

Honorable Rebecca Schulz
Minister of Environment and Protected Areas
Government of Alberta
Sent via e-mail to: epa.minister@gov.ab.ca

June 18, 2024

Re: Bistcho Lake and Cold Lake Sub-Regional Plan Draft Regulatory Details

Dear Minister Schulz,

CPAWS Northern Alberta (CPAWS-NAB), Alberta Wilderness Association (AWA), the Alberta Chapter of the Wildlife Society (ACTWS) and the Pembina Institute are writing you to provide feedback regarding the draft regulatory details for the Bistcho Lake and Cold Lake Sub-Regional Plans (SRPs) released by the Government of Alberta (GoA) for public comment on May 8, 2024.

We appreciate the release of the draft regulatory details as more than two years have elapsed since the Bistcho Lake and Cold Lake SRPs were finalized in April 2022. Without the enabling regulations, the plans have not yet been implemented. The completion and implementation of SRPs is crucial for GoA to meet its commitments for the recovery of threatened woodland caribou (*Rangifer tarandus caribou*) populations in Alberta.

Our primary concerns with the draft regulatory details are as follows:

1. The draft regulatory details include numerous exemptions, vague definitions, and highly discretionary decision-making powers, and therefore, they do not guarantee that the required undisturbed habitat targets will be met.
2. The draft regulatory details permit increased habitat disturbance within caribou ranges that do not meet or come close to undisturbed habitat targets.
3. The models upon which the plans are based assume the full restoration of seismic lines and PNG disturbance within 10 years. However, there is no mechanism to require, or fund, this restoration within the timeline, thus rendering the models and the plans unrealistic in terms of reaching the undisturbed habitat target.
4. The exclusion of wildfire disturbance from habitat projections for both SRPs and regulations means that undisturbed habitat targets will not be met

A detailed explanation for each concern is provided in the following sections.

Background:

In 2020, the *Agreement for the Conservation and Recovery of the Woodland Caribou In Alberta*¹ between Canada and Alberta under Section 11 (Section 11 Agreement) of the *Species at Risk Act* (SARA) was signed to ensure GoA would take actions to recover woodland caribou. The Section 11 Agreement provided a deadline for Alberta to produce range plans for all caribou ranges in the province, which GoA is undertaking through the development and implementation of SRPs.

¹ Environment and Climate Change Canada and Alberta Environment and Parks, "Agreement for the Conservation and Recovery of the Woodland Caribou In Alberta," October 19, 2020, https://www.sararegistry.gc.ca/virtual_sara/files/Ca-CaribouAlberta-v00-2020Oct-Eng.pdf.

Caribou range plans and their enabling regulations must establish how GoA will achieve the critical habitat requirements for woodland caribou. These requirements include the maintenance of a minimum of 65 percent undisturbed habitat within caribou ranges, as well as biophysical attributes required by caribou to carry out life processes.

According to GoA, the Cold Lake and Bistcho Lake regulatory details have been drafted to support the full implementation of these two SRPs by enacting them under the Lower Athabasca Regional Plan (LARP) to provide the necessary compliance and enforcement mechanisms.

Requested Changes to the Draft Regulatory Details:

1. Exemptions and Discretion

The draft regulatory details for both Bistcho Lake and Cold Lake include many exemptions with a high degree of discretion for decision-makers, leaving significant uncertainty about whether the limits will be enforced adequately to meet intended caribou recovery goals as required by the Section 11 Agreement and the SARA Recovery Strategies.

This means that even if the draft regulations contain prohibitions which could be potentially helpful for achieving caribou recovery goals, many of those same prohibitions could be undermined by providing avenues for exemption and/or too much discretion for decision-makers.

Sections containing discretionary provisions and/or exemptions of concern are listed below.

Cold Lake SRP Regulatory Details:

- Sections 8 and 9 (Water Body Dispositions).
- Sections 10 and 11 (Watercourse Dispositions).
- Sections 18 to 21 (Formal Dispositions within Planning Units).
- Section 47 (Rules for Calculating Disturbance through the *Oil Sands Conservation Act* [OSCA] approval).
- Section 59 (Regulatory Backstop).
- Sections 62 and 63 (Limits on Other Human-Caused Disturbances).

