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Nunavunmi Anngutighatigut Aulapkaijitkut Katimajiat
Nunavut Wildlife Management Board

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Tammaqtailinahuarniriit anngutighat atuqhugit Inuit qaujimajatuqangillu ilihimaniillu ilitquhiannin
Conserving wildlife through the application of Inuit Qaujimajatuqangit and scientific knowledge

July 18, 2024

Re: Establishment of Basic Needs Level within the Nunavut Settlement Area

The Nunavut Wildlife Management ("NWMB" or "Board") is providing you with notice that it intends to establish Basic Needs Levels ("BNL") for wildlife populations or stocks that are subject to a Total Allowable Harvest ("TAH") within the Nunavut Settlement Area.

You are further advised that, following deliberation based on the information available on the record, the Board intends rely on data from the 2004 Nunavut Wildlife Harvest Study ("Harvest Study") to calculate Basic Needs Levels pursuant to Section 5.4.5 of the *Nunavut Agreement*.

The attached information sheet provides background for the NWMB's decision on the establishment of the BNL and its reliance on the Harvest Study as the basis for the calculating the BNL.

Sincerely,

Daniel Shewchuk
Chairperson
Nunavut Wildlife Management Board

Establishment of Basic Need Levels
Within the Nunavut Settlement Area

Basic Needs Level (BNL)

Section 5.6.19 of the *Nunavut Agreement* requires that a BNL (a priority right of Inuit to harvest up to a minimum amount of wildlife, to the extent the amount is available) be established when a TAH (an amount of wildlife that is able to be lawfully harvested) is established by the NWMB for a particular wildlife stock or population pursuant to Section 5.6.16 to 5.6.18 of the *Nunavut Agreement*.

Pursuant to Section 5.6.20 of the *Nunavut Agreement*, where the BNL is larger than a TAH, the entire available harvest shall be reserved for Inuit.

Where the TAH is greater than the BNL, Inuit shall have priority entitlement to the BNL and any available amount in excess of the BNL is to be allocated amongst other residents, existing sports and commercial operations, economic ventures sponsored by Hunters and Trappers Organizations, Regional Wildlife Organizations, and other specified users in the order of priority outlined at Section 5.1.1; Section 5.6.20; Sections 5.6.31 to 5.6.40 of the *Nunavut Agreement*.

Pursuant to Section 5.6.26 of the *Nunavut Agreement*, where the NWMB has established a BNL, it shall “periodically review” the BNL for each stock or population to see if an “additional allocation” (referred to as an Adjusted Basic Needs Level or “ABNL”) is required to meet: (1) increased consumption or use by Inuit; (2) inter-settlement trade; or (3) marketing for consumption or use in the Nunavut Settlement Area.

The Nunavut Wildlife Harvest Study (1996-2001)

As outlined in Section 5.4.5 of the *Nunavut Agreement*, the purpose of the Harvest Study is to provide data to assist the NWMB in establishing BNLs and to contribute to the sound management and rational utilization of wildlife resources in the Nunavut Settlement Area.

As required under Part 4 of Article 5 of the *Nunavut Agreement*, relying on the terms of reference outlined in Schedule 5-5, the calculation of a BNL is to be based on data from the Harvest Study.

To conduct the Harvest Study, the NWMB worked with the Qikiqtaaluk Wildlife Board, the Kivalliq Wildlife Board, and the Kitikmeot Hunters and Trappers Association in Kugluktuk to collect harvest records from Inuit in each Nunavut community annually in 1996. The Harvest Study consists of over 140,000 records collected from more than 6,000 Inuit harvesters between 1996 to 2001.

As part of the Harvest Study, the NWMB also established a Steering Committee and hired a study coordinator, who worked with the Steering Committee, to implement its terms of reference.

Since the *Nunavut Agreement* does not explicitly qualify what types of harvests the NWMB is required to include in the calculation of the BNL, the Steering Committee accepted as part of its mandate to define the types of harvest data that needed to be included in the calculation of the BNL.

After consultation with interested stakeholders and after careful deliberation, the Steering Committee adopted the following assumption in 1996 regarding the BNL:

> "that the context of the [Nunavut] Agreement indicates that the BNL is the amount of harvest taken for domestic and cultural purposes. Harvesting or gathering for skins, feathers, dog food, craft materials, etc., would be acknowledged as "basic needs" components as long as the end use occurred in the hunter's community or entered into inter-settlement trade. Materials harvested or gathered for commercial sale as food outside the Nunavut Settlement Area would not be considered as basic needs."

