



January 29, 2021

srrb.camilla.tutcho@gmail.com

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

Dear Ms. Tutcho:

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

On behalf of the Government of the Northwest Territories (GNWT), Department of Environment and Natural Resources (ENR), I would like to thank the Sahtú Renewable Resources Board (SRRB) for its Report of October 31, 2020 (the Report) and decisions and recommendations from the first public listening session.

Consistent with section 13.8.25 of the *Sahtú Dene and Metis Comprehensive Land Claim Agreement*, I have reviewed the Report with ENR staff and am providing my responses to the SRRB's decisions and recommendations in the attachment.

Please note that my approach to responding to the decisions and recommendations took into consideration the *Sahtú Dene and Metis Comprehensive Land Claim Agreement*, the *Wildlife Act* and the overarching wildlife co-management context that currently exists in the Northwest Territories.

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

Sincerely,

Shane Thompson
Minister
Environment and Natural Resources

Attachment

c. Distribution list

Distribution list

Ms. Shaleen Woodward
Principal Secretary

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

Dr. Erin Kelly, Deputy Minister
Environment and Natural Resources

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

Ms. Deborah Simmons, Executive Director
Sahtú Renewable Resources Board

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

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

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

In each response, decisions or recommendations that have been varied or set aside and replaced have been adjusted to remove the phrase “The SRRB has decided” or “The SRRB recommends” to reflect that the recommendation has been reviewed and varied or set aside and replaced by the Minister of ENR.

The Minister of ENR is not required to respond to recommendations of the SRRB under 13.8.25 of the SDMCLCA, however, the Minister of ENR has opted to do so. Efforts will be made to implement the recommendations that are made to ENR as worded in the Minister of ENR’s response.

Decision 1.1

The SRRB has decided that harvest regulation for all caribou populations within the Sahtú region must be subject to community conservation planning measures.

Response: Vary

~~The SRRB has decided that~~ Harvest regulation for all caribou populations within the Sahtú region ~~must be subject to~~ **will reflect** community conservation planning measures **where appropriate**.

Reasons:

ENR recognizes the value and important contribution of community-based initiatives to the overall management of wildlife in the Northwest Territories (NWT). ENR remains supportive of community conservation plans as a part of overall caribou management efforts.

The Sahtú Renewable Resources Board (SRRB) found “that most of the caribou within the Sahtú are considered threatened or of special concern” (page 22). Once a population of caribou is legally listed, the responsible bodies must set goals for the management or recovery of that species, and identify actions to be taken to meet these goals. As outlined in ENR’s submission there are existing species and herd specific management plans, recovery strategies and/or structures in place for all three caribou ecotypes that occur in the Sahtú. The overarching wildlife co-management approach in the Northwest Territories provides for the direct involvement of Indigenous governments and organizations and renewable resources boards established under land claims in wildlife management. The existing herd specific management plans and barren-ground caribou recovery strategy were drafted and approved after engagement and consultation with affected communities, stakeholders and Indigenous governments and organizations.

ENR is willing to consider additional or alternative approaches to harvest management that are locally supported, effectively manage harvest, meet the needs of all harvesters that harvest in an area from a shared herd, and are consistent with land claim agreements and the direction and guidance set out in the broader management plans for caribou.

SRRB’s wording of this decision would preclude any regulation of any caribou population unless there are community conservation planning measures in effect. It is important for the SRRB and Minister of ENR to continue to have discretion to propose and implement harvest regulations on all caribou harvest, including Sahtú Dene and Métis Comprehensive Land Claim Agreement (SDMCLCA) participant harvest, if warranted on the basis of conservation, regardless of whether there is a community conservation plan

in effect. The varied wording retains this discretion and requires that any aspects of community conservation plans that are appropriate are reflected in regulations.

The wording has been varied because anything in a community conservation plan that is not enforceable or is inconsistent with court decisions, the SDMCLCA or a matter for which a consistent approach across the Northwest Territories has been taken in the *Wildlife Act* is not appropriate for inclusion in regulations under the *Wildlife Act*.

See also the varied Recommendation 4.2 and Recommendation 6.1 and accompanying reasons.

Decision 1.2

The SRRB recognizes the importance of having a comprehensive intraregional community conservation planning system based on Sahtú Indigenous governance systems. In this context, the SRRB has decided that Colville is the Sahtú community with primary responsibility for ʔədə (barren-ground caribou) stewardship in Sahtú Barren-ground caribou Area 01 (S/BC/01). Colville shares stewardship with Fort Good Hope within Area S/BC/02 where there may also be ʔədə. Délı̨ę is the Sahtú community with primary responsibility for ʔekwé (barren-ground caribou) stewardship within Area S/BC/03.

Response: Vary

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

Reasons

The SRRB is the main instrument of wildlife management in the Sahtú Settlement Area. The SRRB serves on the Conference of Management Authorities (CMA) and the Advisory Committee for Cooperation on Wildlife Management (ACCWM). As a member of the CMA, the SRRB comes to consensus with the other members of the CMA on listing species, accepting management plans or recovery strategies and implementing those plans or strategies. As a member of the ACCWM, the SRRB gathers with the other member boards and discusses the shared management of herds and coordinates actions.

Barren-ground caribou were added to the NWT List of Species at Risk as a Threatened species in 2018, and in 2020 the CMA released the Recovery Strategy for Barren-ground Caribou (*Rangifer tarandus groenlandicus*) in the Northwest Territories. This recovery strategy lays out overall goals, objectives and approaches for barren-ground caribou conservation and recovery and applies to all barren-ground caribou herds that occur in the NWT, including the two herds found in the Sahtú: the Bluenose-West and Bluenose-East herds.

