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Nunavut Wildlife Management Board (NWMB), Written Hearing to Consider the Narwhal Flexible Quota System and Tag Transfer Policy Phase II

NUNAVUT TUNNGAVIK INCORPORATED (NTI) COMMENTS ON THE RECOMMENDATIONS OF FISHERIES AND OCEANS CANADA (DFO)

August 12, 2016

Introduction

NTI presented written and oral comments in the NWMB's 2012 public hearing[1] to review DFO's draft narwhal management plan and establish total allowable harvests (TAHs) for narwhal under the *Nunavut Agreement*.

NTI's position on the issues in this proceeding[2] continues to be informed by NTI's 2012 comments. NTI asks that the Board take into account NTI's 2012 comments in so far as they relate to the issues in this proceeding.

A. TAH modifications

1. TAH units

DFO's evidence does not establish that, over the long term, the narwhal summering stocks described in DFO's recommendations are a justifiable unit for attaching TAHs under the *Nunavut Agreement*. Under the Agreement, a "stock" to which a TAH may attach must be a biologically self-sufficient group.

NTI recommends that the NWMB continue to employ these narwhal units for TAH-setting purposes only on a three-year trial basis.

2. Proposed increases in TAH levels for stocks other than Eclipse Sound

NTI supports the proposed increases in TAH levels for stocks other than Eclipse Sound.

3. Proposed reduction in TAH level for Eclipse Sound (from 236 to 134 narwhal annually)[3]

a) Hearing procedure

The NWMB established the current TAH for Eclipse Sound on the basis of an oral public hearing. Hunters and Trappers Organization (HTO) representatives appeared before the Board and were able to ask questions of and make comments to DFO's representatives. For that reason, the Board should hold an oral public hearing in Pond Inlet before making any decision to reduce this TAH level.

Additional considerations support the holding of an oral hearing in Pond Inlet on this proposal:

- The HTO is on record as opposing this TAH reduction (HTO's May 27 2016 letter to the NWMB[4]; DFO "What We Heard" document, page 3[5]);
- Where limitations on Inuit harvesting are concerned, the NWMB normally uses written hearings to deal with unopposed proposals. Because Inuit culture is predominantly oral, written hearings are not an appropriate venue for dealing with proposed limitations that Inuit oppose.
- The HTO also is on record as objecting that consultation to date with the community regarding this proposal has not been adequate. According to the HTO's letter, the short visit that DFO representatives made to Pond Inlet regarding this proposal was made without prior indication of the issue to be discussed.

If the Board convenes an oral hearing, the submissions received in this written hearing can form part of the hearing record and contribute to the discussion.

b) *Nunavut Agreement* justification

Under the *Nunavut Agreement*, the Board must reject the proposed TAH reduction for Eclipse Sound if DFO's evidence does not show that the reduction is necessary to maintain vital, healthy narwhal populations capable of sustaining Inuit harvesting needs. (See pages 6-10, NTI 2012 comments.[6])

(As NTI's 2012 comments noted, the history of narwhal non-detriment findings under CITES between 1980 and 2010 indicates that the CITES process does not employ defensible conservation criteria for limiting the exercise of Inuit harvesting rights under the *Nunavut Agreement*. Accordingly, the prospect of CITES detriment findings related to trade in narwhal parts is not relevant to the Board's or Minister's TAH decision. Neither the Board nor the Minister may take such a prospect into account in setting a TAH level under the Agreement.)

c) Proposed reduction

If the Board's decision were based only on the results of the last survey, DFO's proposal would be consistent with the stock management approach set out in the 2013 narwhal management plan.

