

Jim Noble, Chief Operating Officer Nunavut Wildlife Management Board P.O. Box 1379 Iqaluit, Nunavut X0A 0H0 email: jnoble@nwmb.com

Dear Mr. Noble;

May 21, 2014

RE: May 8 letter regarding additional information for the establishment of a Total Allowable Harvest/Basic Needs Level for the Southampton Island caribou herd.

This letter is in response to the Nunavut Wildlife Management Board (NWBM)'s request for the GN to file additional materials by May 21, 2014. For the reasons set out below, the GN will be unable to provide the majority of the information requested by the deadline of May 21, 2014. Given the precarious state of the South Hampton Island Herd, and the critical need to take immediate conservation measures, we urge the NWMB not to allow these difficulties to delay a decision on the Total Allowable Harvest (TAH).

Use of NWMB's powers under the Inquiries Act

You have noted that the NWMB has the powers to summon witnesses and compel the production of documents. The GN does not dispute that the NWMB has such powers under the *Inquiries Act*. However we do not think that it would be appropriate, or useful, for the NWMB to exercise its powers in this case. The NWMB already has a well- established, fair, open, and consultative process in place for its hearings. We have always participated in this process in good faith, and will continue to do so. Finally, much of the information requested in the NWMB's letter of May 8, 2014 is the property of third parties, and is therefore not within the possession or control of the GN. It would be unfair and unreasonable for the Board to invoke its powers to subpoena evidence under the *Inquiries Act* in an attempt to compel the production of documentary evidence that the GN simply do not have.

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Request for Information

In reviewing the list of information requested of the GN, it is apparent that much of it is information that is not now, nor has ever been, in the possession of the GN. Further, some of the documents requested may have been destroyed pursuant document retention schedules prescribed under the *Nunavut Archives Act*. We have listed each of the items requested below and briefly summarized the GN's concerns, and where possible, provided answers:

1. True complete copies of licenses issued to the company responsible for "commercial" harvesting of Southampton Island (SHI) caribou, referred to by the GN, from and including 1996 to 2007, including all license conditions.

You have requested all licenses issued to a specific company during an 11-year period, 3 years of which pre-date the GN's existence.

The GN will make best efforts to locate and provide those licenses issued by the Government of Nunavut. It should be noted that the GN does not have an electronic registry system for licenses, and that the licenses must be retrieved in hardcopy form, some of them from storage facilities where they have been stored for several years. Document management procedures prescribed under the *Archives Act* put in place destruction procedures for government documents. In order to find and disclose the requested documents, if they still exist, the GN will have to devote manpower and time. While the GN is prepared to make best efforts to provide this information, it is not a task that can be achieved in two weeks.

2. The best documentary evidence in the GN's possession – or available to the GN – for the same period, concerning employment of the hunters, the terms of the employment, and the identity of the employer (subject to applicable privacy laws);

While the GN would have licensed the commercial harvest and the processing facilities post formation, and carried out inspections, it is unlikely to have collected detailed information about the identity of the workers working for the company, nor about their terms and conditions of employment.

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We note that the hunters who were involved in commercially harvesting caribou may have worked for one or more of several companies. Some of these companies may have operated for no more than one season. We are unable to determine whether any of the companies who operated meat plants during the duration of the commercial harvesting program still exist in any form. The GN licenced the companies, and GN staff went on site periodically in order to observe the operations, take samples, and ensure that the company was adhering to the license conditions.

Therefore the information requested under this heading is not in the possession of the GN, nor is it readily available to the GN.

- 3. The best available evidence supporting the GN's understanding of the following facts:
 - a) That all SHI caribou harvested for the meat plant in 2007 was for sale outside the Nunavut Settlement Area; and

We cannot say with certainty that all SHI caribou harvested in 2007 was for sale outside the NSA. However given the scale of the operation (records indicate that 2575 caribou were harvested by the commercial operation), it is logical that the primary target market for the meat was outside the NSA

b) That all caribou harvested for the meat plant in the years 1996 to 2001, inclusive, was for sale outside the NSA; and

Based on the information we have, the vast majority of caribou harvested between 1996 and 2001 was for sale outside of the NSA. However, we understand that some portion of the caribou harvested remained within the NSA. We do not have sufficient information to provide a precise breakdown of which portion was sold inside, as opposed to outside, the NSA.

4. If the GN disputes any of the following facts asserted by NTI, the GN's best available evidence of its different understanding:

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a) All meat sold by the plant until approximately 1995 was sold in the Northwest Territories;

We do not enough information relating to meat sales up to 1995 to reach an informed conclusion.

