
WOODWARD & CO.

LAWYERS LLP

B A R R I S T E R S & S O L I C I T O R S

Telephone (250) 383-2356 • Facsimile (250) 380-6560 • E-mail reception@woodwardandcompany.com
Second Floor • 844 Courtney Street • Victoria • British Columbia • V8W 1C4

**Jack Woodward • Patricia Hutchings LL.M. • Murray Browne • Eamon Murphy
David M. Robbins • Gary S. Campo • Sean Nixon • Dominique Nouvet
Heather Mahony • Alana DeGrave • Jay Nelson • J. Berry Hykin
Drew Mildon • Leah Mack • Jenny Biem • Leigh Anne Baker • Holly Vear**

Our file: 4743

July 15, 2010

VIA FAX AND COURIER

The Honourable Jim Prentice
Minister of Environment
10 Wellington Street
Gatineau, Quebec K1A 0H3
Fax: (819) 953-0279, (613) 947-9475

Cc: Attorney General of Canada
284 Wellington Street
East Memorial Bldg, 4th Floor
Ottawa, Ontario K1A 0H8
Fax: (613) 990-7255

Dear Minister Prentice:

Re: Petition for emergency order under the *Species at Risk Act* to protect woodland caribou in northeastern Alberta

We are legal counsel for Beaver Lake Cree Nation, Enoch Cree Nation, Chipewyan Prairie Dene First Nation and Athabasca Chipewyan First Nation (collectively, the “**First Nations Petitioners**”) in respect of this matter.

We write on behalf of the First Nations Petitioners to request that you take immediate steps to protect the full ranges of the remaining woodland caribou herds in northeastern Alberta by preventing any further industrial activity anywhere within those ranges. Leading woodland caribou biologists have been recommending this course of action to you and to your ministry (Environment Canada) for several years. You and your ministry have also known for several years about the precipitous decline of woodland caribou in northeastern Alberta, but to date you have done nothing to protect woodland caribou or their habitat.

All woodland caribou in Alberta were listed as *threatened* under the *Species at Risk Act*¹ (or “SARA”) when it first came into force in 2002. The federal Minister of Environment had a clear statutory duty under the *Species at Risk Act* to prepare a recovery strategy for woodland caribou

¹ S.C. 2002, c. 29 (“*Species at Risk Act*” or “SARA”).

by June of 2007.² As you know, there is still no national recovery strategy for woodland caribou, more than three years after the expiry of the mandatory deadline imposed by SARA.

It is indefensible that you and your ministry have failed to comply with your statutory duties under the *Species at Risk Act*, and that you are several years behind a firm deadline to prepare a recovery strategy at a time when woodland caribou herds in northeastern Alberta are in crisis; every passing month of government inaction drives these herds closer to local extinction. These herds need interim emergency protection until you have prepared a recovery strategy.

You have 45 days from the date of this letter to comply with your mandatory statutory duties under s. 80(2) of the *Species at Risk Act*, by recommending to the federal Cabinet that it make an emergency order to protect woodland caribou and their habitat from any further industrial development in the full ranges of the remaining herds in northeastern Alberta (or in a wider area).

The First Nations Petitioners are Indigenous Peoples with a Direct and Substantial Interest in the Survival and Recovery of Woodland Caribou in Canada

The First Nations Petitioners are Aboriginal peoples within the meaning of s. 35 of the *Constitution Act, 1982*³ and are the successors to Aboriginal groups that signed or adhered to Treaty 6 or Treaty 8.

Under the terms of Treaty 6 or Treaty 8, as modified by the *Natural Resources Transfer Agreement*,⁴ the First Nations Petitioners have (at a minimum) the constitutionally-protected right to hunt woodland caribou for sustenance on all unoccupied Crown lands, and on all other lands to which they have a right of access, within their respective traditional territories (the “Treaty Rights”). Woodland caribou is also important as a preferred species to hunt (when available), as part of a traditional diet that helps maintain the health and welfare of indigenous peoples, and for cultural and spiritual purposes. The First Nations Petitioners see the survival and recovery of woodland caribou as a key indicator of the health of the environment in their traditional territories; the recent sharp decline of woodland caribou is an alarming signal that entire ecological systems in northeastern Alberta are on the verge of collapse.

