



## **Regional and Strategic Impact Assessment and the Case for Regional Strategic Impact Assessment in the Ring of Fire, Ontario**

### **Submission of the Wildlife Conservation Society (WCS) Canada to the Standing Committee on Environment and Sustainable Development regarding Part 1 of Bill C-69 (*Impact Assessment Act*)**

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April 6, 2018

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## **Summary**

The 350 page Bill contains several different Parts which repeal *CEAA 2012*, enact the new *Impact Assessment Act*, repeal the *National Energy Board Act*, enact the *Canadian Energy Regulator Act*, amend the *Navigation Protection Act*, and revise a number of other federal statutes. This submission contains the recommendations of WCS Canada staff on Bill C-69, specifically the sections in the new *Impact Assessment Act* (Act) on regional and strategic impact assessment. To support our recommendations, we provide detailed information on the Ring of Fire in the Far North of Ontario. The Ring of Fire is an important case study for regional impact assessment that should inform project-level impact assessment of individual mining and infrastructure proposals in remote region that is globally significant from ecological, social and economic perspectives where the risks of cumulative effects from multiple projects and climate change are significant. To date, the lack of legal pathway at either the federal or provincial level has provided no impetus for regional assessment in the region. We include 9 essential amendments for improving the regional and strategic impact assessment elements of the Act.

## **Who we are**

We provide this submission in our respective capacities as Wildlife Conservation Society (WCS) Canada<sup>1</sup> scientists familiar with provincial, territorial, and federal impact assessment (IA) processes in policy and practice. We are conservation biologists conducting scientific research to support policy and legislation on species at risk and environmental planning for terrestrial and freshwater ecosystems, in northern (north of 50°) Canada. We have collectively spent two decades working in the Far North of Ontario, the geographic focus of this submission, and are actively engaged in land use planning and impact assessment processes that affect this remote region.

WCS Canada is a member of the Environmental Planning and Assessment Caucus of the Canadian Environmental Network (EPA Caucus); one of us (Ray) currently serves as a member of the Steering Committee. In this capacity, we have worked with many colleagues from environmental and academic institutions over the past two years on a package of reforms that we have communicated in various ways to the six federal ministries engaged in this regulatory review process since June 2016, as well as to provincial governments, including Ontario. These relate especially to governance of the new IA regime to enhance the likelihood that the Government of Canada meet its own commitments to restore public trust in how Canada's natural resources are developed.

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<sup>1</sup> WCS Canada's ([www.wcscanada.org](http://www.wcscanada.org)) mission is to save wildlife and wild places in Canada through science, conservation action, and inspiring people to value nature. Our trademark is "muddy boots" biology, which we do by getting in the field and conducting the necessary research to fill key information gaps on Canada's fish, wildlife, and ecosystems. We then use relevant information and our expertise, working with Government and regulatory agencies, conservation groups, indigenous communities and industry, to resolve key conservation issues. We have worked in the Far North of Ontario continuously since 2002.

### **The focus of our submission**

This submission focuses on one particular topic: regional and strategic assessment in IA, for which substantial needs and amendments are required to improve the proposed Act if these vital instruments are to be used. Although the proposed legislation contains a special section on regional and strategic assessment, few provisions in the current form compel, promote, or incentivize the use of RIAs and SIAs. The proposed Act delivers an ad hoc system, leaving the use of RIAs and SIAs to Ministerial discretion, instead of providing a process or criteria for decision making on when and how to initiate regional and strategic assessments.

We therefore anticipate that the legislation as currently drafted is unlikely to result in any regional and strategic assessments actually being conducted. Given the widely-recognized imperative of assessing and mitigating cumulative impacts while understanding and planning for change at appropriate scales, this section of the Act will have to be amended if the federal government is genuine about its interests in a “new system” that ensures “sustainability for present and future generations”.

We focus on the Ring of Fire in Ontario’s Far North as a case study that illustrates both the opportunity and importance of conducting a robust regional impact assessment to improve and support project-level impact assessments that follow and manage cumulative effects of multiple undertakings together with climate change. In spite of enormous economic potential in this world-class mineral deposit, discovered over a decade ago, there have been no meaningful attempts by the provincial government to proactively evaluate options and risks for introducing development into this ecologically intact and globally significant region and address regional-scale implications such as cumulative effects, climate change, and impacts on Treaty and Aboriginal rights in the region among others. We elaborate on the key reasons the Ring of Fire needs a regional assessment and provide a detailed chronology of the state of play in the region with respect to provincial-led assessment and planning processes. Without strengthening the Act to provide a set of triggers and relationships between regional and strategic assessments with project-level impact assessments, it seems unlikely that the new Act will address well-known issues with impact assessment in Canada. We close with our proposed amendments to the draft bill.

### **Context**

The vast 450,000 km<sup>2</sup> subarctic region known as Ontario’s Far North is globally significant for its intact ecological condition, and its natural resource potential. At this point in time, the region remains largely free of industrial development. This landscape is a stronghold for species at risk that have experienced declines elsewhere in Ontario and Canada (i.e., caribou, wolverine, and lake sturgeon), and contains the largest wetland in North America and the second largest peatland complex in the world, with globally-significant carbon stores.

