

ARTICLE 7

DEVELOPMENT IMPACT

PART 7.1: DEFINITIONS

7.1.1 In this Article:

"*certificate*" means a certificate issued by NMRIRB pursuant to sections 7.5.12 and 7.6.17;

"*ecosystemic*" means relating to the complex of a natural community of living organisms and its environment functioning as an ecological unit in nature;

"*Minister*", unless otherwise specified, means the federal or territorial Minister having the jurisdictional responsibility for authorizing a project to proceed; however, the Government of Canada and Territorial Government may, within their respective jurisdictions, designate a single Minister to be responsible for NMRIRB and to perform all functions assigned to "the Minister";

"*normal community resupply*" means marine transportation whose primary purpose is the delivery to communities in the NMR of foodstuffs, household goods, construction materials for housing and other community-oriented facilities, and related goods and materials;

"*proponent*", in respect of a project proposal, means the person, body or government authority that proposes the project.

PART 7.2: NUNAVIK MARINE REGION IMPACT REVIEW BOARD (NMRIRB)

Establishment

7.2.1 A Nunavik Marine Region Impact Review Board (NMRIRB) shall be established as an institution of public government. Responsibility for the operation of NMRIRB shall vest in the members of NMRIRB.

Functions

7.2.2 The primary functions of NMRIRB shall be:

- (a) to screen project proposals in order to determine whether or not a review is required;

- (b) to gauge and define the extent of the regional impacts of a project, such definition to be taken into account by the Minister in making his or her determination as to the regional interest;
- (c) to review the ecosystemic and socio-economic impacts of project proposals;
- (d) to determine, on the basis of its review, whether project proposals should proceed, and if so, under what terms and conditions, and then report its determination to the Minister; in addition, NMRIRB's determination with respect to socio-economic impacts unrelated to ecosystemic impacts shall be treated as recommendations to the Minister; and
- (e) to monitor projects in accordance with the provisions of Part 7.

7.2.3 The mandate of NMRIRB shall not include the establishment of requirements for socio-economic benefits.

7.2.4 NMRIRB shall carry out such other functions as are identified or contemplated in the Agreement, and such additional functions as may be agreed to from time to time by a MDO and the Government of Canada or Territorial Government or as may be set out in legislation.

Primary Objectives

7.2.5 In carrying out its functions, the primary objectives of NMRIRB shall be at all times to protect and promote the existing and future well-being of the persons and communities resident in or using the NMR, and to protect the ecosystemic integrity of the NMR. NMRIRB shall take into account the well-being of residents of Canada outside the NMR.

Membership and Mode of Appointment

7.2.6 NMRIRB shall be a board composed of five (5) members, one (1) of whom shall be the chairperson. The members shall be appointed as follows:

- (a) two (2) members shall be appointed by the federal Minister responsible for Northern Affairs, upon nomination by the MDO;
- (b) one (1) member shall be appointed by a Minister of the Government of Canada;

- (c) one (1) member shall be appointed by the Minister of the Territorial Government responsible for Renewable Resources;
- (d) from nominations agreed to and provided by persons appointed under (a) and (b) the chairperson shall be appointed by the federal Minister responsible for Northern Affairs in consultation with the Territorial Government;
- (e) in the nomination and appointment of a chairperson, preference shall be given to persons resident in Nunavik where candidates are equally qualified.

7.2.7 In the initial appointment of NMRIRB members, one (1) member under paragraph 7.2.6 (a) and one (1) member under paragraph 7.2.6 (b) shall be appointed for three (3) years, and the other members under paragraphs 7.2.6 (a) and (b) shall be appointed for four (4) years. Thereafter, all appointments shall be for a term of three (3) years, except that any member appointed to replace any member whose term has not expired shall be appointed for the balance of the term of his or her predecessor.

7.2.8 The chairperson shall be appointed for a three (3)-year term.

7.2.9 Members of NMRIRB may be removed from office at any time for cause.

7.2.10 Where a vacancy occurs, a replacement member may be nominated and appointed pursuant to the provisions of section 7.2.6 for the remainder of the term of the former member.

7.2.11 Members of NMRIRB may be reappointed.

7.2.12 Members of NMRIRB shall perform their duties in accordance with:

- (a) an oath following the form set out in Schedule 5-1, taken and subscribed before assuming office, before an officer authorized by law to administer oaths;
- (b) relevant laws relating to conflict of interest, provided that no board member who is a Nunavik Inuk shall be considered biased solely because the member is a Nunavik Inuk; and
- (c) the terms of the Agreement.

7.2.13 Additional members may be appointed from time to time in the same manner and ratio as set out in paragraphs 7.2.6 (a) and (b). Such members may be appointed for a specific purpose, or for a term not exceeding three (3) years.

