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Nunavunmi Anngutighatigut Aulapkaijitkut Katimajiat
Nunavut Wildlife Management Board

ᐱᓗᓪᓕᓕᓄᓃᓪᓗᑦ ᐅᐭᓪᓕᓕᓄᓃᓪᓗᑦ ᓄᓃᓄᓃᓪᓗᑦ ᓄᓄᓄᓄᓪᓗᑦ ᓄᓄᓄᓄᓪᓗᑦ ᓄᓄᓄᓄᓪᓗᑦ ᓄᓄᓄᓄᓪᓗᑦ
Tammaqtailinahuarniriit anngutighat atuqhugit Inuit qaujimajatuqangillu ilihimaniillu ilitquhiannin
Conserving wildlife through the application of Inuit Qaujimajatuqangit and scientific knowledge

May 18th 2016

Honourable Johnny Mike
Minister of Environment
Government of Nunavut

Stanley Anablak
President
Kitikmeot Inuit Association

Honourable Wally Schumann
Minister of Environment and Natural
Resources
Government of Northwest Territories

Cathy Towtongie
President
Nunavut Tunngavik Incorporated

Simon Qingnaqtuq
Chairperson
Kitikmeot Regional Wildlife Board

Sam Kapolak
Chairperson
Bathurst Inlet Hunters and Trappers
Organization

Larry Adjun
Chairperson
Kugluktuk Hunters and Trappers
Organization

Peter Kapolak
Chairperson
Bay Chimo Hunters and Trappers
Organization

Dear Colleagues:

Re: Reasons for the Nunavut Wildlife Management Board decisions to not adjourn its June 13th to 16th 2016 public hearings concerning the Bathurst and Bluenose-east caribou herds, to invite submissions regarding the adequacy of consultations, and to extend the deadline for written submissions

1. Nunavut Wildlife Management Board decisions

This letter is a follow-up to the May 16th 2016 letter from the Nunavut Wildlife Management Board (NWMB or Board), which conveyed to you the following NWMB decisions:

1. To proceed with its original schedule to hold the Bathurst and Bluenose-east caribou public hearings from June 14th to 17th 2016 in Cambridge Bay;
2. To invite additional written submissions regarding whether the consultations already carried out by the Government of Nunavut were adequate; and

3. To extend the deadline for filing all written submissions from May 13th to May 27th 2016.

This correspondence is intended to provide relevant background information and the Board's reasons for its decisions, as well as to expand upon its invitation for submissions regarding the adequacy of consultations to date.

2. Summary of the May 9th 2016 requests and reasons from the Kitikmeot Inuit Association (KIA)

On May 9th 2016, the NWMB received a written hearing submission from KIA (attached as Appendix A) requesting two decisions from the NWMB:

- (a) To adjourn the Board's Bathurst and Bluenose-east caribou hearings until late September 2016; and
- (b) To direct the Government of Nunavut – Department of Environment (DOE) to re-initiate consultations with the Kitikmeot Regional Wildlife Board and affected Hunters and Trappers Organizations (HTOs).

In summary, KIA's reasons for these two requests are the following:

1. DOE's approach to consultation was flawed, and the consultation itself was perfunctory;
2. KIA is opposed to the establishment of total allowable harvests on these herds at this time; and
3. KIA is in favor of:
 - (i) the relevant HTOs using their own *Nunavut Land Claims Agreement* (NLCA) Article 5 authorities to regulate members' harvesting practices and to increase the harvest of predators,
 - (ii) the imposition of mobile caribou protection measures to protect the herds, and
 - (iii) the development of a Community Based Caribou Management Plan.

However, KIA is concerned that "*...it is not possible to get this work done by May 13 2016*" - which was the original NWMB submission filing deadline.

3. DOE consultations to date

DOE participated at or held in-person consultation meetings with one or more affected HTOs a total of ten times between September 2014 and January 2016 regarding conservation concerns with one or both of these herds (see summary table attached as Appendix B to this correspondence). As a result, DOE produced five consultation reports,

which are included in the NWMB's hearing record. In addition, two further reports were issued by a technical working group from the Northwest Territories. Relevant knowledge and concerns of community members appear to have been raised at all of the meetings for which DOE produced reports.

4. NWMB consideration of KIA's May 9th 2016 requests

The NWMB derives its jurisdiction from the relevant terms of the NLCA, which are primarily found in Article 5. Two dominant themes run through the principles and objectives of NLCA Article 5: the significance of conservation in Nunavut's wildlife management system, and the importance of ensuring the long-term economic, social and cultural interests of Inuit harvesters within that system. As a result, the NWMB takes the position that the object and purpose of NLCA Article 5 is to manage wildlife in a way that meets the principles of conservation while protecting and prioritizing Inuit rights to harvest.

