



Government
of Canada

Gouvernement
du Canada

Government of Canada Comments and Recommendations on the 2021 Draft Nunavut Land Use Plan

Submitted to the Nunavut Planning Commission on February 10, 2023

Table of Contents

1	Introduction	2
2	Designated Inuit Organization Goals.....	3
3	Inuit Owned Lands	3
4	Existing Inuit Impact Benefit Agreements.....	4
5	Exploratory Discussions on Arrangements related to Proposed Limited Use Zones.....	4
6	Existing Rights.....	4
6.1	Ancillary Uses.....	5
7	Marine Shipping.....	6
7.1	Further information regarding the Notice to Mariners for the Cambridge Bay Area	11
7.2	Response to Question from Cambridge Bay	11
8	Caribou Habitat.....	11
9	Migratory Birds.....	12
9.1	Table 1 – Migratory Bird Setbacks.....	12
9.2	Tallurutiup Imanga Limited Use Zone and Key Migratory Bird Habitat Sites Overlap.....	13
Annex A – Analysis of the Government of Canada Recommended Approach to Existing Rights versus Appendix A.....		14

1 Introduction

The Government of Canada is providing additional commentary and recommendations to the Nunavut Planning Commission (the Commission) as a result of continuing analysis of the 2021 draft Nunavut Land Use Plan (the Plan, DNLUP) and in response to discussions at the public hearings. As well, the Government of Canada, the Government of Nunavut (GN), Nunavut Tunngavik Incorporated (NTI), and the Regional Inuit Associations (RIAs), have taken part in several joint discussions and workshops to discuss several key topics of shared concern with respect to the Plan. These discussions have informed this Government of Canada submission.

This third submission includes:

- Section 1: this introduction.
- Sections 2 To 7: additional comments and recommendations regarding key topics of shared concern with GN and NTI.
- Section 8: outlines comments and recommendations regarding Caribou Habitat.
- Section 9: outlines additional comments and recommendations regarding Key Migratory Bird Habitat Sites and associated Migratory Bird Setbacks.
- Annex A: provides an analysis of the Government of Canada recommended approach to Existing Rights versus Appendix A.

It should be noted that the recommendations the Government of Canada presented in its October 8, 2021 and April 14, 2022 submissions to the Commission, or conveyed at the public hearings held September to November 2022, continue to apply, except for those recommendations that are specifically modified and noted in this submission. The Government of Canada looks forward to the Commission finalizing the draft Plan and remains available to discuss any part of our written or oral submissions should any further explanation be required.

Following this submission, and should Commission processes allow, the Government of Canada will be prepared to collaborate on the resolution of any remaining concerns, so as to try to advance the goal it shares with the Commission and other planning partners of arriving at an approvable draft Plan.

2 Designated Inuit Organization Goals

NTI and the RIAs have raised concerns with the consultation process that led to the 2021 DNLUP and stated that the current draft does not adequately reflect the substantive views of the Designated Inuit Organizations (DIOs). In particular, there was a lack of consideration regarding the impacts of land use designations in the Plan on Inuit Owned Land (IOL) and that the Commission has not sufficiently reflected the goals of NTI and the RIAs to with respect to these lands in the 2021 DNLUP. The Government of Canada is concerned with the procedural issues tabled by NTI and the RIAs which include concerns around the adequacy and depth of consultation that occurred during the Commission's consultations on the draft Plan, particularly regarding IOLs.

In order to resolve the issues, the Government of Canada believes that the Commission should give due consideration to the recommendations put forward by NTI and RIAs. This is important to mitigate any procedural or substantive issues with the Commission's consultation process. DIOs operate with accountability to and democratic control by Inuit, and their views are essential with respect to consultations in the context of the Nunavut Agreement and Section 35 of the *Constitution Act* rights. Thus, DIO views should be reasonably reflected in the revised plan to allow joint approval by the Government of Canada, the GN, and NTI (the Parties). The Government of Canada also notes that it continues to actively listen to concerns raised by Inuit and other Indigenous peoples through the Commission's consultation process, whether made in writing or orally, and noting how they may be resolved.

Recommendation: A joint submission by the parties, *Joint Submission on the 2021 Draft Nunavut Land Use Plan*, addresses this and provides recommendations to the Commission.

3 Inuit Owned Lands

The Nunavut Agreement is clear that Inuit have the right to manage IOL and that these rights are vested in NTI and the RIAs. While approved Land Use Plans apply to IOL, section 11.8.2 of the Nunavut Agreement is clear that Land Use Plans in Nunavut shall take into account Inuit goals and objectives for IOLs. NTI and the RIAs have stated concerns with the restrictions applied to IOL through land use designations in the DNLUP. Applying restrictions to IOLs that do not reflect Inuit goals and objectives as they have been shared by the DIOs administering those lands does not reflect the intent of the Nunavut Agreement and should be resolved prior to the Commission's submission of a final draft Plan to the Parties.

