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EEYOU MARINE REGION WILDLIFE BOARD
CONSEIL DE GESTION DES RESSOURCES
FAUNIQUES DE LA RÉGION MARINE D'EEYOU
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**Final Decision – Establishing a Total Allowable
Take and Non-Quota Limitations for Southern
Hudson Bay Polar Bears, within the Nunavik
Marine Region.**

December 2015

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DECISION SUMMARY

On January 10, 2012, the Federal Minister of Environment requested that the Nunavik Marine Region Wildlife Board (herein the “NMRWB”) establish a Total Allowable Take (herein “TAT”) for polar bear within the Nunavik Marine Region (here in the “NMR”).

Recognizing polar bear management in Canada is based on management units / sub-populations, the NMRWB decided to establish, if deemed necessary, TAT’s for each of the three Management Units in the NMR, specifically Southern Hudson Bay, Foxe Basin and Davis Strait, rather than one TAT for the entire NMR. It was further decided, in light of concerns over harvest levels from the Southern Hudson Bay polar bear sub-population in previous years, that the NMRWB would proceed with the establishment of a TAT for that Management Unit first.

In February of 2014 the NMRWB held a public hearing in order to gather the information required to establish the TAT for the Southern Hudson Bay polar bear.

Further, and in accordance with the *Nunavik Inuit Land Claims Agreement* (herein “NILCA”), the *Eeyou Marine Region Land Claims Agreement* (herein “EMRLCA”) and the Agreement Relating to the Cree/Inuit Offshore Overlapping Interests Area (herein the “Cree/Inuit Overlap Agreement”), the Eeyou Marine Region Wildlife Board (herein the EMRWB) and the NMRWB, sitting jointly, accepted to extend the application of the NMRWB’s decision on this issue to the area of overlapping interests.

On July 29, 2015, the NMRWB and the EMRWB submitted these decisions with respect to the establishment of a TAT for polar bear harvesting and other non-quota limitation from the Southern Hudson Bay Management Unit for the NMR and the areas of overlapping jurisdiction in the EMR, to the Nunavut Minister of Environment and Canada’s Minister of Environment.

The NMRWB and the EMRWB received notices from the Federal Deputy Minister of the Environment on September 23, 2015, and from the Territorial Minister of the Environment on September 22, 2015, rejecting the decisions of the NMRWB and the EMRWB. In both cases, the decision to establish a TAT of twenty-eight (28) polar bears was rejected by the Minister on the basis that the level of harvest being proposed in the decisions was not sustainable in light of harvest levels established in neighboring jurisdictions, such as Nunavut and Ontario.

Having considered all of the relevant information as well as the reasoning provided by the respective Ministers in their rejection of the initial decisions, the NMRWB and the EMRWB herein provide their Final Decision in accordance with 5.5.19 of the NILCA, and 15.4.6 of the EMRLCA.

In accordance with the sections 5.2.3 (a) and 5.2.10 of the NILCA and sections 12.2.1 (a) and 13.5.1 of the EMRLCA, the NMRWB hereby establishes an annual TAT of twenty-eight (28) polar bears from the Southern Hudson Bay Management Unit for the NMR, and the NMRWB and EMRWB jointly accept that such decision apply to the areas of Cree-Inuit Overlap. In accordance with the section 5.3.7 of the NILCA and 11.3.1 of the EMRLCA, Nunavik Inuit and the Cree of Eeyou Istchee have the exclusive right to harvest polar bear in the NMR and are presumed to require the entire TAT to meet their harvesting needs. As such, the NMRWB and the EMRWB will not address the allocation of the TAT. It is, however, assumed that at least one (1) polar bear, from the TAT of twenty-eight (28), will be allocated to the Cree of Eeyou Istchee for harvest within the Cree-Inuit Overlap Area. Any further allocations of the TAT will be determined jointly by the Regional Nunavimmi Umajulirijiit Katujiqatigininga (RNUK) and the Cree Trappers' Association.

This final decision is identical to the initial decision submitted to the Ministers. In the course of reaching this final decision the NMRWB concluded that altering the initial decision with respect to the establishment of a TAT for the NMR and the overlap area with the EMR to accommodate the reasons for rejection provided by the Ministers would be contrary to the principles, objective and principles of the NILCA and the EMRLCA and the EMRWB supports such conclusion. Further it would be an unjustified infringement of the harvesting rights of Nunavik Inuit and Cree of Eeyou Istchee. The established of the TAT of twenty-eight (28) was decided after giving full consideration to the historic and current harvesting practice and needs of Nunavik Inuit and the Cree of the Eeyou Istchee in the NMR, as well as the principles of conservation and the harvesting of this management unit outside of the NMR. The responses from the Ministers failed to take into account and recognize Nunavik Inuit knowledge of the polar bear population and habitat, and failed to integrate this knowledge with the knowledge gained through the scientific research in their decisions.

The NMRWB further decides that the TAT shall be implemented within a flexible framework. The flexible TAT system consists of the following: all human-causes mortalities will be deducted

from the TAT; if the sum of all human-caused mortalities exceeds the TAT in a given year, the following year's TAT will be reduced correspondingly; if the harvest in a given year is below the TAT, an increase may be permitted the following year (subject to approval); no more than five (5) tags may be transferred to subsequent years and these credits will expire at the end of the next harvesting season. The Ministers, in their rejection of the original decisions, suggest the inclusion of an additional requirement of sex-selective harvesting: the NMRWB and the EMRWB reject this suggestion.

Finally, the NMRWB has decided to establish the following non-quota limitations: the harvest of polar bears in this portion of NMR shall be restricted to Nunavik Inuit beneficiaries (or to the Cree of Eeyou Istchee, in accordance with the Cree-Inuit Overlap Agreement); registration of all bears killed is mandatory; all harvested polar bears must be reported as soon as possible; should a polar bear be killed in self-defence by person not a beneficiary of either the NILCA or the EMRLCA land claim, it must be reported immediately and the hide, meat and all other parts shall be forfeited to the nearest community's Local Nunavimmi Umajulirijiit Katujiqatiginga (herein "LNUK"); polar bear hunting shall be permitted throughout the year; cubs, females with cubs, or bears that are less than two (2) years old shall not be killed, except in defense of life and property; polar bears may not be killed while in their dens or disturbed unless authorized to do so after consultation with the RNUK and approved by the NMRWB; the handling or drugging of polar bears shall not be permitted within this portion of the NMR, unless there has been expressed prior consent by affected LNUKs and the RNUK, as well as access approved by the NMRWB; the RNUK will allocate the TAT among the LNUKs; each LNUK will allocate the TAT among its members and will enforce these allocations as they see fit; the LNUKs and RNUK may, respectively, impose additional non-quota limitations to their members (e.g. hunting seasons); such measures shall not conflict with those established by the NMRWB. The NMRWB and EMRWB jointly agree to the application of such limitations in the Cree-Inuit Overlap Area.

LAW

JURISDICTION OF THE NMRWB AND THE EMRWB

In accordance with the NILCA, the NMRWB is the main instrument of wildlife management for the NMR and has the exclusive authority to establish, modify or remove levels of TAT and non-quota limitations in the NMR (NILCA ss. 5.2.3 (a) and (e), 5.2.10 and 5.2.19). In the course of exercising this authority, the NMRWB has the discretion to express the TAT for a species stock or population by any method that the NMRWB considers appropriate (NILCA s. 5.2.11).

In accordance with section 13.2.1 of the EMRLCA the EMRWB is the main instrument of wildlife management in the EMR and has the exclusive authority for the establishment, modification or removal of a TAT and non-quota limitations in the EMR (EMRLCA sections 13.2.1 (a) and (e), 13.5.1 and 13.8.1). In the course of exercising this authority, the EMRWB has the discretion to express a TAT for a species stock or population by any method the EMRWB considers appropriate (EMRLCA s. 13.5.2).

The Cree of Eeyou Istchee and Nunavik Inuit have overlapping rights in part of the Hudson coast and off shore. This area is in both the NMR and the EMR. The scope of Cree and Nunavik Inuit rights and the management of resources within this overlap area is defined in the Cree/Inuit Overlap Agreement. Within the areas of the overlap referred to as the “Joint Zone”, the NMRWB and the EMRWB have joint and equal authority to establish a TAT for a species or population (section 4.4 of the Cree/Inuit Overlap Agreement).

