



SUMMARY REPORT:

Nunavut Wildlife Management Board Pre-Hearing Conference Concerning the Proposed Legal Listing – Pursuant to the *Species at Risk Act* - of Polar Bear as a Species of Special Concern

December 10th 2009, NTI Boardroom, Iqaluit, Nunavut

Participants:

Joshua Kango, Qikiqtaaluk Wildlife Board representative
Jayko Aooloo, Qikiqtaaluk Wildlife Board representative
Lucassie Nakoolak, Kitikmeot Regional Wildlife Board representative
Ralph Porter, Kitikmeot Regional Wildlife Board representative
Michel Akkuardjuk, Kivalliq Wildlife Board representative
Ross Tatty, Kivalliq Wildlife Board representative
Paul Irgaut, Wildlife Advisor, NTI
Heather Main, Canadian Wildlife Service
Mikidjuk Akavak, Chief Executive Officer, NWMB
Jim Noble, Chief Operating Officer, NWMB
Charlotte Sharkey, A/Director of Wildlife Management, NWMB
Adam Schneidmiller, Wildlife Management Biologist, NWMB
Michael d'Eça, Legal Advisor, NWMB

Observers:

Graham White, University of Toronto
Tom Demcheson, Director of Finance and Administration, NWMB

1. Opening prayer, introductions & review of agenda

Joshua Kango opened the pre-hearing conference with a prayer, after which each participant introduced themselves. The chair, Mikidjuk Akavak, welcomed all the Inuit and Government participants (parties) and started the meeting with opening remarks from the Nunavut Wildlife Management Board (NWMB or Board). He indicated that the purpose of the pre-hearing conference was to assist the NWMB and the parties in ensuring that the

polar bear hearing is conducted in a fair and efficient manner, resulting in a fully-informed Board decision that takes into account all of the relevant evidence, and that is based upon the most reliable and persuasive of that evidence. The agenda was then reviewed by the chair and accepted by all the parties.

2. Discussion of the implications of a listing of special concern under the *Species at Risk Act* (SARA)

Adam Schneidmiller explained that a designation of “*special concern*” means that a wildlife species may become a threatened or an endangered species because of a combination of biological characteristics and identified threats. An important implication of a listing of special concern is that there are no automatic SARA prohibitions - such as restrictions on killing, harming or harassing an individual of the species, or damaging or destroying its residence - and a management plan must be developed to ensure that the species does not become threatened or endangered. The management plan must – to the extent possible - be developed by Government in cooperation with all affected parties, including Hunters and Trappers Organizations (HTOs) and Regional Wildlife Organizations (RWOs). The management plan, as per NLCA S. 5.2.34(d), will be approved by the NWMB. Only the NWMB, federal Ministers of Environment and Fisheries and Oceans Canada and the Government of Nunavut (GN) Minister of Environment – through the appropriate provisions of the *Nunavut Land Claims Agreement* (NLCA) - have the authority to restrict Inuit rights to harvest. Except for interim emergency situations, restrictions can only be established as the result of a decision made pursuant to NLCA S.5.3.3.

Jayko Aooloo asked about the status of the *Polar Bear Memoranda of Understanding* (MOUs) if polar bear were to be listed as special concern. Michael d’Eça responded that Section 69 of the Act allows the Minister to adopt an existing plan as the SARA management plan.

Joshua Kango asked why COSEWIC (the Committee on the Status of Endangered Wildlife in Canada) was not present at the pre-hearing conference. A discussion then ensued, with the result that all parties indicated an interest in attendance by COSEWIC representatives (including its Aboriginal Traditional Knowledge (ATK) Subcommittee) at the hearing itself.

There followed a general discussion about the fact that, during the consultations, most Nunavut communities had already indicated that they were against the listing of polar bears.

3. Hearing parties and witnesses

Michael d’Eça informed the parties that the NWMB’s November 10th 2009 letter was sent by the Board to the most likely parties to participate at the hearing - RWOs, HTOs, Nunavut Tunngavik Inc. (NTI), the GN Department of Environment and Environment

Canada. In addition, he indicated that, as set out in its November letter, the NWMB can only afford to pay for 12 representatives to attend the hearing - 6 Elder representatives and 6 RWO representatives.

