

À 12, 2013

K1A 0E6

Γσ<sup>h</sup>C Δ<sup>h</sup>Δ<sup>h</sup>C<sup>h</sup>:

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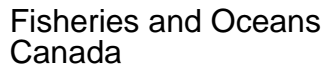
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## 2. REASONS FOR THE NWMB DECISION

The NWMB's decision is based upon the most reliable and persuasive evidence and arguments received during the public hearing process. All of the written submissions filed and considered at the hearing are publicly available for download from the Board's website ([www.nwmb.com](http://www.nwmb.com)). In addition, the NWMB has produced a full transcript of the oral submissions, questions and answers delivered during the hearing. That transcript is available from the Board upon request. A brief summary of key points made during the hearing process is also attached to this letter as Appendix A.

There are two fundamental reasons for the NWMB's NLCA S.5.6.25 decision:

1. To comply with the remarkable and welcome consensus arrived at by Government and Inuit - that the BNL equal the total allowable harvest for beluga, narwhal and walrus in the NSA; and
2. To protect Nunavik Inuit rights with respect to the determination of BNLs and the allocation of total allowable harvests for beluga, narwhal and walrus in the *Areas of Equal Use and Occupancy*.

### 2.1 Consensus among the hearing parties

The establishment of BNLs for these three marine mammal species of such economic, social and cultural importance to Inuit is one of the most significant co-jurisdictional decisions that the NWMB and the Minister have had to make to date. Fortunately, all of the hearing parties were in agreement on one essential element of that decision: the BNL should equal the total allowable harvest for beluga, narwhal and walrus in the NSA.<sup>1</sup> That clear consensus among the hearing parties was very helpful to the Board in reaching its decision.

### 2.2 Protection of Nunavik Inuit rights in the “*Areas of Equal Use and Occupancy*”

The NWMB recognizes that the NSA includes two “*Areas of Equal Use and Occupancy*” (Area A and Area B), described in NLCA Schedule 40-1 and Schedule 27-1 of the *Nunavik Inuit Land Claims Agreement* (NILCA). Nunavik Inuit have a number of rights and related protections in the *Areas of Equal Use and Occupancy* (see NLCA Article 40 and NILCA Article 27). In undertaking its NLCA

<sup>1</sup> See for instance: Department of Fisheries and Oceans: “DFO is prepared to move forward with endorsing the concept that, for beluga, narwhal and walrus, Inuit Basic Needs Level = Total Allowable Harvest in the Nunavut Settlement Area...” (Hearing Binder, Tab 27, p.1); NTI: “NTI proposes that the Board make the following decision: ‘1. The NWMB hereby establishes the basic needs levels for beluga, narwhal and walrus under s. 5.6.25 of the NLCA by determining that Inuit need the total allowable harvest established by the NWMB of all beluga, narwhal and walrus within the Nunavut Settlement Area...’” (Hearing Binder, Tab 26, p. 5); Government of Nunavut Department of Environment, Hearing Transcript p. 181, lines 2 - 8; Qikiqtaaluk Wildlife Board, Hearing Transcript, p. 143, lines 11 - 18; Kivalliq Regional Wildlife Board, Hearing Transcript, p. 186, lines 22 - 23; Amarak Hunters and Trappers Organization, Hearing Transcript, p. 191, lines 10 - 12; and Nunavut Qaujimaniliit, Hearing Transcript, p. 102, lines 8 - 10; p. 105, lines 9 - 10; and p. 203, lines 16 - 20.

S.5.6.25 decision-making process, the Board understood that it would be necessary to fairly address those rights and protections.<sup>2</sup>

Accordingly, starting with a pre-hearing conference invitation letter issued on January 24<sup>th</sup> 2012, the NWMB included Makivik Corporation (Makivik) in all correspondence to Inuit organizations and government departments invited to be parties at the NLCA S.5.6.25 hearing.<sup>3</sup> Nevertheless, Makivik did not attend the hearing, nor did it file any written hearing submissions. Accordingly, the hearing record includes no input from Nunavik interests. The NWMB's Executive Director was informed by Makivik after the hearing that it did not attend because the hearing dates conflicted with other meeting commitments.