In March 2016, the Board considered two *Proposals for Decision* from DOE, supported by (i) 2014 and 2015 surveys and population estimates, (ii) what appeared to be an extensive consultation record, and (iii) a general consensus that the conservation concerns for these herds are serious and urgent. At the same time, the record provided by DOE is clear that there is no consensus between DOE and harvesters and their organizations concerning appropriate management measures in response to this threat. Accordingly, the NWMB decided to promptly hold in-person public hearings for both herds, and to invite "...written submissions and supporting documentation in response to the Government of Nunavut – Department of Environment's Proposal, or otherwise concerning the harvest management of... [each] caribou herd [emphasis added]."¹

In considering KIA's two recent requests - while taking into account the NWMB's role under NLCA Article 5 and the hearing record to date - the Board came to a number of conclusions. First, even though the public hearings will afford an opportunity to more closely and thoroughly examine all of the evidence and arguments, there is sufficient evidence at this point in time to reasonably determine that both herds are under an urgent conservation threat, and that time is of the essence in addressing that threat.

Second, in order to reach a properly informed and fair decision regarding whether DOE's consultations were or were not adequate in the circumstances, the NWMB must – pursuant to the legal rules of procedural fairness – invite and carefully consider submissions from DOE and the other hearing parties with respect to that question.

Third, the NWMB could maintain its current hearing dates and, at the same time, extend by two weeks the deadline for submissions – which would provide all parties an opportunity to file relevant arguments and evidence concerning the adequacy of DOE's consultations. As an alternative, the Board could provide additional time following the oral hearing to file written submissions with respect to the adequacy of the consultations.

¹ April 1st 2016 NWMB invitation letter to hearing parties.

Fourth, KIA's concern - that there is insufficient time prior to the hearing submission deadline to put in place the community-based measures described in its submission – appears to reflect a misunderstanding of the NWMB's hearing process. The Board does not require that parties who oppose a Proposal produce an alternative arrangement ready for implementation at the submission filing deadline. On the contrary, the hearing process is designed for the presentation and consideration of valid competing positions. Naturally, the more thorough, reliable and persuasive submissions and supporting documentation are, the more weight they will be given by the NWMB in the NLCA Article 5 decision-making process. If a favorable way forward will take time to further develop (e.g. the establishment of a management plan), the NWMB and the Minister have the co-jurisdictional authority to make one or more "interim" decisions while awaiting such further development and eventual NLCA Article 5 consideration and decision-making.

5. NWMB reasons for its decisions

As a result, the NWMB's reasons for the decisions conveyed to you in its May 16th correspondence are the following:

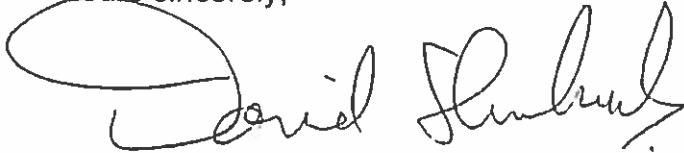
1. The hearings must proceed in June because time is of the essence in addressing the urgent conservation concerns affecting the two caribou herds.
2. The legal rules of procedural fairness require the NWMB to invite and carefully consider submissions from all affected hearing parties – including DOE - concerning the adequacy of DOE's consultations in the circumstances.
3. In the period ending May 27th 2016, there is sufficient time to file relevant arguments and evidence concerning the adequacy of DOE's consultations.

Please note that if any party is of the view that the amount of time provided is insufficient to develop, translate and file further written submissions, the NWMB is prepared – as an alternative - to provide sufficient time following the oral hearing, but prior to decision-making, for the delivery of written submissions concerning this new hearing issue. A party holding such a view is invited to write to the NWMB by no later than 5:00 pm (Eastern Time) on May 24th 2016, indicating with reasons that the original time period provided by the NWMB is insufficient, and requesting time following the oral hearing for the delivery of written submissions concerning the adequacy of DOE's consultations.

4. KIA's May 9th submission complies with the NWMB's invitation for hearing submissions, in that it provides both a response to DOE's Proposal and an alternate proposal concerning the harvest management of these two caribou herds. There is no hearing requirement that the measures proposed by a party be ready for implementation at the time of filing. The NWMB will carefully consider KIA's written and oral submissions in its deliberations and decision-making.

If you require any further information, please visit the NWMB website or directly contact the Board's Executive Director.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Daniel Shewchuk". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Daniel Shewchuk
Acting Chairperson of the
Nunavut Wildlife Management Board

Attachments: 2

- c.c. Hon. Catherine McKenna, Minister of Environment and Climate Change, Government of Canada;
Drikus Gissing, Director of Wildlife Management, Government of Nunavut – Department of Environment;
Attima Hadlari, Vice-President, Wildlife and Environment, Kitikmeot Inuit Association;
Paul Irngaut, Director of Wildlife and Environment, Nunavut Tunngavik Incorporated;
Paul Emingak, Executive Director, Kitikmeot Inuit Association;
Andrew Maher, Resource Conservation Manager, Parks Canada Agency;
Lynda Yonge, Director of Wildlife, Government of Northwest Territories – Department of Environment and Natural Resources;
Ema Qaggutaq, Kitikmeot Regional Coordinator, Kitikmeot Regional Wildlife Board;
Eva Ayalik, Kitikmeot West Regional Coordinator, Kitikmeot Regional Wildlife Board; and
Boyd Warner, President, Bathurst Inlet Developments
Bill Enge, President, North Slave Métis Alliance
Shin Shiga, Regulatory Analyst, North Slave Métis Alliance