

Introduction

The Government of Canada provides the following information in response to the list of questions provided by the Nunavut Planning Commission (NPC or “the Commission”) on July 16, 2018 to participants. The following responses address those questions that were directed to the Government of Canada, as well as those directed to all participants where the Government of Canada believes it can provide a useful response.

It should be noted that the recommendations that the Government of Canada presented in our January 2017 written submission and those we presented at the Qikiqtani regional public hearing in March 2017 still stand, with the exception of those relating to zoning designations for caribou core calving grounds. Please note that despite the change in relation to core caribou calving grounds, the Government of Canada maintains its previous recommendation for caribou post-calving areas, freshwater crossings and access corridors. A comparison of our previous and new recommendations can be found below.

Caribou Habitat	Original Recommendation in 2017	Updated Recommendation in 2018
Core calving grounds	Allows mineral exploration and development subject to seasonal prohibitions (during key caribou life stages) and a general protection whereby project activities stop when caribou are present	We recommend that detailed place-based discussions, led by the Nunavut Planning Commission, be held with Inuit, scientists, industry and government that focus on how to effectively protect core caribou calving grounds, while providing industry the certainty it needs to continue its investments in Nunavut and minimizing the social, cultural and economic impacts to Inuit and other northerners
Post-calving areas, Freshwater crossings, and Access corridors	Requires seasonal prohibitions during key caribou life stages) and a general protection whereby project activities stop when caribou are present	No change

This change of recommendation reflects new information about barren ground caribou obtained since our January 2017 submission, including the publication in October 2017 of the assessment and status report by the Committee on the Status of Endangered Wildlife in Canada.

The Government of Canada recognizes the need to protect caribou habitat while still allowing Nunavummiut a strong voice in zoning decisions. There continues to be concern about the substantive unresolved issue related to balancing protection for caribou with opportunities for mineral exploration and development, as both are critically important to Inuit and northerners. Caribou (for reasons of food security, ecological function, cultural tradition and income) and mineral exploration and development (as the single largest industry in Nunavut) are both critical to the well-being of Inuit and other northerners. Where core caribou calving grounds and mineral interests overlap, zoning designations in the Nunavut Land Use Plan should fully consider all of these factors and the views of those potentially affected by the land-use decisions. The Government of Canada is of the view that detailed, place-based discussions, led by the Commission, on the implications and trade-offs among planning

parties and Nunavummiut are required to inform decision making on the zoning designations and zoning rules in the land use plan for the caribou core calving grounds. This is reflected in our responses below.

Please note that some information requested was provided in previous submissions by the Government of Canada, where no changes have occurred we have directed participants to the January 2017 written submission (<http://www.nunavut.ca/files/2017-01-13%20Final%20GoC%20Submission.pdf>) or the expert report Transition Rules, Existing Rights and Related Issues in the *Nunavut Planning and Project Assessment Act* (http://lupit.nunavut.ca/app/dms/script/dms_download.php?fileid=11378&applicationid=0&sessionid=clrbeukei3pom4d328t29bonb0) filed November 15, 2016. Where new information is available we have attempted to highlight this in our response.

1. Canada clarified benthic areas identified by WWF's written submissions are outside of the Commission's jurisdiction. What additional research priorities should be included in the Land Use Plan to identify benthic areas for potential consideration in future plan amendments, if any?

The Government of Canada has no recommendations for additional research priorities for inclusion in the Land Use Plan to identify benthic areas for potential consideration in future plan amendments.

As new information becomes available, the priority of research themes may change. For the Government of Canada, implementation of research priorities is also subject to appropriations, priorities and budgetary constraints. With these considerations in mind, some research on sensitive benthic areas that might be undertaken by DFO and/or its partners and/or other organizations could include comparative studies between two classes of benthic community habitats: areas with bottom substrates that are stable and areas with bottom substrates that are highly dynamic. Research on benthic areas to date has also generally focused on more offshore areas, with an emphasis on harvested species and there is limited information on lower trophic level organisms, particularly benthos in coastal habitats of the region (e.g., see Goldsmit et al. 2014; http://www.aquaticinvasions.net/2014/AI_2014_Goldsmit_etal.pdf). Currently, collection of more comprehensive coastal baseline information in areas of high shipping activity is a DFO priority, and Iqaluit has been selected as the focal pilot area for baseline studies over the next 4 years.

Some location information on sensitive benthic areas in the Nunavut Settlement Area can be found in the Canadian Science Advisory Secretariat Science Advisory Report 2017/007 (see, for example, pages 25 to 27 and page 42): <http://waves-vagues.dfo-mpo.gc.ca/Library/40600099.pdf>.

6. Is there any evidence of a connection between development on caribou habitat, whether industrial, infrastructure or otherwise, and declining caribou herds?

We are attaching an annotated bibliography (Annex A) that provides a current snapshot of the literature on effects of development on caribou. We are also attaching a second document (Annex B) that also summarizes literature in various sections, but more particularly points out the state of knowledge for

mitigation. The short summary is that there are few papers on the effects of disturbance specifically for barren ground caribou, but there are effects that have been observed and well documented.

7. Would seasonal restrictions allowing development and work stoppages when caribou are approaching/present be sufficient protection for caribou habitat?

With respect to core calving areas, the Government of Canada has revised its recommendation. The type and extent of protections for caribou calving grounds, as an especially vital habitat, should be determined by the Commission after detailed place-based discussions with Inuit, scientists, industry and government. These discussions should focus on the trade-offs required for protection and the potential benefits or impacts of prohibiting activities in these areas. The Government of Canada maintains its previous recommendation of supporting seasonal restrictions on development and other mitigation for other types of caribou habitat identified in the draft Plan.

8. The Dolphin-Union herd and Peary caribou are both SARA listed caribou which depend on sea ice crossings during their annual migrations. Does the Government of Canada endorse seasonal ice-breaking restrictions on these well documented areas supported by both scientific studies and IQ?

Review of the Dolphin-Union herd and Peary caribou are undergoing a joint process that includes the Government of Nunavut and the Government of the Northwest Territories, in cooperation with the Government of Canada and co-management partners, as well as respective co-management processes legislated by the Inuvialuit Final Agreement and the Nunavut Agreement.

The Management Plan for Dolphin and Union caribou recognizes that they require sea ice to permit their spring and fall migrations between Victoria Island and the mainland and that icebreaking can prevent their movement. One of the objectives in the Management Plan for Dolphin and Union caribou in Canada is to: “Minimize the disturbance to habitat and preserve sea ice crossings to maintain the ability of Dolphin and Union Caribou to move freely across their range” (page 7).

A recovery strategy for Peary Caribou is currently being developed in accordance with the *Species at Risk Act*. The draft recovery strategy recognizes that Peary Caribou require sea ice to travel between islands and that icebreaking at certain times can pose a threat to the caribou by disrupting their inter-island movements. As an endangered species, identifying critical habitat for Peary Caribou in the recovery strategy is required. Once the recovery strategy is finalized, the *Species at Risk Act* requires that critical habitat identified therein be subject to protection.

Some ice-breaking restrictions for the recovery of both species is supported by both scientific studies and IQ and will likely be required when critical habitat is published in a recovery strategy, bringing with it the requirement for critical habitat protection under the *Species at Risk Act*. It should be noted that exceptions to the prohibitions that protect critical habitat from destruction are found in section 83 of the *Species at Risk*

Act. Those exceptions would likely include icebreaking for the purpose of search and rescue, among other prescribed circumstances.

More generally, it is not clear that the approach taken in the draft land use plan is the best or most appropriate mechanism to implement protective measures. Therefore, at this time the Government of Canada does not endorse the specific restrictions and manner that they are proposed in the draft NLUP. Once the recovery strategies and critical habitat have been developed in collaboration with our co-management partners and the recovery strategy is published, the most appropriate regulatory mechanism can be applied. The management plan for Dolphin and Union caribou recognizes the need to work with marine/industry/transportation organizations and regulators to seek ways to preserve sea ice crossings, and to investigate mechanisms and authorities that manage shipping traffic. The draft recovery strategy also recognizes the need to develop a plan with industry stakeholders to manage the timing of shipping and ice-breaking to minimize disruption of Peary Caribou inter-island movements.

- 9. You were asked earlier in this Hearing whether INAC would suspend the issuance of new mineral rights in critical habitat, including calving grounds. You did not directly answer the questions so I am raising it again. Given the well-recognized and precipitous declines in herd numbers and the threatened status of many of the herds, will INAC commit to the suspension of the issuance of new mineral rights on critical caribou habitat? Yes or No.**

This response depends on whether the questions intends “critical caribou habitat” to refer to critical habitat identified under the federal *Species at Risk Act* (SARA). If it is a question about critical habitat as defined under SARA, and if it is habitat that is not protected in any other manner, then, orders to protect the area from destruction would be issued by the federal Minister of Environment and Climate Change or the Governor in Council, in accordance with sections 58, 60 and 61 of the SARA. Development that would result in destruction of this habitat would not be permitted.

