



February 9th 2016

Honourable Hunter Tootoo
Minister of Fisheries,
Oceans and the Canadian
Coast Guard
Government of Canada

Honourable Johnny Mike
Minister of Environment
Government of Nunavut

Cathy Towtongie
President
Nunavut Tunngavik
Incorporated

Harry Alookie
Chairperson
Nattivak Hunters and
Trappers Organization

James Qillaq
Chairperson
Qikiqtaaluk Wildlife Board

Dear Colleagues:

Re: Final submissions to the Nunavut Wildlife Management Board (NWMB) written hearing concerning the proposed approval of the Qammartalik Cove Emerging Char Fishery Plan, and a jurisdictional challenge to the NWMB's authority

Background

On December 18th 2015, the Nunavut Wildlife Management Board (NWMB or Board) provided you with correspondence (attached as Appendix 1) notifying you of a written public hearing concerning the Qammartalik Cove Emerging Char Fishery Plan (Fishing Plan) and inviting you or your organization to provide written submissions and supporting documentation. The purpose of the written hearing is to consider:

- (1) A *Proposal for Decision* (Proposal) from Fisheries and Oceans Canada to approve the Fishing Plan of the Nattivak Hunters and Trappers Organization; and
- (2) A corresponding jurisdictional challenge, raised by Nunavut Tunngavik Incorporated, to the NWMB's authority to make a decision on the Proposal.

The Proposal was submitted to the NWMB on August 11th 2015 for consideration at the Board's September 2015 quarterly meeting (RM 003-2015). Nunavut Tunngavik Incorporated's challenge, which urged the NWMB "...to make no decision on this proposal as the Board does not have authority under the Nunavut Agreement (NLCA) to make the decision requested", was delivered to the Board on September 17th 2015. Both

documents, as well as other materials relevant to this written hearing, are available on the NWMB's hearing registry (www.nwmb.com).

In its December 18th 2015 invitation to hearing parties, the NWMB provided two deadlines for the filing of submissions:

- (1) An initial deadline of January 22nd 2016 for Nunavut Tunngavik Incorporated to file written submissions supporting its position that the NWMB lacks the authority under the *Nunavut Land Claims Agreement* to make a decision on the Proposal and, notwithstanding its first position, regarding the merits of the Proposal. The Qikiqtaaluk Wildlife Board and the Government of Nunavut Department of Environment were also invited to provide submissions on the merits of the Proposal by this deadline.
- (2) A final deadline of February 19th 2016 for Fisheries and Oceans Canada, the Nattivak Hunters and Trappers Organization, the Qikiqtaaluk Wildlife Board, and the Government of Nunavut Department of Environment to file written reply submissions to Nunavut Tunngavik Incorporated's written submission supporting its position.

The filing of final submissions

The NWMB did not receive any written submissions from Nunavut Tunngavik Incorporated by the January 22nd 2016 deadline. However, the NWMB did receive correspondence from Nunavut Tunngavik Incorporated on January 28th 2016 (attached as Appendix 2) outlining a proposed way forward in the absence of a written submission.

Given that Nunavut Tunngavik Incorporated has not indicated that it wishes to withdraw its jurisdictional objection and given that the formal record of the hearing proceedings includes Nunavut Tunngavik Incorporated's September 17th 2015 letter, the NWMB will treat the contents of that letter on the issue of jurisdiction as representing the position and submissions of Nunavut Tunngavik Incorporated. Therefore, hearing parties should consider the September 17th 2015 letter as Nunavut Tunngavik Incorporated's position.

Conclusion

The NWMB wishes to reiterate its understanding that the Proposal is seeking approval of a mutually agreed upon plan for the management and protection of the arctic char fishery located in Qammartalik Cove, as per Section 5.2.34(d)(i) of the *Nunavut Land Claims Agreement*. The Board has not been requested, is not required, and does not intend at this point to establish a level of total allowable harvest or basic needs level for the arctic char stock in Qammartalik Cove¹. The NWMB expects that the Minister of Fisheries,

¹ For further detail on the NWMB's authority to make a decision regarding approval of the Fishing Plan and previous decisions made by the Board concerning emerging fishery plans, see the NWMB's December 18th 2015 invitation to hearing parties (attached as Appendix 1).