A co-management forum, the ACCWM has been established to bring together representatives from wildlife co-management boards who share conservation responsibility for the Cape Bathurst, Bluenose-West, and Bluenose-East herds.

ENR defines stewardship as taking responsibility for wildlife resources and the collaborative work to safeguard this resource. The responsibility for stewardship of wildlife and habitat is shared by all people and communities of the NWT. Paragraph 57 of SRRB's Report suggests that SRRB may be using the term "stewardship" to include governance or management of all barren-ground caribou harvest within these areas. This is inconsistent with the SDMCLCA and court decisions for the reasons set out for varied Recommendation 4.1. Given these concerns, this Decision is varied to refer to the community that primarily harvests and shares a stewardship role or the communities that harvest barren-ground caribou and share a stewardship role within the applicable area.

Decision 1.3

The SRRB has decided that youth will be invited to play meaningful roles in the entire process for future public listening sessions.

Response: Accept

Reasons:

As this is a decision about future public listening sessions, and not a decision regarding wildlife management, the extent to which youth are involved is entirely up to the SRRB. ENR is supportive of youth participating in the public listening sessions. This decision is accepted. Consistent with 13.8.16 of the SDMCLCA, the SRRB must determine how to implement this decision within the scope of its budget that has been approved by Canada.

Recommendation 1.1

The SRRB recommends that a proposal for harvest regulation of shúhta goᓇepé (mountain caribou) be co-developed by Tulít'a and Norman Wells and submitted to the SRRB for consideration as part of the 2021-24 series of public listening sessions.

Response: Accept

Reasons:

As the SRRB is aware, any proposal for harvest regulation it supports is submitted to the Minister of ENR as a decision or recommendation. Prior to the Minister of ENR considering any proposed harvest regulation, it is recommended that ENR works with the SRRB and any others developing the harvest regulation proposal to enable all parties to have an opportunity to share their perspectives and try to build consensus. ENR has participated in the working group meetings where the *Níio Neᓇ P'ᓇneᓇ Begháre Shúhta Goᓇepé Narehᓇá – Trails of the Mountain Caribou Management Plan* was drafted. ENR understands the communities of Tulít'a and Norman Wells have concerns about shúhta goᓇepé (Northern mountain caribou). To address these concerns, it is important that ENR, the SRRB and

communities continue to communicate and share knowledge. This recommendation does not fetter the SRRB or Minister of ENR's discretion to require changes to the draft harvest regulation or the Minister of ENR's discretion to not implement any aspect of the harvest regulation for a reason noted in the second last paragraph of the reasons for varied Decision 1.1.

Recommendation 1.2

The SRRB recommends that a Dene béré (country food) campaign be collaboratively developed by the Ne K'ə Dene Ts'ı̨ Forum in accordance with the NWT's Sustainable Livelihoods Action Plan, 2019-23, as well as conservation objectives embodied in community caribou plans.

Response: Accept

Reasons:

ENR is supportive of this recommendation, given the importance of Dene béré (country foods) to Sahtú communities and the links to the Sustainable Livelihoods Action Plan. In 2020-2021, ENR identified available funding to support development of the harvest program, and continues to provide staff capacity as requested. ENR is a partner on an application from the SRRB to the Climate Change Preparedness in the North Program and Climate Change and Health Adaptation Program for a harvesting campaign.

ENR would be happy to work with the Ne K'ə Dene Ts'ı̨ Forum to identify and apply for additional funding to support a Dene béré campaign. ENR can also provide staff support for the campaign as requested, for assistance in proposal development, campaign messaging reviews, message development, etc.

ENR also offers a Hunter Education program, which could be modified and adapted to support youth training, if there is interest from Sahtú communities.

Recommendation 1.3

The SRRB recommends that communities and the Sahtú Dene Council continue to develop Ne K'ədí Ke (Keepers of the Land) programs to support implementation of community conservation plans.

Response: Accept

Reasons:

ENR acknowledges and supports the important role that Guardians or guardian-type programs play in monitoring the land as well as education and outreach that promotes respectful practices and conservation, the passing on of traditional knowledge and values, and the creation of economic opportunities.

Guardians do not have a legal mechanism of authority for enforcement and do not have any enforcement powers under the *Wildlife Act*. That being said, ENR would be pleased to work together

with the Sahtú Nę K'ədí Ke to promote education, outreach and monitoring related to respectful practices and prevention.

ENR has provided and will continue to provide ongoing support to the development of Sahtú Nę K'ədí Ke, including in-kind and staff support, and financial resources where available. Support for guardian type programs is identified in ENR's Sustainable Livelihoods Action Plan. ENR has provided in-kind, capacity and financial support to the program in previous years.

ENR can also work with the Sahtú Dene Council and community partners to identify and apply for funding that supports the broader development and implementation of Sahtú Nę K'ədí Ke, in addition to the implementation of community conservation plans.

Decision 2.1

The SRRB will approve Colville's Plan as a Sahtú community conservation plan following Colville's submission and the SRRB's subsequent assessment of the outstanding components of the community conservation plan: outline of ɔədə (caribou) monitoring and harvest monitoring information to be provided and reporting timelines; the plan for caribou conservation and food security (alternative harvest); and an evaluation framework.

Response: Vary

The SRRB will approve Colville's Plan ~~as a Sahtú community conservation plan~~ following Colville's submission and the SRRB's subsequent assessment of the outstanding components of the community conservation plan: outline of ɔədə (caribou) monitoring and harvest monitoring information to be provided and reporting timelines; the plan for caribou conservation and food security (alternative harvest); and an evaluation framework. **The SRRB will forward the approved Colville Plan to the Minister of ENR for review and, subject to any required changes, approval. Upon approval by the Minister of ENR, Colville's Plan will be in effect as a Sahtú community conservation plan.**

Reasons:

This recommendation is varied to recognize that once the SRRB has approved Colville's Plan, it will be forwarded to the Minister of ENR for review. Once reviewed, the Minister of ENR may approve Colville's Plan or require further changes. In addition to the outstanding components identified by the SRRB, ENR would suggest that the Colville Lake Renewable Resource Council include and reference broader management structures and plans which guide management of barren-ground caribou as well as address the concerns laid out in the reasons provided for varied Recommendation 4.1.

