

Conference of Management Authorities (CMA)
Meeting Minutes
January 22, 2018 Conference Call

Attendees:

| In attendance: | Representative for: |
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| Jody Pellissey, Chairperson | Wek'èezhii Renewable Resources Board |
| Brooke Barber | Acho Dene Koe First Nation |
| Elizabeth Robertson | Acho Dene Koe First Nation |
| Brett Elkin | Environment and Natural Resources |
| Heather Sayine-Crawford | Environment and Natural Resources |
| James Hodson | Environment and Natural Resources |
| Joanna Wilson | Environment and Natural Resources |
| Christian Bertelsen | Government of Canada - ECCC |
| Craig Machtans | Government of Canada - ECCC |
| Isabelle Duclos | Government of Canada - ECCC |
| Joanne Tuckwell | Government of Canada - Parks Canada |
| Doug Doan | Gwich'in Renewable Resources Board |
| Eugene Pascal | Gwich'in Renewable Resources Board |
| Kaytlin Cooper | Gwich'in Renewable Resources Board |
| Ron Allen | Gwich'in Renewable Resources Board |
| Julie Swinscoe | Kátl'odeeche First Nation |
| Peter Redvers | Kátl'odeeche First Nation |
| Sarah Taylor | Kátl'odeeche First Nation |
| Nicole Goodman | North Slave Métis Alliance |
| Deborah Simmons | Sahtú Renewable Resources Board |
| Leon Andrew | Sahtú Renewable Resources Board |
| Jessica Hum | Tł'íchǫ Government |
| Paul Bachand | Tł'íchǫ Government |
| Allison Thompson | Wildlife Management Advisory Council (NWT) |
| Jodie Maring | Wildlife Management Advisory Council (NWT) |
| Larry Carpenter | Wildlife Management Advisory Council (NWT) |
| Claire Singer | Species at Risk Secretariat |

Special meeting called by Environment and Natural Resources to discuss boreal caribou recovery under the federal Species at Risk Act (SARA) and the status/nature of a critical habitat protection order and section 11 agreement.

1. Presentation – *led by Christian Bertelsen, Environment and Climate Change Canada (ECCC)*

- Under SARA, the Minister of ECCC must assess whether critical habitat is protected in all ranges of the boreal caribou. If any portion of critical habitat is not protected, the Minister must:
 - Report on steps taken to protect any unprotected portion of critical habitat, under section 63 of SARA.
 - The Minister has committed to have this reporting complete by April 2018.
 - If any portion of critical habitat is not protected, the Minister must recommend a protection order – a prohibition on the destruction of critical habitat – to the Governor in Council (GIC).
- The GIC, in considering a recommendation to establish SARA protection, is free to consider any number of issues, including questions of socio-economic and other factors such as section 11 conservation agreements (s11).
- There is an opportunity for robust conservation agreements under SARA s11, based on range plans or other similar documents, to demonstrate concrete measures to recover and protect species and their habitat.
 - This is very early days; you are learning about this pretty much as soon as we've begun the possibility of a s11 agreement.
- Objectives:
 - Credible, collaborative, long-term agreements to facilitate the conservation, protection, and recovery of boreal caribou and their critical habitat.
 - Inform a principled and reasonable decision by the GIC on whether protection under SARA is required.
 - There's no guarantee that the s11 agreement will determine or guarantee anything in the GIC's determination, but it's the best mechanism to inform that decision.
- Under s11 of SARA, the Minister can enter into conservation agreements, which can include measures related to:
 - Monitoring the status of a species.
 - Developing and implementing education and public awareness programs.