In the words of Chief Janvier of the Chipewyan Prairie Dene First Nation: “The extinction of caribou would mean the extinction of our people. The caribou is our sacred animal; it is a measure of our way of life. When the caribou are dying, the land is dying. We see no respect from government for the caribou or for us as humans. The way Alberta is operating, profit for the oil industry is number one, and everything else can be sacrificed.”

² SARA s. 42(2).

³ Full cite: *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the “*Constitution Act, 1982*”).

⁴ Full cite: *Natural Resources Transfer Agreement, 1930 Constitution Act 1930* (U.K.) 20-21 George V, c. 26 (the “*NRTA*”).

In the words of Chief Al Lameman of the Beaver Lake Cree Nation: “We are calling on government to immediately halt the destruction of our lands, lands that sustain our caribou and our people. It is difficult for me to express the anger I feel at the loss of this noble animal in our territory. Our traditional land is dwindling. We need habitat for our animals to ensure there is a healthy surplus. These animals sustain us and, as they die, our future becomes uncertain. We must act now to take care of Mother Earth.”

The First Nations Petitioners have seen a sharp decline in woodland caribou numbers in their traditional territories, and now see woodland caribou only rarely (if ever).

The First Nations Petitioners share the interest of all Canadians both in the survival and recovery of woodland caribou, and in the Minister of Environment’s compliance with his mandatory duties under the *Species at Risk Act*. In addition, the First Nations Petitioners have a direct interest in the health, survival and recovery of the following woodland caribou local populations (also called “herds”)⁵ in northeastern Alberta:

- Alberta Cold Lake Air Weapons Range (CLAWR) herd
- Alberta East Side Athabasca River (ESAR) herd
- Alberta West Side Athabasca River (WSAR) herd
- Alberta Red Earth herd
- Alberta Richardson herd, and
- Alberta Slave Lake and Nipisi herds.

Woodland Caribou Face Imminent Threats to their Survival or Recovery

All woodland caribou in Alberta have been designated as “threatened” by the Committee on the Status of Endangered Wildlife in Canada, and are also listed as “threatened” under the federal *Species at Risk Act*. This means that woodland caribou is “likely to become an endangered species if nothing is done to reverse the factors leading to its extirpation or extinction”.⁶

⁵ Note we use these herd (local population) names in the same sense as used in the *Scientific Review* (EC 2008) – see below. See map of herd ranges at p. vi of the *Scientific Review*, *infra* and in ALT 2009, *infra*.

⁶ SARA s. 2.

The 2008 Scientific Review

In August of 2008, Environment Canada published the *Scientific Review for the Identification of Critical Habitat for Woodland Caribou (Rangifer tarandus caribou), Boreal Population, in Canada* (the “*Scientific Review*”).⁷ The *Scientific Review* was initiated to inform the development of a national recovery strategy for woodland (or “boreal”) caribou in Canada, as required by the *Species at Risk Act*. Leading experts in landscape ecology, caribou biology, spatial habitat modeling and population analysis were engaged to provide scientific advice on the identification of woodland caribou critical habitat. Eighteen of those leading experts (including Dr. Stan Boutin: see below) were part of a formal Science Advisory Group established to provide Environment Canada with ongoing peer review throughout the process.⁸

As stated in the Executive Summary of the *Scientific Review*, timely identification of “critical habitat” under the *Species at Risk Act* depends on completion of a recovery strategy; further, the recovery goal for woodland caribou has always been to conserve and recover local populations to self-sustaining levels throughout their current distribution (extent of occurrence):

