

Yellowknives Dene First Nation response to the Joint Proposal on Caribou Management Actions in Wek'èezhìi



Bathurst Caribou Management

March 22-25, 2010

Preamble:

The Government of the Northwest Territories is seeking to impose extra-ordinary restrictions on the rights of the Yellowknives Dene First Nation. The Yellowknives Dene First Nation (YKDFN) – Dettah and Ndilo – are member First Nations of the Akaitcho Territory Dene First Nations, descendants of those who made Treaty on July 25, 1900 at Deninu Kue.

Members of YKDFNs currently have existing aboriginal and treaty rights. These rights include, among others, the right to hunt, fish, trap and gather in Chief Drygeese Territory. The aboriginal and treaty rights of the YKDFN have been exercised by YKDFN for generations, and continue to be exercised to date. The evidence of Elders and First Nation members together generally confirm that in Chief Drygeese Territory:

- The lands are used for hunting, fishing and trapping on a regular basis today,
- The lands are also used for the gathering of berries for food and plants for medicinal purposes,
- They have been so used for generations,
- The trapping provides furs to sell and meat to subsist on,
- The meat obtained from the hunting and trapping feeds many community members and not just the trapper or hunter,
- Many different types of animals are hunted and trapped, and
- The lands have spiritual and cultural significance to the YKDFN.

In short, the treaty rights to hunt, fish, trap and gather provided in the Treaty, in addition to other rights, do not exist only on paper, but are in active use, and an integral part of the tradition and existence of the Yellowknives Dene.

The courts have been clear on the mechanisms that need to be followed if rights are to be infringed:

- 1) There must be a ‘compelling and substantial’ justification for the action
- 2) The Crown must engage in significant and meaningful consultation
- 3) All other privileges and harvesting options must be attempted prior to any infringement of rights, and if infringement does occur, it must be shown to be as little as necessary.

Not one of these steps has been completed.

However, the herd may be in decline, and the YKDFN is willing to take steps to collaborate with partners. Naturally, the first step is eliminating resident, outfitter, and commercial harvest, but if the Crown begins to meaningfully implement conservation measures outside of harvesting actions – for instance working to protect the calving grounds or critical habitat in the Bathurst range – then the YKDFN would be willing to consider the development of internally administered measures that would result in reduced harvesting. This should not be

misconstrued as *no* harvesting, because the First Nation relies on caribou, but it could involve quotas, controlled hunts, or increased selection. However, until other measures are considered as a sign of good faith, the YKDFN is not willing to consider infringements on their treaty rights (see recommendations #4 and #5).

The YKDFN supports the remainder of the recommendations in some form and is willing to work with the partners to implement them to the best effect. The YKDFN would like to highlight recommendation #8 involving the protection of the calving grounds. YKDFN strongly supports the intent of this point, but not as worded in the proposal. The phrasing in the proposal is deceptive and intentionally misleading, as there is essentially no protection for the calving grounds at present, nor has there ever been a meaningful public intervention from the Crown where the protection of habitat is emphasized over development. Furthermore, the Government of Nunavut has indicated their desire for development in this area through the support of the Bathurst Inlet Port and Road (BIPR). Thus, GNWT's "desire to ensure the current level of protection is maintained" is meaningless and empty. The YKDFN strongly recommends that WRRB require GNWT to pursue this, as the Bathurst Herd is the only herd in the NWT in which their calving grounds are open for development.

With respect to the research measures, the YKDFN supports the continued work, but wants a thorough review of the need for more collars and the impacts associated with them prior to any deployments beyond what have already been approved. Secondly, we strongly suggest that WRRB recommend that, as a starting point, ENR complete the work mentioned in the 2006 management plan submitted to the WRRB, considering the predation aspect of grizzly bears and especially wolves on the herd. Following this, ENR should be compelled to review and implement the many action items and strategies that they have developed following many meetings. Extensive examples of items not implemented can be found in (but are not limited to) the 2004 Management Plan, the 2006 Summary of Issues & Priorities from the Bathurst Caribou Management Workshop (Dec 4-6th, 2006), and the report entitled *Caribou Forever – Our Heritage, Our Responsibility: A Barren Ground Caribou Management Strategy for NWT 2006-2010*.

The YKDFN have presented several other suggestions for the Board's consideration. The first is to move this discussion away from just how many animals can be harvested and begin looking at the overall health of the herd, which is affected by the activities across the caribou range – the 'Osterich-esque' management strategy of sticking our heads in the ground, pretending that there is no connection between habitat and herd population irresponsible and not effective.

If in the GNWT's opinion, the herd requires emergency measures and the GNWT is using the *NWT Act* to implement "ordinances restricting or prohibiting Indians from hunting for food" then under the *NWT Act* the game is in danger of extinction and it should be immediately considered for Species at Risk status under the NWT and Federal SARA legislation. Concurrent with this, the NWT Protected Areas Strategy should consider using its mandate to protect identified critical caribou habitat within the NWT. Neither of these has occurred.

Amongst other suggested measures, the YKDFN would also like to see this plan re-submitted with a framework that allows year-to-year evaluation. The inclusion of metrics and nominal 'targets' associated with those data that are monitored yearly would allow the board to evaluate the yearly status of the herd and determine if the management measures are effective. This should be accompanied by a requirement for a yearly report to be submitted by a specific date.

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Section 1.0

Introduction and Background

1.1 Introduction

The Yellowknives Dene First Nation (YKDFN) would like to thank the Wek'èezhì Renewable Resource Board (WRRB) for the opportunity to participate in this process, which as a Nation, the YKDFN are not subject to. The YKDFN are relieved to finally see movement on caribou management, instead of just discussion about what could be done. For years, the Dene have been advising the Crown that action was required, unfortunately it has taken a crisis in the herd population for ENR to begin implementing the actions that have been suggested in the past. The leadership and elders of the Yellowknives Dene First Nation have consistently been warning Governments on the health of the Caribou herd in recent years. The concerns about non-Dene harvesting and cumulative development have not elicited action and have been contributing factors in the reduction of the herd population.

The Yellowknives Dene have lived off the land for generations and have actively practiced wildlife management for thousands of years. People were not allowed to settle in prime wildlife territory, harvesters took only what they needed. Caribou have always been the most targeted species, but with that dependence came respect for the animals, they were not hunted or bothered during the critical periods of calving or post-calving. Not until they started migrating would they meet the hunters coming north from the fisheries around Great Slave Lake. The people knew that if you respected the animals, their habitat, and their space, then the animals would look after you. In essence there is a reverence for the sacredness of creation, including caribou, and the Yellowknives Dene saw themselves as part of the greater whole, not mere users of it.

The Yellowknives Dene are participating in this process as holders of aboriginal and treaty rights who are concerned about caribou management and to continue the status-quo is not acceptable. The Dene are caribou people, and their culture and traditions are based on the co-existence with the herds over thousands of years. The YKDFN position is not guided by money or self-interest, it is guided by the traditions and the absolute need for long term viability of the Bathurst Caribou herd. Not only is the Bathurst Caribou herd the single most important source of country food, but the culture is intimately connected to the land, so if the caribou are suffering so is the whole community.

In general, the YKDFN supports many of the recommendations and are supportive of the general direction that the Joint Proposal is moving in. However, those recommendations that result in direct infringements of the Treaty and aboriginal rights guaranteed to the Yellowknives by the Crown are not supported. In principle, the YKDFN cannot support actions to restrict Dene harvesting until all other options have been considered then, and only then, would the YKDFN consider *necessary* infringements on its Treaty Rights. There are many other management

options to be implemented before any contemplation of the imposition of harvest restrictions upon rights holders. As the Supreme Court of Canada has indicated, infringements upon treaty and aboriginal rights are only to be considered as a last resort, when all other management options have been exhausted.

This is not to confuse the issue of conservation – the YKDFN will take actions necessary to conserve the herd, but these actions will be internally driven, not as a result of the GNWT's activity. Before the Crown can impose harvest restrictions upon the YKDFN, they must first eliminate other harvesting and exercise all other management options. Once this has occurred, they must show that limited Dene harvest and herd recovery are incompatible. Then they must engage in any meaningful consultation with the YKDFN prior to considering potential rights restrictions. None of this has occurred.

1.2 Jurisdiction

While YKDFN are pleased to have the opportunity to participate in this process, any ruling of the Wek'eezhii Renewable Resources Board (WRRB) will not apply to the Yellowknives Dene First Nation, who will continue to abide by their treaty and exercise their Aboriginal and Treaty Rights. It seems clear that the Government of the Northwest Territories wants to apply the results from this WRRB process to other First Nations, but a direct application is not applicable or acceptable. The *Tlicho Agreement*, article 2.71(b)(i) & (ii) recognizes this fact:

- (i) *No provision in the Agreement shall be construed to affect any treaty right of any Aboriginal people other than the Tlicho, where the right existed before the provision of the Agreement was in effect, or*
- (ii) *Any Aboriginal rights of any Aboriginal people other than the Tlicho.*

Not only is it clear that the WRRB process only apply to Tlicho citizens, but the *Tlicho Agreement* is also clear that any Total Allowable Harvest that is set by the WRRB applies only within the Wek'eezhii settlement area. Thus, the total allowable harvest will not apply to the Chief Drygeese Territory.

It seems clear that GNWT intends to use the WRRB process as a proxy for determining appropriate harvesting practices for areas outside of the Wek'eezhii, but are part of the caribou herds habitat – to apply the results of the WRRB process 'across the board', and perhaps even attempt to say that participation in the WRRB process equals consultation. The Yellowknives wish to make it clear that this is not acceptable and that a distinct, meaningful engagement and consultation between the Crown and the YKDFN is going to be required.

The YKDFN is participating because of the concern for the herd and respect for the processes set up by the Tli Cho people – the health of the caribou is connected to the health of the

people. The YKDFN has already taken initial steps to limit their harvest, and will continue to do so if they deem it necessary, outside of any ruling by the WRRB.

This submission has been prepared on behalf of the YKDFN without the input of legal counsel, and any summaries of legal matters and positions are provided for contextual purposes only. The YKDFN reserve the right to seek legal advice on the issues addressed in this submission and to take additional or varying positions in any future court proceedings.

1.3 The Role of Treaty

Before considering this proposal, it is important to note that the foundation of the YKDFN position lies with the Treaty and the rights that were agreed to. The Treaty of 1900 in Deninu Kue would never have been entered into if the hunting opportunities, traditional economy, and freedom of movement were not enshrined and guaranteed by agreement with the Crown. Since the signing of the Treaty of 1900, there have been numerous restrictions and sacrifices of these rights to outside interests. ENR and the Federal Government must ensure that the actions taken to preserve the Bathurst Herd are done in a way that maintains the honour of the Crown.

The initial push from the Crown to make treaty was ‘aimed at overcoming any hostility or resistance by the Indians of frontier areas to the advance of the frontier economy’ (Brody, 1981), while the First Nations were only inclined to enter into Peace and Friendship Treaties if their way of life was to be preserved. After contact and Confederation, the Government of Canada was not inclined to enter treaty with the First Nations of the North. They felt no need to do so, as there was no settler pressure, and there was no development interest that required the extinguishment of aboriginal title. However, from the early 1890s onward, geological surveys found increasingly promising signs of large quantities of oil. Then in 1896, the Klondike gold rush occurred. Following on these two developments, the Federal Government quickly reversed the position that they had held since Confederation, and plans to dispatch treaty commissioners began in earnest in 1898.

1.4 The Treaty of 1900

The 1986 Treaty Eight Research Report prepared by Dennis Madill explains that the “First Nations consistently raised their concerns via missionaries and the Northwest Mounted Police that they would refuse treaty unless there were assurances that their way of life would not be restricted...only when commissioners gave assurances that hunting, fishing and trapping rights would be guaranteed did the Indians at the various trading posts agree to sign the treaty” (Madill, 1986). Additional provisions in the treaty itself were aimed at reinforcing this perception.

Why does this bear repeating? To make the point that when the YKDFN's ancestors entered into Treaty with the Crown, it was with the understanding that they were sovereign people of the land and that they wanted that sovereignty to exist in perpetuity.

To drive the point home I would like to quote Chief Drygeese from the 1900 treaty negotiations:

“if it is going to change, if you want to change our lives, then it is no use taking treaty because without treaty we are making a living for ourselves and our families. I would like a written promise from you to prove you are not taking our lands away from us. There will be no closed season on our land. There will be nothing said about the land. My people will continue to live as they were before and no white man will change that. You will in the future want us to live like white man does and we do not want that. The people are happy as they are. If you try to change their ways of life by treaty, you will destroy their happiness.” (Jackson, 1979)

Yellowknives Dene oral history is quite clear – the Yellowknives Dene were to retain their sovereign right to pursue their land based economy without interference. The treaty that was negotiated was between friends and neighbouring Nations. As the elders told Father Fumoleau “They saw the white man’s treaty as his way of offering them his help and friendship. They were willing to share their land with him in the manner prescribed by tradition and culture. The two races would live side by side, embarking on a common future” (Fumoleau, 1975). Only 18 years later, the Federal Government passed the *Act Respecting Game in the Northwest Territories of Canada (1917)* which introduced closed seasons on a variety of species and signed the *Migratory Birds Convention Act*, which limited the hunting of migratory birds.

From the evidence we can conclude that the Crown intended to offer whatever promises that were required to secure the economic future of the North. In the final analysis, the well-being of the First Nations that took treaty was not an important consideration of the Government’s decision to negotiate. This was born out by their *laissez faire* attitude towards implementing the treaty, if at all; it can be fairly said that the Crown took a narrow and self-serving view in terms of fulfilling their obligations. Without wading too deeply into this century long argument, the YKDFN believe that the most salient fact is that we are here discussing the very types of limitations which so concerned those who took treaty, while at the same time, mining and exploration continue to operate without any discussion in terms of management to ensure treaty obligations. Regardless of the various stances of the stakeholders, it can be argued that the traditional territory of the Yellowknives has provided many billions of dollars of royalties and profits to the Crown and ‘southern industries’ and that from the Crown’s perspective the treaty of 1900 has been a resounding success. As Mr. Madill stated “The fulfillment of Treaty

promises, particularly those concerning hunting and trapping rights were in direct conflict with settler interests". So where does this leave the YKDFN?

The Yellowknives Dene First Nation lived and used this area for thousands of years and took treaty a mere 110 years ago. Over those hundred plus years, the First Nation have seen their rights overlooked time and time again; and now, here we are again, with the Government proposing to limit treaty and aboriginal rights without considering any restrictions on industry – the Joint Proposal before the Board does not contain any measures that would limit industry's contribution to the decline of the Bathurst caribou herd. Until such time as that occurs, *it is patently obvious* that the measures required to ensure conservation is not what matters to the Crown, and the absurdity of an honourable treaty continue. The YKDFN will not abide by any proposal or government initiative that allows their rights to be compromised before the privileges of the "settler interests". For clarity, the First Nation has constitutional rights, where as industry, through land use permits and the like have been granted privileges to use the land. The law is clear that the privileges must be taken away before any rights are compromised.

1.5 Recent Case Law and Treaty

Case law with regards to the infringement of Treaty Rights has been rapidly evolving, but the process by which conservation can impose on Treaty Rights is clear. The definition and explanation of these steps are outlined initially in *Sparrow [1990]* but have been further clarified. The YKDFN acknowledge that the Crown can regulate aboriginal hunting and trapping rights in specific cases, including for conservation. However, the imposition of these restrictions comes with a series of tests that have been outlined by the courts and the Crown must ensure that these tests are met before proceeding with the infringements.

The *Badger [1996]* decision provides general context on the nature of the relationship between the Government and Treaty holders, which guides the nature of discussion.

