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Building Nunavut Together
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Department of Environment
Avatiliqiyikkut
Ministère de l'Environnement

August 29, 2014

Jim Noble, Executive Director
Nunavut Wildlife Management Board
Box 1379
Iqaluit, Nunavut
X0A 0H0

Dear Mr. Noble,

Re: Response to NTI's May 2, 2014 Submission on Establishing a Basic Needs Level for Southampton Island Caribou

The Nunavut Wildlife Management Board is currently contemplating setting a Total Allowable Harvest for Southampton Island caribou, which requires that a Basic Needs Level for Inuit also be struck.

On May 2, 2014 Nunavut Tunngavik Incorporated (NTI) filed a submission on this issue with the Nunavut Wildlife Management Board entitled "Replay to the Government of Nunavut Supplementary Submission".

As you are aware, the Nunavut Wildlife Management Board granted the Government of Nunavut the opportunity to reply to NTI's May 2, 2014 submission. The Government of Nunavut is pleased to submit the attached document in response.

Thank you for the opportunity to provide this additional input for the Board's consideration in making this important decision. Please don't hesitate to contact me if you have questions or concerns.

Sincerely,

Steve Pinksen
Acting Deputy Minister

P.O. Box 1000, Stn.1320
Iqaluit, Nunavut X0A 0H0

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GOVERNMENT OF NUNAVUT DEPARTMENT OF THE ENVIRONMENT
REPLY TO NUNAVUT TUNNGAVIK MAY 2ND SUBMISSION

August 29th, 2014

INTRODUCTION:

The Nunavut Wildlife Management Board (NWMB or the Board) granted the Government of Nunavut (GN) the opportunity to reply to the May 2, 2014 submission filed by Nunavut Tunngavik Incorporated (NTI) entitled "Reply to the Government of Nunavut Supplementary Submission" (the May Reply). The GN reply is set out below.

The GN wishes to be clear about the difference between the NTI and GN interpretations of the Nunavut Land Claims Agreement (NLCA). The GN respects and supports the individual right of an Inuk, set out in section 5.7.30 of the NLCA, to "dispose freely to any person any wildlife lawfully harvested, including the right to sell, barter, exchange and give either inside or outside the Nunavut Settlement Area" (NSA). As the Board is aware, the GN has established a number of programs to facilitate the exercise of these rights and has over the years actively supported these Inuit rights.

The GN does not, however, agree that Inuit harvesting rights under Article 5 of the NLCA extend to full-scale commercial harvesting of wildlife[1] for the specific purpose of selling that wildlife outside of Nunavut.[2] Our reasons for this are both historical and legal. It is for this reason that the GN submissions in this proceeding argue that Southampton Island caribou harvested under commercial licenses during the period relevant for the Nunavut Harvest Study and afterwards should not be included when the NWMB is calculating a basic needs leve (BNL).

In order to assist the Board, the submissions below respond to the NTI argument and May Reply. We also provide further explanation of the GN position.

THE BOARD'S ROLE – PRECEDENT AND THE MEEHAN OPINION:

The NWMB is a quasi-judicial administrative tribunal established under the NLCA as the main instrument of wildlife management in the NSA. In this regard, and consistent with the general role of administrative tribunals in

[1] Throughout this Reply, the GN refers only to wildlife under its jurisdiction and any legal interpretations of the NLCA or other authorities herein should be read with this scope in mind.
[2] Below in this submission we refer, to such wildlife as "commercially harvested caribou". The treatment of caribou harvested for these purposes is the remaining issue which has complicated this Southampton Island caribou TAH proceeding. In the GN's view, such caribou harvesting is not covered by s.5.7.30.

law, the Board is not bound by its previous decisions. While it is open to the NWMB to secure and adopt legal advice, the Board must approach each new decision with an open mind and as an independent decision-maker. This means that the Board must fairly consider the facts and argument advanced by the GN, in particular as it relates to the Meehan opinion and the history and nature of harvesting activities on Southampton Island.

In most respects, the interpretation of Article 5 advanced by NTI is in agreement with the Meehan opinion. In its August 12, 2014 “Reply to GN Status Report” (the August Reply), NTI urges the Board to stick with its precedent – the Meehan opinion. At the end of this proceeding, the Board must make a decision the basis of all the evidence and arguments advanced by the parties. If the result is that NWMB decides to adjust its position in relation to the Meehan opinion, it is free to do so. The Board should not fetter its discretion at this or any stage in the proceeding.

The GN does not agree with Mr. Meehan’s opinion and will suggest a different approach to the interpretation of the NLCA, in particular in relation to whether commercial harvesting should be included in the calculation of BNL.

OUTINE OF GOVERNMENT OF NUNAVUT SUBMISSION:

Part I. TOTAL ALLOWABLE HARVEST FOR SOUTHAMPTON ISLAND CARIBOU

Part II. BASIC NEEDS LEVEL FOR SOUTHAMPTON ISLAND CARIBOU

A. The Facts and the Government of Nunavut Position on BNL

A.1. The Government of Nunavut Evidence
A.2. Evidence in the NTI May Reply

B. The Meehan Opinion

C. The Government of Nunavut Position

D. The NTI May Reply Argument

E. Conclusion

Part III. GOVERNMENT OF NUNAVUT RECOMMENDATIONS TO THE BOARD

Part I. TOTAL ALLOWABLE HARVEST FOR SOUTHAMPTON ISLAND CARIBOU

On March 31, 2014 the Government of Nunavut Department of Environment provided a supplementary submission to the Nunavut Wildlife Management Board addressing the issue of the establishment of a total allowable harvest (TAH) for Southampton Island caribou (the "GN Supplementary Submission"). Parts 1 and 2 of that submission set out a summary of the current status of Southampton caribou, identified management considerations for the NWMB and set out both the issues to be considered by the Board, and a chronology of events relevant to the decision which the Board must make. In Part 3 of the Supplementary Submission, the GN emphasized the serious nature of the conservation problem with this caribou population. Over the past few years, harvesting of Southampton Island caribou has been restricted on the basis of Ministerial Orders imposed pursuant to s.5.3.24 of the NLCA. These interim decisions are not the best approach for management of this population. All parties to this proceeding agree that a TAH must be established.

The GN Supplementary Submission went on to assert that the setting of a basic needs level (BNL) it is not a precondition to a decision establishing a TAH. Although a BNL must follow after a TAH decision, the NLCA does not specify that these decisions must be made at the same time.

NTI's May Reply takes no issue with the evidence produced by the GN and Inuit from Coral Harbour about the decline in the Southampton Island caribou population. In addition, the May Reply agrees with the setting of a TAH of 800 animals for this caribou population.

In March, Appendix "A" of the GN Supplementary Submission suggested that the BNL for this population should be 1906 animals per year.

Part II. BASIC NEEDS LEVELFOR SOUTHAMPTON ISLAND CARIBOU

The NLCA s. 5.6.19 requires the NWMB to strike a basic needs level in accordance with Part 6 of Article 5 of the Agreement, once a TAH has been determined. The GN and NTI disagree on the narrow point of how large scale commercial harvesting for sale of caribou outside of the NSA should be treated for purposes of the calculation of a BNL. As we indicated in the introduction, the GN agrees with and supports the individual rights set out in 5.7.30 of the Agreement. We wish to emphasize that subject to Article 5 of the NLCA, there is no issue between the GN and NTI with respect to the inclusion in BNL of caribou harvested for sale,

barter, exchange or gifts by individual Inuit either inside or outside the NSA.

A. The Facts and the Government of Nunavut Position on BNL

A.1. The Government of Nunavut Evidence

In section 3.2 of its Supplementary Submission, the GN set out its views about the treatment of commercially harvested caribou for purposes of BNL calculation. The GN continues to assert that the history of harvesting of Southampton Island caribou is unique. We suggest that such a disposition of commercially harvested caribou through commercial sale outside the NSA was not in the contemplation of the negotiators of the NLCA, when they set out the framework of Inuit rights in Article 5.

The records included in the Nunavut Harvest Study, between 1996 and 2001, provide little assistance with respect to the specific nature of the commercial harvesting activities on Southampton Island. As a consequence, the GN had to rely on the knowledge and experience of its staff in preparing its Supplementary Submission.

In a May 8, 2014 request to GN, the Board asked the GN for additional documentary to support the Supplementary Submission. This request is below:

> "1. True and complete copies of the licenses issued to the company responsible for *"commercial"* harvesting of Southampton Island (SHI) caribou, referred to by the GN, from and including 1996 to 2007, including all licence conditions;
>
> 2. The best documentary evidence in the GN's possession - or available to the GN for the same period, concerning employment of the hunters, the terms of that employment, and the identity of the employer (subject to applicable privacy laws);
>
> 3. The best available evidence supporting the GN's understandings of the following facts:
>
> (a) that all SHI caribou harvested for the meat plant in 2007 was for sale outside the Nunavut Settlement Area (NSA); and
>
> (b) that all caribou harvested for the meat plant in the years 1996 to 2001, inclusive, was for sale outside the NSA; and
>
> 4. If the GN disputes any of the following facts asserted by NTI, the GN's best available evidence of its different understanding:

(a) all meat sold by the plant until approximately 1995 was sold in the Northwest Territories;

(b) from approximately 1996 until 2007, sales from the plant were not limited to destinations outside the NSA - in particular:

i. smoked ribs, hocks and dry meat were sold in the NSA; and

ii. cuts packaged for export continued to be sold to Nunavut restaurants, and perhaps to other Nunavut buyers (logically inferred from the pre-1995 history); and

(c) from 1993 until 2007:

i. some of the skins were distributed and used locally (sleeping skins, sewing clothing etc.), and

ii. tongues, hearts, back fat (tuunu), leg marrow and briskets were transported back to Coral Harbour for distribution to community residents."[3]

The GN complied with this request and on June 27, 2014 filed a Status Report including further responses to the Board's request for documents related to the GN Supplementary Submission. NTI filed a Reply (the "August Reply") to GN Status Report dated August 12, 2014 in which it set out its views of the new evidence from our June 27 filing.

