

Standing Committee on
Economic Development
and Environment



Report on Bill 74: *Forest Act*

19th Northwest Territories Legislative Assembly

Chair: Mr. Jackie Jacobson

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ECONOMIC DEVELOPMENT AND ENVIRONMENT**

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**STANDING COMMITTEE ON
ECONOMIC DEVELOPMENT AND ENVIRONMENT**

REPORT ON TRANSITION MATTERS

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**STANDING COMMITTEE ON
ECONOMIC DEVELOPMENT AND ENVIRONMENT**

REPORT ON BILL 74: *FOREST ACT*

EXECUTIVE SUMMARY

The Standing Committee on Economic Development and Environment (Committee) was tasked with reviewing Bill 74: *Forest Act* (Bill 74) in the final year of the 19th Legislative Assembly. Committee reviewed Government of the Northwest Territories (GNWT) policies, programs, and legislation related to forest management, as Bill 74 is intended to change how the GNWT manages and protects forests, communities, and values threatened by wildfire. Committee travelled to four communities during its review and engaged with stakeholders and the public at large.

Committee recognizes that Bill 74 is the first legislation to be developed collaboratively with Indigenous Governments and co-management bodies in accordance with the Intergovernmental Council on Land and Resource Management: Legislative Development Protocol. Bill 74 is also the first legislation to be reviewed under the “Process Convention for the Introduction, Consideration and Enactment of Bills Drafted Pursuant to the Intergovernmental Council Legislative Development Protocol.” While this is a first for the NWT, the territory is the only jurisdiction in Canada where the legislative branch of government reviews laws not just with the executive branch but also with Indigenous Governments. Committee has considered this precedent setting legislation, the input we received, and reflected on the review process generally. All this information informs a range of recommendations to the GNWT with the intent and purpose of improving forest management and wildfire prevention in the NWT.

Recommendation 1: Standing Committee on Economic Development and Environment recommends that the GNWT undertake an independent, third-party comprehensive review of GNWT fire prevention and suppression with public engagement. This review should consider the policy framework, coordination with other governments and agencies, funding for these activities, as well as Departmental practices concerning firefighter safety. The findings of the review be made publicly available on a GNWT website.

Recommendation 2: Standing Committee on Economic Development and Environment recommends that the Department review what information it can and

should provide regarding its internal interactive fire databases, its communication efforts and how information is presented and organized on its website to improve access to and knowledge of fire prevention and suppression activities and practices.

Recommendation 3: Standing Committee on Economic Development and Environment recommends that there be an annual meeting between relevant GNWT departmental staff and each community to review values at risk, fire prevention and suppression preparedness, coordination of efforts and related matters.

Recommendation 4: Standing Committee on Economic Development and Environment recommends that representatives from Technical Working Groups should meet with Standing Committee earlier in the process, closer to the beginning of the co-drafting process, to discuss opportunities to share information on policy options and policy intentions for resource management legislation.

Recommendation 5: Standing Committee on Economic Development and Environment recommends that if the overall legislative timeframe allows, there should be the ability to extend Standing Committee reviews of resource management Bills to allow for completion of the collaborative review process.

Recommendation 6: Standing Committee on Economic Development and Environment recommends that exchanges between Standing Committees, the Departments and Technical Working Groups on the review of resource management Bills should be made public where possible and documented in Committee reports on resource management Bills.

Recommendation 7: Standing Committee on Economic Development and Environment recommends that Departments undertaking the co-drafting of resource management legislation and regulations should secure additional resources for this process and conduct more robust public engagement.

Recommendation 8: Standing Committee on Economic Development and Environment recommends that Departments undertaking the co-drafting of resource management legislation and regulations should share more information with the public about policy options and policy intentions and conduct public engagement earlier in the process (i.e., not wait until the end of the co-drafting process). Public engagement can and should run concurrently with the co-drafting process.

Recommendation 9: Standing Committee on Economic Development and Environment recommends that the Department of Environment and Climate Change prepare a detailed budget and work plan for continued co-development of regulations

necessary for a new Forest Act, allowing for more public engagement on those regulations, and the implementation of its new responsibilities under a new Forest Act.

INTRODUCTION

Bill 74: *Forest Act*ⁱ (Bill 74) received second reading on March 9, 2023, and it was referred to the Standing Committee on Economic Development and Environment (Committee) for review. Committee received the approval of the House to extend its review of the Bill from 120 to 180 days on March 9 to allow for collaboration with Indigenous governments as explained below. This review period ended on August 16, 2023.

Bill 74 combines and modernizes the current *Forest Management Act* and *Forest Protection Act*. These Acts have not been substantially changed since the Government of the Northwest Territories (GNWT) inherited the legislation from the Government of Canada in 1987. The new Act will modernize the roles and responsibilities of the GNWT, the Minister of Environment and Climate Change (ECC), Renewable Resources Boards, Renewable Resource Councils, and forest management committees, and better align with land, resources and self-government agreements as well as land use planning.

Bill 74 is intended to improve how the GNWT manages the following key areas:

- Sustainable forest management and protection standards;
- Wildfire, and the protection of forests, communities and values at riskⁱⁱ;
- The roles and responsibilities of the GNWT, the Minister of ECC, Renewable Resources Boards, Renewable Resource Councils and forest management committees; and
- It also redefines and clarifies terminology.ⁱⁱⁱ

At the end of the 18th Legislative Assembly, the Department of the Environment and Natural Resources granted the Committee's request to withdraw Bill 44: *Forest Act*, due to the "tremendous strain" caused by the large number of Bills being referred, and the "limited resources" the Committee had available.^{iv} Correspondence from the Premier regarding "Intergovernmental Council Lessons Learned" recognized that previous bills did not have time to work out consistent processes. Virtually all of Bill 44 has been carried over into Bill 74, but material has been reorganized and expanded.

Bill 74 is the first Bill to be developed collaboratively with Indigenous Government and co-management bodies in accordance with the Intergovernmental Council on Land and Resource Management: Legislative Development Protocol (Protocol).^v Committee commends the level of consideration that went into Bill 74 compared to its predecessor from the 18th Assembly. Committee recognizes and appreciates the improved integration of co-management, strengthened provisions on Indigenous rights, much better organization and flow, and that collaboration is now the foundation for sustainable forestry.

Bill 74 is also the first legislation to be reviewed under the “Process Convention for the Introduction, Consideration and Enactment of Bills Drafted Pursuant to the Intergovernmental Council Legislative Development Protocol” (Process Convention).^{vi} While this is a first for the NWT, the territory is the only jurisdiction in Canada where the legislative branch of government reviews laws not just with the executive branch but also with Indigenous Governments. This is how we work together in the NWT within our unique system of integrated co-management, consensus government, and implementation of Indigenous rights.

Pursuant to the Legislative Development Protocol, the Department of Environment and Climate Change (the Department) established a Technical Working Group with representation from some of the Indigenous Governments to develop Bill 74. Some of the co-management bodies were also engaged during this process. Committee thanks the Intergovernmental Council Technical Working Group (Technical Working Group) for their collaborative work on Bill 74 pursuant to the Protocol. In highlighting co-management of forest resources, the use of Traditional Knowledge and participation in land management, Committee acknowledges that elements of Bill 74 correspond to *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) Articles 11, 20, 24, 26, 29, 31, and 32.^{vii}

Following the Technical Working Group process, the Department carried out a public engagement using a discussion paper and allowed public comments from November 21- December 28, 2022.^{viii} One submission was received and *What We Heard* report was released on March 7, 2023, by the Department.^{ix} Committee acknowledges the hard work of the Department in managing the legislative development process and public engagement with limited time and resources.

COMMITTEE’S WORK ON THE BILL

Public Engagement

Committee notes public participation in forest management is the responsibility of the GNWT. We believe it is important for the Government to clarify and strengthen the public's role in forest management, and especially for those with established interests (rights holders and community governments for example). This approach is consistent with Cabinet's "Open Government Policy"^x and is based on submissions made during the 18th Assembly and public engagement with ECC earlier this year based on the "Summary of Policy Intentions,"^{xi} as well as Committee's own review of Bill 74.

Committee sought public feedback on the Bill with public notices and targeted engagement letters in April.

Committee sent out two sets of stakeholder letters. The first went to Indigenous Governments and organizations pursuant to the Process Convention. The second set targeted community governments, possible commercial operations and other non-governmental organizations. We received written submissions from:

- Aurora Wood Pellets,^{xii}
- Land and Water Boards of the Mackenzie Valley (LWBs),^{xiii}
- the Wek'èezhì Renewable Resources Board,^{xiv}
- the Dehcho Land Use Planning Committee,^{xv}
- Northwest Territories Association of Communities (NWTAC),^{xvi}
- and a co-drafted letter from Canadian Parks and Wilderness Association NWT Chapter and Alternatives North.^{xvii}

It is important to note that wildfires throughout the territory affected Committee's planned public meetings and that these fires resulted in evacuations in Hay River and K'at'l'odeeche First Nation on May 14. Committee rescheduled all travel and held the following in-person public hearings:

- May 25 – Yellowknife^{xviii}
- June 14 – Whatì^{xix}
- June 15 – Fort Simpson / Łíídlı Kųę^{xx}
- June 16 – Enterprise^{xxi}

COLLABORATION WITH THE GNWT AND TECHNICAL WORKING GROUP

Development of the Twenty-Eight Motions Brought Forward by Committee

It is important to note that the Department did not share any substantive information about the co-drafting process for Bill 74 while it was under development despite our requests for sharing of some information. Committee met with the Minister and representatives of the Technical Working Group publicly on April 28, 2023, to ask questions and seek clarification.^{xxii} Committee also met *in camera* with Departmental staff and representatives of the Technical Working Group on July 31, 2023, to discuss Committee's original motions for amendments. This was a very useful exchange and allowed all sides to ask questions, clarify intentions, and discuss potential solutions.

Committee exchanged letters with the Government House Leader (GHL) about Bill 74 as follows (appended to this report to extent permitted by consensus government process conventions):

- March 23, 2023 SCEDE letter to the GHL to highlight differences between Bill 74 and Bill 44 from the 18th Assembly, to get information on the Technical Working Group, any background research that may have been generated, to find out which co-management bodies were engaged in the development of the Bill (GHL responded to some of the issues raised on April 20, 2023);
- May 10, 2023 SCEDE letter to the GHL to follow-up on the April 28, 2023 meeting with questions on 17 areas of potential concern within the Bill and on s.35 Aboriginal rights consultations (GHL responded with a June 8, 2023 summary table that is partially disclosed in **Appendix A**);
- July 12, 2023 SCEDE letter to GHL to follow-up on forestry policy and practice concerns raised during the public hearing including fire prevention activities, GNWT and federal support, road access during fire emergencies, access to fire services and insurance, reforestation practise and policies, coordination on fire bans, wood cutting practices and compliance with the United Nations Declaration on the Rights of Indigenous Peoples (GHL responded on August 11, 2023);
- July 14, 2023 SCEDE letter to the GHL with 37 proposed motions to amend Bill 74 in response to public submissions and Committee's own deliberation with rationale pursuant to the Process Convention (GHL responded on August 4, 2023 with an indication of support for 22 motions and rejection of others with reasons, summary table in **Appendix A**); and
- August 4, 2023 SCEDE letter to the GHL with notice of six further motions for amendments in response to concerns and potential solutions raised by the Department in the July 31 meeting (the motions were subsequently shared with the Minister in advance of the clause-by clause public hearing held on August 11, 2023).

In addition to the formal correspondence, there were numerous exchanges between Committee staff, the Law Clerk, departmental staff and legal counsel and members of the Technical Working Group. All of this was done under very tight timelines and Committee greatly appreciates this work that made improvements to the Bill possible in a collaborative fashion.

Committee initially shared thirty-seven draft amendments with ECC and the Technical Working Group on July 14. These motions were based on public comments and Committee discussion, and we are of the view that the amendments brought forward strengthen Bill 74, especially with regard to public participation in forest management.

At the clause-by-clause public hearing held on August 11, 2023, the Minister concurred with twenty-two of these motions to amend the Bill.^{xxiii} Committee advanced six additional motions with which the Minister did not concur.

WHAT COMMITTEE HEARD AND HOW COMMITTEE RESPONDED

Public Information

Committee heard during its public meetings in Whatì, Fort Simpson, and Enterprise, and in written submissions from NGOs and the NWT Association of Communities (NWTAC), that the Minister should make important documents and decisions on forest management public. Canadian Parks and Wilderness Association NWT Chapter (CPAWS) and Alternatives North (AN) (collectively called non-governmental organizations or NGOs) and NWTAC recommended creating a public registry in their submissions. Committee notes these concerns were raised during Bill 44 and in the public engagement by ECC earlier this year. Public registries were also created in virtually all the resource management legislation in the 18th Assembly including the *Mineral Resources Act*, *Protected Areas Act* and more. Regular MLAs have also worked diligently to ensure greater public disclosure in other Bills such as the recent changes to the *Elevators and Lifts Act* that now has a public registry.

Committee brought forward motions (2, 4, 14, 26.1 and 26.2) to amend s.14 of Bill 74 by adding requirements to publish important documents and decisions on a website maintained by ECC. Committee prepared an extensive list of documents and decisions arising from the Bill and is of the view that all of this information can and should be made public with some appropriate conditions around exemptions for ecological, culturally and business sensitive information. Following extensive discussions and exchanges, Committee, the Department and the Technical Working Group agreed on a much shorter list of what information Bill 74 will require to be made public with a

commitment that further consideration would be given in the regulations to the other items recommended by Committee.

Committee attempted to further broaden the scope of documents to be made public to include forest harvest agreements (with appropriate protection of sensitive information consistent with other resource management legislation and omitted from the agreed upon motion), fire prevention and preparedness plans for industrial activities, and for permits and licences issued for non-personal use forestry activities (following the Department's concerns that publishing personal use permits and licences would create too much work). The Minister would not concur with these additions, so the motion failed at the clause-by-clause review.

Residents voiced concerns about accountability for the position of Forest Superintendent carrying out forest management, given the broad discretion in Bill 74 as to whether or not forest ecosystem management plans and the forest monitoring are developed and implemented. Rather than make these activities mandatory, Committee thought another way to introduce greater accountability and communications would be for an annual reporting requirement for the Forest Superintendent. Committee drafted motions to amending s.15.1 so that important activities would be summarized and made publicly available through an annual report. There was considerable discussion with ECC and the Technical Working Group who share Committee's view that information about forest management should be made public. The Minister would only concur with a basic list of items to be reported on with further details to be worked out in regulation.

Committee attempted to broaden the list of items to be reported on to include research, basic inspection and enforcement activities without compromising individual cases so as to maintain public confidence in departmental capacity and direction. The Minister would not concur with these additions at the clause-by-clause review.

Climate Change

Committee heard comments both in public hearings and in written submissions about the effects of the changing climate on the forest ecosystem. For instance, during a public hearing in Whatì and Fort Simpson, elders and Traditional Knowledge keepers spoke about how forest fires from previous years impacted local wildlife and caribou migration.

Residents in Fort Simpson commented on the need to manage the species of trees in NWT forests, noting more poplar and birch trees could possibly help prevent out of control forest fires.

NWTAC noted that practices like wildfire breaks and fire smarting approaches “become even more critical as the Wildfire risk increases due to climate change.” (This was also noted by CPAWS and AN on page 7 of their submission). Written submissions from CPAWS and AN echoed these concerns about the changing climate in the NWT. Committee understands that these concerns were raised during the Bill 44 review process during the 18th Assembly, and as part of public engagement carried out by ECC in the 19th Assembly.

Committee considered carefully where climate change considerations would best fit within Bill 74 and decided this issue should be part of forest ecosystem management plans and monitoring of the state of the forest ecosystem. Committee therefore recommended amending s.24 and 26 of Bill 74 (Motions 6 and 12). The Minister concurred with these motions at the clause-by-clause.

Public Engagement

Based on what we heard from residents in communities and the NGO and NWTAC written submissions, Committee is of the view that public engagement is a key theme for both forest management as envisioned in Bill 74 and future regulations. This is a public government responsibility and consistent with Cabinet’s approved Open Government Policy. Committee notes that public engagement requirements were also added to other resource management bills brought forward in the last Assembly. Committee supported amendments (Motions 7 and 8) to ensure more public engagement during the development of forest ecosystem management plans in s.24(2) and for forest harvesting agreements where no forest ecosystem management plan exists. Committee is of the view that public engagement on forest ecosystem management plans is not a substitute for public engagement that should be required for all forest harvesting agreements. Best practices and Cabinet’s Open Government Policy should ensure that public engagement takes place any time important resource management decisions are made, including exclusive rights to harvest forests.

The lack of consideration of community governments in Bill 74 was noted by Committee in its initial review. This issue was initially raised during the review process for Bill 44 during the 18th Assembly, and in the public engagement conducted by ECC earlier this year. NWTAC also raised this concern in its written submission to Committee. For instance, under Bill 74, the review of wildfire prevention and preparedness plans required for some owners or operators of industrial activities is one area that would benefit from community government input. If a fire starts for whatever reason in or near a community, their resources are often called on for assistance. Committee therefore

believes it is important that community governments be engaged during the development and/or review of these plans.

Committee drafted motions to ensure this collaboration would take place on wildfire prevention and preparedness plans. The Technical Working Group responded with changes that were less definitive and said the details could be worked out in regulations. Committee noted that this counterproposal would place the onus on the owner or operator of the industrial activity to circulate proposed plans to community governments when this should really be the responsibility of the Forest Superintendent who ultimately approves the plans. Committee also noted that there was no process identified for amending plans part way through a season and no deadlines for the submission and review of plans. Committee therefore proposed Motions 27.01 and 27.2 to specify regulation-making authority to cover these two areas, but the Minister would not concur at the clause-by-clause review.

Consistency of Forest Management Decisions

Committee pointed to the need for consistency between forest ecosystem management plans (FEMPs), forest harvesting agreements, and permits and licences that authorize specific activities. This is consistent with the purpose of Bill 74 which establishes FEMPs as the foundation for sustainable forest management. Once plans are developed and agreed to, they should be followed. Committee brought forward Motions 10 and 16 which the Minister concurred with at the clause-by-clause.

Another area of major concern Committee heard was the need to provide clarity and certainty around land use planning in relation to forest management. This issue was raised during the review of Bill 44 during the 18th Assembly, and earlier in the 19th Assembly during the ECC public engagement, as well as in written submissions from NWTAC and the NGOs.

Additionally, Committee received a submission from the Dehcho Land Use Planning Committee (DLUPC), noting that the Bill “does not speak to authority of approved and legally binding land use plans to restrict the Minister or Forest Superintendent to authorize the use of forest resources.” NWTAC noted that forest management decisions should be consistent with “various types of community bylaws, including but not limited to, General Plans and Zoning By-laws, fire prevention by-laws, tree harvesting by-laws, soil protection by-laws, open air burning by-laws” among others. This issue was also raised by the mayors and councillors during public hearings in Fort Simpson and Enterprise.

Committee is of the view that Bill 74 needed to be consistent with land use planning in the NWT and any applicable bylaws, and thus recommended adding a subsection to s. 5 outlining this in our original Motion 1. Committee's original motion provided for a board definition for land use plans enacted under any federal or territorial legislation. This included community plans and zoning bylaws under the *Community Planning and Development Act*. However, ECC and the Technical Working Group preferred a more general approach for consistency of forest management decisions with legally binding land use plans as shown in Motion 16. The Minister concurred with this motion at the clause-by-clause.