ENR remains supportive of the community conservation planning approach, and will continue to engage with communities in the Sahtú on how to advance their plans. ENR also remains committed to meeting with communities to ensure that community concerns are discussed, and that there is a transfer of knowledge among all parties. ENR recognizes the barren-ground caribou or ɔədə outlined in Colville's Plan as the Bluenose-West herd. As referenced in the reasons noted for varying Decision 1.2, the ACCWM and the Taking Care of Caribou management plan provide overall guidance on the management of the Cape Bathurst, Bluenose-West and Bluenose-East herds.

ENR continues to provide scientific information to the ACCWM during their annual status meeting and supports the orange status that was first determined collectively by the co-management boards that make up the ACCWM at the 2018 Annual Status Meeting. When a herd is in the orange zone, management actions called for under the Taking Care of Caribou plan include “recommend a mandatory limit on subsistence harvest based on a TAH accepted by the ACCWM”. In 2006, the Gwich’in Renewable Resources Board (GRRB) and the Wildlife Management Advisory Council (WMAC-NWT) recommended the Minister of ENR implement harvest restrictions for the Bluenose-West herd which included a 4% harvest rate. After the SRRB held their public hearing in 2007, the board also recommended a 4% TAH for the Bluenose-West herd. In 2019, the SRRB supported the GRRB and WMAC (NWT) position that the agreed-upon sustainable overall harvest of 4% should reflect the 2018 Bluenose-West population estimate.

Colville’s Plan has no reference to any limits on the harvest of barren-ground caribou, and as outlined in Paragraph 31 of the SRRB’s Reasons for Decision, Colville Lake has indicated a lack of trust in the evidence behind the current status (orange – population level is intermediate and decreasing) as determined by the ACCWM. At its current status, overharvest of the Bluenose-West herd could have serious impacts on conservation of the herd. As recommended by WMAC (NWT), GRRB and the SRRB, there is a current herd-wide 4% limit on harvest of the Bluenose-West herd.

Colville’s Plan ultimately requires the Minister of ENR’s approval, and the Minister must also be afforded discretion to require changes.

Decision 3.1

The SRRB approves the 2019 edition of the Belare Wílé Gots'é ʔekwé (Caribou for All Time) plan, pending evidence that the plan has been formally approved by the Délı̨nę Got'ı̨nę Government and Délı̨nę ʔehdzo Got'ı̨nę (Renewable Resources Council).

Response: Vary

The SRRB approves the 2019 edition of the Belare Wílé Gots'é ʔekwé (Caribou for All Time) Plan, pending evidence that the plan has been formally approved by the Délı̨nę Got'ı̨nę Government and ʔehdzo Got'ı̨nę (Renewable Resources Council). **Upon this evidence being provided, the SRRB will forward the Plan to the Minister of ENR for review. The Minister will require the Plan to be amended such that BNW caribou may only be harvested by Délı̨nę Got'ı̨nę if another community with a BNW caribou allocation gives part of its allocation to Délı̨nę ʔehdzo Got'ı̨nę (Renewable Resources Council). Subject to approval by the Minister of ENR, the 2019 edition of the Plan will be in effect as a Sahtú community conservation plan.**

Reasons:

Since the first version of the Belare Wílé Gots'é ʔekwé (Caribou for All Time) Plan was approved, Délı̨nę ʔehdzo Got'ı̨nę (Renewable Resources Council) has not been provided with any allocation of BNW caribou. Therefore, BNW caribou could only be harvested by Délı̨nę Got'ı̨nę if another community with an allocation gave part of its allocation to Délı̨nę ʔehdzo Got'ı̨nę (Renewable Resources Council). This remains unchanged and it is important that this is noted in the 2019 edition of the Plan.

As with varied Decision 2.1, ministerial review and approval are required.

Recommendation 4.1

The SRRB recommends to the Minister that the Colville Lake Renewable Resources Council be granted the power to issue authorizations to all types of harvesters in the entire Sahtú Barren-ground caribou area 01 (S/BC/01), subject to a periodic review of the status and location of ɾədə (Bluenose-West caribou).

Response: Vary

~~The SRRB recommends~~ **It is recommended** to the Minister that the Colville Lake Renewable Resources Council be granted the power to issue **barren-ground caribou** authorizations to ~~all types of~~ **Dehlá Got'ıneḡ and non-participant** harvesters in the entire Sahtú Barren-ground caribou area 01 (S/BC/01), ~~subject to a periodic review of the status and location of ɾədə (Bluenose-West caribou).~~

Reasons:

It is ENR's perspective that the Colville Lake Renewable Resources Council (CLRRC) cannot be granted the authority to issue authorizations to participants from other Sahtú communities to harvest BNW caribou in S/BC/01 because:

1. The Colville Plan has the effect of creating a clear and direct limit on the quantity of BNW caribou that can be harvested by participants from other Sahtú communities and as a result is inconsistent with 13.5.2 of the SDMCLCA.
2. There is a well-established legal requirement, from Canadian court decisions, that any restriction of any modern treaty right to harvest, regarding quantity or in any other respect, must restrict the right to the minimum extent necessary to achieve the conservation objective.
3. ENR's analysis of the meaning of the word "local" in 13.9.4(b) of the SDMCLCA does not allow an RRC to manage or regulate the 13.4.1 SDMCLCA harvesting right of participants from other Sahtú communities.