The GN has been completely open and transparent during the process of reviewing its files and attempting to secure the documents requested by the Board. The state of the documentary record (government files) available to the GN has been fully explained. Much of the early history and documentary records from the period before 1999 when the management of wildlife was the responsibility of the Government of the Northwest Territories are simply not available to the GN. In addition, the GN explained that the Government's *Archives Act*[4] sets out a framework that results in the destruction of any government records which are older than five to seven years depending on the kind of material. Despite these difficulties, the GN conducted searches in its headquarters and regional offices as well as in Coral Harbour in an attempt to secure all the documents requested by the Board. GN will continue to work at filling out the record in this proceeding for the Board.

As we pointed out in our Status Report, only a few documents resulted from that search. In addition, much of the information requested by the NWMB is likely held by third parties and they were not available to the GN. Thus, while there are gaps in the documentary record, the Board should

[3] May 8, 2014 letter from Chair NWMB to the Honourable Johnny Mike and leaders of other parties to this proceeding, pages 3 and 4.

[4] R.S.N.W.T (Nu) 1988, c.A-8. Some materials can even be destroyed sooner than 5-7 years.

recognize that the GN has made best efforts to supplement the documentary evidence available to the Board.

NTI in its August Reply suggests that "...[the] GN has not identified facts and evidence sufficient to support a finding that the harvesting of Southampton Island caribou by Coral Harbour Inuit falls into the exception that the GN reads into the Agreement".[5] This comment and the August Reply in general confuse the documentary record with the full record which will be generated in this proceeding. The Board's request was for additional documentary evidence. The GN's intention is to produce witnesses who will provide oral evidence based on their personal knowledge and experience to support the GN position. Simply put, the documentary record is only a part of the evidence which the Board will have to consider at the end of this proceeding. Thus, the GN disagrees with this conclusion. At best, the conclusions set out in the NTI August Reply are premature and only relate to the documentary record.

In addition, the GN points out that the NLCA anticipates that the NWMB may, on occasion, have to make decisions in circumstances where the evidence available is less than ideal. Such an approach is consistent with the Precautionary Principle and is referenced in section 5.6.24 of the NLCA, which requires the NWMB to make its decisions on the "best evidence available as to the levels of harvesting by Inuit in the five years prior to the establishment of a total allowable harvest". Unfortunately there are difficulties with the documentary record provided by the GN. In our view, however, the Board must still make a decision on the best evidence available. In general response to the many NTI comments in the August Reply, we remind the NWMB that the NTI argument is not evidence.

<u>GN Response to NTI Comments Part B Sections 1 to 4 of the August Reply:</u>

- Section B 1 Licences and Conditions –

  (a) Licensing in relevant years other than 2007:

  NTI's conclusion "that the NWMB should not accept as fact that the company compensating the Coral Harbour hunters for their caribou was operating under a government issued license in the years 1996 – 2000" cannot stand in the face of Appendix F included in the GN's June 27, 2014 submission. The *Wildlife Business Regulations* have been in force since at least 1993. It is simply not possible that any company involved in commercial caribou harvesting on Southampton Island could have operated, much less sold caribou either inside or outside the NSA, in the absence of a commercial

[5] Section A, page 1 August Reply.

license issued by either the GNWT or the GN. Without a licence this activity would be illegal.

NTI goes on to note (and we disagree with this generalization) "there is thus no evidentiary basis for excluding any caribou so harvested in the BNL periods except for the year 2007". The regulatory framework is clear. GN witnesses will address the issue of licensing. It is open to the NWMB, from the documents in hand and the regulatory framework, to infer that such licenses existed.

(b) Reliability of the licensing information offered as a description of the harvesting that occurred:

It is clear from the documents produced by the GN that a meat processing plant operated by Sudliq Developments Limited was licensed in 2009 (see Appendices C, D and E of the GN's June 27 submission). It is thus clear on the face of the documents provided by the GN that the meat processing operation was active in 2009. We suggest that the NTI question asked about determining when the meat plant closed seems to be based on a misunderstanding of the documents already in NTI's possession. We note as well that the GN Supplementary Submission made reference to commercial harvests on Southampton Island 2007 in table 2 of Appendix A. The evidence in hand also shows that no commercial harvesting took place in 2008.

- Section B 2 Documentary evidence of employment, including terms of employment and identity of employees –

  In its June 27, 2014 submission the GN made it clear that the information which NTI complains is missing, including "written contracts of employment, written offers of employment, or other documentary evidence [and] terms of any employment or the identity of any employer" was never in the GN's possession. In addition, GN advised that information of this nature is protected by privacy law.

  NTI has made much of the assertion found in section 2 (c) of the GN Supplementary Submission (page 10) that "... [more] specifically, all sales of caribou were conducted by companies licensed by the government. Inuit involved in these operations were employed as hunters. Aside from the hunting they had no involvement in this commercial operation." As a result, NTI has demanded a variety of documentary evidence, most of which is out of GN's reach.

In our view, NTI's conclusion in this section fairly points out "The absence of a demonstrable employment relationship between the Inuit hunters and the meat processing companies does not require concluding that there was no contractual relationship at all between them." (emphasis added) The GN's view of this arrangement, as set out in the Supplementary Submission, is that the harvesting undertaken by these hunters under admittedly unspecified contractual conditions would never have taken place if the commercial harvesting license had not been issued to the companies involved.

At the time that this commercial harvesting took place, there were no restrictions on Inuit caribou harvesting on Southampton Island. Inuit had the right to harvest up to their full level of economic, social and cultural needs under s.5.6.1 of the NLCA, and GN assumes that they did. The commercial harvesting of caribou for sale outside of Nunavut would simply not have taken place in the absence of the government initiative to establish a business both to reduce the caribou population and generate economic development opportunities for Coral Harbour Inuit. We also draw the Board's attention to the terms and conditions of the commercial license granted to Sudliq Developments Limited in 2009. They indicate that the meat processing had to meet the standards set by the Canadian Food Inspection Agency (CFIA). This is a clear indication that the purpose of the license was to sell meat outside the NSA. It is not possible to export meat from Nunavut for commercial purposes which do not meet these standards, and not necessary to meet CFIA standards for meat which remains within the territory. In addition GN staff advise that CFIA required that all caribou accepted for export had a GN commercial tag assigned to it.

- Section B 3 Sales and other uses of the caribou harvested –

  In the GN's view, the caribou harvested under these commercial licenses were intended to generate products which could provide the basis for the development of an export market. That market was primarily for high-quality meat products. The commercial licenses did not prevent the use of some components of these caribou carcasses locally, or elsewhere in Nunavut. From an economic standpoint, as well as a conservation standpoint, it made sense for the licensed companies to derive as much economic return from the harvested animals as possible. The fact that some components of the animals such as rib cages, hocks or sled skins and even small quantities of meat were sold or consumed in Nunavut does not detract from the fundamental commercial nature of the whole operation or its primary marketing focus – sales to the south.

- Section B 4 Acting honourably and in good faith with due diligence at the community/HTO level

  It is not clear to GN what these comments provided by NTI are intended to mean. GN has, throughout the preparation of its application for the setting of a TAH, made efforts to ensure that the Hunters and Trappers Organization (HTO) of Coral Harbour and community were involved in the development of caribou management proposals and any submissions made to NWMB. Working collaboratively with the community in this way is a long standing approach for the GN. The fact that the local community and HTO were consulted before commercial licenses were issued should come as no surprise to either NWMB or NTI.

A.2 The NTI Evidence

In its May Reply, NTI set out in Part B, between pages 20 and 22 a series of questions which it asked be addressed by the Board and referred to the GN. The NWMB agreed and on May 8, 2014 requested that the GN respond to NTI's questions. The GN's efforts to respond to these questions resulted in a status report and ultimately in the GN's June 27, 2014 submission to the Board. On page 22 of the May Reply, NTI sets out its understanding of the ownership of the companies or businesses which held commercial licenses for caribou harvesting on Southampton Island between 1993 and 2007. The GN does not dispute this information about the ownership of these businesses. The governments' intention in fostering this commercial harvest was always to generate benefits for Inuit, locally and specifically, in Coral Harbour. Despite this information the GN simply notes that corporate entities do not possess or exercise Aboriginal rights and that the ownership of these businesses is not relevant to the issue at hand.

B. The Meehan Opinion

The Meehan opinion (the "Opinion" below in this section) was provided to the Board by Mr. Eugene Meehan, Q.C. on April 29, 2009. After a period of reflection and with input from interested parties, the NWMB adopted the advice from Mr. Meehan about the manner in which BNL should be calculated. On several occasions since, including in this proceeding, NTI has indicated its agreement with the conclusions set out in the opinion. In the Kingnait Fjord fisheries proceeding, however, the NWMB made a decision which relied on the Opinion and the Board's decision was rejected by the Minister of Fisheries and Oceans Canada. At least in respect of its relationship to commercial fisheries, there still appear to be questions about the applicability of the Opinion.

