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Tammaqtailinahuarniriit anngutighat atuqhugit Inuit qaujimajatuqangillu ilihimianni ilitquhiannin
Conserving wildlife through the application of Inuit Qaujimajatuqangit and scientific knowledge

FAXED
Nov 20/06
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CONFIDENTIAL

November 20, 2006

Hon. Paul Okalik
Premier of Nunavut

Hon. Patterk Netser
Minister of Environment
Government of Nunavut

Paul Kaludjak
President
Nunavut Tunngavik Inc.

Phillip Kadlun
Chairperson
Kitikmeot Hunters and
Trappers Association

David Aksawnee
Chairperson
Kivalliq Wildlife Board

Jayco Alooloo
Vice-chairperson
Qikiqtaaluk Wildlife Board

Re: Outstanding Issues for Special Meeting No. 12

Dear Colleagues:

This letter is in response to recent correspondence from the Government of Nunavut (GN - letter dated November 14, 2006) and Nunavut Tunngavik Inc. (NTI - letter dated November 15, 2006); regarding a number of issues that remain outstanding from Special Meeting No. 12 of the Nunavut Wildlife Management Board (NWMB or Board). Those issues are:

- *Repealed Wildlife Regulations*;
- Revised Muskox Total Allowable Harvests (TAHs) and Non-Quota Limitations (NQLs);
- NQLs that the GN maintains are currently in force, and proposes to continue without modification under the new Regulations and Orders;
- NQLs not previously recognized as such by the GN, but that the GN – upon reflection – now agrees are NQLs; and
- NQL decisions postponed by the NWMB at its October 26th 2006 decision-making session.

For reasons of fairness and efficiency, the NWMB has decided not to publicly consider or decide on any of these issues until all preliminary discussions, written submissions and written responses regarding them have been completed. Only after

all of those steps have been achieved will the Board hold a third - and final - session of Special Meeting No. 12.

Repealed Wildlife Regulations

Although both the GN and NTI have indicated that they would like the public consideration of the *Repealed Wildlife Regulations* to proceed as soon as possible, their positions as to how to proceed appear to be at odds with one another.

Briefly stated, the GN position is the following:

"The repeal of existing regulations and the quota and non-quota limitations in those regulations is premised on the assumption that the package of regulations and orders submitted for approval be enacted to replace them. If the NWMB does not approve certain non-quota limitations (NQL's) and total allowable harvest levels (TAH's), the provisions to be repealed may have to be adjusted accordingly... [Justifications for Repealing Existing Regulations under the Wildlife Act, October 22, 2006]"

Also briefly stated, the NTI position is the following:

"...it is critical that when the Board decides whether to accept the replacement limitations proposed in the other draft Regulations, the Board do so in the context of deciding to remove related previous limitations as proposed in this draft Regulation...in most circumstances, where the Government has proposed a new limitation on harvest methods and repeal of a previous, related limitation, it would be unfair if the Board decided to reject the new limitation but maintain the previous one, without giving affected parties notice and an opportunity to be heard on the issue whether the previous limitation is justified under the NLCA. In such circumstances, the fair process is for the Board to decide whether to accept or reject the proposed new limitation, removing the previous limitation in either case, or give notice to the parties that it wishes to consider a different proposal [NTI letter, November 15, 2006]."

One aspect of NTI's position appears to be that all currently-existing limitations must either be removed or be justified under Section 5.3.3 of the *Nunavut Land Claims Agreement* (NLCA) – whether or not the NWMB approves related new limitations. In addition, any modification contemplated by the Board - either to an existing limitation or to a proposed new or modified limitation - must be treated as a new proposal subject to notice, and an opportunity for written and oral submissions. The potential human, capital and time cost implications of NTI's position are considerable.

Revised Muskox TAHs and NQLs

Again, both the GN and NTI have indicated that they would like the public consideration of the Muskox TAHs and NQLs to proceed as soon as possible. However, they disagree as to the procedure to be followed.

Briefly stated, the NTI position is the following:

"...as a condition of dealing with this item in session three, the Board allow NTI and the HTOs/RWOs thirty days following the close of the third session of the Meeting to file any follow-up written submissions on the GN's materials, before the Board makes related decisions [NTI letter, November 15, 2006]."

Also briefly stated, the GN position is the following:

"...NTI would have adequate time in the weeks between receipt of the muskoxen materials and the date of the hearing to meet any reasonable fairness concerns. Therefore, we would suggest that it be entirely proper to have the item on the agenda with no written follow up period [GN e-mail, November 17, 2006]."

