



## GRRB CONSULTATION RULES & PROCEDURES

FINAL DRAFT FOR DISCUSSION (April 20, 2009)

### *GRRB CONSULTATION RULES & PROCEDURES*

## INTRODUCTION

### 1. Why does the Gwich'in Renewable Resources Board need to have a Consultation Policy?

The *Gwich'in Comprehensive Land Claims Agreement* (the *GCLCA*) provides a wide range of powers to the Gwich'in Renewable Resources Board (GRRB), including the establishment of Gwich'in Minimum Need Levels and Gwich'in Need Levels for any species of animal, bird, fish or plant within the Gwich'in Settlement Area (GSA). The GRRB also holds the power to set total allowable harvest levels for any species, and for any user – and therefore the GRRB holds the responsibility to determine minimum conservation requirements for any species or population within the GSA.

The GRRB is a public institution exercising co-management authorities under the *GCLCA*. As a public body, we exercise powers that are constitutionally mandated – we are the main instrument of wildlife management within the Gwich'in Settlement Area. While government (federal and territorial) retain the ultimate jurisdiction over wildlife and habitat management, they have agreed, through a modern Treaty protected by the Constitution, to coordinate all relevant decisions on renewable resources through the GRRB.

The GRRB is also provided a wide range of advisory and approval powers in relation to proposals for development in the GSA that might affect renewable resources – including management plans, endangered species, land and water use impacting on renewable resources, and conservation areas, territorial and national parks.

To match these wide-ranging powers, the *GCLCA* sets out the authority of the GRRB to:

*12.8.23(g): establish rules and procedures for the carrying out of any consultation required by these provisions.*

The Board requires, in this context, a clear set of rules and procedures for how we intend to conduct consultations. We recognize that setting consultation procedures needs to be done with input from and dialogue with those likely to be affected – including the Gwich'in, government, and third parties and the broader public.

Accordingly, we have developed these Consultation Rules and Procedures for response and commentary by those most directly involved – Gwich'in institutions and government. We also invite comment and suggestions for improvement from other stakeholders: including co-management institutions within the Gwich'in Settlement

Area, Aboriginal peoples with interests within the Gwich'in Settlement Area, long-term residents of the N.W.T. as well as the general public.

## 2. Consultation: What does it mean?

There are differing views about what proper consultation really means. This can lead to misunderstandings. It is important to share a common understanding of what consultation means in a practical sense, and what steps must be taken – not only by the GRRB itself, but also by the other parties involved. This includes the Gwich'in generally, the Gwich'in Renewable Resources Councils and other Gwich'in institutions, the federal and territorial governments, and the public generally, including groups provided special interests in the *GCLCA*'s framework for renewable resources management (e.g., non-Gwich'in Aboriginal groups with traditional interests in the GSA, and long-time residents of the NWT).

*Consultation refers to making decisions on the basis of the informed involvement of those affected by the decisions. Those who are consulted must not only be informed, but must be “heard” meaningfully. Consideration must be given to the concerns raised and, where possible, concerns or alternatives preferred by those consulted should be accommodated. Our commitment is that all our decisions will abide by this meaning of consultation. Similarly, where the *GCLCA* requires governments to consult with the Board, the consultation rules and procedures set out in this policy shall be adhered to by the Board in respect of consultations with government.*

Where those affected by the Board's decisions are also subject to the discretionary power of the Board, consultation may have to follow unique rules, which the Supreme Court has called “fiduciary duties”. The Supreme Court of Canada has ruled on the consultation requirements facing public decision-makers in a variety of contexts. Decision-making that involves Aboriginal rights under section 35 of the *Constitution Act, 1982* can trigger consultative requirements ranging from merely providing information about actions that might affect these interests, all the way up to and including the need to receive the full consent of the Aboriginal group involved.

Unlike the Crown, the GRRB has few fully discretionary powers or final control over Gwich'in rights. The GRRB is a co-management body that exists and has powers on the basis of agreement between the Gwich'in and the Crown. The GRRB is not part of the government of Canada or of the N.W.T., and is not a Crown agency. As a result, we have consultation duties that are not tied to Crown obligations. Our consultation duties are uniquely tied to our main goal of protecting the wildlife and wildlife habitat within the Gwich'in Settlement Area, and to the specific terms of the *GCLCA*.

However, by agreement between the Gwich'in and government, the GRRB does have powers of decision-making in relation to wildlife and wildlife habitat management.

We have the powers of a federal Commission of Inquiry, and we can order witnesses to attend our proceedings and give evidence or testimony in order to inform our decisions. In some (though limited) cases, the GRRB is also the final decision-maker on certain matters, including on appeal from Renewable Resources Council decisions on fur-bearer harvesting and in the regulation of the Gwich'in right to trade for personal consumption to insure that it is not "commercial". Therefore some unique and even "Crown-like" consultation obligations may be triggered. We intend to consult on these matters in accordance with the full spirit and intent of applicable laws or judicial rulings on fiduciary obligations.

#### *GRRB as an Advisory Body*

In the vast majority of cases, the GRRB acts as an advisory body to the relevant Ministers of government (federal or territorial). We propose solutions or approve or comment on the plans and actions of government, but we do not ultimately decide on what solutions will in fact be brought into force as a matter of law.

For example, in relation to setting or adjusting Gwich'in Needs Levels, the Board is required by the *GCLCA* (s.12.5.5) to consult with the Gwich'in Renewable Resources Councils, and specific criteria for decisions are set out in the *GCLCA* to guide our decisions. In this case, the Board holds a broader scope for decision-making (since the *GCLCA* does not define precisely how Gwich'in Needs Levels are to be calculated). Accordingly, it is important to state clearly the consultation rules and procedures to guide the Board and our partners in such important decisions.