The GN did not take a position with respect to the conclusions drawn in the Opinion as it was applied to the commercial fisheries proceeding because the issue is outside the GN's jurisdiction. In this proceeding, the GN's preferred approach is still to have the NWMB establish a TAH for Southampton Island caribou and leave the issue of BNL be addressed separately at a later date. GN has indicated, its view that a TAH should be established as soon as possible. Because the agreed-upon TAH number of 800 caribou is so low, it will be below even the lowest possible number for BNL for some time to come.

As indicated in the Opinion, the provisions of Article 5 include no explicit language addressing the manner in which commercial harvesting is to be treated in the calculation of BNL Part 6 of Article 5 which sets out the provisions governing harvesting does not even use the word "commercial" in relation to Inuit rights. The first use of the word in Part 6 is in relation to the surplus and the allocation system set out to deal with the surplus.[6] Thus, the Opinion must infer the treatment of commercial harvests in relation to Inuit rights and the context of BNL calculations from an analysis of the text of Article 5. That text is less than clear.

The Opinion was written in 2009 before the Supreme Court of Canada set out is views about the proper approach to the interpretation of modern land claim agreements in *Moses*[7] and *Little Salmon Carmacks,*[8] in addition although the Opinion made brief mention of Supreme Court jurisprudence in relation to the treatment of, and distinction between subsistence and commercial exploitation of resources[9] by Aboriginal rights holders, it really made no attempt to apply the guidance offered by the Court in those cases to the interpretation of the text of Article 5. It is noteworthy that since the Opinion was written the Supreme Court has made another important decision in *Lax Kw'aalams*[10] on the question of Aboriginal commercial harvesting and has offered further guidance on the way in which Aboriginal commercial rights are to be reconciled with those of other Canadians. [11]

In addition, the Opinion fails to make any attempt to address the historical and social context within which the NLCA is intended to reconcile Inuit rights with those of other Canadians. It appears on our reading of the Opinion that it is focussed narrowly on the words of Article 5 of the NLCA.

[6] See s.5.6.31 NLCA.
[7] Quebec (Attorney General) v. Moses, 2010 SCC 17 ["Moses"].
[8] Beckman v. Little Salmon/Carmacks First Nation, 2010 SCC 53 ["Little Salmon"].
[9] See pages 11 and 12 of the Opinion.
[10] Lax Kw'aalams Indian Band v. Canada (Attorney General), [2011] SCC 56.
[11] Some aspects of the recent Nunavut Court of Appeal decision in Nunavut Tunngavik Incorporated v. Canada (Attorney General), 2014 NUCA 02 also support this approach to land claim interpretation, see for example, paragraph 39.

This interpretive approach is tantamount to the "whole agreement" approach to modern land claim interpretation which is no longer supported by Supreme Court jurisprudence.[12] Finally, the conclusion drawn in the Opinion about including commercial harvests in BNL is inconsistent with the internal scheme for the allocation of the surplus set out in Article 5.

The purpose of this GN submission is not to provide a line by line critique of the Opinion. We have identified our general areas of disagreement with the Opinion and prefer to set out the GN position in relation to our own analysis of Article 5. In so doing, we will comment on the cases cited above, the Opinion and the NTI May Reply. That explanation is set out below.

C. The Government of Nunavut Position

The Nunavut Land Claims Agreement is an "extinguishment - grant back" land claim. Article 2 of the NLCA provides an explanation of how this works. Through the NLCA, the Inuit of Nunavut agreed to "cede, release and surrender to Her Majesty the Queen in right of Canada, all of their aboriginal claims, rights, title and interests, if any", anywhere within Canada and adjacent offshore areas within the jurisdiction or sovereignty of Canada.[13] Simply put, what this means is that Inuit exchanged their traditional and historical rights and interests for those set out in the NLCA. What is left after the completion of this transaction is the rights set out in the NLCA.

This means that for an Inuit right to exist after 1993, it must be found within, or by inference from the full text of the NLCA. Article 2 of the Agreement sets out some internal rules for interpretation of the Agreement and these provisions are supplemented by the guidance provided by the Courts, most importantly, the Supreme Court of Canada, in a number of cases, including the *Moses* and *Little Salmon* cases referred to above and in Appendix 1.

<u>Interpreting the NLCA</u>:

Since Inuit rights are constitutionally protected, any interpretation of their content or effect must be undertaken with great care. Of course when the

[12] See Appendix 1 below. In deference to Mr. Meehan, we point out that the Opinion could not have considered these matters. The case law has evolved quickly since 2009. The cases relied on by the GN in Appendix 1 were not decided when Mr. Meehan rendered his opinion.
[13] See section 2.1.7 (a) NLCA.

rights in question are explicitly set out in the Agreement, the interpretive exercise is easy. For example, section 5.6.5 of the NLCA sets out presumptions as to needs for Inuit which ensure that the total allowable harvest of species such as bears, musk ox, bowhead whales and others is reserved exclusively for Inuit. This makes it quite clear that only Inuit can harvest these species, unless there is a surplus. But even in a case where a right is described in writing, there can still sometimes be difficulties interpreting the appropriate scope and content for the right, or the meaning of the section involved. Thus, for example, section 5.6.1 includes the phrase "up to the full level of his or her economic, social, and cultural needs,...". The exact meaning of these words must still be interpreted in the appropriate context in order to give full recognition to the right set out in that section. The meaning of those words and content of the right is not made clear simply by reading them.[14]

The interpretive exercise becomes even more difficult when the existence, scope or content of a right must be inferred from the full text of Article 5 or the NLCA. It is possible, and not unusual in such instances, for the interpretation of a land claim to require an interpretation of both the text and a more general context in order to determine how to deal with an issue that is not addressed explicitly in the words of the Agreement.[15] In our submission, that is precisely the situation the NWMB is confronted with when dealing with the question of whether commercial harvesting of caribou for sale outside of Nunavut is to be included in the calculation of BNL. We suggest that the words of Article 5 need to be interpreted in a broader context. The starting point is Article 5 but the Board can consider other contextual materials to assist in this exercise. As a result, the GN has provided the materials in Appendix 2 and 3 to this submission to assist the Board.

This is clearly a difficult situation for the Board. Lawyers from NTI, DFO, the Board's outside counsel, Mr. Meehan, and now the GN have been providing differing and conflicting advice about this point of interpretation for over five years. No one expects a co-management wildlife board to be comprised of constitutional lawyers. The NWMB is simply required to listen to the positions advanced to it with an open mind and make the best and most reasonable decision that it can. We hope the arguments that follow will help.

<u>The Meehan Conclusion</u>:

[14] At a minimum you would also have to read 5.6.2 and 5.6.9 of the NLCA and then apply all that language to the definition of the 5.6.1 right. In the Meehan opinion, of course, a number of other NLCA provisions were resorted to in interpreting the 5.6.1 right and the way it relates to BNL.
[15] Appendix 1 further explains this assertion.

We begin by restating the conclusion drawn by Mr. Meehan:

> "Sections 5.6.19 to 5.6.25 of the NLCA do not specify what types of harvests the NWMB shall include in calculating a basic needs level. However, read in context with the whole of Article 5 and the NLCA, in our opinion the calculation of a BNL is a numeric calculation based on (i) the amounts harvested during the original 5 year Nunavut Wildlife Harvest Study or (ii) those amounts and harvests during the 5 year period prior to the imposition of a total allowable harvest, as applicable, without regard to the type of consumption or use by Inuit. We find no express or implied distinction to be drawn between the subsistence or commercial purposes for which may have been harvesting during the applicable period. A BNL is intended as a snapshot of certain harvest levels subject to the applicable formulas specified in Sections 5.6.21 and 5.6.23 - and it obliges the NWMB to strike a base line level of harvesting for Inuit which captures and preserves this first demand by Inuit on the total allowable harvest for that stock or population."[16]

If this interpretation is correct, only the requirements of conservation and the capacity of Inuit to harvest limit the scope of the right set out in 5.6.1 of the NLCA. This is because as Mr. Meehan indicates, correctly in our view, the calculation of BNL is merely an arithmetic exercise. We also agree that sections 5.6.19 to 5.6.25 of the NLCA do not say explicitly what types of harvests can be included in the calculation of a BNL. Notwithstanding these points of agreement, it is the GN's view that Mr. Meehan's overall conclusion is incorrect.

<u>The Meehan Conclusion is Not Consistent with the Scheme or Contents of Article 5 or More Generally with Canadian Wildlife Law and Other Land Claims:</u>

In the GN's view, Article 5 sets out a comprehensive framework for the management of wildlife in Nunavut. This scheme includes the rights granted to Inuit and sets out opportunities for others to harvest wildlife, subject always to the priority granted to Inuit rights. Article 5 establishes the NWMB and sets out its powers and relationship to government. The general Inuit right to harvest is set out in section 5.6.1. But the content and any limits applicable to this right must be found through a broader reading of Article 5 of the NLCA, and by reference to the broader constitutional context applicable to the interpretation of Inuit rights.

The GN view is that this interpretive exercise must begin with careful consideration of the principles and objectives set out in sections 5.1.2 and 5.1.3 of the NLCA. Given the ambiguity which we suggest is associated with the interpretation of the 5.6.1 right, context is important. The words in these sections refer specifically to both "traditional and current use" as well as to the "levels, patterns and character of Inuit harvesting". A simple

[16] Page 3 of the Meehan opinion dated April 29, 2009.

reading of this language invites consideration of what those traditional and current uses as might be. Such consideration requires reference to a broader context than the words of Article 5.

