The Results of 2010-2011 Consultation and Public Engagement

on the Proposed New Wildlife Act

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Northwest Territories Environment and Natural Resources

CONSERVING WILDLIFE

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Development of the New Wildlife Act

The existing *Wildlife Act* has been in force for more than 30 years. During that time: Canadian courts have been challenged to define and uphold Aboriginal and treaty harvesting rights; several land claims have been settled, clarifying the rights of beneficiaries with respect to wildlife and setting up wildlife management processes in settlement areas; the *Canadian Charter of Rights and Freedoms* has clarified the rights of Canadians; new technologies have changed the way wildlife compliance and enforcement activities are carried out; and wildlife management has developed from simply controlling big game harvests to an ecosystem-based approach that recognizes the interconnection of all living things and the value of biodiversity.

A new Wildlife Act is needed to effectively manage wildlife in this new environment. The proposed new Wildlife Act has been developed with extensive input from Aboriginal organizations, wildlife renewable resources boards, residents, industry and other stakeholders. Work on the proposed new Act started with ideas raised by the Wildlife Aboriginal Advisory Group and the public during consultations held between 1999 and 2002, and by the collaborative Working Group that developed the *Species at Risk (NWT) Act*, which came into force in February 2010.

In January 2009, following the successful development of the *Species at Risk (NWT) Act*, the collaborative working group process was continued to develop a new Wildlife Act. Members included representatives and legal counsel from:

- Inuvialuit Game Council
- Gwich'in Tribal Council
- Sahtu Secretariat Incorporated
- Tłı̨chǫ Government
- Northwest Territory Métis Nation

Representatives from the four renewable resources boards set up under the four settled land claims agreements:

- Wildlife Management Advisory Council (NWT)
- Gwich'in Renewable Resources Board
- Sahtu Renewable Resources Board
- Wek'eezhii Renewable Resources Board

Representatives from:

- Government of the Northwest Territories, Departments of Environment and Natural Resources (ENR) and Justice.

The Akaitcho Territory Government and Dehcho First Nations were invited, but chose not to participate.

The collaborative Working Group developed the proposed new Wildlife Act to address issues currently faced by wildlife managers in the NWT. The working group members brought their knowledge of wildlife management, land claims agreements and Aboriginal and treaty rights into the development process to ensure these were properly addressed.

As the Act developed, information was provided to the public and input was requested.

In November 2009, a public document outlining the process and approach for the new Wildlife Act was released. In June 2010, a 30-page publication outlining the major elements of the proposed Act was released. Both these documents were widely distributed and made available on the ENR web site. In July 2011, a pamphlet providing an overview of the main elements of the proposed Act was mailed to every household in the Northwest Territories (NWT). Each document encouraged the public to make their views on the proposed Wildlife Act known.

Throughout the development of the Act, the importance of respecting wildlife and respecting traditional values was raised by the Working Group and by members of the public. Two workshops were held with elders (October 2009 and December 2010) to gain insight into traditional values respecting wildlife and the use of wildlife, and how these could be incorporated in the new Act.

In November 2010, a Consultation Draft and a plain language version of the Act were released to the public and another full round of consultation began. Public meetings were held in every community in the NWT to discuss the proposed Act. Meetings were advertised on the radio, in local papers and on posters put up in each community. Participation in meetings in the smaller communities was good, often with 40 to 50 people in attendance. Fewer people attended meetings in the larger regional centres.

Meetings were also held with local harvesting committees, Aboriginal organizations, renewable resources boards, stakeholders, industry organizations and representatives, tourism organizations, resident hunter organizations, big game outfitters and land use regulators. Aboriginal rights holders were consulted, both in the NWT and in areas bordering the NWT where Aboriginal people have harvesting rights in the NWT. A full list of meetings held between November 2010 and February 2011 is provided at the end of this document.

Throughout the consultation process, ENR received a number of written submissions from organizations and individuals.

All comments heard during meetings, and the submissions received, were fully considered and the draft Act was revised accordingly. The final draft Act submitted to the Legislative Assembly on March 8, 2011, is the result of input from years of consultation, two years of work by the collaborative Working Group and the combined experience of wildlife managers and officers working in the NWT during the past 30 years.

In the following pages, we outline the main elements of the new legislation, the major issues raised during consultations held between November 2010 and February 2011, and how ENR has addressed concerns raised.

Preamble

The new Act begins with a preamble. It sets the context and tone for the cooperative approach to wildlife management taken in the Act. The intent of the preamble is to recognize:

- the value of wildlife to all NWT residents;
- the historical relationship between Aboriginal people and wildlife;
- Aboriginal and treaty rights to harvest wildlife;
- the harvesting rights and wildlife management processes set out in land claims agreements;
- the role all people have in the conservation of wildlife; and
- the importance of working together to conserve and manage wildlife.

What we heard

ENR received two comments questioning the need for a preamble. There were no concerns raised about the content of the preamble.

Including a preamble in the Wildlife Act is a new approach. Although not all legislation in the NWT includes a preamble, one is sometimes included in both territorial and federal legislation. The intent of the Working Group was to develop a truly northern approach to wildlife management that recognizes both Aboriginal and non-Aboriginal values and approaches to wildlife management. The preamble provides this context and has been included to help residents, officers and the courts understand why the Act is written the way it is and to interpret the Act in the way it was intended to be interpreted. No changes were made to the preamble in the final draft Act.

PART 1

Interpretation and Application (s. 1 – 7)

The first part of the Consultation Draft included:

- Definitions (s. 1);
- Principles (s. 2 – 3);
- a statement indicating that the Act cannot add to, or take away from, Aboriginal or treaty rights (s. 4);
- a requirement to be consistent with land claims agreements (s. 5 – 6); and
- a clause binding the Government of the Northwest Territories (GNWT) to follow the Act (s. 7).

