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Review Board  
P.O. Box 938  
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Via email (mhaefele@mveirb.nt.ca)

**Re: Revised Draft Review Board Guidelines for Considering Wildlife at Risk  
(including SARA species) in Environmental Impact Assessment in the  
Mackenzie Valley**

Dear Mr. Haefele:

Thank you for the opportunity to comment on the above-noted revised draft guidelines. Indian and Northern Affairs Canada (INAC) appreciates the efforts of the Mackenzie Valley Environmental Impact Review Board (Review Board) to clarify the consideration of wildlife species at risk in environmental impact assessment in the Mackenzie Valley and to consider our comments on the initial draft. INAC's detailed comments on the revised draft are attached in the requested format.

Since the Review Board released the initial draft of the guidelines in April 2008, the GNWT has released draft species at risk legislation for public comment. INAC suggests that the Review Board discuss with the GNWT the timeline for revision and proclamation of this legislation before deciding when to issue the final guidelines. If the Review Board issues final guidelines before the GNWT legislation is in final form, INAC strongly encourages the Board to revisit the guidelines within 1-2 years of the legislation coming into effect.

INAC understands that the Government of the Northwest Territories has recommended that the current draft be revised by an editing committee including representatives from the GNWT and the competent ministers. INAC would support such an approach. In addition, INAC re-iterates our May 2, 2008 comments that the Review Board, the competent ministers under the federal *Species at Risk Act* (SARA) and the Government of the Northwest Territories (GNWT) should consider

holding discussions with Land and Water Boards and other key players prior to releasing the next version of the guidelines. Given the complexities of the SARA processes, INAC believes that face to face discussions would be the most efficient means of clarifying how SARA fits with the environmental impact assessment process in the Mackenzie Valley. We would be pleased to participate in such discussions if requested.

If you have any questions or concerns about INAC's comments, please do not hesitate to contact Lorraine Seale at (867) 669-2590 or Janice Traynor at (819) 953-8490.

Regards,

*[ORIGINAL SIGNED BY]*

David Livingstone  
Director, Renewable Resources and Environment

cc. Vanessa Charlwood, Canadian Wildlife Service, Environment Canada  
Myra Robertson, Canadian Wildlife Service, Environment Canada  
Katherine Cumming, Parks Canada  
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INAC Working Group

Comment Form -  
 July 2008 Revised Draft Review Board Guidelines For Considering Wildlife at Risk  
 (including SARA Species) in Environmental Impact Assessment in the Mackenzie Valley

INAC comments

Note: INAC is not providing comments on spelling and grammar.

Page	Section	Comment
General	1.1.and all	Suggest clarifying the purpose of the document - is it intended to be both a guideline for developers as well as a procedures manual for preliminary screeners, the Review Board and review panels?
General	All	Consider adding information about the role of reviewers and parties in the EIA process. For example, if a party to an environmental assessment possesses information about species at risk in the area, how and when should the party provide that information to the Review Board and/or the competent ministers and the GNWT? What is the developer's obligation to seek such information and include it in its environmental assessment submissions?
General	All	<p>Consider restructuring the document to improve flow. One possible approach would be to set out the wildlife at risk context first, including SARA species listing and assessment processes, including the role of COSEWIC, an explanation of the SARA environmental assessment provisions, and GNWT species listing and assessment processes (including reference to territorial legislation as appropriate). Once the context is established, the document could then discuss how SARA fits into the Mackenzie Valley EIA processes. It may be useful to set out the role of the developer (currently section 4) before the preliminary screening section (currently section 3) since the developer initiates the EIA process by making an application. The EIA bodies can only start their processes once they get the information from the developer, and the bulk of the expectation is on the developer to provide information regarding wildlife at risk and its project.</p> <p>Sections 3 and 5 could be combined into a single section, with appropriate changes to the title and in the text to account for the fact it may be the Review Board or a panel that would be undertaking these procedures. See also INAC May 2, 2008 comments page 7, section 3: "INAC suggests that this section focus on the overall environmental impact assessment process under the MVRMA. Where there are variations in each of the stages (preliminary screening, environmental assessment, and environmental impact review) specific comments could be made."</p>