The issue before the Board is the relationship between the 5.6.1 right and commercial harvesting of caribou for sale outside the NSA. In its May 2nd Reply, NTI made reference to Inuit commercial use of other species.[17] It is unlikely that any of the harvesting referred to in that portion of the NTI Reply could have a bearing on an Inuit aboriginal right to harvest wildlife for commercial purposes.[18] In the cases cited in his review of "Aboriginal Rights SCC Jurisprudence" by Mr. Meehan, and the *Lax Kw'alaams* case reviewed in Appendix 1, it is clear that for such a right to exist there had to be a pre-contact practice, tradition or custom related to commercial harvesting of wildlife which was an integral part of the culture and of Inuit society. All the NTI examples are post-contact. In any effort to ground such a right, the onus is on the aboriginal group claiming it. No such claim was made and there has been no evidence to support the existence of such a right in Nunavut put forward in this proceeding.

Wildlife legislation in the NWT in 1993 was consistent with the general framework of Canadian wildlife law in that commercial harvesting of wildlife was not permitted as of right. At best, such was heavily regulated and consequently, it was not considered to be an Aboriginal right.[19] Appendix 2 provides an overview of the regulatory regime applicable to Inuit harvesting before the NLCA came into force. It is clear from that review that no Inuit "right" to harvest caribou commercially for sale of outside of Nunavut existed in 1993. The NTI May Reply acknowledges as much in that it suggests that the s.5.7.30 right for an individual Inuk to harvest and sell wildlife outside of the NSA, achieved through the negotiation of the NLCA, represented an expansion of Inuit rights.

Review of all other comprehensive northern land claim agreements[20] indicates that not a single one includes the kind of right claimed by NTI for Nunavut Inuit through section 5.6.1 of the NLCA. As a result, the conclusion reached by Mr. Meehan puts the NLCA harvesting rights granted to Inuit in a very unique class.

As the dominant authority for the management of wildlife in Nunavut, the NLCA, and more particularly, Article 5 must also play a central role in reconciling the interests of Inuit with the interests of broader Canadian society, including non-Aboriginal residents of Nunavut. The structure of

[17] See pages 13 to 15 of the document.
[18] Note for example concerns about the expansion of the GN approach to muskox harvests. This is clearly not relevant because muskox are a "presumption as to needs" species under s.5.6.5 of the NLCA.
[19] See "The Evolution of Wildlife law in Canada" CIRL Occasional Paper #9, May 2000 by John Donihee.
[20] See Appendix 3.

Article 5 achieves this goal by setting out Inuit rights, guaranteeing their priority, within the limits of conservation, and relating Inuit rights to those of others who also live in Nunavut. Thus, Article 5 sets out the principles and objectives which guide and frame the rights and decision-making processes established for the wildlife management purposes of the NLCA. For our purposes, Part 6 and some of Part 7 of Article 5 are the key provisions.

We suggest that the right granted in section 5.6.1 is best characterized by reference to the Inuit needs set out in section 5.6.26. These are the matters which must be considered at the time when an Adjusted Basic Needs Level (ABNL) must be set by the NWMB.

The GN suggests that an interpretation of the right set out in section 5.6.1 such as that advanced by Mr. Meehan and NTI, which in the absence of a conservation concern is essentially unlimited, could lead to circumstances in which there is never a surplus.

If large–scale commercial harvesting for sale of wildlife outside Nunavut is part of the s.5.6.1 right, there would have been little reason to set out the right in section 5.6.39 which guarantees an opportunity for HTOs and RWOs to participate in commercial operations such as “sports and all other forms of commercial ventures, designed to benefit Inuit”. Likewise, there would be no need for section 5.6.46 of the NLCA which guarantees Inuit the opportunity to participate in the limited entry system and thus grants another opportunity for Inuit participation in commercial wildlife opportunities. Thus the GN suggests that the outcomes which would result from the interpretation of Article 5 set out in the Meehan opinion are thus inconsistent with the overall wildlife management scheme in the NLCA.

<u>The Rights Granted Inuit in the NLCA Did Not Include the Right to Harvest Commercially for Sale outside the Nunavut Settlement Area</u>:

In the GN’s view, the scope of the basic or core right to harvest granted to Inuit in s.5.6.1 is the key to the issue before the Board. This is because what goes into BNL is dependent on the wildlife which Inuit are legally authorized to harvest. Calculating BNL is an “arithmetic exercise”. Let’s have a look at the words of that section.

> 5.6.1 Where a total allowable harvest for a stock or population of wildlife has not been established by the NWMB pursuant to Sections 5.6.16 and 5.6.17, an Inuk shall have the right to harvest that stock or population in the Nunavut Settlement Area **up to the full level of his or her economic, social, and cultural needs, subject to the terms of this Article.** (emphasis added)

Despite assistance from s.5.6.2 and 5.6.9, the exact scope of the right granted in section 5.6.1 is not clear. Nor is it immediately clear how this right fits within the context of Nunavut wildlife laws. The NLCA does not use the word “subsistence”. And it only refers to “commercial harvests” in relation to the surplus. Obviously the terms of Article 5 can limit the 5.6.1 right, since the section is explicit in that regard. Section 5.6.9 identifies other factors which guide a determination of the meaning of “full level”. But in the end, the actual meaning of the highlighted phrase in 5.6.1 is not clear, nor is the scope and content of this right. The Meehan opinion had to look elsewhere to interpret it too.

The GN suggests that the proper interpretation of the scope of the 5.6.1 right must be based on a consideration of all the provisions of Article 5, or the NLCA, if other components are helpful. We submit that consideration of the general law, and even other land claims may also provide some useful context.

The place to begin any consideration of the rights granted to Inuit is with the principles and objectives set out in ss. 5.1.2 and 5.1.3 of the NLCA. Now these provisions don’t say exactly what the 5.6.1 right is, but we suggest that any right alleged to be found through an analysis of the text of Article 5 must be consistent with both these principles and objectives. The parties to the Agreement clearly intended that, because as s.5.1.2 (b) states:

> 5.1.2 This Article recognizes and reflects the following principles:
>
> > (a) Inuit are traditional and current users of wildlife;
> > **(b) the legal rights of Inuit to harvest wildlife flow from their traditional and current use;** (emphasis added)

So the legal rights of Inuit were to “flow from”– that is, be related to their traditional and current use. After the NLCA was settled, of course, Inuit continued to use wildlife, but subject to the terms of Article 5. Those terms include a right to harvest. But that right has a content that flowed from traditional and current use at the time the NLCA was settled (1993).

The Agreement goes on to be even more specific about this point. Its objectives also specify that as in s. 5.1.3 (a):

> 5.1.3 This Article seeks to achieve the following objectives:
>
> > (a) the creation of a system of **harvesting rights**, priorities and privileges that
> > (i) reflects the **traditional and current levels, patterns and character** of Inuit harvesting, (emphasis added)
> > .....

So the objectives of the system of harvesting rights established by Article 5 are also that they reflect the traditional and current levels, patterns and character of Inuit harvesting. Traditional includes historical and, current at the time the NLCA was settled, emphasizes the system in place in 1993.[21] Clearly Inuit have continued to harvest after 1993. But we suggest that when considering whether the 5.6.1 right includes large-scale commercial harvesting, the Board needs to address some external context to define the content of the right.

Aboriginal rights can be restricted if necessary and, as the *Sparrow*[22] case made clear, aboriginal rights (such as those held by Inuit before 1993) could even be extinguished, or continue to exist in regulated form. In the GN's view, at best, Inuit commercial harvesting activities were heavily regulated in 1993. This is the context for the rights that flowed into the NLCA. This interpretation is consistent with s.5.1.2 and 5.1.3 of the Agreement. Section 5.4.5 of the Agreement does refer to "current harvesting levels" but that is a reference to what would happen after the Agreement was settled. The 5.4.5 "uses" are subject to the scope of the right granted in the NLCA in 1993. That is consistent with the language in 5.6.1.[23]

In the GN's submission, a characterization or summary of the harvesting rights of Inuit in 1993 would described them as "an unlimited right to hunt wildlife for food, unless the species was declared to be in danger of extinction. Inuit did not have "rights" to harvest commercially. Any such activities were heavily regulated and subject to government licensing. Inuit had the right to sell, exchange and barter lawfully harvested wildlife with other aboriginal people in the NWT pursuant to a General Hunting Licence, but only in Nunavut".

We note that this summary of the Inuit rights current in 1993 is consistent with the right set out in 5.7.30 and clearly related to the elements to be considered for purposes of the development of an Adjusted Basic Needs Level (ABNL).

There has to be a point in time when the rights provided by the NLCA as the "grant back" crystallized. And that had to be when the Agreement came in to force. Because of the way that BNL is calculated in accordance with section 5.6.23 (a) or (b), the result of the NTI interpretation would be that only the level of Inuit harvesting defines the content of the 5.6.1

[21] See Appendix 2 for a review of the history of regulation of Inuit harvesting rights before the NLCA came in to force.
[22] R. V. Sparrow, [1990] 1 S.C.R. 1075. [Sparrow}
[23] Section 5.4.2 always anticipated that the Harvest Study would take place after the NLCA was settled. In 1995 that section was amended so the Harvest Study did not have to take place until 1996.

harvesting right. The extent or nature of such a right is not limited.[24] Even after 5.6.1 needs are fulfilled, indeed even after the need for inter-settlement trade, marketing for consumption in Nunavut and the sale outside of Nunavut by individual Inuit is satisfied, Inuit commercial harvesting for sale outside of Nunavut could continue. This could take place even if it meant that the surplus was eliminated and no other Nunavut residents could harvest a species of wildlife.

