



January 25, 2021

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

**INTRODUCTION**

The Wildlife Management Advisory Council (NWT)'s ("WMAC") and Inuvialuit Game Council's ("IGC") have had an opportunity to review and seek legal advice about the Sahtú Renewable Resources Board's ("SRRB") *Sahtú Ragóza (Hunting Law) and Approaches to Wildlife Harvesting: Report on the Colville 2020 Public Listening (Hearing) Session, 2020* ("Colville Report").

The Councils have concerns about the impact of the SRRB's decision to remove the Total Allowable Harvest ("TAH") for the Bluenose West ("BNW") caribou herd on Inuvialuit harvesting restrictions and rights. The Councils are also concerned about the implications of the community self-regulation approach, as set out in the Dehlá Got'ine ʔədə Plan ("Colville Community Conservation Plan") and *Dehlá Got'ine Tseduweh ʔade Ah'ah* ("Community Conservation Planning Regulation") and recommended by the SRRB, on the collaborative relationship between members of the Advisory Committee for Cooperation on Wildlife Management ("ACCWM"), and in the longer term, on the effectiveness of the cooperative wildlife co-management process in the NWT.

The Councils' specific concerns are set out below.

WMAC and IGC respectfully request that the Minister of the Department of Environment Natural Resources ("ENR") not accept, and specifically

- 1 set aside and replace the SRRB's Decision 6.1 to remove the TAH for the BNW herd, and
- 2 vary or set aside and replace the SRRB's decisions and recommendations regarding community self-regulation that have the potential to adversely affect Inuvialuit rights, and undermine the wildlife co-management system in the NWT (Decisions 1.2 and 2.1, and Recommendations 4.2 and 4.3) .

The Councils also wish to highlight that Inuvialuit evidence presented at the Colville Public Listening was taken out of context, and misquoted in the Colville Report. As a consequence, the Colville Report appears to suggest that the SRRB's approach is supported by Inuvialuit and Inuvialuit evidence. This suggestion is not accurate. Enclosed at **Appendix A** is a summary of examples where such misrepresentation has occurred, with clarifications.

**THE CONTEXT FOR WMAC'S AND IGC'S CONCERNS**

WMAC and IGC are supportive of local caribou management, and do not wish to intrude into SRRB's decision-making about wildlife management in the Sahtú region. However, the

Councils are concerned that certain SRRB decisions and recommendations will impact the broader co-management framework in the NWT, and the exercise of Inuvialuit harvesting rights outside of the Sahtú.

Collaborative co-management of wildlife is central to each of the four settled land claims in the NWT. The NWT's wildlife co-management framework has been negotiated, established, and refined, for over forty years. Similar frameworks have been adopted through land claim agreements across Northern Canada in Nunavut, Yukon, Labrador, and Northern Québec. These co-management frameworks have also been integrated into wildlife legislation in all of the territories, including the NWT *Wildlife Act*,<sup>1</sup> which was drafted in close consultation with Indigenous rights-holders through a process that took many years to complete.

The wildlife co-management framework created by the northern land claims, including the *Sahtú Dene and Metis Comprehensive Land Claim Agreement* ("SDMCLCA"), is flexible and only allows for restriction of Indigenous harvesting rights (i.e., a TAH) where there is significant conservation concern for a species. The framework also recognizes an important role for local management, and provides for direct control of harvesting by communities (e.g., allocation of the Sahtú Needs Level ("SNL") by Renewable Resource Councils ("RRCs")). However, such local management is integrated within the broader co-management framework, and overseen by Renewable Resources Boards, like the SRRB. Renewable Resources Boards are the main instruments of wildlife management in their settlement areas, and are tasked with ensuring that a regional context is applied to wildlife management decisions which account for all perspectives in their respective settlement areas.

At no other point in the wildlife co-management system is regional oversight and coordination more important than in the management of migratory species.

The BNW and Bluenose East ("BNE") caribou herds' ranges encompass a large part of the northeastern NWT, including parts of the Inuvialuit Settlement Region ("ISR"), Sahtú, Gwich'in, and Wek'èezhii settlement areas, as well as part of western Nunavut.<sup>2</sup> Harvesting of barren-ground caribou is central to the Inuvialuit way of life, and to the way of life of Indigenous peoples across the NWT and Nunavut. The right to harvest is enshrined in the Inuvialuit, Sahtú, Gwich'in, and Tłı̄chǫ land claims as well as treaties and is protected by section 35 of the *Constitution Act, 1982*.