#### *GRRB as Final Decision Maker*

In a few cases, the GRRB makes decisions that directly alter the potential access to renewable resources of the Gwich'in, other Aboriginal peoples with interests in the GSA, long-term residents of the NWT or Canadians and other users generally. In these cases, and particularly in relation decisions affecting the Gwich'in – the GRRB needs to have procedures that meet or beat the standards set by legislation or by the courts in relation to how consultations must be carried out.

For example, the GRRB is empowered to determine what is "commercial" and therefore not to be considered "trade" in relation to Gwich'in rights to trade among themselves and other Aboriginal peoples for personal consumption, under s.12.4.16 (d) of the *GCLCA*. This power is quite wide, since it is not subject to review by government other than for conservation, public safety or health concerns.

In these cases – where the GRRB is effectively acting as the final decision maker – our consultation rules and procedures have to accommodate the fact that Gwich'in and potentially other Aboriginal rights are being limited or constrained by our decisions. Our consultation procedures must therefore ensure that the standards set by the Supreme Court and by good public policy are respected. In some cases, the *GCLCA* provides guidance as to what level of consultation is required of the Board. For example, in establishing policies and proposing regulations for the creation or removal of special harvesting areas and any conditions attached to them (as set out at

section 12.4.4), the Board may make decisions only with the consent of the affected Renewable Resources Councils. In this case, the meaning of consultation is provided a clear, constitutional definition: consent of the Gwich'in, as determined by the RRC concerned. In other cases where consultation is specifically required, no pre-determined meaning for consultation is provided by the *GCLCA*. This policy and its rules and procedures provide the clarity needed about the Board's undertakings.

### *GRRB as an Appeal Body*

The GRRB is also the final arbiter or decision-maker on decisions by Gwich'in Renewable Resources Councils in relation to access by non-Gwich'in to fur-bearer harvesting outside of Gwich'in lands. In this case, the Board acts as a quasi-judicial body – like a court of appeal or a grievance board. In this case, the Board is not held to the normal standards of consultation as discussed above. Quasi-judicial agencies, like the courts, are generally not bound to the obligation on the Crown or Crown agencies to consult before making decisions. Instead, the GRRB in this narrow case is required instead to follow reasonable standards of procedure to insure that all of our decisions respect the rights of those implicated to have a say, appear before the Board to make their case, and be informed of the standards of evidence and rules of procedure involved. This is not, however, part of the consultation continuum. Accordingly, a separate policy on the Board's quasi-judicial or grievance procedures will be developed, in accordance with the Strategic Plan, during 2009-2010.

### **3. Good Practices & Gwich'in/Public Expectations.**

A wide variety of models exist for consultative practices on Aboriginal issues, though few address the challenges facing a co-management Board flowing from a modern Treaty or comprehensive land claims settlement.

Even without clear examples of comparative relevance, there are lessons to be learned from the experience of other public agencies with decision-making powers similar to those of the GRRB:

- The need to engage Gwich'in, and where implicated, other Aboriginal interests and institutions, very early in the formulation of decisions, preferably once the key information on the topic for consultation is available, but before defined options for management or harvest limitations have been developed;
- The need to provide community members with clear information on issues and potential solutions, and on the status of decision-making time-frames, well in advance of any meetings, and in a format that is readily understood and widely distributed;
- Where desired or sought, entry into a basic consultation protocol or agreement so that community members have a clear understanding of notification procedures, who to contact with questions or comments, and how to keep up to date on the Board's decision-making process on any particular topic;
- Where the GRRB is participating in a broader management or harvest planning exercise (e.g., for migratory populations such as Blue Nose Caribou), there is a need for a clear assignment of consultation responsibilities amongst the parties involved early on in the planning process;

- Maintain a central registry of consultation materials and reports, and ensure that written material is available locally to those without physical or Internet access to the registry; and
- Assignment of clear reporting duties within the GRRB, whether to staff, management or Board members themselves; facilitated by a common reporting template or form.

Gwich'in expectations for consultation are high, and rightly so. A challenge that the GRRB must meet is to ensure that consultations with Gwich'in (particularly through the RRCs and the GTC), are communicated broadly enough that our commitment to good consultation practices is understood, embraced and reinforced. As set out in the GRRB's Strategic Plan for 2008-2013, (Goal 1; Objective 1), this requires the Board to work with the RRCs to assist their capacities in representing their communities and achieving their mandate of promoting involvement in conservation, harvesting studies, research and wildlife management.

## GRRB CONSULTATION RULES & PROCEDURES

### SUMMARY OVERVIEW

#### 1. RESEARCH

See Annex 1

##### *Context*

The GRRB makes decisions at least annually on appropriate research activities, based on a number of considerations. These include management and harvest study research priorities determined in discussions with Gwich'in institutions (particularly the RRCs), directions for further research set by existing or earlier research, the need to complete and maintain the Gwich'in Harvest Study, and available resources.

The GRRB is fortunate in that we have a Wildlife Studies Fund sustained by a trust investment that was made as a result of a decision of the Gwich'in and with federal funding related to the establishment of the GRRB. This is not nearly enough to afford all the research that the Board, or its partners, would wish. However, it does provide us an essential bench-mark capacity to decide, independently on behalf of the parties to the *GCLCA* (Gwich'in, Federal and Territorial governments) what research is most important in the coming years to inform our wildlife management and harvest planning activities, and obligations.

In addition, much of our research agenda is sustained by collaborative or match-funded contributions from other agencies, including Gwich'in, federal, territorial and academic, non-profit and even, on occasion, business contributions. Needless to say, such research decisions by the Board are driven by consultations with those directly involved in contributing to the end-results.

