



# ENVIRONMENTAL IMPACT REVIEW BOARD

By Email

March 8, 2012

Mr. Larry Dow  
Area Director, Western Arctic Area  
Fisheries and Oceans Canada  
Inuvik, NT

Dear Mr. Dow,

**Re: Information Requests related to the Proposed Inuvik to Tuktoyaktuk Highway Project**

Please find attached Information Requests (IRs) that have been directed to Fisheries and Oceans Canada from the Environmental Impact Review Board and the Department of Environment and Natural Resources, GNWT seeking information related to the proposed Inuvik to Tuktoyaktuk Highway project. These IRs have been generated as part of the environmental impact review of the proposed development being undertaken by the Environmental Impact Review Board (EIRB) to fulfill the requirements of the Inuvialuit Final Agreement and the *Canadian Environmental Assessment Act*.

Please complete a separate response to each IR, and clearly reference the IR number, topic and the Party that generated the IR (i.e., the source). Please complete your responses and submit them to the EIRB by March 30, 2012.

Please contact me if you have any questions or concerns regarding this letter.

Sincerely,

Eli Nasogaluak  
EIR Coordinator  
Environmental Impact Review Board  
Phone: (867) 777-2828 Fax: (867) 777-2610  
[eirb@jointsec.nt.ca](mailto:eirb@jointsec.nt.ca)

c.c. Sarah Oliver, DFO, Yellowknife



# **INFORMATION REQUESTS**

## **(Round 2)**

**DATE OF RELEASE:** March 8, 2012

**DISTRIBUTION:** DFO and the Electronic On-line Registry (EOR).

**PURPOSE:** Information Requests (IRs) issued by the EIRB and Parties to the Department of Fisheries and Oceans (DFO) related to the Review of the proposed Inuvik to Tuktoyaktuk Highway Project.

**DEADLINE FOR SUBMISSION  
OF RESPONSES:** March 30, 2012

**Information Request (IR) Numbers:** 77, 80, 89,119,120,121

### 3.3 Cumulative Effects

**IR Number:** *Number is assigned by EIRB*

77

**Source:** MSES Inc.

**To: Wildlife Management Advisory Council (WMAC)**  
**FJMC**  
**GNWT ENR**  
**DFO**  
**Environment Canada**

**Subject: Cumulative effects assessment - induced effects and increased access** (EIS Section 5.3.1.2, p. 631; IR Responses Round 1, IR #51)

#### Preamble

The Developer acknowledges that it anticipates the completed Highway will make it easier for people to access the land for their various traditional, recreational and cultural pursuits. The Developer points out that to ensure that the environment of the area remains protected, it will be important for the users of the Highway to abide by any “management restrictions” that may need to be developed for the Highway by the resource management agencies and co-management bodies in consultation with the HTC and other interested stakeholders. The Developer has not defined what those anticipated “management restrictions” might be in the EIS. It is not clear how these potential induced environmental impacts through increased access (i.e., increased harvesting of wildlife, potential damage to vegetation, increased random camping, etc.) were quantitatively factored into the cumulative effects assessment.

#### Request

1. Please describe and explain the anticipated “management restrictions” that may need to be developed for the Highway.
2. Please indicate when “management restrictions” will be developed, whether they will be in place prior to Highway completion and who will be responsible for implementation and enforcement.
3. Please explain and justify how “management restrictions” will be evaluated in terms of their relative success at minimizing or eliminating environmental impacts.

### 3.4 Follow-up and Monitoring

**IR Number:** *Number is assigned by EIRB*

**Source:** MSES Inc.

**To:** WMAC  
FJMC  
GNWT ENR  
DFO  
Environment Canada

30

**Subject:** Environmental Management Plans and Effects Monitoring (IR Responses Round 1, IR #11, 16, 55, 61, 62, 63 and 66)

#### Preamble

In the response to IR #55, the developer presents its commitments (Table F) to a number of mitigation measures. However, the Developer does not respond to the question about how the mitigation would address the potential effects of the ITH. Only at the end of the Table F the Developer briefly refers to an “effects monitoring table”. However, it is unclear how such a table would satisfy the requirement for the testing of impact predictions, developing significance thresholds, and determining adaptive measures. As per the Canadian Environmental Assessment Agency’s (CEAA 2009) *Operational Policy Statement, Adaptive Management Measures* under the *Canadian Environmental Assessment Act*, it is imperative to understand how and when, in relation to the construction schedule, effects monitoring programs will be developed.