[Section 2 of the *Species at Risk Act*] defines Critical Habitat as “...*the habitat that is necessary for the survival or recovery of a listed wildlife species and that is identified as the species’ critical habitat in a recovery strategy or in an action plan for the species.*” As such, **to identify Critical Habitat..., a recovery plan must first be established.** In this case, the target was expressed in the draft *National Recovery Strategy for Boreal Caribou* (Environment Canada, 2007) and provided to the [Environment Canada] team leading the science review. **By definition, therefore, for the purposes of the [Critical Habitat] science review the Recovery Goal was that: “boreal caribou are conserved and recovered to self-sustaining levels, throughout their current distribution (extent of occurrence) in Canada”;** and the more specific Population and Distribution Objective was: “*to maintain existing local populations of boreal caribou that are self-sustaining and achieve population growth of local populations that are not currently self-sustaining, to the extent possible, throughout the current distribution (extent of occurrence) of boreal caribou in Canada.*” [italics in original, bold emphasis added]⁹

The information in the following chart is taken from Table 6 in the *Scientific Review*,¹⁰ which sets out proposed critical habitat identification for each local population of woodland caribou. Here, we have summarized some of this information in relation to the caribou herds listed at page 3 of this letter:

⁷ Environment Canada. 2008. *Scientific Review for the Identification of Critical Habitat for Woodland Caribou (Rangifer tarandus caribou), Boreal Population, in Canada*. August 2008. Ottawa: Environment Canada. 72 pp. plus 180 pp. Appendices (the “*Scientific Review*” or “EC 2008”).

⁸ See *Scientific Review* at p. i (Executive Summary).

⁹ *Scientific Review*, at p. i (Executive Summary).

¹⁰ Table 6, at pp. 32 and 35-37. See also Appendix 6.9 at pp. 204 and following.

Local Population	Population Trend – Reported ¹¹	Population Size – Reported ¹²	Range Disturbance – Category ¹³	Notes	Proposed Critical Habitat Identification
AB Red Earth	Rapidly Declining (lambda 0.94)	250-350	High	Weight of evidence suggests current range is not self-sustaining given declining [local population] and high disturbance. [A]nthropogenic disturbance at 39% suggests potential need for improved conditions.	Current Range and Improved Conditions
AB West Side Athabasca River	Declining (lambda 0.99)	300-400	Moderate	Weight of evidence suggests current range is not self-sustaining given declining trend and moderate total disturbance. Anthropogenic disturbance at 43% suggests need for improved conditions.	Current Range and Improved Conditions
AB Richardson	Unknown	Less than 100	Moderate	Weight of evidence suggests current range is not self-sustaining given small population and moderate total disturbance. Anthropogenic disturbance is low. Trend data required.	Current Range
AB East Side Athabasca River	Declining (lambda 0.95)	150-250	Very high	High weight of evidence that current range is not self-sustaining given small, declining population and very high total disturbance. Anthropogenic disturbance at 49% suggests need for improved conditions.	Current Range and Improved Conditions
AB Cold Lake Air Weapons Range	Rapidly declining (lambda 0.93)	100-150	Very high	High weight of evidence that current range is not self-sustaining given small, declining population and very high total disturbance. Anthropogenic disturbance at 46% suggests need for improved conditions.	Current Range and Improved Conditions
AB Nipisi	Unknown	60-70	High	Weight of evidence suggests current range is not self-sustaining given small population and high total disturbance. Anthropogenic disturbance at 46% suggests need for improved condition[s]. Trend data required.	Current Range and Improved Conditions
AB Slave Lake	Unknown	75	Very High	Weight of evidence suggests current range is not self-sustaining given small population and very high total disturbance. Anthropogenic disturbance at 68% suggests need for improved conditions. Trend data required.	Current Range and Improved Conditions

¹¹ An indicator of whether a population is self-sustaining over a relatively short measurement period (3-5 years).

See full description in *Scientific Review* at pp. 20 and 21.

¹² See full description in *Scientific Review* at pp. 20 and 22.

¹³ An indicator of the ability of a range to support a self-sustaining woodland caribou population. See full description in *Scientific Review* at pp. 20-21 and 24-26.