Committee did, however, move a further motion 16.1, adding the need for consistency with zoning bylaws with which the Minister did not concur. Committee is disappointed that there will now be considerable uncertainty as to the status of zoning bylaws under Bill 74 and whether they could or should constrain the issuance of permits or licences for forestry activities within municipal boundaries. Committee is of the view that if land use plans under federal legislation are accorded status, so should municipal plans and zoning bylaws under territorial legislation. Committee also notes that there appears to be some misunderstanding on the part of GNWT as to purpose and authority of zoning bylaws which can regulate land uses (including forestry activities). According to the *Community Planning and Development Act*, s.18(1) "A zoning bylaw may include provisions respecting one or more of the following matters, either generally or with respect to any zone or part of a zone: [...] (o) the cutting of trees; (p) the preservation of habitat;" this is important to note.

Lastly, the NGOs in their written submission recommended including the Statement of Environmental Values (SEVs)^{xxiv} be included in the Bill in the preamble. Unfortunately, after second reading of a Bill it is difficult to change its purpose or preamble. Committee was of the view that a more appropriate place in Bill 74 would be s.12(2) which sets out the way in which the Minister will carry out their authority. Committee is of the view incorporation of the SEVs would be a helpful addition in beginning to implement the *Environmental Rights Act*. This amendment would also ensure consideration of some helpful environmental principles such as polluter pays and even UNDRIP which are part of the SEVs. However, the Technical Working Group rejected this amendment during collaboration and Committee decided not to pursue it any further.

Application of the Bill and Surface Interest Holders

Committee noted in its initial review of Bill 74 that this legislation would be a law of general application, and that there is no clarity as to how it would apply to or be implemented on privately owned lands and land where there may be surface interests including leases. This issue is further complicated as some surface leases in the NWT

reserve to the Crown the right to use of forests. This is similar to the Crown reserving subsurface or mineral rights. Committee notes that this issue was also raised by the NGOs during the ECC public engagement earlier this year, and the Department's response was that the issue would be dealt with in regulation. This lack of clarity may not provide much comfort or reassurance to those with surface interests and reiterates the importance of more public engagement during the regulation making process.

Committee brought forward a series of motions requiring the Department to engage what we called in Committee discussions, and what CPAWS and AN referred to in their written submission as, "surface rights holders." Committee recognizes that whatever contractual rights surface lease holders may have are not equivalent to or of the same nature as Indigenous rights. Committee is also aware of the legislative regime in place for surface rights holders with regard to mineral rights administration under the territorial *Surface Rights Board Act*.^{xxv}

Committee developed a series of motions to ensure that the views of surface interest holders would be adequately considered during the forest management process and decisions. Motions 11 and 18 proposed language after s.25(6) to engage surface rights holders in discussions about forest harvesting agreements and other issues that could affect them. Motions 16.1 and 17 suggested a "Notice of Application" and "Notice of issuance" regarding permits and licenses that might affect surface rights holders. Concerning s.62(1) and s.66, Committee brought forward further amendments to clarify surface rights holders' right to appeal. However, during discussions with ECC and the Technical Working Group, Committee received both written and verbal assurances that current and future practices would not allow for licences or permits on privately owned or leased land unless initiated by or for the owner or with their consent. The Technical Working Group also said that the issue of surface interest holders and how Bill 74 would apply to them is a complicated matter requiring further study and consideration and could not be completed within the available timelines.

Committee agreed to forgo pursuing these motions having received assurances that this issue would be dealt with in a fair and thoughtful manner in the regulations.

Appeal Processes

Committee's initial review of Bill 74 revealed some potential problems with appeal processes as drafted. For example, it was unclear whether it was actually the intention to include potential appeals of inspection and enforcement actions when such matters may require some urgency and a better recourse may be the courts. It was also unclear why and when an adjudicator may be chosen and whether that person could be an

ECC employee. The NGO submission received by Committee also recommended a number of changes to the appeal processes.

Motions 21, 22, and 23 were driven by uncertainty in the appeal mechanisms in Bill 74 as drafted. The proposed amendments Committee brought forward more clearly define the role of the Forest Superintendent and the Minister, to encourage fairness, transparency, and consistency in decision-making. The GHJ also acknowledged that these sections needed improvement. After discussions with ECC and the Technical Working Group, Committee agreed to pursue Motions 21 and 31 at the clause-by-clause review, which the Minister concurred with. Motion 23 was deemed unnecessary and dropped.

Proof of Identification for Indigenous Citizens

Committee heard concerns during the public hearings from Indigenous residents questioning if and whether they would have to obtain permits or licences for traditional activities. Indigenous Governments stated very clearly during the review of Bill 44 in the 18th Assembly that such permits and licences were inconsistent with Indigenous rights. Bill 74 contains a clear exemption for Indigenous citizens from having to get permits or licences, but Committee noted that the wording of s.50(4) as drafted would require the immediate production of identification of Indigenous citizens claiming a right to harvest. Committee remains of the view that a reasonable period of time to produce documentation should be an option as not everyone carries identification when in the bush. A motion was prepared by Committee and shared with the Technical Working Group. They also identified the need to recognize regional differences and methods of checking Indigenous rights. Committee along with the Technical Working Group and representatives from Indigenous Governments worked together to find solutions that were moved as Motion 19 to resolve these issues. The Minister concurred with these changes at the clause-by-clause review.

Public Engagement on Regulations

The issue of public engagement in the development of regulations related to new resource management was a consistent theme in the 18th Assembly. Many of the resource management Bills contain broad frameworks and processes with many of the details left to regulations and the discretion of Cabinet and/or Ministers. Committee received submissions from NGOs and the NWTAC that raised the issue of inadequate public engagement on Bill 74. These organizations also specifically requested opportunities for public engagement on the development of any regulations to implement Bill 74.

Committee noted that the petroleum resources Bills from the 18th Assembly contain public engagement requirement for regulations, even if this was a hold-over from the federal pre-devolution legislation. Committee is also aware that public engagement provisions were built into the *Child Day Care Act* (s.47(2)) in the 19th Assembly and received Ministerial concurrence.^{xxvi} In discussions with Committee, ECC staff noted that there is already a government-wide approach to public engagement on regulations called the Cabinet Operational Guidelines (found as Appendix 4.11 of the Executive Council Submissions Handbook).^{xxvii} Committee noted that under this policy, publication and comment periods for regulations are at the total discretion of each Minister.

Committee is of the view that Bill 74 is not a regular or ordinary Bill given that it was co-drafted pursuant to the Legislative Development Protocol. The Bill also received special treatment during its review by Committee pursuant to the new Process Convention. There is also strong public interest in the content and substance of the Bill, particularly sustainable forestry, and fire management. A government-wide approach is not appropriate or desirable for the development of the regulations and public engagement should not just be encouraged, it should be required. Committee proposed Motion 32 at the clause-by-clause review, but the Minister did not concur.

Other Matters

Committee received submissions for a number of other changes to the Bill and identified some minor technical corrections that should be made. These are summarized below:

- An amendment to remove some superfluous wording in s.7 on the purpose of the Bill, to ensure a focus on collaborative management rather working relationships (recommended by the NGOs, developed as Motion 4.1 which received Ministerial concurrence);
- A new requirement for written reasons where the Minister determines it is necessary to take action on forestry matters where there is no consensus with Indigenous Governments (proposed by the Wek'eezhii Land and Water Board, developed as Motion 5 which received Ministerial concurrence);
- A correction to the terminology used in s. 25(2) (Motion 9 proposed by Committee which received Ministerial concurrence);
- A correction to the terminology used in s.29(3) (Motion 10 proposed by Committee and received Ministerial concurrence);

- Consistent approach to public notice for a number of actions by the Forest Superintendent (recommended by the NGOs, developed as Motion 14 which received Ministerial concurrence)

Matters Raised Outside the Scope of The Bill

Committee heard about many issues during the public hearings regarding fire prevention and fire suppression policies and practices. This is completely understandable given the devastating summer fire season NWT residents are experiencing in 2023 and the widespread evacuations across the territory that due to wildfires. Committee also recognizes the outstanding dedication of our fire fighters and those assisting us and all the GNWT staff and others supporting those efforts. The fires have had a profound impact on us all and have resulted in the loss of life, homes, and businesses.

Given the severity of the 2023 fire season and the changing ecology of fires largely driven by climate change, it would be wise to conduct a lessons learned exercise following the end of the current season. This review must include the fire fighters and other support staff. Such was the case in 2014 following another severe season when a comprehensive internal review was undertaken.^{xxviii} Committee is of the view that an independent review of our fire prevention and fire suppression policy framework and practices should take place and makes the following recommendation.

Recommendation 1: Standing Committee on Economic Development and Environment recommends that the GNWT undertake an independent, third-party comprehensive review of GNWT fire prevention and suppression with public engagement. This review should consider the policy framework, coordination with other governments and agencies, funding for these activities, as well as Departmental practices concerning firefighter safety. The findings of the review be made publicly available on a GNWT website.

Committee heard a variety of concerns and issues related to specific fire prevention and fire-fighting operational practices. Traditional Knowledge keepers who attended the public meeting in Fort Simpson spoke about the importance of forest renewal. Attendees at the hearings in Fort Simpson and Enterprise also asked for more information about forest management and replanting practices.

Another area of concern identified was the need to provide clarity and certainty with respect to fire suppression crews in remote communities. In Whatì, Committee heard

from residents about forest fire prevention and better forest management. Residents discussed the need for the Department to respond to fires faster in the Tl'cho region. Residents noted that money and the creation of local fire crews will lead to more employment and a safer community. Sonny Zoe (councillor, and a member of the Tl'cho Government) spoke to Committee about how the people of Whatì depend on the forest and referenced recent fire-related evacuations in the NWT, noting “each community should have a [local] forest fire suppression team.”

Many of these concerns raised to Committee are well beyond the scope of Bill 74 and Committee did not have sufficient time or resources to conduct a thorough review of these matters. As part of the independent review as recommended above, the issue of fire-fighting capacity in each community, and implementation of NWT-wide teams and establishment of and access to national team(s) should be considered.

Committee also learned of graphic interactive fire databases that are very detailed and available internally to the Department as the result of a visit to the Fort Simpson office. Committee thanks Jamie Chambers, ECC Dehcho Regional Superintendent for hosting our visit and showing us firsthand some of the assets and tools available. Committee appreciates that the Department has also has a lot of information on its website with regard to fire prevention and fire suppression:

- All communities below treeline have a publicly available Wildfire Prevention Plan;^{xxix}
- Recently added fire-smarting information for individual home and cabin owners;^{xxx}
- And other helpful information for protecting communities and national review processes for fire prevention and suppression^{xxxi}

However, Committee heard that communities and their residents do not know about this sort of information and may not be using it. Committee fully recognizes that Departmental staff are currently focusing on our severe fire situation but there is a need for improved access to information on fire prevention and suppression and better communications.

Recommendation 2: Standing Committee on Economic Development and Environment recommends that the Department review what information it can and should provide regarding its internal interactive fire databases, its communication efforts and how information is presented and organized on its website to improve access to and knowledge of fire prevention and suppression activities and practices.

Whatì residents are still seeing the effects of the 2014 fire that threatened the community. They noted the current firebreak is overgrown and too close to the community. A fire at the current line would put the dump and other infrastructure at risk. Residents noted it should be bigger and further away, and that they need more money for fire prevention and fire smarting to protect community values, especially the forest on the west side of the lake which did not burn in 2014. This is of high importance to the forest ecosystem because it provides habitation for local wildlife and migrating caribou. Residents also expressed uncertainty about the locations of historic fires in the region.

Recommendation 3: Standing Committee on Economic Development and Environment recommends that there be an annual meeting between relevant GNWT departmental staff and each community to review values at risk, fire prevention and suppression preparedness, coordination of efforts and related matters.

OBSERVATIONS ON THE PROCESS AND NEXT STEPS

The co-drafting process appeared to work well with Indigenous Governments and co-management bodies that participated. Committee recognizes the immense amount of time and effort that went into the development of Bill 74 and the improvements that were made compared to Bill 44 from the 18th Assembly, particularly in integrating co-management and a collaborative approach to decision-making. However, a number of important Indigenous Governments did not participate. For example, the Dehcho First Nations and Akaitcho Territory government do not appear to have been directly involved. Committee understands that there are also capacity issues for Indigenous Governments and co-management bodies. A number of co-management bodies do not appear to have been engaged (the land use planning boards and Deh Cho Land Use Planning Committee).

Despite requests from Committee for an opportunity to discuss what might be shared with Committee during the co-drafting process, the Department did not share any information with us beyond what was publicly available: no policy options, policy intentions or rationale for approaches were shared.

If information on policy options and policy intentions could be shared earlier than the receipt of a Bill, this would reduce the amount of time spent on understanding how issues are dealt with during the review of a Bill. There were several significant areas of

concern for Committee and the public: coordination with land use planning, annual reporting, a public registry, surface interest holders, collaboration with municipal governments and others. All involved could have benefited from earlier communication, information exchanges, and more time.

Recommendation 4: Standing Committee on Economic Development and Environment recommends that representatives from Technical Working Groups should meet with Standing Committee earlier in the process, closer to the beginning of the co-drafting process, to discuss opportunities to share information on policy options and policy intentions for resource management legislation.

The co-drafting process took a lot of time and energy but pushed Bill 74 to the end of the term of the 19th Assembly. The timelines set out in the Process Convention are very tight. Further progress may have been possible on some issues had there been more time allowed under the Process Convention for this kind of collaborative review.

Recommendation 5: Standing Committee on Economic Development and Environment recommends that if the overall legislative timeframe allows, there should be the ability to extend Standing Committee reviews of resource management Bills to allow for completion of the collaborative review process.

Recommendation 6: Standing Committee on Economic Development and Environment recommends that exchanges between Standing Committees, the Departments and Technical Working Groups on the review of resource management Bills should be made public where possible and documented in Committee reports on resource management Bills.

On the issue of resourcing, Committee notes that GNWT received a permanent and indexed offset as part of the Territorial Formula Funding arrangement of \$24 million in 1987 during the devolution of forestry responsibilities from the federal government. In 2023, the value of this offset is roughly \$55 million according to the Department. The Department usually spends about \$35 million annually on forestry, including wildfire suppression. While there are some years where significant additional resources are required for fires such as this 2023 season, and while some of this money may be recoverable from the federal government as part of emergency response, not all the funds secured through forestry devolution appear to be spent on forest management.

Committee notes that concerns were raised in the 18th and 19th Assemblies about the resourcing of Departments for co-drafting and public engagement for resource management legislation. The Department informed Committee that the *Forest Act* review and engagement would be conducted using internal resources. Committee notes that the Department of Industry, Tourism and Investment (ITI) has been very successful in acquiring additional resources for staffing and for the development of regulations to implement the *Mineral Resources Act*. ITI has also secured an additional \$3.7 million for the Mineral Administration and Registry System (MAARS) which will include a public registry component. Resourcing of the Department for the co-drafting process appears to have limited public engagement which was abbreviated and left to the end of the process.

Several important issues were raised during the review of Bill 44 in the 18th Assembly and persisted during the review Bill 74 in the 19th Assembly. For example, a public registry - or public access to important documents and decisions – and public reporting on key activities have been raised numerous times but were not dealt with in Bill 74 as drafted. Committee is of the view that the public engagement undertaken as part of Bill 74 was not adequate. The public engagement can and should be conducted concurrently with the co-drafting process.

Recommendation 7: Standing Committee on Economic Development and Environment recommends that Departments undertaking the co-drafting of resource management legislation and regulations should secure additional resources for this process and conduct more robust public engagement.

Recommendation 8: Standing Committee on Economic Development and Environment recommends that Departments undertaking the co-drafting of resource management legislation and regulations should share more information with the public about policy options and policy intentions and conduct public engagement earlier in the process (i.e., not wait until the end of the co-drafting process). Public engagement can and should run concurrently with the co-drafting process.

The Department will take on significant new forest management responsibilities as a result of Bill 74, especially in the areas of creating and implementing forest ecosystem management plans, collaboration with Indigenous governments and co-management bodies, making more information public and annual reporting, and much more. Committee notes that the last publicly available map showing forest vegetation management inventory is dates 2015. There does not appear to be much research or

forest inventory work publicly available. The 2019 Forest Health Report and 2020 Forest Health Report were released in March 2022.^{xxxii} The status of overall forest management research and inventory work is not clear.

Additional resources are clearly needed to ensure forest inventory and planning work that is required to identify areas for sustainable forest harvesting. With these areas and opportunities identified, new economic diversification can and should take place, with government supports where necessary. New forestry operations can create jobs in all of our communities by replacing much of the timber and forest products we currently import. Bill 74 sets the stage for sustainable forestry and new business opportunities. The Department needs to ensure it has the resources and business cases in hand to make this happen.

Recommendation 9: Standing Committee on Economic Development and Environment recommends that the Department of Environment and Climate Change prepare a detailed budget and work plan for continued co-development of regulations necessary for a new Forest Act, allowing for more public engagement on those regulations, and the implementation of its new responsibilities under a new Forest Act.

CONCLUSION

Committee sincerely thanks all those who participated in the development and review of Bill 74 Forest Act. The new Process Convention has worked and should continue into the next Assembly. This concludes Standing Committee's review of Bill 74: *Forest Act*.

Typically, Committee includes a recommendation in each report requesting a response from government within 120 days. The recommendation is then moved as a motion in the House and Cabinet is required to respond. However, since the 19th Legislative Assembly will dissolve in less than 120 days, Committee requests that the government provide a public response to this report at the earliest opportunity.

ENDNOTES

ⁱ Bill 74 is available at: https://www.ntassembly.ca/sites/assembly/files/bill_74_-_public_version.pdf.

ⁱⁱ The “Forest Fire Management Policy” (54.04) available on the GNWT’s website was last revised on March 10, 2005,

https://www.gov.nt.ca/ecc/sites/ecc/files/documents/53_04_forest_fire_management_policy.pdf.

ⁱⁱⁱ A plain language summary of Bill 74 is available at:

https://www.ntassembly.ca/sites/assembly/files/td_886-192_plain_language_summary_for_bill_74_forest_act.pdf.

^{iv} On March 12, 2019, Bill 44: *Forest Act* received second reading in the House. That month the Department released a *What We Heard Report*. The Minister along with Standing Committee on Economic Development announced that Bill 44 required substantial changes and would be re-introduced in the 19th Assembly.

Bill 44 - Forest Act was withdrawn from the order paper, <https://www.gov.nt.ca/en/newsroom/joint-release-announcement-bill-38-protected-areas-act-and-bill-44-forest-act>.

^v Intergovernmental Council on Land and Resource Management: Legislative Development Protocol, https://www.igcnwt.ca/sites/daair-igc/files/2020-12-02_igc_mtg_-_igc_legislative_development_protocol-final.pdf.

^{vi} The Legislative Assembly Process Convention requires that Committee consider the paragraphs of the Convention when the Minister sponsoring a Bill advises the House that it has been drafted under the IGC Legislative Drafting Protocol – this is the case for Bill 74, which was acknowledged in the House on March 9, 2023. See also “Process Convention: Introduction, Consideration and Enactment of Bills Drafted Pursuant to the Intergovernmental Council Legislative Development Protocol,”

https://www.ntassembly.ca/sites/assembly/files/td_885-192_process_convention-bills_pursuant_to_intergovernmental_council_legislative_development.pdf.

^{vii} See the *United Nations Declaration on the Rights of Indigenous Peoples*,

https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf. Committee also notes that the current statement of environmental values also references UNDRIP which was raised by Indigenous Governments in their s. 35 review of the Bill.

^{viii} See, “Summary of Policy Intentions: A new Forest Act for the NWT,”

https://www.gov.nt.ca/ecc/sites/ecc/files/resources/plain_language_summary_policy_intentions_forest_act.pdf.

^{ix} See *WHAT WE HEARD: A Forest Act for the NWT*,

https://www.ntassembly.ca/sites/assembly/files/td_879-192_what_we_heard_-_a_forest_act_for_the_nwt_february_2023.pdf.

