

From: richard spaulding
Sent: Monday, May 26, 2014 11:52 AM
To: Michael d'Eça
Cc: Nirlungayuk, Gabriel; Glenn Williams

Subject: RE: Invitation to attend a May 23rd 2014 conference call to discuss the time needed for oral submissions, questions and answers on day 1 of the June 3d and 4th 2014 Southampton Island Caribou Public Hearing

Michael, on behalf of the NWMB you asked me during Friday afternoon's conference call to confirm by email the suggestions that I made as to how Day 1 of the hearing on the BNL issue could be structured. My suggestions, offered from my perspective as NTI counsel, were as follows:

1. The day's agenda could be divided between 1) argument and 2) disputed facts and disputed sufficiency of evidence, in that order.
2. In the argument portion of the agenda, at least 70 minutes if possible should be set aside for NTI to present its arguments - 15 minutes for presentation, 40 for questions from other parties and answers by NTI, and 15 for summing up. This suggestion assumes that similar allotments would be made for GN arguments. (I did not make suggestions for the sequence of presentations, length of time allotted for parties other than the GN and NTI, or how that time should be broken down.)
3. If the Board must set aside less than 70 minutes for NTI, the initial presentation portion should be reduced first. If it is necessary to set priorities in the q and a period, the Board counsel should be reserved a lead role and the GN should have full opportunity to put its questions and have NTI answer them (assuming reciprocal priority for NTI questions during the GN's turn).
4. In the argument portion of the agenda, the Board could consider leading off by explaining its legal analysis and allowing q's and a's on the analysis.
5. With respect to the portion of agenda addressing disputed facts and disputed sufficiency of evidence, I noted that NTI considers basic facts regarding the nature of Coral Harbour harvesting for sale to the meat plant, referred to on page 17 of NTI's written submission, undisputed. Based on that understanding, the only facts or evidence that would need addressing in this portion of the agenda are certain facts and evidence that appear to be relied on by the GN. In light of the GN's May 21 report to the Board regarding additional evidence on these matters that was requested by the Board, I noted that NTI likely would take the following positions in this portion of the hearing:
 - a. Employment of Coral Harbour hunters: The evidence that the GN reports it intends to present at the June 3-4 hearing in support of the GN's assertion that these hunters were employees of a third party is insufficient for the Board to rely on; hence the Board should not consider this component of the GN argument when setting the BNL;
 - b. Licensing of harvesting for sale to the plant: The GN has undertaken to make best efforts to produce copies of the licences relied on in its March 31 submission but reports that these documents will not be available by June 3-4; as oral evidence of

such licences would be insufficient, the Board should not consider this component of the GN's argument when setting the BNL;

- c. Sales and other use inside or outside the NSA: The parties agree that there was some sale or other use of some of these caribou on both sides of the NSA boundary in the BNL periods, but in light of the GN's report that it does not intend to produce records of meat exports from the NSA, there is insufficient evidence for the Board to distinguish reliably between amounts harvested for sale or other use in one area as opposed to the other.

Accordingly, I advised that the GN is in the best position to recommend how much time should be reserved for this portion of the agenda. I indicated that at least two hours would seem needed, but, depending how much oral evidence the GN proposes to introduce, a full day could be taken up. I also noted that if the GN endeavoured to fill in its information gaps in these three areas with oral evidence, NTI would reserve the right to propose a further hearing session for the purpose of offering reply and rebuttal evidence.

On behalf of NTI, I also take this opportunity to make two further observations for the benefit of the Board's planning of the BNL segment of the hearing:

1. The GN's first BNL argument, that amounts harvested for sale to the plant do not count in the calculation because this type of harvesting was not occurring in substantial amounts when the Agreement came into effect in 1993, does not appear to depend in the main on any facts in dispute or evidence whose sufficiency is in dispute. (A difficulty in identifying amounts of caribou sold by Inuit within the NSA in 1993 might come into play if the Board accepted that 1993 harvesting for this purpose could be a relevant type of harvesting for BNL calculation purposes.) The gist of this argument therefore can be decided on by the Board based on argument alone.
2. The GN's second BNL argument, that amounts so harvested by Inuit employees of a company licensed by government do not count in the BNL calculation, appears to depend mainly on assertions regarding employment. As the GN is not challenging the NLCA right of Inuit to harvest for the purpose of sale, even production of a complete record of licensing of this activity for SHI caribou during the BNL periods would not enable the Board to rule on this argument on the basis of reliable evidence without the Board also having in hand reliable evidence of employment and terms of employment that could possibly affect the BNL. NTI has emphasized in its May 2 Reply that the apparently undisputed facts regarding how this activity was conducted make it unlikely that these Inuit hunters were acting as employees of a third party on any terms.

Please forward this message to Jim and Peter with my request that it be distributed to the other call participants and representatives of the parties that could not attend the call. Thank you.

Dick Spaulding