An analysis of these three matters is set out below.

This Recommendation is varied accordingly to grant CLRRC the power to issue authorizations to only Dehlá Got'ıneḡ and also to non-participants who are authorized to harvest by the CLRRC under 13.4.8 of the SDMCLCA.

Quantity of Harvest

In paragraphs 124 and 126 of the Report, Colville's Plan having the clear and direct effect of limiting the quantity of BNW caribou that may be harvested by participants from other Sahtú communities in S/BC/01 was not considered. This aspect of Colville's Plan is inconsistent with the final sentence of 13.5.2 of the SDMCLCA. On this basis, CLRRC cannot be granted the authority to issue authorizations to participants from other Sahtú communities to harvest BNW caribou in S/BC/01.

A requirement for any participant from another Sahtú community to obtain an authorization from CLRRRC to harvest BNW caribou in S/BC/01 would clearly and directly have the effect of limiting the quantity of BNW caribou that can be harvested each year by participants from other Sahtú communities to the number of authorizations, if any, that CLRRRC decides to issue to them. The final sentence of 13.5.2 of the SDMCLCA means that no proposal other than a total allowable harvest may be approved by the SRRB or the Minister of ENR that would have the clear and direct legal effect of limiting the quantity of any wildlife that may be harvested by participants. As the SRRB notes, there are various possible ways of restricting participant harvest other than with respect to quantity under the SDMCLCA. However, none of these other possible ways of restricting participant harvest under the SDMCLCA have the effect of clearly and directly limiting the quantity that may be harvested.

Minimal Infringement

Any restriction of harvest of participants from other Sahtú communities, including alternatives to a limit on quantity of harvest, under the SDMCLCA must restrict the right at issue to the minimum extent required to achieve the conservation objective. Based on court decisions, it is clear that this is a legal requirement. Given the lack of clarity in Colville's Plan regarding what, if any, quantity of BNW caribou participants from other Sahtú communities may harvest, Colville's Plan has the clear potential to restrict their right to harvest BNW caribou more than to the minimum extent required to achieve the conservation objective. This is another reason why CLRRRC cannot be granted the authority to issue authorizations to participants from other Sahtú communities to harvest BNW caribou in S/BC/01.

In *First Nation of Nacho Nyak Dun v. Yukon*, 2017 SCC 58, [2017] 2 SCR 576, Karakatsanis J., for a unanimous Supreme Court of Canada, stated at paragraph 37:

...While courts must “strive to respect [the] handiwork” of the parties to a modern treaty, this is always “subject to such constitutional limitations as the honour of the Crown” (*Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, [2010] 3 SCR 103, at para. 54).

In *Sga'nism Sim'augit (Chief Mountain) v. Canada (Attorney General)*, 2013 BCCA 49 (leave to appeal to Supreme Court of Canada dismissed), Harris J, for a unanimous British Columbia Court of Appeal, stated, in the context of a modern treaty, at paragraph 70:

Treaty rights may be infringed by either the federal or provincial governments provided that government can meet the test set out in *Sparrow* and *Badger* to justify infringement.

There are well-established principles in Canadian law, set out in the Supreme Court of Canada's *Badger* and *Sparrow* decisions, that any restriction of Indigenous harvesting rights on the basis of quantity of harvest must restrict the right to the minimum degree possible to achieve the intended objective of conservation. ENR agrees that “alternatives which achieve the same necessary conservation or safety outcomes as harvest quotas must be used where feasible”. However, it is also well established in Canadian law, from the statements in the two court decisions quoted above, that any restriction on a right to harvest under a modern treaty, including any alternative to a harvest limit, must restrict the right to the minimum degree possible to achieve the intended objective of conservation. This applies regardless of whether wording to that effect is included in the clause at issue in the modern treaty. Consequently, despite 13.4.1 of the SDMCLCA not containing minimal restriction or infringement wording, as 13.5.2 of the SDMCLCA does, any restriction on the harvesting right of participants from

other Sahtú communities set out in 13.4.1 of the SDMCLCA must restrict the right to the minimum degree possible to achieve the intended objective of conservation.

The Interpretation of “local” in 13.9.4(b) of the SDMCLCA

Through ENR’s analysis to interpret what is meant by “local” in 13.9.4(b) of the SDMCLCA, set out below, 13.9.4(b) of the SDMCLCA does not allow an RRC to require participants from other Sahtú communities to obtain an authorization to harvest within any area.

In *R v. Zeolkowski* [1989] 1 SCR 1378, Sopinka J., for a unanimous Supreme Court of Canada, stated:

Giving the same words the same meaning throughout a statute is a basic principle of statutory interpretation.

In *First Nation of Nacho Nyak Dun*, Karakatsanis J., for a unanimous Supreme Court of Canada, stated at paragraph 37:

Paying close attention to the terms of a modern treaty means interpreting the provision at issue in light of the treaty text as a whole and the treaty’s objectives.

Given these two statements by the Supreme Court of Canada, it is apparent that the same word should be given the same meaning throughout any modern treaty and certainly within any chapter of a modern treaty.

There are three references to “local” in chapter 13 of the SDMCLCA: in 13.9.1, 13.9.4(b) and 13.9.4(e). There is nothing within 13.9.4(b) or (e) that provides any clarification as to whether “local” refers to a specific area or a specific community, which is the determination that must be made. However, the underlined wording in 13.9.1, below, leaves no doubt that “local” refers to a specific community:

There shall be a Renewable Resources Council in each Sahtú community to encourage and promote local involvement in conservation, harvesting studies, research and wildlife management in the community.