^x The “Open Government Policy” (11.54) available on the GNWT’s website was last revised on November 16, 2017, https://www.eia.gov.nt.ca/sites/eia/files/2018-01-08_open_government_policy_-_signed.pdf.

^{xi} See the GNWT’s “Summary of Policy Intentions: A new Forest Act for the NWT,”

https://www.gov.nt.ca/ecc/sites/ecc/files/resources/plain_language_summary_policy_intentions_forest_act.pdf.

^{xii} See Aurora Wood Pellets’ submission here:

https://www.ntassembly.ca/sites/assembly/files/images/aurora_wood_pellets_submission_bill_74.pdf.

^{xiii} The June 6, 2023, letter sent by email by the Land and Water Boards of the Mackenzie Valley contains their original submission to the GNWT about Bill 74: *Forest Act*,

<https://wlb.ca/media/1914/download?inline>.

^{xiv} The Wek’èezhì Renewable Resources Board’s June 14, 2023, letter is available here:

https://www.ntassembly.ca/sites/assembly/files/images/2023-06-14_-_feedback_submission_-_bill_74_forest_act_-_wrrb.pdf.

^{xv} Dehcho Land Use Planning Committee’s June 28, 2023, letter is available here:

https://www.ntassembly.ca/sites/assembly/files/images/dehcho_land_use_planning_committee_0.pdf.

- ^{xvi} See Northwest Territories Association of Communities (NWTAC) submission here: https://www.ntassembly.ca/sites/assembly/files/images/nwt_association_of_communities.pdf.
- ^{xvii} See Canadian Parks and Wilderness Association NWT Chapter and Alternatives North joint letter, dated July 6, 2023, https://www.ntassembly.ca/sites/assembly/files/images/canadian_parks_and_wilderness_society_nwt_chapter.pdf.
- ^{xviii} Northwest Territories Legislative Assembly, YouTube channel, Standing Committee on Economic Development and Environment, April 28, 2023, Public Ministerial Briefing on Bill 74, <https://www.youtube.com/watch?v=DXJZIUBJB1M>.
- ^{xix} Committee thanks Whati SAO, Lisa Nitsiza, who provided members with tour of the fire line as well as assistance after the meeting, and also Dale Basnett who helped troubleshoot the audio equipment and ensured the microphones for translation and interpretation services were working properly.
- ^{xx} Committee thanks the Superintendent of Wildlife and Forest Management, in the DehCho Region, and staff for an informative tour of ECC's facilities on June 15, 2023.
- ^{xxi} Committee thanks Michael St Amour, Mayor of Enterprise, for prompting members to tour the firebreak after Committee's public meeting on June 16, 2023.
- ^{xxii} A recording of this April 28, 2023, meeting is available on YouTube: <https://www.youtube.com/watch?v=DXJZIUBJB1M>.
- ^{xxiii} A video of the meeting is available on Facebook: <https://www.facebook.com/LegislativeAssemblyNWT/videos/1075897486726974>.
- ^{xxiv} The NWT Statement of Environment Values was developed and approved by Cabinet pursuant to the *Environmental Rights Act*.
- ^{xxv} See the *Surface Rights Board Act*, <https://nwtsrb.ca/sites/default/files/surface-rights-board.a.pdf>
- ^{xxvi} See the *Child Day Care Act*, <https://www.justice.gov.nt.ca/en/files/legislation/child-day-care/child-day-care.a.pdf>.
- ^{xxvii} See the "Cabinet Operational Guidelines" outlined here: https://www.eia.gov.nt.ca/sites/eia/files/2021_04_22_ecshb.pdf.
- ^{xxviii} The GNWT's 2014 Fire Season review is available here: https://www.gov.nt.ca/ecc/sites/ecc/files/web_pdf_fmd_2014_fire_season_review_report_4_may_2015.pdf.
- ^{xxix} See <https://www.gov.nt.ca/ecc/en/services/wildfire-operations/community-wildland-fire-protection-plans/Community%20Wildland%20Fire%20Protection%20Plans%20-%20by%20community>.
- ^{xxx} See <https://www.gov.nt.ca/ecc/en/services/prepare-wildfire-firesmart-nwt/homes-cabins-camps-and-businesses-and-communities> <https://www.gov.nt.ca/ecc/en/services/prepare-wildfire-firesmart-nwt/communities-and-local-governments>.
- ^{xxxi} See <https://firesmartcanada.ca/wp-content/uploads/2022/01/FireSmart-Protecting-Your-Community.pdf>.
- ^{xxxii} See https://www.gov.nt.ca/ecc/sites/ecc/files/resources/2019_forest_health_report.pdf, and https://www.gov.nt.ca/ecc/sites/ecc/files/resources/2020_forest_health_report.pdf.

GNWT Summary of Discussions on Proposed Amendments (Motions)

MOTION	TOPIC	DESCRIPTION OF MOTION	RELEVANT SECTION of BILL 74	SCEDE POLICY RATIONALE (from July 14 Correspondence)	SUMMARY OF IGC TWG DISCUSSIONS
1	Land Use Planning	<p>Adds an overarching requirement that decisions and actions made under the Act will be consistent with</p> <ul style="list-style-type: none"> - land use plans; - zoning regulations; - bylaws and Déline laws. 	5.1	<ul style="list-style-type: none"> • Committee received a submission from the Dehcho Land Use Planning Committee (DLUPC), noting that the Bill “does not speak to authority of approved and legally binding land use plans to restrict the Minister or Forest Superintendent to authorize the use of forest resources.” • The written submission from the NWT Association of Communities (NWTAC) raised the issue that forest management decisions should be consistent with “various types of community bylaws, including but not limited to, General Plans and Zoning By-laws, fire prevention by-laws, tree harvesting by-laws, soil protection by-laws, open air burning bylaws” among others. • This issue was also raised by the mayors and councilors during public hearings in Fort Simpson and Enterprise. Committee believes the Bill needs to be consistent with land use planning in the NWT and any applicable bylaws, and thus recommends adding a subsection to s. 5 outlining this. 	<p>The TWG was concerned that this motion may create uncertainty. Several legal issues were noted with the proposal. It was also noted that not all elements of forest protection, particularly wildfire response, will comply with local bylaws.</p> <p>TWG recognizes the importance of Land Use planning in the NWT and the concerns raised to SCEDE by the DLUPC and proposed that the clarity desired is best placed in Part 5 of Bill 74 which deals with forest permits and licences. This is consistent with the comments of DLUPC and the legal effect of land use plans. See Motion 16E for motions TWG and SCEDE collaborated on to address the Land Use Planning Topic more appropriately.</p>
1.1	Statement of Environmental Values	<p>Adds a requirement for plans, policies and programs developed under s.12(1) to consider a statement of environmental values prepared under the <i>Environmental Rights Act</i>.</p>	12(2)	<ul style="list-style-type: none"> • In their written submission, Canadian Parks and Wilderness Association NWT Chapter (CPAWS) and Alternatives North (AN) recommended including acknowledgments of the Statement of Environmental Values and the precautionary principle in the preamble of the Bill. However, after discussion, Committee agreed it would be better to amend s. 12(2) (which sets out the way in which the Minister will carry out their authority), taking into account any final statement of environmental values prepared or amended under section 17 of the Environmental Rights Act. • Committee also notes that the current statement of environmental values also references UNDRIP which was raised by Indigenous Governments in their s. 35 review of the Bill. 	<p>The TWG discussion raised concerns with this motion distracting from the ecosystem-based approach that was designed by the TWG in s. 12. The ERA already creates obligation on the GNWT, and the proposed amendment was seen as duplicative to that legislation.</p>

GNWT Summary of Discussions on Proposed Amendments (Motions)

MOTION	TOPIC	DESCRIPTION OF MOTION	RELEVANT SECTION of BILL 74	SCEDE POLICY RATIONALE (from July 14 Correspondence)	SUMMARY OF IGC TWG DISCUSSIONS
2	Information to public	Requires that the Minister make information prescribed by regulations [to be developed] publicly available on a website maintained by the Department.	14.1	<ul style="list-style-type: none"> • Committee heard during its public meetings, and in written submissions from NGOs, that the Minister should make information about forest related activities public. NWTAC also raised this issue. • CPAWS and AN recommended a public registry. Given past concerns from the Department regarding a public registry, Committee recommends that where possible important documents and decisions be published on a website maintained by the Department and suggests amending s.14. 	TWG had considered a public registry during the development of the bill. The lack of a registry in Bill 74 was the result of a choice made by the TWG to avoid burdensome and nonessential website maintenance that would potentially require additional operational resources to maintain. Several items that are meaningful for the public to access are expected to be made available and posted publicly as the detailed requirements are designed in regulations. As a compromise approach, members of the TWG have incorporated four key elements into a re-drafted motion, with additional requirements to be set out in regulations.
3	Reasons	Adds a requirement to include reasons under s.22(3) to the information required to be made public under the new s.14.1(1) (added through Motion 2). Reasons under s.22(3) are added through Motion 5.	14.1(1)	<ul style="list-style-type: none"> • This relates to Motion 2, concerning s. 14.1(1)(h) and the rationale remains the same. 	This motion added an additional, unnecessarily detailed item to the list provided in Motion 2. See comment under motion 2 for TWG recommended approach.
4	Annual Report	<ul style="list-style-type: none"> - Adds a requirement for the FS to produce an annual report covering: <ul style="list-style-type: none"> o activities of the FS under s.23(2); o forest ecosystem management plans under s.24(1); o monitoring under s.26(1); 	15.1	<ul style="list-style-type: none"> • Traditional Knowledge keepers who attended the public hearing in Fort Simpson spoke about the importance of forest renewal. • Attendees at the hearings in Fort Simpson and Enterprise asked for more information about forest management and replanting practices. • Residents who spoke at these public hearings voiced concerns about accountability for officials carrying out forest management, given the broad discretion in the Bill as to how forest ecosystem management plans and the forest monitoring are implemented. 	The TWG acknowledged that an annual report is advisable and was intending to address reporting of this kind in regulations but recognized that it could be in the act itself. The motion required revision because the timelines were not realistic as the bulk of the administrative work would have fallen during fire season. The motions also required reporting on on-going investigations and other enforcement actions which was viewed as problematic. A re-drafted motion proposed to modify these aspects but preserve the mandatory

GNWT Summary of Discussions on Proposed Amendments (Motions)

MOTION	TOPIC	DESCRIPTION OF MOTION	RELEVANT SECTION of BILL 74	SCEDE POLICY RATIONALE (from July 14 Correspondence)	SUMMARY OF IGC TWG DISCUSSIONS
		<ul style="list-style-type: none"> ○ forest renewal activities under s.57; ○ any information prescribed by regulation. <p>- Adds a requirement that the report be published on a website.</p>		<ul style="list-style-type: none"> • Committee recommends amending s.15.1 so that activities and information can be publicly available and included in an annual report delivered by the Forest Superintendent. 	reporting requirement and a number of clear requirements.
4.1	Change a purpose of Part 2 of the Act.	Deletes “working relationships for effective” from s.7(b).	7(b)	<ul style="list-style-type: none"> • CPAWS and AN noted that the purpose language in s. 7 “is vague” and “would be clearer if the reference to ‘working relationships’ is simply removed.” Committee agrees and supports a motion to this effect. 	The TWG felt that this change reflected the policy intent.
5	Reasons	Adds a requirement for the Minister to provide reasons for a decision under s.22(3).	22(3)	<ul style="list-style-type: none"> • This amendment concerning written reason for decisions in s. 22(3) relates to motion 2, concerning s. 14.1(1)(f) and the rationale remains the same. • Committee notes that concerns around the exercise of this Ministerial discretion over dispute resolution were also raised during the s. 35 consultation. 	The TWG notes that the phrases “after the dispute resolution process has concluded” and “upon provision of written reasons” are substantively the same. It would not have been possible with Bill 74 as drafted to conclude the dispute resolution process without having provided reasons as contemplated by the motion. The TWG supports the motion on the basis that it does not alter the policy intent nor outcome.
6	Climate change	Adds potential impacts of a changing climate as a consideration in forest ecosystem management plans under s. 24(1).	24	<ul style="list-style-type: none"> • Committee heard comments both in public hearings and in written submissions about the effects of the changing climate on the forest ecosystem. For instance, during a public hearing in Whati, Traditional Knowledge keepers and elders spoke about how forest fires from previous years impacted local wildlife and caribou migration. • Residents remain adamant that the West side of the lake, which did not burn in 2014, be protected. • Residents in Fort Simpson commented on the need to manage the species of tree in NWT forests, noting more 	The TWG was uncomfortable with the concentration on “historical” data as partially determining the understanding of the impacts of climate change will necessarily include looking forward. After working with Committee and removing the reference to historical data, the TWG supports the motion.

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MOTION	TOPIC	DESCRIPTION OF MOTION	RELEVANT SECTION of BILL 74	SCEDE POLICY RATIONALE (from July 14 Correspondence)	SUMMARY OF IGC TWG DISCUSSIONS
				<p>poplar and birch trees could possibly help prevent out of control forest fires.</p> <ul style="list-style-type: none"> The NWT Association of Communities (NWTAC) noted that practices like wildfire breaks and fire smarting approaches “become even more critical as the Wildfire risk increases due to climate change.” (This was also noted by CPAWS and AN on page 7 of their submission.) With this focus on changing climate, Committee recommends amending s. 24 so that ecosystem management plans, consider potential impacts of a changing climate based on any relevant historical data (i.e. fire history and Traditional Knowledge as noted). 	
7	Public engagement	Adds a requirement for public engagement prior to the establishment of a forest ecosystem management plan under section 24.	24	<p>Rationale provided:</p> <ul style="list-style-type: none"> Further to comments on Motion 6, and based on what we heard and the NGO submission, Committee supports amendments for public engagement during the development of forest ecosystem management plans in s. 24(2). 	The TWG noted that public engagement was always planned as part of the development of forest ecosystem management plans and the TWG supports the motion if it does not negatively impact timelines or prescribe specific engagement methods. There was a general sentiment that this matter should be left to the regulations, but the TWG recognized that it could go in the act itself.
8	Public engagement	Adds a requirement for public engagement prior to the establishment of a forest harvesting agreement under s.25.	25(1.1)	No rationale provided.	The TWG was concerned that this motion would be duplicative in part since forest ecosystem management plans will be developed in a process that includes public engagement. However, the TWG agreed that public engagement should be required when there is no forest ecosystem management plan.
9	Fix typo	Corrects a typo in s. 25(2): the reference should be to “forest ecosystem management plan” rather than “forest management plan”.	25(2)	Corrects a typo.	The TWG supported fixing the typo.

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MOTION	TOPIC	DESCRIPTION OF MOTION	RELEVANT SECTION of BILL 74	SCEDE POLICY RATIONALE (from July 14 Correspondence)	SUMMARY OF IGC TWG DISCUSSIONS
10	Forest ecosystem management plan	Adds a requirement that a forest harvesting agreement must be consistent with any forest ecosystem management plan in the same area.	25(2.1)	No rationale provided.	The TWG was concerned that the broad language used in the motion would result in a requirement for forest harvesting agreements to be consistent with all forest ecosystem management plans rather than just those forest ecosystem management plans that exist in the area to be harvested. The TWG supports the re-drafted motion as it satisfies the goals of SCEDE while ensuring appropriate nuance.
11	Surface rights holders	<ul style="list-style-type: none"> - Adds a requirement for the FS to engage with surface right holders before entering into a forest harvesting agreement. - Adds a requirement for the Minister to make regulations respecting the protection of and compensation for surface right holders affected by forest harvesting agreements 	25	No rationale provided.	<p>The types of concerns Committee is trying to address in relation to “surface rights holders” was discussed by the TWG during the development of bill 74 and the bill’s shift toward plan-based approach through Forest Ecosystem Management Plans. The TWG hopes Committee will recognize the value of Forest Ecosystem Management Plans and their collaborative development to prevent several potential issues.</p> <p>The TWG generally felt that the Committee’s concern for how municipalities, landowners and lessees are considered in the issuance of forest authorizations is best captured within regulations (they are currently dealt with in s.4 and s.12 of the Forest Management Regulations).</p> <p>The TWG noted two main issues with the motion: First, that obligations under proposed (7) related to engagement and (8) related to protection of rightsholders are redundant as that process would happen regardless; Second, that the motion seems to attempt to solve a problem that doesn’t exist as ECC</p>

GNWT Summary of Discussions on Proposed Amendments (Motions)

MOTION	TOPIC	DESCRIPTION OF MOTION	RELEVANT SECTION of BILL 74	SCEDE POLICY RATIONALE (from July 14 Correspondence)	SUMMARY OF IGC TWG DISCUSSIONS
					does not allow forest harvesting where a lease or private land is held.
12	Climate change	Adds climate change impacts as a factor that the FS may consider in monitoring the state of a forest ecosystems.	26(1)	<ul style="list-style-type: none"> As per the public comments stated in the rationale for Motion 6, Committee recommends amending s. 26(1) to include climate change impact. 	The TWG noted that this motion adds a clause to a discretionary, non-exhaustive list and supports the motion.
13	Language change	Changes the reference to a fire “kindled” to a fire “burning”, to avoid an argument that a person could remove a fire kindled in a stove, furnace or other device and leave it burning outside of the device.	29(3)	<ul style="list-style-type: none"> Committee proposes a correction to s. 29(3) striking out "kindled in" and substituting "burning in", to close a potential loophole that would exempt fires started in a stove but subsequently transferred to an outdoor pit from needing to be extinguished. 	The TWG supports the motion as it does not alter what is intended.
14	Notice to public	<ul style="list-style-type: none"> Replaces s.38 to add requirements for the FS to notify the public where: <ul style="list-style-type: none"> Activities have been prohibited in a restricted area under s.36(1)(b); Entry to a restricted area has been prohibited under s.36(1)(c); or A fire restriction has been declared under s.37(1). 	38	<ul style="list-style-type: none"> This relates to Motions 2-3, and 7, etc., concerning s. 38, and the rationale remains the same. 	The TWG supported the additional public notice requirements suggested by Committee but noted concerns with how the motion was initially worded as it included public notice of all prescribed burns. Prescribed burns can happen on an emergency basis in response to wildfire conditions. There will be no time for public notice before an emergency prescribed burn. The motion was modified to provide that public notice is not required if it is on or near an existing wildfire. The TWG supports the modified motion.

