



Beverly and Qamanirjuaq Caribou Management Board

29 October 2019

Director General, Assessment and Regulatory Affairs
Canadian Wildlife Service
Environment and Climate Change Canada
351 St. Joseph Blvd
Gatineau, QC K1A 0H3

By email: ec.registrelp-sararegistry.ec@canada.ca
ec.leprpn-sarapnr.ec@canada.ca
ec.sarnt-lepnt.ec@canada.ca

Follow-up to BQCMB's January 2019 Letter re: Proposed Federal Listing of Barren-ground Caribou

I am writing to follow-up on questions regarding the proposed listing of barren-ground caribou as a threatened species under the federal *Species at Risk Act (SARA)* that the Beverly and Qamanirjuaq Caribou Management Board (BQCMB) submitted to you by letter on 15 January 2019.

We appreciate the verbal responses to some of our questions that were provided by ECCC staff who attended our Spring 2019 board meeting. At that meeting your staff requested that we submit another letter outlining which questions require further responses in writing, which I am now providing.

An attachment to this letter outlines our interpretation of the verbal responses we received to the general and specific questions we posed to you in January, with an indication to which of those questions we are requesting further answers in writing. In some cases, ECCC staff were unable to provide answers that satisfied Board members, while in other cases responses addressed some but not all of the associated issues. Note that if we have misunderstood any of the responses provided by ECCC, additional topics may require further clarification in writing.

In summary:

- The BQCMB recognizes that the proposed listing could result in benefits for caribou and for subsistence caribou harvesters, such as providing an additional tool for protecting critical habitat and influencing environmental assessment processes regarding potential impacts of land use activities on caribou and habitat. According to community members of the BQCMB, however, these potential benefits of listing are not well understood.
- Our understanding of where and to who “automatic prohibitions” would be applied following a Threatened listing has improved as a result of the responses received from ECCC staff to

date. However, significant uncertainty still exists regarding potential application of the “safety net” option should the Minister decide that a jurisdiction does not have adequate laws or mechanisms in place for effectively protecting barren-ground caribou. As a result, much concern remains among Board members regarding the potential impacts of listing on harvesting and related activities by Indigenous peoples.

A few additional concerns were raised at our Spring 2019 meeting related to the listing proposal.


- 1) If barren-ground caribou are listed federally under SARA, no automatic prohibitions or other restrictions should apply on First Nation reserve lands.
- 2) All parties need to know if timelines legislated under SARA will be adhered to or not, should the listing go ahead. For instance, would the 2-year timeline for recovery planning be followed by ECCC? There is concern that benefits from listing might be delayed at a time when urgent action is needed and expected.
- 3) It has been stated that management planning will incorporate existing management plans, such as the BQCMB’s plan for the Beverly and Qamanirjuaq caribou herds, and that critical habitat and threats will be identified in cooperation with communities, governments and wildlife management boards. The BQCMB supports these important commitments. However, support for listing will not likely be provided by caribou people if harvest restrictions will be imposed on any Indigenous (including Inuit, Dene, Cree and Metis) harvesters through the recovery planning process.
- 4) The BQCMB would require additional resources to be able to participate meaningfully in recovery planning. The Board would need to engage with caribou range communities concerning how the management plan would be affected by both the federal listing and subsequent recovery planning.

The BQCMB is unable to formulate a position on the federal listing proposal based on the information currently available. Therefore we are requesting that ECCC develop clear answers to these questions *in plain language* and provide a written response, by the end of March 2020 at the latest. The Board is hopeful that it will be able to submit more comprehensive comments on the proposal once that response has been discussed by board members at the spring 2020 meeting.

I hope that our request for additional information and the ongoing efforts made by ECCC staff from both Northern and Prairie regions will result in better understanding by the BQCMB as a whole to move this initiative forward.

If you have any questions about this letter, please contact Leslie Wakelyn, BQCMB Contract Biologist (wakelyn@theedge.ca), or Ross Thompson, BQCMB Executive Director (rossthompson@mymts.net).

Sincerely,



Earl Evans
BQCMB Chair

Attachment

Attachment. BQCMB Questions Submitted to ECCC-SAR (in 15 January 2019 letter), Responses Received (from Consultation Package and verbal presentation by ECCC staff to Spring 2019 BQCMB meeting) and Requests by BQCMB for Further Clarification.