In Ontario’s Far North, proposals for region-opening multi-metal mines, new transmission lines, all-weather roads, broadband cable lines, and rail access have been considered since at least 2007, often concurrently with other provincial planning processes<sup>2</sup>. The so-called “Ring of Fire” in Ontario’s Far

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<sup>2</sup> including the Regional Framework Agreement with nine Matawa First Nations communities, community-based land-use planning and ecological and cultural commitments mandated in the *Far North Act, 2010*, provincial commitments to addressing

North contains world-class deposits of chromite, nickel and copper<sup>3</sup> and has been touted as the economic equivalent of an Alberta oil sands. Currently, there are mineral exploration projects underway in the Ring of Fire; and one active mining proposal under a joint provincial-federal impact assessment grandfathered under *CEAA 2012*<sup>4</sup>.

Getting minerals to market in this remote region will require access, by road or rail, to connect the Ring of Fire sites with provincial road networks and the power grid. In 2014, the government of Ontario made a billion-dollar commitment<sup>5</sup> to support this infrastructure. However, routing for the transportation corridor has never been finalized. While First Nation communities in the region have been asking for all-weather roads for decades, in part to address declining viability of winter roads under a changing northern climate, the government seeks an economic return on such an expensive and potentially risky investment. It is anticipated that after a transportation corridor is developed, mineral exploration and development costs will drop due to easier access, leading to more exploration, possible new discoveries of mineral, and increasing pressure to develop additional linear corridors.

### **About regional/strategic assessment and its role in impact assessment, particularly cumulative effects assessment**

Under *CEAA 2012*, and its predecessor, the traditional approach to impact assessment in Canada has been to address the symptoms or outcomes of individual project impacts, and then mitigating them until they are deemed acceptable (i.e., making impacts less bad). However, there is constant and consistent messaging from practitioners and experts that cumulative effects assessment and its ability to deliver on more sustainable environmental outcomes in in project-level environmental assessment is not working<sup>6</sup>. Repeated recommendations emphasize that broader regional environmental change and the cumulative effects on social and ecological systems must be addressed more proactively at appropriate spatial scales<sup>7</sup>.

Overall, regional impact assessment (RIA) and strategic impact assessment (SIA) are decision-support tools and participatory processes that can inform and complement project-level assessments. RIA and SIA can provide a preferred direction and strategy for achieving sustainability in a region through the assessment of alternative scenarios, including under different climate change and development futures. When decision-making is explicitly integrated across regional, strategic and project levels in a tiered approach, this should serve to improve the efficiency, effectiveness and fairness of project-level impact assessment and environmental decision-making. In this sense, cumulative effects assessment is not just an add-on component to project-level impact assessment but more fully integrated and contributing to the decision-support process around development in a region. Such integrated decision-making can

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protection of species at risk under Ontario's *Endangered Species Act, 2007*, and provincial commitments to addressing climate change under the provincial Climate Change Action Plan among others.

<sup>3</sup> <http://www.lop.parl.gc.ca/Content/LOP/ResearchPublications/2014-17-e.htm>

<sup>4</sup> <https://www.ontario.ca/page/noront-eagles-nest-multi-metal-mine>; <http://www.ceaa.gc.ca/050/evaluations/proj/63925?>

<sup>5</sup> <https://news.ontario.ca/mof/en/2014/04/ontario-investing-in-the-ring-of-fire.html>

<sup>6</sup> Noble, B. 2015. Cumulative Effects Research: Achievements, Status, Directions and Challenges in the Canadian Context. *Journal of Environmental Assessment Policy and Management* **17**:1550001.

<sup>7</sup> Canadian Council of Ministers of the Environment. 2009. *Regional Strategic Environmental Assessment in Canada: Principles and Guidance*. Canadian Council of Ministers of the Environment, Winnipeg.

improve clarity on what types of projects are desired, as well as better ensure a consistent and transparent consideration of cumulative effects. Other benefits of RIA and SIA include addressing broad alternatives (e.g., alternative infrastructure options for the Ring of Fire), and providing a process for engagement on major policy and planning issues such as climate change and freshwater conservation. Overall, these processes can facilitate more informed and efficient project-level environmental impact assessment.

RIAs provide an emphasis on the sustainability of a region and a desired level of environmental quality, ecological, social, and economic, rather than solely on impact mitigation and offers an overall analysis of the relationships between alternative futures (*sensu* scenarios) for a region and the potential cumulative effects that may emerge from those futures. The important difference in SIAs compared to RIAs is that SIAs tend to focus on a plan, policy, program or strategy, or industry sector (e.g., energy, mining, transportation, etc.).