- Developing and implementing recovery strategies, action plans, and management plans.
- Protecting species' habitat, including critical habitat.
- Undertaking research projects in support of recovery efforts for the species.
- S11 agreements and 'effective protection':
 - We recognize that caribou recovery requires more than legal prohibitions.
 - Agreements may not be 'effective protection' in a legal sense and will not necessarily negate the Minister's obligations to recommend SARA intervention to the GIC, through SARA s61.
 - However, the GIC can consider other factors, including s11 agreements when determining the need for protection under SARA.
- Success will be concrete measures that can be demonstrated to reverse trends and achieve the objectives of the federal recovery strategy.
- Specific and measureable actions:
 - Conservation and protection of species and their habitat.
 - Habitat restoration and promotion of recovery.
 - Mitigation of range-specific threats.
 - Monitoring and reporting: implementation and results.
 - Performance-based codes of practice or best management practices, developed with provinces, territories, and industry.
- We have initiated bilateral negotiation of SARA s11 agreements with willing partners on a jurisdiction-by-jurisdiction basis.
- The s63 report in April 2018 will report on our progress toward conservation agreements and it will inform any subsequent recommendation to the GIC.
- Timelines are very tight. We're not seeing any improvement in the status of boreal caribou in the country. We're hoping to develop a suitable s11 agreement-in-principle by the end of February so the Minister has something reliable to point to recovery efforts in each province/territory.
- The more robust a s11 agreement we can arrive at, the better we can inform and avoid things like protection orders.
- We should think about the immediate and possibly interim measures that can be taken now and incorporated into a s11 agreement. It's also useful to recognize that there's a whole host of effective actions can come later and can be discussed multi-laterally with stewardship partners that don't have to be as aggressively driven as the points in front of us now.

2. Round table discussion – *open forum*

- ECCC - Also note that when we talk about protecting critical habitat, that doesn't necessarily mean a protected area, where no development is allowed. Critical habitat for boreal caribou has been defined based on the percentage of disturbed/undisturbed habitat. A protection regime is a robust management system in place that offers the same kind of protections that are seen in SARA. The system should not allow the level of disturbance to rise. Ultimately, this is more akin to land use planning rather than protected areas.
- ENR – The CMA has been active on this through our *Species at Risk (NWT) Act* and our recent implementation agreement. Our boreal caribou range, NT1, is really a huge area.
 - With the updated disturbance mapping, the NT1 range is 65.6% undisturbed as of fall 2016. We are still above the 65% conservation threshold for critical habitat. This is down from 69% in 2010 but up from 65% in 2015.
 - The increase in habitat disturbance is due to the very large fire years in 2014 and 2015, some new disturbance from development, and some older human disturbance that was not visible in the original disturbance mapping, but was noticed in the new disturbance mapping.
 - The Critical Habitat Protection Assessment (CHPA) will focus largely on legal protection of habitat. It doesn't consider other factors, including land use plans, interim land withdrawals, etc. From discussions with ECCC, we are expecting that ECCC will determine that the NWT does not currently have mandatory and enforceable prohibitions against disturbing critical habitat, which will result in ECCC needing to make a critical habitat protection order. Within the GNWT, to pursue a s11 agreement, we need to have input from other departments and direction from Cabinet. We will be going to Cabinet on January 25, 2018 to seek this direction. If we get Cabinet direction to enter formal negotiations, our initial thinking is that the collaborative CMA process is the way we need to move forward. We see the proposed boreal caribou range planning approach as fulfilling our needs to protect habitat. So, we use the CMA approach for the recovery strategy and range plan as a way of collectively protecting habitat. We want to use the CMA and existing wildlife co-management processes to move this file forward.

- ENR – Brett mentioned the range plan process – to give you the latest, we have a draft framework for range planning and will shortly be hearing from Cabinet on whether we can begin consultation on the framework.
- Kátł'odeeche First Nation – 69% disturbance in 2010; 65% disturbance in 2015. Our concern is the scope of the landscape you use to determine disturbance. Obviously, the southern portion of the NWT is way more disturbed than the northern part of the territory. When you're looking at those numbers, should you use the territorial average, or should you be doing it at a regional level, or even a population level? Could this be addressed or accommodated in the s11 agreement?
 - ENR – If we look strictly at our federal requirement, we need to meet a threshold of 65% across the NWT range. The range plan framework however, will try to address some regional equity concerns, etc.
 - ENR - We're proposing regional disturbance thresholds, which takes into account the fire disturbance throughout the range, which can be quite variable. So we are trying to come up with some regional plans.
- Kátł'odeeche First Nation – The other issue is a rights issue. If there are regions where we're allowing the habitat to degrade because it's being balanced by good habitat elsewhere – the issue of rights and protection of rights has to be given fair and due consideration.
 - ECCC – The matter of aboriginal rights and the exercise of those are an absolutely critical consideration as we proceed. With respect to ranges and what we look at – Canada looks at habitat as an aggregate since we're looking at habitat across the country. A regional break-down is useful and necessary for looking at the particulars of range planning though.
 - ECCC – From time to time, the recovery strategies are formally revised. Right now, we're doing this for SK1 (Saskatchewan). The next round could consider range boundaries, or new science. There are opportunities to revise that, but they're just not on the table at the moment.
- Tł'ichø Government – As previously mentioned, we have an immediate concern about the range and scope of s11 agreements. In your aggressive timeline, you may also want to consider which areas of the NWT should be prioritized. There are a lot of tools already in place already, both with the GNWT and with Aboriginal people. Considering all of these together, does it make sense to have an extra layer over an area that is already deemed to be on red alert and is already receiving a lot of