As 13.9.1 of the SDMCLCA is relevant to all of the other clauses in 13.9 of the SDMCLCA, there is no basis for the subsequent references to “local” to have a different meaning. Consequently, 13.9.4(b) of the SDMCLCA gives the RRC of a community the power to manage, in a manner consistent with legislation and policies of the SRRB, the exercise of harvesting rights of participants from that community, including the methods, seasons and location of harvest.

There are certain respects in which one or more RRCs are given a role in an unspecified part of the Sahtú Settlement Area under the SDMCLCA (for instance in 13.4.6, 13.4.13, and 13.7.1). However, none of those roles involve regulating or managing the exercise of harvesting rights by participants from other Sahtú communities.

Additional Comments

ENR agrees with paragraph 130 of the SRRB Report that local harvesting authorizations already exist. However, the key factor that distinguishes the issuance of all of the authorizations noted by SRRB from the authorizations for participants from other Sahtú communities in the Colville Plan is that the authorizations noted by the SRRB in paragraph 130 are not for the exercise of harvesting rights or are

issued in a way that ensures minimal restriction of the harvesting rights at issue to provide for conservation.

For the reasons set out above, the CLRRC cannot be given the authority to issue authorizations to participants from other Sahtú communities that are required to harvest BNW caribou in S/BC/01. Further, for the first two reasons set out above, the CLRRC cannot be delegated this authority by the SRRB and the Minister of ENR under 13.9.5 of the SDMCLCA.

Recommendation 4.2

The SRRB recommends to the Minister that a new Hido Gogha Senegotsi?á ?e?á (Community Conservation Planning Regulation) be created under the *Wildlife Act* to entrench the community conservation planning approach in NWT law.

Response: Vary

~~Hido Gogha Senegotsi?á ?e?á (Community Conservation Planning Regulation)~~ will be implemented and enforced to the extent possible through regulations created under the *Wildlife Act* to which will entrench the community conservation planning approach in NWT law.

Reasons:

As has been previously stated, community conservation plans and community-based self-regulation can contribute to effective overall wildlife management, but as always, there remains a need for an overall coordinated approach to wildlife management and harvest management. Section 10 of the *Wildlife Act* acknowledges the role of local harvesting committees established under land claims agreement and their role and responsibility in the conservation and management of wildlife. As has been stated previously, in the second last paragraph of the reasons for varied Decision 1.1, anything in a community conservation plan that is not enforceable or is inconsistent with court decisions, the SDMCLCA or a matter for which a consistent approach across the Northwest Territories has been taken in the *Wildlife Act* is not appropriate for inclusion in regulations under the *Wildlife Act*. The community conservation plans will be implemented and enforced to the extent possible through regulations under the *Wildlife Act*.

Recommendation 4.3

The SRRB recommends that the Interim Management Agreement between Colville Lake and NWT Environment and Natural Resources continue to be in effect until Hido Gogha Senegotsi?á ?e?á (Community Conservation Planning Regulation) comes into force.

Response: Vary

~~The SRRB recommends that~~ The Interim Management Agreement between Colville Lake and NWT Environment and Natural Resources is recommended to continue to be in effect until ~~Hido Gogha Senegotsi?á ?e?á (Community Conservation Planning Regulation)~~ the approved Colville Plan is in effect subject to varied recommendation 4.4.

Reasons:

ENR remains committed to continue to work with Colville Lake to implement the Interim Management Agreement and support the conservation and recovery of barren-ground caribou. Given the reasoning for varied Decision 2.1 and varied Recommendation 4.2, ENR supports the recommendation for the Interim Management Agreement to be in effect until an approved Colville Plan is in effect.

Recommendation 4.4

In the event that Hido Gogha Senegotsi?a ?e?a (Community Conservation Planning Regulation) is not in place by the Interim Management Agreement's current date of expiry (May 31, 2021), the SRRB recommends the agreement be extended to such time as the regulation, or its equivalent, is in place.

Response: Vary

In the event that ~~the Colville Plan Hido Gogha Senegotsi?a ?e?a (Community Conservation Planning Regulation)~~ is not in place by the Interim Management Agreement's current date of expiry (May 31, 2021), the SRRB recommends **that the parties meet to review and decide whether to extend the agreement** ~~be extended to such time as the regulation, or its equivalent, is in place.~~

Reasons: See reasons for Recommendation 4.3

Recommendation 4.5

The SRRB recommends that an interim management agreement to implement Délįnę's Belare Wílé Gots'ę ?ekwé (Caribou for All Time) plan be made between Délįnę and NWT Environment and Natural Resources.

Response: Vary

Délįnę and the Department of Environment and Natural Resources should meet to discuss the work plan for implementing ~~The SRRB recommends that an interim management agreement to implement Délįnę's Belare Wílé Gots'ę ?ekwé (Caribou for All Time) plan be made between Délįnę and NWT Environment and Natural Resources.~~

Reasons:

This recommendation has been varied because there is already an approved version of the Délįnę Belare Wílé Gots'ę ?ekwé (Caribou for All Time) plan, and therefore an interim management agreement is not needed. ENR is committed to working with Délįnę on implementing the Délįnę Belare Wílé Gots'ę ?ekwé (Caribou for All Time) plan. This plan includes a work plan for implementation, and ENR will continue to work with the Délįnę ?ekwé Working Group and the SRRB on how to best move these actions forward. As has occurred in the past, ENR is committed to meeting with the working group and discussing implementation of the work plan and potential funding opportunities for its implementation.

Recommendation 5.1

The SRRB recommends that the *Wildlife Act* regulations be amended to provide for alternative measures for pre-sentencing diversion to the culturally appropriate restorative justice processes provided for in the Colville Lake and Délı̄nę community conservation plans (as determined by the communities in consultation with ENR).

