



Issues and Deferred Issues, Procedural Guidance, and Agenda



Revised timing January 31-February 4, 2022

Notice to Parties and the public, December 17, 2021

This notice is to provide an update to parties on the issues and deferred issues, procedural guidance and the agenda for the Déline 2021 PLS.

Please note: The SRRB has decided to *further defer* consideration of the deferred issues from the Colville 2020 PLS related to (1) stewardship roles in caribou conservation, (2) ʔehdzo Got'ine (Renewable Resources Council – RRC mandate and powers under s. 13.9 of the SDMCLCA, and (3) harvester residency and education requirements for harvesters in the Sahtu region at the Déline 2021 PLS. These issues will not be part of the SRRB's consideration in the Déline 2021 PLS. Details and reasons for this decision are below.

In order to assist Parties and the public in preparing for the PLS scheduled for **January 31-February 4, 2022 (note revised dates)**, the SRRB has prepared procedural guidance and a preliminary agenda below.

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Issues for the Délıne 2021 PLS

The Délıne 2021 PLS is part of a larger five-part PLS series on the question: **“What is the most effective way to conserve caribou?”** The Délıne 2021 PLS is focused on the central question: **“What should people’s role be in maintaining healthy relationships between caribou and other wildlife?”** As indicated in the Resumption Notice issued on July 7, 2021, the SRRB will also consider a new issue related to *Hıdó Gogha Sėnégots’ızá (Community Conservation Plan) Process and Components*, which remains on the agenda.

Parties are reminded to submit **responses to Information Requests** related to these issues by **January 14, 2022**. Community Panels and Parties are asked to submit written presentations (slides, narrative texts or other media) by **January 28, 2022**, and oral presentations providing related evidence according to the order of events provided in the Délıne 2021 PLS Agenda (see below).

The July 7 Resumption Notice included a brief overview and summary of the issues for the Délıne 2021 PLS. For easy reference by the Parties as they prepare for the upcoming PLS, the SRRB is including the overview and summary in this notice, with issues deferred to a future PLS noted and struck out to clarify that these will not be part of the Délıne 2021 PLS proceeding.

Overview

The **Délıne 2021 PLS** is focused on caribou relationships with other wildlife, including predators and competitors, within the larger PLS question about caribou conservation. **[Deferred to Future PLS]** ~~The 2021 PLS will also consider some of the deferred issues arising from the Colville 2020 PLS. In what follows, information is provided about the scope of deferred issues and one new issue that will be considered at the Délıne 2021 PLS.~~

Summary

- **Issues for all five PLS:**
 - **[Délıne 2021 PLS]** What is the most effective way to conserve caribou?
- **Central issue for Délıne 2021 PLS:**
 - **[Délıne 2021 PLS]** What should people’s role be in maintaining healthy relationships between caribou and other wildlife?
- **Deferred issues from Colville 2020 PLS [FURTHER DEFERRED TO FUTURE PLS]**
 - ⊖ **[Deferred to Future PLS]** Primary responsibility for stewardship
 - ⊖ **[Deferred to Future PLS]** ʔehdzo Got’ıne (Renewable Resources Council) powers
 - ⊖ **[Deferred to Future PLS]** Harvester residency and hunter education requirements
- **Other issue for Délıne 2021 PLS**
 - **[Délıne 2021 PLS]** *Hıdó Gogha Sėnégots’ızá (Community Conservation Plan) Process and Components*

Reasons for Further Deferred Issues

Provided in Appendix A is a December 13 letter from NWT Department of Environment and Natural Resources (ENR) with a legal justification for its concerns with discussing certain issues on the basis of *res judicata*, a legal doctrine that applies when matters have been finally decided and cannot be re-decided. ENR cites a specific concern over interpretation of powers over participant harvesting rights within a local area under s. 13.9.4(b). The previous correspondence on these concerns was circulated by email on November 29, 2021 and is available on the registry.