"Certain principles apply in interpreting a treaty. First, a treaty represents an exchange of solemn promises between the Crown and the various Indian nations. Second, the honour of the Crown is always at stake; the Crown must be assumed to intend to fulfil its promises. No appearance of "sharp dealing" will be sanctioned. Third, any ambiguities or doubtful expressions must be resolved in favour of the Indians and any limitations restricting the rights of Indians under treaties must be narrowly construed."

Since the *Sparrow* and *Badger* cases, subsequent case law has helped clarify the burden that the Crown has when the infringement of Treaty Rights is in likely.

- 1) *Delgamuukw* - There is always a duty on government to consult with First Nations where Aboriginal or Treaty rights are or may be affected prior to any action taken by government
- 2) The *Huu-Ay-Aht* decision outlines that the duty to consult must occur a) before any infringement occurs and is continuing; and b) that the meaningful consultation arises in relation to the earliest decisions that affected the right.

If GNWT wishes to implement measures that would clearly result in an infringement of Dene Treaty Rights (the *prima facie* infringement) then they must first justify the need for such an infringement. Given the evidence presented thus far versus the responsibility that Government bears, the YKDFN does not accept that the need for conservation via the outright elimination of harvesting is necessary at this time.

1.6 Conservation Overriding Treaty Rights

In Canadian law, government can regulate Treaty Rights only with ‘compelling and substantial’ justification. Part of the Government burden must show that there has been as ‘little infringement as possible in order to effect the desired result’ and that there has been significant and meaningful consultation. Furthermore, the court rulings indicate that subsistence harvesting is the priority when it comes to allocate that portion of the allowable harvest.

The YKDFN asserts that the Crown (which in this context is both the Government of Canada and the GNWT, which is an arm of Canada, created through federal statute) has not involved the YKDFN in preparation of this proposal whatsoever. Nor has the Crown attempted to previously gather community views on its recommendations.

- (i) The Crown has not ensured that the infringement of Treaty Rights is occurring as a last resort. Clearly, as processes that can be considered privileges, such as land use permits, land leases and mineral exploitation continue unfettered there are other measures to be effected before the infringement of the Treaty Rights should be considered or at the very least should be considered in conjunction with limiting hunting and trapping rights. While ENR has implemented limited management actions within their mandate, INAC has not lived up to their Treaty promises. INAC has considerable jurisdiction which it is choosing not to exercise, there by prioritizing economic interests over the Rights enshrined in Treaty and consequently, risking the probability of success of the proposed conservation measures, and prolonging the hardships of those who rely on their Treaty Rights.

- (ii) The Crown has not engaged in sufficient consultation. ENR has held only preliminary meetings with regards to the infringement of Treaty Rights, and INAC has not been involved. INAC may indicate that this is a wildlife issue and is thus between the Territory and the First Nation, but there is a relationship between caribou health and habitat. In a March 21st, 2007 letter from Minister Prentice to Chief Fred Sangris, this relationship is noted, where “Departmental officials have worked ... on many initiatives and programs intended to develop a better understanding of caribou ecology, habitat considerations and other key factors related to caribou well-being”.
- (iii) YKDFN would also point out that the priority nature of Dene harvesting has not been respected with regards to management. GNWT has not scaled back harvesting privileges according to the priority structure (Sport hunting first followed by resident harvest) before infringing on *rights* conferred by Treaty.

Considering that the YKDFN have not been involved in the preparation of this proposal, received little if any notice, and that the Caribou Management Emergency Measures enacted (January 1st) concurrent to this proposal result in a *prima-facie* infringement on the rights of the Yellowknives, then the tests outlined above have clearly not been met and the Yellowknives Dene First Nation has not been adequately consulted by the Crown (either INAC or GNWT).

Frankly, the GNWT should know better. In the 1995 *Noel* case GNWT introduced a no-shooting corridor along the Ingraham Trail in response to an ‘imperative situation’ and was implemented without consultation. The court plainly stated that the Government actions represented a “steam-rolling over aboriginal rights protected under s. 35(1) of the *Constitution Act, 1982*”, and that Mr. Benoit who was charged, was found not guilty.

1.7 The 2002 Tlicho-Akaiicho Boundary Creek Agreement

To ensure better collaboration and cooperation between parties, the YKDFN recommends that the WRRB and TCG implement the overlap agreement between the Akaiicho First Nations and the Tlicho First Nations. The Boundary Creek Agreement has clauses that relate to these kinds of resource situations. In the November 2002 agreement between the Tlicho First Nation and the Akaiicho Territory Dene First Nations, clause 9 and 10 read:

9) Each of the Parties agree to consult the other with respect to any management or regulatory decisions respecting lands and resources that will affect the interests of the other Party, whether or not such decisions have effect within the Primary Use Area of that Party.

10) In exercising their authorities with respect to the management or regulation of lands or resources, the Parties shall:

- a) Work co-operatively to protect their respective and mutual interests;
- b) Foster sustainable development and the protection of lands, resources and harvesting opportunities, for present and future generations;
- c) Take steps to acquire and use traditional knowledge as well as other as other types of scientific knowledge and expert opinion

Furthermore, within the *Tlicho Agreement* there are “overlap” provisions, which have never been implemented – namely with respect to the management boards that came into being with the Act.

Section 2.0

Introduction and Background

2.1 Development and Caribou:

The Bathurst caribou herd's long-term viability as one of the last free roaming species in the world will require the WRRB to make some tough decisions. The recommendations currently before the WRRB are at best short-term knee jerk reaction to a long emergency that has climaxed with the herd's recent population crash. Reducing hunting pressure on the herd is part of the solution; not the solution, as the GNWT would want the YKDFN and the people of the Northwest Territories to believe. The YKDFN and other Dene peoples know better, and we hope that the WRRB knows better as well. Deep down we all know that the long-term well-being of the Bathurst caribou herd depends on changing our collective behaviour. It means fewer caribou hunted, more access restrictions, reduced habitat fragmentation, and ultimately accepting that there are limits to development. The Crown desperately does not want to consider such actions because they are loath to accept any management philosophy that does not adhere to an unbridled faith in never ending growth.

All of the recommendations within the Joint Proposal deal with harvesting and research actions, while there is not a single mention of preserving habitat. While the YKDFN have been warning the GWNT that harvests should be restricted for years, they have also been warning of the impacts of large and small development, are having on the caribou. Unless the Crown (both Territorial and Federal) begin to take heed of these warnings, all the harvest restrictions in the world will not make a difference, the changes to the landscape may outweigh them. Given that researchers are now beginning to quantitatively confirm (Boulanger, 2009) the widespread belief held amongst traditional knowledge holders that development is having a real and significant impact on caribou, the potential impacts from widespread developments across the caribou range are unknown, but potentially significant. There have not been any caribou protection measures developed or implemented for land use permits in the NWT.

Though there is uncertainty as to development's impact on caribou, the elders and TK holders have been clear that the caribou have been impacted by development. In their 2007 report for ENR where they examined the decline of the Bathurst Caribou herd, Gunn and Boulanger noted that modelling suggested that "reduced trends in calf survival and/or fecundity were principal driving forces in the decline of the Bathurst Caribou herd". They went on to say how the current state of knowledge could not be directly explain the declines, but that two notable trends have been observed on the post calving and summer ranges – more severe insect harassment and increasing levels of human activity (Gunn and Boulanger, 2007).

As researchers have begun to focus on the issue in the last five years, they have increasingly found direct and quantifiable linkages. Undoubtedly, this trend will continue and science will be able to quantify what elders and landusers have said in many forums. Considering this, the role of industrial development in the herd's decline cannot be ignored. With the accelerating decline of the herd, there is a great need for caution, and managers need to be ready to respond to all activities on the herd's range. The current level of scientific knowledge has shown that caribou behaviour in areas impacted by industry is altered. The following quotes are from Anne Gunn's August 26th, 2009 sworn statement in the federal court case *Yellowknives Dene First Nation Et.Al v. Canada (Attorney General) et al.* [T-1349-09]:

"It is my understanding that Aboriginal people including the Akaitcho Dene have experience of Caribou avoiding industrial activities and are concerned about the consequences for the caribou"

"My understanding and experience is that caribou responses typically range from caribou being alerted to moving away from disturbances. There are marked differences in these responses among caribou – for example, mature bulls behave very different from cows and these observed differences sometimes cause misconceptions about how caribou respond to human activities. The energy costs to a caribou of interruptions to foraging and the energetic costs of moving away can be estimated through observation data and modelling. The longer-term consequences for the individual caribou and herd depend on the frequency of disturbance and other environmental trends as the caribou is integration all the influences it has to contend with. For example, if the caribou are thin as a result of deep snow making it difficult for them to feed, then their behavioural responses to, for example to a helicopter, become more serious."

"It is also my opinion that cumulative effects of industrial activities on caribou are not restricted to large-scale developments but also the cumulative effects of smaller scale sites such as drill operations. The relative density of land use permit sites is not an issue yet addressed by the responsible agencies but it is a basis for concern."

While the exact impacts associated with development remain a subject of research which governments and developers only reluctantly are engaging in. However, given the early indications and the views of Traditional Knowledge holders, in the absence of categorical, definitive knowledge, the precautionary principle should be applied until such time that the herd has reached a state where it is no longer in danger and there is flexibility and time to conduct the appropriate multi-year studies.

The background of the 2006 submission to the WRRB entitled "Bathurst Caribou Herd Harvest Restrictions" mentions that when exercising its power, the Wek'eezhii Renewable Resources Board must use the "Precautionary Principle" (12.1.5(c)) which states "lack of complete certainty shall not be a reason to postpone reasonable conservation measures". YKDFN is not aware of a single instance when this principle has been applied to development applications, where ENR sought to restrict development in favour of wildlife management. Since 2006 there

have been many land use applications within the Chief Drygeese Territory for ENR to have shown initiative or leadership on this.

The goals of the proposed recommendations currently before the WRRB are predicated on calf survivability as the basis for recovery of the herd. Unfortunately, ENR's proposal is rooted in the linear thinking that has got us into the mess we are currently in because calf survivability is irrelevant unless those calves are also able to reach breeding age. To accomplish this, they must successfully survive their first few months and ultimately have the right conditions within which to grow and reproduce. While ENR can influence the number of hunters within the NWT, it cannot control the quality of the habitat or the actions within Nunavut Territory. And herein lies the crux of the problem.

This Bathurst Caribou Herd's calving area is directly threatened by the proposed Bathurst Inlet Port and Road (file 03UN114 before the Nunavut Impact Review Board) which bisects the calving ground. Neither INAC nor GNWT have been especially vocal in requiring protection of calving areas during the Environmental Assessment process (for confirmation, review the BIPR file on the Nunavut Impact Review Board Registry¹). This is just the most serious threat. At present, there are three existing mines (Lupin, Ulu, Jericho), two mine proposals (High Lake, Hackett River), five advanced exploration projects and 16 other exploration projects in and around the caribou calving grounds (Please see Appendix 1). Other road proposals (notably the High Lake Road proposal – file 06MN082 – which would connect to High Lake, Ulu and Izok amongst others) exist, which could induce further activity.

There are few restrictions on developments, and INACs existing "Caribou Protection Measures", which were derived from a 1978 court action initiated by Baker Lake after INAC once again favoured development over aboriginal rights, are in need of an update (see: Weihs and Usher, 2001, Gunn et al. 2007, BQCMB 2007). Even if these measures were implemented, the BQCMB commented "INAC must acknowledge that CPM [Caribou Protection Measures] will not provide all the protection required to ensure long-term protection of calving and post-calving caribou. The federal government and its partners must work to ensure that other conservation tools are in place to protect calving and post-calving habitat". Though this comment describes the situation facing the Beverly and Qamanirjuaq Caribou herds, it is equally true for the Bathurst herd. Perhaps more so, as the Kivalliq region has a land use plan which gives regulators administrative powers to impose CPM, while the draft West Kitikmeot plan has been scrapped. In the Akaitcho, the Crown has refused to move forward with Land Use Planning, insisting that it remains tied to claim settlement/treaty implementation.

¹ http://ftp.nirb.ca/REVIEWS/CURRENT_REVIEWS/03UN114-BIPR_PROJECT/02-REVIEW/08-CONFORMITY%20TECH%20REVIEW/

Science and experts have recently found explicit links between development and caribou behaviour to support what the Traditional Knowledge holders have been saying for years – with only two active mines. Continued uncontrolled development of known and probable resources could very well result in catastrophe for the herd and those who depend on it. Clearly, habitat protections and development restrictions and thresholds on are critically needed. To do otherwise is to accept the logical absurdity of the status quo and the inevitable demise of our caribou herds.

Somewhat ironically, one of the common themes throughout much of the research is a sense of urgency to this matter, as the continued exploration and development not only has impacts, but also creates of third party interests across the caribou range which serve to complicate any future recovery scheme.

2.2 INAC Has A Role to Play

The YKDFN believe that the issues ultimately affecting the Bathurst Caribou Herd population extend far beyond simply harvesting, as the health of any wildlife population is heavily dependent on its habitat. Any number of examples can be drawn from southern Canada, where we have seen the range of many species reduced by human activities.

The linear thinking that has got us into our current predicament reaches the point of absurdity when INAC's role in the scheme of things is considered. If the WRRB were to ask INAC what it sees as its role in helping the Bathurst caribou; INAC will say it has no desire to be at the table. On January 29th, 2010, Minister Chuck Strahl said that INAC is not responsible for wildlife, but does manage land and water, as though they are totally unrelated.

“The Northwest Territories manages wildlife. Our responsibility with INAC, is basically on land and water issues, not on management of wildlife, per say”
- *CJCD, Work It Out Yourselves, February 3rd, 2010*

INAC feels that having delegated the responsibility for “wildlife” to the GNWT that this issue does not concern them. Clearly, INAC feels that the health of land and water is not relevant to caribou management. Nor does INAC feel that as the department responsible for the administration of Treaty and the rights conferred, they should protect those promises. This position is being advocated despite the courts oft-noted special fiduciary relationship and the First Nation's view that Treaty is a nation-to-nation relationship. The ‘Honour of the Crown’ is at stake. After reviewing Professor Kenneth Coates' book on the Marshall decision, it is clear that INAC leadership was at best ineffective, offering little in the way of leadership or reassurance (Coates, 2000). The YKDFN hoped for better this time around, but it seems that trend of ignoring responsibility is continuing.

If this was not sufficient rationale for Federal involvement, the reality is that the tools available to GNWT with which they can influence caribou survival can at best only provide short term stability by creating long term hardships. They are one dimensional, and only a holistic approach, making all options available and accessible, will ensure that both the First Nation's ability to exercise Treaty Rights and the integrity of the Crown are safeguarded. An Access to Information and Privacy request filed by YKDFN (Appendix C) makes it clear that INAC clearly understands this role, but chooses not to participate. Selected quotes illustrating this:

- Dec 17th, 2009 email from James Lawrance (Director, Aboriginal and Territorial Relations): "I don't think we can avoid developing a formal and clear approach and position on this [caribou management] anymore"
- Dec 18th, 2009 email from James Lawrance: "We've delegated the responsibility for caribou and harvesting management issues in large part to the GNWT, but not in their entirety...*We are part of the equation; we already have a role*" [italics added]
- Dec 18th, 2009 email from Marc Lange (Manager, Environment and Conservation): "The BN highlights that INAC's mandate for environmental management and resource development necessitates our involvement in caribou conservation"
- December 13th, 2007 briefing note: "While Indian and Northern Affairs Canada doesn't manage wildlife, the Department's responsibilities for managing land and water in the NWT and Nunavut means that it is an important partner in ensuring the health and integrity of caribou habitat"

Yet Trish Merrithew-Mercredi, INAC's Regional Director General is "not convinced we have a role to play in this" (Dec 18th, 2009).