Response: Vary

~~The SRRB recommends that the~~ **Alternative measures, as set out in the *Wildlife Act*, that are consistent with regulations be amended to provide for alternative measures for pre-sentencing diversion to the culturally appropriate restorative justice processes provided for in the Colville Lake and Délı̄nę community conservation plans (as determined by the communities in consultation with ENR), may be used if such alternative measures are part of a program of alternative measures authorized by the Minister of Justice.**

Reasons:

Decisions regarding specific matters where alternative measures may be considered are made after consideration by the prosecutor on a case-by-case basis, for offences under the *Wildlife Act* and its regulations.

Alternative measures can only apply to offences under the *Wildlife Act* and regulations thereunder. In relation to Colville Lake's community conservation plan and the Délı̄nę community conservation plan, alternative measures can therefore only apply to the aspects of those approved plans that are able to be reflected in regulations under the *Wildlife Act* consistent with the second last paragraph of the reasons for varied Decision 1.1. If Colville Lake or Délı̄nę want any new alternative measures to apply to those aspects of the regulations under the *Wildlife Act*, or anything else under the *Wildlife Act* or its regulations, or any changes to the existing alternative measures program, Colville Lake or Délı̄nę, as applicable, will need to provide an outline of its proposal for consideration by the Minister of Justice.

Recommendation 5.2

The SRRB recommends that the Interim Management Agreement between Colville Lake and ENR be amended to address enforcement in the period before the Hido Gogha Senegotsi?á ʔe?á comes into force.

Response: Vary

~~It is recommended that the SRRB, The SRRB recommends that the Interim Management Agreement between Colville Lake and ENR~~ **meet to discuss enforcement of community conservation plans.** ~~be amended to address enforcement in the period before the Hido Gogha Senegotsi?á ʔe?á comes into force.~~

Reasons:

A trilateral meeting between the SRRB, Colville Lake and ENR on enforcement of community conservation plans would clarify what ENR is able to enforce. See reasons for varied Recommendations 4.1 and 4.2.

Decision 6.1

The SRRB has decided that it will remove the total allowable harvest in Sahtú Barren-ground caribou hunting Area 01 (S/BC/01), once Colville's community conservation plan has been completed and approved. The SRRB will regularly review the conservation outcomes under the community conservation planning approach. The SRRB reserves the right to re-apply the total allowable harvest if required for effective conservation.

Response: Set aside and replace

~~The SRRB has decided that it will remove the total allowable harvest in Sahtú Barren-ground caribou hunting Area 01 (S/BC/01) once Colville's community conservation plan has been completed and approved. The SRRB will regularly review the conservation outcomes under the community conservation planning approach. The SRRB reserves the right to re-apply the total allowable harvest if required for effective conservation.~~ **In addition to measures put in place under the community conservation planning approach, the previously approved total allowable harvest in Sahtú Barren-ground caribou hunting Area 01 (S/BC/01) will remain in effect once Colville's community conservation plan has been completed and approved.** The SRRB will regularly review the conservation outcomes under the community conservation planning approach. ~~The SRRB reserves the right to re-apply the total allowable harvest if required for effective conservation.~~

Reasons:

Further to the reasoning provided for varied Decision 1.1 and 2.1 and considering the larger management context for the Bluenose-West (BNW) herd, there remains a conservation need for the current harvest limit for this herd. The status of the BNW herd has not improved since the Minister of ENR accepted the SRRB decision to impose a total allowable harvest (TAH) on the BNW herd in 2008. This means that a TAH needs to remain, which minimally restricts while providing for the conservation of the BNW herd. ENR is of the opinion that the TAH cannot be removed until the status of the BNW herd has improved compared to when the SRRB first imposed a TAH.

As has been previously stated, the three wildlife management boards with authority over the Bluenose-West herd (the SRRB, GRRB and WMAC-NWT) established and subsequently reconfirmed the need to continue a sustainable overall harvest level of 4%. The effectiveness of management actions is eroded when not implemented equally across the range of the Bluenose-West herd. ENR appreciates that there are many, varied perspectives on caribou management and that Colville Lake as a primary harvester of the Bluenose-West herd has many insights on the herd and perspectives on how best the herd should be managed. ENR will continue to take these views into consideration along with those of the other users of the herd and the management authorities who have responsibility for the conservation of the herd. In their letter of January 25, 2021, the Inuvialuit Game Council and WMAC (NWT), shared concerns with ENR:

“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...”

The decision to place a TAH on any wildlife species is not taken lightly, and is discussed with all affected parties, including users of the herd in neighbouring regions and jurisdictions. The concept of a TAH was agreed to in the SDMCLCA as well as other land claim agreements.

At the latest ACCWM herd status meeting, the SRRB agreed to the BNW herd being in the orange zone, which means that it is recommended that there be a mandatory limit on subsistence harvest based on a TAH accepted by the ACCWM. It is important that this conservation measure be applied at a herd-wide level, with the approach for the BNW herd taken within the Sahtú Settlement Area for the BNW herd consistent with parts of the herd's range in other land claim areas.

As noted in the reasons for varied Recommendation 4.1, participants from other Sahtú communities cannot be required to obtain an authorization from CLRRC to harvest caribou from the BNW herd in S/BC/01. The TAH and allocations for the BNW herd to applicable Sahtú communities must therefore be maintained to provide a means of regulating the harvest of BNW caribou that restricts the right to harvest under 13.4.1 of the SDMCLCA to the minimum extent necessary to achieve the conservation objective.