Oceans and the Canadian Coast Guard – in implementing the Board's eventual decision – will take whatever implementation step(s) he considers necessary in the circumstances, as permitted by law.

Should you or your organization have any questions or concerns, please do not hesitate to contact the NWMB.

Sincerely,



Jason Akearok
Executive Director
Nunavut Wildlife Management Board

Attachments (2)

- c.c. David Burden, Regional Director General, Central and Arctic Region, Fisheries and Oceans Canada;
- Steve Newton, A/Director, Northern Operations, Fisheries and Oceans Canada;
- Chris Lewis, Fishery Management Biologist, Northern Operations, Fisheries and Oceans Canada;
- James T. Arreak, Chief Executive Officer, Nunavut Tunngavik Incorporated;
- Paul Irgaut, Director of Wildlife and Environment, Nunavut Tunngavik Incorporated;
- Alison Kopalie, Manager, Nattivak Hunters and Trappers Organization;
- Jackie Price, Research and Planning Coordinator, Qikiqtaaluk Wildlife Board;
- Jason Mikki, Qikiqtaaluk Regional Coordinator, Qikiqtaaluk Wildlife Board;
- Gabriel Nirlungayuk, Deputy Minister, Department of Environment, Government of Nunavut; and
- Janelle Kennedy, A/Director of Fisheries and Sealing, Department of Environment, Government of Nunavut.



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Tammaqtallinahuarniit anngutighat atuqhugit Inuit qaujimaqatugangillu ilihimaniillu ilitquhiannin
Conserving wildlife through the application of Inuit Qaujimaqatugangit and scientific knowledge

December 18th 2015

Honourable Hunter Tootoo
Minister of Fisheries,
Oceans and the Canadian
Coast Guard,
Government of Canada

Honourable Johnny Mike
Minister of Environment,
Government of Nunavut

Cathy Towtongie
President of Nunavut
Tungavik Incorporated

Harry Alookie
Chairperson of the
Nattivak Hunters and
Trappers Organization

James Qillaq
Chairperson of the
Qikiqtaaluk Wildlife
Board

Dear Colleagues:

Re: Written hearing of the Nunavut Wildlife Management Board (NWMB) concerning the proposed approval of the Qammartalik Cove Emerging Char Fishery Plan, and a jurisdictional challenge to the NWMB's authority

1. Introduction

On December 2nd 2015, at its Regular Meeting No. 004-2015, the Nunavut Wildlife Management Board (NWMB or Board) made a decision to conduct a written public hearing concerning:

- (a) A *Proposal for Decision* (Proposal) from Fisheries and Oceans Canada (DFO) to approve the *Qammartalik Cove Emerging Char Fishery Plan* (Fishing Plan) of the Nattivak Hunters and Trappers Organization (Nattivak);¹ and
- (b) A corresponding jurisdictional challenge, raised by Nunavut Tunngavik Inc. (NTI), to the NWMB's authority to make a decision on the Proposal.

A written public hearing is one in which all submissions are filed in writing and the hearing does not have an oral component.

¹ See the "Recommendations" section of the Proposal: "Based on a review of the available information and science advice, DFO's view is there would be a moderate risk of harm from fishing if the attached fishing plan was approved."

