

# **NORTH SLAVE MÉTIS ALLIANCE**

**PO Box 2301 Yellowknife, NT X1A 2P7**



December 15, 2017

Mark Cliffe-Phillips  
Executive Director  
Mackenzie Valley Environmental Impact Review Board  
Box 938, #200 Scotia Centre  
5102-50<sup>th</sup> Avenue  
Yellowknife, NT X1A 2N7  
Phone: (867) 766-7050  
Email: [mcliffephillips@reviewboard.ca](mailto:mcliffephillips@reviewboard.ca)

## **Via Email**

Dear Mr. Cliffe-Phillips

**RE: EA-1617-01 Closing Submission of the North Slave Métis Alliance for the Tłı̨chǫ All Weather Road Project Environmental Assessment**

The North Slave Métis Alliance (NSMA) appreciates the opportunity to provide written closing submissions for the Tłı̨chǫ All Weather Road Project Environmental Assessment.

As you will see in our submissions, NSMA's primary concerns relate to protecting NSMA members' Aboriginal rights as Métis to harvest in their traditional territories north and east of Great Slave Lake, Northwest Territories. This should come as no surprise, since - as the Federal Court of Canada recently acknowledged in *Enge v. Canada*, 2017 FC 932 - part of the very *raison d'être* of NSMA is to assert its members' Aboriginal harvesting rights in the area north and east of Great Slave Lake.

NSMA wishes to emphasize to the Mackenzie Valley Environmental Impact Review Board (MVEIRB), as well as other regulatory boards, that the Federal Court also found that the failure to grapple with the fact that NSMA members' hold their Aboriginal rights as Metis can poison consultation and make it impossible to appropriately consider reasonable accommodation measures. It follows, therefore, that we encourage the MVEIRB to recognize that NSMA members have a good claim to Aboriginal rights as Métis north and east of Great Slave Lake. With this in mind, we look forward to the final environmental assessment regarding the Tłı̨chǫ All Weather Road Project.

Yours truly,

A handwritten signature in blue ink that reads "Bill Enge".

William (Bill) A. Enge  
President  
Email: [president@nsma.net](mailto:president@nsma.net)

# **NORTH SLAVE MÉTIS ALLIANCE**

**32 Melville Yellowknife, NT X1A 0G2**



## **EA-1617-01 Closing Submission of the North Slave Métis Alliance for the Tłıchǫ All Weather Road Project Environmental Assessment**

### **1.0 SUMMARY**

The North Slave Métis Alliance (“NSMA”) has reviewed the proposed Tłıchǫ All Season Road (“TASR”) Project, as well as answers and rationale presented by the Government of the Northwest Territories (“GNWT” or “Proponent”) with regards to the potential impacts of the project to rights and interests of the NSMA members. During our review, we focused on the effects assessment process and potential impacts to wildlife species of particular concern to the NSMA members (boreal caribou, wood bison, moose, and barren ground caribou). The following is a list of the recommendations that we feel would help to provide more certainty in the assessment results, and would help to improve mitigation and monitoring to reduce project impacts.

### **2.0 BACKGROUND**

The NSMA produced a comprehensive technical report ([PR#214](#)) to articulate and justify our concerns and views regarding potential impacts of the project. In general, the concerns expressed by the NSMA’s technical review fell within the following three categories:

- i. The quality and reasonableness of the effect pathways considered, and predictions made, within the effects assessment, ([PR#214](#), Appendix A, Sections 3 and 4);
- ii. The quality and reasonableness of mitigation and monitoring proposed by the proponent to sufficiently reduce or avoid impacts of the project ([PR#214](#), Appendix A, Sections 5-19); and,
- iii. Additional mitigation, management, and monitoring required to increase impact certainty, and minimize impacts to acceptable levels ([PR#214](#), Appendix A, Sections 20, 21, and 22)

In this submission of our closing argument, we summarize our primary concerns and recommendations for Measures that the NSMA would like the Mackenzie Valley Review Board (“MVRB”) to include as conditions of the project approval.

### **3.0 PRIMARY CONCERNS**

Primary concerns raised by the NSMA that were related to the quality of the EA and the reliability of the predictions therein, are discussed in the subsections below.

