



## **2. Background**

On August 11<sup>th</sup> 2015, DFO submitted the Proposal in writing to the NWMB (attached to this letter as Appendix A), for initial consideration by the Board at its Regular Meeting No. 003-2015, held from September 23<sup>rd</sup> to 25<sup>th</sup> 2015. In the meantime, on September 17<sup>th</sup>, NTI filed correspondence with the Board (attached to this letter as Appendix B), urging the NWMB “...to make no decision on this proposal, as the Board does not have authority under the Nunavut Land Claims Agreement (NLCA) to make the decision requested.” The letter went on to set out NTI’s reasoning for its position, and asked that “...should the Board further consider making the proposed decision notwithstanding NTI’s objection, the Board first identify any NLCA provision(s) that, in the Board’s view, might authorize such a decision, state the Board’s detailed reasons for holding this view, and give all affected parties the opportunity to comment in writing on the Board’s reasons...”

After due consideration, the NWMB decided to write a letter to both DFO and Nattivak on October 9<sup>th</sup> 2015 (attached to this letter as Appendix C), seeking confirmation from each of them whether they wished to proceed with the Proposal to the Board, considering NTI’s recent correspondence and the points raised therein. On October 20<sup>th</sup>, DFO responded in writing, confirming that it wished to proceed, and on October 28<sup>th</sup>, Nattivak did the same (both letters attached as Appendices D and E to this letter).

After further consideration, the NWMB decided on December 2<sup>nd</sup> to proceed with the public hearing. The Board made its decision to deal with both issues in a single written hearing because it wishes to avoid any appearance of having made its mind up beforehand on either the jurisdictional question or the merits of the application, and also because it wishes to proceed in a timely manner and at a reasonable cost. As a practical matter, once all hearing submissions have been filed, the NWMB will first address the jurisdictional question, and – only if the Board rules that it does possess the necessary authority under the terms of the NLCA – will then address the merits of the application.

## **3. The NWMB’s authority to make a decision regarding approval of the Fishing Plan**

The NWMB understands this Proposal to describe a collaborative arrangement voluntarily entered into by DFO and Nattivak, and that the parties are only seeking approval by the Board of a mutually agreed upon plan for the management and protection of the char fishery resource located in Qammartalik Cove. The NWMB’s authority to make such a decision is set out in NLCA Subsection 5.2.34(d)(i):

*“In addition to its primary functions outlined in Section 5.2.33, the NWMB shall in its discretion perform the following functions related to management and protection of wildlife... (d) approve plans for (i) management... [and] protection... of particular wildlife...”*

NLCA Section 5.3.16 includes NWMB decisions made pursuant to Subsection 5.2.34(d) within the category of Board decisions that are subject to the NLCA Article 5 co-

jurisdictional (NWMB/Minister) decision-making process (NLCA Sections 5.3.17 to 5.3.23).

The NWMB will necessarily be required – in considering approval of the Fishing Plan - to determine whether the voluntary harvest level within the Fishing Plan satisfies the NLCA principles of conservation (Section 5.1.5). However, the Board has not been requested, is not required, and does not intend at this point in time to establish a level of total allowable harvest or basic needs level for the char stock in Qammartalik Cove.

#### **4. The filing of submissions**

Through this letter, the NWMB is extending an invitation to your department or organization to provide written submissions and supporting documentation, as follows:

- 1. NTI file written submissions and any supporting documentation with the NWMB, in English and Inuktitut, by no later than 5:00 p.m. (Iqaluit time) on January 22<sup>nd</sup> 2016:**
  - (i) supporting its position that the NWMB lacks the authority under the NLCA to make a decision on the Proposal, and**
  - (ii) notwithstanding its first position, regarding the merits of the Proposal.**
- 2. The Qikiqtaaluk Wildlife Board (QWB) and the Government of Nunavut Department of Environment file written submissions and any supporting documentation with the NWMB, in English and Inuktitut, by no later than 5:00 p.m. (Iqaluit time) on January 22<sup>nd</sup> 2016, regarding the merits of the Proposal.**
- 3. DFO, Nattivak, QWB and the Government of Nunavut Department of Environment file written reply submissions and any supporting documentation with the NWMB, in English and Inuktitut, by no later than 5:00 p.m. (Iqaluit time) on February 19<sup>th</sup> 2016, to NTI's written submissions and supporting documentation for its position that the NWMB lacks the authority under the NLCA to make a decision on the Proposal.**

**Unless persuasive written and translated reasons are provided to the Board for late filing, the NWMB will not consider materials during the hearing that are not filed on time.**

