

**Preliminary Comments by the Beverly and Qamanirjuaq Caribou Management Board (BQCMB)
on the Draft Upper Thelon Land and Resource Management Plan – March 2010**

1. General Comments on the Draft Plan

We acknowledge that development of an approach to land use in the Upper Thelon is no small task, and that satisfying the various parties involved will be difficult. However, based on what little information we have been provided to date, it appears that there is a lot of work yet to be done to develop an appropriate approach to resolving these land use issues. We are providing our preliminary comments in hopes that they will assist INAC to start addressing all the issues, including issues related to caribou.

Clarification is needed on the context of the Plan and if additional plans or processes will be initiated to address Upper Thelon land use issues. As currently written, it is not clear if any other tools will be developed by INAC and its partners to resolve issues surrounding land use in this region. Our view is that the Plan and the approach it describes is not sufficient for addressing these issues. Some of the main limitations are described below.

The Plan does not adequately address MVEIRB's recommendation in their report on the Ur-Energy environmental assessment that an "Interim Land Use Plan" be developed. The Plan basically outlines an approach for providing conditional access to the area for mineral exploration and development, but does not provide guidance for making decisions about the types of land uses to be permitted in the area, or how different land use activities will be regulated. Therefore it would be more accurately described as a plan for mineral development, rather than a land management or land use plan.

A stated goal of the Plan is "to guide regulators, communities, and developers about how, where and under what conditions development might occur." (p. 3). However, there does not appear to be an option for excluding exploration or development from any portion of the Plan area. Therefore in our view the Plan does not adequately address the main reasons that MVEIRB recommended that Ur-Energy's permit application be rejected: "the Upper Thelon area is of high spiritual and cultural importance to the Akaitcho and other aboriginal peoples", and "the potential for industrial development of the area is not compatible with the aboriginal values of this cultural landscape"¹.

The Plan does not address cumulative impacts on caribou or caribou range from multiple independent projects. Therefore it fails to address a primary concern the BQCMB raised during the UR-Energy, Uravan, and Bayswater environmental assessments about cumulative effects of human land use activities across the caribou range, as well as many of the main points and recommendations made by the MVEIRB in their reports on the EAs for these projects. This includes MVEIRB's advice to the Responsible Ministers that "a regional Caribou Cumulative Effects Study" be conducted.

¹ MVEIRB. 2007. Report of environmental assessment and reasons for decision on Ur-Energy Inc. Screech Lake uranium exploration project. Executive summary.

2. Specific Comments by Section

Preamble

- The Preamble states that INAC is leading a process to develop “an interim approach to land use in the Upper Thelon”. The Plan should define “interim”, and should describe what will replace the Plan after the interim period.
- The overall goals of the Plan and the specific objectives of the Land Access Provisions, which form the core of the Plan, should be clearly outlined.
- The organization or body that will oversee application of the plan needs to be described. A number of operational aspects of the Plan should be clarified, including who will implement it, under what authority, what resources will be available for monitoring and enforcement, and if there will be any ramifications for non-compliance with Plan provisions.
- In our review we have assumed that INAC’s intent is that all provisions will be automatically applied to all land use permits issued for mineral exploration in the Plan area. However, this needs to be clarified in the Plan.
- Background should be provided on development of the Plan, including:
 - o what process and types of information were used to develop the current Plan,
 - o who contributed information for developing the Plan,
 - o how the study area boundaries were determined, and how they relate to the Plan’s goals,
 - o what information gaps currently exist, and to what extent these are expected to be addressed in subsequent drafts of the Plan,
 - o what approach will be followed for further consultation and collaboration with planning partners and other stakeholders,
 - o how the Plan will be periodically revised to incorporate new information, and what schedule will be followed for regular review and revision.

Scope of the Plan

A comprehensive land use plan is needed for the southeastern NWT and beyond; this plan for only the portion of the region that mining companies happen to be interested in has little meaning as a long-term solution for the conflict among various land-use values. The Plan should anticipate changes to the resource development scenario, since recent history makes it clear that the northern mineral development industry is dynamic and ambitious (e.g., recent developments regarding diamonds, uranium, rare earth minerals). If a different Upper Thelon mineral resource has equal or greater development interest in the near future, but the Plan is designed only to deal with the welfare of a few companies interested in developing uranium resources, it will not address other key issues that will arise.

