

**NTI RESPONSES TO NWMB COMMENTS AND REQUESTS FOR NTI DATED
DECEMBER 14, 2005**

March 23, 2006

1. Is the NWMB list of provisions in contention accurate and complete? If it is not, please modify it accordingly.

NTI response

a) accuracy

*The list of provisions "in contention" is, with three exceptions, accurate as of July, 2005. NTI is filing with the NWMB a copy of its most recent comments on limitations proposed in GN draft regulations and orders, entitled *Nunavut Land Claim Agreement – the Nunavut Wildlife Act- Inuit Rights*. These comments were based on the drafts received as of July and were prepared in August, 2005 for the purpose of the public consultation held in the fall.¹*

The exceptions are:

- *permission for non-Inuit to use traditional Inuit weapons and methods to harvest small game (number 7 on the list)*

The draft regulations as of July, 2005 did not give "permission for non-Inuit to use traditional Inuit weapons and methods to harvest small game". At that time, the drafts (Harvesting Regulations, #19a, April 11, 2005) permitted 'passive' methods of harvesting of big game by anyone, excepting traps. NTI did not support that measure in its August comments. In drafts received since, NTI sees that the prohibition on 'passive' methods of harvesting of big game, such as spears, has been reintroduced. NTI has not revised its position that this is a responsible measure in so far as it applies to non-Inuit. The draft regulations did not propose, and NTI has not advocated, prohibiting the use of 'passive' weapons by non-Inuit to harvest small game.

- *a prohibition on the use of ammunition by Inuit less than .243 cal to harvest bear, moose or muskox (number 8 on the list)*

¹ The NWMB's list correctly includes two NTI positions that were not repeated in NTI's most recent comments and were contained in earlier written comments, namely NTI's opposition to a prohibition on the use of dogs by Inuit to harvest muskox (number 6 on the list - position stated in NTI's March 24, 2005 comments to the Working Group) and NTI's opposition to a prohibition on the harvesting of birds of prey older than one year of age (number 10 – position stated in NTI's October 23, 2004 initial comments to the Working Group on NQLs).

NTI was not opposed to this prohibition when NTI prepared its most recent comments. NTI's comments only asked Inuit participating in the public consultations to express their views. When the consultation reports are provided, NTI will review its position on this limitation.

- *a prohibition on harvesting the moss named Porsild's Byrum (number 15 on the list)*

NTI's position respecting this prohibition is the same as its position on the prohibition on the use of .243 cal ammunition; namely, NTI is not opposed at present but will review its position after reviewing the results of the public consultations.

Subject to those exceptions, the list *remains accurate in so far as the limitations that NTI opposed as of last July have not been modified since in a way that meets NTI's concerns*. NTI has not revised its positions. Since the public consultation, NTI has been waiting until the GN provides a set of proposed limitations that responds to the public consultation before reviewing further proposals thoroughly and providing final comments. NTI understands that the next set of proposed limitations, now due on March 27, 2006, will respond to the public consultation, and will go to the NWMB for decision.

b) completeness

(The NWMB list does not refer to limitations recommended in the December 31 2005 "Working Draft" *Recommendations on Total Allowable Harvest Rates for Terrestrial Wildlife Populations in Nunavut* that would change or add to the limitations proposed in the draft orders and regulations. As NTI does not understand that such recommendations would go forward to the NWMB, this response does not address them.)

The NWMB list is not complete as of July 05 in so far as it omits reference to the three non-quota limitations specific to polar bears that NTI opposed in its most recent comments, namely the prohibitions on harvesting females in dens, females with cubs, and cubs. The list also omits the limitation on harvesting contained in s. 9(4) of the draft Harvesting Regulations (addressed in response to question #9 below)

NTI is not aware of any other limitations in contention as of July, 2005 that are missing from the NWMB's list.