The hearing rules and a number of other documents comprising the best available information to date are available for download from the NWMB's website ([www.nwmb.com](http://www.nwmb.com)), or by contacting the NWMB at the following coordinates:

**NUNAVUT WILDLIFE MANAGEMENT BOARD**  
3<sup>rd</sup> Floor, Ikaluktuutiak Drive  
P.O. Box 1379, Iqaluit, NU, X0A 0H0  
Phone: (867) 975-7300  
Fax: (888) 421-9832  
E-Mail: [receptionist@nwmb.com](mailto:receptionist@nwmb.com)

Submissions and supporting documentation may be filed with the Board in person, by courier or by mail. They should be clearly marked as pertaining to the *NWMB Written Hearing Concerning the Qammaralik Cove Emerging Char Fishery Plan*. Delivery of the submissions and supporting documentation may also be made through fax or electronic transmission, but only if your department or organization confirms by phone with the NWMB – prior to each filing deadline – that a complete and legible copy of the transmission has been received by the Board. Materials are deemed to have been filed on the actual day of receipt by the NWMB.

Subject to relevant confidentiality or privacy concerns, all submissions and supporting documentation will be placed on the NWMB website and will be publicly available for download. Please keep in mind that the more thorough, reliable and persuasive supporting evidence and justifications are for your submissions, the more weight they will be given by the NWMB in the *NLCA* decision-making process.

If you require further information concerning the written hearing, please do not hesitate to visit the NWMB website or to contact the Board directly.

## **5. Conclusion**

It is the NWMB's understanding that NTI's challenge to its authority in this matter is related to a long-standing frustration – shared by the Board – with the ongoing lack of significant progress in discussions with DFO concerning (i) the development of modern *Nunavut Fishery Regulations* (Regulations) compliant with the *NLCA*, and (ii) the types of harvests that must be included in the calculation of a basic needs level (BNL) under the terms of the *NLCA*. The co-management partners initiated formal discussions on development of the Regulations in 2000, and incorporated the BNL issue into those discussions in 2013.

As a direct result of its frustration, the NWMB wrote to the Minister in June of 2012 (correspondence attached to this letter as Appendix F) “...that NWMB approval of ...emerging char fishery plans in the future will be conditional upon achievement of significant progress by the NWMB and the *NLCA* parties in determining what harvests are included in basic needs levels.”

The Board went on to approve two emerging char fishing plans in 2013 (Pond Inlet and Igloolik). For both approvals, the NWMB determined that significant progress had not yet been achieved, but that it expected such progress would soon be demonstrated. While some headway was subsequently attained, discussions among the co-management partners were unsuccessful - and essentially broke down completely in the fall of 2014.

Why, in such disappointing circumstances, has the NWMB decided to consider approval of another emerging char fishing plan? The answer is that the Board believes the new Prime Minister's solemn commitment to “...a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and

*partnership...*"<sup>2</sup>, and his appointment of the Honourable Hunter Tootoo as the DFO Minister, provide all parties with a unique opportunity to resume and to successfully conclude the stalled discussions. In the Board's view, the provision of that opportunity constitutes significant progress.

Accordingly, the NWMB looks forward to working respectfully, cooperatively and in partnership with Minister Tootoo and other co-management partners to finally achieve - more than twenty-two years after the NLCA first came into force - what Nunavut and Canada deserve and desperately need: Nunavut fisheries legislation that implements the rights, obligations and management regime guaranteed by the *Nunavut Land Claims Agreement*.

Yours sincerely,



Ben Kovic,  
Chairperson of the Nunavut  
Wildlife Management Board

Attachments: 6

c.c. David Burden, Regional Director General, Central and Arctic Region, Fisheries and Oceans Canada;  
Larry Dow, Director of Northern Operations, Fisheries and Oceans Canada;  
James T. Arreak, Chief Executive Officer, Nunavut Tunngavik Incorporated;  
Paul Irngaut, Director of Wildlife and Environment, Nunavut Tunngavik Incorporated;  
Alison Kopalie, Manager, Nattivak Hunters and Trappers Organization;  
Jackie Price, Research and Planning Coordinator, Qikiqtaaluk Wildlife Board;  
Jason Mikki, Qikiqtaaluk Regional Coordinator, Qikiqtaaluk Wildlife Board;  
Gabriel Nirlungayuk, Deputy Minister, Government of Nunavut Department of Environment; and  
Janelle Kennedy, A/Director of Fisheries and Sealing, Government of Nunavut Department of Environment.

