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February 10, 2023

Sharon Ehaloak
Executive Director
Nunavut Planning Commission
P.O. Box 1797
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Joint Submission on the 2021 Draft Nunavut Land Use Plan

Dear Sharon Ehaloak,

As the parties with the responsibility to jointly accept or reject a final draft land use plan under the *Nunavut Planning and Project Assessment Act* (NuPPAA), the Government of Nunavut (GN), Government of Canada (GoC), and Nunavut Tunngavik Incorporated (NTI) have prepared this submission to address issues of common concern with the Draft Nunavut Land Use Plan (DNLUP or the Plan). This joint submission contains comments and recommendations that resulted from discussion between the parties following participation in the Regional Public Hearings that concluded November 19, 2022.

This submission focuses on six key issues:

- 1. Designated Inuit Organization Goals**
- 2. Inuit Owned Lands**
- 3. Existing Inuit Impact and Benefit Agreements**
- 4. Exploratory Discussions on Arrangements related to Proposed Limited Use Areas**
- 5. Existing Rights and Interests**
- 6. Marine Shipping**

In addition to this joint submission, each party is also providing its own submission. These individual submissions address some of the same issues as the joint submission in further detail and also bring up concerns unique to each party.

Please do not hesitate to contact any of the persons below with questions or concerns regarding this submission.

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Introduction

The GoC, GN, and NTI have reviewed the 2021 Draft Plan with consideration for areas of shared concern and with the goal of proposing solutions to the Nunavut Planning Commission (NPC). This joint submission presents those concerns and proposed solutions with the aim of contributing to the production of a final version of the Nunavut Land Use Plan that all three parties will be in a better position to support. Additionally, NTI has collaborated with the Regional Inuit Associations (RIAs) on the development of this submission and has the support of the RIAs in making this submission.

This submission addresses six topics related to the 2021 Draft Nunavut Land Use Plan:

1. Designated Inuit Organization Goals;
2. Inuit Owned Lands;
3. Existing Inuit Impact and Benefit Agreements (IIBAs);
4. Exploratory Discussions on Arrangements related to Proposed Limited Use Areas;
5. Existing Rights and Interests; and
6. Marine Shipping

In addition to the revisions recommended in this submission, background information and the overall position statements of the three parties are provided for each issue.

Issue 1: Designated Inuit Organization Goals

Background

NTI and the RIAs have raised concerns with the consultation process that led to the 2021 DNLUP and stated that it does not adequately reflect their substantive views. In particular, there was a lack of consultation on how Inuit Owned Lands (IOLs) should be designated in the Plan.

Position

NTI and RIAs as Designated Inuit Organizations (DIOs) are the primary democratic voice of Inuit. Their views are essential with respect to consultations in the context of the *Nunavut Agreement* and section 35 of the *Constitution Act* rights, which should be reasonably reflected in the revised Plan to ensure joint approval by the parties. The GN and GoC are actively listening to Inuit and Indigenous concerns that have arisen out of the consultation process.

The parties recognize that the Crown relies on the NPC's process, and associated proceedings, as laid out in the *Nunavut Agreement* and the NuPPAA, to assist with discharging procedural aspects of the Crown's duty to consult. Due consideration and great weight should be given to the written submissions and oral testimonies of Inuit, First Nations, and Métis on the DNLUP.

Moreover, the NPC has not sufficiently reflected the goals of NTI and the RIAs to retain decision-making and management rights over IOLs in the 2021 DNLUP which is a significant impediment to successfully realizing a final NLUP. To remedy this substantial issue, the Commission must consider and use the submissions of NTI and the RIAs to revise the final land use designations before the Commission submits the final NLUP for approval.

Recommendations:

1. Due consideration and great weight should be given to the written recommendations and oral testimonies of NTI and the RIAs to reflect the goals and objectives of the DIOs on IOLs as title holders.

Issue 2: Inuit Owned Lands

Background

Inuit have the right to manage IOLs in accordance with the *Nunavut Agreement* and these rights are vested in NTI and the RIAs pursuant to section 19.3.1 of the *Nunavut Agreement*. NTI and the RIAs object with the impact of the DNLUP 2021, and land use designations, on their rights as DIOs to manage IOLs. The lack of consideration to impacts on IOLs in the DNLUP 2021 is a significant concern.

