



FAX COVER SHEET

TO: Joe Tetlich, Chair
Porcupine Caribou Management Board

DATE: August 25, 2009

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of PAGES: 8

FROM: Jacquie Van Marck for Lisa Jarvis
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Deputy Minister Kelvin Leary
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DESCRIPTION:

Please find attached the response to your letters of June 12, 2009 and June 26, 2009 to Minister Elaine Taylor..

Please note Deputy Minister Kelvin Leary is responding on Minister Taylor's behalf.

The original letter is in the mail to you today.

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If you have not received all of the faxed pages please call Lisa Jarvis at 667-5460(work) immediately.



Environment
Office of the Deputy Minister

Box 2703, Whitehorse, Yukon Y1A 2C6

August 25, 2009

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

Dear Mr. Tetlich:

Re: Proposed Porcupine Caribou Harvest Interim Conservation Measures

On behalf of Minister Elaine Taylor, thank you for your letters dated June 12, 2009 and June 26, 2009, that provides the Porcupine Caribou Management Board's (the "PCMB") recommended Harvest Management Plan ("HMP") and your review of the Yukon government's proposed interim measures for the conservation of the Porcupine Caribou herd, respectively. I appreciate the thorough and significant consideration you and the PCMB have invested in these letters.

I want to again assure you that we respect 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. Environment Yukon's intent is to work with all the parties to approve and effectively implement the HMP.

The HMP correctly characterizes the issue as a question of risk management: "it boils down to how comfortable we feel about changing the harvest in relation to the effects that change will have on the population... this is risk management..." (p. 16, HMP)

Yukon government is of the view that the plan does not appropriately reflect the current situation of the herd. A voluntary bull only and the voluntary reduction in harvest at a population between 75,000 and 115,000 animals present a high level of risk that the harvest will remain unchanged and that the herd will continue to decline. Voluntary measures are not adequate given the historical decline of the herd, the future projections for the herd, the challenge of changing the historical practice of a 60% cow harvest, and the fact the non-compliance with voluntary restrictions demonstrated to date.

I am especially concerned with a voluntary approach at the lower end of this zone, i.e. 75,000 caribou. A voluntary approach would be acceptable at the higher end i.e. above 100,000 caribou.

Mr. Joe Tetlich
August 25, 2009
Page 2

If I was to accept voluntary measures and the herd continues to decline, Yukon government would not meet its land claim responsibilities 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*".

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 and 80% bulls. These are very different objectives which require very different outcomes. If the intent is to ask hunters to cut back, then wait and see how far they reduce their harvest, this presents a very high level of risk for the Yukon government. Further, as discussed below, without a verifiable harvest reporting system it will be impossible to assess the level of harvest the voluntary measures seek to achieve. An unclear harvest objective, both numbers and sex, does not satisfy the Yukon government's need to ensure conservation of the herd.

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 to Yukon government 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 reassessed. The lack of clear recommendations on when and how harvest information will be collected presents an unacceptable level of risk for Yukon government.

The plan does not appear to be complete, as neither the Gwich'in Tribal Council nor the Inuvialuit Game Council have committed to actions under Appendix A of the HMP. Accepting an incomplete plan does not provide the level of certainty sought by Yukon government.

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.

Mr. Joe Tetlich
August 25, 2009
Page 3

For example, in the 'Yellow' zone, it 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. I believe 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 a level of risk the Yukon government is uncomfortable with based on estimated population of the herd.

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.
 - b. An AAH 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.

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". Considering all the biological factors (p. 20, HMP): a long term decline in the herd; the likelihood that the decline will continue; 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 that many thought that more is needed to be done, sooner, including stopping cow hunting now; and the lack of an agreed upon HMP, Yukon government will continue to consult on the transitional mandatory measures until the outstanding issues have been addressed.

There are several other points that you raised in your letters that I wish to address. With regards to process, you have stated that the proposed HMP is the preferred approach for moving forward with harvest management measures, as opposed to the proposed interim measures. Yukon government does not view these as two independent approaches. They are complimentary.

.../4

Mr. Joe Tetlich
August 25, 2009
Page 4

The intent of the interim measures is to begin managing the harvest on this herd by this fall and to continue to manage the harvest until the HMP can be fully implemented by each of the parties. Once the HMP process is complete, and the recommendation acceptable to all parties, there will be no need for interim measures. Once the HMP is signed by all parties, the native user agreements need to be developed and signed. I anticipate the complete HMP package will take some time to finalize.

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. Yukon government's intent is to use the interim measures, more appropriately transitional measures, until the parties have developed the appropriate legislation to regulate harvest.

