



**FILE COPY**

March 25, 2008

Honourable Loyola Hearn  
Minister of Fisheries and Oceans  
15<sup>th</sup> Floor, Centennial Tower  
200 Kent Street  
Ottawa, Ontario  
K1A 0E6

Dear Mr. Hearn:

**Re: Decision by the Nunavut Wildlife Management Board to approve an increase for 2008 of one additional bowhead whale to the existing 2008 total allowable harvest of one bowhead whale for the Nunavut Settlement Area**

**NWMB decision:**

On March 6<sup>th</sup> 2008, the Nunavut Wildlife Management Board (NWMB or Board) held a public hearing in Iqaluit, to consider the 2008 level of total allowable harvest (TAH) for bowhead whales in the Nunavut Settlement Area (NSA). After having taken into careful account the reliability and persuasiveness of both the written and oral evidence submitted, the NWMB unanimously decided to increase the level of TAH for bowhead whales in the NSA from one to two whales, for the 2008 hunting season only. A TAH of two whales for this year restricts Inuit harvesting only to the extent necessary:

- (a) to effect the valid conservation purpose of continuing the successful restoration and revitalization of the depleted population of Eastern Arctic bowhead whales (Sections 5.3.3(a) and 5.1.5(d) of the *Nunavut Land Claims Agreement (NLCA)*), and
- (b) to provide for public safety (NLCA S.5.3.3(c)).

**Preliminary factors considered by the NWMB:**

In making its decision, the Board took into account the following preliminary factors:

- 1. At NWMB Regular Meeting No. 54 (December 11-13, 2007), Nunavut Tunngavik Inc. (NTI) formally requested "*the modification or removal of the TAH on Bowhead Whales from the Eastern Canadian Arctic population, based on full considerations of Inuit Qaujimajatuqangit and scientific information.*"
- 2. As of December 2007, the NWMB's meeting and hearing schedule for the spring of 2008 was already full.

3. At NWMB Conference Call No. 112 (January 24, 2008), NTI's 2<sup>nd</sup> Vice-President assured the Board that NTI had no concerns with respect to the NWMB's proposal to insert an initial NWMB bowhead hearing into its existing schedule for March 2008, in order to publicly consider – at the earliest opportunity - a proposal to increase the bowhead TAH in the NSA by one whale in 2008, with a further and more informed consideration of the modification or removal of the bowhead TAH to be undertaken as soon as the Board's scheduling permitted, and all of the necessary information could be assembled.
4. At the beginning of February 2008 - when the NWMB officially announced that it would hold the March hearing, and invited submissions on the proposed 2008 TAH increase of one bowhead whale - the Board was still awaiting the receipt of a reanalysis by the Department of Fisheries and Oceans (DFO) of the results from bowhead aerial surveys conducted from 2002 to 2004, as well as the delivery of a final report on Eastern Arctic bowhead stock abundance. Accordingly, the NWMB wrote to DFO, NTI and the Regional Wildlife Organizations on February 1<sup>st</sup> that, *“Until such time as those crucial documents are publicly available, the Board is not prepared to consider any modification to the bowhead TAH, other than the proposed increase of one whale for the 2008 season.”*
5. No objections were subsequently raised by the NWMB's co-management partners to the Board's position, as set out in its February 1<sup>st</sup> correspondence.
6. DFO delivered *“those crucial documents”* on February 26<sup>th</sup> 2008, approximately one week prior to the hearing.
7. At NWMB Special Meeting No. 11 (July 6-7, 2005), based upon recommendations from NTI, the Board approved several equipment modifications – for reasons of public safety - to the *Naujaat Aviq Hunt Plan* for the 2005 Repulse Bay bowhead hunt. Among those modifications was the following requirement: *“The new harpoon darting guns and Penthrite ‘Super Bomb’ Grenades be used exclusively as the primary method of harvest, and there be no use of a shoulder gun in the hunt”* NWMB Resolution 2005-068.
8. At NWMB Regular Meeting No. 51 (April 24-26, 2007), NTI publicly presented and recommended *Bowhead Whale Hunt Plan Guidelines*, which included *“Primary killing equipment (harpooning equipment) that will deploy an exploding device...”*

**Evidence and arguments considered:**

In making its decision pursuant to NLCA Sections 5.3.3(a) and (c), the NWMB carefully reviewed all of the evidence and arguments presented to it, including the following:

