

June 7, 2013

Note to file

EA 0809-004

NICO Project, Fortune Minerals Limited

To parties:

**Re: Consultation on proposed modification to measure #8 in
NICO Report of EA requested by the Federal Minister**

The Review Board has received correspondence from the Minister of Aboriginal Affairs and Northern Development (AANDC Minister) with respect to the Report of Environmental Assessment and Reasons for Decision for the NICO Project (the Report) issued by the Review Board on January 25, 2013. The correspondence from the AANDC Minister is attached.

The Minister states that prior to rendering a decision on the Review Board's recommendation in its Report, the AANDC Minister along with the Responsible Ministers would like to consult with the Review Board with respect to a proposed modification to measure #8 in the Report pursuant to subparagraph 130 (1)(b)(ii) of the *Mackenzie Valley Resource Management Act*.

The Review Board recognizes the consultation that the federal government has conducted on the proposed modification to measure #8 with aboriginal parties and that the proposed modification has been developed by the Responsible Ministers in consultation with the Tlicho Government.

Much of the wording in the proposed modification to measure #8 and the background material to support the modification is new information and not on the public record for EA0809-004, NICO Project. The Review Board has a duty to be fair to all parties to this environmental assessment. The Review Board therefore requests comments from parties to this environmental assessment, including the developer, on the modification to measure # 8 as proposed in the attached correspondence.

Please submit comments **to the Review Board by June 14, 2013.**

Sincerely,

Chuck Hubert
Senior EA Officer
chubert@reviewboard.ca
(867) 766-7052
Mackenzie Valley Review Board

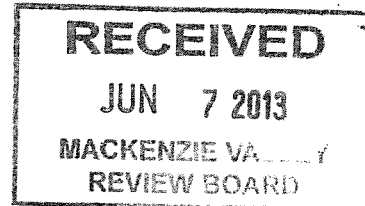
Attachment

Ministre des Affaires autochtones
et du développement du Nord

Minister of Aboriginal Affairs and
Northern Development

Ottawa, Canada K1A 0H4

Mr. Richard Edjericon
Chairperson
Mackenzie Valley Environmental Impact
Review Board
PO Box 938
200 Scotia Centre
YELLOWKNIFE NT X1A 2N7



Dear Mr. Edjericon:

As the Federal Minister, and on behalf of the Responsible Ministers (Environment Canada, Fisheries and Oceans Canada, Natural Resources Canada, Transport Canada, and the Government of Northwest Territories), with jurisdiction related to the proposed Fortune Minerals Limited NICO Project, I am writing to convey that we have completed our review of the Report of Environmental Assessment and Reasons for Decision for the Project dated January 25, 2013.

As described in the Report, the Mackenzie Valley Environmental Impact Review Board has recommended pursuant to subparagraph 128 (1)(b)(ii) of the *Mackenzie Valley Resource Management Act* that the Project be approved subject to the imposition of 13 measures and proponent commitments necessary to mitigate significant adverse impacts on the environment. Prior to rendering a decision on the Review Board's recommendation, the Responsible Ministers and I would like to consult with the Review Board with respect to a proposed modification to measure No. 8 of the Report, pursuant to subparagraph 130 (1)(b)(ii) of the Act.

In this regard, I am enclosing the proposed modification with supporting rationale for your consideration. I would like to highlight that the proposed modification was developed in consultation with the Tlicho Government.

Recognizing the Tlicho Government has a separate decision process pursuant to subparagraph 131.1 of the Act, the Responsible Ministers and I would welcome the participation of the Tlicho Government in this consult to modify process with the Review Board.

The Responsible Ministers and I are currently seeking comments from potentially impacted Aboriginal groups on the proposed modification. We would therefore appreciate receiving a written response from the Review Board with respect to the proposed modification within two weeks from the date at which you received this letter, in order to make a final decision in a timely manner.

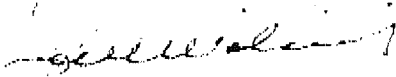
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Canada

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If you wish to meet with the Responsible Ministers to discuss the proposed modification to measure No. 8, please contact Mr. Matt Spence, Director General, Northern Projects Management Office, at 819-766-8439 or Matthew.Spence@cannor.qc.ca.

