (c) Important water sources, such as springs, rivers, and lakes;

¹³ *Nunavut Agreement*, s.11.2.1(f).

- (d) Wildlife resources used for the preparation of traditional clothing and supplies that are critical to the safety and success of contemporary Inuit harvesting practices;
 - (e) Critical travel routes that are relied upon to access hunting grounds and other communities; and
 - (f) Areas relied on for the continuity of Inuit culture, including harvesting, such as teaching areas, campsites and gathering places.¹⁴
23. MHTO is concerned about the impacts to their members' ability to meaningfully travel through these areas and exercise their inherent rights due to impacts from increased marine shipping, current use of ice-breakers to support ongoing operations and planned increase to ice-breaking support, and linear disturbance from the proposed railway.¹⁵

E. KEY SPECIES

I. NARWHAL

24. Narwhal are essential to the way of life of MHTO members; aside from food security, narwhal generate income for harvesters (eg., maktaaq (whale skin and fat) and tugaaq (tusk)). Despite being aware that narwhal are critical to Inuit survival, Baffinland has not undertaken the monitoring or research necessary to understand how marine shipping and icebreaking has and will impact narwhal.
25. In the assessment for the original Mary River project, the effects of marine shipping on narwhal were predicted as not significant with a low confidence rating. In their more recent assessment, Baffinland concludes again that effects will not be significant, but now with a moderate confidence rating, despite data gaps with respect to the impacts of increased marine shipping and icebreaking in the shoulder seasons on narwhal, and Inuit raising that they have already experienced significant adverse impacts on narwhal and their harvesting

¹⁴ 2019-06-14 Qikiqtani Inuit Association's Tusaqtavut for Phase 2 Application of the Mary River Project, p. 3 (NIRB Filing ID 325450); NIRB Public Hearing Transcripts for January 30, 2021, Vol. 6, pp. 1098:13 - 1098:19 // 1098:24 - 1099:5 // 1099:11 - 1099:20 (NIRB Filing ID 333450); NIRB Public Hearing Transcripts for January 30, 2021, Vol. 6, pp. 1114:21 - 1114:26 (NIRB Filing ID 333450); NIRB Public Hearing Transcripts for February 1, 2021, Vol. 7, pp. 1312:25 - 1313:2 (NIRB Filing ID 333451); NIRB Public Hearing Transcripts for February 5, 2021, Vol. 11, pp. 1909:8 - 1910:2 (NIRB Filing ID 333443); NIRB Public Hearing Transcripts for February 5, 2021, Vol. 11, pp. 1913:7 - 1913:9 (NIRB Filing ID 333443); NIRB Public Hearing Transcripts for February 5, 2021, Vol. 11, pp. 1927:1 - 1927:4 (NIRB Filing ID 333443); NIRB Public Hearing Transcripts for February 5, 2021, Vol. 11, pp. 1930:11 - 1930: 26 (NIRB Filing ID); NIRB Public Hearing Transcripts for February 5, 2021, Vol. 11, pp. 1939:1-1939:3 (NIRB Filing ID 333443); NIRB Public Hearing Transcripts for February 5, 2021, Vol. 11, pp. 1947:21-1947:24 (NIRB Filing ID 333443).

¹⁵ See previous correspondence on these matters: Jaykaolasie Kiliiktee, MHTO Director, letter to Tommy Owljoot and Goump Djalogue, Nunavut Planning Commission (September 29, 2017) Re: Requestion to Amend the Land Use Plan from Baffinland, at s.2. {00407588.1}

rights.¹⁶ Furthermore, recently released monitoring data for 2020 shows that narwhal numbers have significantly decreased in Milne Inlet and Eclipse Sound, and Baffinland's own reporting acknowledges that shipping is one of the reasons for this.¹⁷

26. Baffinland has not adequately considered the importance of the local study area to narwhals. Baffinland has also failed to adequately integrate IQ regarding the importance of the local study area for mating, calving, nursing, and foraging by narwhal into its impact assessment and significance determination.
27. Inuit have long known that the local study area provides essential habitat for narwhals, including to mate, calve, nurse, and feed.¹⁸ This has since been corroborated by Baffinland's own monitoring studies, which have not been given full consideration in their assessment.¹⁹
28. Baffinland's Marine Mammal Effects Assessment states that "[s]hipping has potential to effect [sic] narwhal distribution as their summer range overlaps with the Northern Shipping Route, and it is thought this summering area is used for calving and mating."²⁰ Baffinland further refers to it as a "hypothesis" that southern Milne Inlet is an important area for calf rearing.²¹ However, it is known by Inuit that the area is used for mating, calving, nursing, and foraging, and indeed the DNLUP shows Milne Inlet is an important calving area for narwhal²². We point this out in part because MHTO want to ensure that the NLUP provides clear data, as well enforceable mechanisms, that will bind proponents.
29. Inuit hunters have continued to observe calving events in Milne Inlet and have reported some harvested narwhal stomachs being full of prey, indicating the importance of this area for narwhal feeding and building up of the animals' energy reserves. In recent years, Inuit