In the GN's view such an interpretation is at odds with the scheme in Article 5. More importantly, it is not reasonable and it is not consistent with the Supreme Court of Canada's emphasis on the purpose for recognizing Aboriginal right which is to reconcile Aboriginal and non-Aboriginal rights and interests with those of other Canadians. In speaking to this issue in *Lax Kw'alaams* the Court identified the following principle as part of the restated test for Aboriginal commercial rights:

> 4) Fourth and finally, in the event that an aboriginal right to trade *commercially* is found to exist, the court, when delineating such a right should have regard to what was said by Chief Justice Lamer in *Gladstone* (albeit in the context of a Sparrow justification), as follows:
>
> Although by no means making a definitive statement on this issue, I would suggest that with regards to the distribution of the fisheries resource after conservation goals have been met, objectives such as the pursuit of economic and regional fairness, and the recognition of the historical reliance upon, and participation in, the fishery by non-aboriginal groups, are the type of objectives which can (at least in the right circumstances) satisfy this standard. *In the right circumstances, such objectives are in the interest of all Canadians and, more importantly, the reconciliation of aboriginal societies with the rest of Canadian society may well depend on their successful attainment.* [Emphasis in original; para. 75.]

In its recent interim decision on the NTI law suit challenging Canada's performance in the implementation of the NLCA, the Nunavut Court of Appeal reinforced this approach:

> [39] The obligation of governments to balance the interests of many competing groups in society has been recognized even in the context of aboriginal rights. As the Court noted in *Wewaykum Indian Band* at para. 96, the Crown is entitled to balance aboriginal rights with broader public rights:
>
> > When exercising ordinary government powers in matters involving disputes between Indians and non-Indians, the Crown was (and is) obliged to have regard to the interest of all affected parties, not just the Indian interest. The Crown can be no ordinary fiduciary; it wears many hats and represents many interests, some of which cannot help but be conflicting. . . .

[24] Harvesting under s.5.6.23(b) can always change it.

> In *R. v Nikal*, [1996] 1 SCR 1013 at para. 92 the Court adopted with approval the comment in *R. v Agawa* (1988), 65 OR (2d) 505 (CA) at p. 524:
>
> . . . Indian treaty rights are like all other rights recognized by our legal system. The exercise of rights by an individual or group is limited by the rights of others. Rights do not exist in a vacuum and the exercise of any right involves a balancing with the interests and values involved in the rights of others. . . . [25]

In the GN's view the Meehan and NTI interpretation of section 5.6.1 and BNL is not a reasonable approach to the interpretation of Article 5 and, as we have indicated above, the GN does not consider this interpretation to be consistent with Article 5.

We suggest in addition that allowing large-scale commercial harvesting of caribou for export to be included in BNL is not consistent with a purposive interpretation of the NLCA which is intended to reconcile Inuit rights with those of other residents of Nunavut.

How do we relate this argument to the right in s.5.6.1 and the manner in which BNL is calculated? It is our submission that the 5.6.1 right simply does not include the right to large scale commercial harvest of wildlife when the purpose of that harvest is sale outside of Nunavut. The proper interpretation of the s.5.6.1 right is that its content is generally consistent with the needs set out in section 5.6.26. The Meehan opinion offer no explanation as to why the purposes for harvesting for BNL should differ from the nature those set out in s.5.6.26 for ABNL.

We suggest that the Board should find that they are the same.

D. The NTI May Reply Argument

The NTI May Reply to the GN's Supplementary Submission is very lengthy. It runs some 42 pages in length some 23 of which are given over to a detailed review of matters included in the GN's submission, including a review of the Meehan opinion. This NTI Reply also includes a great deal of speculation about the position of the GN, as well as comments and questions in relation to, and a reply to the GN's evidence. NTI's own limited evidence is included as well. All of the evidentiary matters have been addressed earlier in this submission.

In addition, the GN has set out its legal position in greater detail in section C above. The GN repeats its assertion that its position is advanced only in relation to the rather unique matter before the Board which relates to commercial harvesting of Southampton Island caribou for sale outside of

[25] *Supra*, note 11.

Nunavut. Whether or not this position has any relationship to other matters, either past or future, which might come before the NWMB is irrelevant. We strongly suggest to the Board that allowing its decision on the issues related to commercial harvesting of Southampton Island caribou for sale outside of Nunavut to be affected by concerns about what might happen to fisheries quotas could be a legal error.

The GN has provided its response to both the Meehan opinion and the NTI argument based on and related to that opinion in part C of this submission. The GN has also responded to NTI's argument with respect to Inuit use of other species[26] in part C above.

Below, we respond to a number of other points made by NTI in their May Reply.

- The GN suggests that Inuit harvesters long-term economic and other interests are amply protected by a scheme for wildlife management which permits harvesting up to an individual Inuk's full economic social and cultural needs and which permits inter-settlement trade, sale barter and gifting of wildlife within and outside the Nunavut settlement area. Before 1993, there is no evidence that Inuit were personally involved in the sale of commercially harvested caribou outside the NSA. All these activities were commercially licensed and conducted by corporations. As indicated earlier in the submission, the GN supports Inuit harvesting and the rights set out in section 5.7.30 of the NLCA.

- The NLCA grants Inuit exclusive access to all the species listed in s,5.6.5 and such harvests are not at issue here

- The GN is of the view that the "needs" referred to in the term basic needs level does include the economic needs of Inuit, to the extent that those needs are satisfied without the requirement for sale of commercially harvested caribou outside the NSA.

- In the GN's view the right of Inuit to sell wildlife harvested under the BNL or ABNL inside or outside the NSA is a clear expansion of the right held by Inuit GHL holders before 1993. That being said, however, GN does not agree that this right includes the sale of caribou harvested commercially for the specific purpose of sale outside the NSA. The NLCA gives the individual Inuk a broader right of sale than was previously held under a GHL. This is consistent with the recognition of both the traditional and individual economic rights

[26] Set out at pages 13 to 15 of the NTI Reply.

of Inuit. This right does not include the authority to engage in large scale commercial harvests specifically for sale outside the NSA.

- In the GN's view, the Inuit employed to hunt caribou to satisfy the needs of commercially licensed meat processing operations on Southampton Island did so pursuant to a contractual arrangement whether oral or written. In the GN's view this harvesting was in addition to that permitted under section 5.6.1 and it would never have occurred, if the specific purpose of managing the caribou population and generate economic development opportunities for Inuit had not resulted in a government decision to sponsor a commercial enterprise whose sole purpose was to produce high-quality meat products for export from the NSA. The fact that some portions of these carcasses which were not suitable for export were sold in the NSA does not detract from the nature of the operation or the fact that the harvesting was not conducted in the exercise of a 5.6.1 right.

E. Conclusion

The Government of Nunavut respectfully submits that the NWMB should keep an open mind with respect to the Meehan opinion in light of the facts and arguments provided in the GN submissions to date and which will be provided at the hearing scheduled for this proceeding at a later date. It is our submission that a more coherent approach is possible to the construction of Article 5 of the NLCA and in particular to the determination of the scope and content of the right set out in 5.6.1 of the Agreement. The GN has set out its approach to this interpretation exercise for consideration by the NWMB.

In the GN's view, the approach suggested in this submission respects Inuit rights as set out in the NLCA and achieves the proper balance between those rights and the interests of other residents of Nunavut. We anticipate the opportunity to address these matters before the Board at the hearing.

Part III. GOVERNMENT OF NUNAVUT ECOMMENDATION TO THE BOARD

The Government of Nunavut respectfully requests the following rulings from the Nunavut Wildlife Management Board:

1. The establishment of a TAH of 800 caribou per year for the Southampton Island caribou population;
2. That the TAH remain in place until such time as new information becomes available;

3. That the Board rule that the BNL calculation for this population should not include caribou harvested specifically for sale outside of the NSA by companies licensed for this purpose;
4. That a BNL be established accordingly and on the basis set out in the GN's Supplementary Submission;
5. That according to section 5.6.20 of the NLCA Coral Harbour hunters shall have the right to the entire TAH of the Southampton herd on an ongoing basis; and
6. That according to section 5.6.48 of the Agreement, non-quota limitations shall be established to conserve the Southampton herd by prohibiting the harvest of any and all cow/calf pairs on the island.

All of which is respectfully submitted, this 29th day of August, 2014:

_____

Stephen Pinksen, Assistant Deputy Minister
Department of the Environment
Government of Nunavut

APPENDIX 1

REVIEW OF SOME RECENT CASES ON LAND CLAIM INTERPRETATION

Supreme Court of Canada

The Supreme Court of Canada became directly engaged with the interpretation of modern land agreements in a pair of 2010 decisions. These two decisions are *Quebec (Attorney General) v. Moses*[27] and *Beckman v. Little Salmon/Carmacks First Nation*.[28] A brief synopsis of each decision is below.

In *Moses*, the Court had to determine which, or how many, of three environmental assessments processes would apply to a mining project located within the area covered by the James Bay Agreement. The majority, (5-4 split) held that the James Bay Agreement did not eliminate federal jurisdiction to carry out an environmental assessment.

In *Little Salmon*, the Court considered whether an ongoing duty to consult applied in the context of the Little Salmon/Carmacks First Nation Agreement. The Court was split again (7-2) in determining that the duty to consult is a constitutional requirement, and it must be adhered to notwithstanding the language in a modern land agreement.