The Government of Canada agrees that the draft Plan should not unduly restrict NTI and the RIAs decision making power over the management and development of IOL in a manner that is not acceptable to the DIOs. The RIAs have distinct perspectives on the management of IOL; therefore, the DNLUP should apply zoning to IOL in a way that accommodates regional diversity of goals and objectives for IOL. In incorporating NTI and the RIAs recommendations for the draft Plan's zoning over IOL to ensure they respect Inuit self-determination, the Commission should ensure that any plan requirements or land management scheme is consistent with applicable legislation and regulations that apply to IOL, and does not circumvent the statutory mechanisms in place under the *Nunavut Planning and Project Assessment Act* (NuPPAA) (e.g. amendments, minor variances or ministerial exemption).

The Government of Canada also acknowledges the need to avoid incompatibility in land management between Crown lands and IOL. The Government of Canada is willing to collaborate in discussions with the Commission, and NTI and the RIAs, should they be deemed necessary to resolve any such incompatibility.

Recommendation: A joint submission by the parties, *Joint Submission on the 2021 Draft Nunavut Land Use Plan*, addresses this and provides recommendations to the Commission.

4 Existing Inuit Impact Benefit Agreements

IIBAs are not adequately addressed in the 2021 DNLUP. The Government of Canada shares the concerns raised by NTI and the RIAs that in some instances the current version of the draft Plan may prevent the parties from fulfilling their obligations under existing IIBAs.

Recommendation: A joint submission by the parties, *Joint Submission on the 2021 Draft Nunavut Land Use Plan*, addresses this and provides recommendations to the Commission.

5 Exploratory Discussions on Arrangements related to Proposed Limited Use Zones

The Government of Canada recognizes that certain areas designated in the final NLUP as Limited Use zones may be counted towards national and international conservation targets (for example: certain Community Areas of Interest, certain caribou habitat types, and certain Key Migratory Bird Habitat Sites). The Government of Canada has heard the concerns from NTI and the RIAs about the need for an IIBA if land use planning designations are accepted as contributing to national and international conservation targets. It has also heard the concerns from the GN to ensure that there are no new conserved or protected areas established prior to devolution. The Government of Canada position maintains that land use designations under Article 11 of the Nunavut Agreement do not trigger Article 9 of the Nunavut Agreement. However, based on alternative approaches, the Government of Canada is exploring potential agreements and associated funding arrangements with the GN and NTI to find a mutually agreeable solution to this interest. The Government of Canada is continuing discussions with GN and NTI to address concerns and opportunities related to Limited Use zones in the final Nunavut Land Use Plan.

6 Existing Rights

Rights and interests granted under the Nunavut Mining Regulations exist throughout Nunavut. These rights have been granted by the Government of Canada and must be taken into account by the commission under section 58 of the NuPPAA. The Government of Canada shares concerns raised by NTI that the current approach to existing rights under section 6.1.8 of the DNLUP raises legal questions as to

how it aligns with NuPPAA and whether it will ensure the reasonable development of projects stemming from existing rights and interests in Nunavut.

Section 58 of NuPPAA provides that the Commission must consider existing rights and interests. The rights and interests that the Commission must consider are not limited to the rights granted under NuPPAA. Sections 207 and 235 of NuPPAA set out when and how a land use plan or the Act will apply to a project that was proposed or approved before a plan or the Act came into effect. Section 58 instead requires the Commission to consider a broader range of rights and interests, such as mineral rights and interests. These considerations must inform the Commission's zoning determinations.

To avoid any confusion, and provide more certainty in light of the concerns raised by Parties, the Commission should not make its treatment of existing rights and interests dependent on whether such rights and interests relate to a project previously approved under NuPPAA. The draft Plan should contain zoning that in the broadest sense possible allows for existing rights and interests to be reasonably developed. The Government of Canada submits that this can be best achieved by zoning the relevant areas as mixed use. This approach would remove the need for and the uncertainty associated with the criteria included in plan requirements 6.1.8-1 to 6.1.8-5. For areas of existing rights and interests overlapping with areas of sensitive wildlife habitat where conditional use zoning is proposed, this approach could be acceptable to the extent that it allows the reasonable exercise of the rights and interests (i.e. any conformity requirements applied by the plan should not be inconsistent with pre-existing terms and conditions, or restrict land use in a manner that prevents the exercise of those existing rights or interests).

In addressing the zoning that overlaps with existing rights and interests, the Commission should make every effort to ensure that those existing rights and interests can be allowed to reasonably develop in a manner that complies with NuPPAA. This aligns with Goal 5 - Encouraging Sustainable Economic Development of the Commission's Broad Planning Policies, Objectives and Goals. The Government of Canada acknowledges that certain proponents also hold existing rights and interests issued by the DIOs, under the Nunavut Agreement. In cases where rezoning certain parcels of land may lead to incompatibility in between Crown lands and IOL, the Government of Canada is willing to collaborate in discussions with the Commission, and NTI and the RIAs to assist in determining the appropriate zoning.

Recommendation: In addition to the recommendations outlined in the parties *Joint Submission on the 2021 Draft Nunavut Land Use Plan*, the Government of Canada recommends

1. The DNLUP must be consistent with the requirements of NuPPAA regarding the rights of projects that have been proposed or approved.
2. The DNLUP must also allow projects stemming from existing rights to reasonably develop.
3. The Commission should use a zoning approach that provides clear direction on land use to address areas of existing rights and interests. The DNLUP maps should be updated to reflect this change.

