



December 24, 2024

Brianne England
Regulatory Manager
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Subject: Reflecting the CNSC staff's stance on CNSC responsibilities under CEEA 2012 and the Species at Risk Act

Dear Ms. England,

This letter is to provide additional rationale and context for Canadian Nuclear Safety Commission's (CNSC) position on the need for Denison to meet the Government of Canada's [Amended Recovery Strategy for Woodland Caribou](#) (*Rangifer tarandus caribou*), Boreal Population, in Canada (the Strategy) for the purposes of the ongoing Environmental Assessment (EA) for the proposed Wheeler River project (Project).

There are 3 Information Requests (IRs) from the technical review by the Federal Indigenous Review Team that relate to meeting the federal recovery strategy for Woodland caribou, including IR-149, 149-R1A and IR-157 [1-2]. For the purposes of the EIS technical review, these IRs have been accepted, with the caveat that CNSC will recommend an EA condition to the Commission.

As responsible authority for EAs under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) for this Project, the CNSC is responsible for ensuring that the requirements of the [Species at Risk Act](#) (SARA) are met. This includes applicable recovery strategies and action plans for species at risk (s.79(1) and (2) SARA), like the Amended Recovery Strategy for the Woodland Caribou, Boreal Population, in Canada.

CNSC and Environment and Climate Change Canada (ECCC) will jointly be recommending to the Commission an EA condition requiring alignment with the federal Strategy. The EA condition will be included in CNSC's Environmental Assessment Report and provided to the Commission for their consideration.

The remainder of this letter outlines the regulatory and legal basis for recommending an EA condition to meet the federal strategy for Woodland caribou.

Shared jurisdiction over the environment

Other than fishing, issues pertaining to the environment are not specifically enumerated under the powers between federal and provincial governments as set out in sections 91 and 92 of the *Constitution Act, 1867* respectively. The environment is, therefore, a diffuse area which may be addressed under various federal and provincial legislative powers. There is, consequently, shared responsibility over the environment. With respect to the Project, caribou are not physically restricted to provincial or territorial boundaries. As a result, there are concerted, collaborative efforts to develop conservation and recovery measures for their protection. Therefore, the provincial and federal requirements for woodland caribou are not in conflict; both can be met by Denison for its Project.

Regulatory requirements of the CNSC as responsible authority

Under subsection 79(1), SARA confers an obligation on the ‘person’ (Responsible Authority) to notify the competent minister or ministers of the project if the project is likely to affect a listed wildlife species or its critical habitat. The SARA notification requirement covers all species listed in Schedule 1 of SARA, regardless of whether they are found on lands managed by the federal, provincial or territorial governments. Under CEAA 2012, the person who is required to ensure that an EA is conducted is the Responsible Authority. Thus, in the case of projects where the CNSC is the regulator, the onus is on the CNSC, as the Responsible Authority, to comply with section 79 of SARA (see also section 181 (1) [Impact Assessment Act](#)).

Identifying the adverse effects of a project on a listed wildlife species and its critical habitat is a requirement under subsection 79(2) of SARA. This is reinforced by the requirement of paragraph 19(1)(a) of CEAA 2012 for every EA to consider the “environmental effects of the designated project”. Under subsection 79(2), SARA confers obligations on a ‘person’ (Responsible Authority) “to identify adverse effects of the project on a listed wildlife species and its critical habitat, and, if the project is carried out, to ensure measures are taken to avoid or lessen those effects and to monitor them. These measures **must be taken in a way that is consistent with any applicable recovery strategy and action plans**” (emphasis added); notably, this includes the Amended Recovery Strategy for the Woodland Caribou, Boreal Population, in Canada. These obligations are in addition to the requirements set out in CEAA 2012 for an assessment of the environmental effects of the designated project.

Additionally, permits issued by the CNSC are subject to s.77 of SARA which states:

77 (1) Despite any other Act of Parliament, any person or body, other than a competent minister, authorized under any Act of Parliament, other than this Act, to issue or approve a licence, a permit or any other authorization that authorizes an activity that may result in the destruction of any part of the critical habitat of a listed wildlife species may enter into, issue, approve or make the authorization only if the person or body has consulted with the competent minister, has considered the impact on the species’ critical habitat and is of the opinion that

(a) all reasonable alternatives to the activity that would reduce the impact on the species’ critical habitat have been considered and the best solution has been adopted; and

(b) all feasible measures will be taken to minimize the impact of the activity on the species’ critical habitat.

Under paragraph 19(1)(d) of CEAA 2012, the Responsible Authority is required to identify “mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effect of the designated project”. In addition, subsection 79(2) of SARA establishes a requirement to avoid or lessen all adverse effects of a project on listed (i.e., scheduled) wildlife species and their critical habitat, regardless of the significance of those effects.