Position

The parties agree that NTI and the RIAs, as DIOs with the management authority over surface and subsurface IOLs, should maintain decision making authority over IOLs. The parties agree that the final Plan should accommodate the decision-making rights of NTI and the RIAs over IOLs, and regional approaches on how IOLs should be reflected within the final NLUP. The parties will submit further details in their individual submissions.

Recommendations on the Approach to IOLs in the final NLUP:

1. Considering Inuit goals and objectives for their lands, regional preferences, and the need for access to IOLs, land use designations should take into account RIA and NTI views prior to plan approval.
2. For Conditional Use and Limited Use designations, NTI and the RIAs, as private landowners, are best placed to specify the appropriate prohibitions, terms, conditions and processes for IOLs that are consistent with the *Nunavut Agreement* and the *Nunavut Planning and Project Assessment Act*.
3. Boundaries of a Conditional Use area or a Limited Use area must be reviewed and adjusted based on the wildlife values for which the designation was created during plan reviews (7-10 years). This review should consider the Inuit Qaujimagatuqangit on wildlife and environmental stewardship and western science collected during the implementation period for the NLUP. Mechanisms, such as Plan requirements, shall be included in the NLUP to require the collection of Inuit Qaujimagatuqangit and western science for the review and adjustment of designations as appropriate.

Issue 3: Existing Inuit Impact and Benefit Agreements

Background

Existing IIBAs are not currently adequately addressed in the 2021 DNLUP, and in some instances the DNLUP may prevent the parties from fulfilling their IIBA obligations.

Position

Background material and recommendations for revisions to the DNLUP 2021 to allow the parties to fulfill their IIBA obligations are found in Annex A.

Summary of Recommendations:

1. National Parks awaiting establishment (3.1.1-1), be designated as a Valued Ecosystem Component with these areas identified on Map B.
2. Migratory Bird Sanctuaries (3.2.2-1) and National Wildlife Areas (3.2.3-1) be designated under a new land use designation, for example, 'Established Conservation Management Area' with no plan requirements.
3. National Historic Sites (3.2.5-1) and Territorial Historic Sites (3.2.6-1) be designated as Valued Socio-economic Components with these areas identified on Map B.
4. Soper River Watershed (3.2.7-1) and Small Areas of Significance Thelon and Kazan Rivers (3.2.7-2) be designated as Valued Ecosystem Components with these areas identified on Map B.
5. The NLUP should include a streamlined, administrative amendment process for updating the Plan as might be required when a new IIBA is initiated/negotiated.

Issue 4: Exploratory Discussions on Arrangements related to Proposed Limited Use Areas

Background

NTI and the RIAs have expressed to the NPC that Limited Use areas in the final NLUP that achieve conservation goals require the negotiation of IIBAs. The GoC maintains that land use designations under Article 11 of the *Nunavut Agreement* do not trigger Article 9 of the *Nunavut Agreement*, however it acknowledges that many Limited Use areas may meet the domestic and international criteria and count towards the 30% conservation target and is committed to exploring funding arrangements with the GN, NTI, and the RIAs with respect to certain areas effectively conserved through the zoning in the final NLUP that addresses the concerns of all the Parties.

Position

The Parties recognize that certain areas designated in the final NLUP as Limited Use areas may be counted towards national and international conservation targets and that discussions should continue regarding arrangements that address the concerns of all the Parties.

Recommendations:

1. The Parties will continue to work together to address concerns and opportunities related to Limited Use areas in the final NLUP and will keep the NPC informed of the progress being made.

Issue 5: Existing Rights and Interests

Background

The GoC and DIOs issue rights related to mineral exploration and development throughout Nunavut under the *Nunavut Mining Regulations* and the *Nunavut Agreement*. Current projects stemming from these rights have certain protections under NuPPAA.

The Parties share concerns that the current approach to existing rights and interests under section 6.1.8 of the DNLUP in its current form raises legal questions as to how it aligns with NuPPAA and will not ensure the reasonable development of projects with rights and interests in Nunavut.

Position

The DNLUP should be revised to better align with NuPPAA, provide a more transparent approach to existing rights and interests, and ensure that existing rights and interests have been sufficiently addressed within the final NLUP.

NPC must consider the full range of existing rights and interests. Individual submissions from the parties will provide further details on proposed approaches.