##### *Guiding Principle*

*The primary consideration in assessing research priorities for support or participation of the Board and/or the Wildlife Studies Fund will be its value or contribution to wildlife management and harvesting priorities as established annually by the Board, in consultation with the Gwich'in and government parties to the GCLCA.*

## 2. WILDLIFE AND HABITAT MANAGEMENT

See Annex 2

### *Context*

The objectives of wildlife harvesting and management planning are established in Chapter 12 of the *GCLCA*:

- (a) to protect for the future the right of the Gwich'in to gather, hunt, trap and fish throughout the settlement area at all seasons of the year;
- (b) to conserve and protect wildlife and wildlife habitat and to apply conservation principles and practices through planning and management;
- (c) to provide the Gwich'in with certain exclusive, preferential and other harvesting rights and economic opportunities related to wildlife;
- (d) to respect the harvesting and wildlife management customs and practices of the Gwich'in and provide for their on-going needs for wildlife;
- (e) to involve the Gwich'in in a direct and meaningful manner in the planning and management of wildlife and wildlife habitat;
- (f) to integrate planning and management of wildlife and wildlife habitat with the planning and management of all types of land and water use in order to protect wildlife and wildlife habitat;
- (g) to ensure that traditional harvesting by other aboriginal peoples who have harvested in the settlement area can be accommodated in this agreement; and
- (h) to deal fairly and equitably with persons who hunt, trap, fish or conduct commercial wildlife activities in the settlement area and who are not participants.

Government retains the ultimate jurisdiction for managing wildlife and wildlife habitat, and as such is held to these objectives and the implications each holds for consultation undertakings.

Where decisions of the Board recommend regulatory decisions of government, they will remain confidential unless otherwise directed by Ministers until completion of the Ministerial consideration of the Board's decision, as set out at section 18.8.25 of the *GCLCA*.

As a co-management institution, the GRRB is the main instrument of wildlife and habitat management within the Gwich'in Settlement Area through which governments and the Gwich'in, like the public generally, is required to operate.

### ***Wildlife and Wildlife Habitat Management: What it Means***

Management planning is defined as the making and implementation of policies, decisions or plans, or the approval of plans, involving wildlife and wildlife habitat in all cases other than where a formal harvest allocation is in place or being proposed that would require public hearings. This includes any and all policies or proposed regulations of the Board the goal of which is, without formally limiting harvest

entitlements or practices, to conserve and protect wildlife and wildlife habitat within the Gwich'in Settlement Area.

Also included in this definition is the management by the Board, or its approval of plans or proposed regulations, in respect of the commercial harvesting of wildlife, propagation, cultivation and husbandry of furbearers, commercial processing, marketing and sale of wildlife products, guiding and outfitting services, and hunting, fishing and naturalist camps and lodges. The Board has a separate policy and rules and procedures regarding public hearings in relation to these matters.

Wildlife management can occur on either a geographic basis (involving multiple species) or on a species-specific basis. Based on both harvesting and other research conducted by the Board or by third parties, management plans are developed to improve conservation of wildlife and to mitigate potential disruptions to wildlife habitat or population health. In this respect, whether for migratory species or where new land use or land and water use applications are being considered within the GSA, the Board's authorities and activities must be integrated with or accommodate the rules and procedures of other co-management agencies, of government and of the Gwich'in.

### ***Guiding Principles***

*To conserve and protect wildlife and wildlife habitat in the GSA, and to protect for the future the right of the Gwich'in to gather, hunt, trap and fish at all seasons of the year.*

*To respect the harvesting and wildlife management customs and practices of the Gwich'in and provide for their ongoing needs for wildlife.*

*To involve the Gwich'in in a direct and meaningful manner in the planning and management of wildlife and wildlife habitat.*

*To integrate planning and management of wildlife and wildlife habitat with the planning and management of all types of land and water use in order to protect wildlife and wildlife habitat.*

### 3. LIMITATING THE HARVEST

See Annex 3

#### *Context*

The Gwich'in Comprehensive Land Claims Agreement (*GCLCA*) provides detailed guidance on the manner in which the Board is to set harvest plans for any species or population that requires harvest limitations:

- Establishment, Modification or Removal of Total Allowable Harvest Levels for any Species or Population;
- Establishing Gwich'in Minimum Needs Levels;
- Setting Gwich'in Needs Levels (if in excess of Minimum Needs); and
- Allocation of the Total Allowable Harvest in Excess of Gwich'in Needs Levels, including for other Aboriginal peoples, long-time NWT residents reliant on country foods, for sport hunting and fishing, and for commercial operators.

The goal is to set conservation needs for a particular species or population. In respect of Gwich'in Minimum Needs Levels, the *GCLCA* establishes a clear procedure and formula that is based on the Board's Settlement Area Harvest Study. There are two formulae provided in the *GCLCA* (one for wildlife generally, and one for migratory game birds). In essence, the Gwich'in Minimum Needs Levels (for all wildlife including fish and migratory game birds) are determined by the harvest levels of the first five years of the Harvest Study.

The determination of a Total Allowable Harvest for any species or population will necessarily require a public hearing, subject to a separate policy and its rules and procedures. However, as a matter of good practice, the Board has adopted the annexed rules and procedures for consultations in advance of holding formal hearings on harvest allocations. In addition, it is of importance to note that the Board is required to consult with RRCs in respect of location, methods, quantities, seasons and like matters in advance of allocating a portion of any total allowable harvest in excess of Gwich'in Needs Levels to non-participants. This is a general requirement, but is specifically required in relation to allocations of Muskox, Moose, Barren ground Caribou and Dall's Sheep. In respect of some species and activities (commercial Muskox harvesting and related guiding services generally, and for all commercial allocations on Gwich'in lands), non-participants may not be allocated any portion of the harvests involved without the consent of the Gwich'in.

