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Conveyed Electronically

Dr. Erin Kelly  
ADM, Environment and Natural Resources  
Government of the NWT  
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Dear Dr. Kelly:

Re: **May consultations on the ENR legislative proposals**

Thank you for the stakeholders' session in May. We plan to submit comments on individual acts separately. This letter concerns overall points to the five pieces of legislation.

1. **Legislation vs. regulation:** Could we please get a clarification on your views on whether the points we have raised are suited to legislation, regulation, or policy?

We suggest that since Acts such as the *Forest Protection and Management Act* are 'lean' and leaving a lot to regulation, that developing the regulations needs a rigorous development process similar to that used for the Acts.

2. **Definitions:** We understand you are striving to have definitions common to the five acts, which approach we support. Although we have not had a chance to see many of the definitions, we offer the following:

**a) *Precautionary Principle:***

A definition is needed. The precautionary principle denotes a duty to prevent harm, when it is within our power to do so, *even when all the evidence is not in*. The precautionary principle is not a policy, it is a requirement to conduct yourself in a certain way. The definition used in the acts should be one that is widely accepted and useful in decision making, such as the UNESCO definition.

Key elements of a definition of Precautionary Principle include:

When human activities may lead to morally unacceptable harm that is *scientifically plausible* but uncertain, actions shall be taken before harm occurs to avoid or diminish possible harm.

*Morally unacceptable* harm refers to harm to humans or the environment that is

- threatening to human life or health, or
- serious and effectively irreversible, or
- inequitable to present or future generations, or
- imposed without adequate consideration of the human rights of those affected.

The judgement of *plausibility* should be grounded in *scientific analysis*.

- analysis should be ongoing so that chosen actions are subject to review.
- uncertainty may apply to, but need not be limited to, causality or the bounds of the possible harm.

Actions should be chosen that are *proportional* to the seriousness of the potential harm, with consideration of their positive and negative consequences, and with an assessment of the moral implications of both action and inaction.

The choice of action should be the result of a *participatory process*.

**b) Adaptive Management:**

A definition is needed. This concept is closely linked with the precautionary principle. Consistently collecting baseline information and reference sites under different management conditions are important components of adaptive management, so this concept is linked to research and monitoring in protected areas.

Key elements we believe should be in the definition include:

- scientific, controlled testing of hypotheses related to management uncertainties. It is *not* trial and error, or 'best-guess'.
- an open process that involves stakeholders to change management practices in order to investigate for management options for improving long term outcomes.
- information accrual, database for testing hypotheses and continually incorporating new knowledge, hence monitoring systems are an important component.

**c) Artisanal:**

We support, in principle, the definition ENR presents (“means the non-industrialized, labour-intensive extraction or uses of surface and subsurface resources that utilizes local skills and knowledge to produce value-added products for individual sale, domestic use, or community purposes”). However, it should be clarified this means both renewable and non-renewable resources. Also, we see the need to further restrict the term ‘artisanal’ in some cases (e.g., we do not believe extraction of granular materials for community use could be considered artisanal.)

**d) Ecological integrity:**

We agree the definition presented by ENR contains many key elements. However, soils are not abiotic, and this error should be corrected.

**e) Aquatic ecosystems/wetlands:**

We believe that a definition of wetlands needs to be included, at least in the Waters Act, and hopefully also in the Protected Areas Act and Forest Protection and Management Act. We support the definition presented by Ducks Unlimited Canada, namely: *For the purposes of interpreting the Act(s), the term “wetlands” will include all types and forms of wetlands (bogs, fens, marshes, swamps and shallow open water) as described under the Canadian Wetland Classification System. A wetland is defined as: land that is saturated with water long enough to promote wetland or aquatic processes as indicated by poorly drained soils, hydrophytic vegetation and various kinds of biological activity which are adapted to a wet environment (National Wetlands Working Group 1988)*

**f) Emergency:**

A definition is needed. The definition from the *Civil Emergency Measures Act* (“a present or imminent event that is affecting or could affect the health, safety or welfare of people or is damaging or could damage property”) does not seem to be sufficient for these acts. Our concern arises from the fact that Giant Mine has been in an ‘emergency’ situation for many years; and variable definitions could give unwarranted power to a minister to act unilaterally in an ‘emergency’ situation. We would ask that the definition consider including the unleashing of otherwise unbudgeted public funds to deal with a situation.

**3. Transparency:** Transparency should be a requirement in all the Acts, and preferably referenced in all their preambles.

Our understanding is that a public registry for all five Acts will be detailed in the ERA, and then referenced in each Act (i.e., there will not be separate

registries for each Act; all will be co-ordinated through ERA; and there would be a clause in each Act regarding how reporting in the Act relates to the ERA registry). If this is not the case, to facilitate public information, we recommend that the public registry should be referenced in each Act, and detailed under the ERA. This would mean all divisions would not be competing for funding, but co-ordinating information collection, and that the ERA Division would be responsible for the upkeep of the registry. This would help ensure due diligence of reporting with all five acts. All legally required information would be posted on the registry. The reasons for ministerial decisions regarding public processes and exemptions should be posted on the public registry.

4. **Fines and similar measures:** We don't have a sense of good co-ordination between the Acts regarding appropriate use of Administrative Monetary Penalties (AMPs) vs. fines vs. tickets vs. summary convictions. We agree that court proceedings are not necessarily the best way to deal with penalties, and that options should be available. More clarity on this is one way we see to improving the basis for consistent and committed enforcement by the GNWT.
5. **Securities:** We appreciate the efforts ENR is making to ensure that sufficient security is in place for remediation, and that transfer of properties requires assessing the ability of a potential new owner to take on the transfer of assets and concomitant liabilities. It is not clear, however, how company Directors may be liable if, despite best efforts by GNWT, securities are found to be insufficient. We believe there should be greater personal Company Director liability for the actions that they are ultimately responsible for. Director liability is an area of legal development, and AN would welcome the GNWT's research and opinions on the matter, and how it can be incorporated into the Acts.
6. **Cross-appointments:** How can the Acts facilitate cross-appointment of inspectors?
7. **Reporting:** We agree that public right to thorough and consistent information is vital; it is difficult to effectively participate in processes without good background information. It appears there is some consistency in requirements for reporting across the Acts, which we support. Our basic position is that information should be publicly available unless there is a public interest reason not to provide the information.

We agree with the requirements for the five-year reports. However, there should also be annual reports, including annual reports from all the Protected Areas Management Boards. This allows people to be up-to-date, and provides self-informative benefits to the management bodies. The five-year

reports should analyse the information from annual reports (e.g., what trends are noticed?), not merely regurgitate them.

For clarity, we support that the environmental registry should *not* be a duplication of Land and Water Board registry, which we understand is ENR's position.

Thank you for the ongoing opportunity to comment on these important pieces of legislation.

Alternatives North

A handwritten signature in cursive script that reads "Karen Hamre".

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cc. Christine\_glowach@gov.nt.ca  
Cory Vanthuyne, Chair Standing Committee on Economic Development and Environment