

Government of Canada
Comments and Recommendations on the 2014
Draft Nunavut Land Use Plan

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1 Introduction and Overview

This document presents the Government of Canada (Canada) comments and recommendations on the 2014 Draft Nunavut Land Use Plan (DNLUP) following a comprehensive review of its contents and of the supporting documents.

Canada acknowledges the efforts by the Nunavut Planning Commission (Commission) to address the *Government of Canada's Priority Expectations for a First Generation Nunavut Land Use Plan* (April 2013) and *Technical Priorities and Comments* (July 2013) as summarized in the table below.

Government of Canada Priority Expectations for a First Generation Nunavut Land Use Plan	
Legal Compliance	<i>The planning process and resulting Draft Nunavut Land Use Plan (DNLUP) shall be compliant with the Nunavut Land Claims Agreement (NLCA) and the Nunavut Planning and Project Assessment Act (NUPPAA)⁵.</i>
Policy Consistency	<i>The DNLUP must be consistent with federal department and agency mandates, authorities, commitments and policies, including international conventions and agreements which Canada is a party to.</i>
Planning Process Credibility	<i>The development of the DNLUP must be supported by a meaningful, inclusive and transparent public and stakeholder consultation process.</i> <i>A public registry that organizes and consolidates a complete record of evidence and public and stakeholder participation must be established and accessible throughout the planning process.</i> <i>The DNLUP must be based on a transparent process for making decisions among competing land uses based on the consideration of both facts and values.</i>
Clarity and Certainty	<i>The DNLUP must be clear and understandable to users.</i> <i>The DNLUP must provide improved certainty for users.</i>
Implementation	<i>The DNLUP must be practical and implementable.</i> <i>Conformity requirements must be clear and objectively verifiable.</i>
Regulatory Efficiency	<i>The DNLUP should contribute positively to Nunavut's integrated regulatory system.</i>

The 2014 DNLUP is a significant improvement over the 2012 draft and demonstrates that the Commission is on a clear path toward a "first generation plan". Several important issues still remain to be resolved in order for the DNLUP to be advanced for approval. These comments describe those issues and offer a set of solution-oriented recommendations.

First, comments are provided in respect of general issues relating to the overall clarity of conformity requirements and the application of the plan to wildlife harvesting activities and marine shipping. Second, cumulative impacts and the migratory bird setbacks, which are issues recurring in many places in the DNLUP, are discussed. Comments of a more specific nature are then made in the order of the DNLUP chapters to which they pertain.

A series of annexes follows with more comments and suggestions for the Commission to consider. Annex A provides feedback in respect of Table 1 of the DNLUP and specific listed sites. Annex B proposes an aid to interpretation that would be useful to include in Table 2 on the migratory bird setbacks. Annex C mentions a few items in respect of which it would be beneficial to receive more information from the Commission in order to provide informed feedback. Finally, Annexes D and E provide comments on the DNLUP definitions and other comments of an editorial nature.

The number and extent of Canada's comments might seem daunting at first. However, this is merely a reflection of the significant endeavour that developing a land use plan for an area the size of Nunavut entails. It is to be expected that Canada will have more comments to provide as the Commission continues advancing and refining its draft land use plan. In the meantime, we anticipate the Commission or its staff might have a need for clarification of some of the comments found herein, in which case they can count on federal officials' assistance as may be necessary at or between hearings.

2 Clarity of Conformity Requirements

Sound land management, including regulatory efficiency, clarity, certainty and implementation effectiveness, will be best achieved through a land use plan that supports clear and predictable decision-making. This is best achieved through conformity requirements that are (i) explicitly identified as such in the land use plan, (ii) capable of being determined based on criteria that are as objective as possible, and (iii) based on criteria that can be met with the limited information that can reasonably be expected at a very early stage of project development — specifically, at the time the proponent is developing its project description.

With continued refinement, the 2014 DNLUP promises to become an effective instrument to achieve those objectives. It provides a framework for identifying and categorizing particular areas for land use management purposes. This framework enables specifying prohibited land uses, or conditions that must be met for a Project Proposal to conform to the plan. This framework can also be used to provide additional information that may be useful to other decision-makers – proponents, the Nunavut Impact Review Board (NIRB), the Nunavut Water Board (NWB) and other regulatory authorities, and others – when this information does not appear sufficient to justify land use prohibitions or conditions.

In this section of our comments, Canada makes a few suggestions for improving the clarity of the 2014 DNLUP conformity requirements in general. These suggestions relate to community priorities and values, direction to regulatory authorities, and the use of conditions in general.

2.1 Community Priorities and Values

Issue and Discussion

The credibility of the planning process is highly dependent on the work performed by the Commission in gathering information on community priorities and values. This information must be used in designing clear, sound, responsive and well-balanced land-use restrictions. In other words, where information on community priorities and values justifies prohibiting particular land uses or imposing conditions on permitted land uses, the plan should do so.

Even where the Commission have concluded that the information on community priorities and values does not justify creating land-use restrictions, the listing of community values and priorities might nevertheless be useful background information for other decision-makers including proponents. However, care should be taken to ensure that such background information is not confused with land use plan conformity requirements since this would detrimentally affect the land use plan's clarity, certainty and effectiveness as a land-use regulatory instrument.

The Commission has appropriately discussed the importance of community priorities and values and the use it needs to make of them in section 1.4 of the DNLUP as well as in section 1.5.1. However, in other instances, the purpose of the reference to community priorities and values is not as clear and seems to undermine the clarity of the conformity requirements established by the DNLUP.

Recommendation

It is recommended that the DNLUP be reviewed to clarify that community priorities and values do not form part of the land use plan conformity requirements. As the community priorities and values do not form part of the actual land use designations, the plan should make clear that this information is only provided for the benefit of other decision-makers.

More specifically, the definition of “Priorities and Values” should be revised as follows:

Priorities and Values means the issues identified by residents and communities listed in tables 3 and 4, which were considered by the NPC in preparing this plan and which may be relevant to the design and regulation of that need to be considered in the design and regulatory review of Project Proposals.

Likewise, the definition of “Special Management Area” should be revised to remove the reference to priorities and values.

In section 1.5.4 on “Land Use Designations”, the paragraph on “Priorities and Values” should be removed since community priorities and values do not modify or form part of the land use designation. The same applies in respect of section 7.4 “Land Use Designations and Terms”.

Finally, in section 1.5.5 “Using the Plan”, the reference to “Priorities and Values” in step 4 of “Using the Plan” should be reviewed as it currently suggests that information on community priorities and values is something beyond the information on which the DNLUP is based and a source of important background information.

2.2 Direction to Regulatory Authorities

Issue and Discussion

The DNLUP indicates that the intent of the “Direction to Regulatory Authorities” is twofold: 1) to provide direction to federal departments, agencies and regulators; and 2) to identify specific priorities and values that the NIRB, NWB and regulators need to consider in order to mitigate potential impacts (DNLUP, p. 46). Direction to Regulatory Authorities appear in each chapter of the DNLUP, and are also referred to in Table 1, Schedules A and B, and Tables 3-5.

There are essentially two types of direction to regulatory authorities in the DNLUP. First, there are instructions to the effect that setbacks as provided in Table 2 should be incorporated into permits, licences and authorizations. Those seem more akin to land use restrictions – conditions a Project Proposal would have to meet to be in conformity with the land use plan. It seems obvious that a Project Proposal that does not meet applicable setbacks would not conform to the plan. This interpretation of some of the “direction to regulatory authorities” is supported by the fact that in section 7.9 the DNLUP uses these setbacks as examples where the Commission might grant a minor variance. More is said below in respect of conditions and the specific setbacks provided for in the DNLUP.

The second type of direction to regulatory authorities identifies particular concerns worth the attention of other regulators. While the information may indeed be useful to these regulators, it does not appear appropriate to set those out as “directions”. Potential project impacts and appropriate mitigation measures are already required to be identified on a project-by-project basis through the environmental assessment process under the NLCA and the range of applicable statutes. Determining whether and what types of mitigation are required is already an outcome of NIRB’s environmental assessment process. Thus the requirement to apply necessary and appropriate mitigation measures always exists as established by the NLCA. The plan should avoid duplicating this requirement, or worse require that the level of mitigation be reviewed again by each regulatory authority after NIRB’s comprehensive review of the same question.

Despite this, Canada recognizes that through the planning process, the Commission might have gathered and organized information that, without being sufficient to ground land use restrictions, should still be passed on as relevant considerations to others. This should be done in a manner that respects the independence of other decision-makers, without unduly treading on the legitimate jurisdiction of the NIRB, the NWB or other regulatory authorities, or assuming that they will not fulfil their respective mandates.

Recommendations

First, in cases where there is sufficient and specific information to justify prohibitions or conditions, the Commission should develop appropriate restrictions, and clearly identify those land use restrictions as such. For example, any setbacks required for the protection of migratory bird key habitat sites should be redefined as conditions. This could be done as follows:

Condition: The Project Proposal must comply with the setbacks in Table 2 for...

