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# THESIS

# INDEPENDENT COMMISSION ON WOODLAND AND MOUNTAIN CARIBOU

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## Introduction to the Organization

Founded in May 1985, the Assembly of First Nations Quebec-Labrador (AFNQL) is the occasional meeting point for Chiefs of the 43 First Nations communities scattered across Quebec and Labrador. The AFNQL holds Chiefs' Assemblies four times a year, at which time it is empowered with different political mandates.

Mission and objectives :

- Assertion and respect of First Nations rights
  - Recognition of First Nations governments
  - Increase of financial autonomy for First Nations governments
  - Expansion and training of First Nations public administration
  - Coordination of First Nations decision-making
  - Representation of positions and interests amongst forums
  - Shape plans of action to bring forward common stands
  - Recognition of First Nations cultures and languages
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## 1 Preamble

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Caribou are at the core of identities, cultures, and lifestyles of several First Nations. In that sense, the inaction and indifference displayed by the Government of Quebec regarding the protection of the species are serious infringements of First Nations' rights.

As brought forward in a recent [media release](#) on behalf of the AFNQL, the Independent Commission on Woodland and Mountain Caribou (hereafter "the Commission") serves as an excuse to, yet again, postpone the development and the implementation of the *Stratégie pour le rétablissement des caribous forestiers et montagnards* (hereinafter "the Strategy"). The Government of Quebec has held for decades the relevant information to develop and implement a coherent strategy to protect and recover the species.

Moreover, the consultation modalities of the Commission are problematic. On one hand, the scenarios focus exclusively on avoiding socio-economic losses for the forest industry. On the other, the geographic location, as well as the scope of the public hearings and the absence of distinct consultations for First Nations all remain inadequate with respect to the Government of Quebec's legal duty to consult First Nations.

Last, this serious disregard for First Nations rights takes place shortly after the public release of the [Declaration on lands and resources](#) (hereafter "the Declaration") of the AFNQL. The Declaration demands co-management of lands and resources with both levels of governments, according to their respective jurisdictions. Despite how important the statements found in the Declaration are, the Government of Quebec has not followed suit.

## 2 Context

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As soon as the first signs of decline appeared amongst populations of woodland and mountain caribou during the 1980s, First Nations engaged in initiatives of protection and expressed their concerns to the Government of Quebec, along with potential solutions that should be implemented to protect the species.

However, it is only since 2003 that the Government of Quebec started inviting them to several discussion roundtables (recovery teams, regional operational teams, etc.). Initially created to inform recovery plans and action plans, these roundtables also intended to support the development of the Strategy, initially scheduled for 2018. Although First Nations, scientific experts, along with other participants emitted clear recommendations, the Government of Quebec has repeatedly postponed the launch to 2021, then to 2024. It remains unjustified and wrongful for First Nations.

Rather than implementing the long-awaited Strategy, the Government of Quebec instead postponed its commitment by creating the Commission during the fall of 2021 to assess two potential impact scenarios. One of those brings forward serious infringements of First Nations' rights, as it suggests forsaking the caribou populations of Val d'Or, Charlevoix, and Pimicuacan.

Worse still, the Government of Quebec has been criminalizing the assertion of First Nations' rights pertaining to subsistence hunting, by recently imposing a fine on a First Nation member<sup>1</sup>. In another case, it has also publicly accused First Nations of "undermining the actions undertaken by the province to protect the woodland caribou"<sup>2</sup>.

Considering these findings, the Minister of Environment and Climate Change of Canada (MECCC), Steven Guilbeault gave the Government of Quebec an ultimatum to provide proof, such as bills, regulations, and other measures for the protection of caribou and their essential habitat, by April 20, 2022. At the time of writing, the Government of Quebec committed to respond to this demand. Simultaneously, Minister Guilbeault is pursuing his submission to the federal cabinet of a proposal for an emergency order, pursuant to Section 80 of the Species at Risk Act (SARA) to protect caribou herds.

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<sup>1</sup> Blais, A., Le journal du Québec, 02.04.2022, Un juge fait peu de cas du droit ancestral, (02.04.2022), [<https://www.pressreader.com/canada/le-journal-de-quebec/20220402/281642488689199>]

<sup>2</sup> Shields,A. et Sioui, M.-M., Le Devoir, 14.04.2022, Le ministre Dufour s'en prend aux Innus à propos du déclin du caribou forestier, [<https://www.ledevoir.com/politique/quebec/698997/le-ministre-dufour-s-en-prend-aux-innus-a-propos-du-declin-du-caribou-forestier>]

### 3 Comments from AFNQL

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Whether it be regarding the Commission itself, the consultation process, or the related consultation document, the AFNQL witnesses, yet again, the lack of consideration for First Nations' rights throughout the process.