6.1 Ancillary Uses

Under section 6.1.5.1, the current draft Plan provides guidance on the information requirements for the commission to consider a plan amendment to develop linear infrastructure in a Limited Use zone where it is otherwise prohibited. However, there may be other uses of land that are ancillary to the full exercise of existing rights and interests which are prohibited in a zone outside the boundaries of that

right or interest identified in Appendix A of the draft Plan. Providing guidance in the Plan on how these ancillary uses may be permitted could provide additional certainty to land users and help avoid situations where an existing right or interest is stranded and cannot reasonably develop. Specific criteria could be applied to add certainty, describing the information that the Commission would need in making a decision on whether an ancillary use may be allowed. Examples include demonstrating that the ancillary use is strictly necessary for the viability of a project, whether there are alternatives, and the degree to which allowing the use would be consistent with the objectives of the land use plan. This analysis could take place during the conformity stage or via an amendment process.

Recommendation: The Government of Canada recommends that the Commission include guidance in the draft Plan on ancillary uses of land that ensure the full exercise of existing rights and interests which are prohibited by a zoning designation outside the footprint of that right or interest identified in the draft Plan.

7 Marine Shipping

Many concerns have been raised through the planning process about the impacts of marine shipping in the Nunavut Settlement Area. There have also been several differing perspectives on how to resolve these concerns and many recommendations provided to the Commission.

To support the planning process, the Government of Canada has worked together with NTI and the GN to develop joint guiding principles, that have been included within the submission made jointly by these parties. The guiding principles are intended to guide the development of recommendations about marine shipping, and we would encourage the Commission to consider these principles in their deliberations as well.

The Government of Canada recognizes that a first-generation land use plan cannot address all concerns about marine shipping and is committed to ongoing engagement on these issues.

Previous recommendations to the Commission related to marine shipping in the draft 2021 DNLUP have been made by the Government of Canada. All these recommendations continue to apply. For clarity and ease of reference, they are highlighted briefly below, with cross reference to the original recommendation from the Government of Canada submissions.

Marine Shipping Recommendations from Previous Government of Canada Comments and Recommendations to Commission (October 2021 & April 2022)

1. Disposal at sea prohibitions

- Disposal at sea prohibitions should be removed from the DNLUP.
- ***Cross reference Section 2.8 of Government of Canada October 2021 Submission for fulsome explanation***

2. Exceptions where Plan Requirements include seasonal restrictions and setbacks for marine vessels should be consistent.

- Additional exceptions for activities such as research, law enforcement, compliance monitoring and the placement of navigational aids may be warranted to avoid unintended impacts to these important activities.
- Add caveat that “Marine Setbacks shall be observed by community resupply vessels operating within Key Migratory Bird Habitat Sites except when adhering to them would prevent safe and timely community resupply”
- ***Cross reference Section 3.2.1 of Government of Canada October 2021 and Section 3.2.3 of Government of Canada April 2022 Submissions for fulsome explanation***

3. The term “icebreaking” should be clarified

- If it is identified that icebreaking is the appropriate terminology for inclusion in the Plan, it is recommended that this term be defined or described for clarity.
- ***Cross reference Section 3.3.1 of Government of Canada October 2021 Submission for fulsome explanation***

4. Collaborative Plan Requirements

- Consideration should be given to whether a collaborative plan requirement, rather than seasonal icebreaking restrictions in the DNLUP, could be effective.
- ***Cross reference Section 2.2.3 of Government of Canada October 2021 Submission for fulsome explanation***

5. Inclusion of an exception for navigation required for Canada to meet its international obligations and satisfy foreign policy imperatives

- Provide Government of Canada the tools to ensure proper control of foreign navigation if there are areas where icebreaking restrictions are to be put in place, in part to ensure protection of Inuit interests.
- ***Cross reference Section 2.2.2 of Government of Canada October 2021 Submission for fulsome explanation***

6. Clarification that individual vessel movements are not captured by Plan Requirement 2.2.5-1

- In-the-alternative to an exception for navigation required for the Government of Canada to meet its international legal obligations and satisfy foreign policy imperatives, clarification that individual vessel movements are not captured by Plan Requirement 2.2.5-1 would meet Government of Canada needs.
- ***Cross reference Section 2.3 of Government of Canada April 2022 Submission for fulsome explanation***

7. Plan Requirements 2.8.2-1 and 2.8.2-2 should be reworded to allow Canada to meet international law of the sea obligations

- Proposed restrictions for the North Water Polynya (Sarvarjuaq/Pikialaorsuaq) appear to place restrictions on navigation in Canada’s territorial sea and exclusive economic zone not permitted under international law.
- ***Cross reference Section 2.3 of Government of Canada October 2021 Submission for fulsome explanation***

In addition to the previously made recommendations on marine shipping and those in outlined in the parties *Joint Submission on the 2021 Draft Nunavut Land Use Plan*, the Government of Canada proposes three additional recommendations and withdraws one previous recommendation related to marine shipping, as set out in the recommendation box below.