As you are well aware, the BNW and BNE populations are in serious decline. According to the ACCWM 2019 Annual Status Meeting Summary dated March 2020, the BNW herd has an "orange status" (intermediate and decreasing population).<sup>3</sup> The conservation status of the BNW and BNE herds is such that harvesting restrictions have been implemented across these herds' ranges. As set out in the Conference of Management Authorities' 2020 *Recovery Strategy for Barren-Ground Caribou in the NWT* ("Recovery Strategy"), Indigenous harvest of BNW is

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<sup>1</sup> S.N.W.T. 2013,c.30 [Wildlife Act].

<sup>2</sup> In the Sahtú Region, under the *Big Game Hunting Regulations*, the BNW management zone is S/BC/01 and the BNE management zone is S/BC/03.

<sup>3</sup> ACCWM 2019 Annual Status Meeting Summary November 19-21, 2019 dated March 2020.

currently limited by TAH in the Inuvialuit, Gwich'in and Sahtú land claim areas, and harvest of the BNE herd is limited by TAH in Wek'èezhii and Nunavut.<sup>4</sup>

WMAC made a recommendation to your predecessor in October 2006 that a TAH of 4% be set for the BNW herd, in the ISR portion of I/BC/06. The BNW area (I/BC/06) has a legal requirement for tag. Tag allocation began in the ISR in 2008/2009 and continues today. WMAC's recommendations have been implemented by Inuvialuit with support from IGC through HTC by-laws and subsequent regulations under the *Wildlife Act*. In similar fashion, the Cape Bathurst area (I/BC/07) was closed to all hunting by Inuvialuit and remains closed today.

Inuvialuit and other Indigenous harvesters have been subject to harvesting restrictions for many years, and have made difficult, collective sacrifices to protect these important herds for the benefit of future generations of harvesters.

A community self-regulation and voluntary harvesting reporting regime has been in place in the Sahtú region since 2016 (i.e., since the Délı̄ne Plan). However, no harvesting data from the Sahtú region has been shared with ACCWM co-management partners, including Inuvialuit, despite repeated requests, since that time.

Collaborative co-management of migratory species takes team work. As a result of the approach taken by SRRB to managing the BNW and BNE herds over the last several years, and the approach proposed by Colville RRC in the Community Conservation Plan and *Community Conservation Planning Regulation*, Inuvialuit are losing faith in the collaborative co-management system and the effectiveness of the ACCWM.

If ENR allows the disregard for collaborative co-management in the Sahtú region to expand, WMAC and IGC are concerned that more communities will decide to start managing caribou on a local basis, without harvesting restrictions or tracking, and abandon the co-management framework. If this happens, Inuvialuit have significant concerns that caribou herds could disappear.

The situation for barren ground caribou is dire. This subspecies is already listed as threatened under the *Species at Risk Act* (NWT).<sup>5</sup> Barren-ground caribou have also been assessed as "threatened" in Canada by the Committee on the Status of Endangered Wildlife in Canada and Environment and Climate Change Canada are consulting with Indigenous users and institutions in advance of a federal decision for similar status under federal *Species at Risk Act*.<sup>6</sup>

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<sup>4</sup> Conference of Management Authorities' *Recovery Strategy for Barren-Ground Caribou in the NWT* dated 2020 [Recovery Strategy].

<sup>5</sup> SNWT 2009, c.16; See Conference of Management Authorities' NWT List of Species at Risk (Barren-Ground Caribou listed as threatened on July 11, 2018), retrieved from: <https://www.nwt-species-at-risk.ca/CMA/SarList>.

<sup>6</sup> S.C. 2002, c. 29 [SARA]. Note that the Dolphin and Union barren-ground caribou populations are listed as "Special Concern" under SARA, Schedule 1, Part 4. See also NWT Species at Risk, Barren-ground Caribou, Federal SARA list "under consideration", retrieved from: <https://www.nwt-species-at-risk.ca/species/barren-ground-caribou>.

Making collaborative co-management work in this context is imperative, and this consideration must be given high priority in your decision on the SRRB's Colville Report.

### **DECISION TO REMOVE TAH ON BNW HERD SHOULD NOT BE ACCEPTED**

In the Colville Report the SRRB, among other things, decided that it will remove the TAH in S/BC/01 once Colville's Community Conservation Plan has been completed and approved, but reserved the right to re-apply the TAH if required for effective conservation (D6.1). According to the SRRB, "the evidence shows that TAH is a significant infringement of the Aboriginal rights of Sahtú participants. As required by the common law in *R v Sparrow* and *R v Badger*, this infringement is not justified and is not legally valid if there is an alternative that can meet this intended goal – in this case, conservation – while more minimally impairing rights."<sup>7</sup>

WMAC and IGC respectfully request that the Minister of ENR not accept, and specifically set aside and replace, the SRRB's Decision 6.1 to remove the TAH for the BNW herd for the following reasons. While we respect the work of the SRRB, it is not the SRRB's role to make findings of law about infringements on Aboriginal rights.