However, the following considerations support the view that the 2013 survey results do not justify the TAH reduction that DFO proposes:

i. The HTO reported as follows in its May 27 letter:

- Conditions were foggy when Eclipse Sound narwhal were counted, cutting down available flight time and impairing visibility;
- The survey took place in only a few days of one month of one year and could not count whales that had not arrived yet;
- The number of whales that come to Eclipse Sound varies each year and the whales arrive at different times each year;
- Pond Inlet hunters did not observe a decrease in narwhal in 2013 of the scale reported by the 2013 survey; their observations are not considered in the survey;
- The proposed decrease does not take into account the care that Pond Inlet hunters have shown to harvest narwhal conservatively.

ii. NTI anticipates, that, if given the opportunity to address the Board, Pond Inlet Inuit will report that they have been observing a "different type" of narwhal than they are accustomed to seeing in Eclipse Sound. This lends support to the view that aerial surveys on this area do not necessarily observe discrete units of narwhal.

iii. Killer whales present in the area may have caused clumping of the narwhal observed.

iv. The recent history of narwhal surveys in Admiralty Inlet shows that making rash changes in allowable harvest levels that do not have community support cannot instill confidence in the management system and so undermines a key objective of Article 5 of the *Nunavut Agreement*. As noted in NTI's 2012 submission, DFO survey-based recommendations for annual allowable harvests of Admiralty Inlet narwhal see-sawed from 130 to 28 to 233 narwhal in the short time between 2008 and 2012.

v. In the peer review of DFO's scientific report, NTI's biologist noted the possible linkage between narwhals in neighbouring Admiralty Inlet and Eclipse Sound. NTI's point was considered, but not adjusted for in the final recommendations, because, in DFO's view, there was not enough information to support this linkage. The Board should weigh DFO's opinion with the history of widely fluctuating survey results and the Inuit Qaujimajatuqangit that Inuit can present.

vi. Conclusions of the LGL marine mammal study[7], conducted for Baffinland in Eclipse Sound, Milne Inlet, Navy Board Inlet, and Pond Inlet within the seven weeks immediately after DFO's 2013 survey, support the Inuit view that it is unwise to base levels of narwhal harvesting in this area solely on a single-year survey conducted in August:

  - "The timing of narwhal arrival and departure to/from their summering areas is variable and dependent on ice conditions" (ix).

- "About 80% of the [LGL] 2013 aerial survey effort … occurred after mid-September and these data help address a data gap in cetacean distribution, movement, and abundance late in the open-water period" (xi).

- "Narwhal densities were higher in late August/early September (Survey Period 1) and mid-September (Survey Period 2) versus later in the season (see graph below). … As the open-water season progressed, narwhals were more frequently observed in Eclipse Sound and in mid-October narwhals were observed in Pond Inlet. By mid-October (Survey Period 4), there was extensive ice coverage in Pond Inlet as well as Navy Board Inlet, Tremblay Sound, and Koluktoo Bay and many narwhals appear to have left the Eclipse Sound complex and started moving toward their wintering areas." (xii. See also the graph on page xii, showing more narwhals in Eclipse Sound after August than in August.)

- "… narwhals have a highly clumped distribution and exhibit, as a minimum, localized movements within a 24-hour period. In addition to daily variation, narwhal density within the study area varies considerably from year-to-year based on surveys completed in 1978-79, 1994, 1996, 2002, 2004, 2007, 2008, and this study (Koski and Davis 1979, 1980; Richard et al. 1994, 2010; Mary River Project FEIS, Appendix 8A-2, Feb 2012). Depending on the zones (Eclipse Sound, Milne Inlet, or smaller fjords) within the study area, the density may vary from year-to-year by a factor that ranges between 2 and 85 times (Koski and Brandon 2012). The reasons for these wide fluctuations in narwhal numbers have not been well-studied to date." (xii-xiii)

- "…narwhals were significantly more abundant and located farther within the inlets (e.g., White Bay, Tremblay Sound, Koluktoo Bay, Milne Inlet) earlier in the season before moving eastward to the larger areas (e.g., Eclipse Sound, Pond Inlet) during the later part of the season. This trend was consistent during the three years with aerial survey data (2007, 2008, and 2013)."(xiii)

vii. NTI understands that DFO may plan to do an aerial survey of narwhals for Eclipse Sound this summer. If so, considering the uncertainties above, the NWMB should wait for the results of this aerial survey before making a decision that could modify the current TAH.

