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Erin Kelly  
A/ Deputy Minister  
Environment and Natural Resources  
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*Delivered via email*

December 6, 2019

***RE: Responses to ENR Questions and Comments – Colville 2020 Public Listening Session on Sahtú Rogóʔa (Hunting Laws) and Approaches to Wildlife Harvesting***

Dear Deputy Minister Kelly:

Thank you for your letter of December 3, 2019 regarding the *Public Listening on Sahtú Rogóʔa (Hunting Laws) and Approaches to Harvesting*.

The Board members of the ʔehdzo Got'ıne Gots'ė Nákedı (Sahtú Renewable Resources Board – SRRB/the Board) met yesterday to review your letter, and appreciate ENR's questions of clarification regarding the Public Listening process. The SRRB recognizes that the approach to the hearing is a different approach than that often used in tribunal hearings.

You forwarded a series of eight helpful questions of clarification. At a broader level, it may be helpful to clarify some background regarding the Board's approach to this Public Listening Session (and the others scheduled to occur in the Sahtú region over the next three years), and the Board's understanding of the central question in the Public Listening Session in January. The Board's response, including an overview and specific responses to ENR questions, is appended below.

The Board appreciates the questions from ENR, as it assists in clarifying key procedural and scoping questions about the Public Listening Session. The Board encourages ENR to use the Information Request process as a key procedural tool in assisting the Board and other Parties in identifying the priority issues and outstanding questions which should be a focus during the hearing process.

Máhsı cho,  
George Barnaby  
Acting chair

## Overview: The Approach of the Public Listening Sessions

The ʔehdzo Got'Inę Gots'ę Nákedı (Sahtú Renewable Resources Board – SRRB/the Board), as the main instrument of wildlife management in the Sahtú region and as a co-management board established to achieve the objectives and intentions of the Sahtú Dene and Métis Comprehensive Land Claim Agreement (SDMCLCA), is faced with the challenge of dealing with conservation pressures on three caribou ecotypes.

In order to fulfill its role under the SDMCLCA, the Board has looked at how to ensure its procedures meet the obligations and intent of the SDMCLCA as well as evolving requirements for proper Indigenous consultation and accommodation under modern claim regimes when decisions are made which affect Indigenous harvesters. The Board turned its mind to how to ensure its processes are procedurally fair and culturally appropriate, in order to best meet conservation and public interest requirements.

As you are aware, the process for consulting Indigenous communities regarding conservation needs for caribou is typically done on a herd-by-herd, zone-by-zone basis. Each hearing by a wildlife management authority has conventionally looked at a wide range of issues for that specific herd. Herd-specific hearings, based on requests for a total allowable harvest, typically deal with the status of the caribou population based on science and Indigenous knowledge, herd health and population dynamics, the various potential triggers for population decline (including natural population cycles, impacts of industrial development, climate change, wildfire ecology and others), and the various options for addressing pressures affecting caribou (various forms of harvest regulation, limits in land use planning, predator control, and many more). For each herd, this wide range of topics is typically canvassed and the outcome is typically decisions focused on applying a Total Allowable Harvest to control Indigenous harvesters as the primary conservation mechanism.

The Board examined its processes in 2014 and again more recently in response to concerns raised in the Sahtú region about consultation fatigue regarding caribou issues as well as frustration that the existing processes do not appear to achieve either significant positive conservation outcomes nor meaningfully address the potential conservation value of Dene and Métis traditional approaches to “self-regulation” as a key conservation tool. The previous herd-by-herd approach appears to be a source of the problem since it deals with a wider range of issues at a hearing on one specific herd with often insufficient time and focus to allow for more in-depth exploration of alternative solutions which can meaningfully address caribou conservation needs.

For this upcoming set of hearings, and based on the awareness of conservation pressures on three different caribou ecotypes in the Sahtú region, the Board decided to take a “hot topics” or issues approach as the primary focus of each hearing – to address a specific topical area that affects all communities and all ecotypes – rather than the typical herd-by-herd approach. This

approach is inspired by the introduction of hot topics as part of the *Taking Care of Caribou* plan for Bluenose West, Bluenose East and Cape Bathurst Caribou (2014). It also draws upon issues identified in the SRRB's 2016 *ᑭᑦᑲᑦ ᑲᑦ ᑤᑦ ᑤᑦ ᑤᑦ - Sustaining Relationships* Hearing Report (BNE Hearing Report), as well as subsequent planning and engagements with Sahtú communities.

