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OCEANS NORTH CANADA
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Technical Comments on 2014 Draft Nunavut Land Use Plan

Executive Summary

Oceans North Canada, a partnership between Ducks Unlimited Canada and the Pew Charitable Trusts, is a science and community based marine conservation campaign that advocates for scientifically sound policies consistent with indigenous land claims and traditional practices. Oceans North provides ongoing support for regional voices in their desire to ensure adequate protection for the Lancaster Sound marine region is in place in advance of what we anticipate to be increasing pressure on the region. In particular, Oceans North supports the efforts of the Qikiqtani Inuit Association and Parks Canada in their development of a National Marine Conservation Area in Lancaster Sound.

This submission is not an attempt to provide general or comprehensive comments regarding the current land use planning process and the Draft Nunavut Land Use Plan. We wish instead to restrict our comments to the future application of the DNLUP in the Lancaster Sound Region. Oceans North appreciates the opportunity to provide comments during this important process. Our comments in the pages that follow focus on the following key points:

1. The Lancaster Sound Region's ecological integrity is directly connected to the physical and cultural well-being of North Baffin communities. Present-day land use planning affecting this region should build on the existing land use plan, which is the product of decades of community involvement.
2. The Draft Nunavut Land Use Plan at present does not provide stakeholders with a greater degree of precision and predictability than the current North Baffin Regional Land Use Plan and its predecessor.
3. The draft plan fails to adequately address emergent shipping issues in this region.
4. The present planning process should be consistent with the ongoing land use planning that will underlie an interim management plan for the Lancaster Sound National Marine Conservation Area.
5. Recent consultations with High Arctic communities regarding present day perspectives on regional land use, including community consultations regarding NMCA feasibility, should be incorporated in the current process.

I. Lancaster Sound Region

The Lancaster Sound Region is a vital component of both Arctic ecology and Inuit communities. Lancaster Sound is an area of high ecological significance to marine mammals, including various species of seal, various species of whale, polar bear, and walrus. The sound is also home to important breeding colonies for Arctic seabirds. Inuit hunt, fish, and travel in the waters, lands, and ice of Lancaster Sound. The region is recognized for its role in Inuit cultural heritage, with occupancy of the area dating back thousands of years. The marine mammals and fish that live in and migrate through Lancaster Sound remain essential to the economic, social, and cultural well-being of the residents of the region.

Lancaster Sound is also a region facing increasing and anticipated pressures from climate change, industrial development and commercial shipping. As climate change continues to reduce sea ice duration, Lancaster Sound is likely to become a major shipping route. The petroleum industry may return to the North Baffin region, and seismic surveys have recently been approved near Lancaster Sound. Proposals for year-round, ice-breaking shipping in the area have been submitted to Nunavut regulators. Inuit have consistently expressed an interest in protecting the Lancaster Sound region, and have repeatedly opposed petroleum exploration and extraction in the area.

Oceans North is encouraged that the draft plan contains interim management for a National Marine Conservation Area (NMCA) in Lancaster Sound. We suggest the NPC adopt a flexible approach to planning to allow for alterations to the final boundary of the conservation area, and harmonization with interim and final management plans developed through the creation of the conservation area.

II. Land Use Planning in Lancaster Sound

Land use planning and marine conservation initiatives in Lancaster Sound originated in response to pressure for offshore fossil fuel development. Exploration in the area began in the early 1970s with offshore seismic surveys. By 1974, Norlands Petroleum Ltd. had obtained conditional approval to drill an exploratory well in Lancaster Sound. The conditions were not met by 1977, approval-in-principle expired, and the proposal was referred to an Environmental Assessment and Review Panel (EARP) for review (FEARO, 1979).

