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March 26, 2014

Mr. Brian Aglukark
Nunavut Planning Commission
P.O. Box 2101
Cambridge Bay, NU
X0B 0C0

RE: Transport Canada Response to the Nunavut Planning Commission's (NPC) Request for Comments on the Nunavut Impact Review Board's Mary River Early Revenue Phase Final Public Hearing Report and NPC's Four Additional Marine-Shipping Questions

Dear Mr. Aglukark,

The Nunavut Planning Commission requested on March 18, 2014 that parties draw the NPC's attention to any parts of the Nunavut Impact Review Board's (NIRB) Final Public Hearing Report that may be considered relevant to the joint NPC/NIRB review of the proposed transportation corridor. The NPC has also posed questions to Transport Canada (received through legal counsel on March 23, 2014). On both matters, Transport Canada provides the following response.

As noted by Transport Canada in its December 24, 2013 letter to NPC, the department questions whether an amendment to the North Baffin Regional Land Use Plan (NBRLUP) for the proposed transportation corridor is needed given that there is existing transportation infrastructure and activity within the area. It is not clear that Baffinland's Early Revenue Phase (ERP) would involve the development of a new transportation corridor, as (i) marine shipping already takes place within the waters that would be used during the ERP; (ii) there is an existing off-loading facility at Milne Inlet; and (iii) the Milne Inlet Tote Road has existed for some time, with an NLCA-protected public right of access over Inuit Owned Lands for the purposes of transportation.

Should the NPC decide to recommend an amendment to the NBRLUP, Transport Canada requests that any such amendment should not attempt to prescriptively regulate the movement of ships. In particular, Transport Canada would advise against limitations by tonnage or number of ship transits, or on corridor width (see, for example, NIRB's new recommended Terms and Conditions No. 179 (a) – pg. 212-213, Final Public Hearing Report). Arctic shipping is a highly regulated activity in Canada. Transport Canada requests that the NPC ensure that any conditions or restrictions it may recommend are in accordance with:

- existing international law as reflected in the United Nations Convention on the Law of the Sea and relevant conventions of the International Maritime Organization and International Labour Organization (e.g., the Safety of Life at Sea Convention, International Convention for the

Prevention of Pollution from Ships, Maritime Labour Convention);

- Canadian regulatory requirements (e.g., those stemming from the *Canada Shipping Act, 2001* (CSA 2001), *Arctic Waters Pollution Prevention Act* (AWPPA) and the *Marine Liability Act*); and
- due regards to the paramount importance of safety of vessel, crew and the environment.

In our December 24th letter to NPC, Transport Canada offered the NPC the opportunity to pose specific questions as they relate to transportation interests or issues. On March 23rd, 2014 Transport Canada received an email that posed four questions to Transport Canada that pertained to aspects of marine - shipping. The answers to these questions are found below, along with pertinent comments and references to applicable acts and regulations. We hope that this information will be of assistance to NPC.

NPC Question 1 to Transport Canada (TC): *Wildlife and marine wildlife exist and depend on ice cover, residents also rely on the ice cover when traveling to hunting locations and to other communities between Pond Inlet, Arctic Bay and communities located along the eastern coast of Baffin Island. The BIMC has stated that the shipping season will be during ice free conditions. Can TC clearly describe in detail what ice free condition is, and, to what type of ice free conditions will the proponent be required to suspend its proposed shipping activity as described in the ERP.*

TC response:

Transport Canada cannot speak to what Baffinland might have stated, or what meaning it might intend with respect to any such statements. However we can provide potentially relevant background information.

Canadian law imposes limits on vessels operating in the Arctic during all times of the year. The *Northern Canada Vessel Traffic Services Zone Regulations* (NORDREG) require vessels of 300 tons gross tonnage or more to report their identity, destination, route, and any defects to the Canadian Coast Guard 24 hours before entering Canada's Arctic waters. Vessels must also provide a sailing plan and provide daily reports confirming location, prevailing weather and ice conditions and any deviation from the sailing plan, among other things.

