

# FORMAL COMPLAINT TO COLLEGE OF APPLIED BIOLOGY

26 July 2017

## I: INTRODUCTION

This complaint concerns a professional consultant, hereafter referred to as RPBio, who in 2015 prepared a wildlife report while under contract to CANFOR. The report pertains to the federally listed Southern Mountain Caribou and contains misleading assertions and inappropriate recommendations, suggesting that RPBio was consulting outside his/her area of competency.

The decision to proceed with this complaint is informed, first, by the considerable authority accorded to professional biologists under the B.C. Forest and Range Practices Act and, second, by the substantial adverse impact RPBio's recommendations will likely have on a Mountain Caribou herd already in rapid decline.

## II: BACKGROUND

Concerns over the impacts of industrial logging in the Upper Clearwater area, two hours north of Kamloops, have been in the public eye since January 2012 when Canadian Forest Products Ltd (CANFOR) announced its intention to log hundreds of hectares on the eastern and, more recently, western slopes of the Upper Clearwater Valley immediately adjacent Wells Gray Provincial Park.

In 2015, these concerns led to an intensive eight-month Information Exchange Process involving the Upper Clearwater Referral Group (<https://1000clearcuts.ca/referral-group/>), two CANFOR representatives, and a representative from FLNRO.<sup>1</sup>

On 15 January 2016, as part of CANFOR's commitment to the Information Exchange Process, a CANFOR Forestry Supervisor Planning (hereafter referred to as ABCFP ATF), shared the executive summary of a report titled authored by RPBio and prepared while under contract to CANFOR in 2015.

Notwithstanding that the Referral Group has examined the executive summary of this report, repeated requests for a copy of the full report have not been granted. According to ABCFP ATF, RPBio's report is 'proprietary' and hence available for viewing only in his Vavenby office. In March 2017, a member of the Referral Group took up ABCFP ATF's invitation to examine the report, but was prohibited from photographing it and was discouraged from taking notes.

Given this constraint, the following complaint is necessarily based on information contained in the executive summary of RPBio's report rather than on the body of the report itself. While this

is clearly less than optimal, it is felt that the gravity of the situation at hand justifies bringing it to the attention of the College. Presumably the College will have better luck securing the full report.

The executive summary provided by ABCFP ATF appears below.

## **Wildlife Management Recommendations for Forest Planning in the Upper Clearwater Valley<sup>2</sup>**

By RPBio, Conservation Biologist

25 September 2015

### ***Executive Summary***

*The Upper Clearwater Valley is adjacent to Wells Gray Park and is designated a Resource Management Zone (RMZ) under the Kamloops Land and Resource Management Plan (KLRMP). As Part of an integrated forest development plan for the ESSFwc2 and ICHmk2 in the valley, wildlife Species at Risk (SAR) were assessed for habitat requirements and conservation management recommendations.*

*In particular, habitat for the Endangered Mountain Caribou is of greatest concern for the potential effects of forest management. Habitat in the ESSFwc2 adjacent to the boundary of Wells Gray Park has been identified as Non-Core status by the KLRMP Mountain Caribou Sub-Committee and as highly suitable and capable by BC Ministry of Environment. As such, the high-quality habitat area is considered to be infrequently occupied by caribou as of 2006. However, since then, Ministry of Environment has confirmed that Mountain Caribou have not occupied the Upper Clearwater Valley or the adjacent southern portion of Wells Gray Park in recent years. The 2014 National Recovery Strategy for Mountain Caribou has identified reducing predator density as a population recovery objective to facilitate range expansion in the Southern Group of caribou that historically occupied the area.*

*As an RMZ under the KLRMP, integrated forest management is identified as an economic activity appropriate for the Upper Clearwater Valley. As a result, Canfor is developing forest management plans for the part of the area and integrating Mountain Caribou landscape and stand level habitat needs to address population recovery objectives.*

