

TASR Consult to Modify Meeting Notes (EA1617-01)

Review Board Boardroom, July 3, 2018

200 Scotia Centre
5102-50th Avenue
Yellowknife, NT X1A 2N7
Start: 9:00 am; End: ~11:30 am

Participants

Joyce Gourlay (GNWT-INF)

Katie Rozestraten (GNWT-INF)

Stu Niven (GNWT-INF)

Brett Elkin (GNWT-ENR)

James Hodson (GNWT-ENR)

Melissa Pink (GNWT-Lands)

Kate Hearn (GNWT-Lands)

Darren Campbell (GNWT-
Lands-PAB)

Laura Meinert (WRRB)

Jody Pellissey (WRRB)

Damian Panayi (Golder
Associates)

Mark Croux (SWWT INF)

Morgan Moffitt (GNWT-HSS)

Rohan Brown (GNWT-Justice)

Georgina Williston (ECCC)

Bradley Summerfield (ECCC)

Jean-Francois Dufour (ECCC)

Lian Case (NPMO)

Todd Slack (YKDFN)

Shin Shiga (NSMA)

Adrian Paradis (CANNOR)

Zabey Nevitt
(Tłı̨chǫ Government)

(By teleconference)

Peter Unger (NRCAN)

Jason Quinn (NRCAN)

Maureen Flagler (CERNA)

Laurie McGregor (GNWT-ENR)

Loretta Ransom (GNWT-ENR)

Mark D'Aguiar (DFO)

Joanne Black (YKDFN)

Review Board Staff

Chuck Hubert

Alan Ehrlich

Mark Cliffe-Phillips

Catherine Fairbairn

Jeremy Freedman

Simon Toogood

Amanda Annand

John Donihee (Review Board
Legal Counsel)



Note: These meeting notes summarize the discussions about specific measures in the Report of EA and the GNWT or Tłıchǫ Government's proposed modifications to the measures. The measures and proposed modifications were read verbatim during the meeting but are not rewritten here. For the full text, see the Review Board's Report of EA and the GNWT or Tłıchǫ Government's proposed modifications.

Opening comments

Board staff welcomed participants and made introductions around the table. Staff described the [agenda](#), and told participants that for each proposed modification, staff would introduce the measure, its intent and the proposed modifications. The GNWT or Tłıchǫ had an opportunity to provide additional comments if they chose, and then parties and the developer asked questions and discussed the proposed modifications.

Staff described the nature of the consult-to-modify process (particularly the need to preserve the Board's intent for its measures) and how it is different from a reconsideration [see June 27 2018 [Notice of Proceeding](#)]. Staff also cautioned parties to focus discussions on the modifications that were proposed, instead of on alternatives not proposed.

Participants were reminded that the GNWT [reasons](#) and Tłıchǫ [reasons](#) for proposed modification have been provided, which should take precedence if anything said in the meeting should conflict with those written reasons.

Board staff provided a timeline of recent and upcoming events as follows:

- March 29: Report of EA issued
- June 22: Minister and TG initiate consultation with Review Board on proposed modifications
- June 22: Minister consults with Indigenous groups on proposed modifications to measures
- July 3: Board staff hosts meeting to discuss modifications proposed by Minister and TG
- July 23: Review Board's due date for comments on modifications from parties
- July 23: Minister's due date for comments on modifications from Indigenous groups

Presentation of GNWT proposed modifications (by Review Board staff)

Measure 6-1 -- Recovery strategy and range plans

Original intent of measure was that public use of the road does not occur until range plans are implemented to mitigate project affects to boreal caribou.

July 3, 2018

Page 2 of 11



Measure 6-1 Part 1:

Proposed modifications

- GNWT proposes to remove “region” and replace with “portion of NT1 range”
- GNWT proposes changes to when plan is implemented from “prior to road being open to public use” to “complete and submit to WRRB for review 90 days before road is open”

