

TECHNICAL BRIEFING ON THE RATIONALE FOR FNFN'S MEDZIH ACTION PLAN

Fort Nelson First Nation, 2017b.

WHY DID FNFN DEVELOP A MEDZIH ACTION PLAN¹?

Fort Nelson First Nation (FNFN) has both a responsibility and constitutionally affirmed rights under Treaty 8 to ensure that boreal caribou populations are protected and restored across FNFN's traditional territory.

The federal government (Environment and Climate Change Canada; ECCC) takes the lead on recovery of boreal caribou on all federal lands across Canada. However, most caribou habitat is on non-federal land—so provincial ministries are delegated with the task of protecting the majority of boreal caribou habitat. BC's current recovery efforts prioritize development without putting in place strong protection or the necessary planning to prevent incursions into critical habitat for boreal caribou. This lack of protection has led to continued—and likely accelerated—decline in boreal caribou populations in northeastern BC over the last decade.

FNFN's Medzih Action Plan (MAP) provides a much stronger, clearer approach to protecting and restoring habitat for this culturally important species with a goal of restoring a harvestable surplus of caribou for future generations of FNFN members.

WHAT ARE THE FEDERAL GOVERNMENT'S GOALS FOR RECOVERY OF BOREAL CARIBOU?

Federally, boreal caribou are listed as Threatened and are protected under Schedule 1 of Canada's Species at Risk Act (SARA). ECCC released a Recovery Strategy for boreal caribou (the Federal Recovery Strategy) in 2012.² The population and distribution goals that are used to guide recovery efforts across Canada are:

- Maintain the current status of the 14 existing self-sustaining local populations; and,
- Stabilize and achieve self-sustaining status for the 37 not self-sustaining local populations.

In the 2012 Federal Recovery Strategy, all of the local populations (i.e., ranges) in British Columbia were considered not self-sustaining as a result of the existing level of disturbance, combined with population declines.³

¹ The Dene word for boreal caribou is *medzih*. The terms boreal caribou and medzih are used interchangeably in this document.

² Environment Canada. 2012. Recovery Strategy for the Woodland Caribou (*Rangifer tarandus caribou*), Boreal population, in Canada. *Species at Risk Act Recovery Strategy Series*. Environment Canada, Ottawa. xi + 138pp.

³ See Figure 3, p. 8 in Environment Canada 2012. Note that the 2017 Boreal Caribou Recovery Implementation Plan (BCRIP) has redefined the ranges to include five, rather than the original six ranges listed in BC in the 2012 Recovery Strategy. FNFN community members consider all ranges to be interconnected and vital to boreal caribou recovery.

Without improvements in the amount and effectiveness of habitat available in these ranges, not only will boreal caribou not achieve self-sustaining status, they are likely to be extirpated in BC.

HOW DOES THE FEDERAL RECOVERY STRATEGY PROTECT HABITAT FOR BOREAL CARIBOU?

The Federal Recovery Strategy's key measure for protection is based on the identification and protection of critical habitat,⁴ which is identified based on a threshold of disturbance (both natural and human-caused). The threshold of disturbance is 35%—in other words, a minimum of 65% of the range must be maintained in an “undisturbed state”⁵ for boreal caribou to have a 60% chance of recovering to a self-sustaining population.

The Federal Recovery Strategy does not spatially define locations for the undisturbed habitat. Provinces and territories must develop plans to ensure all ranges are at, or will be at, the minimum threshold of 65% undisturbed habitat to meet their obligations to protect critical habitat for boreal caribou. These range plans are due by October 5th 2017.

In 2017, ECCC released a draft Federal Action Plan for boreal caribou. This plan describes the federal government's contribution to the recovery efforts for boreal caribou focused on three key pillars: science to support recovery; habitat recovery and protection; and reporting on progress. With respect to recovery and protection of habitat, the Federal Action Plan lays out how ECCC will assess whether provinces and territories are effectively protecting the critical habitat under their jurisdiction.

