



Environment
Office of the Deputy Minister

Box 2703, Whitehorse, Yukon Y1A 2C6

October 30, 2009

Mr. Joe Tetlich, Chair
Porcupine Caribou Management Board
Box 31723
Whitehorse, YT Y1A 6L3

Dear Mr. Tetlich:

Re: Yukon Government's Response to the Proposed Harvest Management Plan

I wish to reply to your letter of October 19, 2009, in which the Porcupine Caribou Management Board (Board) offers to assist the parties to make progress on the proposed Harvest Management Plan. I am replying on behalf of the Minister.

Your letter is timely, as I also wanted to follow up on Environment Yukon's letter dated August 25, 2009, in which we addressed both the Board's comments on the interim measures and provided our views on the proposed Harvest Management Plan. In particular I want to provide clarity regarding Yukon Government's position on the Harvest Management Plan, and I am happy to now have that opportunity.

First, I wish to again thank you for your letter dated June 12, 2009, titled "*Porcupine Caribou Herd Harvest Management Plan*" that outlines the Board's recommended Harvest Management Plan (HMP) and your letter dated June 26, 2009, titled "*Proposed Porcupine Caribou Harvest Interim Conservation Measures*" that provides the Board's review of the Yukon Government's proposed interim measures for the conservation of the Porcupine Caribou herd and the Board's rationale for the HMP. I appreciate the hard work and thought you and the Board have invested in these issues.

Your letter asks for each of the parties to provide a response by November 6 that includes:

1. An indication of support, or non-support (with reasons) for the Harvest Management Plan, as recommended by the Board;
2. identification of outstanding issues, if any, that need to be addressed prior to Yukon endorsing the plan;
3. identification of any recent initiatives undertaken and future initiatives planned by Yukon that would be considered part of implementing the HMP;

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4. identification of one or two representatives with authority who will be involved in the meeting of the Parties to work on outstanding issues and bring the Plan to finalization, with the expectation that there may be discussion regarding potential concessions; and
5. a schedule of the representatives' availability to meet during the months of November and December 2009.
6. a schedule of the representatives' availability to meet during the months of November and December 2009.

Please accept the following as Yukon's response to your questions.

Recent initiatives undertaken by Yukon and future initiatives planned

As you now know, the Yukon Government has just implemented interim conservation measures that limit subsistence harvesters to "bulls only" and requires mandatory reporting for harvests within the Yukon. Further, there is now a "one bull only" limitation for licensed harvesters that is in keeping with the draft HMP and respects the preferential rights under the Agreement. These interim measures have been instituted to ensure conservation of the herd while the HMP is finalized. The measures do not limit the number of bulls that can be harvested. The mandatory harvest reporting measures within the Yukon will be implemented in a manner that will attempt to minimize inconvenience to native users.

The Yukon Government is willing to discuss cooperative arrangements and agreements with the Parties that satisfy the objectives of these measures in a verifiable manner. It is our view that these measures are the least restrictive and intrusive provisions that can be implemented in a timely fashion to address the current conservation concerns.

In terms of future initiatives, I want to again assure you that Yukon Government respects the collaborative and cooperative processes associated with the management of the Porcupine Caribou herd and we will continue to work towards achieving a plan that attempts to reach a long term harvest management approach by all participating Parties. Our intent is to continue working with all the parties to approve and effectively implement an acceptable HMP.

Yukon's Rationale for not supporting the proposed Harvest Management Plan

The HMP, in many respects, provides some very significant and desirable recommendations; however, we believe it falls short in achieving required conservation and as a result Yukon Government is unable to support the proposed HMP in its entirety.

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Yukon Government is of the view that the HMP does not appropriately reflect the current, vulnerable situation of the herd and does not prescribe the measures necessary to achieve desired conservation goals. It is our view, based on the best available information, that the herd will continue to decline if appropriate conservation measures are not put in place immediately, and in fact the status of the herd may continue to fall to levels such that no or little harvesting is possible. The HMP does not reflect this urgent situation, or the need for immediate and concrete steps.

In particular Yukon government maintains that the present urgent situation requires mandatory harvest reporting and a mandatory bulls-only harvest by all hunters. It is for this reason we passed the interim conservation measures.