Notwithstanding the Supreme Court's division, the judgments are quite similar in the approach taken to the interpretation of modern land claims. Each majority and minority judgment highlights the contractual approach and desire to respect the parties' choice of language. Following the two decisions, Professor Dwight Newman of the University of Saskatchewan – College of Law published an article in the Supreme Court Law Review and made similar suggestions:

> …the judges split over some matters in these cases, there is actually a remarkable degree of agreement amongst the different judges on the different principles applicable to modern treaty interpretation…**the judges on both sides of the splits affirm a strong adherence to the text of modern treaties, albeit with the shared aim of interpreting them to achieve certain purposes. The judges actually adopt the implicit analogy with contractual interpretation**.[29] (emphasis added)

Interpreting Modern Land Claims

[27] Quebec (Attorney General) v. Moses, 2010 SCC 17 ["Moses"].
[28] Beckman v. Little Salmon/Carmacks First Nation, 2010 SCC 53 ["Little Salmon"].
[29] Newman, Dwight, *Contractual and Covenantal Conceptions of Modern Treaty Interpretation,* The Supreme Court Law Review – Aboriginal Rights, (2011), 54 S.C.L.R. (2d) 475 – 491 ["Newman"].

Jurisprudence guiding the interpretation of modern land agreements begins with a case originally rendered in the context of an 1899 treaty. In *R. v. Badger* the Supreme Court of Canada was tasked with determining the scope of Aboriginal hunting rights pursuant to Treaty No. 8.[30] This case is recognized as one of the foundational decisions distinguishing the interpretation of Aboriginal treaty rights from common law Aboriginal rights. Justice Cory, writing for the majority, held as follows on the interpretation of treaties generally.

> Treaty rights, on the other hand, are those contained in official agreements between the Crown and the native peoples. **Treaties are analogous to contracts**, albeit of a very solemn and special, public nature. They create enforceable obligations based on the mutual consent of the parties. It follows that the scope of treaty rights will be determined by their wording, which must be interpreted in accordance with the principles enunciated by this Court.[31] (emphasis added)

Notwithstanding Justice Cory's allusion to contract interpretation, the Court remained quite firm in its view that historic treaties represented a phase in Canadian history marked by inequality in bargaining power between Aboriginal groups and the federal government. The following extract from Justice Cory's judgment makes this point clear:

> Treaties and statutes relating to Indians should be liberally construed and **any uncertainties, ambiguities or doubtful expressions should be resolved in favour of the Indians**. In addition, when considering a treaty, a court must take into account the context in which the treaties were negotiated, concluded and committed to writing. The treaties, as written documents, recorded an agreement that had already been reached orally and they did not always record the full extent of the oral agreement.[32] (emphasis added)

This early comparison of treaty language to contracts has permeated the more recent jurisprudence. This passage from *Badger* has been relied on, and expanded upon, by the Supreme Court in *Moses* and *Little Salmon*.

In *Moses*, Justice Binnie, begins by drawing on the same principles and expanding upon them as follows:

> **The contract analogy is even more apt in relation to a modern comprehensive treaty** whose terms (unlike in 1899) are not constituted by an exchange of verbal promises reduced to writing in a language many of the Aboriginal signatories did not understand (paras. 52-53). **The text of modern comprehensive treaties is meticulously negotiated by well-resourced parties**. As my colleagues note, "all parties to the Agreement [James Bay] were represented by counsel, and the result of the negotiations was set out in detail in a 450-page legal document" (para. 118). The importance and complexity of the actual text is one of the features that distinguishes the historic treaties made with Aboriginal people from the modern comprehensive agreement or treaty, of which the James Bay Treaty was the pioneer. **We should therefore pay close attention to its terms.**[33] (emphasis added)

[30] R. v. Badger [1996] 1 S.C.R. 771 ["Badger"].
[31] Ibid at para. 76.
[32] Ibid at para. 52.
[33] Moses supra note 3 at para. 7.

The minority judgment in *Moses* echoed the majority in this regard, and went even further. The reasons of the four Justice minority were delivered by Justices LeBel and Deschamps. Consider the following extracts from the dissenting judgment:

> …the circumstances at the root of the principle that ambiguities in historical treaties must be resolved in favour of the Aboriginal signatories – unequal bargaining skill and vulnerability of the Aboriginal parties in particular – do not necessarily exist in the context of a modern agreement.
>
> **When interpreting a modern treaty, a court should strive for an interpretation that is reasonable, yet consistent with the parties' intentions and the overall context, including the legal context, of the negotiations**. Any interpretation should presume good faith on the part of all parties and be consistent with the honour of the Crown. Any ambiguity should be resolved with these factors in mind.[34] (emphasis added)

The Supreme Court of Canada reached very similar conclusions in *Little Salmon* as were reached in *Moses*. The Court identified the same distinction between the products of modern negotiations as compared to those which accompanied historic treaties. The majority stated this point as follows:

> Unlike their historical counterparts, the modern comprehensive treaty is the product of lengthy negotiations between well-resourced and sophisticated parties.
>
> When a modern treaty has been concluded, the first step is to look at its provisions and try to determine the parties' respective obligations...[35]

The Court went on to distinguish some of the characteristics of early treaties highlighted by Justice Cory in *Badger.* As noted above, historic treaties were reduced to writing after oral promises were exchanged. Unfortunately, however, many of the oral promises were never included in the treaty language. This caused significant issues in resolving ambiguities when they arose.

In *Little Salmon*, the Court notes the relative complexity and completeness of modern land agreements, which has assisted in limiting the need to resolve ambiguous terms:

> The increased detail and sophistication of modern treaties represents a quantum leap beyond the pre-Confederation historical treaties such as the 1760-61 Treaty at issue in *R. v. Marshall,* [1999] 3 S.C.R. 456, and post-Confederation treaties such as Treaty No. 8 (1899) at issue in *R. v. Badger,* [1996] 1 S.C.R. 771, and *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage),* 2005 SCC 69. The historical treaties were typically expressed in lofty terms of high generality and were often ambiguous. The courts were obliged to resort to general principles (such as the honour of the Crown) to fill the gaps and achieve a fair outcome.[36]

The Court goes on to suggest modern land agreements do not suffer from these same issues.

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[34] Ibid at paras. 115 & 118.
[35] Little Salmon supra note 4 at para. 9 & 67.
[36] Ibid at para. 12.

> Instead of ad hoc remedies to smooth the way to reconciliation, the modern treaties are designed to place Aboriginal and non-Aboriginal relations in the mainstream legal system with its advantages of continuity, transparency, and predictability. It is up to the parties, when treaty issues arise, to act diligently to advance their respective interests.[37]

In *Little Salmon,* Justices Deschamps and LeBel again dissented with the majority's finding. This time however, the judges were alone, forming a two judge minority. Again, the dissenting judgment agreed with the majority insofar as the interpretation of modern land agreements should be undertaken.

In fact, the dissent adopted an even stricter approach to contractual interpretation of the agreement. The second paragraph of the dissenting judgment contains the following:

> Through these agreements, the First Nations concerned have taken control of their destiny. The agreements which deal in particular with land resources, are of course not exhaustive, but they are binding on the parties with respect to the matters they cover. The Crown's exercise of its rights under the treaty is subject to the provisions on consultation. To add a further duty to consult to these provisions would be to defeat the very purpose of negotiating a treaty. **Such an approach would be a step backward that would undermine both parties' mutual undertaking and the objective of reconciliation through negotiation. This would jeopardize the negotiation processes currently underway across the country**.[38] (emphasis added)

Justice Deschamps and LeBel went so far as to refute the majority's assertion that the common law duty to consult applies in every case, regardless of the terms of the treaty in questions.[39] The minority, in this regard, is taking the position that the parties are bound quite strictly to only what is written in the agreement.

Given that this was only a minority judgment, we ought to consider when the Courts will allow for external interpretive aids and evidence when interpreting a modern land agreement.

External Interpretive Tools

The contemporary jurisprudence of the Supreme Court is quite clear. The relevant question is whether the language of the modern land agreement contemplates the matter at issue. Although this remains the primary consideration, the Courts allow for consideration of common law and statute outside of the "four corners" of an agreement.

In both *Moses* and *Little Salmon*, the Court had to reconcile the interpretation of the modern land agreements with either common law or statute. In *Little Salmon*, the Court considered the common law / constitutional duty to consult. In *Moses* the Court considered the effect of the *Canadian Environmental Assessment Act* on the interpretation of the agreement. In both cases, the Court reached a similar result, importing the general law into the interpretation of those agreements.

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[37] Ibid.
[38] Ibid at para. 91.
[39] Ibid at para. 94.

A review of recent jurisprudence suggests a dichotomy in the interpretation of these agreements. The first approach is often referred to as the "complete code". Advocates of this perspective suggest an agreement must be read as representing the whole agreement between the parties. Therefore, if the agreement speaks to a certain issue, there should be no interference by the Courts. This was argued in *Little Salmon* and is reflected in the dissenting judgments of Justices Deschamps and LeBel. The other perspective does not interpret the agreements as strictly and will include the application of general law and context to achieve a proper constitutional interpretation. Where agreements and legislation or common law diverge, the ambiguity will be resolved in favour of a reasonable interpretation of the agreement with access to external authority permitted.

The latter method of interpretation has emerged as the preferred approach at the Supreme Court of Canada level, as made clear by the majority judgments in *Moses* and *Little Salmon*. In *Little Salmon* the majority held "the general law exists outside the treaty". For example, the Court said the following with respect to the common law duty to consult:

> …the duty to consult is derived from the honour of the Crown which applies independently of the expressed or implied intention of the parties.[40]

In *Moses*, even Justices Deschamps and LeBel allude to the use of external interpretive aids. Recall paragraph 118 of the dissenting judgment which is also extracted above:

> When interpreting a modern treaty, a court should strive for an interpretation that is reasonable, yet consistent with the parties` intentions and the overall context, **including the legal context, of the negotiations.**[41]

The analyses in *Moses* and *Little Salmon* shows that the Court will apply a more generous analysis which allows consideration of laws of general application and context in order to supplement the wording of a land claim and provide context where the treaty is silent or ambiguous on a point. In *Moses* the majority decided that federal fisheries legislation must be adhered to notwithstanding the ambiguity in the agreement. In *Little Salmon,* the majority decided that the duty to consult was mandatory, again, notwithstanding the "entire agreement" clause provisions of the Yukon agreement.