- 7.2.14 Legislation may authorize NMRIRB to constitute itself into panels consisting of two (2) or more NMRIRB members. Such panels shall be composed of an equal number of Government and MDO nominees. Legislation may authorize the NMRIRB to delegate to a panel all or any powers of the NMRIRB, including the right to hold hearings.

Head Office, Meetings

- 7.2.15 The head office of NMRIRB shall be in Nunavik.
- 7.2.16 NMRIRB shall, whenever practicable, meet in Nunavik.
- 7.2.17 NMRIRB shall conduct its business in Canada's official languages as required by legislation or policy and, upon request by any member, also in Inuktitut.
- 7.2.18 The chairperson shall convene a meeting of NMRIRB within 21 days of receipt, from any three (3) members, of a written request indicating the purpose of such meetings.

Quorum, Voting

- 7.2.19 All decisions of NMRIRB shall be decided by a majority of the votes cast.
- 7.2.20 Each member other than the chairperson shall have one (1) vote on any matter requiring a decision of NMRIRB. If there is a tie vote, the chairperson shall vote on the matter.
- 7.2.21 Three (3) members of NMRIRB shall comprise a quorum.
- 7.2.22 Vacancies in NMRIRB shall not impair the right of the remainder to act.

By-laws and Rules of Procedure

- 7.2.23 The NMRIRB shall, to the extent possible, adopt the same by-laws and rules as those of the NIRB.
- 7.2.24 Subject to section 7.2.23, the NMRIRB, after due consultation, may make and shall publish its by-laws and rules of procedure respecting:
- (a) the calling of meetings of NMRIRB;
 - (b) the conduct of business at meetings of NMRIRB including the requirements with respect to physical presence and the use of teleconferencing or like facilities;

- (c) the establishment of special and standing committees of NMRIRB, and the fixing of quorums for meetings thereof;
- (d) the carrying on of the work of NMRIRB, the management of its internal affairs, and the duties of its officers and employees;
- (e) the procedures for making representations and complaints to NMRIRB;
- (f) the procedures and guidelines for collecting information and opinions;
- (g) the procedures to be used and the admission of evidence at public hearings before NMRIRB or NMRIRB panels;
- (h) the establishment of standard guidelines for preparation of impact statements; and
- (i) generally, the manner of conducting any business of or before NMRIRB.

Co-ordination with Adjacent Institutions

7.2.25 Legislation may, subject to any matter contained in this Agreement, enable the NMRIRB to coordinate the discharge of its powers, functions and duties with other similar institutions having jurisdiction over areas adjacent to the NMR.

7.2.26 The NMRIRB shall make best efforts to coordinate the discharge of its powers, functions and duties with adjacent institutions.

Public Hearings

7.2.27 In designing its by-laws and rules of procedure for the conduct of public hearings, NMRIRB shall:

- (a) to the extent consistent with the broad application of the principles of natural justice and procedural fairness, emphasize flexibility and informality, and, specifically
 - (i) allow, where appropriate, the admission of evidence that would not normally be admissible under the strict rules of evidence, and
 - (ii) give due regard and weight to the tradition of Nunavik Inuit oral communication and decision-making; and

(b) with respect to any classification of intervenors, allow full standing to a MDO.

7.2.28 NMRIRB shall have the power to subpoena witnesses, documents and things in carrying out its responsibilities.

7.2.29 NMRIRB shall conduct its public hearings in Canada's official languages as required by legislation or policy, and, upon request of any member, applicant or intervenor, also in Inuktitut.

7.2.30 All necessary steps shall be taken by way of notice, dissemination of information, and scheduling and location of hearings to provide and promote public awareness of and participation at hearings.

Officers and Employees

7.2.31 The officers and employees necessary for the proper conduct of NMRIRB, including experts or persons having technical knowledge, may be appointed, and shall be remunerated by NMRIRB recognizing that secondment of government staff may be appropriate in certain cases.

7.2.32 Such officers and employees shall be responsible to, and under the direction and control of NMRIRB.

7.2.33 All officers and employees of NMRIRB shall conform to the same rules respecting conflict of interest as members of NMRIRB.

Costs of NMRIRB

7.2.33 The costs of NMRIRB shall be the responsibility of Government. NMRIRB shall prepare an annual budget subject to review and approval by Government.

PART 7.3: RELATIONSHIP TO THE LAND USE PLANNING PROVISIONS

7.3.1 Where the NMRPC determines, pursuant to section 6.5.10, that a project proposal is in conformity with the land use plans, or a variance has been approved, the NMRPC shall, subject to sections 7.3.2, 7.3.3 and 7.4.3, forward the project proposal with its determination and recommendations to NMRIRB for screening.