#### 3.1 Impertinence of the Commission

- Decades of governments' inaction

As there have been no interim measures to accommodate First Nations, the Commission appears as an excuse to, yet again, postpone the enactment of the Strategy.

Indeed, the implementation of the Commission falls within decades of inaction on behalf of the Government of Quebec. Although the latter held sufficient information to take action, they chose to follow through with disturbing the habitat of the mountain and woodland caribou through the allocation of permits to exploit natural resources.

- Unclear mandate

The intentions behind the Commission remain vague and misunderstood. The mandate is not to bring forward recommendations to the Government of Quebec, but to meet with the population and hear their thoughts on hypothetical scenarios. Eventual uses of those results have not been clarified by the Commission.

- Questionable Commission

The consultation document was conceived unilaterally by the *Ministère des Forêts, de la Faune et des Parcs* (MFFP). As such, all analysis that have been provided to shape the impact scenarios, along with the latter themselves, originate from the MFFP or the *Bureau du Forestier en chef* (BFEC). To what extent has this Commission been « independent »?

Meanwhile, the Government of Quebec chose unilaterally three commissioners that seemingly have little knowledge of biodiversity, along with the rights and cultures of First Nations. The commissioners' academic and professional backgrounds therefore remain questionable with regards to the issues that are touched upon by the Commission. The Government of Quebec willfully excluded well-known caribou experts, such as First Nations and researchers that are part of the existing recovery teams.

- Lack of outreach

The writing style, along with the glossary that are used in the document are inappropriate, considering that it targets a general audience. Moreover, notions that are substantial to the understanding of the issues cannot be found in the document. How can the Commission claim to gather the concerns, issues, and recommendations of the public, when the document is not popularized, and it withholds fundamental concepts? Those concepts are touched upon in Section 3.3 of this document.

## 3.2 Inappropriate consultation process

- Delegation of the duty to consult

The Commission, which aims for independence from the Government of Quebec, has the mandate to proceed to public hearings. Delegating the legal duty to consult First Nations, upstream of initiatives, to a third-party remains not only inappropriate, but also an infringement of First Nations' rights.

- Lack of prior consultation

Although Section 3.2 of the consultation document highlights a short paragraph on notions of consulting and accommodating First Nations, no consultation took place with First Nations prior to the development of the document. The scenarios found within the document, however, significantly impact First Nations' rights. Moreover, the Commission should have developed the consultation modalities closely with First Nations to fully meet the objectives of said consultation.

- Inadequate portray of impacted First Nations

The scenarios under study focus on caribou populations that are located across zones of significance to the forest industry. This approach dismisses First Nations that are not impacted first-hand by the forest industry, yet that experience the effects of mines, recreational tourism, vacation leases, etc.

The same applies for First Nations who have witnessed the disappearance of woodland and mountain caribou on their ancestral territories, and who once depended on caribou for food. Although they can no longer consume caribou originating from their lands as of today, the species still plays a significant role in their culture. Thus, any additional harm to the sustainability of caribou populations poses a serious infringement of First Nations' ancestral rights and cultures.

- Insufficient public hearings

The public hearings are insufficient, both in number and in geographical scope when compared to the extent of the impacts these issues have had on First Nations. More public hearings should be held in urban centers and within Indigenous communities to foster First Nations' participation.

## 3.3 Missing concepts from the consultation document

Considering the approach laid out in the document, the MFFP dismisses the urge to protect and restore the mountain and woodland caribou, along with their habitats. The consultation document, which stems from a so-called "independent" Commission, focuses essentially on short-term socio-economic benefits for the forest industry. The document also discards the holistic approach that should surround the protection and restoration of the species, the ligneous capacity of forests, and the herds' self-sufficiency.

### 3.3.1 The need to protect the caribou

- Holistic approach to the lands and infringement of First Nations' autonomy

To implement ecosystem-based management, the MFFP has used the caribou as an umbrella species<sup>3</sup> to protect habitats that are home to a wide range of biodiversity. The consultation document, despite written by the MFFP itself, completely neglects this notion.

Through a holistic lens, the caribou, as much as other wildlife, plant and fungal species that live within the same habitats, all have significantly contributed to several First Nations' cultures and identities. In a nutshell, those species establish their « pantry »<sup>4</sup> and their pharmacy. Their loss would result in an escalation of harmful effects to the integrity of forest ecosystems, to the food autonomy and to the culture of First Nations.