GNWT Summary of Discussions on Proposed Amendments (Motions)

MOTION	TOPIC	DESCRIPTION OF MOTION	RELEVANT SECTION of BILL 74	SCEDE POLICY RATIONALE (from July 14 Correspondence)	SUMMARY OF IGC TWG DISCUSSIONS
		<ul style="list-style-type: none"> - Maintains the existing requirements for the FS to notify the public of: <ul style="list-style-type: none"> o a prescribed burn other than prescribed burns on or near an existing wildfire; or o a declaration of a restricted area. 			
15	Community engagement	Adds a requirement for the owner or operator of an industrial activity to provide a wildlife prevention and preparedness plan to the government of an affected community for comment.	45	<ul style="list-style-type: none"> • This issue of Wildfire prevention and preparedness plans concerning industrial/commercial activities was raised by the mayors, councilors, and residents during public hearings in Fort Simpson and Enterprise. NWTAC also raised this concern in their written submission. Committee believes there should be clear direction for engagement and recommends amending 45(2) and (3). 	<p>The TWG was concerned with this motion for several reasons. The initial motion’s clauses were unnecessarily complex, including details that may make regulation development difficult. The TWG also expressed that the intent had been to have this matter covered by regulations.</p> <p>The TWG supports the revised motion to notify affected community governments. Certainty regarding that matter was described in a way that still allows regulations to deal with the remainder of the process.</p>
15.1	Mandatory hazard assessment	Makes it mandatory for an owner or operator of an industrial activity to conduct a hazard assessment where new developments are to be carried out in an area not covered by a wildlife prevention and preparedness plan.	45(5)	<ul style="list-style-type: none"> • Motion 15.1 proposes a hazard assessment requirement to prevent fire be made mandatory rather than discretionary as recommended by the NGOs. 	The TWG noted that not all industrial activities pose fire risk and that a mandatory requirement that all owners or operators do hazard assessments did not reflect realistic risks. The TWG does not support this motion.
16	Forest ecosystem	Adds a requirement that a permit or licence must be consistent with any forest ecosystem management	48(2.1)	No rationale provided.	The TWG noted that the goal was always to ensure authorizations were consistent with the Forest Ecosystem Management Plans, but supported the

GNWT Summary of Discussions on Proposed Amendments (Motions)

MOTION	TOPIC	DESCRIPTION OF MOTION	RELEVANT SECTION of BILL 74	SCEDE POLICY RATIONALE (from July 14 Correspondence)	SUMMARY OF IGC TWG DISCUSSIONS
	management plan	plan or binding land use plans in the same area.			clarification in the motion and worked to revise the wording to appropriately apply only to the area under the plan. The TWG also recognized this as an appropriate place to deal with the effect of legally binding land use plans on forest permits and licences in response to the concerns the Dehcho Land Use Planning Committee brought to Committee. A re-drafted motion was developed to include both improvements.
16.1	Surface rights holders	Adds a requirement to notify surface right holders where an application is received for a prescribed class of permit or licence.	48(4.1)	No rationale provided.	<p>The TWG noted that the types of concerns Committee is trying to address in relation to “surface rights holders” was discussed by the TWG during the development of bill 74 and directly related the shift toward plan-based approach through Forest Ecosystem Management Plans. The TWG hopes Committee will recognize the value of Forest Ecosystem Management Plans and their collaborative development to prevent several potential issues.</p> <p>The TWG also felt that the interests captured by motions are specific concerns intended for regulations and it was impractical to evaluate, refine and develop appropriate definitions in relation to these motions without negatively impacting the work of the TWG on regulations.</p> <p>The TWG expressed the following concerns with the motion as drafted:</p> <ul style="list-style-type: none"> • Unless the prescribed class is narrow in regulations, this provision will capture a large number of licences and permits - ECC would be required to send 1000+

GNWT Summary of Discussions on Proposed Amendments (Motions)

MOTION	TOPIC	DESCRIPTION OF MOTION	RELEVANT SECTION of BILL 74	SCEDE POLICY RATIONALE (from July 14 Correspondence)	SUMMARY OF IGC TWG DISCUSSIONS
					<p>documents per year as notice, which has corresponding obligations for receiving parties. Operationally, this is not a sustainable workload for any of the TWG members captured by the motions.</p> <ul style="list-style-type: none"> • TWG notes that RRBs and ECC have agreements in place for when notification is required (above an agreed threshold) already. • TWG had considered this type of provision during policy development but ultimately decided against it due to the burden it would place on all parties. • Concerns that the motion attempts to reach into obligations to notify IGOs that have already been worked through. • Notice requirements and input of these parties will have been addressed in forest ecosystem management plan development and implementation so this will become duplicative before long. The TWG wants to ensure the value of Forest Ecosystem Planning to streamline these permitting processes is realized.
17	Surface rights holders	Adds a requirement to notify surface right holders of where a prescribed class of permit or licence is issued.	48(5.1)	No rationale provided.	The TWG felt that the interests and concerns raised by Committee are well-meaning and are planned to be appropriately defined and addressed in regulations. See comments under motion 11 for further detail.

GNWT Summary of Discussions on Proposed Amendments (Motions)

MOTION	TOPIC	DESCRIPTION OF MOTION	RELEVANT SECTION of BILL 74	SCEDE POLICY RATIONALE (from July 14 Correspondence)	SUMMARY OF IGC TWG DISCUSSIONS
18	Surface rights holders	<ul style="list-style-type: none"> - Adds a requirement for the FS to engage with surface right holders before issuing a permit or licence. - Adds a requirement for the Minister to make regulations respecting the protection of and compensation for surface right holders affected by a permit or licence. 	48	No rationale provided.	The TWG felt that the interests and concerns raised by Committee are well-meaning and are planned to be appropriately defined and addressed in regulations. See comments under motion 11 for further detail.
19	Reasonable time to provide evidence of right to harvest forest resources.	Adds that the regulations may define classes of people to whom subsection (4) does not apply and requires compliance with those regulations instead of subsection (4).	50(4)	<p>Rationale provided for older version of Motion 19:</p> <ul style="list-style-type: none"> • In the public meeting in Whatì, Committee heard about residents driving away from the community to harvest forest resources. Committee became concerned about producing identification in accordance with 50(4), and that it may be impracticable for residents to always carry identification. Committee recommends this section be changed to “as soon as is practicable after receiving a request from an officer.” <p>No rationale provided for the subsequent, modified approach to Motion 19.</p>	<p>Members of the TWG were very concerned with the motion as originally drafted because it changed the policy intent, which was to allow flexibility for development of the regulations to deal with the details associated with determining how someone exercising a right to harvest would be able to provide evidence.</p> <p>TWG worked with Committee to refine the motion and have improved clarity.</p> <p>The motion was varied after discussions between the TWG and Committee to account for the concerns expressed by the TWG while maintaining Committee’s core interest in ensuring that people will not have to carry documentation with them if an alternative process is described in the regulations. The TWG supports the amended motion as it provides additional clarity while maintaining flexibility for approaches in the regulations.</p>

GNWT Summary of Discussions on Proposed Amendments (Motions)

MOTION	TOPIC	DESCRIPTION OF MOTION	RELEVANT SECTION of BILL 74	SCEDE POLICY RATIONALE (from July 14 Correspondence)	SUMMARY OF IGC TWG DISCUSSIONS
20	Reforestation fund	Adds a requirement to publish the audited financial statements of the reforestation fund on a website maintained by the department.	57.1	<ul style="list-style-type: none"> This relates to Motions 2-3, 7, and 14 etc., concerning s. 57, and public reporting on the Reforestation Fund. The rationale remains the same. 	The motion duplicates provisions of the FAA so the TWG did not support it.
21	Appeals	<ul style="list-style-type: none"> Clarifies that an “approved form” means a form approved by the Minister. Clarifies that s.60 appeals apply to decisions or orders of the FS acting in their capacity as an officer. Adds an exception so that decisions under Part 7 are not appealable. Requires appointment of an adjudicator in prescribed circumstances or where a decision of the FS is under appeal. 	60	<ul style="list-style-type: none"> Motions 21, 22, and 23 were driven by uncertainty in the appeal mechanisms in the Bill as drafted. The proposed amendments add clarity and more clearly define the role of the Forest Superintendent and the Minister, to encourage fairness, transparency, and consistency in decision-making. Committee’s correspondence with the GHL also acknowledged that these sections were in need of improvement. 	<p>The TWG identified some improvements in the original motion from Committee including the addition of an exception. The TWG did recognize that some of the other changes may have created an alternative vehicle for appeals and may had a range of unintended consequences.</p> <p>After working to amend the motion, the TWG is generally supportive as it has been refined for clarity and updated the class of people eligible to appeal to only those “adversely affected”, which the TWG felt was reflective of the policy intention.</p>
22	Language change	Replaces “a person affected” with “a person aggrieved”, the latter being the expression used in many pieces of territorial legislation (see, for example, the Limitations of Actions Act). Use of that expression should adopt the associated common law.	60(1)	<ul style="list-style-type: none"> Motions 21, 22, and 23 were driven by uncertainty in the appeal mechanisms in the Bill as drafted. The proposed amendments add clarity and more clearly define the role of the Forest Superintendent and the Minister, to encourage fairness, transparency, and consistency in decision-making. Committee’s correspondence with the GHL also acknowledged that these sections were in need of improvement. 	The TWG had discussed the difference between “aggrieved” and “affected” in the policy development process and chose the latter. The TWG reexamined the wording in light of this motion, but this motion will be unnecessary due to the changes proposed under motion 21.

GNWT Summary of Discussions on Proposed Amendments (Motions)

MOTION	TOPIC	DESCRIPTION OF MOTION	RELEVANT SECTION of BILL 74	SCEDE POLICY RATIONALE (from July 14 Correspondence)	SUMMARY OF IGC TWG DISCUSSIONS
23	Appeals	Adds a right of appeal for a person aggrieved by a compliance order under s.100 to the Supreme Court.	60	<ul style="list-style-type: none"> Motions 21, 22, and 23 were driven by uncertainty in the appeal mechanisms in the Bill as drafted. The proposed amendments add clarity and more clearly define the role of the Forest Superintendent and the Minister, to encourage fairness, transparency, and consistency in decision-making. Committee’s correspondence with the GHL also acknowledged that these sections were in need of improvement. 	The TWG does not support this motion as it appeared to be an attempt to regulate Supreme Court process through program legislation.
24	Surface rights holders	Adds a right of appeal for surface right holders affected by a permit or licence specified in a notice under s.48(5.1).	62(1.1)	No rationale provided.	The TWG expressed concerns with providing appeal rights to an undefined group of “surface rights holders”. Further, the TWG had difficulty envisioning a circumstance where this would occur as forest harvesting authorizations are not issued on privately owned land or leased land. Committee staff also suggested that nuisance may be a reason for appeals or compensation. Nuisance claims trigger very specific evidentiary and legal processes that are best resolved by the courts. See comments under motion 11 for further detail.
25	Surface rights holders	Adds a requirement to give notice to surface right holders of an appeal under s.61, 62 or 63(1).	66(1)	No rationale provided.	See comments under motion 24.
26	Surface rights holders	Together with Motion 25, adds a right to intervene in an appeal under s.61, 62 or 63(1) for surface right holders.	66(2)	No rationale provided.	See comments under motion 24.
26.1	Information to public	<ul style="list-style-type: none"> Coordinating motion with Motion 2. Regulations making authority for info to the public. 	127	Coordinating motion.	The TWG considered this amended motion with Motion 2 and supports it as a coordinating motion.

GNWT Summary of Discussions on Proposed Amendments (Motions)

MOTION	TOPIC	DESCRIPTION OF MOTION	RELEVANT SECTION of BILL 74	SCEDE POLICY RATIONALE (from July 14 Correspondence)	SUMMARY OF IGC TWG DISCUSSIONS
26.2	Annual report	<ul style="list-style-type: none"> - Coordinating motion with Motion 4 - Reg-making authority for annual report 	127	Coordination motion.	The TWG considered this amended motion with Motion 4 and supports it as a coordinating motion.
27	Surface rights holders	<ul style="list-style-type: none"> - Adds a regulation making authority to make regulations respecting the protection of and compensation to the holders of surface rights affected by forest harvesting agreements. - Makes non-substantive corrections. 	127	No rationale provided.	See comments under motion 11.
27.1	Community engagement	<ul style="list-style-type: none"> - Coordinating motion with Motion 15. 	127	Coordinating motion.	The TWG supports the amended motion as a coordinating motion.
28	Numerical changes	<ul style="list-style-type: none"> - Corrects incorrect numerical references in s.127(z.02) and (z.03). 	127	Correction.	TWG supports this motion.
29	Surface rights holders	<ul style="list-style-type: none"> - Adds a regulation making authority to make regulations respecting the protection of and compensation to the holders of surface rights affected by permits or licences. - Makes non-substantive corrections. 	127	No rationale provided.	Coordinating regulation making authority. See comments under motion 11.
29.1	Surface rights holders	Adds the ability to prescribe classes of permits of licences for which notice of an application for a	127(z.08)	No rationale provided.	Coordinating regulation making authority. See comments under motion 16.1.

GNWT Summary of Discussions on Proposed Amendments (Motions)

MOTION	TOPIC	DESCRIPTION OF MOTION	RELEVANT SECTION of BILL 74	SCEDE POLICY RATIONALE (from July 14 Correspondence)	SUMMARY OF IGC TWG DISCUSSIONS
		permit or licence must be provided to surface right holders under s.48(4.1).			
30	Surface rights holders	Adds the ability to prescribe classes of permits of licences for which notice must be provided to surface right holders under s.48(5.1), similar to s.48(5).	127(z.09)	No rationale provided.	Coordinating regulation making authority. See comments under motion 17.
30.1	Identification	Coordination motion with Motion 19.	127	Coordinating motion.	Coordinating regulation making authority. The TWG supports this amended motion with Motion 19 as a coordinating motion.
31	Appeals	Adds ability to make regulations regarding filing and procedure of appeals, appointment of adjudicators, and prescribing circumstances for 60(2.1)(b).	127(z.27); 60(2.1)(b)	Coordinating motion.	Coordinating regulation making authority. The TWG supports this amended motion as a coordinating motion with Motion 21.
32	Public engagement on regulations	Adds a requirement for public engagement before making regulations under the Act.	128	No rationale provided.	The TWG noted that engagement on regulations is an expected part of public governance. ECC stated they plan to do public engagement on regulations to bring Bill 74 into force. ECC also noted that a Cabinet Operational Guideline exists to clarify the public engagement process on regulations across all GNWT. Policy exist concerns with crafting these requirements on an act-by-act basis, limiting an easy-to understand citizen centric approach that evolves over time were raised. It was also noted that some emergency actions, including wildfire responses, may require the development of regulations without delay that are not reconcilable with providing for public engagement.

MOTION

FOREST ACT

That clause 14.1 of Bill 74 be amended by

- (a) renumbering that clause as subclause 14.1(1);**
- (b) deleting paragraphs (d) and (e) of that renumbered subclause and substituting the following:**
 - (d) any forest harvesting agreements entered into under subsection 25(1);
 - (e) any extensions or variations of the wildfire season declared under subsection 28(2);
 - (f) all wildfire prevention and preparedness plans submitted to the Forest Superintendent under subsection 45(2), any such plans resubmitted under subsection 45(3), and any hazard assessments conducted under subsection 45(5);
 - (g) all permits and licences issued under subsection 48(2), other than those that authorize the holder to undertake activities set out in that subsection solely for personal purposes;
 - (h) any prescribed information.
- (c) adding the following after that renumbered subclause:**

Exceptions

(2) Before publishing a forest harvesting agreement under paragraph (1)(d), the Minister may remove from the agreement any of the following information, the disclosure of which would be prohibited pursuant to the *Access to Information and Protection of Privacy Act*:

- (a) any ecologically or culturally sensitive information;
- (b) any information harmful to the financial or economic interests of a party to the agreement.

Exceptions

Exceptions

(3) Information is not required to be published

Exceptions

under subsection (1) if the information

- (a) is prohibited from disclosure under an Act of Canada or an Act of the Northwest Territories; or
- (b) is provided, implicitly or explicitly, in confidence to a person or body exercising powers or performing duties or functions under this Act, and is consistently treated as confidential information by the party providing the information.

MOTION

FOREST ACT

That subclause 15.1(1) of Bill 74 be amended by

(a) adding the following immediately preceding subparagraph (a)(i):

(0.i) any significant research activities of the Forest Superintendent under paragraph 15(3)(b),

(b) deleting "; and" at the end of the English version of subparagraph (a)(iv) and substituting a semicolon; and

(c) deleting paragraph (b) and substituting the following:

- (b) the total number of inspections and investigations conducted under Part 7;
- (c) the total number of fines and other penalties imposed under Part 8; and
- (d) any prescribed information.

MOTION

LOI SUR LES FORÊTS

L:\ML\DW\DRAFT#01\AUGUST 3, 2023\MOTIONS\SECOND.19\FOREST ACT\Motion 16.1 **VERSION 1 amending amended bill**(s.48(2.1))
forest ecosystem management plan ASZ\MEM\DW\VSTP\IER AOÛT 2023\EB 03

MOTION

FOREST ACT

That subclause 48(2.1) of Bill 74 be amended

- (a) in paragraph (a), by striking out "in respect of the" and substituting "in respect of an"; and**
- (b) in paragraph (b), by striking out "that is applicable in respect of the" and substituting "or zoning bylaw that is applicable in respect of an".**

MOTION

LOI SUR LES FORÊTS

L:\ML\DRAFT #03\AUGUST 3, 2023\MOTIONS\SECOND.19\FOREST ACT\ Motion 27.01 (s.127(z.01)) wildfire prevention and preparedness plan /ASZ/MEM/VSTP/AOÛT 2023/EB

MOTION

FOREST ACT

That paragraph 127(z.01) of Bill 74 be deleted and the following substituted:

(z.01) respecting requirements for wildfire prevention and preparedness plans under subsection 45(2), and the amendment of such plans;

MOTION

LOI SUR LES FORÊTS

LJ\ML\DRAFT #03\AUGUST 3, 2023\MOTIONS\SECOND.19\FOREST ACT\ Motion 27.2 **amending amended bill**
(s.127(z.01.1)) community engagement /ASZ/MEM/VSTP/1ER AOÛT 2023/EB 2

MOTION

MOTION

FOREST ACT

LOI SUR LES FORÊTS

That paragraph 127(z.01.1) of Bill 74 be amended by

- (a) striking out ", and" at the end of the English version of subparagraph (i) and substituting a comma;**
- (b) striking out the semicolon at the end of subparagraph (ii) and substituting ", and"; and**
- (c) adding the following after subparagraph (ii):**

(iii) respecting time periods within which plans must be provided;

MOTION

FOREST ACT

That Bill 74 be amended by adding the following after clause 128:

Opportunity
for public
engagement

- 128.1. (1) Subject to subsection (2), before making regulations under this Act, the Minister shall
- (a) ensure that there is an opportunity for public engagement by
 - (i) publishing a copy of the proposed regulations on a website maintained by the Government of the Northwest Territories, and
 - (ii) ensuring that a reasonable period of time has been allotted for receiving feedback on the proposed regulations; and
 - (b) consider any feedback provided on the proposed regulations under paragraph (a).

Exception

(2) Subsection (1) does not apply if the Minister is satisfied that the proposed regulations have been prepared in response to an emergency.

MOTION

LOI SUR LES FORÊTS

MOTION

FOREST ACT

That Bill 74 be amended by adding the following after clause 14:

Information
published

14.1. The Minister shall, as soon as is practicable or within a time period set out in the regulations, make the following information respecting the operation or administration of this Act publicly available by publishing it on a website maintained by the department:

- (a) any forest management committee establishment agreements entered into under section 10;
- (b) the powers and duties given to officers by the Forest Superintendent under subsection 17(2);
- (c) any forest ecosystem management plans developed under subsection 24(1);
- (d) any extensions or variations of the wildfire season declared under subsection 28(2);
- (e) any prescribed information.

MOTION

LOI SUR LES FORÊTS

Il est proposé que le projet de loi 74 soit modifié par insertion, après l'article 14, de ce qui suit :

Renseigne-
ments
publiés

14.1. Le ministre rend public, dès que possible ou dans un délai prévu par règlement, en publiant sur un site Web géré par le ministère, les renseignements suivants concernant la mise en œuvre ou l'administration de la présente loi :

- a) tout accord de création de comité de gestion forestière conclu en vertu de l'article 10;
- b) les attributions précisées par le directeur général des forêts pouvant être exercées par les agents en vertu du paragraphe 17(2);
- c) les plans d'aménagement de l'écosystème forestier élaborés en vertu du paragraphe 24(1);
- d) les prolongations ou les modifications de la saison des feux de forêt déclarées en vertu du paragraphe 28(2);
- e) tout renseignement réglementaire.

MOTION

FOREST ACT

That Bill 74 be amended by adding the following after clause 15:

Annual report
of Forest
Superintendent

15.1. (1) The Forest Superintendent shall, not later than the December 31 following the end of each year, deliver to the Minister a report on the activities of the Forest Superintendent under this Act for that year, that includes

- (a) a summary of
 - (i) any activities of the Forest Superintendent under subsection 23(2),
 - (ii) any forest ecosystem management plans developed under subsection 24(1),
 - (iii) any monitoring under subsection 26(1), and
 - (iv) any forest renewal activities funded under section 57; and
- (b) any prescribed information.

