



**ʔehdzo Got'Inę Gots'ę Nákedı**

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Hon. Robert C. McLeod  
Minister of Environment and Natural Resources  
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***Delivered via email***

December 14, 2016

***RE: Toward a Visionary Cross-Regional Approach to Caribou Conservation in the NWT***

Dear Minister McLeod:

I am writing on behalf of the ʔehdzo Got'Inę Gots'ę Nákedı (Sahtú Renewable Resources Board - SRRB) to follow up on both our Final Decision delivered to you on October 26 plus recent technical discussions that have taken place with ENR officials regarding ongoing questions about reconciling the different Ɂekwé management approaches recommended in different land claim regions. The SRRB wishes to provide additional clarification regarding current challenges and opportunities for Bluenose East (BNE) Ɂekwé conservation in the NWT.

The different approaches taken by the SRRB and the Wek'èezhii Renewable Resources Board (WRRB) to recommendations and decisions on best options for BNE Ɂekwé conservation reflect the particular land claim obligations, different regional contexts, and distinct evidence in the two parallel hearings held by the SRRB and WRRB. Decisions about overall herd management should reflect these differences if the best conservation outcomes are to be achieved.

The SRRB continues to view the WRRB's determinations related to BNE harvest management with great respect, given that they are grounded in evidence concerning recent Tłjchq experiences with declines in other caribou herds provided at the WRRB's BNE Hearing on April 6-8. The SRRB views its own decisions as compatible with those of the WRRB in that they are also grounded in the specific evidence provided about the Sahtú Region history and context, and integrating both western science and traditional knowledge about Ɂekwé health and conservation. There is strong evidence that the distinct approaches affirmed by the two Renewable Resources Boards are best suited to achieve the community support, voluntary compliance and thus successful conservation outcomes at the present time.

The Minister is required to make a decision on overall BNE Ɂekwé conservation that addresses three criteria:

- 1) It must achieve agreed-upon **conservation objectives** based on agreed-upon evidence that BNE are in the “orange zone” (intermediate and declining) defined in the *Taking Care of Caribou* plan for Bluenose Caribou.
- 2) It must be grounded in the **consultation processes** established in the Sahtú and Tłı̄chq land claim agreements and further confirmed in recent legal decisions on consultation and accommodation in a modern land claim context (and specifically with respect to Ɂekwé co-management).<sup>1</sup>
- 3) It must be grounded in the **principles of procedural and substantive fairness** for administrative tribunals enshrined in Canadian law.

None of these three criteria include a requirement that the formulae for calculating harvest thresholds must be determined by the WRRB, or be identically applied across the regions as was suggested by the Minister in his response to the SRRB’s *Ɂekwé hé Dene Ts’ı̄lı̄ Sustaining Relationships* Hearing Report. The concept of proportional distribution as a basis for determining fairness does not adequately accommodate the environmental governance system and indigenous conservation principles of the Sahtú Region.

The historic and still-present basis of Tłı̄chq and Délı̄ne cross-boundary relationships and consensus is not a quantitative formula to be negotiated according to a numbers-only approach determined by biologists, but rather must reflect a deep **respect** for the respective autonomy of the nations based on an understanding of conservation principles shared in common, and **accountability** for paths determined by the Sahtú and Tłı̄chq neighbours. Contributions by biologists about the status of the BNE population have been valuable. However, as pointed out in our previous contributions, the formula-based Total Allowable Harvest system is a measure of last resort and must be based in evidence that there are not better alternatives to infringing Sahtú harvesting rights in this way.

The balance of evidence heard by the SRRB in the Sahtú BNE Hearing is that decisions in the current juncture should not be based on a mathematical formulas, but rather on community-driven conservation initiatives. The evidence in the Sahtú BNE hearings clearly demonstrated that community-driven processes would achieve better rates of compliance, maximize the transition to alternative harvests for other species, and provide more nuanced conservation information on the health of the herd beyond western science surveys of population numbers. ENR has dedicated substantial funding to cross regional discussions about Ɂekwé conservation over the past several

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<sup>1</sup> For instance, we note the recent Quebec Court of Appeal case, *Corporation Makivik c. Québec*, 2014 QCCA 1455 on caribou management in a modern claims context. *Makivik* confirmed that wildlife harvesting co-management regimes protect both priority Aboriginal harvesting rights and decision-making rights and that any infringement on these rights require justification including verification that the infringement is as minimal as possible. The Court of Appeal noted that “the burden borne by government in terms of justification [of infringement of harvesting rights] must remain high; otherwise the rights protected by s. 35 of the *Constitution Act, 1982* could be neutered and the honour of the Crown distorted.”

years. However, these discussions have arguably been least productive when they are centred on negotiation of quotas rather than Ɂekwé **knowledge** and **conservation principles**. Although the Tłıchǰ and Sahtú regions differ in conservation approaches, the SRRB believes they can meet, talk, and arrive at mutual understanding about how their respective harvesting practices are grounded in a common desire to conserve Ɂekwé. The SRRB recognizes the heavy responsibility that the “Sahtú approach” places on the community, but has concluded based on the evidence shared at the BNE Hearing that this is the time to take up the challenge.

The SRRB is therefore recommending that instead of taking a formula-based path determined by conventional wildlife management methodology, the Minister adopt a **visionary**, qualitative approach to the decision about harvest management in the Sahtú Region – an approach uniquely adapted to the rich and varied landscape of indigenous governance and land stewardship now increasingly recognized on a federal level. Such an approach can be at once deeply rooted in indigenous traditions and innovative in addressing contemporary social and ecological problems at local, regional and national scales. It would also meet the legal obligation to ensure the wildlife harvesting and decision-making participation rights bargained for by the Aboriginal communities in the Sahtú region is infringed upon as minimally as necessary to reach valid conservation objectives.

The visionary approach recommended by the SRRB includes:

- 1) Recognition of shared cross-regional goals in Ɂekwé conservation;
- 2) Celebration of living biocultural diversity in the NWT as recognized by UNESCO and Canada under Article 8(j) of the international Convention on Biodiversity;
- 3) Affirmation of distinct approaches to conservation arising from bioculturally diverse contexts in the NWT;
- 4) Recognition that the evidence supports the positive conservation outcomes of wildlife conservation rooted in indigenous community-driven processes; and
- 5) Support for a rigorous and knowledge-based process for evaluating and strengthening conservation measures on local, regional and cross-regional scales.

The SRRB recognizes that you have taken extra time beyond the normal 30-day timeline identified in the Sahtú Dene and Métis Comprehensive Land Claim Agreement to closely consider options for addressing the current conservation challenge for BNE Ɂekwé. We are aware that this is a complex challenge, and appears all the more acute now that COSEWIC has assessed barren-ground caribou in Canada as Threatened. We thank you again for taking the care to ensure that solutions are appropriate to the NWT reality, and look forward to your decision.

Máhsı cho,  
Michael Neyelle, Chair

