



**Presentation to the  
Standing Committee on Economic Development  
and Infrastructure  
Yellowknife – June 11, 2013**

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## **Introduction**

On behalf of the NWT exploration and mining industry, I would like to very much thank the Standing Committee for the opportunity to speak to you today.

I have provided handouts with some slides to help you follow my presentation, and I will refer to them at the appropriate time.

I will skip slide 2 on the Chamber of Mines for later reading, and move directly to Slide 3.

Our industry is the largest private sector contributor to the NWT economy, contributing about one third of the GDP. It is the largest private sector employer of northern and Aboriginal residents. We have invested billions in northern business and we pay significant revenues to government annually.

We have become successful because of our ability to access land for exploration and for mining. Since Bill 3, The Wildlife Act also affects land, we are very much interested in understanding its potential impacts on our industry.

## **Who We Are and Why Are Interested**

We have been interested in the Wildlife Act for some time. Over the last year and a half, we were pleased to participate on the Stakeholders Wildlife Act Advisory Group or SWAAG. We thank the government for taking that inclusive approach to involve a number of stakeholders formally in the review process.

We are particularly interested in speaking to Bill 3, the Wildlife Act because of our interest in helping you provide investment certainty to our minerals industry and our many industry members.

When companies are considering investing millions to billions of dollars in exploration and mining, one of the most important things they look for is investment certainty. That means they assess the rules of working here, and their hope is that the rules and the processes they need to undergo are clear. If they aren't, then the risk to their investment increases, and they must make the decision on whether or not to invest here.

We have very much created a climate of uncertainty for mineral exploration. And I ask you to turn to Slide 4 and the chart: NWT Investment as a Percentage of Total Canadian Mineral Exploration. These are statistics from Natural Resources Canada.

In the past 5-6 years in particular, we have seen a steady decline in exploration investment that today puts us near the bottom in Canada.

This is because a great many investors have looked at the NWT, and they have decided to take their investment elsewhere because of uncertainty.

In comparison, our neighbours to the east and west, Nunavut and Yukon, have experienced significant interest and investment, with Nunavut even reaching record levels two years ago.

You will see that in the chart on Slide 5, titled: NWT, Nunavut & Yukon Mineral Exploration. This is also data from Natural Resources Canada, and it shows the amount of money invested in

exploration and project development in the three territories. You will see that while there has been booming investment in our neighbours, our NWT investment has languished.

Since mines don't last forever, we very much need healthy exploration investment to find new mines and help us sustain our mining industry benefits.

Thus we were very happy that the 17<sup>th</sup> Legislative Assembly made the creation of a Mineral Development Strategy a priority, so as to help turn this alarming investment decline around.

We were also very happy to see the Federal Government launch their Northern Regulatory Improvement Initiative to add to that investment certainty.

And we were also very happy to see land use plans advancing, and to see Aboriginal groups creating ways to help industry. This is all going to help to create investment certainty.

So we appear before you today, to appeal to your Committee to urge that changes be made to Bill 3 to provide increased investment certainty.

To that end, let me provide some thoughts and recommendations on actions to take.

### **5 Key Areas of Interest**

If you turn to Slide 6, I wish to highlight 5 key areas of interest in the Bill to you.

They are:

- Conservation Area creation
- Thresholds for Wildlife Management & Monitoring Plans
- The huge amount of regulations that will really define the Act
- The creation of a permanent stakeholder advisory role; and
- Sustainable Development in the Preamble

Let me speak to each of these in turn.

### **Part 6 – Conservation Areas – Is Biased Against 3rd Party Rights**

Turning to Slide 7, let me begin with Conservation Areas, Part 6 of the Bill.

Our industry is a land based industry meaning we need access to land and security of tenure to succeed. So we are very much interested in how Conservation areas are created, for the process used could create uncertainty in our ability to access land.

In fact, history has shown that investment will often flee even with the suggestion that a Conservation Area is being considered in an area.

### **Treat Mineral Rights Owners the Same as Private Land Owners**

Part 6 dealing with Conservation Measures is biased against mineral rights holders. It deals only with private lands, defined essentially as Aboriginal owned lands. Part 6 offers them agreements and even compensation should a Conservation Area be proposed on their lands.

Mineral exploration and mining companies are NOT private land owners. They are third party rights holders, operating on Crown land through mineral claims and leases.

By not mentioning third party rights holders, Part 6 is biased against our exploration and mining companies. There is no discussion of agreements or compensation with them, yet those companies may have invested from millions to billions of dollars on mineral claims and leases to explore and to mine.