In the north, the administration of development on crown land is an INAC responsibility and continues independent of herd populations. Traditional knowledge holders have clearly, consistently and convincingly expressed their opinion that development and human activity is a central concern at every caribou related meeting. Reviewing the consultation documents that are on the WRRB registry (*North Slave Consultation Logs Addendum 1, 2a, 2b*) simply reinforces this. *North Slave Consultation Logs Addendum 1* mentions development impacts to Caribou over 15 times. The Bathurst Caribou Management Plan and Caribou Summit report are similar.

The 2004 Management Plan and 2007 Caribou Summit captured many of these concerns in the form of recommendations and action items. However, the recommendations and priority actions expressed about INAC's role with respect to caribou remain almost entirely unfulfilled. This willing inaction by the Crown is a significant contributing factor to the current situation, and until such time that it is reversed, the YKDFN feels that at best we are simply 'plugging holes in the dam'.

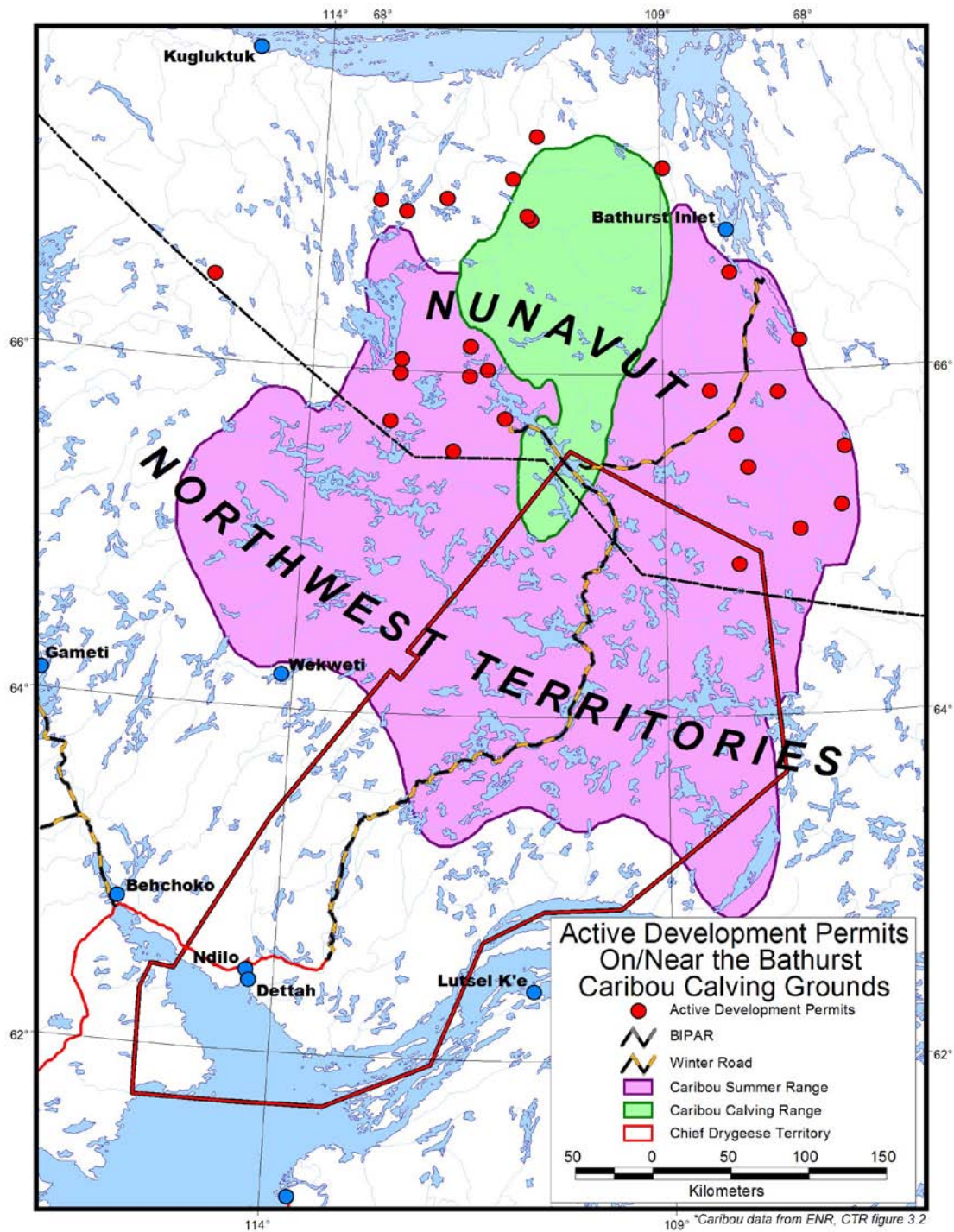


FIGURE 1: Active Developments in and around the Bathurst Caribou Herd Calving Grounds
 * See figure 3.2 of the CTR for the definitions for these ranges. For instance, the 'calving range' is June 3rd to June 13th rather than the dates that ENR mentions in information request 2.15 (May 15th to June 30th) – thus the calving area should be much larger.

2.3 INAC as the Ultimate Regulatory Authority

INAC is the ultimate regulatory authority for development projects in the territory and signs off on the terms and conditions by which land users may operate. Altering the manner in which companies operate on the land and adopting best practices represents another effective and efficient mechanism to help promote herd recovery.

Land Use Planning has often been touted as a necessary step towards regulatory efficiency in the North (i.e. McCrank). Though the Tlicho plan is underway, INAC has provided no support for a similar process in the Chief Drygeese Territory, which represents a significant proportion of the Bathurst Range. As with the Inuvialuit Settlement Region, where the Cape Bathurst Range is protected by special management areas, this represents another avenue for the YKDFN and partners to protect critical habitat, which would promote herd recovery. Therefore, the YKDFN suggests that the WRRB recommend that INAC initiates a land use planning process for the Chief Drygeese Territory and until that plans completion, that any new development applications be considered in light of their impact to the caribou herd not on a case by case basis as they [essentially] are at present, but in light of the level of development across the range.

As Canada's representative for the administration of Treaty, INAC should be participating in this process to ensure that the Honour of the Crown is upheld by ensuring that Treaty Rights are protected until such time that there is no other recourse but to consider infringement in order to conserve the species.

As an example of INAC's participation or lack thereof, I would like to point to just some of the unfulfilled recommendations that have been made in the past with respect to the Bathurst Caribou. It should come as no surprise to those involved with caribou management over the years that we are still talking about many of same things in 2010 that were on the table in 2004 (and before), and that they almost exclusively require Federal involvement.

Lastly, the proposal makes mention of INAC's Caribou Protection Measures in Nunavut. YKDFN have investigated these measures and are there not only doubts as to the effectiveness of them (see Wiehs, F.H. and P.J. Usher. 2001, Beverly and Qamanirjuaq Caribou Management Board. 2007), but it does not seem that they have ever been applied in the West Kitikmeot. YKDFN have repeatedly attempted to obtain land use permits from INAC-Nunavut to allow us to review what measures do exist. From what we could obtain, not only is development permitted in the calving period (despite ENR's assertion in IR 2.15 that they consistently advocate that no exploration or other development activity be permitted on calving grounds between May 15 and June 30) but there is no inclusion of 'Caribou Protection Measures'.

Section 3.0

GNWT Proposal

3.1 GNWT Proposal Timeline

It is not clear why GNWT waited until October to begin [what they consider] consultation with First Nations on a management plan. Not only should their monitoring results from 2007, 2008 and early 2009 been raising red flags, but then the preliminary numbers of the population census should have finally set off the alarms – it corresponded to the troubling monitoring results. Waiting until the final results were in was wholly unnecessary. The preliminary numbers from the initial survey should have been enough to engage First Nations in consultation towards a management plan. Concurrent with this effort, the fall sport hunt also should have been cancelled. The first public acknowledgement regarding the implementation of Interim Emergency Measures was on November 25th meeting (North Slave Consultation Log). The situation that existed then was unchanged from when the preliminary results were provided to ENR (exact date unknown, but late June/early July), so if an emergency existed that whole time, management efforts should have occurred much sooner.

3.2 GNWT Mismanagement

First Nations are right to criticize ENR for mismanagement of this situation and the WRRB should demand additional oversight and reporting. ENR states that the herd has been allowed to decline from 350 000 to 32 000 animals, with no effective or meaningful management actions. Between the last two population counts in 2006 and 2009, there was no alarm raised or consultations to discuss management practices. The YKDFN wonders what the point of the yearly monitoring is - if the results of the monitoring are not used to drive management actions, why bother? It is disconcerting that ENR chose to do nothing during the intervening years, as they had done since 1995. This wilful ignorance has led to the current situation where ENR has decided that drastic measures are needed and has chosen to suspend constitutionally protected rights.

This whole process is eerily similar to the 2006 WRRB process, where ENR submitted a proposal in early December, which then decided to use “emergency measures” to regulate outfitters. During the WRRB hearing, it was revealed that ENR had not consulted with the TCG prior to this submission, as required by the Tlicho Agreement, and on March 26th, 2007 the board directed this to occur. Over the next month, though ENR and the Tlicho met several times, there was no change to the proposal as a result of the consultations. By September 15th, 2007 consultation still had not been completed.

Some two years later, ENR’s interpretation of the consultation process leaves much to be desired. Considering that the case law in Canada is quite clear in terms of the infringement of Treaty Rights and the lessons that should have been learned from the 2006/07 process, ENR

should have been consulting with affected First Nations. Case law has indicated that consultation must occur prior to the infringement occurring, but it must also be deep and meaningful. The registry shows the YKDFN being invited to a single workshop in October. This hardly constitutes consultation. There simply was not a good faith effort to engage with communities. It is not clear how ENR intends to apply the results of the WRRB process to parties outside of the *Tlicho Agreement*, other than simply extending “Emergency Interim Measures” or if they intend to use an entirely separate engagement and consultation process after the WRRB ruling.

In either case, it’s clear that the existing emergency interim measures will be in place much longer than three months that Minister Miltenburger continues to mention (CBC North, 2010) as recently as the morning of February 12th, 2010. Considering that the WRRB decision will be sometime in May, and ENR has indicated that the measures will be in place until ENR implements the recommendations

The GNWT approach to the process has either been at worst, not in good faith, or at best, wholly insufficient.

- 1) The proposal submission was submitted very late in the year, too late to effectively implement management actions using co-management.
- 2) Emergency measures were always going to be part of the management process and prejudiced the process, just as in 2006.
- 3) Despite being the applicant, the GNWT was not prepared to respond to outside inquires as part of the process, which resulted in further delays.
- 4) GNWT has not adequately consulted with the YKDFN as required by law.

3.3 2009-10 GNWT Submission Process and Information Request Response

It seems clear to the YKDFN that ENR did not respond in good faith to many of the Information Requests (IR) that were submitted. Furthermore, when they did respond, it was at such a late date so as to delay the hearing and submission process. As the applicant, the response process should have been smoother, more efficient, and most importantly, more informative. The late and vague nature of these IRs is a primary reason for the delayed hearing, which has had real and meaningful impacts on harvesters. Select examples to illustrate the range of poor IR responses (they have been paraphrased if necessary):

- 1.2 IR: What are the proposed geographic boundaries for Management Actions 1-5
Response: The Geographic boundaries are wildlife Management Units R and U. For a description of these units please see...
YKDFN Comment: Why not just provide a map?
- 1.3 IR: How do the various harvest levels (ranging from 0 to level of current harvest) influence recovery time?
Response: [Very long]
YKDFN comment: The cited modelling from the CTR is only at 3 values – zero, 50% and 100%. No other modelling is provided.
- 1.13 IR: How might the effectiveness of the winter road check stations be improved on?
Response: Mandatory stopping for all traffic at check stations
YKDFN comment: This does not answer the question of “how”, e.g. how would mandatory stopping be required
- 1.14 IR: Please provide a summary of status of discussions with Government of Nunavut with respect to protection of calving grounds.
Response: It is ENR’s understanding that there has been correspondence and meetings between Ministers where issues have been raised.
YKDFN: First, as ENR is the agency that is supposed to be raising these issues according to past management plans, action items and management strategies, and a response indicating that they have an “understanding” that correspondence has been exchanged is not adequate. If they do not “know”, then who does?
Secondly, the identification of this occurring only **where issues have been raised** suggests, given the GNWT’s poor participation record, that very few (if any) issues have actually been raised, and there has been little if any attempt at moving this item ahead.
- 1.15 IR: Provide link how monitoring actions 1-11 are linked to assessing the efficacy of the management actions (and how they will adjusted)
Response: [see Bathurst Caribou Management Plan]
YKDFN comment: This does not answer the question, especially in regards to the adaptive nature of the monitoring results.

These are just five examples from the first set of information requests. The informative nature of the responses declines in round two. Further examples and notes from the YKDFN’s initial review can be found in Appendix B.

The YKDFN tried to obtain further documents and data from ENR. Starting on January 25th, 2010 YKDFN called Mr. Jason McNeill (listed as the contact person on the ENR Information Requests) to obtain several different documents. Despite further phone calls and emails, the YKDFN did

not receive any of the requested information. Other contacts did produce some information, but never through 'official' channels.

3.4 2004 Bathurst Caribou Management Plan Unfulfilled Management Items

ENR has rapidly arrived at a scenario in which they support no Aboriginal Harvesting, which was never envisioned in the previous management plan. The 2004 management plan identified many other management "levers" that could be used as the issue progressed along the spectrum of concern. None of these management options and mitigation strategies mentioned zero Dene harvest. Many of these mitigation strategies have not been utilized or considered (see below).

The YKDFN wants to ensure, as the courts have mandated, that if ENR is going to attempt and curtail Treaty rights, which should only be considered as a measure of *last resort*, that all other options have been implemented first. Just as a reminder, that until January 1st, outfitter hunting was still occurring on the order of several hundred tags per year – and that represents the first harvesting limitation to be enacted. If that tool has only just been used now, then there is a serious disconnect between conservation and management actions.

Selected unexercised management options identified in the Bathurst Caribou Management Plan

1.3.3 – Prepare and implement site-specific monitoring and mitigation programs to detect and address impacts of industrial development projects on caribou behaviour and movements

1.3.5 – Implement the Slave Geological Province Plan of Action [CEAM] recommendations with respect to caribou

1.3.6 – Prepare and implement site-specific monitoring and mitigation programs to detect and address impacts of industrial development projects on caribou behaviour and movements

1.3.7 – Prepare and publicize guidelines for exploration crews, tourism operators and others when around or observing caribou

2.1.1 – Map the annual extent of calving, post-calving and summering areas, migration routes, water crossing and wintering areas

2.1.2 – Investigate the role of forest fires in maintaining caribou habitat and the effects of fire on the winter movement and distribution of caribou

2.1.4 – Apply the measures identified in the Draft West Kitikmeot Land Use Plan designed to minimize the extent and impact of development projects footprints on calving and post calving areas

2.1.5 – Develop remediation policies and approaches that return areas damaged through industrial activity to caribou habitat

2.1.6 – Develop policy and measures to address the permanent loss of caribou habitat resulting from industrial activity whereby similar habitat is protected elsewhere, or protected areas are created that contain similar habitats

2.1.8 – Establish guidelines for mitigation of habitat changes

3.2.2 – Establish a secretariat to oversee implementation of the plan, to support, track and report on monitoring and management actions, to support an annual meeting and to support future reviews of the plan.