However if the question is not in reference to critical habitat for a SARA-listed species, Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) will not commit to the suspension of the issuance of new mineral rights on caribou habitat at this time. If caribou habitat is identified in an approved land use plan as land subject to a prohibition on prospecting or staking a claim, this land will no longer be open for prospecting or staking in accordance with subsection 5(d) of the *Nunavut Mining Regulations* (NMR). Caribou habitat could also be closed to prospecting or staking, per section 5(e) of the NMR, if it is withdrawn from disposal or set apart and appropriated by the Governor in Council under paragraphs 23(a) to (e) of the *Territorial Lands Act*.

If caribou habitat is not protected in the plan or withdrawn by the Governor in Council and the land does not meet one of the other prohibitions listed in section 5¹ of the NMR, the Mining Recorder does not have the

¹ *Nunavut Mining Regulations* Section 5

It is prohibited to prospect or stake a claim on any of the following lands:

(a) lands used as a cemetery;

discretion to refuse to issue mineral tenure. If the holder of a 'licence to prospect' makes an application to record a claim or applies for a prospecting permit, and the requirements of the regulations are met, the Mining Recorder must issue the claim under subsection 33 (4) or permit under subsection 11(2) of the NMR.

10. Recognizing the signatories will be asked to approve or reject the DNLUP, what criteria, if any, would the signatories accept as supporting Protected Area designations where any development is prohibited, or Special Management Areas with seasonal prohibitions on development activity, for habitat such as caribou core calving and post-calving areas, key access corridors, and freshwater crossings?

Staff advice to the Minister and Governor in Council will be consistent with previous recommendations to the Commission. This includes the Government of Canada's Priority Expectations for a First Generation Nunavut Land Use Plan shared with the Commission in March 2013 and summarized on page three of our 2017 written submission on the 2016 Draft Nunavut Land Use Plan.

The Government of Canada maintains the recommendation that the Commission consider all available information, including ecological, socio-cultural and economic information, when determining land use planning zones, as stated on page 24 of our 2017 written submission on the 2016 Draft Nunavut Land Use Plan. Particularly with respect to the core calving areas, the Government of Canada recommends that the Commission also facilitate detailed place-based discussions with Inuit, scientists, industry and government regarding potential benefits or impacts of land use designations prior to any revisions to the plan.

11. Canada's written submission cited Anne Gunn, Kim G. Poole, Jack Wierzchowski and Mitch Campbell, March 2007, Assessment of Caribou Protection Measures, that said it found "conditions on land use intended to avoid disturbance to caribou have been partially effective and could be more effective if adapted with updated monitoring and analytical techniques". Has Canada or any other participant updated that research or conducted further research or monitoring to determine if the quality or quantity caribou habitat is affecting herds?

The Government of Canada does not typically lead the monitoring programs related to barren-ground caribou; it is the jurisdiction of the territorial governments to monitor and manage caribou unless there is a trigger to bring Canada into the management effort (e.g. for caribou listed under SARA, transboundary herds, caribou in national parks, etc). The Government of Canada points the Commission to the website of the CircumArctic Rangifer Monitoring and Assessment (CARMA) Network (<https://carma.caff.is/>) for current understanding of caribou ecology across the range of barren ground caribou.

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- (b) lands covered by a prospecting permit, a recorded claim or a lease of a recorded claim, unless the prospecting or staking is done by the permittee, claim holder or lessee;
 - (c) lands for which the minerals have been granted by the Crown;
 - (d) lands subject to a prohibition on prospecting or staking a claim under a land use plan that has been approved under federal legislation or under a land claims agreement;
 - (e) lands that have been withdrawn from disposal or set apart and appropriated by the Governor in Council under paragraphs 23(a) to (e) of the Act;
 - (f) lands that are mentioned in subsections 22(1) and 52(5), section 56, subsection 67(2) and section 85 that are not open for prospecting or staking.

12. Would Canada, the Government of Nunavut, and NTI support temporary restrictions on development in some caribou core calving, post-calving, key access corridors, and freshwater crossings, to study whether there is a measureable benefit to caribou herds?

In a strict sense, it is much more difficult to demonstrate measurable benefits than to demonstrate negative impacts. The reason is that animals are adapted to the natural environment, so the null hypothesis is that there is nothing we (humans) can do to benefit them. We can only disturb them, and then stop disturbing them.

Further clarification as to the length of such restrictions, the type of restrictions, and which areas would be selected would be required before such a commitment could be made. In addition, community consultations to discuss the need for these restrictions and the anticipated outcomes would need to occur before the Government of Canada would endorse these restrictions. Extensive restrictions on development could have a significant negative impact on the investment climate in and the economy of Nunavut. Uncertainty regarding the temporary nature of restrictions could also deter future investors worried about if or when these restrictions would become permanent.

13. Is there any evidence that mobile caribou protection measures can be effectively implemented, and if so, who would be responsible for monitoring and enforcing such measures?

We defer to the expertise of the governments of Nunavut and the Northwest Territories, the Nunavut Wildlife Management Board and the Regional Wildlife Organizations. The Government of Canada is not currently monitoring the effectiveness of mobile protection measures.

14. Are there any statutes or regulations, whether federal or territorial, that are in operational conflict with the Draft Nunavut Land Use Plan and if so, to what extent is there a conflict?

Canada has a marine shipping regime established through legislation and regulations that were created to enhance safety and to protect life, health, property and the marine environment. When considering designations and potential limitations on shipping, it is important to consider whether the limitations support or contradict the underlying principles of the existing legislation, even if the legislation does not specifically limit the land use plan from applying to shipping and ice breaking. It is also important to consider whether the potential limitations on shipping may impact critical or valued activities such as those to support safe navigation, national defence, emergency response and community resupply.

It is the view of the Government of Canada, that some of the proposed restrictions on marine transportation included in the draft Plan may not be fully compatible with the underlying principles of the existing regime in relation to international cooperation and agreements.

15. Acknowledging the submissions of some participants that caribou data used to generate the DNLUP may have inaccuracies, is there a database or other repository of data on caribou and other wildlife that participants agree should be used in the Land Use Plan instead of existing data?

The methodology chosen to identify core areas (including core calving areas and post-calving areas) is (theoretically) valid. There are some problems with the way the Kernel densities were estimated for core areas, but the polygons identified by Caslys Consulting Ltd. have value. They should be considered as the best information available at this time on core area use by barren-ground caribou in Nunavut. However, based on results by Nagy et al. (2011; i.e., caribou shift calving grounds) and the problems highlighted above, the Government of Canada recommends updating these core ranges in an open process before final polygons are adopted by the Commission. The Government of Canada recommends the use of a similar approach to Caslys Consulting Ltd. (2016), but to modify the approach by combining discontinuous patches of core areas in a trackable way, so that each herd would receive an equal proportion of protected core area. The best method to use would require additional research.

Additionally, we also recommend that the Commission intensify its outreach to existing mineral rights holders before boundaries are finalized so as to ensure that existing rights and interests are considered as required by s. 58 of the Act, and that all stakeholders understand the reasons for any boundary adjustments for biological, social or economic reasons. The expert report filed by Justice Canada notes the obligation of the Commission to consider existing rights and interests, and the flexibility the Commission has in dealing with them (Transition Rules, Existing Rights and Related Issues in the *Nunavut Planning and Project Assessment Act*, filed November 15, 2016).

It is our understanding that the Government of Nunavut is currently updating the caribou polygons in a collaborative manner, and the Government of Canada assumes these updated polygons will be provided to the Commission in the coming months.

17. Is there evidence that existing caribou protection measures are effective?

Please see response to question 18 below.

18. Have existing caribou protection measures been significantly adapted to slow or reverse shrinking herd sizes?

This response relates to questions 17 and 18. We are attaching an annotated bibliography (Annex A) that provides a current snapshot of the literature on effects of development on caribou, including published mitigation measures. We are also attaching a second document (Annex B) that also summarizes literature in various sections, but more particularly points out the state of knowledge for mitigation. Many mitigation measures have been implemented, but few have been tested in a structured way that has allowed understanding of whether or why they work, and how recommendations have evolved through time. This is not to discredit the work of decades of effort; some things, like appropriate heights for pipelines that allow caribou crossing have been found through trial and error. Essentially the biological mechanisms for

sensitivity to various aspects of development have not been addressed in a comprehensive scientific manner, making deeper understanding and therefore more targeted or innovative approaches to mitigation difficult. Stated another way, it is important that we more explicitly evaluate mitigations that have been proposed through time and adapt them, as necessary. We would also suggest that the Commission seek the views of the governments of Nunavut and Northwest Territories on these questions.

- 21. The Commission has heard from many participants that there is no clear evidence that development is linked to declines in caribou numbers. The Commission values both scientific and IQ and traditional knowledge. Do you have any IQ or traditional knowledge regarding effects of development in caribou calving grounds?**

The Government of Canada does not have additional IQ or traditional knowledge to submit to the Commission.

- 22. Can participants identify specific caribou wintering habitat where caribou are particularly sensitive to disturbance, and should be given additional protection under the Plan?**

We would not propose any additional areas that the Commission has not already identified based on the data available to the Government of Canada.

