

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

April 11, 2007

Joe Adla Kunuk
Chief Executive Officer
Nunavut Tunngavik Incorporated

FAXED
Apr. 11/07
to all.
AA

Re: Requests from Nunavut Tunngavik Inc. to place section 11 of the draft *Harvesting Regulations* and section 5.3.3(b) of the *Nunavut Land Claims Agreement* on the agenda for Session C of Special Meeting No. 12

Dear Mr. Kunuk:

NTI's concerns and requests

This letter is in response to two Nunavut Tunngavik Inc. (NTI) documents - *NTI Reply Re Polar Bear NQLs* - dated January 29th 2007, as well as an accompanying letter – *Re: Third Session, Special Meeting Twelve* - also dated January 29th, but delivered to the Nunavut Wildlife Management Board (NWMB or Board) on February 12th 2007.

In its two documents, NTI makes the following points:

1. With respect to the proposed polar bear non-quota limitations (NQLs) in S. 11 of the draft *Harvesting Regulations*:
 - (a) The NWMB's decision must be made pursuant to S.5.3.8 of the *Nunavut Land Claims Agreement* (NLCA). The justification for this position is that this "...is the only practical manner to proceed in such cases [revisiting a previous decision respecting an NQL]. Otherwise, among other considerations, the party proposing establishment (following a previous decision not to establish), removal or modification – whether the party is a DIO, individual or Government – can have no assurance that the Minister who may be persuaded of the case for establishment, removal or modification will have any opportunity to exercise the role that the Minister is provided in the NLCA."
 - (b) The NWMB is requested to place the NQLs on the Agenda for Session C of Special Meeting No. 12, so that the Board may hear from NTI - and other parties in response – concerning the following three points:

- “i) *The implications of the policy (as opposed to legally mandatory) nature of the flexible quota system. NTI requested further time to consider this issue at Session 2.*
 - ii) *The basis for HTO/RWO consent to the 2004 MOUs in relation to these NQLs. NTI is concerned that there may continue to be a misunderstanding on the part of the NWMB regarding NTI's position on this point.*
 - iii) *The basis for the GN's assertion at Session 2 that if the prohibition against harvesting family groups were removed, TAH levels would have to be reduced in order to maintain sustainable harvests. This assertion was sufficiently new that NTI did not have full opportunity to consider it and respond in Session 2.”*
- (c) In the NWMB's November 20th 2006 letter, page 4, the Board granted a similar request from the GN respecting a number of NQLs.
2. With respect to the interpretation of NLCA S.5.3.3(b):
- (a) The NWMB's legal counsel appeared to dismiss, without serious consideration, NTI's written and oral submissions at Session B of Special Meeting No. 12; and
 - (b) Prior to Session C, the NWMB and the GN are requested to provide the parties with written reasons for their contrary interpretations of S.5.3.3(b), including a full response to NTI's analysis – and NTI requests that S.5.3.3(b) be placed on the agenda for Session C as a distinct item.

The NWMB's response

After careful consideration of all of NTI's points, the NWMB regretfully declines to place either S.11 of the *Harvesting Regulations* or NLCA S.5.3.3(b) on the agenda for Session C of Special Meeting No. 12. The NWMB believes it is neither necessary nor advisable to re-open the consideration of the polar bear NQLs or the NWMB's jurisdiction with respect to humane harvesting NQLs within the current Special Meeting No. 12 process. Fair and thorough public examinations and considerations – by way of a public hearing - were carried out with respect to the S.11 polar bear NQLs and the many NQLs that were justified either wholly or partially under S.5.3.3(b). Fair and well-considered decisions were then made by the NWMB. The Board will release those decisions and its reasons in the near future.

You will recall that the NWMB, in a November 20th 2006 letter, notified NTI, the Government of Nunavut (GN), the three Regional Wildlife Organizations (RWOs), the three Regional Inuit Associations and all of Nunavut's Hunters and Trappers Organizations that it would be “*proceeding as scheduled with its second confidential decision-making session for Special Meeting No. 12*”, from December 12th to 14th 2006.

The first confidential decision-making session – held on October 26th 2006 and attended by an NTI observer - was with respect to the “*non-contentious*” harvesting limitations publicly examined at Session A of Special Meeting No. 12, held from September 25th to 28th 2006. The second decision-making session – also attended by an NTI observer, who expressed no procedural or substantive concerns - was devoted to making decisions on the “*contentious*” harvesting limitations primarily examined during Session B of Special Meeting No. 12, held from October 22nd to 25th 2006. Among those contentious limitations were the S.11 polar bear NQLs and a number of NQLs proposed to be justified either wholly or partially under S.5.3.3(b). Specific written submission delivery timelines – including with respect to replies/responses - applied to both Sessions A and B, pursuant to written procedures provided by the NWMB to NTI, the GN and the RWOs on July 14th 2006.