NQLs that the GN maintains are currently in force

As you are aware, there were originally six NQLs placed on this list during Session 2 of Special Meeting No. 12. Responding to an NWMB request at that session, lawyers for the GN, NTI and the NWMB have recently reached agreement on the appropriate classification of two of those NQLs: section 7 of the *Harvesting Regulations* is a new limitation, and section 1 of the *Open Seasons Order* includes an existing, un-modified limitation with respect to gyrfalcon. Although the lawyers have made progress in their attempts to reach agreement on the classification of the four remaining NQLs, they require more time to complete their discussions. Those NQLs are: section 10(3) of the *Harvesting Regulations*, and sections 20, 21(2) and 21(3) of the *Licences and Tags Regulations*.

Even though it appears that agreement on the classification of all the NQLs is achievable, the GN and NTI remain far apart in their views regarding the treatment by the NWMB of those NQLs that the GN proposes to continue without modification under the new Regulations and Orders.

Briefly stated, the GN position is the following:

"...5.6.51 is a valid provision of the NLCA that we cannot ignore, and can be relied upon as a basis for continuing existing restrictions. In the event a present restriction is proposed to continue, we do not have to provide a justification for this, and the NWMB does not have to make a decision... [GN letter, November 14, 2006]."

Also briefly stated, the NTI position is that each limitation being publicly considered at Special Meeting No. 12 for inclusion in the new Wildlife Regulations and Orders - whether falling within NLCA S.5.6.51 or not - requires an NWMB decision that is subject to one or more of the tests under NLCA S.5.3.3 [Discussions among NTI, GN and NWMB counsel, November 16, 2006].

As a result, NTI proposes that the NWMB:

- “invite written submissions to be filed by the parties by December 1 as to the appropriate procedure for the Board to follow in order to consider and decide on these Agenda items...; ”
- Decide, at or before the commencement of the third session and having considered the submissions received, how the Board will deal with these items;
- Notify the parties of its decision, and
- Allow any party such further time as the party reasonably requires in order to participate fully in the process that the Board decides upon [NTI letter, November 15, 2006].”

Limitations not previously recognized as NQLs by the GN

At its decision-making session on October 26th 2006, the NWMB made (initial) decisions to reject six proposed (non-contentious) limitations because the GN had not provided justifications for them. Those limitations are: sections 4 and 8 of the *Prescribed Matters Regulations*, and sections 3(1)(c),(e),(g) and (i), 5(1)(a),(f) and (h), 43(2)(b) and (c), and 46(1) of the *Licences and Tags Regulations*. The GN has since indicated that it is preparing a list of provisions which it now agrees are NQLs, and is providing justifications for them. It recommends that these be added to the agenda for Session 3 [GN letter, November 14, 2006].

NQL decisions postponed by the NWMB

At its decision-making session on October 26th 2006, the NWMB chose to postpone making decisions with respect to several proposed (non-contentious) limitations. The GN has since recommended that five of those limitations be added to the agenda for Session 3. They are sections 8(3)(a)/8(4) and 10(1) of the *Harvesting Regulations*, sections 1/2 and 4 of the *Game Harvesting and Possession Limits Order*, and section 5 of the *Prescribed Matters Regulations*. With respect to sections 10(1) of the *Harvesting Regulations* and 1/2 and 4 of the *Game Harvesting and Possession Limits Order*, the GN proposes that legal counsel for the GN, NTI and the NWMB first meet to discuss the application of these sections to NLCA Article 40 harvesters and NLCA S.5.7.34(a) assignees. With respect to section 5 of the *Prescribed Matters Regulations*, the GN proposes to submit a revised version of the provision prior to Session 3 [GN letter, November 14, 2006].

NWMB Determinations

In making its determinations with respect to the five issues described above, the NWMB has taken into account the views expressed by both the GN and NTI, as well as the following considerations:

- The participants at Special Meeting No. 12 deserve a reasonable opportunity to complete discussions designed to achieve agreement on the status of harvesting limitations under consideration at the Meeting;

- Each participant at Special Meeting No. 12 deserves a reasonable opportunity to provide written and oral submissions – including responses - regarding the establishment, modification or removal of harvesting limitations;
- The NWMB has a long list of other important wildlife management issues to consider and, in a number of instances, has had to postpone that consideration because of the tremendous amount of Board time and attention devoted to Special Meeting No. 12, particularly during the four-month period from August to November 2006; and
- The NWMB has already held two costly week-long sessions to publicly consider the draft harvesting limitations proposed under the new Wildlife Regulations and Orders. The Board is not in a position to devote substantial additional human, capital and time resources towards this process. As a result, it would be unreasonable for the NWMB to continue the Special Meeting No. 12 process indefinitely.

