

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**WILDLANDS LEAGUE and  
FEDERATION OF ONTARIO NATURALISTS**

Appellants

- and -

**LIEUTENANT GOVERNOR IN COUNCIL and  
MINISTER OF NATURAL RESOURCES**

Respondents

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**FACTUM OF THE APPELLANTS**

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## **PART I - THE PARTIES AND THE DECISION APPEALED FROM**

1. The Environmental Groups CPAWS-Wildlands League (“Wildlands League”) and the Federation of Ontario Naturalists (“Ontario Nature”) are public interest litigants.<sup>1</sup> They have a long history of advocating for the protection and recovery of species at risk in Ontario.<sup>2</sup>
2. The Respondent Minister of Natural Resources (“Minister”) is responsible for administering the *ESA*, including exercising authority under s. 57(1). The Respondent Lieutenant Governor in Council (“Cabinet”) has regulation-making power, including under s. 55(1)(b).
3. The Environmental Groups appeal the Divisional Court’s order dismissing their application for judicial review of Ontario Regulation 176/13 (the “Exemption Regulation”) under the *Endangered Species Act, 2007*, SO 2007, c 6 (“*ESA*”) as *ultra vires* and of no force or effect.<sup>3</sup>

## **PART II – OVERVIEW STATEMENT**

4. The Exemption Regulation creates wide-ranging exemptions from the prohibitions of the *ESA* for most industrial activities in Ontario. It deprives each of the province’s 160 endangered and threatened species of statutory protections against killing them and destroying their habitats.<sup>4</sup>
5. In its decision, the Divisional Court held that the Minister had met a statutory precondition under s. 57(1) of the *ESA*, which granted him the right to recommend the Exemption Regulation to Cabinet. Strikingly, the Court held that the Minister’s performance of his duty under s. 57(1) was not reviewable under either a correctness or reasonableness standard. The

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<sup>1</sup> Reasons for Judgment of Lederer J. at para 2 [Appeal Book and Compendium (“ABC”) Vol 1, Tab 3, p 10].

<sup>2</sup> Affidavit of Caroline Schultz (“Schultz Affidavit”), paras 6-18 [ABC Vol 1, Tab 7, pp 354-358]; Affidavit of Anna Baggio (“Baggio Affidavit”), paras 4-11 [ABC Vol 1, Tab 6, pp 95-99].

<sup>3</sup> Order of the Divisional Court, as entered on June 5, 2015 [ABC Vol 1, Tab 2, p 7]. See also the Reasons for Judgment of Lederer J. [ABC Vol 1, Tab 3, p 10].

<sup>4</sup> When the Exemption Regulation came into force, on July 1, 2013, it applied to 155 listed species. O Reg 242/08 provides, at s. 0.1, that “[t]his Regulation applies to all species on the Species at Risk in Ontario List, as that list read on June 27, 2014”. As of that date, there were 160 listed endangered and threatened species.

Court further held that the Minister met his duty – despite that he failed to consider whether the proposed regulation would jeopardize each individual species to which it would apply.

6. The Divisional Court also held that the Exemption Regulation was consistent with the *ESA*'s purpose. In so holding, it ignored the Act's purposes at s. 1. Instead, the Court read into the *ESA* a purpose of promoting the economic interests of industry; this threatens the integrity of the entire statutory scheme. The Legislature intended the *ESA* to protect and recover Ontario's species at risk. The Exemption Regulation is inconsistent with that overarching purpose.
7. The validity of the Exemption Regulation turns on these two issues – as does the survival and recovery of Ontario's most imperilled and vulnerable species.

### **PART III – SUMMARY OF FACTS RELEVANT TO THE ISSUES ON APPEAL**

#### **A. The modern *ESA* was enacted to ensure meaningful protections for species at risk**

8. In 2007, the Ontario Legislature enacted a modernized *ESA*. As stated at first reading, the *ESA* was enacted to “provide significantly broader and more effective provisions for protecting species at risk and their habitats” and “includes a stronger commitment to species recovery”.<sup>5</sup>
9. In contrast to the old *Endangered Species Act* of 1971,<sup>6</sup> which as of 2007 offered only limited protection for 42 of 176 species designated at risk, the *ESA* extended immediate protections to all listed species in Ontario.<sup>7</sup> Notably, it provided general habitat protection for all endangered and threatened species, to commence on or before July 1, 2013.<sup>8</sup> In the words of then-Minister David Ramsay, the *ESA* created a “presumption of protection” for all listed species.<sup>9</sup>

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<sup>5</sup> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38th Parl, 2nd Sess, No 143, (20 March 2007) at 7195 (Hon David Ramsay, Minister of Natural Resources) [Joint Book of Authorities (“JBOA”)].

<sup>6</sup> *Endangered Species Act*, RSO 1990 c E.15 (repealed 30 June 2008).

<sup>7</sup> Environmental Commissioner of Ontario, *Reconciling our Priorities: Annual Report 2006-2007*, submitted to Legislative Assembly of Ontario November 2007 (Toronto: ECO, 2007) at 96 [JBOA].

<sup>8</sup> *ESA*, s. 10(3).

<sup>9</sup> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38th Parl, 2nd Sess, No 148, (28 March

10. In the spring of 2012, as part of an omnibus budget bill, the government proposed significant legislative amendments to weaken the *ESA*.<sup>10</sup> The amendments would have exempted many industrial activities from the Act's prohibitions.<sup>11</sup> After public outcry and opposition through the democratic process, the government removed the proposed amendments from its bill.<sup>12</sup>

**B. In December 2012, the MNR proposed regulatory exemptions aimed at reducing *ESA* permitting, so as to lessen MNR's administrative burden and promote industry**

11. By late 2012, it became clear that the executive had not given up on its desire to weaken the *ESA*. On December 5, 2012, the Ministry of Natural Resources ("MNR") posted a formal notice to the Environmental Bill of Rights ("EBR") Registry, proposing vague changes to *ESA* implementation consistent with MNR's ongoing Modernization of Approvals process.<sup>13</sup>
12. Modernization of Approvals is a general MNR policy framework. It extends to many areas of MNR operations. It is aimed at "streamlining" permit approvals, to introduce cost savings and to "reduce the burden on individuals, businesses and government." The MNR was concerned that, with the *ESA*, the number of permit applications that it had to deal with had grown.<sup>14</sup>
13. On January 24, 2013, the MNR posted additional information about its December 5, 2012 notice to the EBR Registry. It clarified that it was proposing regulatory exemptions from the *ESA* for entire industrial sectors, to reduce the activities requiring permits under the *ESA*.<sup>15</sup>

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2007) at 7500 (Hon David Ramsay, Minister of Natural Resources) [JBOA].

<sup>10</sup> Bill 55, *Strong Action for Ontario Act (Budget Measures)*, 1st Sess, 40th Parl, Ontario, 2012, Schedule 19 (see Schultz Affidavit, Ex C [ABC Vol 1, Tab 7C, p 381].

<sup>11</sup> Subsection 9(1) of the *ESA* provides that no person shall "kill, harm, harass, capture or take" a member of an endangered or threatened species at risk. Paragraph 10(1)(a) of the *ESA* provides that no person shall "damage or destroy the habitat" of an endangered or threatened species.

<sup>12</sup> Baggio Affidavit, paras 19-25 and Exs H, L and M [ABC Tab 6, pp 101-104; Tab 6.H, pp 143- 146; Tab 6.L, p 158 and Tab 6.M, pp 169-170]; Schultz Affidavit, paras 19-31 and Ex H [ABC Tab 7, pp 358-362; Tab 7.H, pp 387-391].

<sup>13</sup> Schultz Affidavit, paras 39-40 and Ex O [ABC Vol 1, Tab 7, pp 366-367 and Tab 7.O, p 464].

<sup>14</sup> EBR Registry posting, 27 Sept 2012, Schultz Affidavit, paras 33-34 and Ex J [ABC Vol 1, Tab 7, p 363; Tab 7.J, p392]. See also ECO Special Report, "Laying Siege to the Last Line of Defence", November 2013, *infra* note 121, at pp 20-21 [ABC Vol 1, Tab 6EE, pp 311-312].

<sup>15</sup> Schultz Affidavit, para 41 and Ex P [ABC Vol 1, Tab 7, p 367 and Tab 7.P, p 469].

14. The proposal provoked major public concern. Over 10,000 Ontarians commented on the EBR Registry notice.<sup>16</sup> The Environmental Groups expressed concerns in meetings with MNR, in letters to the Minister and Premier, and in comments submitted on the EBR Registry notices.<sup>17</sup>
15. Through counsel, Ontario Nature wrote to Minister Oraziotti in February and April of 2013, notifying him of his duties under s. 57(1). It stressed his duty to assess whether the regulatory proposal was likely to jeopardize the survival of, or have any other significant adverse effect on, each of the listed species to which it would apply.<sup>18</sup> In his reply of July 2013, the Minister declined to acknowledge that s. 57(1) required him to assess each individual species.<sup>19</sup>

**C. In May 2013, the Minister purported to make a s. 57(1) determination, and Cabinet made the Exemption Regulation**

16. Cabinet made the Exemption Regulation on May 15, 2013, by amending Regulation 242/08. The Exemption Regulation came into effect on July 1, 2013. This was the same day that all endangered and threatened species were meant to receive habitat protection under the *ESA*.<sup>20</sup>
17. Prior to Cabinet making the Exemption Regulation, Minister Oraziotti signed the Minister's Determination on May 1, 2013.<sup>21</sup> In doing so, he purported to satisfy his duty under s. 57(1).

**D. The Minister's Determination fails to assess jeopardy to 150 of the 155 endangered and threatened species to which the proposed regulation would apply**

18. After initiating litigation, the Environmental Groups obtained the Minister's Determination.<sup>22</sup>

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<sup>16</sup> Schultz Affidavit, para 55 [ABC Vol 1, Tab 7, p. 372].

<sup>17</sup> Baggio Affidavit, paras 47-53 [ABC Vol 1, Tab 6, pp 109-111]; Schultz Affidavit, paras 43-54 and Exs Q, V, X, Y, AA, & BB [ABC Vol 1, Tab 7, pp 368-372; Tab 7.Q, p 479; Tab 7.V, p 488; Tab 7.X, p 504; Tab 7.Y, p 509; Tab 7.AA, p 519; and Tab 7.BB, p 521].

<sup>18</sup> Schultz Affidavit, para 50 and Ex X [ABC Vol 1, Tab 7, p 370 and Tab 7.X, p 504]. See also Schultz Affidavit, para 53 and Exs AA and BB [ABC Vol 1, Tab 7, p 371; Tab 7.AA, p 519; and Tab 7.BB, p 521].

<sup>19</sup> Schultz Affidavit, para 60 and Ex DD [ABC Vol 1, Tab 7, p 374 and Tab 7.DD, p 529].

<sup>20</sup> See *supra* at paragraph 9 and note 8.

<sup>21</sup> Schultz Affidavit, paras 63-68 and Ex GG [ABC Vol 1, Tab 7, pp 375- 377 and Tab 7.GG, pp 535 and 570]. The Minister's Determination is also located at Vol 1, Tab 4, p 33 of the Appellants' Appeal Book and Compendium.

19. It comprises MNR staff's recommendation, to which Minister Oraziotti signed concurrence.<sup>23</sup>
20. With a few exceptions, the Minister's Determination does not assess the proposed regulation's effect on each listed endangered or threatened species to which it would apply.<sup>24</sup> Of the 155 endangered and threatened species listed at the time, only five are assessed: Butternut,<sup>25</sup> Bobolink and Eastern Meadowlark,<sup>26</sup> and Barn Swallow and Chimney Swift.<sup>27</sup>
21. Rather than assessing the proposed regulation's effect on each of the 155 individual species to which it would apply, the Minister's Determination focuses on 18 exemption proposals. Of these, 15 proposals exempt sectors or activities – including forestry, early mining exploration, aggregate operations, hydro operations, operation of wind facilities, drainage works, and an exemption for activities not completed or operating, but that have been approved or planned.
22. The Minister's Determination states the 18 proposals are intended to “increase administrative efficiency and reduce burdens on individuals and businesses engaged in activities that affect species at risk and their habitat while providing for the protection of species at risk.”<sup>28</sup>

**E. The Exemption Regulation means that no endangered or threatened species in Ontario enjoys the full protection of the *ESA*'s prohibitions**

23. In making the Exemption Regulation, the executive replaced a legislated regime intended to create a “presumption of protection” with a regulatory regime operating from a “presumption of permission”. The regulation introduces a vast suite of exemptions from the *ESA*'s prohibitions. Most major industrial activities are now presumptively exempt. A proponent

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<sup>22</sup> *Ibid.*

<sup>23</sup> Minister's Determination, pp 1 and 36 [ABC Vol 1, Tab 4, p 33 and 68].

<sup>24</sup> At the time of the Minister's Determination, 155 species were listed as endangered or threatened.

<sup>25</sup> Minister's Determination, p 25, noting that “It is unlikely that the section will result in any significant adverse effect on Butternut or jeopardize the survival of the species” [ABC Vol 1, Tab 4, p 57].

<sup>26</sup> Minister's Determination, pp 27-28 [ABC Vol 1, Tab 4, pp 59-60].

<sup>27</sup> Minister's Determination, pp 28-30 [ABC Vol 1, Tab 4, pp 60-62].

<sup>28</sup> *Ibid* at p 2 [ABC Vol 1, Tab 4, p 34].



conducting these activities may now kill endangered and threatened species and destroy their habitats. Specifically, a proponent may now conduct these activities if it meets standardized regulatory conditions, which are largely self-monitored. The conditions merely require proponents to *minimize* species death and habitat destruction. As put by the Court, most of the Exemption Regulation's conditions require proponents to "minimize adverse effects".<sup>29</sup>

24. The Exemption Regulation applies to every endangered and threatened species in Ontario. Put another way, not one of the now 160 endangered or threatened species of lichens, mosses, vascular plants, molluscs, insects, fishes, reptiles, birds or mammals enjoys the full protection of the *ESA*'s prohibitions against killing them or destroying their habitats. For a visual representation of this, refer to the Appellants' Table of Endangered and Threatened Species.<sup>30</sup>

#### **F. The Divisional Court dismissed the Environmental Groups' application**

25. The Divisional Court dismissed the Environmental Groups' application for judicial review in a decision rendered on May 28, 2015. Lederer J. authored the Reasons for Judgment.<sup>31</sup>
26. The Court accepted that the Minister's Determination was a condition precedent to Cabinet making the Exemption Regulation.<sup>32</sup> Yet it held that it could not review the correctness or reasonableness of the Minister's Determination.<sup>33</sup> Rather, the Court held that it was limited to reviewing if the condition precedent was "met". According to the Court, it was.<sup>34</sup>
27. The Court also held that the Exemption Regulation was consistent with the *ESA*'s purpose. It rejected the Environmental Groups' position that the *ESA*'s overarching purpose is protection

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<sup>29</sup> Reasons for Judgment of Lederer J. at paras 22-23 [ABC Vol 1, Tab 3, pp 19-20].

<sup>30</sup> Appellants' Table of Endangered and Threatened Species [ABC Vol 2, Tab 12C, pp 907]. The Table covers the 155 endangered and threatened species listed when the Exemption Regulation came into force on July 1, 2013.

<sup>31</sup> Reasons for Judgment of Lederer J. [ABC Vol 1, Tab 3, p 10].

<sup>32</sup> *Ibid* at paras 35-36 [ABC Vol 1, Tab 3, pp 24-25].

<sup>33</sup> *Ibid* at para 37 [ABC Vol 1, Tab 3, p 25].

<sup>34</sup> *Ibid* at para 36 [ABC Vol 1, Tab 3, p 25].

and recovery of species at risk. While it never established the purpose of the *ESA* or the Exemption Regulation, it held that the Act aims to balance species' needs against industry's economic interests and that such economic considerations are "not a peripheral purpose" of the Act.<sup>35</sup>

## **PART IV – STATEMENT OF THE ISSUES AND LEGAL ARGUMENT**

### **A. THE QUESTIONS AT ISSUE**

28. The two questions at issue in this appeal, and the related sub-issues, are as follows:

**Issue 1:** Did the Minister's Determination lawfully satisfy his duty under s. 57(1), such that he lawfully assumed jurisdiction to recommend an exemption regulation to Cabinet?

- a. Is the Minister's performance of his duty under s. 57(1), which serves as a condition precedent to the recommending and making of subordinate legislation, justiciable?
- b. Regarding the standard of review, must a Minister acting under s. 57(1) apply the correct legal test? If he does so, must his s. 57(1) determination be reasonable?
- c. Did the Minister fail to apply the correct legal test under s. 57(1)?
- d. In the alternative, was the Minister's s. 57(1) determination unreasonable?

**Issue 2:** Is the Exemption Regulation inconsistent with the purpose of the *ESA*?

- a. Did the Divisional Court fail to perform the first step of the *Katz* analysis?
- b. Did the Divisional Court misconstrue the purpose of the *ESA*? Is the *ESA*'s overarching purpose the protection and recovery of species at risk?
- c. Is the Exemption Regulation as a whole inconsistent with the purpose of the *ESA*?
- d. In the alternative, is the Exemption Regulation in part inconsistent with the purpose of the *ESA*?

29. The Environmental Groups submit that the answer to all of these questions is "yes".

### **B. THE *ESA* PURPOSE AND SCHEME**

30. The *ESA* is a complete scheme for the protection and recovery of species at risk. It is

Ontario's only statute aimed at protecting endangered and threatened species.

31. The *ESA* was enacted in 2007. It came into force on June 30, 2008. The Legislature enacted the *ESA* because it recognized that a stronger, more effective approach was needed to protect

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<sup>35</sup> *ibid* at para 53, and paras 47-52 [ABC Vol 1, Tab 3, pp 28-30].

species in Ontario. The *ESA* was designed to arrest and reverse an alarming rate of species decline and extinction.<sup>36</sup> As put by the Environmental Commissioner of Ontario in a report to the Legislature, the *ESA* is the “last line of defence” for Ontario’s most imperilled species.<sup>37</sup>

**1. The *ESA*’s overarching purpose is the protection of recovery of species at risk**

32. At s. 1, the purposes of the *ESA* are legislated as follows:

1. To identify species at risk based on the best available scientific information, including information obtained from community knowledge and aboriginal traditional knowledge.
2. To protect species that are at risk and their habitats, and to promote the recovery of species that are at risk.
3. To promote stewardship activities to assist in the protection and recovery of species that are at risk. (emphasis added)

33. Section 1 must inform the interpretation of every provision in the Act. However, the Divisional Court failed to mention s. 1 in its analysis – either when interpreting s. 57(1), or when analyzing whether the Exemption Regulation is consistent with the Act’s purpose.<sup>38</sup>

34. The Environmental Groups submit that this Court should determine that the overarching purpose of the *ESA* is the protection and recovery of species at risk. The Legislature set out that overarching purpose at s. 1.2 of the Act.

35. The Divisional Court repeatedly mischaracterized the Environmental Groups’ position by suggesting they argued that the protection and recovery of species was the Act’s *sole* or *only* or *single* purpose.<sup>39</sup> That has never been their position. That position would be nonsensical –

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<sup>36</sup> Ontario, Legislative Assembly, Official Report of Debates (Hansard), 38th Parl, 2nd Sess, No 143, (28 March 2007) at 7499 (Hon David Ramsay, Minister of Natural Resources) [JBOA].

<sup>37</sup> ECO Report “The Last Line of Defence”, Baggio Affidavit, para 67 & Ex CC [ABC Tab 6, p 115 and Tab 6CC, p 192].

<sup>38</sup> Reasons for Judgment of Lederer J. at paras 34-37 and paras 47-53 [ABC Vol 1, Tab 3, pp 24-25 and 28-30].

<sup>39</sup> Reasons for Judgment of Lederer J. at paras 39, 45 and 47 [ABC Vol 1, Tab 3, pp 25, 27 and 28].

as the Legislature enacted three statutory purposes. Unlike the other two purpose provisions, s. 1.2 is the overarching purpose as it applies to every operative provision within the Act.<sup>40</sup>

36. It is *not* the purpose of the *ESA* to promote economic development or to “balance” natural resource exploitation against the protection and recovery of species at risk. The *ESA* is not a resource management statute; rather, the *ESA* is a species protection statute. Indeed, the *ESA*’s purpose contrasts sharply with legislated purposes found in Ontario’s resource management statutes, such as the *Ontario Water Resources Act*,<sup>41</sup> the *Lakes and Rivers Improvement Act*,<sup>42</sup> the *Aggregate Resources Act*,<sup>43</sup> the *Mining Act*,<sup>44</sup> or the *Crown Forest Sustainability Act, 1994*.<sup>45</sup> A review of these acts’ purpose provisions shows that they are aimed at balancing the economic use of natural resources – like water, minerals, timber – with their conservation.

37. By contrast, the *ESA* is aimed at putting species first. The same is true of the U.S. *Endangered Species Act*, which has afforded endangered species “the highest of priorities” since 1978 with the seminal United States Supreme Court decision in *Tennessee Valley Authority v Hill*.<sup>46</sup>

## **2. The *ESA* scheme allows only narrow, circumscribed exceptions to its core prohibitions**

38. Under the *ESA*, species are identified and classified as endangered or threatened through a science-based process. If the Committee on the Status of Species at Risk in Ontario, a body of independent scientists, classifies a species as endangered or threatened,<sup>47</sup> a Minister’s

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<sup>40</sup> The first legislated purpose of the *ESA*, at s. 1.1, is to identify species at risk based on the best available scientific information. Section 1.1 only clearly applies to the Act’s classification and listing provisions at ss. 3-7. The third legislated purpose of the *ESA*, at s. 1.3, is to promote stewardship activities. Section 1.3 only clearly applies to the Act’s stewardship provisions at s. 16 and ss. 47-48.

<sup>41</sup> *Ontario Water Resources Act*, RSO 1990, c O.40, s. 0.1.

<sup>42</sup> *Lakes and Rivers Improvement Act*, RSO 1990, c L.3, s. 2.

<sup>43</sup> *Aggregate Resources Act*, RSO 1990, c A.8, s. 2.

<sup>44</sup> *Mining Act*, RSO 1990, c M.14, s. 2.

<sup>45</sup> *Crown Forest Sustainability Act, 1994*, SO 1994, c 25, s. 1.

<sup>46</sup> *Tennessee Valley Authority v Hill*, 437 US 153 (USSC 1978) at pp 20-21.

<sup>47</sup> *ESA*, ss. 3-6. Species can also be classified as “extinct,” “extirpated” or “special concern species”.

delegate must add the species to the Species at Risk in Ontario List, in a process known as listing.<sup>48</sup>

39. Listing triggers automatic protections.<sup>49</sup> Two prohibitions are at the core of the Act.

Paraphrased, s. 9 prohibits the killing of endangered or threatened species, and s. 10 prohibits damage and destruction of these species' habitats.<sup>50</sup> Violation of these prohibitions is an offence.<sup>51</sup> Substantial enforcement powers exist to enforce these statutory prohibitions.<sup>52</sup>

40. The Legislature built a few narrow operational exceptions into the Act's scheme prioritizing species protection and recovery. Under ss. 17 and 18, the Minister has tightly circumscribed authority to issue permits, or instruments, authorizing violations of the prohibitions.<sup>53</sup>

41. Further, under s.55(1), the Legislature granted Cabinet the authority to make regulations.

Under s. 55(1)(b), Cabinet may by regulation prescribe exemptions from ss. 9 and 10, subject to any conditions or restrictions in the regulation itself. Before Cabinet may make a regulation under s. 55(1)(b), the Minister must comply with s. 57(1) and, where applicable, with s. 57(2).

If the Minister determines under s. 57(1) that a proposed regulation is likely to jeopardize a species' survival, this triggers special scientific and public consultation duties under s. 57(2).

### **C. ISSUE 1: THE MINISTER'S DETERMINATION UNDER S. 57(1) WAS UNLAWFUL**

42. The Divisional Court erred in holding that the Minister met his duty under s. 57(1). Under this provision, the Minister must assess if a proposed regulation will likely jeopardize the survival

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<sup>48</sup> ESA, s 7; and O Reg 230/08.

<sup>49</sup> ESA, ss. 9(1) and 10(1).

<sup>50</sup> See *supra* paragraphs 9 and 16.

<sup>51</sup> ESA, s 36.

<sup>52</sup> *Ibid* at ss 21-35.

<sup>53</sup> *Ibid* at ss 17 and 18. The Act also provides for specific authorizations for Aboriginal persons in s 19.

of, or have another significant adverse effect on, *each individual species* to which it applies.

The Respondents now concede this interpretation, but argue that s. 57(1) is not justiciable.

43. However, the Divisional Court rejected this interpretation. It interpreted s. 57(1) as allowing the Minister to reach an opinion on whether a proposed regulation would jeopardize *all or any species as a collective group*, without any regard to individual species or their needs:

[35] There is nothing that says that the Minister has to examine the impact on each species to which the regulation would apply separately or independently of the others. There could be a program, approach or other condition that, in the opinion of the Minister, demonstrates there will be no jeopardy to the survival of any of them and no risk of other significant adverse effects. While it may not be independent and separate, this could be said to be a means by which each of the species at risk, to which the regulation would apply, was considered. Whether it is or is not, it is enough to satisfy the condition precedent imposed by s. 57(1) of the ESA. It is what happened in this case.

44. The Minister's Determination incorrectly or unreasonably failed to determine whether the proposed regulation would jeopardize each individual species to which would apply. That duty is a condition precedent to making the Exemption Regulation. As failure to perform a condition precedent is a fatal jurisdictional defect, the Exemption Regulation is *ultra vires*.

**1. The Minister's performance of his mandatory duty under s. 57(1) is justiciable**

45. The Divisional Court held that it could not review the Minister's Determination to "examine and determine whether the opinion is correct or reasonable". The Court held that conducting a correctness or reasonableness review is "beyond what can be properly asked". It reasoned that reviewing for correctness or reasonableness would conflict with the rule in *Katz* that courts must not review whether a regulation is "necessary, wise, or effective in practice".<sup>54</sup>

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<sup>54</sup> Reasons for Judgment of Lederer J. at para 37 [ABC Vol 1, Tab 3, p 25]. The Respondents had urged the Court in their submissions that s.57(1) determinations are not subject to judicial review. They had also taken this position in correspondence; see Schultz Affidavit, Exs FF and JJ [ABC Vol 1, Tab 7FF, p 532 and Tab 7JJ, p 584].

46. On this latter point, the Court's reasons are internally inconsistent. Earlier, Lederer J. had correctly observed the opposite – namely, that a “challenge to ... the Lieutenant Governor in Council in making a regulation stands apart from the review of an administrative decision.”<sup>55</sup>
47. The Court's decision is starkly out of step with modern administrative law. In *Dunsmuir*, the Supreme Court affirmed that, by virtue of the rule of law principle, all statutory decision-making is subject to judicial review to ensure its legality, reasonableness and fairness.<sup>56</sup>
48. Indeed, it is critical that the judiciary scrutinize s. 57(1) determinations. If a Minister opines that a proposed regulation is *not* likely to jeopardize or have another significant adverse effect on a species, this confers jurisdiction on Cabinet to deprive a species of its protections. If the Minister determines that a regulation *is* likely to jeopardize a species, this triggers a scientific and public accountability process under s. 57(2). Yet even after that process, Cabinet can still make a regulation harming a species; as shown by s. 57(2)(a), such regulation need only “not result in the species no longer living in the wild in Ontario.” Thus s. 57(1) determinations, lawful or otherwise, can serve as the gateway to a species' extirpation or its near-extirpation.
49. The Divisional Court wrongly conflated the Minister's Determination under s. 57(1) with Cabinet's Exemption Regulation under s. 55(1)(b), treating the former as part and parcel of the latter. In *Katz*, the Supreme Court in no way suggests that courts may not review the legality or reasonableness of statutory decisions that serve as conditions precedent to subordinate legislation.<sup>57</sup>

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<sup>55</sup> Reasons for Judgment of Lederer J. at para 27 [ABC Vol 1, Tab 3, p 21].