2. Background

On August 11th 2015, DFO submitted the Proposal in writing to the NWMB (attached to this letter as Appendix A), for initial consideration by the Board at its Regular Meeting No. 003-2015, held from September 23rd to 25th 2015. In the meantime, on September 17th, NTI filed correspondence with the Board (attached to this letter as Appendix B), urging the NWMB “...to make no decision on this proposal, as the Board does not have authority under the Nunavut Land Claims Agreement (NLCA) to make the decision requested.” The letter went on to set out NTI’s reasoning for its position, and asked that “...should the Board further consider making the proposed decision notwithstanding NTI’s objection, the Board first identify any NLCA provision(s) that, in the Board’s view, might authorize such a decision, state the Board’s detailed reasons for holding this view, and give all affected parties the opportunity to comment in writing on the Board’s reasons...”

After due consideration, the NWMB decided to write a letter to both DFO and Nattivak on October 9th 2015 (attached to this letter as Appendix C), seeking confirmation from each of them whether they wished to proceed with the Proposal to the Board, considering NTI’s recent correspondence and the points raised therein. On October 20th, DFO responded in writing, confirming that it wished to proceed, and on October 28th, Nattivak did the same (both letters attached as Appendices D and E to this letter).

After further consideration, the NWMB decided on December 2nd to proceed with the public hearing. The Board made its decision to deal with both issues in a single written hearing because it wishes to avoid any appearance of having made its mind up beforehand on either the jurisdictional question or the merits of the application, and also because it wishes to proceed in a timely manner and at a reasonable cost. As a practical matter, once all hearing submissions have been filed, the NWMB will first address the jurisdictional question, and – only if the Board rules that it does possess the necessary authority under the terms of the NLCA – will then address the merits of the application.

3. The NWMB’s authority to make a decision regarding approval of the Fishing Plan

The NWMB understands this Proposal to describe a collaborative arrangement voluntarily entered into by DFO and Nattivak, and that the parties are only seeking approval by the Board of a mutually agreed upon plan for the management and protection of the char fishery resource located in Qammartalik Cove. The NWMB’s authority to make such a decision is set out in NLCA Subsection 5.2.34(d)(i):

“In addition to its primary functions outlined in Section 5.2.33, the NWMB shall in its discretion perform the following functions related to management and protection of wildlife... (d) approve plans for (i) management... [and] protection... of particular wildlife...”

NLCA Section 5.3.16 includes NWMB decisions made pursuant to Subsection 5.2.34(d) within the category of Board decisions that are subject to the NLCA Article 5 co-

jurisdictional (NWMB/Minister) decision-making process (NLCA Sections 5.3.17 to 5.3.23).

The NWMB will necessarily be required – in considering approval of the Fishing Plan - to determine whether the voluntary harvest level within the Fishing Plan satisfies the NLCA principles of conservation (Section 5.1.5). However, the Board has not been requested, is not required, and does not intend at this point in time to establish a level of total allowable harvest or basic needs level for the char stock in Qammartalik Cove.

4. The filing of submissions

Through this letter, the NWMB is extending an invitation to your department or organization to provide written submissions and supporting documentation, as follows:

- 1. NTI file written submissions and any supporting documentation with the NWMB, in English and Inuktitut, by no later than 5:00 p.m. (Iqaluit time) on January 22nd 2016:**
 - (i) supporting its position that the NWMB lacks the authority under the NLCA to make a decision on the Proposal, and**
 - (ii) notwithstanding its first position, regarding the merits of the Proposal.**
- 2. The Qikiqtaaluk Wildlife Board (QWB) and the Government of Nunavut Department of Environment file written submissions and any supporting documentation with the NWMB, in English and Inuktitut, by no later than 5:00 p.m. (Iqaluit time) on January 22nd 2016, regarding the merits of the Proposal.**
- 3. DFO, Nattivak, QWB and the Government of Nunavut Department of Environment file written reply submissions and any supporting documentation with the NWMB, in English and Inuktitut, by no later than 5:00 p.m. (Iqaluit time) on February 19th 2016, to NTI's written submissions and supporting documentation for its position that the NWMB lacks the authority under the NLCA to make a decision on the Proposal.**

Unless persuasive written and translated reasons are provided to the Board for late filing, the NWMB will not consider materials during the hearing that are not filed on time.