Sincerely,



Bernard Valcourt, PC, QC, MP

Encl.

c.c.: The Honourable Keith Ashfield, PC, MP
The Honourable Peter Kent, PC, MP
The Honourable Denis Lebel, PC, MP
The Honourable Joe Oliver, PC, MP
The Honourable Michael Miltenberger, MLA
Eddie Erasmus, Tlicho Grand Chief, Tlicho Government

DRAFT

Government of the Northwest Territories

Proposed Modification to Measure #8

NICO Project Environmental Assessment (EA0809-004)

May 1, 2013

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Abbreviations and Acronyms

CEAM	Cumulative Effects Assessment and Management Working Group
CERF	Cumulative Effects Response Framework
Fortune	Fortune Minerals Limited
GNWT	Government of the Northwest Territories
LSA	Local Study Area
MVEIRB	Mackenzie Valley Environmental Impact Review Board
<i>MVRMA</i>	<i>Mackenzie Valley Resource Management Act</i>
PDA	Project Development Area
PSRF	Project-Specific Response Framework
Report, the	Report of Environmental Assessment and Reason for Decision
RSA	Regional Study Area
VEC	Valued Ecosystem Component
WEMP	Wildlife Effects and Monitoring Program
WWHPP	Wildlife and Wildlife Habitat Protection Plan (titled as a WEMMP by Avalon)

1. GNWT Review of Report of Environmental Assessment

On January 25, 2013, the Mackenzie Valley Environmental Impact Review Board (MVEIRB) released the Report of Environmental Assessment and Reasons for Decision (the Report) on the Fortune Minerals Limited (Fortune) NICO Project Environmental Assessment (EA0809-004). The Report recommended the NICO Project should proceed to the regulatory phase for approval subject to the implementation of 13 measures.

The Government of the Northwest Territories (GNWT) has reviewed the Report as a Responsible Minister pursuant to the *Mackenzie Valley Resource Management Act (MVRMA)*. Measure #8 of the Report relates to cumulative effects and the Bathurst barren ground caribou herd and range. The GNWT is responsible for the stewardship of wildlife resources in the Northwest Territories including the management, conservation and sustainable use of caribou and caribou habitat. With this responsibility, and as a Responsible Minister, the GNWT believes a modification to Measure #8 is required before the NICO Project proceeds to the regulatory phase.

2. Measure #8

2.1. Agreement with Measure Intent

The GNWT accepts the intent of Measure #8 in that cumulative effects on the Bathurst barren ground caribou herd and its range must be assessed and mitigated/managed. With respect to the scope of the NICO Project, the GNWT agrees that NICO Project contributions to cumulative effects on the Bathurst barren ground caribou herd should be mitigated and managed.

2.2. Proposed Modification

The GNWT believes highly prescriptive conditions should be avoided unless they are technically justified and essential for environmental protection. As currently worded, Measure #8 has uncertain interpretations and therefore raises uncertain technical, legal and financial implications for the GNWT.^a The GNWT believes disagreements on the interpretation of this measure during its implementation will jeopardize its ultimate intent.

^a Section 2.4 does not exhaustively address legal implications to the GNWT for accepting Measure #8 without modification.

To preserve the intent of Measure #8, and to prevent similarly worded measures from arising in future and current project environmental assessments, the GNWT believes a modification to this measure, pursuant to s. 130(1)(b)(ii) of the MVRMA, is required.

This proposed modification takes into account:

- The Report, including its measures, and MVEIRB analysis from which measures were derived;
- New information found in Appendix A that is pursuant to s. (131)(4) of the MVRMA;
- Whether the proposed modification has any potential impact on Aboriginal or treaty rights; and
- Government-to-government discussions between the GNWT and the Tlicho Government as a result of the Tlicho Government being another party to which Measure #8 is directed.

2.3. Original Measure and Highlighted Problematic Wording

Below is the original Measure #8 with problematic wording highlighted and denoted with superscript numbers. Rationale for the problematic wording is found in Section 2.4 and corresponds with the numbered superscripts.