<sup>56</sup> *Dunsmuir v New Brunswick*, 2008 SCC 9 (“*Dunsmuir*”) at para 28; and paras 27-31. See also *Canadian National Railway Co v Canada*, 2014 SCC 40 at paras 50-54, in which the Supreme Court applied the *Dunsmuir* framework to the Governor in Council's statutory decisions made under s. 40 of the *Canadian Transportation Act*.

<sup>57</sup> *Katz Group Canada Inc v Ontario (Health and Long- Term Care)*, 2013 SCC 64 (“*Katz*”).

50. Failure to meet a condition precedent is a fatal jurisdictional defect going to a regulation's validity.<sup>58</sup> Decisions of the Supreme Court and this Court confirming this proposition did not involve alleged failures to meet a condition precedent. However, other courts have rejected efforts to limit review of compliance with such preconditions. For example, the Alberta Court of Queen's Bench reviewed Cabinet's failure to meet a condition precedent to an order in council ordering striking teachers back to work, employing a standard of review analysis.<sup>59</sup>
51. The Federal Courts have reviewed analogous decisions under the *Species at Risk Act*.<sup>60</sup> Much like s. 57(1), s. 80(2) of *SARA* obliges the Minister of the Environment to reach an opinion on whether a species faces imminent threats to its survival or recovery. Further, if she reaches the opinion that a species faces such threats, she must recommend an emergency order to Cabinet [ss. 80(1) and (2)]. In a case regarding the Greater Sage Grouse, Canada argued that it could not disclose if the Minister had reached this opinion or made this recommendation, arguing that the Minister's opinion was part of one "Cabinet decision making process". In rejecting this, the Federal Court of Appeal held that s. 80(2) opinions cannot be sheltered from review and are reviewable on a reasonableness standard.<sup>61</sup> In cases regarding Woodland Caribou and Western Chorus Frogs, the Federal Court held s. 80(2) opinions to be unreasonable.<sup>62</sup>

**2. A s.57(1) determination must both apply the correct legal test and be reasonable**

52. The Environmental Groups submit that, regardless of which standard of review is adopted in reviewing the Minister's Determination, the determination cannot survive judicial scrutiny.

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<sup>58</sup> *Thorne's Hardware Ltd v The Queen*, [1983] 1 SCR 106 at 111 ("*Thorne's Hardware*"); *Apotex Inc. v Ontario*, 2007 ONCA 570 at para 32; *Ontario Federation of Anglers and Hunters v Ontario (Ministry of Natural Resources)* (2002), 211 DLR (4th) 741 (Ont CA) at para 41; *Katz*, *supra* note 57 at para 27.

<sup>59</sup> *Alberta Teachers Association v Alberta*, 2002 ABQB 240 at paras 1, 7-8, 17-18.

<sup>60</sup> SC 2002, c 29 ("*SARA*").

<sup>61</sup> *Alberta Wilderness Assn v Canada (Attorney General)*, 2013 FCA 190 at paras 43-49.

<sup>62</sup> *Centre Québécois Du Droit De L'environnement et Nature Québec c Le Ministère De L'environnement*, 2015 FC 773 ("*Chorus Frogs*"), and *Athabasca Chipewyan First Nation v Canada (Minister of the Environment)*, 2011 FC 962.



53. They further submit that s. 57(1) determinations attract the more deferential reasonableness standard – but *only* if the Minister applies the correct legal test in reaching his opinion. This submission is supported by the Supreme Court decision in *Halifax (Regional Municipality) v Canada*.<sup>63</sup> At issue there was, *inter alia*, the scope of the Minister of Public Works' discretion to reach an opinion determining "property value", and the standard of review applying to that determination.<sup>64</sup> In its standard of review analysis, the Supreme Court held as follows:

[43] The Minister's decision under the Act is discretionary within the legal framework provided by the legislation, as explained in *Montreal Port Authority*. Provided that the Minister applies the correct legal test, his or her exercise of discretion is judicially reviewed for reasonableness. The exercise of discretion must be consistent with the principles governing the application of the Act and with the Act's purposes. As LeBel J. said in *Lake* in the context of ministerial discretion in relation to extradition, "The Minister's conclusion will not be rational or defensible if he has failed to carry out the proper analysis. If, however, the Minister has identified the proper test, the conclusion he has reached in applying that test should be upheld by a reviewing court unless it is unreasonable". (emphasis added, citations removed)

54. In the alternative, the Minister's Determination is unreasonable. It is impossible to tell where, how or why the Minister opined that the Exemption Regulation would not likely jeopardize survival of, or have other significant adverse effects on, each of the 150 individual species to which it applies.<sup>65</sup> The Minister's Determination is not justified, transparent or intelligible.<sup>66</sup>

55. On the leave motion, the Respondents argued that this Court lacks jurisdiction to adjudicate the reasonableness of the Minister's Determination, claiming the Environmental Groups abandoned this alternative position. This allegation is meritless. They have never abandoned their alternative relief sought at paragraph 1(b) of their Notice of Application, nor their

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<sup>63</sup> *Halifax (Municipality) v Canada (Public Works and Government Services)*, 2012 SCC 29 ("*Halifax*").

<sup>64</sup> *Ibid* at para 37.

<sup>65</sup> The 150 listed species referenced exclude the five species that the Minister assessed individually; see *supra* at para 20. It also excludes the species listed in 2014, to which the Exemption Regulation applies; see *supra* at note 4.

<sup>66</sup> *Dunsmuir*, *supra* note 56 at paras 62-64; and *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 ("*Newfoundland Nurses*") at paras 15-17.

alternative argument that a reasonableness standard applies.<sup>67</sup> The Respondents' position is a transparent attempt to avoid reasonableness review of a clearly unreasonable decision.

**3. The Ministerial Determination failed to apply the correct legal test under s. 57(1)**

56. Subsection 57(1) imposes a mandatory duty on the Minister, in the following terms:

**57(1)** If a proposal for a regulation under subsection 55(1) is under consideration in the Ministry, the proposed regulation would apply to a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, and either or both of the following criteria apply, the Minister shall consult with a person who is considered by the Minister to be an expert on the possible effects of the proposed regulation on the species:

1. In the case of any proposed regulation under subsection 55(1), the Minister is of the opinion that the regulation is likely to jeopardize the survival of the species in Ontario or to have any other significant adverse effect on the species. ...<sup>68</sup>

57. Thus the Minister's duty to consult an expert is triggered where three criteria apply. First, there must be "a proposal for a regulation under subsection 55(1) ... under consideration in the Ministry". The parties agree that this factual criterion was met. Second, it must be the case that "the proposed regulation would apply to a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species". This criterion was also met.<sup>69</sup>
58. Third, the Minister must determine whether "the regulation is likely to jeopardize the survival of the species in Ontario or to have any other significant adverse effect on the species".
59. The Environmental Groups submit that the Minister did not apply the correct legal test in this third s. 57(1) determination. As conceded by the Respondents, the correct test is whether a proposed regulation is likely to jeopardize *each individual species* to which it would apply.

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<sup>67</sup> On the two occasions that the Environmental Groups modified their positions, they submitted a record documenting the modification to the Divisional Court. See ABC Vol 2, Tab 12A, p 905 and Tab 12B, p 906.

<sup>68</sup> The second criterion set out in s. 57(1) is not relevant to this appeal. On its face, that criterion only applies to regulations that are made under s. 55(1)(a). The Exemption Regulation was made under s. 55(1)(b).

<sup>69</sup> The Exemption Regulation applies to all endangered and threatened species. To identify which of the 18 regulatory exemptions apply to which listed species, refer to the Appellants' Table [ABC Vol 2, Tab 12C, p 907].

60. It is submitted that the Minister acts unlawfully if he assesses only whether a regulation will jeopardize *a few species* to which it would apply. He acts unlawfully if he assesses whether a regulation will jeopardize a *collective group of species*, or *all species overall*, without turning his mind to whether the regulation will jeopardize each individual species to which it applies. Yet this is what the Minister's Determination did. It is devoid of any opinion on the individual species that would later see their statutory rights eradicated by the Exemption Regulation.
61. The correct test arises from the modern approach to statutory interpretation, which requires that s. 57(1) be construed in light of its text, the context and scheme, and the *ESA*'s purpose.<sup>70</sup>
- (i) *Subsection 57(1) must be interpreted according to the grammatical meaning of its text*
62. The text of s. 57(1) provides that if the MNR is considering a proposal for a regulation that "would apply to a species" listed as endangered or threatened, then the Minister must reach an opinion on whether the regulation "is likely to jeopardize the survival of the species". As a matter of English grammar and syntax, this definite article "the" clearly refers back to a noun already identifiable to the reader – namely, to the single species already identified.<sup>71</sup>
63. In his Reasons, Lederer J. never analyzes the text "a species" in s. 57(1). At paragraph 7, he introduces s. 57(1); however, he misstates its text as "*the* species to which it would apply". The actual words of s. 57(1) are "if...the proposed regulation would apply to *a* species".
64. In *Pastore v Aviva Canada*,<sup>72</sup> this Court addressed the meaning of "a" in s. 2(1.1)(g) of the Statutory Accident Benefits Schedule ("SABS") under the *Insurance Act*. The Court held that the tribunal had reasonably construed the meaning of "a" in this context. The tribunal held

<sup>70</sup> *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 ("*Rizzo Shoes*") at para 21.

<sup>71</sup> The French version of s. 57(1) uses the same syntactic structure. It provides that if "le règlement propose s'appliquerait à *une espèce*," then the Minister must assess the proposed regulation's effects on "*l'espèce*."

<sup>72</sup> *Pastore v Aviva Canada Inc*, 2012 ONCA 642 ("*Pastore*").

that “a” referred to “any or one single marked or extreme impairment out of the four areas of functioning”. It did not require an overall impairment, across the board, in all four functions.<sup>73</sup>

65. Despite being overturned in *Pastore*, in his Reasons here, Lederer J. construed the words “a species” in s. 57(1) as meaning *species overall, across the board, as a global group*. For the Court, he held that “[t]here is nothing that says that the Minister has to examine the impact on each species to which the regulation would apply separately or independently of the others”.<sup>74</sup>
66. Importantly, the Court then found as a fact that the Minister’s Determination did not give any “independent” or “separate” consideration to the individual species to which the regulation would apply. It found that the Minister had, instead, considered whether the Exemption Regulation, including its conditions, were likely to jeopardize “any” of the affected species.<sup>75</sup>
67. Analogous errors caused the Alberta Court of Queen’s Bench to overturn an Order in Council ordering striking teachers back to work. Under the *Labour Relations Code*, the Cabinet may only make such an order if, in its opinion, “an emergency arising out of a dispute exists or may occur in such circumstances that...unreasonable hardship is being caused”. Chief Justice Wachowich held that the Cabinet unlawfully failed to consider each dispute, in each of the 22 separate school districts covered by the order, on a separate and individual basis. Each dispute had its own issues – some school boards had a surplus of money and some were in deficit, some teachers were locked out and some were not. Yet the Cabinet had treated them all the same, considering hardship generally across Alberta. This “blanket” opinion for all districts,

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<sup>73</sup> *Ibid* at paras 39-43.

<sup>74</sup> Reasons for Judgment of Lederer J. at para 35 [ABC Vol 1, Tab 3, pp 24-25].

<sup>75</sup> *Ibid*.

that failed to consider whether each district was suffering hardship, was held to be especially objectionable when its effect was to eradicate a statutory right to strike for all districts.<sup>76</sup>

68. Here, it was equally objectionable for the Minister to reach a blanket opinion on jeopardy covering all listed species. Its effect was to eradicate those species' right not to be killed.

*(ii) Subsection 57(1) must be interpreted in light of the broader context and scheme*

69. The same syntactic pattern found in s. 57(1) is used in many other provisions in the *ESA*.

These provisions first mention "a species" and then refer back to it as "the species".<sup>77</sup> The Divisional Court ignored this pattern throughout the *ESA* scheme in interpreting s. 57(1).

70. In *Sierra Club*,<sup>78</sup> the Divisional Court reviewed a permit decision under s. 17(2)(d), which uses the same pattern of expression. For the Court, Lederer J. confirmed the Minister must reach an opinion for *each* of the eight individual species to which the permit would apply.<sup>79</sup>

*(iii) Subsection 57(1) must be interpreted consistently with the ESA's purpose*

71. The *ESA* is remedial legislation. It must be construed to ensure the attainment of its purpose.<sup>80</sup>

72. As held by this Court, interpretations of statutes "should comply with the legislative text, promote the legislative purpose and produce a reasonable and just meaning."<sup>81</sup> A just and reasonable result is one that "promotes applications of the Act that advance its purpose".<sup>82</sup> As held by the Supreme Court, ministers must exercise their statutory powers consistent with the statute's purpose.<sup>83</sup> A minister's approach to her statutory powers cannot lawfully have "the effect of frustrating the very legislative scheme under which the power is conferred."<sup>84</sup>

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<sup>76</sup> *Alberta Teachers' Association v Alberta*, 2002 ABQ8 240 at paras 4-6 and 35-48.

<sup>77</sup> *ESA*, ss. 9(6), 10(1)(b), 11, 17, 18, 28(1) and 56(1). Again, this is true of both the English and French versions.

<sup>78</sup> *Sierra Club Canada v Ontario (Natural Resources & Transportation)*, 2011 ONSC 4655 ("*Sierra Club*").

<sup>79</sup> *Ibid* at paras 40-41; see also para 23. Nowhere in his Reasons does Lederer J. reference the *Sierra Club* decision.

<sup>80</sup> *Rizzo Shoes*, *supra* note 70 at para 22; *Interpretation Act*, RSO 1990, c 1.11, s. 10.

<sup>81</sup> *Bapoo v Co-operators General Insurance Co* (1998), 36 OR (3d) (OCA) 616 at p 620.

<sup>82</sup> *Wawanesa Mutual Insurance Company v Axa Insurance (Canada)*, 2012 ONCA 592, at paras 33-35.

<sup>83</sup> *Halifax*, *supra* note 63 at paras 43, 51-56; *CUPE v Ontario*, 2003 SCC 29 ("*CUPE*") at paras 91-95 and 106-112.

<sup>84</sup> *CUPE*, *ibid* at paras 173-175.

73. In interpreting s. 57(1), the Divisional Court neither considered nor promoted the *ESA*'s purpose, and produced an unjust and unreasonable result. The Act's purpose of protecting and recovering species is undermined by allowing the Minister to do a blanket assessment of a regulation's impacts on "species overall," without assessing each individual species affected. Different species face different threats to survival and recovery. One cannot protect a species from threats left unidentified; one cannot recover a species by ignoring its needs. The Minister cannot assess if a species will be jeopardized if he ignores its needs and threats that it faces.
- (iv) *The "two questions" asked by the Divisional Court invite a de-contextual interpretation*
74. At paragraphs 34-35 of its Reasons, the Divisional Court held that compliance with s. 57(1) consists of "two questions" which "are not to be asked together or as one". The first question asks if the proposed regulation would apply to a species listed as endangered or threatened. If the answer is yes, the Minister must then ask if the regulation would jeopardize those species.
75. While strictly speaking there are three and not two criteria in s. 57(1),<sup>85</sup> the Environmental Groups agree these are two steps within s. 57(1). Yet, in this case, it is a distinction without a difference, and is unhelpful. Divvying up s. 57(1) into two parts risks decontextualizing an interpretation of the provision. It invites an isolated interpretation of the provision's latter words "the regulation is likely to jeopardize the survival of *the* species", removed from and without reference to its earlier words which refer to "*a* species". As shown in its misstatement of s. 57(1), at paragraph 7 of its Reasons, the Divisional Court fell into precisely this error.
76. The "first" of these two steps is not the subject of this appeal. That first step was done by MNR staff. At page 5 of the Minister's Determination, MNR staff advise the Minister of the criteria they used when they picked which species to exempt in their proposed regulation.

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<sup>85</sup> See *supra* paragraphs 57-58.

MNR staff state that “[a]ll endangered species and threatened species on the Species at Risk (*sic*) were considered in this assessment”.<sup>86</sup> To be clear, this statement does not refer to the Minister’s duty to assess jeopardy to each affected species, but to the earlier first step.

77. The Environmental Groups challenge the “second” step, namely the Minister’s Determination of whether the regulation would likely jeopardize each individual species. The Minister never asked this question for any individual species. In short, he failed to apply the correct legal test.

(v) *The Minister cannot lawfully assess whether a proposed regulation will likely jeopardize a listed species simply by reviewing the regulation’s standardized conditions*

78. The Environmental Groups anticipate a submission that the Minister could, and did, assess whether the proposed regulation would jeopardize each species to which it would apply by reading the regulatory conditions (or, as in the Minister’s Determination, a summary thereof).

79. Importantly, the proposed regulatory conditions are part of the proposed regulation that the Minister must assess. The regulatory conditions are not somehow separate from the regulation itself. In imposing a duty on the Minister to assess whether a proposed regulation will jeopardize a species’ survival, the Legislature intended the Minister to assess whether those very conditions will jeopardize the species. Clearly, the Minister cannot simply point to the *existence* of regulatory conditions as satisfying his duty to *assess* those regulatory conditions.

80. Further, the proposed regulation would contain standardized conditions rather than species-specific conditions.<sup>87</sup> The Minister cannot read such a condition, or a summary thereof, and from that alone opine that the condition would not likely jeopardize or cause other significant adverse effect to a particular plant or animal. To assess whether a regulatory condition likely

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<sup>86</sup> Minister’s Determination, p 5 [ABC Vol 1, Tab 4, p 37]. To identify which species were excluded from the proposed regulation as a result of that process, refer to the green boxes in the Appellants’ Table [ABC Tab 12C].

<sup>87</sup> Minister’s Determination, p 2 [ABC Vol 1, Tab 4, p 18].

jeopardizes the survival of a plant or animal, one must know facts about that plant or animal's needs and threats facing it. Yet in the Minister's Determination, the Minister was never even advised which specific plants or animals each of the proposed regulatory exemptions would apply to<sup>88</sup> – let alone given any facts about those species.

**4. In the alternative, the Minister's Determination was unreasonable**

81. Reasonableness review examines both the outcome of a statutory decision, in terms of its justification, and the decision's transparency and intelligibility.<sup>89</sup> As put by the Supreme Court in *Newfoundland Nurses*: "if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met".<sup>90</sup>
82. Addressing first the intelligibility and transparency of the Minister's Determination, it is impossible to identify any page in the decision where the Minister opined that any one of the proposed regulatory exemptions would not likely jeopardize survival of, or have other significant adverse effects on, any particular individual species.<sup>91</sup> At the final page, he opined that, "having considered the information above", the proposed regulation is not likely to jeopardize "the affected endangered or threatened species in Ontario", as a global group. Yet if the Minister thought that the regulatory exemptions were unlikely to jeopardize or have other significant adverse effects on plants like the American Ginseng, Lakeside Daisy or Wild Hyacinth, he never said so. Nowhere in the "information above" are those plants mentioned.

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<sup>88</sup> Except for the species-specific exemptions for Bobolink and Meadowlark; Butternut; and Barn Swallow and Chimney Swift.

<sup>89</sup> *Dunsmuir*, *supra* note 66, at para 47; *Newfoundland Nurses*, *supra* note 66, at paras 14-16. In the context of SARA litigation, see also *Chorus Frogs*, *supra* note 62, at para 72.

<sup>90</sup> *Newfoundland Nurses*, *supra* note 66, at para 16.

<sup>91</sup> Again, excepting the species-specific exemptions for five species Bobolink and Meadowlark; Butternut; and Barn Swallow and Chimney Swift. This submission refers to remaining 150 listed species, and to the additional five species to which the Exemption Regulation applied as of June 27, 2014; see *supra* paragraph 4 and note 4.



If the Minister thought that the proposed exemptions would not jeopardize animals like Piping Plover, Wolverine or Jefferson Salamander, again, he never said so – and he never said why.

83. As just one example of how the Minister's Determination is neither transparent or intelligible, consider the proposed exemption for early mining exploration and its impacts on affected bird species. The proposed exemption for early mining exploration is summarized at pages 12-13 of the Minister's Determination. At page 12, it is stated that this activity creates risks to species' "critical life processes such as hibernation or reproduction, including rearing". Page 13 then indicates that the exemption "will not apply to Golden eagle".<sup>92</sup>
84. However, these two pages do not mention, let alone assess, any species to which the regulation *would* apply. For example, the Minister's Determination does not mention or assess the Eastern Whip-poor-will, another bird species, despite that it is a species to which the proposed exemption would apply. The reader is left with no idea whether, how, or why the Minister purportedly opined that the early mining exploration would not likely jeopardize the Eastern Whip-poor-will. The Minister's reasoning, if any, is just as opaque and unintelligible for the other 149 species to which the early mining exemption would apply, and for the other proposed exemptions.
85. Courts may fill in evidentiary *lacunae* where the evidentiary record helps to assess the reasonableness of the outcome; however, courts may not substitute their own reasons.<sup>93</sup> This Court is not able to guess at what the Minister's views might have been or speculate as to what he may have been thinking – especially where his reasons are silent on this critical issue.<sup>94</sup>

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<sup>92</sup> Minister's Determination, p 13 [ABC Vol 1, Tab 4, p 45]. MNR staff had decided that the proposed regulation would not apply to the Golden Eagle prior to the Minister's Determination; see paragraph 76, *supra*.

<sup>93</sup> *Newfoundland Nurses*, *supra* note 66, at paras 12-17.

<sup>94</sup> *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at para 11.

86. Regarding whether the outcome is justified, the Environmental Groups' expert reports further highlight the unreasonableness of the Minister's Determination. The reports show species-specific considerations that would be relevant had the Minister turned his mind to whether the regulation would jeopardize the survival of the American Eel or the Blanding's Turtle.
87. Given the serious threat to the survival of the American Eel caused by hydro facilities,<sup>95</sup> and the lack of any evidence to the contrary or any reasons by the Minister,<sup>96</sup> a conclusion by the Minister that the exemption for hydro operations would not likely jeopardize or have other significant adverse effects to this species is necessarily unreasonable.<sup>97</sup> Likewise, given the threat to Blanding's Turtle of roads associated with operating wind facilities,<sup>98</sup> in the absence of other evidence or reasons,<sup>99</sup> a conclusion that the exemption for operating wind facilities would not jeopardize or have significant adverse effects on this species is unreasonable.<sup>100</sup>

#### **D. ISSUE 2: THE EXEMPTION REGULATION IS INCONSISTENT WITH THE PURPOSE OF THE ESA**

88. The Environmental Groups submit that Exemption Regulation is an egregious effort to supplant a species-first legislative scheme with an industry-first regulatory scheme. The Exemption Regulation is inconsistent with the *ESA*'s purpose, and egregiously so.
89. As set out below, the Divisional Court's analysis erred in many respects. This Court should correct those errors and hold the Exemption Regulation, in whole or in part, to be *ultra vires*.

#### **1. The Divisional Court failed to perform the first step of the *Katz* analysis**

<sup>95</sup> Expert Report of Robert MacGregor, pp 9-12, 25-35 [ABC Vol 2, Tab 8B, pp 613-616, 629-639].

<sup>96</sup> *Ibid*, p 40 (Question 15) [ABC Vol 2, Tab 8B, p 644].

<sup>97</sup> Minister's Determination, pp 13-14 [ABC Vol 1, Tab 4, pp 45-46]. American Eel is "exempted from the Exemptions Regulation" for only one hydro-electric generating station (R. H. Saunders Station), but is otherwise exempted by the Exemption Regulation from s. 9(1) and 10(1) of the *ESA*.

<sup>98</sup> Expert Report of Dr. Justin Congdon, pp 9-11, 18, 23 [ABC Vol 2, Tab 10B, pp 823-825, 832, 837].

<sup>99</sup> *Ibid* at pp 29-30 (Question 13) [ABC Vol 2, Tab 10B, pp 843-844].

<sup>100</sup> Minister's Determination, pp 18-19 [ABC Vol 1, Tab 4, pp 50-51].

90. In *Katz*,<sup>101</sup> the Supreme Court held that the first step in an analysis of whether a regulation is inconsistent with the purpose of its enabling statute is to determine the statute's purpose. It held that the "overarching purpose of the statutory scheme" was to control prescription drug costs without compromising safety. With this determination made, the Court was then able to consider the regulations and assess if they were consistent with the statutes' purpose.<sup>102</sup>
91. The Divisional Court failed to do this first step. At no point did it establish the Act's purpose.
- 2. To the extent the Divisional Court analyzed the *ESA*'s purpose, it misconstrued it**
92. To the extent that the Divisional Court considered the *ESA*'s purpose, it misconstrued the Act by failing to analyze s. 1; disregarding legislative history; putting undue weight on one phrase in the *ESA*'s non-binding preamble; and considering only those provisions which themselves comprise narrow exceptions to the Act's species protection and recovery purpose.
93. The Court made these errors in support of a results-oriented analysis, arguing that the *ESA*'s purpose must include promoting industries' economic interests.<sup>103</sup> It held that these economic considerations "are not a peripheral purpose" to the *ESA* – but, presumably, are at its core.<sup>104</sup> That view has wide-ranging adverse consequences for how the *ESA* overall is implemented.
94. Statutory purpose provisions are "[t]he most direct and authoritative evidence of legislative purpose".<sup>105</sup> Yet at no point in its analysis of this issue, at paragraphs 47-53, did the Court refer to s. 1. Section 1, of course, makes no mention of any social or economic interests.<sup>106</sup>

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<sup>101</sup> *Katz*, *supra* note 57 at para 30. See also Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed (Markham: LexisNexis, 2008) ("*Sullivan*") at pp 269-270.

<sup>102</sup> *Katz*, *ibid* at paras 30-33 and 34-42.

<sup>103</sup> *Reasons for Judgment of Lederer J.* at para 51 [ABC Vol 1, Tab 3, p 30].

<sup>104</sup> *Reasons for Judgment of Lederer J.* at para 53 [ABC Vol 1, Tab 3, p 30].

<sup>105</sup> *Sullivan*, *supra* note 101 at pp 269-270.

<sup>106</sup> This contrasts with purpose provisions in Ontario's natural resource management laws; see *supra* at para 36.

95. In its debates on Bill 184, the Legislature decided not to promote economic or social interests through s. 1. Then-MPP David Oraziatti queried whether the *ESA* should protect economic interests as well as species. Janet Sumner, for Wildlands League, replied that this was not the purpose of the *ESA*.<sup>107</sup> Two days later, Mr. Oraziatti moved to amend s. 1. Notably, he decided *not* to move amendments incorporating economic or social interests. He moved, and the Standing Committee agreed, to amend s. 1 only to add s. 1.3, to reference stewardship.<sup>108</sup>
96. Legislative history, especially ministerial speeches, is an authoritative source of evidence of purpose.<sup>109</sup> The Supreme Court relied on it as evidence of purpose in *Katz*.<sup>110</sup> Unusually, the Divisional Court deemed legislative history to be “not helpful”, saying “it is the words of the statute that drive an understanding of its intention.”<sup>111</sup> Yet the Court ignored the words of s. 1.
97. To support its view that the *ESA* promotes industries’ economic interests, the Court “cherry-picked” out of the Act isolated clauses that feature the word “economic”. The Court seized on an anomalous phrase in the preamble,<sup>112</sup> without analyzing the rest of the preamble. Specifically, it fixed on a half-sentence about giving “appropriate regard to social, economic and cultural considerations”. It viewed this recital as binding law, calling it an “injunction”.<sup>113</sup> In *Sierra Club*, Lederer J. incorrectly took this same phrase out of its proper legal context.<sup>114</sup>

<sup>107</sup> Ontario, Legislative Assembly, Official Report of Debates (Hansard): Standing Committee on General Government, 38th Parl, 2nd Sess, No 169, (7 May 2007) at G-1139 [JBOA].

<sup>108</sup> Ontario, Legislative Assembly, Official Report of Debates (Hansard): Standing Committee on General Government, 38th Parl, 2nd Sess, No 171, (9 May 2007) at G-1147 [JBOA].

<sup>109</sup> *Sullivan*, *supra* note 101 at p 609.

<sup>110</sup> *Katz*, *supra* note 57, at paras 15-16 and 34. See also *CUPE*, *supra* note 83, at paras 54-73.

<sup>111</sup> Reasons for Judgment of Lederer J. at paras 39-40 and 47 [ABC Vol 1, Tab 3, pp 25-26 and 28].

