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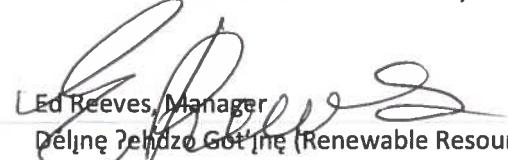
Sahtú Renewable Resources Board Bluenose-East Caribou Herd Public Hearing

?ehdzo Got'jnë Gotsé Nákedí Questions

May 3, 2016

This correspondence contains responses by the Délı̨ne ?ehdzo Got'jnë (Renewable Resources Council) to the two additional questions submitted by the ?ehdzo Got'jnë Gotsé Nákedí (Sahtú Renewable Resources Board – SRRB) in a letter dated April 21, 2016.

Please don't hesitate to contact us if you require further information.


Ed Reeves, Manager
Délı̨ne ?ehdzo Got'jnë (Renewable Resources Council)

SRRB Question 1

There was evidence at the SRRB and WRRB hearings about how different user groups from the Tłı̨chǫ, Nunavut and Sahtú all use the Bluenose East herd. You have had time to think about the questions raised by Colville Lake in the March 1-3 hearings, and the evidence from the regions in the April 6-8 hearings in Behchokǫ. Do you have more thoughts about how you see the plan interacting with plans developed for other user groups, such as the Tłı̨chǫ and other Sahtu communities?

Response

Délı̨ne sees the phase of Bluenose East conservation planning over the past year as an initial step in an ongoing process of plan development that must necessarily include dialogue with other user groups. Délı̨ne understands that the Tłı̨chǫ have collaboratively developed a proposed plan with NWT Environment and Natural Resources that is now being considered by the Wek'èezhì Renewable Resources Board (WRRB), and that other communities within the Sahtú Region wish to develop their own conservation plans.

As noted in our April 21 Final Submission to the WRRB, "implementing and developing our Plan moving forward will require renewing and maintaining our relationships" with our neighbours. Our April 29 response to Colville's fourth undertaking further points out that this collaborative process will entail a

lot of learning for everyone: "as time goes on, we expect that it will be possible to develop a consistent approach to the conservation of caribou through this kind of dialogue." Déljnë has clarified that the scope of the *Belarewile Gots'é Pekwé – Caribou for All Time* plan is limited to the Déljnë District, which is the scope of the Déljnë ɻehdzo Got'jnë powers under the Sahtú Dene and Métis Comprehensive Land Claim Agreement.

Déljnë strongly supports other jurisdictions in establishing their own paths to caribou conservation, and is eager to participate in collaborative conservation processes across districts and regions, as we all have a shared vision for *Belarewile Gots'é Pekwé – Caribou for All Time*.

SRRB Question 2

This question is about how you see the Plan and Code relating to enforcement under the Wildlife Act, if people do not follow the harvesting thresholds you have set out.

Déljnë's Code proposes an alternative community-based enforcement process for dealing with people who do not follow the caribou harvesting code. That process, as we understand it, starts with the person's family speaking directly to the person who is not abiding by the Code, then moves to a Sentencing Circle process and then, if it is not resolved, referral of the matter to GNWT for enforcement under the Wildlife Act. Enforcement is an area outside the SRRB's jurisdiction but the ability of Déljnë to demonstrate that the Code will be effective is an important consideration in understanding the conservation implications of the Plan and Code. The Board is aware that there are mechanisms under the Wildlife Act that allow for alternative enforcement programs. For instance, the Wildlife Act allows alternative enforcement measures can be used to deal with offences under the Wildlife Act if certain conditions are met. One of those conditions, for example, is that an alternative enforcement program would have to be authorized by the Minister of Justice.

Do you see the entire three-step Déljnë Code enforcement program being an alternative under the existing Wildlife Act, or do you see the Déljnë enforcement program as a process completely outside the Wildlife Act that is recognized by the Wildlife Act as an alternative only at the third and last step in the proposed process?

Would Déljnë be willing to work with the GNWT to develop an alternative enforcement measures program authorized by the GNWT Minister of Justice?

