

Procedural Requirements for NLCA Article 5 Decision-making

In order for the NWMB and the Minister to complete the co-jurisdictional NLCA Article 5 decision-making process, the following procedural steps all have to be undertaken and completed:

1. Receipt by the NWMB of a *Proposal for Decision* and accompanying best available information, including a reasonably-detailed summary of relevant consultations undertaken – all translated into English or Inuktitut, as the case may be;
2. Issuance by the NWMB of a formal public hearing notice (generally, 60 days), including an invitation for public participation;
3. NWMB disclosure of all the best available information, duly translated;
4. Issuance by the NWMB of an invitation to potential parties to file written, translated submissions (generally, 39 days);
5. The holding of an NWMB (oral or written) hearing (generally, 21 days following the deadline for submissions);
6. The holding of an NWMB decision-making meeting following the hearing;
7. Issuance by the NWMB of its decision(s) to the Minister (NLCA S.5.3.8); and
8. All other necessary steps set out in NLCA Sections 5.3.9 through 5.3.15 (note: if the Minister disallows the initial NWMB decision(s), this mandatory NLCA process generally takes months to complete).

While the above timelines can be moderately abridged in exceptional circumstances, it is clear that the cumulative total time required for procedurally fair NLCA Article 5 decision-making far exceeds your proposed July 1st deadline, particularly taking into account NWMB hearing and meeting commitments already in place for June as of April 30th 2012.

NWMB-proposed Next Steps

In terms of specific next steps, the Board recommends the following:

- (a) As soon as reasonably possible, the Minister make and implement reasonable interim decisions for the Southampton Island Caribou Population;
- (b) The Department of Environment (DOE) conduct its scheduled additional population study in June 2012;

- (c) DOE publicly distribute the results of the study once they become available, and discuss those results – as well as proposed (new, revised or continued) management decisions and actions - with all affected harvesters and their HTO(s);
- (d) Following those consultations, DOE prepare a translated *Consultation Report* (including accommodations, if any, made as a result of the consultation process); and
- (e) DOE prepare and deliver to the NWMB a *Proposal for Decision* and accompanying best available information, all translated into English or Inuktitut, as the case may be.

Once in receipt of the 2012 population study results, the *Consultation Report*, the *Proposal for Decision* and accompanying best available information, the NWMB will conduct its NLCA S.5.3.24 full review of the interim decision. That full review will be in the form of a public hearing, which will be conducted by way of the eight procedural steps outlined above.

Types of Harvests to be Included in the BNL

Finally, Mr. Minister, the NWMB wishes to repeat the concern raised in its May 9th correspondence to you and other co-management partners, that the establishment of a basic needs level (BNL) for the Southampton Caribou Population at this time could prove to be problematic. A copy of that correspondence is attached to this letter. As you are aware, the establishment of a TAH necessarily requires the striking of an accompanying BNL (NLCA Sections 5.6.19 and 5.6.20).

Unfortunately, the NLCA parties are not all in agreement as to what harvests must be included in a BNL calculation.² The Board's current understanding is that:

- The NWMB and Nunavut Tunngavik Inc. agree that a BNL includes all Inuit harvests – both subsistence and commercial – preceding the establishment of a TAH;
- The federal Department of Fisheries and Oceans takes the position that the BNL only includes Inuit harvests for subsistence, intersettlement trade and marketing for consumption or use in the Nunavut Settlement Area; and
- The Government of Nunavut (GN) has not yet taken a position concerning what harvests must be included in a BNL calculation.


While the NWMB is not expecting that you will need to make a BNL decision as part of your NLCA S.5.3.24 interim decision-making, it appears clear that the NWMB's subsequent hearing and decision-making will include the striking of a BNL for the

² See, for instance, the Nunavut Tunngavik Inc. and Department of Fisheries and Oceans (DFO) submissions to the 2009 NWMB Public Hearing to Consider the Level of Total Allowable Harvest, the Basic Needs Level and the Surplus for the Char Fishery in Kingnait Fjord. See also the resulting April 9th 2010 NWMB initial decision letter and the DFO Minister's August 5th 2010 rejection letter. The NLCA Article 5 decision-making process for Kingnait Fjord Char has been temporarily suspended, to allow additional time to attempt to seek agreement on what harvests must be included in a BNL calculation.

Southampton Island Caribou Population. Accordingly, to assist you in formulating the GN position in time for the NWMB's full review and resulting decisions, the Board is attaching to this letter its April 9th 2010 BNL calculation decision letter and the legal opinion upon which it is based (both of which were delivered to your predecessor at the time they were first issued).