Recommendations:

1. The approach to existing rights and interests in the final NLUP must be revised to be consistent with the requirements of NuPPAA and provide a more transparent planning approach to existing rights and interests and allow existing rights and interests to be reasonably developed as lawfully permitted.

Issue 6: Marine Shipping

Background

Throughout the planning process, written and oral testimonies have identified the impacts of marine shipping in the Nunavut Settlement Area, particularly through ice, as an issue of great importance. The 2021 DNLUP reflects this by including multiple Plan requirements that address marine shipping.

The GN, GoC, NTI and RIAs agree that amendments to the DNLUP are required but are not yet aligned in their views on how these Plan requirements should be amended.

Position

The GoC, GN, NTI and RIAs recognize the importance of marine waters, wildlife and sea ice in the Nunavut Settlement Area, and the importance of the marine environment to Inuit travel, harvesting areas, and practices.

The Parties have jointly developed guiding principles that set a foundation for the submissions from each of the Parties. The guiding principles are attached as Annex B for the consideration of the NPC.

The Parties are committed to ongoing engagement on marine shipping issues before and after the receipt of the final NLUP.

Recommendations:

1. The Parties agree that vital marine services should be clearly and consistently exempt from Plan requirements including community resupply, emergency response, law enforcement, regulatory compliance monitoring, and the placement and maintenance of navigational aids.

Annex A: Existing Inuit Impact and Benefit Agreements and the Nunavut Land Use Plan

The Government of Canada, the Government of Nunavut, Nunavut Tunngavik Incorporated, and the Regional Inuit Associations agree that the Nunavut Land Use Plan (NLUP) land use designations should not prevent the parties to existing Inuit Impact and Benefit Agreements (IIBAs) negotiated under Articles 8 and 9 of the Nunavut Agreement from fully implementing them. Existing IIBAs provide important benefits to Inuit, address potential detrimental impacts, and set out how parties jointly manage parks and conservation areas. IIBAs reflect the understandings and obligations of the parties related to parks and conservation areas in Nunavut and have been carefully negotiated.

To assist with the full implementation of existing IIBAs, the final NLUP must not conflict with the terms of existing IIBAs, including:

- Umbrella Inuit Impact and Benefit Agreement for Territorial Parks in the Nunavut Settlement Area,
- 2016 to 2023 Inuit Impact and Benefit Agreement for National Wildlife Areas and Migratory Bird Sanctuaries in the Nunavut Settlement Area (NWA/MBS IIBA),
- Umbrella Inuit Impact and Benefit Agreement for Canadian Heritage Rivers in Nunavut, and
- Tallurutiup Imanga National Marine Conservation Area Inuit Impact and Benefit Agreement

Moreover, the final NLUP should reflect the recommendations of the Government of Canada, the Government of Nunavut, Nunavut Tunngavik Incorporated and the Regional Inuit Associations contained below regarding land use requirements for areas where an IIBA is currently being negotiated, or may be negotiated, including for National Historic Sites and Territorial Historic Sites.

As new IIBAs are concluded, amendments to the NLUP might be required to ensure that the Plan facilitates the full implementation of these new agreements. The Government of Canada, the Government of Nunavut, Nunavut Tunngavik, and the Regional Inuit Associations recommend that the NLUP set out an efficient administrative amendment process for amending the NLUP for consistency with new IIBAs.

To facilitate full implementation of existing IIBAs, and potential IIBAs, important amendments to the current Draft Nunavut Land Use Plan are needed for the following designations:

- Future National Parks (3.1.1-1)
- Tallurutiup Imanga National Marine Conservation Area (3.1.2-1)
- Migratory Bird Sanctuaries (3.2.2-1)
- National Wildlife Areas (3.2.3-1)

- National Historic Sites (3.2.5-1)
- Territorial Historic Sites (3.2.6-1)
- Soper River Watershed (3.2.7-1)
- Small Areas of Significance Thelon and Kazan Rivers (3.2.7-2)

The joint recommendations for each designation are described below:

Future National Parks

The designation for future parks (3.1.1-1) captures Territorial Parks Awaiting Full Establishment, Proposed Territorial Parks, National Parks Awaiting Full Establishment, and Proposed National Parks. This recommendation applies only to National Parks Awaiting Full Establishment and Proposed National Parks. As the Commission is aware, once the National Parks are fully established, the Nunavut Land Use Plan will no longer apply to them. To facilitate the interim management of these Parks, the joint recommendation of the Government of Canada, Nunavut Tunngavik Incorporated and the Regional Inuit Associations is that the current Limited Use area for National Parks Awaiting Full Establishment and Proposed National Parks be changed to a Valued Ecosystem Component and that these areas be identified on Map B.