New and withdrawn recommendations related to marine shipping for the 2021 draft Nunavut Land Use Plan

1. Collaborative Plan Requirements:

Understanding that communication with communities and land users is an important part of maritime safety and that on-ice travel routes are an important aspect of Inuit culture and support harvest and food security the Government of Canada recommends the following considerations be made in the development of collaborative plan requirements:

- Engagement and consultation on icebreaking activities should be required early in the planning phase and should be considered as part of land use conformity determinations and impact assessment reviews.
- The Commission should consider whether the development of community engagement guidelines, which describe when and how engagement should occur, would result in a more effective plan requirement.

2. On-ice travel routes:

Draft plan requirement 4.1.1-1 indicates that during certain seasons “a proponent of a project that will disrupt or destroy on-ice travel routes ... *must consult with all municipal councils, hunters and trappers organizations and regional wildlife organizations within a 300 km radius of the route and develop an ice-bridging plan before undertaking the project*”.

The implementation of an ice-bridging plan is not feasible in many cases and therefore, is often not possible to meet. The Government of Canada recommends removing this requirement.

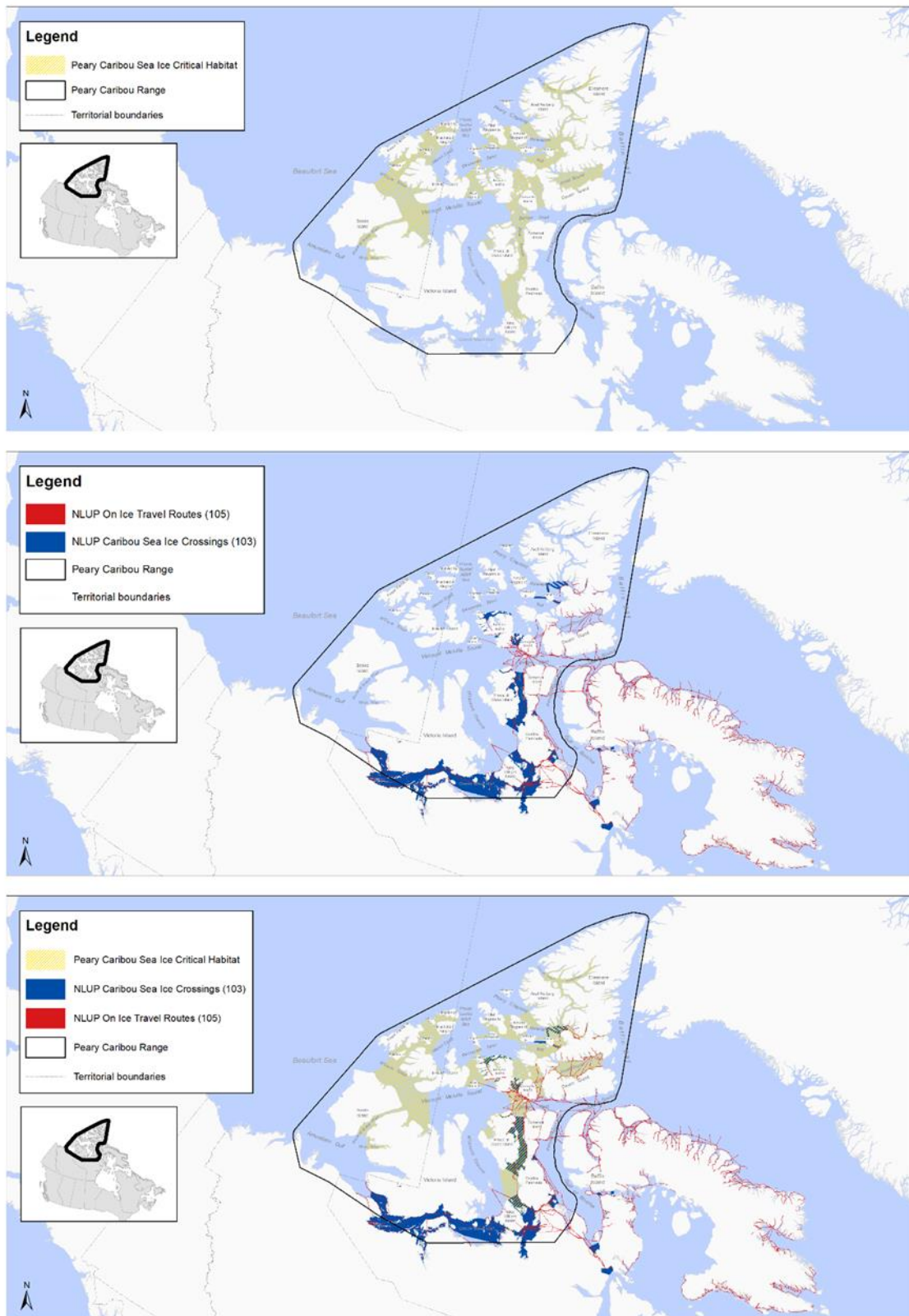
3. Protections for caribou sea ice crossings through the federal Species at Risk Act:

The Government of Canada recommends that plan requirements developed to address concerns regarding caribou sea ice crossings should take into consideration protections for sea ice critical habitat developed under the Species at Risk Act (SARA) for listed caribou. As sea ice remains in federal jurisdiction, federal tools are available and the ones under SARA are mandatory for ensuring critical habitat for caribou that are listed as threatened or endangered is not destroyed. The existing proposed protection measures for Peary Caribou included consultation and engagement with communities as well as following co-management processes with the Nunavut Wildlife Management Board and these collaborations are continuing during implementation. See Figure 1 below for additional information where sea ice critical habitat has been identified for Peary Caribou.