Following the hearing, on November 21<sup>st</sup> 2012, the NWMB wrote directly to the President of Makivik, inviting Makivik representatives to attend as observers at the Board's NLCA S.5.6.25 decision meeting, *"...to permit Nunavik Inuit representatives to observe NLCA Section 5.6.25 decision-making by the NWMB for the entire NSA - which fully respects both Nunavut and Nunavik Inuit rights in the Areas of Equal Use and Occupancy."*

Approximately two weeks later - two days prior to the NWMB's December 6<sup>th</sup> decision meeting - Makivik wrote to the Acting Minister, raising concerns about the process being followed by the NWMB, in particular that *"...no request [had been] received from the NWMB to have the Makivik-appointed alternate members participate in the decision-making process for the establishment of BNLs in the Areas of Equal Use and Occupancy..."*

In fact, the Board's November 21<sup>st</sup> letter had addressed this particular point: *"...Because this NWMB decision-making meeting is with respect to the establishment of basic needs levels for Nunavut Inuit throughout the NSA, Makivik-appointed NWMB members will not participate in the Board's decision-making (see NLCA S.40.2.14 and NILCA S.27.6.1). However, any subsequent NWMB decision-making to establish Nunavik Inuit basic needs levels in the Areas of Equal Use and Occupancy would include Makivik-appointed Board members."*<sup>4</sup> [Emphasis added]

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<sup>2</sup> Beluga, narwhal and walrus are found within the *Areas of Equal Use and Occupancy*: The NWMB regularly approves walrus sport hunts by Nunavik Inuit in Area A (which is located around – and includes – Nottingham and Salisbury Islands); narwhals from the Northern Hudson Bay stock migrate through Foxe Channel and Hudson Strait to and from their overwintering grounds, passing through Area A; and beluga are known to migrate through Area B (which is located around – and includes – the Sleeper, King George, and Bakers Dozen Islands).

<sup>3</sup> See also the NWMB's January 30<sup>th</sup> 2012 letter (announcing the postponement of the hearing), May 1<sup>st</sup> 2012 letter (announcing the reinstatement of the hearing) and July 13<sup>th</sup> letter (addressing a late submission from the Government of Nunavut). Note that the May 1<sup>st</sup> and July 13<sup>th</sup> letters also included the Nunavik Marine Region Wildlife Board on the cc list.

<sup>4</sup> The NWMB routinely makes decisions that apply to the whole of the NSA, including the *Areas of Equal Use and Occupancy* (e.g. seasons of harvest, wildlife gender or age restrictions, weapon and ammunition restrictions, etc.). The directions in NLCA S.40.2.14 neither require nor permit the replacement of 2 DIO-appointed Board members with 2 Makivik-appointed Board members for NWMB decisions that apply to the whole of the NSA, including the *Areas of Equal*

NLCA S.40.2.5 directs that the BNL for Nunavik Inuit shall be determined on the basis of available information (see also NILCA S.27.3.3). To date, the NWMB has received no such information. That section goes on to state that, “*Where the basic needs levels of the Two Groups [Nunavut and Nunavik Inuit] exceeds the total allowable harvest, the total allowable harvest shall be allocated between the Two Groups so as to reflect the ratio of their basic needs levels.*” To date, no total allowable harvest for beluga, narwhal or walrus applies in the *Areas of Equal Use and Occupancy*.

In compliance with clear NLCA instructions, the NWMB is fully prepared to determine one or more BNLs for Nunavik Inuit in one or more of the *Areas of Equal Use and Occupancy* – and to allocate any future TAH between the Two Groups so as to reflect the ratio of their BNLs. Accordingly, condition number 1 of the Board’s NLCA S.5.6.25 resolution properly reflects that NWMB commitment, and ensures the continued protection of Nunavik Inuit rights under NLCA Article 40.

