



379 Ronka Road
Worthington, ON
P0M 3H0
(705) 866-1677

Linda@OntarioRiversAlliance.ca
OntarioRiversAlliance.ca

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Sarah Nugent, Water Resources Coordinator
Ministry of Natural Resources
10 Campus Drive
Kemptville, Ontario
K0G 1J0
E: sarah.nugent@ontario.ca

Dear Ms. Nugent:

**Re: Disposition of American Eel (*Anguilla Rostrata*)
Hydro-electric Facilities on the Mississippi River**

The Ontario Rivers Alliance (ORA) is an organization with a focus on healthy river ecosystems throughout the Province, and represents some 30 organizations across Ontario. Therefore, we wish to comment on the current Public Notice regarding the Disposition of American Eel (*Anguilla Rostrata*), and the Mississippi Hydro-electric Generating Station.

Recommendation: The decline of the American Eel to near extirpation in Ontario is a matter of strong public interest and concern. Cumulatively, waterpower facilities have had major negative impacts on American Eel in Ontario by preventing adequate access to important historical habitat and by killing significant quantities of eel as they attempt to migrate back to sea to spawn. These impacts have persisted on an ongoing basis in Ontario for almost a century.

The ORA recommends that the agreement for the Mississippi River facilities (and at all other waterpower facilities impacting eels) should clearly state that safe and adequate upstream and downstream passage will be a requirement at all facilities within the life of the agreement. Otherwise the facilities will continue to jeopardize survival and recovery of American Eel in Ontario and therefore, in our opinion, should not be signed.

Cumulative Effects: The Mississippi River once provided access to a wide variety of lake and flowing water habitats. For this reason, the Mississippi watershed once supported an abundance of eels. Unfortunately, access to its important habitats has all but been cut off by a series of waterpower facilities and dams on the river and 50 years or so they are all but gone. Moreover, because these facilities have not attempted to provide safe passage, those eels that do manage to get around the facility are at high risk of being killed by turbines 12 or more years later when they attempt to reach even the Ottawa River (where there are several more facilities they must pass) and the St. Lawrence River where they are at risk of being killed by turbines and commercial fisheries in the St. Lawrence

River. Were cumulative effects such as the aforementioned even considered when these agreements were negotiated? Please provide us with a summary of how the cumulative effects were considered and incorporated in this agreement. This is even more important in this agreement as there are five facilities that cumulatively may have substantial impact on eels. The series of hydro-electric facilities on the Mississippi River are a text book example of the well-known cumulative effects of hydro-electric facilities on eel and other migratory fish species.

Millions of dollars have been invested in these facilities, millions of dollars of revenue generated, yet there has been no little to no effort nor money invested to alleviate their effects on eels in Ontario at any facility but Saunders.

Public Notices: In general, the public notices for these waterpower agreements have been very poorly advertised, and it doubtful that many have seen them. Given the timing (agreements should be signed by June 30), it is questionable if there will be time to carefully consider the input we do provide. It makes us wonder whether if the request for comments is genuine as there will be little time for the ministry to change the agreements in light of public comments. However, ministry does have the option of refusing to sign this agreement by June 30, 2011, and to give the public input you receive strong consideration.

Upstream & Downstream Passage: Whereas the Agreements at Chaudière Falls exhibit sound initial approaches and appear to leave no doubt that permanent, effective upstream and downstream passage will be required, the Mississippi agreement is by far the weakest of any agreements that we have reviewed so far. There is no assurance that effective, permanent, safe upstream and downstream passage will ever be required nor installed at any of the facilities within the 30 year life of the agreement. It is doubtful that any facility impacting eels can be in compliance with the ESA and Regulation 242 without assurance that effective upstream and downstream passage will be installed within the life of the agreement.

There have been eels found in the area. Eels continue to be killed, harmed and/or harassed by the operation of these facilities, and it appears essential that strategic mitigation of passage be implemented. If one eel has been caught in a survey then surely more eels will be in the area. There appears to be a feeble short-term effort to provide upstream passage (beginning at the most downstream facility first) but there is no confirmation of this continuing at this facility, much less the others within the 30-year agreement.

The Agreement: As noted previously, capturing one eel in a survey generally will mean there are more eels in the area. This is an endangered species as abundance is precariously low, so low numbers in a survey should be expected. The participants in the agreement should be entering it with the understanding and expectation that their efforts will not impede recovery of the species and will not jeopardize its very survival, and that protecting and rebuilding the species will mean working with small numbers to begin with. However, instead of entering this agreement with the expectation of assisting eel recovery, the agreement appears to be structured with the intent of avoiding even the continuation of the temporary eel ladder at Galletta, based on "presentation of resource requirements, socio-economic evaluation" etc., at the end of the three year implementation plan. As this agreement is multi-party among all facilities on the Mississippi River, and together they generate well over a million dollars annually, there appears to be sufficient pooled resources to undertake reasonable mitigation. We say this as well because it appears that these facilities have never invested substantially in mitigation of passage since the beginning of their operation, often extending to early 1900s.

It is stated that the operation of the facilities will not jeopardize the survival and recovery of American Eel if the conditions of the Agreement are adhered to. There would appear to be no certainty that effective upstream passage will ever be installed at any of the facilities party to this agreement, we are asking for the rationale for this statement, particularly considering that their individual and cumulative impacts can theoretically continue through the life of the agreement. Please provide the rationale for how this agreement will meet the four legal tests for waterpower facilities outlined in Regulation 242 made under the ESA. This agreement does not even appear to move significantly in the right direction, and seems to be structured to enable easy escape from even the one overly simplistic mitigation requirement at Galetta; much less comply with the Regulation. There is no formal mention of instituting a strategic approach to mitigation, and there is no requirement for provision of permanent passage at even one of the facilities. Again, we wish to emphasize that this is an endangered species, abundance is precariously low, and all facilities need to contribute to protection and recovery of eels, a species that they appear to have severely impacted for decade.

Monitoring: The information on monitoring is limited, but is doubtful that land-based surveys once per month will yield much if any useful information. We believe that this will only lead to pressures to cease the efforts and could even lead to a debate over where there is even a need for an agreement. From the meagre three bullets of information provided, this is at best a disingenuous effort at monitoring and mitigation and we can find little to no evidence of a sincere effort to avoid jeopardizing the survival and recovery of eels.

Summary: Hopefully there is more information on this agreement than what was provided. If the material provided is all that is contained in the agreement, then recovery of eels in the Mississippi River is almost certainly doomed, much less the survival of those eels that remain. The monitoring plan appears insufficient to adequately determine effectiveness of mitigation. Moreover, there are no clear targets established at any of the facilities, or for the overall agreement – as noted earlier this is sure to lead to endless pressure on MNR. This can be avoided by including a statement in the agreement that provision of safe adequate passage at all (most?) facilities will be required within the term of this agreement. This should be carried out on a strategic basis (beginning first at the downstream end of the watershed and working progressively upstream). A much stronger agreement should be achieved before it is signed.

Please register ORA as a stakeholder in this issue, and place us on your mailing list to receive all related information, notices and decisions. Thank you!

Respectfully,



Linda Heron,
Chair, Ontario Rivers Alliance

Cc: The Honourable Dalton McGuinty, Premier of Ontario - DMcGuinty.mpp.co@liberal.ola.org
The Honourable Linda Jeffrey, Minister of Natural Resources - ljeffrey.mpp.co@liberal.ola.org
Gord Miller, Environmental Commissioner of Ontario - commissioner@eco.on.ca