### **The gap between federal government intentions, and what is proposed in Bill C-69 and relevant provincial processes in Ontario**

The concept of regional cumulative effects assessment in Canada is not new, and examples are well described in Canadian practice, particularly the Canadian Council of Ministers of the Environment guidance on regional strategic environmental assessment<sup>7</sup>. Regional frameworks for cumulative effects assessment have gained considerable momentum in terms of practice and research in Canada, but are usually stranded as advice, with little authority to influence project approval decisions<sup>8</sup>. Regulatory practice at the project-level and at the regional scale must be addressed in legislation and include options for linking regional cumulative effects with other instruments including land use planning processes and project-level IA. Most experts in this subject refer to the Mackenzie Valley Pipeline Inquiry, led by Mr. Justice Thomas Berger during 1974 and 1977<sup>9</sup>, as the most robust model of an RIA- or SIA-like process informing project-level environmental assessment in Canada. This process set an international standard for critical and cross-cultural public assessment of proposed development options that has not been seen in Canada since.

Although provisions for “regional studies” are contained in *CEAA 2012*, no assessments have ever been undertaken under this legislation. This suggests that the new Act must be constructed in a fundamentally different manner to truly enable conditions for these two instruments to be deployed, particularly given jurisdictional issues.

A major challenge is that the science of cumulative effects and the planning frameworks to support cumulative effects management have advanced in silos. With respect to Bill C-69, ECCC’s web-based “Guide on the proposed new system” illustrates the Government of Canada’s intention that cumulative effects assessment, though unfortunately still outside of the key steps in the new project-level assessment process will be addressed through proactive strategic and regional assessments with a focus on evaluating “big-picture issues (e.g., climate change, biodiversity, species at risk)” to provide context

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<sup>8</sup> Gunn, J.H., and B.F. Noble 2009. Integrating cumulative effects in regional strategic environmental assessment frameworks: Lessons from practice. *Journal of Environmental Assessment Policy and Management* 11:267–290.

<sup>9</sup> Berger, T. R. 2010. *Northern Frontier*, Northern Homeland Douglas & McIntyre.

for project-level impact assessments. Although this language suggests that the new Act is a step forward from CEAA 2012, we and many other experts consider that the proposed legislation will not, in reality, compel or promote the use of these instruments in situations where they would be most helpful – particularly for making good decisions under s. 63 (factors in the public interest) of the proposed legislation.

It is important to first examine the new proposed provisions (ss. 92 – 103) relating to regional and strategic assessment that Bill C-69 does contain. As currently drafted, these provisions provide opportunities for cooperation with other jurisdictions to conduct regional assessments beyond federal land, indicate that the process is to be carried out either by the Agency or under the direction of a committee to be established by the Minister, allow anyone to request that a regional or strategic assessment be carried out, and explicitly mention public participation, including access to data and funding. Bill C-69 is, however, silent on process, providing no direction for how the outcome of a regional assessment would inform project-level decision making. There are no legislative “triggers” or criteria for RIAs and SIAs, and no list of undertakings that may be assessed under an RIA or SIA framework.

Although we understand that the new Act defers to provincial assessment processes if they are available, we bring to your attention (elaborated on further below) the reality that Ontario’s environmental assessment processes are particularly problematic from the perspective of cumulative effects and especially mining – a key driver of land use change in the Ring of Fire. Cumulative effects assessment is not mandated under Ontario’s *Environmental Assessment Act* (EA Act), which also has no provisions for regional or strategic assessments and does not apply to private sector projects like mining. The provincial processes for land-use planning, particularly in the Far North under Ontario’s *Far North Act, 2010*, in Ontario are also unable to consider regional-scale issues and effects.

At the end of this submission, we provide specific suggestions for amendments to Bill C-69 that would better ensure regional and strategic assessments contribute to improved project-level decision making, particularly on cumulative effects. We first provide details of the current situation in Ontario’s Far North, particularly the Ring of Fire, as a case study for why this is critical, and why we cannot rely on provincial legislation to achieve these goals. This case study emphasizes the importance of getting C-69 right, and creating a process and framework within the new Impact Assessment Act that will actually be used, in contrast to our past history. We suggest the new Impact Assessment Act provides an important opportunity to develop a regional impact assessment in the Ring of Fire, providing a good test for outlining the federal, provincial, and First Nations interests in the region given land use and climate change. Such an assessment would support, among others, provincial and federal project-level assessments for new mines and roads currently being proposed.

This submission underscores our profound concern that if the new Act does not facilitate the conduct of a regional assessment in the Ring of Fire of all places -- where it would obviously be helpful but the province has demonstrated no intention to lead one itself -- then where else could the federal government deliver on its promise to “evaluate big-picture issues (e.g. climate change, biodiversity,

species at risk), the cumulative effects of development and provide context for impact assessments”<sup>10</sup> and address their responsibilities to Indigenous peoples?

### **Why the Ring of Fire needs a regional impact assessment**

We have provided ample context for why the future Ring of Fire warrants a regional impact assessment in a report published by WCS Canada and Ecojustice in 2014 (*Getting it Right in Ontario's Far North: The Need for a Regional Strategic Environmental Assessment in the Ring of Fire [Wawangajing]*; Chetkiewicz, co-author)<sup>11</sup>. For the purpose of this submission, we focus on four factors in the Ring of Fire that warrant an RIA, which we discuss below in turn: 1) Complexity of cumulative effects in the region; 2) Limitations of current environmental planning, including the absence of regional planning and concurrent impact assessment processes; 3) Indigenous rights, responsibilities, and interests and purported Federal commitments to reconciliation with First Nations; and 4) the remote, intact, and global significance of the region.