### 3.1 Size of the Assessed Area Used for Boreal Caribou

In sections 3.3 and 4.3 of Appendix A of our technical review ([PR#214](#)), the NSMA raised strong concerns about the size of the assessment area used by the GNWT to determine whether the project would have a significant impact on boreal caribou.

Impacts to boreal caribou were assessed within the NT1 range. The NT1 range is very large relative to the size of the project considered. The NT1 range is 44,166,546 ha, including a significant portion of the NWT, and extends into the northeastern portion of the Yukon Territory. Due to its excessive size relative to the project considered, it acts to “dilute” more relevant and localized regional impacts. The GNWT responded to the NSMA’s concerns, as well as similar concerns raised by the WRRB ([PR#228](#)).

In the GNWT’s response ([PR#239](#)), they assert that the assessment area was justified because it is the unit of area considered by Environment and Climate Change Canada (ECCC) for the management of boreal caribou under the auspices of Federal Species at Risk (“SAR”) Act.

In the GNWT’s response to the WRRB, they reference population continuity presumed from ECCC radio-collar data; radio-collar data observed in 140 collared animals showed some degree of annual home range overlap and no obvious gaps in the distribution of caribou within the NT1 range.

It is important to note that the availability of continuous habitat within the entirety of the NT1 range is already only marginally over the 65% threshold required for boreal caribou to be self-sustaining. As the scale of the assessment area is reduced, excluding more and more of the northerly portion of the NT1 range, to reflect a more realistic regional area associated with the southern portion of this range, the percentage of continuous habitat requirement for a self-sustaining population would not be met.

Implication of the GNWT’s refusal to consider more localized impacts to boreal caribou is that impacts to NSMA members’ ability to harvest caribou, where they hold Aboriginal right to do so, is underestimated.

The NT1 spatial scale is an inappropriate area for considering impacts to wildlife in a way that would have meaningful effects to Métis culture. For example, if caribou are extirpated from the southern portion of the NT1 range, or various regional areas therein, members of these groups would have to travel far to experience and hunt species that have always been a part of their culture. If someone must travel to the Yukon, or far north within the NWT, that species may be considered ostensibly lost from the perspective of the local group. By extension, the project would have had a significant impact on the Aboriginal right of that people.

In other words, the fundamental error in the GNWT’s approach to selecting the assessment area is that the GNWT’s assessment endpoint for impacts on boreal caribou did not seriously consider impacts of the Project on the ability of local Aboriginal harvesters to continue to exercise their rights in their traditional use area. On the contrary, the GNWT relied on an endpoint consistent with the Federal Species at Risk Act, which is the management of an entire SAR wildlife

We believe that these scale perspectives should have been integrated into considerations and ultimate decisions about spatial scales used in the assessment for boreal caribou. We further assert that a more complete examination of evidence would have resulted in the conclusion that, at a regional scale of greater relevance to our members, the project will have a significant impact via its probable adverse effects on boreal caribou.

In NSMA's view, evidence is already before the Review Board that supports probable significant adverse effects on boreal caribou in the relevant geographical scope, such as the North Slave region or Wekeezhii Management Area.

NSMA also submits that the GNWT's refusal to re-assess the potential impacts based on a more reasonable spatial scale reflects poorly on the Proponent. NSMA suggests to the Review Board that the Proponents failed to use a smaller, more reasonable assessment area, so it would not have to grapple with the adverse effect on NSMA members' ability to harvest boreal caribou. Reassessment would have required the Proponent to reconsider the Project or adopt extensive mitigation measures.

With above in mind, NSMA asks the Review Board to conclude that the TSAR will have significant adverse effects on boreal caribou within NSMA members' traditional harvesting area (the area north and east of Great Slave Lake), and that mitigation, monitoring, adaptive management, compensation and offsetting should be prescribed for this project to obtain approvals.

**Recommended Measure 1:**

Based on the evidence provided, the Review Board concludes that there will be a significant adverse impacts on Boreal caribou and its users as a result of the project. In order to avoid causing the significant adverse effect, the Proponent shall obtain approved mitigation, monitoring, adaptive management, compensation and offsetting plans ("Plans") prior to the commencement of construction.