3.2.3 – Ensure that proposed development activities are consistent with this plan

3.5 2007 Caribou Summit Unfulfilled Priority Actions

The 2007 Caribou Summit in Inuvik brought together many of the elders and most active land users from across the territory to consider actions to help the caribou herds. A final report was produced, which identified many actions, suggestions and recommendations across a variety of subject areas. Appendix 6 of that report includes the “Priority Action Items” including such things as meeting with the Government of Nunavut to begin discussion about protecting calving grounds. Several of the priority action items remain outstanding, while many of the more popular recommendations have never acted upon. For instance, under ‘Managing Human Impacts’ the top five items recommendations were:

- a) Protect calving grounds in NWT and Nunavut
- b) Reduce all harvest
- c) Mandatory reporting of all harvest
- d) Implement Cumulative Impact Monitoring Program
- e) Engage all jurisdictions in a protected areas strategy for barren-ground caribou

These recommendations formed five of the top seven priorities from the summit overall. Since this document was authored the only item which has been acted upon with regards to the Bathurst Herd is the reduction of harvest on January 1st, 2010 (almost three years later).

Section 4.0

YKDFN Proposal Review

4.1 YKDFN Position with respect to the Proposal as a whole:

The YKDFN generally supports the Tlicho government's position, which, if applied to the Yellowknives Dene (as the GNWT undoubtedly intends to do), would result in an infringement of Treaty Rights, and would call into question the Honour of the Crown.

4.2 YKDFN Position with respect to Proposed Recommendations:

Recommendations 1, 2, and 3 – Commercial Meat, Sport Hunting, Resident Harvest

The YKDFN agrees with all of these recommendations. They represent the appropriate first measures towards conservation.

Recommendation #4(a) – Eliminate all harvest of Bathurst female caribou

If ENR can make the case for further conservation than outlined in recommendations 1, 2, and 3, as well as enacting management actions with mining interests across the caribou range including access control on the Tibbett to Contwoyto winter road, the YKDFN would consider adopting this principle as a possible internal restriction. However, until meaningful consultation with the Crown occurs, the YKDFN is not willing to accept any limitation to their treaty rights.

Recommendation #4(b) – Assistance harvesting adjacent herds (Bluenose East, Ahiak)

There is no reason to suspect that these herds will be able to support additional harvesting for very long. The Ahiak herd population is down 60% in the last four years and will see other outside hunting pressure via the Deze Energy Proposal as well as additional industrial development in its range. The Bluenose herd, last surveyed in 2006 showed a 45% reduction since 2000. Given the rate of decline associated with these herds, additional harvesting pressure may simply exacerbate the decline. While the YKDFN have never extinguished their harvesting rights throughout their territory in the same manner that the settled claims have, there is no desire to hasten the decline of the neighbouring Caribou herds.

Recommendation #5 – Eliminate all harvest of Bathurst male caribou

If ENR can successfully make the case for further conservation measures than outlined in recommendations 1, 2, and 3, as well as enacting management actions with mining interests across the caribou range including access control on the Tibbett to Contwoyto winter road, the YKDFN would consider adopting this principle as a possible internal restriction. However, until further consultation with the Crown is undertaken, including the presentation of additional research (modeling that shows the impacts of different management actions), the YKDFN is not in favour of this.

Recommendation #6 – Public and Hunter Education

The YKDFN supports this recommendation, and have already begun the process internally. As part of its caribou strategy this year, the YKDFN applied funds from the cancelled community harvest and partnered with other agencies to host a Caribou education camp. This camp focused on traditional harvesting methods, caribou education, and passing on traditional knowledge. It is important to remember that if there are years of reduced harvesting or different harvest patterns, then the knowledge built up over time immemorial is at risk. For example, it would be unreasonable to put young harvesters at Mackay Lake in 10 years and expect them to harvest in the same manner as the experienced harvesters of today if there are no mechanisms to ensure that the knowledge is passed on in the absence of harvesting opportunities to learn first hand. GNWT modelling in their draft technical report *Bathurst Caribou Herd Decline* are already looking at 5 years of harvesting restrictions, and they may well be considering a longer time horizon.

The YKDFN would also support the development of Hunter Education courses for newer harvesters. Courses such as this are available in the south and focus on things such as safety, best practices, and reducing stuck/loss or wounding of animals. If these courses combined traditional knowledge and methods as well as a field component, they could be a powerful tool to improving harvesting techniques.

Any programs implemented should be delivered by the YKDFN with support from ENR, which would be discussed during consultations with the Crown.

Recommendation #7 – Winter Road Monitoring/Compliance

ENR supports increased monitoring and enforcement activities, including an expanded winter road check station. This location needs to be made a mandatory stop and the data collection process must be updated. The value of the data returned from the existing operation has been declining, and further operations without redesign amount to declining returns on the investment. However, this is just a band aid solution. It is treating a symptom rather than the cause – as the YKDFN have argued many times in many venues, access to the road should be controlled, as it represents the single easiest step to limit harvesting opportunities. Any potential access control measures must take into account the ability of YKDFN members to utilize their territory.

The YKDFN also recommends joint patrols so that the membership can be part of the enforcement solution. This had also been identified as a suggestion at the 2007 Caribou Summit.

However, the YKDFN would not support a no-hunting corridor without consultation.

Recommendation #8 – Protection of the Calving Grounds

The Bathurst Caribou herd is the only herd whose Calving grounds are not protected and real, meaningful protection measures are urgently required. The recommendation as proposed “to ensure the current level of protection is maintained” implies there is protection. This is a misrepresentation of the facts. The protections that GNWT refer to are woefully inadequate, effectively amounting to no real protection. As the YKDFN sees it, the current level of protection is essentially nil.

The Porcupine Caribou Herd calving grounds are protected by the Arctic National Wildlife Reserve and Ivvavik National Park; the Cape Bathurst Herd is protected by special management zones created by the Inuvialuit; and the Bluenose Herd calving grounds are protected by Tuktut Nogait National Park. The Bathurst Calving grounds have no such protection, and until this occurs they will remain at significant risk.

There is a critical need for permanent protection of the calving grounds, as there are several all season road proposals being considered that cross the calving and post calving areas. The proposed Bathurst Inlet Port and Road and the High Lake Road are both in Environmental Review process. These mines would serve several mineral plays, which would result in a great deal of development and fragmentation in critical habitat areas. The GNWT has not been very active during these proceedings, raising no concerns after the initial scoping. While the YKDFN understands that GNWT wants to respect Nunavut’s administration over its territory, the critical wildlife management needs should trump political correctness and the GNWT and Canada should be strongly pushing for protection of the calving grounds. There is precedent for this, as GNWT governments under Premiers Kakfwi and Handley advocated for the continued protection of the Arctic National Wildlife Refuge in Alaska, which contain the calving grounds of the Porcupine Caribou herd, who are critical to the Gwich’in people. Canada also supported the continued protection, with Prime Minister Martin supporting the protection measures, “Canada has long argued that drilling in the Arctic Refuge would have a devastating impact on the Porcupine caribou herd, which migrates annually to the refuge from Canada to calve, and on which the Gwich’in First Nations communities depend for their sustenance, culture and way of life”. You only need to change the names and it’s equally applicable to the Bathurst Caribou herd, yet Canada has been silent on protections for this herd.

The draft West Kitikmeot Land Use Plan that was mentioned in the Bathurst Caribou Management Plan was never approved and is no longer under development. A new Nunavut Land Use Plan is currently under development, but it is not clear what (if any) protection for the Bathurst Caribou calving grounds is envisioned. Further, based on what we have seen, by the time any such plan is prepared and adopted by the Crown there could well be no more caribou to speak of and several new mines and roads developed. However, there is an opportunity for

GNWT and partners to push for protections during the plan's development stage. In the past, the Government of Nunavut has been supportive of development in and around the calving areas, so securing sufficient protection is an immediate need.

Recommendation #9 – Harvest Study

The YKDFN is open to discussing this recommendation with ENR. Any harvest study done with YKDFN members should be conducted by the YKDFN with ENR support. The data would have to respect harvester privacy and would remain the Intellectual Property of the Yellowknives Dene First Nation. YKDFN would be open to further discussion on this matter.

Research Recommendations

- 1) YKDFN supports all of these recommendations *with the exception* of deploying 30 more collars on the herd. Further discussion with leadership and Elders is required before this step should be taken. Part and parcel to this discussion should be consideration as to why more collars are required and what alternatives or different methods are available. For instance, one alternative that should be considered is a pilot program to collar caribou at water crossings. This could be conducted in conjunction with youth, active land users, and elder programs, creating an on-the-land classroom.
- 2) YKDFN also suggests that the WRRB recommend that ENR undertake studies that look at the impacts that collars have on feeding and movement rates, as well as general impacts to body condition and reproductive success.
- 3) YKDFN recommends that the WRRB direct ENR to complete the research examining wolf and grizzly bear predation on the caribou herd, as mentioned in previous management plans and more importantly, in GNWT's 2006 submission to the WRRB.

4.3 Further YKDFN Recommendations:

- 1) As previously noted, actions taken to safeguard the Bathurst caribou herd cannot and should not be simply emergency knee jerk reactions. Yes, proper and effective management is long overdue; but there are also longer-term actions that are needed so that we can avoid being here again discussing this very topic in a few years time. Put simply, the current proposal before the WRRB does not address the impacts of human induced development on the herd. Elders, members, and the leadership of the YKDFN have directly communicated that they strongly believe that mines and exploration have affected the caribou, and to not address this is ignoring the “elephant in the room”. The YKDFN recommends that the WRRB:
 - a) Develop thresholds for ‘large scale developments’ in the caribou range – ignoring borders and implementing on a herd basis. For example – if the herd recovers, no more than five active mines in the Caribou range.
 - b) Work with ENR to develop ‘Best practices’ for exploration and smaller development endeavours, minimizing the impacts of ‘smaller programs’ on caribou. INAC would be responsible for enforcement through land use permits and inspection. This was identified in the 2004 Bathurst Caribou Management Plan. Topics could include timing windows relative to location. For example, if you are in area x, no drilling between date 1 and date 2 or until the migration is over.
 - c) Develop flight restrictions to limit the number of over flights of caribou. Prioritize their presence over exploration and other activities. Review the loose guidelines that currently exist and assess their effectiveness. This has been raised as a significant concern at the Diamond Mine Monitoring Workshop, and the outcomes should be expanded to activities beyond just the monitoring flights.
 - d) Find a way to control access without limiting people’s access to their traditional lands - The single easiest method to limit development’s impact on the Caribou herd would be to gate and control access to the winter road. Limiting non-Dene harvesting opportunities would go a long way towards helping the herd recover and represents an easy first step for the Crown.
 - e) Instruct ENR and INAC to develop a study that looks at caribou use of exploration sites, both active and decommissioned. We have all heard the developers note how Caribou ‘came right through their camp’ but lets examine this. Understanding how the sites are used will lead to a much better understanding of the landscape level

- effects. One of many questions would be determining how long is a site avoided (if at all) after operations cease?
- f) Consider Cumulative Effects – The ENR effort at the first caribou cumulative effects model has been in the works for years. This should be expanded beyond the limited area and applied to the rest of the range where development is much more of a factor. This work should begin developing scenarios to attempt to test the levels of development permissible before effects are going to be felt.
 - g) Direct ENR to conduct spatial modelling that begins considering whole caribou range in a more holistic manner – Examining the habitat affected past and present, habitat fragmentation, linear barriers such as the road and proposed transmission line(s) and identification of key/core areas.
 - h) Direct ENR to begin the collaborative process of protecting critical habitats through the NWT Protected Areas Strategy.
 - i) Work with partners (especially INAC and Nunavut) to implement incomplete recommendations from previous caribou management plans, workshops and sessions such as the 2004 Bathurst Caribou Management Plan
- 2) ENR should be directed to immediately begin evaluating this herd as a species at risk under the *NWT Species at Risk* legislation, as well as working with COSEWIC to continue the assessment process under the *Federal Species At Risk Act*.
- 3) WRRB should recommend that ENR resubmit this plan with measurable goals and targets attached that would indicate herd recovery – ideally these would involve those items which are measured annually such as (but not limited to) fall calf survival and/or spring condition). Along with this, ENR should be required to submit a yearly status report (by a specific date), examining the above mentioned metrics and evaluate the population trend within the herd. Without these, there are no thresholds or ability for adaptive management, and in the absence of metrics that can be considered, there would be a risk of a significant shock as seen in the 2009 population census.
- 4) The current proposal does not do a very good job explaining why such extra-ordinary measures are sought after. YKDFN recommends that ENR be directed to start producing material and initiate consultation efforts that show why and what effect the proposed infringements will have towards the caribou herd's recovery. The inclusion of different scenario modelling, examining such things as aboriginal harvest restrictions, male only harvest, 4% total annual harvest via tags/lottery would be valuable.

- 5) The YKDFN also asks the WRRB to consider the need for an independent co-Management body to allow for more widespread oversight. A good example of this in practice is the Porcupine Caribou Management Board, with a multi-party transboundary membership, as a potential model.
- 6) The YKDFN also urgently and emphatically request the WRRB to use its jurisdiction to require INAC Participation – While some of these recommendations already touch on issues that fall within INAC’s mandate, we strongly encourage INAC’s real and meaningful participation. The issues facing caribou are not simply harvesting, nor will the herd recover using harvesting controls alone. The issues facing the herd require a much more holistic and multi-thematic approach that will never be resolved as long as the senior member of the Crown is not at the table.
- 7) YKDFN suggest that support for community health and social programs be increased. As the exercise of traditional activities declines, replacement programs with positive community values should be implemented to minimize the social impacts.

4.4 Conclusion:

YKDFN is generally supportive of the proposal, but will not support any recommendations that result in the infringement of Treaty Rights. The First Nation is open to discussing any matters with ENR and the Crown to help encourage the recovery of the caribou herd, including an internally administered tag system, encouraging male harvesting after the first caribou, or utilizing neighbouring herds to a greater degree.

But action on these matters must be the result of meaningful consultation between the Crown and the First Nation, and will only occur when it can be shown that these measures are part of a larger plan to help the herd. It does no good to only treat symptoms of a problem without attempting to remedy the central cause.

In 2010 we are still discussing the management options that have been advocated in the past, but now the spectre of no Dene harvesting is on the table. Over the years there have been many meetings, workshops, summits, letters, recommendations, suggestions and conversations with calls for action. Over that time, the only management action that anyone seems to know is adjusting harvest levels. The continued inaction on all other fronts means that in order to help the herd recover, the rights of the First Nations will be compromised. These meetings and workshops should have been more than just an opportunity for First Nations to ‘blow off steam’, and the Crown, via GNWT and INAC must *finally* start listening and engaging in good faith. The caribou herds and the people that rely on them are too important to be sacrificed for continued uncontrolled development, no accountability and mismanagement.

Section 5.0

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5.2 Appendix A: Development Overview in and around the Bathurst Caribou Calving Grounds

Overview of Development Projects in the West Kitikmeot Region of Nunavut

February 2010.

Prepared by:

TUNALEY, LINES & ASSOCIATES

1011-8th Street Southeast

Calgary, Alberta

T2G 2Z3

Phone/Fax: 403-697-7897

Email: slines@envireview.ca

For:

Yellowknives Dene First Nation

P.O. Box 2514

Yellowknife, NT

X1A 2P8

Foreword

This report was prepared by Tunaley, Lines & Associates (TLA) for the Yellowknives Dene First Nation (YKDFN) to provide information for its intervention in the Wek'èezhii Renewable Resources Board Caribou Management Plan review. Any findings that are based on this report are those of the YKDFN. The information provided in the report was obtained from public registries, and as such TLA is not responsible for any inaccuracies that may be encountered.

