

VIA EMAIL AND FAX

SEP 17 2018

President Bill Enge
North Slave Métis Alliance
PO Box 2310
YELLOWKNIFE NT X0E 0Y0

Dear President Enge:

Consultation on proposed final modifications to four measures in the Report of Environmental Assessment and Reasons for Decision for the GNWT's proposed Tłı̄chǫ All-Season Road Project (EA1617-01)

On March 29, 2018, the Mackenzie Valley Environmental Impact Review Board (Review Board) released the *Report of Environmental Assessment and Reasons for Decision* (Report of EA) for the Tłı̄chǫ All-Season Road Project (Project). The Review Board recommended the Government of the Northwest Territories' (GNWT), as led by the Department of Infrastructure, proposed Project be approved, subject to the implementation of 23 measures and developer commitments.

On June 22, 2018, in response to the Report of EA, the responsible ministers began consultation with the Review Board to modify three measures related to boreal caribou. This consultation is set out in the *Mackenzie Valley Resource Management Act* (the Act) under section 130(1)(b)(ii). Concurrently, the responsible ministers began Aboriginal consultation with the North Slave Métis Alliance (NSMA), sharing the proposed modifications to these three measures via a letter; the letter also included the Tłı̄chǫ Government's proposed modifications to five separate measures. The letter asked the NSMA whether the proposed modifications had the potential to adversely impact NSMA's asserted Aboriginal rights. NSMA's comments on the responsible ministers' and Tłı̄chǫ Government's proposed modifications for the measures were received on July 19, 2018. The responsible ministers thank you for these comments.

This letter has two purposes. The first purpose is to respond to the concerns NSMA raised and the specific modifications to measures NSMA proposed in your July 19, 2018 letter.

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The second purpose of this letter is to seek your views on the proposed final wording for the three measures modified by responsible ministers, and the one measure modified by the Tłı̨chǫ Government (attached).

Responses to concerns raised in NSMA's July 19, 2018 letter

In your July 19, 2018 letter, responsible ministers heard both the general, and the specific concerns raised by NSMA as they relate to the proposed modifications to Measures 6-1, 6-2, and 6-3. In a general sense, responsible ministers noted that NSMA stated their belief that the measures must be mitigative, address cumulative impacts, implement good management, and be specific and binding with achievable deadlines. Responsible ministers agree and are of the view that the proposed final wording of the measures are mitigative, address cumulative impacts, implement good management practices and are specific and binding with achievable deadlines. The responsible ministers' responses to NSMA's specific concerns are set out below.

Measure 6-1, Part 1

NSMA suggested modifications to the wording previously proposed by responsible ministers to address concerns related to the view that 65% undisturbed habitat is the most appropriate management target relating to critical habitat protection for boreal caribou, recognizing the GNWT does not have ultimate control over forest fires.

Specifically, NSMA's proposed alternate wording for Measure 6-1, Part 1 was:

"GNWT will work with the TG and other relevant Aboriginal and Federal land management authorities to manage, to the greatest extent possible, the amount of undisturbed habitat in the North Slave portion of the NT1 range to achieve the National Recovery Strategy recommended threshold for critical habitat, or a threshold proposed by the GNWT-ENR, following engagement with Environment and Climate Change Canada and consultation with applicable Aboriginal Groups, and approved in accordance with chapter 12 of the Tlı̨chǫ agreement." [requested change identified as underlined]

This proposed wording from NSMA adds the achievement of the *National Recovery Strategy* amount of undisturbed habitat back into the measure, but also leaves the option of managing habitat to a threshold proposed by GNWT-ENR (following engagement and consultation), in the measure. As stated in the measure, the threshold would need to be approved in accordance with chapter 12 of the Tłıchǵ Agreement.

The responsible ministers' final proposed wording references the habitat disturbance threshold set out in the range plan. That threshold will be established through the co-management process following engagement with Environmental and Climate Change Canada (ECCC) and in consultation with applicable Indigenous governments and organizations, including NSMA, and in accordance with the Tłıchǵ Agreement. The responsible ministers' proposed wording does not include reference to the National Recovery Strategy because regional thresholds are not set out in that strategy.

