

September 17, 2013

The Honourable Leona Aglukkaq, P.C., M.P.  
Minister of the Environment  
Environment Canada  
10 Wellington Street  
Gatineau, Quebec K1A 0H3

**Re: Improving Performance of Canada's Species at Risk Act (SARA)**

Dear Minister Aglukkaq,

We would like to take this opportunity to congratulate you on your new role as Minister of the Environment and to bring the results of our recent dialogue on SARA to your attention.

**Industry Association and Environmental Organization Discussions on SARA**

During the Ministerial Round Table on SARA hosted by your predecessor, the Honourable Peter Kent, in November 2012, the undersigned national industry associations and environmental organizations recognized a shared interest in improving upon the first decade of implementation of SARA to achieve better and faster outcomes on the ground. Through subsequent discussions over a period of six months, facilitated by Stewart Elgie of the University of Ottawa and Aaron Freeman of Pivot Strategic Consulting, we were pleased to find considerable areas of agreement on both challenges and potential solutions to improve implementation. While we were unable, within the timeframe of the discussions, to address all of the SARA-related issues identified by each of our organizations, the proposals for improvement outlined herein are supported by all of the undersigned parties.

As a basic premise, we all agree that the Species at Risk Act is an important part of Canada's legislative framework for environmental stewardship. Furthermore, we agree that while the current Act contains many regulatory and stewardship tools intended to achieve protection and recover species at risk, many of these tools remain unused or poorly implemented by the responsible Departments.

**Better Use of SARA's Compliance and Stewardship Mechanisms**

The rather limited use of existing mechanisms in SARA intended to enable compliance and stewardship-- particularly permits, agreements and action plans has been a major barrier to effective implementation of SARA. These mechanisms were designed to help set on-the-ground management conditions for economic development activities to proceed without jeopardizing the survival and recovery of species at risk.

Unfortunately, most species listed under SARA have not advanced beyond the preliminary stages of the process and have yet to proceed to the action planning stage where recovery activities and industry compliance mechanisms can be crafted, with the involvement of stakeholders. To some extent, this reflects the natural sequencing of SARA's process, but also a lack of policy, focus and resources.

After 12 years of SARA's existence, there are various reasons why more species have not moved on to recovery actions. Fixing this problem – effectively using SARA's compliance and stewardship mechanisms – is critical to better implementing the Act.



## **Recommendations for Improving SARA Implementation**

Better implementation of SARA can be achieved by developing much clearer policies and specific guidance, completing regulations, and providing and leveraging resources through shared stewardship approaches, as outlined in the attached recommendations. Although our group did not identify specific legislative amendments in our discussions, in some cases, targeted legislative amendments may also be required to enable specific policy solutions. If through our on-going dialogue we identify any such amendments, we will bring them to your attention. Individual organizations may also share their own views on points beyond the scope of this letter.

The attached document describes priority areas which should be a focus of efforts to improve the implementation and performance of SARA:

- Permits and Agreements;
- Effective Protection;
- Land Stewardship;
- Prioritization;
- Offsets;
- Intersection between Environmental Assessment and SARA; and
- Other Issues.

## **Continued collaboration through Species at Risk Advisory Committee (SARAC)**

We want to emphasize that while we are concluding this phase of our dialogue, our organizations remain committed to continuing to work together on these and other SARA issues, through the reinvigorated Species at Risk Advisory Committee (SARAC) of which all of our organizations are members. Over the past six months, SARAC has been working much more effectively as an advisory body, and made significant progress on developing important policy recommendations. Our recent dialogue external to SARAC has built a common understanding, and laid the groundwork for progress on key issues.

We recognize that responsibility for the conservation of wildlife in Canada is shared among the governments in this country, and that there are many parties interested in recovering species at risk beyond our working group. We encourage a broad collaborative and transparent discussion on these issues moving forward. In particular we recognize the essential role of Aboriginal peoples of Canada in the conservation of wildlife, and the important role the National Aboriginal Council on Species at Risk (NACOSAR) plays in providing advice on SARA-related issues.

Lastly, we want to applaud the good work currently being done within the departments. Continued support from Environment Canada, Fisheries and Oceans Canada and Parks Canada will be necessary in finding solutions to achieve compliance and effectively recover species at risk.