<sup>112</sup> Reasons for Judgment of Lederer J. at paras 47-49 [ABC Vol 1, Tab 3, p 28].

<sup>113</sup> *Ibid* at para 49.

<sup>114</sup> *Sierra Club*, *supra* note 78 at para 54. Again, in the case at bar, Lederer J. makes no reference to *Sierra Club*.

98. The Court placed undue weight on other provisions, also taken out of context, that include the word “economic”. In particular, it noted the Minister’s ability to consider significant social or economic benefits to Ontario when issuing one type of permit under s. 17(2)(d). It ignored the many strict restrictions on this permitting power. Read in context, s. 17(2)(d) is an exceptional provision that allows permits only in exceptional circumstances. In effect, the Court turned the exception into the rule, reading into the Act a purpose never intended by the Legislature.

**3. The Exemption Regulation is, as a whole, inconsistent with the purpose of the ESA**

99. The next step of the *Katz* analysis is to determine the purpose of the impugned regulation, and then to assess whether the regulation is inconsistent with its enabling statute’s purpose.<sup>115</sup>

100. At the second step, the Divisional Court failed to follow the approach in *Katz*. The Court suggests that the Exemption Regulation was motivated by concern about lowering costs and promoting economics of industry.<sup>116</sup> However, the Court never clearly determines its purpose.

101. The purposes of the Exemption Regulation are established in MNR’s formal EBR Registry postings, statements in the Minister’s Determination, and the Exemption Regulation itself. Consistent with the Modernization of Approvals policy, the Exemption Regulation’s primary purpose is to promote the economic interests of industry and government, by aiming to:

- reduce MNR’s administrative burdens and costs, related to permitting;<sup>117</sup> and
- promote the economic interests of a vast array of industries that harm species at risk.<sup>118</sup>

102. As held by the Divisional Court, the effect of the Exemption Regulation is that exempted activities must only “minimize” the killing of species or destruction of their habitats.<sup>119</sup>

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<sup>115</sup> *Katz*, *supra* note 57, at paras 33-38.

<sup>116</sup> Reasons for Judgment of Lederer J. at paras 51 and 53 [ABC Vol 1, Tab 3, pp 29-30].

<sup>117</sup> Schultz Affidavit paras 32-42 and Exs O, X, X and X [ABC Vol 1, Tab 7, pp 363-368; Tab 7.J at p 392; Tab 7.O at p 464; Tab 7.P at p 468]; and Minister’s Determination, pp 1-3 [ABC Vol 1, Tab 4, pp 12-13]. See also ECO 2012/2013 Annual Report, in Baggio Affidavit, Ex DD [ABC Vol 1, Tab 7DD, pp 273-274 and 277-281].

<sup>118</sup> *Ibid*; see also Reasons for Judgment of Lederer J. at paras 9-11, 49 and 51 [ABC Vol 1, Tab 3, pp 12-15 and 28-30]

<sup>119</sup> See *supra* at para 23. See also Minister’s Determination, pp 4-5 [ABC Vol 1, Tab 4, pp 36-37].

103. This case is readily distinguishable from those where regulations *were not* inconsistent with statutory purpose. Existing cases typically involve subordinate legislation targeted at one discrete problem. In *Thorne's Hardware*, the order in council extended a single harbour boundary.<sup>120</sup> In *Katz*, the regulation curtailed one business practice of large pharmacies.<sup>121</sup>
104. This case is more egregious than those where subordinate legislation *was* held *ultra vires*. In *Re Doctors Hospital*, orders-in-council directed closure of four hospitals.<sup>122</sup> In *Heppner*, the impugned regulation declared a narrow strip of land to be a restricted development area.<sup>123</sup>
105. By contrast, the Exemption Regulation deprives *all* endangered and threatened species of their legal rights to be protected against *most* harmful industrial activities in the province. As concluded by the Environmental Commissioner of Ontario: “[b]y effectively exempting most of the major activities on the landscape that can adversely affect species at risk and their habitats, the regulation thwarts the very purposes of the Act.”<sup>124</sup> Egregiously, not one listed endangered or threatened species in Ontario retains the full protection of the law.<sup>125</sup>
106. Cabinet has not been given a blank slate under s. 55(1)(b). While it empowers exemptions, as with any provision, s. 55(1)(b) must be interpreted so as to promote the *ESA*’s purposes and avoid unjust or unacceptable results.<sup>126</sup> The power in s. 55(1)(b) is constrained by the Act’s overarching purpose of protecting and recovering species.<sup>127</sup> This Court should conclude that

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<sup>120</sup> *Thorne's Hardware*, *supra* note 58.

<sup>121</sup> *Katz*, *supra* note 57.

<sup>122</sup> *Re Doctors Hospital v Minister of Health* (1976), 12 OR (2d) 164 (HCJ - Div Ct).

<sup>123</sup> *Heppner v Alberta* (1977), 80 DLR (3d) 112 (Alta SC (AD)).

<sup>124</sup> ECO Special Report, November 2013 at Baggio Affidavit, Ex EE [ABC Vol 1, Tab 6EE, p 330; see also pp 296-297]. See also ECO Press Release, November 6, 2013 at Baggio Affidavit, Ex FF [ABC Vol 1, Tab 6FF, p 350].

<sup>125</sup> Appellants’ Table of Endangered and Threatened Species [ABC Vol 2, Tab 12C, pp 907].

<sup>126</sup> *Bapoo*, *supra* note 81; *Wawanesa*, *supra* note 82.

<sup>127</sup> Further, to “protect” a species’ habitat does not mean to manage it, but to preserve it through enforceable measures; see *Canada (Fisheries and Oceans) v David Suzuki Foundation*, 2012 FCA 40 at paras 113-115.

exemptions are not authorized by s. 55(1)(b) if they have as their “main” or “primary” purpose the promotion of industry economic interests or the reduction of the MNR’s costs.

107. This submission is also supported by *Heppner v Alberta*. In holding that the primary purpose of an order in council was inconsistent with the enabling act, the Appellate Division of the Alberta Supreme Court rejected that the order could be saved if it incidentally accomplished a purpose authorized by the act. It held that “the fact that in accomplishing this invalid purpose, a peripheral purpose falling within the strict terms of the Act may be accommodated does not render valid what would otherwise be invalid subordinate legislation.”<sup>128</sup>

108. Put another way, a lawful exemption under s. 55(1)(b) must still primarily aim at protecting and recovering the species. Any such exemption may not peripherally aim at “minimizing” killing of the species with a primary purpose of saving government and industry money.<sup>129</sup>

109. That is, s. 55(1)(b) is not a so-called “Henry VIII clause” conferring jurisdiction on Cabinet to make, through regulation, a scheme to supplant and prevail over the *ESA* and its purposes.<sup>130</sup>

110. Finally, proper contextual interpretation of the *ESA* indicates that the Legislature never meant for s. 55(1)(b) to be used to reduce the MNR’s permitting costs. Section 50 allows the Minister to charge any person fees related to issuing permits under the Act. The Legislature intended the Minister to use s. 50, not s. 55(1)(b), to reduce costs related to permitting.

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<sup>128</sup> *Heppner v Alberta* (1977), 80 DLR (3d) 112 (Alta SC (AD)), at para 48, and paras 40-47.

<sup>129</sup> The Butternut provides a clear example of how the Legislature intended s. 55(1)(b) exemptions to nonetheless aim at protecting and recovering species. See Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38<sup>th</sup> Parl. 2<sup>nd</sup> Sess., No. 148, (28 March 2007), at 7500 [JBOA]. Prior to the Exemption Regulation, Ontario had exempted activities aimed at protecting and recovering the Butternut from ss. 9 and 10 of the Act. See s. 5 of O Reg 242/08 (as amended by O Reg 294/11, s. 1), which was revoked by O Reg 176/13, ss 4 and 16(1).

<sup>130</sup> See *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68 at para 78; *Ontario Public School Boards' Assn v Ontario (Attorney General)* (1997), 151 DLR (4th) 346 (Gen Div) at paras 73-88; *Greater Essex County District School Board v International Brotherhood of Electrical Workers, Local 773* (2007), 83 O.R. (3d) 601 (Ont Sup Ct – Div Ct) at paras 48-61.

111. Thus, given its purposes and its legal effect, the Exemption Regulation is an “egregious case” of subordinate legislation that is inconsistent with, and that supplants, the enabling statute.

**4. Alternatively, the Exemption Regulation is *in part* inconsistent with the *ESA*’s purpose**

112. Where a regulation is challenged as *ultra vires* its enabling legislation, courts may sever part of the regulation.<sup>131</sup> The Environmental Groups submitted to the Divisional Court, in the alternative, that while the majority of the Exemption Regulation as *ultra vires*, four sections were *intra vires* and could be saved.<sup>132</sup> The Court’s Reasons did not address this submission.

113. Specifically, in the alternative, they submit that s. 23.17 (Species protection, recovery activities), s. 23.7 (Butternut), s. 23.4 (Aquatic species) and s. 23.6 (Bobolink, eastern meadowlark) are consistent with the overarching purpose of the *ESA*. Unlike the remaining exemptions in the Exemption Regulation, these four exemptions do not have promoting industry’s or the MNR’s economic interests as their main or primary purpose. While these provisions peripherally aim to save money, they primarily aim to protect and recover species.

114. The Minister’s Determination describes three exemptions as facilitating activities intended to protect or assist in species recovery, and aimed at beneficial outcomes for the species.<sup>133</sup> The Environmental Commissioner’s analysis of the Exemption Regulation also identifies three exemptions as having beneficial purposes.<sup>134</sup> At Table 1, in the column “Actions to Benefit Species”, he assesses that exemptions for Bobolink and Eastern Meadowlark, Butternut and Aquatic Species “require a proponent to improve conditions” for those species.<sup>135</sup>

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<sup>131</sup> *Alaska Trainship Corp v Pacific Pilotage Authority*, [1981] 1 SCR 261 at 277-278.

<sup>132</sup> Applicants’ hand-up to Divisional Court, January 15, 2015 [ABC Vol 2, Tab 12B, p-906].

<sup>133</sup> Minister’s Determination, pp 19-20 (re s. 23.17 on “Species protection, recovery activities”), p 23 (re s. 23.7 on Butternut), and pp 27-28 (re s. 23.6 on Bobolink and Eastern Meadowlark). The regulatory proposals “are intended to result in one of three desired outcomes”, one of which is “a beneficial action to a specific species”, at p 2.

<sup>134</sup> ECO Special Report, “Laying Siege to the Last Line of Defence”, November 2013, *supra* note 121.

<sup>135</sup> *Ibid* at pp 23 and 52 (see footnote 24) [ABC Vol 1, Tab 6EE, pp 314 and 343]. See also the analysis of these four exemptions in Appendix B to the Report, at pp 47-50 [ABC Vol 1, Tab 6EE, pp 338-341].



## PART V – STATEMENT OF THE ORDER SOUGHT

115. The Environmental Groups respectfully request an Order setting aside the Order of the Divisional Court, and granting the relief that should have been granted below. As pleaded in the Notice of Appeal:

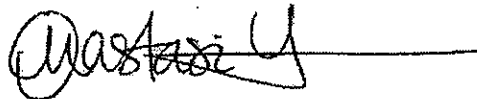
1. A declaration that the Minister of Natural Resources (the “Minister”) erred in law by failing to fulfill the mandatory condition precedent before he recommended the proposed regulation that is now Ontario Regulation 176/13 to the Lieutenant Governor in Council; namely, the Minister failed to form an opinion on whether that proposed regulation is likely to jeopardize the survival of a species or have any other significant adverse effect on a species, for each species that is listed on the Species at Risk in Ontario List as a threatened or endangered species and to which the proposed regulation would apply, as required by subsection 57(1) of the *ESA*.
2. In the alternative to paragraph 1, if the Minister did form the requisite opinion under subsection 57(1) before he recommended the proposed regulation to the Lieutenant Governor in Council, a declaration that the Minister’s opinion was unreasonable, was based on irrelevant considerations, failed to consider relevant considerations or was based on no evidence.
3. A declaration that Ontario Regulation 176/13 is inconsistent with the objects and purpose of the *ESA*.
4. A declaration that Ontario Regulation 176/13 is *ultra vires* the authority of the Lieutenant Governor in Council and of no force or effect.
5. Costs of the application below and of this appeal.<sup>136</sup>

116. The parties have come to an agreement on costs. No party is requesting costs of the appeal or the leave to appeal motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of November, 2015



Lara Tessaro  
Counsel for the Appellants



Anastasia M. Lintner  
Counsel for the Appellants

<sup>136</sup> Notice of Appeal, filed on September 18, 2015 [ABC Vol 1, Tab 1, pp 1-2]; Notice of Application issued on September 9, 2013 [ABC Vol 1, Tab 5, pp 82-83].

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**WILDLANDS LEAGUE and  
FEDERATION OF ONTARIO NATURALISTS**

Appellants

- and -

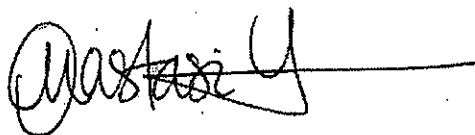
**LIEUTENANT GOVERNOR IN COUNCIL and  
MINISTER OF NATURAL RESOURCES**

Respondents

**CERTIFICATE UNDER SUBRULE 61.11(1)(e)**

I, Anastasia M. Lintner, counsel for the Appellants, certify that:

1. An order under subrule 61.09(2) is not required; and
2. I estimate that the Appellants' counsel will require 3.0 hours for oral argument, not including reply.



November 11, 2015

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**SCHEDULE A**  
**LIST OF AUTHORITIES**

**Case Law**

- Alaska Trainship Corp v Pacific Pilotage Authority*, [1981] 1 SCR 261
- Alberta Teachers Association v Alberta*, 2002 ABQB 240
- Alberta Wilderness Assn v Canada (Attorney General)*, 2013 FCA 190
- Apotex Inc v Ontario (Lieutenant Governor in Council)*, 2007 ONCA 570
- Athabasca Chipewyan First Nation v Canada (Minister of the Environment)*, 2011 FC 962
- Bapoo v Co-operators General Insurance Co* (1998), 36 OR (3d) 616 (Ont CA)
- Canada (Fisheries and Oceans) v David Suzuki Foundation*, 2012 FCA 40
- Canadian National Railway Co v Canada*, 2014 SCC 40
- Centre Québécois Du Droit De L'environnement et Nature Québec c Le Ministère De L'environnement*, 2015 FC 773
- CUPE v Ontario (Minister of Labour)*, 2003 SCC 29
- Dunsmuir v New Brunswick (Board of Management)*, 2008 SCC 9
- Greater Essex County District School Board v International Brotherhood of Electrical Workers, Local 773* (2007), 83 O.R. (3d) 601 (Ont Sup Ct – Div Ct)
- Halifax (Regional Municipality) v Canada (Public Works and Government Services)*, 2012 SCC 29
- Heppner v Alberta* (1977), 80 DLR (3d) 112 (Alta SC (AD))
- Katz Group Canada Inc v Ontario (Health and Long-Term Care)*, 2013 SCC 64
- Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431
- Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62
- Ontario Federation of Anglers & Hunters v Ontario (Ministry of Natural Resources)* (2002), 211 DLR (4th) 741 (Ont CA)
- Ontario Public School Boards' Assn v Ontario (Attorney General)* (1997), 151 DLR (4th) 346 (Gen Div)

*Pastore v Aviva Canada Inc.*, 2012 ONCA 642

*Re Doctors Hospital and Minister of Health* (1976), 12 OR (2d) 164 (H CJ - Div Ct)

*Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68

*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27

*Sierra Club Canada v Ontario (Natural Resources & Transportation)*, 2011 ONSC 4655 (Div Ct)

*Thorne's Hardware Ltd v The Queen*, [1983] 1 SCR 106

*Tennessee Valley Authority v Hill*, 437 US 153 (USSC 1978)

*Wawanesa Mutual Insurance Company v Axa Insurance (Canada)*, 2012 ONCA 592

### **Secondary Authorities**

Environmental Commissioner of Ontario, *Reconciling our Priorities: Annual Report 2006-2007*, submitted to Legislative Assembly of Ontario November 2007 (Toronto: ECO, 2007)

Ruth Sullivan, *Sullivan on the Constructions of Statutes*, 5<sup>th</sup> ed (Markham: LexisNexis, 2008)

### **Hansard**

Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38<sup>th</sup> Parl, 2<sup>nd</sup> Sess, No 143, (20 March 2007)

Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38<sup>th</sup> Parl, 2<sup>nd</sup> Sess, No 148, (28 March 2007)

Ontario, Legislative Assembly, *Official Report of Debates (Hansard): Standing Committee on General Government*, 38<sup>th</sup> Parl, 2<sup>nd</sup> Sess, No 169, (7 May 2007)

Ontario, Legislative Assembly, *Official Report of Debates (Hansard): Standing Committee on General Government*, 38<sup>th</sup> Parl, 2<sup>nd</sup> Sess, No 171, (9 May 2007)

Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 40<sup>th</sup> Parl, 1<sup>st</sup> Sess (28 May 2012)

Ontario, Legislative Assembly, *Official Report of Debates (Hansard), Committee Transcripts: Standing Committee on Finance and Economic Affairs*, 40<sup>th</sup> Parl, 1<sup>st</sup> Sess (6 June 2012)

Ontario, Legislative Assembly, *Official Report of Debates (Hansard), Committee Transcripts:*  
*Standing Committee on Finance and Economic Affairs*, 40<sup>th</sup> Parl, 1<sup>st</sup> Sess (7 June 2012)

Ontario, Legislative Assembly, *Official Report of Debates (Hansard), Committee Transcripts:*  
*Standing Committee on Finance and Economic Affairs*, 40<sup>th</sup> Parl, 1<sup>st</sup> Sess (8 June 2012)

Ontario, Legislative Assembly, *Official Report of Debates (Hansard), Committee Transcripts:*  
*Standing Committee on Finance and Economic Affairs*, 40<sup>th</sup> Parl, 1<sup>st</sup> Sess (12 June 2012)

Ontario, Legislative Assembly, *Official Report of Debates (Hansard), Committee Transcripts:*  
*Standing Committee on Finance and Economic Affairs*, 40<sup>th</sup> Parl, 1<sup>st</sup> Sess (18 June 2012)

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**SCHEDULE B**  
**TEXT OF STATUTES, REGULATIONS & BY - LAWS**

**Endangered Species Act, 2007, SO 2007, c 6**

**Preamble**

Biological diversity is among the great treasures of our planet. It has ecological, social, economic, cultural and intrinsic value. Biological diversity makes many essential contributions to human life, including foods, clothing and medicines, and is an important part of sustainable social and economic development.

Unfortunately, throughout the world, species of animals, plants and other organisms are being lost forever at an alarming rate. The loss of these species is most often due to human activities, especially activities that damage the habitats of these species. Global action is required.

The United Nations Convention on Biological Diversity takes note of the precautionary principle, which, as described in the Convention, states that, where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.

In Ontario, our native species are a vital component of our precious natural heritage. The people of Ontario wish to do their part in protecting species that are at risk, with appropriate regard to social, economic and cultural considerations. The present generation of Ontarians should protect species at risk for future generations.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**Purposes**

**1. The purposes of this Act are:**

1. To identify species at risk based on the best available scientific information, including information obtained from community knowledge and aboriginal traditional knowledge.
2. To protect species that are at risk and their habitats, and to promote the recovery of species that are at risk.
3. To promote stewardship activities to assist in the protection and recovery of species that are at risk. 2007, c. 6, s. 1.

...

**Prohibition on killing, etc.**



**9. (1)** No person shall,

- (a) kill, harm, harass, capture or take a living member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species;
- (b) possess, transport, collect, buy, sell, lease, trade or offer to buy, sell, lease or trade,
  - (i) a living or dead member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species,
  - (ii) any part of a living or dead member of a species referred to in subclause (i),
  - (iii) anything derived from a living or dead member of a species referred to in subclause (i); or
- (c) sell, lease, trade or offer to sell, lease or trade anything that the person represents to be a thing described in subclause (b) (i), (ii) or (iii). 2007, c. 6, s. 9 (1).

**Possession, etc., of species originating outside Ontario**

**(2)** Clause (1) (b) does not apply to a member of a species that originated outside Ontario if it was lawfully killed, captured or taken in the jurisdiction from which it originated. 2007, c. 6, s. 9 (2).

**Specified geographic area**

**(3)** If the Species at Risk in Ontario List specifies a geographic area that a classification of a species applies to, subsection (1) only applies to that species in that area. 2007, c. 6, s. 9 (3).

**Possession by Crown**

**(4)** Clause (1) (b) does not apply to possession by the Crown. 2007, c. 6, s. 9 (4).

**Transfer for certain purposes**

**(5)** If the Crown is in possession of anything referred to in clause (1) (b), the Minister may transfer it to another person or body and authorize the person or body to possess it, despite clause (1) (b), for,

- (a) scientific or educational purposes; or
- (b) traditional cultural, religious or ceremonial purposes. 2007, c. 6, s. 9 (5).

**Interpretation**

**(6)** A reference in this section to a member of a species,

- (a) includes a reference to a member of the species at any stage of its development;
- (b) includes a reference to a gamete or asexual propagule of the species; and
- (c) includes a reference to the member of the species, whether or not it originated in Ontario. 2007, c. 6, s. 9 (6).

### **Prohibition on damage to habitat, etc.**

**10. (1)** No person shall damage or destroy the habitat of,

- (a) a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species; or
- (b) a species that is listed on the Species at Risk in Ontario List as an extirpated species, if the species is prescribed by the regulations for the purpose of this clause. 2007, c. 6, s. 10 (1).

### **Specified geographic area**

**(2)** If the Species at Risk in Ontario List specifies a geographic area that a classification of a species applies to, subsection (1) only applies to that species in that area. 2007, c. 6, s. 10 (2).

### **Transition**

**(3)** Clause (1) (a) does not apply to a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species under clause 7 (7) (c) or (d) until the earlier of the following dates:

- 1. The date that a regulation made under clause 55 (1) (a) that applies to the species comes into force.
- 2. The fifth anniversary of the day section 7 comes into force. 2007, c. 6, s. 10 (3).

### **Recovery strategies**

**11. (1)** The Minister shall ensure that a strategy is prepared for the recovery of each species that is listed on the Species at Risk in Ontario List as an endangered or threatened species. 2007, c. 6, s. 11 (1).

### **Contents**

**(2)** A strategy prepared for a species under subsection (1) shall include the following:

- 1. An identification of the habitat needs of the species.
- 2. A description of the threats to the survival and recovery of the species.
- 3. Recommendations to the Minister and other persons on,
  - i. objectives for the protection and recovery of the species,
  - ii. approaches to achieve the objectives recommended under subparagraph i, and
  - iii. the area that should be considered in developing a regulation under clause 55 (1) (a) that prescribes an area as the habitat of the species.
- 4. Such other information as is prescribed by the regulations. 2007, c. 6, s. 11 (2).

### **Precautionary principle**

(3) In preparing a strategy under subsection (1), the persons who are preparing the strategy shall consider the principle that, where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat. 2007, c. 6, s. 11 (3).

#### **Time limit**

(4) The Minister shall ensure that a strategy prepared under subsection (1) is made available to the public under section 51 not later than,

- (a) the first anniversary of the date the species is listed on the Species at Risk in Ontario List as an endangered species;
- (b) the second anniversary of the date the species is listed on the Species at Risk in Ontario List as a threatened species; or
- (c) despite clauses (a) and (b), the fifth anniversary of the date section 7 comes into force, if the species is listed on the Species at Risk in Ontario List as an endangered or threatened species under clause 7 (7) (a), (c) or (d). 2007, c. 6, s. 11 (4).

#### **Same**

(5) Subsection (4) does not apply to a strategy if, before the time limit set out in subsection (4) expires, the Minister publishes a notice on the environmental registry established under the *Environmental Bill of Rights, 1993* that,

- (a) states that the Minister is of the opinion that additional time is required to prepare the strategy because of,
  - (i) the complexity of the issues,
  - (ii) the desire to prepare the strategy in co-operation with one or more other jurisdictions, or
  - (iii) the desire to give priority to the preparation of recovery strategies for other species;
- (b) sets out the Minister's reasons for the opinion referred to in clause (a); and
- (c) provides an estimate of when the preparation of the strategy will be completed. 2007, c. 6, s. 11 (5).

#### **Same**

(6) The Minister shall not publish a notice under subsection (5) in respect of a species if he or she is of the opinion that a delay in the preparation of the strategy will jeopardize the survival or recovery of the species in Ontario. 2007, c. 6, s. 11 (6).

#### **Extirpated species**

(7) The Minister shall ensure that a strategy is prepared for the recovery of a species that is listed on the Species at Risk in Ontario List as an extirpated species if the Minister is of the opinion that reintroduction of the species into Ontario is feasible. 2007, c. 6, s. 11 (7).

#### **Response to recovery strategy**

(8) Within nine months after a recovery strategy is prepared under this section, the Minister shall publish a statement that summarizes the actions that the Government of Ontario intends to take in response to the recovery strategy and the Government's priorities with respect to taking those actions. 2007, c. 6, s. 11 (8).

#### **Implementation**

(9) The Minister shall ensure the implementation of the actions referred to in a statement published under subsection (8) that, in the opinion of the Minister, are feasible and are within the responsibilities of the Minister. 2007, c. 6, s. 11 (9).

#### **Priorities**

(10) If statements have been published under subsection (8) in respect of more than one species, subsection (9) is subject to the right of the Minister to determine the relative priority to be given to the implementation of actions referred to in those statements. 2007, c. 6, s. 11 (10).

#### **Five-year review of progress**

(11) Not later than five years after a statement is published under subsection (8), the Minister shall ensure that a review is conducted of progress towards the protection and recovery of the species. 2007, c. 6, s. 11 (11).

#### **Feasibility**

(12) The Minister may consider social and economic factors in reaching his or her opinion on whether something is feasible for the purpose of subsection (7) or (9). 2007, c. 6, s. 11 (12).

...

#### **Permits**

**17. (1)** The Minister may issue a permit to a person that, with respect to a species specified in the permit that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, authorizes the person to engage in an activity specified in the permit that would otherwise be prohibited by section 9 or 10. 2007, c. 6, s. 17 (1).

#### **Limitation**

(2) The Minister may issue a permit under this section only if,

- (a) the Minister is of the opinion that the activity authorized by the permit is necessary for the protection of human health or safety;
- (b) the Minister is of the opinion that the main purpose of the activity authorized by the permit is to assist, and that the activity will assist, in the protection or recovery of the species specified in the permit;
- (c) the Minister is of the opinion that the main purpose of the activity authorized by the permit is not to assist in the protection or recovery of the species specified in the permit, but,
  - (i) the Minister is of the opinion that an overall benefit to the species will be achieved within a reasonable time through requirements imposed by conditions of the permit,
  - (ii) the Minister is of the opinion that reasonable alternatives have been considered, including alternatives that would not adversely affect the species, and the best alternative has been adopted, and
  - (iii) the Minister is of the opinion that reasonable steps to minimize adverse effects on individual members of the species are required by conditions of the permit;or
- (d) the Minister is of the opinion that the main purpose of the activity authorized by the permit is not to assist in the protection or recovery of the species specified in the permit, but,
  - (i) the Minister is of the opinion that the activity will result in a significant social or economic benefit to Ontario,
  - (ii) the Minister has consulted with a person who is considered by the Minister to be an expert on the possible effects of the activity on the species and to be independent of the person who would be authorized by the permit to engage in the activity,
  - (iii) the person consulted under subclause (ii) has submitted a written report to the Minister on the possible effects of the activity on the species, including the person's opinion on whether the activity will jeopardize the survival or recovery of the species in Ontario,
  - (iv) the Minister is of the opinion that the activity will not jeopardize the survival or recovery of the species in Ontario,
  - (v) the Minister is of the opinion that reasonable alternatives have been considered, including alternatives that would not adversely affect the species, and the best alternative has been adopted,

(vi) the Minister is of the opinion that reasonable steps to minimize adverse effects on individual members of the species are required by conditions of the permit, and

(vii) the Lieutenant Governor in Council has approved the issuance of the permit. 2007, c. 6, s. 17 (2).