#### **1) Complexity of cumulative effects in the region**

Experience demonstrates that individual project-level impact assessments are unable to consider the multiple components of individual mining proposals, or the potential interacting impacts of future developments precipitated by the project and associated infrastructure.

Due to the remoteness of Ontario's Far North, where the Ring of Fire is situated, transportation corridors are necessary to ship minerals to smelters and markets, as well as provide cheap, reliable power (i.e., transmission lines). To illustrate, in 2018, the Government of Ontario announced it will fund three First Nations proposals to build three different roads in the area connecting communities with the provincial highway system. The roads are being described to the public as community service roads, but will actually also service the mine site proposed by Noront Resources Ltd. to exploit nickel, copper and platinum deposits in the area.

The bottom line is that there are inevitable interactions among these projects/components and their region-opening socio-ecological effects (i.e., a new road or transmission line facilitating future new development) that cannot be addressed in project-level impact assessment. Climate change, which is projected to be more dramatic in Ontario's Far North relative to southern areas<sup>12</sup>, will likely exacerbate interactions among mines, infrastructure, and impacts on the social and ecological communities, and economies in the Far North. To date, climate change remains poorly considered as a cumulative effect in both federal and provincial project-level impact assessment, particularly in terms of the interactions with projects.

Our description above suggests that the acceptance of one or more applications for development (e.g., mines, roads) in a previously undeveloped region, for which no current regional plan or strategy exists, is a critical trigger for considering a regional assessment in the Ring of Fire. Approvals for new roads or transmission lines alongside concurrent, but incomplete land use planning in the region must explicitly

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<sup>10</sup> <https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes.html>

<sup>11</sup> [https://canada.wcs.org/Portals/96/Documents/RSEA\\_Report\\_WCSCanada\\_Ecojustice\\_FINAL.pdf](https://canada.wcs.org/Portals/96/Documents/RSEA_Report_WCSCanada_Ecojustice_FINAL.pdf)

<sup>12</sup> [http://www.climateontario.ca/MNR\\_Publications/CCRR-44.pdf](http://www.climateontario.ca/MNR_Publications/CCRR-44.pdf)



consider future scenarios that enable new mines, roads, and development projects that would not otherwise be economically feasible or even included under federal and/or provincial impact assessment processes that tend to narrow the scope of projects. Climate change must also be addressed in these assessments.

## **2) Limitations of current environmental planning**

Under the *Far North Act, 2010*, Ontario has developed a community-based land-use planning process with interested First Nations. This approach partially meets the first objective of this law, namely supporting and creating a significant role for First Nations in planning. This approach is a significant advance over previous government-led land-use planning processes in Ontario, where First Nations were considered “stakeholders”, but remains focused on zoning for potential industrial and economic development and does not provide the necessary context or framework for addressing sustainability in the Far North, particularly for vulnerable and marginalized First Nations communities.

Community-based land use planning does not consider ecological or social cumulative impacts. Remote Indigenous communities in proximity to new mines and infrastructure have to deal with both the positive and negative impacts of the boom and bust elements of these projects, as well as the impacts on the fish, wildlife, land, and waters, which First Nations have rights to continue to use and conserve. Further, Indigenous communities must live with the legacy impacts of infrastructure once the mine closes (e.g., road maintenance, building safety, tailings management). Mining legacies in Canada have tended to be negative for remote, Indigenous communities, unless special efforts are made to specifically address these legacies<sup>13</sup>. Project-level impact assessment, together with privately negotiated Impact Benefit Agreements (which often rely on the proponent’s impact assessment), offer no guarantee for positive social outcomes. Perhaps as important, are the impacts of new developments on Aboriginal and treaty rights due to impacts on traditional lands and practices, including associated risks of forest fires, habitat loss, encroachment and poaching by non-Indigenous people as well as impacts on remote tourism and recreational economies in the Far North. It remains unclear how Federal commitments to First Nations under Canada’s *Constitution Act* (section 35(1)) and Treaty No. 9 are met by allowing narrowly scoped impact assessment to proceed based on provincial economic interests.

Absent a broader or regional planning framework focused on local and regionally relevant social, ecological, and economic indicators, project-level impact assessments fail to consider sustainability. We suggest sustainability, particularly built around non-renewable mining projects, demands a broader social conversation with First Nations in the Ring of Fire and those living downstream from the mining projects.