In 1978, the panel held community hearings in Arctic Bay, Pond Inlet, Resolute Bay, and Grise Fiord. Communities and representative Inuit organizations voiced strong opposition to this drilling proposal (FEARO, 1979). At hearings in Pond Inlet, Inuit

Tapirisat of Canada (ITC) president Eric Tagoona rejected the legitimacy of the EARP process, and demanded that the question of Arctic oil and gas development be settled through a full public inquiry. Tagoona claimed that the “areas of priority to Inuit” were not covered by the EARP terms of reference, and called the entire process “unilateral and arbitrary” (*ITC News*, November, 1978).

The community and Inuit organization opposition to drilling in Lancaster Sound took place in the context of a wider struggle between Inuit and the oil and gas industry. By the late 1970s, the representative Inuit Organizations had adopted positions which opposed oil and gas development until a land claims agreement was settled and a full public inquiry was conducted on the question of opening Canada’s Arctic to oil and gas development (similar in purpose and scope to the Mackenzie Valley Pipeline Inquiry). Inuit organizations opposed various projects, including the proposed Polar Gas Pipeline and Arctic Pilot Project (*Inuit Today*, April/May, 1978).

The Arctic Pilot Project involved year-round shipping of natural gas through Lancaster Sound, a major source of concern with the project for Inuit communities. Following a FEARO review which approved the proposal, the project was subjected to a National Energy Board licensing process. With support from Inuit in Greenland and Alaska, ITC and BRIA successfully opposed the licensing of the proposal. This effort was coordinated through the newly formed Inuit Circumpolar Conference (ICC). In 1984, Hans-Pavia Rosing, then President of the ICC, called ICC’s intervention against the proposal “perhaps [the] most notable achievement to date” by the organization (*Arctic Policy Review*, 1/1984).

In 1979, the EARP panel released its decision on potential drilling in Lancaster Sound, recommending Norlands not be allowed to conduct exploratory drilling at the time. The Panel recommended drilling in the area not proceed until a broader review of “the present and future uses of Lancaster Sound” is conducted. Based on interventions by Inuit, the panel concluded that “questions of potentially conflicting resource uses must be identified, and thus the desire of the local residents to participate in the development of resource use strategies must be recognized.” (FEARO, 1979)

In response to the panel's recommendations, the Government of Canada commissioned the Lancaster Sound Regional Study. The study's mandate was to research potential uses of Lancaster Sound. The study drafted a "Green Paper" in 1981. Entitled, "The Lancaster Sound Region: 1980-2000", its purpose was to "foster continued discussion" on the potential uses of the region and inform future planning in the region. The draft Green Paper underwent a public review process, and a final Green Paper was released in 1982 (Lancaster Sound Regional Study, 1982). The Green Paper presented 6 options for future uses of the Lancaster Sound region, ranging from environmental protection, shipping, renewable resource harvest, and non-renewable resource extraction.

In 1983, workshops were held in Pond Inlet to document the responses of communities, representative Inuit organizations, government departments, industry, and other stakeholders to the Green Paper. At the workshop, communities and representative Inuit organizations indicated that they did not support hydrocarbon development in Lancaster Sound. (Jacobs, 1983).

Following the release of the Green Paper, the Government of Canada, the Government of the Northwest Territories, and Aboriginal organizations agreed on a "community based planning process" for the Northwest Territories (NPC, 2000). At the same time, Parks Canada became increasingly interested in the creation of marine protected areas within Lancaster Sound. A feasibility study was conducted in the late 1980s (Smith, Gowan and McComb, 1989), but no national protected areas were created.

In 1986, the Lancaster Sound Regional Land Use Planning Commission was formed, with the mandate to develop a land use plan for the region. The commission adopted a community-centred approach to planning, and oversaw a process that was consultative and based largely on the perspectives and wellbeing of the people of the region. Planning began in 1986, with planning commission staff conducting mapping and discussion sessions in Grise Fiord, Arctic Bay, Resolute Bay, Pond Inlet, and Clyde River. In 1987, the commission visited communities to determine and discuss issues of concern, and workshops were held with communities, government, and industry. Further workshops and community meetings were held in 1988, to discuss successive

drafts of the land use plan. The *Lancaster Sound Regional Land Use Plan* (LSRLUP) was finalized in 1989, and approved by Government in 1990 (Lancaster Sound Regional Land Use Planning Commission, 1991).