HARVESTING RIGHTS AND LIMITS ON THE AUTHORITY OF THE NMRWB AND THE EMRWB

In the absence of an established TAT, Nunavik Inuit have the right to harvest polar bear in the NMR up to the full level of his or her economic, social and cultural needs (NILCA 5.3.1). The Cree are afforded this same right in the EMR (EMRLCA s. 11.1.1). The harvesting rights of Nunavik Inuit and the Cree of Eeyou Istchee are the same in the areas of overlap between the NMR and the EMR, and are to be exercised in accordance with their respective customs and traditions (section 4.1 of the Cree/Inuit Overlap Agreement).

The rights of Inuit and Cree, as outlined in the NILCA and the EMRLCA, as well as the Cree/Inuit Overlap Agreement (which was incorporated into the NILCA and the EMRLCA) are constitutionally protected rights under section 35 of the *Constitution Act, 1982*. Recognizing the sacred nature of these rights, the NILCA and the EMRLCA limits the extent to which the NMRWB and the EMRWB can restrict or limit these rights.

Section 5.5.3 of the NILCA states that decisions by the NMRWB in relation to Part 5.2 and 5.3 of the NILCA, which includes the establishment, modification or removal of a TAT and the establishment of non-quota limitations, “shall restrict or limit Nunavik Inuit harvesting **only to the extent necessary** to effect a conservation purpose in accordance with sections 5.1.4 and 5.1.5; to give effect to the allocation system outlined in Article 5 and the rights of other Aboriginal groups within the NMR as outlined in articles 27, 28 and 29 of the NILCA; or to provide for public health or public safety.

The provision in the NILCA are similar to the criteria outlined in the EMRLCA at section 15.2.1 which states that notwithstanding any other provision of this Part III, decisions of the EMRWB or a Minister or the Executive Council made in relation to Chapter 11 or Chapter 13 shall restrict or limit Cree Harvesting only to the extent necessary: a) to effect a conservation purpose in accordance with sections 10.3 and 10.4, b) to give effect to the allocation system outlined in Chapter 11, to other provisions of Part III and to the provisions in this Agreement arising from Chapter 30, or c) to provide for public health or public safety.

Chapter 30 in the EMRLCA and article 28 of the NILCA relate to the overlapping rights held by the Cree and Inuit within the areas of overlap between the NMR and the EMR.

The paramountcy of Inuit and Cree harvesting rights are further emphasized when considering the establishment of non-quota limitations. Section 5.2.21 of the NILCA states that non-quota limitations established by the NMRWB must not unduly or unreasonably constrain the harvesting activities of Nunavik Inuit. Further, and in accordance with section 13.8.3 of the EMRLCA, the EMRWB is prohibited from establishing non-quota limitations that unduly or unreasonably constrain Cree harvesting activities.

MIGRATORY ANIMALS AND HARVESTING OUTSIDE THE NMR

Polar bears from the Southern Hudson Bay Management Unit cross jurisdictional boundaries and are harvested by Nunavut Inuit and Ontario Cree, in addition to Nunavik Inuit and the Crees of Eeyou Istchee. As such, in addition to the considerations required under sections 5.5.3 of the NILCA, when the NMRWB is exercising its authority to establish a TAT for this Management Unit, the NMRWB is required to take account of harvesting activities outside the NMR and the terms of domestic interjurisdictional agreements or international agreements pertaining to this population (NILCA 5.5.4.1). This obligation is shared by the EMRWB in accordance with section 15.2.2 of the EMRLCA.

PRINCIPLES OF CONSERVATION

The principles of conservation, as referenced in section 5.5.3 of the NILCA, are defined in section 5.1.5. The principles of conservation are: (a) the maintenance of the natural balance of ecological systems within the NMR, (b) the maintenance of vital, healthy wildlife populations capable of sustaining harvesting needs as defined in this Article, (c) the protection of wildlife habitat, and (d) the restoration and revitalization of depleted populations of wildlife and wildlife habitat. In applying and interpreting the principles of conservation, section 5.1.4 of the NILCA requires that this be done with full regard to the principles and objectives outlined in section 5.1.2 and 5.1.3 and with full regards to the rights and obligations set out in Article 5.

The principles of conservation referenced in section 15.2.1 of the EMRLCA are defined in Chapter 10 of the EMRLCA. The principles mirror those outlined in the NILCA. They include a) the maintenance of the natural balance of ecological systems within the EMR, b) the maintenance of vital, healthy Wildlife populations, including maintaining such populations to sustain the Harvesting needs as defined in Part III, c) the protection of Wildlife habitat, and d) the restoration and revitalization of depleted populations of Wildlife and Wildlife habitat. The principles are to be interpreted and applied giving full regard to the principles and objectives in section 10.1 and 10.2 and the rights and obligations set out in Part III of the EMRLCA (EMRLCA 10.3).

RIGHTS OF OTHER ABORIGINAL GROUPS AND OVERLAPPING AGREEMENTS

Within the NMR the Nunavut Inuit and the Cree of Eeyou Istchee have harvesting rights in addition to the defined rights of Nunavik Inuit.

Within the waters and islands of the NMR that were traditionally used and occupied by Nunavut Inuit, Nunavut Inuit have the same rights respecting harvesting of wildlife as Nunavik Inuit (section 27.3.3 of the NILCA). As such, and in accordance with the terms of Article 27 of the NILCA, Nunavut Inuit, through Nunavut Tunngavik Incorporated, are to be provided full standing before the NMRWB when they are performing their functions in relation to parts of the NMR that were traditionally used and occupied by Nunavut Inuit (NILCA 27.6.4). Although the areas of traditional use and occupancy by Nunavut Inuit within the NMR have not been defined, and the full scope of Nunavut Inuit rights within the NMR is unclear, the NMRWB provided full standing to Nunavut Tunngavik and have taken into account their representations.

The rights of the Cree of Eeyou Istchee within the NMR are defined in the EMRLCA and the Cree/Inuit Overlap Agreement. The Cree/Inuit Overlap Agreement is incorporated into the NILCA at Article 28 and the EMRLCA at Chapter 30. In addition to recognising the reciprocal harvesting rights of the Cree of Eeyou Istchee and Nunavik Inuit within the area of overlap, the Overlap Agreement defines and augments the manner by which the NMRWB and the EMRWB are to exercise their authority under the NILCA and the EMRLCA. Consequently, the establishment of a TAT for this portion of the NMR requires three decisions (see Figure 1, a Map of the Overlap Areas). One decision is needed for the NMR, where it does not overlap with the EMR, and two decisions where it does overlap with the EMR: one for the “Inuit Zone” and one for the “Joint Zone”. The “Inuit Zone” falls under the exclusive jurisdiction of the NMRWB; however, the Cree of Eeyou Istchee have the right to replace a Nunavik Inuit appointed member of the NMRWB with a member identified by the Cree of Eeyou Istchee. The Cree appointed member has the same voting and participation rights as the remaining NMRWB members for the “Inuit Zone” (sections 4.5 and 7.4 of the Cree/Inuit Overlap Agreement). For the “Joint Zone” the NMRWB and the EMRWB must jointing and equally exercise their authority in establishing a TAT (sections 4.4 and 7.5 of the Cree/Inuit Overlap Agreement).