The responsible ministers believe that the phrase: *"to manage habitat to achieve the habitat disturbance threshold set out in this range plan"* as proposed by the Review Board and accepted by the responsible ministers with the caveat of "to the greatest extent possible" provides protection to boreal caribou habitat and respects the co-management process in place. The wording provided represents a GNWT commitment to strive to achieve habitat protection thresholds, excepting variables beyond the GNWT's control. This protection, along with the responsible ministers' modification to consult with applicable Indigenous governments and organizations as required to achieve the habitat disturbance threshold, mitigates against significant adverse impacts to critical boreal caribou habitat from the Project, thereby reducing Project impacts to NSMA's asserted Aboriginal right to harvest boreal caribou.

Measure 6-1, Part 2:

NSMA noted significant concerns with the removal of abundance monitoring from Measure 6-1. Specifically, concerns were raised regarding the requirement for data on caribou abundance to be part of: adaptive management, the determination of sustainable harvest (required for Measure 6-2), the determination of appropriate offsets (Measure 6-3), and the understanding population resilience.

Responsible ministers' initial proposed modification to Measure 6-1, Part 2 included the removal of monitoring abundance, along with the removal of requiring harvest reporting by Aboriginal and non-Aboriginal hunting (an accommodation at the request

of the Tłı̨chǫ Government), and changing language from “setting and meeting” to “an approach to setting and, to the greatest extent possible, managing habitat disturbance thresholds...”

In response to your concerns (as well as those of the Yellowknives Dene First Nation, the Review Board and the Wek'èezhì Renewable Resources Board), the responsible ministers have accepted the Review Board's August 15, 2018 suggestion that **monitoring to determine** population trends, **abundance**, and distribution, be included in Part 2 of Measure 6-1.

By including monitoring to determine abundance, responsible ministers believe these specific concerns, as they relate to the NSMA's asserted Aboriginal right to harvest boreal caribou, are adequately accommodated.

Measure 6-2

NSMA is of the view that the wording of this measure should be kept as originally worded by the Review Board as the measure is the most specific, immediate, direct, and measurable mitigation among the measures to protect boreal caribou.

The Review Board states that Measure 6-2 is designed to be preventative, implemented as a precautionary approach to “immediately mitigate the significant impacts of increased mortality from [non Aboriginal] hunting due to increased access resulting from the all-season road.” Under Measure 6-2, as originally written, a **temporary** no-hunting corridor will be established to reduce the take of boreal caribou along the Project route. **No preventative or precautionary action is required until the road is opened to the public**, at which time the no-hunting corridor will be established and, at a minimum, will remain in place until the *Recovery Strategy for Boreal Caribou in the Northwest Territories* is fully implemented... and sustainable harvest levels determined.

The responsible ministers believe their final proposed measure is appropriately precautionary and will prevent significant adverse impacts to boreal caribou and YKDFN's asserted Aboriginal and/or Treaty right to harvest boreal caribou in the Project area.

As written by the Review Board, Measure 6-2 requires a no-hunting corridor for boreal caribou to be in place until the *Recovery Strategy* is fully implemented and sustainable

harvest levels for the North Slave region of NT1 are determined. There is no requirement within the Measure to determine whether the no-hunting corridor is effectively mitigating project effects and protecting caribou. There is also no requirement for sustainable harvest levels to be determined, unless the GNWT wishes to remove the no-hunting corridor. The modification proposed by the responsible ministers requires GNWT-ENR to determine, prior to the road opening and management actions being implemented, what the sustainable harvest of boreal caribou is. The determination of sustainable harvest levels will be essential in managing the population of boreal caribou and in determining effective mitigation methods. This upfront determination of sustainable harvest, as proposed by responsible ministers, is more protective of boreal caribou than delaying this determination as would have been permissible under the Review Board's proposed suite of measures regarding boreal caribou.

