



January 18, 2019

Hon. Robert C. McLeod, Minister  
Environment and Natural Resources  
Government of the Northwest Territories  
Box 1320  
Yellowknife, NT X1A 2L9  
Email: [Robert\\_C\\_McLeod@gov.nt.ca](mailto:Robert_C_McLeod@gov.nt.ca)

*Via Email*  
***Robert\_C\_McLeod@gov.nt.ca***

**Re: Consultation on *Protected Areas Act* – Renewable Resources Boards**

Dear Minister McLeod:

The Gwich'in Renewable Resources Board (GRRB), ʔehdzo Got'ine Gots'è Nákedí/Sahtú Renewable Resources Board (SRRB), and Wek'èezhìi Renewable Resources Board (WRRB), collectively the Renewable Resources Boards (RRBs), would like to thank the Department of Environment & Natural Resources (ENR), Government of the Northwest Territories' (GNWT) for the invitation to participate at the Technical Working Group (TWG) meeting on January 10, 2019 to discuss a second draft of the Bill to enact the *Protected Areas Act* (PAA). The RRBs have specific land claims-based roles and authorities in relation to this legislation found in the Gwich'in Comprehensive Land Claim Agreement, Chapters 12, 13, 14 and 16; the Sahtú Dene-Métis Comprehensive Land Agreement, Chapters 13, 14, 15, and 17; and Tłı̨chọ Land Claims and Self-Government Agreement, Chapters 12, 13, 14, and 16. The Land Claim Agreements' provisions related to the RRBs apply to the process for developing new PAA legislation, its contents and eventual application.

As requested in your letter, dated December 20, 2018, the RRBs have reviewed the second draft of the PAA and provide comment on the contents of the Bill below. However, the RRBs consider it essential to first provide comments on the ENR legislation development process.

*Protected Areas Act and Process*

The RRBs first learned of the ENR legislative process on land and resource management legislation following a September 15, 2017 invitation from Dr. Erin Kelly to attend an October 12, 2017 information session with other stakeholders. The GRRB and SRRB's requests for travel support for the October 2017 Stakeholder Advisory Group (SAG) meeting were denied and they were directed to attend the meeting via teleconference. Unfortunately, due to meeting materials being distributed by ENR after the meeting had started, as well as poor sound quality, full RRB engagement in this meeting was very difficult. Despite these problems and throughout this SAG meeting, the RRBs asserted, based on their Land Claim authorities, that participation in the SAG process was not an appropriate way to consult the Boards. The RRBs recommended that their roles and responsibilities warranted participation in the TWG process, which was proceeding concurrent with the SAG process.

Following the October 12<sup>th</sup> information session, the RRBs requested involvement in the TWG process for the PAA via email to Dr. Kelly on November 10, 2017. This request was followed by

formal written requests for full and active participation on the TWG for the PAA to the Minister of ENR from the GRRB and WRRB on November 22, 2017 and January 8, 2018, respectively.

The GRRB and WRRB received a response to their letters from the Minister of ENR on January 29, 2018 indicating that the TWG had discussed the RRBs' request to participate and required the RRBs to provide their priorities in order to assist with understanding the RRBs interests in being invited to TWG discussions. Further, ENR emphasized that RRBs and other stakeholder's interests and input were being documented through the SAG process and provided to the TWG. These responses ignored the clear roles and authorities for the RRBs set out in land claims.

Following the October 2017 SAG meeting, two additional SAG meetings were held on February 28 – March 1, 2018 and May 9-10, 2018. Due to administrative errors at ENR, the GRRB and WRRB were not informed of the February/March meeting at all and, subsequently, did not attend. Once the error was identified, SAG materials and minutes were provided on May 9, 2018. As the WRRB was given only one day notice of the May 2018 meeting, staff attendance was limited to May 9, 2018. The GRRB attended the May 9-10, 2018 meeting in person at its own cost. Notwithstanding RRBs' attendance at these meetings, the RRBs note that limiting participation in the legislative review process to the SAG with industry, advocacy and non-profit organizations implies that RRBs' interests and responsibilities are at the same level, which is simply not the case. As previously noted, and set out below, ENR is legally obliged to consult the RRBs.