For virtually all of the caribou herds in northeastern Alberta (with the exception of the Richardson herd), **the *Scientific Review* recommends that the federal government identify the entire current range of these herds as critical habitat, with “improved conditions”**.¹⁴

The *Scientific Review* provides a further description of what this recommendation means (“current range and improved conditions”), as follows:

Current range conditions and/or extent would need to be improved to restore the potential to support a self-sustaining population. **Further degradation of the range may have serious consequences for local population persistence....**

For most local populations [that are considered “not self-sustaining”], levels of anthropogenic disturbance in conjunction with population trend suggest that recovery efforts are required to restore conditions that support persistence (e.g., **a reduction in anthropogenic disturbance and recovery of disturbed habitat is necessary**)....¹⁵

For the Richardson herd, the *Scientific Review* recommends that the federal government identify the herd’s **entire current range** as its critical habitat (note that the population trend for this herd is “unknown”). The *Scientific Review* provides a further description of this recommendation (“current range”), as follows:

Current range condition and extent are required to maintain potential for self-sustaining population. **Further degradation of the current range may compromise the ability to meet the recovery goal.**¹⁶

The likely causes of decline in caribou year-round habitat for the local populations of woodland caribou in Alberta are set out at pp. 96-97 of the *Scientific Review*:

Recent research in Alberta suggests that **landscape disturbance** and the ensuing changes in predator-prey interactions **affects boreal caribou habitat use. Caribou in northeastern Alberta reduced their use of suitable habitat in close proximity to seismic lines, roads and well sites; caribou avoided roads and well sites by approximately 230 m and 1 km, respectively** (Dyer 1999). The rate of caribou crossing roads was less than expected in all seasons except calving (Dyer et al. 2002). **Because of this avoidance, roads may act as semi-permeable barriers to caribou movement,** potentially restricting caribou use of otherwise suitable areas (Dyer 1999, Dyer et al. 2002, Smith 2004). **Linear corridors such as roads and seismic lines may also facilitate wolf travel and hunting behaviour within caribou range** (Dyer 1999, James 1999, McCutchen 2007) [emphasis added].

¹⁴ *Scientific Review*, at p. 36.

¹⁵ *Scientific Review*, at pp. 51-52. Emphasis added.

¹⁶ *Scientific Review*, at pp. 50-51.

In short, the clear conclusions or implications of the *Scientific Report* are as follows:

- The *Scientific Review* rates all woodland caribou local populations in Alberta as “not self-sustaining”.¹⁷
- Further, for virtually all of the woodland caribou local populations in Alberta, the *Scientific Review* recommends that the condition and/or extent of the entire current range must be improved (i.e. the range cannot be allowed to deteriorate, and active steps must be taken to reduce industrial footprint) in order to restore the potential to support self-sustaining woodland caribou populations.¹⁸
- Improving conditions in woodland caribou ranges in Alberta would require a reduction in landscape disturbance (especially well-sites, and seismic lines, roads and other linear features).
- For **all** woodland caribou populations in Alberta, the *Scientific Review* recommends (at a minimum) that current range condition and extent cannot be allowed to deteriorate any further, and that the **entire current range of these herds should be set aside as critical habitat**.¹⁹
- The current ranges of all woodland caribou herds in Alberta are well-known; they are shown in various maps included in the *Scientific Review*.²⁰

Report on Woodland Caribou in Beaver Lake Cree Nation’s Traditional Territory

Beaver Lake Cree Nation commissioned a report on woodland caribou in Beaver Lake traditional territory from a leading caribou expert, Dr. Stan Boutin of the University of Alberta.²¹ Dr. Boutin’s report (dated July 5, 2010) focused on the Alberta Cold Lake Air Weapons Range herd (CLAWR) and on the East Side Athabasca River herd (ESAR); all of the CLAWR herd range and just over half of the ESAR herd range is within Beaver Lake Cree Nation’s traditional territory in Alberta (referred to as the “TT” in Dr. Boutin’s report).

Dr. Boutin’s report is included in its entirety as an attachment to this letter. Key conclusions include the following:

¹⁷ See *Scientific Review* at p. iv (Executive Summary) and at pp. 32 and 35-37 (table 6).

¹⁸ See *Scientific Review* at pp. 32 and 35-37 (table 6) and at p. 28 (definition of “current range and consider resilience” as proposed identification of critical habitat for a woodland caribou local population).