The hearing rules and a number of other documents comprising the best available information to date are available for download from the NWMB's website (www.nwmb.com), or by contacting the NWMB at the following coordinates:

NUNAVUT WILDLIFE MANAGEMENT BOARD
3rd Floor, Ikaluktuutiak Drive
P.O. Box 1379, Iqaluit, NU, X0A 0H0
Phone: (867) 975-7300
Fax: (888) 421-9832
E-Mail: receptionist@nwmb.com

Submissions and supporting documentation may be filed with the Board in person, by courier or by mail. They should be clearly marked as pertaining to the *NWMB Written Hearing Concerning the Qammartalik Cove Emerging Char Fishery Plan*. Delivery of the submissions and supporting documentation may also be made through fax or electronic transmission, but only if your department or organization confirms by phone with the NWMB – prior to each filing deadline – that a complete and legible copy of the transmission has been received by the Board. Materials are deemed to have been filed on the actual day of receipt by the NWMB.

Subject to relevant confidentiality or privacy concerns, all submissions and supporting documentation will be placed on the NWMB website and will be publicly available for download. Please keep in mind that the more thorough, reliable and persuasive supporting evidence and justifications are for your submissions, the more weight they will be given by the NWMB in the *NLCA* decision-making process.

If you require further information concerning the written hearing, please do not hesitate to visit the NWMB website or to contact the Board directly.

5. Conclusion

It is the NWMB's understanding that NTI's challenge to its authority in this matter is related to a long-standing frustration – shared by the Board – with the ongoing lack of significant progress in discussions with DFO concerning (i) the development of modern *Nunavut Fishery Regulations* (Regulations) compliant with the *NLCA*, and (ii) the types of harvests that must be included in the calculation of a basic needs level (BNL) under the terms of the *NLCA*. The co-management partners initiated formal discussions on development of the Regulations in 2000, and incorporated the BNL issue into those discussions in 2013.

As a direct result of its frustration, the NWMB wrote to the Minister in June of 2012 (correspondence attached to this letter as Appendix F) *"...that NWMB approval of ...emerging char fishery plans in the future will be conditional upon achievement of significant progress by the NWMB and the NLCA parties in determining what harvests are included in basic needs levels."*

The Board went on to approve two emerging char fishing plans in 2013 (Pond Inlet and Igloodik). For both approvals, the NWMB determined that significant progress had not yet been achieved, but that it expected such progress would soon be demonstrated. While some headway was subsequently attained, discussions among the co-management partners were unsuccessful - and essentially broke down completely in the fall of 2014.

Why, in such disappointing circumstances, has the NWMB decided to consider approval of another emerging char fishing plan? The answer is that the Board believes the new Prime Minister's solemn commitment to *"...a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and*

*partnership...*², and his appointment of the Honourable Hunter Tootoo as the DFO Minister, provide all parties with a unique opportunity to resume and to successfully conclude the stalled discussions. In the Board's view, the provision of that opportunity constitutes significant progress.

Accordingly, the NWMB looks forward to working respectfully, cooperatively and in partnership with Minister Tootoo and other co-management partners to finally achieve - more than twenty-two years after the NLCA first came into force - what Nunavut and Canada deserve and desperately need: Nunavut fisheries legislation that implements the rights, obligations and management regime guaranteed by the *Nunavut Land Claims Agreement*.

Yours sincerely,



Ben Kovic,
Chairperson of the Nunavut
Wildlife Management Board

Attachments: 6

c.c. David Burden, Regional Director General, Central and Arctic Region, Fisheries and Oceans Canada;
Larry Dow, Director of Northern Operations, Fisheries and Oceans Canada;
James T. Arreak, Chief Executive Officer, Nunavut Tunngavik Incorporated;
Paul Irngaut, Director of Wildlife and Environment, Nunavut Tunngavik Incorporated;
Alison Kopalie, Manager, Nattivak Hunters and Trappers Organization;
Jackie Price, Research and Planning Coordinator, Qikiqtaaluk Wildlife Board;
Jason Mikki, Qikiqtaaluk Regional Coordinator, Qikiqtaaluk Wildlife Board;
Gabriel Nirlungayuk, Deputy Minister, Government of Nunavut Department of Environment; and
Janelle Kennedy, A/Director of Fisheries and Sealing, Government of Nunavut Department of Environment.