7.3.2 Project proposals falling within Schedule 7-1 shall be exempt from the requirement for screening by NMRIRB. The NMRPC shall not forward such project proposals to NMRIRB.

7.3.3 Notwithstanding section 7.3.2, the NMRPC may refer a project proposal falling within Schedule 7-1 to NMRIRB for screening, where the NMRPC has

concerns respecting the cumulative impact of that project proposal in relation to other development activities in a planning region.

7.3.4 NMRIRB shall not screen project proposals that are not in conformity with land use plans, unless an exemption has been received under 6.5.11 or a variance has been approved under section 6.5.10.

7.3.5 Sections 7.3.1 to 7.3.4 shall apply where a land use plan has been approved pursuant to section 6.5.9. In the absence of an approved land use plan, all project proposals other than those that fall within Schedule 7-1 shall be referred by the NMRPC directly to NMRIRB for screening.

PART 7.4: SCREENING OF PROJECT PROPOSALS

7.4.1 Upon receipt of a project proposal, NMRIRB shall screen the proposal to determine whether it has significant impact potential, and therefore whether it requires review under Part 5 or 6.

7.4.2 In screening a project proposal, NMRIRB shall be guided by the following principles:

- (a) NMRIRB generally shall determine that such a review is required when, in its judgement,
 - (i) the project may have significant adverse effects on the ecosystem, wildlife habitat or Nunavik Inuit harvesting activities,
 - (ii) the project may have significant adverse socio-economic effects on northerners,
 - (iii) the project will cause significant public concern, or
 - (iv) the project involves technological innovations for which the effects are unknown;
- (b) NMRIRB generally shall determine that such a review is not required when, in its judgement, the project is unlikely to arouse significant public concern and
 - (i) the adverse ecosystemic and socio-economic effects are not likely to be significant, or
 - (ii) the project is of a type where the potential adverse effects are highly predictable and mitigable with known technology; and

- (c) in determining whether a review is required or not NMRIRB shall give greater weight to the provisions of paragraph 7.4.2 (a).

7.4.3 Any application for a component or activity of a project proposal that has been permitted to proceed in accordance with these provisions shall be exempt from the requirement for screening by NMRIRB unless:

- (a) such component or activity was not part of the original proposal; or
- (b) its inclusion would significantly modify the project.

7.4.4 Upon receipt of a project proposal, NMRIRB shall screen the proposal and indicate to the Minister in writing that:

- (a) the proposal may be processed without a review under Part 5 or 6; NMRIRB may recommend specific terms and conditions to be attached to any approval, reflecting the primary objectives set out in section 7.2.5;
- (b) the proposal requires review under Part 5 or 6; NMRIRB shall identify particular issues or concerns which should be considered in such a review;
- (c) the proposal is insufficiently developed to permit proper screening, and should be returned to the proponent for clarification; or
- (d) the potential adverse impacts of the proposal are so unacceptable that it should be modified or abandoned.

7.4.5 NMRIRB shall carry out its responsibilities under section 7.4.4:

- (a) where there is a legal requirement for a licensing authority to make a decision within a certain time period, within a time period that would allow the licensing authority to conform with that requirement;
- (b) with the approval of the Minister, within a time period exceeding 45 days; or
- (c) in any other situation, within 45 days.

7.4.6 Where NMRIRB indicates to the Minister that a proposal may be processed without review, the proposal shall be processed under relevant legislation, unless the Minister decides to refer it for such a review.

7.4.7 Where NMRIRB indicates to the Minister that a proposal requires review, the Minister shall:

- (a) where required, by law or otherwise, refer the proposal to the Minister of the Environment for review by a federal environmental assessment panel; such review shall include both socio-economic and ecosystemic impacts;
- (b) where a proposal is not to be reviewed by a federal environmental assessment panel, refer the proposal to NMRIRB for a review of the ecosystemic and socio-economic impacts in the NMR; or
- (c) where the proposal is not in the national or regional interest, inform the proponent that the proposal should be abandoned or modified and resubmitted to NMRIRB to be dealt with in accordance with section 7.4.4.

7.4.8 Where NMRIRB indicates to the Minister that a proposal should be returned to the proponent for clarification, the Minister shall return the proposal to the proponent for clarification and resubmission to NMRIRB to be dealt with in accordance with paragraphs 7.4.4 (a), (b) or (d).

7.4.9 Where NMRIRB indicates to the Minister that a proposal should be modified or abandoned, the Minister, after consultation with NMRIRB, shall:

- (a) return the proposal to the proponent for modification and resubmission to NMRIRB to be dealt with in accordance with section 7.4.4;
- (b) where it appears to be in the national or regional interest that a proposal be reviewed, refer the proposal for review as provided in paragraphs 7.4.7 (a) or (b) accompanied by written reasons for that decision; or
- (c) inform the proponent that the project should be abandoned.

