



3. These NQL's compound the restrictive effect of the total allowable harvests (TAH's) for polar bears, beyond what conservation would require;
4. The timing of the NWMB's and the Minister's decisions with respect to the NQL's did not permit NTI to have a full hearing of its relevant concerns; and
5. NTI doubts that the NWMB has had the full opportunity to consider its concerns.

**Other relevant factors**

Unfortunately, your letter did not mention a number of other relevant factors, including the following:

1. In order to:
  - avoid misunderstandings and disputes among co-management partners,
  - ensure a high level of communication and consultation with Nunavummiut, and among co-management partners, with respect to polar bear management, and
  - produce up-dated, relevant and widely-accepted Polar Bear MOUs, NTI, the Government of Nunavut (GN), the NWMB and the RWOs agreed to form a Polar Bear MOU Working Group in 2001.
2. The Working Group planned and carried out extensive consultations in 2003 and 2004. Representatives of NTI were fully involved in the planning of the consultations and attended almost all of the consultation sessions.
3. The direct costs of the consultations were between \$500,000 and \$1,000,000.
4. The MOUs went through a series of drafts, and copies were distributed for review in the latter half of 2003 and the winter of 2004.
5. The MOUs were discussed at every NWMB quarterly meeting from January 2002 until December 2004 (Meetings 31 to 40). NTI was invited to each meeting, and attended all but one.
6. At no time did the NWMB announce or otherwise indicate an intention to defer making any NQL decisions arising from the MOUs until after the Nunavut Wildlife Legislation Working Group had completed its discussions regarding NQL's.

***The International Agreement on the Conservation of Polar Bears***

I will respond to each of your concerns in turn. With respect to the first matter, it would clearly be incorrect to say that any of the NQL's under discussion are requirements of the 1973 *International Agreement on the Conservation of Polar Bears* (ACPB or Agreement).



At the same time, there is a strong connection between the ACPB and the resolution appended to it, which was passed by the delegates at the historic 1973 Oslo Conference.<sup>1</sup>

That resolution requested that the parties to the Agreement “*take such steps as possible to:*

1. *Provide a complete ban on the hunting of female polar bears with cubs and their cubs, and*
2. *Prohibit the hunting of polar bears in denning areas during periods when bears are moving into denning areas or are in dens.”*

The resolution went on to state that these measures “*are generally accepted by knowledgeable scientists to be sound conservation practices within the meaning of Article II of the Agreement on the Conservation of Polar Bears...*” Presumably, this statement was made in recognition of the relatively low population numbers and reproductive rate of polar bears, coupled with the necessary protection offered by the maternity den and the minimal chances of survival of cubs that have lost their mother.

Although the NWMB does not fully agree with the wording of the resolution – it is too restrictive and lacks an appreciation of the aboriginal perspective – the Board finds its general approach to be fairly reasonable, and compatible with the spirit of the Agreement.

#### **The requirement for justification of NQL’s under the NLCA**

With respect to your second point: However unlikely, it is still possible that – despite the participation of NTI at practically all consultation meetings – some HTOs may have arrived at this incorrect conclusion. If so, future consultations of this sort should emphasize that all relevant decisions of the NWMB or the Minister under the NLCA that attempt to restrict or limit Inuit harvesting are subject to NLCA S.5.3.3. In addition, it is important to point out that the actual decision-maker in this instance – the NWMB – was fully aware of the requirements of NLCA S.5.3.3 at the time it made its NQL decisions.

#### **The NQL’s in question meet the NLCA’s justification standard**

Regarding your third point, the NWMB agrees that the NQL’s place further limitations – beyond those imposed by the TAH’s – on the harvesting of polar bears by Inuit. However, the Board disagrees with your contention that the NQL’s go beyond what conservation would require.

Pursuant to NLCA S.5.3.3(a), the NWMB’s NQL decisions may limit Inuit harvesting only to the extent necessary to effect a valid conservation purpose. The term “*conservation*” is deliberately not defined by the NLCA. The NWMB is confident that, in

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<sup>1</sup> In fact, one commentator has reported: “*It is not clear why this prohibition was not included in the terms of the Agreement itself, but it has been reported that this was an oversight. Apparently, the parties simply forgot to include it in the Agreement language that was finally negotiated. Rather than reopen deliberations on this language, the parties agreed to append this provision to the Agreement as a Resolution.*” See Donald C. Baur, *Reconciling the Legal Mechanisms to Protect and Manage Polar Bears under United States Laws and the Agreement for the Conservation of Polar Bears* (Washington, 1993) at 58.

making its NQL decisions, it exercised its discretion appropriately and in full compliance with NLCA Sections 5.1.2, 5.1.3, 5.1.4, 5.1.5, 5.3.3, 5.6.48, 5.6.50 and 5.6.51.

