



Ms. Camilla Tutcho, Chair
Sahtú Renewable Resources Board
PO BOX 134
TULIT'A NT X0E 0K0

April 30, 2021

Dear Ms. Tutcho:

Sahtú Ragóza (Hunting Law) and Approaches to Wildlife Harvesting: Report on the Colville 2020 Public Listening (Hearing) Session

On behalf of the Government of the Northwest Territories, Department of Environment and Natural Resources (ENR), I would like to thank the Sahtú Renewable Resources Board (SRRB) for its Report of March 31, 2021 (Report) containing the SRRB's final decisions and recommendations from the first public listening session.

Consistent with section 13.8.28 of the Sahtú Dene and Metis Comprehensive Land Claim Agreement (SDMCLCA), I have reviewed the Report and am providing my final responses to the SRRB's final decisions and recommendations in the attachment.

My final responses took into consideration the SDMCLCA, the *Wildlife Act* and the overarching wildlife co-management context that currently exists in the Northwest Territories.

In its Report, the SRRB requests that determination of the final wording of various decisions and recommendations be deferred until a future hearing. Under section 13.8.28 of the SDMCLCA, the Minister may accept, vary or set aside and replace final decisions of the SRRB. I have chosen to maintain as my final responses the varied wording that I provided to the SRRB on January 29, 2021 as my final responses for the decisions and recommendations which the SRRB deferred. Whether the Colville Lake Renewable Resources Council may be granted the power to issue authorizations to participants from other Sahtú communities and the related issue of the allocation may be revisited at the SRRB's discretion after further discussions at future public listening sessions.

The SRRB has introduced in its Report the Policy Statement on Hı́dó Gogha Sė́nė́gots'ı́zá (Community Conservation Plans) and associated components and principles. This policy statement and associated components and principles is in part in respect of 13.8.23(a)(i) of the SDMCLCA, and will therefore need to be submitted to me under 13.8.24, and go through subsequent required steps under the SDMCLCA to receive approval.

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ENR staff and I look forward to the Délı̨nę public listening in 2021, continuing to work collaboratively with Sahtú communities, the SRRB and our other caribou co-management partners to effectively manage caribou.

Sincerely,



Shane Thompson
Minister
Environment and Natural Resources

Attachment

c. Ms. Shaleen Woodward
Principal Secretary

Mr. Martin Goldney
Secretary to Cabinet/ Deputy Minister, Executive and Indigenous Affairs

Dr. Erin Kelly, Deputy Minister
Environment and Natural Resources

Dr. Brett Elkin, Assistant Deputy Minister, Operations
Environment and Natural Resources

Ms. Deborah Simmons, Executive Director
Sahtú Renewable Resources Board

Mr. Jeff Walker, Superintendent, Sahtú Region
Environment and Natural Resources

Ms. Heather Sayine-Crawford, Director, Wildlife and Fish Division
Environment and Natural Resources

Responses to Sahtú Ragóᑦa (Hunting Law) and Approaches to Wildlife Harvesting: Final Report on the Colville 2020 Public Listening (Hearing) Session

Decision 1.1

SRRB Revised Decision

Harvest regulation for all caribou populations within the Sahtú region will reflect community conservation planning measures. When ready for submission and review, community conservation plans will be assessed against the SRRB's Hı́dó Gogha Sė́nė́gots'ı́á (Community Conservation Plan) Components, and when approved, forwarded to the Minister.

Response: Vary

Harvest regulation for all caribou populations within the Sahtú region will reflect community conservation planning measures **where appropriate**. When ready for submission and review, community conservation plans will be assessed against the SRRB's Hı́dó Gogha Sė́nė́gots'ı́á (Community Conservation Plan) Components, and when approved, forwarded to the Minister **for final review**.

Reasons:

ENR continues to support community conservation plans as part of overall caribou management efforts. These community-based initiatives play a valuable and important role, and ENR will continue to support communities in the development and implementation of their community plans.

Any aspect of a proposed community conservation plan that must be included in regulations if a plan is approved, such as an authorization card or sample kit instead of a physical tag, must be consistent with the *Wildlife Act* and acceptable to the Minister. Consequently, it is necessary for the Minister to carry out final review and approval of any community conservation plan following approval by the SRRB. The final review by the Minister will likely be more straightforward if a community has worked with ENR in the development of a community conservation plan to identify and address concerns at an early stage.