#### ***Removal of TAH is Inconsistent with Objectives of SMDCLCA***

As the main instrument of wildlife management in the Sahtú region, SRRB is required to manage caribou in accordance with the SDMCLCA and its objectives.<sup>8</sup>

The objective of Chapter 13 of the SDMCLCA is, among other things, is to "conserve and protect wildlife and wildlife habitat and to apply conservation principles and practices through planning and management."<sup>9</sup> Conservation is defined as "the management of wildlife populations and habitat to ensure the maintenance of the quality and diversity including the long-term optimum productivity of those resources, and to ensure a sustainable harvest and its efficient utilization."<sup>10</sup>

Conservation of a transboundary species, like the BNW herd, to ensure long-term optimum productivity and sustainable harvests requires a collaborative, inter-jurisdictional approach. This reality is reflected in the Recovery Strategy which recognizes that "successfully managing threats to barren-ground caribou in the NWT requires collaborative decision-making among these partners... As most NWT herds range into neighbouring jurisdictions, transboundary agreements and collaboration are necessary for consistent and effective management."<sup>11</sup>

In light of above, the SRRB is required by the SDMCLCA to manage caribou with a view to collaboration and inter-jurisdictional cooperation. The BNW TAH was implemented in response to serious conservation concerns for the BNW herd. Deciding to remove the TAH for the BNW

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<sup>7</sup> SRRB's *Sahtú Ragóza (Hunting Law) and Approaches to Wildlife Harvesting: Report on the Colville 2020 Public Listening (Hearing) Session, 2020* at pg. 57 ("Colville 2020 Report").

<sup>8</sup> SDMCLCA, s. 13.8.1(c).

<sup>9</sup> SDMCLCA, s. 13.1.1(b).

<sup>10</sup> SDMCLCA, s. 2.1.1 (definition of "conservation").

<sup>11</sup> Recovery Strategy at pg. 43.

herd, while the herd remains in “orange” status, and while every other settlement area is subject to a BNW TAH, is contrary to this requirement for collaboration, and risks undermining the objectives of the SDMCLCA and the conservation of the herd.

### ***Public Interest Considerations Support Not Removing the TAH***

The SRRB may decide to “remove” a TAH but that decision is subject to the decision-making process set out in Part 13.8 of the SDMCLCA, which leaves the final decision in the Minister’s hands. In deciding whether to accept, vary or set aside and replace the SRRB’s decision to remove a TAH, the Minister may consider, in addition to the matters considered by the SRRB, information not before the SRRB and “matters of public interest not considered by the Board.”<sup>12</sup>

Eliminating the TAH in the Sahtú on a herd that is in decline without having reliable harvesting restrictions or a process for collecting accurate monitoring information in place could lead to overharvesting of the herd and jeopardize herd productivity. Overharvesting of the BNW herd should not be allowed to occur.

Inuvialuit have been following the BNW tag requirements in their management zones, and can be prosecuted if they do not. Implementing a different management regime in the Sahtú with no harvesting restrictions or corresponding enforcement in place allows for inconsistency and unfairness in the way the *Wildlife Act* is applied across the NWT.

Furthermore, the TAHs in regions which share the range of a caribou herd are generally calculated based on the assumption that harvesting restrictions will be in place across the herd’s range. Indigenous harvesters make this sacrifice and accept this limitation on their rights as a collective. If ENR accepts the SRRB decision to remove the BNW TAH and to allow voluntary community harvesting reporting, the risk is that other user groups may also pull out of the transboundary caribou management arrangement, and the collaborative co-management framework which is enshrined in land claims and the *Wildlife Act* could collapse.

In light of the potential effects that removing the TAH on barren ground caribou would have on co-management across the NWT, ENR should not accept SRRB’s decision to remove the TAH on the BNW herd.

### ***Imposition of a TAH is Not an Infringement of Sahtú Harvesting Rights***

The SDMCLCA is an agreement between the Sahtú Dene and Metis, the Sahtú Tribal Council, the Government of Canada, and the GNWT. The SDMCLCA was negotiated over a period of years, and all parties had the benefit of legal counsel during these negotiations. Part of the agreement includes a process by which a TAH would be implemented, where needed and justified, to achieve wildlife conservation. The TAH is not an infringement of rights as contemplated in *Sparrow*; it is a carefully negotiated limitation on rights that requires significant

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<sup>12</sup> SDMCLCA, s. 13.8.25, 13.8.28.

consultation with affected Indigenous communities and a recommendation from a co-management board before it can be implemented.

Suggesting the removal of a TAH when a herd is in decline, after a determination that a serious conservation concern existed (made by the SRRB after a full public hearing in 2007), when that herd is in worse shape today, and when there is no new evidence provided to suggest that herd recovery has occurred, is not appropriate.