Publication
of report

(2) The Minister shall, upon receipt of a report under subsection (1), make the report available to the public by publishing it on a website maintained by the department.

MOTION

LOI SUR LES FORÊTS

Il est proposé que le projet de loi 74 soit modifié par insertion, après l'article 15, de ce qui suit :

Rapport
annuel
du directeur
général des
forêts

15.1. (1) Au plus tard le 31 décembre suivant la fin de chaque exercice, le directeur général des forêts, en vertu de la présente loi, remet au ministre un rapport de ses activités accomplies pendant cette année qui comprend :

- a) d'une part, un résumé de ce qui suit :
 - (i) toutes les activités entreprises en vertu du paragraphe 23(2),
 - (ii) tous les plans d'aménagement de l'écosystème élaborés en vertu du paragraphe 24(1),
 - (iii) la surveillance effectuée en vertu du paragraphe 26(1),
 - (iv) toutes les activités de renouvellement forestier financées en vertu de l'article 57;
- b) d'autre part, les renseignements réglementaires.

Publication
du rapport

(2) Le ministre, sur réception du rapport prévu au paragraphe (1), le met à la disposition du public en le publiant sur un site Web géré par le ministère.

5021\LJ\DW\DRAFT #01\JULY 12, 2023\MOTIONS\SECOND.19\FOREST ACT\ Motion 04.1 (s.7(b)) working relationships
MEM/ASZ/DW/25 JUILLET 2023/éb.1/

MOTION

FOREST ACT

That paragraph 7(b) of Bill 74 be amended by striking out "working relationships for effective".

MOTION

LOI SUR LES FORÊTS

Il est proposé que l'alinéa 7b) du projet de loi 74 soit modifié par suppression de «des rapports professionnels axés sur la coopération et la collaboration pour une gestion efficace des forêts» et par substitution de «une gestion des forêts axée sur la coopération et la collaboration».

CD\ML\DRAFT #01\JULY 6, 2023\MOTIONS\SECOND.19\FOREST ACT\ Motion 05 GROUP B (s.22(3)) reasons
ASZ\MEM\DW\20 JUILLET 2023\EB 01

MOTION

FOREST ACT

That subclause 22(3) of Bill 74 be amended by striking out "the Minister may implement those aspects at their discretion" and substituting "the Minister may, upon provision of written reason for the decision to the parties to the dispute resolution process, implement those aspects at the Minister's discretion".

MOTION

LOI SUR LES FORÊTS

Il est proposé que le paragraphe 22(3) du projet de loi 74 soit modifié par suppression de «le ministre peut, à sa discrétion, mettre en œuvre ces aspects» et par substitution de «le ministre peut, à sa discrétion, mettre en œuvre ces aspects après avoir communiqué par écrit aux parties les motifs à l'appui de sa décision relative au mécanisme de règlement des différends».

MOTION

FOREST ACT

That clause 24 of Bill 74 be amended by

- (a) adding a semicolon at the end of the English version of paragraph (1)(a); and**
- (b) adding the following after subclause (1):**

Changing
climate

(1.1) In developing a forest ecosystem management plan under subsection (1), the Forest Superintendent shall consider potential impacts of a changing climate on the relevant area of forest, including by considering any relevant Indigenous traditional knowledge, modelling, data and trends.

MOTION

LOI SUR LES FORÊTS

Il est proposé que l'article 24 du projet de loi 74 soit modifié par :

- a) insertion d'un point-virgule à la fin de l'alinéa (1)a de la version anglaise;**
- b) par insertion, après le paragraphe (1), de ce qui suit :**

(1.1) Lors de l'élaboration d'un plan d'aménagement de l'écosystème forestier au titre du paragraphe (1), le directeur général des forêts tient compte des répercussions potentielles des changements climatiques sur le territoire forestier visé, notamment en prenant en compte les connaissances traditionnelles autochtones, les projections et les données et tendances pertinentes.

Changement
climatique

MOTION

FOREST ACT

That Bill 74 be amended by adding the following before subclause 24(2):

Opportunity
for public
engagement

(1.2) The Forest Superintendent shall ensure that there is an opportunity for public engagement during the development of a forest ecosystem management plan under subsection (1).

MOTION

LOI SUR LES FORÊTS

Il est proposé que le projet de loi 74 soit modifié par insertion, immédiatement avant le paragraphe 24(2), de ce qui suit :

(1.2) Le directeur général des forêts veille à ce que le public puisse participer à l'élaboration du plan d'aménagement de l'écosystème forestier prévu au paragraphe (1).

Possibilité
d'engagement
public

MOTION

FOREST ACT

That Bill 74 be amended by adding the following after subclause 25(1):

Opportunity
for public
engagement

(1.1) The Minister shall ensure that there is an opportunity for public engagement prior to entering into a forest harvesting agreement under subsection (1) for an area of forest where no forest ecosystem management plan has been developed.

MOTION

LOI SUR LES FORÊTS

Il est proposé que le projet de loi 74 soit modifié par insertion, après le paragraphe 25(1), de ce qui suit :

(1.1) Le ministre, avant de conclure un accord de récolte des ressources forestières en vertu du paragraphe (1) concernant un territoire forestier pour lequel aucun plan d'aménagement de l'écosystème forestier n'a été élaboré, veille à ce que le public ait la possibilité de participer au projet d'accord.

Possibilité
d'engagement
public

MOTION

FOREST ACT

That subclause 25(2) of Bill 74 be amended by striking out "forest management plan" and substituting "forest ecosystem management plan".

MOTION

LOI SUR LES FORÊTS

Il est proposé que le paragraphe 25(2) du projet de loi 74 soit modifié par suppression de «plan d'aménagement des forêts» et par substitution de «plan de gestion de l'écosystème forestier».

L:\ML\DW\DRAFT #03\JULY 31, 2023\MOTIONS\SECOND.19\FOREST ACT\Motion 10 GROUP E (s.25(2.1)) forest ecosystem management plan ASZ\MEM\DW\VSTP\IER AOÛT 2023\EB 03

MOTION

FOREST ACT

That Bill 74 be amended by adding the following after subclause 25(2):

Consistency with forest ecosystem management plan

(2.1) A forest harvesting agreement entered into under subsection (1) must be consistent with any applicable aspects of a forest ecosystem management plan that have been implemented in respect of the area that is covered by the agreement.

MOTION

LOI SUR LES FORÊTS

Il est proposé que le projet de loi 74 soit modifié par insertion, après le paragraphe 25(2), de ce qui suit :

(2.1) L'accord de récolte des ressources forestières conclu en vertu du paragraphe (1) est compatible avec les aspects applicables d'un plan d'aménagement de l'écosystème forestier qui ont été mis en application à l'égard du territoire visé par l'accord.

Compatibilité avec le plan d'aménagement de l'écosystème forestier

CD\ML\DRAFT #01\JULY 5, 2023\MOTIONS\SECOND.19\FOREST ACT\ Motion 12 GROUP C (s.26(1)) climate change
ASZ\MEM\DW\20 JUILLET 2023\EB 01

MOTION

FOREST ACT

That Bill 74 be amended by adding the following after paragraph 26(1)(e):

(e.1) climate change impact;

MOTION

LOI SUR LES FORÊTS

Il est proposé que le projet de loi 74 soit modifié par insertion, après l'alinéa 26(1)e), de ce qui suit :

e.1) les répercussions des changements climatiques;

L:\ML\DRAFT #01\JULY 5, 2023\MOTIONS\SECOND.19\FOREST ACT\ Motion 13 (s.29(3)) kindled MEM/ASZ/DW/25 JUILLET 2023/éb.1/

MOTION

FOREST ACT

That subclause 29(3) of Bill 74 be amended by striking out "kindled in" and substituting "burning in".

MOTION

LOI SUR LES FORÊTS

Il est proposé que le paragraphe 29(3) du projet de loi 74 soit modifié par suppression de «qui a été allumé» et par substitution de «qui brûle».

MOTION

FOREST ACT

That Bill 74 be amended by deleting clause 38 and substituting the following:

Notice to
public

38. The Forest Superintendent shall take the steps required by the regulations to notify the public where

- (a) a prescribed burn, other than one on or near an existing wildfire under section 35, is to be carried out;
- (b) a restricted area has been declared under paragraph 36(1)(a);
- (c) activities have been prohibited in a restricted area under paragraph 36(1)(b);
- (d) entry to a restricted area has been prohibited under paragraph 36(1)(c); or
- (e) a fire restriction has been declared under subsection 37(1).

MOTION

LOI SUR LES FORÊTS

Il est proposé que le projet de loi 74 soit modifié par suppression de l'article 38 et par substitution de ce qui suit :

Avis au
public

38. Le directeur général des forêts prend les mesures exigées par règlement pour aviser le public, selon le cas :

- a) qu'un brûlage dirigé, autre qu'un brûlage dirigé sur les feux de forêt existants ou à proximité de ceux-ci en vertu de l'article 35, doit être effectué;
- b) qu'une région a été déclarée territoire réglementé en vertu de l'alinéa 36(1)a);
- c) que des activités sont interdites dans un territoire réglementé en vertu de l'alinéa 36(1)b);
- d) que l'accès à un territoire réglementé est interdit en vertu de l'alinéa 36(1)c);
- e) qu'une déclaration de restriction relative aux feux a été émise en vertu du paragraphe 37(1).

MOTION

FOREST ACT

That Bill 74 be amended by deleting subclauses 45(2) and (3) and substituting the following:

Wildfire prevention and preparedness plan

(2) An owner or operator of an industrial activity shall prepare a wildfire prevention and preparedness plan in accordance with the regulations.

Submission of plan

(2.1) A wildfire prevention and preparedness plan prepared under subsection (2) must be

- (a) provided to the governments of affected communities for review and comment, as required by the regulations; and
- (b) submitted to the Forest Superintendent
 - (i) before the start of the wildfire season, or
 - (ii) if the industrial activity commences after the start of the wildfire season, before the industrial activity starts.

Required changes

(3) If the Forest Superintendent is not satisfied with a plan submitted under paragraph (2.1)(b), the Forest Superintendent may require the owner or operator to resubmit the plan with any changes that the Forest Superintendent may direct.

MOTION

LOI SUR LES FORÊTS

Il est proposé que le projet de loi 74 soit modifié par abrogation des paragraphes 45(2) et (3) et par substitution de ce qui suit :

(2) Le propriétaire ou l'exploitant d'une activité industrielle élabore un plan de prévention et de préparation relatif aux feux de forêt conformément aux règlements.

Plan de prévention et de préparation relatif aux feux de forêt

(2.1) Le plan de prévention et de préparation relatif aux feux de forêt élaboré en vertu du paragraphe (2) est, à la fois :

Présentation du plan

- a) fourni aux gouvernements des collectivités touchées pour examen et commentaires, conformément aux règlements;
- b) présenté au directeur général des forêts :
 - (i) soit avant le début de la saison des feux de forêt;
 - (ii) soit avant le début de l'activité industrielle si elle est postérieure au début de la saison des feux de forêt.

(3) S'il n'est pas satisfait d'un plan présenté en application de l'alinéa (2.1)b), le directeur général des forêts peut exiger du propriétaire ou de l'exploitant de présenter à nouveau le plan avec les modifications qu'il demande.

Modifications exigées

MOTION

FOREST ACT

That Bill 74 be amended by adding the following after subclause 48(2):

Consistency with forest ecosystem management plan and land use plan

- (2.1) A permit or licence issued under this section must be consistent with
- (a) any applicable aspects of a forest ecosystem management plan that have been implemented in respect of the area that is covered by the permit or licence; and
 - (b) any legally binding land use plan that is applicable in respect of the area covered by the permit or licence.

MOTION

LOI SUR LES FORÊTS

Il est proposé que le projet de loi 74 soit modifié par insertion, après le paragraphe 48(2), de ce qui suit :

- (2.1) Le permis ou la licence délivré en vertu du présent article est compatible avec :
- a) d'une part, les aspects applicables d'un plan d'aménagement de l'écosystème forestier qui ont été mis en application à l'égard du territoire visé par le permis ou la licence;
 - b) d'autre part, tout plan d'aménagement du territoire ayant force obligatoire et applicable à l'égard du territoire visé par le permis ou la licence.

Compatibilité avec le plan d'aménagement de l'écosystème forestier et le plan d'aménagement du territoire

MOTION

FOREST ACT

That subclause 50(4) of Bill 74 be deleted and the following substituted:

Identification

(4) A person claiming to exercise an Aboriginal or treaty right to harvest forest resources in an area of the Northwest Territories shall either

- (a) carry on their person documentation that provides evidence of the right being claimed, and on request by an officer, produce that documentation for inspection; or
- (b) comply with any applicable alternative requirements respecting documentation that provides evidence of the right being claimed that may be set out in the regulations.

Conditions

(5) Documentation referred to in subsection (4) must satisfy any conditions set out in the regulations.

MOTION

LOI SUR LES FORÊTS

Il est proposé que le paragraphe 50(4) du projet de loi 74 soit abrogé et remplacé par ce qui suit :

(4) Celui qui prétend exercer un droit ancestral ou issu de traité de récolter des ressources forestières dans une région des Territoires du Nord-Ouest, selon le cas :

- a) porte sur lui les pièces qui fournissent la preuve du droit revendiqué et, à la demande d'un agent, les présente pour examen;
- b) respectent les exigences alternatives applicables à l'égard des pièces fournissant la preuve du droit revendiqué qui peuvent être prévues par règlement.

Pièces
d'identification

(5) Les pièces visées au paragraphe (4) respectent les conditions prévues aux règlements.

Conditions

MOTION

FOREST ACT

That Bill 74 be amended by deleting subclauses 60(1) to (3) and the heading immediately preceding subclause 60(1) and substituting the following:

Appeals from Decisions and Orders of Officers

Definition: "approved form" 60. (0.1) In this section and in sections 61 to 63, "approved form" means a form approved by the Minister.

Appeal from decision or order of officer (1) Subject to subsection (2), a person who is adversely affected by a decision or order of an officer made under this Act or the regulations, including a decision or order of the Forest Superintendent acting in their capacity as an officer, may appeal that decision or order by filing a notice of appeal in an approved form and in accordance with the regulations within 30 days after receiving the decision or order.

Exception (2) No appeal lies under subsection (1) in respect of a decision or order made under Part 7.

Forest Superintendent or adjudicator (2.1) If a notice of appeal is filed under subsection (1),
(a) the Forest Superintendent shall decide the appeal; or
(b) if the decision or order appealed from is one of the Forest Superintendent, or in the prescribed circumstances, an adjudicator must be appointed in accordance with the regulations to decide the appeal.

Restriction on appointment (3) No person shall be appointed under paragraph (2.1)(b) who works in the department.

MOTION

LOI SUR LES FORÊTS

Il est proposé que le projet de loi 74 soit modifié par abrogation des paragraphes 60(1) à (3) et de l'intertitre précédant immédiatement le paragraphe 60(1) et par substitution de ce qui suit :

Appels des décisions et ordres des agents

60. (0.1) Au présent article et aux articles 61 à 63, «forme approuvée» s'entend d'une forme approuvée par le ministre. Définition : «forme approuvée»

(1) Sous réserve du paragraphe (2), toute personne lésée par une décision ou un ordre d'un agent au terme de la présente loi ou ses règlements, y compris une décision ou un ordre du directeur général des forêts agissant à titre d'agent, peut en interjeter appel en déposant un avis d'appel en la forme approuvée et conformément aux règlements, dans les 30 jours suivant la réception de la décision ou de l'ordre. Appel d'une décision ou d'un ordre d'un agent

(2) La décision ou l'ordre rendu en vertu de la partie 7 n'est pas susceptible d'appel. Exception

(2.1) Dans le cas où un avis d'appel est déposé en vertu du paragraphe (1), selon le cas :
a) le directeur général des forêts tranche l'appel; Directeur général des forêts ou arbitre
b) si la décision ou l'ordre interjeté en appel avait été rendu par le directeur général des forêts, ou dans les cas prévus par règlement, un arbitre nommé conformément aux règlements tranche l'appel.

(3) Quiconque travaille au ministère ne peut être nommé en vertu de l'alinéa (2.1)b). Nomination restreinte

L:\ML\DRAFT #02\JULY 31, 2023\MOTIONS\SECOND.19\FOREST ACT\ Motion 26.1 (s.127(c.1)) info to the public\ASZ\MEM\VSTP\1ER AOÛTEB 02

MOTION

FOREST ACT

That Bill 74 be amended by adding the following after paragraph 127(c):

- (c.1) prescribing information that must be made publicly available under section 14.1, and respecting times periods within which that information must be published;

MOTION

LOI SUR LES FORÊTS

Il est proposé que le projet de loi 74 soit modifié par insertion, après l'alinéa 127c), de ce qui suit :

- c.1) prévoir les renseignements qui doivent être rendus publics en vertu de l'article 14.1 et régir les délais de publication de ces renseignements;

L:\ML\DRAFT #01\JULY 25, 2023\MOTIONS\SECOND.19\FOREST ACT\ Motion 26.2 (s.127(c.2)) annual report MEM/DW/01 AOUT 2023/EB 01

MOTION

FOREST ACT

That Bill 74 be amended by adding the following immediately preceding paragraph 127(d):

- (c.2) prescribing information that must be included in the annual report under section 15.1;

MOTION

LOI SUR LES FORÊTS

Il est proposé que le projet de loi 74 soit modifié par insertion, immédiatement avant l’alinéa 127d), de ce qui suit :

- c.2) prévoir les renseignements qui doivent être inclus dans le rapport annuel en vertu de l’article 15.1;

LJ\ML\DRAFT #02\JULY 31, 2023\MOTIONS\SECOND.19\FOREST ACT\ Motion 27.1 (s.127(z.01.1)) community engagement /ASZ/MEM/VSTP/1ER AOÛT 2023/EB 2

MOTION

FOREST ACT

That Bill 74 be amended by adding the following after paragraph 127(z.01):

- (z.01.1) respecting the provision of wildfire prevention and preparedness plans to governments of affected communities under subsection 45(2.1), including
- (i) prescribing classes of affected communities whose governments must be provided with a plan, and
 - (ii) defining "government" for the purposes of that subsection;

MOTION

LOI SUR LES FORÊTS

Il est proposé que le projet de loi 74 soit modifié par insertion, après l'alinéa 127z.01), de ce qui suit :

- z.01.1) régir la fourniture de plans de prévention et de préparation relatifs aux feux de forêt aux gouvernements communautaires touchés en vertu du paragraphe 45(2.1), notamment :
- (i) prévoir les catégories de collectivités touchées dont les gouvernements doivent recevoir un plan,
 - (ii) définir le terme «gouvernement» pour l'application de ce paragraphe;

MOTION

FOREST ACT

That Bill 74 be amended by deleting paragraphs 127(z.02) and (z.03) and substituting the following:

- (z.02) respecting requirements for hazard assessments under subsection 45(5);
- (z.03) respecting the power of officers regarding the clearing and disposal of flammable material under section 46;

MOTION

LOI SUR LES FORÊTS

Il est proposé que le projet de loi 74 soit modifié par abrogation des alinéas 127z.02) et z.03) et par substitution de ce qui suit :

- z.02) régir les obligations à l'égard des évaluations des dangers au titre du paragraphe 45(5);
- z.03) régir les pouvoirs des agents à l'égard du déblaiement et la disposition de matières inflammables au titre de l'article 46;

MOTION

FOREST ACT

That paragraph 127(z.21) of Bill 74 be deleted and the following substituted:

- (z.21) respecting the form, content or production of documentation under subsection 50(4), including
- (i) the timing of production, and
 - (ii) setting out different provisions
 - (A) based on representation by different Indigenous governments or Indigenous organizations, or
 - (B) for different areas as specified in the regulations;

MOTION

LOI SUR LES FORÊTS

Il est proposé que l'alinéa 127z.21) du projet de loi 74 soit abrogé et remplacé par ce qui suit :

- z.21) régir la forme, le contenu ou la présentation des pièces visées au paragraphe 50(4), notamment :
- (i) la date de présentation,
 - (ii) la mise en place de dispositions distinctes :
 - (A) soit basées sur la représentation des différents gouvernements autochtones ou organisations autochtones,
 - (B) soit selon les régions, conformément aux règlements;

MOTION

FOREST ACT

That Bill 74 be amended by deleting paragraph 127(z.27) and substituting the following:

- (z.27) respecting appeals authorized by this Act, including
- (i) the filing of appeals,
 - (ii) procedures in respect of appeals,
 - (iii) the appointment of adjudicators, and
 - (iv) prescribing circumstances for the purposes of paragraph 60(2.1)(b);

MOTION

LOI SUR LES FORÊTS

Il est proposé que le projet de loi 74 soit modifié par abrogation de l'alinéa 127z.27) et par substitution de ce qui suit :

- z.27) régir les appels autorisés par la présente loi, y compris :
- (i) le dépôt des appels,
 - (ii) les procédures relatives aux appels,
 - (iii) la nomination des arbitres,
 - (iv) prévoir les cas d'application de l'alinéa 60(2.1)b);

Katie Weaver

From: Brad Mapes <brad@awpltd.com>
Sent: May 2, 2023 9:23 AM
To: Katie Weaver
Cc: Brad Mapes
Subject: RE: Bill 74 Forest Act - Legislative Assembly's Standing Committee on Economic Development and Environment

Follow Up Flag: Follow up
Flag Status: Flagged

EXTERNAL: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender's name and email address and know the content is safe.

