



SUBMISSION TO THE NUNAVUT WILDLIFE MANAGEMENT BOARD FOR BATHURST CARIBOU TAH HEARING

FOR

Information:

Decision: X

**ISSUE: KITIKMEOT INUIT ASSOCIATION (KIA) SUPPORT FOR WEST
KITIMEOT KUGLUKTUK HUNTERS AND TRAPPERS
ORGANIZATION (WKHTO) PROPOSAL FOR AN WKHTO LED
CARIBOU MANAGEMENT PLAN (CMP) TO MANAGE BATHURST
CARIBOU**

BACKGROUND & FACTS:

- The Nunavut Wildlife Management Board (NWMB or the Board) gave Notice on April 1, 2016 of its intention to hold two consecutive hearings to consider applications by the Government of Nunavut (GN) Department of the Environment (DoE) to establish a Total Allowable Harvest (TAH) for each of the Bathurst and Bluenose East (BNE) caribou herds in Nunavut.
- These hearings are scheduled for June 13 -14th (Bathurst) and 15-16th (Bluenose East), 2016 respectively, in Cambridge Bay, Nunavut (the TAH hearings).
- The KIA is the Regional Inuit Association for the Kitikmeot. KIA represents the interests of Kitikmeot Inuit by protecting and promoting their social, cultural, political, environmental and economic well being. KIA is the owner of over 100,000 sq. km of land, and some of which is important caribou habitat.

- KIA applied for and was granted party status in the TAH proceedings on May 17th, 2016.
- KIA, the Kitikmeot Regional Wildlife Board (KRWB), and the West Kitikmeot Hunters and Trappers Organizations (WKHTO) are collaborating in their participation in these hearings and in responding to the DoE TAH applications.
- This submission addresses the proposed DoE Bathurst TAH (the “Proposed TAH”).
- In February 2016, DoE submitted a recommendation to the NWMB requesting a decision for a TAH of 30 Bathurst caribou, all bulls.
- The WKHTO are the organizations representing the Inuit harvesters primarily affected by this Proposed TAH. KIA represents all Inuit in the Kitikmeot Region, including KHTO members.
- KIA, KRWB and WKHTO supported by Nunavut Tunngavik Inc. (NTI) requested an adjournment of the TAH proceedings because of their view that sufficient time had not been provided for regional and local harvesters and organizations to prepare for the TAH hearings and because consultation by GN had been inadequate.
- The NWMB denied that adjournment request. The Board’s Reasons were issued on May 18th, 2016.
- The GN DoE Application suggests that extensive consultations going back to September 2014 have taken place with the WKHTO. See for example pages 2-3 of the Bathurst Application under the subheading “Consultations” and associated documents on the NWMB record.
- In its decision to deny an adjournment the NWMB produced Table 1 “Summary of Consultations on Bathurst and Bluenose-east caribou population status, trends and total allowable harvest recommendations” based on DoE filings in the TAH proceedings.
- Table 1 lists about 10 consultations involving DoE and Bathurst caribou harvesters between September 9, 2014 and January 2016 where it appears the Board inferred that DoE consulted Kitikmeot Inuit and more particularly WKHTO about Bathurst caribou, conservation needs and a TAH.
- Table 1 indicates that “Consultation reports” are available for 7 of the 10 Bathurst consultations.

- Despite all this purported consultation the Application indicates that there is “no consensus” on the Proposed TAH for the Bathurst herd.
- KIA, KRWB and WKHTOs oppose the imposition of a TAH on the Bathurst herd.
- This opposition is not based on denial that conservation concerns exist for the Bathurst caribou herd. KIA, KRWB and KHTO agree that the herd has declined and that conservation action is needed.
- KIA, KRWB and WKHTOs, however, feel that consultation about the specifics of the Proposed TAH and about the alternatives to a TAH has been inadequate. This is not just a wildlife management issue. It is a legal issue.
- KIA and representatives of the WKHTOs and KRWB began working on a collaborative response to DoE’s Proposed TAH in late April and have continued working together on a response since then.
- The KIA Board met in Kugluktuk the week of May 1-5th, 2016 and addressed Kitikmeot Inuit concerns about the caribou TAHs and discussed the KIA collaboration with harvesters’ representatives.
- The KIA Board passed two resolutions (1) to support the HTOs approach to using their own authorities under section 5.7.3 of the Nunavut Land Claims Agreement (NLCA) to regulate members’ harvesting practices and increase the harvest of predators; and (2) to call for the imposition of mobile caribou protection measures to protect the Bathurst and Bluenose East herds. These resolutions are attached to this submission as Annexes 1 and 2. Annex 2 relates primarily to the Nunavut Planning Commission Processes, but it has relevance to caribou conservation and the NWMB as well.
- The KIA Board does not support the imposition of the Proposed TAH on the Bathurst herd at this time. A TAH has the effect of placing harvesting control in the hands of government and exposing Inuit to GN enforcement action.
- Put simply and clearly, a TAH will infringe Inuit harvesting rights under Article 5 of the NLCA.
- The KIA and harvesters’ representatives (WKHTOs and KRWB) want to work together to find a collective community-based solution to caribou herd declines and the role of Inuit harvesting and predators in this decline.

