



**NUNAVUT WILDLIFE
MANAGEMENT BOARD
CARIBOU PROTECTION
WORKSHOP**



**JURISDICTIONS INVOLVED IN
CARIBOU PROTECTION**

NOVEMBER 4th 2015





OVERVIEW:

1. THE CROWN AND APPLICABLE LAW;
2. FEDERAL JURISDICTION;
3. TERRITORIAL JURISDICTION;



OVERVIEW:

4. INUIT OWNED LANDS;

5. NPC JURISDICTION;

6. NIRB JURISDICTION;



OVERVIEW:

7. NWB JURISDICTION;

8. NWMB JURISDICTION; AND

9. POTENTIAL WAYS FORWARD.





THE CROWN & APPLICABLE LAW:

- ◆ **MAJORITY OF CANADIAN LANDS ARE HELD BY THE FEDERAL OR PROVINCIAL GOVERNMENTS IN THE NAME OF THE MONARCH – CALLED CROWN LANDS.**
- ◆ **ESSENTIALLY ALL NUNAVUT LANDS ARE EITHER CROWN LANDS (82%) OR INUIT OWNED LANDS (18%).**



THE CROWN & APPLICABLE LAW:

- ◆ **THE PRIMARY LAW GOVERNING ALL OF THE RELEVANT JURISDICTIONS IS THE *NUNAVUT LAND CLAIMS AGREEMENT* (NLCA - PROTECTED BY THE CONSTITUTION, THE SUPREME LAW OF CANADA).**
- ◆ **VARIOUS FEDERAL AND TERRITORIAL STATUTES AND REGULATIONS ALSO APPLY – AS LONG AS NOT INCONSISTENT OR IN CONFLICT WITH THE NLCA.**



FEDERAL GOVERNMENT JURISDICTION:

- ◆ CONTROLS ACCESS TO AND MINERAL RIGHTS ON CROWN LANDS;
- ◆ CONTROLS MINERAL RIGHTS ON “*SURFACE*” INUIT OWNED LANDS;



FEDERAL GOVERNMENT JURISDICTION:

- ◆ **FINAL APPROVAL OF LAND USE PLANS (SHARED WITH THE NUNAVUT GOVT. (GN)); AND**
- ◆ **FINAL APPROVAL OVER FEDERAL PROJECT PROPOSALS.**



TERRITORIAL GOVERNMENT JURISDICTION:

- ◆ **AUTHORITY UNDER ENVIRONMENTAL PROTECTION AND WILDLIFE LEGISLATION;**
- ◆ **FINAL APPROVAL OF LAND USE PLANS (SHARED WITH THE FEDERAL GOVT.); AND**
- ◆ **FINAL APPROVAL OVER TERRITORIAL PROJECT PROPOSALS.**



INUIT OWNED LANDS:

- ◆ **TWO TYPES: SURFACE INUIT OWNED LANDS (IOLs) AND SUBSURFACE IOLs;**
- ◆ **SURFACE RIGHTS FOR ALL IOLs GRANTED BY RIA; MOST SUBSURFACE RIGHTS FOR SUBSURFACE IOLs GRANTED BY NTI;**
- ◆ **FOR SURFACE IOLs AND GRANDFATHERED SUBSURFACE IOLs, MINERAL RIGHTS ADMINISTERED BY DEPARTMENT OF ABORIGINAL AFFAIRS (AANDC); AND**



INUIT OWNED LANDS:

- ◆ **IF NTI/RIA AND A PERSON WITH AN IOL MINERAL RIGHT ARE UNABLE TO AGREE ON ACCESS, THE NUNAVUT SURFACE RIGHTS TRIBUNAL MUST ISSUE AN ENTRY ORDER – AND MAY IMPOSE CONDITIONS.**
- ◆ **MAJOR PROJECTS ON IOLs FIRST REQUIRE A FINALIZED INUIT IMPACT AND BENEFIT AGREEMENT.**



NPC JURISDICTION:

- ◆ **RESPONSIBLE FOR ESTABLISHING A LAND USE PLAN FOR THE NUNAVUT SETTLEMENT AREA (NSA);**
- ◆ **APPROVED LAND USE PLAN CAN ESTABLISH BINDING RULES FOR MINING DEVELOPMENT AND CARIBOU HABITAT PROTECTION;**
- ◆ **DRAFT PLAN MUST BE ACCEPTED JOINTLY BY AANDC MINISTER, GN MINISTER OF ENVIRONMENT AND NTI;**



NPC JURISDICTION:

- ◆ **IF DRAFT PLAN REJECTED, NPC MAY MODIFY AND RE-SUBMIT;**
- ◆ **ONCE APPROVED, LAND USE PLAN IS RECOMMENDED FOR FINAL APPROVAL TO THE FEDERAL AND GN CABINETS; AND**
- ◆ **UPON FINAL APPROVAL, PLAN IS IN EFFECT (INCLUDING WITHIN IOLs) AND ALL PROJECTS, LICENCES, PERMITS AND AUTHORIZATIONS MUST COMPLY.**



NIRB JURISDICTION:

- ◆ RESPONSIBLE FOR SCREENING AND REVIEWING “*PROJECTS*” IN CONFORMITY WITH FINAL APPROVED LAND USE PLAN;
- ◆ **STEP 1:** NPC DETERMINES (i) IF PROJECT PROPOSAL CONFORMS WITH THE PLAN, AND (ii) IF PROJECT IS EXEMPT FROM SCREENING;



NIRB JURISDICTION:

- ◆ **STEP 2:** IF IN CONFORMITY AND NOT EXEMPT, NIRB SCREENS PROJECT AND DECIDES IF A REVIEW IS REQUIRED;
- ◆ **STEP 3:** NIRB (OR POTENTIALLY ANOTHER REVIEWING BODY) REVIEWS THE PROJECT, AND DECIDES UPON APPROVAL OR REJECTION;



NIRB JURISDICTION:

- ◆ **STEP 4:** THE RESPONSIBLE MINISTER ACCEPTS OR REJECTS THE DECISION;
- ◆ **STEP 5:** IF THE RESPONSIBLE MINISTER ACCEPTS A DECISION TO APPROVE THE PROJECT, HE OR SHE MUST ALSO EITHER ACCEPT OR REJECT THE TERMS AND CONDITIONS OF NIRB'S APPROVAL;



NIRB JURISDICTION:

- ◆ **IF THE MINISTER REJECTS THOSE INITIAL TERMS AND CONDITIONS, NIRB MUST SUBMIT A PUBLIC REPORT WITH FINAL RECOMMENDED TERMS AND CONDITIONS FOR THE PROJECT;**
- ◆ **IF THE MINISTER REJECTS A DECISION THAT THE PROJECT NOT PROCEED, NIRB MUST SUBMIT A PUBLIC REPORT WITH FINAL RECOMMENDED TERMS AND CONDITIONS; AND**



NIRB JURISDICTION:

- ◆ **STEP 6:** WHEN NIRB SUBMITS A PUBLIC REPORT WITH FINAL TERMS AND CONDITIONS, THE MINISTER MAY REJECT OR VARY ANY TERM OR CONDITION RELATED TO SOCIO-ECONOMIC IMPACTS, AND NOT RELATED TO ECOSYSTEMIC IMPACTS.
- ◆ THE SCREENING AND REVIEWING REGIME DESCRIBED ABOVE APPLIES TO BOTH CROWN LANDS AND IOLs.



NWB JURISDICTION:

- ◆ **RESPONSIBLE FOR THE REGULATION, USE AND MANAGEMENT OF WATER IN THE NSA (NOT MARINE WATERS);**
- ◆ **PROVIDES WATER-RELATED RECOMMENDATIONS TO NPC AND NIRB; AND**
- ◆ **ISSUES, AMENDS, RENEWS AND CANCELS WATER LICENCES, SUBJECT TO APPROVAL BY THE AANDC MINISTER.**



NWB JURISDICTION:

- ◆ **WITH RESPECT TO IOLs, EXISTING USE OF WATERS BY INUIT HAS PRIORITY OVER LICENSED USE BY ANYONE WITH A MINERAL RIGHT.**



NWMB JURISDICTION:

- ◆ **MAIN INSTRUMENT OF WILDLIFE MANAGEMENT AND MAIN REGULATOR OF ACCESS TO WILDLIFE IN THE NSA.**
- ◆ **NWMB MISSION: “*CONSERVING WILDLIFE THROUGH THE APPLICATION OF INUIT QAUJIMAJATUQANGIT AND SCIENTIFIC KNOWLEDGE*”.**
- ◆ **PROVIDES ESSENTIAL ADVICE IN LAND USE PLANNING (NPC) AND PROJECT APPROVAL (NIRB).**



NWMB JURISDICTION:

- ◆ **SHARES DECISION-MAKING WITH FEDERAL/TERRITORIAL MINISTERS WITH RESPECT TO:**
- ◆ **WILDLIFE HARVESTING RESTRICTIONS;**
- ◆ **SPECIES AT RISK DESIGNATIONS;**
- ◆ **APPROVAL OF PLANS FOR MANAGEMENT, PROTECTION AND/OR RECOVERY OF WILDLIFE AND HABITAT; AND**