### 3. CONCLUSION

Once the present NLCA Article 5 decision-making process is completed, the Board reasonably anticipates receiving an appropriate *Proposal for NWMB Decision* to determine one or more BNLs for Nunavik Inuit in one or more of the *Areas of Equal Use and Occupancy*. As indicated to Makivik on November 21<sup>st</sup> 2012, NWMB decision-making to establish Nunavik Inuit BNLs in the *Areas of Equal Use and Occupancy* will include Makivik-appointed Board members, as per NLCA S.40.2.14. In accordance with NLCA S.40.2.5, the NWMB will also ensure that any future total allowable harvest applying to the *Areas of Equal Use and Occupancy* is allocated between the Two Groups so as to reflect the ratio of their BNLs.

Mr. Minister, the NWMB hereby forwards its decision to you, for your consideration pursuant to the relevant terms of the NLCA. In the meantime, the NWMB wishes to thank you and your officials for the significant attention that DFO has devoted to this challenging file, and to congratulate the Department for achieving a consensus position with Inuit on a matter of such importance to Inuit.

If you or your officials have any questions with respect to the contents of this letter, please do not hesitate to contact the NWMB at your convenience.

Yours sincerely,



Manasie Audlakiak,  
A/Chairperson of the  
Nunavut Wildlife Management Board

Attachment (1)

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*Use and Occupancy*. However, in those and other circumstances, Makivik exercises the power of an HTO or RWO on behalf of Nunavik Inuit (NLCA S.40.2.6 and 40.2.16; NILCA S.27.3.4 and 27.6.3).



## *Appendix A – Summary of Hearing Party Submissions*

*PLEASE NOTE: This document note offers only a brief summary of the evidence and arguments received by the NWMB in connection with the Board's public hearing on the establishment of basic needs levels for beluga, walrus, and narwhal. The complete written submissions and all supporting written documentation are available from the NWMB's public hearing registry (2012) at [www.nwmb.com](http://www.nwmb.com) or by contacting the Board. A copy of the full oral hearing transcript is also available upon request.*

**Nunavut Tunngavik Inc. Position:** The Board should use the basis set out in the Nunavut Land Claims Agreement for “presumption as to needs” species when setting basic needs levels for beluga, walrus and narwhal. Inuit need the total allowable harvest established for these species. The total allowable harvest should serve as the basic needs level (Hearing Binder Tab 26).

### Evidence and Arguments:

- The Nunavut Land Claims Agreement disqualified the Harvest Study formulae because they are based on past Inuit harvest levels alone. The decision deadline was 1997 and the Harvest Study was not complete at that time.
- Inuit are the primary harvesters of these species in the Nunavut Settlement Area.
- These species are highly important to Inuit culture, society, and economy and harvesters have been regulated. Therefore, Inuit need for these species exceeds the available supply.
- Nunavut Tunngavik and Fisheries and Oceans previously agreed that the basic needs level should be equal to the total allowable harvest for narwhal. Beluga and walrus should be treated the same.
- Fisheries and Oceans has agreed to have beluga listed as “presumption as to needs” in the Nunavik Land Claim Agreement.
- This decision will not impact harvesting until total allowable harvests are set, at which time non-beneficiaries will be eligible for assignment of harvest by the Hunters and Trappers Associations. Fisheries and Oceans could continue to employ its current suite of management tools to regulate non-Inuit harvesting of beluga and walrus.
- A reservation can be made to allow harvesting of narwhal, beluga, or walrus for scientific purposes, and predator or disease control with the Board's approval.

**Department of Fisheries and Oceans Canada Position:** The Department endorses the concept that Inuit basic needs level equals the total allowable harvest for narwhal, beluga, and walrus in the Nunavut Settlement Area provided that regulatory measures for the sustainable harvesting of these species are implemented (Hearing Binder Tab 27).

### Evidence and Arguments:



- Setting a total allowable harvest must be based on the principle of conservation.
- In addition to a total allowable harvest, additional management measures must be in place for all stocks and populations.
- Management measures should be reflected in regulation to ensure that Canada can demonstrate that harvests are sustainable.
- The Department's position on the issue is not subject to Makivik and Nunavut Tunngavik Inc. reaching consensus on a sharing agreement (Hearing Transcript, page 130).