Bistcho Lake SRP Regulatory Details:

- Sections 8 and 9 (Water Body Dispositions).
- Sections 10 and 11 (Watercourse Dispositions).
- Sections 51 and 52 (Limits on Other Human-Caused Disturbances).

For example, Sections 8 and 9 (Water Body Dispositions) in the draft regulatory details state that an exploration approval can still be granted within 250 meters of the bed and shore of identified water bodies if the 'integrity of lands' is not compromised. However, 'integrity of lands' is an undefined concept with a high degree of ambiguity. The inclusion of undefined or ambiguous criteria creates excessive room for discretion by decision-makers and does not guarantee that a prohibition will prohibit the activity.

2. Increased Habitat Disturbance is Permitted within Caribou Ranges

Woodland caribou populations require 65 percent undisturbed habitat within their ranges to give them a 60 percent chance of recovery to self-sustaining levels². This means that if and/or when 65 percent undisturbed habitat is achieved, there remains a significant (40 percent) risk that populations may not be self-sustaining.

GoA data from 2023 shows that all of Alberta's caribou ranges are well below the necessary threshold of 65 percent undisturbed habitat, with some populations – such as Little Smoky – having as little as 0.7 percent undisturbed habitat. The Bistcho and Cold Lake populations specifically have 6.4 percent and 12.4 percent undisturbed habitat within their respective ranges.

According to the same report, the percentage of caribou range covered by human footprint from 2010 to 2023 increased in all ranges except for two summer ranges (A la Pêche and Redrock-Prairie Creek), while more approvals for industry and natural resource activities are expected to come.

The Bistcho Lake and Cold Lake SRPs (and the draft regulatory details) both permit increasing disturbance within caribou ranges by allowing proponents to apply for dispositions for activities such as the construction of new roads, transmission lines, pipelines, seismic lines, sand for surface material extraction or timber harvest.

For example, Figures 7, 8, and 10 in the Bistcho Lake SRP Regulatory Details show roads, surface material extraction zones, and forest harvest timing series respectively, which overlap extensively with caribou range as identified in Figure 1.

Given the current abysmal state of undisturbed habitat within caribou ranges across Alberta, no new dispositions or approvals should be permitted for activities that will increase disturbance within caribou ranges. If Alberta intends to achieve its commitments to caribou recovery, then the draft regulatory details should be revised to prohibit increased disturbance within caribou ranges.

3. Reliance on the LMF for Oil and Gas Reclamation

While not addressed directly within the draft regulatory details, the abandonment and restoration of conventional oil and gas disturbance (and associated infrastructure) will be managed through Alberta's 2020 Liability Management Framework (LMF).

Inactive, orphaned, and/or abandoned oil and gas sites need to be restored if Alberta is to reach the required undisturbed caribou habitat goals. However, recent research³ demonstrates that the LMF is a wholly inadequate tool for enforcing the reclamation of oil and gas disturbance. Therefore, GoA's reliance on the LMF for oil and gas reclamation within caribou ranges diminishes the ability of the plans to achieve the level of undisturbed habitat restoration that is required for caribou recovery.

² Environment Canada, "Recovery Strategy for the Woodland Caribou (*Rangifer Tarandus Caribou*), Boreal Population in Canada" (Ottawa, 2012); Environment Canada, "Recovery Strategy for the Woodland Caribou, Southern Mountain Population (*Rangifer Tarandus Caribou*) in Canada" (Ottawa, 2014).

³ Drew Yewchuk, Shaun Fluker, and Martin Olszynski, "A Made-in-Alberta Failure: Unfunded Oil and Gas Closure Liability," *The School of Public Policy Publications*, October 11, 2023, Vol. 16 No. 1 (2023), <https://doi.org/10.11575/SPPP.V16I1.77468>.