Second, where available information does not justify land-use restrictions, it may still be useful for the plan to signal specific considerations or concerns. For those situations, Canada recommends changing the wording from “Direction to Regulatory Authorities” to “Information for Decision-makers”. This revised wording would replace all references to Direction to Regulatory Authorities, with the exception of setbacks for migratory bird colonies (because we recommend the migratory bird setbacks are better addressed as land-use conditions, as discussed above). For instance, the Direction in respect of Site # 48 could be changed to:

Information for Decision-makers: The value of caribou calving and post-calving areas within this area should be given particular consideration in the screening and review of Project Proposals.

Directions in respect of sites #49, 50, 88, 89, and 103 to 113 should be revised in a like manner to make them “Information for Decision-makers”.

2.3 Use of Terms and Conditions in General

Issue and Discussion

The DNLUP is reasonably clear on what uses would be entirely prohibited in any given area. Some editing might be required to make sure Table 1 consistently uses the defined terms, but this can be easily fixed. Comments on specific definitions of uses and on prohibited uses in respect of specific sites are also provided elsewhere in these Comments and Recommendations.

Terms and conditions (we suggest the word “condition” is probably more appropriate than “terms and conditions”) should describe requirements that must be met for a land use to be in conformity with the land use plan (otherwise it would be prohibited). In including conditions in the plan, the Commission should ensure that the question of whether a Project Proposal meets each applicable condition will be verifiable by the Commission at the time it makes its conformity determination. Often, those requirements will relate to parameters to be included in the design of a Project Proposal. They may also relate to procedural requirements that would need to be complied with prior to the conformity determination (for instance, it is recommended below that prior notification requirements be included as conditions around certain areas).

The use of the defined word “term” in the plan is confusing. In the current draft, the only things that are referred to as “terms” in several places in the DLUP do not seem to set requirements to be met for a conformity determination. Rather they identify an area as raising special concerns for cumulative impacts, suggesting that the Commission would be more likely than elsewhere to exercise its discretion to refer a Project Proposal to screening despite being exempted by

Schedule 12-1 of the NLCA. Further comments are provided in respect of how the DNLUP addresses cumulative impacts in those Comments and Recommendations. Therefore these “terms” do not seem to set out a condition to be met and on which a determination of conformity would depend.

Recommendation

It is recommended that the notion of “Condition” be used for designating requirements a Project Proposal or a proponent must meet to establish conformity with the plan. The currently included “terms” regarding cumulative impact should not be called “terms” and should be revised to more clearly indicate that these are areas where based on currently available information the Commission considers cumulative impact referrals more likely. As indicated above and discussed further below, provisions on setbacks should be rephrased as conditions. As well, Canada recommends including a number of other conditions in the comments below.

3 The NLUP Cannot Apply to Wildlife Harvesting

3.1 Article 5 of the NLCA

Issue and Discussion

While the DNLUP (1.5.3 “Application of the Plan”) clearly states that the plan does not apply to subsistence land use and harvesting, it is also important to clarify that the plan cannot establish limitations on other (non-subsistence) wildlife harvesting, including fishing. Under the NLCA, establishing levels of total allowable harvest and non-quota limitations on harvesting fall within the exclusive purview of Article 5 and are under the sole authority of the Nunavut Wildlife Management Board and other authorities having a role to play under this Article. This flows clearly from the interaction of sections 5.6.16 and 5.6.48 with 11.8.1 of the NLCA.

Recommendation

It is recommended that the plan clearly state that it does not apply to those aspects of a Project Proposal that deal purely with wildlife harvesting activities (including fish harvesting activities). For instance, the following paragraph of section 1.5.3 of the DNLUP should read as follows:

The Plan does not apply to subsistence land use, or to the harvesting of wildlife as “harvest” is defined in the NLCA ~~and harvesting~~.

Additionally, the meaning of “subsistence land use” is not clear.

3.2 Remove Fishing Gear Setbacks from the Plan

Issue and Discussion

The setbacks for the use of fishing gear within specified distance parameters of bird colonies in key bird habitat sites would constitute non-quota limitations, as defined in section 5.1.1 of the NLCA, on fish harvesting activities. This means that the fishing gear setbacks, as non-quota limitations, cannot be established through the land use planning process.

Recommendation

It is recommended that setbacks for the use of fishing gear near key bird habitat sites be removed from the plan.

3.3 Vessel and Aerial Setbacks Do Not Apply to Inuit Harvesting Activities

Issue and discussion

The vessel and aerial setbacks near key bird habitat sites in the DNLUP may have incidental effects on harvesting. Section 5.7.16 of the NLCA sets out that Inuit have a free and unrestricted right of access in the Nunavut Settlement Area (NSA) for harvesting, subject only to certain exceptions, for example, for lands dedicated to national security, public safety concerns, and conservation restrictions imposed by the NWMB.

Recommendation

While 1.5.3 “Application of the Plan” in the DNLUP does state that the plan does not apply to subsistence land use and harvesting, the GOC recommends adding further clarity by noting that unless they fall within one of the exceptions noted above, any aerial or vessel setbacks do not fetter the Inuit right to unrestricted access for the purposes of harvesting, pursuant to section 5.7.16 of the NLCA.

4 Marine Shipping

Issue and Discussion

While recognizing the commitments in the NLCA and that the Commission has an important role in land use planning for the territory, Canada supports an approach to land use planning that both respects Canada’s international obligations and builds on Canada’s domestic regime, and that encourages free and open navigation within a highly regulated environment.

Transport Canada has previously provided the Commission with information on the legal regime that governs shipping in the Arctic (see correspondence related to amendments to the North Baffin Regional Land Use Plan dated December 24, 2013 and March 26, 2014). That information indicated that shipping in the north is a highly regulated activity. It is also an inherently international activity. The international rules and standards for vessels are designed to minimize the threat of accidents and pollution from shipping and have on the whole proved effective.

Canada's domestic legal regime reflects the international legal framework set out in documents such as the *United Nations Convention on the Law of the Sea* (UNCLOS) and conventions negotiated by specialized bodies of the United Nations such as the International Maritime Organization (IMO) and the International Labour Organization (ILO) which Canada has ratified.

The plan should be made expressly consistent with Canada's international legal obligations under these conventions. Transport Canada recommends adding a statement to this effect in the plan to make clear that it is intended, now and in the future, to work within and complement this regime.

In addition, as noted in Transport Canada's earlier submissions to the Commission, Canada has a robust domestic regime for Arctic shipping. That regime attempts to balance the need for a safe and environmentally responsible marine transportation system with the need to have viable, effective and economical marine transportation that facilitates commerce and the well-being of Canadians.

Other bodies, including the Commission, need to be mindful of the effectiveness of the domestic regulatory regime in place for Arctic shipping and the need to balance safe and environmentally responsible shipping with economic development. Transport Canada would be pleased to continue to work with the Commission to support its plan development. Additionally, we recommend that the Commission engage with other federal regulators and the shipping industry to develop planning practices that are safe, environmentally responsible and practical.

Canada notes that the DNLUP (at page 68) proposes to prohibit commercial shipping and cruise ships from operating in Moffett Inlet and in a portion of Foxe Basin. It is not clear what the purpose of such a prohibition is and why less restrictive measures cannot accomplish the same result(s). In Canada's view, an outright prohibition should only be put in place if other less restrictive measures have proven to be ineffective to address environmental and other concerns. As a general rule, Canada's domestic regulatory regime seeks to promote rather than restrict marine commerce. An outright ban on commercial shipping in Canadian waters could

have a significant and potentially negative impact both on the shipping industry and Canadian communities in the North.

Recommendations

To ensure that the NLUP respects Canada's international obligations with respect to navigation and shipping, it is recommended that the following wording be added either immediately before section 4.1.1 or at the end of section 1.5.3 (Application of the Plan) of the DNLUP:

The plan should be interpreted and applied in a way that respects Canada's international rights and obligations including under the *United Nations Convention on the Law of the Sea, 1982*, customary international law and any other binding international instrument.

To ensure that Canada's existing domestic regime is also respected it is recommended that the Commission be mindful of the existing domestic regulatory regime in place for Arctic shipping and the need to balance the need for safe and environmentally responsible shipping with economic development.

Canada further recommends that the underlying issues that led the DNLUP to propose the prohibition on shipping in Moffett Inlet and parts of Foxe Basin be discussed further. It is very likely that there is a less restrictive approach that could strike an appropriate balance between the different interests on shipping in Moffett Inlet and parts of Foxe Basin.

5 Cumulative Impacts

Issue and Discussion

The DNLUP mentions the need for the Commission to consider whether Project Proposals exempt from screening raise cumulative impact concerns in a number of places. It is important that the NLUP clearly explains that the Commission has the authority to refer Project Proposals exempt from screening to NIRB whenever it has concerns the Project Proposal would raise cumulative impact concerns, even though there are areas where such concerns are more likely than others.