¹⁶ 2018-10-03 Baffinland TSD 24 Marine Mammal Effects Assessment, p. 53 (NIRB Filing ID 320584).

¹⁷ 2021-04-07 BIM Tech Memo Re Preliminary Sum of 2020 Narwhal Monitoring Programs-IMTM, PDF p. 6-7 (NIRB Filing ID 334440).

¹⁸ 2019-06-14 Tusaqtavut Study-Pt 1, pp. 3-5 (NIRB Filing ID 325450); NIRB Public Hearing Transcripts for February 5, 2021, Vol. 11, pp. 1947:21- 1947:24 (NIRB Filing ID 333443)

¹⁹ For example, prior to publication of the Phase 2 Addendum, the following publications were available:

Thomas, T.A., S. Raborn, R.E. Elliott and V.D. Moulton. 2016. Marine mammal aerial surveys in Eclipse Sound, Milne Inlet and Pond Inlet, 1 August – 17 September 2015. LGL Draft Report No. FA0059-2. Prepared by LGL Limited, King City, ON for Baffinland Iron Mines Corporation, Oakville, ON. 85 p. + appendices; Abgrall, P., H. Smith, V. Moulton, and M. Fitzgerald. 2017. Narwhal general distribution, behaviour, and group composition in southern Milne Inlet, Nunavut, Canada. 22nd Biennial Conference on the Biology of Marine Mammals, Halifax, Nova Scotia, Canada. 22-27 October 2017; Smith, H.R., V.D. Moulton, S. Raborn, P. Abgrall, R.E. Elliott, and M. Fitzgerald. 2017. Shore-based monitoring of narwhals and vessels at Bruce Head, Milne Inlet, 2016. LGL Report No. FA0089-1. Prepared by LGL Limited, King City, Ontario for Baffinland Iron Mines Corporation, Oakville, Ontario. 87 p. + appendices.

²⁰ 2018-10-03 Baffinland TSD 24 Marine Mammal Effects Assessment, p. 33 (NIRB Filing ID 320584) (emphasis added)

²¹ 2018-10-03 Baffinland TSD 24 Marine Mammal Effects Assessment, p. 33 (NIRB Filing ID 320584)

²² See Map B.1.8.

have reported observing fewer narwhal and calving events.²³ Baffinland’s assessment does not adequately reflect IQ – it downplays the critical importance of the local study area to narwhal and the observed effects on narwhal – and is inconsistent with the DNLUP.

30. The latest monitoring data for the existing mine confirms what Inuit have been saying with respect to the decline in narwhal abundance in Eclipse Sound.²⁴ Baffinland’s recent monitoring reports demonstrate that there has been a significant decline in narwhal abundance in Eclipse Sound – 50% decline since 2019 and 75% decline since 2004.²⁵ Baffinland acknowledges that this decline either indicates a decrease in the Eclipse Sound summer stock or displacement to another area.²⁶
31. The potential effects of increased shipping levels and icebreaking on the critical habitat and life functions of narwhals have not been meaningfully assessed or addressed, and in our submission, we suggest the NPC left a major gap in land use planning by not previously considering impacts at all in relation to Phase 2, instead leaving those to a proponent-led environmental assessment. By way of example, Baffinland has failed to consider how a refusal to abandon the local study area due to the critical importance of this habitat may result in increased stress and consequent impacts to narwhal from the Project. A recent study has shown that cortisol – a stress response hormone and stress indicator in marine mammals – has significantly increased in narwhal since the introduction of the marine shipping for the original project.²⁷
32. This study evaluated cortisol levels in narwhal blubber sampled during subsistence harvests prior to project related vessel traffic (2000-2006), during project related vessel traffic (2013-2019), and during a high-stress entrapment event that occurred in 2015.²⁸
33. The baseline was used to compare against pre-project levels and detect change.²⁹ The study notes that “[v]essel traffic is considered a major stressor for marine mammals and could lead to reduced feeding, communication, and navigation ability that can ultimately

²³ 2019-06-14 Tusaqtavut Study-Pt 4, pp. 49-50 (NIRB Filing ID 32543); NIRB Public Hearing Transcripts for February 6, 2021, Vol. 12, pp. 2269:10 - 2269:15 (NIRB Filing ID 333444); NIRB Public Hearing Transcripts for February 6, 2021, Vol. 12, pp. 2340:15 - 2340:20 (NIRB Filing ID 333444).