If the federal Minister determines that boreal caribou and/or its critical habitat are not protected, she must recommend that the Governor in Council (a committee of the federal cabinet) make an order that prohibits the destruction of critical habitat on non-federal lands.⁶

HOW IS BRITISH COLUMBIA ADDRESSING FEDERAL REQUIREMENTS FOR CARIBOU RECOVERY?

To date, British Columbia has developed three implementation plans specific to boreal caribou: the 2011 Boreal Caribou Implementation Plan (2011 BCIP), a draft 2016 Boreal Caribou Implementation Plan that was developed but never finalized, and the 2017 draft Boreal Caribou Recovery Implementation Plan (BCRIP 2017⁷). There are several supporting documents and government orders associated with these plans.⁸ The 2017 BCRIP represents British Columbia's current effort to protect critical habitat for boreal caribou. British Columbia has stated its intent to work with the federal government to effectively protect critical habitat to the greatest degree possible (BCRIP 2017). The 2017 BCRIP includes brief range-specific ‘plans’ as appendices.

⁴ SARA defines critical habitat as “the habitat that is necessary for the survival or recovery of a listed wildlife species and that is identified in a recovery document for the species.”

⁵ Undisturbed habitat is defined by Environment Canada as habitat that is more than 40 years old and more than 500 m away from anthropogenic disturbances – i.e., cutblocks, roads, seismic lines, industrial sites, and other human developments. Areas affected by wildfires are exempt from the 500 m buffer.

⁶ Environment and Climate Change Canada. 2016. Policy on Critical Habitat Protection on Non-federal Lands [Proposed]. Species at Risk Act: Policies and Guidelines Series. Environment and Climate Change Canada, Ottawa. 9 pp.

⁷ Ministry of Environment and Ministry of Forests, Lands, and Natural Resource Operations. 2017. Boreal Caribou Recovery Implementation Plan.

⁸ See: <http://www2.gov.bc.ca/gov/content/environment/plants-animals-ecosystems/wildlife/wildlife-conservation/caribou/boreal-caribou>

FNFN has put considerable time, effort and resources into reviewing the 2011 BCIP, the 2016 draft BCIP, and the 2017 draft BCRIP. **In all cases, FNFN identified major gaps in the implementation plans that allowed for the continued degradation of boreal caribou habitat in British Columbia. FNFN has shared detailed critiques of the problems with these plans with the province—but these comments have received little to no response from the provincial government.**

WHAT ARE FNFN'S CONCERNS WITH THE 2017 BCRIP?

- The goals of the 2017 BCRIP do not address maintaining caribou across the extent of their range, and do not include the requirement to achieve self-sustaining populations that include a harvestable surplus to allow for the re-establishment of the Treaty right to hunt boreal caribou. This is critical to FNFN: the goal of population recovery must include restoring and preserving the Treaty right to hunt this culturally important animal.
- The 2017 BCRIP does not spatially identify critical habitat for boreal caribou. In the absence of spatially defined protection areas, individual petroleum and natural gas (PNG) projects that claim no “material adverse effect” will continue to be approved in boreal caribou cores and ranges, on the basis of their adherence to the government’s Interim Operating Procedures (IOPs).⁹ FNFN has identified this problem repeatedly in individual permit reviews for proposed oil and gas facilities, and sees no mechanism to prevent this habitat degradation from continuing within the 2017 BCRIP.
- The 2017 BCRIP moves away from the 65% undisturbed habitat threshold and instead defines a management “target” of 6% early seral habitat. Early seral habitat is defined by the province as areas that are either 35 years or younger (for fires) and 20-25 years or younger (for cutblocks).¹⁰ No PNG disturbances (pipelines, borrow pits, camps, wellsites, gravel pits, etc.) are included in the early seral calculation. All of the ranges are currently below the 6% early seral target as defined by the 2017 BCRIP, so the target allows a continued degradation of habitat. The 6% early seral target has no scientifically defensible rationale, and does not equate to the Recovery Strategy target of 65% undisturbed habitat across ranges.
- The BCRIP’s 2km/km² linear disturbance density target for ranges and cores represents a high-risk option that is unlikely to result in population recovery (Antoniuk 2006). Furthermore, the calculation does not include ‘low impact seismic lines’ (LIS).¹¹ While an improvement over conventional seismic

⁹ Note that the Oil and Gas Commission has never found a material adverse effect in relation to a project it regulates, despite thousands of applications over the past two decades. See below for additional discussion of FNFN’s review of the material adverse effects guidelines as they apply to boreal caribou.