Good morning Katie

After reviewing the old and new act , I am comfortable with the changes. I don't see the need to present in person. You can share my email to the committee members.

GNWT Economic Standing Committee members

Firstly , I appreciate the opportunity to give my thoughts on the proposed new forestry act.

The biggest changes to the act that I see is more engaging and participation by the indigenous groups which is key to myself. The groups need to be able to understanding the scope of the sustainable harvest needed to make biomass operations possible. In my history , at times the indigenous groups have been misinformed or directed by consultants that may themselves have not understood the northern forestry.

I have been committed to our project in Enterprise for close to 10 years. Our biomass operations at the site have been delayed due to one of our harvesting area's indigenous groups as they are working to find a way to work together to move forward.

I have been able to move forward with other operations for the site such as logistical rail siding and aggregate production operations. This summer , we will commence our agricultural operations and continue to work with options for creation of renewable energy.

Our logistical site consists of one of the largest rail sidings north of Peace River and providing new logistical options for Northern mines and operations. Over the last few years , we have generated close to 1000 tons of greenhouse emission savings with moving commodities from the road to rail. Every year, we add additional commodities to using rail. Creating logistical cost savings will give northern operations additional life and also give up and coming operations to be feasible. Our site developments for day one have been to be able to tie many other operations to create a massive economic engine for the north. Many smaller business opportunities will be created by the ripple effect of the site.

Our entire development is well over 30 million dollars of investment and proud to say without any federal or GNWT financial assistance. I welcome you all to come for a visit at the site to understand the size of the project and what it will bring to the north.

Thanks
Brad

June 6, 2023

Katie Weaver
Committee Clerk
Standing Committee on Economic Development and Environment
Legislative Assembly
Government of Northwest Territories
Yellowknife NT X1A 2L9

Sent via email

Dear Katie Weaver,

RE: Review of Bill 74: Forest Act

The Land and Water Boards of the Mackenzie Valley (LWBs) would like to thank the Standing Committee on Economic Development and Environment for the opportunity to provide comments on Bill 74: *Forest Act* (the Bill).

Last year, the Wek'èezhìi Land and Water Board provided comments on the draft Bill, and as noted in the Minister of Environment and Climate Change's response, most of these comments are related to what will be in the regulations (please see [here](#) for the correspondence). The LWBs do not have any further comments on the Bill and are looking forward to participating in the development of the regulations.

If you have any questions, please contact [Kathy Racher](#) at (867) 766-7457.

Sincerely,



Tanya MacIntosh
Chair
Mackenzie Valley Land and Water Board



Mason Mantla
Chair
Wek'èezhìi Land and Water Board



Elizabeth Wright
Chair
Gwich'in Land and Water Board



Tanya MacIntosh
Chair
Sahtu Land and Water Board



February 21, 2023

Mason Mantla
Chairperson
Wek'èezhii Land and Water Board
rfequet@wlwb.ca

Dear Mr. Mantla:

Consultation Closure on the *Forest Act* Bill

Thank you for your letter dated December 20, 2022 letter in response to consultation on the Forest Act bill.

Over the past two years, the Department of Environment and Natural Resources (ENR) worked closely with an Intergovernmental Council Technical Working Group (TWG) on all aspects of this bill. ENR has considered all of the feedback received through the consultation process, and we intend to introduce the final bill in this sitting (February/March 2023) of the 19th Legislative Assembly.

The GNWT reviewed your submission, and would like to provide the following information in response to your input:

- The definition and use of the term “industrial activity” in the bill is related to activities where a wildfire prevention and preparedness plan would be required, and requirements around keeping flammable materials cleared around the activities, and being responsible for and controlling fires caused as a result of the activity. The definition is modified from the definition in the existing *Forest Protection Act*. Further detail will be developed in the Regulations with regards to what industrial activity poses a risk to starting a wildfire and to specific requirements under a plan.
- The definition of a “forest activity” is referring to an activity authorized under Part 5 of the bill.
- As per the transitional clause in the Bill, existing forest management agreement holders with existing permits of licences will not need to apply for a new permit or licence until they expire or are terminated. Any new forest management agreements will require a permit or licence to begin operations.

.../2

Many of the Wek'èezhìi Land and Water Board's concerns are related to what will be in regulations. ENR is committed to working with Indigenous governments, Indigenous organizations, boards, stakeholders and the public during the regulation drafting process.

Following the second reading of the bill, it will be subject to a 120-180 day review period undertaken by a Standing Committee of the Legislative Assembly. During this time, we expect Standing Committee will hold public hearings on the bill, which will provide an opportunity for further input on the draft legislation should you wish to participate.

Thank you for your consideration of this draft legislation, and I look forward to your support as the bill moves forward.

Sincerely,



Shane Thompson
Minister
Environment and Natural Resources

c. Honourable Caroline Cochrane
Premier

Shaleen Woodward
Principal Secretary

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

Dr. Erin Kelly
Deputy Minister
Environment and Natural Resources

Shawn McCann
Deputy Secretary, Indigenous and Intergovernmental Affairs
Executive and Indigenous Affairs

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

Ryan Fequet
Executive Director
Wek'èezhìi Land and Water Board

June 14, 2023

Mr. Jackie Jacobson, Chairman
Standing Committee on Economic Development and Environment
Northwest Territories Legislative Assembly
Yellowknife, NWT
Email: jackie_jacobson@ntassembly.ca

Via Email
jackie_jacobson@ntassembly.ca

Re: Forest Act (Bill 74)

Dear Mr. Jacobson:

The Wek'èezhì Renewable Resources Board (“WRRB” or “Board”) is a co-management institution established by section 12.1.2 of the Tłı̨chǫ Agreement (“the Agreement”). The Board has authorities under Chapters 12 (Wildlife), 13 (Trees and Forest Management), 14 (Plants), and 16 (Protected Areas) of the Agreement. The Board exercises its roles and responsibilities as part of the modern Treaty framework agreed to by the Tłı̨chǫ and Northwest Territories governments. Canadian courts have been clear in stating that the text of modern treaties must be interpreted generously in order to achieve the objectives of the Treaty as a whole.¹ The Agreement sets out an important role for the WRRB in forest management.

Bill 74, the proposed new Forest Act, advanced by the Department of Environment and Climate Change (“ECC”), Government of the Northwest Territories (“GNWT”) affects WRRB authorities and would result in ECC officials and processes interacting with the Board and its roles and responsibilities not just in relation to forestry but in relation to the management of forest ecosystems.

The Board has broad procedural and substantive decision-making powers in relation to these matters, as well as the authority to recommend renewable resource management actions to governments² on its own motion. The WRRB must exercise its conservation authorities on an ecosystem level.³ The Agreement and the *Wildlife Act*⁴ both require that the WRRB exercise its authorities in accordance with the precautionary principle. The duties and responsibilities assigned to the Board by the Agreement are central to good renewable resource management in Wek'èezhì.

The WRRB has reviewed Bill 74 and this letter provides comments and recommendations to the Standing Committee on Economic Development and Environment (“Committee”).

Overall, the WRRB acknowledges that Bill 74 has done a good job in reflecting the co-management framework set-out in the Tłı̨chǫ Agreement. However, there are still sections in which the WRRB’s roles are not properly reflected. In its letter dated February 21, 2023, ECC indicated that the Technical Working Group “*worked to ensure that the appropriate language regarding land,*

¹ First Nation of Nacho Nyak Dun v. Yukon, 2 S.C.R. 576 paragraphs 36-38.

² This would be to Parties to the Tłı̨chǫ Agreement: Canada, GNWT, or the Tłı̨chǫ Government.

³ See s.12.1.5 of the Agreement.

⁴ Agreement paragraph 12.1.5(c) and *Wildlife Act*, S.N.W.T. 2013, c.30 see paragraph 2(e).

resources and self-government agreements, recognition of co-management boards and language regarding Aboriginal and treaty rights are reflected accurately within the Bill". The Board appreciates this sentiment but suggests that its roles could be better and more accurately reflected throughout Bill 74.

Specifically, in its letter to ECC dated December 15, 2022, the WRRB outlined its concerns about Parts four, five, and six of the *Draft Forest Act*. The Board is concerned that these provisions set out in Bill 74 may not be reconciled with the Board's authorities and the discretion provided by ss. 13.3.1 or 14.3.1 of the Tłıchq Agreement (See Appendix below).

The WRRB identified additional concerns with Parts four and five of the *Draft Forest Act*. In response, ECC indicated that it is committed to working with Renewable Resources Boards during the regulation drafting process. This commitment is appreciated, but it ignores the fact that regulations must be consistent with their governing legislation. The Board requested a meeting with ECC to discuss development of specific regulations to ensure consistency; however, this request was denied. Our detailed comments, in the following Appendix, are provided to request that your Committee recommend changes to the Bill.

The WRRB looks forward to working with ECC once the Bill is enacted. To give full effect to the co-management process set out in the Agreement, ECC must ensure that the WRRB is involved in the policy and regulation development process. This is the approach required by law and the only one which will fully reflect the NWT's modern framework for cooperative and coordinated management over forests and plants.

The WRRB thanks the Committee for the opportunity to make this submission.

Sincerely,



Joseph Judas
Chair

Cc Katie Weaver, Clerk
Standing Committee for Economic Development and Environment, GNWT

Hon. Shane Thompson, Minister
Environment and Climate Change, GNWT

Jayleen Robertson, Assistant Deputy Minister, Policy & Strategic Planning
Environment and Climate Change, GNWT

Grand Chief Jackson Lafferty
Tłıchq Government

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

Michael Birlea, Manager, Culture and Lands Protection
Tłıchǫ Government

Robert Charlie-Tetlichı, Chair
Gwich'in Renewable Resources Board

Donna Schear, Acting Chair
Sahtú Renewable Resources Board

John Donihee, Counsel
Wek'èezhıı Renewable Resources Board

Appendix

ECC identified that the following comments could be addressed during the regulation drafting process:

- Part 4 could make it clearer that government activities such as road building, infrastructure development and maintenance etc. are also covered by and must comply with Part 4 of the Act, not just “industrial activities”.
- The Board should be able to indicate, as it does through ss. 12.5.1 which actions authorized by licence or permit need not be sent to the Board for review. Having all the permits and licences issued under ss. 48(2) subject to WRRB is an administrative burden and likely not necessary.

ECC stated that the following comments did not need to be addressed as the WRRBs roles and responsibilities are defined by the Tłıchq Agreement:

- Part 5 of the Bill appears to be inconsistent with Chapters 13 and 14 of the Tłıchq Agreement. It also seems inconsistent with the authorities granted to the WRRB to manage its own processes and the current Rule for Management Proposals will have to be revised to include Board responses to forest management and forestry operations. More particularly, forest (and plant) management plans and policies are subject to sections 13.4.2 and 14.4.2 at least in respect of consultation with the WRRB.
- Subsection 55(3) allows for cancellation of a permit or licence merely on the Forest Superintendent believing on “reasonable grounds” that a contravention of the Act or regulations has occurred. This allows for punishment without due process which could be a violation of Charter rights.
- Section 62 of the Bill is not consistent with sections 13.3.1 and 14.3.1 of the Tłıchq Agreement. The WRRB should not have to appeal a decision to issue a permit or licence made by the Forest Superintendent. At least in respect of commercial uses of plants or trees, the WRRB’s decision about wildlife impacts of such a licence or permit comes first.
- The WRRB can and should, after making a decision under 13.3.1 or 14.3.1 that a permit or licence will not have significant adverse effects of forests or plants which make up wildlife habitat, be able to recommend terms and conditions for the permit or licence to the Forest Superintendent. This would need to happen before the Forest Management Superintendent issues the authorization.



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www.wlwb.ca

December 20, 2022

The Honourable Shane Thompson
Minister of Environment and Natural Resources
Government of the Northwest Territories
P.O. Box 1320
Yellowknife, NT X1A 2L9

Sent via email

Dear Minister Thompson,

RE: Draft *Forest Act* Bill

Thank you for the opportunity to comment on the draft *Forest Act* bill. Attached are comments and recommendations from the Wek'èezhì Land and Water Board in Table 1 below.

Please direct questions or concerns regarding this submission to Ryan Fequet in writing.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Mason Mantla".

Mason Mantla, Chair
Wek'èezhì Land and Water Board

Attached: Table 1

Table 1. The Wek'èezhì Land and Water Board's (WLWB) Questions, Comments, and Recommendations on the *Forest Act* Bill

Section of draft <i>Forest Act</i> Bill	WLWB's Questions, Comments, and Recommendations
Section 22 Dispute Resolution Process	<p>Under subsection 22(3), the Minister may implement any aspect of a plan or policy on which consensus has not been achieved if the Minister is satisfied that there is substantial need.</p> <p>The WLWB recommends that the Minister issue reasons for decisions in these cases.</p>
Section 27 Definitions (under PART 4 WILDFIRES AND PROTECTION OF FORESTS)	<p>The WLWB is interested in understanding how the definition of “industrial activity” was developed. In particular:</p> <ul style="list-style-type: none"> • Was aligning the definition of “industrial activity” with the prohibitions under sections 4 and 5 of the Mackenzie Valley Land Use Regulations and/or the terminology used in the Waters Regulations considered? • Are there any minimum thresholds for the listed activities? For example, minimum area cleared, or quantity of explosives to be used or stored. • What aspects of this definition will be clarified under the Regulations developed under paragraph 127(m)? For example, would minimum thresholds (as noted above) be established? <p>The WLWB (along with the other Land and Water Boards (LWBs)) would be pleased to participate in discussions related to this definition and the development of the Regulations “respecting what constitutes an industrial activity for the purposes of the definition “industrial activity” in section 27” (as per paragraph 127(m)).</p>
Subsection 45(2) (Wildfire prevention and preparedness plans)	<p>What will be the timeline for a Forest Superintendent to make a decision on a wildfire prevention and preparedness plan? Will this be clarified in the Regulations under paragraph 127(z.01)?</p> <p>The LWBs and ENR staff have had preliminary discussions regarding these plans. After the <i>Forest Act</i> and its regulations have been enacted, the LWBs will update the Guide to the Land Use Permitting Process and the Guide to the Water Licensing Process to encourage applicants to contact the GNWT for guidance on whether a wildfire prevention and preparedness plan may be required. The LWBs</p>

	would be interested in further discussions about aligning regulatory processes to ensure efficiency, particularly if an approved plan is required prior to the commencement of the activity.
Paragraph 99(1)(a)	What is a forest activity?
Section 131 (Agreements)	<p>Under subsection 9(3) of the <i>Forest Management Act</i>, an agreement “may authorize the government, person, institution or firm named in the agreement to conduct activities described in the agreement without obtaining a permit or licence.” According to the new <i>Forest Act</i>, under subsection 25(3), “A government, person, body or organization named in a forest harvesting agreement shall conduct activities described in a forest harvesting agreement only under the applicable permit or licence.”</p> <p>Once the new <i>Forest Act</i> is in effect, will the holder of a forest management agreement (that was made under section 9 of the <i>Forest Management Act</i> and is still in effect under the transitional provision under section 131) have to apply for any applicable permits or licences?</p>
Minor editorial comments	<ul style="list-style-type: none"> • Subsection 23(b) should have the same alignment as subsection 23(a). • Subsection 31(2) should have a period.



Dehcho Land Use Planning Committee

June 28, 2023

Mr. Jackie Jacobson, Chair
Standing Committee on Economic Development and Environment
Government of the Northwest Territories
Via Email: Committees@ntassembly.ca

RE: DLUPC Review of Bill 74: Forest Act

Mr. Jacobson,

Thank you for the invitation to review and comment on Bill 74: Forest Act. The Dehcho Land Use Planning Committee (DLUPC) has reviewed the bill and provides the following comments for your consideration.

It is currently intended that the Interim Dehcho Land Use Plan (IDLUP) will be approved and implemented as a legally binding land use plan in advance of a Dehcho Final Agreement. The Plan will be implemented through a combination of measures, including potentially, GNWT legislation, land withdrawals, and binding policy direction to Land and Water Boards. The IDLUP includes zones that will restrict commercial timber development in some areas, once the plan is approved.

Currently Bill 74 does not speak to the authority of approved and legally binding land use plans to restrict the Minister or Forest Superintendent to authorize the use of forest resources. This could create a conflict between approved land use plans and the new Forest Act and its regulations. The GNWT should consider adding, where appropriate, "approved land use plans" (whether given legal authority under Lands, Resources and Self-Government Agreements, or under proposed GNWT legislation, land withdrawals, or binding policy direction to Land and Water Boards) to sections that reference the authority of "land, resources and self-government agreements".

The attached table identifies specific sections where revisions may be required to address these potential conflicts. We would be happy to discuss these comments with the Standing Committee and answer any questions you may have.

Please follow up with Heidi Wiebe, Executive Director at (867) 447-0961 or exdirdlupc@dehcholands.org as required.

Mahsi,

A handwritten signature in blue ink, appearing to read 'Herb Norwegian', with a large, stylized initial 'H'.