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General	All	It is INAC's understanding that when a species is added to SARA Schedule 1 or when a recovery strategy or action plan comes into effect, the resulting legal obligations from the <i>Species at Risk Act</i> come into force immediately for environmental impact assessments already underway. The Review Board should verify this point with the competent ministers and include it as required in the guidelines. See also INAC May 2, 2008 comments, cover letter, third paragraph, final sentence.
1	1.1	Consider recommending that readers become familiar with the federal <i>Species at Risk Act</i> before reading these guidelines. SARA is a relatively complex piece of legislation, and as written, the guidelines assume familiarity with SARA terminology and processes. May also wish to consider adding a brief description of SARA processes and a definitions section. See also INAC comment May 2, 2008, page 2, section 1.3 re SARA public registry and communications materials.
2	1.1	2nd paragraph - suggest rewording first sentence as "Section 79 of SARA imposes legal obligation on persons required to ensure that an assessment of environmental effects is conducted. These obligations are to: a) notify the competent ministers if the project is likely to affect listed species, b) identify
2	1.2	reference to four appendices should be to five
3	1.3	2nd par, 4th sentence - suggest rewording as "During an environmental assessment, the Review Board may determine that certain adverse impacts on wildlife are significant adverse environmental impacts."
3	1.3	4th par - This sentence could be read as saying that the national guidance includes only species that meet all of the listed criteria, rather than the intended meaning that the guidance include species that meet any one of
3	1.3	4th par - Not all species assessed by COSEWIC are considered to be "at risk." Some COSEWIC-assessed species are "not at risk" or "data deficient." Suggest clarifying which COSEWIC-species are included. (See
3	1.3	5th par, 3rd sentence - suggest adding "is intended to be" before "consistent
4	1.3	3rd bullet - Readers unfamiliar with SARA may not understand the use of the term "competent ministers." Consider adding definitions section and/or including more explanation of SARA in the document.
4	1.3	3rd bullet and final paragraph - references to the status of the GNWT legislation may date the document. Consider making the references more general or waiting until the GNWT legislation is proclaimed to produce the final guidelines. Possible rewording: "It is anticipated that the Government of the Northwest Territories will develop species at risk legislation that will complement the federal SARA."
3, 4	1.3	General - There is considerable repetition in this section. Eg. First bullet on page 5 overlaps with 3rd sentence of last paragraph on page 5, second bullet on page 5 overlaps with content of 4th paragraph on page 5. Suggest restructuring section to improve flow.

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5	1.3	Table 1 - later in the document, Table 1 is described as presenting a hierarchy. This hierarchy description should be included in the title of the table.
5, 6	2.1	This section does not flow well and should be reorganized. Suggest restructuring the section and the document. For example, it may be better to discuss SARA first and then deal with how the MVRMA fits into it. For instance, the second paragraph ("When a board . . .") is out of place. Perhaps putting all the definitions cited in this section in a sidebar or box would help.
5	2.1	3rd par, last sentence. Remove "new" - SARA is a few years old now, and the term will date the document. Also, if this sentence is referring to s. 79, the requirements are for persons who are required to ensure that an assessment of the effects of a project is conducted. It would be inaccurate to say it sets requirements for persons who "make decision[s] in the practice and processes of EIA . . ."
7	2.2	Although the title of this sub-section indicates that these actions are legal requirements, this concept should be included in the text as well. Possible rewording: replace "that organization must do the following:" with "section 79 of SARA requires that organization to do the following:"
8	3.1	In INAC's view, this section may be confusing for readers unfamiliar with the MVRMA. As per INAC comments May 2, 2008, page 7, section 3.1 "INAC suggests that this section focus on the 'likely' test under s. 79 of SARA...It may be simpler to note that the MVRMA tests are different and provided references to the Operational Terminology Reference Bulletin and the MVEIRB EIA Guidelines."
9, 10, 11	3.2	This section and set of steps is clearer than the steps set out in the April 2008 draft guidelines. To make it easy to locate the steps in the text, may want to consider removing the list at the top of page 9 and using the one line descriptions as bolded titles for the steps. (e.g. <b>Step 1 - The appropriate agency has been alerted</b> )
9, 10, 11	3.2	General - there is no discussion of timelines in this section. See INAC comments May 2, 2008, page 9, section 3.3 - "This could be an issue given that preliminary screenings of land use permit applications must be completed within 42 days unless further study provisions are invoked or a referral to environmental assessment is made."
9	3.2	par 1 - suggest replacing this and all other occurrences of "proponent" with "developer" to be consistent with MVRMA terminology.
9	3.2	par 5, second sentence - not clear what "this guide" refers to - is it Appendix B? If so, replace "this guide" with "this appendix."
10	3.2	This section uses "must" in steps 3 and 5 - suggest using "must" for legal requirements only. Where something is a legal requirement, the legislation and section number should be provided (eg. "Under SARA s. 79, organizations must...")

