

YELLOWKNIVES DENE FIRST NATION

Closing arguments for the environmental assessment of the Tlicho All
Season Road project (EA-1617-01)

[Document subtitle]

Introduction

The Yellowknives Dene First Nation (YKDFN) submits its final comments to the Review Board as evidence to assist in decision-making for the proposed Tlicho All Season Road (EA-1617-01) environmental assessment.

Organization

The YKDFN membership resides primarily in the two communities of Dettah and Ndilo, in addition to the adjacent community of Yellowknife. The proposed Tlicho All Season Road lies within the traditional use area of the YKDFN membership. YKDFN is concerned with the impacts of the project on the land, the animals, and the water that YKDFN members rely on. YKDFN is concerned with the potential impact that this proposed project possesses; not in the short term, but also far into the future.

YKDFN has always demonstrated an understanding of the importance of development to communities in the Northwest Territories. However, our support of projects is always contingent on the project being undertaken in a responsible manner that preserves the rights and livelihoods of our members.

Closing Statement

The YKDFN understands the potential benefits that the project could have for the people of Whati, and we hope that if the project is approved they derive as much benefit as is possible. However, the Yellowknives Dene First Nation have ongoing concerns about the proposed Tlichó All Season Road. We are particularly concerned about the potential impact that this road will have on wildlife and the preservation of Yellowknives Dene First Nation traditional knowledge in the area.

The YKDFN is particularly concerned about the potential effects that this project could have on the boreal woodland caribou. The Yellowknives have harvested boreal caribou in project area long before first contact with colonists, and we continue to do so to this day. In fact, with the unprecedented decline of the barren ground caribou, boreal caribou have become a more valuable resource than ever.

As the Board is aware, a harvesting restriction has been placed on the Bathurst Caribou. This is the primary herd that the Yellowknives rely on. The mobile no-hunting zone surrounding the herd lies primarily in the Yellowknives traditional territory, Chief Drygeese Territory. This experience has made us acutely aware of the consequences of waiting until it is too late to bring in caribou management measures.

Boreal Woodland Caribou

The Boreal Caribou are currently in decline. Boreal caribou are listed as a species at risk by the NWT Species At Risk Committee (SARC), the Federal Species at Risk Act list, and the Committee on the Status of Endangered Wildlife in Canada (COSEWIC). Despite this, the GNWT claims that the boreal caribou in the Northwest Territories (NT1 herd) is stable.

The proponent's argument that the NT1 herd is stable and that the project will not have a significant negative impact hinges on two key arguments.

1. That the boreal caribou will be sustainable if 65% of their usable habitat remains intact, and
2. that the NT1 herd is distinct from other populations on boreal caribou in Canada.

We assert that the "NT1 herd" is a population definition that reflects modern, and biologically meaningless, political boundaries and not the reality of boreal caribou movements or population dynamics. Boreal caribou freely cross the borders between the Northwest Territories, Alberta, and Saskatchewan. If we were to define the herd along lines of historic Treaty 8 and Treaty 11 (arguably a more appropriate boundary from a land use and habitat perspective than the 60° N) it would show a herd in rapid decline. This is particularly true in Alberta, where boreal caribou have been extirpated across much of their historic range.

Even if we were to accept that NT1 was an appropriately delineated range (which we don't because it runs counter to traditional knowledge, science, and even the most trivial logical scrutiny) we assert that the proponent doesn't have the appropriate information to evaluate herd stability and health to support the claim that the herd is stable.

The Scientific Assessment to Inform the Identification of Critical Habitat for Woodland Caribou (*Rangifer tarandus caribou*), Boreal Population, in Canada – 2011 recommends that when assessing range conditions, one should consider:

1. population size,

2. population trend,
3. total disturbance (% of total habitat).

During the hearing it became clear through YKDNF's line of questioning that the GNWT does not have good information on boreal caribou population size, population trend across the NT1 area. The only region that the proponent has somewhat detailed information about population size or trend was in the southern portion of the range, near the Alberta border. Unfortunately, the information they do have shows that the population is declining. This is not a surprise, as the southern NT1 population is not distinct from the northern Alberta population, and the Alberta population is in sharp decline.