Based on the Steering Committee's adoption of the assumption regarding elements to be included in the calculation of the BNL, with an exception for the harvest of fur, wildlife harvested in bulk for sale outside the Nunavut Settlement Area ("Commercial Harvests") was not recorded as part of the Harvest Study.

A Five-Year Preliminary Report was distributed for community consultation and data verification at the end of the Harvest Study and the Final Report, incorporating comments received from interested stakeholders, was published in 2004.

NWMB's Implementation of BNL (2005–2010)

With the Harvest Study, the NWMB began the process of establishing BNL for stocks or populations subjected to a TAH as early as 2005.

Cumberland Sound Halibut BNL

In 2005, while Nunavut Tunngavik Inc ("NTI") objected to the NWMB decision to establish a TAH of 500 tonnes for Cumberland Sound halibut inshore fishery and a BNL of 4.4 tonnes for the community of Pangnirtung, arguing that "nothing in the Nunavut Agreement suggests that "basic" is meant to imply "non-commercial" or "not for export", this decision of the NWMB was accepted by the Minister of Fisheries and Oceans Canada on April 6, 2005.

As part of their objection of the NWMB/Minister decision, NTI adopted the position that they consider "harvesting for commercial purposes a […] core Inuit harvesting right."

2009 Meehan Opinion and Policy Position

Faced with NTI's concerns about the exclusion of data on Commercial Harvests from the Harvest Study, the NWMB sought an independent opinion in 2008 on "whether some traditional commercial harvests fall within basic needs levels of Inuit" and whether the omission of Commercial Harvests from the Harvest Study may be contrary to the principles and objectives of Article 5 of the *Nunavut Agreement*.

In 2009, the NWMB obtained this independent opinion ("Meehan 2009 opinion") that suggests that the BNL should include all Inuit harvests, both subsistence and commercial, that preceded the establishment of a TAH. The NWMB invited and received submissions from NTI and the Department of Fisheries and Oceans ("DFO") about the position outlined in the Meehan 2009 opinion.

While NTI agreed with the Meehan 2009 opinion and reiterated its position that the right of Inuit to harvest refers to their full level of need, including economic needs, that must be taken into consideration in the establishment of a BNL, DFO disagreed and argued that BNL components are limited to consumption or use by Inuit, inter-settlement trade, and marketing for consumption or use inside the Nunavut Settlement Area.

Taking into consideration the arguments submitted by all co-management partners, the NWMB adopted an initial position that BNL must include all Inuit harvests, both subsistence and commercial, preceding the establishment of a TAH.

Kinngait Fiord Arctic char BNL

In April 2009, the NWMB held a public hearing to consider the TAH and BNL for the Arctic Char fishery in Kinngait Fiord and applied its initial position on what is to be included in the BNL for the Kinngait Fiord char fishery, located in several lakes near Pangnirtung and, on April 4, 2010. The NWMB sent its initial decision to the Minister of Fisheries and Oceans Canada ("Minister") establishing a BNL of 10,233 kg for Pangnirtung, which included Commercial Harvests.

On August 5, 2010, the Minister disallowed the NWMB's initial decision based, among other reasons for disallowance, the Minister's belief that "the NLCA does not permit the NWMB to rely on data that the NWMB had left out of the Harvest Study when striking a BNL under s. 5.6.23(a)."

The Minister also specified that the BNL should not include the Commercial Harvests of fish for export outside the Nunavut Settlement Area and suggested instead that the BNL should consist of harvesting for (a) consumption and use by Inuit, (b) inter-settlement trade, and (c) marketing for consumption or use in the Nunavut Settlement Area.

The Minister further suggested that including fish taken for sale outside Nunavut in the BNL would reduce the likelihood of having a surplus for allocation under Section 5.6.31 of the *Nunavut Agreement*.

In light of the Minister's decision to disallow the NWMB's initial decision, the final NWMB decision on the establishment of a TAH and BNL for the Arctic Char fishery in Kinngait Fiord has not yet been rendered.