**Government of Nunavut Department of Environment Position:** The Government of Nunavut supports any points of agreement between the Department of Fisheries and Oceans, Nunavut Tunngavik, and the NWMB (Hearing Transcript, page 181; Hearing Binder Tabs 28-30).

**Evidence and Arguments:**

- Narwhal, beluga, and walrus are nutritionally, socially, culturally, and economically important to Nunavummiut.
- The Government of Nunavut does not have jurisdiction over marine mammals, but remains committed to involvement in management discussions and is willing to provide support where possible.
- Analyzed data from the Nunavut Coastal Resource Inventory which systematically documents local knowledge of numerous marine species, including narwhal, beluga, and walrus was submitted for consideration.
- Notes taken by Government of Nunavut staff during the 2011 and 2012 consultations on narwhal were also submitted as harvesters shared some of their relevant knowledge and experience during these meetings.

**Qikiqtaaluk Wildlife Board:**

- In agreement with the principles of Nunavut Tunngavik's submission (Hearing Transcript, page 143).
- Inuit dependence on the harvest of these species is especially important in the high arctic communities (Hearing Transcript, page 68).
- Harvests from Nunavik and Nunatsiavut in areas covered by overlap agreements (such as those in Section 40 of the Nunavut Land Claims Agreement) should be considered (Hearing Transcript, page 121 and 124-125).

**Kivalliq Regional Wildlife Board:**

- Kivalliq regional concurs with the submission that was provided by Nunavut Tunngavik Inc. (Hearing Transcript, page 186).

- Nunavik harvests should be considered (Hearing Transcript, page 47, 52); Nunavik Inuit have asked for 10 narwhal from the Northern Hudson Bay population (Hearing Transcript, page 136).
- The distribution of narwhal has changed since the signing of the Nunavut Land Claims Agreement (Hearing Transcript, page 44).
- These species are what Inuit have survived on in the past and continue to depend on today (Hearing Transcript, page 222).

#### **Oikiqtaaluk Qaujimaniliit:**

- Narwhal, beluga, walrus are a staple of Inuit diet (Hearing Transcript, page 71).
- It is not possible to provide for the needs of Inuit because of problems with diseases, changes in migration, competition from other species, and access to the animals (Hearing Transcript, page 77,134).

#### **Kivalliq Qaujimaniliit:**

- Concur with Nunavut Tunngavik's submission that basic needs levels should be on par with total allowable harvests (Hearing Transcript, page 102, 203).
- The distribution of species is always changing. The different types of species in an area and different numbers present at any given time affect what the need is for each species (Hearing Transcript, page 44-45, 187-188).
- Nunavik's request for narwhal harvest from North Hudson Bay should be addressed by Nunavut Tunngavik and Makivik (Hearing Transcript, page 139).
- The basic needs level should focus on consumption (Hearing Transcript, page 139-140).
- The population of Inuit is increasing and should be considered. People are always moving to new areas and consuming new species (Hearing Transcript, page 188).
- There hasn't been any research as to what the needs of Inuit actually are; we would like to be able to harvest more (Hearing Transcript, page 188, 190).

#### **Kitikmeot Qaujimaniliit:**

- In agreement with Nunavut Tunngavik's submission (Hearing Transcript, page 105).
- Some of these species are not readily available in the Kitikmeot Region, but are still staples in the diet of people in the region (Hearing Transcript, page 196).

#### **Amarok Hunters and Trappers Organization:**

- The needs of Iqaluit increase as a result of immigration to the community from other areas of Nunavut (Hearing Transcript, page 66-67, 157-158).

- In agreement with the positions of Nunavut Tunngavik and Fisheries and Oceans that basic need levels should equal total allowable harvest for these species (Hearing Transcript, page 191).



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March 8, 2013

Mr. Manasie Audlakiak  
Acting Chairperson  
Nunavut Wildlife Management Board  
P.O. Box 1379  
Iqaluit, Nunavut  
X0A 0H0

Dear Mr. Audlakiak,

We are in receipt of your letter setting out the Nunavut Wildlife Management Board's initial decision concerning the establishment of basic needs levels for beluga, narwhal and walrus.