Following a brief discussion, the parties at the table reiterated that the COSEWIC and ATK Subcommittee Chairs should also be invited to attend (as witnesses, not parties). In addition, Adam Schneidmiller indicated that the World Wildlife Fund had expressed an interest in participating in the hearing process.

Jayko Aooloo also asked whether the Governments of Greenland or the Northwest Territories would be included in the hearing – stating that he felt strongly that these other jurisdictions should be invited. Michael d’Eça replied that the NWMB had not been in contact with either of these governments, since its jurisdiction is only with respect to the Nunavut Settlement Area (NSA), and the listing issue requires neither a decision to limit harvesting activities inside the NSA, nor a consideration of harvesting activities outside the NSA (NLCA S.5.3.4). He also mentioned that Greenland had not responded to previous invitations to attend other NWMB hearings that did address polar bear harvesting.

4. Electronic component of hearing for parties unable to attend in person

Michael d’Eca informed that parties that – as offered in the NWMB’s November 10th letter - the Board would be willing to make arrangements, to the extent reasonably possible, for electronic (teleconference) participation at the hearing for people not able to attend in person.

During the general discussion that followed, Lucassie Nakoolak asked about the possibility of more community members attending if they could pay their own way to the hearing. He was assured that any Inuk, HTO or RWO, and any representative of the GN or the Government of Canada, can attend the hearing as a party (NLCA S.5.2.28). However, it was repeated that the NWMB can only afford to pay for 12 representatives. If more people are going to attend in person as parties, the NWMB will need to know that at least a month ahead of time, for practical planning purposes (eg: to determine the necessary size of the hearing hall, and the timing for oral submissions, questions, etc. on the agenda). It was also pointed out that no other individuals or groups have an NLCA right to be a party at an NWMB hearing. As set out in the Hearing Rules, to be named as a party, any person or organization not referenced in NLCA S.5.2.28 must make an appropriate request in writing to the NWMB.

5. Timing and duration of the hearing, and deadline for submissions

As set out in the NWMB’s November 10th letter, the Board currently intends to hold the hearing in Iqaluit from April 13th to 15th 2010, with public notice and invitations issued on January 8th, and all written submissions delivered by no later than March 8th. All parties indicated agreement with the NWMB’s schedule. Following the oral hearing, the Board

plans to hold a decision-making session in conjunction with its June quarterly meeting and expects to forward its decision to the Minister by no later than July 4th 2010.

6. Procedures to be followed during the hearing process

Michael d'Eça reviewed the Hearing Rules located at Tab 3 of the pre-hearing conference binder (Binder). Everyone was comfortable with the rules as currently drafted. However, after some discussion, a consensus emerged that one further rule should be considered – all supporting documents filed at the hearing that are over 10 pages in length should be accompanied by a translated summary.

There was also some discussion concerning who can attend that part of the hearing – if any - conducted in camera, and whether the in camera portion would be recorded. Michael d'Eça responded that it would depend on the sensitivity and confidentiality of the matters under consideration. He also pointed out that – to date – the NWMB has not found it necessary to conduct a part of any hearing in camera (although the NWMB has occasionally had to call a short recess to internally discuss particular issues before continuing with a hearing).

7. Positions of the parties concerning the proposed listing of special concern

This topic produced much discussion concerning the positions put forward by HTOs during Environment Canada's community consultations. Everyone agreed that almost all communities had clearly indicated opposition to a listing of special concern. Ralph Porter stated that Inuit have no special concern regarding polar bears - they are moving all of the time. Michel Akkuardjuk agreed that they don't need to be listed - pointing out that Inuit are concerned about the drugging of polar bears. Lucassie Nakoolak asked why the GN had not been involved in the consultations. Heather Main replied that the GN declined the invitation to formally participate in the consultations. Joshua Kango expressed the view that Government should be looking at compensation for loss of hunting practices and food replacement.

8. Development of an agreed statement of facts by the parties

Michael d'Eça informed the pre-hearing conference parties that the NWMB is asking whether they are interested in developing an agreed statement of facts - for example, that the proposed listing is with respect to one overall population of polar bear, that climate change is happening, that sea ice is shrinking, that more polar bears are being seen by Inuit, that bear - human conflicts are increasing, and that there is a need for more scientific and IQ research. He underlined that the development of an agreed statement of facts is only a Board suggestion. It is entirely up to the parties whether to proceed or not, and what to include in the statement.