As of this writing, none of the communities in the Ring of Fire have completed approved land use plans (all are at the Terms of Reference stage) under the *Far North Act, 2010*. There is no regional framework or approach to considering big picture processes such as cumulative effects, climate change, and species at risk at the community planning tables. Under the *Far North Act*, the Far North Land Use Strategy is supposed to address the “big-picture, broad-scale interests” at community planning tables. Yet, this

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<sup>13</sup> [https://uwaterloo.ca/next-generation-environmental-assessment/sites/ca.next-generation-environmental-assessment/files/uploads/files/gibson\\_jam\\_mines\\_as\\_bridges.pdf](https://uwaterloo.ca/next-generation-environmental-assessment/sites/ca.next-generation-environmental-assessment/files/uploads/files/gibson_jam_mines_as_bridges.pdf)

Strategy remains in draft form, containing advice and guidance that is insufficient for addressing cumulative impacts or regional-scale issues in any meaningful fashion. In the absence of any strategic or regional framework, Ontario's commitments under existing policy and legislation including Ontario's Biodiversity Strategy, the *Endangered Species Act*, and emerging climate change commitments are also unlikely to be met in the Far North because of their piecemeal and siloed approaches to the environment and the First Nations that depend upon it. In contrast to land-use planning – which generally defines zones that classify the type of development allowed on a parcel of land and develops a plan that establishes where and how land uses occur within a particular area – RIAs and SIAs should focus on evaluating the implications for sustainability of various future scenarios and their alternatives, including the compatibility of various human activities and their effect on the resilience of ecosystems and values (often shortened to valued ecosystem components or VECs).

### 3) Indigenous interests

First Nations are the main current and long term residents in the region, and have individual and collective rights and responsibilities under Canada's *Constitution Act* (section 35(1)) and Treaty No. 9 that will be impacted by new industrial development in the Ring of Fire. These impacts cannot be adequately addressed in project-level impact assessment under federal or Ontario legislation. For example, any Ring of Fire mining proposals will affect the nine Matawa First Nations communities, five of which are remote and only accessible by air or winter ice road. Matawa First Nations have already made their concerns known about project-level impact assessment in the Ring of Fire when they launched a judicial review against CEA Agency and Cliff's Chromite Project stating that project-based impact assessment does not "address all of the impacts of the mine and the infrastructure associated with it or the cumulative effects of more than one mine in an area." This concern prevails even after Cliff's abandoned their project in 2013.

It is well understood that First Nations interests and engagement in federal and provincial impact assessment processes have been marginalized in Canada. Bill C-69 seeks to confront this reality by mandating engagement by Indigenous peoples in determining whether a federal environmental assessment is required, since environmental assessment and the decision-making processes around development projects can be an important tool for the disposition and/or disconnection of their rights and culture. We recognize that the current federal government has made important commitments to considering a nation-to-nation basis for addressing development, and adopted commitments to implement UNDRIP and the calls to action by the Truth and Reconciliation Commission of Canada. Yet, Ontario appears unable or unwilling to address the stark power differentials in its relationship with First Nations, and its provincial interests in the Ring of Fire, despite its stated commitments to reconciliation with Indigenous peoples<sup>14</sup>. Ontario has demonstrated no public sign of its ability or willingness to consider the ecological and social impacts of development and climate change in this region. Moreover, having concurrent planning processes led by different ministries and levels of government, as well as proponents, strain already limited financial and social capital in First Nations communities. Most First Nations in the Ring of Fire are under states of social duress and/or emergency due to inadequate on-reserve infrastructure, funding, resources, and social crises.

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<sup>14</sup> <https://www.ontario.ca/page/journey-together-ontarios-commitment-reconciliation-indigenous-peoples>

#### 4) Remote, Intact and globally-significant environment

The imperative for proactive consideration of cumulative effects at a regional scale is heightened by the uniqueness and ecological sensitivity of the Ontario Far North environment. As mentioned at the beginning of this submission, this is one of the world's largest, most intact ecological systems in the world, including boreal forest, wetlands and peatlands, as well as natural processes such as fire and predator-prey systems. As such, the Far North ecosystems have a high level of ecological integrity, given the absence of roads and settlements, relative to further south where the landscape is heavily fragmented by roads and towns, forestry, mineral exploration, mines and farms.

The sensitivity of this region is widely recognized in the context of discussions about economic development potential in the Ring of Fire. For example, the Far North Science Advisory Panel (Ray was a member) that was convened to provide the best scientific and technical advice to the Minister of Natural Resources on how to achieve the Government's vision for the Far North, issued a report in 2010<sup>15</sup> that emphasized the global significance of the region and provided a number of recommendations for how to maintain ecological integrity in the face of new development. In a similar vein, a 2014 Senate Report entitled *Resource Development in Canada: A Case Study on the Ring of Fire*<sup>16</sup> named "ecosystem sensitivity" of the Ring of Fire region as one of three main challenges to the mining industry in the Ring of Fire (the others being remoteness/lack of infrastructure and education and training for First Nations). Accordingly, Ontario's *Far North Act, 2010* has two ecological objectives that depend on ecological (and cultural) integrity and the maintenance of biological diversity, ecological processes and ecological functions (including carbon). In order to achieve these objectives, socio-ecological limits will need to be considered in impact assessment. Current approaches under project-based assessment cannot consider such limits at scales relevant to ecological processes such as watersheds, caribou ranges, carbon storage, and wetlands, among others.