#### **Response to recovery strategy**

(3) Before issuing a permit under this section, the Minister shall consider any statement that has been published under subsection 11 (8) with respect to a recovery strategy for the species specified in the permit. 2007, c. 6, s. 17 (3).

#### **Conditions**

(4) A permit issued under this section may contain such conditions as the Minister considers appropriate. 2007, c. 6, s. 17 (4).

#### **Same**

(5) Without limiting the generality of subsection (4), conditions in a permit may,

- (a) limit the time during which the permit applies;
- (b) limit the circumstances in which the permit applies;
- (c) require the holder of the permit to take steps specified in the permit, and require that steps be taken before engaging in the activity authorized by the permit;
- (d) require the holder of the permit to furnish security in an amount sufficient to ensure compliance with the permit;
- (e) require the holder of the permit to ensure that the activity authorized by the permit, and the effects of the activity, are monitored in accordance with the permit;
- (f) require the holder of the permit to rehabilitate habitat damaged or destroyed by the activity authorized by the permit, or to enhance another area so that it could become habitat suitable for the species specified in the permit; or
- (g) require the holder of the permit to submit reports to the Minister. 2007, c. 6, s. 17 (5).

#### **Compliance**

(6) An authorization described in subsection (1) does not apply unless the holder of the permit complies with any requirements imposed by the permit. 2007, c. 6, s. 17 (6).

#### **Amendment or revocation**

(7) The Minister may,

- (a) with the consent of the holder of a permit issued under this section,

(i) amend the permit, if the permit was issued under clause (2) (a), (b) or (c) and the Minister is of the opinion that he or she would be authorized under the same clause to issue the permit in its amended form,

(ii) amend the permit, if,

(A) the permit was issued under clause (2) (d),

(B) the Minister has consulted with a person who is considered by the Minister to be an expert on the possible effects of the amendment on the species specified in the permit and to be independent of the person who would be authorized by the permit in its amended form to engage in an activity,

(C) the Lieutenant Governor in Council has approved the amendment, and

(D) the Minister is of the opinion that he or she would be authorized under clause (2) (d) to issue the permit in its amended form, or

(iii) revoke the permit; or

(b) without the consent of the holder of the permit issued under this section, but subject to section 20, amend or revoke the permit, if,

(i) the Minister is of the opinion that the revocation or amendment,

(A) is necessary to prevent jeopardizing the survival or recovery, in Ontario, of the species specified in the permit, or

(B) is necessary for the protection of human health or safety, and

(ii) the Lieutenant Governor in Council has approved the revocation or amendment, in the case of a permit that was issued with the approval of the Lieutenant Governor in Council. 2007, c. 6, s. 17 (7).

### **Delegation**

(8) In addition to any authority under any Act to delegate powers to persons employed in the Ministry, the Minister may, in the circumstances prescribed by the regulations, delegate his or her powers under this section to a person or body prescribed by the regulations, subject to any limitations prescribed by the regulations. 2007, c. 6, s. 17 (8).

### **Instruments under other Acts**

#### **Minister's instruments**

18. (1) An instrument authorizing a person to engage in an activity has the same effect as a permit issued under section 17 if,

(a) the instrument was entered into, issued, made or approved by the Minister;

- (b) the instrument was entered into, issued, made or approved under a provision of an Act of Ontario or Canada or a provision of a regulation made under an Act of Ontario or Canada;
- (c) the instrument affects a species specified in the instrument that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species;
- (d) before entering into, issuing, making or approving the instrument, the Minister considered any statement that had been published under subsection 11 (8) with respect to a recovery strategy for the species specified in the instrument; and
- (e) at the time the instrument was entered into, issued, made or approved,
  - (i) the Minister was of the opinion that the activity authorized by the instrument was necessary for the protection of human health or safety,
  - (ii) the Minister was of the opinion that the main purpose of the activity authorized by the instrument was to assist, and that the activity would assist, in the protection or recovery of the species specified in the instrument, or
  - (iii) the Minister was of the opinion that the main purpose of the activity authorized by the instrument was not to assist in the protection or recovery of the species specified in the instrument, but,
    - (A) the Minister was of the opinion that an overall benefit to the species would be achieved within a reasonable time through requirements imposed by the instrument,
    - (B) the Minister was of the opinion that reasonable alternatives had been considered, including alternatives that would not adversely affect the species, and the best alternative was adopted, and
    - (C) the Minister was of the opinion that reasonable steps to minimize adverse effects on individual members of the species were required by the instrument. 2007, c. 6, s. 18 (1).

#### **Prescribed instruments**

**(2)** An instrument authorizing a person to engage in an activity has the same effect as a permit issued under section 17 if,

- (a) the instrument was entered into, issued, made or approved under a provision of an Act of Ontario or Canada or a provision of a regulation made under an Act of Ontario or Canada;
- (b) the provision referred to in clause (a) is prescribed by the regulations;
- (c) the Minister has entered into an agreement with the authorizing official that, for the purpose of this subsection, applies to the entering into, issuance, making or approval of instruments under the provision referred to in clause (a);



- (d) the instrument affects a species specified in the instrument that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species;
- (e) before entering into, issuing, making or approving the instrument, the authorizing official considered any statement that had been published under subsection 11 (8) with respect to a recovery strategy for the species specified in the instrument; and
- (f) at the time the instrument was entered into, issued, made or approved,
  - (i) the authorizing official was of the opinion that the activity authorized by the instrument was necessary for the protection of human health or safety,
  - (ii) the authorizing official was of the opinion that the main purpose of the activity authorized by the instrument was to assist, and that the activity would assist, in the protection or recovery of the species specified in the instrument, or
  - (iii) the authorizing official was of the opinion that the main purpose of the activity authorized by the instrument was not to assist in the protection or recovery of the species specified in the instrument, but,
    - (A) the authorizing official was of the opinion that an overall benefit to the species would be achieved within a reasonable time through requirements imposed by the instrument,
    - (B) the authorizing official was of the opinion that reasonable alternatives had been considered, including alternatives that would not adversely affect the species, and the best alternative was adopted, and
    - (C) the authorizing official was of the opinion that reasonable steps to minimize adverse effects on individual members of the species were required by the instrument. 2007, c. 6, s. 18 (2).

#### **Application of subs. (2)**

- (3) Subsection (2) applies only if the instrument was entered into, issued, made or approved,
  - (a) after the regulation referred to in clause (2) (b) came into force; and
  - (b) during a period when the agreement referred to in clause (2) (c) was in effect. 2007, c. 6, s. 18 (3).

#### **Compliance**

- (4) Subsections (1) and (2) do not apply to an instrument unless the person seeking to rely on the instrument has complied with any requirements imposed by the instrument. 2007, c. 6, s. 18 (4).

#### **Definitions**

- (5) In this section,

“authorizing official” means,

- (a) with respect to an agreement that authorizes a person to engage in an activity, any federal, provincial or municipal official who entered into the agreement, or

(b) with respect to any other instrument, the person who issued, made or approved the instrument; ("agent autorisateur")

"instrument" means an agreement, permit, licence, order, approved plan or other similar document. ("acte") 2007, c. 6, s. 18 (5).

### **Offences**

**36. (1)** A person is guilty of an offence if the person contravenes any of the following provisions:

1. Subsection 9 (1), 10 (1), 24 (2) or 26 (5), section 35, or subsection 49 (1) or (2).
2. Any provision of an agreement entered into under section 16 or 19, if the agreement authorizes a person to engage in an activity that would otherwise be prohibited by section 9 or 10.
3. Any provision of a permit issued under section 17 or 19.
4. Any provision of an order made under section 27, 28 or 41. 2007, c. 6, s. 36 (1).

...

### **Fees**

**50. (1)** The Minister may establish and charge,

(a) fees related to entering into agreements or issuing permits under this Act; and

(b) fees for the use of facilities, equipment, services or other things provided by the Ministry relating to species listed on the Species at Risk in Ontario List. 2007, c. 6, s. 50 (1).

### **Refund**

(2) The Minister may direct the refund of all or part of a fee if, in the Minister's opinion, it is equitable to do so. 2007, c. 6, s. 50 (2).

### **Payment required**

(3) A person shall pay any fees charged by the Minister under this Act. 2007, c. 6, s. 50 (3).

## **Regulations**

**55. (1)** Subject to subsection (2) and section 57, the Lieutenant Governor in Council may make regulations,

- (a) prescribing, for the purpose of clause (a) of the definition of “habitat” in subsection 2 (1), an area as the habitat of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species;
- (b) prescribing exemptions from subsection 9 (1) or 10 (1), subject to any conditions or restrictions prescribed by the regulations;
- (c) providing that subsection 11 (1) or (7) has no application to a species, if subsections 9 (1) and 10 (1) have no application to the species;
- (d) governing the preparation of recovery strategies under section 11 and management plans under section 12;
- (e) prescribing or respecting any matter that this Act refers to as a matter prescribed by the regulations or as otherwise dealt with by the regulations, other than regulations that are required by section 7. 2007, c. 6, s. 55 (1).

## **Consideration of recovery strategy**

**(2)** Before a regulation is made under clause (1) (a) prescribing an area as the habitat of a species, the Minister shall consider any recovery strategy that has been prepared for the species under section 11 and any statement that has been published under subsection 11 (8) with respect to the recovery strategy. 2007, c. 6, s. 55 (2).

## **Description of habitat**

**(3)** Without limiting the generality of clause (1) (a), a regulation under that clause prescribing an area as the habitat of a species,

- (a) may describe the area by,
  - (i) describing specific boundaries for the area,
  - (ii) describing features of the area, or
  - (iii) describing the area in any other manner;
- (b) may prescribe areas where the species lives, used to live or is believed to be capable of living; and
- (c) may prescribe an area that is larger or smaller than the area described by clause (b) of the definition of “habitat” in subsection 2 (1). 2007, c. 6, s. 55 (3).

## **Conditions and restrictions on exemptions**

**(4)** Without limiting the generality of clause (1) (b), a regulation under that clause may, as a condition or restriction on an exemption, provide that the exemption only applies to a person if

the person complies with an agreement entered into between the person and the Minister. 2007, c. 6, s. 55 (4).

...

### **Special requirements for certain regulations**

**57. (1)** If a proposal for a regulation under subsection 55 (1) is under consideration in the Ministry, the proposed regulation would apply to a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, and either or both of the following criteria apply, the Minister shall consult with a person who is considered by the Minister to be an expert on the possible effects of the proposed regulation on the species:

1. In the case of any proposed regulation under subsection 55 (1), the Minister is of the opinion that the regulation is likely to jeopardize the survival of the species in Ontario or to have any other significant adverse effect on the species.
2. In the case of a proposed regulation under clause 55 (1) (a), the Minister is of the opinion that the regulation is likely to result in a significant reduction in the number of members of the species that live in the wild in Ontario. 2007, c. 6, s. 57 (1).

### **Limitation**

**(2)** If the Minister is required by subsection (1) to consult with a person who is considered by the Minister to be an expert on the possible effects of a proposed regulation on a species, the Minister shall not recommend the regulation to the Lieutenant Governor in Council, and the Lieutenant Governor in Council shall not make the regulation, unless,

- (a) the Minister is of the opinion that the regulation will not result in the species no longer living in the wild in Ontario;
- (b) the person consulted by the Minister under subsection (1) submitted a written report to the Minister on the possible effects of the proposed regulation on the species and the report included the person's opinion on,
  - (i) in the case of any proposed regulation under subsection 55 (1), whether the regulation will jeopardize the survival of the species in Ontario or have any other significant adverse effect on the species, and, if so, whether the regulation will result in the species no longer living in the wild in Ontario, and
  - (ii) in the case of a proposed regulation under clause 55 (1) (a), whether the regulation will result in a significant reduction in the number of members of the species that live in the wild in Ontario;
- (c) the Minister considered alternatives to the proposal for a regulation, including,

- (i) entering into one or more agreements under section 16 or issuing one or more permits under section 17, or
- (ii) making a different regulation;
- (d) the Minister gave notice of the proposal for a regulation to the public under section 16 of the *Environmental Bill of Rights, 1993* at least two months before the day the regulation is made; and
- (e) the notice given under clause (d),
  - (i) in the case of any proposed regulation under subsection 55 (1),
    - (A) set out the Minister's opinion on whether the regulation will jeopardize the survival of the species in Ontario or have any other significant adverse effect on the species, and
    - (B) stated that the Minister is of the opinion that the regulation will not result in the species no longer living in the wild in Ontario,
  - (ii) in the case of a proposed regulation under clause 55 (1) (a), set out the Minister's opinion on whether the regulation will result in a significant reduction in the number of members of the species that live in the wild in Ontario,
  - (iii) gave the Minister's reasons for the opinions referred to in subclauses (i) and (ii),
  - (iv) set out a copy of the report referred to in clause (b),
  - (v) set out alternatives to the proposal for a regulation that the Minister considered under clause (c),
  - (vi) set out the reasons for making the proposed regulation, including any significant social or economic benefit to Ontario, and
  - (vii) set out steps that could be taken to minimize any adverse effects of the proposed regulation on individual members of the species. 2007, c. 6, s. 57 (2).

#### **Fundamental changes in a proposal**

(3) For the purposes of subsection (1), the question of whether a proposal has been so fundamentally altered as to become a new proposal is in the sole discretion of the Minister. 2007, c. 6, s. 57 (3).

#### **Interpretation**

(4) In this section, "proposal for a regulation" has the same meaning as in the *Environmental Bill of Rights, 1993*. 2007, c. 6, s. 57 (4)

## **Préambule**

La diversité biologique fait partie des grands trésors de notre planète. Elle a une valeur écologique, sociale, économique, culturelle et intrinsèque. Elle apporte une contribution essentielle et multiple à la vie humaine, notamment l'alimentation, les vêtements et les médicaments, et elle constitue un aspect important du développement social et économique durable.

Malheureusement, partout dans le monde, des espèces d'animaux, de végétaux et d'autres organismes disparaissent à jamais à un taux alarmant, le plus souvent à cause d'activités humaines, surtout celles qui endommagent l'habitat de ces espèces. Des mesures à l'échelle mondiale s'imposent donc.

La Convention des Nations Unies sur la diversité biologique prend acte du principe de précaution, qui, comme l'indique la Convention, veut que lorsqu'il existe une menace de réduction sensible ou de perte de la diversité biologique, l'absence de certitudes scientifiques totales ne doit pas être invoquée comme raison pour différer les mesures qui permettraient d'en éviter le danger ou d'en atténuer les effets.

En Ontario, les espèces indigènes constituent un élément crucial de notre précieux patrimoine naturel. La population de l'Ontario désire faire sa part pour protéger les espèces qui sont en péril en tenant dûment compte des considérations sociales, économiques et culturelles. Les Ontariens et Ontariennes d'aujourd'hui devraient protéger ces espèces pour les générations à venir.

Pour ces motifs, Sa Majesté, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, édicte :

...

## **Objets**

1. Les objets de la présente loi sont les suivants :

1. Identifier les espèces en péril en se fondant sur la meilleure information scientifique accessible, notamment l'information tirée des connaissances des collectivités et des connaissances traditionnelles des peuples autochtones.
2. Protéger les espèces qui sont en péril et leurs habitats et promouvoir le rétablissement de ces espèces.

3. Promouvoir des activités d'intendance pour aider à la protection et au rétablissement des espèces qui sont en péril. 2007, chap. 6, art. 1.

### **Interdiction de tuer et d'accomplir d'autres actes**

9. (1) Nul ne doit, selon le cas :

- a) tuer, harceler, capturer ou prendre un membre vivant d'une espèce qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce disparue de l'Ontario, en voie de disparition ou menacée, ni lui nuire;
  - b) posséder, transporter, collectionner, acheter, vendre, louer ou échanger, ou offrir de vendre, d'acheter, de louer ou d'échanger, selon le cas :
    - (i) un membre, vivant ou mort, d'une espèce qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce disparue de l'Ontario, en voie de disparition ou menacée,
    - (ii) toute partie d'un membre, vivant ou mort, d'une espèce visée au sous-alinéa (i),
    - (iii) quoi que ce soit qui est dérivé d'un membre, vivant ou mort, d'une espèce visée au sous-alinéa (i);
  - c) vendre, louer ou échanger, ou offrir de vendre, de louer ou d'échanger quoi que ce soit que la personne présente comme une chose mentionnée au sous-alinéa b) (i), (ii) ou (iii).
- 2007, chap. 6, par. 9 (1).

### **Possession, etc., d'espèces provenant de l'extérieur de l'Ontario**

(2) L'alinéa (1) b) ne s'applique pas au membre d'une espèce qui provient de l'extérieur de l'Ontario s'il a été tué, capturé ou pris légalement sur le territoire de l'autorité législative d'où il provient. 2007, chap. 6, par. 9 (2).

### **Zone géographique précisée**

(3) Si la Liste des espèces en péril en Ontario précise une zone géographique à laquelle s'applique le classement d'une espèce, le paragraphe (1) ne s'applique à cette espèce que dans cette zone. 2007, chap. 6, par. 9 (3).

### **Possession par la Couronne**

(4) L'alinéa (1) b) ne s'applique pas à la possession par la Couronne. 2007, chap. 6, par. 9 (4).

### **Transfert à certaines fins**

(5) Si la Couronne est en possession de quoi que ce soit qui est visé à l'alinéa (1) b), le ministre peut le transférer à une autre personne ou à un organisme et l'autoriser à en avoir la possession, malgré l'alinéa (1) b) :

- a) soit à des fins scientifiques ou éducatives;
- b) soit à des fins culturelles, religieuses ou cérémonielles traditionnelles. 2007, chap. 6, par. 9 (5).

### **Interprétation**

(6) La mention au présent article d'un membre d'une espèce vaut mention à la fois :

- a) d'un membre de l'espèce à tout stade de son développement;
- b) d'un gamète ou d'une propagule asexuée de l'espèce;
- c) du membre de l'espèce, qu'il provienne ou non de l'Ontario. 2007, chap. 6, par. 9 (6).

### **Interdiction d'endommager l'habitat**

10. (1) Nul ne doit endommager ou détruire l'habitat, selon le cas :

- a) d'une espèce qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce en voie de disparition ou menacée;
- b) d'une espèce qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce disparue de l'Ontario, si elle est prescrite par les règlements pour l'application du présent alinéa. 2007, chap. 6, par. 10 (1).

### **Zone géographique précisée**

(2) Si la Liste des espèces en péril en Ontario précise une zone géographique à laquelle s'applique le classement d'une espèce, le paragraphe (1) ne s'applique à cette espèce que dans cette zone. 2007, chap. 6, par. 10 (2).

### **Disposition transitoire**

(3) L'alinéa (1) a) ne s'applique à une espèce qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce en voie de disparition ou menacée en application de l'alinéa 7 (7) c) ou d) qu'à compter du premier en date des jours suivants :

1. La date de l'entrée en vigueur d'un règlement pris en application de l'alinéa 55 (1) a) qui s'applique à l'espèce.
2. Le cinquième anniversaire du jour de l'entrée en vigueur de l'article 7. 2007, chap. 6, par. 10 (3).

### **Programmes de rétablissement**

11. (1) Le ministre veille à ce que soit élaboré un programme de rétablissement de chaque espèce qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce en voie de disparition ou menacée. 2007, chap. 6, par. 11 (1).



## **Contenu**

(2) Le programme élaboré à l'égard d'une espèce en application du paragraphe (1) comprend ce qui suit :

1. Une désignation des besoins de l'espèce en matière d'habitat.
2. Une description des menaces à la survie et au rétablissement de l'espèce.
3. Des recommandations au ministre et à d'autres personnes sur ce qui suit :
  - i. des objectifs à atteindre en vue de la protection et du rétablissement de l'espèce,
  - ii. des approches à adopter pour atteindre les objectifs recommandés en application de la sous-disposition i,
  - iii. l'aire qui devrait être prise en considération lors de l'élaboration d'un règlement prévu à l'alinéa 55 (1) a) qui prescrit une aire comme étant l'habitat de l'espèce.
4. Les autres renseignements que prescrivent les règlements. 2007, chap. 6, par. 11 (2).

## **Principe de précaution**

(3) Lors de l'élaboration d'un programme en application du paragraphe (1), les personnes qui l'élaborent doivent prendre en considération le principe voulant que lorsqu'il existe une menace de réduction sensible ou de perte de la diversité biologique, l'absence de certitudes scientifiques totales ne doit pas être invoquée comme raison pour différer les mesures qui permettraient d'en éviter le danger ou d'en atténuer les effets. 2007, chap. 6, par. 11 (3).

## **Délai**

(4) Le ministre veille à ce que le programme élaboré en application du paragraphe (1) soit mis à la disposition du public en application de l'article 51 :

- a) soit au plus tard au premier anniversaire de la date à laquelle l'espèce a été inscrite sur la Liste des espèces en péril en Ontario comme espèce en voie de disparition;
- b) soit au plus tard au deuxième anniversaire de la date à laquelle l'espèce a été inscrite sur la Liste des espèces en péril en Ontario comme espèce menacée;
- c) soit, malgré les alinéas a) et b), au plus tard au cinquième anniversaire de la date de l'entrée en vigueur de l'article 7, si l'espèce est inscrite sur la Liste des espèces en péril en Ontario comme espèce en voie de disparition ou menacée en application de l'alinéa 7 (7) a), c) ou d). 2007, chap. 6, par. 11 (4).

## **Idem**

(5) Le paragraphe (4) ne s'applique pas à un programme si, avant l'expiration du délai énoncé à ce paragraphe, le ministre publie, dans le registre environnemental établi en application de la *Charte des droits environnementaux de 1993*, un avis qui, à la fois :

a) indique que le ministre est d'avis qu'un délai plus long est nécessaire pour élaborer le programme en raison :

(i) soit de la complexité des questions à traiter,

(ii) soit du désir d'élaborer le programme en collaboration avec une ou plusieurs autres autorités législatives,

(iii) soit du désir de donner la priorité à l'élaboration de programmes de rétablissement pour d'autres espèces;

b) expose les motifs du ministre à l'appui de l'opinion visée à l'alinéa a);

c) indique la date approximative à laquelle l'élaboration du programme sera achevée.  
2007, chap. 6, par. 11 (5).

#### **Idem**

(6) Le ministre ne doit pas publier un avis en application du paragraphe (5) à l'égard d'une espèce s'il est d'avis qu'un retard dans l'élaboration du programme mettra en danger la survie ou le rétablissement de l'espèce en Ontario. 2007, chap. 6, par. 11 (6).

#### **Espèces disparues de l'Ontario**

(7) Le ministre veille à ce que soit élaboré un programme pour le rétablissement d'une espèce qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce disparue de l'Ontario s'il est d'avis que sa réintroduction en Ontario est réalisable. 2007, chap. 6, par. 11 (7).

#### **Réponse au programme de rétablissement**

(8) Dans les neuf mois suivant l'élaboration d'un programme de rétablissement en application du présent article, le ministre publie une déclaration qui résume les mesures que le gouvernement de l'Ontario entend prendre en réponse au programme et ses priorités en ce qui concerne la prise de ces mesures. 2007, chap. 6, par. 11 (8).

#### **Mise en oeuvre des mesures**

(9) Le ministre veille à ce que soient mises en oeuvre les mesures visées dans une déclaration publiée en application du paragraphe (8) qui, à son avis, sont réalisables et entrent dans le cadre de ses responsabilités. 2007, chap. 6, par. 11 (9).

#### **Priorités**

(10) Si des déclarations ont été publiées en application du paragraphe (8) à l'égard de plus d'une espèce, le paragraphe (9) est assujéti au droit du ministre de fixer la priorité relative à donner à la mise en oeuvre des mesures visées dans ces déclarations. 2007, chap. 6, par. 11 (10).

#### **Examen quinquennal des progrès accomplis**

(11) Au plus tard cinq ans après qu'une déclaration est publiée en application du paragraphe (8), le ministre veille à ce que soit effectué un examen des progrès accomplis en matière de protection et de rétablissement de l'espèce. 2007, chap. 6, par. 11 (11).

### **Caractère réalisable**

(12) Le ministre peut prendre en considération des facteurs sociaux et économiques lorsqu'il se forme une opinion sur la question de savoir si quelque chose est réalisable pour l'application du paragraphe (7) ou (9). 2007, chap. 6, par. 11 (12).

...

### **Permis**

17. (1) Le ministre peut délivrer à une personne un permis qui, à l'égard d'une espèce qui y est précisée et qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce disparue de l'Ontario, en voie de disparition ou menacée, l'autorise à exercer une activité qui y est précisée et qu'interdirait par ailleurs l'article 9 ou 10. 2007, chap. 6, par. 17 (1).

### **Restriction**

(2) Le ministre ne peut délivrer un permis en vertu du présent article que si, selon le cas :

- a) il est d'avis que l'activité autorisée par le permis est nécessaire pour protéger la santé ou la sécurité des êtres humains;
- b) il est d'avis que l'objet principal de l'activité autorisée par le permis est d'aider à la protection ou au rétablissement de l'espèce précisée dans celui-ci, et qu'elle y aidera;
- c) il est d'avis que l'objet principal de l'activité autorisée par le permis n'est pas d'aider à la protection ou au rétablissement de l'espèce précisée dans celui-ci, mais que, selon lui, à la fois :
  - (i) les exigences qu'imposent les conditions du permis procureront dans un délai raisonnable un avantage plus que compensatoire pour l'espèce,
  - (ii) des solutions de rechange raisonnables ont été envisagées, y compris celles qui ne nuiraient pas à l'espèce, et la meilleure d'entre elles a été retenue,
  - (iii) les conditions du permis exigent la prise de mesures raisonnables pour réduire au minimum les conséquences préjudiciables pour des membres de l'espèce;
- d) il est d'avis que l'objet principal de l'activité autorisée par le permis n'est pas d'aider à la protection ou au rétablissement de l'espèce précisée dans celui-ci, mais les conditions suivantes sont réunies :

(i) il est d'avis que l'activité procurera un important avantage social ou économique à l'Ontario,

(ii) il a consulté une personne qu'il tient pour un expert sur les conséquences éventuelles de l'activité pour l'espèce et qu'il considère comme étant indépendante vis-à-vis de la personne que le permis autoriserait à exercer l'activité,

(iii) la personne qu'il a consultée en application du sous-alinéa (ii) lui a présenté un rapport écrit sur les conséquences éventuelles de l'activité pour l'espèce, y compris son avis sur la question de savoir si l'activité mettra en danger la survie ou le rétablissement de l'espèce en Ontario,

(iv) il est d'avis que l'activité ne mettra pas en danger la survie ou le rétablissement de l'espèce en Ontario,

(v) il est d'avis que des solutions de rechange raisonnables ont été envisagées, y compris celles qui ne nuiraient pas à l'espèce, et que la meilleure d'entre elles a été retenue,

(vi) il est d'avis que les conditions du permis exigent la prise de mesures raisonnables pour réduire au minimum les conséquences préjudiciables pour des membres de l'espèce,

(vii) le lieutenant-gouverneur en conseil a approuvé la délivrance du permis. 2007, chap. 6, par. 17 (2).

#### **Réponse au programme de rétablissement**

(3) Avant de délivrer un permis en vertu du présent article, le ministre prend en considération toute déclaration qui a été publiée en application du paragraphe 11 (8) à l'égard d'un programme de rétablissement relatif à l'espèce précisée dans le permis. 2007, chap. 6, par. 17 (3).

#### **Conditions**

(4) Le permis délivré en vertu du présent article peut être assorti des conditions que le ministre juge appropriées. 2007, chap. 6, par. 17 (4).

#### **Idem**

(5) Sans préjudice de la portée générale du paragraphe (4), les conditions dont est assorti le permis peuvent, selon le cas :

- a) limiter la période pendant laquelle s'applique le permis;
- b) limiter les circonstances dans lesquelles s'applique le permis;
- c) exiger que le titulaire du permis prenne les mesures que précise le permis et que des mesures soient prises avant que l'activité qu'autorise le permis ne soit exercée;

- d) exiger que le titulaire du permis fournisse une sûreté dont le montant est suffisant pour garantir la conformité au permis;
- e) exiger que le titulaire du permis veille à ce que l'activité qu'autorise le permis et ses conséquences soient surveillées conformément à celui-ci;
- f) exiger que le titulaire du permis remette en état l'habitat endommagé ou détruit par l'activité qu'autorise le permis, ou qu'il améliore une autre aire pour qu'elle puisse devenir un habitat qui convient à l'espèce précisée dans le permis;
- g) exiger que le titulaire du permis présente des rapports au ministre. 2007, chap. 6, par. 17 (5).