PART 7.5: REVIEW OF PROJECT PROPOSALS BY NMRIRB

7.5.1 In sending a proposal for review, the Minister may identify particular issues or concerns which NMRIRB shall consider in such a review. This shall not limit NMRIRB from reviewing any matter within its mandate.

7.5.2 When a project proposal has been referred to NMRIRB by the Minister for review, NMRIRB shall, upon soliciting any advice it considers appropriate, issue guidelines to the proponent for the preparation of an impact statement. It is the responsibility of the proponent to prepare an impact statement in accordance with any guidelines established by NMRIRB. Where the original

project proposal submitted by the proponent for screening contains the information required for an impact statement, NMRIRB may accept the original project proposal instead of requiring the preparation of an impact statement. Where appropriate, an impact statement shall contain information with respect to the following:

- (a) project description, including the purpose and need for the project;
- (b) anticipated ecosystemic and socio-economic impacts of the project;
- (c) anticipated effects of the environment on the project;
- (d) steps which the proponent proposes to take including any contingency plans, to avoid and mitigate adverse impacts;
- (e) steps which the proponent proposes to take to optimize benefits of the project, with specific consideration being given to expressed community and regional preferences as to benefits;
- (f) steps which the proponent proposes to take to compensate interests adversely affected by the project;
- (g) the monitoring program that the proponent proposes to establish with respect to ecosystemic and socio-economic impacts;
- (h) the interests in lands and waters which the proponent has secured, or seeks to secure;
- (i) options for implementing the proposal; and
- (j) any other matters that NMRIRB considers relevant.

Hearings

- 7.5.3 NMRIRB may conduct its review by means of correspondence, public hearings or such other procedures as it deems appropriate to the nature of the project and range of impacts.

Time Frames

- 7.5.4 The Minister may propose priorities and reasonable time frames for completion of the reviews.

Matters Taken into Account

- 7.5.5 NMRIRB shall, when reviewing any project proposal, take into account all matters that are relevant to its mandate, including the following:
- (a) whether the project would enhance and protect the existing and future well-being of the persons and communities resident on or using the NMR, taking into account the interests of other Canadians;
 - (b) whether the project would unduly prejudice the ecosystemic integrity of the NMR;
 - (c) whether the proposal reflects the priorities and values of the persons resident in or using the NMR;
 - (d) steps which the proponent proposes to take to avoid and mitigate adverse impacts;
 - (e) steps the proponent proposes to take, or that should be taken, to compensate interests adversely affected by the project;
 - (f) posting of performance bonds;
 - (g) the monitoring program that the proponent proposes to establish, or that should be established, for ecosystemic and socio-economic impacts; and
 - (h) steps which the proponent proposes to take, or that should be taken, to restore ecosystemic integrity following project abandonment.

NMRIRB Report

- 7.5.6 After reviewing the project proposal, NMRIRB shall issue a report to the Minister and the proponent containing:
- (a) its assessment of the project and its impacts;
 - (b) its determination as to whether or not the project should proceed based on its assessment under (a); and
 - (c) in the event the project were to proceed, terms and conditions reflecting the primary objectives set out in section 7.2.5.
- 7.5.7 Upon receipt of the NMRIRB report, the Minister shall:
- (a) accept the report of NMRIRB as to whether or not the project should or should not proceed, including terms and conditions;

- (b) where NMRIRB has determined that a project should proceed, reject that determination on the basis that the proposal is not in the national or regional interest; the proponent shall be so advised by NMRIRB;
- (c) where NMRIRB has determined that a project should proceed, reject the report on the grounds that
 - (i) any of the terms and conditions are more onerous than necessary or insufficient to mitigate to an acceptable level the ecosystemic and socioeconomic impacts, or
 - (ii) the terms and conditions are so onerous that they would undermine the viability of a project that is in the national or regional interest,

and in such situations NMRIRB shall reconsider terms and conditions under which the project should be approved in light of the Minister's reasons;

- (d) where NMRIRB has determined that a project should not proceed, reject that determination on the grounds that the project should have been approved because of its importance in the national or regional interest; thereupon, the Minister shall refer the report back to NMRIRB to consider terms and conditions which should be attached to any project approval; or
- (e) where the report is deficient with respect to ecosystemic and socio-economic issues, refer the report back to NMRIRB for further review or public hearings; upon such further review or hearings, NMRIRB shall submit a further report to the Minister which shall be accepted or rejected in accordance with paragraphs (a), (b), (c) or (d).