Response

Thanks to the SRRB for pointing out Section 167 in the *Wildlife Act* regarding the use of "Alternative Measures" for enforcement (this section along with associated Section 157 are included with this letter as Appendices A and B for easy reference). The question regarding the applicability of Section 167 Alternative Measures has not been discussed by the Déljnë ɻekwé Working Group or the Déljnë ɻehdzo Got'jnë, so it is not possible to provide a determination at this time.

The Déljnë Working Group will be addressing this and other issues related to implementation of the *Belarewile Gots'é Pekwé* Plan and Code in the 2016-2017 planning phase. Section 167 may provide a supporting framework for the enforcement component of the Code, but this bears further investigation. Déljnë would be willing to work with the GNWT to explore whether an alternative enforcement measures program authorized by the GNWT Minister of Justice would be feasible or desirable from the standpoint of the Plan's self-regulation approach.

Appendix 1: Wildlife Act Section 167 - Alternative Measures

<p>Certificate of Superintendent</p> <p>(3) In any proceedings under this Act or the regulations, a certificate signed by the Superintendent stating that wildlife</p> <ul style="list-style-type: none"> (a) has been examined by a person qualified to judge and classify wildlife, and (b) is of a certain species or sex or is in a certain condition, <p>is, in the absence of evidence to the contrary, proof of the facts stated in the certificate and of the authority of the Superintendent without further proof of the appointment or signature of the Superintendent.</p>	<p>(3) Dans une instance sous le régime de la présente loi ou de ses règlements, fait foi jusqu'à preuve du contraire de son contenu et des pouvoirs du surintendant sans qu'il soit nécessaire de prouver la nomination ou la signature du surintendant, le certificat signé par le surintendant indiquant qu'un animal de la faune :</p> <ul style="list-style-type: none"> a) a été examiné par une personne possédant les qualités requises pour juger et classer un animal de la faune; b) est de telle espèce, de tel sexe ou dans tel état. 	<p>Certificat du surintendant</p>
<p>Burden of proving exception</p> <p>166. (1) In a prosecution under this Act or the regulations, the burden of proving that an exemption, exclusion, exception, excuse or qualification under this Act or the regulations operates in favour of the accused is on the accused, and the prosecutor is not required to prove the contrary except by way of rebuttal.</p>	<p>166. (1) Dans toute poursuite sous le régime de la présente loi ou de ses règlements, il incombe à l'accusé de prouver qu'une exemption, une exclusion, une exception, une excuse ou une qualité requise prévue par la présente loi ou ses règlements s'applique en sa faveur; le poursuivant n'est pas tenu, sauf à titre de preuve contraire, de prouver l'inverse.</p>	<p>Preuve de l'exception</p>
<p>Burden of proving permit, licence</p> <p>(2) If holding a licence, permit or other authorization is a defence to a prosecution of an offence under this Act, the accused has the burden of proving that he or she held the licence, permit or authorization at the material time.</p>	<p>(2) Si le fait d'être titulaire d'un permis, d'une licence ou d'une autre autorisation constitue une défense à une poursuite relative à une infraction à la présente loi, il incombe à l'accusé de prouver qu'il en était titulaire à l'époque pertinente.</p>	<p>Preuve de permis ou de licence</p>
<p>Use of alternative measures</p> <p>167. (1) Alternative measures may be used to deal with a person alleged to have committed an offence if the following conditions are met:</p> <ul style="list-style-type: none"> (a) the measures are part of a program of alternative measures authorized by the Minister of Justice; (b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society; (c) the person, having been informed of the alternative measures, fully and freely consents to participate; (d) the person has, before consenting to participate in the alternative measures, been advised of the right to be represented by counsel and has been given a reasonable opportunity to consult with counsel; (e) there is, in the opinion of the Attorney General for the Northwest Territories or his or her agent, sufficient evidence to proceed with the prosecution of the offence; 	<p>Alternative Measures</p> <p>167. (1) Alternative measures may be used to deal with a person alleged to have committed an offence if the following conditions are met:</p> <ul style="list-style-type: none"> (a) the measures are part of a program of alternative measures authorized by the Minister of Justice; (b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society; (c) the person, having been informed of the alternative measures, fully and freely consents to participate; (d) the person has, before consenting to participate in the alternative measures, been advised of the right to be represented by counsel and has been given a reasonable opportunity to consult with counsel; (e) there is, in the opinion of the Attorney General for the Northwest Territories or his or her agent, sufficient evidence to proceed with the prosecution of the offence; 	<p>Mesures de rechange</p> <p>167. (1) Le recours à des mesures de rechange à l'égard de l'auteur présumé d'une infraction est possible si les conditions suivantes sont réunies :</p> <ul style="list-style-type: none"> a) les mesures font partie d'un programme de mesures de rechange autorisé par le ministre de la Justice; b) la personne qui envisage de recourir aux mesures est convaincue qu'elles sont indiquées compte tenu des besoins de l'auteur présumé de l'infraction et de l'intérêt de la société; c) l'auteur présumé, après avoir été informé des mesures de rechange, consent à collaborer à leur mise en oeuvre; d) l'auteur présumé, avant de consentir à collaborer à leur mise en oeuvre, a été avisé de son droit d'être représenté par un avocat et a eu une occasion raisonnable d'en consulter un; e) le procureur général des Territoires du Nord-Ouest ou son mandataire estime qu'il y a des preuves suffisantes justifiant des poursuites relatives à l'infraction; f) aucune règle de droit ne fait obstacle aux poursuites relatives à l'infraction.