For instance, in the DNLUP, the authority of the Commission to refer Schedule 12-1 projects to NIRB for screening where the Commission has cumulative impact concerns is often referred to as a "Term" throughout Table 1 in respect of particular sites. However, the Commission has the authority to refer any Project Proposal for which it has cumulative impact concerns to NIRB for screening, even Project Proposals in areas others than those in respect of which such a "Term"

has been included. Given this, including cumulative impact referrals as a general term throughout Table 1 appears to be redundant and may actually lead to the misinterpretation that it is only with respect to those areas already noted where, due to cumulative impact concerns, the Commission might refer a project to NIRB for screening. Clearly, the Commission is signalling sites in respect of which cumulative impacts would be of greater concern. However, this must be done in a way that will be clearer and does not suggest that the authority of the Commission to refer Schedule 12-1 projects for screening is curtailed.

The NLUP would also benefit from including more information on the criteria the Commission might be relying on in making cumulative impact-related determinations.

On page 46 of the DNLUP, the last paragraph of section 7.4 states the following: "The NPC also works with the Nunavut Impact Review Board and Nunavut Water Board when determining if there is a concern regarding cumulative impacts." In situations where a project may have or contribute to cumulative impacts both inside and outside a national park, national marine conservation area (NMCA) or national historic site (NHS) administered by Parks Canada, the Commission would also need to work with Parks Canada in determining the concerns related to cumulative impacts.

Recommendations

First, it is recommended that all the "Terms" in Table 1 of the DNLUP referring to cumulative impact referrals for Schedule 12-1 projects be changed to items included as "Information for Decision-makers". For instance, such a mention could read as follows:

Information for Decision-makers: This is an area of particular concern in respect of cumulative impacts.

Second, it is recommended that section 7.8 "Conformity Determinations" of the DNLUP be reviewed to make the subsection entitled "Project Proposal Exempt from Screening" a separate section in between sections 7.8 and 7.9. This new section would give more detail on cumulative impacts and the basis on which the Commission would consider them.

The Commission may choose to consult with NIRB in the consideration and refinement of this text:

7.X Referral of Projects Exempt from Screening

Consideration of Cumulative Impacts

Despite the fact a project may be exempt from screening by NIRB under the NLCA and NUPPAA, the NPC has authority to refer any project to NIRB for

screening where it has cumulative impact concerns. Cumulative impacts are changes to the biophysical, social, economic, and cultural environments caused by the combination of past, present and reasonably foreseeable future actions. Cumulative impacts are best understood by distinguishing them from direct impacts. Direct impacts are the impacts of a project or other activity on the environment independent and exclusive of the impacts of other projects or activities. In contrast, cumulative impacts may stem from the interaction of a project's direct impacts with the direct impacts of other development or natural events.

The NPC ensures that projects exempt from screening that may present cumulative impact concerns are referred to NIRB, while avoiding imposing unnecessary requirements. When determining if a project exempt from screening should nevertheless be referred to NIRB for screening, the Commission may consider a number of factors to determine the likelihood and severity of cumulative impacts, such as:

- Whether the project's contribution to cumulative impacts could result in an established or evidence-based benchmark^[1] being exceeded;
- Whether the project is located within an area identified as being of particular concern in respect of cumulative impacts taking into account its ecological or socio-cultural importance;
- Whether the project may evoke concern because of many existing demands on the same resources (e.g., many uses of water from the same water body);
- Whether the project may involve activities within or beyond the project footprint that can interact with other projects and activities and known values;
- Whether, if implemented, the project has the potential to induce further activity in the region that could negatively interact with known values.

No Cumulative Impact Concerns

[RELEVANT TEXT FROM SECTION 7.8 DNLUP.]

¹ NOTE TO COMMISSION: We use the term "benchmark" here rather than "threshold". The term "threshold" typically implies that details are fully known regarding the condition at which a valued component indicator has a significant shift in state (e.g., a wildlife population level that triggers an endangered status rating). The term "benchmark" has become the more acceptable terminology by practitioners to acknowledge that there is often significant uncertainty regarding such thresholds, and that benchmarks may be established based on multiple sources of information (e.g., traditional knowledge, scientific research, etc.).

Cumulative Impact Concerns

[RELEVANT TEXT FROM SECTION 7.8 DNLUP.]

Third, it is recommended that the last paragraph in the first column of p. 46 be amended as follows:

~~In~~The Plan identifies some of the Protected Areas and Special Management Areas identified listed in Schedule A as areas of particular concern in respect of cumulative impacts. ~~the NPC may refer Project Proposals falling within NLCA Schedule 12-1 to NIRB for screening, where the NPC has~~ In such areas, there is a greater likelihood the NPC will determine that a Project Proposal requires being referred for screening by NIRB despite being usually exempt from screening because of concerns respecting the cumulative impact of that Project Proposal in relation to other development activities. Project Proposals that may be considered to raise cumulative impact concerns will include uses such as: . . .

Finally, again on page 46 of the DNLUP, the last paragraph of section 7.4 should include the following statement: "NPC will also work with Parks Canada in situations where a Project Proposal may contribute to cumulative impacts both inside and outside a national park, national marine conservation area or national historic site administered by Parks Canada."

6 Migratory Bird Setbacks

6.1 Not Applying Setbacks to Limit Research Activities

Issue and Discussion

The proposed vessel and aerial setbacks could impede ongoing wildlife research that should be permitted. For example, marine mammal research conducted by Fisheries and Oceans Canada (DFO) through aerial surveys may be impacted by the aerial setbacks. Environment Canada (EC)'s monitoring of migratory bird abundance and distribution could be similarly impacted. Such research is critical to obtaining information about wildlife health, abundance and distribution. The benefit of this research outweighs any potential harms it might have on bird habitat, particularly if properly managed.

Recommendation

It is recommended that the conditions setting out the aerial and vessel setbacks make an exception for research activities conducted by vessel and/or aircraft that are aimed at gathering

information about wildlife health, abundance or distribution. As a consequence, it is recommended that the following language be used to capture the setbacks as conditions:

Condition: Project Proposals must comply with the setbacks in Table 2 for [SPECIFY BIRD GROUP and SETBACK TYPE(S) If APPLICABLE] except wildlife health, abundance or distribution information research activities.

For greater certainty, this condition does not apply to the Inuit right to unrestricted access for the purposes of harvesting pursuant to section 5.7.16 of the NLCA.

6.2 Aid to Interpretation of Table 2: Migratory Bird Setbacks

Issue and Discussion

The DNLUP does not explain clearly how *Table 2 – Migratory Bird Setbacks* is supposed to function. This may create confusion.

Recommendation

It is recommended that an explanation be added on how the table is supposed to function. An explanation of how the table is meant to be used is being suggested in Annex B and could be added to Table 2.

7 Comments Relating to Chapter 1 – Land Use Planning in the Nunavut Settlement Area

7.1 Section 1.4.4 – Watershed Planning

Issue and Discussion

Section 1.4.4 (Watershed Planning) does not accurately reflect the co-management structure and responsible authorities for water management in Nunavut. This section should reflect the federal government's co-management responsibility for inland waters and the Government of Nunavut's responsibility for drinking water, which falls under its more general authority for health and sanitation.

Recommendation

Suggested rewording of this section:

The Minister of AANDC, along with the Government of Nunavut and the Nunavut Water Board (NWB) established under Article 13 of the NLCA, have mandated

responsibilities for the management, conservation and use of freshwater in Nunavut. The federal government and the NWB have shared responsibilities for the management of freshwater resources in Nunavut while the Government of Nunavut has responsibilities for community drinking water and waste management systems. The recently enacted Nunavut Waters Regulations (SOR/2013-69) established 65 Water Management Areas (WMA) within Nunavut (see Schedule B). Given the inter-connectivity between land and water, land use management within these WMAs is expected to be an important component of the Plan moving forward. While there is not an official water management strategy or policy currently in place for Nunavut, it is anticipated that the responsible authorities for water management in Nunavut will advance progress in this area, along with multiple stakeholders in the near future.

7.2 Section 1.5.3 – Application of the Plan

Issue and Discussion

It is important that the plan specifies clearly (i) the entire scope of its geographic application, and (ii) the scope of Project Proposals it applies to.

The NLUP should state explicitly that it would apply throughout the NSA and the Outer Land Fast Ice Zone. It already provides that it does not apply within national parks, NMCA's and NHSes administered by Parks Canada. As a separate matter, it should also state that it applies to all Project Proposals within the geographic area of the Commission's jurisdiction.

We already indicated above how Canada recommends clarifying that the plan will not apply to wildlife harvesting.