Despite not being able to meet the first two criteria for assessing range conditions, the proponent rests the bulk of its assertion that the population is stable because they can speak to the third recommendation. One out of three would count as fail on even the most permissive of tests.

Even on this third criteria however, YKDFN does not find much reassurance. The same scientific document, on which the proponent relies heavily, identifies 65% undisturbed habitat as the minimum required to support a stable boreal caribou population. Currently the NT1 range is estimated to be sitting at 65% undisturbed habitat.

To summarize, the proponent is arguing that the boreal caribou population in the NT1 range is stable based-on,

1. No real knowledge of population size,
2. No real knowledge of population trend (except in the southern portion of the range where the numbers are shown to be going down), and
3. Identifying that the total disturbance area sits precisely at the minimum required undisturbed area proportion of 65%.

Not only is the proponent one-for-three, but the third point is sitting on a knife's edge.

For this reason, YKDFN restates its request that limits be placed on recreational hunters. Recreational hunters are currently the single greatest direct cause of boreal caribou deaths in the Northwest Territories.

During the hearing the Board's counsel stated that the Board does not set hunting regulations. However, YKDFN suggests that it is within the Board's purview to make recommendations to the GNWT and any other responsible parties to look at this issue. As support for this, we point to the Supreme Court of Canada Ruling *Chippewans of the Thames v. Enbridge Pipelines Inc.*. This decision clarifies the role of administrative boards in Canada as being able to carry out consultation and accommodation. Further, we argue that the Board already carries out these roles through its environmental assessment process and through the issuance of measures respectively.

The GNWT, in its response to YKDFN's technical submission, pointed out that the Review Board does not hold the power of final decision making. By contrast, the National Energy Board (NEB) does. Because the NEB was the administrative body in question for the case cited above, the GNWT feels that this is relevant. That is, this decision does not apply to the Review Board because it does not have final decision making power.

We don't argue that the NEB and Review Board have different powers and mandates. We argue that the GNWT has merely identified a distinction without a difference. The ruling speaks to the delegation of the Crown's duty to consult and accommodate to a third party. What it doesn't do is go into which administrative Boards would be appropriate to carry out this duty. Only that the Board be sufficiently qualified.

Traditional Knowledge

The Yellowknives Dene First Nation is a member of historic Treaty 8. In the Northwest Territories modern land claim negotiations for the Treaty 8 area are taking place under the Akaitcho process. While the project area is not part of Treaty 8 or the Akaitcho process, it does lie within the traditional use area of the Yellowknives. The community of Whati was a frequent stopping point for many YKDFN traditional harvesters. To this day many YKDFN elders have longstanding friendships with Whati community members.

The Yellowknives are concerned that the erosion of this traditional use area as a result of the project will result in reduced use of the area. The increase in traffic on the land such as snowmobiles, squatters, resident hunters, anglers and tourists will negatively impact the Yellowknives' use of the land.

A decrease in land use has implications that extend beyond just access to traditional resources. Decreased land use leads to loss of language, tradition practices, and skills. These losses are difficult to quantify, but have major socio-economic impacts on the community.

We restate our requests that the Board create a measure requiring the proponent directly support traditional knowledge research by the Yellowknives Dene First Nation into the project area. The Yellowknives have significant traditional knowledge of the area in question. However, if the project negatively affects land use by members we risk losing that knowledge.

Conclusion

Again, we would like to thank the Board and the community of Whati for the opportunity to take part in the environmental assessment process for the proposed project. It is our sincerest hope that if the project is approved, the people of Whati will reap maximal benefits.

Likewise, it is our sincerest hope that this project does not have a significant negatively adverse effect on the land, wildlife and use of the project area. Unfortunately, experience and evidence tell a different story. This is no more true than with the boreal caribou.

The history of the boreal caribou is not a history of resilience and adaptability. Science and traditional knowledge speak to an animal that is shy, and sensitive to disruption. This is an animal that recedes as development advances. Across Canada's boreal ecoregion, human development stands as a marker of where boreal caribou once were.

Mahsi Cho.