



Reply to GN Status Report

August 12, 2014

A. Introduction

The NWMB's standing interpretation of the NLCA is that all amounts of wildlife harvested by Inuit during the periods when the Basic Needs Level (BNL) falls to be calculated must be included in the calculation. NTI shares this view.

In its March 31 2014 submission, the GN contended that, under the NLCA, wildlife harvested by Inuit during the BNL periods must not be included in the BNL calculation if the Inuit are harvesting as employees of a government-licensed company, the product is sold outside the Nunavut Settlement Area (NSA), and harvesting of this "type" did not occur in 1993, when the NLCA came into effect.

Parenthetically, NTI notes that the GN's interpretation of the NLCA is not only contrary to the detailed written legal opinion commissioned, received, and circulated by the Board; the GN's interpretation disregards the Board's opinion entirely. (For its part, NTI has filed detailed legal analysis addressing the Board's independent advice, and conforming closely to it.). The GN has not presented full legal analysis to the Board or other parties. NTI believes that it would be a most untoward and unwelcome precedent if the Board were to reject its own independent advice in such circumstances.

In its May 2, 2014 reply to the GN submission, NTI noted that, even if the Board were to accept the GN's interpretation of the NLCA, the GN had 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. In particular, no evidence had been identified to show that a government-licensed company employed the Inuit hunters who harvested Southampton Island caribou for sale to the Rankin meat plant during the portion of the BNL periods in which the plant was purchasing caribou (1996-2000 and 2007), no terms of employment had been asserted, and it had not been shown that all the products of these caribou were sold outside the NSA.

NTI's May 2 reply also identified facts and supporting evidence that, NTI submitted, tend to show that the hunters in question were not employed by anyone other than themselves.

In response to NTI's request, on May 8 2014 the NWMB invited the GN to produce (in summary)

- 1) copies of the licences that the GN asks the Board to rely on, including license conditions,
- 2) the best documentary evidence of the employment that the GN asserts, including documentary evidence of terms of employment and identity of the employer; and
- 3) the best available evidence of the GN's assumption that the harvesting in question was all for sale outside the NSA.

On May 28, at the GN's request, the NWMB adjourned the public hearing that had been scheduled for June 3-4, 2014, allowing the GN until June 27 to provide its evidence.

NTI offers the following comments on the GN's June 27 status report so that the factual issues to be considered at the resumed public hearing may be defined as early and as clearly and completely as possible. NTI reserves the right to comment further on the GN status report at the public hearing.

B. NTI Comments

1. Licences and conditions

a) Licensing in relevant years other than 2007

Copies of commercial wildlife licences have been produced for only one year (2007) of the six years in the BNL periods (1996-2000 and 2007) during which, according to the GN's March 31 submission, the plant was still purchasing caribou. For this year, no copy of the licence conditions has been produced. The GN assures the Board that conditions similar to those that applied in 2009, for which a copy is provided, would have applied in 2007. No evidence is offered, and no assurances are made, as to whether similar types of licences were issued for the other five years in question, or if so, whether their conditions were similar.

In view of the lack of any supporting documentary evidence, NTI submits 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 licence in the years 1996-2000. To the extent that the GN's position relies on the company in question operating under a government-issued license, there is thus no evidentiary basis for excluding any caribou so harvested in the BNL periods except for the year 2007.

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

The GN's March 31 submission and the copy of the 2009 licence conditions that is included in the GN's June 27 status report are at odds with one another as to when the meat plant in question ceased to operate. The March 31 submission states that "this program was discontinued in 2007" (page 9) and that, in particular, "the commercial harvest in 2009 is by local hunters marketed within Nunavut, not the meat plant commercial harvest marketed out of Nunavut in 2007". Against this, the copy of the February 20 2009 licence to Sudliq Developments Limited included in the status report authorizes the holder to "harvest + process caribou pursuant to the attached licence conditions", and the attached conditions describe an assignment of tags "to ... caribou meat processing subsidiary company Kivalliq Arctic Foods LTD (KAF) to undertake the harvest ... to standards set by the Canadian Food Inspection Agency". Further conditions make it clear that the three-week harvest anticipated to commence on February 23 2009 can only have been for processing at the abattoir and packaging and transport to the meat plant.

NTI requests that the Board direct the GN to clarify when, according to the GN's records, the meat plant closed, at least 30 days before the public hearing resumes.

If the record confirms that the meat plant closed in 2007, the copy of the 2009 license conditions included in the GN status report would be of doubtful reliability for any BNL-related purpose, since they would bear no real relation to harvesting that was occurring at the time or that could occur once the conditions were set. On any interpretation of the NLCA's BNL instructions, the harvesting that is relevant is harvesting that actually occurs.

2. Documentary evidence of employment, including terms of employment and identity of employers

No written contract of employment, written offer of employment, or other documentary evidence is produced indicating that the Inuit hunters were employed by anyone other than

themselves. Nor is any documentary evidence of terms of any employment or the identity of any employer produced.