The establishment or amendment of Gwich'in Minimum Needs Levels does not require formal consultations over and above the rules and procedures in relation to the Board's research activities and completion of the Settlement Area Wildlife Harvest Study. However, the policy set out in detail at Annex 3 does require that the Gwich'in Renewable Resources Boards, and government, be asked to confirm and verify the data and assumptions used by the Board to set the Gwich'in Minimum Needs Level for a species or population.

The Board has the discretion to set the Gwich'in Needs Level above or at, but not below, the Gwich'in Minimum Needs Level. This requires substantive consultations with Gwich'in as to their actual needs in the harvesting allocation period being contemplated – whether that need is greater than or equal to the formal Minimum Needs Level. The consultation rules and procedures reflect the right of the Gwich'in (through the Gwich'in Tribal Council or the relevant Renewable Resources Council) to release to the Board for allocation to non-participants any portion of the Gwich'in Needs Level over the Minimum Needs Level that will not be required by the Gwich'in.

***Guiding Principles***

*The Gwich'in, government, and other co-management agencies with powers in relation to any migratory species concerned, shall be consulted prior to the determination, whether or not public hearings are required, of any total allowable harvest for a species or population, utilizing the best available conservation research and the results of the Gwich'in Harvest Study as amended and updated from time to time.*

*Gwich'in institutions will be fully consulted in advance of any Board decision that sets a Gwich'in Needs Level. At a minimum, consultation shall include the Gwich'in Renewable Resources Councils and the Gwich'in Tribal Council.*

*Prior to the allocation of the harvest in excess of Gwich'in Minimum Needs, the Board shall hold a public hearing where required under the GCLCA, in accordance with the GRRB's Rules and Procedures on Public Hearings.*

#### 4. TRADITIONAL SHARING

See Annex 4

##### *Context*

Section 12.4.16 of the *GCLCA* provides that Gwich'in have the right to "trade among themselves and with other aboriginal peoples, for personal consumption, edible products of wildlife harvested by them." This is the definition provided by the *GCLCA* for "traditional sharing". The *GCLCA* also defines "aboriginal peoples" to mean those aboriginal people residing in and are eligible by law to harvest wildlife in the Northwest Territories, or who are members of a Yukon First Nation and reside in the Yukon.

The GRRB is provided the power to ensure that the traditional sharing among individuals and communities, and the Gwich'in right to trade, is not done in a manner that the Board considers "commercial". The Board is provided considerable discretion in this power, since the relevant Ministers of the federal or NWT governments may not overturn a Board proposed regulation other than for purposes of conservation, public safety or public health.

The Board may also require those involved in trade activities that are not commercial to prove their right of enrolment in the *GCLCA*, or require participants to obtain permits or licences for the purpose of regulating harvesting (without fee or tax).

##### *Guiding Principles*

*The Board will consult with the Gwich'in Tribal Council, the Gwich'in Social and Cultural Institute, the Gwich'in Renewable Resources Councils and with government prior to the determination of what the Board considers as "commercial" and therefore beyond valid trade conducted in accordance with section 12.4.16 of the GCLCA.*

*The Board will establish, after discussion with the Gwich'in Tribal Council and the Renewable Resources Councils, an outreach consultation mechanism with Aboriginal peoples referred to as section 12.4.16(b) of the GCLCA to obtain their informed views on any proposed regulation concerning what is "commercial" and therefore excluded from the Gwich'in right of trade.*

## 5. ADVICE TO GOVERNMENT

See Annex 5

### *Context*

The *GCLCA* sets out a wide range of conditions for the engagement of the Board in discussions and consultations with or to provide advice to the federal and territorial governments. In some cases, the relevant text of the *GCLCA* refers to the relationship involved as one of consultation. In other cases the requirement is on government to “work with” the Board, particularly in relation to management planning and for migratory species. In yet other cases the Board holds approval powers in respect of government proposals on wildlife or habitat management – whether through legislation, national or territorial parks, inter-provincial or international agreements; public education; research policies or the evaluation of research; cooperative management of migratory species, and plans for training Gwich’in in management of wildlife and related economic opportunities.

The Board is required to provide timely advice, and government is entitled in urgent circumstances to act without Board input through interim decisions.

The Board is also empowered to advise government of any matter that the Board considers of importance, and to request the parties to the *GCLCA* to review any of its provisions.

### *Guiding Principle*

*The Gwich’in Renewable Resources Board will, in relation to advice sought by or provided to government, consult with government departments and agencies on the basis of agreed-to procedures for information sharing, disclosure and decision-making. Such procedures are to be established through formal Memoranda of Understanding between the Board and the government departments/agencies concerned. Where appropriate, the Board will also consult with the Gwich’in Renewable Resources Councils.*

## ANNEX 1

## RESEARCH Consultation Rules & Procedures

### CONTEXT

The GRRB is required as a result of section 12.5.6 of the *Gwich'in Comprehensive Land Claims Agreement (GCLCA)* to prepare a Settlement Area Harvest Study over a minimum of five years. This is the basis for decisions about Gwich'in Minimum Need Levels for any particular species (wildlife, fish or forestry based), which is determined by a set formula. The Harvest Study has now been completed and is available in the GRRB's Public Registry, while noting that species-specific data from the Harvest Study may be only available by special request.

Under section 12.8 of the *GCLCA*, the Board is also provided a mandate to conduct or participate in wildlife research or harvesting studies in the Settlement Area. The Board has established a Wildlife Study Fund as a source of funding for its own research and for research conducted by or in partnership with other institutions.