Executive Summary

The Bathurst Caribou Herd is a highly valued ecosystem component for the Yellowknives Dene First Nation (YKDFN). Given the importance of caribou habitat in West Kitikmeot region of Nunavut, the YKDFN contracted Tunaley, Lines & Associates (TLA) to provide an understanding of the extent of existing and reasonably foreseeable industrial development on the range of the Bathurst Caribou Herd in Nunavut. This undertaking will support the YKDFN's informed participation in the review of the management proposal for the Bathurst Caribou Herd. The management proposal is currently before the WeK'èezhii Renewable Resources Board - a wildlife co-management Board in the Northwest Territories.

Information from public registries indicates that there are 16 mineral exploration projects, five advanced exploration projects, three existing mines in care and maintenance, two proposed new mines, and one proposed port and road development in the area of concern.

Significant potential developments are held by MMG Resources including High Lake (mine proposal), Ulu (mine in care and maintenance), Izok Lake (advanced exploration), Hood (advanced exploration), Gondor (advanced exploration), and Lupin (mine in care and maintenance). Sabina Gold and Silver Corporation owns three other projects including Hackett River (mine proposal), Goose Lake and George Lake (advanced exploration). The Bathurst Inlet Port and Road Project is another potential significant development in the area.

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1.0 Introduction

The Bathurst Caribou Herd, named after the location of their calving grounds near Bathurst Inlet in the West Kitikmeot region of Nunavut, is a highly valued ecosystem component for the Yellowknives Dene First Nation (YKDFN). Over the last 14 years, the Bathurst Caribou Herd is thought to have declined from 472,000 to 31,900.

Given the critical importance of caribou calving habitat in Nunavut, the YKDFN contracted Tunaley, Lines & Associates (TLA) to provide an understanding of the extent of existing and reasonably foreseeable industrial development on the range of the Bathurst Caribou Herd in Nunavut. This undertaking will support the YKDFN's informed participation in the review of the Tlicho Government and Government of Northwest Territories Joint Proposal for Management of the Bathurst Caribou Herd. The Management Proposal is currently before the Wek'èezhii Renewable Resources Board - a wildlife co-management Board in the Northwest Territories.

2.0 Methods

There are different degrees of industrial development on the landscape, from early exploration to full-scale mining. For this reason, the development overview is structured by grouping mineral development projects into three categories: Mineral Exploration; Advance Mineral Exploration; and Mine Development. For the purpose of this report, the Mine Development category also includes existing mines and mines that are in care and maintenance. The categories are defined based on the Nunavut Impact Review Board's definitions and are as follows:

Mineral Exploration: A project proposal with the objective of exploring an area to find geological anomalies. It involves site reconnaissance (ground and/or air) to locate broad and fiscal mineral deposits. [TLA - this may include limited drilling as well].

Advanced Mineral Exploration: A project proposal with the objective of identifying size, grade, and physical characteristics of a mineral occurrence and to assess the economic and technical feasibility of developing the mineral deposit into a producing mine. [TLA - this may include drilling and/or bulk sampling].

Mine Development: A project proposal with the objective of extracting broken rock with mineralization of sufficient grade and tonnage to sustain commercial mining operations (ore). Mining a body of ore can be achieved by either open pit and/or underground development. Mine development may involve milling. Milling involves treatment of the extracted ore through a combination of mechanical and chemical processes to selectively recover the valuable mineral.

In addition to the above categories, other industrial development projects, including roads, have been researched and are listed in a separate category under section 6.0 entitled “Other Developments”.

In order to identify projects that may occur on the Bathurst Caribou range in Nunavut, a list of projects occurring in the West Kitikmeot region of Nunavut, the general area of the Bathurst Caribou range, was obtained from Indian and Northern Affairs Canada exploration overview publications from 2006 and 2009. This list was cross-referenced with a second list obtained from the Nunavut Impact Review Board, who undertakes environmental assessment screenings for all development projects in the Nunavut Settlement Area.

Projects located west of Kugluktuk, north of the High Lake Mine area and mainland, and east of Bathurst Inlet have not been included in this report as they are thought to fall outside of the Bathurst Caribou range based on the current range.

Finally, the Nunavut Impact Review Board and Nunavut Water Board public registry files were used to obtain project-specific information including:

- Proponent and project name;
- Type of mineral deposit;
- Project description; and
- Project coordinates.

Where information was not available from the public registries, company websites were used to obtain information, and in some cases phone calls to industry were made.

Based on the coordinates provided for each project, the YKDFN will be able to produce a map of industrial development on the Bathurst Caribou range in Nunavut. A summary list of project coordinates is provided in Appendix I.

3.0 Mineral Exploration Projects

3.1 Heeqou – Diamondex Resources Ltd.

Coordinates: 65°59'03" N and 112°44'40" W

The Heeqou project is a diamond exploration project with activities including the collection of glacial till material, ground-based geophysical surveys and geological mapping. A portable diamond core drilling rig is brought to site as needed; however, no drill programs have been reported on the property. On-site work is supported by a helicopter.

The project site contains a temporary field exploration camp, which includes one office tent, three sleeping tents, one first aid tent, one kitchen tent, one dry tent, one generator/storage shack and one field sample core storage shack. There are up to 14 people on-site.

Diamondex applied to have the Heeqou camp closed and the associated licenses cancelled in 2009. The INAC Inspector was unable to visit the site in 2009, but plans to conduct a site inspection in 2010 prior to closure. As a result, the requests to cancel project licenses have been denied.

3.2 Hepburn – Diamonds North Resources.

Coordinates: 66°29'44" N and 115°30'01" W

Since 2005, Diamonds North Resources has been exploring for diamonds on the Hepburn property, which straddles the border between Nunavut and the Northwest Territories. Activities include airborne geophysics, ground geophysics, prospecting and drilling.

The project camp is located in the Northwest Territories. The camp consists of six sleep tents, one kitchen tent, one core shack, one dry tent, one first aid tent, one office tent, one outhouse, one generator shack, one heli-pad and one fuel cache. 21 drill holes were completed over the Hepburn Property in 2007; six of which are located in Nunavut.. Diamonds North reports on its website that the Hepburn property has Ekati-Diavik size deposit potential based on the large number of sizable kimberlite targets and compelling mineral chemistry.

3.3 Hood River – Golden Bull Resources

Coordinates: 66°53'46" N and 110°54' 45"W

Through an agreement with Tahera Diamond Corporation, Golden Bull Resources is authorized to undertake an exploration program for all non-diamond mineral resources on Tahera property. Following an initial exploration program in 2008 and 2009, targets identified will be explored in more detail through geophysical surveys and a drill program. In 2010, a further four years of exploration is being proposed.

Exploration activities are serviced by a camp-based charter helicopter. The temporary camp will support up to 20 personnel and consists of eight sleeping tents, one first aid tent, one core shack, one storage tent, one dry tent, one kitchen tent, and one office tent.

3.4 Needle – Kaminak Gold Corp.

Coordinates: 65°04'30" N and 107°08'12" W

The exploration program is a continuation of TerraX Mineral Inc.'s gold exploration project ongoing since 2007 over a 5000 acres area. The 2008 program was carried out from mid-August 2008 until early September 2008. Activities consist of geological mapping and sampling, a ground geophysical program over known airborne anomalies to help target drill holes, and an exploration drill program. The project appears active based on the Kaminak website.

The work is undertaken by shuttling work crews from an established camp (Silvertip camp owned and operated by Strongbow Exploration - see 3.11), located approximately 50 kilometers southwest of the work area. Therefore, no camp structures are permitted for this project.

3.5 Canoe Lake – North Arrow Minerals

Coordinates: 67°07'58" N and 111°11'15" W

The Canoe Lake property is prospective for base metals and gold. Field programs include two diamond drill programs and an optional surface geophysical exploration program. The drill programs operate from a temporary camp on Canoe Lake and require up to 17 people in camp.

The Canoe Lake camp was established in 2005 on the north shore of Canoe Lake by Allyn Resources Inc. The camp consists of five tents and a weatherhaven kitchen tent. Helicopter support is used for the drill program and to a lesser extent for a surface exploration.

3.6 Hammer– North Arrow Minerals/Stornoway Diamond Corp.

Coordinates: 66°55'45" N and 112°45'03" W

This diamond exploration project consists of 2 claims over an area of 2533 acres. In 2009, Stornoway announced the discovery of the Hammer kimberlite on the Hammer Project, a joint venture with North Arrow Minerals who has a 25% interest.

Stornoway and North Arrow are currently reviewing potential future work required to properly assess the site, which may include additional prospecting, kimberlite sampling, ground geophysical surveys, and/or drilling.

3.7 Bathurst – Rockgate Capital Corp.

Coordinates: 66°34'58" N and 108°00'05" W (Upit)

66°10'36" N and 107°01'51" W (Pomy)

This Uranium exploration project includes a team of seven people to undertake a drill program. Project staff are accommodated remotely in the community of Bathurst Inlet. A temporary tent-frame structure, consisting of a 12'x16' wood floor, wood frame and canvas cover, is used as a core logging building and serves as an emergency shelter at each Upit and Pomy sites when drilling occurs. A helicopter is used to transport people to the project sites from Bathurst Inlet. It is unknown whether this project is still active.

3.8 Tuner Lake Option – Rockgate Capital Corp.

Coordinates: 67°11'51" N and 108°57'17" W

The Turner Lake Option is a gold property over an area of 29 km². It contains three known mineral occurrences including Main Gold, Turner East, and Nickel Knob. The project is based out of the community of Bathurst Inlet. Similar to the Bathurst project above (3.7), a helicopter is used to transport people to the project sites from Bathurst Inlet. It is unknown whether this project is still active.

3.9 Back River/Wishbone – Sabina Gold & Silver Corp.

Coordinates: 65°34'30" N and 106°57' 00" W (Boulder Pond approx.)
65°45'00" N and 106°30'00" W (Boot Lake approx.)
65°30'00" N and 106°45'00" W (Del Lake approx.)
65°26'35" N and 107°49'32" W (Wishbone)

Sabina acquired the Back River project from Dundee Precious Metals in 2009. The Back River Project consists of prospective gold properties including Wishbone, Goose Lake, George Lake, Boot Lake, Boulder Pond, and Del Lake. The Back River Project consists of 44 federal mineral leases and 37 federal mining claims covering approximately 183,239 acres. The Back River Project is situated approximately 50km southeast of the Hackett River Project. The George and Goose Lake properties are detailed below under the advanced exploration section and are the main components of the Back River Project. The Goose Lake camp is the main base for the Back River Project.

3.10 Yava – Savant Exploration Ltd.

Coordinates: 65°38'00" N and 107°58'53" W

Yava is a prospective gold, silver and base metals property located between the Hackett River and Back River Projects. After completing a helicopter supported field check in 2007, seven targets were identified for further investigated by drilling in the summer of 2008. The project's temporary camp consists of nine tents and supports 12 people. The site is accessed by float plane from Yellowknife.

3.11 Silvertip – Strongbow Exploration Inc.

Coordinates: 64°52'51" N and 107°59'23" W

Silvertip is an 18,000 acre prospective gold, silver and base metals property. Activities include include prospecting, mapping, soil sampling, ground geophysics and the drilling of land based targets. Field crews work from a temporary camp designed to accommodate 10 to 12 people. The site is accessed by float plane.

3.12 Tree River – Strongbow Exploration Inc.

Coordinates: 67°00'38" N and 112°09'30" W

The Tree River project consists of 13,590 hectares of land with prospects for gold and base metals. The site is accessed by float plane and helicopter. Activities include prospecting, mapping, ground geophysics, and drilling.

The project is proposed to take place in two phases. Phase one consists of a small camp for six people and potentially four additional fly camps. Phase two would see the establishment of a temporary exploration camp, however the exact location of this camp was unknown at the time of application. However, the camp would consist of up to nine tents.

3.13 Blue Caribou – Skybridge Development Corp.

Coordinates: 65°12'23" N and 106°33'09" W

Blue Caribou is a prospective copper and molybdenum property. Blue Caribou is a 12-hole drilling program based out the Goose Lake Camp 40 km northeast, which is operated by Sabina Gold and Silver Corp. Workers are transported to site by helicopter. Four additional property targets were selected for geophysical surveys as part of this project.

3.14 Rockinghorse/Tak – Tahera Diamond Corp.

Coordinates: 66°59'15" N and 113°08'49" W

Six kimberlites were discovered on the property although only four remain on the current extent of the Rockinghorse property located at Takijuaq Lake. A drilling program was conducted on the Anuri kimberlite in the spring of 2005, from which a 944 kilogram sample has been analyzed. There's the potential of diamond recovery with a range that could overlap economic grades at Jericho. Potential additional exploration work on the property may include soil sampling; airborne or ground geophysics; target drilling; delineation drilling and evaluation drilling.

The Tak camp accommodates up to 18 people. It includes wooden structures including a kitchen/dining room, dry room, office, core shack, latrine (weatherhaven tent) and 8 sleep tents (weatherhavens and wooden).

The Tahera Diamond Corporation suspended operations at its Jericho Diamond Mine in June 2008, at the 100 metre mining level, due to financial and operating constraints and the facility was placed on care and maintenance. In January 2010 Tahera Diamond Corporation and its wholly owned subsidiary, Benachee Resources Inc. announced the sale of their Jericho Diamond Mine and all related milling, mining and exploration assets.

3.15 Polar/Muskox – Tahera Diamond Corp.

Coordinates: 65°58'38" N and 111°44'59" W

The Polar project and Muskox kimberlite is a diamond exploration project. During 2006 two programs were completed on the Polar property. In the late winter/spring, a drilling program was carried out on the Muskox kimberlite. One diamond drill and one large diameter reverse circulation drill were utilized.

During the late summer/fall, a soil sampling and ground geophysics program was also completed. During this program, the camp was also utilized by Bay Resources and Nordic Diamonds. The total diamond drilling days at the MuskoX Pipe in 2006 was about 90 days. During 2007, no exploration programs were completed on the Polar property.

The Tahera Diamond Corporation suspended operations at its Jericho Diamond Mine in June 2008, at the 100 metre mining level, due to financial and operating constraints and the facility was placed on care and maintenance. In January 2010 Tahera Diamond Corporation and its wholly owned subsidiary, Benachee Resources Inc. announced the sale of their Jericho Diamond Mine and all related milling, mining and exploration assets.

3.16 BRSC/WM – Western Standard Metals Ltd.

Coordinates: 66°09'00" N and 111°45'00" W

This diamond exploration property is located just north of the Jericho Diamond Mine. The site has been inactive since 2008. No camp was built and activities were based out of the Tahera Diamond Corporation's Jericho and MuskoX camps.

4.0 Advanced Mineral Exploration Projects

4.1 Izok Lake/ Hood/ Gondor – MMG Resources

Coordinates: 66°03'50" N and 112°43'58" W (Hood)
65°42'13" N and 112°51'06" W (Izok)
65°32'19" N and 111°57'22" W (Gondor)
65°40'00" N and 112°50'00" W (Ham Camp approx.)

MMG's properties contain deposits of gold, silver copper and zinc.

The properties have changed owners over the last few years. In 2007, Zinifex Ltd. acquired Wolfden Resources, and in 2008 Oxiana Resources merged with Zinifex to form OZ Minerals.

Shortly thereafter it was announced that Izok would be the top development priority. However OZ Minerals subsequently announced that they were deferring several capital projects and making substantial cuts to operating cost budgets.

In 2009, China Minmetals Corporation acquired the assets of OZ Minerals. A new company called Minerals and Metals Group Ltd. (MMG) was set up to manage these assets.

