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Conveyed Electronically

Dr. Erin Kelly
ADM, Environment and Natural Resources
Government of the NWT
Yellowknife NT X1A 2L9
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Dear Dr. Kelly:

Re: **Consultations on the ENR legislative proposals**

Alternatives North's initial questions and input on the following Acts is attached:

- *Environmental Protection Act*
- *Environmental Rights Act*
- *Protected Areas Act*
- *Forest Management Act*

As you noted at the March 1st workshop, the Waters Act is tracking somewhat slower than the other acts, so we will be concentrating on these four acts at this time.

Our comments are organized according to the categories of the ENR survey, with additions according to the slide number from the presentation deck at our last engagement session. We hope providing input in this format will assist staff in answering our questions and incorporating our comments. If another method of providing future input would be better, please let us know.

For transparency and understanding, we would like to know what the memberships are for the various Technical Working Groups.

We will continue to participate in stakeholder engagement sessions, and intend to make additional comments as the process continues. At this stage we would like to make these overall comments, in addition to the ones on each specific act as attached.

Overall Comments

Ecosystem approach: Alternatives North (AN) appreciates and supports that an ecosystem-based regime across all environmental legislation appears to be the department's goal.

Transparency and Disclosure: We are pleased that ENR also appears to be committed, through these legislative amendments, to gather data and make it publicly available, such

as through the creation of the environmental registry, the efforts at disclosure and the reporting initiatives. As mentioned during the meeting, we do have concerns with details surrounding these efforts. Timely release and plain language information is important. We hope that the GNWT identify and overcome existing constraints and limitations to these issues overall. With respect to this process, we need to see the proposed language for various clauses during the drafting stage, so we can get clarity on meaning and provide appropriate input.

Background research: In past legislative reviews (such as the MVRMA Amendments) there was a significant amount of legislative and operational background/research to aid the reviewers. To have so little in this process was something of a surprise. We have requested some specific information under each legislative initiative in the attachments.

In general, we would expect additional research or background for the following situations:

- Explanations and instances of 'best practices' including cross jurisdictional comparisons and lessons learned;
- Discussions about regulatory gaps or overlaps;
- Instances where consistency or administrative harmony were issues;
- References to the (common) practices of other jurisdictions.

The absence of this information results in the reviewers essentially evaluating the presentation and slides of the day – it lacks the depth for a thorough review of what's clearly intended to be long lasting legislation.

Policy vs legislation: We understand that the GNWT is seeking to put in legislation the authority for some actions and activities it has already undertaken, absent explicit statutory authority. We took your explanation at the March 1st meeting to mean that the GNWT was formalizing the legal framework for the work that they were already doing.

We have concerns about this approach. AN would like additional information and legal research from ENR about this, so we can better understand this situation and make recommendations. While we understand and support the desire to have clear legislative authority for implementing policy, we wonder about unintended consequences, resulting in a constraint on the Minister's discretion in the future, i.e., the belief that any actions will need to have a legislative basis empowering a specific activity. Our position is an outgrowth of a recently completed complex and contractually binding multi-party agreement with Canada and the GNWT. The Federal drafter in that case repeatedly addressed our scenarios by pointing out that if it wasn't 'excluded', then it was inherently 'included'. Absent additional research or compelling rationale, we believe that this should be the default position. Speaking plainly, the legislation should allow GNWT practice to continue absent explicit counter authority.

Stakeholder concerns: It would be helpful if the GNWT could provide clear feedback in tabular form about items that it considers worth addressing and those which lack sufficient support or relevance through tracking, evaluation and (potential) accommodation of stakeholder concerns. Similarly, recognizing that significant work and decisions have taken place in the TWG to move the process on different sections of legislation from red, or yellow to yellow or green, it would aid transparency and understanding towards informed input to know what those decisions were.

Centralisation of authority: AN voiced concerns about the centralisation of discretionary authority with the Minister at the last review of the *Environmental Protection Act*. From what we see at this stage, it appears that ENR is not repeating this approach in these amendments/new Act. We will be tracking this as the process continues.

We are also concerned that much of the detailed implementation of the changes will be left to regulations that can be changed at the discretion of Cabinet and that much of the current approach will rely on ministerial discretion being exercised in the public interest. Because much of the regulatory process takes place without public input, we would prefer that appropriate limitations on ministerial discretion be placed in the legislative changes - including requirements for public disclosure, reasons for decisions, and reasons for exceptions (which should only occur in unusual circumstances).

If you have any questions on this submission, please contact us through the undersigned. Thank you for the ongoing opportunities for input.

Alternatives North

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Attachments:

- *Environmental Protection Act* comments
- *Environmental Rights Act* comments
- *Protected Areas Act* comments
- *Forest Management Act* comments

cc. Christine_glowach@gov.nt.ca
[Chair of the Standing Committee on Economic Development and Environment](#)