	(f) the prosecution of the offence is not in any way barred at law.	
Restriction on use	(2) Alternative measures must not be used to deal with a person alleged to have committed an offence if the person <ul style="list-style-type: none"> (a) denies participation or involvement in the commission of the offence; or (b) expresses the wish to have any charge against him or her dealt with by a court. 	(2) Il ne peut y avoir de mesure de rechange lorsque l'auteur présumé d'une infraction : <ul style="list-style-type: none"> a) soit nie toute participation à la perpétration de l'infraction; b) soit manifeste le désir de voir déferer au tribunal toute accusation portée contre lui.
Admissions not admissible	(3) No admission, confession or statement accepting responsibility for a given act or omission made by a person alleged to have committed an offence as a condition of the person being dealt with by alternative measures is admissible in evidence against that person in any civil or criminal proceedings.	(3) Les aveux de culpabilité ou les déclarations de responsabilité pour un acte ou une omission donné que fait l'auteur présumé d'une infraction pour pouvoir bénéficier de mesures de rechange ne sont pas admissibles en preuve dans les actions civiles ou les poursuites pénales engagées contre lui.
Agreement	(4) Alternative measures may include the making of an agreement containing any terms and conditions, including terms and conditions <ul style="list-style-type: none"> (a) in relation to matters referred to in section 157; (b) recommended by a local harvesting committee, renewable resources board or Aboriginal organization; and (c) relating to costs associated with ensuring compliance with the agreement. 	(4) Les mesures de rechange peuvent prévoir la conclusion d'un accord assorti de conditions, notamment : <ul style="list-style-type: none"> a) en ce qui touche les questions visées à l'article 157; b) les conditions recommandées par le comité local sur la récolte, l'office des ressources renouvelables ou une organisation autochtone; c) en ce qui touche les frais entraînés par le contrôle du respect de l'accord.
No bar to proceedings	(5) The use of alternative measures in respect of a person alleged to have committed an offence is not a bar to proceedings against the person under this Act, and does not prevent a person from laying an information, obtaining the issue or confirmation of a process, or proceeding with the prosecution of an offence in accordance with the law.	(5) Le recours aux mesures de rechange à l'égard de l'auteur présumé d'une infraction n'empêche pas l'exercice de poursuites contre celui-ci dans le cadre de la présente loi et n'empêche pas les dénonciations, l'obtention ou la confirmation d'un acte de procédure ou l'engagement de poursuites relatives à une infraction en conformité avec la loi.
Dismissal	(6) Notwithstanding subsection (5), if a charge is laid against a person in respect of an offence that is dealt with through alternative measures, the court shall dismiss the charge <ul style="list-style-type: none"> (a) if satisfied, on a balance of probabilities, that the person has totally complied with the terms and conditions of the alternative measures; or (b) if satisfied, on a balance of probabilities, that the person has partially complied with the terms and conditions of the alternative measures, and if satisfied that prosecution of the charge would be unfair having regard to the circumstances and the person's performance with respect to the alternative measures. 	(6) Malgré le paragraphe (5), dans le cas où il y a eu recours aux mesures de rechange, le tribunal rejette toute accusation portée contre la personne relativement à l'infraction s'il est convaincu, selon la prépondérance des probabilités, que cette personne : <ul style="list-style-type: none"> a) soit s'est totalement conformée aux conditions des mesures de rechange; b) soit s'est conformée aux conditions des mesures de rechange en partie seulement et, s'il estime par ailleurs que les poursuites sont injustes eu égard aux circonstances et compte tenu du rendement de la personne dans l'exécution des mesures de rechange.