In particular, the harvesting plan attached to the 2009 licence, which the GN assures the Board is similar to the plan used in 2007, differentiates consistently between the Inuit “hunters”, on one hand, and “staff”, “abattoir staff” or “camp crew” of the company to which the licence would be issued, on the other. The plan expressly states that the hunters would use “traditional hunting methods”, rely on their own “traditional knowledge and skills”, and provide their own “equipment” and “supplies” (including “food”). This documentary evidence tends to show that the hunters were not employed by the company.

Further, no facts or evidence are identified in the GN’s status report which provide any reason to doubt the additional facts and evidence cited in NTI’s May 2 reply tending to show that the Inuit hunters engaged in this operation were not employed by the company.

There is therefore no reliable evidentiary basis upon which the NWMB could accept the assertion made in the GN’s March 31 submission (page 8) that “Inuit involved in these operations were employed as hunters” by the companies in question. Accordingly, to the extent that the GN’s position relies on the companies in question having employed these hunters, there is no evidentiary basis for excluding any caribou so harvested from the BNL calculation.

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. Even in the light most favourable to the GN’s view, however, it would appear that such a relationship could not have amounted to more than a contract for the supply of carcasses.

3. Sales and other use of the caribou harvested

a) 2007 meat sales

Contrary to the assertion in the GN’s March 31 submission that “[t]he 2007 commercial harvest was marketed outside the Nunavut Settlement Area” (page 12), the copies of sales receipts provided in Appendix G show substantial quantities of meat having been sold within the NSA. For example, substantial quantities of meat are reported sold to Arctic Ventures Stores, the Frobisher Inn, and D J Specialties.

b) 1996-2000 meat sales

Contrary to the assumption of the GN’s March 31 submission that all caribou harvested for sale to the meat plant between 1996 and 2000 was sold outside the NSA (see Appendix A, Table 1, numbers crossed out) the copies of sales receipts provided in Appendix H show significant quantities of meat having been sold within the NSA. For example, significant quantities of meat are reported sold to Arctic Ventures Stores, Northern Fancy Meats, and the Baker Lake Northern Store.

c) pre-BNL period meat sales

Contrary to the assumption of the GN’s March 31 submission that this operation always served an export market outside of Nunavut (see pages 7 and 8), the GN status report advises that “we do not have enough information relating to meat sales up to 1995 to reach an informed conclusion” (GN status report, page 3 (pagination added by NTI); May 21 letter to NWMB from GN). NTI’s published source reports that sales in this period were only within the NWT, because the plant did not have federal approval to export meat from the territory before 1995 (NTI May 2 Reply, page 21, and referenced study by Mason, Dana, and Anderson).

d) within-NSA meat sales

Contrary to the assumption of the GN’s March 31 submission that all caribou harvested for sale to the meat plant between 1996 and 2000 was sold outside the NSA, the GN status report

offers no further evidence to qualify the government's concession in its May 21 2014 letter to the Board that some smoke ribs, hocks and dry meat produced by the plant were intended for sale in the NSA, and these products "likely" were sold within the NSA (GN status report, page 4).

Similarly, the GN status report concedes that the cuts packaged for export were also sold within the NSA (GN status report, page 4).

e) **distribution of tongues, hearts, back fat, leg marrow and briskets to Coral Harbour community residents**

Contrary to the assumption of the GN's March 31 submission that all caribou harvested for sale to the meat plant between 1996 and 2000 was sold outside the NSA, the GN now accepts that meat not approved for export was "distributed in Coral Harbour" (GN status report, page 4).

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

Condition #2 of the 2009 Commercial Wildlife Licence supplied by the GN indicates that "the proponent is authorized to harvest up to 850 Caribou from Southampton Island, as allocated to them by the Aiviit Hunters and Trappes Organization" (*underlining added*). While this language does not track tightly the classification and allocation of harvesting rights under Article 5 of the NLCA, it appears to reveal that, in the discussions between the HTO and the GN, the community/HTO was led to believe that the GN acknowledged that the caribou in question somehow 'belonged' to the Inuit hunters represented by the HTO, and that the HTO could have looked at other options for use of the caribou in question

C. Next steps

As noted in NTI's report to the Board of the June 2 2014 meeting between GN and NTI, NTI and the GN have agreed that a further pre-hearing meeting of these parties to try to clarify and, if possible, narrow the factual issues in dispute should be held. At the June 2 meeting, the GN indicated that its position in response to basic facts asserted by NTI – e.g. that all the individuals who harvested the caribou in question were Inuit, and that they were paid by the piece – would be stated in the GN's status report. As the status report does not disclose a GN position on a number of such facts, NTI invites the GN to do so at a meeting with NTI to be held at a mutually convenient date in early August, 2014.

Counsel have agreed the GN will have until August 15 to file any further legal argument that the GN intends to submit to the Board for consideration at the public hearing. NTI will intend to exercise the right of reply to any such argument that counsel have agreed NTI will be accorded.

Respectfully submitted on behalf of Nunavut Tunngavik Incorporated:



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