



YELLOWKNIVES DENE FIRST NATION TECHNICAL REPORT

Tłıchq All Season Road-EA-1617-01

Mackenzie Valley Review Board

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Introduction

The Yellowknives Dene First Nation (YKDFN) submits this Technical Report to the Review Board as evidence to assist in decision-making for the proposed Tłı̄chǫ All Season Road (TASR-EA-1617-01).

Organization

The YKDFN membership resides primarily in the two communities of Dettah and Ndilo, in addition to the adjacent community of Yellowknife. The proposed Tłı̄chǫ All Season Road lies within YKDFN traditional use area. YKDFN is concerned with the impacts of the project on the land, the animals, and the water that they rely on. YKDFN are not just concerned about the impacts in the short term, but also far into the future. The TASR will be a semi-permanent structure whose effects on wildlife will stretch far into the future.

YKDFN has practiced land management since time immemorial, with a single rule – if you take care of the land, it will take care of you.

The YKDFN Department of Land and Environment seeks to provide YKDFN's perspective on all matters relating that impact the Chief Drygeese territory and critical values that the membership rely on.

Woodland Caribou Impacts

Issue Statement 1

Whether the percentage of undisturbed habitat in the boreal caribou range is sufficient as to be protective of the boreal caribou.

Proponents Conclusion

The proponents Adequacy Statement Response (4.2.3.1, Boreal Caribou) states,

“Overall, 66.8% of the NT1 range is undisturbed boreal caribou habitat, which exceeds the 65% minimum threshold for undisturbed habitat predicted necessary to support a self-sustaining boreal caribou population (Environment Canada 2012). At Base Case, boreal caribou are predicted to be self-sustaining and ecologically effective with a low risk, but are near their resilience limit.”

YKDFN Conclusion

The YKDFN reject the proponent's assertion that the estimated 66.8% undisturbed habitat leaves the boreal caribou at “low risk”.

Evidence and Rational

YKDFN does not have confidence in the 65% minimum undisturbed habitat value used in the Adequacy Statement Response. It is our contention that this value is a scattershot guess at best, arrived at without any significant consultation from Northern traditional knowledge holders.

What's more, we contend that even the science used to inform this recommendation is poorly validated. Environment Canada has not demonstrated an ability to effectively manage or protect boreal caribou using any habitat protection guidelines, 65% or otherwise. In short, we are of the opinion that Environment Canada isn't in a position to tell anyone how to manage caribou.

Even if YKDFN were willing to accept that the 65% undisturbed habitat recommendation was well vetted and robust, it represents a minimum. Not a target. The proponent's cavalier assertion that being within 1.8% of a habitat requirement recommendation represented a low risk is concerning.

Further, the proponent's reliance on a 1.8% difference between its estimated undisturbed habitat value (66.8%) and the estimated minimum requirement as recommended by Environment Canada (65%) give a false air of precision. Measuring suitable habitat for a species such as boreal caribou over such a prodigious area will necessarily give rise to a margin of error. Even if we accept that the calculation of potential habitat in the study area is sufficiently precise to obviate the need for a margin of error, estimating the relative suitability of habitat within this area would be give rise to more sources or error.

All of the stated concerns about sources of error and error propagation should likewise be applied to the Environment Canada 2012 estimate for minimum undisturbed habitat requirements. However, instead of showing sources or error in the estimated 66.8% or 65% undisturbed habitat the proponent points to the thinnest of margins (1.8%) as an assurance of boreal caribou population resilience. Without knowing what the sources of error for both values, how error was propagated, or how estimates for Environment Canada's 2012 recommendations were established we cannot accept the proponent's assertion that there is sufficient undisturbed habitat to be protective of boreal caribou population health.

Finally, the proportion of undisturbed habitat estimates do not account for the differential impact that linear features such as roads can have on caribou movement. It is well established that roads are a semi-permeable feature for boreal caribou. Traditional knowledge asserts that caribou are intelligent and that they learn migratory routes and that this information is passed down to young caribou.

YKDFN argues that this will create a time dependence for the impact of the road on land use and available habitat for caribou. As fewer caribou use routes that require

crossing the TASR subsequent generations are less likely to return to TASR bisecting routes. Long-term the caribou will look to other areas. This has the effect of further reducing time-dependent available habitat. A similar scenario was predicted by YKDFN TK holders prior to the opening of the Ekati Diamond mine.

Recommendations

1. The proponent show error assumptions, values, propagation methods used for the Environment Canada 2012 recommendation of a minimum 65% undisturbed area habitat requirement.
2. The proponent show error assumptions, values, and propagation methods used for the proponent's estimate of 66.8% undisturbed habitat in the study area.
3. The proponent incorporates traditional knowledge (TK), including but not limited to TK from YKDFN, in estimating the type and proportion of habitat necessary to ensure long-term health and viability of boreal caribou in the study area.
4. The proponent develop mitigative measures that reflect the time dependence of realized impacts imposed by permanent features such as roads.

Aboriginal Rights, Consultation and Accommodation

Issue Statement 2

Whether the GNWT actively obstructed YKDFN's exercise of its rights under section 35 of the *Constitution Act 1982*, and as a result acted in bad faith.

YKDFN Conclusion

The GNWT conducted itself in bad faith at multiple points in this process.

Evidence and Rational

During the initial consultation process YKDFN was not consulted. The YKDFN office of Land and Environment this to the attention of the Mackenzie Valley Review Board's attention during the comment phase.

During the May 25, 2017 Adequacy Statement Response Technical Review Session, YKDFN staff, again, informed the GNWT Department of Infrastructure that YKDFN has a history of use in and around the project footprint. Also that this use was ongoing with land users frequenting the area in late winter to harvest boreal caribou

Subsequent to this, the GNWT drafted a letter to YKDFN questioning the validity of YKDFN's interest in the region around the TASR and wildlife that use the area. For

the full correspondence we kindly direct the board to the document *Correspondence between GNWT and YKDFN*, receive by The Board June 26, 2017.

YKDFN's response detailed our interests in the region and the historical context justifying those interests, including a traditional use map generate through the Dene Mapping Project. However, we would like to be clear that we do not accept that the GNWT's position or approach was based on ignorance a misunderstanding of YKDFN's rights. The GNWT is a well-staffed and sophisticated party with extensive experience conducting Aboriginal consultation in accordance with section 35 of the *Constitution Act 1982*. That the GNWT wasn't aware of YKDFN's rights and interests in project area when the drafted the May 25, 2017 letter stretches credulity.

YKDFN asserts that the GNWT Department of Infrastructure attempted to deliberately impede YKDFN's participation in the TASR hearing process, though we don't presume to know why. This is very disheartening for YKDFN and the Department of Land and Environment (L&E). L&E is single staffed with respect to regulatory issues, and it is sufficiently challenging to stay abreast of all matters without having proponents deliberately undermining YKDFN's section 35 rights.

This should concern all Aboriginal groups and governments in the Northwest Territories.

Recommendations

5. The GNWT Department of Infrastructure, and all department, must act in accordance with maintaining the Honour of the Crown in their dealings with Aboriginal Rights holders. These rights are enshrined in the *Constitution Act 1982* and foundational documents such as Treaties.
6. That the Review Board consider its role as a third party undertaking consultation and accommodation in light of Supreme Court of Canada rulings *Clyde River (Hamlet) v. Petroleum Geo-Services Inc., 2017 SCC 40* and *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc., 2017 SCC 41*

Conclusion

YKDFN would like to thank the Board and Board staff for their time and attention to these matters.