The NWMB received detailed written initial and response submissions from NTI and the GN regarding the polar bear NQLs, within the timelines set out in its meeting procedures. As to NLCA S.5.3.3(b), although that particular justification for humane harvesting limitations was first raised in April 2006, NTI did not file a response submission until approximately six months later, on October 23rd 2006 – which submission the NWMB accepted. The Board then received further detailed oral submissions from the GN and NTI at Session B concerning both S.11 and S.5.3.3(b).

The Board held its second confidential decision-making session in December, as scheduled. There, it made decisions with respect to the polar bear and humane harvesting NQLs, taking into careful account all of the written and oral submissions received. NTI was provided notice of all these steps. It duly filed written submissions, participated fully in the lengthy Session B hearing, and attended the in-camera decision-making session. Not until two months later did NTI deliver its letter requesting that the NWMB re-open these matters.

With respect to the specific points raised by NTI in its two recent documents, and set out on pages 1 and 2 of this letter, the NWMB provides the following brief responses:

- 1(a) The NWMB is satisfied that it is unnecessary to make an NLCA S.5.3.8 to 5.3.15 decision (NLCA decision) in order to not remove polar bear NQLs which the Board and the Minister previously decided to approve pursuant to the terms of the NLCA. NTI requested and received, in the context of Session B of Special Meeting No. 12, an opportunity to make the case for removal of the NQLs. Session B constituted a full and thorough public hearing. Because the NWMB was not convinced by NTI’s arguments (which were well developed and carefully presented), there was no need to modify or remove the original NQL approval decision. Nevertheless, the Board did pass a specific resolution, accompanied by reasons, based upon all of the polar bear NQL submissions. The NWMB intends to

release that resolution – which constitutes a Board decision - at the same time as it forwards all of its Special Meeting No. 12 NLCA decisions to the Minister of Environment – shortly after holding Session C and completing its third confidential decision-making session.

With respect to the argument that, without an NLCA decision, NTI has no assurance that the Minister will have an opportunity to exercise the role provided for him in the NLCA, the Board's response is two-fold:

- (i) These particular NQLs are in the draft *Harvesting Regulations* precisely because the Minister is exercising the role provided for him in NLCA S.5.3.23 – to implement a final NWMB decision accepted by the Minister; and
- (ii) The Minister has the authority to refer any wildlife management matter to the NWMB as a ministerial management initiative, pursuant to NLCA S.5.3.25. When he does so, the Board must respond expeditiously with a decision. Accordingly, if the Minister desires another NLCA decision on this issue, the NLCA provides him with the means to obtain it.

It is also relevant to point out that the Minister fully participated in the Session B hearing through his officials, including counsel.

- 1(b)i) The implications of the policy nature of the flexible quota system were discussed during Session B. All parties have been aware since the inception of the flexible quota system that it is not a part of Nunavut law.

As to NTI's request for "*further time to consider this issue at Session 2*", the following is a transcript of NTI counsel's remarks:

"...But it's possible that, in response to that, NTI would ask the opportunity to provide something in writing to the Board after this session, in a relatively short period of time, just to make sure that the Board has the benefit of our views on reflection rather than immediate response. I hesitate to do that, that I'm not suggesting that that would affect the Board's decision schedule in any way [page 438, lines 22 to 26 and page 438, lines 1 to 4] ...Simply pointing out that it hasn't considered this perspective before and would like the opportunity to reflect further and to provide something to the Board in writing following the wrap-up of today's session... [page 442, lines 19 to 23]"

Those remarks can not be reasonably interpreted to amount to a clear request for further time to consider this issue during Session B. They indicate the possibility that NTI may request an opportunity to provide further written submissions shortly after the close of Session B, and that those potential written submissions will not affect the NWMB's decision schedule.

In fact, NTI did not initiate a request or take any further action until it submitted its *NTI Reply Re Polar Bear NQLs* on January 30th 2007 - more than three months after the close of Session B, and approximately seven weeks following the NWMB's decision-making session attended without apparent concern by an NTI observer. Two weeks after providing that reply, on February 12th 2007, NTI submitted its request letter.