<p align="center">BQCMB Questions (from written submission January 2019)</p>	<p align="center">ECCC Responses (from verbal presentation May 2019)</p>	<p align="center">Further Clarification Requested¹</p>
<p>A. General Questions</p>		
<p>1) Which lands are considered to be “federal lands” under the federal SARA in each jurisdiction of the historic Beverly and Qamanirjuaq caribou ranges?</p>	<p>(See specific questions and responses below)</p>	<p align="center">No</p>
<p>2) What are the implications of listing under SARA for harvesting opportunities and rights?</p>	<p>Automatic application of SARA’s s32 General Prohibitions, also referred to as “automatic prohibitions”, would NOT apply for Sec. 35 rights-based harvest. Responsibility for harvest management would remain with territorial, provincial and Indigenous governments, and harvest management processes currently in place would not change.</p> <p>When the Minister is of the opinion that the laws of the province or territory do not effectively protect a listed species, protections under SARA on non-federal lands can be applied by an order by the Governor in Council, also referred to as the “safety net” option. (See also specific questions and responses below)</p>	<p align="center">YES</p>
<p>3) What is meant by “consultation” under SARA?</p>	<p>(See specific questions and responses below)</p>	<p align="center">YES</p>

¹ Based on BQCMB interpretation of ECCC responses as summarized. If any ECCC responses were misinterpreted, additional clarification may be required.

BQCMB Questions (from written submission January 2019)		ECCC Responses (from verbal presentation May 2019)	Further Clarification Requested ¹
B. Specific Questions			
<i>Jurisdiction of SARA</i>			
1	According to the definition, the Nunavut Wildlife Management Board (NWMB) is the only wildlife management board recognized under the federal SARA for the historic Beverly and Qamanirjuaq caribou ranges. The NWMB is the “main instrument of wildlife management” in Nunavut, and has an established and proven co-management process for establishing harvest restrictions where necessary.		
	We request that you: a) confirm that ECCC recognizes the existing authority and role of the NWMB.	Yes. Harvest management processes currently in place would not change as a result of federal listing under SARA.	No
	b) clarify the jurisdiction of the federal SARA in the Nunavut Settlement Area regarding: - approving a designation of species at risk, - establishing, modifying or removing levels of total allowable harvest, and - playing a role in harvest management.	SARA outlines a process for approving a species at risk designation. ECCC is not involved in harvest management unless the “safety net” option is required.	YES
<i>Automatic prohibitions against killing or harming caribou upon listing</i>			
2	Please clarify on what federal lands on Beverly and Qamanirjuaq caribou range automatic prohibitions against killing or harming caribou would apply.	Automatic application of SARA’s s32 General Prohibitions, also referred to as “automatic prohibitions”, would NOT apply for Sec. 35 rights-based harvest.	No

BQCMB Questions (from written submission January 2019)		ECCC Responses (from verbal presentation May 2019)	Further Clarification Requested ¹
		<p>For other harvest, automatic prohibitions would apply as follows:</p> <p>a) North of 60 - only on lands under the authority of Parks Canada and Environment and Climate Change Canada, which are: National Parks (NP), National Historic Sites (NHS), Migratory Bird Sanctuaries (MBS), and National Wildlife Areas (NWA).</p> <p>b) South of 60 – applies on all federal lands, including federal First Nation reserve lands.</p>	
3	<p>What impact would listing have on caribou harvesting in the following areas, which are located on Beverly and Qamanirjuaq caribou range in the NWT and/or Nunavut (see Map 2):</p> <ul style="list-style-type: none"> • Wood Buffalo National Park and • proposed Thaidene Nëné National Park Reserve • Queen Maud Gulf Migratory Bird Sanctuary and McConnell River MBS • Thelon Wildlife Sanctuary • Thelon and Kazan Heritage River areas • Interim Measures Agreement lands 	<p>Automatic application of SARA’s s32 General Prohibitions, also referred to as “automatic prohibitions”, would NOT apply for Sec. 35 rights-based harvest.</p> <p>For other harvest, automatic prohibitions:</p> <p>would NOT apply (no barren-ground caribou present)</p> <p>(not discussed)</p> <p>would apply.</p> <p>would NOT apply.</p> <p>would NOT apply.</p> <p>would NOT apply.</p>	<p>No</p> <p>YES</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p>
4	<p>What impact would listing have on caribou harvesting in the following areas located on Beverly and Qamanirjuaq caribou range in Saskatchewan and Manitoba:</p>	<p>Automatic application of SARA’s s32 General Prohibitions, also referred to as “automatic prohibitions”, would NOT apply for Sec. 35 rights-based harvest.</p>	