4. Designation of Tuvaijuittuq marine protected area:

The Government of Canada withdraws its October 2021 recommendation to the Commission that the designation for Tuvaijuittuq marine protected area be changed from Valued Ecosystem component to Limited Use (see Section 4, page 43 of the Government of Canada October 2021 submission). The Government of Canada would, however, consider a change of designation for this area to Limited Use if it was the designation preferred by NTI and the Qikiqtani Inuit Association. The Ministerial Order referred to in Section 3.3.4 of the current draft Plan describes the current management regulations under the *Oceans Act*, but this is a temporary measure. If protections for this area evolve to longer-term protection measures, the Government of Canada would then evaluate whether changes to the designation in the Plan are indicated.

Figure 1: Additional information on Peary Caribou critical sea ice identified.



7.1 Further information regarding the Notice to Mariners for the Cambridge Bay Area

During the hearings in Cambridge Bay, participants discussed a Notice to Mariners (NOTMAR) that had been developed for vessels transiting the waters between Victoria Island and the mainland.

For the information of participants and the Commission, the process to develop the NOTMAR for *Vessels Intending to Navigate the Kitikmeot Region in Canada's Northern Waters* is detailed in Appendix I: Pilot Areas of the [National Framework for Assessing the Cumulative Effects of Marine Shipping](#) (CEMS Report).

7.2 Response to Question from Cambridge Bay

The Government of Canada includes in this submission a clarification to our response to the Commission's question in regard to the appropriateness of the Land Use Plan exempting all individual ship movements from its authority when the legislation did not take that step (reference page 126 of the Cambridge Bay transcript). The proposed recommendation is to make an exception for a specific plan requirement and not an attempt to change a legislative authority, noting the Commission has the authority to propose exceptions to the Plan.

8 Caribou Habitat

The Government of Canada has heard, and acknowledges, the concerns for caribou habitat voiced by communities across Nunavut, Nunavik, and northern Manitoba and Saskatchewan during the 2022 public hearings. Caribou are an important species for Nunavummiut as well as Indigenous peoples outside of Nunavut. Population declines in multiple herds affirms the need for caribou habitat management that can ensure healthy populations can support sustainable harvesting into the future.

The Government of Canada views the Nunavut Land Use Plan as an opportunity to integrate measures for caribou habitat management. It is essential that the DNLUP both protects key caribou habitats and creates opportunities for economic development.

NTI and the RIAs have proposed regionally-specific approaches on protection for caribou and caribou habitats in order to accommodate for the diversity of caribou habitats and populations in Nunavut. Indigenous Governments and Organizations, including Athabasca Denesųtiné, Ghotelnene K'odtjneh Dene, and Makivik, have also provided written and oral testimony regarding caribou and other wildlife protection during the public review of the draft Plan. It is important that the Commission refine their consideration of all these recommendations regarding caribou in making decisions about caribou habitat management in the DNLUP given the importance of caribou to the cultures, sustenance, and well-being of Indigenous Peoples throughout the region. In principle, the Government of Canada supports the establishment of caribou habitat management practices in the DNLUP, which might include Limited Use and Conditional Use zoning, or other effective conservation measures for caribou. Regardless of the approach adopted by the Commission, the Government of Canada believes it is important that these measures are monitored and evaluated to ensure those measures are contributing to both herd recovery and long-term sustainability of caribou herds.

Recommendation:

The Government of Canada recommends that land use zones applying to caribou habitats should be revised, taking into account the priorities of NTI and the RIAs, GN, regarding caribou habitat protection and economic development goals, and with due consideration of the recommendations from other Indigenous Governments and Organizations, and Nunavut institutions of public governance provided throughout the public review process.

Should Limited Use designations be applied for key caribou habitats, the Government of Canada continues to recommend that the following should be respected:

- The Designated Inuit Organizations should have a say on how Inuit Owned Lands are managed (see [section 3](#) of this submission for further detail). We view this as an important element of self-determination.
- Existing mineral tenure that has been lawfully acquired under *the Nunavut Mining Regulations* should be zoned in a way that allows them to reasonably develop in a manner that complies with NuPPAA, preferably as Mixed Use (see [section 6](#) of this submission for further detail).

9 Migratory Birds

9.1 Table 1 – Migratory Bird Setbacks

Table 1 – Migratory Bird Setbacks of the draft Plan includes an additional setback to the information that was provided by Environment and Climate Change Canada – Canadian Wildlife Service (ECCC-CWS) in February 2017. Under Marine Setbacks for All Migratory Birds a 1.5 km setback for transiting ships was included in the draft Plan. This has raised some confusion in interpretation as there are smaller marine setbacks provided for ships within the different bird groups All Seabirds and Coastal Waterfowl and Seaducks, and a larger marine setback for Ivory Gull breeding sites. After discussion with Commission staff, it is understood that the intention was for the 1.5 km setback to apply to ships that are passing by (transiting) Key Migratory Bird Habitat Sites (KMBHS) and not intending to stop and that the other setbacks apply to ships that may be stopping near the KMBHS (e.g. cruise ships, research vessels). The Government of Canada recommends adding a footnote to Table 1 to further clarify this to aid in interpretation.