*The ICHmk2 is comprised of mature mixed stands and can be characterized as an NDT3 ecosystem, with frequent fire return (150 years). The ESSFwc2 is comprised of old, climax spruce-balsam forest in the NDT1, which is a stand replacing, long-return fire cycle (250 years) ecosystem type. Fires have burned the ICH throughout the valley in the mid-1920s and 1890's; the ESSF was not burned.*

*As a result of fire history and Mountain Caribou habitat use patterns, a forest management plan has been developed specifically for each of the ICH and ESSF stands. To reduce risk of wildfire, larger blocks have been recommended for the ICH which likely has not been important caribou habitat historically and currently has little suitability. Retention will target biodiversity features*

*such as wetlands and snags. Smaller openings with patch retention, separated by retained old forest stands of similar or larger sizes, have been recommended in the ESSF. Retained intervening forest stands will provide potential movement corridors, including security features, and sustain lichen availability, should mountain Caribou numbers expand into their former range. The main silviculture objective will be to mitigate browse post-harvest in both the ICH and ESSF to avoid attracting other ungulate species and their predators, particularly wolves. Browse will be managed by opening size (ESSF) and post-harvest control (ESSF, ICH), including planting access management.*

### **III: WHEREAS ...**

**WHEREAS 1: THE FOREST AND RANGE PRACTICES ACT (FRPA) IS A PROFESSIONAL RELIANCE MODEL WHICH GIVES CONSIDERABLE AUTHORITY TO THE JUDGEMENT OF ACCREDITED PROFESSIONALS.**

In November 2002, the British Columbia government passed the *Forest and Range Practices Act (FRPA)* intended to help meet its target set in 2001 to eliminate one-third of all then-existing regulations. In January 2004, the B.C. government completed the legal transition from the *Forest Practices Code (FPC)* to a professional reliance model under the *FRPA*. Under *FPC*, the Ministry of Forests (FLNRO) district manager had final authority to withhold cutting permits and road permits. However, under the *FRPA* that authority was removed and decision-making was transferred to the logging companies and their professionals.

Under the *FRPA*, all logging proposals that are consistent with the objectives in an approved forest stewardship plan and signed off by the company's professionals must be approved by the district manager if First Nations rights and title have been respected. Forest licensees and their professionals make the final decisions about how to balance resource values and minimize risks. The district manager has no authority to deny a cutting permit or road permit even if he or she is of the opinion that carrying out the actions authorized by the permit would destroy critical habitat of an endangered species.

*Under FRPA, RPBio's decision, in effect, to consult to CANFOR in the capacity of a professional caribou biologist placed his/her in a position of considerable authority to impact the federally endangered Southern Mountain Caribou of nearby Wells Gray Park. Accordingly, it seems reasonable to expect that he/she would accept the attendant responsibility to exercise due diligence in arriving at his/her recommendations.*

**WHEREAS 2: THE SOUTHERN MOUNTAIN CARIBOU IS FEDERALLY LISTED AS THREATENED/ENDANGERED.**

The Southern Mountain Caribou has been in rapid decline in recent decades and is now formally listed as 'critically imperiled in B.C.' Federally it was designated by COSEWIC as 'threatened' in 2002 and 'endangered' in 2014. It also has legal status as 'threatened' under the Species at Risk Act (*SARA*). The Wells Gray (south) herd decline by half in the past ten years alone; see Figure 1.

Here we reference *BC's Mountain Caribou: Last Chance for Conservation*, a Forest Practices Board report released on 29 September 2004: "All mountain caribou in Canada are nationally designated as 'threatened'. Threatened status means that action is required to improve caribou survival in order to avoid extinction. In 1996, British Columbia signed the National Accord for Protection of Species at Risk. That agreement obliged the province to act to protect species at risk and their habitats ..." It is our understanding that B.C.'s federal obligation to the National Accord both predates and overrides FRPA – ethically if not necessarily legally; though note Section 80 under Canada's Species at Risk Act.

