NWT & NUNAVUT CHAMBER OF MINES

David Ramsey, Chair
Standing Committee for the Species at Risk Legislation
Economic Development and Infrastructure Committee

April 28, 2009

Species at Risk Legislation

Dear Mr. Ramsey,

Thank you for the opportunity to provide comments on the proposed Species at Risk legislation. Management of wildlife in the Northwest Territories continues to be an important part of the mining and mineral exploration industry, and we are happy to provide some insight from a development point of view.

Mineral development and production are the north's primary source of employment, training and business opportunities. Mining contributes over half of the NWT's Gross Domestic Product. Unfortunately, each day a mine operates it is one day closer to closure as its reserves are reduced and eventually exhausted. Only new exploration, reduced costs or a new economic mineral find will guarantee the continuation of the mining industry. Under the current economic climate – unless improvement is seen – the NWT's diamond mines may only have another 10 years production remaining. Current estimates show that we will begin to see a reduction in activity, spending and investment by the existing diamond mines as early as 2012.

Mining and mineral exploration remains the north's best option for economic opportunity and growth. In this context, the potential impact of mineral development is a public concern, even though all mines past and present in the NWT and Nunavut take up as little as 0.003% of the landmass. Although the mineral industry is a temporary user of the land, the industry and regulators have made significant strides in planning, developing and regulating mines so that today short term and long term environmental impacts are mitigated.

In order to be successful and provide continued benefits to northerners, the minerals industry must operate within a regulatory system that is fair, balanced, and predictable. The NWT's regulatory system is currently undergoing a review to address the concerns of northerners. Industry has identified several deficiencies in the regulatory process. Many of them relate to the original drafting of the Mackenzie Valley Resource Management Act (MVRMA), whose wording has left room for interpretation. In our view, this lack of clarity has sometimes enabled mineral activities to be stalled or stopped for reasons unrelated to the actual environmental

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assessment of developments being proposed. New legislation, such as the Species at Risk could ultimately be used in a similar way, if there is not clarity in the legislation.

We respect the fact that there are certain species under threat due to climatic change and the ever increasing human footprint on areas that were once remote. We firmly believe that mineral development and wildlife habitat can coexist, and that government departments and industry can work together to promote sustainable ecosystems and species populations. Northern mines have embraced the principles of sustainable mining, and operate at a pinnacle of regulatory discretion. They are perhaps the most heavily regulated and the most environmentally friendly mining operations in the world. Wildlife management and monitoring is a requirement under land and water use permits and mining companies have been very successful in mitigating the impacts of their activities on local flora and fauna. There is no defendable evidence that mineral exploration, development, or production has caused a loss of habitat to a level that a population effect would be detectable for any species. Our aim as industry is to ensure this remains the case.

Given the above, one of the first concerns the Chamber wishes to point out is the need for stand-alone, NWT Species at Risk legislation. Federal legislation already exists today that can be used as a tool to assess and mitigate the threats to endangered species in Canada. The committee that runs this legislation is held to international standards in their assessments and is led by a qualified panel of experts that make decisions based on the best known science.

The Chamber questions the reasoning for an all new board for the NWT. We note that on top of the new legislation, a Species at Risk Committee (SARC) will be created with representatives from governments and resource management boards. The Conference of Management Authorities (CMA) already consists of representatives from the resource management boards. Is the CMA not adequate to make decisions on Species at Risk issues? If assessment is required then should there not be qualified staff within ENR and other government agencies capable of doing this or at least directing it? We feel a SARC will be for the most part a duplication of CMA given a set of designated tasks that will in reality just be carried out by ENR and consultants. We also caution the creation of another committee/board, which will only further the complexity and delay of the regulatory process, especially when community capacity for board appointments is exhausted already, and at a time when the GNWT is in a deficit.

Our second concern is the possibility for lack of scientific controls over decisions of the SARC for declaring a species to be at risk. Decisions must be based on good science. The loose definition of “distinct population” (Section 26.2) could allow the SARC to name any population as a species at risk for reasons which might not be scientific. Because declaring a species to be at risk has the potential to halt or seriously delay industry projects, impacting significant industry investments, the decision to declare a species to be at risk must be driven by science and protection of the species alone. To be clear, the Chamber fully supports protecting species that are declared at risk, but that such a declaration be on a scientific basis.

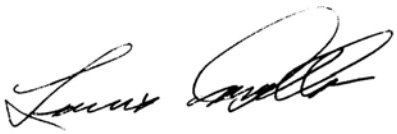
We are also concerned about several clauses in the legislation that could, based on its wording, have a direct impact on the operations of a mining or mineral exploration company. There is discussion of ‘compensation’ in the legislation. We are unsure how compensation can be measured and paid out successfully to holders of mineral tenure. If, for example, an open pit mining operation is told to shut down because a species is nesting in the area, how can government be expected to compensate for the loss of revenue? If a multi-million dollar

exploration project has to be cancelled because of an endangered migratory species passing through the property, how will the company which has invested heavily in the north be compensated for its losses? The whole issue of compensation sounds very convoluted and could lead to legal action where companies who have invested feel they have suffered financially as a result of decisions of the SAR committee.

The mineral industry supports the premise behind the Species at Risk Act. Many of the proposed conditions may indeed be warranted if species are indeed under threat, but we need to be vigilant about how this legislation can be used. Our membership has experienced and is concerned about the political use of the MVRMA and its processes to block development even at low impact, exploration stages. Our members are significant investors in the economy and they need increased certainty in the regulatory environment. They worry that the proposed legislation could create a new avenue for delays, based on matters that are political, not scientific and the cost of these delays. Industry supports a solid and well balanced piece of legislation, and a system that is based on qualified assessment of real threats to species. If the NWT is to have its own Species at Risk Act, it must be held to the same standards as the Federal Legislation, and the government must ensure that its committee is well-funded, and its members are held accountable for their important decisions and the impact they will have.

Thank you again for the opportunity to comment on the draft legislation,

Sincerely,



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