In the GCLCA and SDMCLCA, Sections 12.8.23 and 13.8.23 state

*In furtherance of its purpose as the main instrument of wildlife management in the settlement area, the Board shall have the power to:*

*... (c) approve plans for the management and protection of particular wildlife populations, including transplanted wildlife populations and endangered species, and particular wildlife habitats including conservation areas, territorial parks and national parks in the settlement area;*

*(d) approve the designation of conservation areas and endangered species; ...*

In the Tłı̨chǫ Agreement, Sections 12.5.1 and 16.1.1 state

*12.5.1. A Party shall, before taking any action for management of wildlife in Wek'èezhì, including such actions as set out in a management plan, submit its proposals to the Wek'èezhì Renewable Resources Board for review under 12.5.4. These proposals may include provisions respecting such matters as protection or enhancement of habitat ...*

*16.1.1 At least one year prior to the establishment of any protected area or to changing the boundaries of an established protected area, government shall consult with ...*

*(b) the Wek'èezhì Renewable Resources Board and any affected Tłı̨chǫ community government, where he area is to be in Wek'èezhì.*

ENR and the TWG subsequently changed their position about RRB involvement in the TWG, and a framework document for the PAA was provided to the RRBs on February 13, 2018. ENR requested

RRB comments on legislative provisions for the PAA listed in this document as well as an indication of RRB priorities for each topic addressed.

On May 5, 2018, the WRRB reiterated their concerns about the ENR process and noted that their input on the framework documents would be made available following their June 19-20, 2018 board meeting. The ENR Minister sent letters on June 13, 2018 to the RRBs indicating that no comments or priorities were provided on the framework documents nor through the SAG priority identification process despite continued opportunities to engage through the SAG process. ENR invited the RRBs to again provide their priorities to the TWG, which would be used to identify future potential opportunities for the RRBs to be engaged in remaining TWG discussions. These problems with RRB input were the result of the ENR approach and its assessment of RRB status. In addition, the RRBs received materials late, sometimes not at all and we were not given the opportunity to review these materials carefully with their Boards.

On July 4, 2018 and July 10, 2018, respectively, the GRRB and WRRB provided their comments and prioritization on the framework in the May 2018 documents. Point form summary notes from previous TWG meetings were provided by ENR to assist with the RRBs review and analysis of policy work conducted by the TWG; however, without being privy to the full discussions and minutes, the summary notes most often provided little help. Additionally, on July 5, 2018, the GRRB wrote to the Minister of ENR reiterating their concerns about the process. Following receipt of the prioritized framework documents, on August 30, 2018, the Minister of ENR invited the RRBs to attend the next TWG meeting as well as an overview session with ENR staff to provide background on work conducted to date.

On September 11, 2018, the RRBs met with Conservation Planning staff via video-conference. ENR staff reviewed the framework documents and provided background while the RRBs identified areas where references to renewable resource boards and their constitutionally protected authorities and roles should be included in the PAA similar to the *Wildlife Act*. On September 14, 2018, the RRBs were informed that the next TWG meeting was scheduled for November 7-9, 2018.

The draft PAA was provided to the RRBs on October 26, 2018. Though this was the first draft seen by the TWG, it is noted that this was Draft 5 of the PAA Bill. Unfortunately, the short timelines did not allow enough time for the RRBs advisors and counsel to complete a thorough review of the Bill and meet with their Boards prior to the November 7, 2018 meeting.

The legislative drafter did not attend this TWG meeting. Prior to the November meeting, ENR was inconsistent in its involvement of the RRBs, failed to provide information about the Bill and consultation outcomes, and consistently failed to respond to the specific concerns raised by the RRBs when they commented on the Bill and ENR materials. There was no commitment for further interaction after the November meeting or to respond to these legitimate RRB concerns.

This approach to consultation strongly resembles the post National Energy Board consultation process described in the Federal Court of Appeal's decision on the Trans-Mountain Pipeline.<sup>1</sup> For proper consultation to occur, ENR must do more than take notes and report to their Deputy Minister. Consultation requires a dialogue and government must respond to legitimate concerns raised in these processes. The RRBs provided comments on both the consultation process and content of the draft PAA at ENR's request on November 19, 2018. Additionally, on December 10, 2018, the GRRB and

---

<sup>1</sup> Tsleil-Waututh Nation v. Canada (Attorney-General), 2018 FCA 153.

WRRB wrote to the Minister and suggested specific changes to the text of the draft PAA that would result in legislation that better reflects the roles, responsibilities and interests of the RRBs.

On December 11, 2018, ENR arranged for a TWG teleconference to review written comments received on November 19, 2018 but ENR staff were unable to respond in any detail to the comments provided. TWG members were once again frustrated because ENR did not provide any responses to the comments or proposed changes to the text of the PAA. This teleconference ended shortly after it began.

ENR called one final TWG meeting on January 8-10, 2019 to review a revised draft of the PAA. On December 20, 2018, the start of the holiday break, the ENR Minister sent the revised draft PAA along with a consultation letter requesting “timely” advice – by January 18, 2019. Though this was the second draft seen by the TWG, it is noted that this was Draft 11 of the PAA Bill. While the subsequent draft incorporated some of the detailed written comments that were provided by the RRBs in November 2018, unfortunately, the Minister’s letter was accompanied by no explanation as to why ENR accepted some changes and not others in the revised version of the PAA, specifically the lack of inclusion of co-management. The short timelines before this meeting did not allow enough time for the RRBs to complete a thorough review of the Bill and meet with the Boards.