To mitigate significant adverse cumulative impacts to barren ground caribou, the Government of the Northwest Territories and Tłı̄chǫ Government will establish and cochair at their own expense^{2,3} an expert working group to develop a response framework for managing cumulative impacts.¹ This response framework will inform the Bathurst Caribou Management Plan and the Government of the Northwest Territories Barren ground Caribou Management Strategy^{1,2} and provide direction for Fortune Minerals to manage its project related to cumulative effects on caribou. Participants in this working group should include the Wek'eezhii Renewable Resource Board, Fortune Minerals, Yellowknives Dene and North Slave Metis Alliance.²

The working group will:⁴

- *include persons holding traditional knowledge and persons with scientific knowledge*
- *design a response framework to ensure that proposed cumulative effects monitoring is adaptively linked to mitigation for cumulative impacts,*

[original measure continued on next page]

- a report on the response framework will be completed by the Government of the Northwest Territories and Tlicho Government within 6 months of the federal Minister's approval of this Report of EA⁵
- recommend ways to incorporate the response framework into regional caribou management strategies or plans.

The response framework will:⁴

- demonstrate the linkage between project-specific mitigation and monitoring and cumulative impacts monitoring and mitigation.
- demonstrate how cumulative effects mitigation and monitoring will be integrated with comprehensive herd management planning.

2.4. **Problematic Wording Explained**

The numbered points below provide explanation to the problematic wording identified with underlines and numbered superscripts in the original Measure #8 found in Section 2.3.

1. **Scope** – The scope of the measure is open to multiple interpretations. It is uncertain whether the measure requires the prescribed working group to develop a cumulative effects response framework specific to either, Interpretation (i), the entire Bathurst barren ground caribou herd range, or Interpretation (ii), the NICO Project, or Interpretation (iii), some other uncertain interpretation where, for example, the measure is interpreted as having multiple levels of scope. This uncertainty alone is a serious concern to the GNWT and it strongly believes the obfuscated scope of this measure will jeopardize intent and implementation of the measure.

In the case of Interpretation (i), the measure would extend beyond the scope of the NICO Project. The measure would therefore fall outside MVEIRB jurisdiction, pursuant to the MVRMA.

In the case of Interpretation (ii), there are fundamental technical flaws that arise out of the specific wording used in the measure. Management/mitigation at the NICO-Project scale is not managing cumulative effects on the Bathurst range – it is managing the individual contribution of the NICO Project to cumulative effects, but denies the ability to manage NICO-Project contributions *in conjunction* with *other* cumulative-effect factors affecting the range. Increasing the scope of this

measure could partially remedy this issue, however, would loop back to the scoping issues identified in Interpretation (i) above.

The GNWT believes a cumulative effects response framework must be capable of providing feedback to inform the management of cumulative effects from *all* development projects *and* other natural and human stressors acting within the range of the Bathurst herd. Figure 2 (p. 14, Appendix C) emphasizes that the assessment and management of cumulative effects must occur at a scale appropriate to the species or region of interest. This is due to the multiple natural (e.g., fire) and human-induced (e.g., hunting and development) factors that affect the Bathurst herd and its range, which cannot be appropriately assessed and/or managed at the project-level.

- 2. Participants** – The multiple and uncertain interpretations of scope for the measure have varying implications on participants. Since there are multiple contributors to cumulative effects on the Bathurst barren-ground caribou herd, cumulative effects assessment needs to be inclusive of those contributors and addressed collaboratively as a shared multi-party responsibility. If the measure were to be interpreted in the context of scope for Interpretation (i), it would have a more inclusive participant list. However, this interpretation would be outside the scope of the NICO Project and inappropriate as a measure.

If the measure were to be interpreted in the context of scope for Interpretation (ii), the GNWT agrees with the identified participant list. The list reasonably identifies affected parties that should work with Fortune on approaches to minimize the contribution of the NICO Project to cumulative effects. As such, this participant list is consistent with the list used in the proposed Measure #8 modification found in Section 2.5.