Appendix B: Wildlife Act Section 157 - Additional Order

	or (b) in the course of operations under a licence, permit or other authorization issued to the accused,	<p>pour l'infraction, agissant :</p> <ul style="list-style-type: none"> a) soit comme employé ou mandataire de l'accusé dans le cadre de son emploi ou de son mandat; b) soit dans le cadre d'activités en vertu d'un permis, d'une licence ou d'une autre autorisation délivré à l'accusé. 	
Offences by client, guide	<p>153. A person employed or retained as a guide may be convicted of an offence, whether or not his or her client has been prosecuted for the offence, if it is established that</p> <ul style="list-style-type: none"> (a) the offence was committed by a client of the guide while the guide was providing guiding services to the client; and (b) the guide assented to or acquiesced in the commission of the offence. 	<p>153. La personne employée comme guide ou dont on a retenu les services de guide peut être déclarée coupable d'une infraction, que son client ait ou non été poursuivi pour l'infraction, s'il est établi que :</p> <ul style="list-style-type: none"> a) l'infraction a été commise par le client pendant que le guide lui servait de guide; b) le guide a consenti ou acquiescé à la perpétration de l'infraction. 	Infractions commises par un client, un guide
Defence	<p>154. A person shall not be convicted of an offence under this Act or the regulations if the person establishes that he or she exercised all due diligence to prevent the commission of the offence.</p>	<p>154. Nul ne peut être déclaré coupable d'une infraction à la présente loi ou à ses règlements s'il établit qu'il a fait preuve de diligence pour empêcher la perpétration de l'infraction.</p>	Défense
Forfeiture following conviction	<p>155. (1) A court that convicts a person of an offence may, in addition to any other penalty imposed, order that a thing seized in connection with the offence and not otherwise forfeited, returned or disposed of under this Act, or any proceeds of its disposition, be forfeited to the Government of the Northwest Territories.</p>	<p>155. (1) Le tribunal qui déclare une personne coupable d'une infraction peut, en plus de toute autre peine, ordonner la confiscation, au profit du gouvernement des Territoires du Nord-Ouest, des choses saisies dans le cadre de l'infraction qui n'ont pas été autrement confisquées, remises ou dont il n'a pas été autrement disposé en vertu de la présente loi, ou du produit de leur disposition.</p>	Confiscation après la condamnation
Return to owner	<p>(2) A convicting court that does not order forfeiture under subsection (1) may order that a thing referred to in that subsection, or any proceeds of its disposition, be returned to its owner or the person lawfully entitled to its possession.</p>	<p>(2) S'il n'ordonne pas la confiscation en application du paragraphe (1), le tribunal peut ordonner qu'une chose visée à ce paragraphe, ou le produit de sa disposition, soit remise au propriétaire ou à la personne qui a droit à sa possession.</p>	Remise au propriétaire
Retention and sale of thing seized	<p>156. If a fine is imposed on a person convicted of an offence, a thing seized, or any proceeds of its disposition, may be retained until the fine is paid, or the thing may, not less than one year after the day the fine is imposed, be sold in satisfaction of the fine with the proceeds applied, in whole or in part, in payment of the fine.</p>	<p>156. Si la personne déclarée coupable doit payer une amende, les choses saisies, ou le produit de leur disposition, peuvent être retenues jusqu'au paiement de l'amende ou, un an après l'imposition de l'amende, peuvent être vendues et le produit de la vente peut être affecté en tout ou en partie au paiement de l'amende.</p>	Rétention ou vente
Additional order	<p>157. A court that convicts a person of an offence may, in addition to any other penalty imposed and having regard to the nature of the offence and the circumstances surrounding its commission, make one or more of the following orders:</p> <ul style="list-style-type: none"> (a) prohibiting the person from doing any act or engaging in any activity that the court considers could result in the continuation 	<p>157. Le tribunal qui déclare une personne coupable d'une infraction peut, en plus de toute autre peine et compte tenu de la nature de l'infraction et des circonstances de sa perpétration, lui imposer par ordonnance une ou plusieurs des obligations suivantes :</p> <ul style="list-style-type: none"> a) s'abstenir d'accomplir tout acte ou d'exercer toute activité que le tribunal 	Ordonnances supplémentaires

