



Beverly and Qamanirjuaq Caribou Management Board

4 March 2016

Sharon Ehaloak,
Executive Director
Nunavut Planning Commission
Cambridge Bay NU X0B 0C0

Via e-mail: sehaloak@nunavut.ca

Dear Ms. Ehaloak:

BQCMB Comments on 2014 Draft Nunavut Land Use Plan and Technical Sessions

As you know, the outcome of Nunavut's land use planning process is of great interest to Beverly and Qamanirjuaq Caribou Management Board (BQCMB) members and more than 20 communities in Nunavut, Manitoba, Saskatchewan and Northwest Territories who share the Beverly and Qamanirjuaq caribou herds. We appreciate the opportunity to have our representatives join parts of the Nunavut Planning Commission's (NPC) first two technical meetings on the 2014 Draft Nunavut Land Use Plan (DNLUP) in June and July 2015 by teleconference, and to participate in the third and fourth technical meetings in January and March 2016 in person.

The BQCMB acknowledges the considerable efforts the NPC has made to accommodate the perspectives of the BQCMB and the many caribou harvesters and communities, both in Nunavut and neighboring jurisdictions, to whom the caribou herds are so important. We were encouraged to see improvements made concerning issues relevant to caribou in the 2014 Draft Plan compared to the 2012 Draft Plan, including the proposal to designate some of the most sensitive caribou habitats as protected areas from which industrial land use activities would be excluded. At the same time, however, we were concerned that some necessary caribou protections were omitted from the 2014 Draft Plan. We have been disappointed also by various other proposals made by other parties at the NPC's technical meetings as well as later developments that could have long-term implications for caribou and caribou harvesters.

We have attached a compilation of the BQCMB's main recommendations made on the 2014 Draft Nunavut Land Use Plan in previous written submissions to NPC and verbally during technical meetings in July 2015 and January 2016, plus a few additions. We refer there to the complete written submissions and transcripts where more detailed explanations are provided. We are providing this summary now in support of our participation in the March 7-9th Caribou Workshop, to facilitate NPC's reference to our primary comments, and because in the third technical meeting NPC encouraged participants to repeat any comments that were not included in the discussion document that was provided for that meeting¹ for which we believed additional consideration was warranted.

As we have indicated in numerous submissions to NPC over the years, the BQCMB is not against mining or other forms of economic development. We acknowledge that Nunavut has valuable mineral resources and that the mineral exploration and development industry will be important to the future of their economy and people. But the Board believes that it is essential that the most sensitive and important caribou habitats have effective protection from industrial land use activities. Habitats that require protection are found in calving grounds and post-calving areas and at key water crossings. We believe the conversation about the future of land use in Nunavut should not be about permitting mines OR protecting caribou, but instead needs to be about protecting caribou while allowing for careful mineral exploration and development outside of calving and post-calving areas and key water crossings.

We urge NPC to apply a precautionary approach and risk management in land use planning for Nunavut, in the overall context of cumulative effects on caribou, which are particularly important to consider in light of the declining status and vulnerability of most of the caribou herds that occupy range in Nunavut at least part of each year. **The BQCMB believes that the burden of proof regarding effects of land use activities should be placed on those whose proposed actions would alter habitat and disturb caribou.** That is, before any decisions are made to not provide protection through the land use plan for the most important sensitive caribou habitats (such as calving and post-calving areas and key water crossings), those arguing against protection need to provide convincing evidence that there is no risk of serious long-term effects to caribou herds resulting from leaving these areas open to their proposed activities.

Finally, the BQCMB believes that what is required to protect caribou in Nunavut is a combination of area protection and seasonal restriction of land use activities, which may be

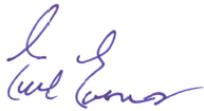
¹ NPC. 2016. Consideration for Potential Refinements to the 2014 Draft Nunavut Land Use Plan. Prepared for discussion at Technical Meeting #3 on the Draft Nunavut Land Use Plan. January 2016. 40 pp.

implemented through improved mobile caribou protection measures. It is not a question of area protection OR protection measures, as both are needed.

Thank you for providing the BQCMB with the opportunity to submit further input to support development of the NLUP. We trust that you, your staff and the Commissioners will seriously consider these recommendations during your ongoing deliberations.