² Mandate letter from the Prime Minister to the Minister of Fisheries, Oceans and the Canadian Coast Guard, November 13th 2015.



www.tunngavik.com

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BY FACSIMILE - URGENT

January 28, 2016

Jason Akearok,
Executive Director
Nunavut Wildlife Management Board
Box 1379
Iqaluit, NU X0A 0H0

Dear Mr. Akearok:

Re: Written Hearing of the NWMB concerning the proposed approval of the Qammartalik Cove Emerging Char Fishery Plan

NTI wishes to thank the NWMB for its letter dated December 18, 2015, and you for your prompt responses to NTI Wildlife Director Paul Irmgaut's inquiries in the past week.

NTI's offices were closed on December 18. Due to an administrative oversight at NTI after the Board's letter was received, NTI was unable to prepare a written submission by the Board's deadline, January 22, 2016. In response to Mr. Irmgaut's telephone request for an extension, you notified NTI by email on January 27 that the Board cannot extend that deadline.

NTI apologizes to the NWMB, DFO and GN for any inconvenience this situation has created.

In light of the fact that no submissions have been received for the written hearing since it was announced, NTI proposes the following way forward:

1. The Board treat NTI's September 17, 2015 letter to the Board as NTI's written submission for the purpose of other parties' reply.
2. The Board also consider any written submissions by other parties filed by February 19, 2016.
3. Subject to NTI's right of reply should any submission by another party raise an issue that was not addressed in NTI's letter, the NWMB proceed to make its initial decision based on the above submissions, exclusively within the confines of the decision described in the Board's December 18 letter. In order to avoid any confusion – and recognizing that past NWMB exploratory plan decisions have been treated by DFO, apparently contrary to the Board's intention, as decisions that may implemented by the Minister under the NLCA by way of fishing licences - NTI asks the Board to reconfirm as soon as possible what the Board considers the proposed decision to be and what it is not, as follows:

The proposed decision is:

- to approve a “collaborative arrangement voluntarily entered into by DFO and Nattivak”, in accordance with the Board’s function to approve plans for the management and protection of wildlife under s. 5.2.33 of the NLCA, and
- subject to the decision-process set out in section 5.3.17 of the NLCA.

The proposed decision is not

- to establish any limitation on the quantity of Inuit fishing;
- to establish any non-quota limitation on Inuit fishing;
- to approve any measure that the Minister may implement under s. 5.3.23 of the NLCA by means of any limitation on Inuit fishing, or
- to approve any measure that the Minister may implement under s. 5.3.23 of the NLCA by means of a fishing licence.

This approach appears to be workable despite NTI not having filed a further submission because, as NTI reads the Board’s December 18 2015 letter, the Board is assuring Inuit that the Board’s decision cannot engage the concerns that NTI set out in its September 17 2015 letter, none of which involved the Board’s authority to approve management plans.

On the question of the Board’s management plan approval authority, NTI continues to urge the Board to clarify what the Board understands a “management plan” to consist of, and what the Board understands to be the necessary implementation consequences under s. 5.3.23, if any, of the Board’s discretionary approval of such plans. NTI would be pleased if the Board addressed those issues in making its initial management plan approval decision, but does not propose that the Board delay this process any further by inviting written submissions on that issue before deciding.

Once again, NTI wishes to assure the Nattivak HTO that the proposed way forward should not delay or restrict the HTO’s winter exploratory fishery in any manner. NTI understands that, if this fishery has not commenced already, it is due to commence very soon.