Tallurutiup Imanga National Marine Conservation Area

An IIBA for Tallurutiup Imanga National Marine Conservation Area (TI NMCA) was signed in 2019 and TI NMCA is in process of being established under the *Canada National Marine Conservation Areas Act* (CNMCAA). A joint Inuit Canada management board, the Aulattiqatigiit Board (AB), has been established to guide management of the area and the parties wish to ensure that the NLUP does not impinge upon the authorities of the AB in the governance of the site.

Migratory Bird Sanctuaries (Plan Requirements 3.2.2-1)

Migratory Bird Sanctuaries are established under the *Migratory Birds Convention Act* for the purposes of protecting migratory birds, migratory bird nests, eggs, and their habitat. Under federal legislation, activities that are harmful to migratory birds, nests (when they are occupied, with exceptions for certain species), eggs or their habitat are prohibited. *Nunavut Agreement* beneficiaries do not require a permit to carry out activities related to subsistence harvesting in Migratory Bird Sanctuaries established in Nunavut; however, other individuals who wish to access Migratory Bird Sanctuaries in Nunavut must apply for a permit. Migratory Bird Sanctuaries make an important contribution to wildlife and wildlife habitat conservation in Nunavut, Canada, and the world.

The Government of Canada, Nunavut Tunngavik Incorporated, and the three Regional Inuit Associations are signatories to the NWA/MBS IIBA that provides benefits to Inuit for Migratory Bird Sanctuaries, and related to their establishment, operation and management. This includes Inuit involvement in the review of any proposed permits for activities within Migratory Bird Sanctuaries. To facilitate full implementation of the

NWA/MBS IIBA, and to enhance the protection already afforded to Migratory Bird Sanctuaries through federal legislation, the Government of Canada, Nunavut Tunngavik Incorporated and the Regional Inuit Associations recommend that these areas be designated under a unique land use designation such as 'Established Conservation Management Area' with no plan requirements. Migratory Bird Sanctuaries, while designated under the *Migratory Birds Sanctuary Regulations* and co-managed through Area Co-Management Committees, remain within the jurisdiction of the Nunavut Planning Commission and the Nunavut Land Use Plan remains applicable. A unique land use designation that recognizes that these are conservation areas is recommended without any plan requirements in order to avoid duplication of processes already established under the existing legislation and management regime.

National Wildlife Areas (3.2.3-1)

National Wildlife Areas are established under the authority of the *Canada Wildlife Act* to protect wildlife and wildlife habitat for the purposes of conservation, research and interpretation. Access to National Wildlife Areas established in Nunavut by anyone other than Inuit enrolled under the Nunavut Agreement is restricted; therefore, any non-Nunavut Inuit must obtain a permit to access or conduct any activity within NWAs that have been established in Nunavut. National Wildlife Areas make an important contribution to wildlife and wildlife habitat conservation in Nunavut, Canada and the world.

The Government of Canada, Nunavut Tunngavik Incorporated, and the three Regional Inuit Associations are signatories to the NWA/MBS IIBA that provides benefits to Inuit for National Wildlife Areas, and related to their establishment, operation and management. This includes Inuit involvement in the review of any proposed permits for activities within National Wildlife Areas. To facilitate full implementation of the NWA/MBS IIBA, and to enhance the protection already afforded to National Wildlife Areas through federal legislation, the Government of Canada, Nunavut Tunngavik Incorporated, and Regional Inuit Associations recommend that these areas be designated under a unique land use designation such as 'Established Conservation Management Areas' with no plan requirements. National Wildlife Areas, while designated under the *Wildlife Area Regulations* and co-managed through Area Co-Management Committees, remain within the jurisdiction of the Nunavut Planning Commission and the Nunavut Land Use Plan remains applicable. A unique land use designation that recognizes that these are conservation areas is recommended without any plan requirements in order to avoid duplication of processes already established under the existing legislation and management regime.