As has been previously stated, not all components or aspects of an approved community conservation plan will necessarily be appropriate for inclusion in regulations under the *Wildlife Act*. Therefore, the term "where appropriate" must remain. In creating any new regulations, the Minister will determine which components of a community conservation plan approved by the SRRB and the Minister are appropriate for inclusion in regulations. There are various circumstances when aspects of a community conservation plan may not be appropriate for inclusion in regulations. This includes any aspect of a plan that is unenforceable, inconsistent with court decisions or the Sahtú Dene and Metis Comprehensive Land Claim Agreement (SDMCLCA), or not in alignment with approaches that have been taken under the *Wildlife Act*.

For example, the Dehlá Got'ı́nė́ Tseduweh ʔəde Ah'ah, October 21, 2019 draft, limits hunters to hunting big game with a firearm. It would not allow bows and arrows or crossbows. Under the SDMCLCA,

participants have the right to employ any methods of harvesting subject to legislation in respect of conservation, public health or public safety and legislation respecting the humane harvesting of wildlife within their traditional territory. ENR officers would not be able to enforce community laws that limit these rights. This is one example of an aspect of a plan that is not appropriate for inclusion in regulations.

Decision 1.2

SRRB defers this Decision

Response: Vary

The SRRB recognizes the importance of having a comprehensive intraregional community conservation planning system based on Sahtú Indigenous governance systems. In this context, the SRRB has decided that communities have a responsibility for stewardship of wildlife and habitat, and Colville is the Sahtú community who primarily harvests and shares a stewardship role for ʔədə (barren-ground caribou) in Sahtú Barren-ground caribou Area 01 (S/BC/01). Both Colville and Fort Good Hope have a stewardship role and harvest within Area S/BC/02 where there may also be ʔədə. Déliṇę is the Sahtú community who primarily harvests and shares a stewardship role for ʔekwé (barren-ground caribou) within Area S/BC/03. All Sahtú communities work together with the SRRB, other co-management partners and ENR to responsibly manage caribou.

Reasons:

In the Sahtu Renewable Resources Board's (SRRB) Final Report on Colville Lake Public Listening Session, the Board has indicated that this Decision has been deferred. Following clause 13.8.28 of the SDMCLCA, the Minister accepts, varies or sets aside and replaces final decisions of the Board. At this time, I have chosen to confirm the varied wording that I provided to the SRRB on January 29, 2021 as my response to the Final Report. I have chosen to maintain as my final response the varied wording that I provided to the SRRB on January 29, 2021 for this decision. Whether the Colville Lake Renewable Resources Council may be granted the power to issue authorizations to participants from other Sahtú communities and the related issue of the allocation may be revisited at the SRRB's discretion after further discussion at future public listening sessions.

The SDMCLCA does not allow for one community to have governance over or management of all barren-ground caribou harvest within their area. If the SRRB would like to give Colville Lake a governance role and accountability for harvest, it can choose to allocate the entire Sahtu Total Allowable Harvest for the Bluenose-West herd to Colville Lake. ENR defines stewardship as taking responsibility for wildlife resources and the collaborative work to safeguard this resource. As noted in the 'Taking Care of Caribou' management plan, the Bluenose-West herd usually migrates through three settlement areas/regions and is typically harvested by 13 communities and the Bluenose-East herd usually migrates through four settlement areas/regions and is typically harvested by nine communities. These communities share a stewardship role for the Bluenose-West and Bluenose-East herds.

Furthermore, the SDMCLCA establishes the SRRB as the main instrument of wildlife management in the Sahtu Settlement Area. The communities of the Sahtu must work with the SRRB as well as the other communities and their corresponding renewable resource boards for the collaborative and cooperative management of barren-ground caribou herds.

Decision 2.1 & 3.1

SRRB Revised Decisions

When ready for submission and review, community conservation plans will be assessed against the SRRB's Hjdó Gogha Sĕnĕgots'íá (Community Conservation Plan) Components, and when approved, forwarded to the Minister for acceptance.

Response: Accept

Reasons:

Once the SRRB has forwarded an approved community conservation plan to the Minister, the Minister will conduct a final review of the proposed community conservation plan consistent with the second paragraph of the reasons for varied Decision 1.1.

