



Environment Canada Environnement
Canada Canada

Environmental Protection Operations
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July 21, 2013

Bill Ross
Chair, New Prosperity Federal Review Panel
160 Elgin Street, 22nd Floor, Place Bell Canada
Ottawa, Ontario K1A 0H3

Dear Mr. Ross:

**Re: New Prosperity Gold-Copper Mine Project – Canada-British Columbia Agreement
 on Species at Risk**

Thank you for your letter of June 12, 2013 regarding the Canada – British Columbia Agreement on Species at Risk (the Agreement) and the protection of species at risk on provincial Crown lands. You have asked us to provide information so that the New Prosperity Federal Review Panel (the Panel) may better understand how the Agreement is implemented and under what conditions the Agreement would apply.

The Agreement provides an administrative framework to ensure a coordinated and focused approach to the delivery of species at risk protection and recovery programs under the *Species at Risk Act* (SARA). The Agreement does not in itself afford protection for SARA-listed species on provincial lands. It was developed to guide and clarify how Canada and British Columbia work together in implementing legislation, policy, and procedures related to species at risk given that the federal and provincial governments share legislative jurisdiction over environmental matters. The practical realities of shared jurisdiction for species at risk include some overlapping responsibilities for species and species habitat in Canada, such as listing of species, recovery planning, recovery implementation and the environmental assessment review processes.

The Agreement addresses practical issues arising from a shared jurisdiction for species at risk reflecting the approach to species at risk conservation set out in the *Accord for the Protection of Species at Risk* (the Accord). The Accord was developed in 1996 and commits the signatory federal, provincial and territorial governments to a national approach for the protection of species at risk. The Accord is one element of Canada's response to the Convention on Biological Diversity and establishes, at a high level, the principles for a cooperative approach between Canada and British Columbia for species at risk protection and recovery.

SARA is but one instrument in Canada's approach to biodiversity conservation. The Act sets out a process for the recovery and protection of species at risk through assessment, legal listing, mandatory recovery planning, and protection. In terms of protection, SARA provides automatic protection for aquatic species and birds protected by the *Migratory Birds Convention Act (1994)*, if they are listed as extirpated, endangered or threatened. This protection is found in

the prohibitions in sections 32 and 33¹ of the Act which apply automatically to all species on federal land. The prohibitions set out in sections 32 and 33 of the SARA can also apply on provincial and territorial lands if the Governor in Council makes an order to that effect. SARA provides that the Minister of the Environment must recommend the making of such an order if he or she is of the opinion that the laws of the province or territory do not effectively protect a species or its residence.

Under sections 58 and 61, there is an additional prohibition against destruction of any part of the critical habitat of a species listed under SARA. The Act defines the critical habitat of a species as *'the habitat that is necessary for the survival or recovery of a listed wildlife species and that is identified as the species' critical habitat in the recovery strategy or an action plan for the species'*. Prohibitions set out in section 58 of SARA apply to federally-managed protected areas and upon an order by the competent minister can apply to other federal lands. A similar prohibition can also apply on provincial and territorial lands if the Governor in Council makes an order under section 61 of SARA. SARA provides that the federal Minister of the Environment must recommend the making of such an order if he or she is of the opinion that the laws of the province or territory do not effectively protect the critical habitat, or provisions in other federal legislation or SARA itself do not protect critical habitat on non-federal land. Accordingly, having regard to the purpose of SARA and these protection provisions, Environment Canada endeavours to work with others to ensure that critical habitat for species at risk is protected.

Environment Canada trusts that this information is useful to the Panel. Our Department looks forward to further opportunities to assist the Panel in its review of the New Prosperity Gold-Copper Mine Project.

Yours sincerely,

<original signed by>

Steven Wright
Regional Director
Environmental Protection Operations Directorate

cc. Barry Smith
Caroline Caza

¹ Subsection 32 (1) of SARA states that no person shall kill, harm, or harass an individual of a species listed as endangered or threatened. Section 33 states that no person shall damage or destroy the residence of one or more individuals of a wildlife species listed as an endangered or threatened (a "residence" being defined as a dwelling-place such as a den, nest or other similar area or place that is occupied during all or part of the species life-cycle).