Proposed Wording for Established Conservation Management Area land use designation for National Wildlife Areas and Migratory Bird Sanctuaries:

Established Conservation Management Area (ECMA) for National Wildlife Areas and Migratory Bird Sanctuaries is defined as: a National Wildlife Area (NWA) or a Migratory

Bird Sanctuary (MBS) established under the *Canada Wildlife Act* (and Regulations) or the *Migratory Birds Convention Act* (and Regulations) respectively and includes both crown land and Inuit Owned Lands (IOLs). The level of protection within an ECMA for NWAs and MBSs is defined in the relevant legislation, specifically the *Wildlife Area Regulations* for NWAs and *Migratory Birds Sanctuary Regulations* for MBSs; Management Plans; and the 'Inuit Impact and Benefit Agreement for National Wildlife Areas and Migratory Bird Sanctuaries in the Nunavut Settlement Area'. Use of land, crown or IOL, within ECMAs will be determined per the established management regime. There are no Plan Requirements for this land use designation.

National Historic Sites (3.2.5-1)

The Government of Canada, Nunavut Tunngavik Incorporated and the Regional Inuit Associations are negotiating an IIBA for existing National Historic Sites in Nunavut. The parties to the negotiation agree that the nature of the National Historic Sites designation is commemorative and does not create land use restrictions on Crown lands or Inuit Owned Lands. For this reason, the Government of Canada, Nunavut Tunngavik and the Regional Inuit Associations recommend that that the current Limited Use area for National Historic Sites be changed to a Valued Socio-economic Component and that these areas be identified on Map B.

The one exception is the Wrecks of HMS *Erebus* and HMS *Terror* National Historic Site, which has already been accessioned under *Canada National Parks Act*, is administered by the Parks Canada Agency, and the Nunavut Land Use Plan will not apply to this Site.

Territorial Historic Sites (3.2.6-1)

The Government of Nunavut, Nunavut Tunngavik Incorporated, and the Regional Inuit Association agree that Territorial Historic Sites should be treated similarly to National Historic Sites. The nature of Territorial Historic Sites designations is commemorative and does not create land use restrictions on Crown lands or Inuit Owned Lands. For this reason, the Government of Nunavut, Nunavut Tunngavik, and the Regional Inuit Associations recommend that that the current Limited Use area for Territorial Historic Sites be changed to a Valued Socio-economic Component and that these areas be identified on Map B.

Soper River Watershed (3.2.7-1) and Small Areas of Significance Thelon and Kazan Rivers (3.2.7-2)

The Government of Canada, Nunavut Tunngavik Incorporated, and the Regional Inuit Associations are parties to the Canadian Heritage Rivers IIBA. In addition, the Government of Nunavut has partnered with the Government of Canada to assist with the implementation of the Canadian Heritage Rivers IIBA. The parties to the Canadian Heritage Rivers IIBA have agreed that the designation will not impact land ownership or management, particularly on Inuit Owned Lands.

For this reason, the Government of Canada, the Government of Nunavut, Nunavut Tunngavik, and the Regional Inuit Associations recommend that that the current Limited Use areas for the Soper River Watershed and Small Areas of Significance for the Thelon and Kazan Rivers be changed to Valued Ecosystem Components and that this area be identified on Map B.

Annex B: Marine Shipping Guiding Principles

The following document supports the development of recommendations to the Nunavut Planning Commission (NPC) related to marine shipping matters in the Nunavut Land Use Plan (the Plan). The document was developed jointly by Nunavut Tunngavik Inc. (NTI), the Regional Inuit Associations (RIAs), the Government of Nunavut (GN) and the Government of Canada (GC).

The guiding principles take into consideration the *Nunavut Agreement*, the *Nunavut Project Planning and Assessment Act*, the NPC's Broad Planning Policies, Objectives, and Goals (BPPOG), and interests as identified by Inuit community representatives and the Parties. It should be noted that agreement between the Parties on these guiding principles sets a foundation for the submissions of each of the Parties and does not predetermine the content of the Parties' submissions.

