

## Qikiqtaaluk Wildlife Board

#### SUBMISSION TO THE

## NUNAVUT WILDLIFE MANAGEMENT BOARD (NWMB)

Regular Meeting No. RM 004-2021

**FOR** 

Information: ☐ Decision: ☑

Issue: Government of Nunavut's Polar Bear Harvest Administration

and Credit Calculation System (HACCS)

## **Background:**

- In 2019, the Nunavut Wildlife Management Board (NWMB) provided interim
  approval pending consultation to a version of the Government of Nunavut's (GN)
  Polar Bear Harvest Administration and Credit Calculation System (HACCS). The
  GN did not consult the Regional Wildlife Organizations (RWOs) and the Hunters
  and Trappers Organizations (HTOs) on this document before submitting it to the
  NWMB for approval.
- The GN did consult the RWOs and HTOs in two 2-hour conference calls in April
  and July 2021. Most HTOs were unable to participate due to short notice and
  poor seasonal timing. As well, the GN did not provide enough time during these
  calls for both parties to resolve the concerns of the RWOs and HTOs about the
  HACCS.
- On August 10, 2021, the GN provided the QWB and other RWOs with an updated version of HACCS, requesting RWO feedback by October 1, 2021.
- The latest version of HACCS infringes on the powers and functions of the RWOs, as provided for in section (s.) 5.7.6 of the Nunavut Agreement (NA), infringes on other sections of the NA, and fails to address concerns raised by Inuit during and after the 2018 NWMB public hearing on the polar bear management plan.
- The staff of the Kitikmeot Regional Wildlife Board KRWB), the Kivalliq Wildlife Board (KWB) and the *Qikiqtaaluk Wildlife Board* (QWB) have collaborated to develop a draft RWO-sponsored Nunavut Polar Bear Harvest Administration System (NPB HAS), which addresses NA infringements, and other RWO and HTO concerns regarding the GN's revised HACCS.
- Through a QWB Executive motion on September 29, 2021 sent to both the GN and NWMB on October 1, 2021, the QWB did the following:

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- The QWB advised the GN that it does <u>not</u> support the GN's revised HACCS proposal;
- The QWB invited the GN to develop a joint GN-RWO submission for the NWMB, based on the draft RWO-sponsored NPB HAS as soon as possible:
- The final NPB HAS or any other polar bear harvest system should work hand-in-hand with RWO Polar Bear Harvest Administration By-laws (PBHAB) in accordance with the NA (currently under active development);
- The QWB asked both the GN and the NWMB to conduct staff reviews of the draft RWO-sponsored NPB HAS, which was attached, and provide constructive comments on the draft NPB HAS to the QWB, KRWB and KWB on or before October 22, 2021.
- Active work by the QWB has continued on the NPB HAS and potential conditions and terms for the developing PBHAB with six of 13 individual HTO consultations completed as of October 30,2021.
- On October 19, 2021, the QWB received a letter from Drikus Gissing, Director of Wildlife Management and Research for the GN Department of Environment, indicating that the RWO's proposed NPB HAS will require extensive review, and that the review would not be completed by October 22, 2021. Mr. Gissing did not indicate when the review could eventually be completed.
- In spite of the fact that the QWB does not support the revised HACCS, Mr.
  Gissing stated that the GN would still submit the updated version of the Polar
  Bear Harvest Administration and Credit Calculation System (HACCS) for the
  NWMB meeting of December 08, 2021.
- The GN has not provided any urgent justification for that submission date.
- The version of HACCS given interim NWMB approval pending consultation in 2019 has functioned adequately since then, while subsequent versions of HACCS offered by the GN have generated significant and serious concerns among the RWOs and HTOs.
- The QWB and other RWOs will continue to develop RWO Polar Bear Harvest Administration By-laws, in accordance with sections 5.7.8 to 5.7.12 inclusive of the NA, and present them to NWMB together with the RWO NPB HAS. The RWOs will incorporate any appropriate comments and input that we may receive from the GN and/or NWMB.
- A letter from QWB's legal counsel addressed to the Chairperson of the NWMB is attached.

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#### Recommendations:

In brief, the QWB's legal position is that "... the RWOs and HTOs are populated by Inuit members who are more than simply stakeholders — they are *rights* holders under the NA.

The QWB thus respectfully requests that the NWMB delay adjudicating on the GN proposed HACCS until such time that (a) the QWB and the other RWOs have satisfactorily been consulted by the GN and (b) the GN has had an appropriate amount of time to complete the "extensive review" of the RWO proposed NPB HAS to which it committed in its October 19, 2021 letter to the QWB."

In the meantime, the QWB respectfully requests that the NWMB continue to utilize the 2019 version of HACCS, which was given interim approval pending consultation, which is incomplete at this time.