The responsible ministers' proposed final wording of this Measure takes a more precautionary approach to protection of boreal caribou and NSMA's asserted Aboriginal and/or Treaty right to harvest boreal caribou than the Review Board's measures. With the final proposed modification, management action must be undertaken **if at any point current** harvest levels are determined to exceed the sustainable level. This includes points in time before the road is opened to public use, as well as once the road is open. Management action could include, but are not limited to, a no-hunting corridor, which is the requirement in the Review Board's original measure.

The responsible ministers' final proposed measure provides for the co-management process involving the Wek'èezhì Renewable Resources Board to be used in any further management actions that will take place if monitoring of the population trends and abundance, as set out in Measure 6-1, determines that the harvest of boreal caribou is increasing towards unsustainable levels.

Reference to the no-hunting corridor remaining in place until the *Recovery Strategy for Boreal Caribou in the Northwest Territories* has been fully implemented has been removed from the measure. There are established processes under the NWT *Species at Risk Act* to guide the implementation of the recovery strategy.

Measure 6-3:

NSMA proposed the following wording:

“The developer will offset effective boreal caribou habitat lost because of the disturbance of the Project. The developer, with the involvement of GNWT-ENR, will prepare and implement a habitat offset plan. The offset area, at minimum, will be based on the area of the right of way with a 2500 m buffer on each side. The plan will describe how it will be achieved.”

In principle, responsible ministers agree with offsetting habitat that has lost effectiveness as a result of the Project. As with NSMA’s proposed modification to the measure and the Review Board’s measures (both the original and the suggested modifications to the responsible ministers’ initial modified measure), the final proposed measure from responsible ministers includes an offset that would ensure that caribou habitat that is effectively lost due to the Project will be offset.

This, combined with the aforementioned proposed final measures, will ensure that the Project does not have a significant adverse impact on boreal caribou and thereby adequately accommodate the concerns NSMA has expressed regarding potential impacts to its asserted Aboriginal right to harvest boreal caribou in the Project area

The responsible ministers are of the view that the details of the habitat offset and restoration plan, including the area to be offset, should be determined through the existing co-management process, with involvement of the Wek’èezhì Renewable Resources Board in the review of both the draft and final offset plan.

The responsible ministers feel that the rationale presented on June 22, 2018 regarding modifications to this measure still applies. The co-management process should be fully respected. The modified measure requires the developer and GNWT-ENR to collaborate with the Wek’èezhì Renewable Resources Board and the Tłı̨chǫ Government and consult with Environment and Climate Change Canada, Yellowknives Dene First Nation and NSMA in order to develop an appropriate habitat offset area that is precautionary without the measure being overly prescriptive, respects the co-management process and does not presuppose its outcome.

Consultation on final wording of the Measures

As mentioned at the beginning of this letter, the responsible ministers are now consulting with NSMA on the final proposed wording of Measures 6-1, 6-2 and 6-3 prior to rendering a final decision under sub-paragraph 130(1)(b)(ii) of the *Mackenzie Valley Resource Management Act*. Your continued input is important for informing the responsible ministers' decisions relating to the Project. This is an opportunity to advise the responsible ministers whether their final proposed wording of the three measures (6-1, 6-2, 6-3) and the final proposed modification to one measure by the Tłı̨chǫ Government, has the potential to adversely impact your asserted Aboriginal right to harvest boreal caribou in the Project area. The edits made by the responsible ministers are in green font and the segments of the Review Board's proposed modified text that the responsible ministers agree with are in purple font in the attachment.

The GNWT and the Government of Canada are again seeking the NSMA's response to the following questions:

- Are there any specific components of the modification(s) to the measure(s) in green and/or purple font that you identify as having the potential to adversely impact your asserted Aboriginal rights?
- If so, please specify the nature of any and all concerns regarding potential adverse impacts resulting from the modification(s) to the measure(s) in green and/or purple font, and which asserted Aboriginal rights you see as being potentially adversely impacted, in your response letter; and
- Please specify what modification(s) to the measure(s) in green and/or purple font you would recommend to address the potential adverse impact.