Following the finalization of the Nunavut Land Claims Agreement, the Nunavut Planning Commission (NPC) was created with the responsibility to develop land use plans for the Nunavut Settlement Area. In 1997, the NPC began a review of the LSRLUP. This was again community-centred, and began by reviewing the existing plan with communities, to determine what changes needed to be made. NPC staff and board members toured North Baffin communities, and held public consultations and meetings with hamlet councils, Hunters and Trappers Organizations, and elders. A hearing was held in Pond Inlet in May 1997. Following submissions of comments and submissions to government, the new North Baffin Regional Land Use Plan was approved in 2000 (NPC, 2000).

Community calls for increased protection for Lancaster Sound found new momentum in 2007, when Prime Minister Stephen Harper announced that the federal government would work with the regional Inuit organization to create a National Marine Conservation Area (NMCA). In 2009, Parks Canada, the Government of Nunavut (GN), and the Qikiqtani Inuit Association (QIA) agreed to conduct a feasibility assessment for an NMCA in the region. A steering committee was established with representatives from all three organizations. Community workshops and consultations with all stakeholders are being conducted, and a feasibility report is due to be released in the near future. Community consultations in the course of the feasibility assessment have found significant public support for the establishment of an NMCA in Lancaster Sound.

Oceans North Canada has from the outset supported this proposal. A National Marine Conservation Area for Lancaster Sound will allow for a high degree of marine protection without compromising harvesting rights. Additionally, an NMCA will accommodate responsible shipping and many different forms of industrial development. What it will not permit, however, is seismic testing and drilling for hydrocarbons. This restriction is altogether consistent with community opposition to oil and gas in the region, which has been consistently expressed since the 1970s.

III. Substantive changes between North Baffin Regional Land Use Plan and 2014 Draft Nunavut Land Use Plan

The 2014 DNLUP seems to take an approach to land management that is significantly different than the approach taken in the LSRLUP and NBRLUP. Of concern, the DNLUP seems to “start from scratch,” and ignore the existing NBRLUP. Management controls on marine transportation, extensive and detailed mapping and management of community land use, and a community-centred approach to planning appear to be missing in the DNLUP. As a result, the product of years of work centred on regional input and involving significant public investment may be lost.

i. North Baffin Regional Land Use Plan should serve as a basis for current and future planning exercises.

We are not suggesting that land use planning remain static and locked in a past document. The NBRLUP requires review and revision. Neither the NBRLUP, nor the LSRLUP, were intended to remain unchanged in perpetuity.

The LSRLUP stipulates that “no more than five years” from the approval of the plan, federal and territorial government “will request a formal review of the plan. (...) Plan review is intended to ensure that the document continues to provide relevant direction as conditions, needs, and concerns in the Region change.” (44)

According to the NBRLUP, “the life of the plan is approximately five years.” (2)

The [NBRLUP] outlines principles and objectives to guide land uses in the future, and actions that are specific to the next five years. After five years, the revised plan will again be formally reviewed and updated. Monitoring, amendment and review are part of the continual process of land use planning. (10)

It had been more than fifteen years since the NBRLUP came into force. The situation in North Baffin is significantly different than it was when both the LSRLUP and NBRLUP were developed. Both plans were developed when there was relatively little immediate

development pressure in the region. Today, the Mary River mine has gone into production, and the proponent is seeking permission to greatly expand the level of marine shipping through the region, including regular ice-breaking traffic in areas of essential community land use. Seismic surveys for oil and gas exploration have been approved in the North Baffin region. Climate change is already impacting sea ice duration and extent in the area, and impacts are predicted to increase significantly in the future. Major revisions to the existing plan are necessary to ensure that communities can reap the benefits of new development opportunities without compromising the ecological integrity or Inuit land use in the region.