Recommendation

It is recommended that the first paragraph of section 1.5.3 of the DNLUP be modified as follows to clarify the geographical scope of the plan and the scope of activities to which it applies:

The Plan applies throughout the Nunavut Settlement Area and the Outer Land Fast Ice Zone, except within those areas excluded by [REFERENCE TO ESTABLISHED PARKS, ETC.] It applies to all Project Proposals within this area, including surface and subsurface lands, freshwater, marine areas and the beds of these bodies of water, and renewable and non-renewable resources, including wildlife.

7.3 National Considerations as a Factor

Issue and Discussion

There is a general need to better highlight in the plan that national considerations be relevant factors in identifying Protected Areas and Special Management Areas.

Recommendation

Specific suggested edits include:

- Adding a reference to national considerations in factors to be taken into account in making Protected Area and Special Management Area designations (two separate bullets on p. 21): “Special local, regional and national considerations.”
- Adding a reference into the opening context of Chapter 2 Protecting and Sustaining the Environment (p. 23): “Special local, regional and national considerations.”
- Adding a reference into the opening context of Chapter 4 Building Healthier Communities (p. 32): “Special local, regional and national considerations.”

8 Comments Relating to Chapter 2 -- Protecting and Sustaining the Environment

8.1 Section 2.3 – Climate Change

Issue and Discussion

Canada shares the Commission’s view that climate change is an important consideration to be taken into account by the Commission in developing and updating the plan. That said, a freestanding direction to regulators to consider climate change does not appear necessary or appropriate for the same reasons we stated with respect to the “Direction to Regulatory Authorities”. As indicated above, determining whether and what types of mitigation are required is by law an outcome of NIRB’s environmental assessment process and other applicable regulatory schemes. This would include taking into account relevant factors relating to climate change. The plan should avoid duplicating this requirement.

Recommendation

It is recommended that the direction to regulators at the end of s. 2.3 (Climate Change) be deleted, and that s. 2.3 clarify that climate change is a planning objective to be used by the Commission in developing and updating the plan in the future.

9 Comments on Chapter 3 – Encouraging Conservation Planning

9.1 Notification Zone around Existing National Parks, National Marine Conservation Areas and National Historic Sites

Issue and Discussion

Parks Canada has in the past discussed the idea with the Commission of establishing a “notification zone” around existing national parks, NMCAs and NHSes to inform Parks Canada of proposed projects outside of these parks and conservation areas. The purpose of such a notification is not to prevent projects that would otherwise be in conformity with the plan from proceeding, but merely to ensure that Parks Canada is aware of Project Proposals in the vicinity of those areas, giving it an opportunity to work with the proponent or better support NIRB in ensuring new projects have limited effects in national parks, NMCAs and NHS administered by Parks Canada.

Ideally, those zones would extend 50 km out of established national parks’ and NMCAs’ boundaries all-around of them, and 25 km out and around of NHS administered by Parks Canada.

Recommendations

It is recommended the NLUP provide for areas extending 50 km out from established national parks and NMCAs boundaries within which it shall be a condition of the NLUP that proof is given to the Commission prior to conformity determination that Parks Canada was notified of the following:

- Description of Project Proposal
- Name and contact information of proponent.

It is recommended the plan provide for similar areas extending 25 km around NHSes administered by Parks Canada within which the same condition to provide notification to Parks Canada be imposed.

9.2 Section 3.1.1.3 - Proposed National Marine Conservation Areas

Issue and Discussion

The DNLUP is supportive of establishing NMCAs in the NSA in the future. Whereas section 3.1.1.2 of the DNLUP refers to the *National Park System Plan* and the fact that, according to this plan, additional regions need to be represented through additional national parks, the DNLUP does not give the corresponding reference to Canada’s *National Marine*

Conservation Areas System Plan. Referring to this plan in section 3.1.1.3 and the fact that the marine regions it identifies in the NSA have yet to be represented by NMCAs would be informative and make that section of the plan more complete. This would parallel nicely with the information given in respect of proposed national parks.

At this point in time, Canada is not in a position to provide more specific areas that may be proposed as NMCAs other than the Lancaster Sound area which the DNLUP includes as a Protected Area and is specifically discussed below.

Recommendation

It is recommended that section 3.1.1.3 of the DNLUP be modified as follows:

3.1.1.3 Proposed National Marine Conservation Areas

National Marine Conservation Areas (NMCAs) provide a network of representative protected areas, and the Commission recognizes the desirability of establishing NMCAs in the NSA. While land use plans developed by the Commission do not apply within established NMCAs, the Commission has a role in supporting the identification and establishment of NMCAs.

Canada's *National Marine Conservation Areas System Plan* identifies nine marine regions either entirely or partially within the NSA: Lancaster Sound, Foxe Basin, Queen Maud Gulf, Baffin Island Shelf, Arctic Archipelago, Arctic Basin, Hudson Strait, Hudson Bay and James Bay. None of those regions are currently represented through an established NMCA, and only one proposal – Lancaster Sound NMCA -- is at an advanced stage.

Lancaster Sound is acknowledged as one of the most important marine areas in the Arctic. A project is now...

9.3 Inuit Impact and Benefit Agreement for National Wildlife Areas and Migratory Bird Sanctuaries in the Nunavut Settlement Area

Issue and Discussion

Environment Canada has negotiated an Inuit Impact and Benefits Agreement (IIBA) with Nunavut Tunngavik Inc. and the Regional Inuit Associations for its Migratory Bird Sanctuaries (MBSs) and National Wildlife Areas (NWAs) in the NSA. This agreement addresses matters connected with the MBSs and NWAs that would have a detrimental impact on Inuit or that could reasonably confer a benefit on Inuit. More particularly, Article 4 and sections 5.4 and 5.5 of this IIBA provide for the unique nature of Inuit use and management of Inuit Owned Lands

within MBS's and NWAs as well as the means of access to these Inuit Owned Lands through other lands in MBSs or NWAs.

The IIBA subject matter of relevance to the NLUP is as follows:

- special provisions for applications to permit activities on Inuit-owned land parcels within the MBS or NWA, where the proposed activities are supported by the Regional Inuit Association;
- provisions for removal of carving stone (quarrying) on Inuit Owned Lands and crown land within MBSs and NWAs;
- provisions for the siting and management of outpost camps on crown land within MBSs and NWAs.

The parties to the IIBA carefully negotiated provisions that would maintain legitimate use by Inuit of lands within MBSs and NWAs in a manner that is consistent with their status as Conservation Areas, as described in Article 9 of the NLCA. It is important that the NLUP does not inadvertently block these provisions so that the full breadth of potential MBS and NWA land uses by Inuit under the IIBA is preserved.

Currently, the DNLUP would impose prohibitions that could run counter to some uses which may be legitimately entertained under the IIBA (e.g., the prohibition on quarries would limit the removal of carving stones; setbacks might have to be adapted to provide access to Inuit-operated tourism facilities; other prohibited activities or infrastructure might also be exceptionally permitted on Inuit Owned Lands).

Recommendation

It is recommended that the following be provided in respect of all MBSs and NWAs:

Notwithstanding any prohibition or condition in the Plan, land uses connected with activities that are permitted or may be permitted pursuant to the *Migratory Bird Sanctuary Regulations* or the *Wildlife Area Regulations* and are conducted under Articles 4 and 5 of the *Inuit Impact and Benefit Agreement for National Wildlife Areas and Migratory Bird Sanctuaries in the Nunavut Settlement Area*, as this agreement may be amended from time to time, conform to the Plan.

10 Chapter 4 – Building Healthier Communities

10.1 Contaminated Sites

Issue and Discussion

In Chapter 4, section 4.4.3 (Contaminated Sites), the DNLUP is silent on future uses of remediated sites. This is contrary to the intent of the Northern Contaminated Sites Program. The DNLUP designates contaminated sites as Special Management Areas and prohibits “incompatible uses”; however there is no definition of “incompatible uses”. When consulting Table 1, one might assume that all uses other than remediation and monitoring of sites are “incompatible uses” in the case of contaminated sites.

In previous Canada submissions (e.g., the July 2013 technical submission), it was clearly stated that future use of remediated sites is encouraged under the concept of “open use of lands in Nunavut”.

Recommendation

Section 4.4.3 (Contaminated Sites) should reflect the Northern Contaminated Sites Program’s “open use of land” intent, and clearly state that remediated sites even though still listed as contaminated sites would be open to future uses, with use restrictions only on landfills, i.e. prohibition of direct drilling, camps or large landing pads. These changes should be reflected in Table 1.

10.2 Consultation Zone around Department of National Defence Sites

Issue and Discussion

As described in previous correspondence from the Department of National Defence (DND) to the Commission, many operational DND sites are sensitive to vibration and electromagnetic interference. Activities conducted adjacent to such sites can also pose safety risks. Establishing a “notification zone” around designated DND sites to require proponents of Project Proposals in the vicinity of those sites to notify DND would ensure that DND is aware of those Project Proposals and given an opportunity to work with the proponent at resolving issues beforehand.