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10	3.2	Step 4 - The term "subjective" may not be appropriate; suggest rewording. If a preliminary screening decision is judicially reviewed, the court will assess the screener's decision on an objective basis, i.e. whether the decision is reasonable on the evidence available to the screener. While professional judgment may differ from one professional to another, the decision must be rational and supportable.
10	3.2	Step 4, final sentence - meaning is unclear. Possible rewording: "This step should occur <b>as soon as</b> a preliminary screener determines that a development is likely to affect a SARA-listed wildlife species. This step may occur as early as Step 1, or if new information becomes available later on in the preliminary screening process, as late as Step 7."
11	3.2	3rd par in Step 7 - This paragraph may give the impression that the Review Board is providing direction to preliminary screeners. Possible rewording could read : "If, in the preliminary screener's decision, adverse impacts on wildlife at risk are likely, and if, in the preliminary screener's opinion, these impacts cannot be reliably reduced or avoided through mitigation, then the preliminary screener may determine that the proposed development might be a cause of significant adverse impact on the environment. Under section 125 of the MVRMA, when a preliminary screener makes such a determination, the screener must refer the proposed development to the Review Board for environmental assessment."
11, 12	3.3	par 2 (i.e. last par on p. 11), and paragraph before tables. It may be helpful to state which of the seven steps from the previous subsection are being described.
12	3.3	Table 2a: title should include ". . . listed on schedule 1 of SARA."
12	3.3	There is no reference to Table 2b in the text - suggest adding a brief discussion.
14	3 and 4	This figure should be placed after the discussion of the developer's role in preliminary screening.
14	3 and 4	Figure 1 - Suggest expanding first box to read "Developer prepares authorization application (process may include discussions with government and other experts)"
14	3 and 4	Figure 1 - Suggest removing final sentence from "Proceed with normal preliminary screening process" box. This sentence could be placed below the figure as a general note. In its current placement, it contradicts the "No" option between the "Preliminary screener determines whether proposed development is likely to affect wildlife at risk" box and the "Proceed with normal preliminary screening process" box.
15	4	As noted in the third general comment above, this section should come before the discussion of preliminary screening.

Page	Section	Comment
16		4 first par - INAC suggests that "more detailed information and studies" is a more appropriate term than "more effort." In INAC's view, the scale of the project in proportion to the likelihood and magnitude, frequency, duration extent etc of the predicted impacts are the most relevant factors in determining what level of detail is required.
16		4 Table 3 - INAC raised several concerns about this table in its May 2, 2008 comments on the first draft of these guidelines. These concerns stand, and INAC suggests that further discussion of the content of the table with the competent ministers and the GNWT (and possibly other interested parties) is required before it is included in final guidelines. The May 2 comments stated: INAC is not certain that it is useful to link the scale of the project to the level of government assistance. The text (p. 12) [reference to page in April 2008 draft] states that the level of assistance will vary with individual projects and circumstances but the table does not contain such qualifications. Do the government departments involved agree with the content of Table 3? INAC suggests that government departments
16		4 Table 3 - If this table is retained, incorporate the caveats from p. 16, par. 3 into the text of the table. Eg. Change title to indicate that the table is illustrative only. May want to change "effort" to "detail."
17		5 As noted in general comments, consider combining this section with section 3. If the sections are combined, the material in Box 1 could be moved to an appendix.
17		5 As noted in INAC May 2, 2008 comments, would be useful to include sample terms of reference extract from a smaller project alongside the Gahcho Kue example.
19	App A	Suggest adding a note that in some cases, a project may overlap with the range of species at risk without having any adverse impacts. See also INAC May 2, 2008 comments.
21, 22, 25	App. B, C, D	See INAC comments May 2, 2008 regarding potential for consolidation of contact information.
28, 29, 30	App. E	This type of information is a useful addition to the guidelines.