Katlodeeche First Nation

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Michael Nadli
MLA Deh Cho
Government of the NWT
Fort Providence, NT

Dear Michael,

The Kátå'odeeche First Nation (KFN) has prepared a brief overview of its questions and concerns relating to the current draft of Bill 3 –*Wildlife Act*, being tabled for third reading in the Legislative Assembly this fall. We understand that the current draft of Bill 3 will be reviewed by a Standing Committee of the Legislative Assembly and would like to ensure that KFN's questions and concerns are addressed by that Committee, and the Legislative Assembly, before final passage of the Bill.

As you are aware, KFN is pursuing a Treaty Land Entitlement (TLE) process so will continue to have a direct First Nation to Crown relationship, will maintain full existing Treaty 8 and Aboriginal rights, and may not be included in a settlement area associated with a modern land claim agreement. Given that the new *Wildlife Act* appears to be premised on the notion of modern treaty agreements rather than on historic treaty rights, including harvesting and resource management rights, the application of the *Act* to KFN needs to be more full assessed.

Our outstanding questions and concerns are as follows, by section. Questions have been noted in italics.

- Definitions: "treaty rights" (p. 18) - This definition should more clearly state that "treaty rights are s. 35 rights based on the historic Treaties (Treaties 8 and 11) along with rights that exist by way of land claim agreements…".

- Section 11(3); (p. 21) -- This section should state that "The Minister shall exercise his or her powers and perform his or her duties in a manner consistent with existing Treaty and Aboriginal rights and land claims agreements".

- 14 (1); (p. 22) – KFN is concerned that the Minister may enter into agreements with "local harvesting committees' in Hay River that do not hold s.35 rights within the KFN traditional territory. We therefore ask: *How will the Minister determine whether an Aboriginal organization asserting wildlife management rights within the KFN traditional territory has historic rights that would justify the establishment of a local harvesting committee?* Furthermore:

Is it possible or likely that the Minister will establish more than one local harvesting committee within a particular land use area where there are overlapping and/or disputed Treaty and/or Aboriginal interests? KFN would oppose this approach if it were to happen as it would infringe on KFN Treaty and Aboriginal rights.

- 19/20; (p. 23) – KFN is concerned that the Minister will accept and/or grant a form of proof or identification of Aboriginal harvesting rights within the KFN traditional territory for Aboriginal persons who do not actually have a historically-based right in that area, and, by doing so, will confer unfounded rights on individuals and/or groups, thereby infringing on KFN Treaty and Aboriginal rights. *Is it possible or likely that the Minister will accept and/or grant a form of proof or identification for harvesting rights within the KFN traditional territory without KFN consent?*

- 21/22; (p. 24) – If a person is not eligible to hold a general hunting licence (GHL) unless they hold Treaty or Aboriginal rights in a specific area of the NWT (section 22), but a person who does hold Treaty or Aboriginal rights does not require and GHL (section 21(2)), than what is the point of maintaining the GHL licencing provision in the new *Wildlife Act*? *To whom does the GHL licencing provision apply and for what purpose is it being maintained?* It appears that the only reason for maintaining the GHL licence is for so that non-rights holders (ie. non-Aboriginal peoples or Aboriginal peoples who do not hold inherent rights in the NWT) can be granted the privilege (not right) to harvest wildlife without restriction. But the interests (not rights) of this group of people can be addressed through the application of the Special Harvester Licence provisions.

  The GHL allows non-rights holders within the KFN traditional territory to hunt and trap freely within that territory without consultation with or the consent of KFN, which is a direct infringement of KFN Treaty and Aboriginal rights, both harvesting and resource management rights. If it is the intent of the GNWT to make the new *Wildlife Act* consistent with the law today, then no person other than a legitimate s.35 rights holder for the KFN traditional territory should be granted the privilege to hunt and trap freely within that territory. By granting that privilege, the GNWT is directly infringing KFN rights. *Will the Minister explain the legal rationale for the continuation of the GHL licencing provision in the Act given that a GHL confers privileges on its holders that violate KFN Treaty and Aboriginal rights?*

- 45(1); (p. 31) – This section makes it explicitly clear that a GHL provides authorization for the unfettered trapping of fur bearing animals even where the application of that licence may contravene KFN Treaty and Aboriginal rights. See question in bullet above.