¹⁰ Environment Canada uses a different definition, and considers undisturbed habitat to be areas that are more than 40 years old and more than 500 m away from anthropogenic disturbances – i.e., cutblocks, roads, seismic lines, industrial sites, and other human developments. Fires are exempt from the 500 m buffer. This definition is considerably more stringent than the more liberal view of disturbed habitat used by British Columbia in the 2017 BCRIP. This shift in the definition is problematic both because it allows more disturbance to occur, and because it obfuscates the comparison of provincial efforts to meet the requirements outlined under the federal Recovery Strategy.

¹¹ ...Prior to the late-1990s seismic lines were cut between 6 and 8 m wide using bulldozers (Lee and Boutin 2006; conventional seismic lines). By the late 1990s, line construction practices began to shift toward preparation of narrower, meandering seismic lines using specialized equipment to more precisely target vegetation removal during construction (Tamarack Solutions 2003, AECOM 2009; low-impact seismic or LIS). From: <http://www.bcogris.ca/sites/default/files/bcip-2016-18-natural-recovery-lis-final-report-golderexplor.pdf>. Despite the shift, as of 2006 lines were still being cut to 5 m widths, many of them still using bulldozers.

lines, LIS represent an increased risk of predation for boreal caribou and should be included in the calculation of linear disturbance.

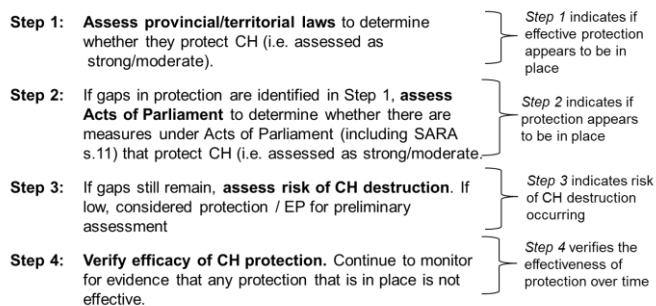
- The 2017 BCRIP notes that new PNG development in caribou cores be offset at a 4:1 ratio. Offsetting is important to ensure future activities do not cause further habitat degradation, but does nothing to address the existing poor functional condition of ranges and cores if no immediate activity is occurring. As a result, BCRIP allows further habitat degradation in cores before any effective restoration is achieved. There is also no rationale presented for the selected 4:1 ratio, which is unlikely to achieve any meaningful restoration given the current extent of habitat degradation.¹²
- The 2017 BCRIP relies on habitat-related “targets” but does not provide the current early seral and linear disturbance levels within ranges and cores; without these clearly stated for each range and core, there is no baseline from which to clearly measure implementation or effectiveness of the BCRIP measures.

With its continued reliance on uncertain targets and weak protection measures, the 2017 BCRIP fails to identify and give strong protection or recovery potential to critical habitat. The 2017 BCRIP will require ongoing reliance on more drastic interventions—such as wolf culls, reductions in moose and deer populations, and maternal penning—to reverse the boreal caribou population trend. FNFN only supports these measures in very specific areas, and only in concert with meaningful, long-term habitat protection and restoration strategies.

DO BRITISH COLUMBIA’S EFFORTS TO PROTECT BOREAL CARIBOU MEET FEDERAL REQUIREMENTS?

Like the 2011 BCIP and the draft 2016 BCIP, the 2017 BCRIP relies on Ungulate Winter Ranges (UWRs), Wildlife Habitat Areas (WHAs), and Resource Review Areas (RRAs) to achieve its stated goals and objectives. These protection measures, which cover large portions of each core and range (see Table 1 in the FNFN Medzih Action Plan), do little in practice to prevent ongoing incursions by forestry and PNG into ranges and cores. There are almost no meaningfully protected areas¹³ in the range of boreal caribou in BC (the most effective land protection tool; Gorley and Holt 2017).