Recommendation: Government of Canada recommends adding a footnote to Table 1 – Migratory Bird Setbacks to clarify the 1.5 km marine setback for All Migratory Birds for transiting ships vs. marine setbacks set out for ships under the separate bird groups All Seabirds, Ivory Gulls and Coastal Waterfowl and Seaducks. Suggested wording for the footnote for the 1.5 km setback:

- *1.5 km marine setback for All Migratory Birds for transiting ships is for those ships passing by and not stopping near Key Migratory Bird Habitat Sites. All other ship or vessel traffic should adhere to the setbacks set out for All Seabirds and Coastal Waterfowl and Seaducks. The 2 km marine setback for Ivory Gull breeding sites applies to all ship and vessel traffic.*

9.2 Tallurutiup Imanga Limited Use Zone and Key Migratory Bird Habitat Sites Overlap

As outlined in the Government of Canada submission dated October 8, 2021, the Limited Use designation for Tallurutiup Imanga National Marine Conservation Area (TINMCA) overlaps several Class 1 and Class 2 KMBHS, which are not included in the 2021 DNLUP Table 1 – Migratory Bird Setbacks with the exception of Buchan Gulf (which should remain). The Limited Use designation for TINMCA does not prohibit or restrict vessel movement within or through the area, does not prohibit tourist related activity, and does not include any plan requirements or seasonal restrictions for the setbacks to apply on the KMBHS. Currently there is no interim management plan in place for the TINMCA that could provide guidance relating to setback for KMBHS and, as stated in Section 3.1.2 of the 2021 DNLUP, *“Until the Tallurutiup Imanga national marine conservation area is fully established, the area requires interim management”*. Importance of Class 1 and Class 2 KMBHS is reflected in the Plan with the Limited Use and Conditional Use designations and the plan requirements in both designations for seasonal setbacks. The Government of Canada understands the Commission’s efforts to reduce administrative burden, however the Government of Canada’s position remains that setbacks for KMBHS within the boundaries of TINMCA should be included in the DNLUP as interim management until formally established. This would be consistent with the treatment of other Class 1 and 2 KMBHS under the 2021 DNLUP and provides an opportunity for the plan to bridge a gap.

Coming out of discussions between ECCC-CWS and Parks Canada Agency on aligning development of the management plan for TINMCA and advice provided for the DNLUP, it has been determined that setbacks do not need to apply to two of the marine KMBHS – Eastern Jones Sound and Eastern Lancaster Sound.

Recommendation: Government of Canada Recommendation #2 from section 2.4 of Government of Canada Comments and Recommendations on the 2021 Draft Nunavut Land Use Plan submitted October 8, 2021 is amended as follows:

2. Substantive Issues to be Resolved

2.4 National Marine Conservation Areas/Tallurutiup Imanga

2.4.2 Key Migratory Bird Habitat Areas in Tallurutiup Imanga (pg 12-13 of Government of Canada October 8, 2021 submission)

“2. The Class 1 (Baillarge Bay, Hobhouse Inlet) and Class 2 (Cape Liddon, Cape Hay and Cape Graham Moore) Key Migratory Bird Habitat Areas that are located within Tallurutiup Imanga or located outside the Limited Use Area, but where marine setbacks would apply, should be identified in Map A and in Table 1. Plan Requirement 3.1.2-1 should identify Table 1 setbacks as conformity requirements. For further information regarding Government of Canada recommendations on Table 1 please see Annex A.”

Annex A – Analysis of the Government of Canada Recommended Approach to Existing Rights versus Appendix A

This document has been prepared in response to the Commission's request made in September 2022 during the Cambridge Bay public hearing that the Government of Canada provide a summary and analysis of the differences between the rights presented in Appendix A and the Government of Canada recommendation to include all existing mineral tenure that overlaps with Limited Use zones.

In its submissions relating to the 2021 Draft Nunavut Land Use Plan, the Government of Canada has recommended that the Commission rezone areas with existing mineral tenure (mineral claims, prospecting permits, and mineral leases) that overlap with Limited Use zones to Mixed Use zones in order to improve clarity. This would effectively eliminate the need for Appendix A.

If the Commission chooses to keep Appendix A, the Government of Canada has recommended that the areas of overlap between Limited Use zones and Nunavut's active mines, specifically the Hope Bay, Meliadine, and Mary River mines, be rezoned to Mixed Use and that all remaining existing mineral tenure that overlaps with Limited Use zones be included in Appendix A.

From the Options & Recommendations document, the Commission selected "active projects previously reviewed under the NuPPAA or the Nunavut Agreement" for inclusion in Appendix A. The 2021 Draft Nunavut Land Use Plan Q&A document, released in March 2022, provided more precise criteria:

"Projects with existing rights in Appendix A were selected by:

- a) Downloading mineral rights data from the Government of Canada and NTI (data from spring 2021)*
- b) Selecting only active projects*
- c) Selecting rights that overlap with proposed Limited Use designations in the 2021 DNLUP that would prohibit mineral exploration and development*
- d) Selecting projects that have been previously reviewed and approved by the Nunavut regulatory system by searching for related activities in NPC, NIRB, NWB public registries"*

What qualifies as an 'active project' under b) is unclear, as is how a determination was made whether each project was 'active'. From Government of Canada's perspective, any mineral claim, prospecting permit or mineral lease in good standing is 'active'. This includes mineral claims or prospecting permits with the status 'suspended' as this indicates a suspension of work requirements has been granted under the Nunavut Mining Regulations and not due to an issue with or a change in tenure.