Southampton Island Caribou BNL

In December 2013, the NWMB scheduled a public hearing to consider proposed changes to the TAH for Southampton Island caribou and calculate the BNL for the community of Coral Harbour. During the course of the public hearing, the NWMB adjourned the session to allow time for the Government of Nunavut to provide its position on elements to be included in the calculation of the BNL.

In March 2014, the Government of Nunavut submitted its position on the inclusion of Commercial Harvests within the BNL, arguing that Commercial Harvests of caribou on Southampton Island should not be included in the calculation of BNLs because this activity was always regulated as a commercial operation managed by the government which employed Inuit as hunters.

The Government of Nunavut's position is that Commercial Harvests was neither a traditional use of caribou by Inuit before 1993, a nor a current one, and that it should not be considered in the establishment of "basic needs" harvest under the *Nunavut Agreement*. It further argued that there was no evidence to support the conclusion that traditional Inuit harvesting of Southampton caribou included exporting caribou outside of the Nunavut Settlement Area for commercial purposes.

NTI challenged the Government of Nunavut's position and reaffirmed its own position that the Nunavut Agreement does not exclude Inuit commercial harvest from being counted towards the BNL.

In light of the opposing views on what is to be included in the BNL, the NWMB established a TAH for Southampton Island caribou in 2011 without calculating BNL.

The NWMB's Adoption of the Nunavut Wildlife Harvest Study

Because of the assumption of what constitutes BNL adopted by the Steering Committee, wildlife harvested in bulk for sale as food outside the Nunavut Settlement Area was not recorded as part of the Harvest Study that was completed in 2004.

Despite concerns expressed by NTI that the Harvest Study inappropriately excluded Commercial Harvests, there is no authority within the *Nunavut Agreement* for the NWMB to modify the assumptions adopted by the Steering Committee relative to what is to be included within the BNL and the NWMB has therefore accepted the position that the calculation of the BNL shall be based on the Harvest Study, which excludes Commercial Harvest, because the *Nunavut Agreement* does not provide the NWMB with an alternative path for calculating a BNL.

Disagreement Between Co-Management Partners

In the interest of fostering a consensus approach to the management of wildlife between co-management partners, the Board suspended the calculation of BNL as it sought to encourage agreement between the parties on the issue of whether or not to include Commercial Harvests in the calculation of BNL.

While the Board has consistently reserved TAH entirely for Inuit as an interim measure in the absence of calculated BNLs, assuming that any established TAH is lower than a properly calculated BNL, to ensure Ministers can meet their duty to implement the TAH "forthwith", the Board believes that this approach is no longer sustainable because it prevents the full implementation of important components of the Nunavut wildlife management system (such as the possibility of establishing ABNL and the implementation of the surplus provisions under the *Nunavut Agreement*).

Despite its interest in fostering consensus, the NWMB has the authority, and primary responsibility, to ensure that the type of management system envisaged under the *Nunavut Agreement* is fully implemented and believes that this authority and responsibility extends to establishing an interpretation of the composition of the BNL.

The way forward

The NWMB believes that the inability of co-management partners to reach a consensus on the composition of the BNL has delayed the full implementation of the Nunavut wildlife management system for more than 14 years and the Board has determined that any further delays in calculating BNL may undermine the Board's implementation of a comprehensive wildlife management system for the Nunavut Settlement Area.

While a consensus approach to the management of wildlife is desired, where there is disagreement between co-management partners, the *Nunavut Agreement* entrusts the NWMB, as the main instrument of wildlife management within the Nunavut Settlement Area, to make a determination under a fair and transparent decision-making process.

In this regard, the NWMB believes that the Steering Committee correctly exercised its discretion to not include Commercial Harvests in the composition of the BNL and, to be able to fully implement the wildlife management system aspired to under Article 5 of the *Nunavut Agreement*, the NWMB has made the decision that it will resume calculating BNLs for species or stock subject to a TAH relying on the data contained in the Harvest Study as required under Section 5.6.23 of the *Nunavut Agreement*.

While the NWMB takes note of the disagreement between co-management partners regarding whether to include Commercial Harvests in the calculation of a BNL, the NWMB believes that it has ultimate discretion to determine what must be included in the calculation of BNL and has made the decision to accept the assumption on what is to be included in the BNL adopted by the Steering Committee.