

June 2, 2014

Fact sheet re SHI caribou BNL, for discussion between GN and NTI senior officials

This document can be filled in and revised to reflect the upcoming discussions, and provided to the NWMB by June 10, 2014.

1. “At the time the NLCA became law, in 1993, commercial harvesting of caribou on Southampton Island was very limited.”

Asserted by - GN, page 7

Agreed? (This can be agreed if the GN can confirm that, by “commercial harvesting,” this statement refers to licensed harvesting for sale to any destination, and acknowledges that, according to Appendix B of the GN’s Submission, five caribou were harvested for this purpose during unknown months in 1993).

2. The caribou taken between 1996 and 2007 for sale to the Rankin Inlet meat plant were “harvested” within the meaning of the NLCA, before the products were processed and sold to the plant. (The NLCA defines “harvest” as the reduction or taking of wildlife into possession.)

Asserted by - NTI, page 17

Agreed?

Considered unproven by the GN?

Disputed by the GN?

Comments by the GN or NTI?

NTI – does not think this conclusion can be disputed, considering the NLCA definition

3. All persons engaged in the hunting of these caribou were “Inuit” within the meaning of the NLCA.

Asserted by - NTI, page 17

(GN, at page 8, asserts: “Inuit involved in these operations were employed as hunters.”)

Agreed?

Considered unproven by the GN?

Disputed by the GN?

Comments by the GN or NTI?

4. The hunters

a) ranged from a temporary camp set up on the land for the butchering of animals;

Asserted by - NTI, page 17

Agreed?

Considered unproven by the GN?

Disputed by the GN?

Comments by the GN or NTI?

b) used their own snowmobiles and sleds to travel to and from the camp and to find and access caribou;

Asserted by - NTI, page 17

Agreed?
Considered unproven by the GN?
Disputed by the GN?
Comments by the GN or NTI?

c) shot the animals with their own guns;

Asserted by - NTI, page 17

Agreed?
Considered unproven by the GN?
Disputed by the GN?
Comments by the GN or NTI?

d) transported the carcasses back to the camp;

Asserted by - NTI, page 17

Agreed?
Considered unproven by the GN?
Disputed by the GN?
Comments by the GN or NTI?

e) were paid by the piece (approximately \$20 for an animal shot in the neck or head, less for one shot in the shoulder, and nothing for an animal shot in the gut); and

Asserted by - NTI, page 17

Agreed?
Considered unproven by the GN?
Disputed by the GN?
Comments by the GN or NTI?

f) were paid nothing when weather or mechanical problems prevented them from making kills; and

Asserted by - NTI, page 17

Agreed?
Considered unproven by the GN?
Disputed by the GN?
Comments by the GN or NTI?

NTI – has assumed all facts under #4 are undisputed.

g) were hunting under the authority of a licence issued to the company responsible for the operation.

Asserted (apparently) by the GN, page 7. (“All of the commercial activities included in these operations were the responsibility of a company operating under a licence issued by the government.”)

Considered unproven by NTI.

Comment by NTI: NTI asks the GN to identify the license and provision of the Wildlife Act or regulation authorizing the harvesting of caribou for this commercial operation. Was it the hunters' General Hunting License or an other license identified in the legislation?

5. Inuit involved as hunters in these operations were employed to do so by the company responsible.

Asserted by - GN, page 8

Considered unproven by NTI.

Comments by NTI: The facts in #4 above "make it unlikely that such hunters were acting as employees of a third party." (page 17) NTI has asked the GN to produce "the best documentary evidence in the GN's possession or available to the GN, proving ... employment of the hunters, the terms of employment, and the identity of the employer (e.g., subject to applicable privacy laws, letters of engagement or other employment contracts, payroll records, tax deductions, records of issuance of ammunition, severance notices for UI, or CPP contributions, etc.) (page 21). See also the Board's May 8 request for this evidence. NTI acknowledges that the GN reported on May 21 that the GN does not have written evidence of this nature in its possession or readily available to it.

Evidence relied on by the GN:

Whether NTI considers this evidence insufficient, and, if so, why:

6. The organization that paid the Inuit hunters

a) was licenced to buy the carcasses from their rightful owners, process and sell them;

Asserted by - NTI, page 18

-GN, page 7-8 ("all sales of caribou were conducted by companies licenced by the government")

Agreed (apparently)

b) was responsible for "all of the commercial activities included in these operations... under a licence issued by government."

Asserted by - GN, page 7

Considered unproven by NTI

Comment by NTI: NTI acknowledges that the GN undertook in its May 21

letter to produce the licences that the GN relies on, indicating that they can not be available for June 3-4. NTI asks that the GN bring to the meeting as representative a set of sample licences as it can, including sample license conditions.

7. From the caribou taken in this operation

a) all meat sold by the plant until approximately 1995 was sold in the NWT;

Asserted by - NTI, page 21

Agreed?

Considered unproven by the GN?

Disputed by the GN?

Comment by the GN: The GN does not have enough information to reach an informed conclusion. (May 21 letter)

b) the “vast majority” of caribou harvested for the meat plant in 1996-2001 inclusive was for sale outside the NSA;

Asserted by – GN, May 21 letter, page 3.
The GN’s March 31 Supplementary Submission assumed that all such caribou were harvested for sale outside the NSA.