CHPA-NFL – Four step process



ECCC employs a four-stage process to determine whether actions put in place by the province are sufficient to meet the requirements of SARA (see figure left showing the critical habitat protection assessment (CHPA-NFL) on non-federal lands). This process is used to assess the strength of legislation to protect prevent destruction of habitat, and the risk that activities that cause habitat destruction might occur.

A recent Protection Study based on this

¹² Laitila et al. 2014. A method for calculating minimum biodiversity offset multipliers accounting for time discounting, additionality and permanence. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4374704/>

¹³ Less than 1% of the Taiga Plains Ecoprovince are formally designated as protected areas in British Columbia.

framework assessed protection status for the South Peace Central Group of caribou (Province of BC and ECCC 2017¹⁴). For that area, significant gaps were found with respect to the ability of provincial legislation to meet the SARA Critical Habitat test. Extensive incursions of industrial activities likely to cause destruction of caribou habitat were found within areas with a varied set of ‘protection’ designations.

The Province of BC and ECCC 2017 Protection Study echoes concerns raised by FNFN about the efficacy of existing protection mechanisms for caribou.¹⁵ Ungulate Winter Ranges and Wildlife Habitat Areas were originally intended to protect areas from forestry impacts. There are two types of each: type A (no harvest) and type B (conditional harvest). However, the ‘no harvest’ and ‘conditional harvest’ labels of these areas do not accurately reflect what activities can occur within these zones, because:

- a) designations apply primarily to forestry rather than the whole industrial footprint;
- b) gas development is unaffected by the designation unless it causes a material adverse effect;¹⁶
- c) there is significant discretion in how the designations are enforced; and
- d) significant areas of all land designation types, including ‘no harvest’ WHAs and UWRs, were harvested and otherwise disturbed by a wide range of industrial footprints (Province of BC and ECCC 2017).

In addition to WHAs and UWRs, the 2011 BCIP established “resource review areas” (RRAs) across areas of caribou ranges that were not already tenured to PNG.¹⁷ Though these RRAs cover more than 500,000 hectares of boreal caribou ranges, most of the area is outside core caribou habitat. Within RRAs, further tenures are prohibited but existing developments can continue to explore, build roads and seismic lines, and conduct ongoing activities associated with the extraction of oil and gas. More than two thirds of some RRAs were already tenured and are still subject to this type of development. The 2011 RRAs expired in 2016; the draft 2017 BCIP proposes establishing new RRAs over untenured portions of caribou core habitat, but not for another two years after the 2017 BCIP is approved. As is the case with WHAs and UWRs, the 2017 Protection Study demonstrates that applications continue to be approved in areas that overlap RRAs (Province of BC and ECCC 2017).

WHAT HAPPENS WHEN PNG DEVELOPMENTS ARE PROPOSED WITHIN WHAs AND UWRs?

In the PNG sector, if a proponent proposes a development in boreal caribou cores and ranges, they must follow the guidance set out by the Environmental Protection and Management Regulation (EPMR) under the Oil and Gas Activities Act (OGAA) for protecting wildlife and wildlife habitat. The Environmental Protection Management Guideline (EPMG) outlines the following GEO (Government’s Environmental Objective) for wildlife and wildlife habitat: operating areas should not be located in WHAs or UWRs,

¹⁴ Province of BC and ECCC 2017. Canada-British Columbia Southern Mountain Caribou (Central Group) Protection Study. url: https://www.registrelep-sararegistry.gc.ca/virtual_sara/files/ProtectionStudy-Smc-central-v01-0217-Eng.pdf

¹⁵ This test is made particularly difficult since the province has not released a map that shows their interpretation of what constitutes ‘critical habitat’ for boreal caribou in BC.

¹⁶ In practice, it is very easy under the current regulations for PNG proponents to meet the “no material adverse effects” test. See next section for more information about how MAEs are measured.