Other Comments on the Scope of the Current Plan:

- The December 2007 status report on the Plan² says that it will “create a balance of interests in the Thelon region”. However, it is clear that the purpose of the current document is for mineral resource development, and it does not include a balance of interests.
- The Plan should include recognition of the waters of the Upper Thelon region as a valuable and essential resource, and should acknowledge downstream effects that development could have. The Plan area should include the Thelon headwaters.
- The Plan should more adequately recognize the land and waters of the Upper Thelon region as a valuable resource for the tourism industry and for recreational pursuits. Tourism and recreational values of the area are not limited spatially to watercourses, and people who visit the area are interested in more than the river. The value of their experience is based on the ecological integrity of the area and without that the value will be greatly diminished.
- The Plan should include provisions for protection of wildlife species other than caribou, and for protection of key wildlife habitats.
- Clarification is required concerning how the Plan will “help create meaningful. . . conservation opportunities”.

Boundary of Plan Area

Although the goals of the Plan are not clearly outlined, inclusion of caribou protection provisions implies that one of the goals is minimizing disturbance to caribou. However, “caribou protection” is required throughout caribou range in the Upper Thelon, not only within the boundaries of the currently designated Plan area. It makes little sense to impose conditions on land use activities to protect caribou in one area of the Upper Thelon region and no conditions in an immediately adjacent area.

Comments on the Current Plan Area Boundaries:

- The level of protection that the Plan would provide for caribou that use the Upper Thelon region is uncertain, since it is not based on caribou range use patterns. Caribou using the Upper Thelon region are not contained by watersheds or more arbitrary human-designated boundaries. If provided with good maps of the Plan area (presumably to be included in the Plan Atlas) and an opportunity to work with ENR to examine caribou location data, the BQCMB may be able to recommend a boundary extension based on caribou use data.
- Background information is needed to indicate what the boundary is based on and what it has meaning for. It does not appear to be based on the watershed, since the headwaters of the Thelon are not included.
- The shape and irregularity of the Plan area will make it very difficult to implement the Plan, including monitoring compliance with Caribou Protection Provisions for companies operating near the boundaries of the Plan area.

² Letter from INAC Regional Director General Merrithew-Mercredi to “Interested Parties”, 7 December 2007.

Guiding Principles

The approach used to develop the Plan appears to be based on two basic assumptions:

- 1) We know enough about the complex ecology of the Upper Thelon to determine how to permit development throughout the area and not alter or harm the ecology of the area over the short or long-term, by “using provisions that will maintain the ecological integrity of the area while still providing economic development opportunities for industry and Aboriginal communities in the area” (p. 3).
- 2) We know how to “mitigate” all effects of human use of the landscape to the extent that they do not cause any impacts whatsoever, so that exploration and development “could occur in all area under certain “provisions” which would stipulate how development (exploration) activity would be undertaken in order to mitigate any significant adverse impacts.” (p. 3)

There are several problems with this approach from the perspective of caribou protection:

- We don't know enough about what has caused the decline of Beverly caribou to determine what level of disturbance will be significant to individual animals and at the population level.
- This approach does not address cumulative impacts of exploration and development, or combined impacts from effects of development and other factors (e.g., loss of winter range due to forest fires, poor summer range quality, parasites and diseases, predators, effects of climate change etc.). Cumulative impacts were the main concern the BQCMB raised during the UR-Energy, Uravan, and Bayswater EAs, and the MVEIRB recommended a caribou cumulative effects study in their report on the Ur-Energy EA.

The Plan should encourage protection of caribou throughout the Plan area through provisions applied to individual projects one at a time, but also on a broader multi-project, area-wide scale. To reduce disturbance to caribou, the Plan should focus on ensuring developers follow best practices, work cooperatively to identify and understand caribou movement through the area, understand the importance of not flying at low levels (below 300m agl) over vulnerable animals during sensitive periods, and are familiar with other key issues for reducing disturbance to caribou.

There should be an educational component associated with the provisions and other measures to ensure that permittees do not misinterpret a lack of major obvious changes in caribou behavior (such as a group not running away) as meaning there is no impact on the animals, especially for pregnant cows or their fetuses. Activities that can create more subtle but still potentially substantial impacts to caribou include those that cause animals to use different migration routes (and travel farther and/or through unfamiliar territory), to avoid preferred areas (especially water crossings), to move constantly (even slowly) to avoid disturbance, or to frequently interrupt feeding (even if the animals remain stationary).

Land Access Provisions

The Plan states that the “provisions are meant to address the different values and sensitivities in the plan area” (p. 5). The information, criteria and analysis used to assign sensitivity levels to particular

areas, and how the provisions are intended to address values and sensitivities, need to be described in the Plan.

Sensitivity level 2 is defined by its use by and value for caribou. However, sensitivity levels 3 and 4 are described as addressing “tourism and recreational uses” and “traditional land use”, respectively. It is likely that much larger areas have value for tourism and traditional aboriginal uses, even considering only their value resulting from the presence of caribou.