Accordingly, the NWMB has decided not to publicly consider or decide on any of the five issues until all preliminary discussions, written submissions and written responses regarding them have been completed. Instead, the Board has made the following determinations, designed to help ensure that only one further meeting session will need to be held.

1. With respect to the *Repealed Wildlife Regulations*, the NWMB is inviting supplementary written (translated) submissions, by no later than 5:00 PM on December 18th 2006, from the GN and NTI on their positions regarding both the public consideration of the currently-existing limitations in the old Wildlife Regulations, and the resulting decision-making by the NWMB. Written (translated) response submissions from both parties and the Regional Wildlife Organizations (RWOs) are also welcome by no later than 5:00 PM on January 29th 2007.
2. With respect to the revised Muskox TAHs and NQLs, the NWMB is inviting the GN to file all its initial written (translated) submissions by no later than 5:00 PM on December 18th 2006. The NWMB further invites written (translated) response submissions from NTI and the RWOs by no later than 5:00 PM on January 29th 2007.
3. With respect to NQLs that the GN maintains are currently in force, the NWMB has instructed its counsel to make himself available for any further legal discussions with the GN and NTI lawyers, aimed at reaching agreement on the classification of the four NQLs still in dispute.

Whatever the outcome of those discussions, there is already agreement that at least one of the six NQLs is currently in force, that the GN is not proposing any modifications to it, and that it falls within NLCA S.5.6.51. Accordingly, the NWMB is inviting further written (translated) submissions, by no later than 5:00 PM on

December 18th 2006, from the GN, NTI and the RWOs on their positions regarding the appropriate procedure for the Board to follow in order to consider and decide on provisions falling within NLCA S.5.6.51. Written (translated) response submissions from all parties are also welcome by no later than 5:00 PM on January 29th 2007.

4. With respect to limitations not previously recognized as NQLs by the GN, the NWMB is inviting the GN to file, as supplementary (translated) submissions, the list and justifications for limitations that it now agrees are NQLs, as well as a list and reasons for those limitations that it does not consider to be NQLs, by no later than 5:00 PM on December 18th 2006. The NWMB further invites written (translated) response submissions from NTI and the RWOs by no later than 5:00 PM on January 29th 2007.
5. With respect to NQL decisions postponed by the NWMB, the Board has instructed its counsel to make himself available for any further legal discussions with the GN and NTI lawyers, concerning any of the five limitations cited by the GN.

In addition, the NWMB is inviting the GN to file supplementary submissions concerning any/all of the five limitations, by no later than 5:00 PM on December 18th 2006. If the GN files submissions, the NWMB further invites written (translated) response submissions from NTI and the RWOs by no later than 5:00 PM on January 29th 2007.

Conclusion

No further written submissions for Special Meeting No. 12 will be accepted by the NWMB beyond January 29th 2007. After considering all of the written submissions received for the five issues, the NWMB will decide how to proceed, and will schedule the third and final session of Special Meeting No. 12.

It is appropriate that the GN's November 14th letter, NTI's November 15th letter and this letter be included as materials filed for Special Meeting No. 12. Accordingly, the NWMB requests that both the GN and NTI forward Inuktitut translations of their letters to the Board, as soon as possible.

Finally, from December 12th to 14th, 2006, the NWMB is proceeding as scheduled with its second confidential decision-making session for Special Meeting No. 12. Pursuant to NLCA S. 5.2.2, the Minister has the right to have an officer of his Department attend the meeting as a non-voting observer. Pursuant to NLCA S.5.2.3, each Designated Inuit Organization (DIO) appointing a member to the NWMB also has the right to have a technical advisor attend the meeting as a non-voting observer. The Board requests that, where a DIO does not send an employee as its technical advisor, the DIO, or the observer attending on behalf of that DIO, deliver to the NWMB - prior to the commencement of the confidential decision-making session - a signed and dated authorization from the DIO.

Please do not hesitate to contact the NWMB if you have questions or concerns regarding this letter.

Yours sincerely,



Joe Tigullaraq
Chairperson

c.c. Terry Audla, Executive Director, Qikiqtani Inuit Association
Fred Elias, Executive Director, Kitikmeot Inuit Association
Madeline Kaludjak, A/Executive Director, Kivalliq Inuit Association
Chairpersons, Nunavut Hunters and Trappers Organizations



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Nunavunmi Anngutighatigut Aulapkaaijtkut Katimajiat
Nunavut Wildlife Management Board

Tammaqtailinahuaririit anngutighat atuqhugit Inuit qaujimajatuqangillu ilihmaniillu ilitquhiannin
Conserving wildlife through the application of Inuit Qaujimajatuqangit and scientific knowledge

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20, 2006

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