**Recommended Measure 2:**

The Proponent shall develop the Plans in collaboration with affected Aboriginal organizations, including the NSMA.

**Recommended Measure 3:**

The Proponent shall develop, implement, and monitor the progress of the Plans collaboratively with affected Aboriginal groups, including the NSMA. The Proponent may strike a working group, committee, or independent oversight group to facilitate the collaborative work. The Proponent shall fund the affected Aboriginal groups to participate in this work.

### 3.2 Indirect Effect Pathway Considerations and Monitoring

Within Sections 3.1, 3.3, and 4.0, of Appendix A of the NSMA's Technical Report ([PR#214](#)), concerns were raised about the potential that effects of the TASR on wildlife, particularly boreal caribou, are underestimated due to inadequate consideration paid to effects of the project on hunting pressure, negative interspecies interactions (expected to increase due to recent fire dynamics), and increased predation rates due to the ease of travel and hunting by wolves along linear corridors.

We highlight the fact that many of the responses and rationale provided by the GNWT to address concerns that such impacts were underestimated relied on two key arguments: 1. that there is already a cleared, linear corridor along most of the route used for the TASR, and 2. that fires occur independent of the project and thus do not need to be considered as part of the effects assessment. We make several observations regarding these points.

- First, although there is an existing clearing that is used by land users, this linear corridor cannot be driven along and accessed, by truck or car during non-winter seasons. If a person wishes to use this corridor at present, they generally travel by snowmobile in the winter, and by ATV in non-winter months. Hence, the low quality of the linear clearing associated with the trail is currently limiting its use by recreational hunters, resident hunters from Yellowknife, and out of town tourists. This is a factor that will predictably change when the TASR is built, which will provide a safe, year-round road that can be used by all types of personal vehicles, and will be more attractive to out of town tourists or weekend visitors from Yellowknife.
- Second, we must also consider the temporal implications of altering a seasonal trail and converting it into a permanent ASR, from an EA framework perspective. The current trail still holds the potential for decommissioning, should it be necessary due to impacts. However, a permanent ASR, like the TASR, takes decommissioning off the table. Thus, all residual impacts incurred due to the project, and after mitigation is applied, must be considered to extend into the far future, and irreversibly.
- Third, the GNWT emphasizes that fire-related impacts to habitat is an issue that is outside of the project scope, as it is not influenced by the project and thus does not need to be considered ([PR#187](#); IR 33, Response 2). However, the proposed project will interact with recently fire-impacted landscapes, which are part of the “base case”, or baseline conditions. The *interaction* between the project and baseline conditions, which the NSMA has shown may create shifting interspecies relationships and impacts along the road corridor ([PR#214](#), Appendix A, Section 3.3), needs to be considered.

Keeping in mind the arguments above, the NSMA submits that the TASR will act as an attractive corridor for hunters, including resident hunters that may travel from Yellowknife or from out of town, to visit the area or engage in land use (including hunting; legal or illegal), which will require a plethora of resources to monitor and adaptively manage. While the GNWT has argued that the winter road already provides a cleared corridor that hunters may use to access the area ([PR#239](#), Section 2.6.2), we do not see the TASR as equivalent in this respect. While the current winter road clearing allows snowmobile travel in the winter, and ATV travel in other seasons, personal trucks and cars cannot generally use the road. The TASR, however, will result in a significant improvement over the current winter road corridor. The proposed TASR will now provide a

smooth, safe, and well-maintained road, year-round, which will be conducive to use by personal trucks and cars, in addition to snowmobiles and ATVs. The improved road quality, smoothness, and safety of the TASR will result in more drivers venturing along the road. We predict that the TASR will result in increased numbers of non-Aboriginal people using the road to access this area, as well as areas to the north of Whati, for various land use purposes and tourism. In turn, this increased access and use by hunters will impact wildlife.

The NSMA also expresses concern over apparent competition between caribou and other ungulates which may be underestimated in the current effects assessment, as described in Section 3.3 of Appendix A of the Technical Report ([PR#214](#)). The GNWT responded to a concern related to not considering fire alongside habitat loss (PR#187) in their answer to #33 of the NSMA's information requests (PR187). They also appeared to respond to our concern around changing interspecies dynamics due to recent fires and the road interacting within in their response to our technical report ([PR#239, Section 2.4.2](#)). However, the GNWT did not address the concerns that we described in Section 3.3 of Appendix A of the Technical Report ([PR#214](#)) within their response. Although the GNWT's response title refers to Apparent Competition, their response focused on habitat availability rather than apparent competition.