- 3. Expenses** – Given that there are multiple contributors to cumulative effects, cumulative effects assessment and management needs to be addressed collaboratively and as a shared multi-party responsibility among those contributors. This includes the sharing of costs among those contributors and not only the two parties identified.
- 4. Existing initiatives** – Several elements of this measure are being addressed through existing GNWT and multi-party cumulative effects assessment and management initiatives. This measure would unnecessarily duplicate and/or

detract from those efforts. The GNWT believes it is crucial to focus resources on these more comprehensive initiatives that are already under development, and which will address the intent of Measure #8 (see Appendix A).

5. **Timeframes** – As described in point #3 above, cumulative effects monitoring, assessment and management/mitigation is a multi-party process. Therefore, work plans and timeframes for any initiatives within this process need to be collaboratively developed rather than dictated.

2.5. **Proposed Modification**

The GNWT has proposed the following modification to Measure #8. The modified measure addresses the intent of the original measure and resolves the problematic wording detailed in Section 2.3 and 2.4. It uses the conceptions of wildlife and wildlife habitat protection from cumulative effects identified in Appendix A. This appendix is presented as new information pursuant to s. (131)(4) of the MVRMA.

The proposed modification is as follows:

The Government of the Northwest Territories (GNWT) has outlined its current conception of a Project-Specific Response Framework (PSRF), Cumulative-Effects Response Framework (CERF) and a Cumulative Effects Assessment and Management Working Group (CEAM). As it pertains to the implementation of the NICO Project PSRF and its integration within the broader CERF, CEAM will at minimum include: the GNWT, Tłı̨cho Government (TG), Wek'eezhii Renewable Resource Board, Yellowknives Dene First Nation, the North Slave Métis Alliance, Fortune Minerals Limited, other traditional harvesters, and other parties as appropriate, which will ensure inclusion of both scientific and traditional knowledge. The TG will have a leadership role in the implementation of both of these response frameworks where and when applicable to the NICO Project.

The PSRF addresses the mitigation of NICO-Project-level contributions to cumulative effects on the Bathurst barren ground caribou herd through:

- *The development of a Wildlife and Wildlife Habitat Protection Plan (WWHPP), which, among other mitigation measures, identifies and applies best practices at the local-scale of the NICO Project to minimize footprint, sensory disturbance to caribou, project-related wildlife mortality, and increased harvester access;*

[proposed modification continued on next page]

- *The design of a Wildlife Effects Monitoring Program (WEMP) to test Fortune NICO Project impact predictions related to the herd. The information from the monitoring program may support and contribute to broader cumulative effects assessment and management for the herd; and*
- *The use of WWHPP and WEMP monitoring results to support adaptive management at the local-scale of the NICO Project.*

The CERF addresses cumulative effects monitoring, assessment, and management at a scale appropriate to the herd. As it pertains to the NICO Project, the CERF will:

- *Be informed and guided by the CEAM;*
- *Demonstrate how the results from the NICO Project WEMP may inform cumulative effects assessment and management programs at the scale of the Bathurst caribou range;*
- *Demonstrate how the NICO Project WEMP may inform the Bathurst caribou management planning process; and*
- *Demonstrate how updated and ongoing cumulative effects management may refine or adapt the WWHPP and WEMP for all developments within the herd range.*

Appendix A: Conceptualization of Cumulative Effects Assessment and Management

1. Collaborative Development of Response Frameworks

Figure 1 (page 11) details the currently proposed GNWT conception of wildlife and wildlife habitat protection from cumulative effects in the Northwest Territories. The GNWT envisions multiple project-specific response frameworks integrated within one larger cumulative effects response framework. Existing GNWT efforts and multi-party collaboration have informed these current conceptions and will continue to do so. GNWT efforts and multi-party collaboration include:

- GNWT initiative to establish a cumulative-effects-based monitoring program for the Bathurst herd (recently discussed at a GNWT March 7-8, 2013 workshop with mines), which the GNWT committed to at the Gahcho Kue Project Public Hearing (EIR0607-001). During the workshop, support was expressed for the creation of a working group focused on the development and implementation of a cumulative effects assessment and management framework for the Bathurst caribou herd range and more generally;
- GNWT commitment to deal with cumulative effects in collaboration with our partners (outlined in the 2011-2015 Barren-ground Caribou Management Strategy); and
- The development of a cumulative effects framework for the Department of Environment and Natural Resources (ENR-GNWT) through a recently formed internal ENR-GNWT cumulative effects working group.

