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March 17, 2014

Mark Wayland
Environment Canada
Species at Risk Recovery Unit
115 Perimeter Rd or 115 Veterinary Rd
Saskatoon, SK S7N 0X4

Dear Mark Wayland,

RE: Proposed Recovery Strategy for the Woodland Caribou, Southern Mountain Population

The Canadian Energy Pipeline Association represents Canada's transmission pipeline companies. Our members are world leaders in providing safe, reliable long-distance energy transportation. Our members transport 97 per cent of Canada's crude oil and natural gas from producing regions to markets throughout Canada and the United States.

CEPA appreciates the opportunity to provide feedback on the Proposed Recovery Strategy for the Woodland Caribou, Southern Mountain Population (RS). CEPA is aware that this RS is the subject of litigation and was prepared on a timeline designed to address that litigation and appreciates the challenges this represents. CEPA is concerned about the state of the current document and the fairness of commenting on a RS where there is incomplete information in regards to specific details that are critical to assessing the RS. CEPA is concerned about the precedent that allowing the incomplete RS to be finalized establishes and encourages Environment Canada to carefully consider the implications of any decisions.

CEPA's primary areas of concern are:

1. Critical habitat (CH) identification is incomplete without either maps (at an appropriate scale) or more specific information to enable parties to know where CH is located (e.g. coordinates or definitions of "low" and "high" elevations). For example, there are no details available to identify what habitat is considered low or high elevation.
2. There is a lack of specificity in Section 7.3 (Activities Likely to Result in the Destruction of CH), especially when combined with the lack of maps. CEPA also seeks clarification that member's existing pipelines and facilities are not part of CH (as they are anthropogenic features) and activities associated with those facilities or pipelines (e.g. conducting pipeline safety and monitoring activities) are not subject to any future prohibition (if an order was to be issued). Similarly, if a new pipeline or facility was to be constructed, maintenance and emergency activities should not be considered activities likely to destroy CH. These activities are required for the safe operation of the pipeline and are a regulatory requirement (provincially or the National Energy Board).
3. As was identified in the RS, pipelines are proposed within some of the local population units of Southern Mountain Caribou. CEPA is concerned that there may be insufficient details in the RS in order to be able to fully assess the potential impacts under the Canadian Environmental Assessment Act (CEAA) or provincial/National Energy Board regimes and to meet the requirements of section 79(2) of the Species at Risk Act (SARA). For example, no indication was given on the percentage of intact, low elevation habitat for each local population unit. This is necessary as it may be that not all low elevation habitats are CH.

If the intention of Environment Canada is to provide additional specificity prior to finalizing the RS, then CEPA requests an opportunity to review the material prior to the finalization. CEPA believes that there need to be no delays in the intended 30 day timeline to accommodate this consultation. If it is not possible to obtain the information in time to finalize the RS, then CEPA requests that the CH identification section be altered to indicate that there is insufficient information to identify CH at this point in time. CEPA also requests that a schedule be provided for when the information will be available and when the RS will be amended to include the relevant information.

CEPA's understanding of the Killer Whale court decision (*Georgia Strait Alliance v. Canada (Minister of Fisheries and Oceans)*) is that CH identification requires both a spatial location and the attributes of that location. To CEPA this decision means that there must be greater specificity provided in the RS including:

1. Ideally, local population unit level maps would be available to clearly identify all three types of CH. CEPA believes that there is sufficient information to more explicitly identify CH. In particular, maps should be available to determine what habitat is low and high elevation areas for many of the local population units. The B.C. Government, or teams preparing range/action plans, have relevant maps that could be relied upon in the interim until Environment Canada completes its' own analysis. If there are no acceptable maps available, then details should be provided on the definition of high and low elevation (what altitude or other characteristics are intended) such that project proponents can clearly identify the relevant areas. CEPA recognizes that identifying the matrix for all local populations may be a challenge; however, when Environment Canada has identified that not all local population units have a "matrix" area, it is critical to identify which local populations have this aspect of CH. Additionally, it may be possible to identify some aspects of the matrix in a timely manner whilst other aspects that require further study can be listed in the Schedule of Studies and added to the RS at a later time. The Schedule of Studies must include all necessary studies, including information necessary to determine low elevation and matrix areas.
2. Information should be made available to parties conducting project assessments within a local population unit of the current (or most recent information) level of disturbance in the local population unit as calculated by Environment Canada. As a threshold has been established for low elevation CH, it is necessary to establish what the current level of disturbance is to determine what is actual CH (recognizing that Environment Canada has stated that if a local population unit is less disturbed than 65% then there may be habitat that is not CH). CEPA believes that further research is required on the concept of thresholds as it might be possible that aspects of the habitat are not critical for the survival or recovery of the herd.
3. Greater specificity in the description of section 7.3 (Activities Likely to Result in the Destruction of CH) is required. Specifically there should be information reflecting the level of risk associated with different activities. The RS has identified different threats as generating different levels of risk, yet all activities are rated the same in section 7.3. This suggests that any activities rated as having "negligible effect" should be allowed to occur within CH at some level.

CEPA agrees with the assessment of Environment Canada that utility and service lines are a negligible threat to Southern Mountain Caribou. However, CEPA notes that in the threat assessment table there is a lack of specificity in regards to which local population units had proposed pipelines. For example, proposed pipelines are going to cross the Quintette and Narraway local population units yet the statement is "most local population units". It is unclear whether those local populations were included. It would be helpful to list all local population units where pipeline activity was considered. This would enable greater transparency on what information was considered in the RS.

Lastly, CEPA urges EC to develop a conservation allowance (offsetting) approach that would enable projects in the public interest to proceed within CH by providing appropriate actions that benefit the species within an appropriate framework.

CEPA looks forward to working with Environment Canada, and the Provinces of Alberta and B.C., on action plans to provide the recovery of Southern Mountain Caribou. CEPA believes that the Provinces should lead the development of these action plans; however, Environment Canada has an important role in providing scientific information. The next steps should include the development of best practices designed to reduce the impact of pipelines on the recovery of Southern Mountain Caribou to levels that are negligible.

CEPA recognizes that Environment Canada must balance many considerations in determining the contents of the final RS; however, it is important to recognize the precedent that is established by allowing a RS to be finalized that does not have sufficient information for parties to know what is critical habitat and what activities would not destroy critical habitat. CEPA supports the recovery of species at risk, including Southern Mountain Caribou, and believes that recovery strategies can be developed in a way that respects the urgency of action on species recovery as well as procedural fairness issues for project proponents.

Thank you for the opportunity to provide comments on the Proposed Recovery Strategy for the Woodland Caribou, Southern Mountain Population. Please contact the undersigned if you have any questions or require further elaboration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Z. Saad", with a long horizontal stroke extending to the right.

Ziad Saad
VP, Safety and Sustainability