- The NWMB process leading to this submission did not allow sufficient time for the WKHTOs, the KRWB and KIA to coordinate the details of an alternative to a TAH, but we are confident that a compelling plan can be developed. KIA supports the development of a WKHTO led alternative to a TAH and will cooperate with WKHTO to make it work.
- There is precedent for this kind of plan in the NWT in the community of Deline. That plan was attached to the KIA adjournment request and is on the record for this proceeding. Also the Kugluktuk and Hunters and Trappers Organization has forwarded a similar plan for the Bluenose East caribou herd.

ANALYSIS & ARGUMENT:

- KIA asserts that the DoE consultations, in particular the January 14 and 15 2016 session (DoE's report is on the Record), jumped to conclusions and started from the assumption that a TAH was needed and was the only reasonable caribou management approach in the circumstances.
- A review of the DoE consultation documents on the record reveals the following:
 - The September 22, 2014 consultation indicates no specific discussion of a TAH, nor could any of the Proposed TAH have taken place;
 - ♦ There is evidence that the KHTO are concerned about caribou and taking action locally;
 - The October 31, 2014 consultation is almost identical to the September report. No mention of specific TAH;
 - The January 29, 2015 consultation indicates that the GN position on Bathurst caribou was to "establish an interim measure of 100 TAH", but:
 - ♦ The report is confusing in that Cambridge Bay and Kugluktuk are mentioned as the communities visited;
 - ♦ The biologist insinuates that resident harvest is a current and substantial threat to Bathurst caribou;

- The February 2, 2015 consultation (Table 1 mistakenly indicates February 11, 2015) was regarding a Bathurst TAH of 100 caribou.
 - ◆ The report again presents evidence of local action by KHTO to manage harvesting and the DoE report also indicates that “local hunters are willing to limit harvest if asked”.
- The January 14-15, 2016 Report of Consultation produced by DoE is a “DRAFT”. It also includes a disclaimer saying that the views therein are not necessarily those of the GN. It is not clear what GN’s position on the TAH is as a result, nor is it clear exactly what the kind and level of consultation on the Bathurst TAH took place.
 - ◆ The Proposed TAH is not mentioned in the body of report. It is buried in the power points in Appendix 3.
 - ◆ The report indicates no agreement on the “level of restriction” on Bathurst harvesting between DoE and Inuit.
 - ◆ The report includes (s.3.4.4 on page 5) a list of “Actions by HTO”. Nowhere in the report is there any indication of a discussion of what could be achieved locally using the WKHTO’s powers under s.5.7.3 of the NLCA. There is no evidence that DoE ever undertook such discussions.
 - ◆ Section 3.5 of the report is headed “Accommodation of input received”. It begins as follows:

“There is little accommodation to be made on the TAH recommendations as they are based on biological facts however there are additional issues that were consistent throughout the meeting on which there is room for additional actions.” (emphasis added)
 - ◆ The report goes on to speak of predator control and hunter education.
- KIA suggests that the DoE conclusion that a TAH is needed because of the “biological facts” is narrow and short sighted . This conclusion is inconsistent with the NLCA and jurisprudence which applies when government (or an institution of public government like the NWMB) proposes to restrict Inuit harvesting right.

- One of the obvious effects of the establishment of a TAH is that local control of harvesting is eliminated. In KIA's submission, this is not necessary because other valid alternatives have not been considered or tested.
- The NLCA provides guidance in this situation:

5.3.3 Decisions of the NWMB or a Minister made in relation to Part 6 shall restrict or limit Inuit harvesting only to the extent necessary:

- (a) to effect a valid conservation purpose;
 - (b) to give effect to the allocation system outlined in this Article, to other provisions of this Article and to Article 40; or
 - (c) to provide for public health or public safety.
- (emphasis added)

- This provision mirrors the jurisprudence which provides another description of what is required of government when it proposes to infringe aboriginal rights:

Within the analysis of justification, there are further questions to be addressed, depending on the circumstances of the inquiry. These include the questions of whether there has been as little infringement as possible in order to effect the desired result; whether, in a situation of expropriation, fair compensation is available; and, whether the aboriginal group in question has been consulted with respect to the conservation measures being implemented. The aboriginal peoples, with their history of conservation-consciousness and interdependence with natural resources, would surely be expected, at the least, to be informed regarding the determination of an appropriate scheme for the regulation of the fisheries.^{1,2}

(emphasis added)

- There appears to be no issue in this matter about the requirements for consultation of WKHTOs. Case law makes it abundantly clear that such consultation is required in a land claims context.³
- KIA submits, however, that the law is clear. GN DoE must consult about the actual activity which it proposes and which will infringe the section 35 rights of WKHTO members.

¹ *R v Sparrow*, 1 [1990] SCC 1075.

² See also *Kadlak v. Nunavut (Minister of Sustainable Development)* 2001 NUCJ 1: in which a GN decision preventing an Inuk from hunting a polar bear was overturned because it was not minimally intrusive.

³ *Beckman v. Little Salmon Carmacks* 2010 SCC para 13.

- KIA suggests that there is an important difference between the general and ongoing information efforts of DoE and the consultation which is required by law once government proposes a specific restriction on an aboriginal right.
- We submit, as a result, that the consultation meetings in 2014 which did not speak about TAH and certainly could not have addressed the Proposed TAH do not constitute consultation about the Proposed TAH.
- Likewise, the January and February 2015 meetings which talked in generalities about a possible Bathurst TAH of 100 – could not be consultation about the Proposed TAH.
- Only the January 2016 meeting addressed the Proposed TAH – and that was the first time that specific intent of the GN to infringe WKHTO harvesting rights was discussed. No consensus was reached on the Proposed TAH.
- GN filed its submission requesting that NWMB establish a TAH of 30 bulls for the BNE in February, 2016.
- GN has an obligation to consult about the actual restrictions it proposes. That is the TAH of 30 bulls only for Bathurst. KIA submits that the January 2016 meeting did not constitute adequate consultation.
- The NLCA and case law also require government to explicitly look to mechanisms which will achieve their goals while ensuring minimal infringement of Inuit rights.
- The evidence of KHTO willingness to work on a locally-based harvest management framework goes back to 2014 and beyond, and that is clear from the GN’s own “consultation” reports.
- But there is no evidence of GN DoE sitting down with WKHTO and working through any options based on section 5.7.3 authorities in an attempt to find a solution which is minimally intrusive.
- Section 5.7.3 of the NLCA reads as follows:

5.7.3 The powers and functions of HTOs shall include the following:

(a) the regulation of harvesting practices and techniques among members, including the use of non-quota limitations;

(b) the allocation and enforcement of community basic needs levels and adjusted basic needs levels among members;

(c) the assignment to non-members, with or without valuable consideration and conditions, of any portion of community basic needs levels and adjusted basic

needs levels; and

(d) generally, the management of harvesting among members.

(emphasis added)

- Based on these authorities, there is no reason to believe that the WKHTOs cannot achieve the harvest management to protect the Bathurst caribou herd. KIA suggests that the ICCMP submitted in this proceeding by KHTO for BNE caribou is evidence of the WKHTOs ability to manage Bathurst caribou properly while maintaining local control of their resources.
- In addition, the NWMB can look to the Deline plan and over 30 years of experience in Inuvialuit communities where Hunters and Trappers Committees manage Inuvialuit harvesting of wildlife. KIA submits that these systems show that local wildlife management can be effective, if given the opportunity and support by government.
- Such an approach is consistent with the NLCA, consistent with the approaches based on IQ and consistent with the desires of elders, Kitikmeot Inuit, their HTOs and the KIA.
- Given the GN's request for a TAH which DoE knows will infringe Inuit harvesting rights, KIA suggests that more specific consultation is required.
- Furthermore, the GN response on the questions of accommodation cited above is simply inadequate. More is required by law of GN and the NWMB must rule accordingly.

KIA RECOMMENDATIONS:

- Given the facts, and in consideration of the arguments set out above, the KIA respectfully requests that the NWMB rule as follows:
 1. There is a conservation concern with respect to the Bathurst caribou herd;
 2. The WKHTO must be provided adequate time to develop an alternative, which is an NLCA right, to develop management tools to conserve caribou other than the Proposed TAH.
 3. That GN – DoE and the KHTO shall collaborate and GN shall provide assistance as required in the development of an alternative to a TAH for the WKHTOs to manage caribou

harvests and other activities, including predator control and the community education necessary to manage Bathurst caribou.

