

May 30th 2017

Dear James:

Re: Withdrawal of the Qikiqtaaluk Wildlife Board from the Public Hearing of the Nunavut Wildlife Management Board concerning the revised *Nunavut Polar Bear Co-Management Plan*

The Nunavut Wildlife Management Board (NWMB or Board) was dismayed by the May 26th letter from Vice-Chairperson Joshua Kango, informing the NWMB that the Qikiqtaaluk Wildlife Board (QWB) Executive Committee has decided to withdraw from the June 6th to 8th 2017 public hearing concerning the revised *Nunavut Polar Bear Co-Management Plan*.

In summary, the reasons provided for the withdrawal are the following:

1. The NWMB's April 13th offer to fund travel and accommodation costs for attendance by six Qikiqtani representatives at the hearing violates the spirit – and possibly even the letter – of the *Nunavut Agreement*;
2. In order for the hearing to be fair and valid, the NWMB would have to fund travel and accommodation costs for attendance at the hearing by representatives of all thirteen Hunters and Trappers Organizations from the Qikiqtaaluk Region; and
3. In such circumstances, QWB must stand up for the basic principles of co-management and the spirit of the *Nunavut Agreement*.

In the NWMB's view, QWB has based its decision on an unfortunate misunderstanding of the facts. I am very much hoping that the explanation below will convince you to reconvene a meeting of your Executive Committee to reconsider QWB's May 26th decision.

2. The NWMB has no legal obligation to fund travel and accommodation costs for parties attending an NWMB hearing

I want to assure you that the Board is under no legal obligation – whether from the *Nunavut Agreement*, other federal or territorial laws, the law made by judges (case law), or any contractual agreement – to fund travel and accommodation costs for parties attending an NWMB hearing. As a result, the NWMB has never received any type of intervenor or participant funding from the federal government.¹

¹ The NWMB is required by Section 5.7.13 of the *Nunavut Agreement* to provide “adequate funding” for the operation of HTOs and RWOs. However, the reference to “adequate funding” necessarily refers to RWO and HTO funding levels determined by the parties to the *Nunavut Agreement* (or, where those parties cannot reach agreement, by Canada) through

Nevertheless, the Board – following the basic principles of co-management and the spirit of the *Nunavut Agreement* – has consistently attempted to maintain a close working partnership with the Regional Wildlife Organizations (RWOs) and Hunters and Trappers Organizations (HTOs), including with respect to their participation at NWMB hearings.

Indeed, the Board has gone out of its way on a number of occasions over the years to secure funding from its own annual operating budget – funding designated for carrying out NWMB legal responsibilities under Article 5 of the *Nunavut Agreement*, but re-profiled in order to provide financial assistance to RWOs and HTOs. The provision of such funding is not an NWMB obligation; rather, it is a necessarily occasional, voluntary donation intended to ensure stronger RWO and HTO participation in the Nunavut wildlife management system.

By way of example, between 2008 and 2013, the NWMB held a total of one in-person pre-hearing conference and seven public hearings, all of which affected more than one Nunavut Region:

1. For four of the hearings, the Board did not offer any financial assistance to RWOs or HTOs for hearing attendance.² No HTO or RWO complained of being treated unfairly.
2. For the other three hearings, the NWMB provided modest financial assistance for hearing attendance.³ No HTO or RWO complained of being treated unfairly.
3. With respect to the single pre-hearing conference, the Board provided modest financial assistance for attendance.⁴ Once again, no HTO or RWO complained of being treated unfairly.

As a result of its consistent experience of no complaints during those six years, the NWMB reasonably understood that QWB had no concerns regarding this occasional, voluntary NWMB practice.

Over the years, the Board has taken additional important steps to help ensure RWO and HTO independence and participation at NWMB public hearings. For instance, the Board advised the Nunavut Implementation Panel - in its December 14th 2012 *Funding Proposal and Workplan for the Period from July 9th 2013 to July 8th 2023* – that the *Nunavut Agreement* parties must ensure adequate funding for RWOs and HTOs to participate at NWMB public hearings.⁵

Since the protection of Qikiqtani Inuit harvesting rights and Nunavut wildlife are necessarily essential QWB wildlife management responsibilities, the NWMB presumes that QWB made a similar recommendation in its own

implementation funding negotiations for each 10-year implementation planning period. The current planning period covers 2013 to 2023.

² **No financial assistance:** The March 6th 2008 Bowhead Whale total allowable harvest public hearing, the September 10th 2008 public hearing to list Grizzly Bear as a species of special concern, the February 10th 2009 Bowhead Whale total allowable harvest public hearing, and the April 13th 2010 public hearing to list Polar Bear as a species of special concern.

³ **Modest financial assistance:** The September 11th and 12th 2012 public hearing to establish basic needs levels for beluga, narwhal and walrus (12 delegates in total, shared between QWB, the Kivalliq Wildlife Board (KWB) and the Kitikmeot Regional Wildlife Board (KRWB)); the July 24th to 26th 2012 public hearing concerning the *Integrated Fisheries Management Plan for Narwhal*, including accompanying harvesting limitations (12 delegates in total, shared equally between QWB and KWB); and the September 10th and 11th 2013 Foxe Basin Polar Bear total allowable harvest public hearing (8 delegates in total, shared equally between QWB and KWB).

⁴ **Modest financial assistance:** The December 10th 2009 pre-hearing conference to list Polar Bear as a species of special concern (6 delegates in total: 2 for QWB, 2 for KWB and 2 for KRWB).

⁵ “...Informed RWO and HTO input into the hearing process – through the development of written and/or oral submissions, and attendance at the hearing – is crucial for informed and fair NWMB decision-making (NLCA S.5.1.2(h), 5.1.3(b)(ii), (iii) and (v), 5.2.26, 5.2.28, 5.2.34(f), 5.7.3(a) and (d), and 5.7.6(a) and (d)).”