¹⁷ For a map of the 2011 RRAs established through the BCIP, see <http://www2.gov.bc.ca/gov/content/industry/natural-gas-oil/petroleum-natural-gas-tenure/information-letters/boreal-caribou>

unless the operating area will not have a material adverse effect on the ability of the habitat to be effective for boreal caribou.¹⁸

A material adverse effect is defined as a change in an environmental value established by the GEOs that is both material (i.e., serious, of consequence) and adverse (i.e., injurious, damaging, unfavourable). A potential effect must be both adverse and material to be inconsistent with the GEOs.

The EPMG states that WHAs and UWRs should be avoided when planning oil and gas activities. If they cannot be avoided, a mitigation plan should be prepared by a qualified professional that outlines how the oil and gas activity will not have a material adverse effect on the wildlife habitat.

FNFN reviews all of the permitted oil and gas and forestry development proposed in boreal caribou cores and ranges in our territory. **FNFN has yet to see any proposed PNG development within caribou ranges and cores—areas that are supposedly protected by UWRs and WHAs—be refused by the Oil and Gas Commission on the basis of impacts to boreal caribou habitat.**

WHY HAS A MATERIAL ADVERSE EFFECT NEVER BEEN FOUND?

The BC Oil and Gas Commission (OGC) is responsible for determining whether a material adverse effect will or will not occur from a proposed development in WHAs and UWRs. Specific to boreal caribou, when a development is proposed in areas that are designated for the protection of this species, the OGC reviews the proponent's "Caribou Mitigation Plan" to determine its adequacy to prevent a material adverse effect. **In all instances**, the OGC considers adherence with a set of measures outlined in the 2011 "Interim Operating Practices for Oil and Gas Activities in Identified Boreal Caribou Habitat in British Columbia" (IOPs)¹⁹ to be a satisfactory approach to mitigation planning.²⁰ **This means that development can go ahead in WHAs and UWRs—even within timing windows that have been identified as critically important for boreal caribou, such as the calving season—as long as the caribou mitigation plan proposed by the proponent follows the Interim Operating Procedures.**

The blanket assumption that adherence to the IOPs is sufficient to avoid a material adverse effect in all contexts is deeply flawed. The IOPs include mitigation measures that have the potential to be effective in some circumstances—for example, where disturbance levels are below established thresholds and boreal caribou populations are recovering. However, most cores and ranges in BC exceed disturbance levels that represent a high risk to boreal caribou. This circumstance represents a pre-existing material adverse effect on caribou and additional development should not occur under these circumstances.

In summary, BC's current approach allows development to continue to degrade boreal caribou critical habitat, even though these areas are already beyond the federal threshold for disturbance. BC must

¹⁸ Environmental Protection Management Guideline: <http://www.bcogc.ca/node/5899/download>

¹⁹ Interim Operating Procedures for proposed work in boreal caribou habitat are available here: <http://www.env.gov.bc.ca/wld/speciesconservation/bc/documents/Operating%20Practices.pdf>

²⁰ This statement has been confirmed through direct correspondence between FNFN and the OGC. Personal communication with Lisa Helmer, Director of Resource Stewardship, October 23, 2015 re: boreal caribou concerns associated with proposed Trail-Gote developments.

therefore fail to meet the requirement to protect boreal caribou critical habitat on non-federal lands, as laid out in the relevant Species at Risk policy document.²¹

WHAT DOES FNFN'S MEDZIH ACTION PLAN DO?

FNFN's Medzih Action Plan clearly identifies areas that need strong, effective protection; areas for priority restoration; and strategies to reach recovery goals in an effective and timely manner.

Rather than relying on a convoluted set of regulations and guidance documents that together act to facilitate rather than limit development in boreal caribou critical habitat, FNFN's approach to boreal caribou recovery is straightforward and clear, providing much greater certainty both for boreal caribou habitat protection and for industrial development.

In order to avoid triggering the federal endangered species 'safety net', FNFN looks forward to working with provincial and federal governments, and other parties, to implement the Medzih Action Plan in the immediate future.

²¹ Environment and Climate Change Canada. 2016. Policy on Critical Habitat Protection on Non-federal Lands [Proposed]. Species at Risk Act: Policies and Guidelines Series. Environment and Climate Change Canada, Ottawa. 9 pp.