SUBMISSION

To

Senate Standing Committee on Energy, the Environment and Natural Resources

By

The Nunavut Impact Review Board

Regarding

Bill C-69: An Act to enable the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts

Date: February 7, 2019
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# Table of Contents

Background ........................................................................................................................................... 3

Specific Comments on Bill C-69 ................................................................................................................. 5

1.0 Cooperation and Coordination as a Stated Purpose (Preamble and s. 1 definition of “jurisdictions” of Bill C-69) .................................................................................................................................................. 5

2.0 Importance of Regional Assessments and Strategic Assessments (Preamble of Bill C-69) ........................................................................................................................................ 5

3.0 Public Participation (ss. 11 and 27 of Bill C-69) .................................................................................. 5

4.0 Applying a Prescribed List of Factors (s. 22 of Bill C-69) ................................................................. 6

5.0 Best Practices ....................................................................................................................................... 7

Conclusions ............................................................................................................................................. 8
**Background**

The Nunavut Impact Review Board (NIRB or Board) is a resource co-management institution of public government established in accordance with Articles 10 and 12 of the *Agreement Between the Inuit of the Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)* and the Board’s applicable legislative base, the *Nunavut Planning And Project Assessment Act*, S.C. 2013, c. 14, s.2 (*NuPPAA*). The NIRB has been operating in its current capacity since 1996 and is the sole impact assessment authority for the entire Nunavut Settlement Area, a jurisdiction representing greater than 1/5 of Canada’s total area.

The NIRB notes that as established under the *Nunavut Agreement*, Article 12, Section 12.12.7 the *Canadian Environmental Assessment Act* or successor legislation (Bill C-69) does not apply in the Nunavut Settlement Area:

**Canadian Environmental Assessment Act**

12.12.7

*The Canadian Environmental Assessment Act, and any successor legislation replacing that Act, shall not apply within the geographic area to which this Article applies.*

One of the defining objectives of the *Nunavut Agreement* is the right of Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources throughout the Nunavut Settlement Area. Since its establishment the membership of the Board has been comprised primarily of Inuit from the three regions of Nunavut, with the exception of a few non-Inuit members who have been long-term northern residents and/or with considerable expertise in impact assessment processes. Recognizing that Nunavut’s population is more than 85% Inuit, the Board’s composition has reflected the communities of Nunavut and greatly contributes to the NIRB’s understanding of issues affecting the Territory (particularly as many Board Members are native Inuktitut speakers and live in communities in each region of the Territory).
The *Nunavut Agreement* establishes a holistic, integrated resource management system for land use planning, impact assessment, and land and water licensing through co-management institutions of public government: the Nunavut Planning Commission (NPC), the NIRB and the Nunavut Water Board (NWB). In this integrated regulatory regime, the NIRB is responsible for assessing environmental, social and economic impacts of proposed development through its screening and review-level impact assessments. The NIRB also designs and administers monitoring programs for major development projects that are approved to proceed, allowing the Board to monitor actual project effects, determine the effectiveness of mitigation measures, and revisit approvals when necessary. This comprehensive monitoring function also informs future impact assessments by providing practical experience with what approaches work best in the unique Arctic environment.

**The Scope of the Board’s Comment Submissions on Bill C-69**

Although Bill C-69 will not directly apply to the NIRB’s assessments under the *Nunavut Agreement*, as the Nunavut Settlement Area shares borders with the Northwest Territories, several Provinces, several areas governed by land claims agreements (current and under negotiation) and the Canadian offshore, the transboundary and inter-jurisdictional aspects of Bill C-69 are particularly important to the NIRB. In addition, with greater than 20 years of experience conducting impact assessment, the NIRB’s submission also offers commentary, observations and best practices based on the Board’s considerable experience with the conduct of numerous Canadian impact assessments in remote locations and in a manner designed to encourage public participation and incorporate Inuit Qaujimangiit, Inuit Qaujimajatuqangit, Local and Community Knowledge.

Accordingly, based on the NIRB’s experiences in conducting numerous impact assessments in Nunavut, as well as conducting assessments outside Nunavut upon referral by the Federal Government and Nunavut Tunngavik Inc. under the *Nunavut Agreement*, in this submission the Board has:

- highlighted important changes to the stated purposes of Bill C-69 that are relevant to the NIRB;
- identified a few potential issues that NIRB anticipates may create challenges during the implementation of Bill C-69; and
highlighted some best management practices that may ultimately be relevant to the authorities responsible for implementing the impact assessment components of Bill C-69.

Specific Comments on Bill C-69

1.0 Cooperation and Coordination as a Stated Purpose (Preamble and s. 1 definition of “jurisdictions” of Bill C-69)

The NIRB appreciates that one of the clearly stated purposes of Bill C-69 is to “promote cooperation and coordinated action between federal and provincial governments, and the federal government and Indigenous governing bodies that are “jurisdictions” with respect to impact assessments. As the NIRB maintains several Memoranda of Understanding with federal and territorial impact assessment authorities adjacent to Nunavut and/or undertaking transboundary assessments, the NIRB is supportive of including this kind of express language to foster cooperation and coordinated action.