### **Preliminary factors which the NWMB took into account in making its decisions**

Your letter asks the NWMB to provide its reasons for these NQL decisions. First of all, the NWMB took into account:

- the extensive participation of the GN, NTI and NWMB staff (through the Polar Bear MOU Working Group) in the development and delivery of the costly and comprehensive consultations that were carried out in 2003 and 2004;
- the broad participation of the GN, NTI, NWMB staff, RWOs and HTOs in the development of the MOUs; and
- the written endorsement of the MOUs, including the NQL's, by every RWO and almost all the HTOs in Nunavut.<sup>2</sup>

These are crucial and practical factors that the NWMB relied upon to reasonably assure itself that, at a minimum, all of the co-management partners had been properly informed of any proposed limitations, and had had sufficient opportunity to make their views known. In this particular case, the signatures of the HTOs and the RWOs on the MOUs also provided reasonable evidence that the affected harvesters agreed to the limitations.

In fact, prominent wording on the cover page of each MOU stated in clear and concise language that "...*this MOU shall, where appropriate, constitute recommendations for consideration by the NWMB.*" Thus, the NWMB reasonably understood that the signatories to the MOU - the GN, the RWOs and the HTOs - were actively recommending the TAH's and NQL's in the document for the Board's consideration.

### **The reason for the first NQL decision**

With respect to NQL decision no. 1 ("*The season of harvest for polar bears shall be from July 1<sup>st</sup> of one year to June 30<sup>th</sup> of the following year*"), this was, in fact, a removal of existing seasonal limitations. The NWMB is of the view that seasonal harvesting limitations for polar bears do not effect a valid conservation purpose.

### **The reasons for the second NQL decision**

With respect to NQL decision no. 2 ("*No person shall harvest a female polar bear that is accompanied by a bear that is or appears to be under three years of age*"), this is an affirmation of the existing NQL.

Considering that:

- The MOUs contain a holistic and integrated set of components for wildlife management,
- Nunavut's polar bear management system has for some time, and for sound reasons, supported male selective harvests,
- necessary TAH's already prevent many harvesters from taking even one bear,

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<sup>2</sup> The Ekaluktutiak, Spence Bay and Amarok HTOs did not sign the M'Clintock Channel and Davis Strait MOUs until sometime after the NWMB made its NQL decisions. However, their reasons for not signing were unrelated to the NQL's.



- polar bears have relatively low reproductive rates,
- the harvest of a mother bear would likely result in the deaths of other members of the family group, and
- harvesters are permitted to otherwise harvest females and (subject to reasonable restrictions) bears under three years of age,

the NWMB is of the view that this restriction limits Inuit harvesting only to the extent necessary to effect the valid purpose of preserving vital, healthy polar bear populations capable of sustaining harvesting needs as defined in NLCA Article 5.

### **The reasons for the third NQL decision**

With respect to NQL decision no. 3 (“*No person shall harvest a polar bear that is under three years of age unless (a) it appears to be abandoned by its mother; (b) the harvest is authorized by an exemption permit; or (c) its mother was killed as an emergency kill... and there is little likelihood of it surviving*”), this restriction is less limiting than the current regulation. The purpose of the NQL is to attempt to ensure that no other member of the family group is harvested unless the mother is gone or the harvester has obtained an exemption permit.

Considering that:

- The MOUs contain a holistic and integrated set of components for wildlife management,
- Nunavut’s polar bear management system has for some time, and for sound reasons, supported male selective harvests,
- necessary TAH’s already prevent many harvesters from taking even one bear,
- polar bears have relatively low reproductive rates,
- an attempt to harvest a young bear accompanied by its mother could reasonably result in the additional wounding or death of the mother or another member of the family group, and
- harvesters are still permitted – as part of this NQL - to harvest bears under three years of age,

the NWMB is of the view that this restriction limits Inuit harvesting only to the extent necessary to effect the valid purpose of preserving vital, healthy polar bear populations capable of sustaining harvesting needs as defined in NLCA Article 5.