- 23. Can participants provide any additional information regarding important caribou habitat, distribution, numbers and movements on Baffin Island that the NPC may not already have in its databases?**

The Government of Canada does not have additional information to provide.

- 33. If protected areas are not established through the land use plan for protecting the most important caribou habitats, such as core caribou calving grounds, will INAC stop permitting mineral exploration and mining activities in these areas? If not, will thresholds be established for limiting disturbance to caribou and habitat in these areas?**

As mentioned in response to question 9, there is little discretion available to CIRNAC to stop issuing mineral tenures. If protection is not included in an approved plan, per section 5(e) of the *Nunavut Mining Regulations* this land could be closed to prospecting or staking if it is withdrawn from disposal or set apart and appropriated by the Governor in Council under paragraphs 23(a) to (e) of the *Territorial Lands Act*.

Conditions limiting disturbance to caribou and habitat that are not set out in a land use plan could continue to be incorporated in the terms and conditions of a project's land use permit and/or water licence, as per the existing regulatory system.

- 34. If the first Nunavut land use plan does not incorporate any form of caribou protection measures, not even the original measures that are included in the Keewatin Regional Land Use Plan, will INAC continue to**

include the original measures as conditions of federal land use permits? If so, what level of effort will be implemented for compliance monitoring and enforcement?

The Government of Canada believe that it is highly unlikely that the land use plan will not incorporate any form of caribou protection measures. However, if this were to occur CIRNAC would continue to implement the current practice of including caribou protection measures in all authorizations issued. Once an authorization is issued, CIRNAC inspectors are then responsible to enforce the terms and conditions by conducting site visits at peak caribou migration periods.

35. If some form of mobile caribou protection measures are adopted as part of the land use plan or outside of the plan, will government agencies and industry work together on further development of the measures, including testing their effectiveness? Who will pay for this work? Which agencies will be responsible for monitoring caribou distribution and compliance of industry with the measures as the caribou and mobile protection areas move between federal and Inuit-owned lands?

As detailed on page 22 of our 2017 written submission on the 2016 Draft Nunavut Land Use Plan, the Government of Canada recognizes the importance of further caribou monitoring and research. The Government of Canada is committed to further discussions with the Commission, regulatory bodies, land owners, industry and interested parties regarding appropriate monitoring and protection for caribou. Canada would promote a diverse partnership approach to this, ensuring work is well designed, published, and addresses the needs of all stakeholders.

46. Most communities have concerns about cruise ships and their tourists. They are informed about the regulations they have to follow but they do not follow them. They sneak into inlets and get too close to wildlife. Where do we take these concerns, or to who?

Transport Canada monitors vessel traffic in the Arctic in conjunction with the Canadian Coast Guard and takes appropriate enforcement actions if vessels are found to be non-compliant with regulatory requirements that are administered by Transport Canada. Where the concern relates to the safety of a vessel, passengers, crew; or ship-based pollution or incidents including those related to unsafe navigation, any non-compliance observed can be reported to Transport Canada.

In order to support the existing and future legislation, and initiatives established by all parties, Transport Canada has committed to improving awareness of cruise ship operators and has developed cruise ship guidelines that are intended to provide information on the requirements of Federal and Territorial government agencies during the planning phase of cruises and during the subsequent Arctic voyages. Information provided by several non-governmental organizations has also been included. The guidelines can be read here <http://www.tc.gc.ca/eng/marinesafety/guidelines-passenger-vessels-operating-canadian-arctic-tp13670e.html>.

In addition, Inuit leaders and community members in the Arctic have expressed interest for greater access to information and data concerning vessel traffic in their waters, and for a greater role in the management of

activities as per their land claims agreements. In response, the Government of Canada is working with Indigenous and coastal communities to develop a new maritime awareness information system (MAIS) that will display information on maritime activity, such as vessel traffic. The early version of the system is being rolled out regionally, with availability in the Arctic expected by the end of 2018. The enhanced version of the system is being piloted through partnerships in nine sites across Canada's coasts over the course of one year, which started in spring 2018. One of the pilot project sites is located in Cambridge Bay, a site that was identified through a Steering Committee composed of representatives from the Government of Canada, Government of Nunavut, Nunavut Planning Commission, and Nunavut Tunngavik Incorporated.

47. You have recommended that the plan be adjusted to reflect that any prohibitions would not apply in specific locations where there are existing mineral rights and interests. What level of existing mineral rights and interests would this apply to? Does your recommendation mean that a prospecting permit in a caribou calving ground should be allowed to develop into a mine as a permitted use within an otherwise protected area?

Further information on the Government of Canada's views on existing rights can be found in our expert report *Transition Rules, Existing Rights and Related Issues in the Nunavut Planning and Project Assessment Act*, filed on November 15, 2016.

Exploration is conducted with the assumption that any mineral deposits discovered could eventually be mined if economically viable and in accordance with any restrictions on permits and licenses to mitigate environmental and socio-economic impacts. However, the Government of Canada also recognizes the importance of caribou and the need to protect key habitat, particularly caribou calving grounds.

The Government of Canada is recommending that detailed place-based discussions, led by the Nunavut Planning Commission, be held with Inuit, scientists, industry and government that focus on how to effectively protect core caribou calving grounds, while providing industry the certainty it needs to continue its investments in Nunavut and minimizing the social, cultural and economic impacts to Inuit and other northerners. This consultation should be completed in a transparent, collaborative manner and involve the most up-to-date information from scientists and Nunavummiut. Ecological, socio-cultural and economic information should all be taken into consideration during discussions on which areas to include or exclude from protected area boundaries and appropriate zoning rules.

If existing mineral developments are in a zone where that use is permitted and found to be in conformity with the approved plan, they could develop into a mine subject to receiving approval from the appropriate regulatory bodies to proceed at each step of the mineral development cycle. Therefore, a prospecting operation could only be developed into a mine if it is a permitted activity in the land use plan and if it meets all other elements of the regulatory regime.

49. Canada referred to a Canada-US treaty relating to navigation in the Northwest Passage as follows: "For example, Canada has a treaty with the United States called the Arctic Cooperation Agreement in which the Government of Canada has undertaken to facilitate navigation by US icebreakers. Any measure under

the Nunavut Land Use Plan that prohibits navigation in some areas may be inconsistent with Canada's obligation under that agreement..."(Qikiqtani hearing transcript p. 249). Were Inuit consulted prior to or during the treaty negotiation, and if so, were issues such as Inuit on-ice transportation and traditional travel routes, as well as wildlife habitat and caribou crossings considered?

The Government of Canada has not found evidence that Inuit were formally consulted in the context of the negotiation of the 1988 Arctic Cooperation Agreement. The treaty, however, was developed in the context of calls by groups and individuals, including the Inuit Tapirisat of Canada, on the Government of Canada to take a stand on Canada's Arctic sovereignty. Under the Arctic Cooperation Agreement, the US Government pledges that all navigation by US icebreakers in Canadian internal waters in the Arctic will be undertaken with Canadian consent.

Further, while the Agreement does not make specific reference to Inuit on-ice transportation, traditional travel routes, or caribou crossings, it contains related language affirming that "navigation and resource development in the Arctic must not adversely affect the unique environment of the region and the well-being of its inhabitants."

The full Arctic Cooperation Agreement can be found here: <http://www.treaty-accord.gc.ca/text-texte.aspx?id=101701&pedisable=false&Lang=eng>.

50. As a member of the Nunavut Marine Council, are you in agreement with the recommendation of the Government of Canada that all shipping regulations should be taken out of this iteration of the Nunavut Land Use Plan, including all restrictions on ice breaking?

We suggest that this question to the Commission from WWF misunderstands the Government of Canada's prior submissions. We would like to take the opportunity to clarify that the Government of Canada supports some limitation of shipping activities in specific setback areas. Those setback areas still allow for passage of vessels through Arctic waters, and provide exemptions for necessary activities such as safe navigation and emergency response.

51. The Nunavut Agreement provides for both impact benefit agreements and land use planning by the Commission. One or more participants have raised the concern that the Land Use Plan would affect Inuit impact benefit agreements or make them unnecessary (see e.g. Qikiqtani hearing transcript p. 33, speaker: D. Kunuk). Under what circumstances if any could a Land Use Plan affect or interfere with impact benefit agreements? If there is little or no effect on impact benefit agreements, would that affect any participant's position on any land use designations in the Draft Land Use Plan?

Parks and Conservation Areas, which require an Inuit Impact and Benefit Agreement under Articles 8 and 9 of the Nunavut Agreement, are not the same as protected areas in a land use plan. Parks and Conservation Areas are established by governments under distinct, specific regulations with the intent that the protection measures of these areas will last forever or for a very long period of time.

A protected area in a land use plan, where certain uses are prohibited or subject to conditions, is a type of zoning designation and is not intended to last forever as it may be amended during periodic review of the plan. In addition, prohibited activities may be permitted in these areas if projects receive a minor variance or amendment to the plan from the Commission or an exemption from the Minister. Therefore, the protections proposed in the land use plan do not permanently withdraw these lands from development.