- 49(3)/(5); (p.33) – Subsections (2) and (4) also do not apply to KFN in that its ongoing Treaty 8 and Aboriginal rights allow it to access any portion of its traditional territory, including private lands, for the purposes of wildlife harvesting, trapping, and other harvesting activities (except for restrictions relating to public safety and conservation purposes, and where consultation has occurred). As it stands, sections 49(3) and (5) are not adequate to overcome the inherent infringements to KFN rights contained in section 49(2) and (4). *Will the Minister amend sections*

49(3) and (5) to acknowledge that sections 49(2) and (4) do not apply to existing Treaty 8 and Aboriginal rights holders, such as KFN.

- 50(2); (p. 33) – KFN maintains the position, consistent with traditional resource management protocols, that, if a KFN trapper finds unauthorized traps on his/her trapline, he/she will immediately spring the traps and hang them up, regardless of who the unauthorized trapper is. This traditional right to restrict outside trappers from setting traps on an existing and traditional trapline should be addressed in the Regulations as per section 173(1)z.7 of the new *Act* if the *Act* is to be consistent with the traditionally-accepted Dene practice.

- 95; (p. 46) – *Will the Minister clarify the role that KFN will play in the development and implementation of any Wildlife Management and Monitoring Plans applying within the KFN traditional territory? Will this role be acknowledged within the Act or Regulations?* KFN has a Treaty and Aboriginal right to be involved in wildlife management activities within its traditional territory and GNWT legislation and/regulations should explicitly acknowledge and affirm this right.

- 98(b); (p. 48) – This section again explicitly acknowledges that the GHL is a licence for non-rights holders but provides no justification for this form of licence, as per KFN comments re sections 21, 22, and 45. KFN again maintains that the GHL designation is redundant and creates infringements of KFN s.35 rights.

- 99; (p. 48-49) – KFN acknowledges that there may be unusual and compelling situations where the Minister has to act swiftly to prevent serious harm to wildlife or habitat, but notes that this section must only be invoked where there is clearly not adequate time for s.35 consultation. However, KFN recommends that the following phrase be added to section 99 (2): "Under all circumstances the Minister will ensure that his or her actions minimize the potential infringements to Treaty and/or Aboriginal rights." The protection of s.35 rights must guide all decision and actions of the Minister, even in emergency situations.

- 173(1)(j); (p. 77) – Again, the GHL designation is redundant and should be removed from the *Act* and from the Regulations, as it allows for the infringement of KFN Treaty and Aboriginal rights by allowing non-rights holders unfettered wildlife harvesting rights within the KFN traditional territory.

- 173(1)(z.51) – The GNWT cannot 'allocate' rights but can only acknowledge, substantiate, and respect existing rights. *Will the Minister change this wording to be more consistent with s.35 law?*

- 173(1)(z.66) – KFN, as an independent First Nation with a direct relation to the Crown, wants to be identified within the Regulations as a body with shared responsible for preliminary screenings. *Will the Minister accommodate this request?*

- 174(3); (p. 90) – KFN opposes this provision in that it allows non-rights holders to maintain unfettered wildlife harvesting privileges in the KFN traditional territory in violation of KFN Treaty and Aboriginal rights. By allowing a redundant and illegal licence to be maintained, the GNWT is knowingly prolonging a rights infringement that cannot be justified or substantiated under the law. The Special Harvester Licence provision, which requires consent by s.35 rights holders with the affected area (as per section 26(1), is the appropriate licencing provision for non-rights holders. *Will the Minister remove section 174(3) from the proposed Act?*

Thank you Michael for bringing these concerns and questions to the attention of the Minister, either through the Standing Committee, the Legislative Assembly, or directly. We willing to have a KFN representative attend any Committee meetings or other sessions to discuss this matter further. We look forward to hearing a response.

Yours truly,

Chief Roy Fabian