Discussion

- Question from YKDFN regarding definition of the NT1 range and whether it is agreed on between the GNWT and the Tłı̨chǫ Government. GNWT to provide a map showing spatial extent, stating it should be in the adequacy statement.
- NSMA asked whether the range plan will be developed by the range planning working group and when Aboriginal groups will be engaged in the process. GNWT responded that each range plan will likely have its own working group and indicated its plans to develop a draft plan in collaboration with groups prior to submission to WRRB.
- WRRB questioned the timeframe for completion for range plans for other regions where caribou might be affected. GNWT stated its intent to work on all three plans concurrently (Wek’eezhii, Dehcho, South Slave) but that it can’t guarantee that the range plans for the Dehcho and South Slave will be submitted 90 days prior to the road opening.
- WRRB pointed out that the proposed modification shifted the pressure from the GNWT to the WRRB, which has a small staff, but that 90 days is likely enough time for the WRRB to review and approve the plan.
- YKDFN asked why the range plan completion date was tied to a moveable date for road opening, as opposed to a fixed one.
- YKDFN indicated it would rather see a set date for range plan completion. Asked if there was a definition of term “open for public use” for TASR.
- GNWT-INF clarified that road opening and public use occurs when the road moves under public Highways Act and opening has a defined date. There is a need for substantial completion prior to this.
- Review Board legal counsel asked if GNWT would comment on its certainty of the effectiveness of their proposed mitigation for this measure, since the original measure had the range plan completed and applied prior to public use, while what is being proposed is that it be sent to WRRB 90 days prior. Stated that the WRRB is its own institution exercising its own discretion, which raises



the question of whether simply sending the plan to WRRB 90 days prior to public use is going to mitigate potential impacts before that use begins.

- GNWT-ENR responded that because the range plan will be developed collaboratively prior to the WRRB submission, it anticipates it will be acceptable to all parties. Also acknowledged that it can't guarantee the outcome of the WRRB process, or that the plan will be approved.
- YKDFN asked what happens after WRRB reviews the plan and if GNWT has a statutory mechanism to implement it. WRRB confirmed that its staff would work with GNWT to develop the range plan, and when received, WRRB board members would review and determine whether to approve and recommend for implementation any modifications, etc. Tłıchq agreement says a party can accept, vary or reject. If approved the GNWT implements the plan as per the Tłıchq Agreement
- Review Board staff encouraged parties to have sidebar discussions and submit the outcomes of such meetings to the registry. Staff stated they will email a template for reporting these meetings and their outcomes to the parties.

Proposed modifications

Removal of National Recovery Strategy habitat threshold, replaced with threshold proposed by GNWT in consultation with ECCC in accordance with chapter 12 of Tłıchq Agreement.

Discussion

- GNWT-ENR clarified that the original measure from the Review Board required the use of a national recovery strategy OR a threshold proposed by GNWT.
- YKDFN asked whether the driver for the proposed modification is because of the existing amount of habitat loss to forest fires, or because that the disturbance may already be 65%, making the threshold unrealistic.
- GNWT-ENR confirmed that as highlighted in its rationale, fires are the driver behind this change.

Measure 6-1 Part 2

Proposed modifications

- GNWT removed "and" and replaced it with "or"
- GNWT removed "abundance"

Discussion:

July 3, 2018

Page 4 of 11



- YKDFN questioned why abundance was removed. GNWT-ENR responded that what it proposed for research methods and monitoring does not include abundance.
- WRRB asked GNWT how sustainable harvest levels could be determined without knowing abundance, pointing out that it defeats purpose of Measure 6-2 if abundance is unknown.
- YKDFN responded to GNWT that REA looked at what GNWT planned to do and is now saying what they ought to do. Asked why GNWT accepts the Board's rationale but doesn't think it needs to monitor abundance.
- GNWT-ENR responded that it can know how the population is doing based on trends without actually having a measure of abundance.

Proposed modifications

Regarding harvest monitoring and hunting, GNWT removed Aboriginal harvest.

Discussion:

- YKDFN asked what reporting would be done if it didn't include Aboriginal harvesting
- GNWT-ENR pointed out that this modification followed the TG modification in a later measure to make aboriginal harvest monitoring voluntary. GNWT will report on their info from their resident harvest reporting, as well as voluntary responses from Aboriginal harvesters.

Proposed modifications

Removal of "setting and meeting critical habitat objectives for each range" and replacing with "an approach to setting and, to greatest extent possible, managing habitat disturbance thresholds for each range planning region".