The SRRB disagrees with the ENR's analysis that it is legally prevented from going forward with consideration of these deferred issues. The decision to defer an issue is within the SRRB's authority over the agenda of the PLS and does not constitute a re-hearing of the issue. The SRRB reminds the parties that the SRRB previously deferred consideration of these issues from the Colville 2020 PLS. The SRRB has to rely on parties having a sincere intention to meaningfully discuss the issues before it. The SRRB's expertise lies in performing its functions as the main instrument of wildlife management and facilitating the Sahtú Settlement Area wildlife co-management regime.

The SRRB is aware that meaningful discussions on issues of community roles in caribou conservation cannot be advanced without fulsome participation from ENR. In the preparation for the Délı̄ne 2021 PLS, there has been limited engagement with a wider scope of issues relating to Dene and Métis harvest management practices and role for Dene and Métis communities in caribou stewardship. The SRRB also recognizes an absence of party-party dialogue contributing to the development of the record leading to the Délı̄ne 2021 PLS. The SRRB seeks the necessary evidence to make sound decisions.

The SRRB reminds all parties it adopted a policy that *hı́dó gogha sęnęgots'ı́zá* (community conservation plans - CCP) are viable conservation approaches that can be more effective, more rights-compliant and more community-led alternatives to harvest limits. This policy lies at the core of the five-part PLS series, which the SRRB is approaching through an iterative approach.

A stewardship role for Dene and Métis participants in caribou conservation and *ʔehdzo Got'ı̄neę* (RRC) activities related to the implementation of their overall mandate and powers are core features of the SRRB's development of community-led *hı́dó gogha sęnęgots'ı́zá* (community conservation plans – CCP), and involve evidence and issues beyond the issue of whether *ʔehdzo Got'ı̄neę* have a specific form of local authority under s. 13.9.4(b). Evidence and findings in the Colville 2020 PLS prompted new questions about harvester residency and education requirements that warrant consideration in future PLS.

At this point, the time before the PLS is short and the preparations for the PLS are quite advanced. In light of the limited engagement on these issues in the lead up to the Délı̄ne 2021 PLS, the standing concerns raised by ENR, the ongoing COVID situation, and the fast-approaching holiday season, the SRRB has decided to further defer consideration of the deferred issues from the Colville 2020 PLS related to (1) stewardship roles in caribou conservation, (2) RRC mandate and powers under s. 13.9 of the SDMCLCA, and (3) harvester residency and

education requirements for harvesters in the Sahtú region at the Délı̨ne 2021 PLS. These issues will not be part of the SRRB's consideration in the Délı̨ne 2021 PLS.

Procedural Guidance

Virtual Format

Given ongoing concerns about risks related to the COVID-19 pandemic, the SRRB decided to convene the Délı̨ne 2021 PLS in a hybrid virtual and community bubble format according to NWT and local safety protocols. To accommodate this format, the SRRB adjusted the dates to January 31-February 4, 2022 (over five days), with notice circulated by email on December 9, 2021.

The five-day format of the Délı̨ne 2021 PLS will allow for meeting for shorter periods each day, to account the challenges of the hybrid format for community bubbles connecting through a virtual platform. Morning and afternoon sessions during the Délı̨ne 2021 PLS are planned for approximately 2 hours each, knowing more time may be required at some points of the agenda. The PLS format is also to enhance opportunities for parties to make submissions, ask and respond to questions.

Registration

To facilitate participation in the virtual (Zoom) platform, the SRRB invites Parties and interested members of the public to register for the Délı̨ne 2021 PLS. Local bubbles in each Sahtú community will provide a meeting venue set up by a local coordinator – in these situations, the local coordinator should register on behalf of the bubble, and identify designated community panel members. The registration form can be found online at www.srrb.nt.ca.

Participation: Parties, Community Panels and the Public

The SRRB has confirmed Parties to the Délı̨ne 2021 PLS that that are interested in making a presentation and/or contributing evidence for consideration by the Board. A Community Panel is composed of the Parties from a Sahtú community. Community Panels have time in the agenda to make presentations. The public will be provided opportunities to contribute and speak, as well.