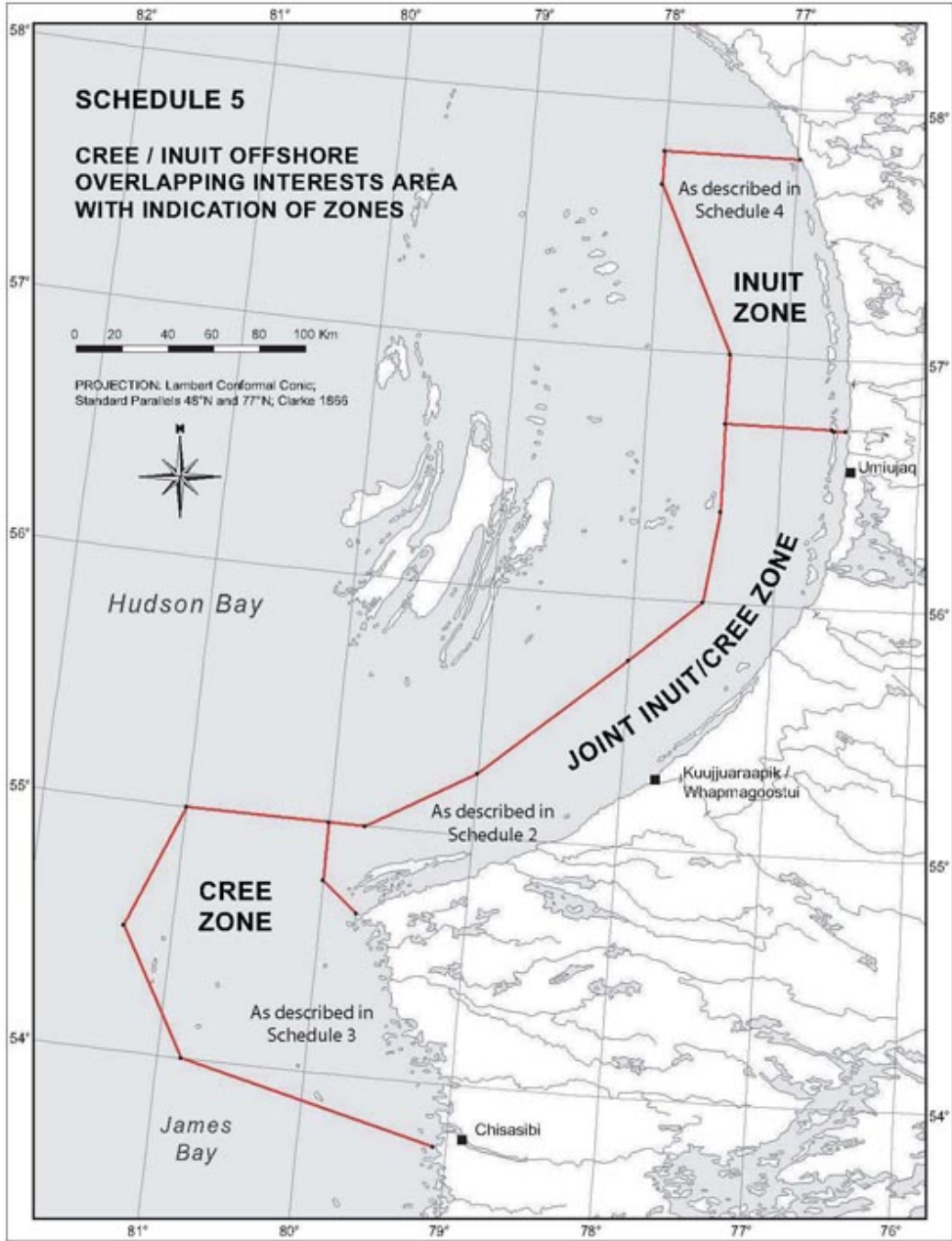


Figure 1 - Map of the Cree/Inuit Overlap Area

APPROVAL AND IMPLEMENTATION OF THE DECISIONS

Although the NMRWB and the EMRWB have the sole authority to establish a TAT for polar bear in the NMR and the EMR; Government has ultimate responsibility for wildlife management as per section 5.1.2(j) of the NILCA and section 10.1(j) of the EMRWB. Further, the NILCA and EMRLCA require decisions made by the boards be submitted to the Government for approval and implementation. With respect to the establishment of a TAT for polar bear, several questions have been raised regarding which Minister has the authority to approve the NMRWB and EMRWB decisions related to polar bear. It has not been made clear whether it is the Minister of Environment Canada, the Minister of Environment Nunavut, or both, that has the legal obligation and authority to approve and implement these decisions.

Through the course of the NMRWB's public hearing, this issue was raised with the Federal and Territorial Ministries and the NMRWB solicited submissions on the issue from both. In response, the Ministers advised that the decisions be sent to both the Minister of Environment Canada and the Minister of Environment for the Government of Nunavut, claiming that there was some overlapping jurisdiction. As such, the first set of decisions with respect to the establishment of a TAT for the NMR, were submitted to both Ministers in accordance with their direction.

With great reservation, this final decision is being sent to both Ministers. It is not the place of the NMRWB and the EMRWB to answer Constitutional questions with respect to Federal versus Territorial jurisdiction over polar bear. It is imperative, however, that the Federal and Territorial Government come to a shared understanding of which Government will be approving and implementing this decision. Although the NMRWB and the EMRWB recognize the complexities of this matter, nearly four years have passed since the request for decision was made to the NMRWB; undoubtedly enough time to clarify any legal gray areas on this matter. Ambiguity with respect to this issue must not be to the detriment of Inuit and Cree harvesting rights as defined in the NILCA and the EMRLCA and polar bear conservation efforts within and outside of the NMR and the EMR. We ask that neither Government make any determinations with respect to the approval, rejection nor varying of these decisions until the jurisdictional issue has been clarified and a shared understanding is reached between the Federal Government and the Government of Nunavut.

INFORMATION CONSIDERED IN ESTABLISHING THE TAT FOR SOUTHERN HUDSON BAY POLAR BEAR IN THE NMR AND THE AREAS OF OVERLAP WITH THE EMR

BIOLOGICAL INFORMATION

POPULATION SIZE AND TREND

In the 1960's aerial surveys performed along the Ontario coastline suggested an increase in the polar bear population between 1963 and 1990; this was based on a relative index of abundance rather than true population estimates, as a result of the survey design (Obbard et al. 2013). Traditional knowledge studies and the testimony of Nunavik Inuit and Nunavut Inuit at the NMRWB Public hearing indicate a similar increase in polar bears began in the 1960's, with a higher rate of increase notably since the 1980s. Inuit, particularly those from Kuujjuaraapik, stated that the creation and operation of the Royal Canadian Air Force base at Kuujjuaraapik (QC) drove the bears away and that they have been slowly returning to the area since its closure.

Actual abundance estimates have been calculated on only three occasions. The first two (1984-1986 and 2003-2005) consisted of capture-recapture studies conducted along the Ontario coastline, where the majority of the SHB bears are thought to summer. Dr. Obbard, the scientist behind the leading population studies for this Management Unit, in his 2008 report concluded that the Southern Hudson Bay subpopulation had remained relatively stable based on the results of the 1984-1986 estimate (634, 95% CI = 390-878) and the 2003-2005 study (673, 95% CI = 396-950). It should be noted, however, that for management purposes, the Canadian Polar Bear Technical Committee adjusted 1984-1986 estimate upwards to 1000 due to the limited spatial coverage of the survey.

Though spatial coverage of the 2003-2005 study was improved, it also did not include any capture efforts at Akimiski Island nor at the Twin Islands. The submissions provided by the Ontario Ministry of Natural Resources and Forestry (OMNRF) indicate that, at the upper confidence limit, the Southern Hudson Bay population numbered approximately 1000 animals in

2005, based on the 2003-2005 estimate, plus a population estimate of 110 (95% CI = 75-195) derived from a collaring effort in 1998-1999 on Akimiski Island and Twin Islands.

The latest population estimate was derived from aerial surveys of the Ontario and Quebec coastlines as well as over most islands within the range of Southern Hudson Bay polar bears. Due to logistical constraints, the surveys for Ontario and Quebec were conducted in 2011 and 2012, respectively. Compilation of the survey results yielded a new population estimate of 951 (95% CI = 662-1366) individuals. Based on this estimate, and in light of the historical information, Dr. Martyn Obbard concluded that this subpopulation has remained relatively stable since the 1980's.