#### **The current state of play with planning and assessment processes in the Ring of Fire**

Under *CEAA 2012*, the Minister had the authority to establish a committee to conduct a regional study to assess cumulative effects of existing or future physical activities. We are not aware of any studies in Canada that have been initiated or conducted under this discretionary approach. In Ontario, the Ministry of the Environment and Climate Change (MOECC) *Statement of Environmental Values* obliges the Ministry to "...consider the cumulative effects on the environment; the interdependence of air, land, water and living organisms; and the relationships among the environment, the economy and society"<sup>17</sup>, even though cumulative effects assessments are not required (unless by discretion of the Minister) under the Ontario EA Act.

As mentioned earlier, there is no language in the Ontario EA Act that requires cumulative effects assessment and nothing about regional studies, SIA and/or RIA. Unlike other jurisdictions, there is no existing policy or regional frameworks at the provincial level to guide cumulative effects assessments, with the exception of a current proposed policy for cumulative effects assessments in air approvals, and

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<sup>15</sup>[http://www.web2.mnr.gov.on.ca/FarNorth/sciencereports/Far\\_North\\_Science\\_Panel\\_Report\\_Summary\\_June\\_2010.pdf](http://www.web2.mnr.gov.on.ca/FarNorth/sciencereports/Far_North_Science_Panel_Report_Summary_June_2010.pdf)

<sup>16</sup> <https://lop.parl.ca/Content/LOP/ResearchPublications/2014-17-e.htm#a8>

<sup>17</sup> <https://www.ebr.gov.on.ca/ERS-WEB-External/content/sev.jsp?pageName=sevList&subPageName=10001>

previous work on the impacts of pulp mill effluent on freshwater fish within the Moose River Basin. Finally, the Ontario EA Act does not apply to private sector projects like mines.

In addition, Ontario has repeatedly demonstrated that in spite of its commitment to fund access to the Ring of Fire and some stated pledges to conduct regional monitoring (from which public documentation has yet to emerge following several years of internal discussions), provincial agencies are simply unprepared and unwilling to proactively consider the regional impacts of industrial-scale development and climate change in this region and on vulnerable First Nation communities, despite ample opportunity to do so since the deposits were first discovered over a decade ago.

To illustrate both the imperative and the lack of consideration for any type of regional assessment by the province of Ontario at any point during planning and/or assessment, we provide a high-level bulleted summary of the chronology of events in this region, focusing on the last 7 years:

- In late 2011 and 2012 respectively, CEA Agency announced two independent Comprehensive Study EAs for Cliffs Natural Resources Chromite Project and Noront's Eagle's Nest Multi-Metal Mine Project, each of which proposed different access routes, with Cliffs scoping out locations for its smelter in an altogether separate process.
- A month after the CEA Agency announcement of a Comprehensive Study EA Process for Cliffs Chromite Project, Matawa First Nations withdrew their support from any Ring of Fire development after their calls for a negotiated Joint Review Panel Environmental Assessment were ignored at the Federal level.
- Cleveland-Cliffs, Inc., (formerly Cliffs Natural Resources) withdrew its project in 2013, citing an inability to work with Queens Park over a number of issues ranging from unresolved land claims to access and power infrastructure.
- The Ontario Minister of the Environment and Climate Change (MOECC) approved Noront's terms of reference (submitted in 2012) in 2015 with amendments to address outstanding issues and concerns raised during the review by government agencies, First Nation communities and others, including consideration of cumulative effects, climate change, and rescreening of all transportation routes – all at the project level. As of today, Noront Resources Ltd. has still not completed its EA/EIS under Ontario and Federal processes.
- The outcome of the Matawa judicial review was the development of the Regional Framework Agreement negotiated between Matawa First Nations and the Government of Ontario, signed in 2014<sup>18</sup>. Its objectives, based on existing constitutional and legislative frameworks in Ontario, focused on industrial and regional infrastructure planning and implementation, long-term environmental monitoring on a regional basis, improving community economic and social development supports in First Nations, and revenue sharing related to Ring of Fire mineral developments. Neither the Agreement nor the processes established by Ontario have resulted in any public announcement of joint progress on any of these objectives.

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<sup>18</sup> [https://www.mndm.gov.on.ca/sites/default/files/rof\\_regional\\_framework\\_agreement\\_2014.pdf](https://www.mndm.gov.on.ca/sites/default/files/rof_regional_framework_agreement_2014.pdf)