If you require further information, please do not hesitate to contact the NWMB.

Yours sincerely,



Peter Kusugak
Acting Chairperson of the
Nunavut Wildlife Management Board

Attachments (4)

- c.c. Cathy Towtongie, President of Nunavut Tunngavik Inc.;
Gabriel Nirlungayuk, Director of Wildlife, Nunavut Tunngavik Incorporated;
Noah Kadlak, Chairperson of the Aiviit Hunters and Trappers Organization;
Ross Tatty, Chairperson of the Kivalliq Wildlife Board;
James Qillaq, Chairperson of the Qikiqtaaluk Wildlife Board;
Michel Akkuardjuk, Chairperson of the Arviq Hunters and Trappers
Organization;
Quvanaqtuliaq Tapaungai, Chairperson of the Aiviq Hunters and Trappers
Organization;
Drikus Gissing, Director of Wildlife, Government of Nunavut-Department of
Environment; and
Peter Hale, Manager of Research, Government of Nunavut-Department of
Environment

WILDLIFE ACT

SI-001-2012

Registered with the Registrar of Regulations

2012-07-12

**SOUTHAMPTON ISLAND CARIBOU HERD TOTAL ALLOWABLE HARVEST INTERIM ORDER
(July 1, 2012 to June 30, 2013)**

Whereas there has been a precipitous decline in the population of the Southampton Island Caribou Herd since 1997, from more than 30,000 to fewer than 8,000 animals;

And Whereas current harvest levels of more than 2,300 caribou per year combined with a 50% reduction in the breeding success rate of the herd since 2000 and a severe outbreak of brucellosis are likely to result in extirpation of the Southampton Island Caribou Herd within three to five years if conservation measures are not taken immediately;

And Whereas the Southampton Island Caribou Herd is an important food, cultural, and economic resource for the community of Coral Harbour;

And Whereas the Coral Harbour HTO, the Nunavut Wildlife Management Board (“NWMB”), and Nunavut Tunngavik Incorporated agree that immediate conservation measures should be taken to maintain the stability and sustainability of the Southampton Island Caribou Herd until it can be determined if additional long-term conservation measures are necessary;

And Whereas the Minister is of the opinion that urgent and unusual circumstances exist requiring an immediate modification in harvesting activities with respect to the Southampton Island Caribou Herd,

The Minister, in accordance with paragraph 121(b) and section 150 of the *Wildlife Act* and every enabling power, makes the annexed *Southampton Island Caribou Herd Total Allowable Harvest Interim Order (July 1, 2012 to June 30, 2013)*.

1. In this Order, “Southampton Island Caribou Herd” means all caribou found on Southampton Island and White Island, being part of Wildlife Management Barren-Ground Caribou Area N/BC/12, as described in the *Wildlife Management Barren-Ground Caribou Areas Regulations*, N.W.T.Reg. R-099-98, as duplicated for Nunavut by section 29 of the *Nunavut Act* (Canada).

2. (1) A total allowable harvest is established for the Southampton Island Caribou Herd for the harvest year of July 1, 2012 to June 30, 2013, in accordance with this Order.

(2) The total allowable harvest from the population of the Southampton Island Caribou Herd for the harvest year is 1,000 caribou.

(3) It is presumed that the Inuit of Coral Harbour need the full amount of the total allowable harvest.

(4) The full amount of the total allowable harvest and basic needs level for the harvest year is allocated to the community of Coral Harbour.

3. The Coral Harbour HTO may issue tags for allocating the basic needs level among its members.

4. For the purposes of conservation, the harvest of the Southampton Island Caribou Herd during the harvest year is subject to the following non-quota limitations:

- (a) there shall be no harvesting of cow-calf pairs; and
- (b) there shall be no harvesting of mature bull caribou.

5. This Order is subject to review as soon as practicable by the NWMB in accordance with section 158 of the Act, but remains in effect until the earlier of:

Southampton Island Caribou Herd Total Allowable Harvest Interim Order (July 1, 2012 to June 30, 2013)

- (a) June 30, 2013;
- (b) registration of an Order to implement an accepted decision of the NWMB concerning the Southampton Island Caribou Herd; or
- (c) registration of a subsequent Order of the Minister.

6. This Order comes into force on the later of July 1, 2012 and the date of registration by the Registrar of Regulations.

PUBLISHED BY
TERRITORIAL PRINTER FOR NUNAVUT
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