### **Conformité**

(6) L'autorisation visée au paragraphe (1) ne s'applique que si le titulaire du permis se conforme aux exigences qu'impose son permis. 2007, chap. 6, par. 17 (6).

### **Modification ou révocation**

(7) Le ministre peut :

- a) avec le consentement du titulaire d'un permis délivré en vertu du présent article :
  - (i) modifier le permis s'il a été délivré en vertu de l'alinéa (2) a), b) ou c) et que le ministre est d'avis qu'il serait autorisé, en vertu du même alinéa, à le délivrer sous sa forme modifiée,
  - (ii) modifier le permis si, à la fois :
    - (A) le permis a été délivré en vertu de l'alinéa (2) d),
    - (B) le ministre a consulté une personne qu'il tient pour un expert sur les conséquences éventuelles de la modification pour l'espèce précisée dans le permis et qu'il considère comme étant indépendante vis-à-vis de la personne que le permis, sous sa forme modifiée, autoriserait à exercer une activité,
    - (C) le lieutenant-gouverneur en conseil a approuvé la modification,
    - (D) le ministre est d'avis qu'il serait autorisé, en vertu de l'alinéa (2) d), à délivrer le permis sous sa forme modifiée,
  - (iii) révoquer le permis;
- b) sans le consentement du titulaire du permis délivré en vertu du présent article, mais sous réserve de l'article 20, modifier ou révoquer le permis si :
  - (i) d'une part, le ministre est d'avis que la révocation ou la modification est nécessaire :
    - (A) soit pour empêcher que soit mis en danger la survie ou le rétablissement, en Ontario, de l'espèce précisée dans le permis,

- (B) soit pour protéger la santé ou la sécurité des êtres humains,
- (ii) d'autre part, le lieutenant-gouverneur en conseil a approuvé la révocation ou la modification, s'il s'agit d'un permis délivré avec son approbation. 2007, chap. 6, par. 17 (7).

### **Délégation**

(8) Outre les pouvoirs que confère toute loi de déléguer des pouvoirs à des personnes employées dans le ministère, le ministre peut, dans les circonstances prescrites par les règlements, déléguer les pouvoirs que lui confère le présent article à une personne ou à un organisme prescrits par les règlements, sous réserve des restrictions prescrites par ceux-ci. 2007, chap. 6, par. 17 (8).

### **Actes prévus par d'autres lois**

#### **Actes pris par le ministre**

**18. (1)** L'acte qui autorise une personne à exercer une activité a le même effet qu'un permis délivré en vertu de l'article 17 si les conditions suivantes sont réunies :

- a) l'acte a été conclu, délivré, pris ou approuvé par le ministre;
- b) l'acte a été conclu, délivré, pris ou approuvé aux termes d'une disposition d'une loi de l'Ontario ou du Canada ou d'une disposition d'un de leurs règlements d'application;
- c) l'acte touche une espèce qui y est précisée et qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce disparue de l'Ontario, en voie de disparition ou menacée;
- d) avant de conclure, de délivrer, de prendre ou d'approuver l'acte, le ministre a pris en considération toute déclaration qui avait été publiée en application du paragraphe 11 (8) à l'égard d'un programme de rétablissement relatif à l'espèce précisée dans l'acte;
- e) au moment où l'acte a été conclu, délivré, pris ou approuvé :
  - (i) soit le ministre était d'avis que l'activité autorisée par l'acte était nécessaire pour protéger la santé ou la sécurité des êtres humains,
  - (ii) soit le ministre était d'avis que l'objet principal de l'activité autorisée par l'acte était d'aider à la protection ou au rétablissement de l'espèce précisée dans celui-ci, et qu'elle y aiderait,
  - (iii) soit le ministre était d'avis que l'objet principal de l'activité autorisée par l'acte n'était pas d'aider à la protection ou au rétablissement de l'espèce précisée dans celui-ci, mais que, selon lui, à la fois :
    - (A) les exigences imposées par l'acte procureraient dans un délai raisonnable un avantage plus que compensatoire pour l'espèce,

(B) des solutions de rechange raisonnables avaient été envisagées, y compris celles qui ne nuiraient pas à l'espèce, et la meilleure d'entre elles avait été retenue,

(C) l'acte exigeait la prise de mesures raisonnables pour réduire au minimum les conséquences préjudiciables pour des membres de l'espèce. 2007, chap. 6, par. 18 (1).

#### **Actes prescrits**

(2) L'acte qui autorise une personne à exercer une activité a le même effet qu'un permis délivré en vertu de l'article 17 si les conditions suivantes sont réunies :

- a) l'acte a été conclu, délivré, pris, donné ou approuvé aux termes d'une disposition d'une loi de l'Ontario ou du Canada ou d'une disposition d'un de leurs règlements d'application;
- b) la disposition visée à l'alinéa a) est prescrite par les règlements;
- c) le ministre a conclu un accord avec l'agent autorisateur qui, pour l'application du présent paragraphe, s'applique à la conclusion, à la délivrance, à la prise ou à l'approbation d'actes, ou au fait de les donner, aux termes de la disposition visée à l'alinéa a);
- d) l'acte touche une espèce qui y est précisée et qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce disparue de l'Ontario, en voie de disparition ou menacée;
- e) avant de conclure, de délivrer, de prendre, de donner ou d'approuver l'acte, l'agent autorisateur a pris en considération toute déclaration qui avait été publiée en application du paragraphe 11 (8) à l'égard d'un programme de rétablissement relatif à l'espèce précisée dans l'acte;
- f) au moment où l'acte a été conclu, délivré, pris, donné ou approuvé :
  - (i) soit l'agent autorisateur était d'avis que l'activité autorisée par l'acte était nécessaire pour protéger la santé ou la sécurité des êtres humains,
  - (ii) soit l'agent autorisateur était d'avis que l'objet principal de l'activité autorisée par l'acte était d'aider à la protection ou au rétablissement de l'espèce précisée dans celui-ci, et qu'elle y aiderait,
  - (iii) soit l'agent autorisateur était d'avis que l'objet principal de l'activité autorisée par l'acte n'était pas d'aider à la protection ou au rétablissement de l'espèce précisée dans celui-ci, mais que, selon lui, à la fois :
    - (A) les exigences imposées par l'acte procureraient dans un délai raisonnable un avantage plus que compensatoire pour l'espèce,

(B) des solutions de rechange raisonnables avaient été envisagées, y compris celles qui ne nuiraient pas à l'espèce, et la meilleure d'entre elles avait été retenue,

(C) l'acte exigeait la prise de mesures raisonnables pour réduire au minimum les conséquences préjudiciables pour des membres de l'espèce. 2007, chap. 6, par. 18 (2).

#### **Application du par. (2)**

(3) Le paragraphe (2) ne s'applique que si l'acte a été conclu, délivré, pris, donné ou approuvé :

- a) d'une part, après l'entrée en vigueur du règlement visé à l'alinéa (2) b);
- b) d'autre part, pendant la période d'effet de l'accord visé à l'alinéa (2) c). 2007, chap. 6, par. 18 (3).

#### **Conformité**

(4) Les paragraphes (1) et (2) ne s'appliquent à un acte que si la personne qui cherche à se fonder sur l'acte s'est conformée aux exigences imposées par celui-ci. 2007, chap. 6, par. 18 (4).

#### **Définitions**

(5) Les définitions qui suivent s'appliquent au présent article.

«acte» Accord, permis, licence, arrêté, décret, ordre, plan approuvé ou autre document semblable. («instrument»)

«agent autorisateur» S'entend de l'une ou l'autre des personnes suivantes :

- a) en ce qui concerne un accord qui autorise une personne à exercer une activité, tout agent fédéral, provincial ou municipal qui a conclu l'accord;
- b) en ce qui concerne tout autre acte, la personne qui l'a délivré, pris, donné ou approuvé. («authorizing official») 2007, chap. 6, par. 18 (5).

...

#### **Infractions**

36. (1) Est coupable d'une infraction quiconque contrevient à l'une ou l'autre des dispositions suivantes :

1. Le paragraphe 9 (1), 10 (1), 24 (2) ou 26 (5), l'article 35 ou le paragraphe 49 (1) ou (2).
2. Toute disposition d'un accord conclu en vertu de l'article 16 ou 19, si l'accord autorise une personne à exercer une activité qu'interdirait par ailleurs l'article 9 ou 10.



3. Une disposition d'un permis délivré en vertu de l'article 17 ou 19.

4. Toute disposition d'un ordre donné en vertu de l'article 27, d'un arrêté pris en vertu de l'article 28 ou d'une ordonnance rendue en vertu de l'article 41. 2007, chap. 6, par. 36 (1).

### **Tentatives**

(2) Quiconque tente de faire quoi que ce soit qui constituerait une infraction aux termes de la présente loi est coupable de cette infraction. 2007, chap. 6, par. 36 (2).

...

### **Droits**

50. (1) Le ministre peut fixer et exiger :

a) des droits relatifs à la conclusion d'accords ou à la délivrance de permis en vertu de la présente loi;

b) des droits pour l'utilisation d'installations, de matériel, de services ou d'autres choses que fournit le ministère relativement aux espèces inscrites sur la Liste des espèces en péril en Ontario. 2007, chap. 6, par. 50 (1).

### **Remboursement**

(2) Le ministre peut ordonner le remboursement total ou partiel de droits s'il estime qu'il est équitable de ce faire. 2007, chap. 6, par. 50 (2).

### **Païement exigé**

(3) Toute personne païe les droits que le ministre exige en vertu de la présente loi. 2007, chap. 6, par. 50 (3).

...

### **Règlements**

55. (1) Sous réserve du paragraphe (2) et de l'article 57, le lieutenant-gouverneur en conseil peut, par règlement :

- a) prescrire, pour l'application de l'alinéa a) de la définition de «habitat» au paragraphe 2 (1), une aire comme étant l'habitat d'une espèce qui est inscrite sur la Liste des espèces en péril en Ontario comme espèce disparue de l'Ontario, en voie de disparition ou menacée;
- b) prescrire des exemptions de l'application du paragraphe 9 (1) ou 10 (1), sous réserve des conditions ou des restrictions prescrites par les règlements;
- c) prévoir que le paragraphe 11 (1) ou (7) ne s'applique pas à une espèce si les paragraphes 9 (1) et 10 (1) ne s'y appliquent pas;
- d) régir l'élaboration des programmes de rétablissement en application de l'article 11 et celle des plans de gestion en application de l'article 12;
- e) prescrire toute question, ou traiter de toute question, que la présente loi mentionne comme étant prescrite par les règlements ou traitée par ailleurs par ceux-ci, à l'exclusion de ceux qui sont exigés par l'article 7. 2007, chap. 6, par. 55 (1).

#### **Prise en considération du programme de rétablissement**

(2) Avant que ne soit pris en application de l'alinéa (1) a) un règlement qui prescrit une aire comme étant l'habitat d'une espèce, le ministre prend en considération tout programme de rétablissement qui a été élaboré à l'égard de l'espèce en application de l'article 11 et toute déclaration qui a été publiée en application du paragraphe 11 (8) à l'égard du programme. 2007, chap. 6, par. 55 (2).

#### **Description de l'habitat**

(3) Sans préjudice de la portée générale de l'alinéa (1) a), le règlement pris en application de cet alinéa qui prescrit une aire comme étant l'habitat d'une espèce :

- a) peut décrire l'aire :
  - (i) soit en en donnant les limites précises,
  - (ii) soit en en donnant les caractéristiques,
  - (iii) soit en la décrivant de toute autre manière;
- b) peut prescrire une aire dans laquelle l'espèce vit ou vivait ou dans laquelle on la croit capable de vivre;
- c) peut prescrire une aire qui est plus grande ou plus petite que celle décrite à l'alinéa b) de la définition de «habitat» au paragraphe 2 (1). 2007, chap. 6, par. 55 (3).

#### **Conditions et restrictions des exemptions**

(4) Sans préjudice de la portée générale de l'alinéa (1) b), le règlement pris en application de cet alinéa peut, comme condition ou restriction d'une exemption, prévoir que cette dernière ne

s'applique à une personne que si elle se conforme à l'accord qu'elle a conclu avec le ministre.  
2007, chap. 6, par. 55 (4).

...

### **Exigences particulières à l'égard de certains règlements**

57. (1) Si la proposition d'un règlement prévu au paragraphe 55 (1) est à l'étude dans le ministère, que le règlement proposé s'appliquerait à une espèce inscrite sur la Liste des espèces en péril en Ontario comme espèce en voie de disparition ou menacée et que l'un des deux critères suivants ou les deux s'appliquent, le ministre consulte une personne qu'il tient pour un expert sur les conséquences éventuelles du règlement proposé pour l'espèce :

1. Dans le cas de tout règlement proposé qui est prévu au paragraphe 55 (1), le ministre est d'avis que le règlement mettra vraisemblablement en danger la survie de l'espèce en Ontario ou aura vraisemblablement une autre conséquence préjudiciable importante pour l'espèce.
2. Dans le cas d'un règlement proposé qui est prévu à l'alinéa 55 (1) a), le ministre est d'avis que le règlement entraînera vraisemblablement une réduction sensible du nombre de membres de l'espèce qui vivent à l'état sauvage en Ontario. 2007, chap. 6, par. 57 (1).

### **Restriction**

(2) S'il est tenu, en application du paragraphe (1), de consulter une personne qu'il tient pour un expert sur les conséquences éventuelles d'un règlement proposé pour une espèce, le ministre ne doit pas recommander le règlement au lieutenant-gouverneur en conseil et celui-ci ne doit pas le prendre, à moins que les conditions suivantes ne soient réunies :

- a) le ministre est d'avis que le règlement ne fera pas en sorte que l'espèce cesse de vivre à l'état sauvage en Ontario;
- b) la personne que le ministre a consultée en application du paragraphe (1) lui a présenté un rapport écrit sur les conséquences éventuelles du règlement proposé pour l'espèce et le rapport comprenait son avis sur les questions suivantes :
  - (i) dans le cas de tout règlement proposé qui est prévu au paragraphe 55 (1), si celui-ci mettra en danger la survie de l'espèce en Ontario ou aura une autre conséquence préjudiciable importante pour l'espèce et, en pareil cas, s'il fera en sorte que l'espèce cesse de vivre à l'état sauvage en Ontario,
  - (ii) dans le cas d'un règlement proposé qui est prévu à l'alinéa 55 (1) a), si celui-ci entraînera une réduction sensible du nombre de membres de l'espèce qui vivent à l'état sauvage en Ontario;

- c) le ministre a envisagé des solutions de rechange à la proposition de règlement, notamment :
- (i) soit la conclusion d'un ou de plusieurs accords en vertu de l'article 16 ou la délivrance d'un ou de plusieurs permis en vertu de l'article 17,
  - (ii) soit la prise d'un règlement différent;
- d) le ministre a donné avis au public de la proposition de règlement en application de l'article 16 de la *Charte des droits environnementaux de 1993* au moins deux mois avant le jour de la prise du règlement;
- e) l'avis donné en application de l'alinéa d), à la fois :
- (i) dans le cas de tout règlement proposé qui est prévu au paragraphe 55 (1) :
    - (A) énonçait l'avis du ministre sur la question de savoir si le règlement mettra en danger la survie de l'espèce en Ontario ou aura une autre conséquence préjudiciable importante pour l'espèce,
    - (B) indiquait que le ministre est d'avis que le règlement ne fera pas en sorte que l'espèce cesse de vivre à l'état sauvage en Ontario,
  - (ii) dans le cas d'un règlement proposé qui est prévu à l'alinéa 55 (1) a), énonçait l'avis du ministre sur la question de savoir si le règlement entraînera une réduction sensible du nombre de membres de l'espèce qui vivent à l'état sauvage en Ontario,
  - (iii) donnait les motifs du ministre à l'appui des avis visés aux sous-alinéas (i) et (ii),
  - (iv) reproduisait le rapport visé à l'alinéa b),
  - (v) énonçait les solutions de rechange à la proposition de règlement que le ministre a envisagées en application de l'alinéa c),
  - (vi) énonçait les motifs à l'appui de la prise du règlement proposé, y compris tout important avantage social ou économique pour l'Ontario,
  - (vii) énonçait des mesures qui pourraient être prises pour réduire au minimum les conséquences préjudiciables du règlement proposé pour des membres de l'espèce.

2007, chap. 6, par. 57 (2).

### **Changements fondamentaux apportés à une proposition**

(3) Pour l'application du paragraphe (1), le ministre a l'entière discrétion d'établir si une proposition a été fondamentalement modifiée au point de devenir une nouvelle proposition. 2007, chap. 6, par. 57 (3).

### **Interprétation**

(4) La définition qui suit s'applique au présent article.

«proposition de règlement» S'entend au sens de la *Charte des droits environnementaux de 1993*. 2007, chap. 6, par. 57 (4).

**Judicial Review Procedure Act, RSO 1990, c J.1**

...

**Applications for judicial review**

**2. (1)** On an application by way of originating notice, which may be styled "Notice of Application for Judicial Review", the court may, despite any right of appeal, by order grant any relief that the applicant would be entitled to in any one or more of the following:

1. Proceedings by way of application for an order in the nature of mandamus, prohibition or certiorari.
2. Proceedings by way of an action for a declaration or for an injunction, or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power. R.S.O. 1990, c. J.1, s. 2 (1).

...

**Ontario Water Resources Act, RSO 1990, c O.40**

...

**Purpose**

**0.1** The purpose of this Act is to provide for the conservation, protection and management of Ontario's waters and for their efficient and sustainable use, in order to promote Ontario's long-term environmental, social and economic well-being. 2007, c. 12, s. 1 (1).

...

**Lakes and Rivers Improvement Act, RSO 1990, c L.3**

...

**Purposes of Act**

**2.** The purposes of this Act are to provide for,

- (a) the management, protection, preservation and use of the waters of the lakes and rivers of Ontario and the land under them;
  - (b) the protection and equitable exercise of public rights in or over the waters of the lakes and rivers of Ontario;
  - (c) the protection of the interests of riparian owners;
  - (d) the management, perpetuation and use of the fish, wildlife and other natural resources dependent on the lakes and rivers;
  - (e) the protection of the natural amenities of the lakes and rivers and their shores and banks; and
  - (f) the protection of persons and of property by ensuring that dams are suitably located, constructed, operated and maintained and are of an appropriate nature with regard to the purposes of clauses (a) to (e). 1998, c. 18, Sched. I, s. 23.
- ...

**Aggregate Resources Act, RSO 1990, c A.8**

...

**Purposes of Act**

**2.** The purposes of this Act are,

- (a) to provide for the management of the aggregate resources of Ontario;
  - (b) to control and regulate aggregate operations on Crown and private lands;
  - (c) to require the rehabilitation of land from which aggregate has been excavated; and
  - (d) to minimize adverse impact on the environment in respect of aggregate operations.
- R.S.O. 1990, c. A.8, s.
- ...

**Mining Act, RSO 1990, c M.14**

...

**Purpose**

**2.** The purpose of this Act is to encourage prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982*, including the duty to consult, and to minimize the impact of these activities on public health and safety and the environment. 2009, c. 21, s. 2.

...

**Crown Forest Sustainability Act, 1994, SO 1994, c 25**

**Purposes**

**1.** The purposes of this Act are to provide for the sustainability of Crown forests and, in accordance with that objective, to manage Crown forests to meet social, economic and environmental needs of present and future generations. 1994, c. 25, s. 1.

...

**O Reg 230/08**

**Last amendment: O Reg 66/15**

**(Endangered Species Act, 2007)**

**Extirpated species**

1. The species listed in Columns 3 and 4 of Schedule 1 according to their common and scientific names, and belonging to the species grouping referred to in Column 2 opposite the listed species, are classified by COSSARO as extirpated species. O. Reg. 139/14, s. 1.

**Endangered species**

2. The species listed in Columns 3 and 4 of Schedule 2 according to their common and scientific names, and belonging to the species grouping referred to in Column 2 opposite the listed species, are classified by COSSARO as endangered species. O. Reg. 139/14, s. 1.

**Threatened species**

3. The species listed in Columns 3 and 4 of Schedule 3 according to their common and scientific names, and belonging to the species grouping referred to in Column 2 opposite the listed species, are classified by COSSARO as threatened species. O. Reg. 139/14, s. 1.

**Special concern species**

4. The species listed in Columns 3 and 4 of Schedule 4 according to their common and scientific names, and belonging to the species grouping referred to in Column 2 opposite the listed species, are classified by COSSARO as special concern species. O. Reg. 139/14, s. 1.

**Geographical limitations**

5. If the classification of a species applies only to a specified geographic area in Ontario, the area is described in a footnote to the relevant Schedule. O. Reg. 230/08, s. 5.

6. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 230/08, s. 6.

...



## Schedule 2 - ENDANGERED SPECIES

Column 1	Column 2	Column 3	Column 4
Item	Species Grouping	Common Name	Scientific Name
1.	Lichens	Pale-bellied Frost Lichen	<i>Physconia subpallida</i>
2.	Mosses	Spoon-leaved Moss	<i>Bryoandersonia illecebra</i>
3.	Vascular Plants	American Chestnut	<i>Castanea dentata</i>
4.	Vascular Plants	American Columbo	<i>Frasera caroliniensis</i>
5.	Vascular Plants	American Ginseng	<i>Panax quinquefolius</i>
6.	Vascular Plants	Bent Spike-rush	<i>Eleocharis geniculata</i>
7.	Vascular Plants	Bird's-foot Violet	<i>Viola pedata</i>
8.	Vascular Plants	Bluehearts	<i>Buchnera americana</i>
9.	Vascular Plants	Blunt-lobed Woodsia	<i>Woodsia obtusa</i>
10.	Vascular Plants	Butternut	<i>Juglans cinerea</i>
11.	Vascular Plants	Cherry Birch	<i>Betula lenta</i>
12.	Vascular Plants	Cucumber Tree	<i>Magnolia acuminata</i>
13.	Vascular Plants	Drooping Trillium	<i>Trillium flexipes</i>
14.	Vascular Plants	Eastern Flowering Dogwood	<i>Cornus florida</i>
15.	Vascular Plants	Eastern Prairie Fringed-orchid	<i>Platanthera leucophaea</i>
16.	Vascular Plants	Eastern Prickly Pear Cactus	<i>Opuntia humifusa</i>
17.	Vascular Plants	Engelmann's Quillwort	<i>Isoetes engelmannii</i>
18.	Vascular Plants	False Hop Sedge	<i>Carex lupuliformis</i>
19.	Vascular Plants	Few-flowered Club-rush	<i>Trichophorum planifolium</i>
20.	Vascular Plants	Forked Three-awned Grass	<i>Aristida basiramea</i>
21.	Vascular Plants	Four-leaved Milkweed	<i>Asclepias quadrifolia</i>
22.	Vascular Plants	Gattinger's Agalinis	<i>Agalinis gattingeri</i>
23.	Vascular Plants	Heart-leaved Plantain	<i>Plantago cordata</i>
24.	Vascular Plants	Hoary Mountain-mint	<i>Pycnanthemum incanum</i>
25.	Vascular Plants	Horsetail Spike-rush	<i>Eleocharis equisetoides</i>
26.	Vascular Plants	Juniper Sedge	<i>Carex juniperorum</i>
27.	Vascular Plants	Large Whorled Pogonia	<i>Isotria verticillata</i>
28.	Vascular Plants	Nodding Pogonia	<i>Triphora trianthophoros</i>
29.	Vascular Plants	Ogden's Pondweed	<i>Potamogeton ogdenii</i>
30.	Vascular Plants	Pink Milkwort	<i>Polygala incarnata</i>
31.	Vascular Plants	Red Mulberry	<i>Morus rubra</i>
32.	Vascular Plants	Scarlet Ammannia	<i>Ammannia robusta</i>
33.	Vascular Plants	Showy Goldenrod (Great Lakes Plains population)	<i>Solidago speciosa</i>
34.	Vascular Plants	Skinner's Agalinis	<i>Agalinis skinneriana</i>
35.	Vascular Plants	Slender Bush-clover	<i>Lespedeza virginica</i>
36.	Vascular Plants	Small White Lady's-slipper	<i>Cypripedium candidum</i>

37.	Vascular Plants	Small Whorled Pogonia	<i>Isotria medeoloides</i>
38.	Vascular Plants	Spotted Wintergreen	<i>Chimaphila maculata</i>
39.	Vascular Plants	Toothcup	<i>Rotala ramosior</i>
40.	Vascular Plants	Virginia Goat's-rue	<i>Tephrosia virginiana</i>
41.	Vascular Plants	Virginia Mallow	<i>Sida hermaphrodita</i>
42.	Vascular Plants	Western Silvery Aster	<i>Symphotrichum sericeum</i>
43.	Vascular Plants	White Prairie Gentian	<i>Gentiana alba</i>
44.	Vascular Plants	Wood-poppy	<i>Stylophorum diphyllum</i>
45.	Molluscs	Eastern Pondmussel	<i>Ligumia nasuta</i>
46.	Molluscs	Fawnsfoot	<i>Truncilla donaciformis</i>
47.	Molluscs	Hickorynut	<i>Obovaria olivaria</i>
48.	Molluscs	Kidneyshell	<i>Ptychobranhus fasciolaris</i>
49.	Molluscs	Northern Riffleshell	<i>Epioblasma torulosa rangiana</i>
50.	Molluscs	Rayed Bean	<i>Villosa fabalis</i>
51.	Molluscs	Round Hickorynut	<i>Obovaria subrotunda</i>
52.	Molluscs	Round Pigtoe	<i>Pleurobema sintoxia</i>
53.	Molluscs	Salamander Mussel	<i>Simpsonaias ambigua</i>
54.	Molluscs	Snuffbox	<i>Epioblasma triquetra</i>
55.	Insects	Aweme Borer Moth	<i>Papaipema aweme</i>
56.	Insects	Bogbean Buckmoth	<i>Hemileuca</i> sp.
57.	Insects	Gypsy Cuckoo Bumble Bee	<i>Bombus bohemicus</i>
58.	Insects	Hine's Emerald	<i>Somatochlora hineana</i>
59.	Insects	Hungerford's Crawling Water Beetle	<i>Brychius hungerfordi</i>
60.	Insects	Laura's Clubtail	<i>Stylurus laurae</i>
61.	Insects	Mottled Duskywing	<i>Erynnis martialis</i>
62.	Insects	Northern Barrens Tiger Beetle	<i>Cicindela patruela</i>
63.	Insects	Pygmy Snaketail	<i>Ophiogomphus howei</i>
64.	Insects	Rapids Clubtail	<i>Gomphus quadricolor</i>
65.	Insects	Riverine Clubtail	<i>Stylurus amnicola</i>
66.	Insects	Rusty-patched Bumble Bee	<i>Bombus affinis</i>
67.	Fishes	American Eel	<i>Anguilla rostrata</i>
68.	Fishes	Eastern Sand Darter	<i>Ammocrypta pellucida</i>
69.	Fishes	Northern Madtom	<i>Noturus stigmosus</i>
70.	Fishes	Redside Dace	<i>Clinostomus elongatus</i>
71.	Fishes	Shortnose Cisco	<i>Coregonus reighardi</i>
72.	Amphibians	Allegheny Mountain Dusky Salamander	<i>Desmognathus ochrophaeus</i>
73.	Amphibians	Fowler's Toad	<i>Anaxyrus fowleri</i>
74.	Amphibians	Jefferson Salamander	<i>Ambystoma jeffersonianum</i>
75.	Amphibians	Northern Dusky Salamander	<i>Desmognathus fuscus</i>
76.	Amphibians	Small-mouthed Salamander	<i>Ambystoma texanum</i>