Recommendation 6.1

The SRRB recommends that the Big Game Hunting Regulations be amended to remove the tag required for Aboriginal harvesters in Sahtú Barren-ground Caribou Area 01 (S/BC/01) and Area S/BC/03 (as they are currently named), as the tagging requirement will be replaced by the authorization and permissions system under Hı́dó Gogha Sė́nė́gots'ı́á ʔeʔa (Community Conservation Planning Regulation), described in Recommendation 4.2 of this report.

Response: Vary

~~The SRRB recommends~~ **It is recommended** that the Big Game Hunting Regulations ~~be amended to remove the tag required for~~ **as they apply to** Aboriginal harvesters in Sahtú Barren-ground Caribou Area 01 (S/BC/01) and Area S/BC/03 (as they are currently named) **will reflect the use of an Authorization for Dehlá Got'ı́nė́ harvesters as identified in the Interim Management Agreement and a sampling kit as identified in the Délı́nė́ plan.** ~~as the tagging requirement will be replaced by the authorization and permission system under Hı́dó Gogha Sė́nė́gots'ı́á ʔeʔa (Community Conservation Planning Regulation), described in Recommendation 4.2 of this report.~~

Reasons:

The tag requirement in the Big Game Hunting Regulations for S/BC/03 was put in place in 2015 after the ACCWM provided interim recommendations for the NWT harvest of the Bluenose-East herd which included a herd-wide harvest limit of 1800 caribou and 80% bulls. In 2017, the Minister of ENR, after consultation with other traditional users of the Bluenose-East caribou herd, supported the Délı́nė́ plan. In that decision the Minister made note of the complementary proposals that were submitted by ENR and Délı́nė́, that the Délı́nė́ plan was consistent with how much harvest the overall herd could sustain. The Délı́nė́ plan includes the use of harvest sampling kit which in S/BC/03 would be used as evidence of authorization to harvest barren-ground caribou in that area.

The TAH for S/BC/01 is still in place and therefore ENR cannot remove the requirement for a tag for S/BC/01 (see reasoning set out under set aside and replaced Decision 6.1). The Interim Management Agreement between Colville Lake and ENR identifies that the “Authorization” set out in Appendix 1 of the Agreement will be evidence of authorization to harvest ɾədə in S/BC/01. For the reasons set out for varied Recommendation 4.1, the proposal in Colville’s Plan to require participants from other Sahtú communities to obtain an authorization from CLRRC to harvest caribou from the BNW herd in S/BC/01 cannot be accepted as an alternative to tags for such harvest.

Recommendation 6.2

The SRRB recommends that Colville Lake work with harvester groups in neighbouring regions in developing and adapting their community conservation plan to address shared conservation goals.

Response: Accept

Reasons:

As Colville Lake’s community conservation plan focuses on the Bluenose-West herd which is a herd shared by 13 communities across 3 land claim areas, the plan would benefit from a broader discussion with harvester groups and other wildlife co-management partners in neighbouring regions. Many, though not necessarily all, shared conservation goals and other key points are set out in the Taking Care of Caribou Plan and the Bluenose-West Action Plan developed by the ACCWM with input from communities.

Recommendation 7.1

The SRRB recommends that Sahtú Barren-ground Caribou Area 01 (S/BC/01) be renamed Gow'ı ʔədə Nęné (Barren-ground Caribou Land), with the name change reflected in the Wildlife Management Zones and Areas Regulations and in any other enactment that references this area.

Response: Accept

Reasons: ENR is not opposed to using Dene naming conventions as an alternative to alphanumeric codes. This change in the *Wildlife Management Zones and Areas Regulations* and other regulations under the *Wildlife Act* will be subject to consideration of the results from engagement with other Indigenous governments and organizations, which ENR will carry out.

Recommendation 7.2

The SRRB recommends that Sahtú Barren-ground Caribou Area 02 (S/BC/02) be renamed Tuyeta ʔədə Nęné (Caribou Land), with the change reflected in the Wildlife Management Zones and Areas Regulations and in any other enactment that references this area.

Response: See response for 7.1

Recommendation 7.3

The SRRB recommends that Sahtú Barren-ground Caribou Area 03 (S/BC/03) be renamed ʔehdaɭla ʔekwę Nęné (Caribou Point Caribou Land), with the change reflected in the Wildlife Management Zones and Areas Regulations and in any other enactment that references this area.

Response: See response for 7.1

Recommendation 7.4

The SRRB recommends that Fort Good Hope and Colville Lake Renewable Resources Councils, SRRB, NWT Environment and Natural Resources, and Environment and Climate Change Canada collaboratively develop a work plan to address knowledge gaps regarding Sahtú Barren-ground Caribou Area 02 (S/BC/02) (to be renamed the Tuyeta ʔədə Nęné [Caribou Land]) through non-invasive Indigenous knowledge and science.

Response: Accept

Reasons: ENR will work with the Fort Good Hope and Colville Lake Renewable Resources Councils and the SRRB to collect knowledge on barren-ground caribou in S/BC/02.

In addition to this non-invasive knowledge gathering, it remains at ENR's discretion to continue to use scientifically accepted techniques and methods, that may be considered invasive by some, to conduct barren-ground caribou research and monitoring to address important information needs and gaps. ENR

has and will continue to support community-based approaches to caribou monitoring. While we acknowledge the value of other herd monitoring approaches, there are key indicators of barren-ground caribou herds that rely on deploying an adequate number of collars within herds. As the SRRB is aware, one of those key indicators is the herd population estimate, which is critical in determining management actions. ENR strives to provide updated scientific information to inform management decisions, and would be happy to work with the Fort Good Hope and Colville Lake Renewable Resources Councils to address the knowledge gaps identified for barren-ground caribou in S/BC/02.

Recommendation 7.5

The SRRB recommends that the Ts'udá Nı́łné Tuyeta Management Board lead the development of a community conservation plan for caribou in Sahtú Barren-ground Caribou Area 02 (S/BC/02) (to be renamed the Tuyeta ʔədə Néné [Caribou Land]).