It is our belief that mandatory harvest reporting is required to provide current, accurate, and verifiable harvest data to assess the success of the actions in the HMP in terms of achieving conservation. Accurate information regarding the level of harvesting of the herd will provide information that allows all parties to better understand the pressures the herd is under from harvesting vis-à-vis other population pressures such as predators and climate change. By better understanding the hunting pressure we can then better refine the measures that are required for continued conservation of this herd over time.

It is our view that a mandatory bulls-only harvest is required at this time as all our evidence shows, with few exceptions, that voluntary measures are not effective. For example, in past years hunters of the Porcupine Caribou herd have been encouraged to voluntarily only take bulls, nevertheless significant numbers of cows continue to be harvested. A mandatory bulls-only harvest will help protect the reproductive capacity of females and will help to stabilize the herd's numbers. It is the least restrictive measure that YG believes can be implemented while meeting parties' commitment to conservation of the herd. It is our view that if the parties accept voluntary harvest measures at this point and the herd continues to decline, it will become increasingly more difficult for us, as a responsible management authority to implement measures that will be required to meet the Parties' mutual commitment to conserve the herd.

For a more comprehensive explanation of our position on voluntary measures, and other issues, please refer to our discussion paper "*Rationale for implementing conservation measures to protect the Porcupine Caribou Herd*" (attached).

Yukon also has additional concerns and comments on the HMP which are provided in summary form in an appendix to this letter.

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Outstanding issues that need to be addressed prior to Yukon endorsing the plan

Yukon Government's interest in the HMP can be addressed by incorporating the following conservation measures:

1. A mandatory harvest reporting system in all zones.
2. A phased-in approach to harvest restrictions:
 - a. The Voluntary bulls only apply when the herd is greater than 100,000 caribou. Mandatory bulls only apply when the herd is below 100,000 caribou, and
 - b. A general overall harvest guideline of 2% between 100,000 and 85,000 caribou; 1% between 84,000 and 68,000 caribou; 0.5% between 67,000 and 50,000 caribou; and 0.1% below 49,000 caribou.

Yukon's Representatives and availability to meet in November and December 2009

Yukon's representatives on this issue will be Dan Lindsey and Doug Larsen. Both are qualified and capable to speak with authority on this issue, and they will be prepared to engage in discussions that are required to bring the Plan to finalization. While Yukon is prepared to discuss concessions that may be required between the Parties to come to an acceptable HMP we also wish to reaffirm that we remain of the perspective that the current, vulnerable situation of the herd requires immediate and concrete steps such as we have taken. Both Dan and Doug are available through-out November and December with only a few exceptions where business requirements will demand them to be elsewhere. I invite you to contact our representatives directly to arrange for a meeting of the Parties once the others have also had a chance to identify their availability.

Conclusion

I would like to reaffirm that your comments, concerns and suggestions have been considered very thoroughly by Yukon Government. We believe that the draft HMP contains some very good provisions and recommendations, subject to those concerns we have noted above. We hope that there will be an opportunity to continue to develop the plan, once the other parties have had time to review and comment on the contents. Of particular importance are the measures that must be undertaken if the population reaches 75,000 caribou. The importance of having agreed upon measures that can be acted on swiftly close to this "trigger" milestone cannot be overemphasized. We must be fully prepared to respond to such conditions if these are encountered in the near future.

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I would also like to re-emphasize that we believe our interim measures are complementary to the HMP process. The measures provide conservation actions that can be applied during the period it takes to reach an approved HMP, related native user agreements and implementation requirements such as legislation, reporting criteria and communication/ education needs.