77.	Reptiles	Blue Racer	<i>Coluber constrictor foxii</i>
78.	Reptiles	Butler's Gartersnake	<i>Thamnophis butleri</i>
79.	Reptiles	Common Five-lined Skink (Carolinian population)	<i>Plestiodon fasciatus</i>
80.	Reptiles	Eastern Foxsnake (Carolinian population)	<i>Pantherophis gloydi</i>
81.	Reptiles	Gray Ratsnake (Carolinian population)	<i>Pantherophis spiloides</i>
82.	Reptiles	Lake Erie Watersnake	<i>Nerodia sipedon insularum</i>
83.	Reptiles	Massasauga (Carolinian population)	<i>Sistrurus catenatus</i>
84.	Reptiles	Queensnake	<i>Regina septemvittata</i>
85.	Reptiles	Spotted Turtle	<i>Clemmys guttata</i>
86.	Reptiles	Wood Turtle	<i>Glyptemys insculpta</i>
87.	Birds	Acadian Flycatcher	<i>Empidonax virescens</i>
88.	Birds	Barn Owl	<i>Tyto alba</i>
89.	Birds	Golden Eagle	<i>Aquila chrysaetos</i>
90.	Birds	Henslow's Sparrow	<i>Ammodramus henslowii</i>
91.	Birds	King Rail	<i>Rallus elegans</i>
92.	Birds	Kirtland's Warbler	<i>Setophaga kirtlandii</i>
93.	Birds	Loggerhead Shrike	<i>Lanius ludovicianus</i>
94.	Birds	Northern Bobwhite	<i>Colinus virginianus</i>
95.	Birds	Piping Plover	<i>Charadrius melodus</i>
96.	Birds	Prothonotary Warbler	<i>Protonotaria citrea</i>
97.	Birds	Red Knot rufa subspecies	<i>Calidris canutus rufa</i>
98.	Birds	Yellow-breasted Chat	<i>Icteria virens</i>
99.	Mammals	American Badger (Northwestern Ontario population)	<i>Taxidea taxus taxus</i>
100.	Mammals	American Badger (Southwestern Ontario population)	<i>Taxidea taxus jacksoni</i>
101.	Mammals	Eastern Small-footed Myotis	<i>Myotis leibii</i>
102.	Mammals	Little Brown Myotis	<i>Myotis lucifugus</i>
103.	Mammals	Mountain Lion or Cougar	<i>Puma concolor</i>
104.	Mammals	Northern Myotis	<i>Myotis septentrionalis</i>

O. Reg. 66/15, s. 1.

### Schedule 3 - THREATENED SPECIES

Column 1	Column 2	Column 3	Column 4
Item	Species Grouping	Common Name	Scientific Name
1.	Vascular Plants	American Water-willow	<i>Justicia americana</i>
2.	Vascular Plants	Branched Bartonian	<i>Bartonia paniculata</i>
3.	Vascular Plants	Colicroot	<i>Aletris farinosa</i>
4.	Vascular Plants	Common Hoptree	<i>Ptelea trifoliata</i>
5.	Vascular Plants	Deerberry	<i>Vaccinium stamineum</i>
6.	Vascular Plants	Dense Blazing Star	<i>Liatris spicata</i>
7.	Vascular Plants	Dwarf Hackberry	<i>Celtis tenuifolia</i>
8.	Vascular Plants	False Rue-anemone	<i>Enemion biternatum</i>
9.	Vascular Plants	Goldenseal	<i>Hydrastis canadensis</i>
10.	Vascular Plants	Hill's Thistle	<i>Cirsium hillii</i>
11.	Vascular Plants	Houghton's Goldenrod	<i>Solidago houghtonii</i>
12.	Vascular Plants	Kentucky Coffee-tree	<i>Gymnocladus dioica</i>
13.	Vascular Plants	Lakeside Daisy	<i>Tetraneuris herbacea</i>
14.	Vascular Plants	Pitcher's Thistle	<i>Cirsium pitcheri</i>
15.	Vascular Plants	Purple Twayblade	<i>Liparis liliifolia</i>
16.	Vascular Plants	Round-leaved Greenbrier	<i>Smilax rotundifolia</i>
17.	Vascular Plants	Showy Goldenrod (Boreal population)	<i>Solidago speciosa</i>
18.	Vascular Plants	Small-flowered Lipocarpa	<i>Lipocarpa micrantha</i>
19.	Vascular Plants	White Wood Aster	<i>Eurybia divaricata</i>
20.	Vascular Plants	Wild Hyacinth	<i>Camassia scilloides</i>
21.	Vascular Plants	Willowleaf Aster	<i>Symphyotrichum praealtum</i>
22.	Molluscs	Lilliput	<i>Taxolasma parvum</i>
23.	Molluscs	Mapleleaf Mussel	<i>Quadrula quadrula</i>
24.	Molluscs	Rainbow Mussel	<i>Villosa iris</i>
25.	Molluscs	Threehorn Wartyback	<i>Obliquaria reflexa</i>
26.	Molluscs	Wavy-rayed Lampmussel	<i>Lampsilis fasciola</i>
27.	Fishes	Black Redhorse	<i>Moxostoma duquesnei</i>
28.	Fishes	Channel Darter	<i>Percina copelandi</i>
29.	Fishes	Cutlip Minnow	<i>Exoglossum maxillingua</i>
30.	Fishes	Lake Chubsucker	<i>Erimyzon sucetta</i>
31.	Fishes	Lake Sturgeon (Great Lakes - Upper St. Lawrence River population)	<i>Acipenser fulvescens</i>
32.	Fishes	Lake Sturgeon (Northwestern Ontario population)	<i>Acipenser fulvescens</i>

33.	Fishes	Pugnose Minnow	<i>Opsopoeodus emiliae</i>
34.	Fishes	Pugnose Shiner	<i>Notropis anogenus</i>
35.	Fishes	Shortjaw Cisco	<i>Coregonus zenithicus</i>
36.	Fishes	Silver Chub	<i>Macrhybopsis storeriana</i>
37.	Fishes	Silver Shiner	<i>Notropis photogenis</i>
38.	Fishes	Spotted Gar	<i>Lepisosteus oculatus</i>
39.	Reptiles	Blanding's Turtle	<i>Emydoidea blandingii</i>
40.	Reptiles	Eastern Foxsnake (Georgian Bay population)	<i>Pantherophis gloydi</i>
41.	Reptiles	Eastern Hog-nosed Snake	<i>Heterodon platirhinos</i>
42.	Reptiles	Gray Ratsnake (Frontenac Axis population)	<i>Pantherophis spiloides</i>
43.	Reptiles	Massasauga (Great Lakes - St. Lawrence population)	<i>Sistrurus catenatus</i>
44.	Reptiles	Spiny Softshell	<i>Apalone spinifera</i>
45.	Birds	American White Pelican	<i>Pelecanus erythrorhynchos</i>
46.	Birds	Bank Swallow	<i>Riparia riparia</i>
47.	Birds	Barn Swallow	<i>Hirundo rustica</i>
48.	Birds	Bobolink	<i>Dolichonyx oryzivorus</i>
49.	Birds	Cerulean Warbler	<i>Setophaga cerulea</i>
50.	Birds	Chimney Swift	<i>Chaetura pelagica</i>
51.	Birds	Eastern Meadowlark	<i>Sturnella magna</i>
52.	Birds	Eastern Whip-poor-will	<i>Antrostomus vociferus</i>
53.	Birds	Least Bittern	<i>Ixobrychus exilis</i>
54.	Mammals	Grey Fox	<i>Urocyon cinereoargenteus</i>
55.	Mammals	Polar Bear	<i>Ursus maritimus</i>
56.	Mammals	Wolverine	<i>Gulo gulo</i>
57.	Mammals	Woodland Caribou (Forest-dwelling boreal population)	<i>Rangifer tarandus caribou</i>

O. Reg. 66/15, s. 1

...

**Securities Act, RSO 1990, c S5**

**Authority in extraordinary circumstances**

**Order to suspend trading**

s. 2.2(3) The Commission may, without notice or a hearing, make an order under this subsection to suspend trading in a security or related derivative or to suspend all trading on a recognized exchange or otherwise,

(a) if, in the opinion of the Commission, there are extraordinary circumstances requiring immediate action to be taken in the public interest; and

(b) if, in the opinion of the Commission, the order is necessary to maintain or restore fair and orderly securities markets, to ensure prompt, accurate and safe clearance and settlement of transactions in securities or to assist in doing so in another jurisdiction. 2009, c. 18, Sched. 26, s. 2; 2010, c. 26, Sched. 18, s. 2.

...

**Commission regulation**

s. 2.2(9) Subject to the approval of the Minister, the Commission may make a regulation relating to any matter governed by Ontario securities law, despite any other provision of this Act,

(a) if, in the opinion of the Commission, there are extraordinary circumstances requiring immediate action to be taken in the public interest; and

(b) if, in the opinion of the Commission, the regulation is necessary to maintain or restore fair and orderly securities markets, to ensure prompt, accurate and safe clearance and settlement of transactions in securities or to assist in doing so in another jurisdiction. 2009, c. 18, Sched. 26, s. 2.

...

**Regulation of the L.G. in C.**

s. 2.2(16) The Lieutenant Governor in Council may make a regulation relating to any matter governed by Ontario securities law, despite any other provision of this Act,

(a) if, in the opinion of the Lieutenant Governor in Council, there are extraordinary circumstances requiring immediate action to be taken in the public interest; and

(b) if, in the opinion of the Lieutenant Governor in Council, the regulation is necessary to maintain or restore fair and orderly securities markets, to ensure prompt, accurate and safe clearance and settlement of transactions in securities or to assist in doing so in another jurisdiction. 2009, c. 18, Sched. 26, s. 2.

**Occupational Health and Safety Act, RSO 1990, c O1**

**If Minister proposes change**

**22.4 (1)** If the Minister is considering a proposed change to the funding and delivery of services for the prevention of workplace injuries and occupational diseases, the Minister shall determine whether the proposed change would be a significant change. 2011, c. 11, s. 8 (1).

**If proposed change significant**

(2) If the Minister determines that the proposed change is significant, the Minister shall seek advice from the Chief Prevention Officer with respect to the proposed change. 2011, c. 11, s. 8 (1).

**If Chief Prevention Officer advising on change**

(3) If the Chief Prevention Officer is considering providing advice to the Minister concerning a proposed change to the funding and delivery of services for the prevention of workplace injuries and occupational diseases, the Chief Prevention Officer shall determine whether the proposed change would be a significant change. 2011, c. 11, s. 8 (1).

**Prevention Council endorsement**

(4) If the Minister asks the Chief Prevention Officer for advice under subsection (2) or if the Chief Prevention Officer determines under subsection (3) that a proposed change would be a significant change, the Chief Prevention Officer shall,

(a) ask the chair of the Prevention Council to state whether the Council endorses the proposed change; and

(b) include that statement in the advice to the Minister. 2011, c. 11, s. 8 (1).

**Matters to consider in determining if change is significant**

(5) The Minister and the Chief Prevention Officer shall consider such matters as may be prescribed when determining whether a proposed change to the funding and delivery of services for the prevention of workplace injuries and occupational diseases would be a significant change. 2011, c. 11, s. 8 (1).

### **Regulation**

(6) On the recommendation of the Minister, the Lieutenant Governor in Council may make regulations prescribing matters to be considered when determining whether a proposed change to the funding and delivery of services for the prevention of workplace injuries and occupational diseases would be a significant change. 2011, c. 11, s. 8 (1).

### **Same**

(7) Before recommending to the Lieutenant Governor in Council that a regulation be made under subsection (6), the Minister shall seek the advice of the Chief Prevention Officer and require the Chief Prevention Officer to seek the advice of the Prevention Council with respect to the matters to be prescribed. 2011, c. 11, s. 8 (1).

### **Fire Protection and Prevention Act, SO 1997, c 4**

### **Failure to provide services**

s. 2(8) If a municipality fails to adhere to the recommendations made by the Fire Marshal under subsection (7) or to take any other measures that in the opinion of the Fire Marshal will remedy or reduce the threat to public safety, the Minister may recommend to the Lieutenant Governor in Council that a regulation be made under subsection (9).

### **Regulation**

(9) Upon the recommendation of the Minister, the Lieutenant Governor in Council may make regulations establishing standards for fire protection services in municipalities and requiring municipalities to comply with the standards.

### **Quality of Care Information Protection Act, 2004, SC 2004, c 3, Schedule B**

### **Regulations**

9. (1) Subject to section 10, the Lieutenant Governor in Council may make regulations,



- (a) defining any term used in this Act that is not defined in this Act;
- (b) specifying information for the purpose of clause (f) of the definition of “quality of care information” in section 1;
- (c) specifying a provision of another Act or its regulations that prevails over this Act or its regulations for the purpose of section 2;
- (d) prescribing information for the purpose of clause 10 (2) (e). 2004, c. 3, Sched. B, s. 9 (1).

### **Minister’s regulations**

(2) The Minister may make regulations prescribing anything that the definition of “health care” or “quality of care committee” in section 1 mentions as being prescribed. 2004, c. 3, Sched. B, s. 9 (2).

### **Public consultation before making regulations**

10. (1) Subject to subsection (7), the Lieutenant Governor in Council shall not make any regulation under section 9 unless,

- (a) the Minister has published a notice of the proposed regulation in *The Ontario Gazette* and given notice of the proposed regulation by all other means that the Minister considers appropriate for the purpose of providing notice to the persons who may be affected by the proposed regulation;
- (b) the notice complies with the requirements of this section;
- (c) the time periods specified in the notice, during which members of the public may exercise a right described in clause (2) (b) or (c), have expired; and
- (d) the Minister has considered whatever comments and submissions that members of the public have made on the proposed regulation in accordance with clause (2) (b) or (c) and has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the Minister considers appropriate. 2004, c. 3, Sched. B, s. 10 (1).

### **Contents of notice**

(2) The notice mentioned in clause (1) (a) shall contain,

- (a) a description of the proposed regulation and the text of it;
- (b) a statement of the time period during which members of the public may submit written comments on the proposed regulation to the Minister and the manner in which and the address to which the comments must be submitted;

(c) a description of whatever other rights, in addition to the right described in clause (b), that members of the public have to make submissions on the proposed regulation and the manner in which and the time period during which those rights must be exercised;

(d) a statement of where and when members of the public may review written information about the proposed regulation;

(e) all prescribed information; and

(f) all other information that the Minister considers appropriate. 2004, c. 3, Sched. B, s. 10 (2).

### **Time period for comments**

(3) The time period mentioned in clauses (2) (b) and (c) shall be at least 60 days after the Minister gives the notice mentioned in clause (1) (a) unless the Minister shortens the time period in accordance with subsection (4). 2004, c. 3, Sched. B, s. 10 (3).

### **Shorter time period for comments**

(4) The Minister may shorten the time period if, in the Minister's opinion,

(a) the urgency of the situation requires it;

(b) the proposed regulation clarifies the intent or operation of this Act or the regulations;  
or

(c) the proposed regulation is of a minor or technical nature. 2004, c. 3, Sched. B, s. 10 (4).

### **Discretion to make regulations**

(5) Upon receiving the Minister's report mentioned in clause (1) (d), the Lieutenant Governor in Council, without further notice under subsection (1), may make the proposed regulation with the changes that the Lieutenant Governor in Council considers appropriate, whether or not those changes are mentioned in the Minister's report. 2004, c. 3, Sched. B, s. 10 (5).

### **No public consultation**

(6) The Minister may decide that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 9 if, in the Minister's opinion,

(a) the urgency of the situation requires it;

(b) the proposed regulation clarifies the intent or operation of this Act or the regulations;  
or

(c) the proposed regulation is of a minor or technical nature. 2004, c. 3, Sched. B,  
s. 10 (6).

### **Same**

(7) If the Minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 9,

(a) those subsections do not apply to the power of the Lieutenant Governor in Council to make the regulation; and

(b) the Minister shall give notice of the decision to the public as soon as is reasonably possible after making the decision. 2004, c. 3, Sched. B, s. 10 (7).

### **Contents of notice**

(8) The notice mentioned in clause (7) (b) shall include a statement of the Minister's reasons for making the decision and all other information that the Minister considers appropriate. 2004, c. 3, Sched. B, s. 10 (8).

### **Publication of notice**

(9) The Minister shall publish the notice mentioned in clause (7) (b) in *The Ontario Gazette* and give the notice by all other means that the Minister considers appropriate. 2004, c. 3, Sched. B, s. 10 (9).

### **Temporary regulation**

(10) If the Minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 9 because the Minister is of the opinion that the urgency of the situation requires it, the regulation shall,

(a) be identified as a temporary regulation in the text of the regulation; and

(b) unless it is revoked before its expiry, expire at a time specified in the regulation, which shall not be after the second anniversary of the day on which the regulation comes into force. 2004, c. 3, Sched. B, s. 10 (10).

### **No review**

(11) Subject to subsection (12), a court shall not review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the Minister under this section. 2004, c. 3, Sched. B, s. 10 (11).

### **Exception**

(12) Any person resident in Ontario may make an application for judicial review under the *Judicial Review Procedure Act* on the grounds that the Minister has not taken a step required by this section. 2004, c. 3, Sched. B, s. 10 (12).

### **Time for application**

(13) No person shall make an application under subsection (12) with respect to a regulation later than 21 days after the day on which,

(a) the Minister publishes a notice with respect to the regulation under clause (1) (a) or subsection (9), where applicable; or

(b) the regulation is filed, if it is a regulation described in subsection (10). 2004, c. 3, Sched. B, s. 10 (13).



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## ONTARIO REGULATION 176/13

made under the

### ENDANGERED SPECIES ACT, 2007

Made: May 15, 2013

Filed: May 31, 2013

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Printed in *The Ontario Gazette*: June 15, 2013

Amending O. Reg. 242/08

(GENERAL)

Note: Ontario Regulation 242/08 has previously been amended. For the legislative history of the Regulation, see the Table of Consolidated Regulations – Detailed Legislative History at [www.e-Laws.gov.on.ca](http://www.e-Laws.gov.on.ca).

#### 1. Ontario Regulation 242/08 is amended by adding the following section:

##### Application

0.1 This Regulation applies to all species on the Species at Risk in Ontario List, as that list read on January 24, 2013.

#### 2. Subsection 1 (1) of the Regulation is amended by adding the following definitions:

“ecoregion” means an ecoregion identified in the document entitled “The Ecosystems of Ontario, Part 1: Ecozones and Ecoregions” that is published by the Ministry of Natural Resources, dated 2009 and available to the public at the Ministry’s district offices, at the Ministry’s corporate library in Peterborough and on the Ministry’s website; (“*écorégion*”)

“Registry” means the registry known as the Ministry of Natural Resources Registry available on the Ministry website; (“*Registre*”)

#### 3. Section 1.1 of the Regulation is revoked.

#### 4. Section 5 of the Regulation is revoked.

#### 5. (1) Paragraph 1 of subsection 11 (1) of the Regulation is amended by adding “before June 30, 2013” at the end.

**(2) Subsections 11 (2), (3), (4), (5) and (6) of the Regulation are revoked.**

**00063 (3) Subsection 11 (8) of the Regulation is revoked and the following substituted:**

**(8) On the earlier of the following dates, subsections (1) and (7) cease to apply to a person who has entered into an agreement with the Minister under subsection (1):**

- 1. The day the person gives notice to the Minister that the person is operating a hydro-electric generating station under section 23.12.**
- 2. July 1, 2018.**

**(4) Section 11 of the Regulation is revoked.**

**6. The Regulation is amended by adding the following section:**

**R.H. Saunders Station — American eel**

**11.1 (1) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who is engaged in the operation of the R.H. Saunders Station on the St. Lawrence River and who, in the course of operating the R.H. Saunders Station, kills, harms, harasses, captures or takes American eel, or damages or destroys the habitat of American eel, if all of the following criteria are met:**

- 1. The person who operates the station has entered into an agreement with the Minister relating to American eel.**
- 2. The agreement states that,**
  - i. the Minister is of the opinion that the agreement requires the person who operates the station to take reasonable steps to minimize adverse effects on American eel,**
  - ii. the Minister is of the opinion that, if the agreement is complied with, the operation of the station will not jeopardize the survival or recovery of American eel in Ontario, and**
  - iii. the Minister is of the opinion that the agreement does not conflict with the obligation of the Minister to ensure the implementation of any action under subsection 11 (9) of the Act.**
- 3. The agreement provides for monitoring the effects of the operation of the station on American eel.**
- 4. The agreement is in force.**
- 5. The person who operates the station has complied with the agreement.**

**(2) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,**

- (a) pursuant to subsection (1), clause 9 (1) (a) of the Act did not apply with respect to the member of the species; or**
- (b) the possession or transport of the member of the species is necessary in order to satisfy the terms of the agreement referred to in subsection (1).**

**7. (1) Subsection 12 (1) of the Regulation is amended by adding “and” at the end**

of clause (b) and by striking out clauses (c), (d) and (e) and substituting the following: **00064**

- (c) the person is not engaged in cultivating the species in a manner that is likely to spread disease or pests to, or to compromise the genetic integrity of, wild populations of the species.

**(2) Subsections 12 (1.1), (2) and (3) of the Regulation are revoked and the following substituted:**

(2) Clause 9 (1) (b) of the Act does not apply to a person who buys, sells, leases, trades, possesses or transports a vascular plant cultivated in the manner described in subsection (1) unless the person does so for the purpose of growing a member of the species in the wild in Ontario.

(3) In this section,

“pest” means any thing that is injurious or potentially injurious, whether directly or indirectly, to plants or to products or by-products of plants.

**8. Section 14 of the Regulation is revoked.**

**9. (1) Section 22 of the Regulation is amended by adding the following subsection:**

(5) On the earlier of the following dates, subsections (1), (2) and (4) cease to apply to a person who has entered into an agreement with the Minister under clause (1) (b) or (2) (b):

1. The day the person gives notice to the Minister under subparagraph 1 i of subsection 23.14 (5).
2. July 1, 2015.

**(2) Section 22 of the Regulation is revoked.**

**10. (1) The Regulation is amended by adding the following section:**

**Forest operations in Crown forests**

**22.1 (1)** This section applies to a person who conducts forest operations in a Crown forest before July 1, 2018 if the person does so on behalf of the Crown or under the authority of a licence granted under the *Crown Forest Sustainability Act, 1994*.

(2) Subject to subsection (3), clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who, while conducting forest operations described in subsection (1), kills, harms, harasses or takes a member of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, or damages or destroys the habitat of such a species, if the person satisfies one of the following conditions:

1. In cases where the applicable forest management plan includes an operational prescription for an area of concern that specifically applies to the species, the person must conduct the forest operations in accordance with the prescription.
2. In cases where the applicable forest management plan does not include an operational prescription for an area of concern that specifically applies to the species, but does include a condition on regular operations that specifically applies to the species, the person must conduct the forest operations in accordance with the condition.

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3. In cases where the applicable forest management plan does not include an operational prescription for an area of concern, nor a condition on regular operations, that specifically applies to the species, and where the person, while conducting forest operations, encounters a nest, hibernaculum, den or other feature of the species' habitat that is established or exists at a specific site within the habitat, the person must do all of the following upon encountering the site-specific feature:

- i. suspend forest operations in the area of the site-specific feature,
- ii. ensure that an application is made to the Ministry for an inclusion in the applicable forest management plan of an operational prescription for an area of concern, or for a condition on regular operations, with respect to the site-specific feature, and
- iii. upon the Ministry amending the applicable forest management plan as appropriate, resume forest operations in accordance with the operational prescription or the condition on regular operations, as the case may be.

4. If none of the cases described in paragraphs 1, 2 and 3 apply, the person must conduct the forest operations in accordance with the applicable forest management plan.

(3) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who kills, harms or harasses a woodland caribou (forest-dwelling boreal population), or damages or destroys its habitat, while conducting forest operations described in subsection (1) within the woodland caribou (forest-dwelling boreal population) continuous distribution area if, in addition to meeting one of the conditions set out in paragraphs 1, 2, 3 and 4 of subsection (2), all of the following conditions are met:

1. The applicable forest management plan provides, directly or indirectly, for,
  - i. the continuous availability of habitat for woodland caribou (forest-dwelling boreal population), both spatially and temporally,
  - ii. the establishment and growth of areas of conifer forests that are suitable to provide woodland caribou (forest-dwelling boreal population) habitat in the future, and
  - iii. road-use management strategies that assist in maintaining or improving habitat conditions for woodland caribou (forest-dwelling boreal population).
2. The person conducts the forest operations in accordance with the applicable forest management plan.
3. If the person conducting the forest operations is the holder of a licence granted to the person under section 26 of the *Crown Forest Sustainability Act, 1994* in respect of the management unit in which the forest operations were conducted, and the forest operations are conducted during a one-year period that begins on April 1 and ends on the following March 31, the management unit annual report for that one-year period that is required under the Forest Management Planning Manual must be prepared by the person in accordance with the Forest Management Planning Manual and submitted to the Minister at the time and in the manner required by the Forest



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Management Planning Manual, unless the person no longer holds the licence to conduct forest operations in the management unit at the time the annual report is due.

(4) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person who transports or possesses a member of a species if, pursuant to subsection (2) or (3), clause 9 (1) (a) of the Act did not apply with respect to the member of the species.

(5) In this section,

“condition on regular operations” means a condition that applies to the carrying out of harvesting, renewal or tending operations and is specified in a forest management plan but is not addressed by an operational prescription for an area of concern set out in the forest management plan; (“condition d’exécution des opérations normales”)

“forest management plan” has the same meaning as in the *Crown Forest Sustainability Act, 1994*; (“plan de gestion forestière”)

“Forest Management Planning Manual” has the same meaning as in the *Crown Forest Sustainability Act, 1994*; (“Manuel de planification de la gestion forestière”)

“forest operations” has the same meaning as in the *Crown Forest Sustainability Act, 1994*; (“opérations forestières”)

“woodland caribou (forest-dwelling boreal population) continuous distribution area” means the area identified as a continuous distribution area on a map entitled “Woodland Caribou (forest-dwelling boreal population) Continuous Distribution Area / Aire de répartition continue du caribou des bois (population boréale sylvicole)”, dated April 23, 2013, that is available on the Ministry website. (“aire de répartition continue du caribou des bois (population boréale sylvicole)”)

(2) Section 22.1 of the Regulation, as made by subsection (1), is revoked.

11. (1) Paragraphs 14, 15 and 16 of subsection 23 (1) of the Regulation are revoked.

(2) Section 23 of the Regulation is amended by adding the following subsection:

(8) On the earlier of the following dates, subsections (2), (4), (5) and (6) cease to apply to a person who is carrying out an activity described in paragraph 14, 15 or 16 of subsection (1) and who entered into an agreement with the Minister under subsection (2) with respect to that activity:

1. The day the person gives notice to the Minister under section 23.9 that the person is carrying out an activity described in subsection 23.9 (1).

2. July 1, 2015.

(3) Subsection 23 (8) of the Regulation, as made by subsection (2), is revoked.

12. Section 23.1 of the Regulation is amended by adding the following subsection:

(4.1) Despite subsections (2), (3) and (4), this section does not apply to a person who has submitted a mitigation report to the district manager unless the person receives a written notice of approval of the mitigation report from the district manager on or before December 31,

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2014.

13. The definition of "ecoregion" in subsection 23.2 (7) of the Regulation is revoked.

14. The Regulation is amended by adding the following sections:

EXEMPTIONS REQUIRING NOTICE TO BE GIVEN ON REGISTRY

**Submission of notice of activity**

23.3 (1) This section applies with respect to a notice of activity form that a person or entity is required to submit to the Minister through the Registry under sections 23.4 to 23.20.

(2) Before submitting a notice of activity form to the Minister, a person or entity shall ensure that,

- (a) all mandatory information requested on the form, including the contact information for the person or entity, has been provided; and
  - (b) the information provided on the form is complete and accurate.
- (3) After submitting a notice of activity form to the Minister, the person or entity shall,
- (a) promptly upon obtaining from the Ministry confirmation that a notice of activity form submitted through the Registry has been received by the Minister, make a record of the confirmation;
  - (b) for as long as the activity is being carried out,
    - (i) keep the record of the confirmation and, if applicable, ensure that a copy of the record is kept at the site where the activity is being carried out, and
    - (ii) make the record of the confirmation available to the Ministry upon receiving a request for it; and
  - (c) if there is a change in the contact information for the person or entity who submitted the notice of activity form, update the information on the Registry within 10 business days of the change.