7.5.8 Upon considering or reconsidering the terms and conditions of a project approval further to paragraphs 7.5.7 (c) or (d), NMRIRB shall:

- (a) within 30 days, or such time as agreed upon with the Minister, make any alterations it considers appropriate;
- (b) refer its revised report back to the Minister; and
- (c) make its revised report available to the public.

7.5.9 Upon receipt of a revised NMRIRB report under section 7.5.8, the Minister shall:

- (a) accept the terms and conditions; or

- (b) reject or vary the terms and conditions, in whole or in part, on the grounds set out in sub-paragraphs 7.5.7 (c) (i) and (ii).

- 7.5.10 The Minister shall supply NMRIRB with written reasons for every decision.
- 7.5.11 Notwithstanding sections 7.5.7 and 7.5.9, NMRIRB's determination with respect to socio-economic impacts unrelated to ecosystemic impacts shall be treated as recommendations to the Minister, which may be accepted, rejected or varied by the Minister without limitation to the grounds set out in sections 7.5.7 and 7.5.9.
- 7.5.12 Upon completion of the process described in sections 7.5.1 to 7.5.11 where it has been determined that a project should proceed, NMRIRB shall issue a project certificate including any terms and conditions which have been accepted or varied by the Minister.

PART 7.6: REVIEW BY A FEDERAL ENVIRONMENTAL ASSESSMENT PANEL

Generally

- 7.6.1 Where the Minister under paragraph 7.4.7 (a) decides to refer a project proposal to the Minister of the Environment for public review by a federal environmental assessment panel, the panel shall conduct its review in accordance with the provisions of this Part and with any other procedures, principles and general practices that provide at least the same opportunity for an open and comprehensive public review as provided by the Environmental Assessment and Review Process Guidelines Order (S.O.R./84-467, 22 June, 1984).

Membership on Panels

- 7.6.2 For a project proposal within the NMR, the Minister of the Environment shall be free to appoint members to a panel in accordance with the Minister's general practice, except that at least one quarter of the panel members shall be appointed from a list of nominees given to the Minister of the Environment by the MDO, and at least one quarter from a list of nominees given to the Minister of the Environment by the appropriate Territorial Government Minister. Nothing shall prevent the MDO or the Territorial Government Minister from nominating candidates who are already members of NMRIRB.
- 7.6.3 When a project proposal would take place both inside the NMR and an adjacent area used by another aboriginal group or groups, at least one quarter of the panel members shall be appointed from nominees of the MDO and the

other relevant aboriginal group or groups, in accordance with any agreement between the MDO and the other aboriginal group or groups.

7.6.4 Members of panels shall:

- (a) be unbiased and free of any potential conflict of interest relative to the project proposal under review; for greater certainty no panel member who is a Nunavik Inuk shall be considered biased solely because the panel member is a Nunavik Inuk; and
- (b) have special knowledge and experience relevant to the anticipated technical, environmental or social effects of the project proposal under review.

Guidelines

7.6.5 Once constituted, a panel may issue to the project proponent a set of guidelines for the preparation of a statement by the proponent on ecosystemic and socio-economic impacts. Any such guidelines shall, where appropriate, require the statement to contain information with respect to those matters listed in section 7.5.2. NMRIRB shall review the guidelines and provide input into their development.

7.6.6 The panel shall ensure that NMRIRB has adequate opportunity to review the proponent's impact statement prior to commencement of public hearings, and the panel shall take into account any recommendations or concerns that NMRIRB has identified.

Hearings

7.6.7 In the conduct of its public hearings under these provisions, a panel shall be bound *mutatis mutandis* by sections 7.2.25, 7.2.27 and 7.2.28. The panel's powers, including any powers of subpoena, shall not be less than those available to federal environment assessment and review panels established under laws of general application.

Relevant Factors

7.6.8 The panel, when assessing any project proposal, shall take into account all matters that are relevant to its mandate, including as appropriate those matters listed in section 7.5.5.