The proposed response framework conceptions below require further collaborative development and refinement among parties. It is envisioned this collaboration will take place through the Cumulative Effects Assessment and Management Working Group (described in Section 3 of this appendix), which will aim to refine and achieve consensus on final response frameworks.

2. The Response Frameworks

As briefly mentioned above, the GNWT envisions multiple project-specific response frameworks integrated within one larger cumulative effects response framework. Respectively, these two types of frameworks are identified as the Project-Specific Response Framework (PSRF) and the Cumulative Effects Response Framework (CERF).

The PSRF addresses monitoring and mitigation of project impacts on wildlife and wildlife habitat at the local or project scale. The CERF addresses cumulative effects monitoring, assessment, and management of wildlife and wildlife habitat at a scale appropriate to the species or region of interest.

3. The Cumulative Effects Assessment and Management Working Group (CEAM)

It is envisioned that the Cumulative Effects Assessment and Management Working Group (CEAM) will be formed. The development and implementation of CEAM will be facilitated by the GNWT. CEAM will:

- Collaboratively guide the development of approaches within CERF and CERF feedback to the PSRF for the monitoring, assessment, mitigation/management of cumulative effects on wildlife and wildlife habitat.
- Include Aboriginal and non-Aboriginal government agencies, management authorities, traditional harvesters, industrial operators (current or proposed), and other interested parties, which will ensure inclusion of both scientific and traditional knowledge.
- Develop a cumulative effects response framework that can be applied to the Bathurst barren-ground caribou herd and its range.
- Provide guidance on:
 - How cumulative effects can be assessed, monitored, managed, and mitigated at the project scale and the scale of the Bathurst range;
 - How these two scales of monitoring can be linked together; and
 - How the results of monitoring can inform regional caribou management strategies and plans.
- Recommend management targets and thresholds, and identify knowledge gaps and monitoring priorities.
- Provide guidance to developers by:
 - Identifying best practices at the local-project scale to reduce individual contribution to cumulative effects;
 - Providing advice on the design of project-specific wildlife effects monitoring programs that can support broader cumulative effects assessment and management; and
 - Providing advice on how to use the results of monitoring to support adaptive management at the project scale.

4. The Project-Specific Response Framework (PSRF)

Arrows 1 through 3 in Figure 1 (page 11) represent current GNWT conception of the PSRF for the monitoring, management and mitigation of project impacts on wildlife and wildlife habitat. As noted in the diagram, a Wildlife and Wildlife Habitat Protection Plan (WWHPP) and Wildlife Effects Monitoring Program (WEMP) (see Appendix B) are needed for the PSRF to be effective. The PSRF is composed of three feedback mechanisms to ensure project-specific wildlife monitoring, management and mitigation uses adaptive management principles:

Arrow 1: Results from a WEMP may trigger changes in the monitoring programs that are part of that WEMP (i.e., a project may not be monitoring correctly to test its predictions);

Arrow 2: Results from a WEMP may trigger changes to the mitigation and/or management measures contained in a WWHPP; and

Arrow 3: Results from any WWHPP-derived local-scale monitoring may trigger changes in management and/or mitigation measures contained within this same plan.

5. The Cumulative Effects Response Framework (CERF)

Arrows 4 through 9 in Figure 1 (page 11) represent current GNWT conception of the broader CERF that integrates the PSRFs of multiple projects into cumulative effects monitoring, assessment, and management of wildlife and wildlife habitat at a scale appropriate to the species or region of interest.