The Government of Canada also sees an issue with restricting inclusion in Appendix A to those projects previously approved under the NuPPAA or the Nunavut Agreement. Use of this criteria excludes existing mineral rights where work has been conducted below the threshold where it would be considered a 'project' under NuPPAA.

Based on an analysis of the GIS data provided by the Commission, there are 1,037 mineral claims and 199 mineral leases included in Appendix A that overlap with Limited Use zones. The only prospecting permits that were included in Appendix A were part of the Gibson MacQuoid project; the permits were all cancelled in April, 2022.

As of October, 2022, Government of Canada has identified an additional 114 mineral claims, 36 prospecting permits, and 16 mineral leases which were not included in Appendix A that overlap with Limited Use zones. Of these mineral claims, 39 are ground-staked claims that were converted to grid-based claims in the Nunavut Map Selection system when it went live on January 30, 2021. The remaining 75 claims were issued since the system became active. All existing prospecting permits were issued between 2016 and 2020; new prospecting permits are no longer being issued after February 1, 2020. The mineral leases excluded from Appendix A were issued between 1970 and 2007.

The Commission requested that the Government of Canada include in this analysis an examination of why mineral tenure may not have been included in Appendix A:

- 26 mineral claims were issued between January 30, 2021 and March 31, 2021 and would have had limited opportunity to submit project proposals to the Commission before the data collection ended;
- 49 mineral claims were issued after March 31, 2021 and thus would have been excluded from the data collection;
- Prospecting permits appear to have been systematically excluded from Appendix A, with the exception of the now-cancelled permits belonging to North Country Gold Corp.'s (Fury Gold Mines Limited) Gibson MacQuoid project;

There are several projects for which the reasons for exclusion remain unclear, as Government of Canada was able to identify Nunavut Impact Review Board (NIRB) screening decisions relating to those projects:

- 13 mineral claims belong to Canadian Orebodies Inc. and were screened under NIRB file number 11EN024 (June 13, 2011); another 16 mineral claims belonging to Canadian Orebodies screened at the same time were included in Appendix A as the 'Belcher Island Diamond Drilling Program', so the reason for this exclusion is unclear;
- 4 mineral leases belong to North Arrow Minerals Inc., and the underlying mineral claims were screened under NIRB file numbers 02ER124 (December 19, 2002) and 03EN100 (July 18, 2003);
- 6 mineral leases belong to Urangesellschaft Canada Limited, a subsidiary of Orano Canada Inc., and are part of the Kiggavik-Sissons project. These leases were screened under NIRB file number 06AN085 (April 3, 2007).

Beyond this, it is difficult for Government of Canada to speculate on the reasons for exclusion of other mineral tenure.

If Appendix A is used to identify mineral tenure that will be excepted from prohibitions in overlapping Limited Use zone(s), it is necessary to determine when and how this list will be finalized. The latest a finalized list could be generated would be following Plan approval, when subsection 5 (1) (f) of the Nunavut Mining Regulations would take effect, resulting in a prohibition on selecting new claims on lands subject to a prohibition under a land use plan that has been approved under federal legislation or under a land claims agreement. The list would then include all mineral tenure overlapping Limited Use zones with prohibitions on mineral exploration and mining as of the approval date.

There may be practical challenges leaving the finalization that late, as it is likely desirable to have the complete list incorporated into the approved Plan, rather than settled afterwards. This also may prevent the Parties from having a full understanding of what it is they are approving; barring the use of a land

withdrawal over the proposed Limited Use zones, the Nunavut Mining Regulations leave no discretion about continued mineral claim issuance.

As an alternative to this, the Government of Canada recommends that once there is agreement as to how existing rights will be handled between the Parties and the Commission, a reasonable notice period should be provided as a cut-off date for inclusion of mineral tenure in the draft Plan. This would ensure a transparent and equitable process.

Although some participants in the public hearings raised concerns about the mineral industry acquiring mineral claims in large numbers during the period up until Plan approval, statistics available do not support this. The number of active mineral claims has been dwindling year-over-year, from 7,178 in 2010 to 2,507 in late 2022. To ensure the accuracy of the finalized list, the Commission is recommended to consult with Crown-Indigenous Relations and Northern Affairs Canada as the issuer of mineral tenure on behalf of the Government of Canada, and with project proponents, to ensure that all relevant mineral tenure are included. It would be important for the Commission to provide a digital spatial data file (e.g. ESRI Shapefile) of the finalized Limited Use zones that includes prohibitions on mineral exploration and mining as well providing the outlines of existing rights excepted from those prohibitions so that it can be reflected in the Nunavut Map Selection system.