*RPBio's decision, in effect, to consult to CANFOR in the capacity of a professional caribou biologist can reasonably be expected to imply an understanding of his/her professional responsibility to refrain from placing endangered species like the Southern Mountain Caribou at increased risk of extirpation – an expectation strengthened by RPBio's description of his/her self as a 'conservation biologist.'*

FIGURE 1: Southern Mountain Caribou decline in southern Wells Gray Park and vicinity between 1995 and 2015

### **WHEREAS 3: FEDERAL DESIGNATION AS THREATENED OR ENDANGERED TRIGGERS THE SPECIES AT RISK ACT**

The federal designations place SMC within the scope of Canada's Species at Risk Act (SARA), the statutory purposes of which are set out in section 6: 'The purposes of this Act are to prevent wildlife species from being extirpated or becoming extinct, to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity and to manage species of special concern to prevent them from becoming endangered or threatened.'

*RPBio's decision, in effect, to consult to CANFOR in the capacity of a professional caribou biologist can reasonably be expected to imply a good working knowledge of the statutory intent and implications of Canada's Species at Risk Act (SARA) as it pertains to Southern Mountain Caribou – an expectation again strengthened by RPBio's description of his/her self as a 'conservation biologist.'*

### **WHEREAS 4: THE CONCEPT OF 'MATRIX HABITAT' IS CORNERSTONE TO THE 2014 FEDERAL RECOVERY STRATEGY (SARA).**

On June 3, 2014, the federal Minister of Environment and the Minister responsible for Parks Canada posted on the SARA registry a final 'Recovery Strategy' under SARA for the Woodland Caribou, Southern Mountain population. The 2014 Recovery Strategy specifically determines that matrix range is critical habitat for the southern mountain caribou. Matrix range is outside the designated seasonal ranges. Type 2 matrix range (overlapping with Canfor's cutting proposal) consists of areas surrounding annual ranges where predator/prey dynamics influence caribou predation rates within the subpopulation's annual range. This is important because B.C.'s legislative framework and 2007 Mountain Caribou Recovery Implementation Plan (RIP) provides mandatory protection only within defined subareas within what B.C. refers to as 'core habitat,' which does not generally include matrix range.

*RPBio's decision, in effect, to consult to CANFOR in the capacity of a professional caribou biologist can reasonably be expected to imply an adequate understanding of the concept of 'matrix habitat,' as clearly laid out in the 2014 Federal Recovery Strategy.*

**WHEREAS 5:** THE 2014 FEDERAL RECOVERY STRATEGY DESIGNATES VIRTUALLY ALL OF CANFOR'S PROPOSED CUTTING AREA ON THE WEST AND EAST SLOPES OF THE TROPHY MOUNTAIN AS MATRIX HABITAT.

The Recovery Strategy sets population and distribution objectives at the Local Population Unit (LPU) level. It establishes a recovery goal to achieve self-sustaining populations in all LPUs within their current distribution. The Strategy provides maps for each of the LPUs showing 'Critical Habitat (Matrix Range)' as well as 'Critical Habitat (High/Low Elevation Range).' The Wells Gray (South) herd is a subpopulation within the Wells Gray-Thompson LPU #18. The map on page 87 of the Strategy shows the Critical Habitat of the Wells Gray-Thompson LPU. The map clearly identifies areas on both sides of the Upper Clearwater Valley adjacent to Wells Gray Provincial Park as matrix range critical habitat. As shown in Figure 2, considerable logging has already occurred in this critical habitat since the issuance of the Recovery Strategy, and the impending clearcut logging cutblocks are located within this Type 2 matrix critical habitat.

*RPBio's decision, in effect, to consult to CANFOR in the capacity of a professional caribou biologist can reasonably be expected to imply a willingness to acquaint his/her self with the fact that the area covered by CANFOR's proposed cutblocks is federally designated as Type 2 matrix habitat.*

Figure 2. Industrial logging in the Upper Clearwater Valley north of Clearwater. The areas in yellow were designated as Critical Habitat for Caribou in the 2014 Mountain Caribou Recovery Strategy but have since been heavily logged. The areas in red include the proposed cutblocks covered by RPBio's 2015 report to CANFOR.