Both of the land use plans for Lancaster Sound were intended to be living documents and the basis upon which land use planning would continue to develop. Indeed, the LSRLUP was intended to be “the beginning of the continuing process of land use planning for the Lancaster Sound Region. The Commission believes that it provides a foundation on which to build in the years to come.” (47)

The NBRLUP was intended as another stage in an ongoing, evolutionary process of Land Use Planning, where new plans would build upon existing plans to increase precision in land use planning.

At this early stage in the evolution of land use planning in the Nunavut Settlement Area, the NPC fully expects that the degree of precision of this plan is less than future plans will be able to provide. (NBRLUP: 1)

The 2014 DNLUP, however, does not appear to build upon the historic planning initiatives undertaken for the Green Paper, LSRLUP, or NBRLUP. The DNLUP, which replaces the existing NBRLUP, does not incorporate the data or recommendations from previous planning exercises. Rather than supporting the evolution of land use planning in the North Baffin region through review and incorporation of the existing NBRLUP, the NPC has “started from scratch”.

We are concerned that the present process would replace the NBRLUP with a plan that has considerably less precision and detail, especially with regards to areas of community land use and management of marine transportation and shipping. Further,

the development of the 2014 DNLUP has not involved the same degree of community consultation and involvement as the development of the LSRLUP or NBRLUP.

ii. **Areas of Community Land Use**

The level of detail of information about community land use is substantially weaker in the DNLUP, in comparison to the LSRLUP and NBRLUP.

The DNLUP contains maps of community land use and occupancy. However, as the *2015 Options and Recommendations* document notes, the DNLUP contains no information about the relative value and importance communities attach to different areas.

“[A]t this time, the Use and Occupancy mapping information identifies areas that are used by community members, but does not include the communities’ views on the relative importance of the areas and management direction that may be appropriate.” (67)

By contrast, the maps contained in the LSRLUP and NBRLUP differentiate between the relative importance of areas of community land use. The LSRLUP and NBRLUP differentiate between “essential areas”, “important areas”, and “marginal areas”.

The DNLUP contains relatively weak protection for essential areas of community land use, in comparison to the LSRLUP and NBRLUP.

Under the DNLUP, areas of community land use are designated “mixed use” (OAR: 66-67). For these areas, “regulating authorities” are directed to “mitigate impacts on community land use” (DNLUP: 33).

While it will no doubt be useful to have areas of community land use “flagged” for both proponents and review boards at the outset of screenings and reviews, this direction offers relatively weak protection at the land use conformity stage of project assessment. The direction to regulators will not provide any means to stop a proposal at the land use conformity stage, even if it is located in an area that is essential to communities and is entirely incompatible with community use of the area.

By contrast, the LSRLUP and NBRLUP contain relatively strong protections for areas of essential use. This was demonstrated in the NPC's 2015 conformity determination for Baffinland's Mary River Project Phase Two proposal. The proposal, which included springtime ice-breaking through an essential area to the community of Pond Inlet, was rejected by the NPC, based on sections 3.2.1 and 3.3.1 of the NBRLUP.

Section 3.2.1 of the NBRLUP reads:

All land users shall refer to the land values and concerns in Appendix G, and to the Areas of Importance map, to determine important land values and concerns in areas where they plan to work, as well as to adjust their work plans to conserve these values.

Section 3.3.1 of the NBRLUP reads:

All land uses shall be conducted in keeping with the policy of sustainable development in order to protect the opportunities for domestic harvesting. All land users shall avoid harm to wildlife and wildlife habitat and damage to community travel routes through the timing of their operations, through careful selection of the location of their main camps and travel routes, and through other mitigative measures.

As Baffinland had not produced evidence that its work plans (timing and location) had been adjusted to avoid infringing upon Inuit use of sea ice, in an area which was essential to the community of Pond Inlet, NPC ruled that its proposal did not conform to the NBRLUP.