**NLCA S.5.3.3(a) (and S.5.1.5(d))**

- (a) Both DFO and NTI recognize one population of bowhead whales in the Eastern Arctic. (NTI, Hearing Transcript, p.63, lines 16-18. DFO, Hearing Transcript, p.88, lines 19-21)
- (b) DFO does not have a full understanding of the population dynamics of bowheads in the Eastern Arctic. (DFO, Hearing Transcript, p.51, lines 22-24)
- (c) Adopting a Potential Biological Removal (PBR – the maximum number of animals that can be removed from a population while still allowing it to remain at, or recover to, its optimum sustainable population size ) “*is a fallback solution to actually understanding the dynamics and providing risk analysis that are based on a full understanding of those population dynamics...*” (DFO, Hearing Transcript, p.51, line 26, and p.52, lines 1-3; DFO, NWMB Bowhead Public Hearing Binder (Binder), Tab C, p.5 )
- (d) “*Based on scientific knowledge and Inuit Qaujimagatuqangit the Eastern Arctic bowhead population is considered to be in the Cautious Zone on an upward trajectory...*” (DFO, Binder, Tab C, p.5)
- (e) The major source of Inuit Qaujimagatuqangit supporting an increase in the TAH was the *Final Report of the Inuit Bowhead Knowledge Study*. (NWMB, Hearing Transcript, p.26, lines 2-6)
- (f) DFO’s National Marine Mammal Peer Review Committee has accepted a fully corrected partial population estimate of 14,400 whales for the Eastern Arctic bowhead population – but with extremely wide confidence limits of between 4,811 whales and 43,105 whales. “*Due to the large uncertainties, caution should be used in interpreting the abundance estimate.*” (DFO, Binder, Tab 5, p.1; DFO, Binder, Tab B, p.1; DFO, Binder, Tab C, p.2)
- (g) The Wildlife Policy Advisory Committee (NTI and the three Regional Wildlife Organizations) takes the position that “*Inuit of Nunavut would have a current level of needs for bowheads of three per year.*” (NTI, Hearing Transcript, p.64, lines 12-13)
- (h) “*This estimation of 14,400 bowheads is based on a survey of three very small areas in relationship to the total summer range of bowhead whales in Nunavut.*” (NTI, Hearing Transcript, p.64, lines 23-26)
- (i) “*...the largest aggregation in summers are found in the areas from which we produced the estimate...*” (DFO, Hearing Transcript, p.49, lines 1-3)
- (j) “*...we feel that the NWMB should remove the TAH on bowhead whales at this time.*” (NTI, Hearing Transcript, p.66, lines 21-22)

- (k) *“Considering the high uncertainty of the new abundance estimate for EA bowhead, it is not clear if the increased population estimate will receive international support... It would be prudent for Canada to wait for international scientific input on the EA bowhead survey reanalysis before an official PBR is established...”* (DFO, Binder, Tab 5, p.1-2)
- (l) Using an abundance estimate of 7,309 whales, a total human-induced loss (PBR) of ten animals from the population would be sustainable. (DFO, Binder, Tab 4, p.2)
- (m) *“It is recommended that a high level of risk avoidance... [PBR of 18] be considered until it can be demonstrated that a higher PBR is warranted.”* (DFO, Binder, Tab C, p.7)
- (n) The international scientific review of the DFO reanalysis of the results from its bowhead aerial surveys conducted from 2002 to 2004, is being presented at the next International Whaling Commission meeting in Chile, in June of 2008. (DFO, Hearing Transcript, p.37, lines 23-26)
- (o) Greenland is permitted to strike no more than two whales per year, with up to two unused strikes permitted to be carried over each year. (International Whaling Commission, Binder, Tab 9, p.3)
- (p) Nunavik will likely be permitted by DFO to harvest one whale per year (up to two strikes in total). (DFO, Binder, Tab 6; DFO, Hearing Transcript, p.46, lines 14-16)
- (q) As far as DFO is aware, between three and five bowheads have been entangled in nets in the past five years. DFO does not know how many of those whales actually died. (DFO, Hearing Transcript, p.50, lines 24-26 and p.51, lines 1-4)
- (r) Taking a more precautionary approach at this time will allow for a faster recovery of the bowhead population. (DFO, Hearing Transcript, p.44, lines 13-15)

**NLCA S.5.3.3(c)**

- (s) *“To meet the requirement of an explosive device to harvest the animal, we currently have ...four explosive devices for the harvesting of whales... what we do is we allocate two of those devices to each hunt. So currently we do have in stock sufficient equipment to do two hunts this summer.”* (NTI, Hearing Transcript, p.82, lines 2-10)

**Conclusions:**

In carrying out its deliberations, the NWMB listened carefully to the arguments put forward by NTI that the Board should entirely remove the TAH for bowhead at this time. The NWMB also conscientiously considered the evidence supporting NTI’s position – including that the current Eastern Arctic bowhead population could potentially be as high

as 43,000 whales, and is certainly considerably higher than the previous estimates upon which the current TAH is based.

In addition, the Board fully considered the evidence presented by DFO, including that DFO's most recent population estimate is a revision upwards to 14,400 whales (not counting those animals not included in the 2002-2004 survey areas), with a corresponding PBR of 18 whales per year.

