

VIA EMAIL AND FAX

SEP 17 2018

Chief Edward Sangris and Band Council
Chief Ernest Betsina and Band Council
Yellowknives Dene First Nation
PO Box 2514
YELLOWKNIFE, NT X1A 2P8

Dear Chief Sangris and Chief Betsina:

Consultation on proposed final modifications to four measures in the Report of Environmental Assessment and Reasons for Decision for the GNWT's proposed Tłı̨chǫ 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 Tłı̨chǫ 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 Yellowknives Dene First Nation (YKDFN), sharing the proposed modifications to these three measures via a letter; the letter also included the Tłı̨chǫ Government's proposed modifications to five separate measures. The letter asked the YKDFN whether the proposed modifications had the potential to adversely impact YKDFN's asserted Aboriginal and/or Treaty rights. YKDFN's comments on the responsible ministers' and Tłı̨chǫ Government's proposed modifications for the measures were received on July 17, 2018. The responsible ministers thank you for these comments.

This letter has two purposes. The first purpose is to respond to the concerns YKDFN raised and the specific modifications to measures YKDFN proposed in your July 17, 2018 letter. 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 Tłıchǵ Government (attached).

Responses to concerns raised in YKDFN's July 17, 2018 letter

In your July 17, 2018 letter responsible ministers heard both the general and the specific concerns raised by YKDFN as they relate to the proposed modifications to Measures 6-1, 6-2, and 6-3. YKDFN raised a general concern that the responsible ministers should not be weakening the mitigations/accommodations relating to boreal caribou. The responsible ministers are of the view that the proposed final wording of the measures takes an appropriately precautionary approach to the protection of boreal caribou and their habitat. This ensures that the Project will not have a significant adverse impact on boreal caribou and responsible ministers believe adequately accommodates YKDFN's concerns regarding potential impacts to your asserted Aboriginal and/or Treaty right to harvest boreal caribou in the Project area. The responsible ministers' responses to YKDFN's specific concerns are set out below.

Measure 6-1, Part 1

YKDFN suggested modifications to the wording previously proposed by responsible ministers to address concerns related to the timing of submissions of range plans for the North Slave portion of the NT1 range and to address concerns related to the responsible ministers' proposal to remove reference to the National Recovery Strategy thresholds.

YKDFN's proposed alternate wording for the second paragraph in Measure 6-1, Part 1 was:

*"GNWT-ENR will complete and submit a range plan for the North Slave portion of the NT-1 range to the WRRB for review under section 12.5.1 of the Tłıchǵ Agreement no longer than **3 years from the issuance of the final Report of Environmental Assessment** OR a minimum of 90 days before the Project is opened for public use, whichever occurs first."*
[requested change identified in bold]

Throughout the environmental assessment, Indigenous governments and organizations have conveyed dissatisfaction with the speed at which range plans are being drafted and implemented. To address these concerns, the Review Board, via Measure 6-1, requires the range plans to be submitted for review a minimum of 90 days before the Project is opened for public use. YKDFN requested, via an 'or clause', that no later than three years from the issuance of the final Report of Environmental Assessment, the range plan be submitted, if the three years occurs before the road is open to public use.

The Wek'èezhii Renewable Resources Board (WRRB) has stated that 90 days will be a sufficient period of time for its review. Its review will consequently be complete before the Project is opened for public use.

The additional time constraint of "three years from the issuance of the final Report of EA..." does not offer additional protection to YKDFN's asserted Aboriginal and/or Treaty Right to harvest boreal caribou in the Project area. What requires mitigation in this measure are the impacts to boreal caribou as a result of the road being opened to the public. As well, responsible ministers note that mitigation measures must, under the Act and as noted by the Review Board in their August 15, 2018 letter, "provide for the control, reduction, or elimination of an adverse impact of a development on the environment." If the project is not developed within the three year period, this measure will not be tied to the Project.

The Review Board and responsible ministers have reached consensus on the first two paragraphs of this measure, that the range plan relates to the North Slave portion of the NT1 range and that the plan will be submitted to the WRRB a minimum of 90 days before the Project is opened for public use. The range plan, as a tool to protect critical habitat (which is itself being used as the indicator of protection afforded to boreal caribou) is an accommodation to the impact of the Project on YKDFN's asserted Aboriginal and/or Treaty right to harvest boreal caribou in the Project area.

For paragraph three (Measure 6-1, Part 1), YDKFN recommended the following wording:

*[...] to the greatest extent possible, **preserve the current (2018) amount of undisturbed habitat, recognizing that the GNWT cannot fully control forest fire occurrence or severity** [...]* [change highlighted in bold].