If a different approach or more permanent protection is needed, the “protected area” designation in a land use plan does not prevent governments from establishing these areas as a Park or Conservation Area under specific legislation. If a Park or Conservation Area is selected as the approach to addressing an area, governments would be required to negotiate and conclude an Inuit Impact and Benefit Agreement prior to its establishment.

52. The expert report by Professor Mullan filed by the NWMB says the Nunavut Agreement in s. 5.7.18(d) makes access rights subject to projects approved by the Commission. Article 7.3.2 also refers to access rights in Article 5. How do participants suggest the Land Use Plan balance Inuit rights of access including the right to set up outpost camps with development that infringes on those rights?

The Nunavut Agreement sets out Inuit access rights to lands for the purposes of harvesting, and sets out rights relating to outpost camps. The land use plan has no direct power to restrict Inuit harvesting access rights or the right to set up outpost camps.

However, land use activities that conform to the approved plan can lawfully affect the environment in which those rights are exercised, and in some cases the presence of a development of a certain kind can limit the ability to exercise those rights within a defined area (see Article 5.7.17², for example). This is authorized by and consistent with the rights established in the Nunavut Agreement

As developments can affect harvesting and outpost camps, it is important that land use designations and the land use plan as a whole be developed with active and informed participation of Inuit. The Commission should take care to consult with Nunavummiut and especially HTOs to determine whether there are areas of particular importance for harvesting purposes or outpost camps, and should develop zoning rules that

² 5.7.17 - Lands Not Subject to Right of Access

The rights of access granted by Section 5.7.16 shall not extend to:

- (a) lands that are
 - (i) dedicated to military or national security purposes or being temporarily used for such purposes under the National Defence Act,
 - (ii) owned in fee simple, other than by municipal corporations, at the date of ratification of the Agreement,
 - (iii) granted in fee simple after the date of ratification of the Agreement, where such parcel of land is less than one square mile,
 - (iv) subject to an agreement for sale at the date of ratification of the Agreement, or
 - (v) subject to a surface lease current on October 27, 1981, and which lease has not been re-negotiated to provide for the right of access as contemplated and intended by Section 5.7.21; or
- (b) any place within a radius of one mile of any building, structure or other facility on lands under a surface lease, an agreement for sale or owned in fee simple.

consider and balance the different uses to which land use can be put and the priorities and values of the communities.

53. The Department of Fisheries and Oceans has recently conducted community consultations to ask communities which areas they would like to see designated as Marine Protected Areas under the Oceans Act. During this DFO MPA process, communities have expressed a consistent desire to create large MPAs and have provided DFO with a lot of information on current community values and uses. How is the Government of Canada ensuring that this information is being brought to the attention of the NPC to ensure Land Use designations reflect community interests?

DFO provides input into the Government of Canada's advice and recommendations to the Nunavut Planning Commission. This input is informed by all relevant information, including from consultation processes on Areas of Interest in Nunavut for potential marine protection. Relevant information collected during consultations, when finalized and approved for distribution, will be provided to the Commission to support its planning processes.

54. What laws, regulations, and/or international treaties preclude or limit the Land Use Plan from directly or indirectly applying to shipping and icebreaking, and where do such limits apply? Are there specific waterways that should be designated "Mixed Use" to preserve navigation, and what waterways if any can be designated "Special Management" or "Protected" to preserve Inuit on-ice travel and wildlife habitat?

The Government of Canada's analysis of the draft NLUP 2016 included a review of each proposed designated area or waterway based on criteria, including the rationale or purpose of the designation (i.e. what protection objectives or concerns are being addressed); the activities that may be limited within the designation; and the consequences of the designation to current and future uses. In addition, the Government of Canada considered existing legislation and regulations that may overlap with the Plan and considered whether alternate mechanisms are already in place, or can more effectively meet the protection objectives. When considering designations and potential limitations on shipping, the Government of Canada also considers whether the limitations meet, or contradict the underlying principles of the existing legislation, even if the legislation does not specifically limit a land use plan from potentially applying to shipping and ice breaking.

Based on this analysis, the Government of Canada supported the Special Management and Protected designations identified in the draft Plan for the protection of migratory birds, walrus and beluga calving grounds. These designations would provide limits to marine shipping but still allow passage of vessels and would include exemptions for necessary activities such as navigation required for safety and emergency response. It is recommended that other critical activities including those related to national defence and community resupply be considered for exemptions. Any additional proposed Special Management and Protected designations in the draft Plan would be subject to similar analysis and scrutiny in a determination as to whether or not the Government of Canada might support their inclusion. The Government of Canada did not undertake analysis to identify land use designations for specific waterways.

Various multilateral and bilateral treaties to which Canada is a Party include obligations relevant to shipping and icebreaking. Their relevance would also be assessed in light of what might be specifically proposed for in the draft NLUP. Generally, the content of those treaties would be reflected in Canadian domestic law or policies, as relevant. A review of domestic rules would therefore also generally cover those international obligations.

Any proposed prohibition or limitation on icebreaking or navigation through Canada's internal waters would need to take Canada's international obligations into account, including under the Arctic Cooperation Agreement. In this 1988 treaty between the Government of Canada and the Government of the United States, the Government of the United States pledged that "all navigation by U.S. icebreakers within waters claimed by Canada to be internal will be undertaken with the consent of the Government of Canada." The waters referred to as "internal" in the Arctic Cooperation Agreement include the waterways lying between the islands of the Canadian Arctic archipelago. For its part, the Government of Canada undertook to "facilitate navigation" by US icebreakers in our Arctic waters.

The treaty can be read here: <http://www.treaty-accord.gc.ca/text-texte.aspx?id=101701&pedisable=false&Lang=eng>.

In the territorial sea of Canada, which includes the waters extending 12 nautical miles seaward from the baselines drawn along the islands of the Canadian Arctic archipelago, attention must also be given to the provisions of the UN Convention on the Law of the Sea (UNCLOS) granting foreign ships a right of innocent passage. Coastal states may adopt certain laws and regulations relating to innocent passage, including for the purpose of environmental preservation, but without having the practical effect of denying or impairing the right of innocent passage.

The Government of Canada welcomes the opportunity to have collaborative discussions with NPC staff, signatories and other affected parties in the review of any proposed restrictions to marine shipping.

57. Would the signatories and participants support additional protections for marine wildlife and marine habitat, including sea ice caribou and community ice crossings, if Inuit hunting, community resupply, emergency response and national defense were permitted uses of all marine environments?

It is the understanding of the Government of Canada, from participation in the Iqaluit hearing³ that it is the intention of the NPC that community resupply and emergency response activities will be unrestricted by the land use plan. The Government of Canada suggests that this should be clearly and explicitly stated within the draft Plan.

While the Government of Canada supports that the land use plan does not restrict critical activities such as those necessary for the safety of the vessel and its occupants, national defence, search and rescue, emergency response and community resupply, as well as icebreaking and the installation and maintenance of aids to navigation for reasons of marine safety; we would also want to conduct analysis of the proposed

³ From Transcript Page 63, Session 9

restrictions including a review of each proposed designated area or waterway based on criteria, including the rationale or purpose of the designation (ie. What protection objectives or concerns are being addressed); the activities that may be limited within the designation; and the consequences of the designation to current and future uses. In addition, the Government of Canada would consider existing legislation and regulations that may overlap with the Plan and whether alternate mechanisms are already in place, or can more effectively meet the protection objectives.

The Government of Canada welcomes the opportunity to have collaborative discussions with NPC staff, signatories and other affected parties in the review of additional proposed restrictions.

58. Does the Government of Canada have a strategy for transportation in Nunavut's marine environment that the Commission should take into consideration in finalizing the Land Use Plan?

Transportation 2030 is our strategic plan. The plan groups areas of work under [five themes](#)⁴. These themes span modes of transport (such as air, shipping, trucking and rail) as well as activities (such as setting and enforcing regulations). Each theme has its own specific goal. We are taking action now under all themes, and will continue to develop policies and carry out actions for each area. The five themes include:

- [The Traveller](#)
- [Safer Transportation](#)
- [Green and Innovative Transportation](#)
- [Waterways, Coasts and the North](#)
- [Trade Corridors to Global Markets](#)

Under Transportation 2030, Transport Canada (TC) is developing a departmental Arctic transportation policy framework to better address the unique transportation issues in the territorial North. This framework will include five pillars: safe and secure; environment and climate change conscious; innovation; socio-economic development; and leadership in international fora. Once completed, the framework will support greater coherence in federal transportation actions related to policy, investment, and regulatory measures that support a strengthened transportation system across the territories and improved social and economic opportunities in Canada's Arctic. TC is leading engagement sessions throughout 2018 with Northerners, including the Inuit and other Indigenous groups, territorial government officials, and industry stakeholders. The engagement sessions will provide a greater understanding of some of the most pressing infrastructure needs in the territories, and inform the development of the Arctic transportation policy framework this fall. Initial engagement has highlighted that the transportation needs across the three territories are very different; each territory has its own unique transportation challenges and opportunities.