Please provide any written comments by September 26, 2018, directly to the GNWT's Department of Lands', Project Assessment Branch, via Melissa Pink at Melissa.Pink@gov.nt.ca or 867-767-9180 ext. 24021.

Sincerely,



Kate Hearn
Assistant Deputy Minister
Planning and Coordination
Department of Lands



Adrian Paradis
A/ Director-General
Northern Projects Management Office
Government of Canada

- c: Mr. Gary Bohnet, Principal Secretary, Office of the Premier of the Northwest Territories
- Mr. Mike Aumond, Secretary to Cabinet/Deputy Minister, GNWT Executive and Indigenous Affairs
- Mr. Alan Cash, Deputy Secretary to Cabinet and Assistant Deputy Minister
- Mr. Willard Hagen, GNWT Department of Lands
- Dr. Joe Dragon, Deputy Minister, GNWT Department of Environment and Natural Resources
- Mr. Robert Jenkins, Assistant Deputy Minister, GNWT Department of Environment and Natural Resources
- Mr. Mark Hopkins, Director General, Natural Resources and Environment Branch, Crown-Indigenous Relations and Northern Affairs Canada
- Mr. Patrick O'Neill, Director General, Explosive Safety and Security Branch, Natural Resources Canada
- Mr. Mark Cliffe-Phillips, Executive Director, Mackenzie Valley Environmental Impact Review Board
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Attachment

Revised proposed wording for Measure 6-1

6-1, Part 1: Develop and implement range plans

The GNWT-ENR will develop and implement a range plan for boreal caribou (t̥d̥z̥ı) in the North Slave portion of the NT1 range, as required by the *Recovery Strategy for the Boreal Caribou in the NWT*. The GNWT-ENR will also develop and implement a range plan for any other region where boreal caribou (t̥d̥z̥ı) may experience impacts related to the Project.

The range plan(s) will be developed collaboratively with Aboriginal groups and co-management partners. GNWT-ENR will complete and submit a range plan for the North Slave portion of the NT1 range to the Wek'èezhì Renewable Resources Board for review under section 12.5.1 of the T̥ıcho agreement a minimum of 90 days before the Project is opened for public use.

The GNWT will work collaboratively with the T̥ıcho Government and other relevant Aboriginal and federal land management authorities to manage habitat to achieve the habitat disturbance threshold set out in this range plan **to the greatest extent possible**. **The GNWT will consult with applicable Aboriginal groups as required.**

6-1, Part 2: Information and adaptive management requirements

For the area identified by the range plan(s) in measure 6-1, part 1, the following must be included in the development and implementation of the *Recovery Strategy for the Boreal Caribou in the NWT* or range plan(s):

- monitoring to determine population trends, abundance and distribution;
- determination of population thresholds and triggers to inform adaptive management;
- harvest monitoring and reporting;
- determining sustainable harvest levels;
- identifying critical habitat;
- ongoing habitat disturbance monitoring;
- setting disturbance thresholds for critical habitat and, **to the greatest extent possible**, managing habitat **towards meeting** these disturbance thresholds for each range planning region; and,
- monitoring predator populations including densities, movements and predation rates.

Monitoring will meet the requirements of Appendix C. GNWT-ENR will work with the developer to adaptively manage Project impacts on boreal caribou (ṯdzı) (following guidance in Appendix B).

Measure 6-2: Determine sustainable harvest levels for boreal caribou (ṯdzı) and implement measures to ensure harvest is sustainable if required

Proposed wording for Measure 6-2

To mitigate significant adverse impacts from the project on boreal caribou (ṯdzı), the GNWT-ENR in collaboration with Aboriginal groups and in accordance with the requirements of the Ṯcho agreement, will determine sustainable harvest levels for boreal caribou in the North Slave portion of the NT1 range prior to the road being opened to the public.

In that same period, if current harvest levels are determined to exceed sustainable levels, management action will be undertaken in conjunction with the Ṯcho Government.