- or repetition of the offence;
- (b) directing the person to take any action that the court considers appropriate to remedy or avoid any harm to any wildlife or habitat to which this Act applies, that has resulted or may result from the commission of the offence;
 - (c) directing that the person must successfully complete an approved harvester training course before carrying out any future harvesting of wildlife in the Northwest Territories;
 - (d) directing the person to publish, in any manner that the court considers appropriate, the facts relating to the commission of the offence;
 - (e) directing the person to pay to the Government of the Northwest Territories an amount for all or any of the cost of remedial or preventative action taken, or to be taken, by or on behalf of the Government of the Northwest Territories as a result of the commission of the offence;
 - (f) directing the person to perform community service in accordance with any conditions that the court considers appropriate;
 - (g) directing the person to submit to the Minister, on application to the court by the Minister within three years after the conviction, any information that the court considers appropriate about the activities of the person in relation to matters within the scope of this Act;
 - (h) directing the person to post a bond or pay an amount into court that the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this section;
 - (i) directing the person to pay for deposit in the Natural Resources Conservation Trust Fund, established under the *Natural Resources Conservation Trust Act*, a specified amount which, when added to the amount of a fine ordered, must not exceed the maximum fine that may be imposed for the particular offence;
 - (j) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct or for preventing the person from repeating the offence or committing other offences.
- juge susceptible d'entraîner la continuation de l'infraction ou la récidive;
- b) prendre les mesures que le tribunal juge indiquées pour corriger ou éviter toute atteinte à la faune ou à l'habitat visé par la présente loi qui a résulté ou est susceptible de résulter de la perpétration de l'infraction;
 - c)achever avec succès un cours de formation des récoltants avant de se livrer à toute autre récolte de la faune aux Territoires de Nord-Ouest;
 - d) publier, de la façon que le tribunal juge indiquée, les faits liés à la perpétration de l'infraction;
 - e) verser au gouvernement des Territoires du Nord-Ouest un montant couvrant les frais associés aux mesures correctives ou préventives prises – ou qui le seront – par le gouvernement des Territoires du Nord-Ouest ou pour son compte par suite de la perpétration de l'infraction;
 - f) exécuter du travail communautaire conformément aux conditions que le tribunal estime indiquées;
 - g) fournir au ministre, à la suite d'une demande du ministre au tribunal dans un délai de trois ans à compter de la déclaration de culpabilité, les renseignements relatifs à ses activités que le tribunal estime indiqués dans le cadre de la présente loi;
 - h) en garantie de l'exécution des obligations imposées au titre du présent article, fournir le cautionnement ou déposer auprès du tribunal le montant que celui-ci juge indiqué pour assurer le respect d'une interdiction, d'un ordre ou d'une exigence en vertu du présent article;
 - i) verser une somme déterminée, qui ne peut dépasser, lorsqu'elle est ajoutée à l'amende ordonnée, l'amende maximale pouvant être imposée à l'égard de l'infraction visée, à déposer au Fonds de fiducie pour la conservation des ressources naturelles établi en vertu de la *Loi sur la fiducie pour la conservation des ressources naturelles*;
 - j) remplir les autres conditions que le tribunal estime indiquées pour assurer sa bonne conduite ou pour empêcher la récidive ou la perpétration d'autres infractions.