Considered unproven by NTI. (NTI’s May 2 Reply disputes the more wide assumption in the GN’s Supplementary Submission.)

Comments by the GN: Export permits have been kept, though are difficult to locate and may be incomplete. The GN relies for this assertion on employees’ and officers’ recollection and logical inference from the limited local market for caribou. (May 21 letter)

Counter-assertions by NTI: from approximately 1996 until 2007, sales from the plant were not limited to destinations outside the NSA. In particular;

-smoked ribs, hocks and dry meat were sold in the NSA;

Comment by GN: ‘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.’ (May 21 letter)

-it is a logical inference from the pre-1995 history that cuts packaged for export continued to be sold to Nunavut restaurants, and perhaps to other Nunavut buyers.

Comment by GN: “While we do not have sufficient information to determine exact quantities, we know that some products sold by the plant went to buyers within the NSA.” (May 21 letter)

c) all Southampton Island caribou harvested for the meat plant in 2007 was for sale outside the NSA;

Asserted by – GN, page 12, Table 2 (“The 2007 commercial harvest was marketed outside the Nunavut Settlement Area”). The GN’s May 21 letter reported that “we cannot say [that] with certainty” and “it is logical that the primary target for the meat was outside the NSA.”

Disputed by NTI – see NTI counter-assertions under b) above.

d) a portion of the products of such caribou taken between 1993 and 2007 remained in the NSA.

Asserted by NTI, page 21

Agreed apparently. (In its May 21 letter, the GN states that “we understand that some portion of the caribou harvested remained within the NSA”.)

i) In particular, some of the skins were distributed and used locally (sleeping skins, sewing clothing etc.)

Asserted by – NTI, page 21

Agreed?

Considered unproven by the GN?

Disputed by the GN?

Comment by the GN: “We have no information on this matter at this time.” (May 21 letter.)

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

Asserted by – NTI, page 21

Agreed in part, apparently. (In its May 21 letter, the GN reported that “We do not have documentary evidence... . However, we think it likely that some of these products were distributed to community residents.”)

8. This operation “was sponsored by government and its costs were underwritten by government in years when no profit was made.”

Asserted by – GN, page 8

Likely to be agreed, assuming the GN will give a satisfactory explanation of this statement at the meeting.

9. etc. Additional facts assumed in either party’s previous submission

[As complete as possible a set of additional facts relied on can be identified at the meeting and, to the extent possible, before the meeting by email.]

Agreed?

Considered unproven?

Disputed?

Comment by NTI: The GN has not yet asserted terms of employment that, in NTI’s view, could possibly affect the BNL entitlement. NTI asks the GN to identify the terms of employment that the GN relies on, and to identify the GN’s evidence for such terms and for any assumption that terms were the same for all Inuit hunters, by email before the meeting or, if that is not possible, at the meeting.

Meeting between GN and NTI representatives on outstanding issues re a TAH and BNL for Southampton Island caribou

NTI proposed agenda

Purpose: to take immediate steps towards mutually resolving the outstanding issues on the NWMB's agenda for a fall hearing.

Date: week of June 2-6, 2014, day to be agreed

Duration: 2-3 hours

Joint Chairs: the senior GN and NTI officials

1. TAH

Discuss difficulties with enforcing the current TAH, and identify how the GN will ensure enforcement of the TAH going forward.

- The HTO initially approached the GN requesting a TAH of 1500, the Minister as per NLCA 5.3.24 established the current TAH of 1000, and there is now a proposed reduction of the TAH to 800. The HTO has indicated to both GN and NTI that the HTO requested the establishment of a TAH in order to have the GN's authority to enforce the limitation on caribou harvesting on Southampton Island.
- The GN reports, based on a Hamlet Council letter, that 17,000 lbs of meat were shipped out of Coral Harbour in January-February 2014, and that this is a conservation concern. Some individuals may be harvesting more than the 4 caribou per household for which tags are allocated by the HTO. What monitoring and enforcement measures has the government put in place to ensure that the TAH is not exceeded?

2. BNL

Identify the key facts considered to be agreed, unproven, or disputed that either the GN or NTI asserts to be relevant to the setting of the BNL.

- NTI has assembled a list of the facts that are identified as relevant to the BNL in the GN and NTI written submissions already filed with the NWMB. ("fact sheet", attached)

- NTI proposes to use this sheet to guide the discussions and to structure how the results are reported. NTI welcomes any GN suggestions for changes to the fact sheet before the meeting.
- At the meeting, each item in the sheet can be discussed, following which each item can be noted as agreed, considered unproven (by which party) or disputed (by which party). Comments by either party also can be noted.
- Additional facts that either party has assumed can be added to the list and noted in the same way.
- Where a fact is noted as disputed or considered unproven, the parties can discuss what evidence is relied on by the party asserting the fact and why the other party considers it insufficient.

Following this and one follow-up meeting if necessary, the fact sheet can be revised and sent jointly to the NWMB by June 10, as requested by the NWMB.