In addition, the 2017 budget provided funding to support the [Oceans Protection Plan](#)⁵ and continue the Northern Transportation Adaptation Initiative. Initiatives under the Oceans Protection Plan have begun and

⁴ For further details please see: https://www.tc.gc.ca/eng/future-transportation-canada.html#_About_Transportation_2030

⁵ For further details please see: <https://www.tc.gc.ca/eng/oceans-protection-plan.html>

those pertaining to the Arctic are listed below. Combined, the initiatives will serve to address concerns related to marine shipping.

- The **Northern Low-Impact Shipping Corridors (Corridors) initiative** is a comprehensive approach for managing marine transportation in Canada's North, including Nunavut's marine environment. The goal is to promote safe, efficient and sustainable maritime shipping in the Corridors throughout Canada's North by ensuring that environmental conditions, sensitive ecological areas (e.g. the location of breeding grounds for marine mammals and of bird sanctuaries), current and forecasted use, local and Indigenous Knowledge (including Inuit Qaujimajatuqangit), as well as science, inform management of vessel activities. The Government of Canada is seeking to develop a governance structure inclusive of Indigenous, federal, territorial and provincial partnerships to oversee the identification and management of the Corridors as well as guide potential investments in navigational services (e.g. hydrographic charting, ice breaking, weather forecasting and emergency response services). Overall, this initiative will support the provision of essential services in Northern communities and advance important government objectives related to supporting economic and social development in a manner that enhances Indigenous partnerships, while reducing the environmental and cultural impact of shipping. Discussions with partners are ongoing and will continue in 2018 and beyond.
- **Modern Hydrography and Charting in Key Areas** – To deliver modern and improved hydrography and charting in key areas of high traffic commercial ports and waterways; deliver real-time bathymetric, water levels, tides and currents information and world-leading navigational dynamic products and services to protect mariners' safety and the environment; deliver real-time information and more quickly produce world-leading navigational aids for mariners.
- **Maritime Awareness Information System (MAIS)** The Government of Canada is working with Indigenous and coastal communities to develop a new maritime awareness information system that will display information on maritime activity, such as vessel traffic. The early version of the system is being rolled out regionally, with availability in the Arctic expected by the end of 2018. The enhanced version of the system will be piloted through partnerships in nine sites across Canada's coasts over the course of one year, starting in spring 2018. One of the pilot project sites is located in Cambridge Bay, a site that was identified through a Steering Committee composed of representatives from the GOC, GN, NPC, and NTI.
- **Proactive Vessel Management** – Transport Canada is working closely with Indigenous partners and marine stakeholders to collaboratively develop a national framework that provides direction on how to identify and prioritize shipping issues of concern, gather, exchange and use information, and make decisions for intervention. The Nunavut Planning Commission was part of the Steering Committee that picked the The PVM National Framework Development Workshop was held on September 18-19, 2018 in Ottawa and included partners and stakeholders from Nunavut including: governments, organizations, groups participation such as Nunavut Tunngavik Inc., Government of Nunavut, and the Nunavut Marine Council.
- **Cumulative Effects of Marine Shipping** – Working with Indigenous and coastal communities to identify concerns and collect information about the environmental effects of marine shipping, and create tools to assess and reduce the environmental effects of marine shipping. A pilot project is

being conducted in Cambridge Bay, which was identified through the same Steering Committee as MAIS. Initial discussions with the community have been held to introduce the initiative and ask some key questions with respect to key stressors, study area boundaries and how shipping activities impact Inuit use of the area.

- **Coastal Environmental Baseline Monitoring** – To support evidence-based decisions by collecting important information with partners to be used when making decisions that could impact sensitive marine habitat and species. A pilot is being conducted in Iqaluit, which has a number of projects for collecting data. Early projects of particular interest to partners in Iqaluit have included characterizing water and sediment properties; quantifying macrophytes, macro-invertebrates, various fish species and ringed seals; and considering some indices of environmental and/or species health. This program is not an on-going 'monitoring program' per se, but rather aims to collect a breadth of baseline information at pilot sites over the course of several years that can help characterize ecosystems and provide open data. Its outputs may also support evidence-based decision making, such as integrated oceans management considerations, including cumulative effects. Baseline activities across years 2-5 of the initiative will include: initiation and continuation of baseline data collection at Iqaluit through partnerships with local groups; refinement of sampling protocols as needed; analysis of baseline data collection results; and reporting on baseline conditions of pilot sites. Discussions on continuing the work to characterize this and/or other coastal ecosystems in the Region will ensue in the latter part of the 5-year window. National data management project working with partners will be funded via Baseline G&C. This project will assist Iqaluit partners to develop approaches to collect, organize and share the Baseline data, while incorporating recognized data management standards.
- **Marine Environmental Quality Regulatory and Non-Regulatory Measures** – Will increase understanding and address pressing issues affecting the quality of the marine environment, with initial emphasis on stressors from marine shipping activities.
- **Federal Investments in Safety Equipment and Basic Marine Infrastructure in Northern Communities** – Provides funding for marine safety equipment and basic marine infrastructure for northern coastal communities to improve environmental protection and achieve faster, safer, and more efficient Arctic resupply operations in many northern communities. The GN was engaged in the first call for proposals.
- **Increased Canadian Coast Guard Presence** – The Canadian Coast Guard extended their Arctic season and increased presence by a 13-day extension and 34 sea days.
- **Modernize Canadian Coast Guard Environmental Response** – The Coast Guard will conduct a review of the current equipment model and develop a new equipment strategy that is more logistically-sound and sustainable.
- **Increase Emergency Offshore Tow Capacity** – Coast Guard will place emergency tow kits onboard all major Coast Guard vessels and in caches across Canada to assist vessels in distress. In addition to this, the Coast Guard, in partnership with Transport Canada, will complete a national emergency towing needs assessment and will develop a long-term national strategy for emergency towing; it will be launched in the Arctic this year

- **Increase On-Scene Environmental Response Capacity** – Ensures the Coast Guard Auxiliary program receives a financial top-up to allow for environmental response training costs for volunteer Auxiliary members. A First Response to Oil Spills Training course will provide a general overview of oil spill response, safety, oil spill behavior and assessment knowledge, plus related health and safety information, and will be provided to Canadian Coast Guard Auxiliary members by Canadian Coast Guard instructors.
- **Northern Marine Safety Oversight** – Expanded and conducted proactive vessel inspections (76 vessel inspections have been completed – 190% of planned); provided capacity and opportunities to develop new and deeper relationships with local marine operators, community leaders and elders, academics, and other partners; and improved federal/local collaboration related to marine safety and environmental protection. Targets have already been exceeded through a whole-of-government approach with NASP, Canadian Coast Guard and territorial partners. 2 senior inspectors and 2 NASP surveillance officers have been hired; and 525 hours of NASP surveillance have been completed. The *Arctic Shipping Safety and Pollution Prevention Regulations* to implement the international Polar Code for ships operating in polar waters have also been introduced.
- **NASP Hangar** – Will construct a hangar and accommodations unit in Iqaluit to allow for expansion and improved efficiencies, safety and effectiveness of Arctic oversight and surveillance.
- **Northern Marine Training Program** – Will reduce barriers to marine training for underrepresented groups in the marine labour force, such as women, Northerners, Inuit and Indigenous peoples. The Nunavut Fisheries Marine Training Consortium received funding from the GOC to, among other items, expand their classroom and storage facilities in Iqaluit. A 26-foot training vessel, together with fast rescue boats and their respective equipment arrived on sealift in August. Additional training equipment includes a GMDSS simulator, expansion to the bridge simulator, additional firefighting equipment, and immersion suits. From April-June 2018 they delivered 15 courses to 153 participants.
- **In-Shore Rescue Boat Program** – The Canadian Coast Guard implemented a seasonal in-shore rescue boat station in Rankin Inlet, with trained local personnel to support near-shore search and rescue operations. The RIB Station completed its first season on September 4, which was a resounding success. The crew trained with the Local Coast Guard Auxiliary Unit, spent over 100 hours on the water, and responded to SAR cases. Through these activities (among others), the Inuit student crew gained invaluable experience and expanded our northern SAR capacity. Recruitment for the next operational season is currently ongoing.
- **Indigenous Community Boat Volunteer Pilot Program** – Provides funding to Indigenous communities to purchase a search and rescue capable boat and/or associated equipment in order to join or enhance their membership in the Canadian Coast Guard Auxiliary and strengthen their capacity to participate in maritime search and rescue activities. Gjoa Haven, Cambridge Bay and Rankin Inlet, Nunavut, and Ulukhaktok, Northwest Territories received close to \$1M in total funding for new boats and equipment to support their participation in the auxiliary. This brings the total of auxiliary units to 16 in the Arctic. Nunavut communities will receive their boat or equipment in 2019.
- **Coast Guard Auxiliary Chapter in the Arctic** – Launched on April 1, 2018, provides dedicated contribution funding to increase Indigenous membership, expand the reach of the Auxiliary's search

and rescue capacity, as well as to support environmental response training. Over time, this investment will enhance the participation of Indigenous Arctic coastal communities in Canada's marine emergency response system.