You have stated that the PCMB supports the HMP as opposed to Yukon government's proposed interim conservation measures and that this position is based on the PCMB's interpretation of the definition of conservation, the application of the precautionary principle, and the broad community support for the HMP. I would like to address each of these points. I am pleased the PCMB has finally articulated its interpretation of the land claims definition of conservation. This helps me to understand why Yukon government and the PCMB are at odds with regards to conservation measures to be implemented now. You have stated that the HMP is a balance between the continuation of the herd and the continuation of the harvest. This statement 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. In other words, harvest can be limited for conservation reasons, as per the land claims agreements. The PCMB's interpretation of conservation and the recommended actions in the HMP clearly place harvesting opportunities as a priority before the conservation of the herd.

Even though the PCMB does not agree with the reverse onus rationale with regards to the precautionary principle, I appreciate the PCMB explaining how it applies the precautionary principle to the HMP. I would agree the HMP applies the principle when using a 19% cow mortality rate in the modeling exercises, and I would also agree it applies to restrictions as the herd increases in the 'Yellow' and 'Orange' zones. You have argued that the PCMB has applied the precautionary principle through an increased reduction in the harvest, through the AAH, in the 'Orange' zone. This would be a reasonable argument if level of reduction were specified. Without this detail, it is not a strong argument.

Mr. Joe Tetlich
August 25, 2009
Page 5

Likewise the direction to collect annual harvest information does not meet the precautionary principle without specifying if and how the harvest is to be monitored.

I would challenge the PCMB to apply the precautionary principle to the statement that "The HMP will achieve long-term productivity by reducing harvest to a level that no longer contributes to continued decline". It is unclear to me how the PCMB plans to meet this objective while allowing an uncontrolled harvest on the herd in the 'Yellow' zone, and an undefined annual allowable harvest in the 'Orange' zone. This does not reflect Yukon government's understanding of the precautionary principle or meet requirements for conservation.

The PCMB needs to qualify the 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. In my opinion the HMP does not meet this expectation. As well, all communities are not in support of the plan. Vuntut Gwitchin First Nation has expressed their concern with the plan, as has Yukon government. The statement that the HMP has broad community support is misleading.

You have stated 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. I would agree, and that is why I refer to the proposed measures 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, interim measures will no longer be needed.

I accept your argument 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). And again, if you don't know what the harvest is, you will not be able to assess what level has been achieved. Both are cause for serious concern on whether the HMP will meet the conservation needs and therefore present a level of risk Yukon government is uncomfortable with.

Yukon government, through its proposed interim measures, believes it might avoid the need for a total allowable harvest provision. However, if the herd continues to decline the interim measures will provide a transition into a total allowable harvest management regime.

Mr. Joe Tetlich
August 25, 2009
Page 6

It is proposed that in the enforcement aspect of the mandatory bulls-only this will be phased in, which will also allow a transition for users to become accustomed to the proposed regulations. In addition, Yukon government's proposed interim measures are less restrictive than the HMP in respect to there is no limit on the number of bull caribou harvested.

I strongly believe that Yukon government plan is complementary to the HMP, not in contradiction to the plan. To that end, Yukon government plans to continue with its efforts to bring into effect interim measures for this year.

As you mentioned in your 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 Environment Yukon's expectation that cooperative measures regarding enforcement and harvest reporting can be established with the Parties to Porcupine Caribou Management Agreement. In particular, your governments, and the Vuntut Gwitchin government, have self-governing powers that the Transboundary Parties do not. Environment Yukon will continue to discuss how best to cooperatively implement any approved measures that arise from Environment Yukon's proposed conservation measures or the HMP.

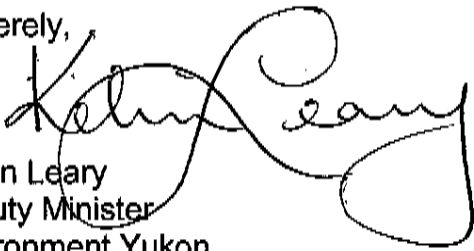
Managing a herd over multiple jurisdictions, with a variety of user groups and communities, is challenging at best and can take considerable time and focused commitment. There still remains, in our view, substantial work to achieve approvals and to implement the HMP, especially one that establishes firm commitments and concrete, verifiable implementation activities. During this time, we believe some interim or "transitional" steps still need to be pursued while a longer term plan can be agreed upon, adopted and implemented. The interim measures are intended to respect the paramount goal of "conservation" in absence of any definitive and approved plan and related actions.

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 that attempts to avoid harm to the herd, despite a lack of scientific certainty.

Mr. Joe Tetlich
August 25, 2009
Page 7

I would like to reaffirm that your comments, concerns and suggestions will be fully considered by Yukon government during its interim measures deliberations and that reasonable accommodations will be explored.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelvin Leary". The signature is fluid and cursive, with the first name "Kelvin" written in a larger, more prominent script than the last name "Leary".

Kelvin Leary
Deputy Minister
Environment Yukon

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