The Board's hope is that this approach is both more inclusive in addressing the caribou knowledge and concerns of all five communities within the Sahtú Region and more focused in concentrating on a narrower range of issues within each Session (recognizing that these issues apply to all herds in varying ways).

The Board decided, therefore, to conduct five Public Listening Sessions over the next three years, on five hot topics, rather than herd-specific Sessions. To achieve the goal of maximizing Sahtú community participation in this process, and in light of the frustrations raised with previous hearings in the Sahtú region, the Board is titling the sessions "Public Listening Sessions," instead of hearings. The term "listening" is intended to denote active acknowledgement and accommodation of the full range of evidence presented. Throughout the process the Board will be ensuring that its approach, while procedurally fair, accommodates Dene and Métis cultural rights and values for good decision-making. This includes providing mechanisms to allow individual ᑭᑦᑲᑦ ᑲᑦ ᑤᑦ ᑤᑦ (Renewable Resources Councils) to participate in a meaningful way and working with communities to ensure that the logistics for each Public Listening Session are culturally appropriate.

The first Public Listening Session is on *Sahtú Rogóᑦᑦ (Hunting Laws) and Approaches to Harvesting*, which we discuss in some detail below. There will be Board decisions and recommendations to the Minister based on this Public Listening Session. It will be followed by four more public listening sessions which will also result in Board decisions and recommendations to the Minister, on the following four topics, tentatively scheduled over the next three years:

- Session 2 – Knowledge of Caribou and Landscapes, fall 2020
- Session 3 – Caribou and Predators, winter/spring 2021
- Session 4 – Wildfires, Climate Change and Caribou Habitat, fall 2021
- Session 5 – The Sahtú Mixed Economy and Caribou Conservation, winter/spring 2021

This five-Public Listening Session process will allow the Board to consider a narrower scope of issues for each hearing, based on the specific theme and questions for that hearing (which are relevant to all caribou populations and other wildlife) in the Sahtú region. The Board thinks this is an opportunity to explore, in more depth, some key issues related to conservation approaches rather than repeating the processes which have already been used for caribou conservation planning. The Board sees this process as fitting into the broader cross-regional discussions on caribou conservation, as it will both be informed by the approaches and

information in adjacent regions, and conversely provide meaningful input into those processes with respect to the specific topics being canvassed in the five Public Listening Sessions.

Your letter raised some specific questions of clarification about the process, which the Board appreciates. In addition to the response in this letter, the Board will include these ENR questions and the Board's responses in the compilation of responses to Information Requests.

## SRRB Responses to ENR Questions and Comments

### ENR Question 1: Reasons for Decision

Will the Colville Lake Public Listening Session result in Reasons for Decision going to the Minister? Will the Reasons for Decision respond to the Colville Lake Caribou Plan, any other submissions and the four overarching harvesting questions posted by the Board, or will the Reasons for Decision only be provided following the conclusion of all Public Listening Sessions?

#### *Board Response*

Yes, there will be Board decisions and recommendations going to the Minister, based on the evidence provided in the Colville Lake Public Listening Session on *Sahtú Rogóᑦa (Hunting Laws) and Approaches to Harvesting*. The reasons for decision will be based on the issues and evidence raised by the parties in the hearing, and the Board anticipates that the reasons for decision will respond to issues and questions raised in Colville's *Dehlá Got'İne ᑦadā Plan and Tseduweh ᑦadā ᑦahᑦah (Caribou Plan and Law)* as well as the responses of all the parties to the four overarching harvesting questions posed by the Board to the Parties, and any other relevant submissions of the parties. The Board will provide reasons for decision after each Public Listening Session in the intended series of five Sessions over the next three years. In addition, the Board intends to issue a summary report at the end of all five Listening Sessions that may include reasons for decisions based on the totality of the evidence over the five sessions.

### ENR Question 2: Community Collaboration

ENR is concerned that there may be a potential for an interpretation of procedural bias given the Colville Lake RRC is a registered party to the Public Listening Session and also a partner in the Colville 2020 Public Listening Session. Can the SRRB clarify the intent of this collaboration? Further, can the SRRB clarify the role the CLRRC will have in the decision-making process during or following the public listening session?

#### *SRRB Response*

The Colville Lake Renewable Resources Council (Colville) is both a registered party in the Public Listening Session, and a partner in the planning for the Listening Session. This collaboration arose from several factors from the Board's perspective.