NTI is aware that the NWMB list is not complete as of December, 2005 in at least one instance, in that it does not include the non-quota limitation on Inuit non-traditional methods of harvesting that is contained in paragraph 8(3)(a) of draft Harvesting Regulations #22, dated September 2, 2005. NTI stated its opposition to a prohibition on the use by Inuit of non-"traditional," 'passive' harvesting methods when this idea was

suggested by GN representatives in Working Group discussions in April, 2005, and earlier. NTI's position was simply that Inuit should be exempted from the prohibition on 'passive' harvesting methods. NTI has not revised that position.

NTI does not know whether the draft regulations and orders circulated after July contain any further limitations that NTI would oppose.

c) modifications, and preparation for the Special Meeting

NTI will not be in a position to modify the NWMB's list of issues in contention in a form that is current until NTI receives the GN's limitations proposed to the NWMB, due March 27.

NTI plans to file a written response to those proposed limitations, as provided for under the Meeting Procedures. The response is currently due on April 21. NTI plans to make this response as complete as possible in the period allotted. *NTI will make its best efforts to include in its response a modified list of limitations in contention that is current and complete.*

At this time, NTI does not plan to change any of its positions referred to in the NWMB's list, prior to commencement of the Meeting.

For the purpose of assisting the NWMB and other parties in meeting preparation, NTI submits that:

- the limitations in contention as of July 2005 are numerous and complex.² For this reason, the issues in contention at the Meeting can be expected to i) require the review of substantial material before and during the Meeting, ii) involve presentations from participants and considerable discussion at the Meeting, and iii) require significant opportunity for Board deliberation prior to the making of decisions.
- due to the number and complexity of limitations that will be considered at the Meeting and the limited time allotted for responses after March 27, it is essential that the limitations at issue be proposed to the Board, and justified, distinctly. The NWMB has directed this in its March 2 letter with respect to limitations "in contention" in the fall of 2005 and proposed limitations that have been altered since. In NTI's submission, it is essential that *all* limitations proposed for decision

² For example, item number 3 on the NWMB's list, "TAHs for muskox" refers to at least twelve proposed TAHs, ranging from relatively high levels to zero. Each TAH applies to an area-based unit of muskox designated as a population. Each TAH is a distinct limitation. The related item 16, "geographic limitations on the harvest of muskox", refers to up to 23 management areas, dividing the populations, many but not all of which, in turn, have associated quotas. Each quota is also a distinct harvesting limitation.

at the Meeting be put forward in that manner. (Along with this document, NTI is submitting to the NWMB recommended templates outlining the type of written material that, in NTI's view, proponents should provide when proposing that the NWMB should establish TAHs or NQLs on Inuit harvesting, whether or not the limitation is "in contention.")

2. Please indicate any areas where NTI can be flexible and/or believes it can work with the GN (and the NWMB) to find a mutually-acceptable solution.

NTI response

NTI will continue to remain open to discussing any and all points in contention with the GN up to the point of NWMB decision.

3. Please prioritize the list.

Inuit have the right to harvest wildlife under the NLCA. Limitations on Inuit harvesting require justification under the NLCA. Accordingly, all of the points in contention are priorities for NTI.

Also, in NTI's submission, the NWMB is responsible to ensure that Inuit harvesting limitations are justified under the NLCA whether limitations are "in contention" between parties or not. NTI therefore submits that the NWMB should not consider establishing *any* Inuit harvesting limitations in the absence of written rationale for the proposal, supported by evidence. This is particularly important in a decision process such as the present one, in which the NWMB plans to decide upon many limitations at the same time. Inuit rely on the NWMB to make independent decisions on harvesting limitations in accordance with the rigorous criteria and procedures called for under the NLCA. Also, HTOs, RWOs, and Inuit harvesters should have the opportunity to consider the reasons for the limitations proposed to the NWMB, so that they can consider whether they have concerns not raised by NTI and bring any such concerns forward at the Meeting.

4. Does NTI take the position that the 3 regional consultations, the NWMB informal hearing (with respect to TAHs) and the GN offer for Wildlife Officer-led consultations – combined with NTI and RWO inclusion in the development of the draft Regs and Orders over a 16-month period – amount to insufficient consultation? If so, why?

NTI response

NTI has been fully engaged in the Working Group. However, NTI is aware that HTOs and RWOs have expressed concerns to NTI with the level of consultation that has taken place. In addition, NTI is not aware of communities in which officer-led consultations have been accomplished.