- **Proposed Legislative Amendments to Strengthen Environmental Protection and Response** – Amendments to key legislation have been introduced in late October, as Bill C86. Specifically, amendments to the *Canada Shipping Act, 2001* (Division 22) and the *Marine Liability Act* (Division 23) to strengthen marine safety and environmental protection, including: enhancing marine ecosystem protection; strengthening environmental response; modernizing Canada's Ship-Source Oil Pollution Fund; and supporting research and innovation.
- **Alternative Response Measures** – To increase the effectiveness of oil spill response, the Government of Canada is considering legislative amendments to:
 - Allow the use of Alternative Response Measures as an additional tool to clean up oil spills from ships and oil handling facilities, when there is likely to be a net environmental benefit and when authorized by the Minister of Fisheries and Oceans on recommendation of the Canadian Coast Guard;
 - To enable the Minister of Environment and Climate Change to establish, by regulation, a central list of Alternative Response Measures that may be authorized for use; and
 - Allow the same range of Alternative Response Measures to respond to oil spills from ships, oil handling facilities, and offshore drilling platforms.
- **TERMPOL** – Will address challenges of the current voluntary program, including developing a path forward for through extensive engagement with stakeholder and indigenous groups, in-depth analysis and development of potential future options for the program, regional navigation safety assessments, a new navigation safety data and analysis unit, and potential legislative and regulatory reform.
- **Places of Refuge** – Transport Canada is working to strengthen and enhance the Places of Refuge process to implement an efficient decision-making process which is inclusive of the interests of all stakeholders and of Indigenous peoples. In areas of shared jurisdiction, clarity of authorities needs to be established to de-conflict decision making in times of emergency.
- **National Strategy for Abandoned and Wrecked Vessels** – Will work in collaboration with territories, municipalities and Indigenous communities to reduce the number of abandoned and wrecked vessels in Canadian waters by preventing the occurrence of new problem vessels and making progress on cleaning up the stock of existing ones. New legislation – *Wrecked, Abandoned or Hazardous Vessels Act* (Bill C-64) – will bring the *Nairobi International Convention on the Removal of Wrecks, 2007* into Canadian law. This will help strengthen vessel owners' liability for wrecks resulting from a maritime casualty. For instance, it will require vessels that are 300 gross tonnes and above to carry mandatory wreck removal insurance to locate, mark and remove wrecks resulting from a maritime casualty. The new legislation will also prohibit irresponsible vessel management such as vessel abandonment; it will strengthen owner responsibility and liability for their vessels including the costs for clean-up and removal; and it will empower the federal government to address problem vessels more proactively. Enhancements are also being pursued to the pleasure craft licensing system and the vessel registration systems to better identify owners and hold them

accountable under the new legislation. This legislation is the first of its kind to recognize Indigenous governments in federal statute.

59. Can the Government of Canada confirm if they would accept additional shipping restrictions in the first generation of the Plan above and beyond walrus and bird setbacks? And can the Government confirm if they would accept any icebreaking restrictions in this Plan, for example, along community travel routes or caribou sea ice crossings?

The Government of Canada's analysis of the draft NLUP 2016 included a review of each proposed designated area or waterway based on criteria, including the rationale or purpose of the designation (i.e. what protection objectives or concerns are being addressed); the activities that may be limited within the designation; and the consequences of the designation to current and future uses. In addition, the Government of Canada considered existing legislation and regulations that may overlap with the Plan and considered whether alternate mechanisms are already in place, or can more effectively meet the protection objectives. When considering designations and potential limitations on shipping, the Government of Canada also considers whether the limitations support or contradict the underlying principles of the existing legislation, even if the legislation does not specifically limit the land use plan from applying to shipping and ice breaking.

Based on this analysis, the Government of Canada supported the Special Management and Protected designations identified in the draft Plan for the protection of migratory birds, walrus and beluga calving grounds. These designations provide limits to marine shipping but still allow passage of vessels and include exemptions for necessary activities such as safe navigation and emergency response. It is recommended that other critical activities including those related to national defence and community resupply be considered for exemptions. Any additional proposed Special Management and Protected designations in the draft Plan would be subject to similar analysis and scrutiny in a determination as to whether or not the Government of Canada might support their inclusion.

Additionally, any proposed prohibition or limitation on icebreaking or navigation through Canada's internal waters would need to take Canada's international obligations into account, including under the Arctic Cooperation Agreement.

The Government of Canada welcomes the opportunity to have collaborative discussions with Commission staff, signatories and other affected parties in the review of additional proposed restrictions.

61. Participants are invited to answer the following question from Abraham Kublu (Qikiqtani Hearing Transcript p. 63): "...My question is about the Northwest Passage since it is starting to be used more. There are more interested groups that would like to pass through this area. My question is on restriction. Can we provide a restriction so that they do not go through certain areas?"

Some additional shipping restrictions may be possible to protect specific sensitive areas in the Northwest Passage. Before the Government of Canada might support any such restrictions, those restrictions would

also be subject to a thorough analysis. The analysis would include a review of each proposed designated area or waterway based on criteria, including the rationale or purpose of the designation (ie. what protection objectives or concerns are being addressed); the activities that may be limited within the designation; and the consequences of the designation to current and future uses, and Canada's international legal obligations. In addition, the Government of Canada would consider whether any proposal overlaps or conflicts with existing legislation and regulations and whether other mechanisms can more effectively meet the protection objectives.

62. Can participants suggest mechanisms by which the Land Use Plan can avoid conflicts between uses of the ice-covered marine environment with caribou migration, community uses and formal international agreements? For example, are there specific times, areas and corridors where temporary restrictions could be applied? More broadly, can participants suggest mechanisms that would ensure vessels respect the buffer and exclusion zones established by the Plan?

The Government of Canada recognizes its responsibility to implement requirements of the land use plan within our regulatory permit and approval processes. The current regulatory regime is managed through a risk based approach which balances the need for enforcement, with resource capacity limitations. As part of our risk based approach we rely on awareness and voluntary compliance.

The Government of Canada has mechanisms in which information can be shared with vessel operators. These include notice through the Northern Canada Vessel Traffic Services (NORDREG) before a vessel enters Canadian waters; and Notice to Mariners which is intended to inform the marine community of hazards, current activities and other pertinent information. Transport Canada has developed the Cruise ship Guidelines that could be updated to include information on buffer and exclusion zones

The Government of Canada can work with the Commission to determine whether any or all of the aforementioned mechanisms would assist in supporting the land use plan objectives and increasing vessel operator awareness of the buffer and exclusion zones so consideration of these zones may be factored into operational planning.

With respect to Coast Guard ice breaking operations, the Coast Guard consults with provinces, territories and industry when developing the annual ice breaking plan. Throughout the ice breaking season, Coast Guard engages with industry, provinces, territories, stakeholders, and partners to provide daily updates on ice conditions, the status of Coast Guard ships and the schedule of Coast Guard icebreaking operations. These ongoing discussions allow the Coast Guard to make adjustments to the ice breaking plan in consideration of current information. For example, the Canadian Coast Guard ice office has identified contacts from the Government of Nunavut, the Nunavut Impact Review Board and NPC, and members of communities and hunting and fishing organizations that can be contacted 72 hours in advance if Coast Guard is required to break ice in a community where fast ice (sea ice that is "fastened" to the coastline) exists and people might be using it to travel, fish or hunt. When Coast Guard contacts the communities, they may express their concern about impacts on activities described above or advise Coast Guard of the

presence of wild life. If resupply is not critical, Coast Guard will discuss with industry to postpone the resupply to a later date when melting would have started and ice would no longer be safe for the users.

While Coast Guard provides the majority of icebreaking in the Arctic, industry may choose to contract ice escorts or icebreakers from private firms, which are not controlled by Coast Guard. These activities could be considered in the design and regulatory review of projects under the Nunavut Impact Review Board process.

63. Cruise ships and associated activities, including real and potential disturbance to important wildlife habitats, are of increasing concern to many residents. Can participants suggest mitigation mechanisms that would ensure that such disturbances do not occur?

In order to support the existing and future legislation, and initiatives established by all parties, Transport Canada has committed to improving awareness of cruise ship operators and has developed cruise ship guidelines (<http://www.tc.gc.ca/eng/marinesafety/guidelines-passenger-vessels-operating-canadian-arctic-tp13670e.html>) that are intended to provide information on the requirements of federal and territorial government agencies during the planning phase of cruises and during the subsequent Arctic voyages. Information is also included that has been provided by several non-governmental organizations.

Within the draft land use plan 2016 there are proposed setbacks for the protection of migratory birds, walrus and beluga calving grounds. Implementation of the setbacks could serve as an effective mitigation measure.

Under federal jurisdiction, the Government of Canada implements, monitors and enforces regulations focused on safety and security including vessel reporting, vessel safety and design as well as pollution prevention; which also apply to cruise ship transits. Ensuring that vessels are constructed and operated in a manner that would limit pollution and accidents is vital to protecting important habitat areas. Transport Canada monitors and enforces these regulations.