Prepared by: Michael Ferguson and Kolola Pitsiulak, Qikiqtaaluk Wildlife Board

Date prepared: November 1, 2021

DANIEL W. DYLAN | Ċのひょ ೧೭º

BARRISTER & SOLICITOR IN THE TERRITORY OF NUNAVUT

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P.O. Box 26063 | MEMORIAL PO | THUNDER BAY, ON P7B 0B2

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WITHOUT PREJUDICE

Thunder Bay, Ontario November 2, 2021

Mr. Daniel Shewchuk Chairperson, Nunavut Wildlife Management Board PO Box 1379 Iqaluit, NU X0A 0H0

Dear Chairperson Shewchuk:

# RE: Government of Nunavut's Polar Bear Harvest Administration and Credit Calculation System (HACCS)

On September 23, 2021 the Qikiqtaaluk Wildlife Board (QWB) provided to, and requested that the Government of Nunavut (GN) review and provide comments respecting the RWO's proposed Nunavut Polar Bear Harvest Administration System (NPB HAS) by October 22, 2021. The proposed NPB HAS was jointly drafted by the QWB, the Kitikmeot Regional Wildlife Board (KRWB), and the Kivalliq Wildlife Board (KWB) — the RWOs under the *Nunavut Land Claims Agreement* (NA).

On October 19, 2021 the GN informed the QWB via a letter from Drikus Gissing, Director of Wildlife Management and Research for the GN Department of Environment, that the RWO's proposed NPB HAS "...raises a number of concerns and proposes major changes to the overall polar bear harvest management in Nunavut. This will require an extensive review before any formal discussions can take place. Due to the nature and extent of the proposed changes and review required, the GN will not be able to meet the [October 21, 2021] deadline that is proposed." Mr. Gissing added that "...the GN will continue with its plan to submit the consulted and updated version of the Polar Bear Harvest Administration and Credit Calculation System (HACCS) to NWMB during their December 08, 2021 meeting. Feedback and discussion from the April 1st, 2021, and July 27th, 2021, consultations on the HACCS will be reflected in the updated version for the December NWMB meeting."

The QWB expressed serious concerns with the GN's proposed HACCS at the April 1, 2021 and July 27, 2021 meetings among the RWOs and the GN. The QWB has continued to express those concerns to the GN as reflected in NPB HAS.

The QWB is of the position that the GN's HACCS has, in several places, exceeded its jurisdiction under the NA. For example, and perhaps of the most significant concern, the HACCS attempts to determine how annual quotas will be set for individual communities in respect of polar bear harvesting. The NA clearly provides in sections 5.7.1 to 5.7.14 that the RWOs and HTOs are responsible for the allocation and enforcement of basic needs levels and adjusted basic needs levels among HTOs, as well as generally the management of harvesting among HTOs and their members.

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The GN's HACCS, therefore, usurps the powers given to the RWOs and the HTOs in the NA, a constitutionally protected treaty which provides *rights* to Inuit.

It is the QWB's position that the HACCS remains flawed and cannot, therefore, form the basis of a lawful polar harvest management system at least and until such flaws are addressed and remedied. For greater clarity, the current HACCS proposed by the GN is unacceptable to the QWB.

Further, because of these flaws, the QWB respectfully requests that the NWMB delay adjudication on the GN proposed HACCS so that the GN will have the time to conduct—what it referred to in its October 19, 2021 communication to the QWB as—an "extensive review [of NPB HAS]."

Mr. Gissing stated in this same October 19, 2021 communication that "I would like to reaffirm that the GN Department of Environment is committed to working with all RWO's and HTO's to find a way forward that respects the concerns of stakeholders for effective polar bear management and ensures continued trade and economic benefits for Inuit while ensuring long-term population sustainability for the future of Nunavummiut." While the GN's commitment to working with RWOs and HTOs is to be commended, the absence, however, of any recognition of Inuit *rights* in Mr. Gissing's communication to the QWB, as well as any recognition of the social and cultural aspects of polar bear harvesting for Inuit is certainly problematic and epitomizes many of the concerns the QWB has with the currently proposed HACCS.

In the present case, the RWOs and HTOs are populated by Inuit members who are more than simply stakeholders — they are *rights* holders under the NA.

The QWB thus, again, respectfully requests that the NWMB delay adjudicating on the GN proposed HACCS until such time that (a) the QWB and the other RWOs have satisfactorily been consulted by the GN and (b) the GN has had an appropriate amount of time to complete the "extensive review" of the RWO proposed NPB HAS to which it committed in its October 19, 2021 letter to the QWB.

Please reach me at dwdylanlaw@gmail.com or the QWB Director of Wildlife and Environment Dr. Michael Ferguson at MFerguson@niws.ca should you have any questions or require further information.

Sincerely,

Daniel W. Dylan

Legal Counsel, Qikiqtaaluk Wildlife Board