Table 1, below, sets out the area of intersection between mineral tenure included in Appendix A and various Limited Use land use designations, and the area of intersection between mineral tenure not included in Appendix A, to illustrate the differences between 2021 draft Nunavut Land Use Plan and Government of Canada's recommendations. Note that the total area of intersection between mineral tenure and all Limited Use land use designations has not been calculated, the significant area of overlapping land use designations complicates this calculation.

Table 1: Comparison of Mineral Tenure included/excluded from Appendix A

Limited Use Zone Name	LUZ Area (km ²)	Intersection (km ²) - in Appendix A				% Inter-section	Intersection (km ²) - not in Appendix A				% Inter-section	Sum	
		Claims	Permits	Leases	Sum		Claims	Permits	Leases	Sum		Total (km ²)	Total%
Caribou Calving Grounds	267,455.49	7,373.72	0.00	631.16	8,004.88	2.99%	250.80	1,831.90	31.13	2,113.83	0.79%	10,118.70	3.78%
Caribou Freshwater Crossings	35,671.58	356.85	0.00	170.92	527.77	1.48%	237.43	422.69	17.88	678.00	1.90%	1,205.77	3.38%
Caribou Key Access Corridors	16,205.66	46.76	0.00	0.00	46.76	0.29%	6.14	98.01	0.00	104.15	0.64%	150.91	0.93%
Caribou Post-Calving Areas	88,113.59	2,518.00	0.00	852.44	3,370.44	3.83%	187.03	1,350.02	0.00	1,537.05	1.74%	4,907.49	5.57%
Community Area of Interest - Boothia Peninsula	37,144.68	314.47	0.00	0.00	314.47	0.85%	0.00	0.00	0.00	0.00	0.00%	314.47	0.85%
Community Area of Interest - Diana River	44.53	0.00	0.00	0.01	0.01	0.01%	0.00	0.00	0.00	0.00	0.00%	0.01	0.01%
Community Area of Interest - Hiukitak River	8,202.34	0.00	0.00	1.42	1.42	0.02%	0.00	0.00	0.00	0.00	0.00%	1.42	0.02%
Community Area of Interest – Sanirajak	9,924.55	0.00	0.00	0.00	0.00	0.00%	4.54	0.00	0.00	4.54	0.05%	4.54	0.05%
Community Water Supply	3,430.07	58.26	0.00	0.00	58.26	1.70%	1.45	0.00	0.00	1.45	0.04%	59.71	1.74%
Cumberland Sound Turbot Management Area	26,167.14	1.03	0.00	0.00	1.03	0.00%	0.00	0.00	0.00	0.00	0.00%	1.03	0.00%
Key Migratory Bird Habitats - Class 1 Bathurst and Elu Inlets	7,412.59	21.83	0.00	10.15	31.98	0.43%	1.01	0.00	7.99	9.00	0.12%	40.98	0.55%
Key Migratory Bird Habitats - Class 1 Belcher Islands	18,893.55	151.36	0.00	0.00	151.36	0.80%	138.50	0.00	0.00	138.50	0.73%	289.86	1.53%
Key Migratory Bird Habitats - Class 1 Creswell Bay	3,236.17	0.00	0.00	0.00	0.00	0.00%	0.00	15.27	0.00	15.27	0.47%	15.27	0.47%
Key Migratory Bird Habitats - Class 1 Markham Bay	5,714.59	0.00	0.00	0.00	0.00	0.00%	26.18	0.00	0.00	26.18	0.46%	26.18	0.46%
Kivalliq-Manitoba Linear Infrastructure	8,753.62	1,006.33	0.00	211.14	1,217.47	13.91%	35.33	0.00	8.12	43.45	0.50%	1,260.93	14.40%
Mary River-Milne Inlet Linear Infrastructure	1,024.10	142.32	0.00	36.75	179.07	17.49%	0.00	0.00	0.00	0.00	0.00%	179.07	17.49%
Military Facilities and Infrastructure	397.90	0.00	0.00	0.00	0.00	0.00%	0.14	16.68	0.00	16.68	4.19%	16.68	4.19%
Priority Contaminated Sites	9.89	0.28	0.00	0.00	0.28	2.86%	0.00	0.28	0.28	0.57	5.71%	0.85	8.57%
Proposed NMCA Talluruiup Imanga	84,952.35	0.05	0.00	0.00	0.05	0.00%	1.01	0.00	0.00	1.01	0.00%	1.06	0.00%
TPAFE - Iqalugaarjuup Nunanga Territorial Park	20.77	0.00	0.00	0.02	0.02	0.08%	0.00	0.00	0.00	0.00	0.00%	0.02	0.08%
TPAFE - Kugluktuk/Bloody Falls Territorial Park	8.75	3.74	0.00	0.00	3.74	42.79%	0.00	0.00	0.00	0.00	0.00%	3.74	42.79%
TPAFE - Katannilik Territorial Park	1,461.66	0.00	0.00	0.00	0.00	0.00%	3.01	0.00	0.00	3.01	0.21%	3.01	0.21%
TPAFE - Taqaiqsirvik Territorial Park	0.03	0.00	0.00	0.00	0.00	0.00%	0.03	0.00	0.00	0.03	100.00%	0.03	100.00%
Walrus Haulout Sites	13,881.46	0.00	0.00	0.00	0.00	0.00%	0.00	0.00	3.10	3.10	0.02%	3.10	0.02%