Caucuses

A caucus is a group of people with common interests that may wish to meet to pool knowledge. This can be helpful if the caucus wishes to prepare a common presentation at the PLS. The virtual format of the Délı̨ne 2021 PLS will not include time for scheduled caucus sessions. Caucuses are encouraged to meet prior to the Délı̨ne 2021 PLS or in the breaks between meeting times. Please contact the SRRB if assistance is required in setting up a caucus session.

Presentation Guidelines for Panels/Parties

The SRRB is convening the Délı̨ne 2021 PLS for Parties to come together and discuss important issues related to caribou conservation. Parties have a right to a procedurally fair hearing. In the interests of fairness, the agenda includes time limits for presentations, questions and comments

by Panels, Parties and the public. In convening the Déłıne 2021 PLS, the SRRB follows the *Rules for Public Hearings* (2019 edition, online at www.srrb.nt.ca), and the Directions on Practice from the July 7, 2021, Resumption Notice. All who participate in the Déłıne 2021 PLS are asked to respect the role of the facilitator in supporting a fair process.

Please note the following:

- The deadline for submitting written and/or slide presentations is **January 28, 2022**.
- To support cross-cultural understanding, please provide written or oral explanations of key terms and concepts used in presenting written and oral evidence (see *Rules for Hearings* 7.5).
- Please focus presentations on the scope of the Déłıne 2021 PLS issues (see the “Issues to be Considered” section above).

The Board recognizes that communication will be cross-cultural and will include multiple dialects and languages, with the additional challenge of the virtual platform. Simultaneous Dene and English language interpretation is provided, but does not always allow for full communication. The agenda includes space for discussing key concepts at the beginning of each day.

Questions/Comments During the PLS

The agenda provides a period for questions and comments by Panels and Parties following presentations. This reflects fair process in a cross-cultural format, incorporating both the standard formal hearing question format as well as the Indigenous “Talking Circle” approach where speakers may comment or build on what was said by presenters.

Record of the PLS

The Déłıne 2021 PLS will be recorded in Dene and English languages. The English language version will be transcribed by a court reporter, and transcripts will be posted on the Public Registry. It is important for Parties to provide key terminology so that this can be correctly reflected in the transcripts. The oral Dene language recordings will also be available on the Public Registry. The SRRB’s *Rules for Hearings* provide a procedure for requesting that confidential information be protected (see Rules 12.21, 12.22).

The Déłıne 2021 PLS will have a graphic recorder from Drawing Change and Nigit’stil Norbert. Graphic recorders listen closely, synthesize and draw graphical representations of proceedings in real time. Graphic recording is not evidence and is to enhance and facilitate communication in the Déłıne 2021 PLS.

Agenda for the Délı̄nę 2021 PLS

It is expected that participants will gather in community bubbles each day at 9:00 am so that technical issues can be addressed and the proceeding can start promptly at 9:30 am. The schedule provides for two-hour sessions each morning and afternoon, with a lunch break. If needed, there will be other health breaks during each day. Breaks will be called where there are suitable opportunities in the agenda.

Monday, January 31

9:00 *Community bubble gathering, Party preparations, and technical checks*

9:30 *Opening prayer*
Chair and Délı̄nę Co-Host Opening Comments
Introductions
Review of Public Listening Agenda and Procedures
Acknowledgement of Written Submissions
Overview of key terminology and concepts
Presentation by Délı̄nę Panel (1 hour)
Parties' Questions/Comments (15 min. each)
Closing prayer

Tuesday, February 1

9:00 *Community bubble gathering, Party preparations, and technical checks*

9:30 *Opening prayer*
Agenda, key terminology and concepts
Presentations by Sahtú communities (30 min. each)
Parties' Questions/Comments (15 min. each)

- Colville Lake Panel
- Fort Good Hope Panel

Closing prayer

Wednesday, February 2

9:00 *Community bubble gathering, Party preparations, and technical checks*

9:30 *Opening prayer*
Agenda, key terminology and concepts
Presentations by Sahtú communities (30 min. each)
Parties' Questions/Comments (15 min. each)

