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July 25, 2006

Hon. Patterk Netser
Minister of Environment
Government of Nunavut

Hon. Jim Prentice
Minister of Indian Affairs
and Northern Development
Government of Canada

Hon. Loyola Hearn
Minister of Fisheries
and Oceans
Government of Canada

Re: Harvesting Restrictions in the Thelon Game Sanctuary

Dear Ministers:

This letter sets out the plan of the Nunavut Wildlife Management Board (NWMB or Board) to examine the issue of harvesting restrictions in the Thelon Game Sanctuary by way of public review. In order to successfully carry out that review, the NWMB requires the assistance of its government co-management partners.

Background

In June of 2004 the NWMB approved the Thelon Game Sanctuary Management Plan pursuant to its authority under the *Nunavut Land Claims Agreement* (NLCA). The NWMB's approval was subject to the inclusion of the following within the Introduction (Section 1.0) to the Management Plan:

1. An acknowledgement that the Government of the Northwest Territories (GNWT) has announced that it will not be an official signatory to the Management Plan at this time, but that it has pledged its intention to abide by the spirit and intent of the Management Plan, wherever possible;
2. An acknowledgement that the Management Authority established by section 4.3 of the Management Plan will, until such time as the GNWT becomes an official signatory to the Management Plan, be composed solely of the three Nunavut members described in subsection 4.3.1;
3. A commitment by the signatories to the Management Plan to work cooperatively with the GNWT in the management of the Sanctuary wherever possible; and

4. Language which indicates that the Management Plan does not, and is not intended to, prejudice or predetermine any agreements reached between the Saskatchewan Athabasca Denesuline, the Manitoba Denesuline or the NWT Métis Nation and the Government of Nunavut (GN), the GNWT or Canada.

In conjunction with its approval decision, the NWMB recommended that the GN and Canada, along with their approval of the Management Plan, formally commit to the following:

1. In collaboration with the GNWT, treat as a priority the development and enactment of new legislation, or the amendment of existing legislation, to enshrine in law the arrangements set out in the Management Plan, in particular with respect to the establishment and ongoing operation of the Management Authority; and
2. Provide the Management Authority with sufficient financial and human resources to address its mandate as set out in the Management Plan, and as reflected in new or amended legislation.

Pursuant to NLCA Sections 5.3.8 and 5.3.17, the NWMB forwarded its decision by letter to Mr. Netser's and Mr. Prentice's predecessors on July 16th 2004, and both ministers subsequently approved the Board's decision.

In its letter to the ministers, the NWMB also acknowledged that the Management Plan leaves unresolved what harvesting restrictions should apply to Inuit within the Sanctuary. The Management Plan *"recommends that the NWMB's approval of the Management Plan include the NWMB's undertaking to examine this issue further to see what harvesting restrictions are warranted and within its authority to impose under the terms of the NLCA."*

Accordingly, the Board undertook that - once the Management Plan was approved by Canada and the GN - the NWMB would promptly follow through on this important matter. In addition, the Board indicated its intention to review the fishing restrictions for non-Inuit within the Sanctuary and, if necessary, decide upon any modifications.

Two recent requests from the Minister of Environment

The territorial Minister of Environment wrote a follow-up letter to the NWMB in December of 2005, asking the Board to proceed over the next few months with respect to two related matters:

1. The NWMB's undertaking to examine the unresolved issue of harvesting restrictions on Inuit in the Sanctuary; and
2. The Management Plan's recommendation *"that the NWMB and the agency having jurisdiction over management and protection of wildlife and wildlife habitat in the Northwest Territories jointly and publicly review what harvesting restrictions are warranted and within their authority to impose, in view of Inuit and Dene harvesting rights and community interests, and in view of the special purposes and policies relating to the Sanctuary."*

The NWMB's plan to proceed with an examination of harvesting restrictions in the Sanctuary

The NWMB would like to commence in December of 2006 an examination of the unresolved issue of harvesting restrictions in the Thelon Game Sanctuary. That examination will necessarily be subject to four important limitations:

- (a) The Board's jurisdiction under Article 5 of the NLCA only permits the NWMB to place restrictions on Inuit for the reasons set out in NLCA S. 5.3.3. If, for any species, the requirements of S.5.3.3 are not satisfied, the NWMB has no authority to limit Inuit harvesting of that species – even if other compelling reasons exist;
- (b) In a situation where restrictions on the Inuit right of access established by the NWMB for the purpose of conservation (NLCA S.5.7.18(b)) are inconsistent or in conflict with any agreement between Inuit affected and the management agency of the Sanctuary (NLCA S.5.7.18(c)), the measures in the agreement will prevail to the extent of the inconsistency or conflict (NLCA S.5.7.20);
- (c) The NWMB has no decision-making jurisdiction outside the Nunavut Settlement Area (NSA) - the Board is restricted to providing advice and recommendations with respect to harvesting or potential harvesting in the Sanctuary outside the NSA; and
- (d) The Management Plan – which has not been agreed to or signed by the GNWT - applies only to the NSA portion of the Sanctuary, and the Management Authority consists only of Inuit members.