What we heard

Definitions (s. 1)

A few comments noted that many terms were not defined in the Wildlife Act, potentially causing uncertainty or ambiguity. Where the normal dictionary meaning of a word is used in the Act no definition is included. Instead, this section defines words that need to be understood in a particular way in the Wildlife Act. These words might be used differently in other places. ENR reviewed the Act and added some definitions for additional clarity.

Most definitions in the Consultation Draft did not raise any concerns. ENR did receive comments on the following:

Beneficiary – A concern was raised that this term may not include "participants" defined under the Gwich'in Final Agreement. The definition of beneficiary has been revised to include beneficiaries, participants and citizens identified in all current and future land claims agreements.

Conservation – ENR received one comment that the definition of conservation needs to include sustainable human use. The comment was noted, but the definition was not revised as it already includes reference to the management and protection of wildlife and habitat as well as the use of wildlife.

Land claims agreements – There was a concern that the term "land claims agreement" may be too broad or too vague. The term was defined so that it will include future agreements, constitutionally protected or otherwise.

Private lands – There were some concerns about how "private lands" is defined. The definition was developed to make it clear that private lands include titled private lands held by individuals as well as titled private lands held by land claims organizations. The Act also includes the ability to make regulations to further define "private lands" to include other types of land, where appropriate. For example, land held under a land lease could be defined as "private lands" and the lease holder could be given the same consideration as a land owner.

Wildlife – The definition of "wildlife" in the new Act is broader than the definition in the existing *Wildlife Act* and includes all species of vertebrates and invertebrates found wild in the NWT, except fish and marine mammals. Including invertebrates (insects, spiders, snails) in the Wildlife Act is a new approach.

Generally, there was support for expanding the definition of wildlife. Some concerns were raised that such a broad definition of wildlife would result in people requiring a licence to kill mosquitoes or use worms for composting. The proposed Act has been carefully reviewed and revised to ensure that general prohibitions and licence requirements will not apply to insects.

Currently, the GNWT is not able to manage invertebrates and cannot control activities such as the import of insects (e.g. honey bees may carry parasites that could harm wild bees; parasitic wasps are used as biological control agents). The proposed definition would enable the GNWT to more properly manage our biodiversity. This is the same approach taken in the *Canada Wildlife Act* and the *Nunavut Wildlife Act*. It is also promoted in the Wildlife Policy for Canada.

What we heard

Principles (s. 2 – 3)

The proposed Act would bind the GNWT and others to follow these principles when performing functions under the Act:

- Conserve wildlife for the future.
- Recognize wildlife and habitat are interconnected.
- Manage wildlife using a collaborative process.
- Recognize and value traditional Aboriginal values and practices.
- Use the best information available.
- When there is a threat of serious harm, a lack of complete certainty should not prevent conservation actions.

The principles in the proposed Wildlife Act reflect objectives set out in land claims regarding the protection and conservation of wildlife and its habitat in settlement areas, GNWT policies and modern wildlife management concepts. They provide direction on how wildlife management should occur. These principles would also be considered when interpreting or applying the Act. Including principles in the Wildlife Act is a new approach.

There was general support for including these principles. Some comments suggested the principles should include a reference to sustainable development and the importance of striving for a balance between protection of the environment and promoting responsible economic development.

ENR supports the concept of sustainable development and is bound by the GNWT's Sustainable Development Policy. However, the purpose of the Wildlife Act is the conservation of wildlife, including the sustainable use of wildlife. Principles addressing broader economic development issues lie outside the realm of the Wildlife Act.

Some comments suggested principles such as government transparency and public engagement should be included. Again, these are already reflected in the GNWT's Communications Policy, which guides all GNWT actions.

Consistency with Aboriginal Rights and Land Claims Agreement (s. 4 – 6)

ENR received several comments that the proposed Act and its recognition of Aboriginal rights are contrary to the *Canadian Charter of Rights and Freedoms*. There was concern that the proposed Act does not mention the rights of Canadians to enjoy and use wildlife or the responsibility to provide maximum opportunity to all residents to use and enjoy wildlife. In response to these concerns, ENR obtained legal advice with respect to the Charter, and is satisfied with the approach in the proposed Act. Aboriginal people have a constitutionally protected right to harvest wildlife. This must be respected in the Wildlife Act. Non-Aboriginal people do not have the same right and there is no right under the Charter for Canadians to enjoy and use wildlife. Similar to other jurisdictions in Canada, non-Aboriginal people are granted the privilege to hunt under the Wildlife Act.

In most Canadian provinces, access to wildlife by non-Aboriginal people is more limited than in the NWT because of conservation concerns and the extent of privately owned land.

ENR also heard some concerns about how Aboriginal rights will be defined and recognized, especially for groups without a settled land claims agreement and Aboriginal harvesters who live outside the NWT but have harvesting rights within the NWT. The Wildlife Act cannot define, confer or determine Aboriginal harvesting rights. Such rights are defined in treaties and modern land claims agreements, and are recognized and affirmed under section 35 of the *Canadian Constitution*. There is a legal duty on governments and Aboriginal peoples to uphold these treaties and modern land claims agreements.

PART 2

Cooperative Governance (s. 8 – 21)

Part 2 of the Consultation Draft included provisions describing the cooperative approach to wildlife management the GNWT is committed to. The purpose of this part of the Act is to promote collaborative and co-operative working relationships, while respecting roles and responsibilities of each body authorized to manage wildlife in the NWT. The Consultation Draft described the roles of each of these bodies:

- Renewable Resources Boards
- Minister
- Conference of Management Authorities
- Secretariat

This part also established the Conference of Management Authorities to address matters of common interest such as:

- shared wildlife species;
- conservation education;
- co-ordination in planning actions; and
- wildlife research.