- Tulıt'á Panel
- Norman Wells Panel

Closing prayer

Thursday, February 3

9:00 *Community bubble gathering, Party preparations, and technical checks*

- 9:30 *Opening prayer*
Agenda, key terminology and concepts
Presentation by NWT Environment & Natural Resources (1 hour)
Parties' Questions/Comments (15 min. each)
Presentations on Indigenous Knowledge and Science Toolkits (Janet Winbourne and Colin Macdonald) (1 hour); Parties' Questions (15 min. each)
Closing prayer

Friday, February 4

- 9:00 *Community bubble gathering, Party preparations, and technical checks*
- 9:30 *Opening prayer*
Agenda, key terminology and concepts
Presentations by visiting Parties and the public
Closing remarks by the Panels/Parties
Chair's closing remarks
Closing prayer

Contact Us!

For more information, contact Catarina Owen at info@srrb.nt.ca or (780) 686-5318.

APPENDIX A – ENR Letter: Délı̄nę 2021 PLS Agenda Questions



Ms. Camilla Tutcho, Chair
?ehdzo Got'ı̄nę Gots'ę Nákedı̄ (Sahtú Renewable Resources Board)
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December 13, 2021

Agenda Questions for Délı̄nę 2021 Virtual ?elets'ėhkwe Godı̄ (Public Listening Session): Tı̄ch'adı̄ hé Gots'edı̄ (Living with Wildlife): Predators and Competitors

In response to your November 29, 2021 letter, the Department of Environment and Natural Resources (ENR) respectfully reiterates its request that the matters of primary responsibility for stewardship and ?ehdzo Got'ı̄nę (Renewable Resources Council) powers be removed from the agenda for the Délı̄nę 2021 Virtual ?elets'ėhkwe Godı̄ (Public Listening Session).

Please find attached the October 18, 2021 letter from Ms. Maren Zimmer, legal counsel for the GNWT, respondent in the Judicial Review, to Mr. Mark G. Underhill, counsel for the SRRB in the Judicial Review. This letter sets out why ENR's legal counsel opted not to provide their full legal analysis regarding the removal of these two matters from the agenda under the 'Agenda for the next public listening session' heading.

As it now appears that the SRRB does not intend to remove the topics of primary responsibility for stewardship and ?ehdzo Got'ı̄nę (Renewable Resources Council) powers from the agenda for the 2021 Public Listening Session, ENR wishes to state its position on why these matters should be removed from the agenda, with supporting analysis, for the SRRB's consideration.

It is ENR's position that any further consideration of these two matters by the SRRB at the 2021 ?elets'ėhkwe Godı̄ (Public Listening Session) will unavoidably require interpretation of 13.9.4(b) of the Sahtú Dene and Metis Comprehensive Land Claim Agreement (SDMCLCA).

The differing positions of ENR and Colville Lake on the interpretation of this clause are currently before the Court. Colville Lake seeks to have the Court declare that Colville Lake has the power under 13.9.4(b) of the SDMCLCA to manage the exercise of participant harvesting rights within a local area in a manner consistent with legislation and the policies of the SRRB. ENR's position is that 13.9.4(b) of the SDMCLCA gives each renewable resource council the power to manage the exercise of harvesting rights of participants from that community throughout the Sahtú Settlement Area consistent with legislation and the policies of the SRRB.

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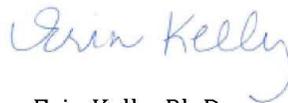
Until the Court provides its interpretation of this clause, and subject to any appeal, it is ENR's perspective that the SRRB should not also interpret this clause in another forum. Revisiting a matter at the same time the issue is being reviewed by the Court is inconsistent with the legal principles of finality and res judicata.