Relatedly, the Sahtú Dene and Métis and the Sahtú Tribal Council agreed to the SDMCLCA, including the process for setting a TAH and the roles and responsibilities of the institutions set out in Chapter 13. This framework is now enshrined in a constitutionally protected agreement and should not be ignored. In law, in the case of inconsistency, the SDMCLCA overrides any other legal authorities applicable to the SRRB's decisions and recommendations and Colville RRC's proposed management framework.

Land claims are modern treaties and as “expressions of partnership between nations,” they are “critical in fostering reconciliation.”<sup>13</sup> In *First Nation of Nacho Nyak Dun v Yukon*, the Supreme Court held that “[a]lthough not exhaustively so, reconciliation is found in the respectful fulfillment of a modern treaty’s terms.”<sup>14</sup> The Supreme Court explained that the Yukon Umbrella Final Agreement “establishes institutions for self-government and management of lands and resources”<sup>15</sup> and “set[s] out in precise terms a co-operative governance relationship.”<sup>16</sup>

The co-operative governance relationship and TAH process set out in the SDMCLCA must be respected by all parties. To allow select communities to act contrary to a negotiated land claim agreement undermines the objective of reconciliation in the NWT.

Finally, if SRRB's argument and resulting decision (6.1) is valid, then any provision in a modern land claim agreement that limits Indigenous rights is open to re-interpretation. Inuvialuit and others could refuse to follow TAH restrictions, alleging that they infringe their rights too. Land claim agreements were negotiated to ensure certainty in governance. An interpretation of these claims that allows key harvesting limitations to be re-opened without justification is untenable.

### **DECISIONS AND RECOMMENDATIONS THAT UNDERMINE COLLABORATIVE CO-MANAGEMENT SHOULD NOT BE ACCEPTED**

In the Colville Report the SRRB, among other things,

- ♦ decided that harvest regulation for Sahtú barren ground caribou populations must be subject to community conservation planning measures (Colville to have primary responsibility for S/BC/01 (BNW area)) (D1.2)

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<sup>13</sup> *First Nation of Nacho Nyak Dun v Yukon*, 2017 SCC 58 at para 1 [*First Nation of Nacho Nyak Dun*].

<sup>14</sup> *First Nation of Nacho Nyak Dun* at para 38.

<sup>15</sup> *First Nation of Nacho Nyak Dun* at para 10.

<sup>16</sup> *First Nation of Nacho Nyak Dun* at para 33.

- ♦ decided that it will approve Colville RRC’s Community Conservation Plan (D2.1), which does not require harvesters to report their harvest to the Colville RRC<sup>17</sup>
- ♦ recommended to the Minister that a new *Community Conservation Planning Regulation* be created under the *Wildlife Act* to entrench the community conservation approach in NWT law (R4.2)
- ♦ recommended that the Interim Management Agreement with GNWT continue to be in effect until the *Community Conservation Planning Regulation* comes into force (R4.3), and
- ♦ recommended that the *Big Game Hunting Regulations* be amended to remove the tag required for Aboriginal harvesters in S/BC/01 (BNW area) and S/BC/03 (BNE area), to be replaced by authorizations and permissions granted by the community under the *Community Conservation Planning Regulation* (R6.1).<sup>18</sup>

As currently set out, these decisions and recommendations undermine collaborative co-management in the NWT. ENR should vary or set aside and replace any decisions or recommendations that undermine the co-management process.

### ***Authority for the Colville Community Conservation Plan and Regulation***

We submit that the SRRB is inappropriately delegating its authority as the “main instrument of wildlife management” to the Colville RRC by recommending that ENR adopt the Colville Community Conservation Plan. Furthermore, the *Community Conservation Planning Regulation* is simply beyond the authority of the Colville RRC. It is not and cannot substitute for the mandated responsibilities of the SRRB and GNWT under the *Wildlife Act*. For example,

- ♦ Pursuant to SDMCLCA, s. 13.9.4(b), RRC’s have the power to manage, in a manner consistent with legislation and the policies of the SRRB, the local exercise of participants’ harvesting rights, including the methods, seasons, and location of wildlife harvest. RRC’s do not have the power under the SDMCLCA to propose new laws like the *Community Conservation Planning Regulation*. By contrast, the SRRB does have the power to propose regulations in respect of wildlife harvesting under s. 13.8.23.
- ♦ The *Community Conservation Planning Regulation* (proposed as a regulation under the *Wildlife Act*), s. 6(1) provides that if there is a conflict between the *Regulation* and the *Wildlife Act*, or the SDMCLCA, the *Regulation* prevails pursuant to the SDMCLCA, s. 13.6.4. Part 13.6 of the SDMCLCA is about government negotiated agreements, it does not speak to RRC authorities. SDMCLCA, s. 13.6.4 provides that management agreements established with respect to the Bluenose herd will apply notwithstanding inconsistent

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<sup>17</sup> Dehłá Got’ıne ʔədə Plan prepared by the Colville Lake RRC dated October 21, 2019 at pg. 16, Section 3.1, Item 1, which states that Colville RRC will monitor harvesting by encouraging volunteering reporting of harvest to the RRC.

