



Government of Newfoundland and Labrador  
Department of Environment and Conservation  
Environmental Assessment Division

January 30, 2015

Mr. David Schulze  
Dionne Schulze - Attorneys  
507 Place d'Armes #1100  
Montreal, Quebec H2Y 2W8

Dear Mr. Schulze,

**Re: Reply to your November 19, 2014 letter concerning the Environmental Assessment of the Labrador-Island Transmission Link Project: *The Species at Risk – Impacts, Mitigation and Monitoring Plan* (the “Plan”). Your file number: 7550-005**

Since many of the issues raised in the noted correspondence of November 19, 2014 have been addressed in earlier replies to the Ekuanitshit, this letter will strive to address any new issues that were raised in the noted correspondence on behalf of the Ekuanitshit.

#### Plan Approval

The review period for post environmental assessment (EA) documents is clearly explained in the Post EA Aboriginal Consultation Guidelines for this Project that was circulated for Aboriginal consultation on July 2, 2013 and which the Province has followed throughout the post EA Plan review process. Please recall that on October 20, 2013 Nalcor circulated an initial Plan for Aboriginal consultation that the Province determined to be deficient. Once Nalcor improved that Plan, a second period of Aboriginal consultation was initiated as established in the Guidelines. The 30-day consultation period for this revised Plan began on September 10, 2014 and was scheduled to end on October 10, 2014. In the case of the Ekuanitshit, the review period was extended to November 10, 2014 to better accommodate the Ekuanitshit's participation. As no further comments were received up to the extended November 10, 2014 deadline, nor any request for a further extension received, the Province proceeded to issue the section 19 permit to the proponent. Please note that there was no predetermined decision to approve the Plan on November 10, 2014. The Province feels the iterative process, and the input received during the two Aboriginal consultation periods, produced a strong Plan for species at risk in Labrador.

### Questions

Regarding the efforts of the Government to consider and address the concerns of the Ekuanitshit, please be assured the Government has made every effort to fully and fairly consider the comments provided to the Province's regulators by the Ekuanitshit, and to reasonably accommodate, where appropriate, those concerns. The Province would like to state clearly that your presumptions are not well-founded and the Province does not agree with them.

### Meetings

Since the Ekuanitshit did not propose a meeting or a meeting date during the consultation period, no interpretation services were sourced or discussed with the Ekuanitshit. The Government remains committed to meeting with the Ekuanitshit, at any time, in accordance with the post EA consultation guidelines for this Project, and remain committed to paying for half the cost of any needed French/English interpretation required for those meetings.

### Environmental Protection Plan

As you note, there can be overlap between post EA monitoring and protection plans. This is not unusual as they are requirements under separate legislation (*Environmental Protection Act* and the *Endangered Species Act*). Environmental Protection Plans (EPPs) and Environmental Effects Monitoring Plans (EEMPs) are required as conditions of release of the Project from Environmental Assessment and are not required for the issuance of a permit. The Species at Risk Impacts Mitigation and Monitoring Plan (SAR IMMP) is a requirement for the Minister of Environment and Conservation to consider before the issuance of an Economic Activity Permit under Section 19 of the *Endangered Species Act*. All documents (i.e., EPP's, EEMP's, SAR IMMP) were provided to Aboriginal organizations during this post-EA phase for review. It is the responsibility of reviewing bodies to ensure they have carried out their review and met the comment submission deadlines outlined in the Consultation Guidelines. Another point to make is that post EA monitoring and protection Plans are considered 'living' in that should new information or mitigations become available, these Plans will evolve to better reflect these changes.

### Protection Plans

With respect to critical habitat protection plans specific to the Red Wine Mountain herd, the following matters are put forward for consideration:

In reviewing your September 25<sup>th</sup>, 2014 correspondence we are unable to locate where you have reminded us of a “failure to adopt critical habitat protection plans”... “by establishing ranges”. However please see comments below on critical habitat planning and range planning.

Newfoundland and Labrador Biologists worked with their Federal counterparts on early iterations of the National Recovery Strategy for Boreal caribou. The 2012 document drafting was led by Environment Canada with limited involvement from the provinces and territories. The final strategy clearly identifies herd ranges for Labrador and includes range-specific risk assessments and population objectives. Newfoundland and Labrador (NL) biologists have taken existing data to further develop seasonal range boundaries that are dynamic. As new information is gained on animal movements, NL biologists routinely update annual and seasonal ranges for all Boreal caribou in Labrador, and use this information for management.

The Newfoundland and Labrador *Endangered Species Act* states that critical and recovery habitat may be identified in a Recovery or Management plan where appropriate. If critical habitat is identified in a plan, the minister must release a statement outlining how the habitat is to be protected. There is no legal requirement to develop critical habitat protection plans under the *Endangered Species Act*.

There is often confusion between the federal *Species at Risk Act* and the provincial *Endangered Species Act* and the requirements under each. The *Species at Risk Act*, for the most part, applies on federal lands and to federally managed species (Migratory Birds under the *Migratory Birds Convention Act* and Fish covered under the *Fisheries Act*). The *Endangered Species Act* applies to all species listed under the act whether provincially managed or federally managed, on provincial and private land which includes the majority of this Project in Labrador. The species in question is neither aquatic nor a migratory bird, and occurs on provincial rather than federal land.

You state “Critical habitat protection plans are nonetheless required under Section 7.4 of the Recovery Strategy for the Woodland Caribou (*Rangifer tarandus caribou*), Boreal Population, in Canada issued in 2012 by Environment Canada and therefore subject to the *Species at Risk Act*.” This is a commitment by the federal government not by the Province. It is

our understanding that the federal government is working on these range plans in conjunction with the various provinces and territories individually.

