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BY EMAIL

May 12, 2017

Daniel Shewchuk
Acting Chairperson,
Nunavut Wildlife Management Board
P.O. Box 1379,
Iqaluit, NU
X0A 0H0

Dear Mr. Shewchuk:

Re: Written public hearing of the Nunavut Wildlife Management Board (NWMB or Board) concerning the proposed increase to the commercial quota for Arctic char at Lauchlan River (Byron Bay)

Thank you for the opportunity for Nunavut Tunngavik Incorporated (NTI) to comment on this matter.

NTI wrote to Fisheries and Oceans Canada (DFO), c.c. the Board, regarding this matter on April 20, 2017. Please place NTI's April 20 letter on the record of this proceeding and treat it as part of this submission.

DFO replied to NTI's April 20 letter on May 8, 2017. Please place DFO's May 8 letter (also copied to the NWMB) on the record of this proceeding.

NTI position

The commercial quota that applies to Lauchlan River char is already higher than the amount the Ekaluktutiaq Hunters and Trappers Organization (HTO) has requested (5000kg.) A decision by the NWMB in this matter is therefore not necessary and should not be made.

Basis for NTI's view

a) History of the quota and the requirements of the *Nunavut Agreement*

NTI set out its understanding of the error that led to a proposal for an "increase" to this quota in its April 20 letter to DFO. In summary, the *Nunavut Agreement* deems any valid quota that was

in force when the Agreement came into effect in 1993 to continue to apply unless and until removed or modified by the NWMB in accordance with Article 5. The quota for Lauchlan River char in 1993 was 9,100 kg. DFO did purport to vary that quota downward to 2,400 kg after 1993. However, under the *Nunavut Agreement*, whose provisions are paramount over the *Fisheries Act*

and its Regulations, only the NWMB may modify a pre-Agreement quota deemed by the Agreement to continue in effect. The NWMB may only do so in the course of considering whether the quota should be replaced by a justified Total Allowable Harvest (TAH), and by means of the joint decision process with the Minister that is set out in the Agreement. In this case, the NWMB made no such decision; in fact, the purported quota change was unilateral on the part of DFO. The quota therefore remains at 9,100 kg. DFO was mistaken in advising the HTO differently.

b) Additional information received by NTI

NTI's April 20 letter requested further information from DFO and the NWMB in order to confirm the accuracy and completeness of NTI's understanding of the history of this quota. The information NTI has since received supports the account set out in a) above.

DFO provided copies of several variation orders purporting to change the 1993 quota of 9,100 kg. after 1993.¹ (DFO has provided no information indicating that, at any time prior to receiving the HTO's proposal in this proceeding, the NWMB was approached or involved in any way concerning any quota decision relating to Lauchlan River char.)

The NWMB confirmed that it has no record of considering Lauchlan River char fishing issues in 1994 or 1995² (1994 being the year cited in the HTO's proposal, on DFO's advice, as the year the current quota was set at 2,400 kgs by DFO).

c) DFO's May 8 reply

In its letter replying to NTI, DFO pointed out the following:

- the fisheries management plan for the Cambridge Bay commercial char fishery, including Lauchlan River, approved by the Board in 2014, identifies the main objectives and requirements for the commercial fishery, as well as the management measures that will be used to achieve these objectives.
- The HTO's proposal reflects the approach identified in the management plan.

¹ Attachment to May 8, 2017 email from DFO Regional Director, Central and Arctic Region Scott Gilbert to NTI Director of Wildlife Paul Irngaut, digital title "Lauchlan River Variation Orders 1990-91 to 2016-17 v2". Variation orders for the seasons 1994-1995 and 2002-2003 were not included. The purported changes shown were:

'95-96: to 2,400 kg
'00-01: to 4,800 kg
'01-02: to 2,400 kg.
'03-04: to 9,100 kg
'06-07: to 2,400 kg.

² May 9, 2017 email from NWMB counsel Michael d'Eca to NTI counsel Richard Spaulding.

- DFO is committed to working with Inuit and the NWMB to manage this fishery consistently with the *Nunavut Agreement*.

The management plan in question³, however, does not propose, or purport to make, any quota changes.⁴ Indeed, the NWMB's June 30, 2014 letter to Minister Shea approving the plan is premised on the Board's stated understanding that "the Management Plan does not propose any changes to commercial harvest levels" (page 2, NWMB letter).

The approved plan also states that it is not legally binding and that any inconsistency between the plan and the *Nunavut Agreement* is to be resolved by following the Agreement (Foreword, management plan). NTI reads the management plan's description of the effect of the Agreement's "deeming" provision for pre-1993 quotas as incomplete, in that, among other omissions, the description omits mention of any role for the NWMB in modifying such quotas: see pages 6-7, management plan. This may go some way to explaining DFO's unilateral manner of proceeding previously. In any event, however, the requirements of the *Nunavut Agreement* will always prevail over provisions of an approved management plan.

In short, the fact that the Board has approved a related management plan does not alter the fact that the quota reduction presupposed by the proposal now before the Board was not carried out consistently with the *Nunavut Agreement*.

Right of Reply

The Board's Rules for this proceeding do not address a right of written reply once written submissions have been filed. The written submissions are due today – a tight timeline that NTI has met. For those reasons, and considering the generality of DFO's May 8 letter, the principles of procedural fairness, and the Crown's duty to consult Nunavut Inuit meaningfully, NTI reserves a right to reply to DFO's and other parties' filed submissions. Please confirm as soon as possible that the Board will provide reasonable further time for the filing of any written replies.

In closing, I would like to assure the Board that, in response to DFO's May 8 request for a meeting with NTI to discuss this matter further, NTI will be pleased to arrange to meet with DFO once DFO confirms in writing whether DFO takes issue with the interpretation of the *Nunavut Agreement* set out in these comments and NTI's April 20 letter, noting any DFO points of disagreement and providing its reasons in full.

Of course, NTI also acknowledges that nothing prevents DFO or any other party from proposing in future that the Board consider replacing the current quota on Lauchlan River char with a TAH and Basic Needs Level (BNL), provided that the proponent offers the Board sufficient rationale

³ NTI is working from the unsigned copy of this plan, marked "produced by Fisheries and Oceans Canada", provided to NTI by email from NWMB Executive Director Jason Akearok on May 5, 2017.

⁴ NTI acknowledges that on pages 6 and 17, the management plan purports to inform readers that the "current quota" for Lauchlan River is 2,100 kg. Even if the NWMB had relied on this erroneous information in approving the management plan, it could only be approval of the management plan, not the requirements of the *Nunavut Agreement* or the operative quota itself, that might be affected by this error.

and evidence to meet the Agreement's requirements concerning the conservation justification of a TAH, and provided that the full Inuit harvest is included in the BNL and the BNL is properly calculated.

Thank you again.

Sincerely,

A handwritten signature in black ink, appearing to be 'James Eetoolook', written over a horizontal line.

James Eetoolook
Vice President

CC Chairperson Bobby Greenley, Ekaluktutiaq HTO