We hope that these recommendations will inform ongoing discussions within the federal government and, above all, that they demonstrate a broad consensus on how to improve the effectiveness of SARA.

We would appreciate the opportunity to meet with you or your staff at your earliest convenience to discuss our recommendations in greater detail. To set up a meeting please contact Kate Lindsay at the Forest Products Association of Canada at (613) 563-1441 x412 or [klindsay@fpac.ca](mailto:klindsay@fpac.ca).

Sincerely,



David Miller  
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Cc: The Honourable Gail Shea, P.C., M.P., Minister of Fisheries and Oceans  
Bob Hamilton, Deputy Minister, Environment Canada  
Matthew King, Deputy Minister, Fisheries and Oceans Canada  
Alan Latourelle, Chief Executive Officer, Parks Canada Agency

Enclosure: Industry Association and Environmental Organization Recommendations for Improving SARA Implementation

## **Industry Association and Environmental Organization Recommendations for Improving SARA Implementation**

In 2012/2013, the Canadian Electricity Association, Canadian Federation of Agriculture, Canadian Hydropower Association, Canadian Parks and Wilderness Society, Canadian Wildlife Federation, Forest Products Association of Canada, Mining Association of Canada, Canadian Association of Petroleum Producers, David Suzuki Foundation and World Wildlife Fund participated in a series of meetings to discuss improving SARA implementation. Through this dialogue, industry associations and environmental organizations identified and recommended the following priority areas to be the focus of efforts to improve the performance of the Species at Risk Act (SARA).

### **1. Permits and Agreements**

A well-functioning system for permits and agreements is very important to the effective implementation of the Act. The current system needs significant improvement. While s.73 and 74 set out reasonable conditions for approving economic activities that may incidentally affect listed species or habitat, the lack of clarity about how to apply these is impeding the implementation of the permitting process. In particular, there is a need for better policy guidance in a number of areas, including:

- a. Clarify how the three part test under s.73 and 74 will be interpreted, so that it is applied in a reasonable, timely and consistent manner. Of particular importance is to put in place a framework for making permitting decisions about whether or not an activity jeopardizes the survival and recovery of a species.
- b. Provide guidance for how permits for activities on federal lands and waters or for federal species will be reviewed in cases when information is incomplete, such as when Recovery Strategies are not yet finalized.
- c. Clarify the intersection of permits under SARA with those under other legislation. In particular, clarify that SARA permits can be issued for activities affecting migratory birds and their nests, and that Fisheries Act approvals can also serve as SARA permits, by applying the s. 73 conditions. In addition, it would be beneficial to enable a SARA permit to act more broadly as a compliance mechanism under the Migratory Birds Convention Act for all migratory birds.
- d. Encourage competent ministers to use s. 78, which allows delegation to provinces to issue s. 73 permits and agreements (applying SARA's conditions).

### **2. Effective Protection**

There is a need for policy guidance on what constitutes "effective protection" under the Act. Such policies help to enable the Minister to make timely determinations of whether or not effective protection is in place to meet obligations under s. 63. Furthermore, effective protection should be interpreted as including both regulatory and non-regulatory mechanisms that are shown, over time,

to be achieving protection of critical habitat and recovery of the species. Section 11 Conservation Agreements have particular potential here.

Significant progress has been made on this issue in recent months with the development of the Critical Habitat Effective Protection Assessment (CHEPA) framework now underway. SARAC is reviewing and providing input on the CHEPA framework this month.

Work on the details of this policy framework should continue so it can be completed and approved quickly.

### **3. Land Stewardship**

The success of SARA relies on a mix of incentives to promote stewardship and proactive habitat protection, while ensuring that there are effective legal backstops. To date, the stewardship tools in SARA have not been adequately developed and implemented. Moreover, the federal departments charged with implementing SARA are not well positioned to effectively engage with land owners and managers about stewardship mechanisms and agreements. SARA has not provided adequate support, encouragement or recognition to landowners and managers for “on-the-ground” stewardship activities that contribute to recovering species at risk. Priorities to move forward on such a program include:

- a. Develop policy guidance on s.11 conservation agreements, which is a key stewardship tool envisioned under the Act. Note that SARAC has set up a working group to develop more detailed advice on Conservation Agreements over the next six months.
- b. Ensure a well-resourced “boots on the ground” program to work with landowners to conserve species at risk. The goals of such a program could include, better communicating with landowners about how SARA applies to them (it’s actual impact is generally very limited) and proactively negotiating stewardship and compliance measures (s. 11 or 73 agreements, action plans, codes of practice, etc.). One promising approach is to partner with agricultural or land use organizations that have the on-the-ground capacity and relationships to develop, resource, and deliver such a program, as contemplated by s. 10 of SARA. A landowner outreach and SARA stewardship program could be developed and resourced as one component of a National Conservation Plan.

Note: We recognize that provinces have the primary regulatory responsibility for the majority of species at risk on private lands, but the federal government should show leadership in its areas of authority, while promoting cooperative action with provinces.

### **4. Prioritization**

Most species listed under SARA have not advanced beyond the preliminary stages of the process and have yet to proceed to the action planning stage where recovery activities and industry compliance mechanisms are implemented. In order to guide the departments’ work to address the

backlog of recovery strategies, a rigorous, science-informed and transparent prioritization approach is needed.

Significant progress has been made over the past few months on this initiative through a SARAC working group, collaborating with EC and DFO staff. Industry and ENGOs have provided joint guidance and a methodology that reflects our input is in the final stages of development. We hope it can be completed and applied soon.

## **5. Offsets**

The potential for using offsets as part of the SARA permitting system is an area of interest to many industry groups and an area of concern for environmental groups. Industry groups see this as another tool for achieving compliance. Many environmental groups are concerned that an offsets program would pose an increased risk to species that are already at risk of extinction.

Through our dialogue, we started a frank and open discussion about the potential risks and benefits of offsets in the context of species at risk, and discussed whether an offsets scheme could assure an adequate level of scientific certainty to overcome these risks. Fundamentally, the use of offsets for species at risk differs from more abundant species because the implications of an offset failing are potentially irreversible.

More discussion is needed to determine if agreement on this issue will be possible. However, there is a willingness among the groups to build on our discussions to date and continue to explore this issue further.

## **6. Intersection between Environmental Assessment and SARA**

Under SARA, when critical habitat is identified for a federally listed species at risk an automatic prohibition comes into force on federal land and areas of federal jurisdiction. These prohibitions do not apply to provincial land unless the federal government decides to step in and apply the “safety net” under SARA. Because SARA prohibitions do not apply across most of terrestrial Canada, federal environmental assessment proceedings provide an important venue for project proponents to commit to actions consistent with the intent of the Act. At present, there is insufficient guidance on how to address species at risk requirements through the environmental assessment process.

Clearer policy guidance is required on how SARA listed species should be addressed in environmental assessments, especially when there is no Recovery Strategy in place, and when a project is on provincial lands. Guidance should include mechanisms to enable proponents to understand how to successfully meet the needs of species at risk and clarify where the proponents’ responsibility begins and ends.

## **7. Other Issues**

- Action planning is a key stage of SARA when all stakeholders and governments work together to build integrated recovery solutions across a species' range, drawing on scientific and economic information. It is very important to move more species through to the action plan stage. To achieve this, consistently setting and adhering to timelines for action plans is important.
- Greater use should be made of codes of practice, guidelines and regulations under SARA where appropriate.
- Recovery strategies should strive to provide as much specific information as possible on activities that may result in the destruction of a species' critical habitat and the types of activities that can safely take place within that habitat, further to s. 41(1) (b) and (c). This will help to guide land use activities and inform the permitting process.

The above recommendations reflect the general areas of agreement to date among our working group members. In addition, we made progress towards more detailed agreement on a number of issues. We intend to take the progress and goodwill that has been built through our group's discussions and carry that over into the SARAC process. Through the recently reinvigorated SARAC and the policy development work that is currently being pursued by the departments, the federal government has an opportunity to create the conditions that will enable positive action on the ground for threatened and endangered species. All of the groups endorsing these recommendations are committed to working with EC, DFO and Parks Canada to achieve this and would like this much-needed work to be undertaken through a collaborative and transparent process that gives all interests a meaningful opportunity to contribute.