

## Bill 44 – Forest Act

Joint submission by

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- Ecology North ([www.ecologynorth.ca](http://www.ecologynorth.ca) )
- Canadian Arctic Resources Committee (CARC) ([www.carc.org](http://www.carc.org) )
- Council of Canadians – NWT Chapter (<https://cocnwt.wordpress.com> ), and
- Canadian Parks and Wilderness Society – NWT Chapter ( [www.cpawsnwt.org](http://www.cpawsnwt.org) )

**Overview:** This bill needs substantive modifications.

### **Key Positive Elements:**

- recognition of forest ecosystems; principles of sustainable forest management and use
- promotes development of ecosystem management plans to address sustainability, ecological integrity, and cumulative effects
- requirements for forest fire prevention and preparedness plans

### **Key Issues for SCEDE to address:**

#### **Definitions:**

*Industrial Activity:* while the existing definition includes “the extracting and processing of raw materials”, since oil and gas is separately listed, we believe mining warrants specific mention. Hence, we recommend adding:

(f) mineral exploration and mining development,

Then (f) is renumbered as (g).

**Ecosystem Management Plans:** These plans, described as addressing including forest sustainability, maintenance of ecological integrity, and cumulative effects management are key to implementing the ideals of the preamble. As such, they should be done. We recommend the wording:

12. (1) “The Supervisor **shall** develop” (rather than *may* develop).

This would then be in keeping with section 35 (2), which states “A forest ecosystem management plan concerning an area of forest **must** [emphasis added] be completed by the Supervisor before a forest harvest agreement is implemented”.

We suggest this section needs to be supplemented, such as in the Yukon’s *Forest Resources Act*, Part 2, with additional information on where these plans are, and how they interact with existing co-management systems. During the stakeholder group meetings, Alternatives North asked about the relationship between the Gwich’in Forest Management Plan (developed and signed by the GRRB, GTC and GNWT) and a Forest Ecosystem Management Plan. The answer was that the Gwich’in Plan was likely the equivalent of a FEMP. However, this should not be left to suggestion at this stage. The Yukon’s *Act* says “**7**(1) The Minister may establish, by order, a planning area for the purpose of developing a forest resources management plan” (comparable to our FEMPs). Some equivalent wording suitable to our combination of settled and unsettled claims should be added.

In addition, there should be a provision in this section for public input into the development of the ecosystem management plans. For example, the Yukon's *Act*, the equivalent of Forest Ecosystem Management Plans are subject to a (minimum) 30-day public consultation period and must also be shared with Renewable Resource Councils holding responsibilities in the planning area.

**Overall Monitoring:** Monitoring is critical to proper forest management practices, so while Section 13 addresses monitoring the state of forest ecosystems, we suggest several additions. The health and regeneration of our forests is hugely impacted by climate change, so it is positive to see climate change addressed in the preamble. However, the preamble is not enforceable, so should be added. A climate change section would be broader than the already included 'forest change' section. It would help draw attention to some of the factors outside the NWT affecting our forests, and should be specifically mentioned. In this regard, we also suggest adding our ties to the national forest network of monitoring plots. Furthermore, the NWT Audit, required every five years under the *Mackenzie Valley Resource Management Act*, may give important recommendations on improving management, including relationships with co-management boards. This report should help track efforts to improving deficiencies noted in that Audit. Finally, the public must have full and transparent access to this information.

We recommend the following wording:

13 (1) The Supervisor **shall** [not may] monitor the state of the forest ecosystems in the Northwest Territories including, but not limited to, monitoring the state of

(a) through (f) remain

**(g) climate change** [add]

**(h) comparison with national forest network of monitoring plots**

**(i) progress on apt recommendations from the NWT Environmental Audit from the *Mackenzie Valley Resource Management Act* or subsequent legislation.**

(j) any other matter the Supervisor considers advisable. [renumbered only]

**13 (2) The Minister shall table a report to the Legislative Assembly annually with respect to the state and health of forest ecosystems."**

### **NEW SECTION: Public registry**

*Part 3 Sustainable Forest Management* does not include reference to a public registry. Management and decision making requires public participation. For the public to have reasonable input, they need information. Every department must make environmental information accessible to the public in a reasonable, timely, culturally appropriate and affordable manner. If there is not a general public registry under the *Environmental Rights Act*, (i.e., unless revised from the current Bill), then a new Section 14 should be added to the Forest Act. Wording to consider (with possible reference section included):

"(1) The Minister shall establish a forest management registry for the Northwest Territories.

(2) The forest management registry shall contain the following information:

- a. Ministerial agreements (section 7(7));
- b. Draft and final forest ecosystem management plans (section 12(1));
- c. Draft and final wildfire prevention and preparedness plans (section 15(1));
- d. Draft and final hazard assessment plans (section 15(3));
- e. Draft and final forestry agreements (section 35(1));
- f. Provisions for forest permits and licences (section 35(3));
- g. Notices to the public regarding input into above;
- h. Appeals taken from decisions by government actors;

- i. Reasons for decisions;
- j. Enforcement actions taken and responses of recipients of enforcement actions;
- k. Alternative measures in lieu of sentencing by a court;
- l. Reporting on the Special Forest Fund; [see comments below]
- m. *State of environment reporting [Section \*\*]*
- n. Other information to allow the public adequate information and notice to enable adequate public participation in decision making.