Coast Guard is responsible for ensuring the cleanup of ship-source and mystery source spills of oil and other pollutants into Canadian waters. As the lead incident commander, Coast Guard is responsible for: (i) monitoring cleanup efforts by polluters; and (ii) managing cleanup efforts when polluters are unknown, unwilling, or unable to respond to a marine pollution incident. Coast Guard will work with the polluter (if willing and able), Indigenous communities, and stakeholders from federal / provincial / territorial agencies, and municipalities in a unified command setting for the successful resolution of incidents. Coast Guard responds to all ship-source and mystery source spills in the Arctic.

Through Oceans Protection Plan initiatives to bolster response capabilities such as investments in safety and environmental response equipment and the establishment of Inshore Rescue Boat stations, the potential impacts of pollution/spill incidents can be more effectively addressed.

The Marine Mammal Regulations (MMR) prohibit disturbance of, and regulate approaches to, marine mammals. Disturbance includes “approaching or attempting to approach a marine mammal to feed it, swim

or interact with it, move it or entice or cause it to move from the immediate vicinity in which it is found, separate it from its group or go between it and a calf, trap it or its group between a vessel and the shore or between a vessel and other vessels, or tag or mark it.” The MMR sets out minimum approach distances for some marine mammals. For example, the minimum approaches to walrus are 100 metres in water (January 1 to December 1, with an exemption for vessels in transit), 200 metres on ice (June 1 to October 31), and 300 metres on shore (June 1 to October 31). The MMR also have provisions to prevent aircraft disturbance of marine mammals and to require reporting to Fisheries and Oceans Canada (DFO) of any accidental contact between a marine mammal and a vehicle or fishing gear. Here is a link to the MMR: <http://laws-lois.justice.gc.ca/eng/regulations/SOR-93-56/FullText.html#h-21>.

Environment and Climate Change Canada has jurisdiction through the federal *Species at Risk Act* and is currently reviewing the Dolphin-Union herd and Peary caribou in collaboration with the Government of Nunavut and the Government of the Northwest Territories, in cooperation with co-management partners; and respecting co-management processes established by the Inuvialuit Final Agreement and the Nunavut Agreement. The identification of critical habitat through these processes will require federal protections that are enforced under the *Species at Risk Act*.

The Government of Canada has mechanisms in which information can be shared with vessel operators. These include notice through NORDREG before a vessel enters Canadian waters; and Notice to Mariners which is intended to inform the marine community of hazards, current activities and other pertinent information and could be updated to include information on buffer and exclusion zones.

64. Have you consulted with the Nunavut Marine Council to see if they are in agreement with your recommendation to remove all shipping restrictions in this draft of the Nunavut Land Use Plan? Similarly, have you consulted with the four members of the Nunavut Marine Council (NIRB, NWMB, NPC, NWB) to see if they are in agreement with your recommendation to remove all shipping restrictions in this draft of the Nunavut Land Use Plan?

The Government of Canada recommendations support some limitations on shipping activities, including restrictions, such as specific setback areas from important habitat of marine species. The setback areas still allow for passage of vessels through Arctic waters, and provide exemptions for necessary activities such as safe navigation and emergency response.

The Government of Canada has participated in technical discussions which included participation from the Nunavut Wildlife Management Board, Nunavut Impact Review Board and NPC (June 2015, July 2015, January 2016, April 2016) and has reviewed written submissions from all parties. In addition, we have engaged the Nunavut Impact Review Board, to collaborate on marine shipping concerns outside of the land use planning process. The Government of Canada welcomes the opportunity to further discuss recommendations with planning partners in a transparent, collaborative forum once the Commission has established the next steps.

67. Recognizing the signatories will be asked to approve or reject the DNLUP, what criteria, if any, do the signatories believe is necessary before a restriction on developing existing mineral claims could be proposed, or do the signatories take the position all mineral claims ought to be grandfathered?

Per section 58 of the *Nunavut Planning and Project Assessment Act* (NuPPAA), existing rights and interests must be considered when the Minister decides to accept or reject the plan per section 54(1). The Minister will be required to balance these considerations with factors laid out in sections 47 and 48 of NuPPAA and section 11.3.1 of the Nunavut Agreement.

Mineral exploration and development is one of the largest industries in Nunavut and it is critical to the economic well-being of Inuit and northerners. The Government of Canada recommends that the Commission facilitate detailed place-based discussion that focus on how to effectively protect core caribou calving grounds while minimizing social, cultural and economic impacts, and then revise the plan. These discussions should involve Inuit, scientists, industry and government as the interested parties. A better understanding by all parties of the trade-offs involved in particular land use designations and possible restrictions is necessary before the plan could be approved. The Government of Canada maintains its recommendation that Special Management Areas allowing development subject to certain conditions be used in other caribou habitat types.

If protected areas are established with prohibitions on mineral development in an approved plan, CIRNAC would stop permitting new mineral exploration in these areas. For further information on existing uses within protected areas please see our expert report Transition Rules, Existing Rights and Related Issues in the *Nunavut Planning and Project Assessment Act*, filed November 15, 2016.

68. Recognizing the signatories will be asked to approve or reject the DNLUP and that the Land Use Plan cannot exempt a project from itself, do participants support recognizing existing uses as conforming uses in all land use designations subject to further conformity determinations if significant modifications are made, and if so, how should the Land Use Plan address projects that are developed in stages (or phases)?

For a more detailed explanation of what follows, please refer to our expert report Transition Rules, Existing Rights and Related Issues in the *Nunavut Planning and Project Assessment Act* (NuPPAA), filed November 15, 2016.

NuPPAA itself deals with the continued conformity of projects that lawfully pre-existed the adoption of a land use plan. The Act also makes a new assessment (including a new conformity determination) necessary before an existing project can be significantly modified.

Where there is a proposal for a significant modification of an existing project, a new project description and conformity determination would be required, as per sections 145 and 146 of NuPPAA. It is therefore imperative that the Commission and the parties carefully consider what zoning should be placed on existing uses where it is foreseeable that the existing project may need to change over time. Further information on

the Government of Canada's position on existing uses can be found on page 25 of the 2017 written submission.

74. Many participants have provided further information to the Commission, and where information gaps remain, they have urged the Commission to apply the precautionary principle. How do participants propose the Nunavut Land Use Plan define and implement the precautionary principle, recognizing the weight the Commission gives to traditional knowledge and IQ?

The Government of Canada's Privy Council Office (PCO) document "A Framework for the Application of Precaution in Science-based Decision Making About Risk" (2003) (at this link: http://www.who.int/ifcs/documents/forums/forum5/precaution_e.pdf) guides the Government of Canada on principles for precautionary measures. The document discusses five principles for precautionary measures:

- 1) Precautionary measures should be subject to reconsideration, on the basis of the evolution of science, technology and society's chosen level of protection.
- 2) Precautionary measures should be proportional to the potential severity of the risk being addressed and to society's chosen level of protection.
- 3) Precautionary measures should be non-discriminatory and consistent with measures taken in similar circumstances.
- 4) Precautionary measures should be cost-effective, with the goal of generating (i) an overall net benefit for society at least cost, and (ii) efficiency in the choice of measures.
- 5) Where more than one option reasonably meets the above characteristics, then the least trade-restrictive measure should be applied.

Government of Canada departments refer to this Privy Council Office framework. For example, Fisheries and Oceans Canada's (DFO) "A Fishery Decision-Making Framework Incorporating the Precautionary Approach" refers to this framework, as well as to domestic and international commitments that Canada has made, in describing how it implements the precautionary approach into its decision-making framework for fisheries. Please see: <http://www.dfo-mpo.gc.ca/reports-rapports/regs/sff-cpd/precaution-back-fiche-eng.htm> . It says: "In general, the precautionary approach in fisheries management is about being cautious when scientific knowledge is uncertain, and not using the absence of adequate scientific information as a reason to postpone action or failure to take action to avoid serious harm to fish stocks or their ecosystem. This approach is widely accepted as an essential part of sustainable fisheries management."

Traditional knowledge, IQ, and scientific knowledge can complement one another. See for example, the Canadian Science Advisory Secretariat (CSAS) Research Document 2012/0001 "A synthesis of narwhal (*Monodon Monoceros*) scientific advice and Inuit knowledge collected during Nunavut community consultations (May 25-31, 2011) (at this link: <http://waves-vagues.dfo-mpo.gc.ca/Library/345414.pdf>), which combines scientific advice related to narwhals and the Inuit knowledge collected during consultations in six Nunavut communities in 2011. In general, the scientific advice and the Inuit knowledge shared at the consultations complemented each other, but there were also some areas where the two types of information diverged.

Please see our response to question 75 below for further information on the precautionary principle.

75. Participants including the NIRB and NWMB recommend using the precautionary principle in the Land Use Plan and the NWMB's submissions ask the NPC to use protected areas to protect caribou. Under what circumstances would the signatories say this application of the precautionary principle is appropriate?

As stated on page four of the Government of Canada's 2017 submission on the 2016 Draft Nunavut Land Use Plan, we believe that a clear description of what the Commission has heard, options under consideration, and a discussion of the rationale for the recommended option would enhance the planning process. While the Government of Canada agrees that some issues do not have enough evidence to definitively support one option over another, the Commission should still consider the evidence that is available and the views of interested parties prior to making recommendations.