In its processes, the Board is required by the SDMCLCA to work closely with ᑦehdzo Got'İneᑦ (Renewable Resources Councils), who advise the Board on local wildlife issues. The Board

intends to work with each of the five ʔehdzo Got'Inę in turn to organize and support the five Public Listening Sessions, which will each be hosted in a separate community.

Colville offered to the Board that it would host this first Public Listening Session, since the topic of approaches to harvesting regulation is one of particular importance to Colville. The Board accepted the offer, taking into consideration which of the five Public Listening Sessions are best suited for the specific issues of interest for each of the five Sahtú communities.

In addition to taking an active role in providing logistical support for the January Public Listening Session, Colville is presenting its community caribou plan for review by the Board and other parties, and for the Board's decision-making process. This is appropriate, as the Board is required to review and approve all wildlife management plans in the Sahtú region (not just management plans proposed by ENR). In 2016, in its July report on the Bluenose East herd and its October report on its final reasons for decision on Bluenose East management, the Board invited all the Sahtú communities to present community management plans to the Board for review based on a series of questions posed to the communities at that time. Colville is the first community after Dél'Inę to have completed a plan for consideration by the Board.

The Board is partnering with Colville to assure maximum community participation and best available community evidence to inform the Board's decision making, and in order to ensure that the Board can fully review and understand Colville's proposed plan and law. The Board considers this to be procedurally fair and appropriate in the context of its mandate and consultation requirements under the SDMCLCA, and does not consider this to be an interference with the Board's own discretion to make its own decisions based on the evidence from all Parties.

Colville will not have any role in the decision-making process during or following the Public Listening session. Along with all other registered Parties, Colville will be invited to make a presentation at the Public Listening in Colville Lake, and will be invited to make its final written submissions by February 10, 2020. The Board shall independently make its decision based on the evidence from all Parties.

### **ENR Question 3: Proposal Review**

Is the SRRB anticipating any more proposals for decision to be submitted? If so, can the SRRB provide information on how the process will ensure parties have enough time to adequately review proposals prior to the Public Listening Session?

### ***SRRB Response***

In its 2016 BNE Hearing Report, the Board asked all five Sahtú communities to provide community conservation plans for caribou. The Board is aware that all five communities have been working on (or, in the case of Dél'Inę, working to update) community conservation plans.

The Board anticipates that there will be an update from Déljñę on the status of its plan as well as draft plan information from the other three Sahtu communities in the January Public Listening Session. The Board is aware that, given the oral tradition of SDMCLCA participants, some key information about the community plans may be presented as oral evidence at the hearing rather than in writing, and the Board is ensuring its procedures accommodate this as this is a legal requirement for procedural fairness in the context of oral Aboriginal evidence.

The Board recognizes this means that there may be key evidence presented at the Public Listening Session and not available ahead of time. For this reason we have adjusted the process to allow a two week period after the Public Listening Session to provide final written submissions in order to allow Parties the time and opportunity to respond to all evidence in the proceeding.

The Board recognizes that all of the community plans will likely continue to evolve and be updated over time (as the Board decided was appropriate in its decisions on the Déljñę plan in 2016). The Board anticipates that further consideration of the community plans will occur in the other four Public Listening Sessions and there will be future opportunities for Parties to raise questions as the plans change and evolve (just as currently occurs for herd-specific hearings as new information arises during sequential hearings with respect to population status and other changing key information about caribou).

The Board has included an Information Request process in order to assist the Board and parties in focusing the evidence in the Public Listening Session. Two Parties have raised Information Requests, and the Board has compiled these along with the Board's own Information Requests to be issued today. The Board encourages ENR to raise Information Requests as well, as part of the process of resolving issues prior to the Public Listening Session and contributing to the process of discerning key questions that should be a focus in the January proceeding.

#### ENR Question 4: Public Listening Scope

Given the breadth of the [four preliminary] questions, scope of the issues and number of parties involved ENR is of the view that these broad questions cannot be fully covered in three days. ENR would appreciate any further clarification on how the schedule will be managed to ensure that all questions are discussed.

#### *SRRB Response*

The Board, at its December 5 meeting, carefully considered this question from ENR. The Board wishes to clarify that the central question for the January Public Listening Session is:

#### ***What is the most effective way to regulate the harvest of caribou?***

The Board issued the four preliminary questions to help narrow the scope of the Public Listening and to assist Parties in answering the central question. To further assist Parties in

answering this question, the Board has refined some of the original four preliminary questions. The refined versions can be found in the Board's Round 1 Information Requests posed to all Parties.