Recommendation

It is recommended that, for Special Management Areas # 130-136 and 137-166, the following condition be added:

It is a condition of conformity with the Plan that proponents demonstrate that the Department of National Defence has been notified of the Project Proposal, in order to ensure that development and activities near these sites do not negatively impact the ongoing operations of the sites.

It is also recommended that the Commission work with DND to address the additional issues relating to aerodrome safety zones and the Joint Seismic Research Facility that were identified in correspondence from Jaime W. Pitfield (DND) to Sharon Ehloak (NPC) dated May 8, 2015.

11 Chapter 5 – Encouraging Sustainable Economic Development

11.1 Fisheries

Issue and Discussion

Subsistence Fisheries: While subsistence land use and harvesting activities are not subject to the NLUP, the NLUP can play an important role in protecting important harvesting areas.

Atlantic Cod Lakes: DFO provides the following clarification to the discussion on the Cod Lakes at page 44 of the Options and Recommendations to the DNLUP. While the Minister of Environment has accepted the NWMB's decision to not list these cod populations under the Species at Risk Act (SARA), the final decision on listing has not yet occurred or been published in the Canada Gazette. DFO also notes that whether or not the Atlantic Cod in the Cod Lakes are listed under the SARA, the species is still considered a species at risk by the Committee on the Status of Endangered Wildlife in Canada.

Char, Turbot and Shrimp: While some char and turbot areas of abundance have been identified in the DNLUP, Canada recommends that shrimp areas of abundance, in addition to those of char and turbot, also be identified under Schedule B of the DNLUP in order to provide important information for proponents and the public to consider.

Recommendation

It is recommended that the plan clearly identify important subsistence fishing and other fishing and marine mammal harvesting areas.

12 Chapter 7 – Implementation Strategy

12.1 Section 7.5 – Generally Permitted Uses - Commemoration of National Historic Sites

Issue and Discussion

National historic sites can be found in almost any setting, from urban or industrial locales to wilderness environments. It is most desirable that the NLUP recognizes the need for flexibility in commemorating NHSes anywhere in the NSA, and allowing for the recognition and

preservation of their heritage value. 'Commemoration' as an NHS is a symbolic act only and does not change land use by itself. It may lead to accessory activities such as putting up a plaque, but it does not on its own require a change in use of the site.

Just as the DNLUP provides that establishment of an NHS administered by Parks Canada should be a generally permitted use, the NLUP should specify that commemoration of a NHS is also generally permitted. This would give Canada the capacity to formally acknowledge all sites of historic significance in the NSA, and remove any doubt that this may be a prohibited use.

Recommendation

It is recommended that the following item be added as a generally permitted use in section 7.5 of the DNLUP:

- Commemoration of National Historic Sites.

12.2 Section 7.6 - Existing Rights

Issue and Discussion

In Section 7.6 (Existing Rights) the DNLUP identifies conditions under which the plan does not apply, citing NuPPAA transitional clauses. This section fails to consider the full mineral exploration and development life-cycle which consists of a series of related projects (i.e., prospecting, exploration, development, closure). As such, unless the plan is careful to protect pre-existing rights, a user with a claim in an area with a land use designation that prohibits mining or activities associated with mining may be prohibited from advancing the project to the next stage of the life-cycle.

While Section 7.6 of the DNLUP specifies that the land use plan will not apply to Project Proposals with existing rights, the DNLUP does not clearly define "existing rights". An analysis of current land tenure shows that approximately 21% and 24 % of existing subsurface tenures and surface tenures, respectively, are located in land use designations that prohibit major development. Furthermore, the existing rights provisions only apply to Project Proposals that have been approved or are in the process of being approved. If there is a significant modification to a project that meets the transitional clause conditions, the NLUP will then apply to that modified project.

It is undesirable that proponents, who have invested significant sums of money on research, field work, administration and tenure charges, and who have initiated projects on the expectation that those investments are secure, should be denied the ability to pursue their rights and advance them to the next stage of their expected life-cycle after the adoption of the plan. Canada considers that this is not the right policy to pursue since it would seriously

impede the advancement of more than 20% of existing tenures and therefore reduce related potential investments. This might also put a chill on the investment climate in Nunavut in general.

Recommendation

The plan should accommodate the development of all pre-existing tenures, including prospectors' permits and mining claims, as well as significant modifications to existing projects that were approved before the adoption of the plan so as to allow existing rights to advance to the other stages of their life-cycle. While NuPPAA sets minimal exemptions, the Commission is not bound by this minimum and has the authority to exempt pre-existing tenures from the application of specific land use designations and allow them to be modified so as to advance in the different stages of their life-cycle. When the tenures expire the prohibitions would then become applicable.

ANNEX A – Comments in Respect of Table 1: Land Use Designations

Impact on Proposed Transportation Corridors

Issue and Discussion

It seems that two major proposed transportation corridors, the Izok Corridor and the Manitoba to Kivalliq Corridor, are compromised through Protected Area and Special Management Area land use designations and prohibitions on all-weather roads along their routes. It is unclear if this was deliberate, given that both of these transportation corridors are intended by their proponents to be all-weather roads.

Recommendation

Since those transportation corridors are known and intended by their proponents to be all-weather roads, it is recommended that they be exempted from the prohibition on all-weather roads.

Prohibition of “Related Research”

Issue and Discussion

Canada is concerned that blanket prohibitions on research related to prohibited uses, as are listed in many land use designations in the plan, may unnecessarily prevent research activities

that are not harmful to other values. For example, geoscience research and mapping (GEM II)² is important to bring knowledge of the land to modern standards, as a basis for informed decisions". It is Canada's view that research should not generally be prohibited unless it conflicts with other values, in which case only that type of research should be clearly identified under prohibited uses.

Canada also notes that additional measures and systems exist for ensuring that research is not in conflict with priority values (e.g., the Nunavut Research Institute (NRI) under Nunavut's *Scientist Act*). It therefore does not appear necessary to prohibit all research which may be considered related to a prohibited use in respect of a site.

Recommendation

Canada recommends prohibiting "related research except Non-exploitive Scientific Research" in Table 1. "Non-exploitive Scientific Research" should be defined as follows and added to the definitions:

Non-exploitive Scientific Research means not-for-profit investigation based on scientific methods of data collection whose procedures and outcomes adhere to recognized ethical parameters of non-exploitation.

This ensures that publicly-funded research is allowed to continue in sites with prohibitions in Table 1. Recognizing that some specific non-exploitive research activities may conflict with the values associated with some planning areas, Canada recommends that where such activities are identified in developing the plan, specific research activities be prohibited in Table 1.

Environment Canada to be Notified of all Activity near Key Bird Habitat Sites

Issue and discussion

Environment Canada should be notified of all activities at Key Bird Habitat Sites to enable the Department to advise proponents on the location and timing of bird activity in the area, and to discuss vessel/aircraft routing. EC need not approve the project, but the Commission should be satisfied that this procedural requirement has been met before it makes its conformity determination.

Recommendation

² In 2013 the Prime Minister announced GEM II, the Geo-mapping for Energy and Minerals. GEM II will invest \$100 million over the next seven years.

It is recommended that proponents of projects at Key Bird Habitat Sites (sites # 1 to 46 inclusive) have notified EC before the Commission makes a conformity finding. The following condition could be added in Table 1 (Land Use Designations):

It is a condition of conformity with the Plan that proponents demonstrate that Environment Canada-Canadian Wildlife Service has been notified of the Project Proposal so that Environment Canada-Canadian Wildlife Service can provide information on the location and timing of bird activity in the area and discuss ship routing through the area as applicable.

Site # 29 – Key Bird Habitat Site – Creswell Bay

Issue and Discussion

Creswell Bay is a combined marine and terrestrial Key Bird Habitat Site. Therefore, EC recommends prohibitions for activities in addition to the oil/gas and related research already included. It would be appropriate to include the same prohibitions that are found in the other terrestrial Key Bird Habitat Sites in the list of Protected Areas.

Recommendation

Prohibited activities which apply to the Rasmussen Lowlands Key Bird Habitat Site should be added to the prohibition on oil/gas at Creswell Bay.

Site # 44 – Key Bird Habitat Site – Sabine Peninsula

Issue and Discussion

Sabine Peninsula is likely to be identified as Critical Habitat for Peary Caribou in the near future, at which time prohibitions on land use will be needed that could require amendments to the plan, if the current proposed designation is used.

Recommendation

The Commission could consider, for efficiency, simply designating this site as a Protected Area with appropriate prohibited uses.

Sites # 51, 57 and 58 - National Parks Awaiting Full Establishment - Ward Hunt Island; Proposed National Park – Blue Nose Lake Area; Proposed National Park – Qausuittuq (Bathurst Island)

Issue and Discussion

To facilitate the establishment of proposed national parks, such areas require land management consistent with the prevention of new interests in these lands. Particular land management is also required to ensure that the cultural and ecological integrity and heritage values of future park resources are preserved. Moreover, permitted land uses should not be allowed for too long a term in case they would be inconsistent with the establishment of the national park.