²⁴ 2021-04-07 BIM Tech Memo Re Preliminary Sum of 2020 Narwhal Monitoring Programs-IMTM, PDF p. 37 (NIRB Filing ID 334440)

²⁵ 2021-04-07 BIM Tech Memo Re Preliminary Sum of 2020 Narwhal Monitoring Programs-IMTM, PDF p. 1 (NIRB Filing ID 334440); 2021-05-17 QIA Ltr Re Preliminary Narwhal Monitoring, p. 1 (Filing ID 335352)

²⁶ 2021-04-07 BIM Tech Memo Re Preliminary Sum of 2020 Narwhal Monitoring Programs-IMTM, PDF p. 37 (NIRB Filing ID 334440)

²⁷ 2021-02-04 Watts et al, Cortisol levels in narwhal (*Monodon monoceros*) blubber from 2000-2019, PDF p. 2 (NIRB Filing ID 332989)

²⁸ 2021-02-04 Watts et al, Cortisol levels in narwhal (*Monodon monoceros*) blubber from 2000-2019, PDF pp. 2, 5 (NIRB Filing ID 332989)

²⁹ 2021-02-04 Watts et al, Cortisol levels in narwhal (*Monodon monoceros*) blubber from 2000-2019, PDF p. 4-5 (NIRB Filing ID 332989)

lead to reduced fitness”.³⁰ Blubber from “narwhals sampled during the vessel traffic period in the Eclipse Sound region was over 100% higher in cortisol than samples from the pre-project related vessel traffic period”.³¹

34. All of this known scientific data and IQ provide the NPC with enough information to ensure that increased shipping and, in particular, the use of ice breaking ships in the North Baffin region cannot be authorized. To put this another way, proponents should not be proceeding with additional project work until the NPC has completed proper land use planning based on fulsome evidence, which includes evidence of decreased narwhal availability and impacts to harvesting and harvesting rights.

II. CARIBOU

35. Caribou are critically important to the Inuit way of life.³² Caribou are core to the terrestrial hunting and subsistence for Pond Inlet community members.³³ They continue to be a source of food security.³⁴
36. Caribou hide is also relied upon for the making of clothing, bedding and sleds. The ability to craft clothing from caribou depends on there being enough animals with skins of sufficient quality to be harvested.³⁵
37. Caribou are recognized to be sensitive and vulnerable to the impacts of industrial disturbance. Caribou in the territory and specifically those on Baffin Island are at a particularly vulnerable stage of their lifecycle.³⁶
38. Caribou abundance in the Arctic has been cyclical. As of 2019, Baffin Island caribou were confirmed to be in the “red phase” where caribou abundance is at a minimum (<10% of the peak), and it is assumed that they are still in that phase. In this phase, extirpation is possible for some or all of Baffin Island.³⁷

³⁰ 2021-02-04 Watts et al, Cortisol levels in narwhal (*Monodon monoceros*) blubber from 2000-2019, PDF p. 10 (NIRB Filing ID 332989)

³¹ 2021-02-04 Watts et al, Cortisol levels in narwhal (*Monodon monoceros*) blubber from 2000-2019, PDF p. 11 (NIRB Filing ID 332989)

³² 2019-06-14 Tusaqtavut Study-Pt 4, pp. 61-62 (NIRB Filing ID 32543)

³³ 2019-06-14 Tusaqtavut Study-Pt 4, p. 62 (NIRB Filing ID 32543)

³⁴ 2019-06-14 Tusaqtavut Study-Pt 4, pp. 70-71 (NIRB Filing ID 32543)

³⁵ 2019-06-14 Tusaqtavut Study-Pt 4, pp. 69-70 (NIRB Filing ID 32543)

³⁶ NIRB Public Hearing Transcripts for February 5, 2021, Vol. 11, pp. 1935:19 - 1935:22 (NIRB Filing ID 333443); NIRB Public Hearing Transcripts for February 5, 2021, Vol. 11, pp. 1936:3 – 1936:7 (NIRB Filing ID 333443)