### RULES FOR CONSULTATION ON RESEARCH

1. The GRRB is empowered to determine its own research priorities, consistent with the terms of the *GCLCA* and emerging research priorities. Such research will be carried out in accordance with the principle of respect for Gwich'in traditions of harmony with the natural world.
2. As a matter of good practice, the GRRB will consult with Gwich'in communities in the determination of research priorities through public meetings with interested community members in Aklavik, Inuvik, Fort McPherson and Tsiigehtchic. These meetings will normally be held together with consultation sessions held with Gwich'in Renewable Resource Councils, as well as through the annual update to the Gwich'in Tribal Council Annual Assembly. Designated Gwich'in Organizations, Band Councils, Elders and Youth councils are to be informed of such meetings and invited to participate. Where relevant to proposed research, other Aboriginal stakeholders are to be consulted (e.g., Vuntut Gwich'in; Inuvialuit).
3. As required by sections 12.8.40 and 12.9.5 of the *GCLCA*, the Board will formally consult at least twice annually with Gwich'in Renewable Resources Councils to determine community research priorities, to assist in setting the Board's research agenda, and to identify how best to involve the RRCs in wildlife research or harvest studies.
4. In addition, the GRRB will liaise throughout each year on a regular basis with the Gwich'in Tribal Council and the Gwich'in Social and Cultural Institute to better inform our research agenda and coordinate our actions with those of Gwich'in institutions.

5. The GRRB will also be in regular liaison with federal and territorial government departments and agencies involved in wildlife or harvest management and related research of species within the GSA, and will seek formal protocols or memoranda of understanding to provide clarity for the ongoing liaison process.
6. The GRRB will liaise as required with other co-management Boards and agencies whose research activities may have an effect on management or harvest plans within the GSA, including the Sahtu Renewable Resources Board, the Inuvialuit Game Council etc.
7. As a matter of good practice, the GRRB will liaise with academic and non-profit organizations involved in research activities affecting or within the GSA.
8. The Board will, further to and subject to section 12.8.39 of the *GCLCA*, maintain a public file for reports, research papers and data received by the Board, in such manner as the Board may find convenient. Any materials provided to the Board on a confidential basis will not be made public without the consent of the originator. Research findings, reports or data produced by the Board for harvest or management planning purposes may be held as confidential where, in the Board's opinion, publication or release of the information could imperil the status or health of a sensitive, threatened or endangered species or population.

#### **PROCEDURES FOR CONSULTATIONS ON RESEARCH**

1. The Chair and/or Executive Director shall be responsible for leading the Board's annual consultation sessions with Gwich'in Communities, the RRCs, the GTC and the GSCI.
2. Consultation sessions with Gwich'in communities and institutions shall be informed by the receipt and distribution of information material within the community no less than three weeks prior to any session. Information materials are to be posted on the GRRB's website and circulated in hard-copy formats to the RRCs and other Gwich'in institutions with which consultations are planned.
3. As a guideline, summaries of the results of each RRC/community consultation session are to be presented at the end of a session for comment, and will be published on the GRRB website within 30 days of a consultation meeting, excluding any information of a confidential nature. The GRRB website will make provision for on-line comments to draft plans for research.
4. GRRB research staff with research responsibilities will be present to discuss research priorities and objectives to RRC/community meetings and at the annual GTC Assembly (if required/requested).
5. Research Consultation Committee comprised of the Executive Director, appointed staff and members of the Board will supervise liaison responsibilities by the Board or on its behalf with Gwich'in, government agencies or departments and with other

stakeholders. A liaison/consultation report following a common template will be developed by the Research Consultation Committee and shall be completed within 30 days of any meetings or teleconferences regarding research plans. These reports will be maintained, subject to confidentiality undertakings, in the GRRB's public files, a copy of which is to be provided to the co-management Board or government agency or agencies concerned. The Research Consultation Committee may establish and recommend deadlines and for research proposal applications, Board consideration and response time.

## ANNEX 2

## **WILDLIFE AND HABITAT MANAGEMENT Consultation Rules & Procedures**

### **CONTEXT**

The GRRB is required under the *Gwich'in Comprehensive Land Claims Agreement (GCLCA)* to manage wildlife and wildlife habitat so as to achieve the eight objectives set out at Chapter 12.1.1.

The GRRB is required to involve the Gwich'in in a direct and meaningful manner in the planning and management of wildlife and wildlife habitat to conserve and protect wildlife and wildlife habitat and to apply conservation principles and practices through planning and management.

For the purposes of these Rules and Procedures, a “consultation session” involves efforts by the GRRB to engage other organizations, groups or individuals in an informed discussion of potential outcomes before options for decision-making are taken.

The GRRB will work with the Gwich'in Renewable Resources Councils (RCCs), the Gwich'in Tribal Council and governments to establish and maintain ongoing coordination of RCC activities throughout the Gwich'in Settlement Area.

### **RULES FOR CONSULTATION ON RESOURCE MANAGEMENT**

1. Wildlife and habitat management plans within the Gwich'in Settlement Area are to be established and verified with the Gwich'in Renewable Resources Councils (RRCs).
2. Gwich'in communities will be consulted primarily through the RRCs, established in the *GCLCA* as the main instrument of community involvement in conservation, harvesting studies, research and wildlife management. In coordination with the RRCs, the GRRB will also liaise with Designated Gwich'in Organizations and community Elders and Youth Councils.
3. The GRRB will liaise and consult with the Federal and NWT governments in the management of wildlife and wildlife habitat.
4. The GRRB will liaise and consult with other co-management Boards within the Gwich'in Settlement Area, and with other co-management boards involving migratory or trans-boundary species, in order to better integrate management planning. Consultation procedures with Gwich'in RRCs are to be clarified through protocols or Memoranda of Understanding with these other co-management Boards.
5. An application for commercial opportunities in relation to wildlife, other than fish, is permitted by section 12.7 of the *GCLCA*. Where there has been no previous commercial harvesting for the particular species or population concerned during the previous three years, the Board shall require an applicant to obtain the consent of any affected Renewable Resources Councils (RRCs), subject to a review of a refusal of consent on grounds of reasonableness. The Board will consult with the RRCs, the

GTC and the GSCI in respect of appropriate terms and conditions for any licence. The consultations will address employment, training and business opportunities for the Gwich'in, non-interference with harvesting by the Gwich'in and like matters, as stipulated at section 12.7.1 of the *GCLCA*.