Oceans North is concerned that the DNLUP provides insufficient protection for areas of relatively high importance to communities in the North Baffin region. Oceans North recommends the NPC incorporate previous land use mapping exercises and studies to help identify areas of community land use that are essential to community well-being. The existing NBRLUP, as well as mapping exercises conducted by QIA, could provide valuable data sets to begin this exercise. Oceans North recommends the NPC place stricter management conditions on areas of community land use that are essential to communities, to prohibit uses that are incompatible with community use of these areas.

iii. **Transportation**

The 2014 DNLUP contains relatively limited discussion of how marine shipping should be managed in Nunavut:

In addition to surface links, marine transportation corridors and infrastructure are also an important component of future development in Nunavut. A growing number of goods, natural resources and tourists will navigate through the waters in the future. Major resource development will rely on the heavy lift capacity of marine transport to move ore to production and a decrease in sea ice due to changes in climate may extend shipping seasons and improve marine navigation conditions. Both factors could contribute to an increase in marine activity and will require mitigation measures to minimize potential impacts.

Currently, challenges exist in identifying future land and marine transportation needs due to the scale of the region, environmental factors and ever changing economic circumstances. *As areas are identified as potential transportation corridors (surface and marine), they should be managed to ensure that this potential is not compromised.* [emphasis added] (DNLUP: 34)

The final sentence in this section is particularly troubling, as it could be interpreted to imply that transportation takes precedence over all other land uses, including Inuit travel over sea ice, Inuit harvesting activities, marine wildlife conservation, and commercial fisheries.

Additionally, the 2014 DNLUP calls on the “Planning Partners” (Government of Canada, Government of Nunavut, and Nunavut Tunngavik Incorporated) to conduct further research on some issues that include marine shipping and its effect on marine mammals and Inuit use of sea ice.

To support on-going planning studies the following is a list of research priorities, in no particular order, from which the information collected would support the fulfilment of the NPC responsibilities.

(...)

Identify acceptable thresholds and indicators to manage the impacts from commercial and industrial project proposals on:

- fresh water quality within Nunavut's Water Management Areas and smaller watersheds under development pressures;
- marine mammals from commercial shipping;
- the ability of Inuit to travel on sea ice as a result of regular ice breaking; and
- important habitat relied upon by walrus, polar bear, seals, whales, caribou and migratory bird species. . (DNLUP: 51)

By contrast, the NBRLUP contains a lengthy discussion of the potential impacts and conflicts that could arise from marine shipping, as well as a series of terms and conditions to mitigate these impacts and manage conflicts. (NBRLUP: 43-46)

Oceans North recognizes that responsible shipping and the protection of harvesting and a healthy marine environment can be accommodated with proper planning and management. We are concerned that the 2014 DNLUP does not contain sufficient provisions for the management of marine shipping/transportation though the North Baffin region. Shipping would seem to be given precedence over all other potential uses of the North Baffin region. Oceans North is particularly concerned that insufficiently managed marine shipping may damage sea ice in the North Baffin region. This could have detrimental impacts on important wildlife habitat and the harvesting activities of several communities.

iv. **Community-centred planning**

The LSRLUP and NBRLUP involved ongoing participation of communities throughout the planning process. The development of the LSRLUP was a multi-year process involving fieldworkers conducting community mapping sessions, commission visits to

communities to determine and discuss issues of concern, and workshops with communities to discuss successive drafts of the plan. The review of the LSRLUP and its transformation into the NBRLUP again began with community review at the beginning, rather than end, of the planning process. The first year of the review involved substantial NPC presence in the communities of North Baffin.

Oceans North suggests that community-based planning be upheld in the new process and that past community input be incorporated. This includes public planning discussions that occur outside of NPC processes. In developing its position regarding the Lancaster Sound NMCA, the Qikiqtani Inuit Association conducted extensive consultations with High Arctic communities regarding present day perspectives on regional land use. These views should be incorporated in the current process.