Project activities are based out of Ham Camp, which accommodates up to up 40 people. Camp infrastructure includes 13 trailer units, eight tents, one incinerator, one generator building, one steel garage, two wood frame steel clad core storage warehouses, 1one wood frame aluminum clad skidded core shack, seven 12,000 gal skid mounted fuel tanks, one bulldozer, one grader, one fuel trailer and one truck.

Project activities include drilling, prospecting and environmental baseline studies to obtain the necessary background data and to improve the knowledge of the physical environment of the property. This is in preparation for a future submission of an Environmental Impact Statement in support of permit applications for mine development and operation.

Both Gondor and Hood are considered to be potential supplementary ore sources for Izok Lake. However, it is presently unknown how these projects fit into the overall development plan of MMG's other deposits, which include High Lake (see section 5.1), Ulu (see section 5.2) and Lupin (see section 5.3).

4.2 George & Goose Lake – Sabina Gold & Silver Corp.

Coordinates: 65°32'35" N, 106°28'09" W (Goose Lake)
65°52'39" N, 107°22'14" W (George Lake)

The George Lake camp is maintained as a staging area for supply flights, exploration activities and drilling operations. Sabina may drill exploration targets located in various locations on the George Lake claim group depending on exploration priorities. Several of the areas under consideration are within a radius of up to 10 km from the existing camp at George Lake.

Infrastructure at George Lake:

Qty	Item
3	Sleeping quarters and office
1	Kitchen
1	Dry building
1	Fuel, Jet B and Gasoline storage areas

- 2 70,000 litre double walled ULC approved envirotanks
- 1 14.2 kW Generator
- 1 1100' esker airstrip
- 1 Solid Waste lay down area
- 1 Sea container
- 1 Quonset – Machine Storage garage

Sabina uses Goose Lake for its main camp, which accommodates up to 50 people. Goose Lake drill targets lie within an approximate 70 km radius north and west of the camp. The camp is approximately 300 metres in length from east to west and 100 metres wide from north to south, covering an area of 30,000 m². A helicopter is used to fly personnel to and from the area, as well as for drill support. Drills operate on a 24-hour schedule during the exploration season.

Infrastructures at Goose Lake includes:

- | Qty | Item |
|-----|---|
| 31 | Sleeping quarters |
| 1 | Core processing facility (coreshacks/saw room/shipping area) |
| 1 | Kitchen & 1 dry building |
| 1 | Office complex – Geology/Logistics |
| 2 | Primary storage areas for drummed diesel, jet fuel (Jet A and Jet B) and gasoline |
| 6 | 70,000 litre double walled ULC approved envirotanks in bermed area |
| 2 | Generator shacks – main and auxiliary power |
| 1 | Emergency airstrip (natural unprepared esker) |
| 4 | Helipads |
| 1 | Jetty/floating dock |
| 1 | Solid waste lay down area |
| 13 | Sea containers |

- 1 Waste Incinerator
- 4 Shop buildings (contractor & Sabina)
- 1 Smoke shack
- 1 Medical/Muster Station
- 2 Quonset – Machine Storage garage (blue)

Advanced exploration programs have been carried out in previous years at Goose Lake and George Lake with similar activities anticipated in 2010 and beyond as Sabina undertakes to advance the project. If developed, Goose Lake and George Lake would use the infrastructure proposed under the Hackett River Mine Project (see section 5.4). The project description document for the Hackett River project indicates that if feasible George Lake could operate from 2012-2024 and Goose Lake from 2013-2020.

5.0 Mine Development Projects

5.1 High Lake – MMG Resources

Coordinates: 67°22'52" N, 110°50'37" W

MMG is the current owner of the High Lake Project, which consists of three ore bodies that contain deposits of copper, zinc, gold, and silver. The High Lake Mine Project application was submitted for environmental review in 2008. The project has been put on hold until MMG revises its development plan for its other properties (Izok, Ulu, Hood, Gondor, Lupin). The MMG website indicates that a mill may be placed at Izok Lake under a new proposal.

The original High Lake Mine development proposal indicated that ore close to the surface will be mined by open pit methods and the deeper ore will be mined by underground methods. Zinc and copper ore will be processed on-site and the resulting concentrate will be transported north via the all-season road to the Grays Bay dock at the coast. Over the anticipated 14-year operational life of the proposed mine, production of ore is expected to be about 4,000 tonnes per day.

Currently at High Lake, there is on-going drilling to further define the deposit. Approved infrastructure includes a 70-person weatherhaven camp, various equipment laydown areas and access roads, a gravel airstrip and 12-km access road, a winter trail is established between High Lake and Ulu, and two quarries to support development construction needs.

5.2 Ulu – MMG Resources

Coordinates: 66°54'58" N, 110°58'00" W

MMG holds a Type B mining water licence for the Ulu property. The facilities at the Ulu Project consist of consist of a 60-person camp with sleeping, dining and recreation quarters, a vehicle repair shop, power house, warehouse, cold storage, office and change rooms. Also at the site are a fuel storage tank farm, fresh water and sewage systems, garbage incinerator, an ore storage area, fuel staging area and explosives magazines.

The Ulu Project has been estimated to contain approximately 1.6 million tonnes of mineable reserves or the equivalent of 7 years production at 590 tonnes per day. All mine production is scheduled to be transported during the winter months to supplement production at other potential future mine sites held by MMG. No processing facility is contemplated for the Ulu site.

In May 2006, Wolfden, the previous property owner, re-entered the Ulu mine with the intent of mining out ice that had accumulated underground to further its exploration program. This work continued until early August 2006 when the Mines Inspector determined the concrete collar at the top of the vent raise was structurally unsafe and therefore not able to be used as a secondary means of egress. The Mines Inspector would not allow Wolfden to conduct any further work underground until a secondary means of egress was re-established. Since the cost to repair the vent raise collar and establish a ladder/manway system in the vent raise was not budgeted for, Wolfden decided to defer further work at Ulu until High Lake or Lupin neared production. Therefore, in the summer of 2006 the Ulu project was put into care and maintenance.

MMG continues to put the Ulu Project on hold and all exploration activity is currently suspended. However, all facilities have remained at site with equipment in storage as it is expected that future exploration activities will take place due to the current world gold prices.

5.3 Lupin – MMG Resources

Coordinates: 65°44'01" N, 111°14'12" W

Production at the Lupin gold mine ceased in 2005, and the mine site is under care and maintenance. Considering current world gold prices, MMG is in the process of determining the costs associated with

re-commissioning the Lupin mine and milling operations. MMG anticipates that it may be feasible to extract the current known resources at the Lupin Mine site.

The Lupin Mine was an underground operation with ore hoisted to the surface for processing in the mill. The waste product, or tailings, from the processing mill are transported for storage at the Lupin Tailings Containment Area which is located approximately 6 km to the southwest of the mill. The solids portion of the waste stream is separated through settling, and the solution is held for treatment and eventual discharge to the environment.

5.4 Hackett River – Sabina Silver

Coordinates: 65°53'41" N, 108°20'16" W

The proposed mining project includes the development of two open pits (Main Zone deposit and East Cleaver deposit) and one underground mine (Boot Lake deposit). Ore would be mined and trucked to a conventional grinding and flotation plant on site to produce zinc, copper, and lead concentrates. Waste rock material from the mine would be placed on the land in certain areas and tailings would be deposited under water in an impoundment. The mine and mineral processing plant would operate for about 14 years.

The concentrate produced would be trucked to a port located at Bathurst Inlet using the proposed Bathurst Inlet Port and Road Project (BIPAR see section 6.1). A 23-km all-weather access road would be constructed to connect the mine with BIPAR, and approximately 80 km of the northern portion of BIPAR would be used to haul concentrate to the port and supplies back to the mine site. From the port, the concentrate would be shipped to overseas markets via the eastern shipping route.

The Project includes a camp, mineral processing plant, storage areas, maintenance and mechanical repair warehouses, fuel tanks, tailings impoundment, waste rock piles, airstrip, and local site roads. Sabina would also construct a concentrate storage and loading facility at the port site.

5.5 Jericho – Tahera Diamond Corp.

Coordinates: 66°00'56" N, 111°29'44" W

Tahera Diamond Corporation developed the Jericho Diamond Mine at the north end of Contwoyto Lake. The open-pit mine was projected to have an eight-year life to produce approximately three million

carats of diamonds. Infrastructure on-site includes a causeway located in a freshwater lake, tailings containment area, waste rock storage, fuel storage, airstrip, landfill, landfarm, and mill.

The project has a footprint of approximately 220 hectares. The site is accessed by air and by utilizing the winter road that runs north from Yellowknife. The Jericho site utilizes this winter road access by continuation of the winter road from the Lupin mine site on Contwoyto Lake (approximately 30km).

The Jericho Project completed the Environmental Review Process in February 2004 and water licensing process in December 2004.

Tahera intended to continue its exploration efforts in the Jericho region in an attempt to find other economic kimberlites, which could potentially extend the life of the project. However, the Tahera Diamond Corporation suspended operations at its Jericho Diamond Mine in June 2008, at the 100 metre mining level, due to financial and operating constraints and the facility was placed on care and maintenance. In January 2010 Tahera Diamond Corporation and its wholly owned subsidiary, Benachee Resources Inc. announced the sale of their Jericho Diamond Mine and all related milling, mining and exploration assets. Reclamation security for the project is held by Indian and Northern Affairs Canada in the amount of 2.2 million dollars and is based on estimates provided during the water licensing process in 2004.

6.0 Other Industrial Developments

6.1 Bathurst Inlet Port and Road – BIPAR Joint Venture Ltd.

Coordinates: N/A

The Bathurst Inlet Port and Road (BIPAR) is a proposed port south of Bathurst Inlet with an all-weather road extending to the east side of Contwoyto Lake. It is believed the construction of a road from Bathurst to Contwoyto will likely provide the catalyst for mineral development in the area.

The port is located on Crown Land and requires 159 hectares and 270,000 cubic metres of quarried materials for construction. The port site will include:

- a wharf to serve large ice class vessels delivering fuel and bulk cargo to the port;
- a dock to handle barges serving the Kitikmeot communities of Kugluktuk, Bathurst Inlet, Cambridge Bay, Umingmaktok, Gjoa Haven and Taloyoak;
- a 150 person camp and services;

- a 180 million litre diesel fuel tank farm;
- a truck and trailer maintenance shop; and
- a 1,200 metre airstrip.

The 211-km all-weather road passes over 82 km of Inuit Owned Land and 129 km of Crown Land. Road construction materials will be obtained from 37 quarries adjacent to the roadway.

The Project's annual operating schedule will reflect the seasons of the arctic environment. Marine shipping would occur between mid-July and late October. During that period, six to eight round trips by ice class vessels up to 25,000 tonnes will bring in approximately 180,000 tonnes of fuel and supplies for the communities and operating mines served by the Project. Icebreaker support may be required to extend the normal shipping season. Marine barge operations will also supply fuel and general cargo to the Kitikmeot communities with three round trips by tug and barge from the port during the summer shipping season.

Road operations will also follow the arctic seasons. The road, although designed for all-weather use, would operate from January to April and connect with the existing Lupin winter road from Yellowknife to haul 161,000 tonnes of fuel and supplies to Ekati and Diavik Diamond Mines in the N.W.T. and Lupin and Jericho in Nunavut.

The BIPAR Joint Venture Ltd. encountered difficulty during the environmental assessment review of the project and has been on hold for a few years. Most recently in January 2010, the BIPAR Joint Venture Ltd. indicated that it would pursue a 2010 summer field season in order to collect the additional data required to address the comments and issues raised during the technical review with the hope of re-engaging in the environmental assessment review process in 2011.

7.0 Summary

Information from public registries indicates that there are 16 mineral exploration projects, five advanced exploration projects, three existing mines in care and maintenance, two proposed new mines, and one proposed port and road development in the area of concern. Project coordinates are provided in Appendix I in order to produce a map of projects within the Bathurst Caribou Range in the West Kitikmeot.

Currently, there is no approved land use plan for the West Kitikmeot region of Nunavut. Project proponents are generally required to implement standard mitigation measures in an effort to reduce

effects on caribou. Mitigation measures are imposed through Nunavut Impact Review Board decisions and Indian and Northern Affairs Canada land use permits.

For large projects, such as mine development proposals, proponents are generally required to provide a project-specific Wildlife Mitigation and Monitoring Plan. These plans include details of proposed caribou mitigation measures and the monitoring programs designed to detect effects on caribou that may result from individual developments.

Appendix I Project Coordinates

Project	Coordinates
Exploration	
Heeqou	65° 59' 03" N and 112° 44' 40" W
Hepburn	66° 29' 44" N and 115° 30' 01" W
Hood River	66° 53' 46" W and 110° 54' 45" W
Needle	65° 04' 30" N and 107° 08' 12" W
Canoe Lake	67° 07' 58" N and 111° 11' 15" W
Hammer	66° 55' 45" N and 112° 45' 03" W
Bathurst	66° 34' 58" N and 108° 00' 05" W (Upit) 66° 10' 36" N and 107° 01' 51" W (Pomy)
Turner Lake Option	67° 11' 51" N and 108° 57' 17" W
Back River/Wishbone	65° 26' 35" N and 107° 49' 32" W
Yava	65° 38' 00" N and 107° 58' 53" W
Silvertip	64° 52' 51" N and 107° 59' 23" W
Tree River	67° 00' 38" N and 112° 09' 30" W
Blue Caribou	65° 12' 23" N and 106° 33' 09" W
Rockinghorse/Tak	66° 59' 15" N and 113° 08' 49" W
Polar/Muskox	65° 58' 38" N and 111° 44' 59" W
BRSC/WM	66° 09' 00" N and 111° 45' 00" W
Advanced Exploration	
Izok Lake	65° 42' 13" N and 112° 51' 06" W
Hood	66° 03' 50" N and 112° 43' 58" W
Gondor	65° 32' 19" N and 111° 57' 22" W
George Lake	65° 52' 39" N and 107° 22' 14" W
Goose Lake	65° 32' 35" N and 106° 28' 09" W
Mine Developments	
High Lake	67° 22' 52" N and 110° 50' 37" W
Ulu	66° 54' 58" N and 110° 58' 00" W
Lupin	65° 44' 01" N and 111° 14' 12" W
Hackett River	65° 53' 41" N and 108° 20' 16" W
Jericho	66° 00' 56" N and 111° 29' 44" W

5.3 Appendix B: YKDFN Initial Review of ENR Information Request Responses

1.1 – Inviting three community members to a workshop does not constitute consultation. It represents only a single step. Real consultation on something as significant as facilitating the outside harvest of a herd that you know is in decline, but have very little information on, requires direct consultation with the leadership and appropriate bodies of the affected community. It is not clear what impact that these additional harvesting will have on the herd.

1.2 – A map should be provided.

1.3 – The information provided in the Caribou Technical Report (CTR) Section 7.2 shows only two harvest levels – current assumed level and 50% of assumed level. It does not, as the request asks, show how various harvest levels influence recovery time – say 10%, 25%, different sex harvesting ratios.

1.4 – It does not clarify if the modelling recognizes the eliminations of the sport hunt and resident harvesting in the future bull/cow ratio? Was the modelling that was mentioned done as in 1.3 (ie. at current pace and 50% harvest)? The answer provided does not answer the question.

1.5 – Why was the bull harvest not estimated (at the very least to verify the assumptions in IR 1.4). Does this mean that hunter harvest is responsible for almost 20% of the mortality? Is this assumed to be constant over the last three years – ie. even when the herd was still quite large?

1.6 – If outside groups are accessing the Bluenose East herd, how does GNWT intend to impose the 4% harvest rate? Should management actions not be expected to allow Tli Cho harvesters access to the resource, with concurrent reductions from Sahtu harvesters?