Arrow 4: Results from project WEMPs contribute to multiple scales of monitoring, including herd/population and/or range-level monitoring; and through this;

Arrow 5: Results from herd/population and/or range-level monitoring will feed into cumulative effects assessment, along with complementary studies on other species-applicable cumulative effects factors (may include climate change, fire, predators, disease, etc.; see Arrow 9). Cumulative effects assessment will then inform cumulative effects management;

Arrow 6: To address cumulative effects at the scale appropriate to the species of interest: Herd and/or range management is influenced by cumulative effects management (e.g., implementation of the thresholds for disturbance described in the national Recovery Strategy for Woodland Caribou, Boreal Population, in Canada);

Arrow 7: To address cumulative effects at the scale of the project: cumulative effects management can result in changes to project-level monitoring (e.g. through the WEMP) and mitigation (e.g. through the WWHPP) by emphasizing the use of best practices. It is through best practices that a developer like Fortune can reduce its own individual contribution to cumulative effects on wildlife and wildlife habitat. The GNWT and other co-management partners can work with developers to identify and implement best practices;

Arrow 8: The CEAM will develop approaches for the assessment and management/mitigation of cumulative effects on wildlife and wildlife habitat. This includes recommending management targets and values, cumulative effects thresholds, variables to measure, and identifying knowledge gaps and priorities; and

Arrow 9: Information from complementary studies on other cumulative effects factors (e.g., fire, harvest, climate change, etc.) will also feed into cumulative effects assessment.

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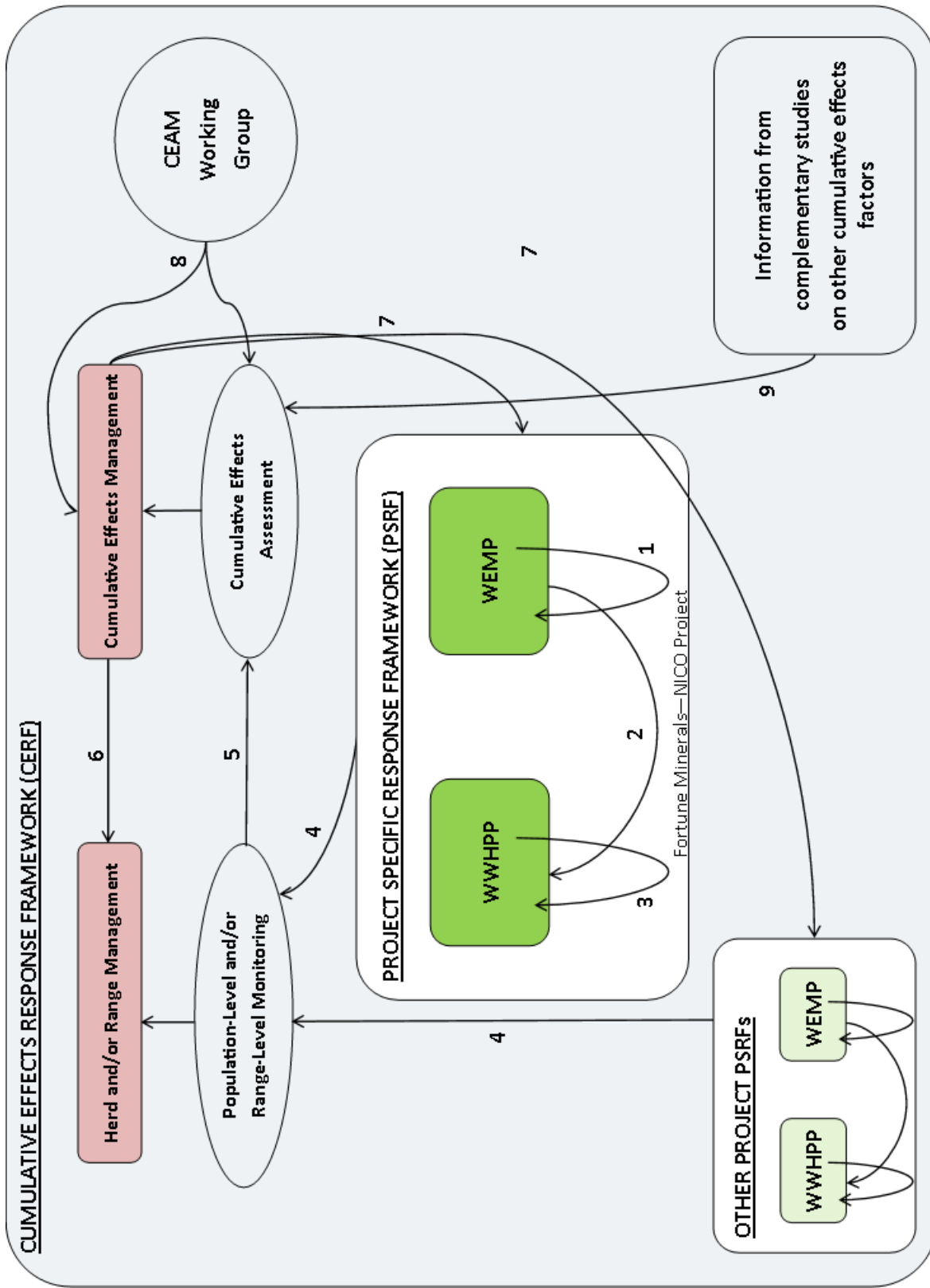