### **PROCEDURES FOR CONSULTATIONS ON MANAGEMENT PLANS**

1. Management planning will be conducted in close consultation with Gwich'in Renewable Resources Councils. Draft management plans will be circulated for comment with at least 30 days available locally for consideration in advance of any consultation meeting to be held at the community level with RRCs. Copies will be sent for comment to the Gwich'in Tribal Council. Where possible, GRRB staff will provide pre-consultation briefings on draft management plans to RRC members.
2. Amended Draft Management Plans, based on input from RRCs, will be provided for the input and advice of government, with at least 90 days notice being provided to government of the Board's consideration of a management plan. The result of Government comments on amended draft management plans will be posted in summary form on the GRRB website at least 30 days before being considered by the Board. This information will also be available at the GRRB office for inspection.
3. RRCs shall be consulted – whether by telephone, e-mail or otherwise – by the GRRB prior to the Board finalizing comments in response to requests from the Gwich'in Land Use Planning Board or Gwich'in Land and Water Board. The GRRB will respond to applications made to the respective Boards as it is best able in light of the respective application response time-frames of those Boards, and on the basis of the information provided to the Board on the applicant's plans affecting wildlife or wildlife habitat.
4. Where the GRRB participates in management planning for migratory species with other co-management boards and/or government agencies, a protocol shall be developed with those boards or agencies to identify roles and responsibilities for consultation with Gwich'in, and in particular with affected RRCs. The GRRB shall liaise with the affected Gwich'in institutions (including where relevant the GTC, GSCI and Designated Gwich'in Organizations) prior to completing a protocol on consultation roles and responsibilities.
5. As a general rule, summaries of the results of consultations on Wildlife and Habitat Management will be provided at the end of each consultation session, and then published on the GRRB website within 30 days. The GRRB website will, where possible, provide for on-line commentary by the public on proposed wildlife or habitat management plans. Note shall be made where information of a confidential nature has been withheld. Copies of summary consultation reports will be maintained for public consultation at the GRRB head office.
6. In respect of applications for commercial opportunities, including harvesting, guiding and outfitting and commercial propagation, cultivation and husbandry, the Board will in general follow the procedures set out below:

- a. Where there has been no commercial harvesting in respect of the species or population in question, the Board shall require the applicant to first obtain the consent of the affected Renewable Resource Council (RRC), and stipulate what the Board considers to be a reasonable time for the RRC to review the application, consider it and respond to it. The GRRB will work closely with the RRC(s) affected to provide support in understanding any implications for wildlife harvesting by Gwich'in of the applicant's proposed commercial harvest.
- b. Where an RRC refuses consent, the Board may, upon application or on its own motion, review the decision of the RRC for reasonableness. If the Board feels the application is reasonable in all the circumstances, it will provide the RRC concerned with 90 days advance notice of the Board's position before approving any request with such terms and conditions as the Board sees fit to apply, pursuant to section 12.7.1(a) of the *GCLCA*.
- c. In setting terms and conditions for commercial harvesting – whether or not there is a requirement of consent, the GRRB will consult with the affected RRCs, the Gwich'in Tribal Council and the Gwich'in Social Cultural Institute, and provide at least 90 days for commentary and feed-back on possible terms and conditions before giving them final consideration.
- d. In setting terms and conditions for any new licence for commercial naturalist activities or for commercial guiding and outfitting activities for hunting and sport fishing, the GRRB will consult with the affected RRCs, the Gwich'in Tribal Council and the Gwich'in Social Cultural Institute, and provide at least 90 days for commentary and feed-back on possible terms and conditions before giving them final consideration.
- e. In considering a proposed commercial activity for the propagation, cultivation or husbandry of wildlife, whether indigenous to the settlement area or not, the GRRB will first assess whether or not, in its view, this might adversely affect harvesting by the Gwich'in, and shall inform any affected RRC of its preliminary view in writing, and provide RRCs with at least 90 days to review the GRRB assessment before holding a consultation session with the RRC affected. Where the Board remains of the view that the proposed activity could adversely affect Gwich'in harvesting in the area concerned, or otherwise, the Board shall require the applicant to seek the consent of the RRC for the area.
- f. Where an RRC refuses consent to an applicant for a licence to operate a commercial activity for the propagation, cultivation or husbandry of wildlife, the Board may, upon application or on its own motion, review the decision of the RRC for reasonableness. If the Board decides that the proposed activity is reasonable, in all the circumstances, it will provide the RRC concerned with 60 days advance notice of the Board's position and invite the RRC to comment on the matter before making any final decision and informing the appropriate licencing authority of that decision.

## ANNEX 3

## **LIMITING THE HARVEST**

### **Consultation Rules & Procedures**

#### **CONTEXT**

The GRRB is empowered under the *Gwich'in Comprehensive Land Claims Agreement (GCLCA)* to allocate harvesting of wildlife so as to achieve the objectives of the *GCLCA* as set out in Chapter 12, section 12.1.1. Unless and until the Board implements its powers to set harvesting allocations, government legislation or policies in effect from time to time shall continue to apply.