The document states that the Plan Map will likely be amended based on information received during review. Therefore it is essential that all stakeholders be given an opportunity to review the revised map.

We are not able to provide any meaningful input on the boundaries or extent of sensitivity level areas without knowing what criteria and analysis the areas are based on, so will restrict our comments to the provisions themselves.

Sensitivity Level 1

This is the status quo. There is no value in designating a sensitivity area in which permittees will be required to follow existing legislation but nothing more, as this is no different than what applies to the region outside the Plan area.

Sensitivity Level 2 - Caribou Protection Provisions

Objectives for Provisions:

- The Plan states that sensitivity level 2 “addresses the protection of caribou”, but does not explain what this means in terms of objectives, to what extent caribou are to be protected (e.g., reduce, minimize, or avoid effects?), or from what they are to be protected. The proposed caribou protection provisions imply that one of the objectives is minimizing disturbance to caribou, although this is not described in the Plan.
- The intent of these provisions should be clarified. This would allow the BQCMB and others: a) to assess whether the proposed provisions are adequate to achieve the objective(s), b) to determine how provisions might be improved if they are not adequate, and c) to identify requirements for monitoring and assessing the effectiveness of provisions.

Limitations of Approach:

- Recommendations made for permit conditions for individual permits, one at a time and in isolation, may not be sufficient for protection of caribou when applied on a regional basis. As outlined above, regional land use planning is needed to take into account the cumulative effects of all permitted activities in the region, and one key part of planning should be to set thresholds beyond which effects are not allowed to accumulate.

- We recognize that some of these provisions have been adapted from recommendations made by the BQCMB and GNWT-ENR in our joint presentation and submissions to MVEIRB's environmental assessment of the UR-Energy land use permit application. We are pleased that INAC is considering adapting these recommendations as provisions. However, these recommendations were made to address a single mineral exploration operation, not multiple operations that may be permitted across the Plan area. A regional land use plan with objectives for protecting caribou that will do more than reduce disturbance from individual operations is needed.
- We recognize that some of these provisions have been adapted from Caribou Protection Measures (CPM), and therefore are based on past research used to develop CPMs as land use permit conditions, applied by INAC for Beverly and Qamanirjuaq caribou calving and post-calving area and water crossings since the early 1980s. We are encouraged that INAC is considering adapting these conditions as provisions outside currently designated Caribou Protection Areas. However, the BQCMB has been critical of INAC's application of Caribou Protection Measures for the Beverly and Qamanirjuaq herds, and believes that CPM are not effective without adequate monitoring and enforcement. We have several suggestions to offer that we hope INAC will consider to improve this approach:
 - a) Recent data on seasonal range use patterns of caribou in this area and current knowledge about vulnerability of caribou to disturbance should be used to determine appropriate timing for application of new provisions to new areas.
 - b) The BQCMB's critique of CPM, which was included in a position paper developed by the BQCMB and submitted to INAC and other relevant parties in 2004³, should be used by INAC to improve caribou protection provisions and their implementation through the Plan.
 - c) Other adaptations of the CPM approach should be considered, including mobile protection measures being developed for other regions and caribou herds, such as the Sahtu.⁴

Limitations of BQCMB Review:

- Without first doing an analysis of available data on seasonal range use by caribou, we are only able to make generalized statements and suggestions. The BQCMB would need good maps of the area and time to collaborate with ENR to identify use of this landscape by caribou, based on past and recent survey and collar location data. This analysis would allow us to provide information on known seasonal use of the area and to identify what timing would best apply for provisions, based on the information available to us.
- However, development of draft provisions should be made based on all available information on seasonal range use by caribou, including both scientific data and traditional knowledge.

³ BQCMB. 2004. Protecting calving grounds, post-calving areas and other important habitats for Beverly and Qamanirjuaq caribou: A position paper by the Beverly and Qamanirjuaq Caribou Management Board. September 2004. 26pp.

⁴ Gunn, A. and K.G. Poole. 2009. A pilot project to test the use of aerial monitoring to supplement satellite collared caribou for mobile caribou protection measures. Prepared for: Déline Renewable Resources Council. 16pp.

General Comments about Provisions:

- Explanation for the timing of restrictions and their basis is required, including the discrepancy in timing for different provisions.
- More clarity is needed in provisions, including definition of terms.
- Explanation of how these provisions will be implemented is required (automatic conditions on land use permits?) and how this will relate to the standard review of individual permit applications.
- Explanation of how compliance monitoring and enforcement will be conducted is required. Establishing a system with more “rules” but without adequate compliance monitoring or enforcement may do little to protect caribou.

