



*RESOLVED that the NWMB recommend that, should the range of the Blue Whale, Northwest Atlantic Population, expand into the waters inside or adjacent to the Nunavut Settlement Area, Fisheries and Oceans Canada conduct consultations with Nunavut communities adjacent to that range on recovery documents and actions required under the federal Species at Risk Act.*

## **2. Reasons for the NWMB's Resolutions**

Under Section 5.2.34(d)(i) of the *Nunavut Land Claims Agreement*, the NWMB shall, in its discretion, approve plans for the management, classification, protection, restocking or propagation, cultivation or husbandry of particular wildlife, including endangered species. Such 'plans' include Recovery Strategies, Action Plans and Management Plans under the federal *Species at Risk Act*. The three proposed recovery documents in question had not gone through the 60-day public consultation period at the time of consideration by the NWMB, and may therefore still be modified. The NWMB's approval of a document that may still undergo changes is not consistent with the *Nunavut Land Claims Agreement*, in particular Sections 5.3.20 and 5.3.23 which are both clear that, where the Minister accepts an NWMB initial decision made pursuant to Section 5.3.16 or where a final decision has been accepted or varied by the Minister, "...*the Minister shall proceed forthwith to do all things necessary to implement*" that decision, whether it be initial, final or varied. Accordingly, there is no legal option to treat an accepted initial NWMB decision or an accepted or varied final NWMB decision as an interim determination or recommendation subject to additional consultation and potential resulting modification. Therefore the NWMB's discretionary responsibility to approve plans such as those mentioned above, as per Section 5.2.34(d)(i) of the *Nunavut Land Claims Agreement*, requires final proposed recovery documents.

The above concern regarding the NWMB's approval of recovery documents has also been communicated to the Minister of Environment and Climate Change<sup>1</sup> and the submission of final recovery documents, following the 60-day public consultation period, has recently become a practice of the Canadian Wildlife Service. Therefore, the NWMB is requesting that Fisheries and Oceans Canada follow a similar procedure and submit revised Proposal(s) for Decision regarding approval of these three recovery documents following the completion of the 60-day public consultation period.

The NWMB accepts that, as there have been no recent, confirmed sightings of Blue Whales in or near Nunavut waters, you do not intend to conduct consultations with Nunavut communities on the *Action Plan for Blue Whale, Northwest Atlantic Population, in Canada*. However, once again, the NWMB considered the potential for the range of the Blue Whale to expand into waters inside and adjacent to the Nunavut Settlement Area

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<sup>1</sup> See December 18<sup>th</sup> 2015 correspondence attached as Appendix A.

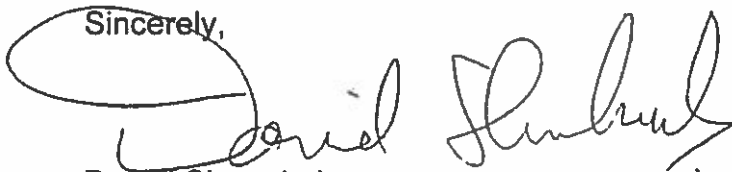
with changes in climate and other environmental conditions. The NWMB recommends that, should evidence arise indicating an expansion of the range of the Blue Whale into the waters inside or adjacent to the Nunavut Settlement Area, Fisheries and Oceans Canada conduct consultations with those Nunavut communities adjacent to that range on existing recovery documents and actions required under the federal *Species at Risk Act*, and submit the resulting consultation report and any proposed changes to the NWMB for consideration. The NWMB would also like to take this opportunity to note possible recent sightings of Blue Whales near Pond Inlet, NU, which were discussed during the Board's consideration of the proposed Action Plan at its September 2016 quarterly meeting. You and your department may wish to investigate these sightings by community members further.

The NWMB recognizes the growing potential for changes in species distribution with changes in climate and is therefore working to develop a Board policy to define procedurally fair processes for the NWMB's listing and recovery document decision-making functions for species that currently appear to have limited ranges in Nunavut. This policy will also express under what conditions the NWMB will decide to not perform its listing and recovery document decision-making functions for such species. The NWMB would also like to suggest that the Government of Canada – through Fisheries and Oceans Canada and Environment and Climate Change Canada – work collaboratively with the Board on the development of a Memorandum of Understanding to ensure adequate consultations and procedurally fair decision-making when reliable new information indicates a species' range has moved into or adjacent to the Nunavut Settlement Area.

### 3. Conclusion

Mr. Minister, the NWMB hereby forwards its decision and recommendation to you for your consideration pursuant to the relevant terms of the *Nunavut Land Claims Agreement*. Should you or your officials have any questions or concerns with respect to the contents of this letter, please do not hesitate to contact the NWMB at your convenience.

Sincerely,



Daniel Shewchuk  
A/Chairperson of the  
Nunavut Wildlife Management Board

Attachments (1)

c.c. Honourable Catherine McKenna, Minister of Environment and Climate Change;

Sam Stephenson, Species at Risk Biologist, Fisheries and Oceans Canada;  
Raymond Ratynski, Regional Manager, Species at Risk Program, Fisheries and  
Oceans Canada; and  
Larry Dow, Director of Northern Operations, Fisheries and Oceans Canada.



decision on the approval of the recovery strategy, or not perform its decision-making function.

Therefore, the NWMB is requesting that Canadian Wildlife Service forward the Recovery Strategy to the NWMB following the 60-day public comment period. Pursuant to Section 5.2.34(d)(i) of the *Nunavut Land Claims Agreement*, the NWMB shall in its discretion approve plans for the management, classification, protection, restocking or propagation, cultivation or husbandry of particular wildlife, including endangered species in the Nunavut Settlement Area. Thus, after reviewing the Recovery Strategy, the NWMB will exercise its discretion to either make a decision on the approval of the recovery strategy, or not perform its decision-making function.

The NWMB recognizes that with climate change, more species are likely to expand their ranges into Nunavut. Consequently, a species whose current range or habitat is near Nunavut or occasionally within Nunavut, may move further into the territory under the right conditions. Considering this, the NWMB also passed the following resolution:

FURTHER RESOLVED that the NWMB develop a Board policy regarding (i) what procedurally fair processes it will follow for its listing and management plan/recovery strategy/action plan/critical habitat decision-making functions for species or populations that currently appear to have limited or potentially even no ranges in Nunavut, and (ii) under what conditions it will decide to exercise its *Nunavut Land Claims Agreement* Section 5.2.34 discretion to not perform its listing and management plan/recovery strategy/action plan/critical habitat decision-making functions for such species or populations.

Therefore, in the coming months, the NWMB will be drafting a policy regarding what procedurally fair processes it will follow, and under what conditions it will exercise its *Nunavut Land Claims Agreement* Section 5.2.34 decision-making functions, regarding the listing and recovery documents for species or populations that currently appear to have a limited or potentially no range in Nunavut.

If you or your officials have any questions or concerns with the contents on this letter, please do not hesitate to contact the NWMB.

Sincerely,



Ben Kovic  
Chairperson of the  
Nunavut Wildlife Management Board

c.c. Lisa Pirie, A/Head of Eastern Arctic Section, Canadian Wildlife Service.



