



Committee for Moose Management

Summary of Meeting Discussions

May 12, 2011

5:30 p.m.

Winnipeg River Learning Centre, Pine Falls

Attendees:

Ernest McPherson	Cam Neurenburg	Vince Keenan	Doug McPherson
Bob Austman	Trevor Barker	Ron Missyabit	Brian Kotak
Orton Ramsey	Stu Jansson	Rene Barker	Kelly Leavesley
Paul Millan	Mitch Walker	Herman Dettman	Fiona Scurrah
Gerry Arbez	Eugene Bear	Ivan Lavoie	

INTRODUCTIONS: People introduced themselves.

GUEST PRESENTATION – Duty to Consult

Michael Conner, Crown Counsel, Manitoba Justice

Michael was invited to the meeting to give a presentation on the judicial / legal background surrounding the consultations occurring with communities on the moose issues in Manitoba. Michael has provided the following summary of his presentation for inclusion in the May 12 meeting minutes:

Duty to Consult: Understanding Crown-Aboriginal Consultation

Presentation to Model Forest Committee for Moose Management (May 12, 2011)

“The reconciliation of Aboriginal and non-Aboriginal Canadians in a mutually respectful long-term relationship is the grand purpose of s. 35 of the *Constitution Act, 1982*.”

“Consultation in some meaningful form is the necessary foundation of a successful relationship with Aboriginal people.”

Beckman v. Little Salmon/Carmacks First Nation, 2010 SCC 53

Treaty and Aboriginal Rights

- Section 35 of the *Constitution Act, 1982* gave constitutional protection to aboriginal and treaty rights existing on April 17, 1982:

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.

- Treaties No. 1, 2, 3, 4, 5, 6 and 10 (1871-1905) cover Manitoba. Land was surrendered to the Crown in return for various treaty promises such as hunting and fishing for domestic purposes, treaty land entitlement, and annual annuity payments, among others.
- *Natural Resources Transfer Agreement* (1930) assured Indians the right to hunt and fish for food on all unoccupied Crown land and other land where right of access exists in Manitoba.
- Aboriginal rights are those practices, customs or traditions that are integral to the distinctive culture of an aboriginal community and existed before European society. Examples may include hunting, fishing, gathering items for ceremonial or spiritual purposes.

Reconciliation

- Constitution requires a reconciliation of government’s sovereign power to pass laws, make decisions and take action with the need to protect Treaty and Aboriginal rights.
- Treaty and Aboriginal rights are not absolute and may be infringed for valid public policy reasons.
- The Crown represents many interests which sometimes conflict. When exercising government powers, the Crown must have regard to the interests of all affected parties.
- The fundamental objective of the law concerning Aboriginal and Treaty rights is to reconcile the claims, interests and ambitions of aboriginal and non-aboriginal people. Reconciliation of these relationships takes place in the shadow of a long history of grievances.

Consultation

- Consultation is a means of achieving reconciliation honourably. It is a meaningful process to exchange information about a proposed government action or decision that potentially affects Aboriginal or Treaty rights.
- It allows government to become more familiar with the history, practices and traditions of an aboriginal community.
- It permits sharing information and enables government to understand the potential impact on Treaty and Aboriginal rights.
- It provides government with information about the means to accommodate aboriginal interests and mitigate adverse impacts.
- Both sides must participate in good faith.
- Consensus is desirable but consent is not a legal requirement.

When is consultation required?

- A duty to consult is triggered whenever a proposed government decision, action or law might adversely affect Aboriginal or Treaty rights. There must be potential for an appreciable adverse effect as opposed to a speculative impact.

With whom should government consult?

- The Crown must consult with Aboriginal communities possessing or asserting Treaty or Aboriginal rights that may be adversely affected by the government decision or action. There is no duty to consult with individual members or political organizations.

What is accommodation?

- Consultation may lead to a requirement to accommodate the Treaty or Aboriginal rights potentially affected.
- Accommodation is a reasonable attempt to substantially address concerns of the Aboriginal community or approaches to minimize the effects of an activity on Aboriginal and Treaty rights.

What is the role of stakeholders?

- The duty to consult an Aboriginal community is the Crown's obligation. Industry or a project proponent may be involved in certain aspects of consultation (e.g. sharing information or preparing an environmental impact statement). But the Crown remains ultimately responsible.
- Government may also consult with other stakeholders as a matter of policy and good government.

What are the consequences of failing to consult or accommodate?