5. With respect to the TAH for grizzly bear, the NWMB's position regarding the application of s.24 of the *Nunavut Act* is that the Board is only concerned whether or not there is a conservation reason justifying a limitation on the harvest. The NLCA does not provide the Board with any jurisdiction to consider the use to which a harvested animal will be put (for instance, food, clothing, shelter, etc.).

NTI response

NTI agrees that it is not the NWMB's concern to determine legislative jurisdiction. (In NTI's view, food is among the "needs" on which an Inuk's right to harvest is based (section 5.6.1, NLCA), and food is among the "harvesting needs" that the NWMB must consider when applying the conservation standard provided in section 5.1.4 (c) of the NLCA. However, this does not give the NWMB a role in determining legislative jurisdiction.)

6. TAHs for any species that Article 40 Aboriginal people (Nunavik Inuit, the Dene of northern Manitoba and Saskatchewan, Aboriginal people of the eastern Northwest Territories) have a right to harvest must include a basic needs level (BNL) for that Aboriginal people, separate from any BNL for Inuit (NLCA S.40.2.5, 40.3.3, 40.4.2 and 40.5.2). To date, the NWMB has not been provided any information regarding consultations with Article 40 Aboriginal people, their levels of harvest, or proposed portions of the various GN-proposed TAHs to be allocated to them. The NWMB will need such information prior to deciding on any TAHs shared between Inuit and Article 40 Aboriginal people.

NTI response

NTI agrees that the NWMB will need such information prior to deciding on any shared TAHs.

7. With respect to TAHs for peary caribou:
 - (a) The evidence is overwhelming that the peary caribou population on Somerset-Prince of Wales Islands is endangered, and that the number of peary caribou currently on Devon Island is extremely low,

- (b) In the *Wildlife Act*, NTI agreed (with no objections raised by the RWOs or HTOs) that the NWMB is to establish either a prohibition or a TAH on every species that is designated as threatened or endangered (s.132(1)(b)), and
- (c) The Grise Fiord and Resolute Bay HTOs have both agreed to the establishment of the GN-proposed TAHs for Bathurst Island and Ellesmere/Axel Heiberg Islands, and have agreed to the establishment of TAHs (although not the GN-proposed numbers) for Somerset, Prince of Wales and Devon Islands.

NTI response

NTI will take this information and these views into account when preparing its response to any TAHs proposed to the NWMB for Peary caribou and any associated rationale. (With respect to the NWMB comment under (b), the territorial Wildlife Act's species at risk provisions are not triggered by a federal designation, and the federal Species At Risk Act does not necessarily require a TAH as part of a recovery strategy or action plan. Also, neither type of legislation can reduce the standard of justification required by section 5.3.3 of the NLCA for the establishment of a TAH. To the extent that designation under legislation triggers a legislative requirement for a TAH, the designation must meet 5.3.3's strict requirements.)

8. Please note that neither the 6-hour NQL on sport hunters (see s.13(1), *Harvesting Regs*) nor the ability to use traditional weapons and methods to harvest small game by Qallunaat (s.8, *Harvesting Regs*) is subject to the NLCA S.5.3.3 test.

NTI response

NTI agrees that limitations on non-Inuit harvesting are not subject to the s. 5.3.3 test.

9. Is there a process that could be followed in enforcing the prohibition on harvesting game contrary to the 3 IQ principles (s.9? *Harvesting Regs*) which would be satisfactory to NTI?

NTI response

NTI continues to submit that the only appropriate process for introducing Inuit harvesting restrictions of this nature is through the authorities of HTOs and RWOs, recognized under Article 5.

NTI notes that subsection 9(4) of the draft Harvesting Regulations also effectively prohibits harvesting game contrary to a further IQ principle, Pilimmaksarniq/Ayoikyumikatakhimanik (skills must be improved and maintained through experience and practice). NTI also opposes this limitation and considers HTO/RWO authorities to be the only appropriate means of introducing any such a limitation on Inuit harvesting.