¹⁹ *Ibid.* And see p. 28 definition of “current range” as proposed identification of critical habitat for a woodland caribou local population.

²⁰ See e.g. p. 49. See also maps included in ALT 2009 (see below).

²¹ Dr. Stan Boutin, PhD, FRSC. *Expert Report on woodland caribou [Rangifer tarandus caribou] in the Traditional Territory of the Beaver Lake Cree Nation.* July 5, 2010.

- The ESAR herd has declined by 71% since 1996 while the CLAWR herd has declined 74% since 1998. This level of decline is dramatic and it is a strong signal that drastic immediate management action is required to keep caribou from disappearing completely in the TT.
- The ultimate cause of the decline is human-caused changes in vegetation and the creation of linear features such as seismic lines, pipelines, and roads. These changes can result in physical loss of habitat, avoidance of areas by woodland caribou, and increased caribou mortality as a result of population increases of moose and deer and wolves.
- Given that the creation of linear features due to energy sector development is the most prominent human-caused habitat change in caribou range in the TT, it is likely that these changes are the primary contributor to the declines in caribou seen in the TT. Extensive oil and gas deposits underlie most caribou ranges in Alberta and very high levels of petroleum and natural gas exploration and development have taken place on most of Alberta's caribou ranges, including the caribou range within the TT. The majority of the well sites, seismic lines, and pipelines created by the energy sector remain in place on caribou range because of continued industrial use, slow forest regeneration, and/or high levels of recreational vehicle use.
- Caribou are known to avoid habitat within 250 meters of linear features. Buffering all linear features within caribou range in the TT reveals that 51% of CLAWR and 66% of ESAR caribou ranges in the TT have been functionally lost.

Dr. Boutin made the following recommendations to ensure the survival and recovery of woodland caribou in the area:

- There is clear evidence that the human-caused changes in vegetation on caribou range in the TT are well above any threshold that could support viable caribou populations. Population declines in recent years have been drastic and recovery of caribou in the TT requires immediate action involving restoration of linear features, well sites, and cut blocks to natural vegetation, no further habitat change caused by human land use (full protection of caribou range), and caribou mortality management.
- It is clear that the history of planning and mitigation of activities at local project scales has not worked to protect caribou. The cumulative effects of many individual projects have led to total industrial activity exceeding the levels that can support viable caribou herds in the TT and surrounding area.
- The identification of critical habitat and development of a recovery strategy are fundamental steps in the conservation of any species, including caribou.
- Any delays in the implementation of conservation actions for caribou greatly increase the risk of failure. Given the rapid rates of decline that are now well-documented for the herds in the TT, the number of animals left is fast approaching levels where management

actions are less and less likely to be effective. [In Dr. Boutin’s opinion], caribou will be extirpated from the TT, most of northeastern Alberta, and in many other parts of Canada if the conservation actions outlined in [Dr. Boutin’s] report are not implemented immediately.

Although Dr. Boutin’s report focussed on the traditional territory of the Beaver Lake Cree Nation, the traditional territories of all First Nations in northeastern Alberta are in similar condition due to the pace, scale and intensity of industrial activity throughout this general area (primarily from oil sands and other oil and gas activity). Further, the survival and recovery of woodland caribou throughout northeastern Alberta depend on immediate implementation of Dr. Boutin’s recommended management actions; as Dr. Boutin makes clear in his report, the recommended management actions are not limited to Beaver Lake Cree Nation’s traditional territory.

Athabasca Landscape Team Report

In May of 2009, the Athabasca Landscape Team (ALT) released the *Athabasca Caribou Landscape Management Options Report* (the “ALT Report”).²² The ALT was asked to develop management options to recover and sustain boreal caribou for all populations in the Athabasca Landscape area, defined as the area in northeast Alberta covered by boreal caribou ranges plus a 20 km buffer zone.²³ The ALT Report notes that woodland caribou are listed as “threatened” under both Alberta’s *Wildlife Act* and under the federal *Species at Risk Act*.