The GRRB may choose to establish harvest allocations on its own, or it may be requested to do so by government, in which case the Board must comply with a government request within a reasonable time as set by the Minister concerned.

As in the case of management plans, harvest allocations may be informal (voluntary) or formal (set out in government regulations). Where formal allocations are made, the regulations become enforceable in law. Because of this, setting formal allocations and limits requires that the various rules and conditions as set out in the *GCLCA* regarding consultation and/or public hearings must be followed.

#### **RULES FOR CONSULTATION ON LIMITING THE HARVEST**

1. The GRRB will consult with Gwich'in communities and community institutions, principally through the Gwich'in Renewable Resources Councils, in determining the conservation levels and the Gwich'in Needs Levels for a species or population for which a total allowable harvest is being contemplated. In relation to Gwich'in Needs Levels, the GRRB shall consider all relevant factors set out at section 12.5.5 of the *GCLCA*.
2. The GRRB will liaise and consult with the parties to the *GCLCA* in the development of any proposed conservation and Gwich'in Needs Levels, taking into account the relevant factors set out at section 12.5.5 of the *GCLCA*.
3. The GRRB will hold public hearings on the establishment of a Total Allowable Harvest and for a Gwich'in Needs Level in respect of a species or population of wildlife, which has not been subject to a Total Allowable Harvest within the previous two years. The public hearings will be held in accordance with the Board's *Rules and Procedures for Public Hearings*.
4. The GRRB will liaise with other co-management boards involving migratory and trans-boundary species, in order to integrate harvest management planning. Integrated harvest plans will in general be based on Gwich'in Needs Levels as established through consultations.

#### **PROCEDURES FOR CONSULTATIONS ON LIMITING THE HARVEST**

1. The Gwich'in Minimum Needs Level for a species or population is to be developed in accordance with the *GCLCA*. The calculation of and all assumptions used in setting

the Gwich'in Minimum Needs Level will be provided to the Gwich'in Renewable Resources Councils (RRC) and to relevant government departments with a minimum of 30 days time for comment to ensure that the appropriate information has been used. After this commentary period, the Board shall set the Gwich'in Minimum Needs Level in accordance with the formula set out at s.12.5.8 of the *GCLCA*.

2. The Board shall determine the required conservation levels for any species or population for which a total allowable harvest has been set. In setting these levels the best scientific data and traditional knowledge shall be utilized in consultation with the Renewable Resources Councils, the Gwich'in Tribal Council, governments and, where relevant, other stakeholders. In general, proposed conservation levels will be circulated by the GRRB to the parties and the RRCs to provide no less than 60 days for comment.
3. Where no Total Allowable Harvest has been in place within the previous two years, the Board shall consult with the communities, the RRCs, the public, and government through a public hearing conducted in accordance with the GRRB's *Rules and Procedures for Public Hearings*.
4. In advance of any public hearing on a Total Allowable Harvest and associated allocation plans, and on Gwich'in Needs Levels, the GRRB will directly consult with the RRCs and with the GTC on proposed Gwich'in Needs Levels, and to determine whether Needs Levels exceed those established in the Gwich'in Minimum Needs Levels referred to above. The Board shall provide written reasons for its proposed Gwich'in Need Level allocation and provide a minimum of 90 days for commentary to RRCs, the GTC and to government unless circumstances require a shorter time frame.
5. Based on consultations and/or public hearings on any new or amended Total Allowable Harvest and any new or amended Gwich'in Needs Level, the Board will publish the proposed harvesting plan on it's the GRRB web-site to provide third parties and the public with at least 60 days final notice prior to formal consideration for adoption by the Board. This information will also be available at the GRRB office for inspection.
6. Written summaries of the results of consultation sessions other than public hearings held on harvest allocations (including Total Allowable Harvest levels and Gwich'in Needs Levels) will be circulated to all institutions involved and published on the GRRB website within 45 days of any consultation meeting. In addition, the GRRB website shall make provision for on-line comments by Gwich'in community members. Note shall be made in consultation summaries that are published where information of a confidential nature has been withheld. Information will also be available to the public at the GRRB's office.
7. Where requested by a party to the *GCLCA*, or on its own motion, the Board may choose to proceed with the urgent establishment of a Total Allowable Harvest and establish an associated Gwich'in Needs Level and any related allocation beyond the

Gwich'in Needs Level. Based on the situation at hand and the level of threat involved, the GRRB will liaise with all parties to the *GCLCA* and with the Renewable Resources Councils and set, at its discretion, a time frame and procedures for an appropriate response. Where the GRRB is unable in the circumstances to discharge any obligation to hold a public hearing on the matter given the urgency of the situation, the Board may request the issuance of an interim decision by the Minister responsible, pursuant to section 12.8.35 of the *GCLCA*.

## ANNEX 4

## TRADITIONAL SHARING Consultation Rules & Procedures

### CONTEXT

The *Gwich'in Comprehensive Land Claims Agreement (GCLCA)* sets out the right of Gwich'in to trade for traditional sharing of edible wildlife products amongst them and other aboriginal peoples. The Board has the authority, under section 12.4.16 (d) to propose regulations in respect of such trade, but only to ensure that it is not done in a manner that it considers commercial.

The GRRB will not propose a formal regulation for the purposes of s.12.4.16 (d) unless requested to do so by one of the parties to the *GCLCA*, such as at the request of one or more RRCs. The GRRB acknowledges the need to achieve a broad-based consensus on the definition of what is “commercial”, including the need for youth and elder engagement and for the input of recipients of Gwich'in traditional sharing, including other Aboriginal peoples within the NWT and the Yukon.