In addition to the Prohibited Uses already provided for in the DNLUP, it is desirable to include others long-term land uses and uses which would negatively affect the value of lands as future park resources.

Recommendation

It is recommended that the Prohibited Uses for Sites # 51, 57 and 58 be modified as follows:

The following uses are prohibited:

- Mineral exploration and production;
- Oil and gas exploration and production;
- Quarries;
- Hydro development;
- All-weather roads; ~~and~~
- Uses of land or water for a term of more than five years, except, for greater certainty, in respect of Existing Rights; and
- Any use that would diminish the ecological integrity or the heritage value of the land as future park resources.
- ~~Related research.~~

Site # 52 – Ukkusiksalik National Park of Canada

Issue and Discussion

Most of the area of Ukkusiksalik National Park of Canada is now fully established under the Canada National Parks Act (see <http://gazette.gc.ca/rp-pr/p2/2014/2014-08-13/html/sor-dors187-eng.php>). The NLUP will therefore not apply to that area. The DNLUP will need to be modified to account for this.

The Sila Lodge area has yet to be included in the fully established national park area. However, the long term intent is for Sila Lodge to be included within the park boundary. In the shorter term, the NLUP will therefore apply to Sila Lodge. Because Sila Lodge is considered an area awaiting full establishment as part of Ukkusiksalik National Park, it seems most proper to give it

Protected Area status as an area awaiting full establishment as a national park with the level of protection suggested by the Commission for such areas.

Parks Canada previously provided the Commission with information on the boundaries of the Sila Lodge Area. However, should it require further information in this respect, the Commission should contact Parks Canada.

Recommendation

It is recommended that the colour of Ukkusiksalik National Park in Figure 1 of the draft NLUP be changed.

It is also recommended that references to Ukkusiksalik National Park in general be removed from Table 1 and Annex A, and replaced with references to the Sila Lodge area:

Area Awaiting Full Establishment as Part of a National Park – Sila Lodge (Ukkusiksalik).

Site # 59 – Peary Caribou Habitat Adjacent to Proposed Qausuittuq National Park

Issue and Discussion

The North-eastern part of Bathurst Island is designated as Protected Area #59 – Peary Caribou Habitat Adjacent to Proposed Qausuittuq National Park with prohibitions on mineral exploration and production, oil and gas exploration and production, quarries, hydro development, all-weather roads, and related research. While the prohibitions are an accurate capture of the current moratorium on development activities – until the longer-term needs of the Peary Caribou herd are known, AANDC is concerned that the protected area designation goes farther than is necessary for a special management regime in the area. The zoning for the area needs to recognize both the interests of protecting the sensitive caribou calving grounds as well as the high mineral development potential of the area.

Recommendation

It is recommended that site # 59 not be listed as a Protected Area, but as a Special Management Area that maintains the prohibitions currently listed, but also identifies the need for further study by the Senior Mineral and Energy Resource Assessment (MERA) Committee, which is committed to develop management options. These options may necessitate a future plan amendment. This recognizes both the interests for protecting the sensitive caribou calving grounds as well as the high mineral development potential of the area.

Site # 61 – Proposed Lancaster Sound National Marine Conservation Area

Issue and Discussion

The only outright prohibitions in NMCAs under the *Canada National Marine Conservation Areas Act* are mineral and hydrocarbon exploration and development, and ocean dumping or disposal at sea. The prohibited uses identified for the Proposed Lancaster Sound NMCA in the DNLUP are not entirely consistent with those prohibitions in the *Canada National Marine Conservation Areas Act*. They should be adjusted accordingly.

The layout of area 61 - Proposed Lancaster Sound NMCA in Schedule B is currently confusing. Number 61 shows up in different polygons even though it refers to one area. In particular, the semi-circle extending from NW corner Bylot (off Cape Hay) that has only 61 in it seems to be missing a number (probably number 15). As well, it is not clear that marine areas in Navy Board, Eclipse Sound and near Pond Inlet are part of polygon 61. The apparent buffer zone around Bylot Island does not indicate how it is proposed to be zoned/designated (is it the Bylot Island Migratory Bird Sanctuary?).

Recommendations

It is recommended that the Prohibited Uses for Site # 61 - Proposed Lancaster Sound National Marine Conservation Area be modified as follows:

The following uses are prohibited:

- Mineral exploration and production;
- Oil and gas exploration and production; and
- Disposal at sea.
- ~~Quarries;~~
- ~~Hydro development; and~~
- ~~Related research.~~

It is recommended that the following be added as a new definition:

Disposal at Sea has the same meaning as “disposal” in section 122 of the *Canadian Environmental Protection Act, 1999* as amended from time to time.

It is recommended that Schedule B should be reviewed to show site # 61 as one polygon, if possible, and to clearly include the area around Bylot Island.

Site # 97 – Denesuline Land Withdrawals

Issue and Discussion

Area 97 Denesuline Land Withdrawals is designated as a Protected Area in the DNLUP. This area prohibits mineral exploration and production, oil and gas exploration and production, quarries,

hydro development, and all-weather roads. These lands are subject to the Order in Council #PC 2013-625 (<http://gazette.gc.ca/rp-pr/p2/2013/2013-06-19/html/si-tr62-eng.php>) in which both the surface and subsurface rights to the lands are withdrawn from disposal for a period of three years. Specifically, the land withdrawal prohibits long-term leases in the area, but does not prohibit short-term permits. The land withdrawal also has a qualifier that allows for long-term leases associated with quarrying activities. Given this information, the prohibitions listed in the DNLUP are not congruent with those within the land withdrawal. The land withdrawal still permits activities associated with mineral exploration, oil and gas exploration, and quarries.

Recommendation

Given that the withdrawals in place address the planning needs of the area, it is best not to identify site # 97 in the plan. If it is to be identified, then we recommend that it be designated as a Special Management Zone with prohibitions in place that align with the Order in Council they are subject to.

Sites # 130 to 136 and 137 to 166 - Department of National Defence Establishments and North Warning System Sites

Issue and Discussion

In Table 1, Sites #130-136 and #137-166, the DNLUP lists prohibited uses as follows: "All uses are prohibited except GoC activities" (pg. 69-70). Based on the March 2011 GoC submission on the December 2010 Draft Land Use Plan, and given the need for these sites to be made available on occasion for Government of Nunavut activities, DND finds the prohibited uses too restrictive.

Recommendation

It is therefore suggested that the language be changed to "All uses are prohibited except Government of Canada and Government of Nunavut activities" ("and activities associated with the remediation and monitoring of the sites" for sites # 137 to 166.)

ANNEX B - Aid to Interpretation of Table 2: Migratory Bird Setbacks

First, consult *Table 1: Land Use Designations* (pg. 54 of DNLUP) to identify the prohibitions in place for a given key habitat site. For activities that are not prohibited, determine the type of setbacks that are relevant from Table 1, and then use *Table 2: Migratory Birds Setbacks* (pg. 71 DNLUP) to identify the specific details for the type of activities and type of birds under consideration.

Table 2: Migratory Bird Setbacks (pg. 71) is divided according to type of activity (aerial, marine, and terrestrial), and by different bird groups. The first row provides information on setbacks in place for migratory birds generally. Subsequent rows provide information on more specific setbacks in place for various bird groups. In some cases setbacks for certain bird groups will also apply to other bird groups but may include additional restrictions. For example, the aerial setbacks for All Seabirds include a lateral setback of 3 km from the seaward side of seaward colonies PLUS the setbacks listed for All Migratory Birds. The table is constructed this way to ensure that setbacks are only placed where they are needed to avoid being overly restrictive.

Example #1: Site is in the 'Protected Area' Land Use Designation, and is a Bird Sanctuary or National Wildlife Area (protected under legislation)

Example: Seymour Island Migratory Bird Sanctuary (MBS)

1. Go to *Table 1: Land Use Designations: Seymour Island MBS* (see Land Use Designation #70).

Note the prohibitions for this site:

- Mineral exploration and production;
- Oil and gas exploration and production;
- Quarries;
- Hydro development;
- All-weather roads; and
- Related research

For activities that are not prohibited, the following setbacks must be observed: Aerial Setbacks (All Seabirds), Marine Setbacks (All Seabirds), and Terrestrial Setbacks (Ivory Gull).