### **The reasons for the fourth NQL decision**

With respect to NQL decision no. 4 (“*No person shall harvest a female polar bear that is in a den or that is constructing a den*”), this is an affirmation of the existing NQL. The NWMB reasonably believes that a female polar bear constructing a den will, in many cases, be pregnant, and a female polar bear already occupying a den may either be pregnant or actually have one or more cubs.

Considering that:

- The MOUs contain a holistic and integrated set of components for wildlife management,
- Nunavut’s polar bear management system has for some time, and for sound reasons, supported male selective harvests,

- necessary TAH's already prevent many harvesters from taking even one bear,
- polar bears have relatively low reproductive rates,
- the killing of a pregnant or mother bear in a den or constructing a den would likely result in the deaths of other members of the family group, and would necessarily result in the deaths of all members of the potential family group, and
- harvesters are permitted to otherwise harvest female polar bears,

the NWMB is of the view that this restriction limits Inuit harvesting only to the extent necessary to effect the valid purpose of preserving vital, healthy polar bear populations capable of sustaining harvesting needs as defined in NLCA Article 5.

**NTI has had repeated opportunities to convey its concerns**

With respect to your fourth and fifth points, the NWMB disagrees with your contention that NTI was prevented from having a full hearing of its concerns because of the actions of the Board and the Minister. On the contrary, not once during three years of participation on the Polar Bear MOU Working Group, two years of expensive consultations, several iterations of the MOUs, and nine quarterly NWMB meetings (31 to 39), did NTI mention concerns regarding these NQL's, although it had any number of chances to do so.

Furthermore, you will recall that the NWMB invited both the GN and NTI, in a letter dated April 21<sup>st</sup> 2004, to join the Board in organizing an independent review of Nunavut's polar bear management system:

*"Such a review – carried out on behalf of all the co-management partners – would provide a necessary critique of both the strengths and weaknesses of the current methods for determining restrictions on polar bear harvests within Nunavut. This, in turn, could lead to the development of a simpler, more straightforward management approach that engenders greater understanding and support from the communities."*

Following an initial meeting of the parties shortly thereafter, the NWMB prepared an *Outline of Terms of Reference for Polar Bear Management*, and sent it to the senior NTI and GN officials who had attended the meeting. Approximately nine months later, the Board is still awaiting a reply.

The facts on this particular point are incontrovertible: NTI repeatedly had full opportunity to raise its concerns regarding these NQL's with the MOU Working Group, RWOs, HTOs, and directly with the NWMB. It did not do so, at least with respect to the NWMB.

**Conclusion**

Richard, besides raising other concerns, your letter makes two particularly serious allegations with respect to the NWMB – first, that the Board's recent NQL decisions do not meet the NLCA's justification standard, and secondly, that actions of the NWMB and the Minister did not permit NTI to have a full hearing of its concerns relating to those NQL's. Clearly, the NWMB disagrees on both counts.



Nevertheless, as you know, the NWMB has the authority to modify or remove NQL's from time to time and as circumstances require – and will exercise that authority whenever the Board considers it necessary. Even though it ought to have done so earlier, should NTI still wish to make a case before the NWMB for the modification or removal of the three NQL's, the Board is prepared to receive your written and oral submissions.

However, please note that the NWMB is expecting to receive recommendations, within the next few months, arising from the work of the Nunavut Wildlife Legislation Working Group, concerning the development of proposed Orders and Regulations under the 2003 *Wildlife Act*. Those recommendations will be concerning a number of harvesting limitations, and may address the NQL's in question. Accordingly, the Board would not be prepared to make any decisions until after it has received and considered those recommendations.

Yours sincerely,



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Jim Noble  
Chief Operating Officer  
Nunavut Wildlife Management Board

- cc. Simon Awa, Deputy Minister, Department of Environment, Government of Nunavut;  
Joannie Ikkidluak, Chairperson of the Qikiqtaaluk Wildlife Board;  
David Aksawnee, Chairperson of the Kivalliq Wildlife Board; and  
Phillip Kadlun, Chairperson of the Kitikmeot Hunters and Trappers Association