The designation of a Conservation Area over their mineral claims and leases could inflict huge uncertainty and economic losses. Yet the Bill is silent on how these third party interests will be consulted, and whether compensation would be considered for their economic losses. This creates significant uncertainty for the investor, and by itself this section could seriously affect future investment in exploration and mining, the economic foundation for our territory.

Let me illustrate the concern with an example.

In the attached slide 8, you will see a map of an area that some have suggested be considered for a Conservation Area. You will see that it is right in the middle of the diamond fields of the NWT. This region hosts our two world class diamond mines, and this region produces most of the NWT's mining wealth.

Note that the proposed boundary overlaps much of the prime mineral claims and leases in the area.

Think of the ramifications of making this a no-go region. I suggest it will send shock waves through the investment community. Would it be worth compensation? Not according to the wording of Part 6.

The Bill needs to be fixed by treating third party interests the same as private land owners.

- Recommendation 1: Treat mineral rights owners the same as private land owners

### **Decision Making at the Highest and More Consultative Level**

The removal of land for conservation purposes is a serious process, as it carries both environmental and socio-economic implications.

We were very pleased to see that Bill 3 has elevated decision making from the bureaucratic to the Cabinet level. It needs to be at a high level because of the ramifications. However, we would suggest that 30 days notice may not be sufficient, and there should be added transparency and input by taking it to public consultation as well.

- Recommendation 2: Decision making should be at the highest and most transparent levels, and with more than 30 days consultation time.

### **Requires a Diligent and Transparent Process for Considering Conservation Areas**

Bill 3 describes no process for the due diligence that should be followed in the consideration of land for a Conservation Area.

When an area is proposed for a National Park, it must undergo a Mineral & Energy Resource Assessment. When a protected area is proposed under the Protected Areas Strategy it must undergo an 8-Step Process.

Bill 3 provides no clarity on the process that will be used to consider establishment of a Conservation Area, if any. The Bill should be changed to describe a due diligent, transparent and neutral process that will be used in considering Conservation Area creation.

- Recommendation 3: Add a process of due diligence to consider Conservation Areas

### **Assign Process for Considering Conservation Areas to Neutral Lands Department**

To that end, it would be advisable to assign the process for overseeing a potential land withdrawal to a neutral department.

When areas are being considered for possible removal for protection, there are two considerations to be assessed: environmental and socio-economic. Thus there are at least two government departments that should be involved: those responsible for protecting land, and those responsible for economic development.

Would it make sense to assign the role of considering lands for conservation to the environment department, or to the economic development department? Either will bring their own bias.

Considering the removal of lands for a Conservation Area should be part of an overall land use strategy, for it cuts across the interests of many different departments of government not to mention the differing interests of the citizenry of the NWT.

Under Devolution, a new Lands Department will be created; one that we understand is to be a neutral party. We respectfully suggest that it would be preferable that the responsibility for overseeing processes to consider lands for possible Conservation Areas be assigned to this new, neutral Lands Department who can oversee a diligent and transparent process. And that is our recommendation.

- Recommendation 4: Have the new Department of Lands oversee Conservation Areas consultation

### **Take Politics Out of Conservation Area Boundaries**

Turning to a somewhat different clause, Clause 91 under Part 6 is an interesting one as it favours using Crown lands for Conservation Areas rather than private, Aboriginal owned lands. This seems an odd requirement to define wildlife protection by a political boundary rather than a habitat boundary. It might also clash with Principle 2.1(b) which states that “the conservation and management of wildlife and habitat is to be carried out on an ecosystem basis, recognizing the interconnection of wildlife with the environment”, and not on political boundaries.

- We recommend you consider removing Clause 91

### **Establish Thresholds for Wildlife Management & Monitoring Plans**

Let me switch now to our next area of interest, thresholds for Wildlife Management and Monitoring Plans.

When our diamond mines were proposed, government required that they each sign Environmental Agreements. One of the reasons for requiring these is that there was no legislative requirement for such things as Wildlife Management & Monitoring Plans. The Environmental Agreements became the vehicle to help fill legislative gaps.

Therefore, we recommended that the Wildlife Act help us reduce the size and eventually the need for Environmental Agreements for each mine, by filling one of these legislative gaps.

We are pleased that this Bill allows the Minister to require such plans outside of Environmental Agreements, and we think that is an important positive feature of the proposed legislation.

However, there is no threshold provided for the size of project that would require a monitoring plan. The Bill defers to Regulations for when a wildlife management and monitoring plan would or wouldn't be required. Without seeing the Regulations, it is impossible for us to comment then, which brings us to recommend that the Bill not be passed into law until this regulation has been developed, and with our input.

This is my segue to my next point, and that is on the myriad of Regulations the Bill proposes.