- Reconciliation is not achieved
- Civil acts of disobedience
- Court may find a law inapplicable, grant an injunction to stop a project from proceeding or set aside a government decision pending further consultation

Questions from Committee Members on Michael Conner's presentation:

A number of comments, questions and concerns were expressed at the conclusion of the presentation. Several of these are noted below:

Q - How long does consultation take, what are the costs and who pays?

A - Michael indicated that it depends on the nature of the project, the seriousness of the impact and the number of communities involved / affected. Some processes are relatively quick and others lengthy. Bipole III is an example of a significant project with potentially serious affects and a lengthy consultation process involving numerous communities.

Government has established the Crown-Aboriginal Consultation Participation Fund to provide funding to enable community capacity to participate in consultations with government. The fund has 5 million dollars available over a 5-year period. This is the second year of the 5-year period. Government can make an application to the fund on behalf of a community. To do so, a consultation plan must first be jointly prepared by the community and a government representative. The consultation plan includes a budget covering things like meeting and travel costs, participation by community knowledge holders, communications, etc,

Q – There are concerns for the length of time it is taking for consultations related to moose. Moose are at risk, consultations are required, but as more time passes the risk to moose increases. There are concerns that the process is taking too long.

A- Kelly noted that a lot of progress has been made since the March 3 committee meeting, and indicated that that updates will be given as the next item on tonight's the agenda.

UPDATES ON THE CONSULTATION PROCESS

General request to engage in consultations

- Letters were sent in October from the minister to a number of communities whose members are known to have traditional use in GHA 26, including Black River, Hollow Water, Sagkeeng, Bloodvein, Brokenhead Ojibway, Peguis, Buffalo Point and Shoal Lake First Nations.
- Letters were also sent to Northern Affairs communities, including Loon Straits, Bissett, Manigotagan, Aghaming and Seymourville;

Northern Affairs Communities:

- All the above-noted communities were invited to a meeting on April 21. Representatives attended from Manigotagan, Loon Straits and Aghaming.

Hollow Water and Black River First Nations:

- Consultation plans for each community have been prepared (by Rene and Kelly), and applications for funding submitted and approved.

- The first formal consultation session with Hollow Water and Black River (joint session) occurred on May 11. Several other sessions will be occurring over the next month;

Sagkeeng First Nation:

- No formal consultation meetings have occurred to date;
- Several letters have been exchanged between Sagkeeng and Manitoba since the initial letter was sent by the minister in October;
- Ivan read a portion of one letter sent by Sagkeeng, which indicated that the community would like additional information from Conservation.

May 12 chiefs meeting with Minister Blaikie

- A meeting was to occur today with the minister and representatives of 6 First Nation communities – Sagkeeng, Hollow Water, Black River, Bloodvein, Peguis and Brokenhead Ojibway First Nations.

Message being delivered at recent meetings with First Nations

- The initial letters and information sessions with First Nations provided information on the status of the moose population, factors influencing the population, measures taken to address the situation and the projected future of the population if no further actions are taken. While the information presented indicated further declines and loss of the population unless all hunting was curtailed, none of these earlier communications included any possible decisions that Manitoba could make to curtail hunting;
- The message now being delivered to First Nations includes (as taken from Kelly's powerpoint):
 - The situation is becoming more urgent as time passes in the absence of consultations. Some immediate actions are needed to prevent moose numbers from dropping to an unrecoverable level
 - Access management will help
 - Increased harvest of moose predators will help
 - Increased harvest of white-tailed deer will help
 - All of the above will help, but will not be enough by themselves....
 - Recovery of the moose population will only be possible if these measures are combined with a short term closure to all moose hunting, including rights-based hunting...

- Manitoba would like to discuss:
 - Your thoughts, comments and questions on a short term closure of moose hunting to all peoples, including rights holders;
 - How your people would be impacted if they are unable to harvest moose in this area;
 - Accommodation measures;
 - Your community's involvement on a long term moose conservation and recovery strategy;

Questions and Comments from Committee Members on the consultation updates:

- C -** Rene indicated that Black River and Hollow Water have been discussing this situation for some time and are supportive of a hunting closure. Ernest indicated that Black River has been asking for change for a long time – too many licenses were sold in the past and he has concerns about wounding from archery hunting – they are finally being listened to.
- Q –** If a moose hunting closure to all people does occur, when would the decision be made and when would it be put in place ?
- A -** A hunting closure would be most effective if it was in place by mid August. If a decision is made to close moose hunting, it needs to be made by mid-June to allow sufficient time for all the regulatory changes to be in place by August. Time is also needed to make sure all the proper communications can be in place so that all people are aware of the change.
- C -** Kelly indicated that the message indicated above is being communicated to stakeholders as well as First Nations. A public meeting on the moose situation has been scheduled for May 26 in Lac du Bonnet;

PRESS RELEASE ON \$800,000 for MOOSE CONSERVATION

The new money for be directed as follows, to be split between GHA 26 and the Duck Mountains::

- Aerial Moose Surveys – for both areas
- Aerial Wolf Surveys – for both areas
 - It was noted that this will be the first time that Manitoba has committed funds for surveying wolf numbers. Past aerial survey information has only been possible through funding contributions by Manitoba Hydro;

- Road Access Management – to decommission roads in critical moose areas
 - This funding will allow for continued short term decommissioning needs while the permanent “fate” of Tembec’s roads is being negotiated. Additionally, there are a few roads that will require some adjustments to allow seasonal use by other resource users (e.g. for the wild rice operation on Maskwas Lake as well as Stu’s wild rice operation);
 - Once the negotiations respecting the long term status of Tembec’s roads are concluded, it is expected that a number of roads will be permanently decommissioned via road ripping and other means (these costs to be borne by Tembec);
- Trapper Incentives - for increasing wolf harvests
 - A letter was sent by the minister to the Local Fur Councils and the MTA inviting their participation developing ideas for trapper incentives and wolf management. Kelly has talked to the Lac du Bonnet Local Fur Council president, who has indicated interest in having a meeting towards the end of May.
 - This new funding will allow the Manitoba Model Forest and the Moose Committee to free up money currently targeted for the GHA 26 component of the wolf diet study and use it for GHA 17A. Kelly noted that it would probably be advisable for the moose committee guidelines to be consistent with what is developed by the LFC and Conservation;
 - Stu indicated that the MTA did not receive a letter. He also indicated (re: another matter) that MTA president Ron Spence would be sending a letter to Jack Dubois asking how the MTA would be involved in the new beaver management strategy announced by the province.
- It was noted that beaver carcasses from the beaver program could be used for baiting wolves, however, freezer space may be a problem;
- Stakeholder Committee Support – Duck Mountain Area
 - A new committee has been established on the west side to obtain stakeholder input on moose management issues and management
 - Kelly indicated that the province is looking to the Committee for Moose Management as a vehicle to channel stakeholder advice and recommendatiuons on moose management in eastern Manitoba
- New Staff – to coordinate, carry out work related to moose management::
 - 2 Wildlife Biologists – 1 for Lac du Bonnet and 1 for Swanson River
 - 3 Natural Resources Officers – 1 for Lac du Bonnet and 2 for western Manitoba

TERMS OF REFERENCE

A draft Terms of Reference (TOM) has been circulated prior to the meeting. It was agreed that it was important to develop the TOM before starting on committee recommendations, and to make as much progress as possible on the TOM tonight.

The second draft of the TOM, as revised May 12, is attached.

MANAGEMENT RECOMMENDATIONS

The following will be considered for forwarding to Manitoba Conservation:

The Committee for Cooperative Moose Management:

Recognizes:

- the importance of consultations;
- the importance of communications;
- the importance of community “buy-in” for moose conservation measures ;.

Urges:

- that consultations be conducted on an urgent basis, and be completed prior to mid June;

Recommends:

- Certain immediate measures be implemented to halt moose declines and enable recovery of the population, including:
 - All moose hunting, including rights-based hunting should be suspended for a period of ___ years, or until the population has recovered sufficiently to support a sustainable harvest; (editing note: may not be able to specify a number of years)
 - Effective road decommissioning should be undertaken in key areas critical to moose recovery;
- The relationships built through the consultation process should continue past the date of initial decisions, through the implementation phase and beyond the stage of population recovery
- Appropriate communications, including placement of informational signs, be undertaken to advise people of moose recovery measures;

The above recommendations represent the initial discussions held on May 12. Further work will be required to develop the full range of recommendations to be forwarded to Manitoba Conservation.

NEXT MEETING: June 2, Winnipeg River Learning Centre, Pine Falls

Final version of these minutes were approved by the CCMM at their August 10, 2011 meeting. Minutes prepared by Kelly Leavesley.