(4) A person or entity who provides incomplete, false or misleading information on a notice of activity form or when updating information on the Registry shall be deemed to have not submitted the notice of activity form.

**Aquatic species**

23.4 (1) Subject to subsection (2), this section applies to a person who is carrying out one of the following activities in or adjacent to a river, creek, stream, brook or similar watercourse, other than a watercourse identified in subsection (3), if the watercourse is the habitat of a species listed in the Schedule to this section:

1. The maintenance, repair, modification, expansion, removal or replacement of a bridge, culvert, pier or other structure.
2. The construction, maintenance, repair, modification, expansion, removal or replacement of a pipeline or conduit other than a pipeline or conduit situated under a watercourse that was or will be installed using open-cut trench techniques.

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(2) This section does not apply to the following activities:

1. Any modification or replacement of a structure that would increase the portion of the existing footprint of the structure that is within the bankfull width of the watercourse by more than 25 per cent.
2. Any activity that would damage,
  - i. more than a total of 300 square metres of land situated either within the watercourse or outside of the watercourse but within 30 metres of the bankfull width of the watercourse, subject to subparagraph ii, or
  - ii. more than 100 square metres of land situated within the watercourse below the bankfull width.
3. Any activity that involves,
  - i. the installation of a temporary bridge or a temporary culvert, or
  - ii. the deposition of material in a watercourse to establish a temporary road access.
4. Any activity that involves a change to the alignment of any part of a watercourse.
5. Any activity described in subsection (1) that would have an incidental impact on a coastal wetland, lake or other body of water that is not a river, creek, stream, brook or similar watercourse.
6. Any activity to which section 23.9 applies.
7. Any construction, maintenance, repair, modification, expansion, removal or replacement of a dam or hydro-electric generating station.

(3) This section does not apply to activities carried out in or adjacent to the following watercourses or portions of watercourses:

1. The Detroit River.
2. The Niagara River.
3. The St. Clair River.
4. The St. Lawrence River.
5. The portion of the main channel of the Sydenham River from the downstream edge of the bridge on Tupperville Road within the Municipality of Chatham-Kent extending upstream to the upstream edge of the bridge on County Road 77/Murphy Drive within the Township of Adelaide-Metcalf.
6. The portion of the main channel of the Ausable River from the downstream edge of the bridge on Bog Line/Parkhill Drive/County Road 18 within the Municipality of Lambton Shores to the upstream edge of the bridge on Crediton Road/County Road 10 within the Municipality of South Huron.

(4) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who is engaged in an activity described in subsection (1) and who, in the course of carrying out the activity, kills, harms, harasses, captures or takes a member of a species listed in the Schedule to this section, or damages or destroys the habitat of such a species, if the person satisfies the

(5) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

- (6) The following are the conditions that a person who carries out an activity described in subsection (1) must satisfy for the purposes of subsection (4):

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of the activity, the person shall monitor the effectiveness of,

- i. the steps taken under subparagraph 4 ii to minimize the adverse effects of the activity on each species identified in the notice of activity form, and
    - ii. the action completed under paragraph 8 to benefit each species identified in the notice of activity form.
  7. While the person is carrying out the activity and carrying out the monitoring requirements of paragraph 6, the person must create and maintain a monitoring record and the person must,
    - i. retain the record for at least five years after the activity is completed, and
    - ii. provide a copy of the record to the Ministry within 14 days of receiving a request for it.
  8. Subject to subsection (12), within one year of the completion of the activity, the person must complete one of the actions described in subsection (11) in order to provide a benefit to each species identified in the notice of activity form and the action must be carried out in an area that would benefit the species.
  9. If the person or an employee or agent of the person observes a species identified in the notice of activity form in the course of carrying out the activity, the person must ensure that, within three months of the observation, the Natural Heritage Information Centre Rare Species Reporting Form available on the Ministry website is completed, detailing the species and number of individual members that were observed, the date and location of observation and any other information requested on the form.
- (7) A mitigation plan shall be prepared and updated by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available.
- (8) A mitigation plan shall include the following information:
1. The name and contact information of the person who is proposing to carry out an activity described in subsection (1).
  2. A map indicating the geographic location of the property on which the activity will occur and the names and location of all watercourses on the property.
  3. With respect to the activity that the person proposes to carry out,
    - i. a description of the activity,
    - ii. the proposed start and completion dates of the activity, and
    - iii. a description of all of the stages of the activity and a timeline for the stages.
  4. A list of species referred to in the Schedule to this section that may be affected by the activity and,
    - i. a description of the survey methodology used or the records reviewed to determine if a species referred to in the Schedule to this section could be

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affected by the activity, and

- ii. a description of how the activity may affect the species or its habitat, including a list of any works to be carried out in or adjacent to the habitat of the species, such as works involving water crossings, structures, or any other works that may affect the species or its habitat.
5. Detailed plans on the steps the person shall take during the activity to minimize the adverse effects on the species, including,
- i. details of the steps described in subsection (9), including the specific dates, locations and methods applicable to each step,
  - ii. the times during the year at which a species identified under paragraph 4 is likely to be carrying out a life process related to reproduction or rearing and at which activities should not be carried out in the habitat of a species,
  - iii. details of the steps the person must take in accordance with paragraph 2 of subsection (9) to isolate the work area and relocate a species identified under paragraph 4, including the coordinates of the relocation area, and
  - iv. details of the steps the person must take to restore substrate and riparian areas that are damaged during the activity in accordance with paragraph 13 of subsection (9).
6. A description of the steps the person must take in accordance with subsection (10) to monitor the effectiveness of,
- i. the actions taken to minimize the adverse effects of the activity on the species, and
  - ii. the action completed under paragraph 8 of subsection (6) to benefit the species identified in the notice of activity form.
7. With respect to an action described under paragraph 8 of subsection (6) that will be completed to benefit the species identified in the notice of activity form, reports or other evidence that the action will meet the requirements of one of the paragraphs of subsection (11), such as studies or evidence of the conditions of the area before the beneficial action was undertaken.
8. Details of the action that will be completed under paragraph 8 of subsection (6) to benefit the species identified in the notice of activity form, including the dates, locations at which the action will be completed and the methods that will be employed to carry it out.
- (9) The following are the steps that a person must take to minimize the adverse effects of the activity described in the notice of activity form on the species identified in the form:
1. The person must not carry out any part of the activity that is likely to kill, harm or harass a member of the species or damage or destroy the habitat of the species while the species is likely to be carrying out a life process related to reproduction, including rearing,
  2. The person must isolate the work area within the watercourse in a manner that

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prevents members of the species from entering the work area, and must relocate any fishes or mussels from within the work area to suitable habitat for the species.

3. If the activity will take place in the habitat of a mussel species referred to in the Schedule to this section, any relocation of mussels must be carried out in accordance with the requirements for mussel relocation described in the document entitled "Protocol for the detection and relocation of freshwater mussel species at risk in Ontario-Great Lakes Area (OGLA)", dated 2008, a Canadian Manuscript Report of Fisheries and Aquatic Sciences 2790, published by Fisheries and Oceans Canada and available on the Fisheries and Oceans Canada website.
4. No vehicles or machinery may enter the watercourse at any time, except in an area of the watercourse in which the species have been isolated and from which they have been relocated in accordance with paragraph 2, and after the area has been de-watered.
5. The flow of the watercourse that is redirected around the work area must be maintained to ensure that water quantity and quality is not affected downstream of the activity.
6. If the activity involves the maintenance, repair, modification, expansion or replacement of an open-bottom culvert, the culvert must remain as an open-bottom culvert or may be converted to a clear span bridge.
7. If the activity involves the construction, maintenance, repair, modification, or expansion of a pipeline or conduit under the watercourse,
  - i. the activity must not take place in an area that a fish species uses to carry out a life process related to reproduction, including rearing,
  - ii. the activity must be conducted using trenchless techniques, which must be applied at a minimum of two metres below the bed of the watercourse,
  - iii. no part of the activity may be conducted in the watercourse and there must be no damage to the watercourse bed or banks as a result of the activity,
  - iv. bore pits for directional drilling must be located outside the floodplain and bore pits for other trenchless techniques must be located a minimum of five metres outside of the bankfull width, and must include the appropriate erosion and sediment controls, as set out in paragraph 11, and
  - v. a contingency plan, including an emergency response plan to deal with a failure of the trenchless techniques referred to in subparagraph ii, must be prepared and all necessary equipment and materials to implement the plan must be available on site until the activity is complete.
8. All construction equipment used for the purpose of carrying out the activity must be operated in a way that minimizes adverse effects on the habitat of the species and prevents deleterious substances from entering the watercourse.
9. No machinery or equipment may be maintained or refuelled within 30 metres of the watercourse.

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10. Any equipment, stockpiled material or construction material must be stored a minimum distance of 30 metres from the habitat of the species and in a manner that prevents sediment or deleterious substances from entering the habitat of the species.
  11. The person must establish and maintain sediment and erosion control measures, which must include installing and maintaining a double row of sediment control fencing consisting of a non-woven material with staked straw bales, to prevent sediment from entering any part of the watercourse.
  12. Any water that is laden with sediment that the person proposes to discharge must be filtered to remove the sediment before it enters any part of the watercourse.
  13. Riparian areas that are damaged during the activity must be restored to provide suitable conditions for the species, by stabilizing exposed soils and planting native non-invasive plants, as soon as possible after the area is damaged.
  14. If the person discovers that steps described in paragraphs 1 to 13 or in the mitigation plan have not been effective in minimizing the adverse effects of the activity on the species or that the action completed to benefit the species under paragraph 8 of subsection (6) has not been effective, the person shall take such actions as are necessary to increase their effectiveness, including,
    - i. adjusting the sediment and erosion control measures,
    - ii. installing tree guards or wire mesh to protect trees or shrubs,
    - iii. replacing dead plants, and
    - iv. repairing areas that have suffered due to failed sediment and erosion control measures.
- (10) The monitoring required by paragraph 6 of subsection (6) must include,
- (a) daily inspections of the activity site while the activity and the action for the benefit of the species required under paragraph 8 of subsection (6) are being carried out; and
  - (b) annual inspections of the activity site for a period of five years after the activity is completed.
- (11) For the purposes of paragraph 8 of subsection (6), the following are the actions that a person may complete in order to provide a benefit to the species identified in the notice of activity form:
1. Remediation of an area of degraded riparian habitat to create the conditions that are required by the species adversely affected by the activity, which may include bank stabilization and riparian planting, if,
    - i. the area is in a degraded state prior to the activity taking place, and
    - ii. the area of degraded riparian habitat is at least two times the size of the total area that is adversely affected by the activity, including the areas that are both in the watercourse and adjacent to the watercourse.
  2. Improvement of an existing storm water management facility, by planting native non-invasive plants that will shade the storm water management pond, in order to



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reduce the water temperature and improve the quality of water being discharged at the outlet of the facility and, in so doing, create the conditions that are required by the species adversely affected by the activity, if,

- i. the area is not adequately vegetated prior to the activity taking place, and
  - ii. the area planted is at least two times the size of the total area that is adversely affected by the activity, including the areas that are both in the watercourse and adjacent to the watercourse.
3. Improvement of an existing storm water management facility, by installing a bottom draw outlet or a cooling trench to the facility, in order to reduce the temperature of water being discharged at the outlet of the facility and, in so doing, create the conditions that are required by the species adversely affected by the activity.
  4. Remediation of an existing perched culvert to remove barriers to fish passage that exist in the watercourse and, in so doing, create the conditions that are required by the species adversely affected by the activity.

(12) The requirement in paragraph 8 of subsection (6) to complete an action described in subsection (11) in order to provide a benefit to the species identified in the notice of activity form does not apply if the activity identified in the notice of activity form is the replacement of a closed-bottom culvert with an open-bottom culvert or a clear span bridge.

(13) The monitoring record required under paragraph 7 of subsection (6) shall,

- (a) document the data and information collected during monitoring conducted at the site, such as the effectiveness of erosion control measures and the growing progress of riparian plantings;
- (b) evaluate and summarize the effectiveness of the steps taken by the person to minimize adverse effects of the activity on the species identified in the notice of activity form;
- (c) evaluate and summarize the effectiveness of the action completed under paragraph 8 of subsection (6) in order to provide a benefit to the species identified in the notice of activity form, such as the effectiveness of bank stabilization measures or the growing progress of riparian plantings;
- (d) document details of any encounters with members of the species identified in the notice of activity form; and
- (e) describe any measures that were followed during the course of carrying out the activity described in the notice of activity form or of the action that was completed under paragraph 8 of subsection (6) to increase the effectiveness of the steps taken to minimize the adverse effects of the activity or the effectiveness of the action completed under paragraph 8 of subsection (6).

(14) In this section,

“bankfull width” means the width of a watercourse at the point where the water begins to leave the channel and move into the floodplain.

#### SCHEDULE

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## SPECIES TO WHICH SECTION APPLIES

## 1. The following species of mussels listed as endangered or threatened on the Species at Risk in Ontario List:

- i. Eastern Pondmussel.
- ii. Fawnsfoot.
- iii. Hickorynut.
- iv. Kidneyshell.
- v. Rayed Bean.
- vi. Round Pigtoe.
- vii. Salamander Mussel.
- viii. Snuffbox.
- ix. Mapleleaf Mussel.
- x. Rainbow Mussel.
- xi. Wavy-rayed Lampmussel.

## 2. The following species of fish listed as endangered or threatened on the Species at Risk in Ontario List:

- i. Eastern Sand Darter.
- ii. Pugnose Shiner.
- iii. Redside Dace.
- iv. Black Redhorse.
- v. Channel Darter.
- vi. Cutlip Minnow.
- vii. Silver Shiner.
- viii. Spotted Gar.

**Barn swallow****23.5 (1)** In this section,

“barn swallow active season” means the period of each year when barn swallow carry out life processes relating to breeding, nesting and rearing, and that begins around the beginning of May and ends around the end of August, the exact dates varying according to the area of the Province in which the barn swallow are located and the climate conditions of each year; (“saison active de l’hirondelle rustique”)

“nest cup” means a container, receptacle or vessel that may be used as a nest by barn swallow. (“nid artificiel”)

(2) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who harms or harasses a barn swallow, or who damages or destroys its habitat, while carrying out the

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maintenance, repair, modification, replacement or demolition of a building or structure that provides barn swallow habitat, if the person satisfies the conditions set out in subsections (3) to (12).

(3) The following are the conditions that a person who carries on an activity described in subsection (2) must satisfy for the purposes of subsection (2):

1. Before commencing the activity, the person must,
  - i. give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry,
  - ii. ensure that the notice includes,
    - A. a description of the activity,
    - B. the proposed start and end dates for the activity,
    - C. the location of the building or structure that will be the object of the activity, and
    - D. notice of the fact that the activity will impact barn swallow habitat,
  - iii. prepare a barn swallow mitigation and restoration record in accordance with subsection (4).
2. The person must follow the requirements of section 23.3 with respect to the completion of the notice of activity form referred to in subparagraph 1 i, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
3. Before, during and after carrying out the activity described in subsection (2), the person must,
  - i. follow the steps set out in subsections (5) to (9) to minimize the adverse effects of the activity on barn swallow and its habitat, and
  - ii. update the barn swallow mitigation and restoration record to include the steps referred to in subparagraph i.
4. The person must carry out the monitoring and record keeping activities described in subsections (10) to (12).
5. Every year that the person is required to monitor barn swallow habitat under subsection (10), the person must notify the Ministry of barn swallow observed during the monitoring by completing, within three months following the completion of the monitoring, the Natural Heritage Information Centre Rare Species Reporting Form available on the Ministry website detailing the species, number of barn swallows, the date and location of observation and any other information requested on that form.

(4) A barn swallow mitigation and restoration record referred to in subparagraph 1 iii of subsection (3) shall, when first prepared, include the following information:

1. The name and contact information of the person who is proposing to carry out an activity described in subsection (2).

000772. A description of the activity the person proposes to carry out, including the proposed start and completion dates.

3. A description of the building or structure that is the object of the activity.

4. The number, location, and description of barn swallow nests located on the building or structure, and the amount of area suitable for nesting that the building or structure provides.

(5) The following are the measures a person who proposes to carry out an activity described in subsection (2) must follow to minimize the adverse effects of the activity on barn swallow and its habitat:

1. If any part of the activity is to be carried out during the barn swallow active season, the person must ensure that barn swallow are excluded from any part of the building or structure that is the object of the activity by doing the following before the barn swallow active season begins:

- i. removing from the building or structure any existing barn swallow nests that may be impacted by the activity, and
- ii. installing tarps and netting or taking other such measures to prevent barn swallow from accessing any part of the building or structure that is the object of the activity.

2. If, despite following the measures described in paragraph 1, barn swallow enter the building or structure to establish nests, any part of the activity that would harm or harass barn swallow while nesting must be suspended until the end of the barn swallow active season.

3. If, as a result of carrying out the activity or the requirements of paragraph 1, barn swallow nests on a building or structure will be removed, damaged or destroyed, the person must create habitat for barn swallow as follows:

- i. for each nest that was removed, damaged or destroyed, the person must substitute one nest cup,
- ii. the substitute nest cup must be installed,
  - A. in the building or structure that was the object of the activity and in any area of the building or structure that continues to provide conditions that are suitable for barn swallow nesting,
  - B. in any building or structure that exists within one kilometre of the building or structure that was the object of the activity if it provides conditions that are suitable for barn swallow nesting, or
  - C. in any building or structure that the person constructs within one kilometre of the building or structure that was the object of the activity, that meets the requirements of subsection (8),
- iii. the substitute nest cup must be installed within the time period set out in subsection (6).

4. The person must create habitat for barn swallow in accordance with subsections (7),

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(8) and (9) and within the time period set out in subsection (6) if, as a result of carrying out the activity, a building or structure that provides barn swallow habitat,

- i. will be destroyed, or
- ii. will be altered so that it no longer provides suitable conditions for barn swallow nesting or provides a smaller area for barn swallow nesting.

5. The person must maintain a building or structure constructed or modified under paragraph 4 for a period of three years after the habitat is created.

(6) A person who proposes to carry out an activity described in subsection (2) must create habitat for barn swallow under paragraph 3 or 4 of subsection (5) within one of the following time frames:

- 1. If the activity will begin outside of the barn swallow active season, before the beginning of the next barn swallow active season.
- 2. If the activity will begin during the barn swallow active season, before the beginning of that barn swallow active season.

(7) A person who is required to create habitat for barn swallow under paragraph 4 of subsection (5) must do so,

(a) in one of the following ways:

- (i) by constructing one or more structures that meet the requirements of subsection (8), or
  - (ii) by modifying one or more existing buildings or structures that do not provide habitat for barn swallow so that they meet the requirements of subsection (8); and
- (b) in a location that is within one kilometre of the building or structure that will be the object of the activity described in subsection (2) and within 500 metres of an area that provides suitable foraging conditions for barn swallow and that is accessible to barn swallow.

(8) A building or structure constructed or modified under clause (7) (a) must provide suitable conditions for barn swallow nesting and must,

- (a) provide horizontal ledges or rough vertical surfaces with a sheltered overhang;
- (b) provide surface areas suitable for nest attachment at a height that minimizes disturbances to barn swallow and in a location that minimizes predation;
- (c) allow barn swallow to freely enter and exit nests;
- (d) provide suitable area to accommodate appropriate spacing between nests; and
- (e) be structurally sound and capable of providing habitat for barn swallow on a long term basis.

(9) The amount of habitat provided by a building or structure constructed or modified under clause (7) (a) must be greater than the amount of habitat that was lost in the building or structure that was the object of the activity described in subsection (2).

~~000000~~ (10) For a period of three years after a person has created habitat for barn swallow under paragraph 3 or 4 of subsection (5), the person shall monitor the use of the habitat by barn swallow during the barn swallow active season of each year and shall record information collected during monitoring, including the following information:

1. The number, description and location of new nests created by barn swallow.
2. An estimate of the number of barn swallow using the building or structure.

(11) A person who carries out an activity described in subsection (2) shall retain the barn swallow mitigation and restoration record created under subsection (4) for a period of two years after the monitoring required under subsection (10) is completed and shall update the record from time to time to include the following information:

1. A description of the steps followed by the person in accordance with subsection (5) to minimize the adverse effects of the activity on barn swallow and its habitat, including details of,
  - i. nest cups installed on buildings or structures in accordance with paragraph 3 of subsection (5), and
  - ii. buildings or structures constructed or modified in accordance with paragraph 4 of subsection (5), the amount of nesting area created in the buildings or structures and their location.
2. The information recorded during monitoring activities described in subsection (10).
3. Any change to the information included in the record under subsection (4).

(12) A person who carries out an activity described in subsection (2) shall provide a copy of the barn swallow mitigation and restoration record to the Ministry within 14 days of receiving a request for it.

### Bobolink, eastern meadowlark

**23.6 (1)** This section applies with respect to any activity to develop land, such as the construction of buildings, structures, roads or other infrastructure and the excavation and landscaping of land, in an area that is the habitat of bobolink or eastern meadowlark, but does not apply to an activity to which section 23.2 applies.

(2) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who, while carrying out an activity described in subsection (1), kills, harms, harasses, captures or takes a bobolink or an eastern meadowlark, or damages or destroys its habitat, if,

- (a) the size of the area of habitat of bobolink or eastern meadowlark that is damaged or destroyed by the activity is equal to or less than 30 hectares; and
- (b) the person satisfies all of the conditions set out in subsection (4).

(3) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a bobolink or an eastern meadowlark if, pursuant to subsection (2), clause 9 (1) (a) of the Act did not apply with respect to the bobolink or eastern meadowlark.

(4) The following are the conditions that a person who carries out an activity described in subsection (1) must satisfy for the purposes of clause (2) (b):

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1. Before commencing the activity, the person must,
  - i. give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry,
  - ii. prepare a habitat management plan in accordance with subsections (5) and (6), and
  - iii. give the Minister a written undertaking to continue, after the end of the five-year period referred to in paragraph 7, to manage any habitat created or enhanced in accordance with paragraph 6 by carrying out the measures described in subsection (9) until the earlier of,
    - A. the end of the 20-year period that follows the creation or enhancement of the habitat under paragraph 6, or
    - B. if the area of habitat that was destroyed by the activity is eventually returned to a suitable state to be used by bobolink or eastern meadowlark, the day on which the area reaches that state.
2. The person must ensure that the notice of activity form submitted under subparagraph 1 i includes,
  - i. a description of the activity,
  - ii. the proposed start and end dates of the activity and the area in which it will be carried out, and
  - iii. an indication as to whether the activity will be carried out on land that is habitat for bobolink, for eastern meadowlark, or for both, as the case may be.
3. The person must follow the requirements of section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
4. Once a habitat management plan is prepared under subparagraph 1 ii, the person must,
  - i. comply with any provisions in the habitat management plan with respect to the manner in which,
    - A. the activity should be carried out, and
    - B. the habitat for bobolink or eastern meadowlark referred to in paragraph 6 should be created or enhanced, as the case may be, and managed,
  - ii. retain a copy of the habitat management plan for at least five years after the activity is complete, and
  - iii. provide a copy of the habitat management plan to the Ministry within 14 days of receiving a request for it.
5. While carrying out the activity, the person must,
  - i. not perform any part of the activity that is likely to damage or destroy the habitat of bobolink or eastern meadowlark or kill, harm or harass bobolink or eastern

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- meadowlark, between May 1 and July 31 of any year, and
- ii. take reasonable steps to minimize adverse effects of the activity on bobolink and eastern meadowlark, including, if applicable, routing access roads along existing fencerows or hedgerows if possible.
6. The person must either create new habitat for bobolink or eastern meadowlark or enhance an already existing habitat for bobolink or eastern meadowlark as follows:
- i. the area of the new or enhanced habitat must,
    - A. be located outside of the area where the activity is carried out but within the same ecoregion as that area or in an ecoregion that is adjacent to that area, and
    - B. meet the requirements of subsection (7) with respect to its size and dimensions,
  - ii. within 12 months after the day the activity described in subsection (1) is commenced, the work of creating or enhancing the habitat must be completed in a manner that ensures that the habitat meets the requirements of subsection (8) with respect to the types of vegetation it provides.
7. For five years after habitat is created or enhanced in accordance with paragraph 6, the person must do the following annually:
- i. manage the habitat by carrying out the measures described in subsection (9), and
  - ii. monitor the area in which the habitat was created or enhanced by conducting at least three surveys every year at a time when bobolink or eastern meadowlark are likely to be present, to determine if the species are in fact present and, if so, to assess fledgling success.
8. The person must prepare and maintain a record in respect of the activity and the habitat created or enhanced under paragraph 6 and ensure that the record meets the requirements of subsection (10) and the person must,
- i. retain the record until December 31 of the final year of the five-year period during which the person must manage and monitor the new or enhanced habitat, and
  - ii. provide a copy of the record to the Ministry within 14 days of receiving a request for it.
- (5) A habitat management plan shall be prepared by a person with expertise in relation to bobolink or eastern meadowlark, or both, as the case may be.
- (6) A habitat management plan shall include the following information:
1. The name and contact information of the person on whose behalf the activity described in subsection (1) is being carried out.
  2. With respect to the area of bobolink or eastern meadowlark habitat that is likely to be damaged or destroyed by the activity described in subsection (1),
    - i. a description of the area's location, including a detailed map,



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- ii. the ecoregion in which the area is located, and
  - iii. the size of the area in hectares.
3. With respect to the activity described in subsection (1) that the person proposes to carry out,
- i. a description of the activity, and
  - ii. the proposed start date of the activity,
4. With respect to the area intended as new or enhanced habitat under paragraph 6 of subsection (4),
- i. a description of the area's location, including a detailed map,
  - ii. the ecoregion in which the area is located,
  - iii. the size of the area in hectares,
  - iv. the composition of the soils covering the area, and
  - v. the percentage of the area covered by grass species at the time the habitat management plan is prepared.
5. A description of how the area intended as new or enhanced habitat under paragraph 6 of subsection (4) will be created or enhanced and managed for eastern meadowlark or bobolink, including,
- i. a description of the areas to be seeded, and of the composition of the seed mixture such as the species and their relative percentage within the seed mixture,
  - ii. phasing and times of the year for site preparation, planting, seeding, tending and maintenance, and
  - iii. a description of the practices that will be undertaken for site preparation, planting, seeding, tending and maintenance, including the requirements set out in subsections (8) and (9).
- (7) An area that will be converted into new or enhanced habitat for bobolink or eastern meadowlark must meet the following requirements as to its size and dimensions:
- 1. The area must be larger than the area of the habitat for bobolink or eastern meadowlark that is damaged or destroyed by the activity.
  - 2. The area may be made up of separate parcels of land, but the minimum size of any individual parcel must be no less than four hectares.
  - 3. No portion of the area shall be less than 200 metres in width.
- (8) Habitat for bobolink or eastern meadowlark that has been created or enhanced under paragraph 6 of subsection (4) must meet the following requirements with respect to the types of vegetation it provides:
- 1. A minimum of 60 to 80 per cent of the habitat must be covered with at least three different grass species and any remaining part of the habitat that is not covered with grass species must be covered with forbs or legumes.

**000832.** Among the grass species referred to in paragraph 1, at least one must grow greater than 50 centimetres high under normal growing conditions.

(9) The following are the requirements to manage habitat for bobolink or eastern meadowlark that has been created or enhanced under paragraph 6 of subsection (4):

1. The area shall not be harvested, mowed or cut between April 1 and July 31 of any year.
2. If the habitat is used for pasture, grazing farm animals must be excluded from at least 50 per cent of the habitat from April 1 until July 31 of each year.
3. In each of the five years following the creation or enhancement of the habitat, take such actions as are necessary to maintain the grass species, forbs and legumes in the area in the proportions described in paragraph 1 of subsection (8) and remove woody vegetation and invasive species.

(10) The record required under paragraph 8 of subsection (4) shall,

- (a) document the steps taken by the person under subparagraph 5 ii of subsection (4) to minimize adverse effects of the activity described in subsection (1) on bobolink or eastern meadowlark;
- (b) document the steps taken by the person to create or enhance habitat under paragraph 6 of subsection (4) and to manage that habitat under subparagraph 7 i of subsection (4);
- (c) include photographs of the area created or enhanced as habitat under paragraph 6 of subsection (4) that show the area prior to and after the habitat is created or enhanced;
- (d) include data and information collected during monitoring under subparagraph 7 ii of subsection (4); and
- (e) include details of any encounters with the species.