<sup>18</sup> Colville 2020 Report at pg. v-viii.

provisions of the SDMCLCA. The *Regulation* proposed by the RRC is not a government negotiated management agreement.

- ♦ The *Wildlife Act*, s. 6 does provide that land claim agreements prevail over the Act and its regulations where they are inconsistent. But a *Regulation* created under the *Wildlife Act* cannot take precedence over a land claim agreement or the *Wildlife Act* itself.
- ♦ The *Community Conservation Planning Regulation*, s. 10 provides that the Colville RRC is “responsible for all matters relating to the harvest of [caribou] in the traditional territory of the Dehlá Got’íne.” Sections 13 and 14 of the *Regulation* provide that Colville RRC can enter into agreements with the SRRB or the Minister of ENR respecting the SRRB’s or ENR’s involvement in conservation and management of caribou in the traditional territory. The Colville RRC does not have the authority to define SRRB’s or ENR’s participation in harvest management. SRRB, not Colville RRC, is the primary authority responsible for caribou management in the Sahtú region, and ENR has ultimate jurisdiction over wildlife. Colville RRC’s role is to manage local harvesting in accordance with SRRB policies (s. 13.9.4(b)), and advise the SRRB with respect to harvesting and matters of local concern (s. 13.9.4(e)).
- ♦ The *Community Conservation Planning Regulation*, s. 12 provides that Colville RRC may “establish policies and procedures and give directions respecting any matters relating to the harvest of [caribou] in the traditional territory of the Dehlá Got’íne.” The Colville RRC does not have power to establish policies for harvesting under the SDMCLCA. The SRRB has power to establish policies under s. 13.8.23.
- ♦ The *Community Conservation Planning Regulation* provides that the Colville RRC will enforce the *Regulation*, and s. 28 states that the Colville RRC may “invite” ENR to assist the RRC enforcement. This approach is problematic at best, and is unlikely to function in practice.

WMAC and IGC are not asserting that local management of wildlife by land claim beneficiaries is not important. Indeed, Part 13.9 of the SDMCLCA permits the RRC to exercise local control through the allocation of SNL. We suggest, however, that local authority must be exercised within the bounds of the land claim agreement and co-management framework.

The SRRB is an institution of public government and the “main instrument of wildlife management” in the Sahtú region, not the Colville RRC. The Colville RRCs is not a co-management institutions and Renewable Resource Boards are not self-government institutions. The approach set out in the Colville Community Conservation Plan and the *Community Conservation Planning Regulation* is inconsistent with the SDMCLCA, and would erode the SRRB’s authority to manage wildlife and harvesting across the Sahtú region.

### ***GNWT’s Responsibilities for Migratory Species Management***

Pursuant to s. 13.6.1 of the SDMCLCA, the GNWT agreed that plans for wildlife and habitat management “will be designed to enhance the productivity of migratory species within the

NWT... in an integrated fashion.”<sup>19</sup> ENR is therefore required under the SDMCLCA to take an integrated approach to management of transboundary caribou herds in the NWT, to enhance the productivity of the species within the NWT.

That ENR is required to take an integrated approach is further supported by the *Wildlife Act*. The GNWT exercises jurisdiction over wildlife through the *Wildlife Act* and its regulations, subject to land claim agreements, like the SDMCLCA.<sup>20</sup> GNWT and all persons and bodies exercising powers and performing functions under the Act must do so in accordance with the principles set out in s. 2 of the *Wildlife Act*, which include that the conservation and management of wildlife and habitat is to be (i) carried out on an ecosystem basis, recognizing the interconnection of wildlife with the environment, and (ii) conducted in an integrated and collaborative manner.<sup>21</sup> These principles also apply to the interpretation and application of the Act.<sup>22</sup>

ENR should not approve the Colville RRC Community Conservation Plan or *Community Conservation Planning Regulation* as currently drafted because they do not promote integrated and collaborative conservation of the BNW herd. In particular, the proposed community-regulation approach does not rely on a TAH and does not set out a reliable system for tracking harvesting (i.e., does not require harvesters to report their harvest to the RRC).