Comments on Specific Provisions:

3 Monitoring

- We are pleased to see inclusion of conditions for community environmental monitors, monitoring designed to identify when caribou approach project activities, and recording and reporting wildlife sightings. However, daily airborne flights by multiple developers all operating independently would not be a situation that we would encourage you to set up via the Plan. Such a situation could create numerous sources of daily disturbance, and would work counter to the stated intent of “protecting caribou”.
- 3 (a) and (b) - The difference between these two provisions is not clear, as they appear to provide the same direction with different organization and emphasis.
- 3 (d) – It should be clearer what making reports “available” means – including how, when, and how frequently. The content and format of the reports should also be specified to ensure that the information reported is understandable and useful. Note also that this should be provisions 3 c (not d) as currently written.

4 Presence

- Permittees should not conduct activities at any time when pregnant cows or cows with calves are present in the area, not just mid-March to May 31. Pregnant cows in the area before mid-March would also be extremely vulnerable, and repeated disturbance of cows with calves between July and September could have significant negative impacts.
- 4 (b) - We are glad to see an attempt to address the issue of airborne geophysical surveys, as these are often overlooked and can be a source of significant disturbance. However, restriction of low level flights should be expanded to address all flights occurring in the area. Flights below 300 m agl should be prohibited except while aircraft are landing and taking off and for safety reasons.
- 4 (b) b – Our understanding is that most airborne geophysical surveys must be done at heights below 300m, as adequate readings can’t be obtained at greater heights. The practicality of this provision should be clarified.

5 Migration

- We recognize that these provisions have been adapted from Caribou Protection Measures (specifically clauses 3.1 and 3.2), and are pleased that INAC is considering adapting these conditions as provisions for the Plan area. However, we encourage INAC to improve them based in part on our suggestions above.
- These provisions should be improved by providing clarity and leaving them less open to interpretation by permittees. This could be accomplished in part through definition of various terms, such as “migration”, “substantial diversion” and “interfere with migration”.

6 Water Crossings

- We recognize that these provisions have been adapted from Caribou Protection Measures (specifically clauses 4.1 and 4.2), and are pleased that INAC is considering adapting these conditions as provisions for the Plan area. However, we encourage INAC to improve them based in part on our suggestions above.
- It is not clear why restriction of activities near water crossings is limited to the period between July 15th and the end of September (CPM dates are May 15 to September 1st). Other sensitive time periods should be addressed by this provision, such as spring migration for pregnant cows, the immediate post-calving period for cows with calves, and the fall migration and rut. For instance, permittees should not conduct activities at any time when pregnant cows or cows with calves are near water crossings, not just between July 15th and the end of September.
- The process and criteria for designating water crossings should be described in the Plan. New research may be required to identify key water crossings in the Plan area.

Sensitivity Level 3 – Areas of Significant Recreational and Tourism Use

- Explanation should be provided on the process, information and criteria that will be used to designate these areas.
- How and when will exploration companies determine that their infrastructure and activities “are not seen from areas designated as areas of significant tourism use”? Will this require increased flights through the area as exploration camps are set up? We would not support this recommendation, as frequent flights particularly near and across the Thelon River, could impact caribou in the area, especially animals that may be crossing water bodies during migration.

Sensitivity Level 4 – Areas of Known Significant Traditional Land Use

- Explanation should be provided on the process, information and criteria that will be used to designate these areas.
- The BQCMB believes that protection of caribou and culture are not separate issues, as the cultural importance of the Upper Thelon region is tied inextricably to its importance as a major migration route for caribou. Further declines of caribou could result in genuine hardship for

people who rely on hunting caribou both for food and as a vital part of their cultures, including the Akaitcho, the Athabasca Denesuline and the Northwest Territory Metis Nation.

- These provisions do not address the cultural and spiritual value of the Upper Thelon area, but instead are focused on specific sites. They do not allow for even temporary protection of any areas larger than a 100 m radius, and do not provide a mechanism for designation of any areas as not appropriate for mineral exploration and development. Therefore they do not address the primary reason for rejection of the UR-Energy land use permit application, namely that “the potential for industrial development of the area is not compatible with the aboriginal values of this cultural landscape” (MVEIRB REA).
- Specifically in relation to caribou, the “Traditional Land Use” provisions are not sufficient to protect the ability of Aboriginal peoples to conduct traditional activities related to caribou harvesting, or to maintain their cultural and spiritual relationship with the land and waters of caribou range, over the long-term.

Provision Calendar for Sensitivity Levels 2 and 3

- This table could be more useful if it was condensed to indicate restrictions by period rather than calendar month. For instance, using the current dates, “caribou protection provisions” would apply for the period March 15-May 31, so one table row could provide this information (rather than the three repetitive rows currently used).