What we heard

There was general support for a collaborative approach to wildlife management and the importance of people working together was raised at all public meetings. Most of the comments received about this part of the Act were about membership in the Conference of Management Authorities.

In the Consultation Draft, the members of the Conference included the renewable resources boards established under land claims agreements, the Inuvialuit Game Council (which has specific roles in wildlife management under the Inuvialuit Final Agreement), the Tłı̨chǫ Government (which has law making authority for wildlife management on Tłı̨chǫ lands) and the territorial and federal governments. The Conference was also able to invite Aboriginal organizations negotiating land claims agreements that address wildlife management authorities to participate in the Conference.

After further discussions with Aboriginal organizations negotiating land claims agreements, the draft Act was revised to include organizations that are negotiating land claims agreements to establish regional wildlife management authorities (Northwest Territory Métis Nation, Dehcho First Nations and NWT Treaty #8 Tribal Corporation). Organizations still negotiating a land claims agreement may choose not to participate by notifying the Minister. Once a land claims agreement is concluded and a renewable resources board is established to be the main instrument of wildlife management in these areas, the board will replace the respective Aboriginal organization. The Conference was renamed the NWT Conference for Wildlife Management to reflect the participation and roles of all its members. The purpose remains the same.

The revised draft also allows the Minister to recognize Aboriginal organizations that represent rights holders and have authority in respect of some aspect of wildlife management as members of the Conference. This would apply to groups with negotiated wildlife management authority such as the Salt River First Nation or, potentially, the Gwich'in Tribal Council. Agreement from the organization is required before they can be recognized.

For greater certainty, clauses have been added making it clear that membership in the Conference does not confer or change any rights or authorities with respect to wildlife or wildlife management, nor does the Conference have the authority to impose legal obligations on any of its members. As noted earlier, such rights and authorities cannot be conferred through the Wildlife Act. The revised clauses dealing with the Conference are all found in s. 14 and 15 of the draft Act.

What we heard

Cooperative Governance (continued)

There were also questions raised about the role of stakeholders (industry, resident hunters) in wildlife management. While stakeholders do not have a legal responsibility for wildlife management, they do have stewardship interests. The Conference may invite observers and advisors to its meetings and can determine their level of involvement (s. 17(2)). This can include organizations such as non-governmental organizations, resident hunter organizations or industry organizations.

One suggestion was made that the Conference should be obligated to consult with affected constituencies, including exploration and mining sectors, once a year and report on the outcome. This has not been added to the final draft because each member organization of the Conference with an existing legal mandate for wildlife management already has a responsibility to consult with its constituent groups, including stakeholders and the general public. In particular, the Gwich'in, Sahtu and Wek'eezhii Renewable Resources Boards are public boards and must act in the public interest.

PART 3

Rights and Authorizations (s. 22 – 49)

Part 3 of the Consultation Draft dealt with who can harvest wildlife in the NWT and what type of licences or permits are required. This part included:

- identification requirements for holders of Aboriginal or treaty harvesting rights (s. 22 – 25);
- general hunting licences (s. 26 – 28);
- hunting licences for people without Aboriginal or treaty rights (s. 29 – 42);
- special harvester licences (s. 29(3), 31);
- harvest reporting requirements (s. 33, 44(2));
- minimum age and special requirements for youth hunting licences (s. 32, 43, 47);
- requirement for non-residents to use an outfitter (s. 36(2), 46); and
- trapping licences (s. 49).

What we heard

Identification for Aboriginal and Treaty Rights Holders (s. 22 – 25)

The removal of the existing requirement for Aboriginal harvesters to obtain a licence to exercise their harvesting rights was strongly supported by the Working Group and by Aboriginal communities and organizations during consultation. This change has been requested by Aboriginal organizations for many years and is provided for in land claims agreements. Many questions were raised during community meetings about what kind of identification cards would be used by Aboriginal harvesters, how they would be issued, and how overlap and reciprocal agreements respecting harvesting between Aboriginal groups could be recognized. One organization was concerned there was not enough certainty that the rights of Aboriginal harvesters who do not have a land claims agreement would be respected. There were also concerns about whether trappers could access GNWT programs like the Genuine Mackenzie Valley Fur Program if they did not have a general hunting licence. Under the Act, ENR will work with Aboriginal organizations and other government departments to work out these details.

General Hunting Licences (s. 26 – 28)

Views on whether or not general hunting licences (GHLs) should continue to be issued were varied. Some people said the GHL should be eliminated. Others thought it should be phased out, with current holders being grandfathered, or should be kept at least until all land claims are settled.

What we heard

General Hunting Licences (continued)

The 2003 Progress Report and the June 2010 public document on the proposed Act suggested eliminating the GHL, but allowing existing GHL holders to keep their licence for their lifetime. However, this approach does not work for Aboriginal harvesters in areas without settled land claims agreements where it is not yet possible to develop overlap agreements with harvesters with settled land claims agreements. It also does not work for NWT Métis harvesters, who require a GHL to harvest migratory birds without a migratory game bird hunting permit under the federal *Migratory Birds Convention Act Regulations.*

The Consultation Draft proposed keeping the GHL system in place until land claims are settled in the southern part of the NWT. This approach has been taken in the final draft. The need for GHLs will be reviewed when the new Wildlife Act is reviewed in seven years. ENR will work with other government departments to ensure that Aboriginal harvesters exercising their rights using an agreed upon Aboriginal identification card will still have access to government programs tied to the GHL.