Herb Norwegian, Vice-Chair
Dehcho Land Use Planning Committee

Detailed Review of Bill 74: Forest Act

Section of the Bill 74 – Forest Act	Comment / Consideration
<p>4. An action or thing authorized by this Act or the regulations must be carried out in accordance with any applicable land, resources and self-government agreement and the applicable required role, if any, given to any boards and councils established under any land, resources and self-government agreement.</p>	<p>If the Dehcho Land Use Plan is approved and legally binding and being implemented in advance of the Final Dehcho Agreement as is currently being envisioned, then actions and authorizations would need to be carried out in accordance with the plan.</p> <p>Recommendation: Consider adding “approved and legally-binding land use plans” to this clause (not just land, resources and self-government agreements). This same comment may be applicable to other clauses in Bill 74 referencing land, resources and self-government agreements (e.g. S. 5?)</p>
<p>23. (1) The Forest Superintendent shall, in accordance with any applicable land, resources and self-government agreement</p> <p>(a) assess and manage the sustainability of forest resources; and</p> <p>(b) authorize the use of forests within a framework of sustainable forest management.</p>	<p>This clause needs to reference approved and legally-binding land use plans as binding on the Forest Superintendent’s authority to authorize the use of forests (b). They could not authorize any use of forests in zones where such use is prohibited under an approved land use plan.</p>
<p>48. (1) In this section, "mill" means a facility in which timber or biomass is processed, including saw mills, pulp mills and biomass mills.</p> <p>(2) The Forest Superintendent may, in accordance with any applicable land, resources and self-government agreement or forest management committee establishment agreement, issue permits and licences in accordance with the regulations that authorize a person to</p> <p>(a) cut timber;</p> <p>(b) clear forest;</p> <p>(c) transport timber;</p> <p>(d) import or export timber;</p> <p>(e) burn flammable material;</p> <p>(f) harvest or use forest resources other than timber;</p> <p>(g) conduct research respecting forests or forest lands;</p> <p>(h) conduct programs or activities respecting the management of forests;</p> <p>(i) operate a mill;</p> <p>(j) scale timber;</p> <p>(k) manage, administer and operate a community woodlot; or</p> <p>(l) undertake any other activity specified in the regulations.</p>	<p>Subsection (2) needs to reference approved land use plans (not just land, resources and self-government agreements and forest management committee establishment agreements). Commercial timber operations will be restricted in some areas under the IDLUP, and will be legally binding on the Forest Superintendent.</p>



Bill 74 – Forestry Act
NWT Association of Communities
Comments to the
Standing Committee on
Economic Development & the Environment
July 7, 2023

Bill 74 – Forest Act
Comments to the
Standing Committee on
Economic Development and the Environment
July 7, 2023

The NWT Association of Communities, would like to thank the Standing Committee on Economic Development and the Environment for providing us with the opportunity to comment on Bill 74 – The Forest Act.

The NWT Association of Communities

The NWTAC is a non-profit, non-governmental organization that represents the interests of 100% of NWT communities.

The NWT Association of Communities was formed in 1966 to represent the interests of community governments in the Northwest Territories. It provides a forum and unified voice for the aspirations of its members.

Our Vision:

“Working together to achieve all that our communities want to be”

Our Mission:

“To work together to serve our communities by addressing common issues, delivering programs and exchanging information. We are the unified voice for communities on municipal goals determined by our members.”

Once again, the first we have heard of an act update is at the consultation phase being completed by the standing committee. This is far too late in process! Not providing comment until after 2nd reading greatly reduces the chance of eliciting change.

While our comments are not intended to overstep the authority of the land and water boards or any Indigenous governments or the Territorial Government, community governments have an important role to play with respect to Forestry Management within and adjacent to Community Boundaries.

We are very proud of our joint application with the Forestry Division to secure \$20M to construct all required Fire Breaks in the 29 communities that have a wildfire risk. It takes the time frame that it would have taken to construct the breaks at current funding levels of 83 years down to 8 years. We look forward to starting this construction next year. We hope that no impediments to this work are included in either the Act or the subsequent regulations.

All 29 communities with wildfire risk in the NWT have had a Community Wildfire Protection Plan (CWPP) developed. Our Firebreak Program is based on these

plans. Having these CWPP's completed left this project shovel ready. The Forestry Division deserves considerable credit for the preparation of these CWPP's

Beyond the construction of these Wildfire Breaks there will still be many initiatives that will need to be completed in communities such as for example: Fire Smarting, equipment for wildfire fighting in communities, dry hydrants adjacent to appropriate water bodies, policies to transition to Fire Resistant Building Materials among others.

These approaches become even more critical as the Wildfire risk increases due to climate change.

Our commentary on the proposed Forestry Act include:

- We found little reference to the responsibility and authority of community governments within and adjacent to municipal boundaries
- In scanning the document we found only 11 references to community or communities and 2 references to municipalities
- Consultation or at the very least notice should be provided for any licenses or permits, harvesting agreements, forest ecosystem management plans, fire prevention and suppression plans and associated

activities that occur within or adjacent to community boundaries.

- There should be some sort of acknowledgement of complying with various types of community bylaws, including but not limited to, General Plans and Zoning By-laws, fire prevention by-laws, tree harvesting by-laws, soil protection by-laws, open air burning by-laws among others.
- We were not clear as to any sort of appeal process and notification of decisions to the public. Will there be some sort of public registry?
- The responsibility of the community governments for the initial response to incidents as well as primary emergency management needs to be acknowledged.
- Community Governments have been constructing and maintaining firebreaks based on the above referenced Community Wildfire Protection Plans. This role needs to be acknowledged.

We would be pleased to assist with the development of the associated regulations to ensure the interests of community governments are protected.

In closing, we want to once again reiterate that we appreciate the opportunity to provide these comments to the Standing Committee on Economic Development and the Environment on Bill 74 – the Forest Act.

**MY COMMUNITY
MATTERS**

July 6, 2023

ATTN: Legislative Assembly of the Northwest Territories
Standing Committee on Economic Development and the Environment

RE: Review of Bill 74 *Forest Act* (the “Act”)

The following comments and recommendations are from Canadian Parks and Wilderness Society – NWT Chapter and Alternatives North. Comments focus on biodiversity, climate change, public participation, and wildfire.

Our comments and recommendations are set out sequentially based on the order of provisions in the Act. There is also an additional recommendations section at the end of this document.

We have included in Appendix A our previous joint submission on Bill 74 *Forest Act* where many of the same recommendations were made during the 18th Assembly and the public engagement in the development of Bill 74.

PREAMBLE

We recommend including acknowledgments of the statement of environmental values and the precautionary principle in the preamble.

a) Include the Statement of Environmental Values

We recommend that the preamble acknowledge the Government of Northwest Territories (“GNWT”) Statement of Environmental Values. This would fit well after the 7th statement in the preamble, which provides:

And whereas the people of the Northwest Territories have an interest in forests as a natural resource and desire responsible stewardship of forest ecosystems;

Then, we recommend adding as the next statement:

And whereas forests should be managed in consideration of the principles and provisions set out in the GNWT Statement of Environmental Values.

b) Include the Precautionary Principle

We recommend including the precautionary principle in the preamble. This would logically follow the 5th statement in the preamble, which provides:

And whereas decision-making in respect of forests should use the best available information including Indigenous traditional knowledge and values, local and community knowledge and scientific knowledge;

The next statement could be worded as follows:

And whereas lack of full scientific certainty should not be used as a reason for postponing measures to prevent forest ecosystem degradation where there are threats of serious or irreversible damage;

PART 1 – INTERPRETATION AND APPLICATION

a) Amend the Definition of “Ecological Integrity” in Section 1 to Reflect Climate Change

We recommend an amendment to the language used in the section 1 definition for “ecological integrity,” which states:

“ecological integrity” means the native components and conditions of the ecosystems that are characteristic of the Northwest Territories and that are likely to persist into the future [emphasis added].

This definition does not reflect that climate change poses a grave risk to many native ecosystem components and conditions in the Northwest Territories. To include in the definition of “ecological integrity” only those native ecosystem components and conditions that are “likely” to persist is to exclude many vulnerable yet critical native ecosystem elements.

Instead of the word “likely,” the definition could employ the word “critical,” as follows:

“ecological integrity” means the native components and conditions of the ecosystems that are characteristic of the Northwest Territories and that are critical to persist into the future; [emphasis added].

PART 2 – ROLES AND RESPONSIBILITIES

We commend the approach to explicitly including Renewable Resources Boards (“RRBs”), Renewable Resources Councils (“RRCs”), Forest Management Committees (“FMCs”), Indigenous Governments, and Indigenous Government Organizations as key collaborators throughout the Act.

The public and non-governmental organizations will also likely have an interest in forest management planning and decision making and may already be collaborating with Indigenous governments and organizations. NWT residents add value to forest management through sharing knowledge from their own experiences living and working in the NWT, and community members living near proposed forestry operations may want to have their opinions heard and considered.

We are curious as to why the GNWT is not ensuring that residents, businesses, and all levels of government including municipalities are informed. The Act would be much improved by including the public and adding a public registry that would align with the GNWT's commitments to transparency. With those changes, the Act would truly reflect a collaborative approach to forest management and stewardship between members of the public and Indigenous Nations in the NWT.

The Minister of Environment and Climate Change ("ECC"), Shane Thompson, recently attended a meeting of the Canadian Council of Forest Ministers (the "CCFM"). A focus of the CCFM is public involvement and transparency, as its webpage states:

Governments at all levels have responded to this interest in public involvement and participation with policy development that is open and transparent, based on community involvement and backed by comprehensive legislation.¹

We believe that excluding the public from the Act is contrary to those values and commitments, which are ostensibly endorsed by the Minister of ECC based on his involvement in the CCFM.

We want to support this the Act through to Third Reading and Assent before the coming election. However, our support depends on the inclusion of public participation, alignment with government transparency, and commitments to reporting through a public registry. We believe that these improvements will make the Act the best forestry regime in Canada.

a) Amending the Purposes of Part 2 under Section 7

We recommend amending section 7(b) and adding section 7(c).

Amending Section 7(b) to Remove Vague Language

Firstly, the purpose language in section 7 is vague. It provides that one of the purposes of Part 2 is to:

promote cooperative and collaborative working relationships for effective forest management at the local, regional and territorial levels.

It is unclear how these relationships affect forest management. The purpose would be clearer if the reference to working relationships is simply removed and the section reads as follows:

promote cooperative and collaborative forest management at the local, regional and territorial levels.

¹ <https://www.ccfm.org/canadians-and-communities/>

Include Collaborative Natural Resource Management in General

Secondly, the goal of cooperative and collaborative forest management would be furthered by reference to collaborative natural resource management more generally. The purpose language used in section 2 of the *Mineral Resources Act* could be imported and used as section 7(c). The relevant language in section 2 of the *Mineral Resources Act* states that a purpose of that legislation is:

to complement the systems for collaborative management of land and natural resources in the Northwest Territories.

Using the same purpose language from the *Mineral Resources Act* would create continuity across natural resource management schemes, furthering the goals of collaborative and cooperative management.

b) Include Provisions for Public Participation, Public Notification, and a Public Registry

The Act is out of step with the modern trend of making sure that the public is aware of and can participate in administrative processes. We recommend including provisions for public participation, public notification, and a public registry within the Minister's roles and responsibilities (sections 11-14).

The Act is clearly oriented to promoting coordinated and collaborative forest management. Section 11(1) goes so far as to place an affirmative duty on the Minister to promote collaborative and cooperative forest management:

The Minister shall administer this Act in a manner that promotes a coordinated, collaborative, and integrated approach to the stewardship and management of forests in the Northwest Territories.

A truly coordinated and collaborative approach to forest management is impossible without public involvement. Transparent and accurate information are pre-requisite to public involvement. We envision a public registry provision in the Act as follows:

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

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

- (a) forest co-management agreements (section 10);*
- (b) draft and final forest ecosystem management plans (section 24(1));*
- (c) draft and final wildfire prevention and preparedness plans (section 45(2));*
- (d) draft and final hazard assessment plans (section 45(5));*
- (e) draft and final forest harvest agreements (section 25(1));*
- (f) terms and conditions for forest permits and licences (section 52(1));*
- (g) notices to the public regarding input into above;*
- (h) appeals taken from decisions by government actors (Part 6);*

- (i) reasons for decisions;*
- (j) enforcement actions taken (Part 7);*
- (k) penalties imposed, including alternative measures (Part 8);*
- (l) reporting on the Special Forest Fund; [see comments below]*
- (m) state of environment reporting [section 57(1)]; and*
- (n) any other information necessary to enable adequate notice and public participation.*

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

The requirement for a public registry would fit following section 14, meaning that the public registry provision would become section 15.

Public comment periods are imperative for public participation, yet they are entirely absent from the Act. Public comment periods should be codified in the Act for any significant decisions made under it. This is discussed more below in relation to forest ecosystem management plans under section 24 and forest threats under section 47.

In addition to statutorily mandated public comment periods for significant types of decisions, we recommend that an additional provision is added to the Act as section 16 to empower the Minister to hold public comment periods for any other decisions where the Minister determines that it is in the public interest to do so.

Remaining sections would need to be renumbered. Please note that all comments below follow the current numbering system.

PART 3 – SUSTAINABLE FOREST MANAGEMENT

The Forest Superintendent’s authority under Part 3 is largely discretionary. We recommend vesting the Forest Superintendent with duties in respect of sustainable forest management and ecosystem management plans.

a) The Forest Superintendent’s Powers for Sustainable Forest Management under Section 23(2) Should be Duties Not Powers

Section 23(2) vests the Forest Superintendent with broad powers for sustainable forest management. The section reads:

(2) The Forest Superintendent may, in accordance with the regulations,

- (a) develop forest ecosystem objectives that guide decision-making;*
- (b) perform forest ecosystem monitoring;*
- (c) report on the health of forest ecosystems;*
- (d) utilize management processes that continually incorporate newly gained knowledge or information into decision-making; and*

(e) set harvest limits for forest resources [emphasis added].

Although the Forest Superintendent's powers under section 23(2) are discretionary because of the word "may," the powers listed in (a) to (e) are each imperative for effective forest management:

- Ecosystem objectives that guide decision-making are critical to a coordinated and integrated forest management regime.
- Forest management decisions are uninformed and ineffective without up-to-date monitoring data. In essence, forest management decisions become guesses without good data.
- The purposes of the Act are to enable sustainable use of forest resources and to manage, protect, and enhance the health of forest ecosystems (see section 2(b)). These purposes are clearly undercut without reporting on the health of forest ecosystems.
- Decision-making that does not incorporate newly gained knowledge or information violates the precautionary principle and the preamble commitment to best available information and Indigenous knowledge.
- A complete absence of harvest limits for forest resources runs wildly counter to the Act's purposes. Unrestrained forest harvesting is unsustainable, and harvest limits are critical to ensuring the continued availability of forests resources.

Accordingly, the wording in section 23(2) should be changed from "may" to "shall." It would read:

*The Forest Superintendent **shall**, in accordance with the regulations,*

- (a) develop forest ecosystem objectives that guide decision-making;*
- (b) perform forest ecosystem monitoring;*
- (c) report on the health of forest ecosystems;*
- (d) utilize management processes that continually incorporate newly gained knowledge or information into decision-making; and*
- (e) set harvest limits for forest resources [emphasis added].*

b) Forest Ecosystem Management Plans under Section 24 Should be Mandatory, Include Public Consultation, and Consider Climate Change

Forest Ecosystem Management Plans Should be Mandatory

Section 24(1) gives the Forest Superintendent the discretion on whether to develop forest ecosystem management plans ("FEMPs") but does not require them to do so:

The Forest Superintendent may, in accordance with the regulations and any applicable land, resources and self-government agreement, develop forest ecosystem management plans that address;

- (a) forest sustainability*
- (b) the maintenance of ecological integrity;*
- (c) cumulative effects of forest use; and*
- (d) other management objectives [emphasis added].*

FEMPs are crucial to sustainable forest management, forest health, and ecosystem integrity. The Forest Superintendent should be vested with a mandatory duty to develop FEMPs. We strongly urge that the wording in sections 24(2) be changed from “may” to “shall”:

*The Forest Superintendent **shall**, in accordance with the regulations and any applicable land, resources and self-government agreement, develop forest ecosystem management plans that address*

- (a) forest sustainability*
- (b) the maintenance of ecological integrity;*
- (c) cumulative effects of forest use; and*
- (d) other management objectives.*

Forest Ecosystem Management Plans Should Require a Public Comment Period

FEMPs are significant decisions under the Act, particularly if they are mandatory, as they guide forest sustainability, the maintenance of ecological integrity, and the cumulative effects of forest use in a specified area. However, they are subject to no consultation under the Act.

We recommend that proposed FEMPs be subject to a mandatory public comment period before the Forest Superintendent implements them. This will ensure public consultation in respect of a very important aspect of forest management.

This public comment period could be added as section 24(3) under the Act.

Forest Ecosystem Management Plans Should Consider Climate Change

Climate change should be a consideration in every FEMP under section 24(1). Climate change considerations could become (d), and other management objectives would then become (e).

The impacts of climate change on our forest ecosystems are undeniable, and the role of the boreal forest in climate change mitigation and adaptation is under-acknowledged in the Act. We expect that the ECC as co-manager has an interest in addressing climate change considerations in every FEMP.

Overall, we recommend the following amendments for section 24:

(1) The Forest Superintendent *shall*, in accordance with the regulations and any applicable land, resources and self-government agreement, develop forest ecosystem management plans that address

- (a) forest sustainability
- (b) the maintenance of ecological integrity;
- (c) cumulative effects of forest use;
- (d) *climate change considerations*; and
- (e) other management objectives.

...

(3) Forest ecosystem management plans shall be subject before they are implemented by the Forest Superintendent to a public comment period set by regulation.

c) Forest Ecosystem Management Plans Should be Pre-Conditional to Forest Harvesting Agreements under Section 25

Section 25(2) gives the Forest Superintendent the discretion of whether to require implementation of a FEMP before a forest harvesting agreement may be implemented in that area. Section 25(2) states:

The Forest Superintendent may require that a forest management plan concerning an area of forest be implemented before a forest harvesting agreement may be implemented in respect of that area [emphasis added].

As explained above, FEMPs are crucial to sustainable forest management, forest health, and ecosystem integrity. Importantly, FEMPs are impotent if forest harvesting is allowed to proceed before they are implemented. FEMPs should be pre-requisite to any forest harvest activity.

Therefore, we urge the wording in section 25(2) to be changed from “may” to “shall”:

The Forest Superintendent shall require that a forest management plan concerning an area of forest be implemented before a forest harvesting agreement may be implemented in respect of that area [emphasis added].

We also recommend adding the following additional clause to ensure conformity between FEMPs and forest harvesting agreements:

All licenses and permits pursuant to this section shall conform to and be consistent with any approved Forest Ecosystem Management Plan as laid out in section 24.

This additional clause would fit most logically as section 25(4). Remaining sections would need to be renumbered. Please note that all comments below follow the current numbering system.

d) Monitoring the State of Forest Ecosystems under Section 26 Should be Mandatory

Section 26(1) vests the Forest Superintendent with the discretion to carry out forest ecosystem monitoring:

The Forest Superintendent may monitor the state of a forest ecosystem in the Northwest Territories including, but not limited to, monitoring the state of

- (a) forest vegetation;*
- (b) forest health;*
- (c) forest carbon;*
- (d) forest change;*
- (e) wildfire occurrence and impact;*
- (f) sustainable use; and*
- (g) any other matter the Forest Superintendent considers advisable [emphasis added].*

As we discussed above, monitoring of forest ecosystems is critical for informed and effective forest management decision making. This information is also essential for understanding the health of forest ecosystems. Accordingly, we recommend that the wording in section 26(1) be changed from “may” to “shall”:

The Forest Superintendent shall monitor the state of a forest ecosystem in the Northwest Territories including, but not limited to, monitoring the state of

- (a) forest vegetation;*
- (b) forest health;*
- (c) forest carbon;*
- (d) forest change;*
- (e) wildfire occurrence and impact;*
- (f) sustainable use; and*
- (g) any other matter the Forest Superintendent considers advisable [emphasis added].*

PART 4 – WILDFIRES AND PROTECTION OF FORESTS

a) The Current Legislated Wildfire Season in Section 28 Puts the GNWT on its Heels

Section 28(1) establishes the wildfire season as May 1 to September 30 and section 28(2) vests the Minister with the authority to extend or vary the wildfire season based on “*an unusual danger of wildfires in any year.*”

Climate change is causing extended wildfire seasons. The current wildfire situation in the South Slave and Dehcho Regions are obvious examples. The late season burn that destroyed the Scotty Creek Research Facility in October 2022 confirms the possibility that wildfire is a risk to valued infrastructure weeks beyond what was expected from fire behaviour in previous years. Ministerial intervention did not prompt a timely or robust enough response to prevent the loss of this infrastructure.