2013 to 2023 funding proposal and workplan regarding its funding needs for the current implementation planning period. The Board also presumes that the relatively significant budget increases achieved by the RWOs and HTOs for 2013 to 2023 include a reasonable level of funding for participation at NWMB hearings.

3. The NWMB's legal obligation is to hold procedurally fair public hearings

Among the most important of the Board's wildlife management responsibilities is the holding of procedurally fair public hearings. Procedural fairness includes three crucial elements: proper notice of the hearing, adequate disclosure of the relevant issues and facts, and the provision of a reasonable opportunity for affected harvesters to make their views known (via written submissions and/or the right to attend the hearing as a party). The NWMB has met all of those legal responsibilities with respect to this particular public hearing.

In fact, the Board has taken even more care than usual with the procedures it has followed in preparing for this highly important hearing:

1. The NWMB started with a written hearing in the fall of 2015, to which it properly applied the three crucial elements of procedural fairness;
2. In the course of that hearing, the NWMB decided that the draft *Nunavut Polar Bear Co-Management Plan* required further development; the Board therefore adjourned the hearing to permit the Department of Environment to carefully review the submissions received, and to consider revisions to the original Plan based upon its review;
3. The Department subsequently undertook and completed a number of revisions, and then conducted further consultations with relevant Inuit organizations during October and November of 2016; the result of that process is the revised draft Plan, submitted to the NWMB on February 2nd 2017; the Board then held two pre-hearing teleconferences with the hearing parties (February 15th and March 30th);
4. At the initial teleconference, all parties – including QWB - indicated that they would support whatever hearing format (written or in-person) the Board decided upon; after careful consideration, the NWMB decided that an in-person public hearing was warranted; and
5. During the second teleconference, the parties discussed concerns over the dates and location of the hearing, the length of the hearing, the number of party representatives for whom the NWMB would pay travel and accommodation costs, the proposed agenda, and the timelines for oral submissions and resulting questions and answers; at the end of the teleconference, the Board was careful to ask all of the participants if they had remaining concerns. No concerns or disagreements were expressed by any of the participants, including the QWB representatives.

Within just one week - on April 7th - the NWMB issued a summary of the discussions at the pre-hearing teleconference, the final version of the hearing agenda, and a formal hearing invitation letter to the parties. All three documents reflected the consensus reached at the March 30th teleconference.

During the following seven weeks, the Board received no questions, concerns or replies to the three April 7th documents. At the end of the work day on Friday, May 26th – approximately one week before the hearing is to commence – QWB unexpectedly delivered its withdrawal letter to the NWMB.

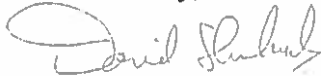
4. Conclusion

The NWMB's legal obligation is to provide a reasonable opportunity for affected harvesters and their representative organizations to respond to the *Proposal for Decision* that has been presented to the Board for approval. The NWMB is confident that it has met that legal obligation; in fact, the Board believes it has satisfied a very high standard in meeting all of its procedural fairness obligations to QWB and the other hearing parties. Accordingly, the NWMB met by teleconference on May 29th, and unanimously decided to proceed with the hearing as scheduled.

James, it goes without saying that QWB is entitled to not attend the public hearing, and to withdraw its written submission. However, the NWMB believes that QWB's withdrawal from this very important wildlife management process would be an unfortunate and unnecessary loss for all concerned – a loss that could be felt by Qikiqtani harvesters for many years to come. I therefore sincerely ask you, on behalf of the NWMB, to reverse the May 26th decision, and to have QWB once again play the thoughtful leadership role it has displayed at so many NWMB hearings over the years.

If you require further information or explanation, the NWMB's Executive Director and Legal Counsel would be happy to meet with you and/or your Executive Committee at a mutually convenient time prior to the commencement of the hearing.

Yours sincerely,



Dan Shewchuk
A/Chairperson of the
Nunavut Wildlife Management Board

c.c. Hon. Joe Savikataaq, Nunavut Minister of Environment;
Hon. Catherine McKenna, Minister of Environment and Climate Change Canada;
Aluki Kotierk, President of Nunavut Tunngavik Inc.;
Joe Ashevak, Chairperson of the Kitikmeot Regional Wildlife Board;
Stanley Adjuk, Chairperson of the Kivalliq Wildlife Board;
Chairpersons of the Nunavut Hunters and Trappers Organizations,
c/o the Executive Director, Annie Tattuinee, of the Nunavut Inuit Wildlife Secretariat;
Daniel Watson, Chief Executive Officer, Parks Canada Agency;
David Miller, President and CEO, World Wildlife Fund Canada;
Jobie Tukkiapik, President of Makivik Corporation;
Drikus Gissing, Director of Wildlife, Nunavut Department of Environment;
Paul Irngaut, Director of Wildlife, Nunavut Tunngavik Inc.;
Jason Mikki, Executive Director, Qikiqtaaluk Wildlife Board;
Ema Qaggutaq, Regional Coordinator, Kitikmeot Regional Wildlife Board;
Qovik Netser, Regional Coordinator, Kivalliq Wildlife Board;
Adamie Delisle Alaku, Executive Vice President, Makivik Corporation;
Lisa Pirie, Acting Head of Eastern Arctic, Canadian Wildlife Service, Environment and Climate Change Canada;
Caroline Ladanowski, Director, Wildlife Management and Regulatory Affairs Division, Canadian Wildlife Service, Environment and Climate Change Canada;
Jenna Boon, Nunavut Field Unit Superintendent, Parks Canada Agency; and
Paul Crowley, Vice-President Arctic, World Wildlife Fund Canada.