The Board's view is that using a topical-focus on the central question, rather than a broader herd-specific hearing which canvasses a wide variety of topics for one herd, provides appropriate focus for the Public Listening Session.

### ENR Question 5

ENR would appreciate clarification on whether the intent of the Public Listening is to answer the four preliminary questions as they relate specifically to the Colville Lake RRC plan and law or if broader conversations are expected? If broader conversations are expected, how will the SRRB address mountain caribou, boreal caribou and the Bluenose-East barren-ground caribou herd if there are no proposals for decision related to these caribou?

### *SRRB Response*

The intent of the Public Listening Session is to answer the central question of "What is the most effective way to regulate the harvest of caribou?". The Board will consider answers to all four preliminary questions and responses to Information Requests as they relate to addressing the central topic of effective regulation of caribou harvesting. This includes looking at the Colville *Dehlá Got'ıne ʔədə Plan and Tseduweh ʔədə ʔahʔah*, which can be considered to contain one set of responses to these four questions. The Board anticipates that the four questions, which together focus on the topic of effective regulation of caribou harvest, will be answered in relation to all three caribou ecotypes in our region.

Evidence in the 2016 Hearing, as noted in the Board's report, showed that the communities deal with caribou on a multi-herd basis and that questions of regulation apply to the relationship of the communities with all the ecotypes that they harvest. For this reason, the Board is interested in hearing how the communities understand caribou harvesting regulation as it applies to the totality of their caribou relationships across herds and ecotypes. The Board will use this evidence to inform the Board's herd-specific decisions.

### ENR Question 6

Can the SRRB confirm if only community conservation plans will be considered as an approach within the Sahtú or if community conservation plans are being proposed in addition to such documents as existing or proposed herd-specific management plans and strategies, which may include a total allowable harvest system.

### *SRRB Response*

The Board will consider evidence put before the Board of any existing or proposed approach to harvest regulation, not just community conservation plans. The Board decided, in 2016, that

the Board would consider the use of a Total Allowable Harvest for the Bluenose East herd if the Délı̄ne community conservation plan did not result in conservation outcomes. The Board remains open to any evidence that shows that Total Allowable Harvest, Dene community conservation plans, or some other alternative approach to regulating harvesting produces the best conservation outcomes.

In its decisions, the Board is considering how the use of different approaches in different regions interact to address conservation needs for caribou. For this reason, the Board has actively encouraged representatives of adjacent regions to attend, as well, to share information about their regional perspectives on harvest regulation. The Board is aware, for instance, that Kugluktuk in the Nunavut Wildlife Management Board area is developing a community conservation plan for caribou harvest and is interested in sharing that experience. The Board has also actively encouraged participation in this Public Listening Session from adjacent regions which use a TAH approach.

### ENR Question 7

Why have the Taking Care of Caribou management plan and the associated individual action plans not been added to the SRRB public registry?

#### *SRRB Response*

This was not a deliberate choice but an oversight. The Board thanks ENR for raising this as a key relevant document. The Board is an active participant in the ACCWM (Advisory Committee for Cooperation on Wildlife Management) which coordinates implementation of the *Taking Care of Caribou* plan and associated Action Plans. The Board has been discussing the relevance of the plan as part of its preparation for the Public Listening Session. The *Taking Care of Caribou Plan*, the most recent associated action plans, and current monitoring information from Member Boards of the ACCWM will now be posted by the Board to the Public Registry.

The Board thanks ENR for noting this gap and encourages ENR to identify any other plans or documents which ENR believes are relevant for the Public Listening Session, so that the Board can ensure that all relevant evidence is on the Public Registry.

### ENR Question 8

When considering the Colville Lake RRC plan and associated law the SRRB will have to take into consideration all Sahtu participants and the public interest. How does the SRRB intend to ensure that each Sahtu and neighbouring communities understand all of the implications of the decisions that may be recommended to the Minister?

#### *SRRB Response*

The Board thanks ENR for raising this question, as the Board has also been looking at the process of how to communicate the Public Listening Session process both prior and following

individual Sessions. The Board will consider post-hearing follow up workshops in Sahtú and neighbouring communities, subject to funding capacity to do so. The Board will also continue to seek ways to collaborate with other wildlife management authorities in communicating about its decisions. The Board will also actively participate in cross-regional forums for information sharing and coordination about caribou conservation, as these are critical opportunities to share the Board's decisions and discuss cross-regional implications. As mentioned above, the Board has also been encouraging participation of representatives from adjacent regions in the upcoming Public Listening Session.