1(b)ii) The NWMB is confident that it understands NTI's position regarding the basis for HTO/RWO consent to the 2004 MOUs in relation to the polar bear NQLs. Please also be assured that the NWMB does not view the HTO/RWO signatures on the MOUs as evidence that directly contributes to the justification required under NLCA S.5.3.3. As indicated by the NWMB in its February 14th 2005 letter to NTI – located at Tab 65 of the *Binder for Special Meeting Number 12* - those signatures are among the preliminary factors which the NWMB took into account in making its decisions. Although the signatures provided the NWMB with reasonable evidence that the affected harvesters were consulted about, and agreed to, the limitations, the Board did not then - and does not now - treat those signatures as being among the reasons that justify the restriction of Inuit harvesting under NLCA S.5.3.3.

1(b)iii) The GN assertion referred to by NTI (page 460, lines 21 to 26) is not that TAH levels would have to be reduced if the prohibition on family groups were removed. Rather, the statement goes at least one hypothetical step beyond that - *"If the harvest was shifted from juvenile animals and senescent animals, females, to animals in prime reproductive age, the sustainability of a given harvest would be reduced, meaning we would have to adjust the TAH downward..."*

The NWMB does not believe it is necessary to further explore or test this particular GN hypothetical in order to make a decision on whether any or all of the Board's October 2004 polar bear NQL decisions deserve to be reversed.

It is also relevant to point out that the GN's oral submissions concerning the relationship between sex and age of the harvest and TAH levels were based upon their written materials. See, for instance, the GN's September 8th 2006 document at Tab 15 of the *Binder for Special Meeting Number 12*, pages 20 and 21: *"The TAH levels on polar bears are predicated on not harvesting young polar bears... The TAH levels on polar bears are predicated on not harvesting family groups... The TAH levels on polar bears are predicated on not harvesting denning females."*

1(c) The NWMB disagrees that, in its November 2006 letter, it granted a similar request from the GN. In that circumstance, the GN had initially denied that

particular non-contentious harvesting limitations were NQLs, and provided no justifications for them. Because there were no justifications, the NWMB rejected the NQLs. Shortly thereafter, the GN reversed its position with respect to certain of the harvesting limitations – agreeing that they are proposed NQLs, offering to provide justifications for them, and requesting that they be added to the agenda for Session C.

The NWMB fails to see how that circumstance is of the same nature or kind as NTI's request to re-open the consideration of contentious harvesting limitations that all parties agree are NQLs, that have had justifications since the outset, that were the subject of extensive written and oral submissions, and that were decided by the Board - after having taken account of those extensive submissions - approximately two months before NTI delivered its letter requesting that the NWMB re-open them.

- 2(a) The NWMB's legal counsel conducted himself properly during the NLCA S.5.3.3(b) discussion at Session B. It was not unreasonable for him to take the position that the Board's wildlife management jurisdiction includes authority over humane harvesting limitations. In fact, that position appears to have been shared by all parties during the development of the *Wildlife Act*, and during the development of the draft Wildlife Regulations and Orders by the Nunavut Wildlife Legislation Working Group . See, for instance, the NWMB's April 2003 approval of s. 75 of the *Wildlife Act* – which raised no objection from any party, including NTI.¹
- 2(b) Prior to and during Session B, both the GN and NTI filed and presented their evidence and justifications for and against the proposed humane harvesting limitations. In making its December 12th to 14th decisions with respect to those limitations, the NWMB maintained an open mind, and considered all of the justifications and evidence presented for and against each proposed restriction. The Board considered whether the evidence presented was reliable and persuasive enough to justify the limitation of an Inuit harvesting right or a non-Inuit harvesting privilege. It also considered what constituted an appropriate justification under the NLCA. The Board will shortly be releasing its decisions, and will provide reasons for those decisions. The NWMB is therefore satisfied that there is no need to place S.5.3.3(b) on the agenda for Session C as a distinct item.

The NWMB wishes to thank NTI for its dedicated participation in the Special Meeting No. 12 process throughout 2006 and into 2007. With NTI's continued participation and assistance, the Board looks forward to completing Special Meeting No. 12 in the next few months.

¹ *Wildlife Act* s.75: "Any person harvesting a wild animal shall respect the principles of Iliijaqsuittailiniq/Kimaitailinik and Sirliqsaaqtittittailiniq/Naklihaaktitihuiluhi."

Yours sincerely,



Joe Tigullaraq
Chairperson

c.c. Simon Awa, Deputy Minister of Environment;
Jayko Aooloo, Vice-Chairperson, Qikiqtaaluk Wildlife Board;
Michael Angutitauruq, Chairperson, Kitikmeot Hunters and Trappers Association;
David Aksawnee, Chairperson, Kivalliq Wildlife Board;
Chairpersons, Nunavut Hunters and Trappers Organizations