Comments were also received about eligibility requirements for GHLs being described in regulations rather than in the Act. For additional clarity and certainty, eligibility requirements for GHLs have been added to the final draft Act (s. 27). Holders of existing GHLs will be able to keep their GHLs for their lifetime. To be eligible for a new GHL, applicants must have an Aboriginal or treaty right to harvest wildlife in the NWT, be eligible to be a member of an Aboriginal organization located in the NWT listed in the regulations, and meet the residency requirements to be set out in the regulations.

Resident Hunting Licences (s. 1 (definition of resident), 29, 52)

The Consultation Draft proposed a one-year residency requirement for obtaining a resident hunting licence. As in the consultations undertaken between 1999 and 2002, this issue generated a great deal of discussion. Members of the Working Group, and most comments raised during meetings in Aboriginal communities, supported keeping the residency requirement at two years or raising 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 in one year. Two years 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 goes forward. Community members were concerned these short-term residents would put too much pressure on local wildlife resources and take away the local food source. Some community residents felt there was already too much pressure on local wildlife resources, making it difficult for community members to feed families.

Non-Aboriginal residents commented that lowering the residency requirement to one year, or lower, was more reasonable and more in line with the rest of the Canada. They stated that the number of resident hunters in the NWT relative to the number of Aboriginal harvesters is so small that reducing the residency requirement to one year would not make a difference to harvesting levels.

The residency requirement in the final draft Wildlife Act remains at one year, with a requirement for first time big game resident hunters to successfully complete a harvester training program (s. 52). This is intended to address concerns that a one-year residency is not adequate to become a safe and knowledgeable hunter.

Resident hunters make up only about six percent of total harvesters in the NWT and their numbers have been steadily declining during the past two decades. Resident harvests are controlled through a tag system and bag limits. Where there is a conservation concern about over-hunting of scarce resources, the resident hunter harvest can be addressed through other wildlife management tools, including designating management zones, setting bag limits and seasons, and controlling the number of tags available to resident hunters.

What we heard

Minimum Hunting Age (s. 32, 43, 47, 52)

There was confusion in the public about who the minimum age provisions apply to. Aboriginal youth with rights to harvest may hunt at any age. The minimum hunting age applies to those who require a hunting licence, excluding GHLs.

Most comments supported lowering the minimum age to obtain a hunting licence to 12, as this would allow young people to learn to hunt from an early age. This is consistent with the federal *Firearms Act*. Some comments indicated that 12 was too young for a person to know how to hunt properly and suggested the minimum age be kept at 16 or raised to 21. The minimum age to obtain a hunting licence has been kept at 12 to encourage hunting participation from a young age and to allow outfitters to take a parent and child hunting together (s. 32). Youth between 12 and 18 require parental consent to obtain a licence and must be accompanied by an adult hunter while hunting (s. 47). They must also successfully pass a hunter training course before obtaining their first big game tag (s. 52). These requirements should address the concerns raised about young hunters.

ENR also received a number of requests to allow youth to hunt under the authority of a parent's licence. This would allow young people to learn how to hunt before they obtain their own licence. This has been added to the final draft and requires parental consent and close supervision by an adult hunter. Youth must be under 18 to hunt under the authority of an adult hunter's licence. There is no minimum age. Any animals harvested by the young hunter would be part of the adult hunter's bag limit (s. 43, 47).

Special Harvester Licence (s. 29(3), 31)

The ability to issue special harvester licences, where supported by local harvesting committees, was strongly supported in many communities.

Mandatory Harvest Reporting (s. 33, 44(2))

The Consultation Draft included a requirement for all licenced hunters, excluding GHL holders, to report their harvest. ENR received a number of comments about mandatory reporting, primarily from resident hunters, who commented it was unfair to make harvest reporting mandatory for non-Aboriginal hunters when Aboriginal harvesters do not have to report their harvest. Harvest reporting by licenced hunters, at least for big game species, is a requirement under all provincial wildlife acts except Manitoba (where reporting is by request), Prince Edward Island (where regulations requiring reporting can be made) and Newfoundland and Labrador. Aboriginal harvesters, harvesting within their traditional areas, are not required to report in any other Canadian jurisdiction.

Some resident hunters commented that since wildlife harvested by resident and non-resident harvesters makes up such a small portion of the total wildlife harvest, it was ineffective to collect harvest data only from resident and non-resident hunters. ENR also received many comments stating that knowing harvest levels is one of the most important tools in wildlife management and, therefore, harvest reporting should be mandatory for everyone.

ENR recognizes the importance of wildlife harvest information for effective management of wildlife. That is why harvest reporting has been made a requirement for obtaining a hunting licence. Since harvesters with Aboriginal or treaty harvesting rights do not require a licence to exercise their harvesting rights, it is not possible to tie harvest reporting to obtaining a licence. The Act does, however, include the ability to make regulations requiring harvest reporting by all harvesters, including Aboriginal rights holders.

The renewable resources boards, established under land claims agreements, and most Aboriginal organizations support the idea of harvest reporting for key species where there may be conservation concerns. ENR will work with boards and Aboriginal organizations to implement harvest reporting for Aboriginal harvesters, where it is necessary. Under several land claims agreements, renewable resources boards have undertaken harvest studies at a cost of thousands of dollars.

PART 4

Proper Conduct on the Land (s. 50 – 73)

Part 4 of the Consultation Draft dealt with how people should behave on the land and how they should treat wildlife. This part included provisions on:

- harvester training (s. 50 – 52);
- harvesting on private lands where beneficiaries have an exclusive right to harvest (s. 53);
- interference with lawful harvesting (s. 54);
- harassment and disturbance (s. 55 – 56);
- retrieving wounded animals (s. 57(1));
- wastage (s. 57(2);
- emergency and accidental kills (s. 58 – 62);
- harvesting methods (s. 63 – 65);
- possession of wildlife or wildlife parts (s. 66 – 67);
- feeding and attracting wildlife (s. 68 – 69);
- capturing and keeping live wildlife (s. 70);
- releasing domestic animals or captive wildlife to endanger wildlife (s. 71);
- releasing species into habitat where they do not belong (s. 71); and
- restrictions on harvesting methods for public safety reasons (s. 72 – 73).