The Inuit of Nunavik, specifically the communities of Inukjuak, Umiujaq and Kuujjuarapik, as well as the Cree community of Whapmagoostui and the Nunavut Inuit community of Sanikiluaq have harvested from and observed this population since time immemorial. As such the Nunavik and Nunavut Inuit and the Cree of Eeyou Istchee have a wealth of knowledge and experience with this polar bear population. Inuit, reports with respect to population abundance, are that while the population grew somewhat from the 1960's until the 1980's, the increase has been especially marked since the 1980's; all Nunavik Inuit communities in Southern Hudson Bay shared this view. The Makivik Corporation provided excerpts from the transcripts of interviews conducted during implementation of the James Bay and Northern Quebec Agreement (during the early 1980's). The transcripts indicate that the polar bear population was already growing near Inukjuak but that their presence, even in areas where bears are abundant today (e.g. Elsie Island), remained somewhat of a rarity. Representatives from Sanikiluaq indicated that a sizeable increase in the polar bear population has also been observed in their region since the 1960's. Taken together, these observations suggest a regional trend rather than changes in the local abundance near certain communities. Many Inuit believe that this increase is related to the abundance of ringed seals in Southern Hudson Bay. Unpublished Department of Fisheries and Oceans aerial survey results suggest population of over 100,000 ringed seals in the Southern Hudson Bay range (M. Hammill, pers. comm.). Further, it is believed that the increase is due to changes in winter sea ice dynamics caused by the James Bay hydroelectric projects. This is particularly true in the Inukjuak area where hunters have observed changes, which have improved polar bear habitat because there are now more expanses of open water, and therefore more foraging opportunities.

Inuit Traditional Knowledge indicates that polar bears occur inland in Nunavik and that denning is observed along this coast. However, both the current and the previous population estimates are based on the assumption that there are few to no polar bears in Nunavik during the time of estimation (early fall); the results may thus be negatively biased by insufficient spatial coverage. It is not currently possible to determine whether the bias would significantly impact the population estimate.

Based on the evidence presented above, the NMRWB finds that the Southern Hudson Bay polar bear population has at a minimum remained stable since the 1984-1986 survey. There is, however evidence to suggest that the population may in fact have increased since that time.

OTHER BIOLOGICAL INDICATORS OF POPULATION HEALTH

Though it appears from population estimates that the Southern Hudson Bay polar bear numbers are healthy, it is the opinion of Dr. Obbard that the long-term data suggests that their body condition is deteriorating. Inuit, on the other hand, have not observed a similar trend and reported very few encounters with sick or skinny bears.

Information collected along the Ontario coast, during autumn, indicates that there has been a marked decline in the body condition for all age and sex classes of polar bears. Dr. Obbard's findings suggest that solitary (pregnant) females have suffered the largest declines. A 2006 publication on trends in body conditions showed that this trend was apparent between the 1984-1986 and 2000-2005 surveys (Obbard et al. 2006). Dr. Obbard testified that this trend continued until at least 2009. Despite the observed trend in body condition, it was confirmed at the public hearing that Dr. Obbard's 2006 report found no significant relationship between the duration of ice-cover and timing of ice-melt with body condition of Southern Hudson Bay bears.

Evidence from the Nunavut Government shows that polar bears harvested in Sanikiluaq between 2009 and 2014 showed no apparent decline in body condition and that bears were in average to above-average body condition (based on a standard 5-scale subjective ranking system). Though, data prior to 2009 is not available from Southern Hudson Bay bears harvested by Nunavut Inuit, this is in line with the observations of Nunavik Inuit who have noted no decline in the body condition of bears they have harvested and observed. While hunters report

that there is significant year-to-year fluctuation in the condition of polar bears, none feel that the bears are skinny compared to the past.

The observed declines in body condition in Ontario, by Dr. Obbard, may suggest that SHB polar bears are less healthy than the population estimate alone suggests. However, the available information about reproductive rates, based on observations in Ontario and Nunavik suggests that the population is healthy. According to Inuit, litter size for SHB polar bears has increased compared to the past. Hunters report that females generally have two cubs and that it is not uncommon to see bears with three cubs. Historically, it was rare to see a female with more than one cub. Data collected during the last aerial surveys differs somewhat and suggests average litter sizes of 1.56 (SE: 0.06; $n = 70$) and 1.54 (SE: 0.08; $n = 54$) for cubs-of-the-year and yearlings, respectively (Obbard et al. 2013). Although the scientific information is less reassuring than Inuit knowledge, these litter sizes are in line with those reported for the Foxe Basin management unit, which is considered to be among the healthiest.

A correlation between survival rates and spring ice breakup date has been demonstrated for some cohorts of the Western Hudson Bay sub-population (juvenile, sub-adult, and senescent adult bears). Therefore, concerns have been raised in regard to the possible effect of a shortened duration of sea-ice cover, in particular an earlier spring break up, on Southern Hudson Bay polar bears. Though there is a significant trend towards an earlier break-up and later freeze-up of sea ice throughout much of Hudson Bay, it is most pronounced in the areas used by WHB bears. There currently exists some evidence to suggest that the survival rates of SHB bears are declining, but no significant correlation has been drawn with the observed trends in sea ice cover, possibly due to less remarkable change in spring break-up date in Southern Hudson Bay (Obbard 2008). Nonetheless concerns remain about future impacts of these changes in ice cover.

Considering the totality of the evidence provided, the NMRWB concludes that the Southern Hudson Bay polar bear remains a healthy sub-population. Although there may be some indication that there has been a decline in the body condition for certain segments of the population, there is significant evidence suggesting that the bears in this population are thriving. The testimony of Dr. Obbard acknowledged the inconsistencies in the observations of both scientist and Inuit: he concluded that “there is something about this population that we don’t understand despite the years of research.”

CULTURAL AND SOCIO-ECONOMIC CONSIDERATIONS

Nunavik Inuit have a long history of harvesting polar bears and speak about the importance of polar bears for their cultural and economic well-being and for food security. Interviews with Nunavik hunters demonstrate the long standing value and benefit of the polar bear harvest for Inuit. Nunavik Inuit stressed the importance of continuing the hunt, especially for the well-being of young hunters and for the continuation and preservation of cultural practices and harvesting skills. It was evident from the testimony of Nunavik Inuit that the value of a polar bear goes far beyond the economic value of the hides. Sale of the bear hide is not the primary objective of Nunavik Inuit polar bear harvesting. Hunters from Kuujjuaraapik, Umiujaq and Inukjuak spoke about polar bear hides that they had kept for clothing or other traditional purposes. In all communities, and particularly Inukjuak, hunters spoke about the importance of polar bear meat and said that meat from un-tranquilized bears continues to be shared and distributed with the whole community. Several hunters stated that polar bears occasionally come into their communities and Nunavik Inuit have expressed safety concerns associated with the increased presence of these predators, adding that bears have also been responsible for the destruction of several cabins. Nunavik Inuit also emphasized that these encounters continue to be somewhat of a rarity thanks to their hunting practices, which instil a fear of humans in the bears and have kept the population at reasonable size. The Crees of Eeyou Istchee have similarly expressed concerns over the safety of their communities due to the higher frequency of encounters with polar bears.

HISTORICAL HARVEST LEVELS IN THE SOUTHERN HUDSON BAY MANAGEMENT UNIT

Southern Hudson Bay polar bears are harvested throughout their range, though primarily by Inuit in Nunavik and Nunavut. There was no participation from Ontario Cree at the public hearing, and they have provided minimal input to the process, making it difficult to fully consider their historic take. However, according to submissions made to the public hearing, it has historically been assumed that Ontario Cree harvested nine (9) bears per year, though the actual level of harvest is likely much lower as evidenced by the recent voluntary agreements where their annual take was set at five (5) bears for 2011/12, two (2) bears 2014/15 and one (1) bear for 2015/16.

The Cree Trapper's Association submitted to the Boards that they have historically been allocated four (4) polar bear in accordance with the Guaranteed Harvest Level under the James Bay Northern Quebec Agreement. In the harvest data provided by Quebec's Ministère des Forêts, de la Faune et des Parcs (MFFP), Quebec Cree reported a catch of ten (10) bears (in total) between 1985 and 2014; most were from recent years and, many were the result of defense kills. Finally the Cree of Eeyou Istchee agreed to a voluntary limit of four (4) bears for 2011/12 and in the most recent agreement have agreed to a maximum take of one (1) bear for 2014/15 and two (2) bears for 2015/16.