BQCMB Questions (from written submission January 2019)		ECCC Responses (from verbal presentation May 2019)	Further Clarification Requested ¹
		For other harvest, automatic prohibitions:	
	<ul style="list-style-type: none"> Wapusk National Park 	would apply.	No
	<ul style="list-style-type: none"> First Nation reserve lands, and 	would apply.	YES²
	<ul style="list-style-type: none"> provincial lands not under the authority of the Minister of the Environment or the Parks Canada Agency? 	would NOT apply.	No
5	Would automatic prohibitions apply to:	Automatic application of SARA's s32 General Prohibitions, also referred to as "automatic prohibitions", would NOT apply for Sec. 35 rights-based harvest.	
	<ul style="list-style-type: none"> territorial lands in NWT that were recently (2014) devolved to the GNWT 	would NOT apply, UNLESS the lands are designated as NPs, NHSs, MBSs, or NWAs	No
	<ul style="list-style-type: none"> federal lands to be devolved to the Government of Nunavut 	would NOT apply, UNLESS the lands are designated as NPs, NHSs, MBSs, or NWAs	No
	<ul style="list-style-type: none"> Inuit-owned lands in Nunavut 	would NOT apply.	No
6	Would there be areas with exemptions to automatic prohibition against killing or harming caribou by Indigenous people on federal lands and would these apply for all Indigenous peoples with established or asserted rights or only where rights have been established through finalized Treaty Land Entitlement settlement agreements and land claim agreements?	Automatic application of SARA's s32 General Prohibitions, also referred to as "automatic prohibitions", would NOT apply for Sec. 35 rights-based harvest. Asserted rights are now treated as if they are established rights.	YES³

² This situation is concerning for SK and MB communities.

³ This situation is concerning as Metis people in MB do not have S.35 rights to hunt caribou.

BQCMB Questions (from written submission January 2019)	ECCC Responses (from verbal presentation May 2019)	Further Clarification Requested ¹
<i>Possible future restrictions on harvest on non-federal lands</i>		
7 If ECCC decides that future restrictions on harvest are needed on non-federal lands under SARA, what is meant by “the Minister of the Environment will consult with impacted WMBs and Indigenous organizations”?	ECCC is not involved in harvest management unless the “safety net” option is required.	
<ul style="list-style-type: none"> What role would WMBs and Indigenous organizations play in decision-making processes? 	There is a “high threshold” for anything dealing with Indigenous rights, and situations are treated case-by-case, so there is not one set approach.	YES
<ul style="list-style-type: none"> What role would governments responsible for caribou management play in decision-making processes? 	A close role.	YES
<i>The consultation process</i>		
8 Regarding the joint ECCC/GNWT consultation package distributed to NWT, Saskatchewan and Manitoba community and regional organizations and to Nunavut Tunngavik Inc. in Sep/17:		
<ul style="list-style-type: none"> How were communities identified to be eligible for receipt of the consultation package? 	(not discussed)	YES (?)
<ul style="list-style-type: none"> What type of follow-up was conducted by ECCC after circulation of this written information? 	ECCC (Prairie Region) received requests for consultations in response to the initial information package and followed-up with emails, phonecalls and some community and regional meetings (for example the regional meeting in Wollaston Lake in January 2019). ECCC-SAR staff present were not aware of follow-up conducted for NWT and NU communities and organizations.	YES for NU

