

**Natural Resource Board Direction:
Planning and Approval of Development Activities in the South Peace Northern Caribou Area**

April 16, 2013

Background

Northern Caribou are one of three distinct eco-types of woodland caribou found in B.C. Seven herds of this ecotype are collectively referred to as “South Peace Northern Caribou” (B.C. Ministry of Environment, 2013). These herds fall within the Southern Mountains Population and are listed as Threatened under the federal *Species at Risk Act* (SARA). The total population has declined from thousands in the 1980s to approximately 1,100 animals currently.

In March 2010, a B.C. Supreme Court decision found that the Treaty 8 First Nations have a treaty right to hunt caribou and that, as part of the consultation process, the province must:

- Consider cumulative impacts when assessing the potential impacts of proposed activity/project on Treaty 8 rights, which includes the right to hunt traditional species as an aspect of traditional seasonal rounds.
- Adequately consider, at least on a preliminary basis, the impacts of potential future development on the traditional practices of Treaty 8 First Nation(s) even when the proposed activity is at the exploratory stage.
- Understand the Treaty 8 right to hunt as a guarantee of their right to continue with the same means of livelihood as pre-treaty, such that in some circumstances, regardless of available mitigation plans, their position may need to be preferred and that consideration must guide the Province as it “takes up” lands for development purposes as otherwise contemplated by the treaty.
- Ensure that all First Nations concerns and proposals are responded to with “satisfactory, reasoned explanations” of why their view is not to be preferred over the Province’s, after due consideration of all the alternatives.

In November, 2012 Government announced the strategic elements of its approach to the conservation of these herds and that direction has been incorporated into the Implementation Plan for the Ongoing Management of South Peace Northern Caribou (*Rangifer tarandus caribou* pop. 15) in British Columbia (Attachment i).

The Implementation Plan deals with the conservation of all seven herds, contributes to the planning required under SARA and addresses the requirements to address Treaty 8 rights to caribou. This direction has been developed to facilitate consistent decision-making in the Implementation Plan area. The consistent application of this direction will provide for a rigorous scientific assessment of both the potential impacts to caribou and/or caribou habitat that may result from a proposed activity or approval, as well as any potential mitigation measures.

Principles

Given the conservation status of the South Peace Northern Caribou herds and their overall dramatic decline it has been determined that any net adverse impacts from development to caribou are significant; this is because the overall population has declined rapidly in recent years (see above) and further impacts will only exacerbate the challenges in stabilizing and reversing this trend. Without the circumstances improving there is a high likelihood of extirpation of at least some of these herds. This direction is based on the following principles:

1. Proposed development activities and associated mitigation (including offsetting) can be demonstrated to result in a net neutral or positive effect on the viability of South Peace Northern Caribou within 10 years of receiving approval; and,

2. Proponents are responsible for developing Caribou Mitigation and Monitoring Plans (CMMPs) and resourcing the management actions required to meet Principle 1 (Attachment i).

The following circumstances are exempted from the need to develop CMMPs:

- Proposed activities that do not overlap high elevation winter range.
- Proposed activities within high elevation winter range that:
 - have a total surface disturbance that is <0.25 ha with disturbance of trees and terrestrial lichen communities minimized,
 - do not involve the creation of, or improvement to existing, road access,
 - do not involve the use of motorized vehicles (does not include helicopters) off of existing road access and,
 - only occur within least-risk timing windows (including construction, maintenance and removal).

Business Process

Proponents should be informed about this direction as early as possible, ideally prior to submitting an application. Where applicable, the normal process of referring applications to the regional stewardship team of the Ministry of Forests, Lands and Natural Resource Operations (MFLNRO) will be followed. This review will involve considering cumulative impacts and the impacts of potential future development on the traditional practices of Treaty 8 First Nations even when the proposed activity is at the exploratory stage.

MFLNRO's stewardship team will provide written comments that may include:

- An initial assessment of the impacts and risks to caribou and/or caribou habitat (or a review of any assessments conducted by others) – that can be shared with First Nations during consultation, as well as other parties involved in the technical review of applications.
- Suggested or recommended tenure conditions that could be applied to reduce the impact to caribou and critical habitat values – these will inform discussions with both First Nations during consultation, as well as with the proponent.
- Recommendations on any mitigation measures or Best Management Practices that might be used to regulate the spatial and temporal extent of development, or provide a review of any mitigation measures/plan developed by a proponent – these will inform discussions with both First Nations during consultation, as well as with the proponent.
- Options for the statutory decision-maker to consider to address the objectives. Options may include deferral, refusal, permit conditions and/or further mitigation steps. The risks and benefits of each option will be briefly described.

Consultation with First Nations on the proposed authorization as well as any associated mitigation and monitoring is critical. In circumstances where First Nations have indicated that they are satisfied with the accommodation of their treaty right to hunt caribou, statutory decision-makers may choose to vary their application of this direction.

Reference:

B.C. Ministry of Environment. 2013. Implementation plan for the ongoing management of South Peace Northern Caribou (*Rangifer tarandus caribou* pop. 15) in British Columbia. Victoria, BC.
(<http://www.env.gov.bc.ca/wld/speciesconservation/nc/index.html>)

Attachment:

- i. Guidance for the Development of Caribou Mitigation and Monitoring Plans for South Peace Northern Caribou