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<sup>2</sup> Mandate letter from the Prime Minister to the Minister of Fisheries, Oceans and the Canadian Coast Guard, November 13<sup>th</sup> 2015.



**SUBMISSION TO THE**  
**NUNAVUT WILDLIFE MANAGEMENT BOARD**  
**FOR**

**Information:**

**Decision: X**

**Issue:** Qammartalik Cove Emerging Char Fishery Application

**Background:**

The Nattivak Hunters and Trappers Organization (HTO), Qikiqtarjuaq, NU have requested an exploratory licence for Arctic Char from the Fox Charlie/Qammartalik Cove Area. The HTO is the applicant and has consulted with their membership and Fisheries and Oceans Canada (DFO). This briefing note and the attached fishing plan are being presented to the Nunavut Wildlife Management Board (NWMB) for decision.

According to the application and previous correspondence with the applicant Arctic Char are abundant in the Qammartalik Cove Area (Figure 1 - topographic map). Subsistence fishing takes place annually in this area in the spring. The HTO feels that these lakes have the potential to develop into a viable commercial fishery.

**Fox Charlie/Qammartalik Cove Area:**

The most current information available was provided by the community of Qikiqtarjuaq. Traditional and local knowledge suggests that the proposed exploratory harvest level of 1000 kg in the attached fishing plan is reasonable. Furthermore, this initial harvest level is consistent with previous exploratory harvest levels recommended by DFO for other areas. The collection of information as per the five-year exploratory protocol would allow DFO science to evaluate harvest levels. DFO recommends the exploratory fishery begin with the 1<sup>st</sup> year of the 5-year approach due to the limited information currently available.

The five-year exploratory fishery protocol is intended to provide information on the viability of a fishery in a particular waterbody. The protocol requires effort be taken to annually harvest the full quota over the five-year period, and the collection of biological characteristics of the fish caught at, a minimum, the start and at the end of the five-year period. Changes to the population structure following continuous harvest of the maximum quota may indicate that the harvest level is not sustainable. However, if the harvest over that period does not change indicators of population health, then the existing level of harvest is likely sustainable. Harvest of the full quota annually is necessary for this approach.

**Recommendations:**

Based on a review of the available information and science advice, DFO's view is there would be a moderate risk<sup>1</sup> of harm from fishing if the attached fishing plan was approved.

The fishery should be monitored to assess the effect of the exploratory fishery on the stock and the following conditions implemented:

- The fishery should follow the exploratory fisheries five-year approach, with all samples and data being submitted annually to DFO-Resource Management in Iqaluit;
- Minimum gillnet mesh-size of 5 ½ inches employed.

**Consultations:** DFO Central & Arctic Region  
Nattivak Hunters' and Trappers' Organization

**Prepared by:** Chris Lewis & Joanna Panipak  
Resource Management – Northern Operations  
Fisheries and Oceans Canada

**Date:** Aug. 11, 2015

**Attachment 1:**

Qammartalik Cove Emerging Char Fishery Fishing Plan.

**Attachment 2:**

Nattivak HTO Emerging Fisheries Application Letter of Support – Qammartalik Cove.

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<sup>1</sup> Moderate risk: some information is missing which would allow for the assessment of the health of the stock. We think fishing at this level may not adversely affect the stock; however, it is very important to collect data from any harvest that occurs. It is also important to reassess the stock once biological data has been collected and analyzed.

**ATTACHMENT 1:**

**QAMMARTALIK COVE EMERGING CHAR FISHERY PLAN**

**LICENCE APPLICANT:**

Nattivak Hunters' and Trappers' Organization (HTO), Qikiqtarjuaq, NU

**PURPOSE:**

To develop a sustainable commercial char fishery and promote economic opportunities for Inuit in Qikiqtarjuaq