(3) Information on the forest management registry shall be public and made available in a timely manner.”

This would become section 14, and remaining sections would need to be renumbered. Comments that follow use the current numbering system.

**Hazard Assessment**

We agree that hazard assessments are important to undertake when new activities are planned. We recommend 15 (3) wording be changed to:

“...the Supervisor **shall** [not may] require the person to conduct a hazard assessment.”

**Forest harvesting agreements**

It is positive that “A forest ecosystem management plan concerning an area of forest must be completed by the Supervisor before a forest harvest agreement is implemented” (section 35 (2)). We suggest a second sentence that states:

“The implementation of all forest harvesting agreements must be in compliance with the appropriate forest ecosystem management plan or plans.”

**Monitoring Programs**

The requirement to complete a forest ecosystem management plan prior to any harvesting agreement is very positive. For management to be effective, monitoring is needed. Therefore, we recommend 39 (2) wording be changed to:

“The Supervisor **shall** [not may] require that monitoring programs...”.

This will be important information to include in the reporting on the overall state and health of forest ecosystems.

**ADDITIONAL SECTION(S): Special Purpose Fund:**

The approach of having fees for reforestation and clearing be placed in a special forest fund could be very positive. However, as described in the Bill, it loses much of its potential to have sounder, ecologically based approaches to reforestation and natural regeneration.

This fund warrants additional description in the legislation, rather than leaving all to the regulations.

Given that this fund is a new approach, careful monitoring of the fund is needed to ensure it does cover liabilities. This is particularly important in view of the huge changes to forests due to climate change. As such, the use of the funds should be highly transparent. Co-mingling the funds in the Consolidated Revenue Fund may cloud transparency and weaken accountability, a separate fund is needed. Regular reporting from the responsible ministry is needed. The following starting point for drafting is drawn from *The Forest Act of Manitoba* found in sections 43(1) and 43(2):

### **Annual reports by minister**

43(1) Within nine months after the close of each fiscal year of the government, the minister shall prepare a report on the administration of this Act, including a review of all forestry allocations, for that fiscal year and lay the report before the Assembly if the Legislature is then in session or, if the Legislature is not then in session, within 15 days of the beginning of the next following session of the Legislature.

### **Five year reports by minister**

43(2) In addition to the reports required under subsection (1), the minister shall, within nine months after the close of the fiscal year of the government ending on March 31, 1991 and within nine months after the close of the fiscal year in every fifth year thereafter, prepare and lay before the Assembly forthwith if the Legislature is then in session or if it is not then in session within 15 days of the opening of the next following session, a report containing

- (a) a review of the status of the forest resources in the province including the status of any species of trees to which reference is made in the Act or regulations or in any licence or permit issued thereunder and such other species of trees as the minister may select for review;
- (b) a review of the forestry management programs carried on by the government and an assessment of their effectiveness;
- (c) an analysis of trends in, and the forecast of demands for, the use of forest resources in the province; and
- (d) an evaluation of the capability of the forest resources in the province to meet anticipated demands.

We would also include:

- annual forest reforestation objectives
- state of forest ecosystem monitoring
- state of the health of the forest ecosystem, including predictions in changes to forests due to climate change
- state of understanding of natural forest regeneration
- number of permits and licences given, with details on annual reforestation requirements and responsive action achieved
- accounting of Forestry Fund (e.g., capital; investments; expenditures; proposed expenditures)

### **Additional Considerations for SCEDE:**

*Wildfire Season (Section 14)*: given there is a real possibility that climate change will lengthen the wildfire season, it is unclear why a limited wildfire season is legislated, then give the Minister discretions to change it. Furthermore, given the size of the NWT, it could

well difficult to establish a fire season that is apt for the entire territory. Consider the wording from the Nova Scotia *Forests Act*:

“23 (1) The fire season in the various counties shall be prescribed by the regulations.”

And

“42 Until a regulation is made pursuant to clause (h) of Section 40, "fire season" means, in the case of the Counties of Queens, Shelburne, Yarmouth, Digby and Annapolis, the period between the first day of April and the fifteenth day of October in each year and, in the case of other counties of the Province, the period between the fifteenth day of April and the fifteenth day of October in each year.”

The GNWT is going to have to be highly responsive to changing conditions and deal with different areas of the forest differently. Legislation similar to that of Nova Scotia would allow that agility.

*Offences and penalties:* Section 96 list some substantial fines, and imprisonment, for failing to comply to the Act or regulations. We support this. We also take that under the variety of additional possible orders under 103, this could include alternative sentencing arrangements, which we support.