As with Wildlife and Habitat Management Planning and Limiting of the Harvest, the main vehicle for community consultation is the Renewable Resources Council, in liaison with Designated Gwich'in Organizations, Band Councils and Hamlet/Town Councils.

The Board notes that based on the requests of any of the parties, it may also need to address traditional sharing and what is “commercial” in the case of trans-boundary or migratory species. When called upon, the GRRB will pursue the matter through the appropriate joint management structures, such as the Porcupine Caribou Management Board.

### RULES FOR CONSULTATION ON TRADITIONAL SHARING

1. The GRRB will consult with the Gwich'in Renewable Resources Councils, the Gwich'in Tribal Council and the Gwich'in Social and Cultural Institute on any proposed determination of what the Board considers “commercial” in relation to s.12.4.16 (a) rights.
2. The GRRB will consult with government based on the input and views of Gwich'in on a proposed determination of what the Board considers “commercial” in relation to s.12.4.16 (a) rights.
3. Based on input from the Gwich'in and government, a proposed rule shall be posted on the GRRB's website for public comment, and provided in writing to each RRC, the GTC, the GSCI and to government before the Board convenes to adopt or vary the proposed regulation.

**PROCEDURES FOR CONSULTATIONS ON TRADITIONAL SHARING**

1. A proposed regulation on traditional sharing addressing the distinction between commercial activities and traditional sharing will be developed in consultation with the affected RRCs, and shall be circulated for comment to Gwich'in participants, through the RRCs, the GTC and the GSCI, no less than 120 days before being transmitted to government for comment.
2. A proposed regulation addressing the distinction between commercial activities and traditional sharing shall be sent to government, with no less than 90 days for comment, after receiving comments from the RRCs, GTC and GSCI, or no less than 120 days after requests for comments to Gwich'in participants have been sought.
3. Following input from government, an amended regulation on traditional sharing will be posted for public commentary on the Board's website and circulated to the RRCs, the GTC and the GSCI, with at least 60 days notice being provided prior to the Board's determination of a proposed regulation for transmittal to the responsible Minister for adoption and enforcement in accordance with the normal regulatory process.

## ANNEX 5

## ADVICE TO GOVERNMENT Consultation Rules & Procedures

### CONTEXT

The *Gwich'in Comprehensive Land Claims Agreement (GCLCA)* sets out three basic types of advice to government other than in relation to harvest allocations or the regulation of harvest activities:

- Approval of government plans affecting wildlife and/or wildlife habitat;
- Review and comment on any matter referred to it by government; and
- Advice to government whether initiated by the Board or where government is either required to consult or may consult with the Board.

“Advice to Government” is specifically intended to include the formal transmission of written advice to either a Federal or Territorial Minister of advice on habitat or wildlife resource management, harvest limitation, or any other matter included in Chapter 12 of the *GCLCA* where the Board makes a formal decision to give such advice. This would not include normal or every-day transactions or liaison between the Board, Executive or Staff and governmental officials. These rules and procedures are meant to cover only formal requests by a Minister to the Board for advice, or formal advice provided by the Board at its own initiative to a Minister.

### RULES FOR CONSULTATION

1. GRRB will clarify roles, responsibilities and undertakings in relation to consultations with government and concerning Board approval procedures of government plans through protocols (e.g., written agreements or Memoranda of Understanding) with the relevant departments and agencies, and in particular with the Department of Fisheries and Oceans, Environment Canada, and the Department of Environment and Natural Resources of the Northwest Territories. Wherever possible, such protocols will be developed and implemented at the local level with the involvement of RRCs.
2. Consultation with government shall provide sufficient time to permit the Board to carry out its consultation obligations with Gwich'in or, where relevant, non-participants who may be affected in respect of existing management or harvest plans within the GSA.
3. Subject to confidentiality requirements concerning sensitive species, consultation with government will be subject to public documentation through the GRRB's public registry. The results of formal consultations, advice from the Board or responses to requests for advice to the Board will be documented and made public through the GRRB on-line and on-site (Inuvik) registry.

**PROCEDURES**

1. Subject to available resources, the Board will respond to government requests for advice and/or the exercise of the Board's approval powers within 120 days of such request in order that time is available for internal assessment and consultation and/or liaison with affected Gwich'in institutions and other affected stakeholders.
2. Notice to the public will be given within 30 days through the public registry of requests to the Board for advice or approvals by the government proposals.
3. Depending upon the topic involved, consultations with Renewable Resources Councils and/or other Gwich'in institutions will follow the rules and procedures relevant to that topic, as specified elsewhere in this Policy.
4. Where the Board exercises its authority to offer advice to government or to any of the parties to the *GCLCA* without being requested, consultation by the Board with Gwich'in institutions and government, or as relevant with other stakeholders, will follow the most appropriate procedures as set out in this Policy.
5. Where the GRRB is asked to respond to a licence request made to the Gwich'in Land and Water Board or the Gwich'in Land Use Planning Board, the GRRB will respond within two weeks with a preliminary determination of the adequacy of the applicant's information in relation to the Board's duty to assess any effects on wildlife or habitat. Where the information is inadequate for that purpose, or where an impact on wildlife harvesting or habitat is considered to be potentially adverse, the GRRB will request additional time to consult with the Gwich'in, the RRCs and with government on the detailed impacts.
6. Where, pursuant to section 12.8.35 of the *GCLCA*, the GRRB is requested to respond to an urgent government request for a decision on wildlife management under its powers set out in section 12.8.23 or to advise the government on matters listed under section 12.8.32, the GRRB shall respond within 30 days or, if the Minister indicates a more pressing requirement, such earlier period as is required.