- In March 2015, a \$785,000 road study, jointly funded by Canada and Ontario, was promoted as the federal government's latest meaningful contribution to enhance the economic potential of the Ring of Fire. However, the study, completed in June 2016, was actually focused on an all-season community service road that would link four communities – Nibanimik, Neskantaga, Webequie, and Eabametoong –and connect them to the existing highway system. The scope of the study explicitly excluded discussion of transportation infrastructure to Noront Resources' proposed nickel mine or any other industrial activity and did not address any potential impacts or discussion of alternative scenarios. Consultations with the communities raised many concerns about “who would own the road and how it would impact traditional cultural activities such as hunting, trapping and fishing”. The report concluded that “most people were not ready to make a final determination in support or not in support of an all-season road.” Importantly, the road study has not been made publicly available, although it is our understanding that the biophysical impacts are limited to alignment and engineering considerations.
- The mandate for coordinating and leading the development in the Ring of Fire to “create opportunities in Northern Ontario’s resource and mineral sector” lies with the Ministry of Northern Mines and Development (MNMD), specifically the Ring of Fire Secretariat<sup>19</sup>. It has placed some focus on skills and training (“community readiness and capacity building”), manages funding to First Nations for infrastructure in the Far North, including winter roads and the “All Season Community Road Study”, promotes Ontario’s mineral sector, and is working with the Minister of MOECC and the Minister of MNRF on decisions relating to environmental assessments, cumulative and regional environmental impacts — and long-term monitoring in the Ring of Fire, including the assessment of carbon storage.
- MNRF is mandated<sup>20</sup> to continue to work with MNMD and MOECC to support comprehensive environmental assessments and planning related to projects in the Ring of Fire. MNRF is leading the development of a regional monitoring framework in an exclusively internal exercise. MNRF is responsible for developing the Far North Land Use Strategy (described above) as required under the *Far North Act, 2010* in order to provide policy guidance for joint planning teams as they develop community-based land use plans and for developers as they plan projects. MNRF is also responsible for implementing the *Endangered Species Act* and of particular relevance in the Ring of Fire, delivering on range-level goals and objectives identified in Ontario’s Caribou Conservation Plan.
- MOECC is mandated<sup>21</sup> to continue to work on decisions relating to environmental assessments associated with projects in the Ring of Fire region by working with MNMD, Indigenous Relations and Reconciliation (IRR), Transportation, and MNRF. This includes “ensuring that the regional and cumulative impacts of proposed development are considered, including climate change impacts.” MOECC has engaged in baseline studies on water, soil, and aquatics in the Ring of Fire, but has offered no public statements to date as to how MOECC will address regional and

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<sup>19</sup> <https://www.ontario.ca/page/september-2016-mandate-letter-northern-development-and-mines>

<sup>20</sup> <https://www.ontario.ca/page/september-2016-mandate-letter-natural-resources-and-forestry>

<sup>21</sup> <https://www.ontario.ca/page/september-2016-mandate-letter-environment-and-climate-change>

cumulative impacts in the Ring of Fire (not required under Ontario's EA Act, as mentioned above).

- In August 2017, the Premier of Ontario announced that three all-weather roads, with the dual purpose of linking isolated First Nations in Northern Ontario with the province's highway system and servicing mining development, would begin construction in 2019. The roads would be developed by three Matawa First Nations communities (Webequie, Nibanimik, and Marten Falls). Under the Ontario EA Act, three individual EAs will be funded by the Government of Ontario and "harmonized" at the federal level although it remains unclear to us what will be the Federal requirement for impact assessment for these new linear developments. Other Matawa First Nations that were left out of these processes issued public statements indicating that such an announcement was premature relative to the Regional Framework Agreement.
- As of April 4, 2018, there are 8 active mineral exploration permits in the Ring of Fire region. These 8 active permits cover 587 mining claims. As of April 4, 2018, there are 71 active dispositions within the Ring of Fire region and a total of 1,514 active mining claims. As of April 2018, none of the exploration projects in the Ring of Fire have either indicated any public intention to develop or triggered an MNDM closure plan which specifies how the mine site will be rehabilitated after mining activities are complete and is a mandatory step in moving forward with development.
- In August 2017, Noront announced that it was looking at specific sites for a ferrochrome smelter to process chromite from the Ring of Fire mining development. Four short-listed northern Ontario communities (Sudbury, Timmins, Sault Ste Marie and Thunder Bay) were invited to submit bids. This process remains entirely disconnected from any decisions about access, road routing, or environmental assessment processes. The company expressed its intention to work on smelter development while the province and First Nations created road infrastructure.
- In addition to linear features tied to mining proposals, there is an ongoing hydroelectric transmission project underway (Wataynikeneyap), which includes scenarios on completion of Phase 1 to supply electricity to any Ring of Fire mines. First Nations in the Ring of Fire are also engaged in multiple processes with different Ontario Ministries, particularly climate change adaptation planning with MOECC and community-based land use planning with MNRF. As of March 2018, none of the communities in the Ring of Fire have completed approved land use plans under the *Far North Act, 2010*. This legislation prohibits the development of new mines, all-weather infrastructure and other developments in the absence of an approved land use plan (s. 12) unless the Minister, by order, determines the development is predominantly for community use in the area (s. 12 (6)) or that the development is in the social and economic interests of Ontario (s. 12(4)).