The Province is unable to comment on commitments to develop range plans set out in the Recovery Strategy for the Woodland Caribou (*Rangifer tarandus caribou*), Boreal Population, in Canada issued in 2012 by Environment Canada. We would suggest you forward all inquiries on the National Recovery Strategy to Environment Canada.

Further, we feel it important to point out that critical habitat is identified in the National Recovery Strategy as 'the area within the boundary of each boreal caribou range that provides an overall ecological condition that will allow for an ongoing recruitment and retirement cycle of habitat, which maintains a perpetual state of a minimum of 65% of the area as undisturbed habitat'. Currently, greater than 65% of all Boreal caribou ranges in Labrador remain undisturbed, including the Red Wine Mountain Range.

The work of provincial biologists to identify areas of importance for caribou as part of the identification of caribou critical habitat is a scientific process that requires extensive data collection and long term data sets. Over the past several years, to assist in specific regional planning for an updated Labrador Recovery Plan, biologists in the Wildlife Division have done the following:

- Monitored Boreal caribou through surveys, calf recruitment assessments, and by calculating annual survival rates for each herd;
- Compiled historical information on survival and recruitment to assist in evaluation of current trends;
- Defined biological seasons based on movement rates;
- Mapped seasonal ranges;
- Developed an Ecological Land Classification for central Labrador with an emphasis on habitats relevant to Boreal caribou;
- Calculated selection ratios for preferred habitats;
- Mapped fire and disturbance footprints for all ranges.

The analysis of this data is complex and time consuming. There are various techniques and procedures that can be used. The provincial biologists responsible for this work have been examining these various techniques looking at which would be best suited to identify areas specifically important to Labrador caribou. Putting a time frame on this kind of work is difficult as using a large dataset for the analysis will provide a more accurate picture of what is truly critical habitat. We are unable to put a firm date on when the critical habitat work will be completed. It is our hope that we will have something available to the Recovery Team before spring 2015.

The updated Provincial Recovery Plan will be released once the critical habitat analysis is complete and the Recovery Team approves the plan. As explained above, we cannot set a time frame for that. Although neither of these plans is finalized, documents have been developed by Nalcor (e.g., EPPs, EEMPs) that were subject to Aboriginal consultation and then approved by the Province. These documents incorporate aspects of the analysis conducted to identify critical habitat provincially and outline numerous protective measures that will be taken for boreal caribou. Your client has had opportunity to comment on all documents approved to date.

#### Environment Canada Participation

The Province's views on the participation of these federal officials remain as previously communicated. With respect to the scheduling of meetings, please see the above section on Meetings.

#### South Peace Northern Caribou Plan

While the Province's biologists are aware of developments in other jurisdictions, including the noted BC Plan, each SAR IMMP must be developed based on the local conditions present in each jurisdiction. The Province has reviewed the subject SAR IMMP to determine whether it meets its intended purpose. After applying its knowledge of Labrador caribou populations and conditions, the Province found that the subject SAR IMMP could be approved. The Province did work with Nalcor in the finalization of an acceptable SAR IMMP and does not feel that the authorship is an issue given that the subject SAR IMMP contains sufficient measures to protect caribou in Labrador. In this way, the example from British Columbia, as well

as examples of monitoring and mitigation documents from other jurisdictions in Canada, have been incorporated, where appropriate, in the Project's impact mitigation and monitoring plan.

As to the predicted residual impacts of the Muskrat Falls Project on caribou, the monitoring Nalcor is undertaking as per the SAR IMMP will determine if the residual impacts of the project are the same as predicted in the EIS. The EIS documents, including the predicted project impacts, are posted on the Environmental Assessment website public registry.

### Guidelines

Through commitments made in the EIS, the EIS Addendum, numerous post EA release permits, EPPs, EEMPs and the SAR IMMP, mitigations have been identified that the Province feels are appropriate to avoid and or minimize potential negative effects of this Project on the environment.

Federal regulators are better placed to address questions related to federal permitting and guidelines, so questions on those matters should be directed to the federal regulators.

Likewise, provincial regulators will consider provincial guidelines in the establishment of provincial permit conditions. Where provincial guidelines are required or appropriate to be included as provincial permit conditions, they will be included.

The response by Nalcor to CEAA-16 outlines the circumstances where mitigations will be applied in the absence of any provincial or federal regulatory authority. It is the Province's view that such circumstances would be few and of limited consequence. Please note that while Nalcor is a statutory crown agent, the provincial crown, not Nalcor, is the regulator for matters under the jurisdiction of the Province. Please be assured that all provincial applications by the proponent will be assessed for compliance with all provincial law and policy. In addition, permit conditions are established after considering the risk posed by the activities that are sought to be authorized. The permit conditions are, therefore, sufficient given the nature of the activity at the particular activity location and at the specified activity time.

### Labrador Woodland Caribou Recovery Team (LWCRT)

A meeting of the LWCRT has not been scheduled to date. As previously indicated, if the Ekuanitshit would like to participate, please contact the Wildlife Division to discuss participation on the team and to be informed of future meetings.

### Conclusions

As to the issues raised in the "Conclusions" section of the noted November 19<sup>th</sup> correspondence, they are issues that have been previously addressed, or have been addressed in the preceding sections of this letter.

To conclude, the Province values the views of the Ekuanitshit, and stands ready to fully consider any views the Ekuanitshit may wish to put forward in relation to the specific activities that are the subject of a provincial permit required for these projects.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Ivy Stone', consisting of a stylized first name and a last name.

Ivy Stone  
Environmental Assessment Division

cc: Lily Abbass, Acting Regional Director General, Fisheries and Oceans Canada  
Ross Firth, ADM, Parks and Natural Areas Division, ENVC, GNL  
Brian Harvey, Director, Labrador and Aboriginal Affairs, GNL