



September 5, 2008

Martin Haefele  
Manager, Environmental Impact Assessment  
*Via email*

Dear Mr. Haefele:

**Re: Revised Draft Review Board Guidelines for the Considering Wildlife at Risk**

Thank-you for the opportunity to review the revised *Guidelines for Considering Wildlife at Risk (including SARA Species) In Environmental Impact Assessment in the Mackenzie Valley* (Guidelines). In comparing this revision to the previous version, we note that there have been improvements with regards to clarity of some sections; however we continue to question the value of the Guideline in its current form. In particular, our central concern from the initial draft remains, namely the broadening of SARA legal requirements to species identified through other processes.

We recognize that one purpose of the Guidelines is to assist screeners in meeting their legal obligations. However, we do not believe that extending the legal requirements of SARA is promoting a best practices approach, as stated in Section 2.2. The Guidelines will likely create confusion by not drawing distinctions between what is legally required and what is good practice. Moreover, we believe that the Guidelines will create a set of expectations that will prove impractical on the ground.

**SARA Legal Requirements**

As in our previous submission on the Guidelines to the Board, CAPP strongly objects to the Board's extension of SARA requirements to other listed species. As stated in our previous letter:

“the various lists of wildlife at risk are not all the same, and carry different levels of uncertainty and legal requirements. The NWT General Status Ranking Program is conducted to identify species at risk but also acknowledges they may need further study. It is intended to inform decision makers. COSEWIC assessments are part of the SARA listing process, and while there have been very few cases where the COSEWIC assessments have not been adopted by the Minister for SARA listing, there may be cases where the two do not align. While we agree that good practice requires their consideration, stating (as Section 2.2 does) that COSEWIC and GNWT listed species require the same actions as SARA listed species circumvents the SARA listing process and the Minister's decision in listing.”

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We continue to believe our comments are relevant and have not been substantively addressed in the revision. Extending the application of SARA is not equivalent to promoting best practice in assessment, but only extends legal requirements that have proven problematic in their implementation to other lists of species.

The Guideline relies on an ideal implementation of SARA, where range, habitat, and recovery planning are all available. It is industry's experience that the implementation of SARA has proved challenging and is incomplete. While we recognize preliminary screeners must discharge their legal duties, the Guidelines must also be pragmatic in their approach and recognize that perfect information will not always exist.

### **Broad Interpretation**

CAPP believes that the Guideline puts in place very broad definitions that will make practical implementation difficult. For example:

- Section 2.3 suggests that all habitat should be treated as important in the absence of information to the contrary. The significance or meaning of "important" habitat is unclear. This is not a term under SARA or one that has a commonly understood definition in environmental assessment. As such, the relevance of stating the habitat should be considered important is not clear, and in fact the Guidelines do not state elsewhere what steps should be taken with respect to important habitat.
- Section 3.3 stipulates that the Minister must be notified if a development is "near critical habitat". This is not a legal requirement of SARA. The Review Board appears to be making the assumption that development near critical habitat will invariably have an effect on it. While this may occur under some circumstances, it is not a given. That judgment should be made on case by case basis.
- Section 4 states that the test to determine whether there is an effect on a listed species should be an overlap in the range of a species and the location of the development. This is much clearer than the "important habitat" identified above, however again conveys a broad interpretation. For wide ranging species such as caribou or migratory birds, this effectively will mean that any development anywhere in the NWT will have an effect on wildlife at risk.
- Section 4 states that all "possible adverse effects" of the proposed development should be identified. CAPP suggests that the wording to be changed to "reasonably expected", as "possible" can be interpreted broadly and fails to convey any qualification as to probability of a given effect occurring.

In their totality, these provisions to the Guideline will provide for a broad interpretation that will not sufficiently address what is reasonable or practical to do on the ground. This approach fails to provide for a reasonable balance between the need to be precautionary when dealing with species at risk and the need to be practical in the absence of perfect and information (for example,

identification of "critical habitat"). Considering that perfect information often is not available, the Guidelines must provide a means for project review to proceed in its absence.

**Information Requirements, Appendix A**

CAPP continues to question the value of the table in Appendix A. Has the Review Board engaged the various preliminary screeners with respect to adopting the table? Having an agreed upon format and information requirements would ultimately provide more certainty for operators than a table that "could" be used by preliminary screeners.

Further, we believe the examples provided in the table understate the information required. We find it unlikely that any reviewer would be satisfied with the level of detail provided, particularly with respect to the northern leopard frog example. While we recognize these are fictitious examples, it would be beneficial for the Review Board to provide realistic examples of the information being sought to assist proponents.

CAPP believes that guidelines such as these can be useful tools in helping to clarify the requirements of the Review Board. Moreover, providing resources like those identified in Appendix B is a helpful consolidation of information to assist proponents. However, we are concerned that these Guidelines will put in place an impractical approach and confuse proponents with respect to their legal obligations. We would be pleased to meet with the Review Board to discuss these comments and possible alternatives.

If you have any questions on the above, please feel free to contact me or Mike Peters at 403-267-1130 or [peters@capp.ca](mailto:peters@capp.ca).

Sincerely,

A handwritten signature in black ink, appearing to read "JH Masterson". The signature is written in a cursive, slightly stylized font.

John Masterson  
Manager, Federal Regulatory Affairs