**LOCATION & HARVEST LEVEL:**

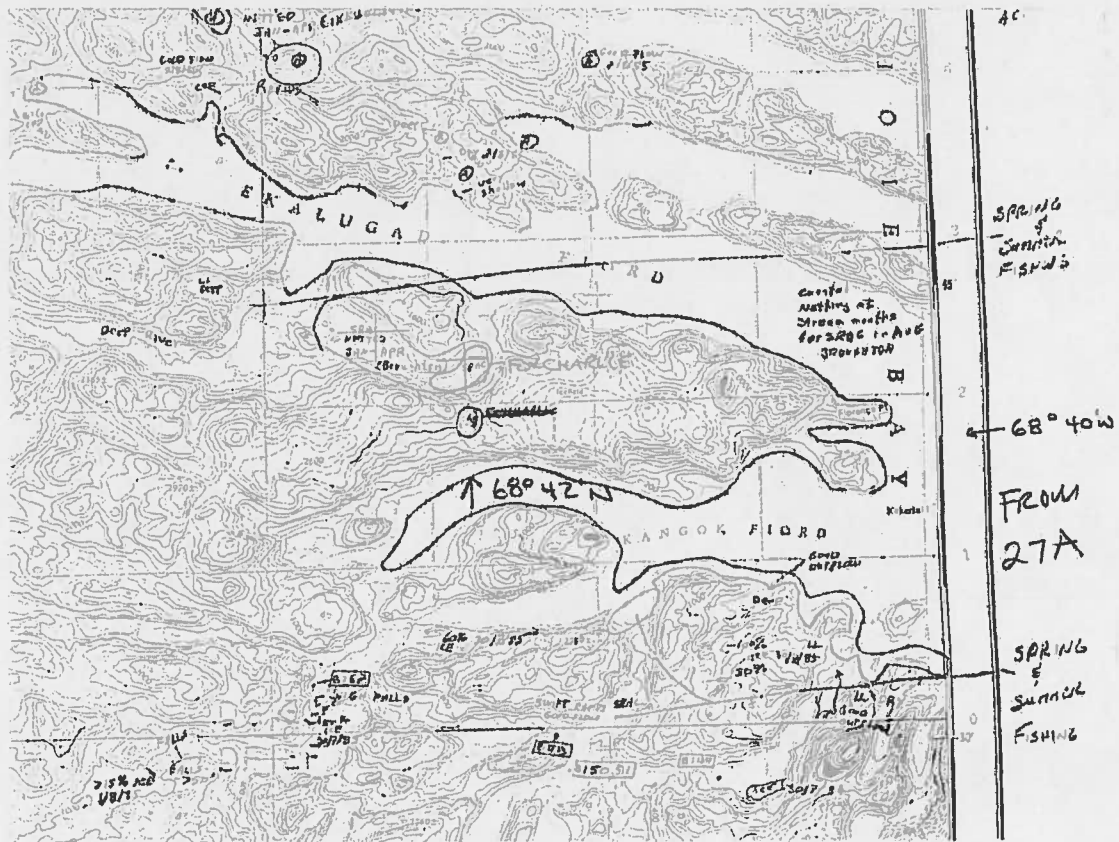
<b>Water body</b>	<b>Coordinates</b>	<b>Exploratory Harvest Level (kg)</b>
Qammartalik Cove/ Fox Charlie	68°42'N 68°41'W	1000 kg

**METHODS:**

Fishing will take place during the winter months. The HTO will be the licence holder and as such will coordinate community members to fish the exploratory harvest level. The exploratory char fisheries five-year approach for collecting biological and catch-effort data will be followed. A minimum gillnet mesh-size of 5.5 inches will be employed. Any harvested Arctic Char that is exported across Nunavut's territorial borders will follow the prescribed direction by the Canadian Food Inspection Agency as directed by the "Fish Inspection Act" and "Fish Inspection Regulations."



Figure 1 (topographic map)



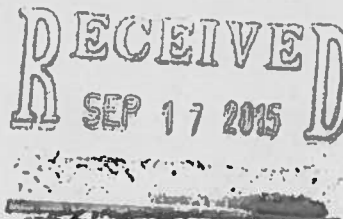


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September 17, 2015

Mr. Jason Akearok  
Executive Director  
Nunavut Wildlife Management Board  
Box 1379  
IQALUIT, NU X0A 0H0



Re: DFO proposal for NWMB approval of Qammartalik Cove Emerging Char Fishery Application

Dear Mr. Akeagok,

Nunavut Tunngavik Incorporated (NTI) understands that the Nunavut Wildlife Management Board (NWMB or Board) will consider the above-captioned proposal at the Board's next meeting, scheduled for September 23-24, 2015.

NTI urges the Board to make no decision on this proposal, as the Board does not have authority under the *Nunavut Agreement (NLCA)* to make the decision requested. Qikiqtarjuaq Inuit may legally harvest and sell 1000 kg of char without a decision by the NWMB.