IV. Interim Management of Lancaster Sound National Marine Conservation Area

The decades of regional input that led to the adoption of the current land use plan also informed the decision by the federal government and QIA to work toward creation of Canada's first Arctic National Marine Conservation Area. The 2014 DNLUP contains measures for the interim management of the proposed Lancaster Sound NMCA. Oceans North has questions and concerns with the determination of a boundary for the NMCA, and with how the DNLUP (and eventual final Nunavut Land Use Plan) will be harmonized with interim management plans for the NMCA.

i. NMCA Boundary

In 2010, the Federal Government released a proposed boundary for the NMCA. The DNLUP's boundary for a proposed Lancaster Sound NMCA seems to be based on this proposed boundary. In the 2014 *Options and Recommendations* document, the NPC

states that “PCA has advised that there is a boundary for the Proposed Lancaster Sound NMCA”. However, a final boundary has yet to be determined.

In 2012, the QIA released a report entitled, *Tallurutiup Tariunga Inulik: Inuit Participation in Determining the Future of Lancaster Sound*. The report was intended to provide Inuit with information about the proposed NMCA and to inform the GN and Federal Government about “Inuit perspectives on marine conservation.” (ii) The report criticized the Federal Government’s boundary proposal as too focused on “physical geography, biology and resource potential,” and called for the creation of a boundary that considers “Inuit occupancy and conservation preferences.” (8)

Also in 2012, the steering committee for the NMCA visited Grise Fiord, Resolute Bay, Pond Inlet, Clyde River, and Arctic Bay. According to a 2013 Parks Canada newsletter, “All of the communities recommended extending the marine area to include important biological and cultural aspects.” (2) The newsletter also described the process for a final boundary determination moving forward:

Final decisions regarding a boundary will be informed by consultations and the results of several studies, specifically assessments of the energy resources and ecological values of Lancaster Sound, as well as the Inuit Traditional Knowledge study being completed by QIA. All those information layers will be part of the report that will be submitted to the governments of Canada and Nunavut and to the QIA for a decision on the final boundaries of an NMCA in Lancaster Sound. (6)

Regarding the federal government’s proposed boundary, a 2014 letter from the NMCA steering committee to persons/organizations identified as having a “special interest” in the Lancaster NMCA stated the following:

It is important to note that this boundary is not firmly set but put forward as a basis to start discussions. Initial consultations within affected communities have occurred and identified a community based desire to amend the proposed boundaries and increase the size of the conservation area. Prior to completion of

the study however and making an assessment on the feasibility of the project, the views of all stakeholders must be understood and taken into consideration.

In 2014, following community mapping sessions and IQ research exercises, QIA released its own boundary proposal. The QIA's boundary proposal identifies a more expansive region of high importance to harvesters and communities in the Lancaster Sound Region than the boundaries as proposed by the federal government

Oceans North recommends the NPC ensure the Nunavut Land Use Plan is sufficiently flexible to address potential changes to the boundary of the Lancaster Sound NMCA.

Oceans North recommends the Nunavut Land Use Plan ensure the protection to the important ecological and Inuit land use areas, documented by QIA (both within and outside the Federal Government's proposed boundary for the NMCA).

ii. Interim Management of Lancaster Sound – Prohibited and Restricted Uses

The DNLUP contains interim management provisions for the proposed Lancaster Sound NMCA, including clearly identified uses and prohibitions for the area. Oceans North recommends the NPC ensure that any future Nunavut Land Use Plan be consistent with both interim and final NMCA management plans, as applicable. Both the Federal Government and the regional Inuit association have signalled their ongoing commitment to the Lancaster Sound NMCA process and its end goal. As we have argued elsewhere, we believe that it makes most sense that this process and its plan precede any changes to the North Baffin Land Use Plan as it applies to the same marine region. The prospect of two significant and overlapping land use planning processes proceeding at the same time could potentially create inconsistencies and the expenditure of unnecessary resources.