The Land Claim Agreements require consultation of the RRBs in relation to draft legislation for wildlife, forests and plants as well as the involvement of the RRBs in a variety of circumstances related to protected areas. The purposes for the establishment of protected areas will very likely include conservation of wildlife, fish and habitats, forests and plants. There is no doubt that the RRBs’ interests are engaged by the development of a PAA or that they will be engaged by the implementation of the legislation. There can also be no doubt that the establishment of a protected area in the Gwich’in Settlement Area, Sahtú Settlement Area or Wek’èezhìi would engage the RRBs.

The Gwich’in Tribal Council, Sahtú Secretariat Inc, and Tłı̨chǫ Government have all spoken strongly of the need for RRBs involvement in the legislative process. The definition of “consultation” in the Land Claim Agreements applies and the RRBs suggest that ENR has not met this standard.

In the GCLCA and SDMCLCA, “consultation” means

- (a) *the provision, to the party to be consulted, of notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;*
- (b) *the provision of a reasonable period of time in which the party to be consulted may prepare its views on the matter, and provision of an opportunity to present such views to the party obliged to consult; and,*
- (c) *full and fair consideration by the party obliged to consult of any views presented.*

In the Tłı̨chǫ Agreement, “consultation” means

- 1. *the provision, to the person or group to be consulted, of notice of a matter to be decided in sufficient form and detail to allow that person or group to prepare its views on the matter;*

2. *the provision of a reasonable period of time in which the person or group to be consulted may prepare its views on the matter, and provision of an opportunity to present such views to the person or group obliged to consult; and*
3. *full and fair consideration by the person or group obliged to consult of any views presented.*

It is difficult to see how ENR's actions to date in relation to the consultation of the RRBs on the PAA satisfy these definitions. At best, the RRBs feel the process employed by ENR reflects what the Supreme Court in *Haida* described as “*an impoverished view of the Crown's consultation obligations*”.

Counsel for ENR has repeatedly responded to RRB concerns that the draft PAA does not reflect the existence of a land claims-based co-management system, by advising that such provisions “were not legally necessary”. This is a *de minimis* approach, which is inconsistent with the commitments made by the GNWT in their *Intergovernmental Agreement on Lands and Resources Management*.<sup>2</sup> The Bill is intended as a basis for the collaborative management of protected areas with Indigenous Governments and land claim organizations. The question is not what is legally necessary but rather what is the right thing to do and the right way to do it.

The RRBs feel that inclusion of the co-management system would add clarity about the relationship of this legislation to land claims and treaty and Indigenous rights. It would simplify implementation of the legislation and save time, money and frustration in the establishment and management of protected areas in the NWT. The RRBs offer additional comment below on the need for content related to the NWT's existing co-management system.

#### *Protected Areas Act and Content*

ENR drafted the PAA Bill on its own with no direct input from any Indigenous Government or co-manager. A more inclusive approach to the development of the PAA would have provided the RRBs with the opportunity to interact creatively and positively with ENR and look for ways to build co-management into the PAA establishment process.

The PAA Bill is like a lot of modern legislation – most of the details will come along later in regulations. However, it is not clear what process ENR will use to develop these regulations or when that work will be done. This leaves the RRBs and other reviewers with a lot of uncertainty about how this protected area framework will be developed and operate. To address RRB concerns, ENR must provide greater transparency and assurance that the policy and regulation development process will reflect the spirit and intent of the Land Claims Agreements to coordinate and cooperate on matters related to resource management. The RRBs expect to be fully involved in this process.

The PAA speaks of “*cooperative governance*”<sup>3</sup> for protected areas but the Bill does not encourage such an approach. It proposes the creation of a separate management board for each protected area that is established with the negotiation of the roles and responsibilities of these boards as part of an Establishment Agreement. This leaves open the possibility that these negotiated management boards will have roles that conflict with or complicate the jobs of RRBs. In the Gwich'in Settlement Area, Sahtú Settlement Area, and Wek'èezhì, a protected area management board will need to work with and respect the roles of the RRBs. Without this, there is a risk of conflict with the role and authorities

---

<sup>2</sup> This is Schedule 5 to the Devolution Agreement.

<sup>3</sup> Draft 11 Protected Areas Act, Preamble, page 1.

of the RRBs when a protected area management board gets directly involved in wildlife, fish or habitat management, harvesting of trees and plants, forest and plant management, protected area establishment, boundaries or boundary changes or protected area agreements.