Sanikiluaq has had a government regulated management system in place for over forty (40) years, and has had a Total Allowable Harvest of twenty five (25) polar bears since at least 1991/92. This level of take was maintained in the 2011/12 voluntary agreement but Sanikiluaq representatives agreed to a reduced take of 20 bears in the 2014/15 voluntary agreement. The Sanikiluaq Memorandum of Understanding (MOU), a copy of which was submitted by the Nunavut Wildlife Management Board (NWMB), indicates that the limit of twenty five (25) was based on a total allowable removal of fifty (50) bears (assuming a population estimate of 1000 polar bears), of which sixteen (16) were assumed to be harvested in Quebec (Cree and Inuit combined) and nine (9) in Ontario. To the best recollection of hearing participants, the historical harvest level for Nunavik Inuit and the Cree of the Eeyou Istchee was drawn from the Quebec Government's harvest records. As to be discussed further within this decision, the accuracy of this dataset is incomplete and unreliable. More recently, harvesters from Sanikiluaq have agreed to a voluntary annual limit of twenty (20) polar bears or 2014 to 2016.

During the public hearing, questions were raised with regards to how the Nunavik Inuit harvest had been considered when Sanikiluaq's Total Allowable Harvest was established, and if any consultations with Nunavik Inuit had taken place. The NWMB confirmed that the limit of twenty five (25) for Sanikiluaq was first established by the Government of the Northwest Territories (GNWT) and, pursuant to the *Nunavut Land Claims Agreement*, was later deemed to have been established by the NWMB. Subsequently the NWMB approved two MOUs for the management of Southern Hudson Bay polar bears harvested in Nunavut (in 1996 and 2004) and provided details on those discussions. It is apparent from the information provided that Nunavik Inuit were not active participants in this process. Prior to the signing of the 1996 MOU the GNWT held a workshop (in 1994) where two Makivik representatives attended; however in the

meeting minutes they emphasized that they were just observers to the process. Further, the meeting minutes from the approval of the current 2005 MOU indicate that members requested information regarding the support from other jurisdictions sharing the population and the response from the GN was “that there has been communications, but no formal objection to the new quotas”. Based on this information, it appears that the Total Allowable Harvest for Sanikiluaq may have been based on flawed assumptions, incomplete information regarding the Nunavik Inuit harvest levels and without consultation with Nunavik Inuit. .

For Nunavik Inuit, harvest records from the MFFP reveal that Inukjuak has historically hunted the most polar bears, with a total of 458 being reported since 1985. This amounts to an annual reported harvest of just under twenty (20) bears, though there are a number of years in which harvests were significantly higher (i.e. 1988/89 = 45; 2009/10 = 36, etc.). During the same period, Umiujaq reported an overall total of five (5) bears, whereas Kuujjuaraapik reported harvesting a total of twenty seven (27) bears. Despite the history of harvest-monitoring undertaken by the MFFP, it is evident that the levels reported do not fully reflect the total number of bears harvested by Nunavik Inuit. This discrepancy is reportedly due to the fact that many hunters have only reported catches when wanting to sell their hides and therefore it is likely that few, if any, of the bears kept for traditional purposes have historically been reported. The lack of an MFFP presence in the communities may also have contributed to this issue: there are limited MFFP employees and offices located within the Nunavik communities in the Southern Hudson Bay.

Recognizing the inadequacy of the MFFP dataset, the NMRWB engaged in consultations with Nunavik communities to determine a more comprehensive understanding of the level of the Nunavik harvest. After meeting with LNUKs and interviewing several hunters and Elders, the NMRWB learned that the annual harvest of Southern Hudson Bay polar bears by Nunavik hunters ranged anywhere between 28-45 bears per year (Inukjuak = 20-30; Umiujaq = 2-3 (one representative felt 6-8 was more accurate); Kuujjuaraapik = 6-7).

In the recent voluntary agreement, Nunavik Inuit agreed to a limit of 22 polar bears per year for 2014 to 2016.

ADDITIONAL MANAGEMENT CONSIDERATIONS

A number of parties' make submission to the NMRWB advocating for a cautious management approach for this sub-population, given the trends in body condition and prolonged ice-free season. This opinion was shared by the Nunavut Department of Environment, Environment Canada, the OMNRF, MFFP, the World Wildlife Fund (WWF) and the Center for Biological Diversity (CBD).

Other submissions, notably those from Makivik and other Nunavik Inuit, presented a differing view on the condition of bears and stressed that Inuit have always hunted polar bear sustainably according to traditional Inuit harvesting practices, referencing the stability of the Southern Hudson Bay population as evidence of this. Interviews with hunters and Elders also reinforced that Nunavik Inuit have long established practices in place related to polar bear stewardship, such as seasonality of hunting, ethical treatment of bears, and avoidance of harvesting younger bears and females with cubs.

Nunavik Inuit assert that the number of polar bears observed fluctuates between years, largely in response to environmental conditions. For example, in years when there are large areas of open water near communities, more bears are observed. Inuit have stressed that these fluctuations are a natural aspect of polar bear demography. Similarly environmental conditions, such as years with large expanses of rough ice, can impede the ability of hunters to reach the floe edge where they would normally harvest bears.

Lastly, Nunavik Inuit have noted that the strict implementation of a fixed quota has led harvesters to rush in order to ensure that they can hunt before the quota is reached, or to ensure that their quota will not be reduced in subsequent years. This was a pattern observed as a result of the imposition of the beluga management system. Many fear that a similar approach to polar bear management will artificially increase the demand for polar bears and lead to a higher level of harvest than would occur naturally; accordingly a flexible system which removes this urgency to some extent is preferred by Nunavik harvesters.

POSITION OF THE EMRWB

The EMRWB does not have firsthand knowledge of the information set out in the present section, did not participate in its gathering or review, and has not conducted its own independent analysis and consultation.

That said, the EMRWB takes note of and acknowledges such information and generally agrees that it presents a clear and accurate summary of the information available on the Southern Hudson Bay polar bear in the NMR. As such, the EMRWB agrees with and supports the conclusions of the NMRWB based on this information.

APPLICATION

SETTING THE TOTAL ALLOWABLE TAKE

The NMRWB, in accordance with its discretion permitted in the NILCA concludes that the TAT is to be established for the Southern Hudson Bay polar bear Management Unit as defined by Canada's Polar Bear Administrative Committee, in the NMR. The EMRWB, in accordance with its discretion permitted in the EMRLCA, agrees that such TAT be extended to and apply in the Joint Zone.

The NMRWB concludes that the Southern Hudson Bay polar bear population continues to be healthy, despite reported environmental changes. While the particular vulnerability of this population to environmental changes in the region is not refuted, the TAT established by the NMRWB and EMRWB is based on the assumption that the Southern Hudson Bay subpopulation has remained healthy and stable under current conditions and recent harvesting levels. The EMRWB, based on the information provided to it by the NMRWB, agrees with this conclusion.

Given many of the uncertainties raised about the population estimate and about the recorded historical harvest levels, an approach that reflects actual conditions rather than those which have been hypothesized or modeled has been applied in this case. It is the finding of the NMRWB that an alternative approach would result in an unjustified restriction of Inuit and Cree

harvesting rights. The EMRWB, based on the information provided to it by the NMRWB, agrees with this conclusion.

Inuit and Cree have continued to harvest polar bear from this population in accordance with their needs and custom throughout the years this population has been studied and surveyed. If the population has remained stable since the 1980's, which is supported by all the evidence, then it is evident that the population has supported the Nunavik Inuit and Cree harvesting levels, in addition to harvests that have occurred outside the NMR, over that period. Further, if the allowable harvest established reflects the historical harvest levels of Nunavik and Nunavut Inuit, Cree of Eeyou Istchee and Ontario Cree, and harvests outside the NMR do not increase, then this population should continue to be sustained. The NMRWB and the EMRWB recognize that if the population becomes less productive, or there is a decline in population and condition this finding will need to be re-evaluated. As such, it is recommended that there be regular monitoring of this population.

Based on these findings, the NMRWB concludes that the body of evidence considered herein continues to support the original decision for the establishment of an annual TAT of twenty-eight (28) polar bears for the NMR. The EMRWB believes that this conclusion is reasonable in light of the information presented. A TAT of twenty-eight (28) reflects the low-end of estimated annual harvests by Nunavik Inuit (considered to be a conservative estimate of past harvests, and a level which has allowed the population to remain stable in recent years) and permits an allocation to the Cree of Eeyou Istchee. The NMRWB considers this a defensible and prudent approach since there are currently no immediate conservation concerns for the Southern Hudson Bay Polar Bear population: the population is not classified as threatened or endangered, and a comprehensive survey is scheduled for 2016. In line with the Principles of Conservation as defined in the NILCA and the EMRLCA, the decisions of the NMRWB and EMRWB are thus intended to maintain the vitality and health of this sub-population by ensuring that harvesting pressures do not offset the natural balance that has allowed the Southern Hudson Bay polar bear sub-population to remain relatively stable. This is consistent with the management objective established by the NWMB for this sub-population for the Nunavut Settlement Area (NSA).