Figure 1: Conception of how the Project Specific Response Framework (PSRF) is integrated within the broader Cumulative Effects Response Framework (CERF).

Appendix B: Guidelines for the Wildlife and Wildlife Habitat Protection Plan and Wildlife Effects Monitoring Program

Wildlife and Wildlife Habitat Protection Plan (WWHPP)

The WWHPP outlines the steps necessary to protect personnel, wildlife and wildlife habitat within the Project Development Area (PDA), also commonly described as a project's direct "footprint." A WWHPP documents the day-to-day standard operating procedures including mitigations, reporting, and best practices for the Project site.^b

The WWHPP requires the development of clear protocols and standard operating procedures for project employees and contractors to ensure the implementation of site-specific mitigation. The WWHPP must include measures for compliance monitoring and reporting, environmental monitoring and reporting. This helps ensure human safety by reducing the potential for interaction between people and wildlife and reduces or prevents any direct impacts to wildlife from the PDA. The plan is required to provide a set of instructions to mine staff; to show diligence on part of the developer; and, to comply with legal requirements. Typically, site-specific management data is not directly relevant to regional scale monitoring, but some information may be incorporated into a regional scale monitoring program (e.g., tracking of on-site wildlife mortalities).

Wildlife Effects Monitoring Program (WEMP)

A WEMP encompasses effects monitoring at a Local Study Area (LSA) and Regional Study Area (RSA) scale during the life of the project. In effect, it is a follow-up program as defined under the *MVRMA*. A follow-up program is meant to evaluate (1) the soundness of an environmental assessment or environmental impact review for a proposed development; and/or (2) the effectiveness of mitigation measures or remedial measures imposed as conditions of approval of the proposal.

A WEMP details larger scale monitoring objectives and methods (e.g., monitoring wildlife species threatened by potential increases in harvester access due to project roads). The WEMP provides an avenue to test the effectiveness of impact predictions made by a developer during a project's EA or EIR, including mitigation techniques employed during the construction,

^b The effectiveness of mitigation is tested in a project WEMP.

operation, closure and post-closure phase of a project. A WEMP does not include mitigation measures per se as it, by definition, is strictly a process for monitoring and testing specific effects questions. The results of this will be used to support adaptive management approaches, if needed, and to contribute to cumulative effects assessment, if appropriate. Results from a well-designed WEMP can also be used to inform best practices associated with future development projects in the Northwest Territories.

An effective WEMP should:

1. Be focused on key Valued Ecosystem Components (VECs) and other species of importance that are typically found in or near the area surrounding the project;
2. Be conducted at a project LSA and/or project RSA scale that is appropriate to the proposed predictions for the project VEC;
3. Use tested standardized protocols/methods/approaches so that monitoring results can be combined at a regional scale;
4. Be developed and reviewed in collaboration with Aboriginal partners, government, regulatory agencies, and other interest groups including other mines; and,
5. Be developed such that monitoring and mitigation techniques can be revisited and revised pending new information (i.e., developed using an adaptive management framework).