2. Go to *Table 2: Migratory Bird Setbacks* (pg. 71) for specific setbacks by 'Bird Group':

a. All Seabirds, aerial setbacks

This setback includes the aerial setbacks listed for All Migratory Birds AS WELL AS those listed for All Seabirds. All overflying aircraft must maintain a:

- i. Minimum vertical setback of 1100 m and a minimum lateral aerial setback of 1.5 km from where concentrations of birds are present (in this case, the concentration is the Ivory Gull nesting colony on Seymour Island). This is a SEASONAL SETBACK (mid-May to end of August).
- ii. Lateral setback of 3 km from the seaward side of seabird colonies (in this case, the Ivory Gull colony on Seymour Island). This is a SEASONAL SETBACK (mid-May to end of August).

b. All Seabirds, marine setbacks

These are:

- i. 500 m setback from seabird colonies when birds are present. This is a SEASONAL SETBACK (Mid-May to end of August).
- ii. 100 m setback from seabird colonies for zodiacs, kayaks and other small launch vessels. This is a SEASONAL SETBACK (Mid-May to end of August)

c. Ivory Gull, terrestrial setbacks

- 2 km setback distance from breeding sites (in this case, Seymour Island). This is a SEASONAL SETBACK (mid-May to end of August).

Example #2: Site is in the 'Protected Area' Land Use Designation, and is not part of a National Wildlife Area or a Migratory Bird Sanctuary

Example: Lambert Channel Key Bird Habitat Site

1. Go to *Table 1: Land Use Designations: Lambert Channel Key Habitat Site* (Land Use Designation #11).

Note the prohibitions for this site:

- Oil and gas exploration and production; and
- Related research

For activities that are not prohibited, the following setbacks must be observed: *Aerial Setbacks (Coastal Waterfowl and Seaducks)*, *Terrestrial Setbacks (Coastal Waterfowl and Seaducks)*, and *Marine Setbacks (Coastal Waterfowl and Seaducks)*.

2. Go to *Table 2: Migratory Bird Setbacks* (pg. 71) for specific setbacks by 'Bird Group':

a. Coastal Waterfowl and Seaducks, aerial setbacks

This setback includes the aerial setbacks listed for All Migratory Birds AS WELL AS those listed for Coastal Waterfowl and Seaducks. All overflying aircraft must maintain a:

- i. Minimum vertical setback of 1100 m and a minimum lateral aerial setback of 1.5 km in areas where concentrations of birds are present. This is a SEASONAL SETBACK (mid-May to end of August).
- ii. Lateral setback of 3 km from flocks of Coastal Waterfowl and Seaducks. This is a SEASONAL SETBACK (mid-May to end of August).

b. Coastal Waterfowl and Seaducks, terrestrial setbacks

This setback includes the terrestrial setbacks listed for All Migratory Birds (there are no specific setbacks for Coastal Waterfowl and Seaducks, the table simply refers the reader back to the 'All Migratory Birds' row):

- 300 m setback from concentration of birds (i.e. bird breeding colonies at Coburg Island and marine moulting areas). This is a SEASONAL SETBACK (mid-May to end of August).

c. Coastal Waterfowl and Seaducks, marine setbacks.

- 500 m setback distance from seaduck colonies, moulting aggregations of seaducks and waterfowl. This is a SEASONAL SETBACK (mid-May to end of August).

Note: All of the setbacks are seasonal. Setbacks are measured outward from the bird colony itself, NOT from the boundary of the Key Habitat Site.

Example #3: Site is in the 'Special Management' land use designation

Example: Hell Gate and Cardigan Strait Key Bird Habitat Site

1. Go to *Table 1: Land Use Designations: Hell Gate and Cardigan Strait* (Land Use Designation #18)

Note there are no prohibitions for this site. However, the following setbacks must be observed: *Aerial Setbacks (All Seabirds)*, *Terrestrial Setbacks (All Seabirds)*, *Marine Setbacks (Northern Fulmar)*, and *Aerial Setbacks Coastal Waterfowl and Seaducks*.

2. Go to *Table 2: Migratory Bird Setbacks* (pg. 71) for specific setbacks by 'Bird Group':

a. All seabirds, aerial setbacks

This setback includes the aerial setbacks listed for All Migratory Birds AS WELL AS those listed for All Seabirds. All overflying aircraft must maintain a:

- i. Minimum vertical setback of 1100 m and a minimum lateral aerial setback of 1.5 km from where concentrations of birds are present. This is a SEASONAL SETBACK (mid-May to end of August).
- ii. Lateral setback of 3 km from the seaward side of seabird colonies. This is a SEASONAL SETBACK (mid-May to end of August).

b. All Seabirds, terrestrial setbacks

This setback includes the terrestrial setbacks listed for All Migratory Birds (there are no specific setbacks for All Seabirds, the table simply refers the reader back to the 'All Migratory Birds' cell):

- 300 m setback from concentration of birds (i.e. bird breeding colonies and marine moulting areas). This is a SEASONAL SETBACK (mid-May to end of August).

c. Northern Fulmar, marine setbacks

This setback includes the marine setbacks listed for Northern Fulmars AS WELL AS those listed for All Seabirds. These include a:

- i. 500 m setback from seabird colonies. This is a SEASONAL SETBACK (mid-May to end of August).
- ii. 100 m setback from seabird colonies for zodiacs, kayaks and other small launch vessels. This is a SEASONAL SETBACK (mid-May to end of August).

d. Coastal Waterfowl and Seaducks, marine setbacks

- 500 m setback distance from seaduck colonies, moulting aggregations of seaducks and waterfowl. This is a SEASONAL SETBACK (mid-May to end of August).

Note: All of the setbacks are seasonal. Setbacks are measured outward from the bird colony itself, NOT from the boundary of the Key Habitat Site.

ANNEX C – Requests for Further Information

Polynyas

Issue and Discussion

Polynyas are biologically and ecologically important areas that have been assigned a Mixed Use land use designation. Given the ecological value of polynyas, it would be useful to know on what basis the decision was made to designate polynyas as mixed use rather than special management areas.

This being said, Canada recommends that the plan continue to identify all EBSAs and polynyas to provide information to proponents and the public, and that where there is sufficient and specific science and traditional knowledge to support the same, conditions of use in the vicinity of polynyas and in EBSAs be set out in the plan.

Recommendation

We request that the Commission provide information relevant to the designation of polynyas in the plan so as to enable Canada to provide better informed feedback.

Designation of Some National Historic Sites as Protected Areas and Not Others

Issue and Discussion

Eight NHSes out of twelve in the NSA are being given Protected Area status in the DNLUP. They are listed as sites # 76 to 84 in Table 1. In order to be able to provide fully informed feedback on the level of protection to be given by the NLUP to the NHSes, it would be useful if the Commission could provide the information it used to determine which of the 12 NHSes warranted protection and which did not.

Recommendation

We request that the Commission provide Parks Canada with the information on which it has based its determination of the level of protection to be given each of the 12 NHSes in the NSA.

Prohibition on Establishment of Tourism Facilities

Issue and Discussion

In the DNLUP, sites bearing the designation # 167 or 168 are subject to a prohibition against the establishment of tourism facilities. Those sites are designated either as having “High Mineral Potential” or being subject to an “Oil and Gas Significant Discovery Licence”. However, it is not obvious that all types of tourism facilities for any length of time would always be inconsistent

with the purpose for which those areas would be designated and set apart. More information on the basis on which it was decided that all tourism facilities should be prohibited would be useful for Canada to provide fully informed feedback.

Recommendation

We request that the Commission provides AANDC with the information on which it has based its determination that the establishment of tourism facilities should be prohibited in areas designated as # 167 or 168.

ANNEX D - Definitions

The Working Group identified some of the definitions in the DNLUP as inaccurate, inconsistent or missing. The Working Group followed a structured approach to identify definitions that require improvement, based on the following considerations:

- Definitions that must be consistent with the NLCA or other relevant acts, policies or regulations.
- Definitions with unintended consequences.
- Definitions important to an understanding of a concept but missing in the DNLUP.
- Definitions that confuse rules with definitions.
- Inconsistent use of definitions.
- Ensuring any other suggested changes to the DNLUP are included and accurately portrayed in the definitions section of the revised version of the plan.

Recommendations

The Working Group has developed a suggested list of definitions for the Commission's consideration. They are presented in alphabetical order.

Accessory Use

DNLUP definition: "means a use of land that is temporary or seasonal and is both incidental to and customarily found in connection with a principle land use."

Suggested definition: a use or activity that is incidental and subordinate to the main use or activity permitted in a land use designation.

The suggested definition removes the idea of an accessory use being temporary or seasonal as this may have the unintended consequence of making an accessory use or activity non-conforming if it remains a permanent use or activity subordinate to the main use or activity.

Area of Interest

DNLUP definition: "means a spatial area where the principles of conservation planning and sound land use management practices are applied through Land Use Designations, in order to protect areas of particular ecological, cultural, social, archaeological, historic,

research, restoration of environmental integrity or other similar purpose in the absence of legislation.”

Suggested definition: means a spatial area where the principles of conservation planning and sound land use management practices are applied through Land Use Designations, in order to protect or promote areas of particular ecological, cultural, social, economic, archaeological, historical, or research interest as well as the restoration of environmental integrity or other similar purpose in the absence of legislation.