After considerable discussion, the Inuit parties indicated that, with NTI as the lead, they would like to attempt to prepare and share with Environment Canada a proposed agreed

statement of facts. Heather Main replied that Environment Canada would be interested in participating in such an exercise if NTI/Inuit were to develop a draft document.

9. Additional “best available information” to be included on the Hearing Registry

Copies of “*A Memorandum of Understanding to Harmonize the Designation of Rare, Threatened and Endangered Species Under the Nunavut Land Claims Agreement and the Listing of Wildlife Species at Risk under the Species at Risk Act*” (MOU) were distributed to all parties – and a discussion ensued concerning “best available information” under clause 3.11 of the MOU, and whether additional “best available information” should be placed on the NWMB’s hearing registry.

The parties reviewed the list on page 47 of the *Nunavut Consultation Report* in the Binder (Tab 8), which consisted of a list of ATK and Inuit Qaujimagatuqangit (IQ) communications and documents considered in the development of the COSEWIC Status Report. Following a thorough discussion, the consensus was that the NWMB and Environment Canada should review that list of documents and, between them, consider adding one or more of the ATK/IQ documents to the “best available information” on the hearing registry.

In addition, Paul Irgaut stated that NTI will be using a 1-800 number to ask affected Inuit some relevant questions – with those questions and answers to be filed, as part of NTI’s submission, by the March 8th 2010 deadline for written submissions.

10. Review of the NWMB – Canada “*Memorandum of Understanding to Harmonize the Designation of Rare, Threatened and Endangered Species Under the Nunavut Land Claims Agreement and the Listing of Wildlife Species at Risk under the Species at Risk Act*”.

Michael d’Eça presented a PowerPoint presentation on the MOU, a copy of which was included in Tab 20 of the Binder.

11. Recommendations from the pre-hearing conference parties:

1. The pre-hearing conference parties agreed upon the following recommendations:
 - (a) The parties to the hearing should at least include Environment Canada, the Government of Nunavut Department of Environment, Respected Elders, Regional Wildlife Organizations, Hunter and Trapper Organizations and Nunavut Tunngavik Incorporated;
 - (b) The COSEWIC Chair, an ATK Subcommittee Chair and the Nunavut representative on the ATK Subcommittee should be invited to attend the hearing as witnesses;
 - (c) Other Inuit parties or representatives have a right to attend the hearing, on the understanding that the NWMB only has sufficient funding to pay travel and

- accommodation costs for attendance by up to six distinguished Elders and six RWO/HTO representatives (twelve delegates in total); and
- (d) The NWMB should make arrangements for electronic participation, to the extent possible, if NTI, or any RWO or HTO indicates there is such a need.
2. The pre-hearing conference parties recommend that the NWMB maintain its current timelines concerning the hearing: Public notice and invitations issued by January 8th 2010, written submissions filed by no later than March 8th 2010, and the hearing held from April 13th to 15th 2010.
 3. The pre-hearing conference parties recommend that the NWMB maintain its hearing rules as currently drafted, with one proposed addition – include a rule that filed supporting documents over 10 pages in length should be accompanied by a translated summary.
 4. The pre-hearing conference parties recommend that NTI work with the RWOs and HTOs to develop a statement of facts to be circulated to Environment Canada, with a view to the parties submitting an agreed statement of facts to the NWMB by no later than the submission deadline of March 8th 2010.
 5. The pre-hearing conference parties recommend that the NWMB and Environment Canada review the list of ATK/IQ documents listed at Tab 8 on page 47 of the Binder and - between them - consider adding one or more of those documents to the “*best available information*” on the hearing registry.
 6. The pre-hearing conference parties recommend that the NWMB provide RWOs, HTOs and Respected Elders at least an equal amount of time as other hearing parties at the oral hearing.
 7. The pre-hearing conference parties recommend that the NWMB write to the HTOs concerning the filing of written submissions for the public hearing.

12. Closing Remarks and Closing Prayer

All parties provided their closing remarks, and the meeting ended with a prayer led by Joshua Kango.