Under SDMCLCA, s. 13.6.2, GNWT agreed to work with the SRRB and other wildlife management bodies to establish wildlife management agreements for migratory species.<sup>23</sup> Sections 13.6.3 and 13.6.4 provide that GNWT shall specifically work with the users of the Bluenose caribou herd to establish an agreement for management of the herd, and that any agreements established for the Bluenose herd will apply to the herd, notwithstanding any inconsistent provisions of the SDMCLCA. But no agreement for the management of the BNE and BNW herds has been negotiated to date under Part 13.6 of the SDMCLA. This is likely because GNWT, co-managers and users developed the ACCWM process and have been managing caribou without the need for a formal inter-regional agreement.

It seems clear that further discussions among GNWT and parties to the ACCWM need to be undertaken to address the proper role for local/community level management of wildlife, and we suggest that such discussion take place at an early date.

If disagreement between wildlife management boards on the approach for managing Bluenose caribou cannot be resolved, it may be necessary for ENR to consider initiating negotiation of a transregional management agreement.

### ***Interim Management Agreement and Traditional Knowledge License***

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<sup>19</sup> SDMCLCA, s. 13.6.1.

<sup>20</sup> Any action or thing authorized by the *Wildlife Act* must be carried out in accordance with applicable land claim agreements; See *Wildlife Act*, s. 5.

<sup>21</sup> *Wildlife Act*, s. 2(1)(b) and (c).

<sup>22</sup> *Wildlife Act*, s. 3.

<sup>23</sup> SDMCLCA, s. 13.6.2.

The Councils also wish to comment on GNWT's signing of the Traditional Knowledge and Limited License Agreement under the Interim Management Agreement with the Colville RRC.<sup>24</sup> This agreement prevents ENR from disclosing harvesting information shared by Colville RRC, without the RRC's consent.

The License Agreement threatens ENR's obligation under SDMCLCA, Part 13.6 and the *Wildlife Act* to promote integrated caribou management. Furthermore, it frustrates long-standing collaborative co-management practices.

The BNE and BNW herds are shared resources, and TAHs are allocated to user groups on the basis of historical harvesting data. A TAH is a limitation on constitutionally protected harvesting rights, which is only put in place when there is serious conservation concern for a species. When TAHs are allocated, and rights are restricted on the basis of historical harvesting data, it is essential that rights-holders are treated equitably and that the pain or sacrifice is being shared. The sharing of harvesting data is critical for ensuring fairness and accountability across user groups and to inform ongoing management (e.g., the adjustment of TAH if needed).

### ***ACCWM and Transboundary Obligations***

No one wildlife management board has authority to manage and restrict harvesting of BNW or BNE caribou across these herds' entire ranges. This is precisely why the ACCWM was established in 2008 to coordinate wildlife management and information sharing between wildlife management boards, and to facilitate management of caribou herds that cross land claim boundaries, including the BNW and BNE herds.

The SRRB's approach as set out in the Colville Report is inconsistent with the ACCWM's Memorandum of Understanding ("MOU")<sup>25</sup> and collaborative framework for management of barren-ground caribou.

By pursuing a caribou management framework that has potential to jeopardize the exercise of other land claim beneficiaries' harvesting rights, and by not sharing harvesting data despite repeated requests from WMAC and IGC (for over five years), SRRB is failing to seek to accommodate and find consensus among the Parties' interests, as is expected of the SRRB under ss. 3.7 and 3.8 of the ACCWM MOU.

In addition, by not ensuring a reliable and accountable process for the sharing of harvesting data the SRRB is failing to uphold the spirit and intent of the MOU, and is undermining the collaborative process set out by the MOU, and the effectiveness of ACCWM.

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<sup>24</sup> Interim Management Agreement between the Behdzi Ahda' First Nation, Ayoni Keh Land Corporation and the Colville Renewable Resources Committee dated December 20, 2019 [Interim Management Agreement].

<sup>25</sup> Memorandum of Understanding: Cooperation of Wildlife Management dated October 2012, amended June 2016 [ACCWM MOU].

Not ensuring reliable information sharing from the Sahtú region also jeopardizes the success of the ACCWM's Taking Care of Caribou Plan,<sup>26</sup> which was approved by consensus of the wildlife management boards (including SRRB), and which GNWT considers as the "primary guidance on monitoring and management of the Cape Bathurst, BNE and BNW herds."<sup>27</sup> The Taking Care of Caribou Plan emphasizes the importance of (i) collaborative management of transboundary caribou herds, particularly when discussing TAH for shared herds (ii) openness and cooperation among responsible agencies and users (shared use requires shared responsibility), and (iii) the collection and sharing of harvesting information among managers and harvesters.<sup>28</sup> The SRRB's recent management approach, and the approach set out in the Colville Report, are inconsistent with these principles which are fundamental to caribou management in the NWT.

ENR's decision on the Colville Report should support the ACCWM management framework.