We look forward to participating in the caribou workshop next week, and in the Public Hearing. If you have any questions about these comments, please contact BQCMB Executive Director Ross Thompson (rossthompson@mymts.net) or contract biologist Leslie Wakelyn (wakelyn@theedge.ca).

Sincerely,

A handwritten signature in purple ink, appearing to read "Earl Evans".

Earl Evans
BQCMB Chairperson

Attachment

Attachment. Summary of BQCMB Recommendations and Comments on the 2014 Draft Nunavut Land Use Plan

A. Recommendations Provided to NPC in Writing and at the Third Technical Meeting (*in the order presented by NPC in the 2016 Considerations document*)

• ***Caribou Habitat - Calving and Post-calving Areas and Water Crossings***

- *Area Protection prohibiting Specified Land Use Activities including Mineral Exploration and Development* - The BQCMB² has consistently called for long-term protection of caribou calving grounds and post-calving areas through prohibition of industrial land use activities such as mineral exploration and development. The Board's main recommendation in a 2004 position paper to establish legislated protected areas to provide permanent habitat protection. However, in the absence of any plans for application of federal or territorial protected area legislation to these areas in Nunavut, protection through land use plan designation is currently the best alternative.

The 2014 DNLUP proposes to prohibit specified land uses from core caribou calving and post-calving areas, and the Government of Nunavut (GN)'s 2015 position was to prohibit specified land uses from core calving grounds and key access corridors, to apply seasonal restrictions on development activities during the post-calving period (June 15 – July 15) when and where caribou are present, and to prohibit all-season roads in post-calving areas.

The BQCMB² partially supports both these positions as a good start but believes neither is sufficient for protection of key sensitive caribou habitat. NPC's proposal will provide only partial protection for calving and post-calving areas, as it is limited to only the core portions of these seasonal ranges. GN's proposal will be even more limited in the protection it would provide to post-calving habitat.

The BQCMB² believes that protection of "traditional calving areas", delineated using all available telemetry and survey data (since the 1950s) and Inuit Qaujimagatuqangit (IQ) and other traditional knowledge, is required to provide caribou herds with access to crucial calving habitat as herd sizes change through their long-term population cycles. The BQCMB's position is that development activities should be prohibited from post-calving areas as well as from calving areas,

² BQCMB letter to NPC, 22 June 2015. BQCMB Comments for Technical Meeting on 2014 Draft Nunavut Land Use Plan. 7 pp.

and that the entire area used during the post-calving period should be designated for protection.

- *Designation for Calving and Post-calving Areas with High Mineral Potential* - The BQCMB² is concerned about the proposal to designate “caribou calving and post-calving areas that overlap with high mineral potential” as Special Management Areas (SMA). This would not fulfill the intent of the land use plan which is stated as being “to ensure that the integrity of calving and post-calving areas is maintained”, as it provides only general direction to regulators “to mitigate impacts on caribou calving and post-calving areas”, but does not restrict any activities. This designation will not prevent i) loss of high quality habitat resulting from land uses such as mineral extraction and all-weather roads or ii) loss of availability of high quality habitat resulting from disturbance to caribou using these areas.

The BQCMB³ does not agree that identification of “high mineral potential” for any portion of caribou calving and post-calving areas should automatically down-grade designation of that area to SMA and recommends that these key caribou habitats should be designated as Protected Areas with prohibition of industrial land use activities regardless of their mineral potential.

- *Response to NPC’s Options for Refinement of the 2014 DNLUP* - As stated at the third technical meeting, the BQCMB⁴ makes the following recommendations for the options provided:
 1. modifying to “assigning calving areas a Protected Area designation, regardless of high mineral potential” (i.e., not applied only to core calving areas but to entire calving areas).
 2. assigning post-calving areas a Protected Area designation, regardless of high mineral potential.
 3. assigning key access corridors a Protected Area designation
 4. assigning fresh water crossings a Protected Area designation
 5. sea ice crossings - no recommendation (not within BQCMB jurisdiction)
 6. assigning rutting areas a Special Management Area designation with seasonal restrictions (e.g., GN proposal as a good place to start)
 7. assigning migration corridors a Special Management Area designation with seasonal restrictions

³ BQCMB letter to NPC, 7 August 2015. BQCMB Follow-up to Technical Meeting on 2014 Draft Nunavut Land Use Plan. 7 pp.