In support of this position, NTI notes the following features of the Department of Fisheries and Oceans' (DFO's) proposal:

- the proposal acknowledges (to DFO's credit) that it is a "request" or "application" for "an exploratory licence." Attachment 1 identifies the Nattivak Hunters and Trappers Organization (HTO) as "Licence Applicant".
- it proposes that the Board make a "decision", apparently to approve the licence application.
- by identifying the HTO as the applicant, the proposal recognizes that the persons who would conduct the fishing in question are "Inuit" within the meaning of the *NLCA*.
- it includes a proposed "exploratory harvest level" of 1000 kg, but does not propose that this level be established as a Total Allowable Harvest (TAH) under the *NLCA*, and does not contain supporting information that the Board plausibly could consider a proposed justification for a TAH pursuant to section 5.3.3(a) of the *NLCA*.
- it makes no reference to the *NLCA*, Inuit rights under the *NLCA*, NWMB authority under the *NLCA*, or the duty of the Minister to implement all NWMB decisions under the *NLCA*.

Neither the Board nor Minister may establish the harvest level requested without contravening the *Nunavut Agreement*. Under the *NLCA*, Inuit have the right to fish without a licence (s. 5.6.1; s. 5.7.26), and the only quantitative limit that may be placed on such Inuit fishing is a TAH Level as allocated, within the Basic Needs Level, by an HTO or Regional Wildlife Organizations (RWO) (s. 5.6.1; s. 5.6.3; ss. 5.7.3(b) and 5.7.6(b)). Inuit have the right to sell their fish inside or outside the Nunavut Settlement Area, subject only to reasonable export permit requirements (s. 5.7.30).


The Board is aware of the history of NTI's concerns with similar applications. The Board also appreciates that the licence requested would be issued under Fishery Regulations that have never

been amended to comply with the new fisheries management system created under the *Nunavut Agreement*. NTI therefore also asks that, should the Board further consider making the proposed decision notwithstanding NTI's objection, the Board first identify any *NLCA* provision(s) that, in the Board's view, might authorize such a decision, state the Board's detailed reasons for holding this view, and give all affected parties the opportunity to comment in writing on the Board's reasons.

In taking this position, NTI also wishes to assure the Nattivak HTO that, in NTI's view, lack of a Board decision on DFO's proposal should in no way hinder the successful undertaking of the 1000 kg. fishery that the HTO wishes to proceed with this winter. To this end, NTI's Wildlife Department representatives can be available to assist with adoption, in an HTO by-law or decision, of all management measures that the HTO wishes to put in place.

Considering the Board's schedule and the major significance of this issue for Nunavut Inuit fisheries, I would ask you to reply in writing to this letter as soon as possible. Thank you.

Sincerely,



James T. Arreak  
Chief Executive Officer

CC. David Burden, DFO – RDG Western and Northern Region  
Manager, Nattivak Hunters and Trappers Organization  
Gabriel Nirlungayuk, GN – DM Department of Environment  
RWOs – QWB, KWB, KRWB



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**Tammaqtailinahuarnirit annugutghat atuqhugit Inuit qaujima jatugangillu ilihimaniillu ilitquhiannin**  
**Conserving wildlife through the application of Inuit Qaujima jatugangit and scientific knowledge**

**Larry Dow**  
**Director of Northern Operations**  
**Fisheries and Oceans Canada**

**Re: Request for Nunavut Wildlife Management Board approval of Qammartalik Cove/Fox Charlie exploratory arctic char fishery**

**The Nunavut Wildlife Management Board (NWMB or Board) would like to thank you for your participation at its quarterly Regular Meeting (RM003-2015) on September 23<sup>rd</sup> 2015, during which you presented a *Proposal for Decision* (Proposal) to the Board for approval of an emerging arctic char fishery plan in the Qammartalik Cove/Fox Charlie area.**

The NWMB considered this Proposal during its In-Camera meeting (IC005-2015) on September 24<sup>th</sup> 2015. In light of a September 17<sup>th</sup> 2015 letter from Nunavut Tunngavik Incorporated to the NWMB (attached to this letter), on which the Nattivak Hunters and Trappers Organization and Fisheries and Oceans Canada were copied, the NWMB decided to contact you prior to making a decision on the approval of the proposed emerging fishery plan. Through this letter, the NWMB is seeking confirmation from both the Nattivak Hunters and Trappers Organization and Fisheries and Oceans Canada whether you wish to proceed, considering Nunavut Tunngavik Incorporated's September 17<sup>th</sup> 2015 letter and the points raised therein, with the Proposal for the NWMB to approve the Qammartalik Cove/Fox Charlie emerging arctic char fishery plan.