Based on the foregoing, it seems the Court has an appreciation that modern land agreements do not exist in a legal vacuum. Rather, consideration must be afforded to the legal context in which it was drafted. Most importantly, agreements, or the proposed interpretation of such an agreement, must stand up to constitutional scrutiny and fit with the Courts' broad goals of reconciliation and accommodation.

The Court has even shown some attention to the social context in which an agreement must be interpreted. Consider the following extract from *Little Salmon*:

> Underlying the present appeal is not only the need to respect the rights and reasonable expectations of Johnny Sam and other members of his community, but the rights and expectations of other Yukon residents, including both Aboriginal people and Larry Paulsen, to good government.

[40] Ibid at para. 38.
[41] Moses supra note 3 at para. 118.

> The Yukon treaties are intended, in part, to replace expensive and time-consuming ad hoc procedures with mutually agreed upon legal mechanisms that are efficient but fair.[42]

It is interesting that the Supreme Court chose to include a reference to all "Yukon residents". This suggests the interpretation or adjudication of a modern land agreement must be carried out with some consideration of the community as a whole. This attention to the effect of the interpretation of the rights set out in a modern treaty is also manifest in a recent case addressing a claim for aboriginal rights to harvest commercially.[43] We suggest that this approach is consistent with the legal framework for interpretation of land claims described above, as it has been developed by the Supreme Court of Canada. That framework is premised on interpreting aboriginal rights in a manner which ensures reconciliation and accommodation of aboriginal peoples and broader Canadian society.

In *Lax Kw' Alaams* the Supreme Court of Canada addressed a claim by a group of First Nations whose ancestral land stretched along the northwest coast of British Columbia. They claimed an Aboriginal right to conduct commercial harvesting and sale of "all species of fish" within their traditional waters.

In this case the Court reviewed the decisions of *Van der Peet*, *Gladstone*, *NTC Smokehouse*, *R. v. Marshall*, and *R. v. Sappier*, which set out the test to establish whether an Aboriginal right to harvest resources commercially exists.

More importantly for this memo, the Supreme Court further refined the test set out in *Van der Peet*, and noted that the public interest and resolution of Aboriginal claims calls for a measure of flexibility not always present in ordinary contractual litigation. It restated the appropriate test for determining whether an aboriginal right exists in the context of a s. 35(1) claim which is summarized below:[44]

> 1) First, at the characterization stage, identify the precise nature of the First Nations claim to an aboriginal right based on the pleadings. If necessary, in light of the evidence, refine the characterization of the right claimed on terms that are fair to all parties;
>
> 2) Determine whether the First Nation has proved, based on the evidence adduced at trial, the existence of a pre-contact practice, tradition or custom advanced in the pleadings as supporting the claimed right, and that this practice was integral to the distinctive pre-contact aboriginal society;
>
> 3) Determine whether the claimed modern right has a reasonable degree of continuity with the integral pre-contact practice. In other words can the claimed modern right demonstrably be connected to and reasonably regarded as a continuation of a pre-contact practice; and,

[42] Little Salmon supra note 4 at para. 34.
[43] Lax Kw'Alaams Indian Band v. Canada (Attorney General), [2011] SCC 56.

[44] The test as modified by *Lax Kw'Alaams* has been applied in the recent decision of *Ahousaht Indian Band and Nation v. Canada (Attorney General*), 2013 BCCA 300, and may be considered the most recent statement of principles set out in *Sparrow* and elaborated upon in *Van der Peet* and subsequent decisions concerning aboriginal commercial harvesting rights.

4) In the event that an aboriginal right to trade commercially is found to exist, the court, when delineating such a right should consider the rights of non-aboriginal Canadians, including economic and regional fairness and the industry or resource as used by non-aboriginal persons, among others.

Thus, in conclusion, it is clear that when ambiguity exists in a land claim agreement, and we suggest, even in the absence of such ambiguity, that when important interpretive decisions must be made that it can be appropriate to look to the outside context, in other words the general legal framework within which the claim must operate in order to give a proper constitutional interpretation to its terms. In addition, when interpreting rights such as those related to commercial harvesting, which have effects on the interests of non-aboriginal persons, the framework established by the Supreme Court for reconciliation and accommodation of these rights requires consideration of the rights of others.

APPENDIX 2

History of Aboriginal (Inuit) Commercial Rights (sale and export of meat) under *Northwest Territories Wildlife Ordinances* and the *NWT Wildlife Act*

The *Nunavut Land Claims Agreement* and the *Nunavut Act*[45] came into force in 1993 and distinguished the legislative scheme of Nunavut from that of the NWT. Prior to division, Nunavut was governed as a part of the Northwest Territories and Inuit harvesting was subject to NWT laws, modified as required after the *Nunavut Land Claims Agreement Act*[46] came in to force. This means that the legislation briefly described below applied to the Inuit of what is now Nunavut prior to 1993 and until 1999.

The Government of the Northwest Territories' (GNWT) authority to pass legislation affecting wildlife began with an amendment to the *Northwest Territories Act (NWT Act)* in 1948. That amendment gave the NWT a legislative authority over the 'preservation of game' which existed in that form from 1948 until 2014.[47] In the 1985 *NWT Act*[48] this legislative authority was set out in section 16(m). Section 16(m) of the *NWT Act* was incorporated in to the *Nunavut Act* in 1993 at section 23(s).

A further amendment to the *NWT Act* in 1960 gave the territory the authority to enact Ordinances related to wildlife which applied to Indians and Inuit. This authority was set out at section 18 (2) and (3) of the 1985 *NWT Act*:

> ***18.*** *(1) Notwithstanding section 17 but subject to subsection (3), the Commissioner in Council may make ordinances for the government of the Territories in relation to the preservation of game in the Territories that are applicable to and in respect of Indians and Inuit.*
>
> *(2) Any ordinances made by the Commissioner in Council in relation to the preservation of game in the Territories, unless the contrary intention appears therein, are applicable to and in respect of Indians and Inuit.*
>
> *(3) Nothing in subsections (1) and (2) shall be construed as authorizing the Commissioner in Council to make ordinances restricting or prohibiting Indians or Inuit from hunting for food, on unoccupied Crown lands, game other than game declared by the Governor in Council to be game in danger of becoming extinct.*

In the period between the introduction of these provisions in 1960, and 1982 when s. 35 to the *Constitution Act* came in to force, the NWT was been able to pass Ordinances affecting the preservation of game which were applicable to Indians and Inuit. Section 18(3) limits this authority in relation to game hunted for food unless a species is declared to be endangered. However, because commercial activities, including the sale

[45] S.C. 1993, c.28.
[46] S.C. 1993, c.29.
[47] GNWT still has authority to legislate in respect of wildlife but the description of that power was amended through changes to the NWT Act in the *Northwest Territories Devolution Act* , Bill C-15 which became law in March, 2014.
[48] This is the version that was repealed for devolution.

and export of meat are not 'hunting for food' (at least for the hunter) they could be and were regulated for some time. It is noteworthy that 18(3) was also included in the *Nunavut Act* at section 24.

Historical legislation relating to game or wildlife (commercial rights)

1956 game Ordinance

Commercial rights contained in the 1956 *NWT Game Ordinance* were not restricted in the way they were in subsequent Ordinances. In 1956, trade and sale of game meat was authorized by a "trading post or outpost" licence, there were no restrictions on who could apply for one. Indians and Inuit could apply for a General Hunting Licence ("GHL") which would allow them to sell game meat. They essentially enjoyed unlimited hunting privileges. The first step toward limiting commercial harvest in the NWT came in the 1974 *NWT Wildlife Ordinance.*

1974 Game Ordinance

Section 17 of the 1974 Ordinance dealt with the sale of game and included a prohibition at subsection (1) against the buying, selling, bartering, or killing for gain or reward of big game (which included caribou). Subsection 17(3) allowed the holder of a GHL to sell or barter caribou meat to any person so long as it was for consumption within the territories. Subsection 17(4) allowed a person to purchase or barter for caribou meat for direct consumption in the territories or for resale to a commercial establishment for consumption within the territories. Both of these rights were subject to regulations made by the Commissioner which allowed him to control or prohibit the purchase, barter or sale of caribou in the territories or any part thereof [17(6)]. It should be noted that the 1974 Ordinance did not specify any preferential treatment or rights to be afforded to Aboriginals.

The regulations made under the 1974 Ordinance did not take effect until 1976. The regulations contained a section called "commercial caribou" and stipulated how many commercial harvesting tags would be issued for the territory (3450) and how they would be divided among the 35 management zones. The regulations did not stipulate a number of tags as being available only to Aboriginals. Pursuant to the regulations, GHL holders (almost exclusively Aboriginals) were only allowed to sell or barter caribou meat if they possessed a commercial tag issued by the NWT government.

1978 Wildlife Ordinance

The 1978 Game Ordinance bore many similarities to the 1974 Ordinance, however, hunting controls under the Ordinance were expanded and became more detailed. GHL holders, who were allowed under the 1974 Ordinance to sell meat, had some limits attached to this ability by regulations made under the Ordinance. Further, the export of game was prohibited in 1978 except with the permission of the Commissioner.