- b) From approximately 1996 until 2007, sales from the plant were not limited to destinations outside the NSA in particular:
 - i. Smoked ribs, hocks and dry meat were sold in the NSA; and

We do not have records to indicate one way or the other. However, we do know that some of these products were intended for sale in the Territory. We think it likely that, particularly in the case of products for which local demand was high, sales were not limited to destinations outside the NSA.

ii. Cuts packaged for export continued to be sold to Nunavut restaurants, and perhaps to other Nunavut buyers (Logically inferred from pre-1995 history); and

While we do not have sufficient information to determine exact quantities, we know that some of the products sold by the plant went to buyers within the NSA.

From 1993 - 2007:

 Some of the skins were distributed and used locally (sleeping skins, sewing clothing etc.), and

We have no information on this matter at this time.

ii. Tongues, hearts, back fat (tuunu), leg marrow and briskets were transported back to Coral Harbour for distribution to community residents.

We do not have relevant documentary evidence regarding the distribution of Tongues, hearts, back fat (tuunu), leg marrow and briskets to community residents. However, we think it likely that some of these products were distributed to community residents.

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The GN has kept records of exports of meat from the Territory. However, such records, particularly where significant time has elapsed, may be difficult to locate and may be incomplete. Based on the recollection of those GN employees and officers who had an active role in the sponsored commercial harvesting program, we believe that the vast majority of the meat harvested was exported from Nunavut. Our conclusion is based in part on our determination that it would have been physically and commercially impossible for the local market to absorb the quantity of meat which was commercially harvested. This is particularly true in consideration of the fact that most Nunavut residents had access to caribou through harvesting it themselves or by obtaining it from others who did so.

Concerns regarding procedural fairness

This information was requested on May 8th, less than two weeks before the due date on the request (May 21st, by 5 pm), and less than a month before the hearing date. To the extent that it exists, much of the documentary evidence and information will be in the hands of third-parties, such as the private enterprises involved in the sale of caribou during the period in question, or, in the case of information pre-dating division, the Government of the Northwest Territories.

As a tribunal, Board is bound by rules of procedural fairness. NWMB's demand that the GN provide an accounting for over 10 years' worth of historical data, at this late stage in the proceedings, coupled with the NWMB's invocation if its powers under the *Inquiries Act*, is unreasonable and unfair.

The NWMB appears to have adopted NTI's position on this matter, and set an arbitrary date for provision of the requested information without any consideration of the barriers that would face the GN in attempting to comply. These barriers, not the least of which being that the GN is not the "home" of most of the information sought, must have been readily apparent to the Board when it made the request.

The need for immediate action to preserve the SHI herd

Given the submissions put in to date, it is apparent that the Basic Needs Level (BNL) for the SHI caribou herd will greatly exceed the viable TAH, meaning that the issue of whether commercial use ought to form part of the calculation of the BNL is likely to have no impact at all on harvesting of the SHI caribou herd in the foreseeable future.



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At the same time, the Board's determination of whether the BNL encompasses commercial harvesting is one that will have far-reaching ramifications for wildlife management in Nunavut. This is not a determination that can be made quickly or with partial information. We do not believe that the larger question of whether commercial harvesting constitutes part of the BNL is amenable to a final resolution in the course of the impending hearing regarding the TAH for the Southampton Island Caribou Herd.

In 2013 the Minister set an Interim TAH for the SHI caribou herd because basic precautionary principles of conservation demanded it. We are before the Board seeking a regularized TAH that represents a further reduction, in part because the people of Coral Harbour have requested emergency action to preserve the SHI herd. The SHI herd is facing extirpation, unless swift action is taken to limit harvesting to numbers which allow the herd to maintain and replenish its numbers.

In light of the urgent need to take measures to preserve the SHI herd, and the possibility for a protracted process for resolution of the matter of commercial harvesting and basic needs, we ask that the NWMB separate these two matters, and deal first with the setting of a TAH for the Southampton Island caribou herd. If the Board concludes that it cannot set a TAH for the SHI herd without setting a BNL, then we ask that the NWMB set the BNL without including commercial harvesting in the calculation of basic needs. Concerns regarding precedent regarding other wildlife, or future use of the SHI herd may be addressed within the body of the decision by included a proviso that the BNL may be re-visited in the event that, after hearing all of the evidence and arguments, the Board determines that it ought to have been calculated differently.

Regards,

Steve Pinksen

Acting Deputy Minister