**Please respond in writing, by no later than October 30<sup>th</sup> 2015, confirming whether or not you wish to proceed with the above mentioned Proposal. Should you wish to proceed, the NWMB will take the necessary steps to make a decision on your Proposal.**

**The NWMB looks forward to continued collaboration with co-management partners to ensure that Nunavut's fisheries are developed and managed in a sustainable manner for the benefit of all Nunavummiut. If you have any questions or concerns regarding the content of this letter, please do not hesitate to contact the NWMB.**

**Sincerely,**

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**Ben Kovic**  
**Chairperson of the**  
**Nunavut Wildlife Management Board**

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## **Attachments (1)**

**c.c. James T. Arreak, Chief Executive Officer, Nunavut Tunngavik Incorporated;  
Paul Imgaut, Director of Wildlife and Environment, Nunavut Tunngavik Incorporated;  
Glenn Williams, Wildlife Policy Advisor, Nunavut Tunngavik Incorporated;  
Chris Lewis, Fisheries Management Biologist, Fisheries and Oceans Canada;  
Alison Kopalie, Manager, Nattivak Hunters and Trappers Organization;  
Jackie Price, Research and Planning Coordinator, Qikiqtaaluk Wildlife Board; and  
Jason Mikki, Qikiqtaaluk Regional Coordinator, Qikiqtaaluk Wildlife Board.**

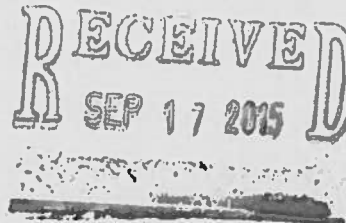


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September 17, 2015

Mr. Jason Akearok  
Executive Director  
Nunavut Wildlife Management Board  
Box 1379  
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- the proposal acknowledges (to DFO's credit) that it is a "request" or "application" for "an exploratory licence." Attachment 1 identifies the Nattivak Hunters and Trappers Organization (HTO) as "Licence Applicant".
- it proposes that the Board make a "decision", apparently to approve the licence application.
- by identifying the HTO as the applicant, the proposal recognizes that the persons who would conduct the fishing in question are "Inuit" within the meaning of the *NLCA*.
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Neither the Board nor Minister may establish the harvest level requested without contravening the *Nunavut Agreement*. Under the *NLCA*, Inuit have the right to fish without a licence (s. 5.6.1; s. 5.7.26), and the only quantitative limit that may be placed on such Inuit fishing is a TAH Level as allocated, within the Basic Needs Level, by an HTO or Regional Wildlife Organizations (RWO) (s. 5.6.1; s. 5.6.3; ss. 5.7.3(b) and 5.7.6(b)). Inuit have the right to sell their fish inside or outside the Nunavut Settlement Area, subject only to reasonable export permit requirements (s. 5.7.30).

The Board is aware of the history of NTI's concerns with similar applications. The Board also appreciates that the licence requested would be issued under Fishery Regulations that have never

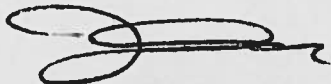


been amended to comply with the new fisheries management system created under the *Nunavut Agreement*. NTI therefore also asks that, should the Board further consider making the proposed decision notwithstanding NTI's objection, the Board first identify any *NLCA* provision(s) that, in the Board's view, might authorize such a decision, state the Board's detailed reasons for holding this view, and give all affected parties the opportunity to comment in writing on the Board's reasons.

In taking this position, NTI also wishes to assure the Nattivak HTO that, in NTI's view, lack of a Board decision on DFO's proposal should in no way hinder the successful undertaking of the 1000 kg. fishery that the HTO wishes to proceed with this winter. To this end, NTI's Wildlife Department representatives can be available to assist with adoption, in an HTO by-law or decision, of all management measures that the HTO wishes to put in place.

Considering the Board's schedule and the major significance of this issue for Nunavut Inuit fisheries, I would ask you to reply in writing to this letter as soon as possible. Thank you.

Sincerely,



James T. Arreak  
Chief Executive Officer

CC. David Burden, DFO – RDG Western and Northern Region  
Manager, Nattivak Hunters and Trappers Organization  
Gabriel Nirlungayuk, GN – DM Department of Environment  
RWOs – QWB, KWB, KRWB

**Pêches et Océans  
Canada**

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**Nattivak Hunters & Trappers Organization**

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Nunavut Wildlife Management Board (NWMB)  
Iqaluit, Nunavut  
X0A 0H0

October 28, 2015

To Whom It May Concern

RE: **Qammartalik Cove Exploratory Fishing  
Fishery Application**

On behalf of Nattivak Hunters & Trappers we would like the Exploratory Fishing to proceed. The Monitoring & Management Plan will be worked on in Mid November assisted by NTI.

Iqalugaarjuit Lake is on the North of Qammartalik Cove so this was discussed by the Board Members during their Special Meeting on Monday 26th of October & has decided that they want both lakes to be explored.

