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December 14, 2006

Jim Noble
Chief Operating Officer
Nunavut Wildlife Management Board
P.O. Box 1379
Lot 924 Parnaivik Building
Iqaluit, Nunavut
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Dear Jim:

Re: Outstanding issues for Special Meeting Twelve

Further to my November 15 letter, NTI would like to comment on some of the issues raised in the NWMB's November 20 letter and to seek clarification on some other issues that are outstanding. NTI also plans to file further submissions according to the schedule outlined by the Board.

Repealed Wildlife Regulations

The Board's November 20 letter addresses NTI's position on the appropriate procedure for the Board to follow

- 1) when the Board is considering whether to approve new limitations that relate to currently existing limitations, and
- 2) when the Board wishes to consider approving any limitation different from that which was proposed.

The letter expresses concern that, in both cases, the potential time and resource implications of NTI's position might be considerable.

With respect to the first of these cases, it is NTI's position that Inuit and their representatives are entitled to procedural fairness in this case as fully as in every other case where the Board's or Minister's decision may "restrict or limit Inuit harvesting" within the meaning of section 5.3.3 of the NLCA. The requirements of procedural fairness include the giving of adequate notice of the limitation or limitations being considered and the justifications advanced, and a reasonable opportunity to respond.

NTI submits that Inuit would be entitled to notice and an opportunity to respond in relation to both the new limitation and the related current limitation where the Board has not previously considered the current limitation and if it were proposed either i) that the current limitation should continue alongside the new one, or

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Gjoa Haven اطالع Bay Cے الح Pelly Bay Taloyoak ii) that continuation of the current limitation should be considered as an alternative to establishment of the new one. That, however, is not the situation in Special Meeting Twelve. Throughout the Special Meeting Twelve process, the GN has proposed only that the Board remove the current limitations encompassed in the GN's proposed Repealed Wildlife Regulations. (All parties have received notice and have been assured an opportunity to respond to the proposal to remove those limitations.) Accordingly, no further notice or opportunity to respond is required with respect to those limitations unless and until the Board were to consider continuing them. To emphasize, notwithstanding that the GN's October 22 submission suggests that "provisions to be repealed may have to be adjusted", removal is the only proposal before the Board respecting those current limitations.

NTI also submits that, for limitations that the Board has not considered previously, it is reasonable to anticipate that the time and resource implications of following the requirements of procedural fairness will be comparable whether the proposed limitation is new, modified, or continuing, allowing of course for the wide variations that can occur between proposed limitations in complexity of rationale, degree of concern among harvesters, related travel and hearing costs, etc.

With respect to the second case above, NTI submits that where a proposed limitation or its supporting justification changes before being decided on by the Board, the safeguards of procedural fairness also apply to such changes where Inuit harvesting could be adversely affected by the change. For example, if a proponent or the Board wishes the Board to consider a total allowable harvest higher than was proposed to the Board, Inuit are entitled to notice and an opportunity to be heard respecting the increase. On the other hand, procedural fairness normally will be satisfied without further notice if a Board decision that differs from what was proposed falls within the type and range of restriction that was clearly contemplated in the original proposal.

In the second case, it can be expected that necessary adjustments to the Board's process in response to the changed proposal will require some additional time, and often additional costs. In NTI's submission, while such implications are frequently unavoidable in regulatory processes of this kind, they are also an important reason why proponents and the Board should always be expected to give complete notice of any changes to proposals that they wish the Board to consider, at the earliest opportunity.

NTI hopes that this explanation of its position satisfies the Board's stated concerns.

2. NQLs now recognized as such by the GN, and NQL decisions postponed by the NWMB at its October 26 decision-making session



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The Board's November 20 letter indicates that the letter will be filed on the public record of the Meeting. According to the letter, the Board decided at its decision-making conference following Session #1 to reject certain non-contentious limitations and to postpone deciding on certain others. The letter also indicates that, in response to the GN's November 14 letter, the Board has decided to reopen the limitations that had been rejected, for further Board consideration, and to bring those limitations and those for which decisions had been postponed back to the Meeting for further comment by the parties.

NTI does not object to either result. However, based on the Board's previous

NTI does not object to either result. However, based on the Board's previous correspondence, NTI had understood that the Board's decision conferences were to be held in- camera and subject to the confidentiality requirement of s. 5.3.8 of the NLCA. NTI wishes to express its concern that as long as the Board maintains its practice of holding in- camera decision conferences, attended only by Board staff, advisors and members and the non-voting observers referred to in s. 5.2.2 and 5.2.3 of the NLCA, these conferences must be kept separate from the public hearing portion of the Meetings. If a hearing were to be effectively continued during sittings that were announced as incamera decision conferences, all parties would be entitled to notice and the other safeguards of procedural fairness that apply during the hearing, administered evenhandedly.

3. Peary Caribou materials

In its opening comments during Session 2 regarding Peary Caribou, the GN noted that both the GN and the Board possess related materials that the GN has not submitted to the Board in this Meeting. NTI does not know what materials were being referenced. Please confirm that the NWMB will not consider any unfiled materials in its decision process for this Meeting regarding the Peary Caribou issues.

4. <u>Precautionary principle materials</u>

Prior to Session 2, counsel for the Board, GN and NTI exchanged views on how to proceed in response to the Board counsel's request for materials discussed in the Working Group regarding the precautionary principle. The discussion did not conclude. NTI proposes that this issue be included in the matters that counsel address when they meet to discuss other procedural matters before Session 3 convenes, and NTI requests that the NWMB not consider any related materials that have not been filed or quoted in the Meeting until the discussion concludes.

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Sincerely,

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Glenn Williams, Senior Wildlife Advisor, Nunavut Tunngavik Incorporated

cc Steve Pinksen, Government of Nunavut