Section 55(1)(b) of the Ordinance made it an offence to buy, sell, or trade the meat or any part of wildlife. However, GHL holders were allowed to do so, as long as the person who bought the meat, or sold it was also a GHL holder [ss.55(5)]. This represents a far greater restriction than was present in the 1974 Ordinance. Section 56 of the Ordinance operated to prohibit the killing of wildlife for money or money's worth [subject to the Ordinance and corresponding regulations].

47(1) of Regulation 310, which was brought into force in 1980, stated that the meat of lawfully killed game could be exported but it also established limits to how much meat could be exported. Pursuant to 47(1)(b) a GHL holder could export up to 500kg of meat in a given year, but is silent on the ability to charge money for it. The ability to export the meat was subject to getting an export permit under section 61 of the Ordinance.

NWT Wildlife Act

The framework for the *NWT Wildlife Act*[49] has not changed in a significant way since the 1978 Ordinance.[50] After the NLCA came in to force the regulation of Inuit harvesting was based on Article 5 and the work of the Nunavut Wildlife Management Board, subject to section 5.6.4 of the NLCA. In 1999 division of the territories took place and the Government of Nunavut operated under the NWT wildlife legislation until 2003 when it enacted its own *Wildlife Act*.[51]

Conclusion

A review of the history of "game" and later wildlife management in the NWT and then Nunavut clearly indicates that commercial harvesting by Inuit was subject to government restrictions from at least 1974 onward and that as far back as 1956 Inuit commercial harvesting activities depended on having a GHL. By the time the NLCA came in to force in 1993, GHL holders were able to sell, barter and exchange game meat only with other GHL holders. Any other commercial exchange of the meat of game, including export from Nunavut was prohibited without a licence.

[49] After the 1988 restatement of the NWT legislation the GNWT changed the name of its legislation from "Ordinance" to "Act". The 1988 *Wildlife Act* was essentially unchanged from 1978.
[50] GNWT enacted a new Wildlife Act in late 2013. It is not yet in force.
[51] SNu 2003, c.26.

APPENDIX 3

REVIEW OF COMMERCIAL HARVESTING RIGHTS IN NORTHERN LAND CLAIM AGREMENTS

	Title of Land Claim	**Harvest Provisions**	**Is commercial harvesting of wildlife permitted?**	**Comment on Scope of Rights**
1	The James Bay and Northern Quebec Agreement (JBNQA) (1975)	S. 24 Hunting, Fishing, Trapping	No. Restrictions imposed.	Harvesting Rights for commercial purposes is restricted to (traditional) activities related to the fur trade (commercial trapping) and commercial fisheries. See S. 24.1.13; S. 24.2.11; S. 23.3.16; and S.4.3.19.
2	The Eeyou Marine Region ("EMR") Agreement (Crees of Eeyou Istchee) (2010)	Ch. 11 Harvesting	Yes but limited by species. S. 11.5 Commercial Operations	In the EMR, certain species of wildlife are reserved for the exclusive use of the Cree. This includes the right to harvest species for "all commercial purposes" listed in Schedule 11-1 subject to licensing. Schedule 11-2 includes species which can be harvested commercially -- Caribou others are small game or non-migratory birds. The Cree have right of first refusal to establish and operate any new commercial operation in the EMR, such as marketing and processing of wildlife products within or outside the EMR (see S.11.5.1(b)).
3	Labrador Inuit Land Claims Agreement (2004)	Ch. 12 Wildlife and Plants	No. Restrictions imposed.	Inuit retain harvesting rights for traditional commercial purposes (S.12.3.10 and S. 12.3.12) they can sell barter exchange etc. with other aboriginal people. Inuit get first demand ("Inuit Domestic Harvest") when there is a "total allowable harvest" allocated (S. 12.4.2 and S. 12.4.13) – BUT – the Inuit harvest level for species and plants are to provide for Inuit needs other than commercial purposes (S.12.4.13). There is a general exception – Inuit needs may require

	Title of Land Claim	Harvest Provisions	Is commercial harvesting of wildlife permitted?	Comment on Scope of Rights
				the harvesting of plants for crafts, tools, artwork for all purposes - including commercial purposes (S. 12.4.14) (does not include wildlife).
4	Gwich'in Comprehensive Land Claim Agreement (1992)	Ch. 12 Wildlife Harvesting and Manage-ment	No. Restrictions imposed.	Gwich'in retains harvesting rights for traditional commercial purposes (S.12.3.16) (e.g. trapping and traditional trading/sharing with aboriginal people) The Gwich'in get first demand when the total allowable harvest is allocated (referred to as Gwich'in Needs Level) (S. 12.5.3 and S. 12.5.5) **The Gwich'in have the exclusive right to be licensed to conduct commercial wildlife activities (S.12.7.10)** → The Gwich'in Tribal Council have right of first refusal with respect to Commercial Naturalist and Commercial Guiding and Outfitting Licensing Activities – when the Renewable Resources Board determines that the species population (e.g. Caribou) can permit such activities (S.12.7.1 and S.12.7.4)
5	Umbrella Final Agreement Council of Yukon Indians (1993)	Ch. 16 Fish and Wildlife	No. Restrictions imposed.	Yukon Indians retain wildlife harvesting rights for subsistence and traditional commercial purposes (S.16.4.2 and S.16.4.4) trapping and sale and barter of wildlife with other aboriginal peoples When harvesting of wildlife is limited for conservation – the total allowable harvest is allocated to give priority to the subsistence needs of the Yukon Indians (S.16.9.1) There are specific provisions for allocation of commercial salmon fishery to the Yukon Indians (S.16.10.15) but no provisions to allocate wildlife for commercial purposes.
6	Sahtu Dene and Metis Comprehensive Land Claim Agreement (1993)	Ch. 13 Wildlife Harvesting and Manage-ment	No. Restrictions imposed.	Participants retain wildlife harvesting rights for subsistence and traditional commercial purposes (S.13.4.16) sale, trade and barter among aboriginal people When harvesting of wildlife is limited for conservation – the total allowable harvest is allocated to give priority to the Sahtu Needs Level (S.13.5.3)

	Title of Land Claim	Harvest Provisions	Is commercial harvesting of wildlife permitted?	Comment on Scope of Rights
				The Sahtu have the exclusive right to be licensed to conduct commercial wildlife activities (S. 13.7.10) → The Sahtu have right of first refusal with respect to Commercial Naturalist and Commercial Guiding and Outfitting Licensing Activities (S. 13.7.5 (a)), including commercial Propagation, Cultivation, and Husbandry Activities (S.13.7.7)
7	Tlicho Land Claims Agreement (2003)	Ch. 10 Wildlife Harvesting Rights Ch. 12 Wildlife Harvesting Manage-ment	No. Restrictions Imposed.	Tlicho Citizens can trade or give edible wildlife to aboriginal people. (S.10.3.1) Non-edible parts to anyone. Tlicho Government has the exclusive right to be licensed to commercially harvest muskox or bison on Tlicho lands, including provide guiding services and harvesting opportunities with respect to muskox or bison. (S.10.7.4) However, when it comes to imposing limits on harvesting, the Wek'eezhii Renewable Resources Board will give priority to non-commercial harvesting over commercial harvesting (S.12.6.5 and S.12.6.6) The Wek'eezhii Renewable Resources Board makes recommendations for regulations to NWT Government respecting the "commercial processing, marketing and sale of wildlife and wildlife products" (S.12.10.1(c)). Generally, the Tlicho Government and NWT Government must consult each other before authorizing commercial activities on Tlicho lands (S.12.10.2 and S.12.10.4).
8	Inuvialuit Final Agreement (the Western Arctic Claim) (1984)	S. 12 and 14 Wildlife Harvesting and Manage-ment	No. Restrictions imposed.	Inuvialuit retain exclusive rights to harvest furbearers they may only trade or barter game products with other Inuvialuit beneficiaries (s.12(31) The Inuvialuit have "first priority in the Western Arctic Region for guiding, outfitting or other commercial activities related to wildlife as authorized by governments from time to time". (S.14 (36) and S.14.(42)).

	Title of Land Claim	Harvest Provisions	Is commercial harvesting of wildlife permitted?	Comment on Scope of Rights
9	Nunavik Inuit Land Claims Agreement (2006)	Article 5 Wildlife	No. Restrictions imposed.	Nunavik Inuit retain traditional commercial harvesting rights (S.5.3.21.1) Can buy, sell trade and barter with other Inuit and aboriginal peoples. Subject to conservation principles (S.5.1.2 (h)), the Makivik Designated Organizations (MDO) have the right of first refusal to establish and operate any new commercial operation excluding commercial fisheries in the MNR involving the "marketing and processing of all wildlife, wildlife parts and wildlife products within the [Nunavik Marine Region] NMR" (S.5.3.15) When the total allowable take is established (S.5.2.10 and S.5.2.11), the amount shall be allocated in the following order of priorities: (a) Basic needs level and adjusted basic needs level (as the case may be) (b) Personal consumption by residents of Nunavik other than Nunavik Inuit (c) To provide for the continuation of lawfully authorized commercial operations (d) To provide for the establishment of economic ventures sponsored by MDOs including commercial harvesting, domestication and animal husbandry, propagation, aquaculture and mariculture (e) To provide for commercial, recreational or other uses, considering the benefits that may accrue to the local economy of Nunavik or Nunavut (S.5.3.13.1) Where any commercial operation is approved and undertaken by Nunavik Inuit in the NMR - the Nunavik Inuit requires a license under laws of general application (S.5.3.20)

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