<p style="text-align: center;">BQCMB Questions (from written submission January 2019)</p>	<p style="text-align: center;">ECCC Responses (from verbal presentation May 2019)</p>	<p style="text-align: center;">Further Clarification Requested¹</p>
<ul style="list-style-type: none"> • Did GNWT hold in-person meetings with community and regional organizations across the Beverly and Qamanirjuaq ranges? If so, where and when were these meetings held and was information provided about both the territorial and federal caribou listing proposals? 	<p>Response received from NWT-SAR: “Please refer to the Conference of Management Authority’s 2018 Consensus Agreement on Listing Barren-ground Caribou for details on the consultation and engagement that was undertaken in preparation for the listing decision (available here: https://www.nwt-species-at-risk.ca/sites/default/files/consensus_agreement_on_listing_barren-ground_caribou_signed_apr1118_0.pdf; refer to information starting on page 12 of 15 for GNWT-specific actions). Consultation was done through letter and, when requested, community meetings, insofar as the listing schedule permitted (i.e., the legal timeline within which we must make a listing decision). Within Beverly and Qamanirjuaq range, community meetings were held in Fond du Lac, Black Lake, Hatchet Lake, Lac Brochet, and Tadoule in early 2018. Two additional requests for community meetings were received from Earl Evans and the Łutsel K’e Dene First Nation; unfortunately, given the tight timelines under which we operate, these requests could not be accommodated at that time, although we followed up with additional information.</p> <p>We were unable to coordinate community meetings with Environment and Climate Change Canada. As such, the presentations we made focused largely on the NWT proposed listing.”</p>	<p>No</p>
<p>9 How is ECCC providing information and collecting input on the proposed federal listing of barren-- ground caribou from communities across the Beverly and Qamanirjuaq ranges?</p>		

BQCMB Questions (from written submission January 2019)		ECCC Responses (from verbal presentation May 2019)	Further Clarification Requested ¹
	<ul style="list-style-type: none"> Was written information provided to community and regional organizations specifically on the proposed listing of caribou, or only with the proposed amendment for all 21 terrestrial species? 	Initially one package was sent out with information regarding proposals for 21 species. Follow-up provided greater focus on the proposed listing of barren-ground caribou.	No
	<ul style="list-style-type: none"> What follow-up was conducted or is planned for ECCC's in-person presentations made to Hunters and Trappers Organizations in the Kitikmeot and Kivalliq communities and at regional meetings for northern Saskatchewan and Manitoba communities? 	<ul style="list-style-type: none"> For SK and MB, ECCC received some requests for consultations and some community and regional meetings were held. ECCC is still open to receiving additional requests, which can be submitted to ECCC-SAR staff or directly to the Minister. ECCC-SAR staff present were not aware of plans for NU communities. 	YES ⁴
	<ul style="list-style-type: none"> How will input received during community consultations be used to inform the recommendations made to the Minister on the federal listing of barren-ground caribou? 	All input received will be provided to the Minister. Comments and concerns will be considered when economic and social aspects of listing are taken into account.	No
Recovery planning			
10	What would "involvement" of governments responsible for the management of barren-ground caribou and "cooperation" with directly affected Indigenous organizations mean in terms of roles, responsibilities and decisions made during recovery planning?	<ul style="list-style-type: none"> If listed as Threatened, a recovery strategy will be required within 2 years under SARA. However, it may take longer to involve governments and Indigenous organizations adequately⁵. Existing management plans will be incorporated. Identification of critical habitat will be done in 	YES ⁶

⁴ More details about meetings held or planned are requested. The BQCMB is aware that ECCC has hired new SAR staff based in NWT (Yellowknife) and NU (Iqaluit) who are planning to conduct consultations on the proposed federal listing with NWT and NU communities and organizations.

⁵ We would like to know if ECCC intends to follow the legislated 2-year timeline or not. It was indicated that development of a recovery strategy took 10 years for boreal caribou. There is concern that benefits from listing would be delayed when urgent action is needed.

⁶ We would like to know more about the roles that would be played in decision-making for recovery planning by the various parties that would be impacted or which have authority for caribou management.

BQCMB Questions (from written submission January 2019)		ECCC Responses (from verbal presentation May 2019)	Further Clarification Requested¹
		cooperation with communities, governments and Wildlife Management Boards.	
11	Who would pay the costs of activities required for this involvement and cooperation, including participation in recovery planning meetings?	(not discussed)	YES