4. GN – DoE should continue to consult and seek accommodation in respect of the WKHTO desire to develop a management plan for Bathurst caribou.
5. GN and NWMB should ensure that WKHTOs have the capacity and financing necessary to implement the management plan once completed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

THIS 27 DAY OF MAY, 2016

Paul Emingak
Executive Director KIA

Annex 1.



KIA support for HTOs to establish a caribou management alternative to a GN proposed total allowable harvest for Bluenose East and Bathurst caribou.

Whereas, the Kitikmeot Inuit Association (KIA) met at a duly constituted Board meeting on May 5, 2016, in Kugluktuk, Nunavut, and;

Whereas, the KIA Board has been updated on the Government of Nunavut (GN) Proposal to the Nunavut Wildlife Management Board (NWMB) for a Total Allowable Harvest (TAH) for Bathurst and Bluenose East (BNE) caribou herds, and;

Whereas, the KIA has not been consulted by the GN about the proposed TAH for BNE and Bathurst caribou, and;

Whereas, the KIA Board is concerned that a TAH for BNE and Bathurst caribou will transfer harvest control from the HTO to the GN, and;

Whereas, the KIA Board wishes to support the affected HTOs in their efforts to establish an HTO controlled alternative for BNE and Bathurst caribou harvest management, and;

Whereas, the KIA Board supports predator management programs, and may contribute financial resources to assist the HTO's BNE and Bathurst caribou harvest management programs.

Now therefore be it resolved that:

- i. KIA is opposed to the proposed TAH by the GN for BNE and Bathurst caribou, and;
- ii. KIA supports an HTO controlled BNE and Bathurst caribou harvest management alternative, and;
- iii. KIA supports predator management measures in the Kitikmeot Region of the Bluenose East and Bathurst Caribou Herd range, and;
- iv. KIA may contribute funds to a properly designed program to assist in predator management and commit to engaging other management partners in predator management.
- v. KIA will provide legal, & technical, resources to support HTOs if requested, to present an alternative to a TAH to the NWMB.
- vi. KIA will request an adjournment of the NWMB TAH Process for BNE and Bathurst Caribou herd process
- vii. And be it further resolved, that if the NWMB does not adjourn the hearing that, the KIA Request the GN to temporarily withdraw their TAH proposal from the NWMB, to enable the HTOs and the KIA to coordinate an alternative proposal to the NWMB.

Moved By: Attima Hadlari

Seconded By: David Nivingalok

Disposition:

Carried

KIA BD 31/16

Annex 2.



KIA support for mobile protection measures for caribou.

Whereas, the Kitikmeot Inuit Association (KIA) met at a duly constituted Board meeting on May 5, 2016, in Kugluktuk, Nunavut, and;

Whereas, caribou are an essential component of Inuit social and cultural identity, and KIA wants to conserve caribou populations for future generations, and;

Whereas, the KIA Board acknowledges that caribou populations have cycles of lower and higher numbers over history and this is possibly caused by several natural (disease, weather, predators, parasites, insects, habitat quality, etc...) and man-made factors (harvesting, harvest efficiency, and development), and;

Whereas, the KIA Board was updated by KIA technical staff on the current status of caribou calving ground protected areas to the Nunavut Planning Commission (NPC), and;

Whereas, the KIA Board acknowledges that caribou calving grounds shift unpredictably on the mainland of the Kitikmeot Region, and;

Whereas, in addition to the NPC processes, there are other existing legal alternatives to NPC designated protected areas that are held by government, NWMB, and KIA that can establish more flexible and responsive protection measures for caribou, if they are needed, and;

Whereas, any protected area designation is inflexible to the natural changes in the caribou calving ground areas, and thus will protect areas, but not necessarily calving caribou, and;

Whereas, KIA rigorously reviews project proposals in the Kitikmeot region to protect caribou, and KIA includes these in its land tenures and recommendations to NIRB.

Now Therefore be it resolved:

- i. KIA supports reasonable mobile protective measures for concentrations of caribou, including calving caribou, wherever they may be, irrespective of the season.
- ii. KIA will lobby responsible agencies and proponents to bolster their investments in caribou monitoring, information sharing, and enforcement in order to ensure caribou are appropriately protected.
- iii. KIA supports development of research initiatives geared to identifying adaptive management approaches that allow for the co-existence of caribou and development in the Kitikmeot Region.

Moved By: David Nivingalok

Seconded By: Andre Otokiak

Disposition:

Carried

KIA BD 32/16