Under the Operational Policy of CEAA, compliance monitoring on its own does not satisfy the requirements for a follow-up program. Compliance monitoring also does not adhere to the GNWT’s (2006a) position statement which requires that *monitoring and reporting programs need to be designed to test impact predictions*. Moreover, the CEAA operational policy states: “If project implementation is likely to begin shortly after approval, the follow-up program should be fully designed and a reliable baseline established during the environmental assessment phase of the project.”

The Developer’s response to IRs 11, 16, 61, 62, 63 and 66 are similarly deficient in clarifying how adaptive management measures will be developed in light of CEAA’s policy.

#### Request

For each resource and regulatory agency, please clarify your agency’s role in developing an effects monitoring and an adaptive management program. Please identify:

1. Which programs you anticipate to review and approve as part of your agency’s mandate.
2. What regulatory tools are available to your agency, to ensure that both compliance and effects monitoring would be in place to ensure that the effects on any given valued component will be at or below the effects predicted in the EIS.
3. How your agency would ensure that the above programs would be designed and implemented prior to construction.

**Worst Case Scenario**

**IR Number:**

89  
AAWOC, DFO, EC

**To:** Aboriginal Affairs and Northern Development Canada; Fisheries and Oceans; Environment Canada

**Subject:** Worst Case Scenario (EIS, Section 4.4.5 pages 614 to 622; IR 69 and response)

**Preamble**

The Inuvialuit Final Agreement (IFA) in paragraph 13(11)(b) requires that developers provide evidence to enable an estimate of "the potential liability of the developer, determined on a worst case scenario". This is *in addition* to evidence about both actual and future wildlife harvest loss which may result from a worst case scenario. Inuvialuit have a right to compensation for both actual and future harvest loss based on section 13(15) of the IFA. Further, the IFA specifies that where there is more than one developer they are jointly and severally liable. The IFA also sets out that future harvest loss includes damages to habitat and disruption of future harvesting activities.

The EIS did not provide an estimate total clean up costs of the proposed worst case scenario. The estimate of liability in the EIS is based only on losses (or replacement value) of fish and some fishing gear for one season and does not address impacts on fish habitat or the effects of a spill on future Inuvialuit harvesting in the affected area or future harvest losses if Inuvialuit harvesters avoid the affected area in the future. Answer IR 69.2 provides an estimate of costs for a 5 day and a 10 day spill response event and the costs of monitoring.

**Request**

1. Please review and comment on the Developer's explanation of the likely fate of diesel spilled in the worst case scenario as set out in the EIS.
2. Please evaluate the impact of the worst case scenario on the fish and migratory bird habitat and populations in the streams, water courses and Husky Lakes. Provide an estimate of the cost of remediating these affected habitats.
3. Please provide a critical evaluation of the estimated costs for cleaning up the fuel spilled under the worst case scenario.

IR Number: 119

To: Department of Fisheries and Oceans

Subject: Increased access to fisheries resources during Project operations

References: EIS, Section 4.2.5.1 - 4.2.5.3, p. 503-504, Round One IR #32.

### Preamble

The EIS referenced a report contracted by the Department of Fisheries and Oceans [*Socio-Economic Literature Review of the Impact of Linear Developments in the Northwest Territories* (Nichols Applied Management and Knopp 2010) (attached). In this report, two types of management plans are briefly discussed [p. 21]:

*DFO Integrated Fish Management Plans are used to manage a specific stock of a particular species of fish from a particular region that is under multiple fishing pressures from users from multiple locations. IFMPs involve input from all stakeholders and are used to guide the conservation and sustainable use of the resource (Fisheries and Oceans Canada 2009b). An example of an IFMP from the Mackenzie River is the "Integrated Fisheries Management Plan for Coney (Stenodus leucichthys) in the Gwich'in Settlement Area, Inuvialuit Settlement Region, and the Sahtu Settlement Area, Northwest Territories 2000-2005" (Fisheries and Oceans Canada 2000b). The Fisheries Joint Management Committee, the Inuvialuit Game Council (IGC), the Gwich'in Renewable Resource Board and the Sahtu Renewable Resource Board (SRRB) and Fisheries and Oceans Canada all have a responsibility under their respective mandates to manage the Inconnu ("Coney") in their waters (Fisheries and Oceans Canada 2000b). This IFMP was developed to determine the best way to manage the inconnu in a way that everyone could agree on and to determine who would carry out the management of this species.*

