


1. There is no legal impediment to this fishery proceeding in 2009 without any further Board decision. As the Board notes in its September 22 2008 letter, the fact that the Board has not altered or removed its 2005 decision in the past three seasons “has not hindered the community of Pangnirtung from continuing its 2,000 kg commercial char harvest each year, nor from continuing its traditional subsistence harvest every year”. While NTI continues to regard the Board’s 2005 decision as invalid, the absence of a valid NWMB decision does not impede the fishery. NTI’s requests that the Board replace its 2005 decision with a decision whether or not a TAH is justified have been based on the understanding that adequate time and information would be provided for the making of the Board’s further decision. Until sufficient time and information are provided, NTI must support maintaining the status quo for 2009 rather than setting a TAH and BNL. (If, however, any further decision is made, it remains NTI’s position that the Board should replace the 2005 decision with the decision that no TAH is justified.)
2. The Board did not write a January 23 2009 letter informing NTI or DFO that it intends to hold a TAH hearing this spring. Rather, the Board delivered a previously unsent September 22, 2008 letter to NTI and DFO on that day after the conclusion of a conference call initiated by DFO in which the parties, including the NWMB’s representative, agreed to discuss a non-TAH approach with the community. The Board’s May 13 letter does not acknowledge the significance of this call, NTI’s follow-up February 16 letter, or the lack of any Board response to NTI’s February 16 letter, when assessing the reasonableness of the parties’ expectations as to how the Pangnirtung fishery will be managed in 2009.
3. NTI did not receive the Board’s Rules for the Pangnirtung hearing until NTI received notice of the hearing; the Rules therefore did not assist NTI to establish reasonable expectations for the main features of this hearing process. The NWMB did not consult NTI in the preparation of the Rules, or seek a response to their issuance. Such rules are of course subject to the requirements of procedural fairness and the duty to consult.
4. In response to the Board’s assurance that the Board’s 2009 TAH decision will be made on the basis of the “best available information”, NTI notes as follows:
 - a. Neither the Board nor DFO has provided any information relevant to the conservation justification for a TAH under the NLCA after 2005;
 - b. DFO’s May 12 letter leaves in doubt whether DFO is proposing a TAH for 2009 and whether DFO accepts the responsibility to furnish the NWMB with the justification information and rationale that the affected parties may expect the Board to require (and, to

repeat for the sake of clarity, NTI is not proposing a TAH for 2009);

- c. It is of grave concern to NTI that DFO states that it will not be ready on June 2 to respond to NTI's proposal for a non-TAH approach. This could effectively remove from the Board's consideration the only non-TAH management option for this fishery that all parties appear to consider NLCA-compliant. In NTI's submission, this new factor alone is reason for the Board to reconsider going forward with the hearing on June 2;
 - d. NTI objects to the Board's consideration of any justification information at the hearing not provided to the parties by May 25, on the basis that NTI's representatives will have received inadequate time to consider it, formulate questions, and respond;
 - e. In light of the legal opinion that the Board circulated recently regarding the basis for the harvest data that underlies the striking of a BNL, NTI assumes that the Board will strike any BNL on the basis of the July 8 2008 *Sample Calculation* option that considers commercial harvest levels. While NTI agrees with the opinion's conclusion that the Inuit harvest data supporting a BNL must include commercial harvest levels, NTI has not had sufficient time to analyze the *Sample Calculation* since its receipt on April 23, 2009. In particular, NTI requests that the Board provide NTI with two weeks to respond to any post-hearing written submission on these issues that DFO may provide. The HTO may also require more time to respond to the *Sample Calculation*.
5. No NTI representative received a copy of the March 30 2009 e-mail respecting Board jurisdiction over trade in wildlife products that your May 13 letter quotes. The April 8-14 email exchange copied in the Appendix to this letter confirms that NTI had good reason to believe prior to receipt of the Board's May 13 letter that the Board had not responded to NTI's request.

In light of these considerations, NTI again requests that the Board postpone any decision hearing on this issue at least until adequate information and adequate preparation time can be provided. However, based on the Board's May 13 letter, NTI will assume that the hearing will proceed on June 2 unless the Board notifies the parties otherwise.