Report

- 7.6.9 Upon completion of its review, the panel shall forward its report to the Minister of the Environment and the Minister, who shall make it public and who shall forward a copy to NMRIRB.
- 7.6.10 Upon receipt of the report of the panel, NMRIRB shall have sixty (60) days to review the report and forward its findings and conclusions to the Minister with respect to ecosystemic and socio-economic impacts in the NMR, NMRIRB may identify deficiencies in the panel report, additional terms, conditions and mitigative measures that should be attached to any project approval, additional data requirements, and any other conclusions deemed pertinent by NMRIRB including whether or not the project proposal should proceed. In so doing, NMRIRB shall be guided by the primary objectives set out in section 72.5.
- 7.6.11 Upon receipt of the panel report and the recommendations of NMRIRB, the Minister shall:
- (a) accept the report with the terms and conditions proposed by the panel insofar as they apply to the NMR;
 - (b) accept the report insofar as it applies to the NMR with modifications proposed by NMRIRB; or
 - (c) reject the panel report or any part thereof insofar as it applies to the NMR on the following grounds:
 - (i) the project proposal should be rejected on the grounds that the proposal is not in the national or regional interest, in which case the proponent shall be so advised by the Minister,
 - (ii) the project proposal should be allowed to proceed because of its importance in the national or regional interest, in which case NMRIRB shall consider the terms and conditions with respect to the NMR which should be attached to any approval, or
 - (iii) any of the terms and conditions are more onerous than necessary or insufficient to mitigate to an acceptable level of ecosystemic or socio-economic impacts of the project, in which case NMRIRB shall thereupon reconsider the terms and conditions with respect to the NMR in the light of the Minister's objections.
- 7.6.12 In considering or reconsidering the terms and conditions of a project approval, NMRIRB shall, within thirty (30) days or such other period as agreed upon with the Minister, report back to the Minister, with respect to the terms and conditions which should be attached to any project approval.

- 7.6.13 Upon receipt of NMRIRB's report further to section 7.6.12, the Minister shall:
- (a) accept the terms and conditions; or
 - (b) reject or vary the terms and conditions, in whole or in part, on the grounds that:
 - (i) any of the terms and conditions are more onerous than necessary or insufficient to mitigate to an acceptable level the ecosystemic and socio-economic impacts in the NMR; or
 - (ii) the terms and conditions with respect to the NMR are so onerous that they would undermine the viability of a project which is in the national or regional interest.
- 7.6.14 The Minister shall supply NMRIRB with written reasons for every decision insofar as it applies to the NMR.
- 7.6.15 The role of NMRIRB with respect to any federal environmental assessment panel report shall be confined to those parts of that report that are applicable to or affect the NMR.
- 7.6.16 Notwithstanding sections 7.6.11 and 7.6.13, the panel's report or NMRIRB's determination with respect to socio-economic impacts unrelated to ecosystemic impacts shall be treated as recommendations to the Minister, which may be accepted, rejected or varied by the Minister without limitation to the grounds set out in sections 7.6.11 and 7.6.13.
- 7.6.17 Upon completion of the process described in sections 7.6.1 to 7.6.16, NMRIRB shall issue a NMRIRB project certificate including any terms and conditions which have been accepted or varied by the Minister.

PART 7.7: MONITORING

Project Monitoring

- 7.7.1 The terms and conditions contained in:
- (a) a NMRIRB project certificate issued pursuant to sections 7.5.12 or 7.6.17;
 - (b) a recommendation of NMRIRB pursuant to paragraph 7.4.4 (a); or

(c) any approvals issued by the NWB,

may provide for the establishment of a monitoring program for that project which may specify responsibilities for the proponent, NMRIRB or Government.

7.7.2 The purpose of a monitoring program set up pursuant to section 7.7.1 shall be:

- (a) to measure the relevant effects of projects on the ecosystemic and socio-economic environments of the NMR;
- (b) to determine whether and to what extent the land or resource use in question is carried out within the predetermined terms and conditions;
- (c) to provide the information base necessary for agencies to enforce terms and conditions of land or resource use approvals; and
- (d) to assess the accuracy of the predictions contained in the project impact statements.

7.7.3 Without limiting the generality of section 7.7.2, the monitoring program set up pursuant to that section may include:

- (a) a requirement that regulatory agencies and the proponent supply NMRIRB with reports and information respecting project operations and impacts, and the implementation of mitigative measures;
- (b) a requirement for a periodic evaluation by NMRIRB of monitoring programs for projects; and
- (c) based on paragraph (b), a requirement that NMRIRB compile a report on the adequacy of the monitoring program and on the ecosystemic and socio-economic impacts of the project.

7.7.4 Responsible government agencies and departments shall continue to fulfill their responsibilities for monitoring and data collection. Any monitoring responsibilities assigned to NMRIRB shall not be a duplication of those functions.

7.7.5 Any monitoring program established for a project under section 7.7.1 shall be designed so as to avoid duplication of duties and to facilitate coordination of monitoring activities and may, in addition to any other relevant matters, provide for the variables to be monitored and the program specifications.

General Monitoring

- 7.7.6 There is a requirement for general monitoring to collect and analyse information on the long term state and health of the ecosystemic and socio-economic environment in the NMR. Government, in co-operation with the NMRPC, shall be responsible for developing a general monitoring plan and for directing and co-ordinating general monitoring and data collection. The NMRPC shall:
- (a) in accordance with the plan, collate information and data provided by, amongst others, industry, government departments and agencies;
 - (b) in accordance with the plan, report periodically on the ecosystemic and socio-economic environment of the NMR; and
 - (c) use the information collected under paragraphs (a) and (b) to fulfill its existing responsibilities under Article 6.
- 7.7.7 The NMRPC may delegate any or all of its functions under this Part to members of the NMRPC or officers or employees of the NMRPC.