* OR, are all harvesters expected to access the Ahiak herd?

1.7 – There is scarce data, but the herd is in decline. From IR 1.9, “There is by definition no sustainable harvest from a declining population “. Now ENR is proposing to shift the harvest of several thousand animals onto the Ahiak herd. Not only is the precautionary principle is being selectively applied, but there has been no meaningful consultation with Lutsel K’e, nor any management actions put into place to ensure that this isn’t simply exporting the problems occurring in the Wek’eezhii and Chief Drygeese Territories elsewhere.

Seems to be the opposite of a data driven decision with potentially serious consequences for LKDFN without their consent.

1.8 – see thoughts on 1.6.

1.9 – Doesn’t answer the question. In 2006, appropriate harvest was set at 4% according to the ENR management proposal.

1.10 – Doesn’t answer the question. Clearly, they have set a population size for the Bathurst that resulted in this recommendation, thus such a determination should be made for the neighbouring herds that are being accessed for the mitigation measures.

1.13 – Answer does not explain how this can be done. Via what regulations or legislation for example.

1.14 – “It is ENR’s understanding”. Shouldn’t the department tasked with accomplishing this in the 2004 Bathurst Caribou Management Plan and the 2007 Caribou summit have a more solid statement as to the status of protection of the calving grounds?

1.15 – does not answer the request

1.16 – response does not take into account that existing community hunts have been outlawed at present and will continue to be if the ENR provisions of the “Joint Proposal” are accepted. Furthermore, there is no information on how other priority rights holders other than the Tli Cho will be involved.

1.17 – (a) Given the risk associated with this herd is so great that ENR has felt compelled to enact “emergency measures” shouldn’t this herd have priority over all others? The only possible exception would be the Cape Bathurst Herd, which is monitored out of Inuvik not out of the North Slave, and should have a distinct calving period that would allow any territorial staff that are required to attend.

1.18 – Is a sex ratio of 45-50 bulls a target of the recovery plan for the herd?

1.19 – Since there is no power analysis done, why not 100 collars. Why not over 9000? What basis are they using for this. Too often collar use is just required without real consideration of the objectives. If cow survival is the objective, is this not achieved better through other methods? In terms of collar operations over the years, (especially pre-release mechanism) how many collars have been examined for the death vs. slippage? How many of those collars in which the animal is dead has the cause of death been determined? Lastly, how many collar failures have there been, be it batteries or transmission (as a percentage, by year)?

1.20 – Does not answer the question. The response implies that collars are being placed on bulls to evaluate the survival. How many collars are required to achieve a large enough sample size to draw inferences on this?

1.21 – ENR has uncertain information on the herd other than it is declining, has undertaken no consultation with the local users of the herd who would be most impacted by the proposed mitigation measure, and can offer no guarantee that the mitigation does not represent anything more than exporting the problem and hastening the decline of the Ahiak herd.

2.2 – It is not clear why ENR accepts only the modelling information as useful despite the errors and assumptions associated with the process, while jettisoning the other poor data sources.

2.3 – does not answer the question. The question asks to show the effects of not reducing female harvest by various levels. The answer simply re-iterates the data provided in the CTR with a harvest of 2400 animals with 3 proportions of female to male harvesting. This is a rather critical question/IR YKDFN would have liked to see the results of

2.5 – The answer unclear - is “unlikely” yet at the end there is the suggestion that there will be a clear indicator of “trend in numbers of breeding cows” which suggests that the effect of no female harvest will indeed be detectable. Additional clarity would be welcome.

2.6 – Considering that 2.3 does not answer the question, this should be answered otherwise.

2.15 – Does not answer question - Where are the details?

(1) GNWT has approached GN about increased protection...Why was this not conveyed in the answer to IR 1.14?

(2) GNWT has “consistently advocated” that no exploration or other development activity be permitted on calving grounds between May 15 and June 30”...where are the examples/details?

(3) INAC’s ‘Caribou Protection Measures’ – already insufficient in view of the boards and reviewer

(4) There have been no land use permits issued for exploration activities – during this time of the year...but development proceeds (Jericho)

2.16 – ENR suggests that more collars have made it more difficult, then proceeds to not that there are other [better?] alternatives, then notes that the numbers required depend on the use – yet for other IRs they do not define the objectives/uses that they have in mind

2.17 – Answer in which other response? Shouldn’t monitoring actions be linked to management? Isn’t that the point of monitoring – and then adapting your management? We ask the mines to do this all the time.

2.19 –ENR’s definition of detailed is different than everyone else’s? Section 5.9 seems to contain a lot of very soft, not especially rigorous, observation data

2.20 – is the high variability based on occurrences or reporting methods?

2.21 – Does not answer 2nd part of the question.

2.23 – Should have been two proposals. A joint proposal should include more common ground that differences. In this case, the areas in which agreement exist are much less significant than the disagreements.

2.26 – Does not answer 1st question (provide map). 2nd question not answered (Response talks about calving grounds). 3rd question not answered

2.27 – asks for a map of claims, traditional territorial etc. Questions not answered.

2.32 – questions 2 & 3 not answered very well. Also, answer 3 not consistent with 1.14

2.33 – Questions not answered

2.34 – Does not answer the question

2.37 – WEMP – ENR approved & allowed changes to the WEMPs (especially Diavik) that resulted in less survey effort and less data capture

2.38 – misleading answer. Clearly these concerns would have been raised for more than three years and yet the GNWT allowed the resident and sport hunt to continue.

2.41 – it is not land claims that dictate the priorities for allocation of the harvest of wildlife

2.42 – Does not answer question. relates to IR 2.23. Creates confusion.

2.50 – We’ve seen how ENR co-operates with aboriginal groups

2.52 – 1) Does not answer question; 2) Provide map; 3) What about before peak calving? If any operations closures match this definition, wouldn’t this cause early calving cows to move to less ideal territory because of the activity? 4) Answer does not match definition from IR 2.15 – May 15th to June 30th.

2.53 – Does not answer question. What about non-immediate post-calving? Provide map.

2.54 – Response not consistent with Press release announcing emergency measures says “remain in effect until recommendations on barren-ground caribou management by the Wek’eezhii Renewable Resources Board are implemented”

2.64 – Provides answer to question, then immediately says answer is wrong, without providing rationale.

2.81 – Does not answer the question. Specific.

2.86 – Doesn’t do a good job answering question

2.89 – Misleading. The PCMB and BQCMB are not involved with this proposal. In regards to the rest, YKDFN have stated that they were not consulted on this proposal or emergency measures.

2.90 – Does not attempt to answer the question.

2.91 – Does not attempt to answer the question.

2.92 – Does not answer the question and is misleading. The breakaway mechanisms are relatively new compared to the length of time that collars have been used. Slippage and collar failure are important to know.

2.93 – Does not answer question. How many is this?

2.95 – Doesn’t answer the question about range

2.98 – Which other IR?

2.99 – Vague response - quantify ‘substantial’

2.101 – Breakdowns not mentioned, nor was capacity funding

2.106 – First, it does not answer the question on HOW ENR monitors. Secondly, the reference in the CTR says “Although the disturbance effects of the mines on the Bathurst caribou herd appear thus far to be limited, **they should not be trivialized**”, after which ENR proceeds to do just that in this IR “To date it does not appear that development in the Bathurst range has had a major impact on the herd”. ENR has not taken heed of the repeated warnings and recommendations from elders and land users that the mines ARE having an impact on the caribou.

5.3 Appendix C: YKDFN ATIP Request Response



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

Access to Information and Privacy
Ottawa, Ontario
K1A 0H4

Facsimile: (819) 953-5492

Your file Votre référence

Our file Notre référence

FEB 22 2010

A-2009-00239 / jsi

Mr. Todd Slack
232 Niven Drive
Yellowknife, Northwest Territories
X1A 3Z1

Dear Mr. Slack:

This is in response to your request under the *Access to Information Act* for:

"Requesting all emails that were generated in response to my email of December 17th addressed to Lorraine Seale (Lorraine.Seale@inac-ainc.gc.ca). I received no response to this email but I suspect that there was probably an internal discussion examining if INAC should be participating in the Wekeez'hii Renewable Resource Board hearing considering the Joint Caribou Management Proposal hearing."

The processing of your request is now complete. There are 17 pages of records, which are being disclosed to you in their entirety.

Do not hesitate to contact Jordan Silver at (819) 997-8162, who will be pleased to address any concerns or questions you may have regarding this matter.

Please be advised that you are entitled to submit a complaint to the Information Commissioner concerning the processing of your request **within 60 days** of the receipt of this letter. In the event that you decide to avail yourself of this right, your notice of complaint should be addressed to: Place de Ville, Tower B, 112 Kent Street, 22nd Floor, Ottawa, Ontario, K1A 1H3.

Yours sincerely,

Stewart Cook
Coordinator
Access to Information and Privacy

Canada

2

² Document scanned and included, hard copy available in case formatting is off or legibility is reduced

From: Julie Jackson
To: Hoefler, Tom; Hopkins, Annette; Joudrie, Teresa; Lange, Marc; Lawranc...
Date: 2009-12-18 10:32
Subject: Re: Fwd: INAC Participation at the WRRB Caribou Management Plan

Hey Annette (and Darnell) - that is good news on the GNWT/roads issue. As this issue is one that is key to consultation, I would like to be kept in the loop and attend any meeting we have with GNWT if it's possible.

thanks,

Julie

Julie Jackson
Manager, Consultation Support Unit
Indian and Northern Affairs Canada, Yellowknife, NT Region
Phone: (867) 669-2891
Fax: (867) 669-2540
Email: Julie.Jackson@inac.gc.ca

>>> Annette Hopkins 12/18/2009 8:14 AM >>>

You are correct re: ice roads. While we issue a Licence of Occupation to the Joint Venture to the Diamond Mines, the Licence only covers those portions of the road that goes over land, so basically the portages. With regard to public access, we cannot restrict access to the public for use of public lands, unless there is a specific regulation (law) that allows us to impose those types of restrictions.

On the roads front, I understand from Darnell, that the GNWT is almost in position to engage us on taking over 'roads to resource sites' per my discussion paper on roads administration/control. I believe MACA is making arrangements with Darnell for a first meeting/discussion on this topic.

A

>>> Trish Merrithew-Mercredi 12/18/2009 6:16 AM >>>

Tom -

As both Annette and I have pointed out there are a number of other factors which must be considered and I am not convinced we have a role to play in this one. I will be speaking to Paula today on it. Correct me if I am wrong as well Annette but I don't think we have any authority over ice roads?

Trish

Trish

-----Original Message-----

From: Tom Hoefler

To: Annette Hopkins <Annette.Hopkins@inac-ainc.gc.ca>

Cc: Julie Jackson <Julie.Jackson@inac-ainc.gc.ca>

To: Teresa Joudrie <Teresa.Joudrie@inac-ainc.gc.ca>

To: Marc Lange <Marc.Lange@inac-ainc.gc.ca>

To: James Lawrance <James.Lawrance@inac-ainc.gc.ca>

To: Trish Merrithew-Mercredi <Trish.MerrithewMercredi@inac-ainc.gc.ca>

To: Lorraine Seale <Lorraine.Seale@inac-ainc.gc.ca>

000001

Sent: 12/17/2009 6:47:08 PM

Subject: Re: Fwd: INAC Participation at the WRRB Caribou Management Plan

Further to my note, I've just read the joint Tli Cho/GNWT proposal to the WRRB, and was encouraged to read: "Preliminary results suggest that cumulative effects of non-natural stressors on caribou such as mining activities in the range of the Bathurst herd (beyond calving grounds) have not had a significant negative influence on overall mortality of caribou."

Also read the letter the YK Dene wrote to the MVLWB re the winter road land use application (just approved), and they point out that if government is going to impose restrictions to treaty rights with caribou hunting, then industry should put an access control point on the ice road, and GNWT and INAC should work on allowing enforcement.

Tom

000002

From: Trish Merrithew-Mercredi
To: Paula Isaak, Tom Hoefler, Annette Hopkins, Teresa Joudrie, Marc Lange, Ja...
CC: John McEwen, Julie Jackson
Date: 2009-12-18 13:38
Subject: Re: Fwd: INAC Participation at the WRRB Caribou Management Plan

Thanks Paula. I definitely agree.

Trish

-----Original Message-----

From: Paula Isaak
Cc: John McEwen <John.McEwen@ainc-inac.gc.ca>
To: Tom Hoefler <Tom.Hoefler@inac-ainc.gc.ca>
To: Annette Hopkins <Annette.Hopkins@inac-ainc.gc.ca>
Cc: Julie Jackson <Julie.Jackson@inac-ainc.gc.ca>
To: Teresa Joudrie <Teresa.Joudrie@inac-ainc.gc.ca>
To: Marc Lange <Marc.Lange@inac-ainc.gc.ca>
To: James Lawrance <James.Lawrance@inac-ainc.gc.ca>
To: Trish Merrithew-Mercredi <Trish.MerrithewMercredi@inac-ainc.gc.ca>
To: Lorraine Seale <Lorraine.Seale@inac-ainc.gc.ca>

Sent: 12/18/2009 3:15:32 PM

Subject: Re: Fwd: INAC Participation at the WRRB Caribou Management Plan

Trish: I would caution active participation in this issue. We play a watching role here re. overall caribou issues that EC is addressing, and in the regions, it is a territorial responsibility so I would caution getting too far down that road. I think there are plenty of other players addressing these issues.

thx
Paula

>>> Trish Merrithew-Mercredi 12/17/2009 4:22 PM >>>
Actually we have put some funds into caribou research through MGP, as well as several other avenues. I think we need to discuss this with NCR (Paula maybe we can chat about this tomorrow when we meet) though before we make any commitments. I am not quite as confident as other perhaps that we do have a role to play here.

Thanks, Trish

-----Original Message-----

From: James Lawrance
Cc: Clayton Balsillie <Clayton.Balsillie@inac-ainc.gc.ca >
To: Tom Hoefler <Tom.Hoefler@inac-ainc.gc.ca >
To: Annette Hopkins <Annette.Hopkins@inac-ainc.gc.ca >
Cc: Julie Jackson <Julie.Jackson@inac-ainc.gc.ca >
To: Teresa Joudrie <Teresa.Joudrie@inac-ainc.gc.ca >
To: Marc Lange <Marc.Lange@inac-ainc.gc.ca >
To: Trish Merrithew-Mercredi <Trish.MerrithewMercredi@inac-ainc.gc.ca >
To: Lorraine Seale <Lorraine.Seale@inac-ainc.gc.ca >

Sent: 12/17/2009 4:11:48 PM

Subject: Re: Fwd: INAC Participation at the WRRB Caribou Management Plan

Tom, you and I have both drawn attention lately for the need to analyze what role Canada and INAC need to/must play in these caribou management issues. In fact, two years ago in REC, I gave a short talk on how caribou issues would begin to significantly affect political agendas, other inter-related resource

000003

management matters, aboriginal relations in general, and various key federal interests. I don't think we can avoid developing a formal and clear approach and position on this any more. Thoughts anyone?

>>> Lorraine Seale 12/17/2009 1:01 PM >>>
fyi...

To: "Grant Pryznyk" < gpryznyk@wrrb.ca >, "Bruno Croft" < Bruno_Croft@gov.nt.ca >, "Kerri Garner" < kerrigarner@ticho.com >, "Lorraine Seale" < Lorraine.Seale@inac-ainc.gc.ca >
Date: 2009-12-17 10:47
Subject: INAC Participation at the WRRB Caribou Management Plan
CC: "Kelly Cumming" < kelly@ykdene.com >, "Jennifer Drygeese" < jennifer@ykdene.com >, < scellis@eastarm.com >

>>> "Todd Slack" < tslack@ykdene.com > 2009-12-17 10:46 >>>
Has there been any indication that INAC is going to be participating in the hearing? The more research and thinking that I do on this, the more it seems to me that they are the missing link in this process - we're trying to stem the bleeding but only using one hand.