Response: Vary

It is recommended that the Ts'udá Nı́łné Tuyeta Management Board **lead take part in meetings on** the development of a community conservation plan for caribou in Sahtú Barren-ground Caribou Area 02 (S/BC/02) (to be renamed the Tuyeta ʔədə Néné [Caribou Land]), **led by the Fort Good Hope Renewable Resources Council.**

Reasons:

The Ts'udá Nı́łné Tuyeta Territorial Protected Area Management Board is not the final decision maker for wildlife management matters therein and does not have responsibilities outside of the boundaries of Ts'udá Nı́łné Tuyeta Territorial Protected Area for caribou. Further, the Ts'udá Nı́łné Tuyeta Territorial Protected Area Management Board has a limited role with respect to caribou harvest management. For these reasons, the Fort Good Hope Renewable Resources Council seems best suited to lead the development of this community conservation plan. The Board would be in a position to provide valuable input on the development of the community conservation plan with respect to the area of overlap with Ts'udá Nı́łné Tuyeta Territorial Protected Area.

Decision 8.1

The SRRB has decided that the 2021 public listening session will include a full discussion of the role that residency requirements and hunter education play in fostering or inhibiting respect for Dene protocols in the Sahtú region.

Response: Accept

Reasons:

This is a decision about future public listening sessions rather than a decision regarding wildlife management. As the matters on the agenda for future public listening sessions, and the time allocated to discussion of each matter, are entirely at the discretion of the SRRB, this decision is accepted.

Residency requirements are a matter for which consistency exists across the Northwest Territories under the *Wildlife Act*. There are good reasons to maintain this consistency as set out below.

The process to draft a new *Wildlife Act* started in 1999 and concluded in 2014 when it came into force. Over those 15 years, multiple rounds of public meetings, engagement sessions, and formal consultations took place in each of the NWT's 33 communities. The Act was collaboratively drafted by a "Wildlife Act Working Group" that included representation from the SRRB and Sahtú Secretariat Incorporated and their legal counsel.

The definition of "resident" has always generated a great deal of discussion across the NWT, particularly while the Act was developed. Most comments raised at that time in Indigenous communities supported keeping the residency requirement at two years or increasing it. The most common concern raised by these groups was that new residents cannot learn everything they need to know to hunt safely and properly within one year. Two years or more would allow a new resident an opportunity to learn about local wildlife and learn from local residents how to safely travel on the land and hunt responsibly. Concerns were also raised about a large influx of new short-term residents to the NWT if the Mackenzie Gas Project went forward. Community members were concerned these short-term residents would put too much pressure on local wildlife and take away the local food source. Some community residents felt there was already too much pressure on local wildlife, making it difficult for community members to feed families.

Non-Indigenous residents commented that lowering the residency requirement to one year, or lower, was more in line with the rest of the Canada. It has been determined that resident hunters make up only about six percent of total harvesters in the NWT, with their numbers steadily declining over the past two decades. As such, feedback during engagement sessions identified that the number of resident hunters in the NWT relative to the number of Indigenous harvesters is very small and that reducing the residency requirement to one year would not make a difference to harvesting levels.

Based on input received during the 2010 and 2012 public engagement and consultation, the residency requirement in the Act is now at one year. It is important to note that there is now a legal requirement for first time resident hunters to successfully complete a harvester training course, developed in collaboration with Indigenous government representatives. This new course helps to address the concern that a one-year residency is not adequate to become a knowledgeable hunter. The Wildlife Act Working Group and the Legislative Assembly supported this approach.

Recommendation 9.1

The SRRB recommends that Ɂehdzo got'ıneę (renewable resources councils), NWT Environment and Natural Resources, and the SRRB undertake community conservation planning workshops in each of the three Sahtú districts (K'áhsho Got'ıneę District; Tulít'a District; and Délıneę District) to develop proposals for implementation of special harvesting areas, including any required regulations, prior to the 2024 public listening session.

Response: Accept

Reasons:

This recommendation is accepted with respect to those special harvesting areas designated for harvest of moose. ENR is not responsible for special harvesting areas designated for harvest of fish or migratory game birds. If SRRB would like to make the corresponding recommendation for those special harvesting areas, it should be made to Environment and Climate Change Canada, which is responsible for the special harvesting areas for migratory game birds, and Department of Fisheries and Oceans Canada, which is responsible for the special harvesting areas for fish.

S. 13.4.4(b) of the SDMCLCA states:

Persons who are not participants may not have access to such areas in (a) for the purpose of harvesting wildlife where such harvesting would be inconsistent with the special harvesting by participants.

This clause does not impose a total prohibition on non-participant harvest in these areas. Further, s. 13.4.4(c) of the SDMCLCA states:

Persons who are not participants may, pursuant to legislation, harvest moose in the special harvesting areas designated for the harvesting of moose during a season in the fall of the year. The season in such area shall be no longer than 90 days in duration and shall close no later than the 16th day of December in any calendar year. Such special harvesting areas are set out in schedule VII, appendix E.

It will be important for the proposal(s) that are developed for implementation of special harvesting areas for moose to be consistent with these SDMCLCA clauses.

Decision 10.1

The SRRB has decided that there needs to be further capacity support and program funding for community conservation planning and plan implementation in the Sahtú region.

Response: Accept

Reasons:

ENR will continue to provide support and funding for community conservation planning and plan implementation on a case-by-case basis. Acceptance of this recommendation does not mean that all funding requested will be provided or that ENR has a set amount of funding for the implementation of this recommendation. ENR will work with the SRRB to increase awareness of community conservation plans and the processes undertaken to develop those plans.