### **Legislation through Regulations not Statute**

The proposed Act incorporates numerous provisions authorizing the Commissioner to enact regulations. In fact, it might set a new record for just how many regulations it enables.

In a sense, this Act then becomes just enabling legislation. It is actually the myriad of regulations that will be created at a bureaucratic level that will define the final intent and impact of the Act. This carries risk.

With such a huge amount of undeveloped and undefined regulations, there is a huge lack of clarity, and the real powers of the Act are quite uncertain.

We recommend that the proposed Act not be made into law until all of the draft regulations that the government has in mind have been revealed to the public, and that sufficient time has been allowed for consultation with potentially affected interests, including the minerals industry.

We also propose that the legislation be amended to require that any regulations that will be established in the future be publicly disclosed before they are formally adopted, and that an appropriate allowance be made for consultation in each case.

- Recommendation 6: Do not make the Act into law until regulations have been finalized and with our input (see Recommendation 7).

### **Ensure Permanent Future Stakeholder Participation**

This brings me to the next point, also connected to this.

As I said, in the face of the myriad regulations still to be developed, the Wildlife Act actually becomes quite hollow. Its true effects are impossible to predict until so many of the proposed regulations are developed.

Since many of those regulations have great potential to create uncertainty for our industry, we would like to be involved in their drafting. We suspect other Stakeholders would also like to be.

We therefore recommended that the Stakeholders Wildlife Act Advisory Group (SWAAG) become a permanent advisory group under the Act to continue to provide industry and other stakeholders with a permanent avenue for input into the Act.

In the short term, we would help to review and finalize all the relevant regulations to accompany Bill 3.

In the longer term, we would provide industry participation to review the Act's effectiveness. It is a complex bill, and it is bound to have some imperfections that we can work on together to solve.

In our last SWAAG meeting with the Minister, we were given verbal support that we would continue to be involved. By making it explicit in the Bill, we would receive guaranteed assurances of participation, even when Ministers and governments change.

- Recommendation 7: Amend the Bill to include a permanent stakeholder advisory group to provide advice to the Minister on regulation making and future Act's effectiveness.

### **Include Sustainable Development in the Preamble to the Act**

As currently written, there is little in the proposed legislation, either in the preamble or in the six "principles" listed in clause 2, that would require the government to strive for an appropriate "environment-economy balance" when, for example, proposing the establishment of a Conservation Area.

The Preamble exists to aid in the Act's interpretation and application. And we believe the Act should consider the full range of socio-economic impacts in wildlife management and protected area decision-making.

For example, and not to belabour the point, the Bill allows for the creation of Conservation Areas. While we recognize that certain lands may need to be insulated from development in order to preserve valued wildlife components, we also maintain that the socio-economic implications of each potential designation for such areas must be carefully assessed, taking into account the predicted impacts on the well-being and advancement of local and regional communities. We raised that point earlier.

We believe that recognition of Sustainable Development principles in the Preamble will serve to remind those who apply the Act that balance is a foundation for the Act's application.

We do understand that there is an NWT Sustainable Development Policy, but we also believe that legislation trumps policy. Therefore, we recommend the Bill be amended so as to include the principle of Sustainable Development in the Preamble.

- Recommendation 8: Amend the Bill to include the concept of Sustainable Development in the Preamble.

## **Conclusion**

That brings me to the end of our recommendations.

Let me close by saying that the spirit of partnership and inclusion has been one of the most notable changes we have seen since the 17<sup>th</sup> Legislative Assembly was convened. We really want to thank the government for this very refreshing change.

With respect to this Bill, we saw this with the new approach to stakeholder engagement and the creation of the Stakeholders Wildlife Act Advisory Group (SWAAG).

We have also seen it in the approach your government has taken to partner with business and with industry in the work to create an Economic Development Strategy and a Mineral Development Strategy.

We also see its success in the approach taken to grow more support for NWT devolution.

It is our hope that the Standing Committee will continue to support this principle of partnership and inclusion with our industry and other stakeholders as we move forward to create a new Wildlife Act that provides us with clarity and investment certainty in its application.

We look forward to, and are prepared to help.

Thank you very much.