attention? Aren't you being a bit blunt in your approach? Your timeline is also concerning.

- ECCC – Absolutely, we want to foreground the significant and effective protection efforts that have already been taken across the NWT and in the Tłı̨chǫ region. We want to work with what exists to the extent that that can be leveraged. There's an important distinction to be made between undisturbed areas and effectively protected areas of habitat. We have a great deal of the former in the NWT, but the latter is more about legal, enforceable protection that provides certainty. We need to look at the numbers for how much of the latter we have in the NWT. Also, in the NWT, we have a particular challenge with respect to fire. Depending on the season and the scope and scale of fires, that's a bit of a variable that we need to consider because it bears on how we arrive at the disturbance numbers.
- ENR – I think we need to recognize what we have in the NWT (CMA, implementation agreement, range planning) and take a large view and regional approach – we have different land management regimes, etc. We want to take advantage of the tools we do have in settled and unsettled land claim agreements. An agreement, an implementation agreement, and a range plan.
- ECCC – If negotiating a s11 agreement lays out both the commitments and nature of the protection already in place is convincing and federal cabinet believes that is the case, then there would be no need for extra layers. We'd just be committed to fulfilling our plan, but with specific timelines. However, if federal cabinet isn't convinced, it would be up to them whether to add another layer. This is the last thing we want though. We want to use the tools we have in place already.
- Tłı̨chǫ Government – Could Canada provide a little more information on what it anticipates the Minister's report will contain?
 - ECCC - We want what the Minister reports under s63 to be informed by what we've agreed to under the s11 agreements across the country. Despite the less than ideal timelines, we want the existing actions to inform that and we want to equip her with an analysis of northern approaches to addressing any gaps. This will then allow the Minister to say, 'Here's what's being undertaken in the NWT and here are my recommendations'.
 - Tłı̨chǫ Government – How do you envision undertaking these negotiations?

- ECCC – Very quickly using the two-phased approach. Essentially, triage the phases into a timeline that works for this. We appreciate that this is a weighty and significant file to consider and that you have competing demands on your time. We've started the conversation with the NWT. Things to be included in a s11 agreement must be figured out in the next 2 months and codified accordingly.
- Sahtú Renewable Resources Board – Are the boreal caribou part of the mountain caribou?
 - ENR – The range of boreal caribou (NT1) is basically the boreal forest up the Mackenzie Valley, but not including the mountains. So there is a distinction between boreal and mountain caribou and this work is only considering boreal caribou.
- Tłı̨chǫ Government – How many s11 agreements do you anticipate and which government/council members will be the signatories? How you scope out how you're going to approach that?
 - ECCC – There is a draft agreement for southern mountain caribou in BC – different context, but useful as a template. We were thinking that because the timelines are so aggressive, starting this conversation with the GNWT to hopefully arrive at something by the end of February is the most immediate concern, but there's room to have additional signatories. We would look to governments like the Tlicho to tell us how they'd like to be involved in that. Then have a discussion from there.
- Kátł'odeeche First Nation – I know that SARA is focused on habitat and habitat protection; one of the issues we face though is harvesting and over-harvesting. I know that isn't covered though. I'm just wondering at what point (assuming this is an entirely GNWT responsibility) we have a link between habitat and harvesting.
 - ECCC – Harvesting considerations can be included in a s11 agreement.
 - ECCC – Note that there are sections of SARA that are for individual protection as well. However, Aboriginal harvesting is the last kind of harvesting that we would consider for regulation.

Call ended at 11:07am.