What we heard

Harvester Training (s. 50 – 52)

The November 2010 Consultation Draft included a requirement for the Minister to develop harvester training courses to promote the safe and humane harvest of wildlife.

Resident hunters were required to successfully complete a harvester training course before obtaining a big game tag for the first time. The requirement to complete a harvester training course also applied to a person convicted of an offence under the Wildlife Act. Although harvester training was not mandatory for people with an Aboriginal right to harvest, the Minister could assist Aboriginal organizations that were developing or delivering harvester training courses.

There was strong support for harvester training throughout the NWT. There were many comments about the importance, especially for young people, of learning to hunt and handle meat properly to reduce wastage. The importance of being able to include regional differences in the training courses was pointed out. There were several suggestions that ENR promote harvester training in schools. Concern was raised about whether courses would be available everywhere and many comments were received asking whether funding would be available to develop and deliver courses.

The final draft Act has been revised to require the Minister to ensure development **and delivery** of training courses to address these concerns (s. 50(1)).

Everyone agrees harvester training is good and all new hunters should learn to hunt properly. However, some resident hunters felt it was unfair that harvester training was mandatory for resident big game hunters, but not Aboriginal hunters. They want to see harvester training either mandatory for all harvesters or voluntary for resident hunters.

Since Aboriginal harvesters have a right to harvest, they cannot be prevented from exercising that right if they have not taken a course. There is strong support for harvester training in the communities and ENR is committed to working with Aboriginal communities to help develop and deliver training courses. This is the same approach taken elsewhere in Canada. All other Canadian jurisdictions have a mandatory hunter training program for licenced hunters. The requirement does not apply to Aboriginal rights holders. There were no changes made to the final draft with respect to training requirements.

Resident hunter organizations indicated they want to be involved in development of harvester training courses. The Consultation Draft required the Minister to consult with local harvesting committees, but did not include

What we heard

Harvester Training (continued)

resident hunting organizations. This was changed in the final draft Act to include resident hunting organizations (s. 50(2)).

A question was raised in some meetings about whether non-resident hunters should require harvester training. Since non-resident hunters require a guide, who is responsible for ensuring the non-resident hunter follows the law and does not waste meat, no requirement for harvester training has been added.

Harvesting on Private Lands (s. 53)

There was strong support in areas with settled land claims agreements to require permission for non-beneficiaries to harvest on private lands where beneficiaries have exclusive harvesting rights. It was recognized that this will require significant public education so people are aware of these restrictions and training for officers to enforce this provision.

Harassment (s. 55 – 56)

There was strong support for strengthening the ability to prevent harassment, particularly harassment of big game by low-flying aircraft. There were a number of concerns industrial operators would continue to be able to harass big game because they have a permit to carry out their work. ENR will work with industry and land use regulators to develop guidelines and regulations to reduce the impact of flights on wildlife.

Wastage (s. 57(2))

There was also strong support for strengthening the ability to prevent wastage and to make the definition of wastage more flexible to address local concerns and practices. There were some concerns the Act would make it an offence to waste some wildlife parts that are not usable. For example, under the Consultation Draft it would be an offence to waste the hide of a bear killed in defence. The hide of a bear killed in summer has no value, so in several communities there were requests that leaving behind a defence-killed bear hide in summer not be considered wastage. The final draft has been revised so that wastage offences apply to prescribed wildlife and wildlife parts, making it possible to be more flexible in the application of regulations.

Baiting (s. 65, 89)

The issue of baiting was discussed in several public meetings. Comments ranged from a request to allow anyone to use bait (particularly for wolves and other predators) to increase the likelihood of hunting success to suggestions that all baiting (other than lawful trapping) be prohibited. Other suggestions included allowing subsistence harvesters to bait, but not outfitters, and defining baiting so unintentional baiting and traditional practices were not an offence.

No changes were made to the final draft. Baiting for big game or other prescribed wildlife would require a permit unless a person has an Aboriginal or treaty right to harvest. Baiting by someone who has an Aboriginal right may be limited for public safety concerns. Permit requests would be assessed on a case-by-case basis, with consideration given to local concerns and safety issues.

Public Safety (s. 72, 73)

There was general support for prohibitions against equipment presenting a public safety concern, even though this infringes on Aboriginal rights to use any method to harvest. However, it was mentioned in several Inuvialuit community meetings that set guns were traditionally used for hunting in those areas. There was also general support for restricting shooting across or along a highway or in no shooting corridors. It was recognized that no-shooting corridors would have to be established on a case-by-case basis and would require consultation as they could infringe on Aboriginal harvesting rights. One person commented that if they couldn't shoot from the highway, it wasn't worth going hunting. No changes were made to the final draft with respect to public safety issues.

PART 5

Commercial and Other Activities (s. 74 – 89)

Part 5 of the Consultation Draft addressed:

- licences and permits for commercial activities related to wildlife (s. 74 – 78);
- big game outfitting and guiding (s. 79, 80);
- possession, import, transport and export of wildlife (s. 81 – 85); and
- wildlife research and other commercial activities involving wildlife (s. 86 – 88).

What we heard

Commercial Licences (s. 74 – 78)

Some people asked for preferential access to commercial wildlife licences for businesses owned by NWT residents. ENR received legal advice indicating such a provision would be contrary to the *North American Free Trade Agreement* (NAFTA), which came into effect in 1993, and cannot be included.

The Consultation Draft included a requirement for any transfer of a commercial licence to follow requirements for right of first refusal set out in land claims agreements. This was a concern for some individuals and organizations. As these requirements are set out in the respective land claims agreements, this requirement has been removed in the final draft.