³⁷ 2021-01-18 Management and Solutions Environmental Science, Review of Caribou Impacts for the Baffinland Phase 2 Development Proposal Hearing, p. 1 (NIRB Filing ID 332620)

39. North Baffin Island, including the Phase 2 area, has long been a place where caribou are harvested – hunting caribou in this area is central part of life-long learning that has been passed down through the generations from parents and grandparents. Although caribou numbers have dwindled, the region continues to be an incredibly important area for caribou, and Inuit continue to hold caribou and their harvest with highest regard. The stewardship of caribou and continuity of these practices is of the utmost importance to the community.³⁸
40. MHTO has viewed the maps in the DNLUP at B1.3, B1.4 and B1.5 and submits that those maps do not include all critical information about caribou.
41. For example, the hilly and mountainous landscapes around Mary River and the mine site are known caribou calving grounds.³⁹ The congregation of caribou in the Mary River area is accompanied by linked caribou trails and migration routes throughout the interior of Baffin Island. Community members have returned to these sites to hunt caribou for generations.⁴⁰
42. It is recognized that caribou cross through the valley where the tote road used by Baffinland is located. Caribou have relied on the area for critical life stages (calving, post calving, migration, and breeding).⁴¹
43. Ever since mining started the caribou have steadily declined and are sometimes completely absent. Kanajjuq no longer forms ice and is frequented by caribou, which calve there. There are always caribou in this area in May, and during the early spring caribou always go there. It is their traditional area and after they give birth they begin to leave there. MHTO requests that area be protected as it is a traditional caribou hunting area and must be reflected in the NLUP maps.
44. Phase 2, and in particular the proposed Northern Railway, will have a similar detrimental impact on caribou as has the tote road. Linear disturbances like this impact the routes of the caribou. Even with the addition of crossings, there is no evidence that caribou would not be deterred by the noise and large barriers alone. MHTO members know, through IQ, the noise and scent of the trains will significantly disrupt the caribou who are sensitive to such disturbances. A Northern Railway would ensure that caribou will not return to North Baffin Island.

³⁸ 2019-06-14 Tusaqtavut Study-Pt 4, pp. 62, 67-69 (NIRB Filing ID 32543)

³⁹ 2019-06-14 Tusaqtavut Study-Pt 4, p. 62 (NIRB Filing ID 32543)

⁴⁰ 2019-06-14 Tusaqtavut Study-Pt 4, pp. 64-66 (NIRB Filing ID 32543)

⁴¹ 2019-06-14 Tusaqtavut Study-Pt 4, pp. 64-69 (NIRB Filing ID 32543); 2018-10-03 TSD 10 Terrestrial Wildlife Baseline and Impact Assessment, PDF pp. 8-13, 41 (NIRB Filing ID 320562)

III. SEAL

45. MHTO members have relied on the harvest of seal for generations. Seal are depended on to survive and are a key part of the diet of Inuit and therefore a crucial part of Inuit food security.⁴²
46. Sealskin is further a valued animal hide for making traditional clothing in the community, particularly for the warmth and durability while hunting in cold temperatures.⁴³
47. MHTO is concerned about the impacts of marine shipping and use of ice-breaking vessels on seal, including the potential for impacts due to disruption of sea ice in the shoulder seasons, and is deeply concerned that the NPC has not adequately considered the impacts of marine shipping and the use of ice-breaking vessels around North Baffin Island to date.
48. In particular, the significance of the interruption of critical life cycle periods of seal by marine shipping and the use of ice-breaking vessels, such as moulting and breeding. The potential for interruption of the lifecycle of seal could have long-term impacts on the viability of the population. Further, female seals are pregnant during the fall and use the thin-ice to select their winter breeding habitat. Interruption of this critical time by the use of ice-breaking vessels could have population-level impacts.
49. The transportation corridor through Eclipse Sound, Pond Inlet and Milne Inlet for project shipping, which in recent years has seen use of ice-breakers by Baffinland, is highly valued seal habitat and harvesting areas for seals.⁴⁴ DFO mapping submitted to NIRB corroborates member knowledge of seal habitat along the shipping and ice-breaking route.⁴⁵
50. Inuit “before-after” observations show that the ringed seal population has decreased in Eclipse Sound and especially in Milne Inlet since the increase in shipping from Baffinland's operations. Inuit are reporting that they have to travel further to hunt seals and that there are an increased number of seals that are being caught that are abnormal or sick, and that they do not want to eat for fear of contamination.⁴⁶

