

FEB 10 2010

Mr. Grant Prynzyk
Interim Chair
Wek'eezhii Renewable Resources Board
102A 4504 – 49TH AVENUE
YELLOWKNIFE NT X1A 1X7

Dear Mr. Prynzyk:

Legal issues

Please find attached our submission in relation to legal issues related to the Bathurst Caribou Joint Management Proposal. As requested in your letter of February 1, 2010 formal written statements were required digitally to Ms. Jody Snortland at jsnortland@wrrb.ca by February 10, 2010. Environment and Natural Resources has no comments on numbers 4, 7, 8, 14, 15, 16, 19, 20 and 21.

Sincerely,



Gary A. Bohnet
Deputy Minister

Attachment



Question 1

The Bathurst Caribou Bathurst Caribou Management Plan was released in December 2004. It was prepared by a committee consisting of representatives from federal, territorial and Aboriginal Governments, First Nations, Inuit organizations, institutions of public government and communities on or adjacent to the herd's range. The committee was established in 2000 and operated by consensus. Extensive consultations were held in 2004. Although not formally endorsed by others, ENR considers the plan to be a valid guidance document when considering monitoring and management actions.

Question 2

The joint proposal submitted by the Tlicho Government and ENR proposes actions for all three caribou herds located in the North Slave region. Bulls have been collared in the Bluenose-East herd but not the Bathurst and Ahiak herds. The bulls are considered to be Bluenose-East as they are consistently associated with Bluenose-East cows. There is no evidence to suggest that bulls in other caribou herds act differently. Thus, it is reasonable to assume that the location of the cows can be used to identify the herds that outfitters are harvesting.

Question 3

A Meeting was held with outfitters and Deputy Minister in July 23, 2009 to discuss the decline of the Bathurst Caribou herd and possible management actions including the elimination of tags. Outfitters participated in the Bathurst Decline Workshop in October 23, 2009 to discuss recovery options. A letter was sent by the Deputy Minister to all outfitters in October indicating the potential elimination of all outfitting tags for barren ground caribou, including a caution about accepting reservations for outfitted hunts for 2010 season.

Question 5

ENR interprets the reference to "transparency" as sharing information in an open manner. ENR has provided presentations on all survey results and analyses and held workshops where information was openly shared. ENR has limited sharing of draft reports as there is a duty to provide the best information to the public. With respect to meta-populations, the ARC report validates the approach of managing by herds (as defined by calving grounds) as standard practice across North America. ARC suggested that ENR should increase collar numbers to confirm the degree of closure (i.e. rate of exchange) of herds. The ARC report states, *"In contrast, no data support the competing hypotheses that all caribou*

should be treated as one herd, nor that mass movements between herds have demonstrably occurred. However, for management purposes, the ARC report suggests the analysis of data for each herd should be integrated within a larger population framework.

Question 6

In the last 3 years, ENR has done annual presentations to boards, user groups (e.g. outfitters) and communities on an animation of caribou movements and which caribou herds are seasonally found in Management Unit R.

With respect to a management plan, ENR has undertaken the following actions:

- In 2004, ENR released a draft Bathurst Caribou Management Plan which ENR uses as a guidance document. The plan was developed collaboratively with all management authorities and communities that share the herd.
- In late 2006, ENR submitted a proposal to the Wek'eezhii Renewable Resources Board on management actions for barren-ground caribou in the North Slave region.
- ENR has been working with the Tlicho Government and the Wek'eezhii Renewable Resources Board to develop a management process for the Bathurst herd as directed by the *Tlicho Agreement*.
- A management plan exists for the Bluenose-East herd which is now being revised by an inter-jurisdictional committee lead by the wildlife co-management boards in the NWT and Nunavut.
- Maps of radio-collar locations from the Ahiak, Bluenose East and Bathurst herds during fall and winter were presented at workshops in October 2009 and are contained in ENR's Bathurst workshop report and the longer Bathurst technical report. Other ENR reports have used maps based on radio-collar data for all herds monitored by ENR.

Question 9

As part of the interim emergency measures to offset reduced access to caribou, ENR has established two new wood bison management areas in Unit R. R/WB/01 is located west of Behchoko and has a quota of 45 tags. These are to be allocated by Tlicho Government, Yellowknives Dene First Nation and Metis groups. The second zone R/WB/02 is located east of Behchoko to Yellowknife and is open to all General Hunting Licence holders.

Questions 10. 11. 12 and 13

Barren-ground caribou have been listed as being in danger of becoming extinct since 1960, when the Government of Canada implemented Regulation 1236 under the *Northwest Territories Act*, a piece of federal legislation.

The *Northwest Territories Act* (and its attendant *Regulations*) is the law that grants the Government of the Northwest Territories its legal authorities and powers, including the authority to regulate game. These laws apply to everyone, including Aboriginal persons.

Aboriginal rights are extremely important, but they are not absolute. Canadian courts have consistently allowed governments to infringe Aboriginal rights where it was necessary and justified, provided that the government has taken steps to minimize the infringement.

Any infringement of an Aboriginal right must be justified, and the government must be able to satisfy a court of law that it has met a three-part legal test:

1. That there is a valid legislative objective
2. That there has been as little infringement as possible to achieve the desired result, and
3. That there has been consultation regarding the measures being implemented.

In the case of the joint proposal currently before the WRRB, the Government of the Northwest Territories and the Tli Cho Government have worked together to develop this joint proposal in order to ensure the long-term recovery of the Bathurst caribou herd, a herd on the verge of extinction.

In drafting the joint proposal survey results were shared with affected groups beginning in July, 2009. A number of affected groups participated in the Bathurst Caribou Decline workshops held in October to discuss recovery options. Letters sent in October 2009 to potentially affected Aboriginal governments and organizations to discuss recovery options. Consultation meetings on the joint proposal we held in November and December 2009. GNWT will be submitting results of the consultations to the WRRB. Once recommendations are received from the WRRB, the GNWT and Tli Cho government will consult with each other, and GNWT will undertake further consultation if required.

At current harvest levels the long-term survival of the Bathurst herd is in serious doubt, given model projections of extinction in 3-5 years. In our view, the joint proposal is aimed at the best interests of Aboriginal people, as the recovery of the herd will ensure future generations of Aboriginal hunters will have Bathurst caribou to hunt in order to feed their families and protect their culture.

Question 17

The mandate of the Minister and the Department of Environment and Natural Resources is to promote and support the sustainable use and development of natural resources and to protect, conserve and enhance the Northwest Territories environment for the social and economic benefit of all Northwest Territories residents.

Question 18

The GNWT may nominate 2 members and both are on the Board.