There were many questions about what types of activities would be allowed without a licence and what activities would be considered commercial. For example, would selling stew at a local jamboree require a commercial licence? There were also concerns people would need to get a licence to carry out traditional activities such as tanning moose hides for making moccasins or selling furs.

Under the proposed Wildlife Act, regulations will be made to specify what type and level of activity will be considered commercial. Thresholds will be set so activities like selling stew or making moccasins would not require a commercial licence. This same approach has been successfully used in Nunavut to ensure commercial operations are licenced and monitored, but traditional activities like trapping and arts and crafts are not affected. The regulations could differ from area to area to reflect local values. In some areas, people indicated they did not want to see any selling of meat. In those areas, any selling of meat could be considered commercial and require a licence.

There were also comments received that Aboriginal people who have rights to trade and barter should be able to sell meat to commercial institutions such as elders' or correctional facilities. Some comments suggested Aboriginal people should also be able to gift meat to such institutions as this is consistent with the traditional practices of sharing meat, especially with those who were not able to hunt. No changes were made to the final draft, but these issues may be dealt with in the regulations.

There was a lot of support for removing the permit requirements to serve wildlife meat at a community function and for Aboriginal rights holders and resident hunters to export meat for personal use.

Big Game Outfitting (s. 79 – 80)

ENR received a number of comments about the need for guides to receive training and to pass the same hunter training course required by resident big game hunters. ENR will work with outfitters and the tourism industry to review requirements for guide licencing. ENR also heard that guides should be able to shoot an animal wounded by their client without waiting for a request from the client. This has been added to the final draft.

Permits for Other Activities that Involve Wildlife (s. 87 – 88)

The tourism industry raised concerns about the requirement for commercial operators offering organized activities involving interaction, manipulation or close observation of wildlife to obtain a permit under the new Wildlife Act since these operators

What we heard

Commercial Licences (continued)

already require a licence to operate under the *Tourism Act*. This provision has been revised in the final draft so a permit is only required by operators who offer activities that involve interaction, manipulation or close observation of big game and other prescribed wildlife.

ENR is working with the Department of Industry, Tourism and Investment to develop a process for attaching wildlife-related terms and conditions to a Tourism Operator Licence so tourism operators can be exempted from the need to get an additional permit under the Wildlife Act. Such terms and conditions would help keep clients safe and limit potential harassment of wildlife.

There were no concerns raised about the other provisions proposed in this section.

PART 6

Conservation and Management Measures (s. 90 – 104)

Part 6 of the Consultation Draft included many of the tools needed to manage wildlife and wildlife habitat. Provisions included:

- management zones with different regulations for each (s. 90);
- conservation areas to protect wildlife or important wildlife habitat (s. 91 – 93);
- prohibitions against destroying wildlife habitat (s. 94 – 95);
- wildlife management and monitoring plans for land use activities that are likely to cause significant disturbance to wildlife or wildlife habitat (s. 96);
- guidelines and standard operating procedures for activities that may disturb wildlife or wildlife habitat (s. 97);
- Minister's submissions to regulatory authorities or land use planning bodies when wildlife is likely to be affected by a proposed land use activity (s. 98);
- priorities for the allocation of harvest when harvest must be limited for conservation purposes (s. 99);
- a process to follow when emergency circumstances require an immediate decision on a wildlife management issue (s. 100);
- declaring a species a pest (s. 101);
- area closures where there is a wildlife-related risk to the public (s. 103); and
- clean-up orders where food, waste or materials are likely to attract a dangerous animal (s. 104).

What we heard

Generally, there was widespread support for more effective tools to manage and protect wildlife and wildlife habitat. Several people commented on the importance of protecting habitat to protect wildlife and the importance of integrating wildlife and wildlife habitat concerns into existing regulatory processes.

Conservation Areas (s. 91 – 93)

Under the existing *Wildlife Act*, conservation areas may be created. Existing conservation areas include the Thelon and Mackenzie Bison Game Sanctuaries, the Peel River and Roland Michener Game Preserves and the two Critical Wildlife Areas in the Cape Bathurst Peninsula in effect from May 25 to June 15 each year to protect caribou cows that calve there.

What we heard

Conservation Areas (continued)

Concern was raised, particularly by industry, that the ability to establish conservation areas could negatively impact economic development in the NWT. There were also questions about what process and criteria would be used to establish conservation areas and how these would work with federal land use authorizations and the process to establish protected areas. Most Canadian wildlife acts allow for the protection of wildlife habitat. In the final draft Act, Conservation Areas must be approved by Cabinet rather than established on the recommendation of the Minister as proposed in the Consultation Draft (s. 91). This will ensure there is opportunity for a full discussion of how a conservation area may affect the economy or any other area of interest.

Wildlife Management and Monitoring Plans

Industry representatives commented that some of the habitat protection measures proposed in the Wildlife Act, including the requirements for wildlife management and monitoring plans and the posting of security, appear to duplicate other regulatory processes such as the processes established under the *Mackenzie Valley Resource Management Act* (MVRMA). Industry also expressed concern about the potential for imposing greater and potentially conflicting requirements on developers and land users.

No such concerns were raised by the regulatory boards established under the MVRMA to implement the MVRMA.

The processes for wildlife habitat protection in the Wildlife Act have been developed to work within the current regulatory processes and fill a gap that currently exists with respect to the protection of wildlife and wildlife habitat. The wildlife management and monitoring plans have been requested by the land and water boards established under the MVRMA to fill a current gap.