Please reply to this letter, including NTI’s request to clarify what the proposed decision is and is not, as soon as possible. Thank you.

Sincerely,



James T. Arreak
Chief Executive Officer

CC. David Burden, DFO-RDG Central & Arctic Region
Manager, Nattivak Hunters and Trappers Organization
Gabriel Nirlungayuk, Deputy Minister, Department of Environment, GN



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BY FACSIMILE - URGENT

January 28, 2016

Jason Akearok,
Executive Director
Nunavut Wildlife Management Board
Box 1379
Iqaluit, NU X0A 0H0

Dear Mr. Akearok:

Re: Written Hearing of the NWMB concerning the proposed approval of the Qammartalik Cove Emerging Char Fishery Plan

NTI wishes to thank the NWMB for its letter dated December 18, 2015, and you for your prompt responses to NTI Wildlife Director Paul Irgaut's inquiries in the past week.

NTI's offices were closed on December 18. Due to an administrative oversight at NTI after the Board's letter was received, NTI was unable to prepare a written submission by the Board's deadline, January 22, 2016. In response to Mr. Irgaut's telephone request for an extension, you notified NTI by email on January 27 that the Board cannot extend that deadline.

NTI apologizes to the NWMB, DFO and GN for any inconvenience this situation has created.

In light of the fact that no submissions have been received for the written hearing since it was announced, NTI proposes the following way forward:

1. The Board treat NTI's September 17, 2015 letter to the Board as NTI's written submission for the purpose of other parties' reply.
2. The Board also consider any written submissions by other parties filed by February 19, 2016.
3. Subject to NTI's right of reply should any submission by another party raise an issue that was not addressed in NTI's letter, the NWMB proceed to make its initial decision based on the above submissions, exclusively within the confines of the decision described in the Board's December 18 letter. In order to avoid any confusion – and recognizing that past NWMB exploratory plan decisions have been treated by DFO, apparently contrary to the Board's intention, as decisions that may implemented by the Minister under the NLCA by way of fishing licences - NTI asks the Board to reconfirm as soon as possible what the Board considers the proposed decision to be and what it is not, as follows:

The proposed decision is:

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- to approve a “collaborative arrangement voluntarily entered into by DFO and Nattivak”, in accordance with the Board’s function to approve plans for the management and protection of wildlife under s. 5.2.33 of the NLCA, and
- subject to the decision-process set out in section 5.3.17 of the NLCA.

The proposed decision is not

- to establish any limitation on the quantity of Inuit fishing;
- to establish any non-quota limitation on Inuit fishing;
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This approach appears to be workable despite NTI not having filed a further submission because, as NTI reads the Board’s December 18 2015 letter, the Board is assuring Inuit that the Board’s decision cannot engage the concerns that NTI set out in its September 17 2015 letter, none of which involved the Board’s authority to approve management plans.

On the question of the Board’s management plan approval authority, NTI continues to urge the Board to clarify what the Board understands a “management plan” to consist of, and what the Board understands to be the necessary implementation consequences under s. 5.3.23, if any, of the Board’s discretionary approval of such plans. NTI would be pleased if the Board addressed those issues in making its initial management plan approval decision, but does not propose that the Board delay this process any further by inviting written submissions on that issue before deciding.

Once again, NTI wishes to assure the Nattivak HTO that the proposed way forward should not delay or restrict the HTO’s winter exploratory fishery in any manner. NTI understands that, if this fishery has not commenced already, it is due to commence very soon.

Please reply to this letter, including NTI’s request to clarify what the proposed decision is and is not, as soon as possible. Thank you.

Sincerely,



James T. Arreak
Chief Executive Officer

CC. David Burden, DFO-RDG Central & Arctic Region
Manager, Nattivak Hunters and Trappers Organization
Gabriel Nirlungayuk, Deputy Minister, Department of Environment, GN