Subsection 79(2) of SARA also requires monitoring of the actual adverse effects of a project once it is carried out. Subsection 79(2) requires a Responsible Authority to ensure that measures are taken to monitor the actual adverse effects on the listed wildlife species or its critical habitat. This implies a need to understand the actual on-the-ground effects once a project is implemented. This may involve verifying the accuracy of the predictions and determining the effectiveness of the mitigation measures; however, this requirement is independent of the significance of the predicted effects, the technology involved in the mitigation measures, or any other factors. Subsection 79(2) of SARA also requires that such measures are consistent with any applicable recovery strategy or action plan.

ECCC as a specialist in federal assessments on matters concerning the protection of the environment

The proposed Wheeler River Project is a designated project (*Regulations Designating Physical Activities*, SOR/2012-147) subject to a federal EA under CEAA 2012, for which the CNSC is the responsible authority (as defined by section 15(a) of CEAA 2012). As defined by section 2(1) and in accordance with section 20 of CEAA 2012, ECCC is a federal authority, serving the interest of the Crown to provide specialist or expert information or knowledge with respect to the EA of the Project; ECCC must provide the CNSC as the responsible authority with advice on matters concerning the protection of the environment. Beyond the statutory requirement, the cooperation is also set out in part II, subsection 3(b) of the [Memorandum of Understanding between the CNSC and EC \(signed in June 2012\)](#). With respect to species at risk, including boreal woodland caribou, per section 79 of SARA, ECCC provides expert advice and guidance to assist the CNSC in meeting its obligations under SARA as further outlined below. CNSC relies on its federal counterpart's advice.

Federal-Provincial Species at Risk Agreements

The CNSC understands from ECCC and the province of Saskatchewan that they have been working to collaborate on species at risk, including caribou, through an Agreement. Specifically, in 2007 ECCC and the Province entered into a Agreement under [section 10 of the Species at Risk Act](#). The CNSC notes that section 3.4 of the Agreement states: “[it] does not create any new legal powers or duties nor does it alter the powers and duties established by the SARA, the Saskatchewan Wildlife Act, or any other federal or provincial legislation”.

The Canada-Saskatchewan Agreement on Species at Risk section 10 Agreement expired in 2017 (*cf s. 19.3 of the Agreement*). The CNSC understands that although the Agreement was not renewed, ECCC and the Province continue their working practice, keeping with the intent of the lapsed Agreement. The CNSC as a responsible authority under the SARA and its obligations are unchanged by the lapsed Agreement.

The CNSC has also been informed that ECCC and the Province have a s.11 SARA agreement for boreal woodland caribou, which has been extended to March 31, 2025 and that negotiations are underway for a renewed 5-year term.

Consideration of the precautionary principle and NSCA objects

The CNSC also notes that the relevance and application of the precautionary principle. To the extent that the Project may cause harm, actions that may plausibly have potential for major or irreversible negative consequences to the environment should be mitigated, even if the extent of the consequences are not conclusively known. The CNSC also has as its statutory objects the obligation to regulate in order to prevent unreasonable risk to the environment, per section 9(a)(i) of the [Nuclear Safety Control Act](#).

Conclusions and Next Steps

As responsible authority for CEAA 2012 EA relative to this Project, the CNSC is responsible for ensuring that the requirements of SARA are met, including parts that apply to recovery strategies and action plans for species at risk. An EA condition that reflects this will be included in CNSC's EA Report and provided to the Commission. Denison's plan for caribou offsetting will be required to align with the Amended Recovery Strategy for the Woodland Caribou, Boreal Population and SARA, in order to fulfil the EA condition. A draft EA condition will be shared with Denison prior to inclusion in the EA report.

Once Denison has shared a more detailed version of the caribou offsetting plan that is currently under development, CNSC staff will work with ECCC to provide additional guidance on whether or not the plan needs to be modified to meet the federal requirements. It is recommended that Denison consider the comments that have been provided through the EIS technical review to date, in order to avoid having to rework this approach later in the process.

CNSC and ECCC staff are available and willing to meet with Denison to discuss the path forward and to clarify expectations, as it relates to this requirement and the proposed EA condition.

Should you have any questions, please do not hesitate to contact me, directly by phone at 343-540-6213 or by email at Jessica.Way@cnsccsn.gc.ca.

Sincerely,

-Original signed by-

Jessica Way
Environmental Review Officer
Environmental Review Division

c.c.: CNSC: N. Kwamena, P. Burton, A. Levine, N. Frigault, S. Chari, R. Noakes, K. Gorzkowski, R. Froess
Denison: K. Himbeault, J. Switzer, C. Inglis-McQuay, R. Nagel
ECCC: J. Small, J. Crocker, V. Charlwood

References:

- [1] Letter, J. Way (CNSC) to B. England (Denison), *Outcome of the Federal-Indigenous Review Team technical review of the October 18, 2024 Responses to Information Requests for the proposed Wheeler River Project*, November 20, 2024 ([e-Doc 7410519](#))
- [2] Annex 6, Federal and Indigenous Review Team, *Wheeler River Project – Information Requests – Submission #4*, November 20, 2024 (e-doc [7389398](#))