In other words, it may be appropriate to take precautions, but the Commission should provide rationale for why these actions are necessary and identify what the potential outcomes of these actions would be and why one option is preferable to another. We suggest that the Commission be explicit as to what the residual uncertainty is after considering the evidence on the record, then indicate what degree of caution is needed/warranted in the Commission's recommendation on any given subject. Since the precautionary principle inherently applies to decisions made with imperfect information, our main recommendation is that the degree of uncertainty be transparent, so recommendations can be seen in proper context. Per the Priority Expectations for a First Generation Nunavut Land Use Plan shared with the Commission in March 2013, the Government of Canada expects that the Plan will be based on a transparent process that makes decisions on competing land uses based on a consideration of facts and values.

76. A number of organizations have recommended that NPC be more explicit with regard to the periodic Plan review, given that this would be a "first-generation land use plan". Can participants suggest mechanisms which would address the need for clarity and certainty when it comes to the periodic review?

Section 66 of the *Nunavut Planning and Project Assessment Act* (NuPPAA) provides that the Commission may conduct a periodic review of a land use plan. A periodic review should evaluate whether the plan continues to serve its purposes and requirements set out by the Nunavut Agreement and NuPPAA, as well as to identify whether there are gaps to fulfill these purposes and requirements. Conducting periodic reviews of an approved land use plan is also a common best practice of land use planning.

In order to facilitate effective evaluation, careful consideration should be given in setting up well-defined goals with supporting, measureable objectives in a land use plan. The periodic review could begin with evaluating whether the implementation of the plan is contributing to meeting those objectives. Frequency is another aspect for period reviews. Sufficient interval in between each review should be given for implementation of a land use plan in order to gather enough data to evaluate the plan.

Good practice and successful examples of effective mechanisms for period reviews of a land use plan are in place in many other jurisdictions. We recommend that the Commission look to other jurisdictions to learn from their success and lessons about setting up an appropriate and effective mechanism for periodic review.

77. Can participants recommend specific research topics and themes that should be addressed to fill important gaps in knowledge?

The Government of Canada has no specific recommendations for additional research topics and themes that should be addressed to fill important gaps in knowledge. As new information becomes available, the priority of research themes may change. For the Government of Canada, implementation of research priorities is also subject to appropriations, priorities and budgetary constraints. Keeping the aforementioned considerations in mind, in broad terms, some research areas that might be focused on by the Government of Canada and/or its partners and/or other organizations could include: impacts of climate change to marine habitat; areas required for critical life functioning of marine species; cumulative effects of stressor and risks of various marine activities to species, habitats, and climate variability (e.g. species sensitivities to underwater noise, vessel grey water, ballast water exchange, heavy fuel oil and ice breaking); and development of baseline information, with assistance from community monitoring, on the status and change of biota in a region and on the occurrence of new biota to an area.

79. Under what circumstances if any do participants suggest the Land Use Plan require the NPC to issue a negative conformity determination rejecting a project rather than a positive conformity determination for further consideration by the NIRB and other regulators?

Under article 11.5.10 of the Nunavut Agreement and section 77 (1) of the Nunavut Planning and Project Assessment Act (NuPPAA), the Commission is required to review projects to determine if they are in conformity with approved land use plans. If a proposed project does not meet the requirements set out in the plan then the Commission must issue a negative conformity determination. A land use plan can make provision for the Commission to grant “minor variances”, which has the effect of granting conformity to projects that do not fully conform. However the plan must itself establish the power to grant such a variance. We recommend that the plan itself should set clear conditions within which variances may be considered and granted, and help establish a shared understanding of the scope of “minor” variances.

Therefore, when a project does not conform to the plan (and where a variance is not possible or the Commission declines to grant one), the Commission is required to issue a negative conformity determination. This also means that where the land use plan allows for certain land uses but makes them subject to terms and conditions, the Commission is required to issue a negative conformity determination if a proposed project would not meet those terms and conditions.

The Government of Canada is of the view that any prohibitions and terms and conditions the land use plan will impose should be clear, well thought out, and necessary or conducive to the existing and future well-being of Nunavummiut.

82. When we were in Kuujuaq, I did mention if photographs were taken of the Nottingham Island cleanup. I want to see any pictures of the cleanup taken.

The Department of Transport (DOT) constructed the radio and navigation station at Nottingham Island in 1927 and a weather station in 1956. About 17 buildings were built at the site to house the radio and weather stations infrastructure and to house the people that worked at the station.

The Government of Canada takes its environmental responsibilities seriously and is committed to managing contamination in a responsible, timely and efficient manner. The operation and abandonment of the Nottingham Island former weather and radio station (during its years of operation) created several environmental issues on the site resulting from practices that were consistent with the norms and knowledge levels of the day; however, they are no longer environmentally acceptable.

These issues include physical hazards related to aged / deteriorating structures and unconsolidated scattered debris; and chemical hazards due to the releases of substances such as petroleum hydrocarbon (PHC), polychlorinated biphenyl's (PCBs), metals, polycyclic aromatic hydrocarbon (PAH) and other substances, in the sites' soil and water, and to some extent air. With the presence of these substances on the Nottingham Island site, it gained the status of a contaminated site posing potential hazards to human and wildlife's health and the environment. To protect the sites' environment and alleviate or completely eliminate negative environmental impacts on animals and human visitors, Nottingham Island required cleanup which was carried out by CIRNAC between 2014 and 2016. Throughout the course of the cleanup, several hundreds of photos were taken. In an effort to meet the request, we have a presentation (Annex C) which has several photos in it. If there is a specific photo or area that Mr. Qavavauq is seeking, he should not hesitate to contact directly the CIRNAC contact provided in this submission.

83. Can we have confirmation that some of the area will be cleaned up? Who exactly is responsible to confirm this with us that it's going to happen?

Please see response to question 84 below.

84. Participants are invited to answer the following question from Joshua Kango, Iqaluit HTO (Qikiqtani Hearing Transcript p. 56): "The garbage that has been buried from the past, we think these buried contaminants are dangerous, even as far as Resolute Bay. There are a lot of old vehicles that are just abandoned and buried over. Who will be responsible for this cleanups identified?"

This response is in relation to questions 83 and 84. Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) is responsible for most federal lands in Nunavut. A number of sites have been abandoned across Nunavut that are contaminated. These sites are under the management of CIRNAC and other federal departments. Hamlets within Nunavut, the Government of Nunavut, and Inuit owned organizations are also responsible for contaminated sites within their jurisdiction unless remediation activities had been previously agreed upon during the transfer of land or within the Nunavut Agreement.

There are approximately 85 contaminated sites and waste sites across Nunavut that are the responsibility of CIRNAC (See Annex D). Each site that is CIRNAC's responsibility is assessed using the Federal Contaminated Sites Action Plan (FCSAP) and scored using the National Contaminated Sites Classification Score system⁶. FCSAP is a program that focuses on reducing human health and ecological risks at highest risk federal sites. It is important to note that sites are prioritized based on the risks to humans and the environment. Sites that pose a higher risk are sites that are addressed on a priority basis. Sites that are lower risk have a lower priority. In some instances, a site may visually appear in poor condition however the actual risk could be low.

The work planned for 2018 and 2019 include the remediation of the following sites and areas: CAM-C, CAM-E, FOX-D, and 12 sites (see Annex D) located in the high arctic, which were related to oil and gas exploration. In addition to this, we are doing supplemental work at Resolution Island.

Additionally, Transport Canada is responsible for some contaminated sites located at airports throughout Nunavut. In 2017, Transport Canada decommissioned a landfill and metal dump near the Sylvia Grynell River in Iqaluit and in 2018 Transport Canada began decommissioning of a landfill at the Resolute Bay airport. The decommissioning of these sites will reduce the potential impact to the surrounding environment from landfill contamination.

85. What criteria do participants recommend the NPC apply when it is prioritizing the clean-up of contaminated sites?

The Federal Contaminated Sites Action Plan (FCSAP) is a program that supports federal departments, agencies and consolidated Crown corporations in addressing contaminated sites for which they are responsible. The primary objective of this program is to address the risks that these sites pose to human health and the environment, and to reduce the associated financial liability. Under FCSAP, we use the Canadian Council of Ministers of the Environment: National Classification System for Contaminated Sites (NCSCS) to prioritize the highest risk sites. CIRNAC understands that visually unappealing sites can seem to be problematic however a risk based approach is used to prioritize sites in addition to consultations with the Nunavut Tunngavik Incorporated and the Regional Inuit Associations to incorporate community input.

For more details on our recommendations to the Commission on prioritizing the clean-up of contaminated sites, please refer to p.31 in the Government of Canada Comments and Recommendation on the 2016 Draft Nunavut Land Use Plan, submitted to the Commission in January 2017.

⁶ For more information on federal contaminated sites programs, please go to the website at <https://www.canada.ca/en/environment-climate-change/services/federal-contaminated-sites/publications.html>