The NSMA is also concerned with indirect effects of the road on predation risk as described in Section 4.0 of Appendix A of the Technical Report ([PR#214](#)), combined with other sources of mortality alluded to above, being unsustainable over the long term, within the south portion of the NT1 range. It has been demonstrated that the probability of boreal caribou dying (from wolf predation) increases with active road density, for areas with overall low road density, as in the project area. Therefore, developments do not need to be extensive before an effect is identified. ***A 1-unit increase in standardized density of active roads, in the annual home range of a caribou, has been shown to increase its risk of dying by 88%*** (Leblond *et al.* 2013). This area would likely represent a zone within which boreal caribou presence is of extreme importance to Aboriginal rights holders, such as NSMA members. We cannot say that there will be no effect of the proposed road on predation because the existing road and the proposed project may function very differently. The existing road feature is not considered an "active" road as it is more similar to a derelict road, which decrease hunting risk by predators (Leblond *et al.* 2013). This contrasts with the proposed project which would be expected to increase predation risk. Adding to this is the fact that the road, once developed, becomes a feature that must be considered as having an effect into the far future, with no potential for road restoration. We also do not know the locations and numbers of the boreal caribou in the southern part of the range that this would impact due to a lack of population data.

#### **4.0 UPDATED MEASURES**

Given the arguments presented with NSMA's Technical Review ([PR#214](#)), discussion points brought forward during the public hearing, responses from the GNWT to the NSMA's technical report (PR#239) and points reiterated above regarding spatial scale, and the likely under-estimation of the magnitude of certain indirect effects, the NSMA recommends that the Board adopt Measure 4.

##### **Measure 4:**

The refined boreal caribou assessment area will be used to strengthen, mitigation, offsetting, compensation, and monitoring plans. These plans should be refined in collaboration with these same groups noted in Measure 2 and 3, in an upcoming version of the Plans (e.g. WMMP).

1. Offset for all habitat loss that will occur due to the project. Compensate for habitat loss by decommissioning and restoring old or historic linear corridors no longer needed for their initially created purposes within the southern portion of NT1.
2. Add a second harvest check station rather than moving the existing harvest check station, which may render a “blind spot” for harvest to the north of Whati.
3. Collect ongoing monitoring data on boreal caribou in the regional study area and Project Area, to improve knowledge of population size, distribution, and trends. We recommend that this occur for a minimum of 10 years post construction.
4. Conduct monitoring for project effects on numbers and distributions of other species that could interact with and negatively affect boreal caribou via apparent competition. The additional species that should be monitored include wood bison, moose, and wolves.
5. Options for adaptive management and mitigation measures, with regards to apparent competition, should be included if the monitoring in point 4 lead to the detection of issues related to apparent competition. Such options may include funding fire suppression to reduce the growing proportion of early seral stage habitat in the area surrounding the project (which can cause increases in moose and bison, which in turn support increases in wolves that prey on boreal caribou), or encouraging the hunting of certain species, *if* they are increasing in number and causing apparent competition with boreal caribou (e.g., moose).
6. Related to point 5, experimental wolf hunting for wold reductions could be included as an adaptive measure, if monitoring data suggest that wolf predation on boreal caribou is increasing due to the change in the function of the road (i.e., from its current functioning, largely as a derelict road at present, which can reduce predation by wolves, to a low-density road, known to increase wolf predation of caribou). We note that wolf hunting would be less effective if the driving force is apparent competition (5), and monitoring of alternate prey (moose, wood bison) is needed to distinguish between these two effects.
7. Ground-based wildlife surveys should be done prior to vegetation clearing, blasting, and other construction activities during the calving, post-calving, and rutting periods, as the reliance on collared animals during a period where animals are highly solitary will result in the majority of animals not being protected.
8. Use powerful, long distance or drone flown infrared scopes to improve monitoring capabilities and distances in winter dark conditions to allow for monitoring of boreal caribou. High powered, long range infrared devices that are both hand held and operated by aerial drones can be used to search for caribou, bison and moose. Hand held infrared will be blocked in highly wooded areas, but these devices can still detect moving animals, or portions of signals between trees in low and moderate density forests (up to 3- 4 km). In highly dense forests, aerial drones with infrared detectors that scan downward through the trees may be more effective.
9. If helicopters are used, include data loggers in helicopters to collect real time data on over-flight altitudes and locations during sensitive periods for boreal caribou. These data can be used alongside radio-collar data for boreal caribou to determine if boreal caribou are avoiding helicopters, or increasing their movement speeds at various distances from helicopters.
10. Use a blast sound effect threshold (for quarry blasts) developed through a literature review on noise levels known to impact boreal caribou, barren ground caribou, moose, and wood bison to develop a well-informed buffer distance around quarry blasts. We recommended 90 dBA in our technical review, as a conservative value for most ungulates, but we recognize that further research on the ungulate and bovinds interacting with this project could lead to support for a different threshold. The dBA