The PAA drafters ignored the existence and roles of co-management tribunals, which allowed them to simplify the legislation. But the roles and responsibilities of the RRBs are land claim-based and supersede anything in the PAA and anything negotiated in an Establishment Agreement. For instance, there is no provision in the Bill for a review of an Establishment Agreement to avoid such conflicts. Real problems are likely to result. It is unfortunate that the excellent and far reaching work done by ENR addressing co-management matters in the *Wildlife Act* and the *Species at Risk Act* was ignored. There is a ready-made framework to help the GNWT address these concerns. ENR simply did not consult properly or soon enough with the RRBs.

ENR already has the authority to establish conservation areas under Part 6 of the *Wildlife Act*. Those conservation areas cannot be established without regulations being in place under Section 89 of that Act and ENR has not developed such regulations. The PAA does not indicate how efforts to protect biodiversity will be squared with wildlife and habitat protection and management programs. The question which arises – particularly given the failure of ENR to integrate the co-management process into the PAA as contrasted to the *Wildlife Act* – is which legislative regime is the better choice for conservation and protection of wildlife and habitat?

The *Wildlife Act* fully integrates co-management and arguably wildlife conservation matters are better managed by wildlife staff and co-management boards. The RRBs suggest that a provision be inserted into the PAA saying that when the primary values to be protected in a candidate area are wildlife and/or habitat that the *Wildlife Act* is the legislation which should be used.

### Conclusion

As noted, the legislative development process for the PAA has been less than ideal. Proper consultation is vitally important in order to generate good statutes, not just because the law currently requires consultation. This review and the experience of the RRBs show that ENR's consultation efforts on the PAA Bill have come up short. In our view, the PAA fails to properly reflect the Land Claim Agreements' co-management framework. This means that the process of identifying, establishing and managing protected areas in the Gwich'in, Sahtú, and Wek'èezhìi will be more difficult, time consuming and potentially inefficient than need be.

The RRBs also note a strong disappointment with the ENR *de minimis* approach to the co-management framework negotiated in land claims and reflected in both federal and territorial laws. While this approach simplified the legislation, the RRBs believe that it did so at the cost of certainty of process in the identification of protected areas, in the management of these areas, and ultimately in biodiversity protection in the NWT. As such, the RRBs recommend that ENR should continue work with all Indigenous Governments and co-managers to rework the Bill in a more collaborative manner that reflects the cooperative governance approach contained in legislation such as the *Wildlife Act*.

The RRBs intend to take advantage of the opportunities to make additional comments on the legislation once it is introduced to the Legislative Assembly by taking these matters jointly to the Standing Committee. ENR needs to ensure that the RRBs are fully involved in the policy and regulation development process that will fully reflect the NWT's modern framework for cooperative and coordinated management over protected areas.

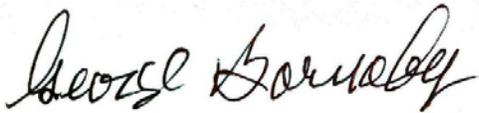
The RRBs trust that these comments will assist ENR in completing the work on the PAA. If there are any questions, please contact our offices at GRRB: (867) 777-6600 Ext. 2 or [aamos@grrb.nt.ca](mailto:aamos@grrb.nt.ca); SRRB: (867) 588-4040 or [director@srrb.nt.ca](mailto:director@srrb.nt.ca); WRRB: (867) 873-5740 or [jpellissey@wrrb.ca](mailto:jpellissey@wrrb.ca).

Sincerely,



---

Jozef Carnogursky, Chair  
Gwich'in Renewable Resources Board



---

George Barnaby, A/Chair  
Sahtú Renewable Resources Board



---

Joseph Judas, Chair  
Wek'èezhì Renewable Resources Board

Cc Robert Jenkins, Assistant Deputy Minister  
Environment and Natural Resources, GNWT

Grand Chief Bobbie Jo Greenland-Morgan  
Gwich'in Tribal Council

Charles McNeely, Chair  
Sahtu Secretariat Inc.

Grand Chief George Mackenzie  
Ṯchq̱ Government

Zabey Nevitt, Senior Advisor, Sustainability and Resource Management  
Ṯchq̱ Government



January 18, 2019

Hon. Robert C. McLeod, Minister  
Environment and Natural Resources  
Government of the Northwest Territories  
Box 1320  
Yellowknife, NT X1A 2L9  
Email: [Robert\\_C\\_McLeod@gov.nt.ca](mailto:Robert_C_McLeod@gov.nt.ca)

*Via Email*  
***Robert\_C\_McLeod@gov.nt.ca***

**Re: *Environmental Rights Act* – Renewable Resources Boards**

Dear Minister McLeod:

The Gwich'in Renewable Resources Board (GRRB), ʔehdzo Got'ıne Gots'ę Nákedı/Sahtú Renewable Resources Board (SRRB), and Wek'èezhìi Renewable Resources Board (WRRB), collectively the Renewable Resources Boards (RRBs), would like to thank the Department of Environment & Natural Resources (ENR), Government of the Northwest Territories' (GNWT) for the opportunity to participate at the Technical Working Group (TWG) meeting on January 8, 2019 to discuss a draft of the Bill to enact the *Environmental Rights Act* (ERA). The RRBs have specific land claims-based roles and authorities found in the Gwich'in Comprehensive Land Claim Agreement, Chapters 12, 13, 14 and 16; the Sahtú Dene-Métis Comprehensive Land Agreement, Chapters 13, 14, 15, and 17; and Tłchq Land Claims and Self-Government Agreement, Chapters 12, 13, 14, and 16. As drafted, it appears that the ERA will be unlikely to have much impact on co-management of renewable resources in the Gwich'in Settlement Area, Sahtú Settlement Area and Wek'èezhìi.

The RRBs do note that the current definition of “*environment*” in the ERA would include wildlife, fish, and/or habitat. It is understood that the previous investigations provisions in the Act were focused on the release of a contaminant into the environment; however, the current draft Bill significantly widens the potential scope of ERA investigations to include “*any act or omission that has caused or is likely to cause significant harm to the environment*”. This language is broad enough to bring the actions of RRBs within the scope of the Bill's investigations provisions and could result in investigations of compliance with any requirements imposed by the RRBs.

If an investigation touching on the actions or decisions of a RRB were initiated, we note that the Bill does not place any obligation on third parties, such as RRBs, to collaborate with the Minister in such an investigation. We further note that the Bill does not give the Minister any investigative powers such as those provided by the *Public Inquiries Act*.<sup>1</sup> So it is not clear what the effects of an investigation requested into the decision-making or operations of an RRB might be.

Finally, the Bill is not at all clear about what happens if the Minister finds that an act or omission did take place and that it resulted in serious damage to the environment.

---

<sup>1</sup> R.S.N.W.T. 1988, c. P-14.

In conclusion, the RRBs note that there is still quite a bit of uncertainty about how the expanded scope of these investigations will work.

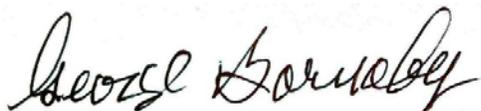
We trust that these comments will assist you in completing the work on the ERA. If there are any questions, please contact our offices at GRRB: (867) 777-6600 Ext. 2 or [amos@grrb.nt.ca](mailto:amos@grrb.nt.ca); SRRB: (867) 588-4040 or [director@srrb.nt.ca](mailto:director@srrb.nt.ca); WRRB: (867) 873-5740 or [jpellissey@wrrb.ca](mailto:jpellissey@wrrb.ca).

Sincerely,



---

Jozef Carnogursky, Chair  
Gwich'in Renewable Resources Board



---

George Barnaby, A/Chair  
Sahtú Renewable Resources Board



---

Joseph Judas, Chair  
Wek'èezhì Renewable Resources Board

Cc Robert Jenkins, Assistant Deputy Minister  
Environment and Natural Resources, GNWT

Grand Chief Bobbie Jo Greenland-Morgan  
Gwich'in Tribal Council

Charles McNeely, Chair  
Sahtu Secretariat Inc.

Grand Chief George Mackenzie  
Tłchq Government

Zabey Nevitt, Senior Advisor, Sustainability and Resource Management  
Tłchq Government



January 18, 2019

Hon. Robert C. McLeod, Minister  
Environment and Natural Resources  
Government of the Northwest Territories  
Box 1320  
Yellowknife, NT X1A 2L9  
Email: [Robert\\_C\\_McLeod@gov.nt.ca](mailto:Robert_C_McLeod@gov.nt.ca)

*Via Email*  
*Robert\_C\_McLeod@gov.nt.ca*

**Re: Consultation on *Forest Act* – Renewable Resources Boards**

Dear Minister McLeod:

The Gwich'in Renewable Resources Board (GRRB), ʔehdzo Got'ine Gots'é Nákedi/Sahtú Renewable Resources Board (SRRB), and Wek'èezhìi Renewable Resources Board (WRRB), collectively the Renewable Resources Boards (RRBs), would like to thank the Department of Environment & Natural Resources (ENR), Government of the Northwest Territories' (GNWT) for the invitation to participate at the Technical Working Group (TWG) meeting on January 9, 2019 to discuss a first draft of the Bill to enact the *Forest Act* (FA). The RRBs have specific land claims-based roles and authorities in relation to this legislation found in the Gwich'in Comprehensive Land Claim Agreement, Chapters 12, 13, 14 and 16; the Sahtú Dene-Métis Comprehensive Land Agreement, Chapters 13, 14, 15, and 17; and Tłı̨chǫ Land Claims and Self-Government Agreement, Chapters 12, 13, 14, and 16. The Land Claim Agreements' provisions related to the RRBs apply to the process for developing new FA legislation, its contents and eventual application.