⁴² 2021-01-18 MHTO Supplemental Final Written Submissions to NIRB for Baffinland’s Phase 2 Proposal, p. i (NIRB Filing ID 332619); 2019-06-14 Tusaqtavut Study-Pt 4, pp. 38-48, 49-50 (NIRB Filing ID 32543)

⁴³ 2019-06-14 Tusaqtavut Study-Pt 4, p. 47 (NIRB Filing ID 32543)

⁴⁴ 2019-06-14 Tusaqtavut Study-Pt 3, pp. 32-33, 38, 40 (NIRB Filing ID 325452)

⁴⁵ 2021-01-18 Department of Fisheries and Oceans Canada, Pinniped (seals and walrus) research in Pond Inlet, Eclipse Sounds, Tremblay Sound and Milne Inlet (NIRB Filing ID 332596); 2021-02-05 MHTO: Compendium of Testimonies on the Impacts of Baffinland Iron Mine’s Mary River project on Ecosystems, Wildlife, and Residents of Pond Inlet (Part 3.3: Marine Impacts - Shipping Disturbance on Seal), (NIRB Filing ID 333029); NIRB Public Hearing Transcripts for February 5, 2021, Vol. 11, pp. 1913:1 – 1913:19 (NIRB Filing ID 333443); NIRB Public Hearing Transcripts for February 5, 2021, Vol. 11, pp. 1956:18 – 1956:21 (NIRB Filing ID 333443)

⁴⁶ 2021-02-05 MHTO: Compendium of Testimonies on the Impacts of Baffinland Iron Mine’s Mary River project on Ecosystems, Wildlife, and Residents of Pond Inlet (Part 3.3: Marine Impacts - Shipping Disturbance on Seal), (NIRB Filing ID 333029); 2021-02-05 MHTO: Compendium of Testimonies on the Impacts of Baffinland Iron Mine’s Mary River project on Ecosystems, Wildlife, and

51. Inuit have been hunting seal in the area for generations and continue to do so. Yet IQ reflecting that seals have decreased in Eclipse Sound and especially in Milne Inlet since the increase in shipping has been ignored by Baffinland in its effects assessment.⁴⁷ This is why the NPC must provide a land use plan that protects the ice, seal, and seal habitat, and relies on IQ. Resource developers cannot be relied upon to do so.
52. Baffinland has asserted – without relevant or adequate evidence - that seal will become habituated to shipping without considering the volume of shipping and use of ice-breakers that is being contemplated for the Project.⁴⁸
53. Given that seal and seal harvesting rights are experiencing significant adverse effects at the current level of shipping and ice-breaking support, and that these effects have not been recognized or mitigated by current project studies, the NPC must be mindful of the impacts on seals of potential expanded shipping and planned ice-breaking.

IV. ARCTIC CHAR

54. Fishing is an essential component of the Inuit way of life.⁴⁹ Fishing occurs in the Pond Inlet region, particularly for char in the areas of Lake Qurluqtuuq and Tuugat Lake (which are accessed from Qinnngua), and in the small lakes and rivers of the Phillips Creek and Mary River watersheds.⁵⁰
55. Community members return to the same fishing locations year after year. As a result, many fishing sites are intimately connected to camps and dwelling locations, and important sites for cultural transmission.⁵¹
56. Arctic Char are a main source of country food for MHTO members and a food that marine mammals rely on.⁵²

Residents of Pond Inlet (Part 3.4:Marine Impacts – Shipping Impact on the Fall and Spring Habitat of the Seal), Moses Koonark at 0:55 -1:40 (NIRB Filing ID 333030); 2019-06-14 Tusaqtavut Study-Pt 4, pp. 51-53 (NIRB Filing ID 32543); NIRB Public Hearing Transcripts for February 5, 2021, Vol. 11, pp. 1913:1 – 1913:7 (NIRB Filing ID 333443); NIRB Public Hearing Transcripts for February 5, 2021, Vol. 11, pp. 1906:4-1906:5 (NIRB Filing ID 333443).