The land use plan is also intended to “encourage sustainable Economic development”, including mineral exploration and development, tourism, commercial fishing, etc.

Marine Infrastructure

There is no reference to marine infrastructure in the DNLUP; therefore a definition is not required.

Mineral Exploration and Development

There are no definitions of “mining” or “mineral exploration”. Further, the two terms are used interchangeably throughout the DNLUP. In particular, Table 1 which indicates prohibited uses for specific sites (land use designations), sometimes prohibits “mining” and at other times prohibits “mining exploration and production”. This could be interpreted such that where only “mining” is prohibited, prospecting, staking a claim and exploration would be permitted. For the purposes of clarity and to better reflect the range of uses and activities that are potentially involved in the life cycle of the development of a mine, it is suggested that a single term, “**mineral exploration and development**” be used consistently throughout the NLUP.

Suggested definition: **mineral exploration and development** includes prospecting for minerals, staking a claim, surveying, removal and processing of a mineral resource, developing or operating a mine, reclamation and any other works required within the meaning of the Nunavut Mining Regulations, but does not include government funded geological research or any other low-impact exploration or research activities that do not require environmental assessment and are not associated with mine development.

With this definition, it would be clear that the full range of activities would be prohibited, or conversely permitted, in certain site-specific land use designations, with the exception of low-risk exploration or research activities. Alternatively, to address the

issue of clarity, consideration could be given to providing separate definitions for “mineral exploration” and “mining”.

National Parks Awaiting Full Establishment

DNLUP definition: “means areas awaiting full establishment as a National Park under the Canada *National Parks Act*”.

Suggested definition: an area that is awaiting full establishment as a National Park under the *Canada National Parks Act* but for which an Inuit Impact and Benefit Agreement has been signed.

Project and Project Proposal

Rather than provide separate definitions, which may create confusion, we suggest that the plan simply state that the definitions for “Project” and “Project Proposal” are the same as those found in *NuPPAA* and the *NLCA*, respectively.

Proposed National Park

DNLUP definition: “means an area for which the NPC has been notified by Government that a National Park is being, or has been, proposed with respect to that area under the applicable federal laws of Canada.”

Suggested definition: please delete “under the applicable federal laws of Canada”.

Proposed National Marine Conservation Area

A definition should be included in the definitions section for Proposed National Marine Conservation Area.

Suggested definition: “means an area for which the NPC has been notified by Government that a National Marine Conservation Area is being, or has been, proposed.”

Tourism

DNLUP definition: means the activities of persons travelling to and staying in places outside of their usual environment for not more than one consecutive year for leisure, business and other purposes.

Suggested definition: means the activities of a tourist, guide or outfitter who travel to and stay in places outside of their usual environment for leisure, recreational and/or sporting purposes.

The suggested definition removes “business” from the definition to avoid the potential for misinterpretation of what kind of business is a conforming use.

Transportation Corridor

Current definition: reads more like a rule than a definition.

DNLUP definition: Transportation Corridor means an area that is designated to be used for a public or private road, rail or shipping route, and may be used by any person for the purpose of transportation. Any industrial activity within the corridor shall be in accordance with the terms and conditions of any permits, licenses or authorizations. Any incidental activities or regular maintenance associated with the upkeep or continued operation of the transportation corridor to ensure the safe operation of transportation-related infrastructure and activities will not require further review or amendment.

Suggested definition: a transportation corridor is a linear development between two or more geographical points for the purposes of transporting resources, goods and people. Such a corridor can be multi-modal and intermodal and be comprised of road, rail, marine and/or air transportation –related infrastructure as well as works or structures for the construction, maintenance and safe operation of the corridor. Transportation corridors may also be combined with utilities such as power and communication transmission lines and towers.

ANNEX E -- Editorial Comments

Page Number	Section/Location	Issue/Comment
10	Definitions	Planning Partner: The definition appears to be a definition for the term “stakeholder” and “public” rather than “planning partner”.
13	Chapter 1	There should be a reference to Crown lands to clarify the context of the NLUP for everyone.
20		Chapters 2 – 5 organize the DNLUP by theme while Chapter 6 is a specific designation/zone. It should be organized differently for clarity because at first it seems that chapters 2-5 are individual zones, but that is not the case.
21	1.5.5	Step 2: “would be considered” – The NLUP needs to clarify whether this means “would be considered to conform to the NLUP”.
29	3.1.2	Article 9 is the relevant article of the NLCA re Conservation Areas, not Article 8.
35	4.4.1.2	Words are missing in the designation/zoning box.
36	4.4.2	Should read: “In Nunavut, there are seven (7) Long Range Radar (LRR) Sites and twenty-four (24) Short Range Radar (SRR) Sites.”
36	4.5.1	<p>Please add: “Resolute Bay, Wrangel Bay and Lincoln Bay” to the list of DND establishments.</p> <p>Note: Lake Hazen should not be included in this list as the NLUP will not apply to DND sites that are within national parks because the NLUP does not apply within national parks. Lake Hazen is within Quttinirpaaq National Park. Parks Canada</p>

		works with DND re access to the site by DND. Wrangel Bay and Lincoln Bay are <u>not</u> within Quttinirpaaq National Park.
38	Chapter 5, Introduction	The NLUP should clarify whether tourism was identified as supporting the NPC goal of encouraging sustainable development.
46	7.4	The reference to the NPC “working” with NIRB and NWB on cumulative impacts is vague and should be clarified, as should the role of the NWMB.
47	7.8	The NLUP should clarify whether it is referring to specific recommendations from NPC to NIRB or recommendations that are in the NLUP.
48-49	7.9	The NLUP should indicate how it was determined that 10 days would be the turnaround time and whether this is standard and appropriate, as well as whether others would be informed if there is an extension.
52	7.1.4	The text suggests that projects that do not conform to the NLUP may or may not be prohibited uses.
54-68	Table 1	<p>In Protected Areas, the table sometimes states that “The following uses are prohibited”, while other times it states that “Activities associated with these uses are prohibited”. This leads to confusion with respect to what is being prohibited. For example, is there a difference between prohibiting the uses of “oil and gas exploration and production” (areas 5, 9, 11-12, 24-27, 29, 32-33, 38, 40, 42, 47, 51-87, 90-99), versus prohibiting activities associated with “oil and gas” (areas 10, 13, 23, 28, 30-31, 34-37, 39, 41, 43, 45-46)? Similarly, is there a difference between prohibiting the uses of quarries, hydro development or all-weather roads (areas 47, 51-87, 90, 94-97), versus prohibiting activities associated with quarries, hydro development, or all-weather roads (areas 10, 13, 23, 28, 30-32, 34-37, 39, 41, 43, 45-46)?</p> <p>The NLUP should use consistent language in this regard.</p>

63	Table 1	The names of the two proposed national parks are misspelled. They should spell "Bluenose" and "Qausuittuq".
67	Area 89	The NPC suggests it has the authority to limit what the NWB will consider. This reference needs to be reworded in a way that reflects the NPC jurisdiction on this matter.
69	Table	<p>DND Establishments: there are six (6) sites in the High Arctic Data Communications System. Only four (4) are listed.</p> <p>Please add: High Arctic Data Communication System – Victor and High Arctic Data Communication System – IDA.</p> <p>Please add the following sentence: "If the Park does not remain crown land, DND should have the option to retain the HADCS land requirement."</p>
70	Table 1	<p>There are a total of 31 North Warning System sites.</p> <p>Please add: PIN-CB Bernard Harbour.</p> <p>Correct: FOX-CA.</p> <p>Change from Langok Fiord to Kangok Fiord.</p> <p>Remove the period Cam-1.A to read Cam-1A.</p>
72	Table 2	<p>Revise Footnote 1 to read: "Aircraft shall endeavour to maintain, subject to pilot discretion regarding aircraft and human safety, and except for specified operational purposes such as take offs and landings, etc., the proposed vertical and lateral aerial setbacks."</p> <p>Revise Footnote 2 to read: "Subject to situations in which the safety of vessel, crew and passengers will need to come first".</p>
76	Options and Recommendations	<p>Revise bullet 3 on page 76 ("Aerodromes") to read:</p> <p>The Airport Zoning Regulations created under the Aeronautics Act, which states Land use activities within the municipal aerodromes</p>

		<p>certified Nunavut aerodromes (i.e. airports) (4 km radius measured from the midpoint of the runway) are required to comply with existing <i>Airport Zoning Regulations</i> created under the <i>Aeronautics Act</i>; under these regulations, building heights are restricted and additional hazardous uses are often identified, including bird attractants, which can pose a significant threat to aircraft operations.</p> <p>Revise the “Recommendation for Aerodromes” on page 76 to read:</p> <p>Regulations are in place for all Nunavut airports certified Nunavut aerodromes (airports) and the land use plan does not need to duplicate restrictions.</p>
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