Since the first version of the Belare Wílé Gots'ĕ?ekwĕ (Caribou for All Time) Plan was approved, Délĭnĕ ?ehdzo Got'ĭnĕ (Renewable Resources Council) has not been provided with any allocation of BNW caribou. Therefore, BNW caribou could only be harvested by Délĭnĕ Got'ĭnĕ if another community with an allocation gave part of its allocation to Délĭnĕ ?ehdzo Got'ĭnĕ (Renewable Resources Council). This remains unchanged and it is important that this edit is made to the 2019 edition of the Plan.

Recommendation 4.1

SRRB defers this Recommendation

Response: Vary

It is recommended to the Minister that the Colville Lake Renewable Resources Council be granted the power to issue barren-ground caribou authorizations to Dehlá Got'ĭnĕ and non-participant harvesters in the entire Sahtú Barren-ground caribou area 01 (S/BC/01).

Reasons:

In the SRRB's Final Report on Colville Lake Public Listening Session, the Board has indicated that this Recommendation has been deferred. Following clause 13.8.28 of the SDMCLCA, the Minister accepts, varies or sets aside and replaces final decisions of the Board. At this time, I have chosen to confirm the varied wording that I provided to the SRRB on January 29, 2021 as my response to the Final Report. I have chosen to maintain as my final response the varied wording that I provided to the SRRB on January 29, 2021 for this recommendation. Whether the Colville Lake Renewable Resources Council may be granted the power to issue authorizations to participants from other Sahtú communities and the related

issue of the allocation may be revisited at the SRRB's discretion after further discussion at future public listening sessions.

The original wording of the SRRB's recommendation granted the Colville Lake Renewable Resources Council the power to issue authorizations to all types of harvesters in Sahtú Barren-ground caribou area 01 (S/BC/01). Because the wording of this recommendation would delegate decision-making over the extent to which the rights of participants in Fort Good Hope and Norman Wells are restricted, correspondence was sent to the Fort Good Hope and Norman Wells Renewable Resource Councils offering legal support to ensure understanding of this aspect of the plan from a legal perspective and asking them if they were in support of this aspect of Colville Lake's draft community conservation plan after consulting with a lawyer. In formal written responses dated April 9, 2021 and April 10, 2021, neither the Norman Wells nor the Fort Good Hope Renewable Resource Council indicated their clear support for granting the Colville Lake Renewable Resources Council this power and asked for further discussions to occur on this matter within their communities and with the SRRB.

For this reason and the reasons provided in the initial Response to the SRRB with the same varied wording of this Recommendation, the recommendation cannot be accepted and has been varied to grant the Colville Lake Renewable Resources Council the power to issue authorization to only Dehlá Got'Inę and also to non-participants who are authorized to harvest by the CLRRC under 13.4.8 of the SDMCLCA. ENR staff will continue to engage Sahtú communities on this issue and clarify the support for jurisdiction of the Colville Lake Renewable Resources Council in issuing authorizations to harvesters other than Dehlá Got'Inę and non-participant harvesters.

Clause 13.9.4(b) of the SDMCLCA gives the RRC of a community the power to manage, in a manner consistent with legislation and policies of the SRRB, the exercise of harvesting rights of participants from that community throughout the entire Sahtú Settlement Area. Clause 13.9.4(b) does not limit the power of each RRC to the geographic boundaries of that community or any boundaries less than the entire Sahtú Settlement Area. 13.9.4(b) of the SDMCLCA could certainly have been worded more clearly. Though it may have been better to refer to "exercise of local participants" rather than the actual wording "local exercise of participants" to reflect an intention for "local" to mean 'from that community', this is of limited significance in interpreting what is meant by "local" in 13.9.4(b). The points set out in the initial Response to the SRRB are of greater significance in interpreting what is meant by "local".

Recommendation 4.2

SRRB defers this Recommendation

Response: Vary

Hjdó Gogha Sėnégots'ıá (Community Conservation Plans) will be implemented and enforced to the extent possible through regulations under the *Wildlife Act*.