⁴⁷ 2021-03-22 Baffinland Post-Hearing Question Responses Phase 2 Proposal – Mary River Project: Response to QIA -10, pp. 21-22 (NIRB Filing ID 334147); 2021-02-05 MHTO: Compendium of Testimonies on the Impacts of Baffinland Iron Mine’s Mary River project on Ecosystems, Wildlife, and Residents of Pond Inlet (Part 1:Introduction), Jaykolasi Killiktee at 2:06-2:15 (NIRB Filing ID 333024)

⁴⁸ 2021-03-22 Baffinland Post-Hearing Question Responses Phase 2 Proposal – Mary River Project: Response to QIA-8, p. 21, referring to Harris et al. 2001 and Bonner 1982 in Baffinland 2012. (NIRB Filing ID 334147)

⁴⁹ 2019-06-14 Tusaqtavut Study-Pt 5, p. 90 (NIRB Filing ID 325454)

⁵⁰ 2019-06-14 Tusaqtavut Study-Pt 5, pp. 90-91 (NIRB Filing ID 325454)

⁵¹ 2019-06-14 Tusaqtavut Study-Pt 5, pp. 91 (NIRB Filing ID 325454)

⁵²2021-02-05 MHTO: Compendium of Testimonies on the Impacts of Baffinland Iron Mine’s Mary River project on Ecosystems, Wildlife, and Residents of Pond Inlet (Part 3.1: Marine Impacts – Dust Pollution), Elijah Panipakoocho at 3:14-3:52 (NIRB Filing ID 333027); NIRB Public Hearing Transcripts for February 5, 2021, Vol. 11, pp. 1909:8-1909:20 (NIRB Filing ID 333443); NIRB Public Hearing Transcripts for February 5, 2021, Vol. 11, pp. 1944:6 – 1944:8 (NIRB Filing ID 333443)

57. MHTO has seen current project effects on fishing locations and is gravely concerned with the impact of a Northern Railway on fishing, both in terms of the locations as well as the species fished.

F. INUIT QAUJIMAJATUQANQIT

58. The NPC and the land use planning process is guided by its commitment to ensure respectful, and inclusive consultation and decision-making that integrates and applies the principles of Inuit Qaujimaqatugangit (IQ) with western science.⁵³

59. As we have set out herein, IQ has not been accurately captured in existing impact assessments, nor in monitoring of harvesting rights. Inuit hunter observations and knowledge are not merely ‘anecdotal’ and should not be dismissed as such. Inuit have been using the territory for generations. IQ provides evidence of long-term trends in narwhal abundance and distribution, which is not otherwise available for the regional study area.

60. MHTO members fear that if they lose more of the sea ice, IQ tells us that the polar bears and other critical species would migrate elsewhere. MHTO IQ is not being meaningfully integrated into the present development. It is vital the NLUP relies heavily on IQ and informs the NPC’s planning with respect to marine shipping, use of ice-breakers, and development railway transportation corridors.

G. DUTY TO CONSULT AND ACCOMMODATE

61. MHTO members are owed a duty of consultation and accommodation with respect to the impacts of Crown land use planning on their harvesting rights. The Crown (which includes the NPC) is required to meaningfully consult with MHTO members about known and proposed impacts on harvesting rights that remain unassessed and unaddressed. The Crown must take steps to accommodate those impacts in the land use planning process. With respect to the impacts of the Phase 2 Expansion, principally from marine shipping, ice breaking, and the northern railway, the Crown has failed to do so.

62. MHTO implores the NPC to consider the impact of Phase 2 on MHTO’s harvesting rights and the ecological health of the Northern Baffin Region. As evidenced, the impacts of the Mary River Mine are already being experienced by MHTO members. The previous conformity decision with respect to Phase 2 must not fetter the NPC’s important work in respect of land use planning in the North Baffin Island. Phase 2 remains an unapproved proposal and the NPC must consider the evidence before it and adequately designate and protect critical species habitat, critical harvesting areas, and travel routes.

⁵³DNLUP Recommendations at 9.

63. The DNLUP has incorporated some critical feedback. However, it fails to meet its goals of: strengthening partnership and institutions, protecting and sustaining the environment, encouraging conservation planning, building healthy communities, and encouraging sustainable economic development.⁵⁴
64. MHTO respectfully requests that the NPC further engage with MHTO regarding the barriers to full and meaningful participation in the DNLUP process.
65. Finally, MHTO respectfully requests that the NPC elevate IQ to its proper place in Nunavut land use planning and meaningfully integrate the evidence submitted herein to the finalized NLUP, including proper regulation of increased marine shipping and use of ice-breakers, and railway, all of which will have a devastating impact on MHTO members' existing and future well-being and the integrity of the Northern Baffin Region.

All of which is respectfully submitted.

Dated: October 8, 2021



Eamon Murphy
Woodward and Company Lawyers LLP
Suite 200, 1022 Government Street
Victoria, British Columbia V8W 1X7

⁵⁴ DNLUP Recommendations at 9-10.