Again, our primary focus is to ensure that wherever possible, we manage the herd for long term productivity so that it can support the use of current and future generations. We believe we must fully respect the conservation principle in the exercise of our management authority

Sincerely,



Kelvin Leary
Deputy Minister, Environment Yukon

Attachment

cc. First Nation of Na-Cho Nyak Dun
Government of Canada
Inuvialuit Game Council
Vuntut Gwich'in First Nation
Wildlife Management Advisory Council (North Slope)
Gwich'in Tribal Council
Government of Northwest Territories
Tr'ondëk Hwëch'in
Gwich'in Renewable Resource Board

Appendix
Additional issues with the proposed Plan

a) Objective of the “Yellow” zone is unclear

The plan is not clear on the objective for the current population in the ‘Yellow’ zone. The broadly stated objective is to encourage hunters to take fewer animals. However, chart 5 of the plan (p. 19, HMP) appears to present a more definitive objective of a 3,000 caribou harvest made up of 80% bulls. These are very different objectives which will result in very different outcomes. To ask hunters to cut back, and then wait and see how far they reduce their harvest, presents a high level of risk that, in our view, does not satisfy conservation needs. Further, as discussed below, without a verifiable harvest reporting system it will be impossible to assess the level of harvest the voluntary measures achieve. An unclear harvest objective for both numbers and sex does not satisfy the need to ensure conservation of the herd.

b) A clear recommendation on monitoring harvest is absent

There is no clear recommendation on how to monitor harvest. This is exacerbated by the acknowledgement in the plan that it will be a challenge to collect harvest information from the user communities in the Northwest Territories (p. 21, HMP). Without current, accurate, and verifiable harvest data it will be impossible to assess the success of the actions in the HMP. The immediate collection of verifiable and accurate harvest data is critical in order to assess the current harvest levels and to determine whether or not the management actions in the ‘Yellow’ zone are being met. Harvest levels may currently be lower than the 4,000 caribou used throughout the HMP. If this were the case, both the HMP and Yukon Government’s proposed interim measures may need to be reviewed in the context of the herd’s population and continuing trends. The lack of clear recommendations on when and how harvest information will be collected presents an unacceptable level of risk to conservation objectives.

c) missing information

While we hope that information will be forthcoming from all Parties, the plan does not appear to be complete, as some Parties have not identified their commitment to actions under Appendix A of the HMP.

d) Phase in mechanisms preferred

Yukon Government would prefer to see explicit phase-in mechanisms both between and within zones. It is not clear in the HMP how graduated restrictions may be implemented. For example, in the ‘Yellow’ zone, the plan recommends going from a voluntary bulls only and encouraging hunters to take fewer animals (115,000 to 75,000 caribou) to mandatory “bulls only” and an Annual Allowable Harvest (“AAH”) in the ‘Orange’ zone (75,000 to

45,000 caribou). It does state that in the 'Orange' zone that the AAH will decrease as the population declines through the 'Orange' zone. Unfortunately, it does not prescribe the rate at which the harvest would decrease. This approach will make harvest restrictions more tolerable to the users. Again, in the absence of phase-in mechanisms, or undefined rates of the AAH, the plan presents an unacceptable risk based on the estimated population of the herd.

e) *Long term fate of the interim, conservation measures should be considered and perhaps they should be consider transitional*

As noted in your covering letter with the HMP, "*although voluntary actions are called for in the plan, this does not preclude parties from implementing more restrictive actions...should they feel that is warranted*". Yukon has done exactly this, and we are of the view that our actions are warranted by a need for conservation.

Prior to implementing the interim mandatory measures Yukon also considered all the biological factors (p. 20 HMP); the long term decline in the herd; the likelihood that the decline will continue; the fact that the community engagement survey conducted by the working group indicated that the communities want to stop the decline of the herd and restore it to higher numbers, and also the view expressed by many that more is needed to be done, sooner, including stopping cow hunting now.

Yukon also considered the lack of an agreed upon HMP and how soon the Parties might reasonably achieve this goal. Overall, it is my expectation that final acceptance and implementation of a HMP will take a fair amount of time and effort by all the Parties. For example following the overall acceptance of the HMP by all parties, the native user agreements will then need to be developed and signed. In addition, I anticipate that the final HMP package will include a requirement to implement legislation by some of the Parties. The time period for implementation of recommendations that require regulations to manage the harvest will vary with each of the parties and will be a reflection of the regulatory instruments available to each party. Some aboriginal authorities currently have self-governing powers while others do not. Some aboriginal authorities currently have legislation to regulate harvest, some do not.

At this time, it is Yukon Government's intent is to use the interim measures, perhaps more appropriately called transitional measures, until the parties have fully implemented an agreed to HMP, including the development of appropriate legislation to regulate harvest where possible and required. Also we believe once the HMP process is complete there may very well be alternatives to the new interim measures that need to be pursued.