I would like to request a 60 day extension during which time I invite the Board to discuss and develop a protocol with DFO on how to implement the Board's decision (with a focus on condition #2 of the decision). This protocol would then form part of the advice prepared for the Minister's consideration and decision on the matter concerning the establishment of basic needs levels for beluga, narwhal and walrus.

Please confirm at your earliest convenience if the Nunavut Wildlife Management Board is willing to grant the extension and whether the Board would be interested in meeting with DFO. I thank you in advance for your continued collaboration.

Sincerely,

David Burden  
A/Regional Director General  
Central and Arctic Region  
Fisheries and Oceans Canada



Ottawa, Canada K1A 0E6

JUN 12 2013

Mr. Manasie Audlakiak  
A/Chairperson  
Nunavut Wildlife Management Board  
P.O. Box 1379  
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Dear Mr. Audlakiak:

Thank you for your correspondence of February 12, 2013 on the Nunavut Wildlife Management Board decision, which included two conditions that the Board indicated are an integral part to the decision, with respect to the establishment of basic needs levels for beluga, narwhal and walrus in the Nunavut Settlement Area.

I also wish to thank the Board for granting the extension requested by my Department for preparing this response to your decision. This extension permitted our respective organizations to commence discussions on developing a protocol to implement, in a practical way, some aspects of the conditions stipulated in the Board's decision.

This letter confirms that I accept the Nunavut Wildlife Management Board decision to “...*establish the basic needs levels (BNLs) for beluga, narwhal and walrus in the Nunavut Settlement Area (NSA) to be equal to the levels of total allowable harvest established or modified by the NWMB...*” This will cause the Basic Needs Levels for beluga, narwhal and walrus to fluctuate with changes to the level of the Total Allowable Harvest made in accordance with Article 5 of the Nunavut Land Claims Agreement.

I will now address the conditions stipulated in the Nunavut Wildlife Management Board decision. The first is an existing requirement of the Nunavut Wildlife Management Board under Article 40 of the Nunavut Land Claims Agreement. While the condition specifically refers to Nunavik Inuit, there is the potential that other Inuit or aboriginal groups may demonstrate traditional use of these marine mammal resources within the Nunavut Settlement Area. In such an eventuality, the requirements of the Nunavut Land Claims Agreement must be considered for those harvesters.

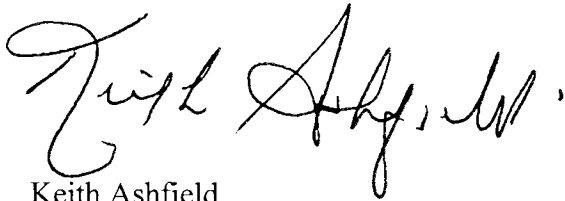
With respect to the second condition, my Department recognizes the powers, duties and functions of the Nunavut Wildlife Management Board as set out under the provisions of the Nunavut Land Claims Agreement. It is my understanding that there has been good progress to date between our respective organizations in developing an operational protocol to accommodate this contingency if necessary. However, finalization of the protocol requires further discussions amongst our staff and also other stakeholders in the management of these marine mammal fisheries in the Nunavut Settlement Area. The Department remains committed to working with the co-management organizations on this initiative.

.../2

We also look forward to working together on ensuring that appropriate management measures for beluga and walrus are in place and reflected in regulation for the conservation of all stocks and populations of beluga and walrus. This requirement will enable Canada to continue demonstrating that harvests of these marine mammal species are sustainable in support of our domestic and international obligations for the responsible management of Canadian fisheries.

In closing, I congratulate the Nunavut Wildlife Management Board and staff in successfully dealing with this requirement under Article 5 of the Nunavut Land Claims Agreement. The Department looks forward to our continuing collaboration as we implement this decision for beluga, narwhal and walrus within the Nunavut Settlement Area.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Keith Ashfield". The signature is fluid and cursive, with the first name "Keith" being more prominent and the last name "Ashfield" written in a more compact, connected style.

Keith Ashfield