

NTI REPLY RE DRAFT REPEALED WILDLIFE REGULATIONS

January 29, 2007

As NTI understands the GN's position, the GN continues to expect that it may "adjust" its filed proposal that the Board remove the limitations contained in the draft Repealed Wildlife Regulations, at some point in the remaining phase of Special Meeting Twelve. The GN has not indicated what process, if any, such adjustments would be based on.

NTI submits that the GN's December 20, 2006 reasons in support of this position fail to account for the Board's responsibility to ensure procedural fairness to affected parties. As NTI noted in its December 14 letter, it would be procedurally unfair for the NWMB to decide on substantial changes to the proposals contained in this draft regulation that are introduced by the GN at the final session without prior notice to affected parties or opportunity to respond. In response to the GN's advice that the parties should place process concerns second to conservation priorities, NTI submits that the Board and Government should remain mindful that proper process is about the protection of Inuit and general public consultation rights, which should be of substantial concern to everyone. Further, a flawed process can lead to a flawed product, which is in no one's interest.

With respect to the considerations that the GN's reasons address, NTI has found the GN's reasons difficult to follow. There appear to be a number of concerns expressed or implied, namely

- 1) that the Board's final decisions on harvest limitations must meet conservation needs functionally, within the constraints of 5.3.3;
- 2) that all limitations established or continued must work functionally with the other provisions of the new regulations, such as reporting requirements, that are not harvest limitations and therefore fall outside of the NWMB's decision authority;
- 3) that the process must allow the Government a 'fallback' to a set of limitations that the GN views as functional for conservation purposes but that may not have been presented to affected parties with opportunity to reply or that may not meet the constraints of s. 5.3.3 of the NLCA.

NTI accepts the first point. The NWMB has an equal interest with the Government in ensuring that the wildlife management system established under the NLCA is a functional one for conservation purposes. As an advocate of Inuit rights, NTI too is committed to the standard that the new system must function as a whole to conserve wildlife to the extent necessary. In NTI's submission, however, there is nothing in the draft Repealed Wildlife Regulations that raises this concern distinctly from any of the other proposals before the Board. If the Board should decide not to accept some of the limitations proposed by the GN in the new package, this would give no reason to doubt that the limitations that the Board does accept are sufficient to meet conservation needs in a functional way. If the Government is uncertain whether the Board will accept its

proposals, this does not warrant reversing the Government's positions before the Board has rendered its decision.

NTI also accepts the second point. It was a virtue of the Working Group process that preceded the Board's deliberations that proposed limitations were considered in the light of all of the new regulatory provisions being developed. It is evident that the NWMB and affected parties have retained that perspective in the NWMB's decision process. Again, however, NTI does not see how this concern might justify any departure from the NWMB's proposed process in the case of the draft Repealed Wildlife Regulations. Those regulations simply identify the former regulations that the Government proposes to replace with the contents of its new proposed package.

NTI does not accept the third point, however, because it assumes incorrectly that the Board can waive procedural fairness and the requirements of the NLCA. (Professor Sullivan's opinion and further memo of reply, filed, address the basis of NTI's understanding of the NLCA's requirements respecting pre-existing limitations.) Although it would have led to an unwieldy process, it was open to the Government when it first presented its proposed new system of limitations to the NWMB to present them in alternative form, including a 'fallback' position if the NWMB disagreed with the Government's preferred option as to how best to meet the requirements of the NLCA. Such a fallback position could have been based on the existing regulations, or something else. However, had this been done, both the Government's best option and its fallback position would have had to be fully supported by 5.3.3 justifications. In NTI's submission, it was clear in the Working Group process preceding the Board's review that the Government made a choice not to try to justify the former regulations under the NLCA except in so far as it wished to include former terms in the new system being created in the new regulations. Having made this choice, the Government cannot avoid either the requirements of procedural fairness or the NLCA by altering the draft Repealed Wildlife Regulations at the close of the Board's hearings.

As the GN's reasons may imply, the Government's choice to proceed by way of a single, 'best option' package has limited the scope of change that the Government may introduce to the NWMB decisions by means of the Minister's power to vary NWMB decisions. (This power itself also must be exercised with procedural fairness and consistently with the Minister's constitutional duty to consult.) In NTI's submission, the Government's choice was clearly best for all concerned, indeed the only practical way to proceed. Again, what is most important for the Government to recognize is that there should be no reason to doubt that the package of limitations that the NWMB approves following Special Meeting Twelve will satisfy conservation needs functionally, subject to the constraints of the NLCA.