Throughout this process, the Cree of Eeyou Istchee have made it clear that they are not regular polar bear hunters, but on occasion do harvest bears and are required to harvest in defense of

life and property. Although their take of polar bears within the “Joint Inuit/Cree Zone” and/or in the “Inuit Zone” has been minimal - only one harvest has been recorded by the MFFP for the community of Whapmagoostui since 1985- the Cree of Eeyou Istchee continue to exercise their traditional activities throughout the Overlap Area. Since neither of the responses from the Ministers to the original decisions indicated concern over the mechanism that was initially put forward to guarantee that the Cree right to defend life and property will be maintained within the “Joint Inuit/Cree Zone” and/or in the “Inuit Zone”.

With respect to the allocation of the TAT of twenty-eight (28) among the harvesters, it is expected that the RNUK and Cree Trapper’s Association will jointly determine which portion of the TAT will be allocated to the Cree of Eeyou Istchee within the “Joint Inuit/Cree Zone” and/or in the “Inuit Zone”. The frequency of such allocation-decisions shall be determined by the RNUK and Cree Trapper’s Association. Nothing in this decision precludes the RNUK and Cree Trappers Association from revising their allocations during the course of any given year, should the need to do so arise. Should the nature of Cree harvesting in the NMR change or if there is a significant increase in the prevalence of defense kills, the NMRWB and EMRWB would act jointly, and rapidly, to re-evaluate the TAT for the Cree-Inuit overlap area.

THE IMPORTANCE OF FLEXIBILITY WITHIN THE MANAGEMENT SYSTEM

The testimonies of Nunavik Inuit have clearly demonstrated that the TAT must be implemented within a flexible framework, such that its mechanisms can account for the inter-annual variations in the availability of bears and for defense kills in excess of the annual TAT. The NMRWB and the EMRWB further conclude that a flexible system will allow the TAT system to be implemented in accordance with traditional practice and without creating a sense of ‘urgency to hunt’ among hunters.

Lastly, the NMRWB and the EMRWB expect more thorough reporting of all kills within a flexible framework since there is no underlying threat of sanctions, other than reduction of the TAT in subsequent years, in the event of an overharvest. This is not intended to promote or encourage overharvesting, but rather to recognize the realities that face Inuit harvesters and is in recognition of the role of the RNUK/LNUKs as the regulators of harvesting practices and techniques among its members.

The flexible TAT mechanism proposed by the NMRWB and the EMRWB is straight-forward and will help ensure effective implementation at the community level and will respect traditional practices. The proposal is as follows:

- a. all human-caused mortalities will be deducted from the TAT, including any bears killed in defense of life and property;
- b. if the sum of all human-caused mortalities exceeds the TAT in a given year, the following year's TAT will be reduced correspondingly;
- c. if the harvest in a given year is below the TAT, an increase may be permitted the following year, subject to prior approval by the NMRWB and/or another relevant authority, as agreed upon by the responsible Ministers, to ensure that doing so will not in itself create a conservation concern;
- d. no more than five (5) tags may be transferred to subsequent years, even if the actual harvest is lower than the TAT by more than five bears;
- e. When a transfer has been granted, credits will expire at the end of the next harvesting season, specifically credits cannot be accumulated over multiple years.

The requirement for reporting of all harvested bears, whether intended for trade or for traditional use, is new to Nunavik and clearly an important step in the region's polar bear management efforts.

Reduction of a subsequent year's harvest, following an overharvest, provides a mechanism to quickly offset the potential for long-term repercussions on population dynamics. This is not intended to provide a means for harvesting excessively above the TAT but rather to avoid prosecution in the case that the TAT has been slightly surpassed, or when bears are killed in defense of life and property.

Similarly, the transfer mechanism proposed when harvests are below the TAT is intended to be conservative. Prior approval by the NMRWB, or other relevant authority, will allow external factors, such as natural die-off, overharvest in another region, etc. to be taken into consideration before a carry-over is authorized. A limit on the number of bears that can be

carried-over and expiration of the credits after one year, are additional measures intended to avoid creating a significant stress on the population.

ESTABLISHING A SEX-SELECTIVE HARVEST

In the initial decisions, the NMRWB provided an explanation as to why a legislated sex-selective harvest was not necessary within the NMR (including the overlap areas). It was made clear by Environment Canada and the Nunavut Minister of Environment that they expected the final decision to include a formal male-biased harvest.

The NMRWB recognizes that a sex-selective harvest has been used as part of polar bear harvest-management in other jurisdictions. However, given that a sex-selective harvest occurs in Nunavik in the absence of legal mechanisms and since Cree harvests are rare and primarily in defense of life and property, implementing a formal sex-selective harvest is unnecessary and would be contrary to the NILCA and EMRLCA and an unwarranted limitation of Inuit and Cree harvesting rights. Although the MFFP harvest dataset is incomplete, there is no indication from the data towards a harvest biased towards either of the sexes. As well, Nunavik Inuit have been adamant that implementing a management system which directs hunters to preferentially target males - especially large males - goes against Inuit traditions and values since, according to their knowledge, this practice upsets the natural balance of wildlife populations and tends to remove the fittest breeders.

Consequently, the NMRWB maintains its initial position that a flexible TAT be applied without a requirement for sex-selective harvesting and the EMRWB agrees with such position with respect to the Joint Zone. To address concerns raised by the Ministers, we propose that the harvest records be reviewed regularly to ensure that the harvest of Southern Hudson Bay polar bears does not become skewed more heavily towards females than is currently the case. The Boards hereby commit to reconsidering this position in a timely manner, should a 2:1 male to female ratio not be naturally maintained in the coming years.

OTHER NON-QUOTA LIMITATIONS

The NMRWB and EMRWB are presently engaged, with their co-management partners, in the development of a comprehensive polar bear management plan which will provide the necessary structures to implement the TAT. However, this may be a lengthy process and the NMRWB and

EMRWB feel that a set of temporary non-quota limitations should be applied in the interim to avoid undue delays in the implementation of this decision. The majority of these non-quota limitations are adapted from the 1984 Agreement on polar bear hunting between the Quebec Government and the Nunavik Hunting, Fishing and Trapping Association and from recent voluntary agreements. Because neither government offered concerns about the non-quota limitations proposed initially, the Boards have maintained them, in their entirety, within the final decision.

1. The harvest of polar bears in this portion of NMR shall be restricted to Nunavik Inuit beneficiaries (or to the Cree of Eeyou Istchee, as per James Bay Northern Quebec Agreement guaranteed level of harvest for polar bear, in accordance with the Cree-Inuit Overlap Agreement);
2. There will be mandatory registration of all bears killed, whether as part of the subsistence harvest or in defense of life and property (whether or not these are intended for sale);
 - a. All harvested polar bears must be reported as soon as possible after being killed;
 - b. Should a polar bear be killed in self-defence by any person not identified in item #1 (above), it must be reported immediately and the hide, meat and all other parts shall be forfeited to the nearest community's LNUK (as per NILCA s.5.3.35);
3. Polar bear hunting shall be permitted throughout the year; however, for administrative purposes, the harvest-year shall be from July 1st until June 30th of the following year;
4. Cubs, females with cubs, or bears that are less than two (2) years old shall not be killed, at any time of year, except in defense of life and property;
5. Polar bears may not be killed while in their dens. Furthermore, no one may disturb a denning polar bear, unless authorized to do so after consultation with the RNUK and approval by the NMRWB;
6. The handling or drugging of polar bears shall not be permitted within this portion of the NMR, unless there has been expressed prior consent by the affected LNUKs and the RNUK, as well as access approval by the NMRWB (NILCA s. 12.3.6).

7. Pursuant to NILCA s.5.7.4(d), the RNUK will allocate the TAT among the LNUKs;
8. Pursuant to NILCA s. 5.7.2 (d), each LNUK will allocate the TAT among its members (by any means it deems appropriate) and will ensure enforce these allocations as they see fit;
9. Pursuant to NILCA s.5.7.2(c) and 5.7.4(c), the LNUKs and RNUK may, respectively, impose additional non-quota limitations to their members (e.g. hunting seasons); such measures shall not conflict with those established by the NMRWB.