The SRRB proceeding with these items on the agenda and making related decisions or recommendations, prior to the Court's decision, that could turn out to be inconsistent with the Court's decision would necessitate subsequent amendment of any inconsistent decisions and recommendations to align with the Court's decision. This has the potential to create legal uncertainty and lead to further applications for judicial review on the same or similar issues before the Court in the current Judicial Review.

Given the SRRB's application filed with the Court on November 26, 2021 in this Judicial Review and the position that the SRRB intends to take if the application is granted, it is ENR's perspective that it would be inappropriate for the SRRB to preempt the Court's decision in relation to what the SRRB is seeking by including responsibility for stewardship and ?ehdzo Got'ine (Renewable Resources Council) on the agenda and making related decisions and recommendations. The Court has now been asked to determine if the Minister's refusal to defer the applicable decision and recommendation stands and we must now await this ruling.

As stated previously, ENR would like to meaningfully and fully participate in the upcoming ?elats'ehkwę Godı (Public Listening Session).

Sincerely,



Erin Kelly, Ph.D.
Deputy Minister
Environment and Natural Resources

c. Distribution list

Distribution list

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

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

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

Ms. Deborah Simmons
Executive Director
?ehdzo Got'ine Gots'ê Nákedı (Sahtú Renewable Resources Board)

Ms. Maren Zimmer
Legal Council
Justice

APPENDIX B – Pre- and Post-PLS Preparations and Submissions

The Délı̄nę 2021 PLS agenda is the outcome of work that has been done since December 1, 2020, when the SRRB announced this second in the five-part series of PLS addressing the central question, “*What is the most effective way to conserve caribou?*” Below is a summary of the various kinds of opportunities for preparation that have been offered through this proceeding.

Sahtú Regional Preparation Workshop

A virtual Regional Preparation Workshop was convened by the SRRB on November 2-4, 2021 to assist Sahtú community delegates in preparing for the Délı̄nę 2021 PLS. Workshop objectives included gaining an understanding of the central question of the PLS, and leadership development. Participants helped with a preliminary scoping of information required for the Délı̄nę 2021 PLS with respect to predators, competitors, and planning.

Sahtú Community Local Planning

Sahtú communities have been supported to undertake local planning activities, including work by technical teams, ʔehdzo Got'ı̄nę (Renewable Resources Councils), and working groups, as well as engagement with the public. Each community determined their own approach to these preparations.

Pre-PLS Teleconferences

As of December 2021, two pre-PLS teleconferences have taken place. Teleconference #1 took place on December 16, 2020. After some delay due to COVID-19 contingencies, Teleconference #2 took place on August 2, 2021.

Teleconference #3 is planned for **January 28, 2022 at 1:30-4:00 pm** to discuss the Délı̄nę 2021 PLS process. *Please confirm your attendance* to info@srrb.nt.ca or call 867-588-4040.

Pre-PLS Written Submissions

To date, three rounds of Information Requests have been issued and responded to by Parties, along with recommendations of relevant materials for posting to the Public Registry, and draft plans or plan components.

The deadline for submission of responses to Round 3 Information Requests is **January 14, 2022**. Submissions related to the Délı̄nę 2021 PLS process are made available on the Public Registry (www.srrb.nt.ca) and may serve as the basis for submissions and presentations by the Parties.

The deadline for submission of written versions of presentations, including slide presentations, for the Délı̄nę 2021 PLS is **January 28, 2022**. This maximizes the time allowed for preparing presentations, while providing Parties and the public with time to consider questions or points of clarification that they wish to raise at the Délı̄nę 2021 PLS on **January 31-February 4**.

Post-PLS Final Written Arguments

The deadline for final written arguments is **February 17**, meaning that Parties will have 18 days after the Déljné 2021 PLS is completed to prepare their final written submissions, in response to and in light of any new information that they may have acquired at the Déljné 2021 PLS. This aspect of the Déljné 2021 PLS Schedule was carefully planned to allow as much time as possible for Parties to prepare final submissions.

This decision, as with other decisions concerning the Schedule, was made in consideration of the unique issues of procedural fairness that arise when working with communities that may face obstacles in relation to capacity.