The *Arctic Shipping Pollution Prevention Regulations* establish two vessel control systems which provide for operational safety by taking into account the vessel's capability to operate safely in ice by virtue of ice strengthening, and the ice conditions it will encounter. The requirement to use one of the systems exists 365 days a year in waters north of 60 degrees north latitude and out to the limit of Canada's exclusive economic zone. The two systems are known as:

Zone/Date System

Under the Zone/Date System, Canadian Arctic waters are divided into 16 shipping safety control zones. A vessel is allowed to operate in a particular zone between the dates that correspond to its ice class. Zone boundaries were established using analysis by the National Research Council of ice conditions over many years. Zone numbering indicates the relative severity of ice conditions from Zone 1, the most severe, to Zone 16. Voyages from Milne Inlet to Europe will transit Zone 13, and possibly Zones 9 and 10.

Arctic Ice Regime Shipping System (AIRSS)

The AIRSS System is an alternative to the Zone/Date System and provides a more flexible framework for decision-making based on actual ice conditions. It characterizes the relative risk which different ice conditions pose to the structure of different ships. It requires a higher level of experience for ice navigators and full use of available ice information. Voyages outside the Zone/Date limits are required to use this system.

Vessels employed by Baffinland will be required to follow the Zone/Date System or the AIRSS as applicable, regardless of the time of year. Transport Canada monitors voyages 24 hours a day, seven days a week, via vessel reports to Northern Canada Vessel Traffic Services under NORDREG, and ensures vessel compliance with AIRSS. If Transport Canada observes non compliance with the regulatory requirements, vessels will be directed not to enter applicable Shipping Control Zones /Arctic waters. In addition to limits imposed via the Zone/Date system or AIRSS, Canadian law makes the master of a vessel (and not the “proponent” of the project the shipping serves) responsible for its safety, including the discretion to determine operational safety limits.

A master must use his or her professional judgment and knowledge of the vessel and the prevailing conditions to determine whether to continue on a voyage or to seek safe haven. Furthermore, Transport Canada inspectors are granted powers under the CSA 2001 and AWPPA, and to direct, if required as necessary to mitigate safety and environmental risks.

NPC Question 2 to Transport Canada (TC): *In the event that ice block the passages along a defined corridor that would require the shipping activity to be suspended, will all ships within Milne Inlet, Eclipses Sound, and those ships entering Eclipse Sound stop to ensure ships do not congregate in the area where the blockage has occurred?*

TC response:

Transport Canada cannot speak specifically to how Baffinland, or the applicable ships’ masters, might manage such a situation, however we can provide potentially relevant background information.

Regularly updated ice conditions and forecasts are provided by Environment Canada’s Canadian Ice Service to all vessels operating in Arctic waters. This provides advance information to inbound vessels for masters to avoid ice congested areas.

All vessels are required to have updated charts and publications and a detailed passage plan for their intended passage, including identifying places of refuge in the event of an incident. It is the responsibility of the master to ensure that vessels are operated with due consideration to safety of crew, vessel and environment. The master is required to monitor the passage in consideration of ice conditions and not to enter ice that would jeopardize the safety of the vessel.

As previously noted, vessels employed by Baffinland are required to follow either the Zone/Date System or the AIRSS as applicable. Transport Canada monitors voyages 24 hours a day, seven days a week, via vessel reports to Northern Canada Vessel Traffic Services (NORDREG) and ensures vessel compliance with AIRSS. If Transport Canada observes non compliance with the regulatory requirements, vessels will be directed not to enter applicable Shipping Control Zones /Arctic waters.

Baffinland has indicated that approximately 54 ship sailings will be required to transport the iron ore to European markets; this would account for approximately one ship passing through Milne Inlet every day, when considering ships arriving at and departing Milne Port.

Given the above facts, availability of ice information, low frequency of transit, the regulatory requirement to have detailed passage plan and TC's 24/7 voyage monitoring through NORDREG, Transport Canada is of the opinion that ship congregation is not likely to occur. In the event of ice blocking safe passage, the master of each vessel has the responsibility to take appropriate action which does not risk his or her vessel, crew or the environment.