The NMRWB considers these limitations to be fair and necessary to give effect to the TAT in the NMR and to meeting the management objectives for this subpopulation and the EMRWB agrees, based on the information provided, with respect to the Joint Zone. By implementing strict reporting requirements the Boards aim to reduce the likelihood of under-reporting, while giving consideration to the lifestyle of Inuit and Cree harvesters.

ENSURING THE EFFECTIVENESS AND IMPLEMENTATION OF POLAR BEAR MANAGEMENT DECISIONS

Because significant environmental changes are occurring within the range of Southern Hudson Bay polar bears, the NMRWB takes the position that its decisions must be supported by a rigorous monitoring program that couples frequent scientific population estimates with regular assessments based on Inuit/Cree Ecological Knowledge. This is needed to ascertain whether the conclusions that have been reached by the NMRWB, with the support of the EMRWB, continue to be relevant in the future, and to ensure that harvesting does not become detrimental to this sub-population. Research efforts on denning are also needed to quantify the importance of Quebec, as well as offshore islands in the NMR, EMR and in the Nunavut Settlement Area to the breeding ecology of SHB polar bears.

Should it become evident that the management system, or aspects of it, is resulting in undue pressures on Southern Hudson Bay polar bears, the decisions must be revisited immediately by the NMRWB and the EMRWB. This may include a review of management parameters whenever a revised population estimate is completed or when further traditional Inuit and Cree knowledge studies becomes available.

Finally, a clear framework must be established that will ensure the implementation and enforcement of the management measures established by these decisions. Absence of such a framework will undermine the efforts of the NMRWB and the EMRWB to establish an effective management system and will display a failure to understand the significance of the changes that are about to be imposed upon polar bear harvesters in the NMR and EMR. The present decision will forever affect the very construct of Inuit and Cree livelihoods, values, cultures and traditions as they relate to polar bear harvesting. The importance of these changes and their implications must not be overlooked. Inuit and Cree have successfully managed their harvest of polar bear since time immemorial. All the evidence shows that this management system has been successful and sustainable. The objectives of these decisions are to respect and affirm these practices, not to augment them where it is not necessary.

REASONS FOR REJECTION FROM THE MINISTER OF ENVIRONMENT CANADA AND THE MINISTER OF ENVIRONMENT NUNAVUT

Environment Canada and the Nunavut Department of Environment rejected the NMRWB and EMRWB's original TAT decisions on grounds that they were unsustainable. This was based on the assumption that a polar bear sub-population can only support an annual removal of 4.5% of the population. Both Ministers come to the conclusion that a TAT of twenty-eight (28) is inappropriate and not sustainable based on the estimated population size of 951 (95% CI = 662-1366) bears. Further, the Ministers concluded that the NMRWB and the EMRWB were bound by the terms of the terms of the "Consensus from the Southern Hudson Bay Polar Bear Management Meeting" agreement (herein "Consensus Agreement") that was been reached between the hunters of Nunavut, Nunavik and the Eeyou Istchee with respect to harvest levels.

The NMRWB respectfully disagrees with the arguments and conclusions reached by the Ministers. The NMRWB respectfully submits that the Ministers failed to properly consider Inuit knowledge in conjunction with science in concluding that the population size is 951 bears and improperly gave more force and importance to the consensus agreement than legally warranted.

FAILURE TO CONSIDER INUIT KNOWLEDGE

In correspondence relating to the management of Southern Hudson Bay polar bear (May 7, 2014 letter from Minister Aggluqaq and subsequent exchange with Makivik Corporation), Canada's

Minister of Environment identified the harvest of forty-two (42) polar bears as the sustainable harvest level. The Makivik Corporation challenged this position, claiming that the Minister was pre-supposing the outcome of the NMRWB process. Despite assurances from the Minister that the decision-making process would be respected, the Deputy Minister's basis for rejection of the NMRWB and EMRWB's decisions reiterates, almost word for word, the Minister's initial position and clearly disregards the extensive body of Inuit traditional knowledge that was before the NMRWB in reaching the initial decisions. The Governments of Nunavut and Canada have failed to take into account the Traditional Knowledge in their responses to these decisions and appear to have based their response solely on the scientific population estimate as well as on a general removal rate that is not specific to the circumstances of this particular management unit. The Government of Nunavut proposes an overall harvest for Southern Hudson Bay polar bear at forty-two (42) bears (i.e. 4.5% of 951). Since the established TAH for this sub-population in the NSA is 25, and considering the recognized harvest of the Cree of Eeyou Istchee and Ontario Cree is 9, this would require the NMRWB set a TAT of 8 for Nunavik Inuit. Given the stability of the population under historic harvesting pressure, the NMRWB concludes that adopting this position would result in an unjustified infringement of the harvesting rights of Nunavik Inuit and Cree of Eeyou Istchee and would be in violation the NILCA and the EMRLCA and the EMRWB supports such conclusion.

THE RELIANCE ON THE "CONSENSUS FROM THE SOUTHERN HUDSON BAY POLAR BEAR MANAGEMENT MEETING" AGREEMENT

In the course of responding to the TAT decisions, both Environment Canada and the Nunavut Department of Environment indicated that the NMRWB and the EMRWB must give more consideration for the voluntary harvest levels agreed to in the Consensus Agreement.

First, Environment Canada has indicated that the Consensus Agreement is a domestic interjurisdictional agreement as contemplated by section 5.5.4.1 of the NILCA, and asserts that it must be considered when developing a final TAT decision. The NMRWB does not agree with this proposition. Section 5.8.5 of the NILCA and 17.4 of the EMRLCA requires the participation of the NMRWB and EMRWB in the negotiation and/or amendment of domestic interjurisdictional agreements commensurate with their wildlife management responsibilities. No members of the NMRWB and the EMRWB were in attendance at this meeting in their role as Board members.

Further, the Consensus Agreement was never presented to the NMRWB or the EMRWB during a properly constituted sitting of the Boards for input or approval. Although an employee of the NMRWB was in attendance as an observer during the Ottawa meeting, it was made clear to all in attendance that his role was that of an observer, and in no way did his presence reflect an endorsement by the NMRWB. As such, it is the NMRWB and the EMRWB's position that the Consensus Agreement is not a domestic interjurisdictional agreement as contemplated in sections 5.5.4.1 of the NILCA and 15.2.2 of the EMRLCA, and therefore has no bearing on the decisions of the Boards.

Regardless of the legal status of the Agreement the NMRWB has considered the Consensus Agreement in reaching these final decisions. With respect to the weight the Consensus Agreement is to be given, Article 7 of the Consensus Agreement clearly stipulates that the voluntary agreement is without prejudice to the decision-making processes defined in the applicable Lands Claims Agreements. Being deferential to the terms of the Consensus Agreement as proposed by the Minister would undermine the autonomy and integrity of the decision-making process prescribed by the NILCA and EMRLCA, further, it's not supported by the evidence available to the NMRWB, the EMRWB and in turn, the Ministers.

Finally, it is important to limit the influence of the Consensus Agreement as its purpose was, in part, to implement temporary and voluntary measures so as to protect the international commercial trade of polar bear products obtained via the subsistence harvest. The NILCA and the EMRLCA do not permit the NMRWB and the EMRWB to restrict Inuit and Cree harvesting based on this criteria.

