

April 30, 2013

Hon. David Oraziotti
Minister of Natural Resources - MINISTER'S OFFICE
Whitney Block
6th Flr Rm 6630
99 Wellesley St W
Toronto ON M7A1W3

(Delivered by email to doraziotti.mpp.co@liberal.ola.org)

Dear Minister Oraziotti,

Re: Proposed approaches to implementation of the *Endangered Species Act* as it pertains to the 'Ring of Fire'

We would like to bring to your attention the Ministry of Natural Resources' (MNR) proposed modernization of approvals under the *Endangered Species Act (ESA)*, which raises several substantive concerns for us.

As you are likely aware, we believe MNR's current proposal and approach for regulatory exemptions as described in the "Additional detail to accompany Environmental Registry notice (EBR Registry Number: 011-7696): *Proposed approaches to the implementation of the Endangered Species Act which could include regulatory amendments to authorize activities to occur subject to conditions set out in regulation consistent with MNR's Modernization of Approvals*" are unnecessary; and, they run counter to the purpose of the ESA.

Moreover, we would like to flag for you a section in the proposal called *Transition for Activities that are Already Approved or Planned* and its implications for large scale projects such as the Ring of Fire and new transmission lines in Northwestern Ontario. In this section, MNR describes that "*Individual projects that have attained a certain stage in approvals when a new species is listed on the SARO List or when new habitat protection comes into forces are being considered for this time limited transition provision but only for those species-specific.*" MNR then adds that one example of the approved activities that could potentially qualify for this provision is:

Carrying out an undertaking, if approval to proceed with the undertaking was given under Part II of the Environmental Assessment Act.

From our work in northern Ontario where we are most familiar, we see that the following projects could potentially qualify for this provision (this does not include southern and central Ontario where there may be other projects that might qualify that could be just as worrisome):

- Cliffs Chromite Project (projected date of operations 2016)
- Noront Eagle's Nest Project (projected date of operations 2016)
- Wataynikaneyap Power¹ (projected to be in service by 2015)
- Sagatay Power Transmission Line (projected to be in service in 2015)

¹ Wataynikaneyap Power and Sagatay Power transmission line proposals are competing. How each meets or doesn't meet the test of the *Endangered Species Act* could be a determining factor in which proposal goes forward. The proposed transition exemption would not help in this respect.

While we don't yet know the intended timing of the transition provision, it appears that these projects would theoretically qualify for an exemption under the ESA for caribou and any other of the 65 species that are receiving habitat protection July 1 2013. This seems to us to be a too broad and sweeping use of a transition exemption especially since all of the above projects are in early days and have ample opportunity to incorporate taking care of endangered species into their environmental assessments. Going through the steps of using the various flexibility tools in the ESA (when proponents are anticipating damaging or destroying habitat) will *actually strengthen* overall project design and encourage proponents to select the best alternatives. This was not the case with the old *Endangered Species Act* in Ontario and is a key innovative feature of the new one.

The MNR's proposed approach is not consistent, in our opinion, with the advice given by the "Endangered Species Act Stakeholder Panel" (the Panel) in January of this year of which we were a member. In the panel's advice, we specifically warned that larger scale, higher risk projects/activities where there is a lower degree of confidence in the outcome are not appropriate for permit by rule approaches (exemptions) and would continue to require permit by review (this was the panel's way of saying permits as described by section 17 or instruments under the Act).

Scientists tell us that woodland caribou, a wide ranging species sensitive to disturbance, is in urgent need of meaningful action. The idea that meaningful actions consistent with meeting the test of the ESA would be excluded and the lesser standard of a "mitigation plan" used lowers the bar for protection of the species significantly.

The Ring of Fire has been described as a transformational mining opportunity for northern Ontario. These regulations have the unintended effect of giving the impression that Ontario might be willing to accelerate mining in this part of the province through exemptions. We respectfully raise this with you in the hopes this was not the intended outcome and wanted to make sure you are aware of several of the liabilities of the current approach proposed by MNR. We hope that you Minister can find ways to improve implementation of the *Endangered Species Act* without creating a two tiered system where one set of species receive the gold standard of protection under the Act and others receive a lesser standard.

We also have concerns regarding the proposed use of sector wide exemptions for forestry and other industries and activities but wanted to make sure you were aware of the implications of the proposed regulations on the Ring of Fire.

We look forward to working with you Minister as you implement the *Endangered Species Act* that is celebrated as first among many and world leading.

Sincerely,



Janet Sumner
Executive Director

Cc: Hon. James Bradley, Minister of Environment

Hon. Michael Gravelle, Minister of Northern Development and Mines
Hon. Glen Murray, Minister of Infrastructure and Minister of Transportation
Hon. Bob Chiarelli, Minister of Energy
Hon. Linda Jeffrey, Minister of Municipal Affairs and Housing