## **CONCLUSION**

As stated above, WMAC and IGC are not opposed to local caribou management in the Sahtú region or elsewhere. Nor do the Councils wish to intrude into SRRB's decision-making about wildlife management within the Sahtú region. The Councils concerns relate to the effects of SRRB decisions on migratory and shared wildlife, especially a species as vitally important as barren-ground caribou.

A form of local management of wildlife by Hunters and Trappers Committees is also an important part of the *Inuvialuit Final Agreement* ("IFA") and has been operating for many years. Inuvialuit are committed to the implementation of these IFA provisions. But we suggest that local management must be pursued without undercutting the structure of collaborative co-management, which is critical to conservation of migratory species in the NWT.

We believe the recent approach taken in the Sahtú region is an example of what happens when wildlife managers and harvesters do not work together towards a solution that works for everyone. If other settlement areas and communities start to follow the approach taken by the SRRB, many years of hard work and collaborative co-management will be threatened. The Councils' concerns are particularly important, as it appears that ENR is being urged to approve decisions and recommendations which are not consistent with land claim agreements and legislation. More work is obviously needed by all parties to better address the roles of RRCs and local harvesting committees in wildlife management, especially for migratory wildlife.

The Minister of ENR has ultimate jurisdiction over wildlife in the NWT, and GNWT is a party to the Inuvialuit, Sahtú, Gwich'in and Tłı̨chǫ land claim agreements. WMAC and IGC respectfully urge the Minister to exercise this jurisdiction and responsibility carefully. The decisions which must be made on the SRRB's Colville Report should preserve the integrity of the collaborative

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<sup>26</sup> Advisory Committee for Cooperation on Wildlife Management. 2014. Taking Care of Caribou: the Cape Bathurst, Bluenose-West, and Bluenose-East barren-ground caribou herds management plan. Yellowknife, NT [Taking Care of Caribou].

<sup>27</sup> Belarewı̨le Gots'ė ʔekwe. A Délı̨ę Got'ı̨ę Plan of Action approved in principle on November 4, 2015, first edition dated January 8, 2016 at pg. 6 [Délı̨ę Plan].

<sup>28</sup> Taking Care of Caribou at pg. 9, 12, 39, and 48-49.

co-management and the viability of the BNW and BNE herds on which Indigenous rights-holders depend.

## APPENDIX A

The *Sahtú Ragóza (Hunting Law) and Approaches to Wildlife Harvesting: Report on the Colville 2020 Public Listening (Hearing) Session, 2020* takes some Inuvialuit observations and commentary out of context to justify its decisions, exaggerating Inuvialuit observations and misrepresenting a quotation by Jim Elias of the Inuvialuit Game Council (“IGC”).

### Section 31

Section 31 of the report reads,

While the ACCWM considers ɾəðə to be in the orange zone (the population level is intermediate and decreasing) based on community and scientific evidence, Colville has expressed lack of trust in this evidence and cites their own evidence about the strength of community relationships with and knowledge about caribou. Information provided to the ACCWM by Colville as well as the neighbouring Inuvialuit communities of Paulatuk and Tuktoyaktuk (by way of the Wildlife Management Advisory Council – NWT) are that ɾəðə are abundant and fat.

This is repeated on p. 151 of the report:

This evidence is supported by monitoring information provided to the ACCWM. Reports from the communities of Paulatuk and Tuktoyaktuk via the Wildlife Management Advisory Council – NWT (WMAC-NWT) indicat[e] that the caribou are abundant and fat, though according to Paulatuk there are perhaps fewer calves than in previous years.

The words “abundant and fat” were part of the 2019 ACCWM monitoring table, which is populated on an annual basis when the WMAC (NWT) conducts its community tour. However, they are also separated from the larger context surrounding the population trend. The full Population and Population Trend sections of the report, from Paulatuk, read as follows:

**Population:** “Members noted the caribou numbers are higher than they have been in the last 2–3 years and they are abundant and healthy. The population has been steadily increasing over the last 3 years. This harvest season, “Everyone had their share”. The caribou populations follow natural cycles; a long time ago the hills looked like they were moving with the migrating caribou; it’s not like that anymore.”

**Population trend:** “Paulatuk members noted the population increased since last year. It’s been steadily increasing in the last 3 years; this year has been especially good. The population is better than any previous years (except 2006, which was excellent).”

In 2018, Paulatuk noted that “Community members noted the population seems to be increasing compared to the 1990s.”

Observations from Tuktoyaktuk primarily concern the Cape Bathurst herd (as well as Tuk Pen), and their feedback is included in the Cape Bathurst monitoring table, which is not shared with Colville or any Sahtú communities. However, their full observations on Cape Bathurst caribou from the 2018 monitoring table read as follows:

**Population size:** “Tuktoyaktuk noted that the population size has been pretty steady for the last few years.”

**Population trend:**

- ▶ More caribou in Husky Lakes area
- ▶ Tuktoyaktuk noted that when you see bunches of caribou now, there’s an increase in the size of the bunches you see.
- ▶ Last fall in Kugaluk River and Mason River area, one harvester noted they had seen the most caribou of the past 5 years, and numbers are not like before but the population is increasing
- ▶ Inuvik harvesters said the population has not changed compared to last year.