PART 7.8: FLEXIBILITY IN RELATION TO CERTIFICATES

- 7.8.1 NMRIRB project certificates issued under either sections 7.5.12 or 7.6.17 may contain terms and conditions expressed to come into force at some time in the future or on the happening of any particular event or contingency.
- 7.8.2 NMRIRB may on its own account or upon application by a MDO, the proponent, or other interests, reconsider the terms and conditions contained in the NMRIRB certificate if it is established that:
- (a) the terms and conditions are not achieving their purpose;
 - (b) the circumstances relating to the project or the effect of the terms and conditions are significantly different from those anticipated at the time the certificate was issued; or
 - (c) there are technological developments or new information which provide a more efficient method of accomplishing the purpose of the terms and conditions.
- 7.8.3 Where the Minister determines that any of the conditions in paragraph 7.8.2 (a), (b) or (c) have been established, NMRIRB shall reconsider the terms and conditions contained in a certificate, and NMRIRB shall produce a report of its reconsideration. The Minister may accept, reject or vary that report only on the

grounds specified in section 7.6.13. NMRIRB shall amend its certificate to reflect any changes as accepted, rejected or varied by the Minister.

- 7.8.4 For greater certainty, section 7.5.4 applies to a reconsideration by NMRIRB pursuant to section 7.8.2 or 7.8.3.

PART 7.9: IMPLEMENTATION

- 7.9.1 Subject to section 7.9.3, the terms and conditions of NMRIRB project certificates shall be implemented by all government departments and agencies in accordance with their authorities and jurisdictional responsibilities.
- 7.9.2 Without limiting the generality of section 7.9.1, the terms and conditions of NMRIRB project certificates shall, in accordance with the authorities and jurisdictional responsibilities of government departments and agencies, be incorporated in relevant permits, certificates, licences or other government approvals that the proponent may require. Government departments and agencies shall discuss with NMRIRB how best to implement the terms and conditions of NMRIRB project certificates and may provide NMRIRB with drafts of permits, certificates, licences and other government approvals.
- 7.9.3 Where an independent decision of a regulatory board contains terms and conditions at variance with the terms and conditions of a NMRIRB project certificate, the regulatory board shall provide reasons to the Government and NMRIRB justifying the difference. The Governor-in-Council shall consider both the independent decision of the regulatory board and the NMRIRB project certificate. The NMRIRB project certificate shall prevail unless:
- (a) with respect to an independent decision of a regulatory board where Government does not have the authority to vary that decision, it is in the national or regional interest that the project proceed; or
 - (b) with respect to any other independent decision of a regulatory board, the project is considered to be in the national or regional interest and the acceptance of the terms and conditions in the NMRIRB project certificate would undermine the viability of the project; or
 - (c) an amendment to the NMRIRB project certificate is accepted pursuant to section 7.8.3.

If the NMRIRB project certificate does not prevail, the appropriate terms and conditions contained in the NMRIRB project certificate shall be amended accordingly.

- 7.9.4 In this Part, "independent decision of a regulatory board" means a decision made by a statutory body in the exercise of regulatory or licensing powers in the course of which the body is not subject to specific direction or control by Government; a decision does not cease to be an independent decision of a regulatory board merely because that decision is subject to a general direction whether by guidelines, regulations or directives or to approval, variance or rescission by Government.
- 7.9.5 A decision ceases to be an independent decision of a regulatory board for the purposes of this Part where Government has varied such a decision prior to considering the conflict between the decision and the NMRIRB certificate.
- 7.9.6 Where there is conflict between any NMRIRB project certificate and a decision of a regulatory board not falling within section 7.9.3, the NMRIRB project certificate shall prevail.
- 7.9.7 A licence, permit, certificate or other governmental approval which implements or incorporates any term or condition of a NMRIRB project certificate may not be called into question in a court of law on the grounds that the issuing agency thereby fettered its discretion or otherwise acted without jurisdiction, when implementing any term or condition of a NMRIRB project certificate.
- 7.9.8 Nothing in sections 7.9.1 to 7.9.7 shall preclude any regulatory or government agency from reviewing a project and imposing additional or more stringent terms and conditions, or from refusing to issue a licence or approval that would be required in order to allow a proposed project to proceed.
- 7.9.9 The duty to implement referred to in section 7.9.1 does not include an obligation on Government to amend legislation.
- 7.9.10 NMRIRB and the NMRPC shall, unless they specify otherwise, receive copies of all approvals, regulatory or otherwise, for projects for which NMRIRB has issued a certificate.