Appendix C: Development on the Bathurst Caribou herd range (1996-2012)

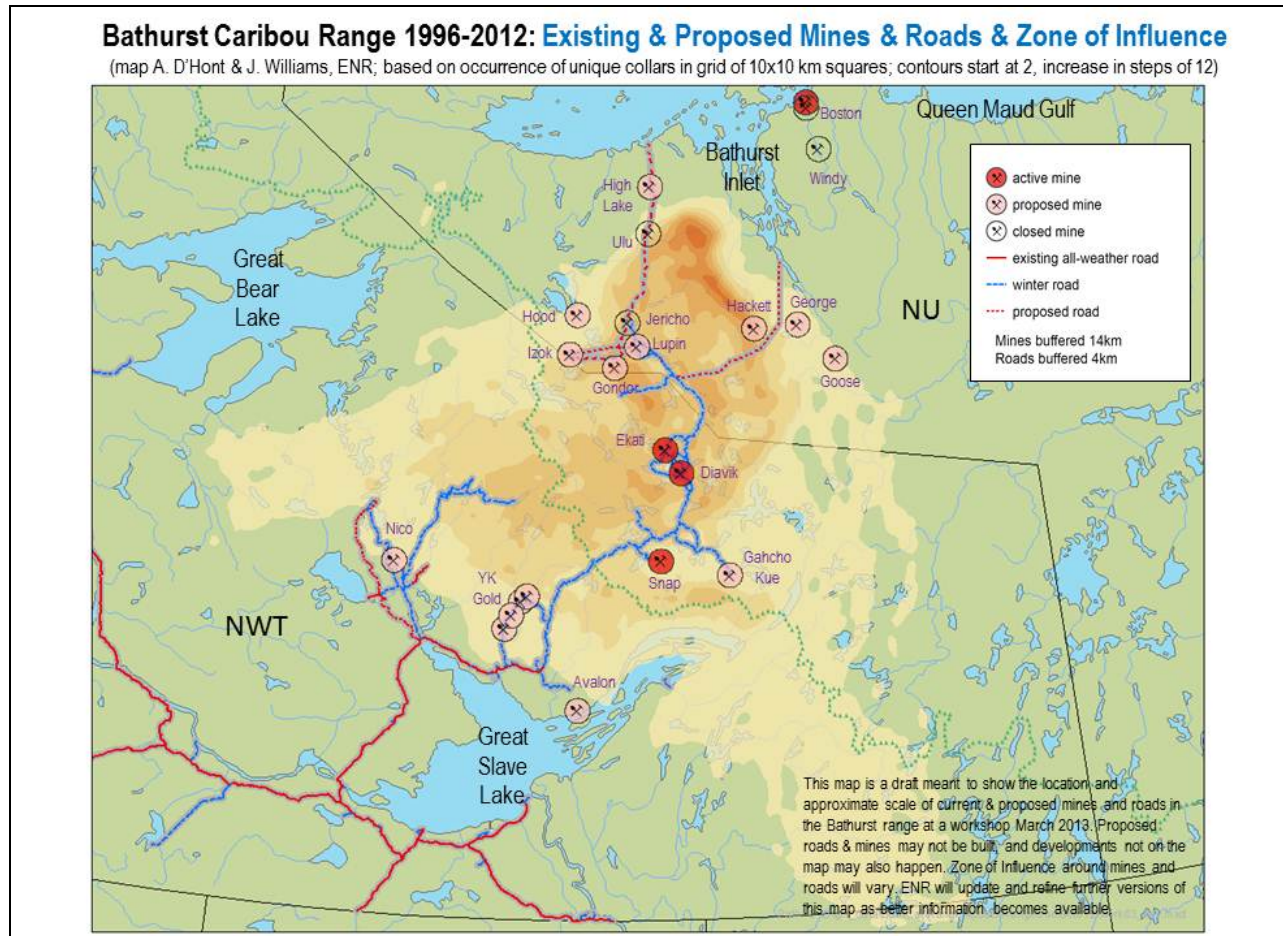


Figure 2: A map showing development on the Bathurst barren ground caribou range (1996-2012). The map emphasizes that the assessment and management of cumulative effects must occur at a scale appropriate to the species or region of interest. This is due to the multiple natural (e.g., fire) and human-induced (e.g., hunting and development) factors that affect wildlife and wildlife habitat, which cannot be appropriately assessed and/or managed at the project-level.