According to a 2023 paper⁴ from the University of Calgary’s School of Public Policy, the LMF is “unlikely to substantially reduce inventories of orphan and inactive assets.” The LMF relies heavily on the discretion of the Alberta Energy Regulator to trigger closure obligations and does not include any legislated timelines or quotas for closure work.

The absence of any mandatory timelines, quotas, or penalties for non-compliance means that proponents can continue to push their closure and/or reclamation work towards an unspecified future date. This critique reinforces our concern that GoA’s reliance on the LMF may not guarantee that reclamation occurs at the pace needed to facilitate the recovery of caribou habitat.

If GoA wants to take the issue of oil and gas reclamation seriously and uphold its commitments to caribou recovery under SARA and the Section 11 Agreement, then reclamation quotas and timelines should be explicitly stated within the SRPs and the associated regulatory details. Most importantly the GoA needs to require the regulator to enforce the regulations effectively to ensure desired outcomes are met.

Exclusion of Wildfire Projections from Caribou Habitat Modeling

As outlined in our letter to the Minister of Environment and Protected Areas from April 29, 2024⁵, the SRPs and their associated regulatory details need to include projections for the impact of wildfires in caribou habitat models.

The uncertainty in our ability to predict wildfire reinforces the need to take a precautionary approach in the sub-regional planning process when modeling for disturbance and restoration, especially as it relates to caribou recovery.

Neither the Cold Lake nor the Bistcho Lake SRP includes projections for the probable impact of wildfire on caribou habitat. That’s despite recent data from the Alberta Biodiversity Monitoring Institute which shows that in 2023 alone, 12.7 percent of preferred caribou habitat in the Bistcho range was lost due to wildfire⁶, in a range that is already more than 93 percent disturbed.

As wildfires are likely to increase in frequency and severity due to climate change, their potential impacts need to be considered in the development and implementation of all SRPs if they are going to successfully facilitate caribou recovery. Otherwise, GoA should increase the target threshold for undisturbed habitat to a value greater than 65 percent to buffer for potential unforeseen wildfire impacts.

We recognize that provisions have been included in both SRPs to review the plans in the event of significant wildfire disturbance. However, in the case of Bistcho Lake, those thresholds have

⁴ Yewchuk, Fluker, and Olszynski.

⁵ Canadian Parks and Wilderness Society Northern Alberta Chapter, Alberta Wilderness Association, and Alberta Chapter of The Wildlife Society, “Joint ENGO Letter to Alberta’s Minister of Environment and Protected Areas Regarding Wildfire Impacts to Caribou Habitat,” April 29, 2024, https://albertawilderness.ca/wp-content/uploads/2024/05/20240429_lt_engos_goa_wildfire_impacts_caribou_habitat_srp_shortcomings.pdf

⁶ D. Huggard, B. Allen, and D. R. Roberts, “Effects of 2023 Wildfires in Alberta,” ABMI Science Letters Issue 8, March 2024.

already been surpassed, which means that a two-year-old plan that has yet to be implemented already requires a full-scale review. Given the time-consuming SRP implementation process, provisions must be included in SRPs to account and adjust for potential wildfire disturbance to avoid requiring a full-scale review.

Concluding Remarks

SRPs are the tool by which GoA intends to meet its commitments to caribou recovery as required by the Section 11 Agreement and the SARA Recovery Strategies. This means that the finalized SRPs and their enabling regulations need to demonstrate – with certainty – how activities on the landscape will be managed in such a way that caribou recovery is prioritized over increased disturbance.

As we have outlined above, both the Cold Lake and Bistcho Lake SRP regulatory details leave us with several significant concerns, and thus fail to provide us with certainty that the SRPs will adequately support caribou recovery with sufficient urgency.

We thank you for the opportunity to provide feedback as part of this engagement and we hope to see this feedback reflected in the finalized regulatory details and in the development and implementation of future SRPs.

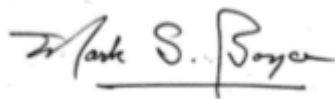
Sincerely,



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