The ALT’s key conclusions are set out in an Executive Summary, and include:

The ALT determined that there is insufficient functional habitat to maintain and increase current caribou distribution and population growth rates within the Athabasca Landscape area. Boreal caribou will not persist for more than two to four decades without immediate and aggressive management intervention. **Tough choices need to be made between the management imperative to recover boreal caribou and plans for ongoing bitumen development and industrial land-use.**²⁴

[...]

Land-use footprint, associated with oil sands (bitumen) extraction and forest harvest, is likely to increase throughout the Athabasca Landscape area over the next 50+ years. The highest risk to caribou occurs in areas that are underlain with thick bitumen deposits....²⁵

[...]

²² Athabasca Landscape Team, *Athabasca Caribou Landscape Management Options Report*, May 2009. (“ALT Report” or “ALT 2009”). Available on-line at: <http://www.albertacariboucommittee.ca/PDF/Athabasca-Caribou.pdf>

²³ ALT Report at p. i. Definition of Athabasca Landscape area at p. xii.

²⁴ ALT Report at i – emphasis in original.

²⁵ ALT Report at ii.

The ALT’s analyses show that the time for management action in the Athabasca Landscape area is now. Risk of extirpation increases yearly, and further delays in management action implementation will compound the current challenges. ALT analyses demonstrate that an aggressive suite of management actions... will need to simultaneously focus on reducing predation risk and restoring functional caribou habitat within each planning area.²⁶

[...]

The suite of management options identified by the ALT includes:

- establish large (thousands of square kilometre) Zone 1 Areas in portions of each planning area where recovery of functional habitat (footprint is reduced well below today’s levels through aggressive and coordinated reclamation and future industrial footprint is restricted to levels below current conditions); and caribou mortality control... would be the designated and enforceable management priority;²⁷

[...]

It is important to note that the benefits of habitat restoration will not be realized for decades because there is a 30-50 year lag time following reclamation before forest becomes old enough to be considered low quality for other prey, and suitably old to be used by caribou. At minimum, mortality management will need to be continued for this entire lag period. For this reason, **long-term risk will be minimized if both habitat restoration and mortality management begin as soon as possible.**²⁸

Table A of the ALT Report²⁹ summarizes “successful management options and considerations” for each Athabasca Landscape caribou planning area (WSAR, Richardson, ESAR and CLAWR). The ALT Report gives a “Current Risk Rating” as “High” for Richardson, ESAR, ESAR-West, ESAR-Bitumen Fairway and CLAWR, and “medium” for WSAR and CLAWR-East. For all planning areas, other than those with a low probability of caribou persistence, the report notes: “Habitat restoration is essential for long-term persistence [of woodland caribou].”

The ALT Report also notes that current project- or activity-specific approaches to caribou management, including project-specific mitigation measures, are not preventing an ongoing decline in caribou numbers.³⁰ Rather, the rate of decline of monitored caribou populations in the Athabasca Landscape area appears to be increasing in spite of “considerable” efforts to mitigate effects.³¹

²⁶ ALT Report at ii – emphasis in original.

²⁷ ALT Report at pp. iii-iv.

²⁸ ALT Report at iv – emphasis in original.

²⁹ ALT Report at pp. v-vi.

³⁰ ALT Report at 6.

³¹ ALT Report at 6 – see also p. 46.

Canada's and Alberta's Failure to Protect Woodland Caribou and their Habitat in Northeastern Alberta

As set out above, woodland caribou in northeastern Alberta very clearly face imminent threats to their survival or recovery. However, neither the Canadian federal government nor the government of Alberta have taken any meaningful steps to recover or prevent the further decline of woodland caribou and their habitat in northeastern Alberta.

Canadian Federal Government's Failure to Prevent the Decline of Woodland Caribou

The federal Minister of Environment was required to prepare a national recovery strategy for woodland caribou by June of 2007.³² The recovery strategy was required to address threats to woodland caribou's survival, including habitat loss, and identify the critical habitat of woodland caribou to the extent possible, based on the best available information.³³

As you know, there is still no national recovery strategy for woodland caribou, more than three years after the expiry of the mandatory deadline imposed by the *Species at Risk Act*.