The final draft has been revised to make it clear that the Minister can accept part or all of a wildlife management and monitoring plan developed for another regulatory agency (s. 96(3)). It has also been revised to clarify the Minister's ability to request a wildlife management and monitoring plan (s. 96(1)). Some thought a wildlife management and monitoring plan should be required for all land use activities, regardless of size or potential impact. Most comments on this issue stated there should be thresholds established so that smaller, low-impact activities would not require a plan. Regulations will detail what type of land use activities would and would not require a wildlife management and monitoring plan.

Guidelines and Standard Operating Procedures (s. 97)

The Consultation Draft included the ability for the Minister to establish guidelines and standard operating procedures for land use activities that may disturb wildlife or damage wildlife habitat. Industry representatives asked that reference to standard operating procedures be removed as this term has a specific meaning to industry that is not appropriate for guidelines established by an agency that does not regulate the industry. This change has been made. ENR will allow for public input from industry and other stakeholders when developing guidelines to ensure they are appropriate and effective.

Priorities for Harvest Allocation (s. 99)

With respect to priority for harvest allocation in areas without land claims agreements when harvesting must be limited for conservation reasons, Aboriginal communities strongly supported the recognition of their harvesting rights. Some people commented that including allocation priorities in the legislation would help people understand who could harvest when harvesting had to be limited.

The NWT Wildlife Federation has asserted the allocation priorities identified in the Wildlife Act are contrary to the *Charter of Rights and Freedoms*, are unfair to non-Aboriginal harvesters and are different from the Yukon.

Aboriginal people have a constitutionally protected right to harvest. Although the right to harvest can be infringed upon when there is a conservation need,

What we heard

Priorities for Harvest Allocation (continued)

Aboriginal harvesters must be given first priority above all other users of the resource.

Non-Aboriginal people have been granted the privilege of harvesting wildlife in the NWT. There is no non-Aboriginal right to harvest. The Constitution and case law both support the need to give priority allocation of harvest to Aboriginal rights holders when harvesting must be limited.

In the Yukon, the situation is quite different. The *Umbrella Final Agreement Between the Government of Canada, the Council for Yukon Indians and the Government of the Yukon* includes a clause that requires each Yukon First Nation Final Agreement to set out how the total allowable harvest of wildlife will be shared between Yukon Indian people and other harvesters. When opportunities to harvest wildlife are limited for conservation, public health or public safety, the total allowable harvest must be allocated to give priority to the subsistence needs of Yukon Indian people, while providing for the reasonable needs of other harvesters. How the actual allocation is done depends on each Yukon First Nation Final Agreement.

PART 7

Enforcement (s. 105 – 168)

Part 7 of the Consultation Draft included:

- the process for appointing officers under the Act (s. 106 – 111);
- powers of officers with respect to inspections and searches (s. 112 – 123);
- process for dealing with seized items (s. 124 – 138);
- requirements to provide information to an officer (s. 142 – 145);
- penalties (s. 148 – 164);
- time limits on prosecutions (s. 165); and
- use of alternative measures (s. 168).

What we heard

Inspection and Search (s. 112 – 123)

Members of the airline industry and others using charter aircraft raised concerns about requirements for keeping records of flights carrying wildlife, hunters or anyone else carrying out an activity involving wildlife.

Concerns were twofold. Flight logs and records are already regulated by the federal government and requirements cannot be changed without federal approval, and aircraft owners and pilots are not in a position to monitor or regulate the activities of their passengers.

This requirement has been removed in the final draft. However, aircraft owners and operators are still required to show their log books to an officer upon request (s. 112). This is consistent with the existing *Species at Risk (NWT) Act* and is required for investigation into potential infractions. Concerns about how this may impact aircraft owners will be addressed through officer training. Information about the activities of hunters and others involved in wildlife-related activities using aircraft can be collected in other ways.

Penalties (s. 148 – 164)

Comments on penalty levels were varied. Although there was general support for higher penalties, there was some concern the penalties were too high for some people to pay. The Standing Committee on Economic Development and Infrastructure (SCEDI) voiced a concern that the high penalties could place wildlife officers at risk. Others felt the proposed penalty levels were too low, particularly for commercial offences. There was also some discussion about whether or not minimum fines should be imposed.

What we heard

Penalties (continued)

No changes have been made to the penalties in the final draft.

The proposed fines are consistent with penalties in wildlife acts in other Canadian jurisdictions and more properly reflect the value of wildlife in the NWT. The penalties listed in the legislation are maximum penalties. The actual fine imposed for an offence is determined by the courts, which have a wide range of penalties and actions they can impose. Minimum penalties are not included in GNWT legislation as that would limit the discretion of the courts to impose appropriate penalties.

For many years, ENR has been receiving requests that monies paid in penalties go to community wildlife organizations or back into wildlife conservation. The final draft allows the court to, in addition to any other penalty, direct payment into the Natural Resources Conservation Trust Fund, established under the *Natural Resources Conservation Trust Act.*

Alternative Measures (s. 168)

Comments received on the use of alternative measures varied. Some communities welcomed the possibility of being involved in an alternative measures process. Others felt there was no local capacity to deal with wildlife issues through alternative measures. There was some concern that alternative measures would result in the offender getting off too easily.

No changes were made to the alternative measures provisions in the final act. The provisions make the use of alternative measures possible and set parameters for their use. A proper process and appropriate agreements would have to be developed before an alternative measures process could be implemented. If such a process was developed, use would be completely optional. No community would be forced to use an alternative measures process.

General Enforcement

ENR also heard general comments about the need for more and better enforcement as well as more and better training for officers.

PART 8

General (s. 169 – 173)

The final section of the Consultation Draft included provisions:

- allowing the Minister to limit information disclosure if it could harm species or when a renewable resources board requests traditional knowledge not be released (s. 169);
- requiring the Minister to respond as soon as practicable to renewable resources board requests for information related to management of wildlife in its area (s. 170);
- requiring the Minister to respond in a timely manner to renewable resources board decisions or recommendations (s. 171);
- requiring a legislative review of the Act every five years (s. 172); and
- providing regulation making authority in all areas needed to implement the Act (s. 173).