Should you have any questions, concerns, & or comments relating to the application; you can contact the Chairperson of Nattivak during regular business hours at (867) 927-8836

With Regards,

Alison Kopalie

Alison Kopalie  
Manager of Nattivak HTO

Oct. 28, 2015

Date:

Honourable Keith Ashfield  
Minister of Fisheries and Oceans  
15<sup>th</sup> Floor, Centennial Towers  
200 Kent Street  
Ottawa, Ontario  
K1A0E6

**Re: NWMB approval of the *Confederation Fiord Area Emerging Char Fishery Plan*, and related concerns with respect to the implementation of the allocation system under Article 5 of the *Nunavut Land Claims Agreement***

On March 14<sup>th</sup> 2012, the Nunavut Wildlife Management Board passed the following three resolutions concerning the proposed *Confederation Fiord Emerging Char Fishery Plan*:

- a) Each fishery should follow the exploratory fisheries five-year approach, with all samples and data being submitted annually to the Department of Fisheries and Oceans (DFO) - Science in Winnipeg;
- b) That the collection of fishery and biological data occur at both the individual lake, and overall Confederation Fiord fishery levels;
- c) That research include investigation of the connectivity of the four lakes and the exchange of char between them; and
- d) That the NWMB receive letters of support for the Char Fishery Plan from both the Nattivak Hunters and Trappers Organization and the Qikiqtaaluk Wildlife Board.

*RESOLVED that the NWMB write to the DFO Minister that NWMB approval of similar emerging char fishery plans in the future will be*

*conditional upon achievement of significant progress by the NWMB and the NLCA parties in determining what harvests are included in basic needs levels.”*

## **2. Reasons for the Plan and Mesh-size Approvals**

With respect to the *Confederation Fjord Char Fishery Plan* (Plan) approval, the NWMB is satisfied that the Plan, following the precedent set in a number of earlier char fish plans approved by the Board, reflects a collaborative, voluntary and conservation-based approach to sustainable commercial char fishing - in this case, agreed to by the Nattivak Hunters and Trappers Organization and the Department of Fisheries and Oceans (DFO).

With respect to the approval of the minimum gillnet mesh-size of 5½ inches, the NWMB has repeatedly approved this particular non-quota limitation (NQL) for other commercial/exploratory char fisheries. In the interests of efficiency and consistency – and in compliance with the principles of conservation - the Board has decided to approve this mesh size for all commercial or exploratory sea-run char fisheries. This NQL does not apply to char fishing carried out pursuant to a Scientific Research Licence or fisheries licenced for scientific purposes under section 52 of the *Fisheries (General) Regulations*.

## **3. The Urgent Need to Settle what Harvests are included in Basic Needs Levels**

### **3.1 Background: 2006 to 2010**

With respect to future Board approvals of such plans, it is important to acknowledge that the practice of “stand-alone” approvals of char fishery plans - approvals containing no decisions with respect to total allowable harvests (TAHs), basic needs levels (BNLs) and surpluses - was intended to be a temporary measure only. The practice commenced in 2006, following successful co-management discussions among DFO, Nunavut Tunngavik Inc. (NTI) and the NWMB. The expectation was that this temporary measure would permit HTO commercial char fishing to proceed while the NWMB and the NLCA parties worked towards successfully implementing the NLCA Article 5 TAH-BNL-surplus allocation system.

In due course, on June 3<sup>rd</sup> 2009, the NWMB held its “*Public Hearing to Consider the Level of Total Allowable Harvest, the Basic Needs Level and the Surplus for the Char Fishery in Kingnait Fjord*”. The Board forwarded its resulting decisions to your predecessor in April 2010, and the Minister rejected the two primary decisions (TAH and BNL) in August of that year. The main point of disagreement was concerning the types of harvests that must be included in the calculation of the BNL – a disagreement rooted in differing interpretations of key provisions of NLCA Article 5.