### **The matter of federal jurisdiction**

Apart from the assessment of federal policies, plans, and programs, strategic and regional assessments will clearly be stronger if they are carried out with the cooperation of other jurisdictions. However, Ontario provides a clear demonstration of the resistance of provincial jurisdictions to do so. We stress that while the Constitution may limit the ability of the federal government to make certain decisions

about programs, plans or projects following RIAs and SIAs in the absence of provincial engagement, no such limits exist with respect to gathering and assessing information, and engaging the public. The Ring of Fire should provide ample demonstration of the potential value of a regional assessment to provide authoritative guidance to federal project assessments, including mines and related infrastructure. In general, sound decisions at the project level about a project's contribution to the 'public interest' (s. 63 of the Act) would benefit enormously from the results of a comprehensive regional assessment that rigorously analyses a range of options and alternatives for addressing existing and/or anticipated cumulative effects. Accordingly, it is vital for the new Act to truly commit to both providing incentives for other jurisdictions to cooperate and being ready to proceed with a federal RIA or SIA in the absence of interest from other jurisdictions.

### **Our recommended amendments to the Act**

The legislated base established in Part 1 of Bill C-69 is inadequate to compel implementation of regional and strategic assessment, and therefore appropriate consideration of cumulative effects. Although we understand that the relevant federal agencies expect that underlying intentions, not spelled out explicitly in the Act, are to be realized in forthcoming policy and/or guidance, we submit that the specific proposed language of the legislation is still too vague and lacks too few explicit provisions to guarantee the federal government's intended direction on these assessments. The history of implementation of CEAA provides ample evidence that weak and/or enabling language will not result in the conduct of regional assessments. CEAA has never mandated strategic-level assessments.

The amendments discussed below are intended to create mandates for a limited number of regional and strategic assessments. We are suggesting 9 essential amendments for improving the regional and strategic impact assessment elements of the Act and provide these below along with rationale for their inclusion, pointing to the appropriate section in the Act, and suggesting specific language in some cases.

- 1) The terms "regional impact assessment" and "strategic impact assessment" must be defined (in s. 2) both to clarify the difference between the intended process and the CEAA 2012 "studies" and to ensure that SIAs are not limited to those that are only "relevant to conducting impact assessments." The definition of RIA should require recommendations on how to address identified cumulative effects concerns that emerge from the RIA. In addition, the description of the scope of regional assessments in s. 92 and s. 93 be amended to reflect the same issue and the scope of strategic assessments in s. 95 should be amended to provide for an assessment of "(b) potentially reasonable strategic responses to any issue relevant to the purposes of this Act."
- 2) It is critical to add a provision that ensures that the Minister's determination of factors in the public interest include outcomes from relevant regional and strategic assessments, as in:

**s. 63. Add (f): *any relevant assessment referred to in section 92, 93, or 95.***

- 3) Amend s. 109 to provide for a regulation to serve as equivalent to the Project List for regional and strategic undertakings and provide necessary details about the process and expectations of SIA and RIA. Among other things, this regulation would establish criteria for when RIAs and SIAs should be undertaken as well as decision making on public requests for regional and strategic

assessments. Further, the regulation would lay out the process to be followed and indicate how the results are to be used at the project level.

- 4) Include language that makes clear the existence of incentives for federal departments and provincial, territorial, Indigenous, and municipal governments to undertake cooperative regional and strategic assessments, as in:

**96.2. Add: *The Minister must establish a funding program to facilitate the conduct of regional and strategic assessments and the participation of other jurisdictions in assessments under sections 92, 93 and 95.***

- 5) Require responses by the Minister to regional and strategic assessment reports in s. 103, following receipt of the report in s. 102, with reasons in light of the s. 63 factors, and posting of the report on the Internet site.
- 6) Section 22 (factors to be considered in impact assessment) and 63 (factors to be considered in the public interest) refer to Canada's commitments, but the language is limited to climate change. Our international commitment to biodiversity under the Convention on Biological Diversity must be mentioned at the same time. This can be accomplished by adding "and biodiversity" following "commitments in respect of climate change" (s. 22(i) and 63(e)).
- 7) Make explicit use of the Expert Committee established under s. 157 as a vehicle to propose potential regional and strategic assessments, as in:

**97. Add "*, or a recommendation by the expert committee,*": The Minister must respond, with reasons and within the prescribed time limit, to any request, *or a recommendation by the expert committee*, that an assessment referred to in section 92, 93 or 95 be conducted. The Minister must ensure that his or her response is posted on the Internet site.**

- 8) Add a Schedule for "Regions for which regional assessment to be initiated" and a Schedule for "Policies, programs or plans for which strategic assessment to be initiated".
- 9) Regarding decisions in the planning phase, we strongly suggest the addition of a provision in s. 17 to screen out any projects that are inconsistent with the outcomes of an RIA or SIA and have the planning phase of a new project allow for triggering of a RIA or SIA under appropriate conditions, as in:

**17(1)(b): Add, "*, or would be inconsistent with the outcomes of a relevant assessment referred to in section 92, 93 or 95*", i.e., "*...the Minister is of the opinion that it is clear that the designated project would cause unacceptable effects within federal jurisdiction or unacceptable direct or incidental effects, or would be inconsistent with the outcomes of a relevant assessment referred to in section 92, 93 or 95.*"**



**17 (1): Add: “or the Minister may refer a matter to a committee or the Agency under sections 92, 93 or 95, and make an order directing the Agency not to conduct the impact assessment until the conclusion of the assessment under sections 92, 93 or 95.”**