Reasons:

In the SRRB's Final Report on Colville Lake Public Listening Session, the Board has indicated that this Recommendation has been deferred. Following clause 13.8.28 of the SDMCLCA, the Minister accepts, varies or sets aside and replaces final decisions of the Board. At this time, I have chosen to go confirm the varied wording that I provided to the SRRB on January 29, 2021 as my response to the Final Report. I have chosen to maintain as my final response the varied wording that I provided to the SRRB on January 29, 2021 for this recommendation. Whether the Colville Lake Renewable Resources Council may be granted the power to issue authorizations to participants from other Sahtú communities and the related issue of the allocation may be revisited at the SRRB's discretion after further discussion at future public listening sessions.

Community conservation plans and community-based self-regulation can contribute to caribou management at a local or regional scale, but as always, there remains a need for a coordinated approach to overall caribou management and harvest management.

Section 10 of the *Wildlife Act* acknowledges the role of local harvesting committees established under land claim agreements and their role and responsibility in the conservation and management of wildlife. However, as set out in varied Decision 1.1, there may be aspects of a community conservation plan that are not appropriate for inclusion in regulations under the *Wildlife Act*. This would include items which are not enforceable, anything which is inconsistent with court decisions or the SDMCLCA, and any matter for which a consistent approach across the Northwest Territories has been taken under the *Wildlife Act*.

Community conservation plans will be implemented and enforced to the extent possible through regulations under the *Wildlife Act*. Once any community conservation plan has been approved by both the SRRB and the Minister, ENR staff will work with the Department of Justice to include those aspects of the plan that are appropriate for inclusion in regulations under the *Wildlife Act*. At this time, a community conservation planning regulation is not being developed.

Recommendation 4.3**SRRB Revised Recommendation**

The *Interim Management Agreement* between Colville Lake and the Department of Environment and Natural Resources is recommended to continue to be in effect until it is replaced with an approved Hjdó Gogha Sénégots'ízá (Community Conservation Plan).

Response: Accept

Reasons:

ENR remains committed to continuing to work with Colville Lake on implementation of the Interim Management Agreement and to support the conservation and recovery of barren-ground caribou.

Recommendation 4.4

SRRB Revised Recommendation

In the event that the Colville Plan is not in place by the *Interim Management Agreement's* current date of expiry (May 31, 2021), the SRRB recommends that the parties meet to review and decide to extend the agreement.

Response: Accept

Reasons:

ENR is happy to meet with Colville Lake to discuss the continued implementation of the Interim Management Agreement. As per clause 6.1 of the Interim Management Agreement, if the parties agree, the term of the Agreement can be extended by written agreement of the parties.

Recommendation 5.1

SRRB Revised Recommendation

Alternative measures, as set out in the Wildlife Act, that are consistent with culturally appropriate restorative justice processes provided for in the Colville Lake and Délı̨nę community conservation plans will be presented for authorization as alternative measures to the Minister of Justice.

Response: Vary

Alternative measures, as set out in the *Wildlife Act*, that are consistent with culturally appropriate restorative justice processes provided for in the Colville Lake and Délı̨nę community conservation plans, **may be used if such alternative measures are part of a program of** ~~will be presented for authorization as~~ alternative measures authorized by the Minister of Justice.

Reasons:

In addition to the reasons provided in the initial Response to the SRRB with the same varied wording of this Recommendation, there are two further points that are important to note given the SRRB's reasons in its Final Decision.

First, alternative measures are a matter of administration of justice and therefore the Minister of ENR has no ability to authorize any alternative measures or to alter the existing alternative measures framework.

Second, alternative measures, as set out in the *Wildlife Act*, will not be a basis for limiting harvest. Rather, alternative measures are an alternative to proceeding with a prosecution for an offence under the *Wildlife Act* or its regulations and the sentences that could be imposed by a court.

Decision 6.1

SRRB defers this Decision

Response: Vary

In addition to measures put in place under the community conservation planning approach, the previously approved total allowable harvest in Sahtú Barren-ground caribou hunting Area 01 (S/BC/01) will remain in effect. The SRRB will regularly review the conservation outcomes under the community conservation planning approach.