**WHEREAS 6:** SARA ALLOWS FOR CRITICAL HABITAT PROTECTION BY THE FEDERAL GOVERNMENT ON NON-FEDERAL LANDS.

SARA s.61(2) provides that the s.61(1) prohibition against destroying critical habitat applies on non-federal lands (such as the subject matrix range critical habitat) only where ordered by the Governor in Council under s.61(2) on the recommendation of the Minister under s.61(3) after consultation with the appropriate province as required by s.61(4).

SARA s.61(4) stipulates that, if the Minister forms the opinion that any portion of critical habitat on non-federal lands is not effectively protected by the laws of the province, and there are no effective federal measures or laws to protect that portion of critical habitat, then the Minister must recommend that the Governor in Council make an order that extends the prohibition against the destruction of critical habitat to that portion.

*RPBio's decision, in effect, to consult to CANFOR in the capacity of a professional caribou biologist can reasonably be expected to imply awareness that recommending extensive industrial*

logging on federally designated Critical Habitat for Caribou could trigger an emergency protection order under SARA. This it has done:

<http://1000clearcuts.ca/wp-content/uploads/2017/04/2017-04-07-SARA-s.80-Wells-Gray-Thompson-caribou-emergency-order-application.pdf>.

**AND WHEREAS 7:** THERE IS NO SCIENTIFIC SUPPORT FOR THE SUGGESTION THAT POST-HARVEST BROWSE MITIGATION CAN DETER OTHER UNGULATE SPECIES AND THEIR PREDATORS.

RPBio makes the following statement in his/her report: *'The main silviculture objective will be to mitigate browse post-harvest in both the ICH and ESSF to avoid attracting other ungulate species and their predators, particularly wolves. Browse will be managed by opening size (ESSF) and post-harvest control (ESSF, ICH), including planting access management.'*

We are aware of no scientific evidence in support of the implied assumption here that post-harvest browse mitigation can deter ungulate use in a regenerating clearcut. Evidently such an approach is founded in the belief that moose and deer consume only coarse woody shrubs summer and winter, which is of course not the case. Creation of hundreds of hectares of young regenerating forest as per RPBio's recommendations will unquestionably promote an increase in the local ungulate populations as well as their predators.

*As a professional wildlife biologist, RPBio can reasonably be expected to understand that browse management over the hundreds of hectares endorsed by his/her report cannot possibly succeed in deterring moose and deer from using the resulting young clearcuts both summer and winter – the more so insofar as the area in question acts as winter catchment for virtually all of Wells Gray's ungulates, as indicated in habitat capability maps produced by the B.C. Ministry of Environment in the 1980s. Had RPBio chosen to consult local knowledge of the area, he/she would have been made aware of this.*

#### **IV: THEREFORE ...**

This complaint proceeds from two statements made by RPBio in the executive summary of his/her report, as well as from recommendations arising from them.

(1) *'The 2014 National Recovery Strategy for Mountain Caribou has identified reducing predator density as a population recovery objective to facilitate range expansion in the Southern Group of caribou that historically occupied the area.'*

On the one hand this statement confirms that RPBio is aware of the 2014 Federal Recovery Strategy for Mountain Caribou, yet on the other hand it reveals a poor understanding of its contents. here is what the report actually says: *The primary threat to most Local Population Units of southern mountain caribou is unnaturally high predation rates as a result of human-caused and natural habitat loss, degradation, and fragmentation. These habitat alterations support conditions that favour higher alternate prey densities (e.g., moose, deer, elk), resulting in increased predator populations (e.g., wolf, bear, cougar) that in turn increase the risk of predation to southern mountain caribou. This threat can be mitigated through coordinated land*

and/or resource planning, and habitat restoration and management, in conjunction with predator and alternate prey management where LPU conditions warrant such action.  
[Underlining added]

There are two problems with RPBio's focus on predator reduction. The first problem is that the scientific literature nowhere supports the proposition that predator reduction can achieve population recovery for the Southern Mountain Caribou. The second problem is that southern Wells Gray Park has lost half of its caribou in less than a decade (Figure 1). Given RPBio's professional identification as a conservation biologist, this fact alone should have been sufficient to justify a recommendation against further logging here.