As requested in your letter, dated December 20, 2018, the RRBs have reviewed the first draft of the FA and provide comment on the contents of the Bill below. However, the RRBs consider it essential to first provide comments on the ENR legislation development process.

*Forest Act and Process*

The RRBs first learned of the ENR legislative process on land and resource management legislation following a September 15, 2017 invitation from Dr. Erin Kelly to attend an October 12, 2017 information session with other stakeholders. The GRRB and SRRB's requests for travel support for the October 2017 Stakeholder Advisory Group (SAG) meeting were denied and they were directed to attend the meeting via teleconference. Unfortunately, due to meeting materials being distributed by ENR after the meeting had started, as well as poor sound quality, full RRB engagement in this meeting was very difficult. Despite these problems and throughout this SAG meeting, the RRBs asserted, based on their Land Claim authorities, that participation in the SAG process was not an appropriate way to consult the RRBs. The RRBs recommended that their roles and responsibilities warranted participation in the TWG process, which was proceeding concurrent with the SAG process.

Following the October 12<sup>th</sup> information session, the RRBs requested involvement in the TWG process for the FA via email to Dr. Kelly on November 10, 2017. This request was followed by

formal written requests for full and active participation on the TWG for the FA to the Minister of ENR from the GRRB and WRRB on November 22, 2017 and January 8, 2018, respectively.

The GRRB and WRRB received a response to their letters from the Minister of ENR on January 29, 2018 indicating that the TWG had discussed the RRBs' request to participate and required the RRBs to provide their priorities in order to assist with understanding the RRBs interests in being invited to TWG discussions. Further, ENR emphasized that RRBs and other stakeholder's interests and input were being documented through the SAG process and provided to the TWG. These responses ignored the clear roles and authorities for the RRBs set out in the Land Claim Agreements.

Following the October 2017 SAG meeting, two additional SAG meetings were held on February 28 – March 1, 2018 and May 9-10, 2018. Due to administrative errors at ENR, the GRRB and WRRB were not informed of the February/March meeting at all and, subsequently, did not attend. Once the error was identified, SAG materials and minutes were provided on May 9, 2018. As the WRRB was given only one day notice of the May 2018 meeting, staff attendance was limited to May 9, 2018. The GRRB did attend the May 9-10, 2018 meeting in person at its own cost. Notwithstanding RRBs' attendance at these meetings, the RRBs note that limiting participation in the legislative review process to the SAG with industry, advocacy and non-profit organizations implies that RRBs' interests and responsibilities are at the same level, which is simply not the case. As previously noted, and set out below, ENR is legally obliged to consult the RRBs on forest legislation.

In the GCLCA and SDMCLCA, Sections 13.1.10(a) and 14.1.10(a) state

*Government may consult the Board on any matter which affects forestry and forest management and shall seek the timely advice of the board on the following matters:*

*(a) draft legislation respecting forestry and forest management including the fighting and control of forest fires; ...*

In the Tłı̨chǝ Agreement, Section 13.4.2 states

*In relation to Wek'èezhì but not in relation to a national park, government or the Tłı̨chǝ Government may consult the Wek'èezhì Renewable Resources Board on any matter which affects forest management and shall consult the Board on*

*(a) draft legislation and Tłı̨chǝ laws respecting forest management;*

*(b) land use policies and draft legislation and Tłı̨chǝ laws where those policies, legislation or laws will likely impact on forest management; ...*

ENR and the TWG subsequently changed their position about RRB involvement in the TWG, and a framework document for the FA was provided to the RRBs on February 16, 2018. ENR requested RRB comments on legislative provisions for the FA listed in this document as well as an indication of RRB priorities for each topic addressed.

On May 5, 2018, the WRRB reiterated their concerns about the ENR process and noted that their input on the framework documents would be made available following their June 19-20, 2018 board meeting. The ENR Minister sent letters on June 13, 2018 to the RRBs indicating that no comments or priorities were provided on the framework documents nor through the SAG priority identification

process despite continued opportunities to engage through the SAG process. ENR invited the RRBs to again provide their priorities to the TWG, which would be used to identify future potential opportunities for the RRBs to be engaged in remaining TWG discussions. These problems with RRB input were the result of the ENR approach and its assessment of RRB status. In addition, the RRBs received materials late, sometimes not at all and were not given the opportunity to review these materials carefully with their Boards.

On July 4, 2018 and July 10, 2018, respectively, the GRRB and WRRB provided their comments and prioritization on the framework in the May 2018 documents. Point form summary notes from previous TWG meetings were provided by ENR to assist with the RRBs review and analysis of policy work conducted by the TWG; however, without being privy to the full discussions and minutes, the summary notes most often provided little help. Additionally, on July 5, 2018, the GRRB wrote to the Minister of ENR reiterating their concerns about the process. Following receipt of the prioritized framework documents, on August 30, 2018, the Minister of ENR invited the RRBs to attend the next TWG meeting as well as an overview session with ENR staff to provide background on work conducted to date.