### **3.2 September – October 2011 Correspondence between the Minister and the NWMB**

On September 2<sup>nd</sup> 2011, prior to completing its reconsiderations and final decisions, the NWMB wrote to you, recommending that it postpone making those final decisions in

order to provide a reasonable opportunity for DFO, NTI and the NWMB to attempt to reach a consensus on the way forward. As part of that recommendation, the Board proposed the following workplan/schedule:

1. *The NWMB, DFO, NTI and the Government of Nunavut meet in October [2011] to discuss the use of management tools - other than licences or permits - to address the practicalities of regulating BNL harvests, and of monitoring, reporting and certifying as sustainable those harvests to be sold to fish plants for export.<sup>1</sup>*
2. *The parties continue to meet as necessary during the fall and winter of 2011-2012, with a view to reaching consensus on harvests to be included in the BNL, and on reasonable management measures to regulate, and to monitor, report and certify as necessary, such harvests; and*
3. *If the parties are not able to show significant progress towards consensus within the next six months [by March 2012], they make best efforts to agree upon one of the following three alternatives:*
  - (a) DFO and NTI agree to arbitration of the issue under NLCA Article 38;<sup>2</sup>*
  - (b) The parties agree upon the statement of a case for the opinion of the Court; or*
  - (c) The NWMB proceeds to make its final TAH and BNL decisions for Kingnait Fjord char.*

On October 24<sup>th</sup> 2011, you replied positively to the Board's proposal to work towards consensus prior to finalizing its decision. However, rather than endorsing the workplan/schedule proposed by the NWMB, you encouraged the Board to work with DFO and others towards the establishment of a senior level committee "...to address the fundamental issues relating to the Kingnait Fjord char fishery as well as other Nunavut fisheries related issues..."

### **3.3 The Canada – Nunavut Fisheries and Marine Mammal Cooperation Committee**

In the seven months since, the "Canada – Nunavut Fisheries and Marine Mammal Cooperation Committee" (Committee) has developed draft Terms of Reference and acknowledged that the identification of harvests included in a BNL is a top priority issue. However, the Committee has held no meetings or substantive discussions to move the matter forward. Meanwhile, the implementation of the NLCA Article 5 TAH-BNL-surplus allocation system remains at a standstill – three years after the Kingnait Fjord hearing was held, and a full six years after the co-management partners commenced the temporary practice of "stand-alone" approvals of char fishery plans.

<sup>1</sup> The NWMB recommends that the parties closely examine the potential for a "certificate" or "tag" system that meets reasonable management, traceability and certification requirements and the directions in NLCA Section 5.7.26. An additional measure could be the development of an agreement for procedures taken to satisfy fish purchasers outside of Nunavut.

<sup>2</sup> The issue of what harvests must be included in the calculation of a BNL constitutes a "... matter concerning the interpretation, application or implementation of the Agreement (NLCA S.38.2.1)" which would fall within the jurisdiction of an arbitration panel, "where the DFO and Government agree to be bound by the decision".



### 3.4 NWMB Recommendations

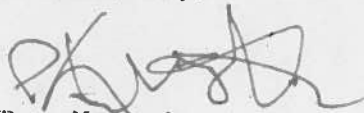
Mr. Minister, by any reasonable standard, the co-management partners are collectively treating this fundamentally important NLCA fisheries and wildlife management issue too casually, and have consequently made no significant progress to date. As a result, it is not an exaggeration to conclude that the fishery management system in Nunavut is approaching a crisis point. Accordingly, the NWMB repeats – for your consideration – its September 2011 recommendations, duly updated:

1. The Committee is scheduled to meet in Iqaluit on July 11<sup>th</sup> and 12<sup>th</sup> 2012. The NWMB recommends that the agenda be devoted to a discussion of the use of management tools - other than licences or permits - to address the practicalities of regulating BNL harvests, and of monitoring, reporting and certifying as sustainable those harvests to be sold to fish plants for export.
2. The parties continue to meet as necessary during the remainder of 2012, with a view to reaching consensus on harvests to be included in the BNL, and on reasonable management measures to regulate, and to monitor, report and certify as necessary, such harvests.
3. If the parties are not able to show significant progress towards consensus by the end of 2012, they make best efforts to agree upon one of the following three alternatives:
  - (d) DFO and NTI agree to arbitration of the issue under NLCA Article 38;
  - (e) The parties agree upon the statement of a case for the opinion of the Court; or
  - (f) The NWMB proceeds to make its final TAH and BNL decisions for Kingnait Fjord char.

For the reasons set out in Part 3 above – and as reflected in its March 14<sup>th</sup> 2012 resolution – henceforth, the NWMB will only consider “*stand-alone*” approvals of char fishery plans if significant progress has been achieved by the NWMB and the NLCA parties in determining what harvests are included in the calculation of BNLs.

If you or your officials require further information, or have any questions or concerns regarding this letter, please do not hesitate to contact the NWMB.

Yours sincerely,



Peter Kusugak  
Acting Chairperson of the  
Nunavut Wildlife Management Board

c.c. David G. Burden, A/Regional Director General, Department of Fisheries and Oceans, and  
Keith Pelley, A/Director, Eastern Arctic Area, Department of Fisheries and Oceans