The Board's letter states that the management goal of the proposed interim measures "to stop the decline" is not a goal for all times, but the HMP does address harvest for all time. For clarity, that is why our conservation measures are referred to as interim. Yukon Government's intent has always been to use interim measures only as long as there is a

void in the conservation approach to managing this herd. Once the HMP is approved and implemented by all Parties, interim measures may no longer be needed.

f) The Board's view of conservation

The Board has stated its support for the HMP based on the Board's interpretation of the definition of conservation, the application of the precautionary principle, and the broad community support for the HMP.

I am pleased the Board has articulated its interpretation of the Agreement's definition of conservation. This helps clarify why Yukon Government and the Board are at odds with regards to conservation measures. Your letter has stated that the HMP is a balance between the continuation of the herd and the continuation of the harvest.

This approach places equal emphasis on allowing a harvest as it does on the continuation, or conservation, of the herd. Yukon Government believes that the emphasis should be on the conservation of the herd and that harvest should be accommodated as long as the herd is healthy and sustainable. In other words, harvest can be limited for conservation reasons. The PCMB's interpretation of conservation and the recommended actions in the HMP in our view places harvesting opportunities as a priority before the conservation of the herd. The sustainability of the herd needs to be ensured in order to provide continuing harvests.

I would encourage the PCMB to strengthen the statement that *"The HMP will achieve long-term productivity by reducing harvest to a level that no longer contributes to continued decline"*

with more defensible conservation actions. It is unclear how the PCMB plans to meet this objective while allowing an uncontrolled harvest on the herd in the 'Yellow' zone, and an undefined AAH in the 'Orange' zone, all without a robust and verifiable harvest reporting regime. This does not reflect our understanding of the precautionary principle, nor does it appear to meet requirements for conservation.

g) Broad community support not clear

It would be helpful if the Board qualified its statement that the plan has broad community support. The community engagement survey conducted by the working group indicated that the communities want to stop the decline of the herd and restore it to higher numbers, and that many thought that more is needed to be done, sooner, including stopping cow hunting now. It is not clear how the HMP meets this expectation. As well, not all Parties are in support of the plan. Vuntut Gwich'in First Nation has expressed their concern with the plan and several parties have yet to comment on the HMP.

h) Concerns with the Model

The Board's point is that the modeling outcomes of the proposed interim measures and a reduction of 25% harvest with 80% bulls would likely be indistinguishable given the error surrounding the models. However, as pointed out earlier in this correspondence, the recommendation in the 'Yellow' zone is to encourage people to take fewer animals (not a 25% reduction) and a voluntary bull only harvest (not an 80% bull harvest).

In absence of clear harvest data it will not be possible to assess what level has been achieved. Both are cause for serious concern on whether the HMP will meet the conservation needs.

i) Cooperative measures need to be recognized

As you mentioned in your June letter, the document, "*Rationale for implementing conservation measures to protect the Porcupine Caribou herd*" was not provided when consultation began. This document was a response to initial comments and requests for increased information and rationale and thus was the result of the 'dialogue' that consultation generates. The presentation of the Rationale document reflected the needs of the process. It is our expectation that cooperative measures regarding enforcement and harvest reporting can be established with the Parties to the Porcupine Caribou Management Agreement. As an example, some Yukon First Nations have self-governing powers that others do not. Environment Yukon will continue to discuss how best to cooperatively implement measures that arise from our conservation measures or the HMP. Further, the interim measures do contain provisions to enter into agreements or cooperative arrangements with the Parties that satisfy those measures.

Managing a herd over multiple jurisdictions, with a variety of user groups and communities, is challenging at best and can take considerable time and focused commitment. There still remains, in our view, substantial work to achieve approvals and to implement the HMP, especially one that establishes firm commitments and concrete, verifiable implementation activities.

j) information gaps exist

Yukon Government will continue to allocate resources to acquire baseline population data and trend information, along with the dedication of personnel who are committed to achieving better technical information. We realize though, that even with the significant resources we already allocate, there will be information gaps. In these instances we are recommending that a precautionary approach be utilized along with the best information available and that conservation of the herd remains paramount.