A "preface" to the *Scientific Review* claims there is insufficient information to identify the critical habitat of woodland caribou. However, as you know, the Scientific Advisory Group to the *Scientific Review* (EC 2008) advised your ministry otherwise. As set out in Dr. Boutin's report, at p. 18:

The identification of critical habitat and development of a recovery strategy are fundamental steps in the conservation of any species, including caribou (see also the Federal SARA). No National Recovery Strategy has been produced for caribou, partially due to a purported claim that Critical Habitat has not yet been identified (EC 2008). In my opinion, the scientific information provided in EC (2008) was fully adequate to identify caribou Critical Habitat. This opinion was also held by the Scientific Advisory Group (of which I was a member) involved in drafting of the document. A 'preface' to the recent assessment EC (2008) hints at continued delay of the recovery strategy until 2011.

As clearly set out in the *Scientific Review*, the critical habitat of woodland caribou throughout northeastern Alberta is, at a minimum, their current range. Current range is well known and has been mapped throughout Canada and, in particular, in northeastern Alberta.

You and your ministry have tried to justify ongoing delay in producing a recovery strategy, in part, by saying that the federal government needs time to "consult" with First Nations or to gather Aboriginal Traditional Knowledge about woodland caribou. This may be part of the reason for your ongoing delay in completing the recovery strategy. But you have more than

³² SARA s. 42(2).

³³ SARA s. 37(1) and s. 41.

enough information about the critical habitat of woodland caribou to **protect their habitat in the interim**, while you continue to consult with First Nations. **Consultation cannot be used as an excuse for ongoing delay in recovering (or at least halting the decline of) woodland caribou in northeastern Alberta.**

Indeed, while you claim to consult with First Nations, the populations of woodland caribou in northeastern Alberta continue their precipitous decline: for example, as set out above, the ESAR herd has declined by 71% since 1996, while the CLAWR herd has declined 74% since 1998. This is a drastic situation that requires immediate intervention.

In addition to your duties to prepare a recovery strategy for woodland caribou, you have a mandatory duty under s. 80(2) the *Species at Risk Act* to recommend to federal Cabinet that it make an emergency order to provide for the protection of woodland caribou if you are of the opinion that woodland caribou faces imminent threats to its survival or recovery.

Given the information available to you, we do not feel you could reasonably hold any other opinion. As Dr. Boutin states at pp. 18-19 of his report:

Scientific knowledge concerning caribou habitat requirements, caribou status, and appropriate conservation actions has become available in the last 10 years and there was fully adequate knowledge to act in the last 3-5 years. This holds for the herds residing in the TT, northeastern Alberta, and the rest of Canada. [...]

There is ample evidence to support the claim that any delays in the implementation of conservation actions for caribou greatly increase the risk of failure (ALT 2009). Given the rapid rates of decline that are now well-documented for the herds in the TT, the number of animals left is fast approaching levels where management actions are less and less likely to be effective. **It is my opinion that caribou will be extirpated from the TT, most of northeastern Alberta, and in many other parts of Canada if the conservation actions outlined in this report are not implemented immediately.**

The First Nations Petitioners demand that you exercise your statutory duty under s. 80(2) to recommend an emergency order protecting woodland caribou in northeastern Alberta (or in a wider area). Under s. 80(4) of the *Species at Risk Act*, an emergency order on provincial land may:

- a) identify habitat that is necessary for the survival or recovery of a listed wildlife species in the area to which the emergency order relates; and,
- b) include provisions prohibiting activities that may adversely affect the species and that habitat.

The First Nations Petitioners demand an emergency order that identifies the entire current range of woodland caribou in northeastern Alberta as “the habitat that is necessary for the survival or recovery” of woodland caribou in that area; further, the emergency order should prohibit any further industrial activity or development in caribou range. The emergency order should remain

in place until you comply with your mandatory statutory duty to prepare a recovery strategy for woodland caribou – you and your ministry have remained out of compliance with the mandatory deadline imposed by the *Species at Risk Act* for more than three years. Given your failure to comply with your duties to prepare a recovery strategy, and given the continuing and alarming decline of woodland caribou in northeastern Alberta, we feel that a request for an interim emergency order is entirely reasonable.