NPC Question 3 to Transport Canada (TC): *Who has the right of way? A hunter, group of hunters in a process of capturing prey or ships within the (defined) corridor that?*

TC response:

As a general principle there is no default right of way that covers all situations involving hunters and ships. The rules that apply would depend on the situation. Any given 'right of way' determination depends on the relative location of two (or more) vessels, their status (anchored, under way, etc.), whether they are approaching or leaving port, type of vessel, etc. Only with full information on all the relevant factors can right of way be determined. However it should be noted that a vessel engaged in "fishing" does receive special recognition within the internationally accepted system of rights of way.

All vessels are required to comply with the *Collision Regulations* (Col Regs, http://laws-lois.justice.gc.ca/PDF/C.R.C.,_c._1416.pdf) which are made under authorities in the CSA, 2001. These regulations provide a comprehensive set of 46 'rules of the road' for ships. The rules apply internationally and include obligations related to sound and light signals, steering and sailing, safe speeds, navigation in narrow channels, conduct of vessels in sight of one another, conduct of vessels in restricted visibility and other matters related to avoiding collisions. Of particular relevance to your question is **Rule 8: Action to avoid Collision**, part (d) and **Rule 18: Responsibilities between Vessels**. In general terms these regulations require power driven vessels to keep out of the way of fishing vessels.

NPC Question 4 to Transport Canada (TC): *The Nunavut Planning Commission is currently considering whether a map showing a transportation corridor should be included in the NBRLUP and that this corridor may require a defined legally defined marine corridor. Would the T/C be able to provide the NPC with a recommended legally defined corridor that would include the routing as proposed and approved through the NIRB/NPC review process and, a defined width that would allow ships traveling in either direction to safely pass each other?*

TC response:

Transport Canada does not think an amendment to the NBRLUP to create a marine transportation corridor for the ERP is necessary. There are two reasons for this. It does not appear that the ERP involves the development of a new transportation route, but rather the use of an existing transportation route. The Milne Inlet Tote Road has existed for some time. There is also existing marine transportation infrastructure and activity within the area. An off-loading facility already exists at Milne Inlet and marine shipping already takes place within the waters that would be used during the Early Revenue Phase (ERP). Such activities and any proposed developments would be subject to the current laws and regulations that address design, construction and crewing of vessels, as well as their operation in Arctic waters.

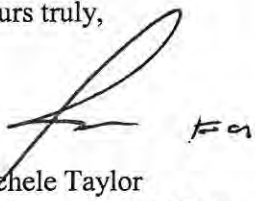
It is Transport Canada's opinion that no additional regulation of shipping is required through an amendment to the NBRLUP. As the answers to the foregoing questions have demonstrated, shipping is a highly regulated activity in Canada, particularly in waters north of 60 degrees north latitude. A full suite of rules exists to ensure that vessels are constructed, equipped, crewed and operated in a manner that takes into account the realities of navigating in the Arctic environment. The regime has both national and international components.

Notwithstanding the robust regulatory regime and the track record of safe shipping to and from the Milne Inlet site, should the NPC decide to recommend an amendment to the NBRLUP, in Transport Canada's view it should not be overly prescriptive and must be drafted to recognize the existing regulatory framework and to provide broad discretion to the master of the vessel to take into account sea ice and environmental conditions and to ensure the safety of the vessel and crew.

In the same vein restricting corridor width would restrict the maneuverability of vessels in relation to available width of water and may reduce the master's ability to safely navigate the vessel.

In conclusion, Transport Canada acknowledges the NPC has the expertise to consider the land use planning aspects of the transportation corridor application and has the authority established under the NLCA to recommend land use plan amendments. That said, shipping is a highly regulated and technically complex activity. To ensure that any recommended amendment to the NBRLUP is consistent with Canada's regulatory regime for marine shipping, the Department would appreciate a chance to review any draft amendment to the NBRLUP developed by the NPC prior to its submission to the appropriate ministers for approval. If it would be helpful, Transport Canada remains willing to meet with NPC to ensure that any proposed NBRLUP amendment is developed with the appropriate knowledge and awareness of the framework already in place to ensure safe, efficient and environmentally responsible marine shipping.

Yours truly,

A handwritten signature in black ink, appearing to read 'M. Taylor', with a large, stylized flourish above the name.

Michele Taylor
Regional Director General
Prairie and Northern Region

cc: Catherine Higgens, A/ADM Programs