Discussion:

- YKDFN asked whether the targets set for each region will link back to the overall NT1 range plan.
- GNWT-ENR confirmed this but stated that this would be evidence that wasn't before the Board in the EA, asking if they could still speak to it.
- Review Board legal counsel stated that new info needs to be made available in writing according to legislation if it hasn't already been provided. New info that leads to changing measures should be on the record.



- GNWT recently released a range planning framework that outlined how it would set regional disturbance thresholds and how that would add up to 65% disturbance in the NT1 range. GNWT also committed to putting this information on the public registry.

Measure 6-2 – Establishment of a No Hunting Corridor

- Original intent was that the Board found that road would lead to increased hunting pressure on boreal caribou, and that multiple effects on caribou from TASR will lead to conservation concern. Based on this finding the Board proposed no hunting of caribou to offset these effects until a range plan was in-place.

Proposed modifications:

- No hunting corridor in original measure changed to determining sustainable harvest levels prior to road being opened to the public.

Discussion:

- YKDFN asked GNWT to explain how the modification addresses the Review Board's finding of significance on caribou and how it ensures the project is mitigated if it is being handed off to a government with different objectives than the Review Board. Also concerned about delays.
- GNWT-Lands: responded that the modification is just pointing to a process that is already in place.

Proposed modifications:

The corridor in the original measure was proposed to be in place prior to the road being open and until the range plan was actioned and sustainable hunting levels determined. GNWT proposes to replace this with, "in the same period, if current harvest levels exceed sustainable levels once the road is open, a wildlife management proposal will be submitted under the Tłıchǫ agreement to the WRRB for timely implementation of any measure necessary to ensure boreal caribou harvest is in sustainable levels"

Discussion:

- YKDFN noted the Board's significant impact finding, harvesting concern, and impact to YKDFN's rights. The proposed modification states that sustainable harvest numbers will be determined in the future, but the Review Board already says there is a significant impact, and it will exist until a harvest decision is made.



- GNWT-Lands described the process in place to establish adequate management responses if sustainable harvest can't be met.
- Review Board legal counsel asked to GNWT how sustainable harvest levels could be determined without knowing abundance (from measure 6-1), and whether sustainable harvest numbers would be a number. Counsel stated if so, then it's a total allowable harvest, which has implications for WRRB in terms of their role. Counsel also asked what the difference was between the mitigation of significant environmental impacts and the normal role of WRRB in managing wildlife. Lastly, counsel asked what happens after the WRRB makes a decision if the proposed changes are accepted. Normally if a minister accepts a recommendation, the measure then has to be applied by Boards in making subsequent regulatory decisions, but how does the WRRB decision fit into that framework? There's an issue of potential overlap between these two institutions of public government.
- Review Board staff asked if the actions described in the proposed changes to 6-2 are the same as what is normally done by GNWT.
- GNWT confirmed that the actions are business as usual, but would now occur within the timeline proposed by the Board.
- YKDFN pointed out that in EAs, harvesting as a consequence of increased access is often a concern. Expressed concern that if this measure goes ahead with the proposed modifications, it takes away from the Board's and parties' ability to respond to harvesting concerns (given the precedents and mandate of the Board to respond to Aboriginal concerns and put mitigations in place). YKDFN encouraged conversation with GNWT after meeting.

Measure 6-3 – Habitat Offset and Restoration Plan

Proposed modifications:

Includes the removal of 2500m offset calculation, changing how the area will be determined and how it will be achieved.

- GNWT is in agreement with an offset, but GNWT is proposing a modification that would result in a plan for determining offset area, rather than using the number in the original measure.
- Developer confirmed that it is more comfortable relying on experts to come up with numbers rather than a fixed value from the Review Board.



Discussion:

- YKDFN pointed to the difference between 2500m and originally GNWT-proposed industry standard 500m, asking how did GNWT move from that point of view to deciding at some point in the future the amount.
- Golder: Clarified its understanding that the 2500m proposed by WRRB was about disturbance area via residual effects assessment. Agreed with the process in developing an offsetting plan in NWT, didn't agree the 2500m was meant to be applied to this offset. Offset is often applied in a linear context in a ratio, not a buffer per se.
- Review Board Staff: confirmed that the Board's intent, as outlined in the Report, was to take a precautionary approach to this given the substantial uncertainties and potential for serious harm.
- YKDFN expressed concerns that other EAs (such as Gahcho Kue) had requirements to do a cumulative effects framework for caribou, report annually, etc. and it hasn't happened. They pointed to the issue of orphan measures and asked why parties should have faith in a future process rather than something more rigid that provides certainty.
- GNWT-Lands responded that they are legally bound to any accepted measures, and have to be accountable to the public
- The Developer pointed to the Inuvik to Tuk highway as an example of commitments that were orphaned, and that it still met all of them.