It is difficult to reconcile RPBio's support for logging hundreds of additional hectares in the vicinity of a caribou herd already heavily impacted by past logging with his/her requirement, as an RPBio, to 'formulate and present opinion, conclusions and recommendations from an impartial and factual science base' as well as to 'ensure that facts and opinions used to support advice; conclusions or recommendations are accurate and are represented accurately.' (Notes under Item 1 of the RPBio Code of Ethics).

Given that best science does not in this instance support logging as an appropriate activity, and because RPBio in his/her *de facto* capacity as a professional caribou biologist has nonetheless recommended in favour of logging, we feel strongly that he/she is in violation of his/her professional responsibility under Schedule 2.1 of the RPBio code of ethics.

(2) '*To reduce risk of wildfire, larger blocks have been recommended for the ICH which likely has not been important caribou habitat historically and currently has little suitability.*'

As outlined in Items 4 and 5, above, this statement runs directly contrary to the 2014 Federal Recovery Strategy and appears to open RPBio to the charge of failure to do due diligence with respect to the survival and recovery of the endangered Mountain Caribou.

Professional reliance is of course cornerstone to FRPA. Under FRPA, consultants and other professionals are expected to consult strictly within their areas of expertise – or at any rate to recognize when the expertise of others is required. Major land resource decisions based on the recommendations of consultants operating outside their competency can have serious consequences and are deserving of censure, both by the appropriate professional body and by society at large.

In light of the foregoing, and inasmuch as RPBio:

- had a professional responsibility to exercise due diligence in arriving at his/her recommendations to CANFOR with regard to clearcut logging in the Upper Clearwater Valley (observation 1, above);
- had a moral responsibility to refrain from placing the endangered Southern Mountain Caribou at increased risk of extirpation (observation 2, above);
- can reasonably be expected to have or else to acquire a good working knowledge of the statutory intent of the federal Species at Risk Act as it pertains to Southern Mountain Caribou (observation 3, above);

- can reasonably be expected to possess or to acquire an adequate understanding of the concept of ‘matrix habitat’ as clearly laid out in the 2014 Federal Recovery Strategy (observation 4, above);
- can reasonably be expected to acquaint his/her self with the fact that the area covered by CANFOR’s proposed cutblocks is federally designated as Type 2 matrix habitat (observation 5, above);
- can reasonably be expected to understand that recommending clearcut logging on federally designated Critical Habitat for Caribou would be controversial and could trigger an emergency protection order under *SARA* (observation 6, above)’
- can reasonably be expected to understand that post-harvest browse management will not deter increased ungulate use of the clearcuts recommended by his/her and will more likely increase local populations of moose and deer (observation 6, above) ...

... we suggest that RPBio is in violation of Schedule 2.2 of the RPBio code of ethics, which stipulates that members must ‘ensure that they practice only in areas in which they are competent,’ with competence being defined as ‘the ability to complete a task to the same standard as trained professionals in similar situations.’ This RPBio has simply failed to do.

While we regret that it has not been possible for us to examine RPBio’s entire 2015 report (a separate complaint is being launched against the CANFOR employee responsible for preventing public examination of a professional reliance-based report under FRPA), we nevertheless feel that the misleading statements and misinformation identified in his/her Executive Summary are sufficient to recommend disciplinary action on the basis of the RPBio Code of Ethics.

<sup>1</sup>Meeting notes available upon request.

<sup>2</sup>The report title, authorship and date have been added to the scanned version on the basis of information provided by ABCFP ATF in an e-mail dated 13 March 2017.