In addition to the evidence and arguments from NTI and DFO were a number of other considerations – which, taken together, the NWMB found to be reliable and persuasive enough to lead the Board to decide that a precautionary increase of one whale to the 2008 TAH (a 100% increase) best meets the justification requirements of NLCA S.5.3.3 for this year.

The NWMB has concluded that there is one bowhead population in the Eastern Arctic, that it is much larger than previously estimated – and that it is growing. At the same time, the Board understands that DFO does not have a full grasp of the population dynamics of bowheads in the Eastern Arctic, and that bowhead population numbers have not yet returned to their former levels. Pursuant to both Inuit Qaujimajatuqangit and scientific information, they are still in the “*Cautious Zone*”.

As well, the very wide confidence limits for the new estimates require a particularly careful approach to be taken with respect to the modification of harvesting limits. While the Board must consider the possibility that the bowhead population may number as high as 43,105 whales, it must also consider that the population may be considerably lower - even as low as 4,811 animals.

DFO's reanalysis was completed and distributed just days before the NWMB's public hearing. Ideally, such crucial documents would be provided at the same time as a proposal for NWMB decision - at least six weeks prior to the hearing – thus allowing all parties, potential parties and the public a full opportunity for consideration and response. The Board intends to provide that opportunity when it publicly considers the further modification or removal of the bowhead TAH, following the 2008 hunting season.

In addition, while not determinative of NLCA decision-making with respect to bowhead harvests, the June 2008 international scientific review of DFO's reanalysis will certainly be relevant to that decision-making. Accordingly, the Board intends to also include in its next public consideration the results of that international review.

In making its 2008 TAH decision, the NWMB took into careful account the planned bowhead harvesting activities for this year outside the NSA (NLCA S.5.3.4), as well as other potential bowhead removals: up to two strikes each by Greenland and Nunavik whalers - for a potential total of four removals - and up to two other potential human-caused bowhead mortalities, such as from net entanglements.

Using a very precautionary 2008 PBR of 10 whales, and considering the potential removal of up to six bowheads through hunting in other jurisdictions and by way of accidents, the NWMB decided to increase the TAH by one whale for 2008, pursuant to NLCA S.5.3.3(a). That TAH permits up to two strikes per harvest attempt – four strikes in total.

While the NWMB understands that its decision is a cautious one, it is confident that the 2008 TAH will allow for a faster restoration and revitalization of the depleted Eastern Arctic bowhead population, an outcome that is in accordance with NLCA S.5.1.5(d).

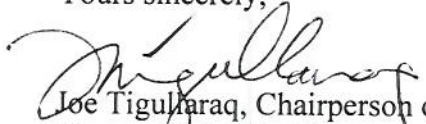
Finally, the NWMB conscientiously considered – in accordance with NLCA S.5.3.3(c) - the important issue of public safety in connection with the hunt. The Board was particularly concerned that the safest hunting equipment be used to carry out the Nunavut hunts. NTI has done much work in recent years to secure such equipment and to help ensure that all community bowhead whale hunt plans require the use of such equipment. At the hearing, NTI informed the NWMB that it has sufficient equipment for only two hunts in 2008. Accordingly, pursuant to NLCA S.5.3.3(c) – and in accordance with (although not dependent upon) its determination under NLCA S.5.3.3(a) - the Board confirms a TAH of two whales in the NSA for 2008.

**NWMB request for a prompt response from the Minister**

Mr. Minister, the NWMB hereby forwards its decision to you pursuant to NLCA S.5.3.17. While acknowledging that you have up to sixty days to provide a response (NLCA S.5.3.18), the Board requests that you treat this particular decision as an urgent matter requiring a prompt reply. If there is to be an additional bowhead hunt this summer, Nunavut's Regional Wildlife Organizations and relevant Hunters and Trappers Organizations require as much time as possible to properly prepare for that hunt – including with respect to such matters as the selection of the whaling crew, the provision of training, the assembly of appropriate whaling equipment, and the development (and subsequent NWMB approval) of a comprehensive Whale Hunt Plan. That Plan will need to address all of those matters just mentioned, as well as the towing, landing, processing, disposition and distribution of the harvested whale. Should your response not arrive soon - even if it is an acceptance of the NWMB decision - an additional 2008 hunt will be put in jeopardy.

Please do not hesitate to contact the NWMB at any time, if you have questions or concerns with respect to the Board's decision – or if the NWMB can be of other assistance in helping you to provide a swift response to its decision.

Yours sincerely,

  
Joe Tigullaraq, Chairperson of the  
Nunavut Wildlife Management Board

c.c. Keith Pelly, A/Director, Eastern Arctic Area, Department of Fisheries and Oceans