

## Intro

Article 5 creates a system of harvesting rights and wildlife management (5.1.3).

Describing itself as a “system” tells us that

- 1) Article 5 is intended to be more or less complete for its purpose;
- 2) its parts have to be understood as working together, and
- 3) it is meant to be operational – it describes how things should be done, not a set of abstract principles.

Paul and I will go over the system’s key features.

Let’s look first at the purpose of the system. What were the negotiators trying to do? (Agreement Preamble/Article 5 Principles (5.1.2) offer indicators)

- respond to Inuit’s assertion of ownership of the land and resources in Nunavut.
- in the case of wildlife, this translated as a claim to the right to use wildlife resources, and a right to control, or decide how wildlife will be used.
- in terms of the interests it served, the system was intended to have a strong cultural component, and a strong economic component – a successful system is going to support Inuit culture and support Inuit economic reliance on wildlife.
- the negotiation was also forward-looking: the goal was to secure rights for the future and to be able to adjust for change.
- as it turned out, the Government accepted the core elements of the Inuit claim to wildlife rights, and the parties considered this important enough to state on page 1 of the Agreement [read the two core wildlife rights from Preamble objectives].

We can shed a bit more light on the purpose of the new system if we ask, what was the status quo? what regime were the negotiators trying to reform?

- The old system of wildlife management treated hunting as a privilege. With a few exceptions, wildlife laws prohibited hunting without a licence. (Egs – NWT Fishing Regs; NWT Wildlife Act/GHL requirement.)
- Government Ministers and officials did not have to involve Inuit in the decisions that governments made about where they could hunt and when, or how much wildlife could be taken. (Eg – MBCA.)

The system has four parts:

- A. Inuit harvesting rights;

- B. Inuit self-regulating bodies (HTOs/RWOs);
- C. A co-management board through which Inuit participate in government's wildlife management decisions (NWMB);
- D. Standards for government restrictions on Inuit harvesting (government retains ultimate responsibility).

## **Importance of harvesting to Inuit - Paul**

### **A. The core Inuit harvesting right – Paul (powerpoint)**

1. The right of an Inuk to harvest as much wildlife as he or she needs where a Total Allowable Harvest (TAH) is not established (5.6.1).

### **B. Inuit self-regulating bodies – Paul (powerpoint)**

2. The exclusive right of Inuit RWOs and HTOs to allocate regional and community Basic Needs Levels (BNLs) among their members (5.7.3(b); 5.7.6(b)).
3. The right of Inuit HTOs/RWOs to regulate the harvesting practices of their members (5.7.3(a); 5.7.6(a)).

### **A. (cont'd) The other Inuit harvesting rights - Dick**

- Paul described the core harvesting right of an Inuk, to harvest as much wildlife as he or she needs where a Total Allowable Harvest (TAH) is not established for the stock or population
  - So, the quantity of Inuit harvesting cannot be restricted except following a cap on the entire harvest of a population (TAH) – there can be no bag limits, possession limits, or quotas placed on Inuit that don't flow from a global limit that applies to all of the harvesters of the population.
- 4. A companion right is the right of Inuit to harvest a priority share of any TAH established, calculated according to Inuit basic needs (5.6.20);
  - Paul explained how RWO's allocate BNLs between communities, and HTO's allocate between Inuit in communities – not a government role
  - (Surplus priorities 5.6.31)
  - Example: 10, 000 caribou herd; a limit on harvest quantity is shown to be necessary for conservation, so a TAH is set, at 300 p.a. If BNL was 500, limit is 300; all to Inuit; no surplus. If BNL was 200, Inuit receive 200, leaving a surplus of 100. The surplus is distributed according to the

NLCA's surplus priorities. In sum, the BNL is the first demand out of the total available.

5. The exclusive right of an Inuk (and certain GHL holders) to harvest furbearers, subject to HTO authority to permit others to harvest furbearers (5.6.12/5.6.13);
6. The right of an Inuk to sell harvested wildlife to any person inside or outside the settlement area (5.7.30);
7. Other incidental features:
  - rights of access anywhere in Nunavut, including parks and sanctuaries, subject to stated safety restrictions (5.7.16- 5.7.24)
  - with a few exceptions, Inuit have the right to harvest without a licence (5.7.26)
  - priority share is assignable for a limited time by an Inuk, HTO or RWO to any qualified hunter (5.7.34 (b)).
  - subject to stated limitations, Inuit also have the right to harvest by any method (5.7.42)

### **C. The Co-management Board - Dick**

8. The Board reflects the second core Inuit right relating to wildlife – “Inuit ... rights to participate in decision-making concerning wildlife harvesting” (Preamble, page 1)
  - a) Structure – federally funded institution of public government
    - Half members appointed by Inuit organizations
    - Other half by territorial and federal cabinets
    - 9<sup>th</sup> member, Chair, appointed by the federal cabinet
  - b) Scope of authority
    - main instrument of wildlife management (5.2.33)
    - sole authority to establish harvest limitations (5.6.16/5.6.48, 5.3.24)
    - transition manager (5.6.4; 5.6.51)
  - c) Board decisions
    - power to hold hearings
    - decision final unless Minister disallows or rejects (5.3.19(b)).
    - right to reconsider if Minister disallows (5.3.21)
  - d) Government role in Board decisions
    - power to reject initial Board decision with written reasons (5.3.18)
    - power to reject or vary final decision (5.3.22) (i.e. retains ultimate authority)

- e) Government duty to do all things necessary to implement final Board decisions (5.3.23)

#### **D. Standards for Government Restrictions on Inuit Harvesting - Dick**

- The negotiators could have left the system without a fourth component. But they chose not to. They chose to add a set of independent standards that government decisions – including Board decisions - must meet, no matter how well Inuit are represented in the process of making the decision.
- The main standard closely resembles the standard that the Courts use to assess whether government limitations on Aboriginal or treaty harvesting rights are justified under the Constitution.

#### 9. Decision standards (5.3.3) – Board and Government may restrict Inuit harvesting

- i) only to the extent necessary, and
  - ii) only where necessary to give effect to a valid wildlife management purpose (conservation; public health, public safety) or to the system being established by the NLCA itself.
- These standards, and the third component – the right to participate in decisions through the Board - act as a check and balance on each other. Once this last part of the system is understood, it's fair to describe the core Inuit harvesting right as the right to harvest free from unnecessary interference. A degree of autonomy for Inuit individuals and communities is offered by the system.

#### **Topics for question period:**

- How the system works in practice
- Polar bears
- Peary Caribou
- Beverly Caribou
- Commercial implications
- Implications for changes in the way government manages wildlife
- Implications for biologists
- What should happen when interpretive differences crop up