

November 27, 2017

The Honourable Catherine McKenna
Minister of Environment and Climate Change
200 Sacré-Coeur Boulevard
Gatineau QC K1A 0H3
ec.ministre-minister.ec@canada.ca
Via Email and Courier

Dear Minister McKenna:

Re: Petition for the Protection of Critical Habitat for Five Local Populations of Boreal Caribou in Northeastern Alberta, *Species at Risk Act*, s. 61

We are legal counsel to the Alberta Wilderness Association, the David Suzuki Foundation and the Cold Lake First Nations (collectively, the “Petitioners”) in respect of this matter. The Petitioners present for your consideration the enclosed *Petition for the Protection of Critical Habitat for Five Local Populations of Boreal Caribou in Northeastern Alberta* (“*Petition*”) and a compendium of supporting documents. The Petitioners request, through this *Petition*, that you recommend to the Governor in Council that the critical habitat of five local populations of boreal caribou in northeastern Alberta (the Cold Lake, Richardson, Red Earth, West Side Athabasca River, and East Side Athabasca River populations) be protected by an order under section 61 of the *Species at Risk Act*.

The Alberta Wilderness Association is the oldest wilderness conservation group in Alberta dedicated to the completion of a protected areas network and the conservation of wilderness throughout the province.

Founded in 1990, the David Suzuki Foundation is a national, non-profit organization that uses evidence-based research, education and policy analysis to conserve and protect the natural environment, and help create a sustainable Canada.

Cold Lake First Nations is a Dene Nation which has relied on *Ethen* (Caribou) for survival, particularly in the late winter when food is scarce, since time immemorial. The continued practice of Cold Lake First Nations’ Section 35 Treaty Rights in *Dene Ni Nenne* (Cold Lake First Nations’ Traditional Territory) is directly tied to the survival of the *Ethen* in the Cold Lake Herd Range.

The Petitioners collectively have a longstanding interest in the protection and recovery of boreal caribou in the traditional territory of the Cold Lake First Nations, in Alberta, and throughout Canada.

The critical habitat of the five herds has been severely impacted by extensive oil sands development, conventional oil and gas development, and forestry operations. The *Recovery Strategy for the Woodland Caribou (Rangifer tarandus caribou), Boreal population, in Canada* sets a target of no more than 35 percent disturbed habitat for each local population in order to give the population a 60 percent chance of becoming self-sustaining. Habitat disturbance for the five herds in question ranges between 72 and 88 percent. The populations of the five herds are declining rapidly.

We understand from the recently released *Report on the Progress of Recovery Strategy Implementation for the Woodland Caribou (Rangifer tarandus caribou), Boreal population in Canada for the Period 2012-2017* (“*Progress Report*”) that Environment and Climate Change Canada plans to assess in late 2017 whether boreal caribou critical habitat in Alberta is effectively protected and that if any portion of the critical habitat is unprotected, you will recommend, by April 2018, that the Governor in Council make an order under section 61 of the *Species at Risk Act*.

The enclosed *Petition* and supporting documents clearly demonstrate that the majority of the critical habitat of the five herds has already been decimated and remains unprotected by either provincial or federal laws.

The posting of the recovery strategy for the boreal caribou was unlawfully delayed by 5 years. The posting of a draft action plan for boreal caribou was delayed by almost two years beyond the deadline of December 2015. There is no need for further delay in order to protect the critical habitat of these five herds. As stated by Madam Justice Mactavish in *Western Canada Wilderness Committee v Minister of Fisheries and Oceans*, 2014 FC 148:

To state the obvious, the *Species at Risk Act* was enacted because some wildlife species in Canada are at risk. As the applicants note, many are in a race against the clock as increased pressure is put on their critical habitat, and their ultimate survival may be at stake.

While the Petitioners believe that there is no need for further assessment and that you should immediately recommend an order pursuant to section 61 to protect the critical habitat of the northeastern herds, they are willing to allow time for Environment and Climate Change Canada to complete their own protection assessment (which must include a review of this *Petition* and supporting documents) and for you to make your decision by April 2018 as outlined in the *Progress Report*. To be clear, we assume that you and your department’s staff will consider the *Petition* and supporting materials as you make your decision about whether to recommend an order for the northeastern herds or generally for Alberta’s boreal caribou herds.

If any portion of the critical habitat of the northeastern herds remains unprotected as of May 1, 2018, the Petitioners are prepared to take legal action to ensure that the critical habitat protection provisions in section 61 of the *Species at Risk Act* are applied and enforced.

Sincerely,

A handwritten signature in cursive script, appearing to read "Barry Robinson".

Barry Robinson
Barrister & Solicitor

Enclosures: Petition
 Compendium