PART 7.10: ENFORCEMENT

Projects Not to Proceed

- 7.10.1 No licence or approval that would be required in order to allow a proposed project to proceed shall be issued in respect of a project that is to be screened by NMRIRB until the screening has been completed and, if a review pursuant to Part 5 or 6 is to be conducted, until after that review has been completed and a NMRIRB project certificate has been issued by NMRIRB pursuant to these provisions.

Exceptions

- 7.10.2 Notwithstanding section 7.10.1, where a project proposal has been referred for review pursuant to Part 5 or 6, approvals or licences for exploration or development activities related to that project may be issued if:
- (a) the activity falls within Schedule 7-1; or
 - (b) the activity can, in the judgement of NMRIRB, proceed without such a review.

Continuing Responsibilities

- 7.10.3 Where permits, certificates, licences or other government approvals which implement or incorporate the terms and conditions of a NMRIRB project certificate have been issued, the responsible government department or agency shall continue to be responsible for the enforcement of the permit, certificate, licence or other government approval.
- 7.10.4 Responsible government departments and agencies shall apply effective techniques at their disposal for enforcement under section 7.10.3 and in applying such techniques, they shall not be confined to prosecution or to the suspension of any permit, certificate, licence or other government approval.

Standing

- 7.10.5 In addition to any person or body that is recognized by laws of general application as having standing to seek a court determination, a MDO shall have standing before an appropriate court:
- (a) to seek a determination as to whether any term or condition contained in a NMRIRB certificate has been implemented, and any remedy deemed appropriate by the court if the term and condition has not been implemented;
 - (b) to obtain a court order compelling a person to do or prohibiting a person from doing whatever that person is, by any licence, approval, permit or contract implementing any terms or conditions of a NMRIRB certificate, required to do or prohibited from doing; or
 - (c) to seek judicial review of decisions and orders, whether interim or final, made pursuant to this Article.

PART 7.11: TRANSBOUNDARY IMPACTS

Transboundary Impacts

- 7.11.1 NMRIRB may upon request by Government or, with the consent of Government, upon request by a MDO, review a project proposal located outside of the NMR which may have significant adverse ecosystemic or socioeconomic effects on the NMR.
- 7.11.2 Without limiting the jurisdiction of NMRIRB or CEAA as set out in this Article, the Government of Canada and the Territorial Government, assisted by NMRIRB, shall use their best efforts to negotiate agreements with other jurisdictions to provide for collaboration in the review of project proposals which may have significant transboundary ecosystemic or socio-economic impacts.

PART 7.12: APPLICATION

Geographic Application

- 7.12.1 This Article shall apply to Nunavik Inuit Lands.
- 7.12.2 This Article shall apply to both land and marine areas within the NMR. Shipping associated with project proposals in the NMR shall be subject to this Article. However, normal community resupply or individual ship movements not associated with project proposals shall not be subject to Parts 4, 5 and 6.
- 7.12.3 This Article applies to the installations, facilities and activities required for the purpose of national defence. However, such installations, facilities and activities will be exempted from these provisions on an exceptional basis upon certification by the Minister of National Defence that an exemption is required in the interest of national security for reasons of confidentiality or urgency.

Limitations

- 7.12.4 No term or condition which is in contravention of any standards established by any federal or territorial environmental or socio-economic laws of general application, may be imposed pursuant to this Article.
- 7.12.5 Decisions made pursuant to these provisions shall be designed, implemented and interpreted in a manner consistent with Article 5.

No Statutory Defence

7.12.6 The issuance of a NMRIRB project certificate shall not provide a defence of statutory authorization to an action in tort.

SCHEDULE 7-1

TYPES OF PROJECT PROPOSALS EXEMPT FROM SCREENING

(Sections 7.3.2, 7.3.3, 7.3.5, 7.10.2)

1. Land use activities not requiring a permit or authorization from the Government of Canada or Territorial Government.
2. Land use activities requiring only a Class B permit under the *Territorial Land Use Regulations* (SOR/77-210 4 March 1977).
3. All construction, operation and maintenance of all buildings and services within an established municipality, except for bulk storage of fuel, power generation with nuclear fuels, or hydro power and any industrial activity.
4. All hotels, motels or tourist facilities of twenty (20) beds or less outside the boundaries of a municipality.
5. Water uses that do not require a public hearing under section 13.7.3 of NLCA.
6. Prospecting, staking or locating a mineral claim unless it requires more than a Class B permit mentioned in item 2.
7. Such other categories of activities and projects as may be agreed upon by NMRIRB and the appropriate Minister.