Requiring positive Ministerial action when the wildfire season inevitably falls outside the legislated May 1 to September 30 period puts the GNWT on its heels in respect of effective wildfire management. Furthermore, given the size of the NWT, it is likely 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.

...

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 must be highly responsive to changing conditions and equipped to deal differently with forest fires across the territory. Legislation like that of Nova Scotia would allow agility.

We suggest that the wildfire season under section 28(1) be extended to October 20 within the Act, with the ability to extend the wildfire season by regulation:

The wildfire season in the Northwest Territories is the period from May 1 to October 20th in each year.

This would ensure that fire response teams can be best prepared to respond in conditions that may include adverse weather and temperatures that dictate the availability of equipment.

b) Industrial Owners Should be Required under Section 45(5) to Conduct Hazard Assessments

We strongly support the requirement under the Act for industrial owners and operators to submit a wildfire prevention and preparedness plan and receive approval of their plan from the Forest Superintendent before commencing or continuing their industrial activity during wildfire season. However, this requirement does not currently apply to new areas not covered by an approved plan. Section 45(4) of the Act states that:

Where an owner or operator of an industrial activity intends to carry out new developments in an area not previously covered by a plan that has been approved by the Forest Superintendent, the Forest Superintendent may require the owner or operator to conduct a hazard assessment in accordance with the regulations.

This creates a loophole wherein industrial owners and operators can “add” areas to their operations and circumvent the requirement to have an approved wildfire prevention and preparedness plan for those areas. Accordingly, we recommend changing “may” to “shall” in section 45(4) to ensure that all areas are duly addressed:

Where an owner or operator of an industrial activity intends to carry out new developments in an area not previously covered by a plan that has been approved by the Forest Superintendent, the Forest Superintendent shall require the owner or operator to conduct a hazard assessment in accordance with the regulations.

c) The Public Should be Aware of and Consulted About Forest Threats Under Section 47

Invasive species can reduce the economic, cultural, recreational, and spiritual value that our forests provide for all. The public has an interest and role in reducing “forest threats.” Individuals, civil society organizations, community groups and others may have expertise that can contribute to preventing, identifying, reporting, and participating in the removal of invasive species. Informing and mobilizing the public is also a good way to expand communication and awareness about “forest threats.”

ECC should be eager to notify the public when a “forest threat” is identified and an action is to be taken. Broader collaboration among the public and Indigenous organizations, sharing of resources and opportunities to mitigate more readily “forest threats” are a few of the lost opportunities by not including “the public” in section 47.

We recommend amending both section 47(3) and (4) to account for public notification and consultation.

Amend Section 47(3) to Require Public Notification via the Public Registry

Section 47(3) currently requires notification only to select entities of action taken to address forest threats:

On taking action under subsection (2), the Forest Superintendent shall, as soon as is practicable, notify the following entities in the affected areas, if any, of any such action taken:

- (a) renewable resources boards;*
- (b) renewable resources councils;*
- (c) forest management committees;*
- (d) Indigenous governments;*
- (e) Indigenous organizations [emphasis added].*

We recommend amending section 47(3) to require public notification via the public registry by removing “if any” and using the following wording:

On taking action under subsection (2), the Forest Superintendent shall, as soon as is practicable, notify the following entities in the affected areas, and post on the public registry of any such action taken:

- (a) renewable resources boards;*
- (b) renewable resources councils;*

- (c) forest management committees;
- (d) Indigenous governments;
- (e) Indigenous organizations;
- (f) the public.

Amend Section 47(4) to Require Public Notification, Consultation, and Consideration

We recommend similar changes to section 47(4), which requires consultation with and consideration of the views of select entities:

An action taken under subsection (2) must be an interim measure and, as soon as is practicable after taking such action, the Forest Superintendent shall consult with and consider the views of the following entities in the affected areas, if any, on any subsequent actions to be taken:

- (a) renewable resources boards;
- (b) renewable resources councils;
- (c) forest management committees;
- (d) Indigenous governments;
- (e) Indigenous organizations.

We recommend amending section 47(4) to require public notification via the public registry, as well as consideration of and consultation with the public by removing “if any” and using the following wording:

An action taken under subsection (2) must be an interim measure and, as soon as is practicable after taking such action, the Forest Superintendent shall consult with and consider the views of the following entities in the affected areas, and post on the public registry on any subsequent actions to be taken:

- (a) renewable resources boards;
- (b) renewable resources councils;
- (c) forest management committees;
- (d) Indigenous governments;
- (e) Indigenous organizations;
- (f) the public.

d) The Public Should be Aware of Permits and Licenses Issued under Section 48(5)

The public should be informed if an area of forest is subject to issuance of a forestry permit or licence. The Forest Superintendent should post notice of all permits and licenses to a public registry, and of course should always notify any RRCs, RRBs, forest management committees, Indigenous Governments, or Indigenous Organizations in the relevant area.

Section 48(5) currently states that only certain entities are notified of permits or licenses:

Where the Forest Superintendent issues or refuses to issue a permit or licence of a prescribed class, the Forest Superintendent shall provide notice of the issuance or refusal to the following entities in the areas, if any, that would be affected by the permit or licence within 30 days after the issuance or refusal:

- (a) renewable resources boards;*
- (b) renewable resources councils;*
- (c) forest management committees;*
- (d) Indigenous governments;*
- (e) Indigenous organizations.*

Concealing permits and licenses from the public creates the conditions for conflict and public distrust. In contrast, transparency helps garner social license, thereby improving the Northwest Territories' ability to attract industry.

We recommend amending section 48(5) to require public notification via the public registry by removing "if any" and using the following wording:

Where the Forest Superintendent issues or refuses to issue a permit or licence of a prescribed class, the Forest Superintendent shall provide notice of the issuance or refusal to the following entities in the areas that would be affected by the permit or licence and post on the public registry within 30 days after the issuance or refusal:

- (a) renewable resources boards;*
- (b) renewable resources councils;*
- (c) forest management committees;*
- (d) Indigenous governments;*
- (e) Indigenous organizations;*
- (f) the public.*

PART 6 – APPEALS

a) Clarify "Person Affected" Under Section 60(1)

The public must have a right to appeal decisions made under the Act. This includes individual members of the public, environmental groups, and non-governmental organizations.

However, the wording in section 60(1) is unclear as to who can avail themselves of the Act's baseline appeal process:

Subject to sections 61 to 63, a person affected by a decision or order of an officer made under this Act or the regulations may appeal that decision or order by filing a notice of appeal in an approved form with the Forest Superintendent within 30 days after receiving the decision or order [emphasis added].

The applicability of section 60(1) should be clarified, either by adding a definition to the Act for “a person affected” or by clarifying the meaning of “a person affected” through regulation. Regardless of the method chosen, it is imperative that it be made clear that individual members of the public, environmental groups, and non-governmental organizations can all avail themselves of appeals under section 60(1), subject to the Chief Forester’s discretion as an administrative tribunal. The Act must vest the Chief Forester with the discretion to allow for interested parties to bring a legitimate and valuable appeal, otherwise the Chief Forester’s authority as an administrative tribunal is fettered.

Public participation is an essential aspect of any administrative regime, but particularly so in relation to environmental and resource law. Public participation provides a range of benefits, including by garnering social license and by improving the quality of administrative decisions.²

b) Recommendations Under Section 65 Regarding Appeal Decisions Will Create Inadequate Outcomes

Section 65(1) provides that the Minister can refer a notice of appeal to an advisor for recommendations or to an adjudicator to decide the appeal:

On receiving a notice of appeal referred to in section 61, 62 or 63, the Minister shall, within 45 days, appoint

- (a) an advisor to advise and make recommendations to the Minister respecting the appeal; or*
- (b) an adjudicator to decide the appeal.*

Option (a) creates the possibility for an inadequate outcome if the advisor makes recommendations that the Minister chooses not to implement (see section 69(1)). In essence, the Minister may decide to do nothing with the recommendations they receive. It is preferable to have an adjudicator who is vested with decision-making authority because it will ensure that an outcome is achieved. Accordingly, we recommend amending section 65(1) as follows:

On receiving a notice of appeal referred to in section 61, 62 or 63, the Minister shall, within 45 days

- (a) elect to decide the appeal themselves; or*
- (b) appoint an adjudicator to decide the appeal.*

² Raj Anand & Ian Scott, “Financing Public Participation in Environmental Decision-Making” (1982) 60 Can. Bar Rev. 81 at 93-96

This will require corresponding amendment to the sections that flow from section 65(1), namely section 69(1).

c) The Public Should be Able to Intervene Under Section 66(2)

The Act creates a two-tiered appeal process. Under section 60(1), a “person affected” by a decision or order of an officer under the Act may appeal that decision to the Forest Superintendent. As explained above, section 65(1) establishes an elevated appeal process for the following situations wherein an appeal lies directly to the Minister:

- a person whose “designated” permit or licence application was refused (section 61);
- Indigenous organizations that seek to appeal the issuance or refusal of a permit or license (section 62(1));
- a person whose permit or licence has been made subject to terms and conditions (section 63(1));
- a person whose forest resources have been seized for non-payment of fees or charges (section 63(2)); and
- a person whose permit or licence has been cancelled or suspended for nonpayment of fees (section 63(3)).

We applaud that the GNWT has established an elevated appeal process for Indigenous organizations under section 62(1) of the Act that allows them to appeal directly to the Minister. This better ensures that the Honour of the Crown is upheld in relation to Indigenous peoples.

However, the elevated appeal process also applies to specified non-Indigenous forestry actors. Indigenous organizations may apply under section 66(2) for intervener status in all elevated appeals:

(2) An entity listed in paragraph (1)(a) [i.e., renewable resources boards, renewable resources councils, forest management committees, Indigenous governments, and Indigenous organizations] may intervene in an appeal under section 61 or 63 and a person or entity listed in paragraph (1)(b) may intervene in an appeal under section 62.

The public has been completely excluded from this elevated appeal process, including from the role of intervener. Section 66(2) should be broadened to allow intervention by members of the public, including environmental groups and non-governmental organizations.

As described above, public participation is widely recognized as a positive contribution to administrative decision making.³ Accordingly, the trend is to broaden rights of intervention in the interests of higher quality decision making.

³ Raj Anand & Ian Scott, “Financing Public Participation in Environmental Decision-Making” (1982) 60 Can. Bar Rev. 81 at 93-96

Moreover, public participation in the elevated appeal process is also in the interests of efficiency. As an example, imagine that an environmental organization intends to appeal a problematic permitting or licensing decision to the Chief Forester. An Indigenous organization intends to appeal that same problematic decision to the Minister. Assuming that they can avail themselves of section 60(1), the environmental organization has no choice but to bring a parallel appeal to the Forest Superintendent because they cannot intervene and participate in the appeal brought by the Indigenous organization. The environmental organization should be able to participate in the Indigenous organization's appeal as an intervener to prevent duplicative appeals.

It is important that the public has an opportunity to participate in these elevated appeals. The Act must vest the Minister with the discretion to allow interested and value-added parties to intervene under section 66(2) in appeals brought under section 65(1). Otherwise, the Minister's authority as an administrative tribunal is fettered.

ADDITIONAL RECOMMENDATIONS

Codify That There is No Compensation for Government Carrying out its Duties in the Public Interest Under the Act

The Act should clearly codify that the exercise of government powers by officials, including the issuance and refusal of licences and permits, shall not be deemed to create a compensable taking. This provision would foreclose the possibility that the GNWT will incur private liability when regulating or acting under the Act in the public interest.

Forestry companies will be incentivized to seek compensation through litigation for any manner of regulatory changes, including those motivated by reconciliation and ecosystem-based management. Litigation like that is underway in other parts of Canada after the Supreme Court of Canada's decision in *Annapolis Group Inc. v. Halifax Regional Municipality*, 2022 SCC 36.⁴ Forestry companies require clarity, and it is the duty of the legislature to provide that clarity.

BC recently amended the *Forest Act* to expressly insulate the government from private liability for various decisions made under that legislation.⁵ For example, section 162 of the *Forest Act* provides:

No compensation is payable by the government and proceedings must not be commenced or maintained to claim compensation from the government or to obtain a declaration that compensation is payable by the government in respect of the effect, on a forest licence, timber licence or tree farm licence or on a contract or subcontract, under any provision of the following:

(a) sections 152 to 161 of this Act;

⁴ See e.g., *Altius Royalty Corporation v. Her Majesty the Queen in Right of Alberta*, [2022 ABQB 255](#)

⁵ See e.g., *Forest Act*, [RSBC 1996 c 157](#), ss. 24.91, 35(2), 80(2)-(4), 162, 175.1

(b) the regulations made under or for the purpose of a provision referred to in paragraph (a).

BC's *Forest Act* can serve as an example for language to codify that the GNWT will not incur any private liability when regulating or acting under the Act in the public interest.

Address Wildfire Risks to Communities, Biodiversity, Carbon Sequestration, and Species at Risk

Wildfire management close to communities is a clear priority, given the current fire situation in the NWT. We must also be aware of wildfire risks to biodiversity, soil, carbon sequestration, and species at risk. Canada is currently experiencing our worst wildfire season in recorded history. We are deeply concerned that this impact of climate change will continue to escalate in the NWT. We should anticipate that severe forest fire seasons will occur more frequently.

An expansion of wildfire policy regarding values at risk ("**Wildfire VAR Policy**") should address biodiversity, forest, soil carbon, and Species at Risk. This will benefit species such as boreal caribou, and will also help to mitigate climate change by keeping forest and soil carbon in place. This approach could qualify as a natural solution to climate change and may be an avenue to secure extra funds from the federal government or international investors for training and retaining fire fighters and resourcing their efforts. As well, this approach will help the GNWT meet its own commitments for Species at Risk, protect food security, local economies, and infrastructure important to land-users such as harvesters and trappers.

For example, in the GNWT's framework for boreal caribou range planning, section B.2 paragraph 3 states that:

It is recognized that managing both the human-caused and wildfire disturbance footprint will be important to achieving range plan objectives. Although management classes are defined by human disturbance thresholds, wildfire management options are considered an essential part of the tiered management approach and are discussed in Section B.2.4.⁶

To advance these goals, we recommend:

1. hosting discussions with Indigenous Governments, land-users, the public, and non-government organizations about Wildfire VAR Policy;
2. expanding Wildfire VAR Policy to include biodiversity, forest carbon, soil carbon, and species at risk; and
3. including the Wildfire VAR Policy in the regulations for the Act.

Include a Requirement to Use Best Available Information, Including Indigenous Knowledge

⁶ www.gov.nt.ca/ecc/sites/ecc/files/resources/boreal_caribou_range_planning_framework_2019_-_cadre_de_planification_de_laire_de_repartition_du_caribou_boreal_2019.pdf

The preamble of the Act acknowledges that “*decision-making in respect of forests should use the best available information including Indigenous traditional knowledge and values, local and community knowledge and scientific knowledge.*” We strongly support the inclusion of this language in the preamble and believe it is a positive step towards sustainable forest management and preserving ecosystem integrity.

However, sustainable forest management and ecosystem integrity are most advanced if decision-makers under the Act are *required* to use best available information, including Indigenous knowledge. Therefore, we believe this principle should be codified in the body of the Act.

-End-

Sincerely,

Kris Brekke
Executive Director
Canadian Parks and Wilderness Society- NWT Chapter

Karen Hamre
Alternatives North

These submissions draw on legal and policy support donated by Tollefson Law – a law firm based in Victoria, British Columbia that specializes in tackling complex litigation, policy reform, and governance negotiations.

Appendix A: Previous joint submission on Bill 44: Forest Act

Bill 44 – Forest Act

Submission to the Standing Committee on Economic Development and Environment
Revised May 2, 2019

Joint submission by

- Alternatives North (www.alternativenorth.ca)
- Ecology North (www.ecologynorth.ca)
- Canadian Arctic Resources Committee (CARC) (www.carc.org)
- Council of Canadians – NWT Chapter (<https://cocnwt.wordpress.com>), and

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

Background

The Forest Act has been the most controversial of the three bills. The NGOs were *not* part of the Technical Working Groups, so cannot comment on how well that process went, or whether the commitments made during co-drafting are included in the acts. We were, however, part of stakeholder meetings about the five acts (those today plus Waters and Environmental Protection Act). We were told that the Forest Act was behind in terms of drafting compared to the EPA, so were quite surprised to see it brought forward. That sense was echoed in the number of concerns raised in the assembly during second reading of the Bill. We too have substantial concerns with this bill as presented.

That said, we understand that the role of SCEDE is to make the best recommendations possible to improve the bill. Whether it gets passed or not is up to the assembly. Given that, we hope these comments help the committee in their very substantial task ahead.

Key Issues for SCEDE to address

Purpose

One of the purpose statements in Bill 34: Mineral Resources Act is

“(g) to complement the systems for collaborative management of land and natural resources in the Northwest Territories;”

As many discussions have taken place regarding how the co-management system is aligned with the Forest Act, perhaps adding to Purpose

“...in a manner that...(d) complements the systems for collaborative management of land and natural resources in the Northwest Territories;”

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 required. 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

The bill's preamble states it "promotes a cooperative, collaborative, integrated and adaptive approach to sustainable forest management". We can't have a co-operative and collaborative approach without the public...and the public needs information. As noted in our Environmental Rights Act submission, research has shown that good input from the public results in better environmental outcomes.

That statement is in the preamble, so not legally enforceable, but it sets the tone. The body of the bill talks about 'adaptive management' in several places. True adaptive management is an **open process** that involves stakeholders helping to assess management options for improving long term outcomes. Again, public participation, and information to the public, is needed.

Ensuring an open process is also in keeping with the mandate statement for this assembly: Governance: Improving accountability, transparency, and collaboration.

Since *Part 3 Sustainable Forest Management* does not include reference to a public registry, we recommend this additional section to 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.”

Licences and permits

Once the FEMPs are completed, all work should reference and flow from them. Therefore we recommend this additional clause:

“36 (4) All licenses and permits pursuant to this section shall conform to and be consistent with any approved Forest Ecosystem Management Plan as laid out in section 12.”

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 CLAUSE(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 the 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.

Pests and diseases:

An example of the mis-matched scope resulting from joining the two current acts together is in *Part 4 – Protection of Forests*. In Part 4, there are 20 sections. Nineteen sections deal with wildfire, and only one section of one sentence in length addresses insects, diseases and invasive plant species. It is odd to leave such an important piece solely to regulations.

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.

Process:

Since so much is left to regulations in this Bill, and the others that SCEDE is reviewing, we have suggestions on the process. We realize that the co-drafting process is very innovative, and we hope that the process going forward might continue to enhance reconciliation and is as open as possible. The NGOs ask to be involved in the drafting of the regulation for this and other SCEDE bills. Please bring this request forward, or tell us how to bring this request forward.

In looking to future work, we have a couple of suggestions. We are not alone in being rather overwhelmed with the amount of work in a short period of time; you committee members are feeling this too! Next time, we would like to get plain

language material even before the bill comes to the house. This was done for MRA, with Minister of ITI giving a presentation to the YK Chamber of Commerce about the major aspects of the bill before it came up in the assembly. We shouldn't have to wait, as we did this time, partway through a short process, for information on the bills. Of course, the plain language materials should match what is in the actual bills, as has been noted in other sessions.

We appreciated the concept of a suite of related legislation being worked on together. However, the ability of the Standing Committee, IGOs and public to deal with so many bills at once is not realistic. The Standing Committee timelines need to be adaptable to the number of bills that are introduced.

-End-