If harvest levels are observed to increase towards unsustainable levels once the road is opened to the public, GNWT-ENR and the Ṯcho Government will submit a wildlife management proposal under section 12.5.1 of the Ṯcho Agreement to the Wek'èezhì Renewable Resources Board for the timely implementation of any measures necessary to ensure boreal caribou harvest in the region is kept within sustainable levels.

Such measures may include the establishment of a no-hunting corridor along the Project route.

Measure 6-3: Habitat offset and restoration plan

Revised proposed wording for Measure 6-3

The developer will offset effective boreal caribou (ṯḏẕı) habitat lost because of disturbance from the Project.

The developer, with the involvement of GNWT-ENR, will prepare and implement a habitat offset plan. This plan will describe how the required habitat offset area will be determined and how it will be achieved. In preparing the plan, the developer will collaborate with Ṯı̱cẖ Government and the Wek'èezhì Renewable Resources Board, and consult with the following participants to this environmental assessment:

- Environment and Climate Change Canada;
- Yellowknives Dene First Nation; and,
- North Slave Métis Alliance.

The developer will make funding available to the parties to support this consultation and collaboration. The developer will submit a draft and a final plan as described below. Once approved, the developer will operate in accordance with the plan.

The developer will submit a draft plan to the Wek'èezhì Renewable Resources Board a minimum of 30 days prior to commencement of construction. The developer will submit the final habitat offset plan to the Wek'èezhì Renewable Resources Board for review under section 12.5.1 of the Ṯı̱cẖ Agreement, as soon as possible, and no later than 90 days prior to public use of the road. This final plan will include, at a minimum:

- the goals and objectives of the plan;
- a discussion on the expected effectiveness of mitigations and offsets;
- a decision framework to prioritize restoration areas, mitigations, and offsets, including references to the research on which the decision framework was based;
- a discussion of how any proposed mitigations or offsets align with the Recovery Strategy for the Boreal Caribou in the NWT and range plans;
- details of proposed ways to offset habitat disturbance including restoration sites, mitigation measures, offsets, forest fire fighting policies, or habitat management approaches;
- a description of the spatial scale of the proposed offset, the habitat quality and type, site specific restoration activities, and any challenges;
- a timeline for offsetting;
- a quantitative and qualitative assessment of the total area of boreal caribou habitat proposed for restoration and the timeframe required for restoration;

- a summary of consultation feedback that was integrated into the draft and final plans;
- a description of any Traditional Knowledge that was considered in the development of the plan, and how it was incorporated; and,
- a description of any resources provided to Aboriginal groups to support their involvement in the drafting of the final plan, and for any involvement in the implementation of the plan.

Measure 8-1: Fisheries Management Plan

Fisheries and Oceans Canada and the Tłı̨cẖo Government, with the support of the developer, will develop and implement Fisheries Management Plan for fisheries in the project area. This will prevent significant adverse impacts from additional fishing pressure that will likely result from increased access via the Project. In designing the plan, Fisheries and Oceans Canada will engage with the Tłı̨cẖo Government, the Wek'èezhì Renewable Resources Board, the Community of Whatì and other affected Aboriginal groups. Fisheries and Oceans Canada and the Tłı̨cẖo Government will submit the plan to the Wek'èezhì Renewable Resources Board for review under section 12.5.1 of the Tłı̨cẖo Agreement.

As part of this plan, the following work will be by completed Fisheries and Oceans Canada, and Tłı̨cẖo Government:

- a) Complete work to understand baseline fishery and harvest conditions. This work will include, at a minimum:
 - i. assessing yield and harvest;
 - ii. identifying management issues;
 - iii. establishing fisheries objectives; and,
 - iv. clarifying management and stewardship arrangements.

- b) Design and implement, with support of the developer, mitigation to prevent or manage project impacts (which may include a regulatory and compliance plan).

- c) Design and implement monitoring plans, meeting the requirements of Appendix C.

- d) Design and implement an adaptive management plan (following guidance in Appendix B).

Fisheries and Oceans Canada and the Tłı̨cẖo Government will provide opportunity for the working group (required by Measure 14-3) and other interested parties to review and comment on this plan.