Responsible ministers appreciate that YKDFN's proposed modifications acknowledges forest fires are beyond the control of government. YKDFN's proposed wording sets the threshold at the current (2018) amount of undisturbed habitat and replaces a reference to the GNWT's ability to set a threshold for the North Slave portion of the NT1 range through engagement. The wording recommended by YKDFN has not been accepted as it does not allow for co-management partners and the GNWT to work together to set a disturbance threshold for the North Slave portion of the NT1 range. The co-management process involving the WRRB is the appropriate means of making this determination, which will be done in a collaborative manner.

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 YKDFN's asserted Aboriginal and/or Treaty right to harvest boreal caribou.

Measure 6-1, Part 2

As with 6-1, Part 1, the YKDFN recommends including a timeline approach to the seventh bullet in Part 2:

[...] setting habitat disturbance thresholds for each region by 2023, followed by managing habitat disturbances, to the greatest extent possible, for each range planning region [...] [change highlighted in bold text]

As stated above, the purpose of measures are to mitigate significant impacts that may arise as a result of the Project. An arbitrary date, not linked to a project does not mitigate Project impacts. As such, the suggestion of including 2023 as the date by which habitat disturbances would be set was not accepted by responsible ministers.

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..."

YKDFN recommended that responsible ministers return the requirement to measure abundance to 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.

In response to your concerns (as well as those of the North Slave Métis Alliance, the Review Board, and the WRRB), 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 YKDFN's asserted Aboriginal and/or treaty right to harvest boreal caribou, are adequately accommodated.

Measure 6-2

YKDFN strongly rejected any modification to this measure.

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 the 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 YKDFN'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 actions 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 WRRB 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. There are established processes under the NWT *Species at Risk Act* to guide the implementation of the recovery strategy.

Measure 6-3

YKDFN expressed concern with the lack of clarity in this measure but recognized the responsible ministers' interest in having greater flexibility to determine the offset (area) when it is reasonable and backed by solid science and traditional knowledge. YKDFN also stated they are of the position that the proposed wording gives the GNWT too much discretion regarding the timing of the determination of the area to be offset and implementation of the offset.

YKDFN suggested the following wording:

*[...] The developer, with the involvement of GNWT-ENR, will prepare and implement a habitat offset plan. This plan will be based on a minimum buffered distance of 2500m on each side of the right of way, **unless GNWT can provide clear evidence demonstrating that the buffer can be modified from the precautionary levels** [...]*[change highlighted in bold text].

In principle, responsible ministers agree with offsetting habitat that has lost effectiveness as a result of the Project. As with YKDFN'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 the responsible ministers believe, adequately accommodate the concerns YKDFN has expressed regarding potential impacts to its asserted Aboriginal and/or Treaty 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 WRRB 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 WRRB and the Tłı̨chǫ Government and consult with Environment and Climate Change Canada, YKDFN and North Slave Métis Alliance 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 YKDFN 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' decision 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 and/or Treaty 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 seeking the YKDFN'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 and/or Treaty 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 and/or Treaty 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,



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Assistant Deputy Minister
Planning and Coordination
Department of Lands
Government of the Northwest Territories



Adrian Paradis
A/ Director-General
Northern Projects Management Office
Canadian Northern Economic
Development Agency
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, Deputy Minister, 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

Ms. Ethel Liske, Negotiations Coordinator, Akaitcho Dene First Nations

Chief Louis Balsillie Denínu Kúé First Nation

Chief Darryl Marlowe, Łutselk'e Dene First Nation

Mr. Mark Cliffe-Phillips, Executive Director, Mackenzie Valley Environmental Impact Review Board

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 (t̥ɔdzɪ) 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 (t̥ɔdzɪ) 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 T̥ìcho agreement a minimum of 90 days before the Project is opened for public use.

The GNWT will work collaboratively with the T̥ìcho 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 Ṯẖcẖ Government and the Wek'èezẖ 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'èezẖ 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'èezẖ Renewable Resources Board for review under section 12.5.1 of the Ṯẖcẖ 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 Tłıchǵo 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 Tlıcho Government, the Wek'èezhì Renewable Resources Board, the Community of Whatì and other affected Aboriginal groups. Fisheries and Oceans Canada and the Tłıchǵo Government will submit the plan to the Wek'èezhì Renewable Resources Board for review under section 12.5.1 of the Tłıchǵo Agreement.

As part of this plan, the following work will be completed by Fisheries and Oceans Canada, and Tlıcho 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 Tłıchǵo Government will provide opportunity for the working group (required by Measure 14-3) and other interested parties to review and comment on this plan.