B. Approval of the Narwhal Flexible Quota System and Tag Transfer Policy Phase II

The NWMB should differentiate clearly in its decisions between those that establish, modify or remove non-quota limitations on harvesting and decisions that are intended to have different implementation consequences. For the sake of proper implementation and accountability in decision-making, it is important that any Board decisions that are intended to limit Inuit harvesting be expressed in clear terms.

Submitted on behalf of Nunavut Tunngavik Incorporated by

for

Paul Irngaut, Director of Wildlife

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[1] *http://www.nwmb.com/en/public-hearings-a-meetings/public-hearings-1/2012-1/proposed-integrated-fisheries-management-plan-for-narwhal-in-the-nunavut-settlement-area-including-the-establishment-of-total-allowable-harvests-basic-needs-levels-and-non-quota-limitations-july-24th-26th*.

[2] http://www.nwmb.com/en/public-hearings-a-meetings/public-hearings-1/2016-1/written-public-hearing-to-consider-approval-of-the-narwhal-flexible-quota-system-and-tag-transfer-policy-phase-ii . DFO's recommendations are at http://www.nwmb.com/en/public-hearings-a-meetings/public-hearings-1/2016-1/written-public-hearing-to-consider-approval-of-the-narwhal-flexible-quota-system-and-tag-transfer-policy-phase-ii/proposal-for-decision-and-supporting-documentation-4/6024-fisheries-and-oceans-canada-s-proposal-for-nwmb-decision-regarding-approval-of-the-narwhal-flexible-quota-system-and-tag-transfer-policy-phase-ii-eng/file

[3] According to DFO's 2015 Science Advisory Report (page 2) "If narwhals from the Eclipse Sound and Admiralty Inlet areas are considered as belonging to a single unit, the TALCs cannot simply be summed. The TALC advice for a combined unit would be 542 narwhals": http://www.nwmb.com/en/public-hearings-a-meetings/public-hearings-1/2016-1/written-public-hearing-to-consider-approval-of-the-narwhal-flexible-quota-system-and-tag-transfer-policy-phase-ii/proposal-for-decision-and-supporting-documentation-4

[4] http://www.nwmb.com/en/public-hearings-a-meetings/meetings/regular-meetings/2016/rm002-2016-june-17-2016/5972-rm002-2016-meeting-binder-eng/file

[5] http://www.nwmb.com/en/public-hearings-a-meetings/public-hearings-1/2016-1/written-public-hearing-to-consider-approval-of-the-narwhal-flexible-quota-system-and-tag-transfer-policy-phase-ii/proposal-for-decision-and-supporting-documentation-4/6032-tab-4-baffin-bay-narwhal-tour-what-we-heard-april-2016-eng/file

[6] http://www.nwmb.com/en/public-hearings-a-meetings/public-hearings-1/2012-1/proposed-integrated-fisheries-management-plan-for-narwhal-in-the-nunavut-settlement-area-including-the-establishment-of-total-allowable-harvests-basic-needs-levels-and-non-quota-limitations-july-24th-26th/responses-6/2477-nti-response-submission-on-ifmp-for-narwhal-jul-4-2012-eng/file

[7] MARINE MAMMAL AERIAL SURVEYS IN ECLIPSE SOUND, MILNE INLET, NAVY BOARD INLET, AND POND INLET, 31 AUGUST – 18 OCTOBER 2013, by Robert E. Elliott, Scott Raborn, Heather R. Smith, and Valerie D. Moulton, LGL Limited, environmental research associates, for Baffinland Iron Mines Corporation, March 6 2015: ftp://ftp.nirb.ca/03-MONITORING/08MN053-MARY%20RIVER%20IRON%20MINE/03-ANNUAL%20REPORTS/02-PROPONENT/2013-2014/01-REPORT/160401-08MN053-Aerial%20SurveyReport-Part%201-IA2E.pdf