Despite the assertion that Colville provided information stating that caribou are abundant and fat, information from Colville in the 2019 and 2018 monitoring tables is extremely limited. The 2019 table says that “no significant changes were noted”, and the 2019 table reads “We have a difference of opinion on numbers, but we are working through that.” For Body Condition and Health, Colville shared that “?əɗə appear to be in normal good health.” Nowhere in the monitoring table is there information from Colville saying that caribou are simply abundant and fat. The ACCWM cannot make decisions based on information that has not been shared with it.

While Paulatuk has been noticing increases near their community, none of the observations from Inuvialuit implied that the population was high enough, or near peak levels, to merit removing all management actions. Paulatuk and Tuktoyaktuk harvesters also clearly stated that population levels, though increasing steadily, are not at high levels like they were in some of their childhoods.

Furthermore, the ACCWM and co-management boards are mandated to make decisions on the equal basis of scientific and local and traditional knowledge. Either WMAC (NWT) or the SRRB could have proposed a status change for the Bluenose West herd in 2019 or 2020, and discussions were held about potentially changing the status from Orange (decreasing) to Yellow (increasing), but the boards decided not to make that proposal. Despite its criticisms of the ACCWM, the SRRB, as a co-management board, is a member of the ACCWM and has the responsibility to bring information to the Annual Status Meetings and propose status changes. For example, based on observations from Tuktoyaktuk, the status, agreed by consensus, for the Cape Bathurst herd was changed from Red (low) to Yellow (increasing) following the 2020 ASM.

## **Section 38**

Section 38 of the Colville 2020 report reads,

Evidence provided at the 2020 session included community reflections on their rationale for embracing a CCP approach. Community panels pointed to the role of CCP in supporting community governance frameworks as well as Indigenous decision-making processes and laws. Community panels also highlighted their community conservation plans as platforms for cross-community learning and community-to-community sharing agreements.

Included in this section are several quotes from the Colville meeting, including a quotation from Jim Elias, representing the IGC:

So if we don't all sit at the same table, we'll do different plans and different things which might not be what another groups agree with ... so we have to sit at the same table and come to some sort of an agreement where it'll work out for everybody.

It is misleading to describe this quotation as “highlight[ing] their community conservation plans as platforms for cross-community learning and community-to-community sharing agreements”, and nest it within a section of quotations which support the Colville CCP process, when Mr. Elias was highlighting the importance of collaboration and coordination across jurisdictions, rather than separating the collaborative management system we do have into separate components for each community, without agreement from neighboring peoples.

The following is the full quotation from the Colville 2020 transcript (January 23, 2020):

One (1) of my concerns is that -- like, we all have to work together. If not, things don't get done right and sometimes don't get done at all. This includes all government groups and Aboriginal people. We are leaders talking on behalf of our -- our people, so we have to -- like what our Chief said, there's no wrong -- wrong words or anything, no -- no stupid questions and that, so -- well, yes, I'm going to say you should say it and then doesn't matter. We all have our own ways and see it in our language, our traditional dress, and our entertainment. Like, we have all different cultures and that. We might live one community away and that, but even in our area we see our dialects -- dialects are very different. That's why I'm so happy that we have all this translating stuff here where we could understand everything, and then we get to understand what's being said or hear what's being said.

One (1) of the things is, like, when we -- or we share between the communities is, like, our caribou, the migrations and that. So when something like that comes up and that, I think the governments and everybody should be aware that you just don't just come to the ISR or the Sautú or the Nunavut area and that because this

is shared resources, our -- our birds and the migrations of our caribou and the other migration animals.

So if we don't all sit at the same table, we'll come up with different -- we'll do different plans and different things which might not be what another group disagree with and that, so we have to sit at the same table and come to some sort of an agreement where it'll work out for everybody.

With more context, it is clear that Mr. Elias was referring to a concern about the relationship between separate community conservation planning approaches and collaborative management, rather than support for the Colville CCP process as a new “platform” for collaboration.

## References

Advisory Committee for Cooperation on Wildlife Management. 2020. Annual Status Meeting Summary for the Cape Bathurst, Bluenose-West, and Bluenose-East Caribou Herds. Yellowknife, NT.

Advisory Committee for Cooperation on Wildlife Management. 2018. Annual Status Meeting Summary for the Cape Bathurst, Bluenose-West and Bluenose-East Caribou Herds. Yellowknife, NT.

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