NWMB JURISDICTION:

- ◆ **APPROVAL OF CONSERVATION AREAS, INCLUDING CRITICAL HABITATS AND SPECIAL MANAGEMENT AREAS.**
- ◆ **SUBJECT TO LIMITED EXCEPTIONS, IT IS PROHIBITED TO ENGAGE IN ANY EXPLORATION, PROSPECTING OR CLAIMS STAKING ON CRITICAL HABITAT.**



NWMB JURISDICTION:

- ◆ **THE NWMB MAY APPROVE A SPECIAL MANAGEMENT AREA IN ORDER TO:**
- ◆ **BENEFIT PARTICULAR WILDLIFE OR HABITAT,**
- ◆ **PRESERVE THE ECOLOGICAL INTEGRITY OF THE AREA, OR**
- ◆ **PRESERVE BIODIVERSITY.**



NWMB JURISDICTION:

- ◆ **ONCE THE NWMB AND GN HAVE APPROVED A CRITICAL HABITAT OR A SPECIAL MANAGEMENT AREA, THE GN CAN MAKE REGULATIONS RESPECTING:**
- ◆ **THE PRESERVATION, RESTORATION, USE AND CONTROL OF THE HABITAT IN THE AREA;**
- ◆ **THE REGULATION OR PROHIBITION OF ACCESS TO THE AREA; AND**



NWMB JURISDICTION:

- ◆ ***“ANY ACTIVITY IN OR USE OF THOSE PLACES, INCLUDING THE EXPLORATION, PROSPECTING, CLAIMS STAKING AND PRODUCTION OF METALS, MINERALS, OILS OR GAS AND THE CONSTRUCTION, OPERATION AND MAINTENANCE OF ANY BUILDING, STRUCTURE OR THING.”***



NWMB JURISDICTION:

- ◆ PURSUANT TO RECENT DECISION-MAKING BY THE NWMB AND THE GN, ON JULY 1st 2015, NEW *CONSERVATION AREAS REGULATIONS* WERE PASSED INTO LAW.
- ◆ THOSE REGULATIONS INCLUDE THE CONTINUATION OF 8 CARIBOU CALVING AREAS IN NUNAVUT AS SPECIAL MANAGEMENT AREAS.



NWMB JURISDICTION:

- ◆ **NOTE:** THE FEDERAL GOVERNMENT HAS LEGAL AUTHORITY TO DISALLOW REGULATIONS WITHIN THE FIRST YEAR AFTER THEY ARE PASSED BY THE GN.
- ◆ SUCH AUTHORITY IS UNLIKELY TO BE EXERCISED (NEVER HAPPENED YET).



POTENTIAL WAYS FORWARD:

- ◆ **CONSIDER WHETHER NEW OR MODIFIED HARVESTING LIMITATIONS NEED TO BE CONSIDERED FOR ANY VULNERABLE CARIBOU POPULATIONS;**
- ◆ **CONSIDER (FURTHER) SUBMISSIONS TO THE NPC LAND USE PLAN HEARING, FOCUSING ON THE PURPOSE OF THE PLAN TO “*PROTECT... THE ENVIRONMENTAL INTEGRITY OF THE DESIGNATED AREA*”;**



POTENTIAL WAYS FORWARD:

- ◆ **CONSIDER SUBMISSIONS TO RELEVANT NIRB HEARINGS, FOCUSING ON NIRB'S PRIMARY OBJECTIVE TO *"PROTECT THE ECOSYSTEMIC INTEGRITY OF THE DESIGNATED AREA"***;
- ◆ **CONSIDER WHETHER TO LIST SPECIFIC CARIBOU POPULATIONS AS THREATENED OR ENDANGERED (RECOVERY POLICY/CRITICAL HABITAT PROTECTION);**



POTENTIAL WAYS FORWARD:

- ◆ **REVIEW CURRENT SPECIAL MANAGEMENT AREAS AND ACCOMPANYING PROTECTIONS FOR CARIBOU CALVING GROUNDS, AND CONSIDER WHETHER THE AREA BOUNDARIES AND/OR PROTECTIONS REQUIRE MODIFICATION; AND**
- ◆ **CONSIDER WHETHER TO APPROVE ADDITIONAL SPECIAL MANAGEMENT AREAS – AND, IF SO, CONSIDER THE NEED TO MAKE DECISIONS OR PROVIDE ADVICE REGARDING APPROPRIATE PROTECTIONS.**