In addition, it is important to note that, in making decisions affecting the Sanctuary, the NWMB and the Minister must take into account the special purposes and policies relating to the Sanctuary (NLCA S. 5.3.6 – see also the *Wildlife Act*, s. 156(5)), the terms of relevant inter-jurisdictional and international agreements, as

well as harvesting activities outside the NSA for shared populations (NLCA S. 5.3.4 – see also the *Wildlife Act*, s. 156(7)).¹

Preliminary information required by the NWMB

In order to be able to properly commence its examination of harvesting restrictions within the Sanctuary in December of 2006 – an examination that could potentially include a joint inter-jurisdictional public review with one or more agencies - the NWMB will require considerable preliminary information from government by no later than the end of October 2006. Accordingly, the Board requests the delivery of the following information within that time frame from the Department of Indian Affairs and Northern Development and the Department of Environment (and the Department of Fisheries and Oceans with respect to information concerning aquatic species/populations/stocks in requests (g) to (x)):

- (a) A copy of the final and approved *Thelon Game Sanctuary Management Plan*, containing the modifications required by the NWMB and approved by Canada and the GN;
- (b) An update on progress achieved to date by Canada and the GN in implementing the NWMB's June 2004 recommendations:
 - (i) Developing/enacting/amending legislation to implement the Management Plan; and
 - (ii) Providing necessary financial and human resources for the Management Authority;
- (c) A list – including contact information - of which Aboriginal groups, besides Nunavut Inuit, harvest or have the right to harvest within the NSA-portion of the Sanctuary pursuant to the terms of NLCA Article 40, and which Aboriginal groups harvest or have the right to harvest in the Sanctuary inside the NWT, pursuant to Aboriginal or treaty rights;
- (d) Based upon the list of Aboriginal groups harvesting or having the right to harvest in the Sanctuary, the contact information for each agency with jurisdiction over management and protection of wildlife and wildlife habitat in the NWT portion of the Sanctuary.
- (e) The contact information for the current Chair and other two members of the Sanctuary Management Authority;
- (f) An up-to-date list of all the special purposes and policies relating to the Sanctuary;

¹ See also NLCA S. 5.7.24: Conservation restrictions applying to the Sanctuary, and in effect at the date of ratification of the NLCA, remain in force until removed or replaced pursuant to the terms of the NLCA.

- (g) An up-to-date list of all known aquatic, terrestrial and avian wildlife species/ populations/stocks within the Sanctuary that are harvested by, or of potential harvesting interest to, Inuit or the other Aboriginal groups mentioned in subsection (c);
- (h) The most recent population estimate of each species/population/stock;
- (i) The date of each population estimate;
- (j) The accuracy of each estimate and the sources of error;
- (k) The current population boundaries;
- (l) The accuracy of/confidence in those boundaries, and the sources of error;
- (m) The birth and death (reproduction) rates, and how well they are understood;
- (n) What the harvest levels for the last five years are for each species/population/stock inside the Sanctuary, organized by jurisdiction, and an opinion as to how complete the data is;
- (o) Which species/populations/stocks are shared between Nunavut and one or more other jurisdictions, and what jurisdictions those are;
- (p) What the harvest levels for the last five years are for each species/population/stock outside the Sanctuary, organized by jurisdiction, and an opinion as to how complete the data is;
- (q) Concerns, if any, with the harvest levels inside and/or outside the Sanctuary;
- (r) If the population is migratory, how well known are the migration routes;
- (s) The information gaps for each population, how long it is estimated it will take to collect that information, at what cost, and what the challenges are to collecting the information;
- (t) Other potential threats or concerns for each population;
- (u) Whether there are any inter-jurisdictional or international agreements in place for any species/populations/stocks in the Sanctuary, and copies of those agreements;

- (v) An up-to-date list of all known wildlife species/populations/stocks located in the Sanctuary that are currently “at risk” under relevant territorial, provincial or federal legislation;
- (w) Whether, in the Department’s view, restrictions (total allowable harvests/non-quota limitations) should be placed on the harvesting of any species/populations/stocks within the Sanctuary for conservation reasons that are in compliance with NLCA S. 5.3.3(a) (*“only to the extent necessary... to effect a valid conservation purpose”*); and
- (x) Whether, in the Department’s view, restrictions (total allowable harvests/non-quota limitations) should be placed on the harvesting of any species/populations/stocks within the Sanctuary for reasons that are in compliance with NLCA S.5.3.3(b) (*“only to the extent necessary... to give effect to the allocation system outlined in this Article, to other provisions of this Article and to Article 40”*) or NLCA S.5.3.3(c) (*“only to the extent necessary... to provide for public health or safety”*).

While the NWMB recognizes that full answers to all of the requests set out above constitute an ideal circumstance, the Board would appreciate as complete a set of answers as is reasonably possible.

Next steps in implementing the NWMB’s plan to examine harvesting restrictions

Once in receipt of the responses to the requests set out above, and after having engaged in follow-up discussions with other relevant agencies, the NWMB plans to:

- (a) Decide whether to proceed by way of its own or a joint public review, in examining what harvesting restrictions, if any (including fishing restrictions for non-Inuit), are warranted – either within the NSA portion of the Sanctuary or within the entire Sanctuary;
- (b) Develop and circulate a draft schedule in the late-fall of 2006 for the conduct and completion of the public review; and
- (c) Commence the public review by December of 2006.

Please be assured that the NWMB is prepared to meet with your officials concerning the preliminary information required by the Board. In addition, please do not hesitate to contact the NWMB if you have any questions or concerns arising from this letter.

Yours sincerely,



Joe Tigullaraq
Chairperson
Nunavut Wildlife Management Board

- c.c. Hon. Rona Ambrose, Minister of Environment, Government of Canada;
Hon. Michael Miltenberger, Minister of Environment and Natural Resources,
Government of the Northwest Territories;
Paul Kaludjak, President of Nunavut Tunngavik Incorporated;
Tongola Sandy, President of Kivalliq Inuit Association;
David Aksawnee, Chairperson of Kivalliq Wildlife Board;
Eric Ukpatiku, Chairperson of Baker Lake Hunters and Trappers Association; and
Monte Hummel, O.C., President Emeritus of the World Wildlife Fund Canada