As such, the protection and recovery of woodland and mountain caribou, along with their habitats must be approached from a holistic perspective. Furthermore, the absence of such a vision across the consultation document highlights the lack of consideration of the Government of Quebec to act towards reconciliation with First Nations.

- MFFP's responsibility towards resources for future generations

Prior to the implementation of the *Sustainable Forest Development Act* (SFDA) in 2013, most of the forest industrial park had been built upon decades of forestry overexploitation<sup>5</sup>. In other words, the forest industrial park was disproportionate with respect to the growth capacity of the forests, resulting in the alteration of the resources on First Nations' territories, including the habitat of woodland and mountain caribou. The ecosystem-based management that has been pushed forward by the MFFP, with the means of the SFDA, must allow for “retention of biodiversity, along with viability of ecosystems”<sup>6</sup>, according to criteria established unilaterally, without prior

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<sup>3</sup> Drapeau, P., Leduc, A., Kneeshaw, D., & Gauthier, S. (2008). Paramètres à considérer pour le suivi de l'approche écosystémique dans une perspective d'aménagement adaptatif en pessière à mousses. Aménagement écosystémique en forêt boréale, 361-392.

<sup>4</sup> Gouvernement du Canada, Environnement Canada, (2009), Caribou des bois (*Rangifer tarandus caribou*) : rapports sommaires des connaissances traditionnelles autochtones, <https://www.canada.ca/fr/environnement-changement-climatique/services/registre-public-especes-peril/publications/caribou-bois-rapports-sommaires-connaissances-autochtones/quebec.html#a5>

<sup>5</sup> Commission d'étude sur la gestion de la forêt publique québécoise, (2004), Rapport, 307p., [<https://mffp.gouv.qc.ca/documents/forests/consultation/rapport-coulombe.pdf>]

<sup>6</sup> Ministère des Forêts, de la Faune et des Parcs, L'aménagement écosystémique au cœur de la gestion des forêts, site web, (consulté le 29.04.2022), [<https://mffp.gouv.qc.ca/les-forets/amenagement-durable-forets/lamenagement-ecosystemique-au-coeur-de-la-gestion-des-forets/>]

consultation with First Nations<sup>7</sup>. Woodland caribou has been identified as an indicator for forests' health and biodiversity<sup>8</sup>.

Nevertheless, ten years after the implementation of the SFDA, ecosystem degradation has only worsened, as witnessed through the decline of woodland and mountain caribou populations since 2010. The MFFP has been ignoring those clear signs instead of decelerating forest exploitation. It has further exacerbated the issue, claiming within the Wood Production Strategy that it remains feasible to double wood harvest by 2050, which is unreasonable<sup>9</sup>.

The MFFP has therefore been repeating its predecessors' mistakes through authorizing the growth of a disproportionate industrial park with respect to forests' capacity. This issue could lead to supply disruptions, to factory shutdowns, and inevitably, to employment losses.

Altogether, the MFFP is simply proposing to mortgage future generations' resources on traditional lands that are not theirs.

- **Biased socio-economic repercussions**

The method of calculation for socio-economic repercussions found in the consultation document is inherently biased<sup>10</sup>. Indeed, it implies that employment losses related to a decrease in forest capacity is rooted in caribou protection and restoration measures. The MFFP therefore fails to, on one hand, take accountability for employment losses, and on the other, suggest any solutions to solve the issue.

As mentioned above, the MFFP and its predecessors permitting wood consumption that is disproportionate with respect to the production capacity of ecosystems is amongst the causes that have led to employment losses.

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<sup>7</sup> Ministère des Forêts, de la Faune et des Parcs (2016). Intégration des enjeux écologiques dans les plans d'aménagement forestier intégré de 2018-2023, Cahier 2.1 – Enjeux liés à la structure d'âge des forêts, Québec, gouvernement du Québec, Direction de l'aménagement et de l'environnement forestiers, 67 p., [[https://mffp.gouv.qc.ca/wp-content/uploads/Cahier\\_2-1\\_structure\\_age.pdf](https://mffp.gouv.qc.ca/wp-content/uploads/Cahier_2-1_structure_age.pdf)]

<sup>8</sup> Ministère des Forêts, de la Faune et des Parcs, Direction générale de l'expertise sur la faune et ses habitats, (2015), Démarche ayant mené à la sélection des espèces sensibles à l'aménagement forestier d'intérêt provincial, Gouvernement du Québec, 16 p.[ <https://mffp.gouv.qc.ca/documents/faune/seLECTION-espECEs-sENSIBLES.pdf>]