⁴ Draft Nunavut Land Use Plan. Nunavut Planning Commission 3rd Technical Meeting. Transcript. January 18-22, 2016. Rankin Inlet, Nunavut. 267 pp.

8. assigning the remainder of caribou range a Mixed Use designation with cumulative effect referrals applied

- **Conservation Areas - Thelon Wildlife Sanctuary and Queen Maud Gulf Migratory Bird Sanctuary** - The BQCMB³ urges the NPC to recognize that the sanctuary boundaries contain calving grounds of the Beverly and Ahiak caribou herds and that the area provides crucial habitat for caribou as well as for geese. The BQCMB recommends maintaining the proposed Protected Area designation with prohibited uses as specified for the QMGMBs in the 2014 Draft NLUP, subject to refining what is meant by “related research” so as not to prohibit research required for management and conservation of wildlife and habitat.

Response to NPC’s Options for Refinement of the 2014 DNLUP - The BQCMB⁴ recommends that Option 3 be chosen for both the Thelon Wildlife Sanctuary and Queen Maud Gulf Migratory Bird Sanctuary, and that prohibited land uses be specified in the NLUP.

- **Heritage Rivers - Thelon and Kazan** - The BQCMB³ recommends applying the Protected Area designation to the Thelon and Kazan Heritage Rivers with prohibited uses as specified for the Soper River in the 2014 Draft NLUP, subject to clarifying the term “related research” so as not to prohibit research required for management and conservation of their ecological and cultural values.

Response to NPC’s Options for Refinement of the 2014 DNLUP - As stated at the third technical meeting by the BQCMB⁴: the first choice would be that the Kazan and Thelon Heritage Rivers both be designated as Protected Areas; second choice would be Special Management Area status that excludes specific land use activities at key caribou crossings, similar to what is included in the caribou protection measure restrictions and recommendations made by the GN for migratory corridors. The BQCMB might support Option #2 following more discussion about what exactly would be included in terms of specific land use recommendations.

- **Transboundary Considerations** – The BQCMB⁴ recommends that the NLUP consider the transboundary nature of caribou herds, including that caribou harvesters outside of Nunavut will be affected by decisions and actions made within Nunavut and also that Nunavummiut may be affected by decisions and actions made about caribou and caribou range outside of Nunavut.
- **High Mineral Potential** – The BQCMB⁴ recommends that calving grounds, post-calving areas, key access corridors, and water crossings should be designated as Protected

Areas regardless of their mineral potential. High mineral value should not be automatically considered the best use of any and all lands, because if there are other values, they should be considered. (See also “Caribou Habitat” above.)

- **Linear Infrastructure Corridors (Terrestrial) - Manitoba-Kivalliq road corridor** - The BQCMB³ disagrees with the GoC’s June 2015 recommendation to exempt the entire proposed Manitoba-Kivalliq road corridor from prohibition on all-weather roads, and instead recommends that all-weather roads continue to be prohibited in calving grounds, post-calving areas and spring migration corridors.

Response to NPC’s Options for Refinement of the 2014 DNLUP - The BQCMB⁴ re-affirms that it would not support allowing winter roads or all season roads within calving grounds, post-calving areas, and spring migration corridors and would not support Option #1 (permitting winter roads in all designations). The BQCMB also recommends that roads be prohibited from all Protected Areas and that the NLUP not include linear infrastructure corridors that have not yet been confirmed as current proposals.

- **Existing Rights - Proposal to Grandfather Mineral Rights** - The BQCMB³ recommends that “guaranteed rights” for all-weather roads should not be granted to all holders of mineral tenures (prospecting permits, mineral claims and mineral leases) regardless of the type of tenures held and where those tenures are located. The BQCMB⁴ further recommends that the proposal to grandfather all mineral tenures to full mine development not be implemented through the NLUP.

In the past the BQCMB had been told by federal government staff that prospecting permits and mineral claims provide ensured access to defined parcels of land for a specific purpose (mineral exploration) and a specified time period, but do not provide “rights” for mine development. The BQCMB does not agree with the interpretation that all tenures were issued with certainty of the right to complete the full mining lifecycle from the initial mineral tenure through to mine development and that no prohibitions on any land uses related to mineral exploration and mining (including all-weather roads) should occur where mineral tenures exist.