INAC is the administrators of Treaty, INAC is the permitting authority for land use, INAC is ultimately the regulator of all development. Essentially, without their participation, all we are discussing is how many caribou people can shoot, because that's what ENR can influence. To be clear, YKDFN will be talking about a great many roles that INAC fulfills - but without their participation, there will be no effective discussion on the relationship between caribou and the land - and it can certainly be argued that development has played a role in the decline of the herd. Their non-participation means that the status quo will persist and we will continue to treat harvesting independent of habitat, and the negative population pressures caused by development will continue unabated - thus the actions and the hardships incurred on the harvesting (demand) side could be all for nothing.

Regards

Todd Slack
TE GIS, Yellowknives Dene First Nation
Roman Empire Bldg.
P.O. Box 2514

000004

From: Marc Lange
To: Annette Hopkins; James Lawrance; Teresa Joudrie; Tom Hoefer; Trish M...
CC: Greg Yeoman; Julie Jackson; Lorraine Seale
Date: 2009-12-18 12:13
Subject: Re: Fwd: INAC Participation at the WRRB Caribou Management Plan
Attachments: NCR-#1164587-v1-CARIBOU_-_INFO_BN_FOR_THE_ADM.DOC

Hello,

Thank you for copying me on these discussions.

Last guidance I was taking on operational matters with respect to research and evidence at hearings was from a briefing note to the ADM in 2007 (attached). That note (I assumed) was a small 'p' policy on INAC's involvement in caribou management. The BN highlights that INAC's mandate for environmental management and resource development necessitates our involvement in caribou conservation, and that INAC's interests can be met by continuing and strengthening our approach of working with co-management partners to ensure research and monitoring supports appropriate caribou conservation and management measures.

The email exchanges just this week suggest that our position may be evolving?

Directions from senior regional management would be most useful to me in guiding our participation at the WRRB hearings (if any) as well as funding of research requests coming from the GNWT.

Yours,
Marc

Marc Lange
Manager, Environment & Conservation
Indian and Northern Affairs Canada
Box 1500 Yellowknife, NWT X1A 2R3

Tel: 867-669-2588
Mobile: 867-446-1510
FAX:867-669-2701
Email: marc.lange@inac-ainc.gc.ca

>>> Trish Merrithew-Mercredi 12/18/2009 6:16 AM >>>
Tom -

?

As both Annette and I have pointed out there are a number of other factors which must be considered and I am not convinced we have a role to play in this one. I will be speaking to Paula today on it. Correct me if I am wrong as well Annette but I don't think we have any authority over ice roads?

Trish

Trish

-----Original Message-----

From: Tom Hoefer
To: Annette Hopkins <Annette.Hopkins@inac-ainc.gc.ca>

000006

3

³ Page 000005 omitted to reduce file size – only YKDFN contact information on it. It is available upon request.

Cc: Julie Jackson <Julie.Jackson@inac-ainc.gc.ca>
To: Teresa Joudrie <Teresa.Joudrie@inac-ainc.gc.ca>
To: Marc Lange <Marc.Lange@inac-ainc.gc.ca>
To: James Lawrance <James.Lawrance@inac-ainc.gc.ca>
To: Trish Merrithew-Mercredi <Trish.MerrithewMercredi@inac-ainc.gc.ca>
To: Lorraine Seale <Lorraine.Seale@inac-ainc.gc.ca>

Sent: 12/17/2009 6:47:08 PM

Subject: Re: Fwd: INAC Participation at the WRRB Caribou Management Plan

Further to my note, I've just read the joint TII Cho/GNWT proposal to the WRRB, and was encouraged to read: "Preliminary results suggest that cumulative effects of non-natural stressors on caribou such as mining activities in the range of the Bathurst herd (beyond calving grounds) have not had a significant negative influence on overall mortality of caribou."

Also read the letter the YK Dene wrote to the MVLWB re the winter road land use application (just approved), and they point out that if government is going to impose restrictions to treaty rights with caribou hunting, then industry should put an access control point on the ice road, and GNWT and INAC should work on allowing enforcement.

Tom

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**CARIBOU: THEIR IMPORTANCE, PROTECTION AND MANAGEMENT
IN NORTHERN CANADA**

(Information Briefing Note for the ADM - Northern Affairs)

DATE: December 13, 2007

PURPOSE

To inform you of the link between caribou and INAC's mandate and activities, in the context of upcoming pressures.

SUMMARY

- Caribou are a critical species to Aboriginal people and are experiencing declines in population levels during a current expansion in non-renewable resource development.
- Considerable concern is being expressed regarding the impacts of development on caribou, particularly in the calving and post-calving grounds of several barren-ground herds in Nunavut.
- Although INAC does not manage wildlife, our mandate for environmental management and resource development necessitates our involvement in caribou conservation.
- INAC's interests can be met by continuing and strengthening our approach of working with co-management partners to ensure research and monitoring supports appropriate caribou conservation and management measures.

BACKGROUND

- Caribou are a touchstone species in the North. As a species relied on for physical, cultural, spiritual, and economic well-being by Aboriginal people, the need for caribou protection is mentioned in virtually every forum concerning resource development.
- Recent declines in the numbers of several caribou populations (e.g., the Bathurst, Bluenose West, and Porcupine herds) has generated significant concern among traditional users, wildlife managers, and the public, prompting a number of suggestions for management actions, some of which are contentious.
- The northern land claim agreements clarify harvesting rights for Aboriginal people, and give responsibility for managing caribou primarily to wildlife management boards and the territorial governments.
- While Indian and Northern Affairs Canada doesn't manage wildlife, the Department's responsibilities for managing land and water in the NWT and

Nunavut means it is an important partner in ensuring the health and integrity of caribou habitat.

- Through policy or legislation the Department plays a role in a number of initiatives relating to caribou, including:
 - protected areas and land use planning;
 - managing impacts to caribou;
 - caribou designated as species at risk; and,
 - supporting caribou management boards.

CURRENT STATUS AND ISSUES

Protected Areas and Land Use Planning:

- Establishing protected areas for caribou calving grounds or other key caribou habitats (see Annex 1) is one approach in Canada that receives support from many northern interests, but remains contentious. For barren-ground caribou, pregnant cows move northeast in spring so most of the calving grounds are located in Nunavut, which would experience the greatest loss of resource development opportunities under such an approach (see Annex 2). The Government of Nunavut does not support this approach.
- Nevertheless, at a caribou workshop in Inuvik in January 2007, the most widely supported resolution was the establishment of protected areas for calving grounds for all barren-ground herds. While some barren-ground caribou herds demonstrate strong fidelity to calving and post-calving areas, others do not use exactly the same areas for calving from year to year, making choosing boundaries for protection difficult.
- In the NWT, caribou is often mentioned as a significant value for which land use plans designate conservation areas. Areas that are candidates for protection under the NWT Protected Areas Strategy commonly reference the value of the area to caribou. In Nunavut, caribou is also considered a valued species but a different approach has been taken; the two approved regional land use plans for Nunavut have supported the co-existence of multiple land uses, with the implementation of special restrictions on mineral exploration activities to protect caribou, rather than setting aside land for the protection of caribou.¹
- Internationally, the Porcupine herd, which ranges across parts of Alaska, the Yukon, and NWT, shows strong fidelity to the same area each year for calving and post-calving. The Government of Canada has opposed oil and

¹ Development pressures, especially uranium exploration, have increased dramatically in the calving grounds since the plans were approved, which may be resulting in a change in public opinion. This was demonstrated by a request in 2006 by the Baker Lake Hunters and Trappers Association for a moratorium on mineral exploration in their traditional hunting areas.

gas development in the Arctic National Wildlife Refuge in Alaska, as it would displace the Porcupine caribou herd, on which the Gwich'in people rely, from this critical habitat. Canada has urged the United States to seek permanent protection for the Porcupine herd and its key habitats, as Canada has done with the establishment of Ivvavik and Vuntut National Parks in the Yukon.

Managing Impacts to Caribou:

- The renewal of interest over the last decade and a half in mineral and hydrocarbon exploration in the North, combined with apparent population declines, has led to a resurgence of concern for the impacts to caribou. When caribou ranges are not protected from development, land use planning and environmental assessment processes, as well as regulatory tools, are used to provide some protection for mitigating or monitoring impacts to caribou.
- In Nunavut the approved land use plans require that INAC apply caribou protection measures to short-term land uses it permits (e.g. mineral exploration activities) in the Kivalliq and North Baffin regions. These measures have been used by the Department since 1978 in the Kivalliq and are currently under review to determine how they may be changed to better protect caribou.
- Caribou tend to be a key component of northern environmental assessments. Due to current concerns over declining caribou populations and the influence of exploration and development pressure, northern environmental assessment boards may consider evidence of the impact of development activities on caribou so significant as to recommend the development:
 - not proceed (potential impacts to caribou was a consideration in the rejection of the UR-Energy project);
 - be subject to higher levels of review (caribou were an important factor in referring the Gahcho Kue project to an environmental impact review); or
 - be subject to mitigation measures industry may consider onerous (suggestions to fence open pits and tailings ponds to mitigate impacts to caribou were not well received by the proponents in the Ekati and Diavik diamond mine assessments).

Caribou Designated as Species at Risk:

- Protecting caribou populations remains a possibility through the *Species at Risk Act* (Annex 3).
- With respect to Peary caribou, the Minister of Environment wrote to the Nunavut Wildlife Management Board in May 2007 indicating he intends to start the process of listing all populations of Peary caribou, a species of

caribou resident in the Arctic islands, as endangered under this Act. This action will be taken despite the Board's recommendations to the Minister to the contrary and is expected to be opposed by hunters in high Arctic communities and Nunavut Tunngavik Incorporated.

- The boreal population of woodland caribou, resident in the western NWT boreal forest, are listed as threatened under SARA. A recovery strategy is close to completion and an action plan being led by the GNWT may require INAC to implement specific measures to protect boreal caribou from human disturbance and habitat disruption. SARA also requires that special consideration be given to mitigating impacts to boreal caribou in the environmental assessment process.

Supporting Caribou Management Boards:

- Dating back to the 1970s, INAC has signed multi-party agreements to create and support caribou boards that provide information, advice and recommendations to wildlife and resource management authorities, as well as the public. These boards are:
 - the Porcupine Caribou Management Board - INAC helps fund the Board and appoints a member jointly with Environment Canada;
 - the Beverly Qamanirjuaq Caribou Management Board - along with funding support, a Nunavut staff member sits on the board; and
 - the Bathurst Caribou Management Planning Committee - along with funding support, an NWT staff member sits on the Committee.

CONSIDERATIONS

- INAC's mandate necessitates continued engagement in the protection of caribou and its habitat. This involvement is characterized by recognition of the special connection, rights, and concerns of northern Aboriginal people with respect to caribou. INAC must work with co-management boards and the territorial government departments responsible under legislation and land claims for the management of caribou.

NEXT STEPS

- INAC staff will look for opportunities to contribute to the Government of Nunavut's draft caribou conservation strategy.
- Funding support will continue for research and management initiatives on the Beverly, Bathurst, Qamanirjuaq, Porcupine and other herds under pressure from development.
- INAC will likely be involved in the regional study of cumulative effects on caribou being led by the GNWT in response to the UR-Energy environmental assessment.

PROTECTED A – G6787

- A review of how INAC can make its use of caribou protection measures more effective will continue, including extending the measures to mineral tenure instruments.

ORIGINATOR:

Name/Region/Sector: Janice Traynor/INAC-HQ/Northern Affairs/NRE

Phone number: (819) 953-8490

Consulted: Michael Nadler, Colette Meloche, and Carl McLean, Nunavut region; Glen Stephens, NAP/NRE; Arthur Boutilier, NWT region.

Date: November 22, 2007

Annexes:

Annex 1: Protected areas for caribou in the territories

Annex 2: List of northern caribou populations

Annex 3: Status of Caribou herds and populations under the *Species at Risk Act*

Protected Areas for Caribou in the Territories

Territory	Protected Area	Notes
Yukon	Vuntut National Park Ivvavik National Park	These adjacent parks, established under the Inuvialuit Final Agreement, represent international efforts to protect a major northern ecosystem defined in part by the Porcupine Caribou Herd. Ivvavik, meaning 'a place for giving birth, a nursery', protects a portion of the calving grounds of the Porcupine caribou herd.
Northwest Territories	Tuktut Nogait National Park	Tuktut Nogait, meaning 'young caribou', encompasses most of the core calving, and post-calving grounds of the Bluenose West caribou herd.
Nunavut	Thelon Game Sanctuary	Created in the 1920s for the conservation of caribou and muskox, it includes a portion of the calving grounds of the Beverly caribou herd.

List of Northern Caribou Populations

SUBSPECIES/POPULATION	LOCATION
Grant's Caribou:	
Porcupine	Alaska, Yukon, NWT
Woodland Caribou :	
North Mountain population (several isolated herds)	Alaska, Yukon, NWT
Boreal population (several isolated herds)	NWT, AB, BC
Barren-ground Caribou :	
Cape Bathurst	NWT
Dolphin and Union	NWT, Nunavut
Bluenose West	NWT, Nunavut
Bluenose East	NWT, Nunavut
Bathurst	NWT, Nunavut, SK
Ahiak	NWT, Nunavut
Beverly	NWT, Nunavut, SK, MB
Qamanirjuaq	NWT, Nunavut, SK, MB
Boothia	Nunavut
Wager	Nunavut
Lorillard	Nunavut
Coats Island	Nunavut
Southampton Island	Nunavut
Northeast Kivalliq	Nunavut
South Baffin Island	Nunavut
North Baffin Island	Nunavut
Northeast Baffin Island	Nunavut
Peary Caribou :	
High Arctic	NWT, Nunavut
Low Arctic	NWT, Nunavut
Banks Island	NWT

Annex 3

Status of Caribou Herds and Populations Under the *Species at Risk Act* (SARA)

Species/population	Status	Next Steps
Peary caribou (Banks Island population, High Arctic population, and Low Arctic population)	Not listed under Schedule 1* of SARA, but was last assessed as endangered by COSEWIC [†] in 2004.	Attempts to list this species in 2005 met opposition in Nunavut and were abandoned. The Minister of Environment has since consulted with the Nunavut Wildlife Management Board and notified it in May 2007 he intends to proceed with the listing. A period of public consultation must take place before the species can be listed.
Barren-ground caribou, Dolphin and Union population	Not listed under Schedule 1 of SARA, but was last assessed as a species of special concern by COSEWIC in 2004.	Attempts to list this species in 2005 met opposition in Nunavut and were abandoned. The Minister of Environment has since consulted with the Nunavut Wildlife Management Board and notified it in May 2007 he intends to proceed with the listing. A period of public consultation must take place before the species can be listed.
Woodland caribou, Boreal population	Threatened, listed on Schedule 1 of SARA.	A recovery strategy is in preparation and should be out for public consultation shortly.

*Species listed on Schedule 1 receive special protection under the *Species at Risk Act*. Actions with respect to species listed as threatened or endangered are subject to prohibitions and recovery strategies must be prepared. Species of special concern are not subject to these prohibitions, but management plans must be prepared.

[†]Committee on the Status of Endangered Wildlife in Canada assesses the status of species and makes reports to the responsible Ministers under SARA.