The First Nations Petitioners give you 45 days to comply with their request that you exercise your duties under s. 80(2) of the *Species at Risk Act*, failing which you will be deemed to have refused to exercise your duty under s. 80(2) or to have delayed unreasonably in exercising this duty.

Failure to meet these demands will leave the First Nations Petitioners with no option but to compel you to comply with your statutory duties by court order. We put you on notice that the First Nations Petitioners will expect the federal government to comply strictly with the time limits set out in the relevant legislation and court rules if this matter proceeds to court; delay in litigation will only cause a further decline in woodland caribou populations in northeastern Alberta.

Provincial Government's Failure to Prevent Decline of Woodland Caribou

The federal government cannot rely on the Alberta provincial government to conserve woodland caribou; the Alberta Provincial government also has taken no active steps to prevent the further decline of woodland caribou in northeastern Alberta, let alone to recover the species. As set out in Dr. Boutin's report, at p. 18:

Boreal caribou in Alberta were listed as Threatened under SARA in 2002 and a recovery plan was tabled in 2005 (ASRD 2005). **Although the Provincial government developed a recovery strategy in 2004, no on the ground actions have been implemented to date** with the exception of the Little Smoky Range in west-central Alberta. [...]

Neither the Provincial or Federal Governments have implemented any conservation-based land-use plans in the TT. **The Lower Athabasca Regional Plan is currently under development but there are no explicit conservation strategies for woodland caribou. Recommendations made by ALT (2009) included the establishment of zone 1 areas within each caribou range that have caribou conservation as a priority. The management elements included caribou mortality management, restoration of current energy sector footprint and establishment of areas with no further industrial development. The location and size of these zones were not made explicit and to date, the Provincial Government has not acted to implement the ALT (2009) recommendations.**

Further details about the Alberta provincial government's failure to protect caribou, and about the province's general failure to control the cumulative environmental effects of rampant development in northeastern Alberta, are set out in more detail in the attachments to this letter.

Conclusion

The First Nations Petitioners put the federal government and the Alberta provincial government on notice that no further approvals for industrial developments or activities should be issued anywhere in or near woodland caribou ranges in northeastern Alberta. Any further human-caused land disturbance in these areas will threaten woodland caribou populations and, by implication, ecosystem integrity throughout the region.

The First Nations Petitioners have a constitutionally-recognized right to hunt woodland caribou. Woodland caribou populations are in severe decline in northeastern Alberta. The First Nations Petitioners will be forever denied the possibility of exercising their constitutionally-protected rights unless immediate steps are taken to restrict all further development throughout woodland caribou ranges in the region.

The First Nations Petitioners rely on woodland caribou and on the ecological conditions in their traditional territories for their cultural survival; accordingly, the imminent threat to the survival or recovery of woodland caribou in northeastern Alberta also represents an imminent threat to the health and survival of First Nations cultures throughout the region. It is incumbent on you to take immediate steps to address an entirely-preventable ecological and cultural tragedy.

Yours truly,
WOODWARD & COMPANY

<original signed by>

Jack Woodward

- Enclosures:
1. *Scientific Review* (EC 2008)
 2. July 5, 2010 Report of Dr. Stan Boutin
 3. Athabasca Landscape Team Report (ALT 2009)
 4. BLCN letter to federal Minister of Environment and Alberta Minister SRD, 25 August 2009
 5. Affidavit #1 of Simon Dyer, filed in Alberta Court of Queen's Bench Action No. 0803 06718
 6. Affidavit #2 of Peter Lee, filed in Alberta Court of Queen's Bench Action No. 0803 06718
 7. GFW Map of oil sands leases and current and proposed oil sands projects in BLCN traditional territory
 8. Government of Alberta - Energy, July 2009 map: "Alberta's Oil Sands Projects"

c.c. Alberta Environment, Alberta Sustainable Resource Development, Alberta Energy, ERCB