On September 10-11, 2018, the RRBs met with Forest Management staff in-person in Inuvik, NT, and were pleased with the positive outcome of the meeting. ENR staff reviewed the framework documents and provided background while the RRBs identified areas where references to renewable resource boards and their constitutionally protected authorities and roles should be included in the FA similar to the *Wildlife Act*. On September 14, 2018, the RRBs were informed that the next TWG meeting was scheduled for November 7-9, 2018. However, on October 9, 2018, the RRBs were informed that the FA would not be discussed at the November 2018 TWG meeting.

ENR called one final TWG meeting on January 8-10, 2019 to review a first draft of the FA. On December 20, 2018, the start of the holiday break, the ENR Minister sent the revised draft FA along with a consultation letter requesting “*timely*” advice – by January 18, 2019. Though this was the first draft seen by the TWG, it is noted that this was Draft 8 of the FA Bill. Unfortunately, the short timelines before this meeting did not allow enough time for the RRBs advisors and counsel to complete a thorough review of the Bill and meet with the Boards.

The legislative drafter did not attend this TWG meeting. The draft legislation fails to address the RRBs substantive concerns about incorporation of their central roles and responsibilities over forestry in the settlement areas of the NWT, and was not developed through a process that meets either the spirit or letter of the requirements set out in the Land Claim Agreements. No explanation was provided as to why the RRBs were not provided any earlier versions of the Bill to avoid this situation of inadequate comment and review. Further, ENR stated that a subsequent version of the Bill will not be provided for RRBs review and comment prior to first reading in the Legislature.

The Land Claim Agreements require consultation of the RRBs in relation to draft legislation for forests and plants. The Gwich’in Tribal Council, Sahtú Secretariat Inc, and Tł̨chq̨ Government have all spoken strongly of the need for RRBs involvement in the legislative process. The definition of “consultation” in the Land Claim Agreements applies and the RRBs suggest that ENR has not met this standard.

In the GCLCA and SDMCLCA, “*consultation*” means

- (a) *the provision, to the party to be consulted, of notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;*
- (b) *the provision of a reasonable period of time in which the party to be consulted may prepare its views on the matter, and provision of an opportunity to present such views to the party obliged to consult; and,*
- (c) *full and fair consideration by the party obliged to consult of any views presented.*

In the Tłı̨chǫ Agreement, “*consultation*” means

1. *the provision, to the person or group to be consulted, of notice of a matter to be decided in sufficient form and detail to allow that person or group to prepare its views on the matter;*
2. *the provision of a reasonable period of time in which the person or group to be consulted may prepare its views on the matter, and provision of an opportunity to present such views to the person or group obliged to consult; and*
3. *full and fair consideration by the person or group obliged to consult of any views presented.*

It is difficult to see how ENR’s actions to date in relation to the consultation of the RRBs on the FA satisfy these definitions. At best, the RRBs feel the process employed by ENR reflects what the Supreme Court in *Haida* described as “*an impoverished view of the Crown’s consultation obligations*”.

Counsel for ENR has repeatedly responded to RRB concerns that the draft FA does not reflect the existence of a land claims-based co-management system, by advising that such provisions “were not legally necessary”. This is a *de minimis* approach, which is inconsistent with the commitments made by the GNWT in their *Intergovernmental Agreement on Lands and Resources Management*.<sup>1</sup> The Bill is intended as a basis for the collaborative management of forests and plants with Indigenous Governments and land claim organizations. The question is not what is legally necessary but rather what is the right thing to do and the right way to do it.

The RRBs feel that inclusion of the co-management system would simplify implementation of the legislation by providing guidance to GNWT forest managers about when and how they need to interact with RRBs to ensure that proper co-management occurs. The RRBs offer additional comment below on the need for content related to the NWT’s existing co-management system.

#### *Forest Act and Content*

The RRBs are accorded important roles in forest management – not just in terms of inputs on policy and legislation, but on a day to day basis, for example, in relation to decisions about commercial harvesting of trees. It must also be noted that the role accorded to the RRBs is intended to be integrative – that is the RRBs have the authority and duty to consider forest management and harvesting in light of their broader roles related to plants and wildlife, fish and habitats. The Supervisor under the Bill does not have such responsibilities.

---

<sup>1</sup> This is Schedule 5 to the Devolution Agreement.

ENR drafted the FA Bill on its own with no direct input from any Indigenous Government or co-manager. A more inclusive approach to the development of the FA would have provided the RRBs with the opportunity to interact creatively and positively with ENR and look for ways to build co-management into the FA.