What we heard

Legislative Review (s. 172)

SCEDI recommended the Act be reviewed by the legislature every seven years, rather than every five years. This change has been made in the final draft. This is a new approach for the Wildlife Act and is intended to provide an opportunity to change anything that is not working and to ensure the legislation remains up-to-date and effective.

A suggestion was also made that the review process be simpler than the consultation process undertaken to develop the new Act.

Regulations (s. 173)

There were concerns that too much detail is left to regulations, making it difficult to determine what the impact of the legislation will be.

This was a particular concern for industry, where regulations with respect to habitat could affect their operations. Some Aboriginal groups were concerned that regulations could infringe on their rights. ENR also received a number of comments indicating consultation would be needed on regulations and people should have an opportunity for input into the regulations.

ENR is reviewing the existing 28 sets of regulations. Any regulations inconsistent with the proposed new Act will be removed or revised. Other regulations will remain in effect and will be reviewed during the next three years.

Some new regulations will be needed before the Act comes into effect. ENR is developing a process and timelines to allow for consultation with other government departments, Aboriginal organizations, stakeholder organizations and the public on new regulations.

Public Engagement and Consultation Meetings Held and Submissions Received

Inuvialuit Region

Inuvialuit Game Council (IGC)
Wildlife Management Advisory Council (NWT)
Tuktoyaktuk Hunters and Trappers Committee
Aklavik Hunters and Trappers Committee
Inuvik Hunters and Trappers Committee
Paulatuk Hunters and Trappers Committee
Uluhaktok Hunters and Trappers Committee
Sachs Harbour Hunters and Trappers Committee
Community of Tuktoyaktuk
Community of Inuvik
Community of Paulatuk
Community of Aklavik
Community of Uluhaktok
Community of Sachs Harbour

Gwich'in Region

Gwich'in Tribal Council (GTC)
Gwich'in Renewable Resources Board (GRRB)
Gwich'in Land and Water Board
Gwich'in Land Use Planning Board
Tetlit Gwich'in Renewable Resource Council
Ehdiitat Renewable Resource Council
Gwichya Gwich'in Renewable Resource Council
Nihtat Renewable Resource Council
Community of Fort McPherson
Community of Tsiigehtchic
Community of Inuvik
Community of Aklavik

Sahtu Region

Sahtu Renewable Resources Board (SRRB)
Norman Wells Renewable Resource Council
Deline Renewable Resource Council
Fort Good Hope Renewable Resource Council
Tulita Renewable Resource Council
Behdzi Adha Renewable Resource Council
Community of Norman Wells
Community of Fort Good Hope
Community of Colville Lake
Community of Tulita
Community of Deline

North Slave Region

Tłı̨chǫ Government of Wekweeti
Tłı̨chǫ Government of Whati
Tłı̨chǫ Government of Gameti
Community of Gameti
Community of Behchoko
Community of Wekweeti
Community of Whati
Community of Yellowknife
Yellowknives Dene First Nation
City of Yellowknife
Lutsel k'e Dene First Nation
Wek'eezhii Renewable Resources Board

South Slave Region

Northwest Territory Métis Nation
West Point First Nation
Community of Hay River (December 30 and January 19)
Community of Fort Smith
Community of Enterprise
Community of Fort Providence (members of the Fort Providence Métis Council, Fort Providence Resource Management Board and Deh Gah Gotie Dene Band)
Hamlet of Fort Resolution
Hay River Metis Council
Fort Smith Metis Council
Salt River First Nation
Akaitcho Territory Government

Dehcho Region

Nahanni Butte Dene Band
Fort Liard Métis Nation
Ka'a'gee Tu First Nation
Sambaa K'e Dene Band
Pehdzeh Ki First Nation
Jean Marie River First Nation
Liidlii Kue First Nation
Acho Dene Koe First Nation
Denedeh Resources Committee
Community of Nahanni Butte
Community of Fort Liard
Community of Fort Simpson
Community of Kakisa
Community of Trout Lake
Community of Wrigley
Community of Jean Marie River

Rights Holders Outside NWT

Smith's Landing First Nation
Black Lake First Nation, Saskatchewan
Fond du Lac Denesuline Nation, Saskatchewan
Hatchet Lake First Nation, Saskatchewan
Prince Albert Grand Council, Saskatchewan
Nacho Nyak Dun, Yukon
Lac Brochet, Sayisi Dene First Nation, Manitoba
Tadoule Lake, Northlands Band, Manitoba
Dene Tha, Chateh, northern Alberta

Stakeholders

Association of Mackenzie Mountain Outfitters (AMMO)
Canadian Association of Petroleum Producers (CAPP)
NWT/Nunavut Chamber of Mines
French Association, Yellowknife
Barren Ground Caribou Outfitters Association
Indian and Northern Affairs Canada (INAC)
NWT Wildlife Federation
NWT Tourism Association
Northern Frontier Visitors' Centre
Mackenzie Valley Environmental Impact Review Board
Independent Environmental Monitoring Agency

Written submissions were received from the following organizations:

Akaitcho Territory Government
Canadian Association of Petroleum Producers
Chamber of Mines
Fort Providence Métis Council
Gwich'in Land Use Planning Board
Gwich'in Tribal Council
Nihtat Renewable Resources Council
North Slave Métis Alliance
Northern Air Transport Association
Northwest Territories Tourism Association
Northwest Territories Wildlife Federation
Northwest Territory Métis Nation
Prince Albert Grand Council
Wek'eezhii Renewable Resources Board

Written submissions were also received from 13 individuals.