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Handout: Deck with slides referenced





## Industry Comments on Bill 3, NWT Wildlife Act

To: Standing Committee on Economic Development and Infrastructure  
By: Tom Hoefer, Executive Director  
June 11, 2013

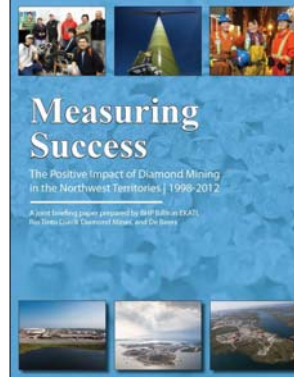
### Who We Are and Why We Are Interested

- The Chamber of Mines:
  - Non-profit industry association formed in 1967
  - Leading advocate for responsible mineral development in NWT and Nunavut
  - Represents members with interest in a strong northern minerals industry: mining & exploration, service & supply, consultants, Aboriginal corporations, individuals
  - Two offices: Yellowknife, NT & Iqaluit, NU



## Mining creates significant benefits

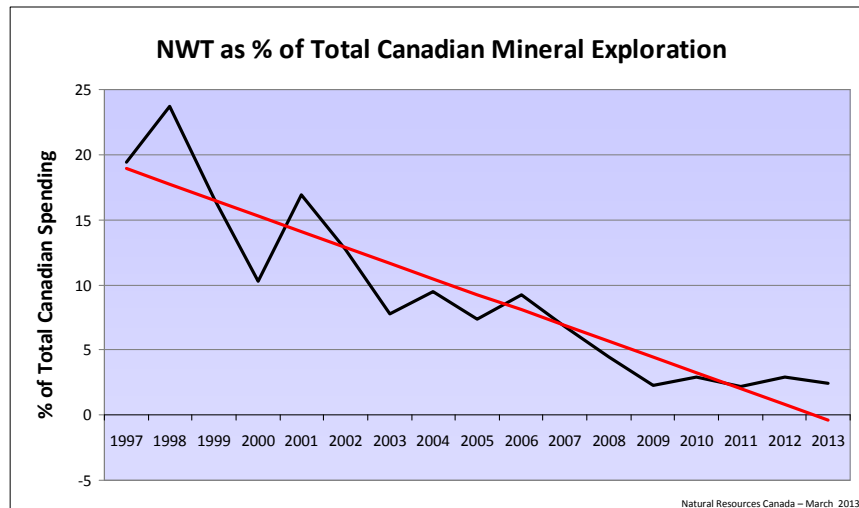
- Mines exceeded employment & business expectations
- 19,000 person years northern employment
  - 50% Aboriginal (mining is the largest private sector employer of Aboriginal residents)
- Over \$9.3 billion in northern business
  - \$4 billion Aboriginal
- Over \$100 million to communities
- \$ millions in scholarships
- Royalties, taxes
- Resource royalty sharing



Download: [www.miningnorth.com](http://www.miningnorth.com)



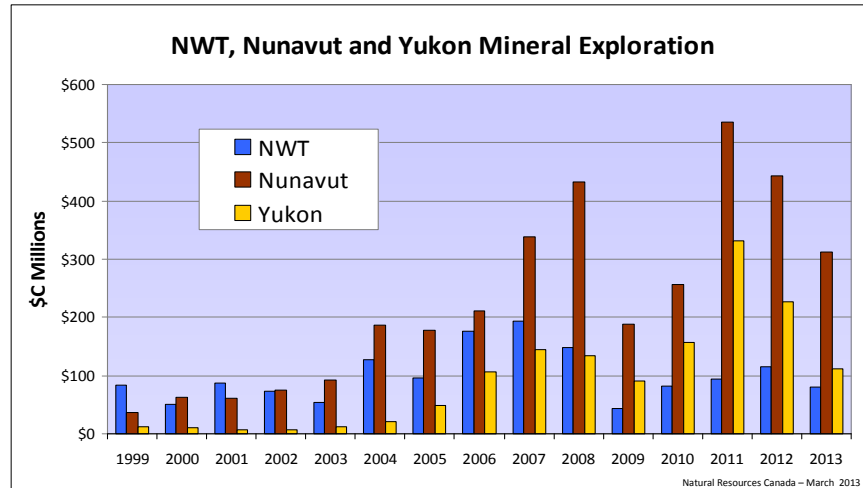
## NWT investment climate needs help



- The NWT's share of total Canadian mineral exploration is has been in decline for some time. We need to take actions to create a real turnaround.



## Uncertainty creates declining investment



- Exploration strong in Nunavut & Yukon
- Languishing in NWT (missed the recent boom, eg, NU & Yukon)



## 5 Key Areas of Interest

- Conservation Area creation
- Thresholds for Wildlife Management Plans
- Myriad of regulations that will really define the Act
- Permanent stakeholder advisory role
- Sustainable Development in the Preamble





## Additional Recommendations

- Do not make the Act into law until regulations have been finalized and with our input.
- Amend the Bill to include a permanent stakeholder advisory group to provide advice to the Minister on regulation making and future Act's effectiveness.
- Amend the Bill to include the concept of Sustainable Development in the Preamble.