Guiding Principles

- A. On-ice travel routes and floe edges are integral to the exercise of Inuit harvesting rights and support culture, harvesting, and food security. These important values need to be protected.**

The *Nunavut Agreement* states that “the planning process shall ensure land use plans reflect the priorities and values of the residents of the planning regions”. On-ice travel routes are recognized as integral to the exercise of Inuit harvesting rights as they are an important aspect of Inuit culture that supports harvesting and food security. Icebreaking activities can impact the ability of Inuit harvesters to safely use the ice, thereby impeding the exercise of harvesting rights. The effectiveness of Plan requirements developed to address this concern must be taken into consideration.

Floe edges are also an important value that provide habitat for marine mammals and are used by Inuit for exercising harvesting rights. The protection of floe edges is important to support food security in Nunavut. Plan requirements must consider the dynamic nature of floe edges and changing ice conditions.

- B. Sea-ice crossings are important to support the long-term survival of caribou species in Nunavut.**

Sea-ice crossings used by caribou (Dolphin-Union, Peary and Barren-Ground) are essential to ensure the long-term survival of species and, in turn, support long term food security for Inuit. Sea-ice crossings are particularly important for Peary Caribou and the Barren-Ground caribou of Baffin Island that rely upon crossings to the Melville Peninsula and several offshore islands adjacent to Baffin, which are important during particular periods of their population cycle. Ice breaking activities can result in areas of open water that negatively impact caribou. Therefore, protective measures, including Plan requirements, should be developed to take this into consideration.

C. Marine shipping concerns should be managed in a way that supports safe, sustainable shipping, as well as a strong supply chain. This should take into consideration other forms of marine transportation such as on-ice travel routes.

Land use planning in Nunavut must consider both conservation and sustainable development objectives. Marine shipping is an important transportation method to bring goods to Nunavut communities and to support development and economic opportunities. Community resupply and the reasonable use of existing and foreseeable future ports should not be restricted. Consideration must be given in how the Plan can support the right balance between these two objectives.

D. The Plan should complement existing regulatory regimes and authorities rather than duplicate them.

As noted in the NPC's BPPOG, land use planning should promote an integrated approach, avoid duplication of existing legislation/regulation, and acknowledge the roles of other processes. Opportunities may exist to address marine issues through other regulatory processes without duplication in the Plan. Additional work will be needed to strengthen these regimes and their effectiveness at protecting sensitive marine values, environments, and the exercise of Inuit rights within them.

In addition to regulatory regimes and legislative authorities, other initiatives exist that could help support Plan development and implementation and should be leveraged where possible. Examples include initiatives under the Oceans Protection Plan, such as the Low Impact Corridors Framework, Enhanced Maritime Situational Awareness, Cumulative Effects of Marine Shipping, and Proactive Vessel Management.

E. The Plan should address marine shipping concerns to the extent possible, recognizing that the Plan cannot address all concerns.

It is appropriate the Plan address some shipping concerns, such as the impacts of shipping on some marine habitats and species, including specific whale calving areas, and Inuit travel and harvesting areas and practices. It is acknowledged, however, that the Plan cannot address or resolve all shipping related concerns. Concerns, or interests, that cannot be addressed within the Plan should not be left *orphaned*. In addition to appropriate avenues under the Plan, additional existing forums, or mechanisms to continue to discuss shipping concerns should be identified by parties.

F. The Government of Canada requires flexibility to implement international obligations and foreign policy considerations

The Plan must be developed in a manner that is consistent with Canada's international legal obligations. Blanket prohibitions without important exceptions to address Canada's obligations regarding icebreaking through the Northwest Passage may not be consistent with those legal obligations.

Ensuring that the Government of Canada retains the capacity to consent to navigation through the Northwest Passage for important foreign policy reasons is necessary to protect Canada's full sovereignty over those waters. Ensuring we have the capacity to consent to navigation means Canada will be in a position to provide guidance to foreign vessels when they indicate that they plan to transit the Northwest Passage, thereby allowing for Canada's regulatory framework (including that outlined in the Plan) to be respected.

G. Communication between land users, communities, and proponents can be strengthened in regard to marine vessel movements in Nunavut waters, especially those associated with projects.

Increased and advanced communications with communities about vessel movements and operations has been requested and is an integral part of maritime safety. While existing communication processes do exist, opportunities to strengthen communication about project shipping activities, including when and where they are proposed to occur, could be supported by the planning process.