APPENDIX 1 – THE PARTIES AND WITNESSES

PARTIES TO THE HEARING

1. Environment Canada, represented by Sue-Milburn Hopwood, Dr. Rachel Vallender
2. Government of Nunavut (Department of Environment), represented by Markus Dyck, Drikus Gissing
3. Quebec Government (Ministère de la faune, des forêts et des parcs), represented by Clément D’Astous, Isabelle Thibault, Vincent Brodeur, Michel Bergeron, Charles Jutras
4. Ontario Government (Ministry of Natural Resources), represented by Leith Hunter
5. Makivik Corporation, represented by Adamie Delisle-Alaku, Andy Moorhouse, Gregor Gilbert
6. *Regional Nunavimmi Umajulirijiit Katujjiqatigiinninga* (RNUK), represented by Paulusie Novalinga, Johnny Arnaituk Jr., Jimmy Johannes, Eli Angiyou
7. *Local Nunavimmi Umajulirijiit Katujjiqatigiinninga* of Inukjuak, represented by Billy Palliser, Pauloosie Kasudluak, Danielie Oweetaluktuk
8. *Local Nunavimmi Umajulirijiit Katujjiqatigiinninga* of Umiujaq, represented by Simon Tookalak, Markusie Sala
9. *Local Nunavimmi Umajulirijiit Katujjiqatigiinninga* of Kuujjuaraapik, represented by Salamiva Weetaltuk, Alec Tuckatuck, Jimmy-Paul Angatookalook
10. Nunavut Tunngavik Inc. (NTI), represented by James Eetoolook, Glenn Williams, Richard Spaulding
11. Nunavut Wildlife Management Board (NWMB), represented by Ben Kovic, Michael D’Eça, Anna Magera
12. Eeyou Marine Region Wildlife Board (EMRWB), represented by Peter Kattuk (there as an observer for EMRWB and hunter from Sanikiluaq)
13. Qikiqtaaluk Wildlife Board (QWB), represented by James Qillaq
14. Sanikiluaq Hunters and Trappers Organization, represented by Lucassie Arragutainaq, Joe Arragutainaq, Eli Kavik, Epoo Kattuk, Davidee Kavik

15. Cree Trappers' Association, represented by Isaac Masty
16. Inuit Tapiriit Kanatami (ITK), represented by Terry Audla
17. World Wildlife Fund (Canada), represented by David R. Miller
18. Center for Biological Diversity, represented by Sarah Uhlemann
19. Nunavik Inuit and Nunavik Elders: Danielie Inukpuk (Inukjuak), Lucassie Echalook (Inukjuak), Jobie Epoo (Inukjuak), Shaomik Inukpuk (Inukjuak), Adamie Inukpuk (Inukjuak), Simeonie Ohaituk (Inukjuak), Mosusie Alaku (Inukjuak), Lizzie Epoo-York (Kuujjuaq).

WITNESSES SUMMONED BY THE NMRWB

After realising that the Ontario Ministry of Natural Resources and Forestry did not intend to send a representative to the in-person hearing, the NMRWB requested the presence of Dr. Martyn Obbard during the in-person hearing. Dr. Obbard has led the vast majority of research about SHB polar bears.

ORGANIZATIONS THAT DID NOT RESPOND TO NMRWB INVITATION TO PARTICIPATE IN THE HEARING

1. Attawapiskat First Nation
2. Fort Albany First Nation
3. Fort Severn First Nation
4. Kashechewan First Nation
5. Moose Cree First Nation
6. Weenusk First Nation

APPENDIX 2: DOCUMENTS SUBMITTED TO THE HEARING

DOCUMENTS MADE AVAILABLE BY THE NMRWB

1. Obbard et al. 2013. Estimating abundance of the Southern Hudson Bay polar bear subpopulation using aerial surveys, 2011 and 2012. OMNR Science and Research Branch, Wildlife Research Series 2013-01.

SUBMISSIONS RECEIVED IN ADVANCE OF THE HEARING

2. Alec Tuckatuck – Written Submission
3. Center for Biological Diversity – Written Submission
4. Cree Trapper’s Association – Written Submission
5. Canadian Wildlife Service – Written Submission
6. Inukjuak LNUK – Written Submission
7. Kuujuaraapik LNUK – Written submission by the Hunters of Kuujuaraapik
8. Makivik Corporation – Written Submission
9. Nunavut Tunngavik Incorporated – Written Submission
10. Nunavut Wildlife Management Board – Written Submission
 - a. Appendix 1: Consensus from the Southern Hudson Bay Polar Bear Management Meeting, Inukjuak, 21 September 2011.
 - b. Appendix 2: July 2012 letter to the participants in the Southern Hudson Bay polar bear subpopulations management process.
 - c. Appendix 3: Polar Bear Management Memorandum of Understanding between the Sanikiluaq HTO and the Nunavut Department of Environment (2005).
11. Government of Nunavut – Written Submission

12. Ministère des Forêts, de la faune et des parcs (Québec) – Written Submission
13. Ontario Ministry of Natural Resources – Written Submission
14. Obbard. 2014. Estimating abundance of the Southern Hudson Bay polar bear subpopulation – NMRWB Public Hearing, February 12-14, 2014 (PPT presentation).
15. Qikiqtaaluk Wildlife Board – Written Submission
16. Regional Nunavimmi Umajulirijiit Katujjiqatigiinninga – Written Submission
17. Sanikiluaq HTO – Presentation: Southern Hudson Bay Polar Bear Management System. Sanikiluaq, NU.
18. Shaomik Inukpuk – Written Submission
19. Umiujaq LNUK – Written Submission
20. World Wildlife Fund Canada – Written Submission

RESPONSES TO UNDERTAKINGS

1. Government of Nunavut – Overview of body condition for bears harvested in Sanikiluaq.
2. Kuujjuaraapik LNUK – Additional considerations.
3. Lewis et al. 2006. Update of traditional knowledge on polar bears at Inukjuak and Puvirnituq, Nunavik. Makivik Corporation Report #12-493 (AFSAR report).
4. Makivik Corporation – South Hudson Bay Polar Bear Traditional Inuit Knowledge Taken from Interviews to Inform the Land Use and Occupancy Study 1980-2001.
5. Makivik Corporation – Nunavik Reported Polar Bear Harvest Data 1970-2013.
6. MDDFP – Consensus from the Southern Hudson Bay Polar Bear Management Meeting, Inukjuak, 21 September 2011.
7. MDDFP – Hunting, Fishing and Trapping Coordinating Committee. Entente NEG n° 89-90A-01. Guaranteed Harvest Levels for the Cree.

8. MDDFP – Hunting, Fishing and Trapping Coordinating Committee. Entente NEG n° 85A-3F. Guaranteed Harvest Levels for the Inuit.
9. MDDFP – Hunting, Fishing and Trapping Coordinating Committee. Entente NEG n° 04-05:1. Guaranteed Harvest Levels for the Naskapi.
10. MDDFP – Laforest et al. 2014. Insights into polar bear biology from interviews with elders and hunters in the northern Eeyou Istchee marine region, Québec, Canada (*Abstract*).
11. MDDFP – Meeting minutes, March 29, 2012 teleconference. Collection of traditional knowledge for the polar bear survey 2012.
12. MDDFP – Memorandum: Polar Bear Regulations. Doc. 84-02. (the 1984 Agreement)
13. MDDFP – Quebec Polar bear harvest records for Southern Hudson Bay (1985 to 2014).
14. Nunavut Wildlife Management Board – Undertakings letter
 - a. Appendix 1: Polar bear harvest report for the Southern Hudson Bay subpopulation (Sanikiluaq from 1991/1992 to 1995/1996).
 - b. Appendix 2: Draft minutes from Polar Bear Workshop (May 24-26, 1994).
15. Nunavik Marine Region Wildlife Board – Nunavik Inuit Knowledge of Polar Bears: Summary of Knowledge and Suggestions.
16. Obbard and Middel. 2012. Bounding the Southern Hudson Bay Polar Bear Subpopulation. *Ursus*, 23(2): 134-144.
17. Obbard. 2008. Southern Hudson Bay Polar Bear Project 2003-05, Final Report. OMNR.
18. Obbard et al. 2006. Temporal Trends in the Body Condition of Southern Hudson Bay Polar Bears. OMNR Climate Change Research Note #3.
19. Obbard and Walton. 2004. The Importance of Polar Bear Provincial Park to the Southern Hudson Bay Polar Bear Population in the Context of Climate Change. Parks Research Forum of Ontario Proceedings.

SUPPLEMENTARY SUBMISSIONS

1. The Honourable Leona Aglukkaq. Minister of Environment (Canada). Additional Submission Re: Jurisdiction for implementing NMRWB decisions.
2. Steve Pinksen. A/ Deputy Minister of Environment (Nunavut). Additional Submission Re: Jurisdiction for implementing NMRWB decisions.
3. No response from the Honourable Laurent Lessard, Ministre des Forêts, de la Faune et des Parcs (Quebec).

APPENDIX 3: RECORD OF DECISIONS
