



May 30th 2012

Honourable James Arreak
Minister of Environment
Government of Nunavut

NWMB - SENT

DATE: June 4/12

Dear Mr. Arreak:

Re: Request for Harvesting Limitation Decisions from the Nunavut Wildlife Management Board for the Southampton Island Caribou Population

Request for NWMB Decisions

In April 30th 2012 correspondence to the Nunavut Wildlife Management Board (NWMB or Board), you requested that the NWMB make a total allowable harvest (TAH) and two non-quota limitation decisions for the Southampton Island Caribou Population, “...in time for management action to be taken before the commencement of the next harvest year, which begins July 01, 2012.” The request was in the form of a ministerial management initiative, issued pursuant to Section 5.3.25 of the *Nunavut Land Claims Agreement* (NLCA).

NWMB Recommendation

As explained below, unfortunately the Board would not able to meet its NLCA Article 5 decision-making obligations within the very short timeline provided. However, as discussed in March - April 2012 correspondence between you and the Chairperson of the Aiviit Hunters and Trappers Organization (HTO), you are authorized by section 150(1) of the *Wildlife Act* (and by NLCA S.5.3.24) to make and implement any reasonable interim decision in urgent and unusual circumstances. In turn, the NWMB is required to conduct a full review of that interim decision as soon as practicable thereafter (NLCA S.5.3.24 and s.158 of the *Wildlife Act*).

In these particular circumstances, the Board recommends that you proceed by way of NLCA S.5.3.24. That recommendation is unanimously supported by the participants at the “*Pre-Hearing Teleconference Concerning the Management of the Southampton Island Caribou Population*”, held on May 16th 2012.¹ The minutes of the teleconference are attached to this letter.

¹ The pre-hearing teleconference was attended by representatives of the Aiviit HTO, Nunavut Tunngavik Inc., the Government of Nunavut’s Department of Environment, and the NWMB. The Arviq and Aiviq HTOs were also invited.

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