<sup>9</sup> Ministère des Forêts, de la Faune et des Parcs, (2022), Stratégie nationale de production de bois, 50 p. [[https://cdn-contenu.quebec.ca/cdn-contenu/adm/min/forets-faune-parcs/publications-adm/strategies/STR\\_production\\_bois\\_MFFP.pdf](https://cdn-contenu.quebec.ca/cdn-contenu/adm/min/forets-faune-parcs/publications-adm/strategies/STR_production_bois_MFFP.pdf)]

<sup>10</sup> Gouvernement du Québec, (2022). Document de consultation - Commission indépendante sur les caribous forestiers et montagnards, Québec, 65p.

With the mechanization of harvesting and processing, labour within the forest industry has almost been halved between 1990 and 2020<sup>11</sup>. During the same period, thousands of square kilometers of forested areas that are part of the woodland and mountain caribou's habitats were all logged. Although the Government of Quebec has forgone all protection measures for the caribou to avoid any impact on the forest industry, employment losses remain forecasted, as process automation carries on<sup>12</sup>.

Simultaneously, the functioning of the forest industry in Quebec is only profitable for shareholders. In addition to monopolizing resources located on First Nations' lands, the industry is funded by government subsidies. No significant portion of the economic benefits are reallocated, neither to First Nations, nor to non-Indigenous communities<sup>13</sup>.

However, forestry economy, , is holistic and is not limited to the valuation of wood. Non-timber forest products (NTFPs), hunting, trapping, and gathering all hold significant and long-term economic potential that has been reasonably harnessed by First Nations since time immemorial.

### 3.3.2 Terms to protect and recover caribou populations

- **Self-sufficiency of caribou herds for reproduction**

The approach of the scenarios is to allow habitat restoration to foster self-sufficiency of caribou populations, along with the use of enclosures for supplementation of individuals. There has been, however, significant lack of nuance to allow for the needs of each populations to be targeted to further identify the means to ensure self-sufficiency and breeding.

For example, some of the isolated populations, such as those in Charlevoix, Gaspésie and Val-d'Or, would require reintroduction projects. However, these means are not mentioned in the document and yet, examples of success exist, such as for the population of Charlevoix. A re-introduction project has also been provided to the MFFP for the population in Val-d'Or.

## 3.4 Scenario review

The approach in which the scenarios are rooted is narrowed by opposing conservation and short-term socio-economic benefits. Those variables, in this context, are difficult to compare; yet they are at the core of the scenarios suggested by the Commission.

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<sup>11</sup> Gouvernement du Canada, Emplois dans le secteur forestier, Données statistiques, Service canadien des forêts, forêts et foresterie, (2021) [<https://scf.rncan.gc.ca/profilstats/emploi/ca>]

<sup>12</sup> Mercier, G., (07.09.2017), Opérations forestières et de scieries, Foresterie 4.0, vers une révolution forestière, [<https://www.operationsforestieres.ca/foresterie-40-vers-une-revolution-forestiere-2759/>]

<sup>13</sup> Schepper,B., Bégin,A.,(2020),Portrait de l'industrie forestière au Québec : une industrie qui a besoin de l'État, Institut de Recherche et d'information socioéconomique, Québec, 24p.

### 3.4.1 Reviewed Advisory Scenario

In the light of analysis developed by First Nations in recent years, the “adequate level of protection for caribou habitat” that is suggested within the document remains insufficient and justified by erroneous socio-economic impacts.

- **Lack of ambition to protect and restore populations**

It is mentioned across the document that scenarios must allow for the “promotion” of woodland and mountain caribou’s autonomy. In other words, the public is encouraged to assess the relevance of the scenarios that do not ensure, but merely foster protection and recovery of caribou populations, along with their habitats. Such process shows the lack of ambition of the MFFP to live up to its responsibilities regarding wildlife management.

- **Insufficient threshold of disturbance**

The maximum allowable disturbance threshold in extensive favourable areas (EFAs) and habitats undergoing restoration (HURs) of 35% induces a 60% probability of maintaining stable or positive population growth, or almost a fifty-fifty chance. This threshold, along with associated costs and benefits, should be reviewed in close collaboration with First Nations to reach more appropriate population sustainability probabilities.