- threshold adopted in Nunavut for the Back River mine project, based on a similar analysis by ERM for barren ground caribou, was 96 dBA. If the current blast buffer distance of 500 m does not exceed an informed threshold for these species, then no adjustments are needed. If it does, this buffer area should be increased accordingly (and surveyed prior to blasting using methods in 7).
11. Add an immediate adaptive management option, giving the environmental lead the authority to halt activity and to increase mitigation if harmful impacts to caribou are observed (without needing to wait for weekly or annual reports).
  12. Create escape gaps every 200 m through roadside snow, in areas where snow has accumulated to a depth of > 55 cm. Within created escape gaps, maintain snow at depths of < 55 cm, to allow young bison and other bovid and ungulate species to avoid strikes by vehicles, extended runs along the road, and the risk of depredation when stuck in deep snow.
  13. Extend restoration monitoring to 10 years into the operation period to ensure that invasive plant species are kept in check, and to conserve the habitat quality for boreal caribou.
  14. Collect, minute-by minute traffic data at several locations along the road, as opposed to traffic data averaged over multiple number of years from one location. This will allow for analysis of traffic rates by season, day, and minute, and may allow an eventual analysis of effects of road traffic on collared boreal caribou (step length, rate of movement, and deflections). Such analyses would fill a major and important data gap for road development in the north, leading to more informed Environmental Assessments and mitigation for future and existing roads.
  15. Record locations and dates that sodium chloride is applied to the road and utilize caribou warning signs around such locations to reduce collision risk. Report all locations and issues of wildlife attraction or vehicle collisions with wildlife associated with those locations.
  16. Work with interested and knowledgeable stakeholders to help further guide effective monitoring and patrolling methods for access and harvest along the TASR.
  17. Consider group size information and seasonal changes in group sizes in the next iteration of the WMMP and rely more heavily on collar data during the late winter and rut when it reflects larger groups. Recognize that there will be significant lag time between the radio-collars producing a location signal, and when they are available to the environmental monitors – therefore signals that are much farther than the prescribed buffer distances need to be used to signal the potential presence of boreal caribou.
  18. Alter sensitive periods for boreal caribou to include post-calving and rut periods
  19. Wherever possible, avoid construction or highly disturbing construction activities, during sensitive seasons for boreal caribou.
  20. Set a clearly defined limit for the distance at which construction vehicles should stop for wildlife, including caribou, near the road in the next WMMP.
  21. Allow additional time above the 15-minute period (up to 2 hours) for wildlife, including caribou to clear the area naturally before the Environmental Monitor will approach
  22. The snowmobile setback distance for caribou (250 m), which were present in V.1, but were lost in V.2 of the WMMP, should be added back into the next version of the WMMP.
  23. While TK has not yet indicated any water crossings, please reference standard setback distances from water crossings, as recommended by AANDC et al. (2012) for caribou, in case that any water crossings are identified in the future.



24. Clearly define survey methods and/or methods used for using TK data for determining locations of key habitat features for caribou including rutting areas, mineral licks, or water crossings in the next WMMP.

NSMA appreciates this opportunity to provide a Closing Submission to the Tł̓ch̓q̓ All Weather Road Project Environmental Assessment.