Sincerely,


RN - Raymond Ningeocheak,

Vice-President of Finance and Executive Member responsible for Wildlife
Nunavut Tunngavik Incorporated

CC. Peterosie Qappik – Pagnirtung HTO
Manasa Evic – Pagnirtung Fisheries Ltd.
Jayko Aooloo - Qikiqtaaluk Wildlife Board
Eric Kan – DFO Iqaluit
Stefan Romberg – DFO Ottawa
Wayne Lynch – Government of Nunavut, Iqaluit
Gabriel Nirlungayuk – Nunavut Tunngavik Inc., Rankin Inlet
Richard Connelly – Nunavut Inuit Wildlife Secretariat, for distribution to all
Nunavut Hunters and Trappers Organizations, the Kivalliq Wildlife Board and the
Kitikmeot Regional Wildlife Board

APPENDIX TO LETTER FROM NTI TO NWMB 27 May 09

From: Glenn Williams [mailto:gwilliams@tunngavik.com]
Sent: April 14, 2009 4:39 PM
To: Jim Noble
Cc: mdeca@decalaw.ca; Gabriel Nirlungayuk; Richard Spaulding
Subject: RE: Polar Bear NDF

Jim:

When NWMB jurisdiction is not apparent on the face of the NLCA it is proper for any interested party to ask the Board to state its position. The NTI request for an NWMB position was properly made on the record at NWMB meeting #59 on 26 March 09. It was indicated by NWMB staff at the time that this was a question of jurisdiction that was being reviewed and that a NWMB position on the CWS request for a decision of the draft NDF for polar bears would be forthcoming. NTI has since followed up with an email request for a response on 8 April 2009. There is no presumption under the NLCA that the NWMB has jurisdiction over any particular issue. To date, there is no response from the NWMB. If this continues to be the case, NTI will have to respond to the Government of Canada that it asked the NWMB on March 26 for the Board's position but did not receive a response.

Glenn

From: Jim Noble [mailto:jnoble@nwmb.com]
Sent: Thursday, April 09, 2009 4:22 PM

To: Glenn Williams
Cc: mdeca@decalaw.ca; Gabriel Nirlungayuk; Richard Spaulding
Subject: Polar Bear NDF

Hi Glenn,

The NWMB is prepared to answer NTI's question about the jurisdictional basis for the Board's role in addressing the NDF under CITES, but requests that the NTI inquiry be sent through a formal letter, preferably from a senior NTI official. This would be in keeping with other recent inquiries from NTI regarding concerns about the NWMB's NLCA authority (for instance, levels of harvesting and humane harvesting). In addition, the NWMB is under the impression that NTI is skeptical in this instance (as it was in the two examples I just mentioned) that the NWMB has any jurisdiction to involve itself in the NDF matter. If I am correct about that, the Board would appreciate if the letter could at least briefly set out NTI's reasons for its skepticism. Although I can't make any promises, I will do my best to provide you with an NWMB response within two working days of receipt of the requested letter. Thanks.

Jim

From: Glenn Williams [mailto:gwilliams@tunngavik.com]
Sent: April 8, 2009 3:46 PM
To: Jim Noble
Cc: Richard Spaulding; Gabriel Nirlungayuk
Subject: Polar Bear NDF

Jim;

Further to the question that I asked at the NWMB's regular meeting #59, NTI requests that the NWMB inform NTI as soon as possible whether the Board views itself as having a role in the making of an NDF under CITES – whether a decision role, a recommendation role, or something else. If so, please indicate what NLCA provision(s) the NWMB relies on for its view. If the NWMB does see a role for it under the NLCA, please indicate also whether the Board has exercised the role previously and if so, in what cases.

NTI plans to respond in writing by next Thursday April 16 to CWS' request that NTI indicate how Nunavut Inuit should be consulted on this issue. Please provide your answer to this request no later than Tuesday April 14 so that NTI can consider it when writing to CWS.

Thanks
Glenn Williams

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