- **Inconsistent application territories**

The territories of application that have been targeted (VEP, HURs and connectivity zones) are inadequate. The areas that were suggested, whether it be for the woodland or mountain caribou, remain insufficient with respect to the species’ needs, or they simply do not cover all territories where they live. For instance, the area of recovery that has been suggested for the woodland caribou located in Val-d’Or lies on territory that turns out to be inconsistent with the data issued from telemetric monitoring of the population. Worse still, the MFFP ignores the areas that have been explicitly identified<sup>14</sup> by some First Nations communities, along with the researcher Martin-Hugues Saint-Laurent, as best scenarios for habitat restoration. Collaborating with First Nations, who are inarguably experts on the matter, remains crucial to identify coherent territories of application.

- **Absence of socio-economic and cultural benefits**

In the medium-term, restoration activities generate many opportunities that must be considered in socio-economic analysis:

- Roads closure contracts for small contractors (including Indigenous contractors);
- Reforestation contracts;
- Follow-up of effectiveness contracts (which could be completed in partnership with Indigenous businesses);

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<sup>14</sup> St-Laurent, M.-H., & J. Gosselin. (2020). Sélection d’habitat, délimitation de l’habitat essentiel et scénarios de restauration d’habitat à prioriser au bénéfice du caribou de Val-d’Or. Rapport scientifique présenté au Conseil de la Nation Anishnabe du Lac Simon, par l’Université du Québec à Rimouski. viii + 118 p.

- Depredation contracts for Indigenous trappers;
- Valorization of Indigenous knowledge through the commercialization of trapping products (meat and fur);
- Contract to monitor caribou, predator, and moose populations.

In addition to being useful, the vocation of these activities would allow the people employed to feel valued by structuring projects for society. In the long-term, through a holistic worldview of the land, the woodland and mountain caribou habitat can be subject to full economic valorization. The latter does not take place with ecosystems impairment, notably through the following:

- NTFPs production and harvesting;
- Trapping of fur-bearing animals;
- Carbon storage;
- Transmission of culture;
- Creating protected areas that are co-managed with First Nations.

Opportunities like those above should be quantified to assess their potential in partnership with First Nations.

### 3.4.2 Scenario “with no additional impacts for forestry”

The scenario known as “with no additional impacts for forestry” stems from a flawed worldview that prioritizes economic benefits and dismisses First Nations’ rights and cultures. Commissioners should therefore disregard such a scenario.

- **Creating a dangerous precedent for dismissing the extinction of endangered species**

It remains inconceivable that this scenario dares to suggest the extinction of a species that has existed for millennia. The MFFP brings forward a dangerous precedent, as this decision paves the way for the future of other endangered species.

In that respect, the MFFP deliberately suggests to further infringe First Nations’ rights, and to perpetuate their predecessor’s colonial behaviour.

48 wildlife species are currently identified as endangered or threatened, whereas 115 are likely to be, pursuant to the *Loi sur les espèces menacées et vulnérables du Québec*. Will First Nations have to accept, without their consent, additional losses of biodiversity for the benefit of exploiting natural resources?

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## 4 Recommendations

The following recommendations focus on the implementation of concrete short and long-term actions for the protection and recovery of the woodland and mountain caribou populations, in close collaboration with First Nations:

- Demand Nation-to-Nation meetings with governments to develop and implement protection actions;

- Impose interim measures (e.g., moratorium on logging essential habitat) to foster the woodland and mountain caribou's protection until full implementation of the Strategy;
- Review areas of implementation, to reflect the actual essential habitat to caribou populations;
- Consider Indigenous knowledge throughout the development and implementation of said actions;
- Carry out a holistic study of solutions, economic opportunities, and environmental gain;
- Ensure sustainability for the assertion of First Nations' rights;
- Establish a network of protected areas that are connected and co-managed with First Nations.

## Conclusion

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The Government of Quebec has, once again, failed to fulfill its obligations. Following decades of inaction, woodland and mountain caribou's populations are on the verge of extinction, although we hold all the relevant information that is required for their recovery.

The Commission is a disgrace towards the duty to consult First Nations. The process, along with the suggested scenarios, are inappropriate and reflective of the Government of Quebec's absolute disregard of First Nations' rights.

First Nations are not mere stakeholders in the management of the land and its resources. They hold rights and valuable knowledge on territories and ecosystems, both of which are rooted in millennia of empirical observations. In that respect, First Nations should be considered as experts in the management of caribou populations and their habitat.

Considering the impact of the decline of caribou populations on the assertion of First Nations' rights, working cooperatively to find best practices and solutions remains essential. The necessary actions must be defined and implemented in collaboration with the First Nations for the future of the caribou, the integrity of biodiversity on their traditional lands, and the protection of their constitutional rights.