The FA drafters ignored the existence and roles of co-management tribunals, which allowed them to simplify the legislation. But the roles and responsibilities of the RRBs are land claim-based and supersede anything in the FA. The Land Claim Agreements clearly intended co-management to be a central part of forest management. The Bill's failure to reflect this is a significant flaw. There is more to this issue than what is minimally required in law. The resulting Bill if enacted will establish a process fraught with legal uncertainty. This cannot be in the public interest. ENR simply did not consult properly or soon enough with the RRBs. It is unfortunate that the excellent and far reaching work done by ENR addressing co-management matters in the *Wildlife Act* and the *Species at Risk Act* was ignored. There is a ready-made framework to help the GNWT address these concerns.

The RRBs note that, even if some of the more general provisions addressing the priority of land claims and role of the RRBs were to be adopted from the *Wildlife Act* and the *Species at Risk Act*, the architecture of the draft FA fails to account for the existence of the shared responsibilities for forest management to such a large degree it is unlikely that this alone would serve to resolve the substantive concerns. For instance, entire sections of the bill, including Part 2 – Administration, Part 4 – Protection of Forests, and Part 5 – Agreements, Permits and Licenses do not appropriately reflect the current and evolving responsibilities, authorities and jurisdictions of the GNWT, Indigenous Governments and RRBs as they are set out in existing Land Claim Agreements. Such fundamental omissions are not acceptable, particularly when other existing and pending legislation has appropriately addressed these matters.

Further, the FA fails to reflect the mandatory GNWT obligation to consult with the RRBs on all matters, including legislation, land use forest and forest management policies. It is not clear how the Supervisor can do his/her job as set out in Parts 4 and 5 without some guidance in the legislation. Any action taken by government, and any licence or permit issued, or plan approved without meeting mandatory consultation requirements set out in the Land Claim Agreements is at legal risk.

Overall, the new Bill simply continues many of the provisions of the outdated legislation that it was intended to replace, instead of 'evolving' to reflect post-devolution commitments and realities. This is made more problematic in light of the legislation being framed as not merely technical and administrative improvements, but, rather, the larger long-overdue and necessary work of modernizing forestry legislation to reflect current co-management realities. Simply put, the process associated with the development of the Forest Act was inadequate, and the RRBs feel that this does not fulfill the GNWT's obligations under the respective land claim agreements.

### Conclusion

As noted, the legislative development process for the FA has been less than ideal. Proper consultation is vitally important in order to generate good statutes, not just because the law currently requires consultation. This review and the experience of the RRBs show that ENR's consultation efforts on the FA Bill have come up short. In our view, the FA fails to properly reflect the Land Claim Agreements' co-management framework.

The RRBs also note a strong disappointment with the ENR *de minimis* approach to the co-management framework negotiated in land claims and reflected in both federal and territorial laws.

While this approach simplified the legislation, the RRBs believe that it did so at the cost of certainty in the management of forests and plants. As such, the RRBs recommend that ENR should continue work with all Indigenous Governments and co-managers to rework the Bill in a more collaborative manner.

Further, the RRBs advise ENR that in their collective views the consultation process for the Bill to date has not satisfied ENR's legal responsibilities under the respective Land Claim Agreements. If ENR proceeds with this Bill despite our concerns, the RRBs will take these matters jointly to the Standing Committee. The RRBs also expect to be fully involved in any policy and regulation development process for the FA following enactment.

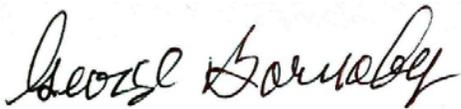
The RRBs trust that these comments will assist you in completing the work on the FA. If there are any questions, please contact our offices at GRRB: (867) 777-6600 Ext. 2 or [aamos@grrb.nt.ca](mailto:aamos@grrb.nt.ca); SRRB: (867) 588-4040 or [director@srrb.nt.ca](mailto:director@srrb.nt.ca); WRRB: (867) 873-5740 or [jpellissey@wrrb.ca](mailto:jpellissey@wrrb.ca).

Sincerely,



---

Jozef Carnogursky, Chair  
Gwich'in Renewable Resources Board



---

George Barnaby, A/Chair  
Sahtú Renewable Resources Board



---

Joseph Judas, Chair  
Wek'èezhìi Renewable Resources Board

Cc Robert Jenkins, Assistant Deputy Minister  
Environment and Natural Resources, GNWT

Grand Chief Bobbie Jo Greenland-Morgan  
Gwich'in Tribal Council

Charles McNeely, Chair  
Sahtu Secretariat Inc.

Grand Chief George Mackenzie  
Tłıchǫ Government

Zabey Nevitt, Senior Advisor, Sustainability and Resource Management  
Tłıchǫ Government