The BQCMB⁴ recommends that other options be considered that do not apply in the same way to all types of mineral tenures and do not rule out other more creative approaches that may be possible in some situations on a case-by-case basis. At a minimum prospecting permits should be excluded from grandfathering to the mining stage of mineral development. We also urge the GoC and NPC to clarify terminology (see below) and to determine at what date tenures will be considered “existing”.

If the GoC continues with this proposal, the BQCMB^{3,4} repeats the previous recommendation that a preset date should be identified for exempting existing tenure from the changes being proposed by the DNLUP, as discussed by the GoC in its draft document on “Clarification of Existing Rights” that was provided prior to the NPC’s Third Technical Meeting. Previously the BQCMB had pointed out that this action was needed in order to avoid a potential staking rush that exemption of existing rights from conformity determination may cause. The BQCMB agrees with the GoC that further discussion on a date and how to implement it would be needed.

B. Additional Recommendations – Other Issues

- **Terminology Issues** – The BQCMB recommends that the following terms be clarified:
 - *Habitats vs. seasonal ranges* – Habitat is provided within seasonal ranges. Seasonal ranges are the geographic areas that need to be defined and delineated for land use planning. But seasonal ranges are not “caribou habitats”.
 - *Definition and delineation of seasonal ranges, including calving grounds and post-calving areas* – Confusion exists concerning both the time period used for definition of areas and the types of data used for delineating areas, in part because of a lack of consistency outside of the NU land use planning process. Therefore this is both an issue of definition (as different groups define the calving and post-calving periods, for instance, using different dates) and of GIS analysis (as people disagree on how the collar location data should be analyzed to delineate seasonal ranges). Decisions need to be made before NPC can map final polygons to which designations, prohibitions and conditions can be determined.

The BQCMB² recommends that calving and post-calving areas be delineated for purposes of land use planning based on all past collar and survey data (since the 1950s) and Inuit Qaujimajatuqangit (IQ) and other traditional knowledge. More recently, the BQCMB has recognized that consideration should be given to delineating these seasonal ranges based primarily on telemetry data in cases where sufficient data are available, in conjunction with relevant survey data. Survey data can help corroborate where calving occurred in those years in which surveys were done (including 1994 surveys for the Beverly and Qamanirjuaq herds).

- *Existing re: tenures* – At what point in time and for what duration are rights considered to be “existing”? The BQCMB’s view is that “existing” means at the present time, as in the rights a party has now, and that the duration of those rights would be the time period designated by the type of “rights” (e.g., 3 years for certain prospecting permits). Clarification is also required concerning at what point in time tenures will be determined to be “existing rights”, with options including when the NLUP is finalized, when it is approved by all signatories, or at a preset date not contingent on the vagaries of the planning process (see also Existing Rights above).
- *Protected Area land use designation vs. legislated protected areas* – As other parties have pointed out⁴, there is potential confusion created by use of the term “Protected Area” to label a NLUP designation, in that the term is commonly used to refer to areas that are protected in legislation, such as National Parks and Migratory Bird Sanctuaries. At the least there is potential confusion and complexity for translation. The BQCMB⁴ recommends that an alternate term, such as “Conservation Zone” be used in the NLUP to identify a designation for areas to which prohibitions and others conditions are applied.
- **Water crossings** – The list of officially-recognized and designated caribou water crossings needs to be updated, with IQ and other information from communities and information available from monitoring caribou using telemetry over the last 20 years added to the current official list, which is based on past documentation by governments.
- **Caribou Protection Measures** – The BQCMB² asked NPC for clarification concerning the existing Caribou Protection Measures (CPM) established by the federal government in 1978 and whether they would continue to be applied by NPC as part of the conformity process for the new NLUP. Much confusion remains about proposed application of the CPM, mobile protection measures described by industry, and new mobile measures under consideration by the Kivalliq Inuit Association.

One major element of confusion appears to be that there is not a clear understanding of the intent and limitations of various versions of protection measures. The key issue for the BQCMB is that these protection measures are a tool for mitigating effects on caribou, not for habitat protection. As described at the third technical meeting⁴: Calving areas are not protected through caribou protection measures. Caribou protection measures monitor and restrict land use activities based on use of habitat by caribou, and reduce disturbance of those caribou. But there is no protection provided for the habitat.