*Local subsistence fisheries are monitored and managed using Community-based Monitoring Plans (CBMPs) and Fish Management Plans (FMPs). CBMPs and FMPs are put in place to maintain healthy fish stocks, maintain and manage the fishery for continued use by local communities and to encourage co-operation among all users to ensure sound management (Gwich'in Renewable Resource Board 2010).*

In its response to IR 32, the Developer provided a commitment to prepare an "action plan" and indicated that an "Action Plan is the key mitigation proposed to minimize indirect residual effects on fish and fish habitat." The Developer had already committed to developing a "Fish and Fish Habitat Protection Plan" for direct impacts in the EIS and Conformity Response 2b.

Given the legislated mandate of the Department of Fisheries and Oceans and the rights assigned to the Inuvialuit under the Inuvialuit Final Agreement, it is unclear whether the Developer's commitment is additional to the fish management planning processes and

regulatory processes nor is it clear how the Developer's commitment relates to the regulatory decision process of Department of Fisheries and Oceans.

#### **Request**

1. *Please describe the mandate and the regulatory processes of the Department of Fisheries and Oceans under the **Fisheries Act** to establish limits and restrictions on sport, subsistence and commercial fishing activities in the LSA and RSA for the Project.*
2. *Please describe the status of any relevant fisheries management plans and file copies of existing or draft fisheries management plans.*
3. *If relevant fisheries management plans are in preparation but cannot be released at this time, please provide the expected due date.*
4. *Please clarify and explain how the Developer's commitment to develop an "action plan" fits within the existing planning and regulatory processes to manage fish harvest by subsistence, sport or commercial harvesters as a mitigation to minimize residual impacts to fish.*

**IR Number:** 120

**To:** Department of Fisheries and Oceans

**Subject:** Fisheries Research Applicable to the Project Area

**References:** EIS 7.3 NWT Cumulative Effects Monitoring Program p. 653-654

**Preamble**

The EIS referenced a report contracted by the Department of Fisheries and Oceans [*Socio-Economic Literature Review of the Impact of Linear Developments in the Northwest Territories* (Nichols Applied Management and Knopp 2010) (attached). In this report states that fish management-related studies are underway for stock structure and population analyses, community-based monitoring, climate change effects on fish, as well as Traditional Knowledge studies of fish and aquatic resources [p. 21]:

**Request**

1. *Please provide a list of the research and Traditional Knowledge studies relevant to the Project LSA and RSA. For each study, describe the study objectives and activities and indicate the status of the study.*
2. *Please file the results of completed studies.*
3. *If any research and Traditional Knowledge studies relevant to the Project LSA and RSA are in preparation but cannot be released at this time, please provide the name of the project and expected due date.*
4. *Please explain how the Developer's commitment to provide its fish and fish habitat results would assist with the ongoing research and Traditional Knowledge studies, as well as the federal government's a Cumulative Impact and Monitoring Program.*



**IR Number:** 121

**To:** Department of Fisheries and Oceans

**Subject:** Adequacy of Commitments

**References:** IR Round 1 Response 55.1 Table F. Summary of Developer Commitments

**Preamble**

The EIRB requested a complete list of all general and specific mitigation measures and commitments which the Developer provided in its Response to IR 55.1. The GNWT agrees that mitigation measures are a crucial aspect of ensuring adverse effects are avoided or minimized. However, to be fully applicable in regulatory processes, environmental and topic specific management plans, these commitments should be specific, measurable, attainable, relevant and trackable. To ensure the most appropriate wording is on record for discussion in technical sessions or public hearings, it is important for expert departments to provide feedback on the adequacy of the wording of mitigations and commitments to improve and to identify missing mitigations or commitments early in the environmental assessment process.

**Request**

1. *Please review the relevant general and specific mitigation measures provided by the Developer in IR Response 55.1 Table F and identify and confirm the adequacy of the wording of the mitigation measures or provide editorial suggestions to improve the wording to ensure the commitments are specific, measurable, attainable, relevant and trackable.*
2. *Please identify and provide wording for additional mitigation measures required to ensure the avoidance or minimization of Project impacts.*