2.0 Importance of Regional Assessments and Strategic Assessments (Preamble of Bill C-69)

The NIRB also endorses the express recognition of the importance of regional assessments and strategic assessments in the Preamble of Bill C-69. As the NIRB is currently undertaking a Strategic Environmental Assessment of Potential Oil and Gas Development in Davis Strait and Baffin Bay (Canadian offshore waters adjacent to the Nunavut Settlement Area), the Board is acutely aware of the important role of such assessments in the development of a robust and integrated impact assessment regime. The Board is pleased to see this importance noted at the outset of Bill C-69.

3.0 Public Participation (ss. 11 and 27 of Bill C-69)

The NIRB notes that under ss. 11 and 27 of Bill C-69, the Impact Assessment Agency (Agency) must give the “public” opportunities to participate in the preparations for a possible impact assessment (s. 11) and also during an impact assessment (s. 27). The NIRB recognizes that the rights of participation may vary considerably depending upon the nature of the assessment proceeding and the nature of the participation sought by members of the public. However, as
there is currently no definition of the “public” nor defined scope of the rights of public participants, the NIRB anticipates that the Agency will be called upon to make these types of determinations in every case.

The Board recognizes the importance of assessment processes including broad rights of public participation, and the NIRB has an established process for allowing for public participants to seek full intervener rights of participation, as well as allowing for community members to participate in a more informal way during in-person proceedings of the Board conducted in communities. The NIRB’s practice has developed over time and given the realities of limited participant funding and high costs associated with travelling to communities in Nunavut, the Board’s facilitation of public participation has not been overly burdensome.

In contrast, given the high level of public interest generated by recent assessments conducted under the predecessor legislation to Bill C-69, the Board anticipates that with no guidance about issues in the statute, there will be, at least initially, considerable uncertainty about both the parties the Agency will (or will not) consider to be the “public” as well as the scope and content of the rights afforded to public participants in the preparations for an assessment or any assessment that results. As a result of having to make case by case determinations, the Agency may be burdened with making numerous “standing” decisions for a variety of parties in each case that must address the standing and participation rights of various categories of public participants.

4.0 Applying a Prescribed List of Factors (s. 22 of Bill C-69)

As set out under s. 22 of Bill C-69, there is a prescribed list of some 25 factors that must be taken into account by the Agency during an assessment. The NIRB is similarly tasked with taking into consideration prescribed factors when conducting a review of a project (s. 103 of the NuPPAA). In the NIRB’s experience, whenever an assessment authority has a list of considerations or factors that must be considered during impact assessment, there is an obligation for the authority to provide, in decision documents, an indication of how the prescribed factor was considered in the assessment, including if the authority found that the prescribed factor was not relevant in a given assessment. As a result, when the listing of prescribed factors (as is the case in Bill C-69)
is extensive, the Agency may be required to document their consideration of factors, even if that specific factor has limited or no relevance to the specific assessment.

The NIRB notes that the benefit of prescribing factors in the statute that must be considered by an assessment authority is that there is some predictability and consistency in terms of the approach to assessment and decision-making for all projects undergoing assessment. The downside, however, of an overly prescriptive approach to the listing of factors that must be considered is that assessment authorities and participants may spend considerable review time and comment on prescribed factors that are not relevant to the specific assessment. In implementing the NuPPAA, the Board has found that the more general approach of listing prescribed considerations/factors under the NuPPAA, coupled with the Board’s discretion under s. 103(1)(p) to add “any other matter” within the Board’s jurisdiction that should be considered, strikes a reasonable balance between certainty across assessments and flexibility and scalability to reflect the appropriate factors for specific assessments.

In reviewing both the detail and extent of the current list of prescribed factors that must be considered by the Agency under s. 22 of Bill C-69, the NIRB notes that the largely mandatory language of s. 22 may have the effect of limiting the ability of the Agency to undertake decision-making and provide concise decision documents focused only on those factors that are relevant to the specific assessment.

5.0 Best Practices

The NIRB notes that since its inception the NIRB has established a positive track record of completing thorough assessments of proposed developments in a timely, efficient and inclusive manner. The outcome of the NIRB processes has been to allow the Territory to realize lasting economic benefits while safeguarding the environment. Some key practices supporting the NIRB in achieving this goal include:

- engaging with the communities and people potentially affected by proposed developments at the early stages of the Board’s assessment process (e.g. developing the scope of the assessment, identification of valued ecosystemic and socio-economic components, etc.);
▪ exercising discretion to establish appropriate timelines for assessments to facilitate community and intervenor participation;
▪ requiring translation of key materials and providing simultaneous interpretation services to ensure proceedings are accessible to potentially-affected communities;
▪ extensive coordination and participation with licensing agencies throughout the assessment process in a manner that allows the Board’s assessment to inform and support subsequent licensing and permitting activities; and
▪ facilitating a collaborative and transparent approach to identifying and mitigating the potential for project-related ecosystemic and socio-economic impacts for all participants in the NIRB processes.

Conclusions
The Board thanks the Honorable Members of the Senate Standing Committee on Energy, the Environment and Natural Resources for this opportunity to appear and present our comments with respect to Bill C-69; we welcome any questions of the Committee Members.