Proposed Modifications

Removal of a minimum of 90 days and just leaving it to "prior to commencement of construction" (regarding when the draft habitat offsetting plan is submitted to the WRRB).

Discussion:

- WRRB restated that the timeline leaves it at a disadvantage to provide feedback on the draft, transferring pressure to the WRRB from the GNWT. GNWT-ENR confirmed that it didn't expect that WRRB would complete its review prior to commencement of construction, but rather that GNWT would submit it prior to construction, and that WRRB would still have up to 90 days prior to public use to collaborate, review and approve.
- YKDFN asked for clarification on the phrase "commencement of construction". Review Board staff responded that this wasn't explicitly defined in the EA.
- YKDFN asked GNWT if they think the proposed modifications are accommodating the concerns expressed by YKDFN regarding hunting pressure and harvesting rights. GNWT-Lands responded



that it doesn't believe it has modified the intent of the measures, and if YKDFN has any outstanding concerns they would like to see those in writing.

BREAK for 10 min

Proposed Modifications from the Tłıchǰ Government (TG)

Measure 5-2

Proposed modifications:

- The TG proposed adding GNWT and Tłıchǰ Community services agency as main actors. Same change was proposed in other measures such as 5-6 (adding Tłıchǰ community services agency)
- The TG proposed to change “improve availability of country foods” to “address decline of country foods”

Discussion:

- No comments.

Measure 8-1 – Integrated Fisheries Management Plan

Proposed modifications:

- Change from “integrated fisheries management plan” to “fisheries management plan”.

Discussion:

- Review Board staff asked DFO to comment on what the difference was between the two types of plans. DFO responded that the *integrated* fisheries management plan is a specific prescribed DFO plan, and that this measure was more about a fisheries management plan. A full fledged *integrated* fisheries management plan requires a full stock assessment and more research, beyond the intent of the measure.
- YKDFN asked DFO what would be the mechanism to integrate the fisheries management plan, and if the fledged *integrated* fisheries management plan is an actual tool, what does the fisheries management plan offer? DFO confirmed that a fisheries management plan can be whatever stakeholders determine it to be. Once that's done, then an enforcement plan can be put in place in accordance with this plan.



- TG confirmed that the same process would apply as to other mechanisms (that is, they go to WRRB for review and recommendation, same groups conduct enforcement).

Proposed modifications:

- Changes who will engage aboriginal groups to just stating that they will be engaged.
- Removes specific references to who will do the work, instead saying “the following work will be completed.”

Discussion:

- No comments.

Measure 9-1 Harvest monitoring and reporting

- Original intent: to protect sustainable wildlife harvest and follow recommendations from the WRRB

Proposed modification:

- Proposed change is to implement a “non-mandatory” Aboriginal reporting program.

Discussion:

- No comments.

Measure 9-2: cultural sensitivity in work camps

Proposed modifications:

- Changed from “develop” a cultural orientation program to “approve” (clarifying it is the responsibility for the developer to develop the program) and that it should be for non-Tłıchq workers (not residents)

Discussion:

- rationale provided by Tłıchq was that resident can be confused with resident hunters
- Review Board staff clarified that the intent of the Board was to recognize that non- Tłıchq residents living in Tłıchq communities may not require this kind of training.



Wrap Up:

Review Board staff outlined next steps for parties. July 23rd is the due date to provide comments on GNWT and the Tłıchǫ Government's proposed modifications.

YKDFN asked if there have been commitments to fulfill the suggestions from the *Report of Environmental Assessment*, in particular in regard to adaptive management. GNWT had no comment.

The Review Board reminded parties to please use the Board's template to report the outcomes of any side-bar meetings, and that these would need to be posted to the registry. The URL is noted below.

http://reviewboard.ca/upload/project_document/EA0708-007_Template_for_meeting_report_.PDF

The Board also reminded parties that written submissions on the consult to modify would be posted to the registry, and thanked parties for their participation in the meeting.