Reasons:

In the SRRB's Final Report on Colville Lake Public Listening Session, the Board has indicated that this Decision has been deferred. Following clause 13.8.28 of the SDMCLCA, the Minister accepts, varies or sets aside and replaces final decisions of the Board. At this time, I have chosen to confirm the varied wording that I provided to the SRRB on January 29, 2021 as my response to the Final Report. I have chosen to maintain as my final response the varied wording that I provided to the SRRB on January 29, 2021 for this decision. If there is a change in the status of the Bluenose-West herd or there is no longer recommendations for a herdwide Total Allowable Harvest (TAH) from the ACCWM and the individual renewable resource boards, the TAH in S/BC/01 may be revisited at the SRRB's discretion after further discussion at future public listening sessions.

I am happy to see that the SRRB will consider presenting its proposed Community Conservation Planning Policy to the ACCWM. I am supportive of these fulsome discussions between renewable resources boards who have management authority for the Bluenose-West and Bluenose-East herds. As the SRRB is aware, on February 26, 2021, the ACCWM released the 2021 Action Table Plans for the Cape Bathurst, Bluenose-West and Bluenose-East caribou herds. The ACCWM has determined the Bluenose-West herd status colour zone to be orange (intermediate and decreasing). A Total Allowable Harvest (TAH) of 4% has been recommended by the Wildlife Management Advisory Council (NWT) and the Gwich'in Renewable Resources Board. The TAH minimally restricts rights under modern Treaties while supporting the conservation and recovery of the Bluenose-West herd. For these reasons and the reasons set out in the initial Response to the SRRB's Decision, the TAH will remain in place until the status of the herd has improved.

Recommendation 6.1

SRRB defers this Recommendation

Response: Vary

It is recommended that the Big Game Hunting Regulations as they apply to Aboriginal harvesters in Sahtú Barren-ground Caribou Area 01 (S/BC/01) and Area S/BC/03 (as they are currently named) will reflect the use of an Authorization for Dehlá Got'ıne harvesters as identified in the Interim Management Agreement and a sampling kit as identified in the Délıne plan.

Reasons:

In the SRRB's Final Report on Colville Lake Public Listening Session, the Board has indicated that this Recommendation has been deferred. Following clause 13.8.28 of the SDMCLCA, the Minister accepts, varies or sets aside and replaces final decisions of the Board. At this time, I have chosen to go confirm the varied wording that I provided to the SRRB on January 29, 2021 as my response to the Final Report. I have chosen to maintain as my final response the varied wording that I provided to the SRRB on January 29, 2021 for this recommendation.

The Délı̨ne plan includes the use of harvest sampling kits as evidence of authorization to harvest barren-ground caribou. The sampling kits would be used in S/BC/03 which reflects the range of the Bluenose-East herd in the Sahtú Settlement Area.

The Interim Management Agreement between Colville Lake and ENR identifies that the "Authorization" set out in Appendix 1 of the Agreement will be evidence of authorization for Dehlá Got'ı̨ne harvesters to harvest ʔədə in S/BC/01.

As outlined in varied Decision 6.1, the TAH for S/BC/01 is still in place and so the Big Game Hunting Regulations will not be changed in this respect.

Recommendation 7.5**SRRB Revised Recommendation**

It is recommended that the Ts'udá Nı̨né Tuyeta Management Board take part in meetings on the development of a community conservation plan for caribou in Sahtú Barren-ground Caribou Area 02 (S/BC/02) (to be renamed the Tuyeta ʔədə Néné [Caribou Land]).

Response: Accept

Reasons:

The Ts'udá Nı̨né Tuyeta Territorial Protected Area Management Board (the "Management Board") is not the final decision maker for wildlife management matters therein and does not have responsibilities outside of the boundaries of Ts'udá Nı̨né Tuyeta Territorial Protected Area for caribou. Further, the Board has a limited role with respect to caribou harvest management. The Management Board cannot be compelled to take part in meetings on development of a community conservation plan, nor does the Management Board have any authority over those parties that may work on the development of a community conservation plan.

The Management Board would be in a position to provide valuable input on the development of the community conservation plan with respect to the area of overlap with Ts'udá Nı̨né Tuyeta Territorial Protected Area and therefore ENR is supportive of the Management Board participating in meetings on development of a community conservation plan for caribou in Sahtú Barren-ground Caribou Area 02 (S/BC/02). It is respectfully requested that ENR be included in development of a community

conservation plan for S/BC/02 to provide ENR with an opportunity to provide input on the plan and to ensure ENR has a full understanding of any plan that results.