### **Butternut**

**23.7** (1) In this section,

“butternut health assessor” means a person or member of a class of persons designated by the Minister for the purpose of assessing whether, and the extent to which, butternut trees are affected by butternut canker; (“évaluateur de la santé des noyers cendrés”)

“seed zone” means a seed zone identified in the document entitled “Southern Ontario Tree Seed Zone Atlas” that is published by the Ministry of Natural Resources, dated 2011, as amended from time to time, and that is available to the public at the Ministry’s district offices, at the Ministry’s corporate library in Peterborough or on the Ministry’s website. (“zone de semences”)

(2) The following classes of butternut trees are established for the purposes of this section:

1. Category 1 tree — the butternut tree is affected by butternut canker to such an advanced degree that retaining the tree would not support the protection or recovery of butternut trees in the area in which the tree is located.

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2. Category 2 tree — the butternut tree is not affected by butternut canker or the butternut tree is affected by butternut canker but the degree to which it is affected is not too advanced and retaining the tree could support the protection or recovery of butternut trees in the area in which the tree is located.

3. Category 3 tree — the butternut tree may be useful in determining sources of resistance to butternut canker.

(3) This section does not apply to a butternut tree if a butternut health assessor has conducted an assessment of the tree in accordance with the practices and requirements referred to in subparagraph 1 ii of subsection (4) and determined that the tree is a category 3 tree.

(4) Subject to subsection (5), clause 9 (1) (a) of the Act does not apply to a person who kills, harms or takes butternut trees if the following conditions are satisfied:

1. The following events must be completed at least 30 days before the person kills, harms or takes the butternut trees,
  - i. the person must request a butternut health assessor to conduct an assessment of the health of the butternut trees,
  - ii. the butternut health assessor must conduct an assessment of the health of the butternut trees in accordance with the practices and requirements for such assessments set out in the document entitled "Butternut Assessment Guidelines: Assessment of Butternut Tree Health for the Purposes of the *Endangered Species Act, 2007*", published by the Ministry of Natural Resources, dated May 2011, as amended from time to time, and available to the public on the Ministry's website,
  - iii. the butternut health assessor must provide a written report in respect of the butternut trees that is completed in accordance with the guidelines set out in the document referred to in subparagraph ii and that meets the requirements of subsection (6),
  - iv. the person must give the butternut health assessor's report to the district manager of the Ministry for the district in which the butternut trees are located.
2. The butternut health assessor's report must indicate that, in the opinion of the butternut health assessor, the butternut trees are either category 1 trees or category 2 trees and are not category 3 trees.
3. During the 30-day period that follows the day the person gives the report of the butternut health assessor to a district manager, the person must give permission to enter the property on which the trees are located for the purpose of examining the trees to the district manager or any employee of the Ministry who request the permission to do so.
4. If the butternut health assessor's report indicates that one or more of the butternut trees are category 2 trees, the person must satisfy the following additional conditions with respect to those trees after the 30-day period described in paragraph 3 has elapsed:

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- i. before killing, harming or taking the category 2 trees, the person must give the Minister notice of the activity by submitting a notice of butternut impact form available on the Registry to the Minister through the Registry,
  - ii. the person must ensure that the notice of butternut impact form includes,
    - A. the number of category 2 trees that the person proposes to kill, harm or take,
    - B. whether the category 2 trees will be killed, harmed or taken,
    - C. the location of each category 2 tree and the diameter of each tree at breast height, and
    - D. the date and report number of the butternut health assessor's report prepared in respect of the butternut trees in question,
  - iii. the person must follow the requirements of subsections (7) and (8) with respect to the completion of the notice of butternut impact form, the keeping of records relating to the notice of butternut impact form and the updating of the information on the Registry, and
  - iv. the person must comply with the requirements set out in subsection (10) for planting seedlings to replace butternut trees that are killed, harmed or taken and for monitoring and tending to those seedlings, and keeping records in relation to the seedlings.
- (5) The exemption from clause 9 (1) (a) of the Act provided in subsection (4) is subject to the following limitations:
1. If the report of a butternut health assessor identifies more than 10 butternut trees as category 2 trees among the butternut trees that a person proposes to kill, harm or take, the exemption shall not apply with respect to more than 10 such trees.
  2. The exemption shall not apply if,
    - i. the person has previously been exempted, pursuant to subsection (4), from clause 9 (1) (a) of the Act with respect to 10 butternut trees that were identified by a butternut health assessor as category 2 trees,
    - ii. the butternut trees that the person is proposing to kill, harm or take are located in the same area as the 10 butternut trees with respect to which the person was previously exempted from clause 9 (1) (a) of the Act, or in an area situated in close proximity to that area, and
    - iii. the reasons for which the person is proposing to kill, harm or take butternut trees are the same as, or similar to, the reasons for which the person previously killed, harmed or took butternut trees.
- (6) A butternut health assessor's report shall, for each butternut tree that a person is proposing to kill, harm or take,
- (a) identify the precise location of the tree;
  - (b) set out the diameter of the tree at breast height or indicate that the tree is shorter

than breast height;

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- (c) state whether, in the opinion of the butternut health assessor, the tree is affected by butternut canker, describe the extent of the canker and classify the tree as a category 1 or 2 tree depending on the extent of the butternut canker;
  - (d) determine if, in the opinion of the butternut health assessor, the tree may be useful in determining sources of resistance to butternut canker and should be categorized as a category 3 tree; and
  - (e) identify the reason the person is proposing to kill, harm or take the butternut tree, if known to the butternut health assessor.
- (7) Before submitting a notice of butternut impact form to the Minister, the person must ensure that,
- (a) all mandatory information requested on the form, including the person's contact information, has been provided; and
  - (b) the information provided on the form is complete and accurate.
- (8) After submitting a notice of butternut impact form to the Minister, the person must,
- (a) promptly upon obtaining from the Ministry confirmation that a notice of butternut impact form submitted through the Registry has been received by the Minister, make a record of the confirmation;
  - (b) for as long as the activity is being carried out,
    - (i) keep the record of the confirmation and, if applicable, ensure that a copy of the record is kept at the site where the activity is being carried out, and
    - (ii) make the record of the confirmation available to the Ministry upon receiving a request for it; and
  - (c) if there is a change in the contact information for the person who submitted the notice of butternut impact form, update the information on the Registry within 10 business days of the change.
- (9) A person who provides incomplete, false or misleading information on a notice of butternut impact form or when updating information on the Registry shall be deemed to have not submitted the notice of butternut impact form.
- (10) A person who kills, harms or takes one or more butternut trees that are category 2 trees and who, pursuant to subsection (4), is exempt from clause 9 (1) (a) of the Act shall comply with the following requirements:
1. For each tree that is killed or taken, the person shall plant butternut seedlings in accordance with the following rules:
    - i. at least two butternut seedlings, if the tree that is killed or taken is described in the butternut health assessor's report as shorter than breast height or less than three centimetres in diameter at breast height,
    - ii. at least five butternut seedlings, if the tree that is killed or taken is described in the butternut health assessor's report as at least three centimetres but less than

15 centimetres in diameter at breast height, and

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- iii. at least 20 butternut seedlings, if the tree that is killed or taken is described in the butternut health assessor's report as 15 centimetres or greater in diameter at breast height.
2. For each tree that is harmed, the person shall plant butternut seedlings in accordance with the following rules:
    - i. at least one butternut seedling, if the tree that is harmed is described in the butternut health assessor's report as shorter than breast height or less than three centimetres in diameter at breast height,
    - ii. at least three butternut seedlings, if the tree that is harmed is described in the butternut health assessor's report as at least three centimetres but less than 15 centimetres in diameter at breast height, and
    - iii. at least 10 butternut seedlings, if the tree that is harmed is described in the butternut health assessor's report as 15 centimetres or greater in diameter at breast height.
  3. Every butternut seedling that is planted must have been grown from seed that originated from the seed zone in which it is planted.
  4. All butternut seedlings must be planted within three years of the person submitting the relevant notice of butternut impact form under subparagraph 4 i of subsection (4).
  5. Butternut seedlings must be planted in an area with the following characteristics:
    - i. the soil must be greater than one metre deep, moist but well-drained and have a fine to medium texture with a recognizable organic layer and with a pH ranging from 6.8 to 7.2, and
    - ii. the area must provide full sunlight conditions to the butternut seedlings.
  6. In order to avoid a monoculture of butternut, the person shall plant deciduous trees and shrubs that are not butternut seedlings and that are native to the area in which the seedlings are planted in such numbers to ensure that there are an equal number of butternut trees and other native Ontario species in the area.
  7. Every butternut seedling and companion tree or shrub referred to in paragraph 6 must be planted either between March 1 and May 15 or between September 20 and October 30 of any year, except for a butternut seedling or companion tree or shrub that was grown in a container which may be planted between May 16 and May 25 of any year.
  8. No more than 200 butternut seedlings shall be planted in a hectare.
  9. Butternut seedlings must be planted at least,
    - i. three metres from other planted butternut seedlings,
    - ii. two metres from other trees or shrubs that are likely to be the same height or shorter than the butternut tree at full growth,
    - iii. four metres from other trees or shrubs that are likely to be taller than the

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butternut tree at full growth,

- iv. 15 metres from the canopy drip line of trees that are greater than four metres in heights at the time of planting, and
  - v. 100 metres from a highway consisting of two or more lanes in either direction.
10. Every butternut seedling that is planted under this subsection must be monitored once annually between May 15 and September 20 for two years after it is planted to assess the health of the tree and its habitat conditions.
11. In order to ensure the good growth and health of the butternut tree, every butternut seedling that is planted under this subsection must be tended to in accordance with the following rules:
- i. tending activities shall take place once a week from May 15 to September 20 during the first growing season after the butternut seedling is planted,
  - ii. tending activities during the first growing season after the butternut seedling is planted will include,
    - A. maintenance of tree guards to protect the lower stem from rodents,
    - B. vegetation control 60 centimetres around the base of the tree until the tree is above the herbaceous vegetation, and
    - C. watering during drought or low rainfall periods, and
  - iii. tending activities shall take place during the second growing season after the butternut seedling is planted as required to ensure that,
    - A. vegetation is controlled 60 centimetres around the base of the tree until the tree is above the herbaceous vegetation, and
    - B. the tree is watered during drought or low rainfall periods.
12. The person must plant a butternut seedling to replace any butternut seedling planted under this subsection that dies within two years of the planting of the seedling and must do so in accordance with the planting requirements of this subsection.
13. For each butternut seedling planted under this subsection, the person must maintain a record of the planting, monitoring and tending activities required under this subsection, which record shall include,
- i. the date the butternut seedling was planted,
  - ii. the date of each time a person attended to monitor or tend to the butternut tree,
  - iii. a description of every monitoring and tending activity,
  - iv. an assessment of the health status of the butternut seedling every time it is monitored or tended to to indicate if its health is good, poor or whether it is dead, and
  - v. whether the butternut tree shows evidence of butternut canker and, if so, a description of the extent to which the tree is affected by butternut canker.
14. Within 14 days of receiving a request from the Ministry, the person shall provide the

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record maintained under paragraph 13.

(11) Clause 9 (1) (a) of the Act does not apply to a person who kills, harms or takes a butternut tree that was cultivated if the person is the owner or occupier of the land on which the tree is located or is acting on behalf of the owner or occupier of such land.

(12) The exemption from clause 9 (1) (a) of the Act provided under subsection (11) does not apply in respect of a butternut tree that was cultivated as a result of the requirements for an exemption under subsection (4) or of a condition of a permit issued under section 17 of the Act.

(13) Clause 9 (1) (b) of the Act does not apply with respect to butternut.

(14) Subsection 10 (1) of the Act does not apply with respect to the damage or destruction of the habitat of a butternut tree that occurs when a person kills, harms or takes a butternut tree if the person is exempt from clause 9 (1) (a) of the Act pursuant to an exemption under subsection (4) or (12).

(15) Subsection 9 (1) of the Act does not apply to nuts from a butternut tree.

(16) Section 12 of this Regulation does not apply to the commercial cultivation of butternut trees.

#### **Chimney swift**

**23.8** (1) In this section,

“chimney swift active season” means the period of each year when chimney swift carry out life processes relating to breeding, nesting and rearing, and that begins around the end of April and ends around the middle of October, the exact dates varying according to the area of the Province in which the chimney swift are located and the climate conditions of each year.

(2) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who harms or harasses a chimney swift, or who damages or destroys its habitat, while carrying out the maintenance, repair, modification, replacement or demolition of a chimney that provides chimney swift habitat, if the person satisfies the conditions set out in subsections (3) to (11).

(3) The conditions that a person must satisfy for the purposes of subsection (2) are as follows:

1. Before commencing an activity described in subsection (2), the person must,
  - i. give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry,
  - ii. ensure that the notice includes,
    - A. a description of the activity,
    - B. the proposed start and end dates for the activity,
    - C. the location of the chimney that will be the object of the activity, and
    - D. notice of the fact that the activity will impact chimney swift,
  - iii. prepare a chimney swift mitigation and restoration record in accordance with



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subsection (4).

2. The person must follow the requirements of section 23.3 with respect to the completion of the notice of activity form referred to in subparagraph 1 i, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
  3. Before, during and after carrying out the activity described in subsection (2), the person must,
    - i. follow the steps set out in subsections (5) to (7) to minimize the adverse effects of the activity on chimney swift and its habitat, and
    - ii. update the chimney swift mitigation and restoration record to include the steps referred to in subparagraph i.
  4. The person must carry out the monitoring and record keeping activities described in subsections (8) to (11).
  5. Every year that the person is required to monitor chimney swift habitat under subsection (8), the person must notify the Ministry of chimney swift observed during monitoring by completing, within three months following the completion of the monitoring, the Natural Heritage Information Centre Rare Species Reporting Form available on the Ministry website detailing the species, number of chimney swifts, the date and location of observation and any other information requested on that form.
- (4) A chimney swift mitigation and restoration record referred to in subparagraph 1 iii of subsection (3) shall, when first prepared, include the following information:
1. The name and contact information of the person who is proposing to carry out an activity described in subsection (2).
  2. A description of the activity the person proposes to carry out, including the proposed start and completion dates.
  3. A description of the chimney that will be affected by the activity, including the height, internal square footage and material.
  4. An estimation of the number of chimney swift using the chimney.
- (5) The following are the steps a person who proposes to carry out an activity described in subsection (2) must follow to minimize the adverse effects of the activity on chimney swift and its habitat:
1. If any part of the activity is to be carried out during the chimney swift active season, the person must take measures, such as capping the chimney, to prevent chimney swift from accessing the chimney that will be affected by the activity both before and during the chimney swift active season.
  2. If, despite following the measures described in paragraph 1, chimney swift begin to use the chimney during their active season to nest, rest or roost, any part of the activity that would affect the chimney must be suspended until the end of the chimney swift active season.

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3. If, as a result of carrying out the activity, a chimney that provides habitat for chimney swift will be unavailable for chimney swift nesting, resting or roosting during the chimney swift active season, but will be available by the following chimney swift active season and will provide at least the same amount of suitable habitat for chimney swift at that time, the person must improve the conditions for chimney swift nesting, resting or roosting provided by the chimney by ensuring that the activity includes measures such as any of the following:
    - i. increasing the height of the chimney,
    - ii. installing a sun collar on the opening of the chimney, or
    - iii. cutting back vegetation encroaching on the chimney's opening.
  4. The person must create new habitat for chimney swift in accordance with subsection (6) if, as a result of carrying out the activity, a chimney that provides habitat for chimney swift,
    - i. will be destroyed,
    - ii. will be altered so that it no longer provides suitable conditions for chimney swift nesting, resting or roosting or provides a smaller area for chimney swift nesting, resting or roosting, or
    - iii. will be unavailable for chimney swift nesting, roosting or resting for more than one chimney swift active season.
  5. The person must maintain habitat created under paragraph 4 for a period of three years after the habitat is created.
- (6) If a person is required to create new habitat for chimney swift under paragraph 4 of subsection (5), the habitat must be created as follows:
1. The habitat shall be created by either,
    - i. constructing one or more new structures, which may or may not be chimneys, that provide appropriate conditions for chimney swift nesting, resting or roosting, or
    - ii. modifying one or more existing structures which may or may not be chimneys, that do not currently provide habitat for chimney swift to provide appropriate conditions for chimney swift nesting, resting or roosting.
  2. The habitat must include features to attract chimney swift to the structure or to enhance the suitability of the structure for chimney swift, such as installing a sun collar at the opening of the chimney or planting native shrubs, trees or flowers to attract insects.
  3. The structure that is constructed or modified must be located within two kilometres of the chimney that will be affected by the activity described in subsection (2) and must be capable of providing habitat for more chimney swifts than the chimney that was affected by the activity.
  4. If a single structure is constructed or modified, the structure must be of a greater height and have greater internal square footage available to chimney swift than the

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chimney affected by the activity described in subsection (2), but must not be greater than one and a half times the size of the chimney affected by the activity.

5. If more than one structure is constructed or modified, one of the structures must be of at least the same height and have at least the same internal square footage available to chimney swift as the chimney affected by the activity described in subsection (2).
6. A structure must be constructed or modified so as to provide suitable conditions for chimney swift nesting, resting or roosting, including the following:
  - i. the structure must have a temperature range that is suitable for chimney swift nesting, resting and roosting during the chimney swift active season,
  - ii. the opening of the structure must be accessible for chimney swift to enter and exit,
  - iii. the interior surface of the structure must be composed of unpainted, rough-textured material such as brick or cinder block appropriate for clinging and nest adherence,
  - iv. the interior dimensions of the structure must be suitable for chimney swift nesting, resting or roosting,
  - v. the height of the structure must be suitable for chimney swift nesting, resting or roosting having regard to the ground level, the roofline of associated structures and other structures or vegetation within reasonable proximity.

(7) A person who proposes to carry out an activity described in subsection (2) and is required to create habitat for chimney swift under paragraph 4 of subsection (5) must do so within one of the following time frames:

1. If the activity will begin outside of the chimney swift active season, before the beginning of the next chimney swift active season.
2. If the activity will begin during the chimney swift active season, before the beginning of that chimney swift active season.

(8) After a person has created habitat for chimney swift under paragraph 4 of subsection (5), the person shall monitor the use of the habitat by chimney swift during the chimney swift active season for a period of years determined under subsection (9) and shall record information collected during monitoring, including the following information:

1. An estimate of the number of chimney swift entering or exiting the structure.
2. Evidence of chimney swift nesting in the structure.

(9) The number of years during which a person must monitor the effectiveness of habitat under subsection (8) shall be determined in accordance with the following rules:

1. If chimney swift are observed and recorded entering and exiting the structure during the first three years of monitoring, the person is not required to conduct further monitoring after the end of the three-year period.
2. If chimney swift are not observed and recorded entering and exiting the structure during the first three years of monitoring, the person shall continue to monitor the

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habitat until five years have passed after the creation of the habitat under paragraph 4 of subsection (5).

(10) A person who carries out an activity described in subsection (2) shall retain the chimney swift mitigation and restoration record created under subsection (4) for a period of five years after the activity is completed and shall update the record from time to time to include the following information:

1. A description of the steps followed by the person in accordance with subsection (5) to minimize the adverse effects of the activity on chimney swift and its habitat, including the location, square footage and description of the habitat created under paragraph 4 of subsection (5) or improved under paragraph 3 of subsection (5).
2. The information recorded during monitoring activities described in subsection (8).
3. Any change to the information included in the record under subsection (4).

(11) A person who carries out an activity described in subsection (2) shall provide a copy of the chimney swift mitigation and restoration record to the Ministry within 14 days of receiving a request for it.

#### **Drainage works**

23.9 (1) This section applies to a person who carries out one of the following activities in a drainage works or ditch that is the habitat of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species:

1. Improving or maintaining drainage works, if an agreement for the improvement or maintenance was filed under subsection 2 (2) of the *Drainage Act*.
2. Improving, maintaining or repairing drainage works, if a report that applies to the drainage works was adopted under subsection 45 (1) of the *Drainage Act* or under subsection 3 (15) of that Act, as that subsection read on October 24, 2010.
3. Maintaining a ditch constructed under *The Ditches and Watercourses Act*, being chapter 109 of the Revised Statutes of Ontario, 1960, in accordance with subsection 3 (18) of the *Drainage Act*.

(2) This section does not apply with respect to the following species, except in the circumstances described in subsection (3):

1. Bogbean Buckmoth.
2. Cherry Birch.
3. False Hop Sedge.
4. False Rue Anemone.
5. Grey Fox.
6. Heart-leaved Plantain.
7. Pugnose Minnow.
8. Scarlet Ammannia.
9. Small-mouthed Salamander.

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## 10. Toothcup.

(3) This section applies with respect to a species referred to in paragraphs 1 to 10 of subsection (2) if a person is carrying out an activity described in subsection (1) in an area that is the habitat of, or used by, the species and,

- (a) before June 30, 2010, the person had entered into an agreement with the Minister under subsection 23 (2);
- (b) the agreement applied specifically to the species and with respect to an activity described in subsection (1); and
- (c) the person submits a notice of drainage works form to the Minister in accordance with paragraph 1 of subsection (6) and complies with the other conditions set out in subsection (6).

(4) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who, while carrying out an activity described in subsection (1), kills, harms, harasses, captures or takes a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, or damages or destroys the habitat of such a species, if the person satisfies all of the conditions set out in subsection (6).

(5) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

- (a) pursuant to subsection (4), clause 9 (1) (a) of the Act did not apply with respect to the member of the species; or
- (b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (6).

(6) The following are the conditions that a person who carries on an activity described in subsection (1) must satisfy for the purposes of subsection (4):

1. Before doing anything, in the course of carrying out an activity described in subsection (1), that is prohibited under clause 9 (1) (a) or subsection 10 (1) of the Act, the person must,
  - i. submit a notice of drainage works form available on the Registry to the Minister through the Registry, thereby giving the Minister notice that,
    - A. the person is responsible for the improvement, maintenance or repair of the drainage works or ditch, and
    - B. as part of the improvement, maintenance or repair of the drainage works or ditch, an activity described in subsection (1) will be carried out at various times in the future in the drainage works or ditch that will likely affect one or more species listed on the Species at Risk in Ontario List as endangered or threatened species, and
  - ii. subject to subsection (10), prepare in accordance with subsection (11) a mitigation plan that,
    - A. meets the requirements of subsection (12), and

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- B. applies to all activities described in subsection (1) that will be carried out in the future in the drainage works or ditch with respect to the species listed on the Species at Risk in Ontario List as endangered or threatened species that are identified in the notice of drainage works form.
2. The person must ensure that the notice of drainage works form includes,
    - i. the location of the drainage works or ditch, and
    - ii. the name of every species listed on the Species at Risk in Ontario List as endangered or threatened species that will be affected by the activity.
  3. The person must follow the requirements of subsections (7) and (8) with respect to the completion of the notice of drainage works form, the keeping of records relating to the notice of drainage works form and the updating of the information on the Registry.
  4. Whenever carrying out an activity described in subsection (1) in the drainage works or ditch identified in the notice of drainage works form, the person must,
    - i. comply with the requirements of the mitigation plan,
    - ii. take reasonable steps to minimize adverse effects of the activity on the species identified in the notice of drainage works form, including the steps described in subsection (13).
  5. After the mitigation plan is prepared, the person must,
    - i. retain a copy of the mitigation plan for as long as the person continues to be responsible for the improvement, maintenance and repair of the drainage works or ditch,
    - ii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it, and
    - iii. ensure that the mitigation plan is updated in accordance with subsections (11) and (12) at least once every five years to include information obtained from observing the effects of the activity on the species.
  6. For as long as the person continues to be responsible for the improvement, maintenance and repair of the drainage works or ditch, the person must,
    - i. on or before December 31 of each year, prepare an annual report in accordance with subsection (14) on the effects that any activity described in subsection (1) that was carried out in the course of that year has had on the species identified in the notice of drainage works form,
    - ii. retain a copy of the annual report for at least five years after it is prepared, and
    - iii. provide a copy of the annual report to the Ministry within 14 days of receiving a request for it.
- (7) Before submitting a notice of drainage works form to the Minister, a person who proposes to carry out an activity described in subsection (1) must ensure that,
- (a) all mandatory information requested on the form, including the person's contact

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information, has been provided; and

(b) the information provided on the form is complete and accurate.

(8) After submitting a notice of drainage works form to the Minister, a person must,

(a) promptly upon obtaining from the Ministry confirmation that a notice of drainage works form submitted through the Registry has been received by the Minister, make a record of the confirmation;

(b) for as long as the person continues to be responsible for the improvement, maintenance and repair of the drainage works or ditch,

(i) keep the record of the confirmation, and

(ii) make the record of the confirmation available to the Ministry upon receiving a request for it; and

(c) if there is a change in the contact information of the person who submitted the notice of drainage works form, update the information on the Registry within 10 business days of the change.

(9) A person who provides incomplete, false or misleading information on a notice of drainage works form or when updating information on the Registry shall be deemed to have not submitted the notice of drainage works form.

(10) A person who carries out an activity described in subsection (1) is not required to complete the preparation of a mitigation plan until the following dates if the following circumstances apply:

1. If the mitigation plan relates to a species that was added to the Species at Risk in Ontario List as an endangered or threatened species for the first time on January 24, 2013, the third anniversary of that day.

2. If the mitigation plan relates to a species that first appears in the drainage works or ditch after the person begins being responsible for the improvement, maintenance and repair of the drainage works or ditch, three years after the date the species first appears in the drainage works or ditch.

(11) A mitigation plan must be prepared and updated by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available.

(12) A mitigation plan prepared with respect to an activity identified in a notice of drainage works form submitted to the Minister under subparagraph 1 i of subsection (6) must include the following information:

1. The name and contact information of the person who is carrying out the activity.

2. A description of the area within the drainage works or ditch that will be affected by the activity and that is used by, or is the habitat of, a member of a species identified in the notice of drainage works form.

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13. Details of how the person will carry out the steps described in subsection (13) that are required to minimize the adverse effects of the activity on a species identified in the notice of drainage works form, including the dates during the year when the species is likely to be carrying out a life process related to hibernation or reproduction, including rearing, and when the person must take reasonable steps to minimize or avoid killing, harming or harassing members of the species.

4. A description of any steps the person will take to minimize the adverse effects of the activity on a species identified in the notice of drainage works form, in addition to the steps described in subsection (13), including a description of any measures to restore or enhance the habitat of the species that is affected by the activity.

(13) The following are the steps that a person must take to minimize the adverse effects of an activity described in the notice of drainage works form submitted to the Minister under subparagraph 1 i of subsection (6) on a species identified in the form:

1. The person must take reasonable steps to minimize or avoid the killing, harming or harassing of members of the species during a time of year when the species is likely to be carrying out a life process related to hibernation, overwintering, or reproduction, including rearing.
2. If the person encounters an animal that is a member of a species while carrying out the activity, the person must cease carrying out the activity in the area of the encounter and provide the animal with a reasonable amount of time to leave the area before continuing with the activity.
3. If, after providing an animal with a reasonable amount of time in accordance with paragraph 2 the animal does not leave the area, the person must take measures to relocate the animal to a nearby location that is suitable and safe for the animal.
4. The relocation of an animal in accordance with paragraph 3 must be undertaken by or in consultation with a person knowledgeable about, or having training in, the handling of the species.
5. The person must take reasonable steps to exclude members of the species from an area in the drainage works or ditch in which the activity is being carried out or is likely to be carried out, such as installing temporary fencing to prevent members of the species from accessing the area.
6. If the species is a turtle species, the person must not reduce the level of the water in an area of a drainage works or ditch where a member of the turtle species is likely to be hibernating.
7. The person must take reasonable steps to control erosion and sediment, and to stabilize water banks in any area affected by the activity if,
  - i. the area is the habitat of the species, or
  - ii. a member of the species is likely to be present in the area.
8. If the person discovers that the steps described in paragraphs 1 to 7 or in the mitigation plan have not been effective in minimizing the adverse effects of an activity described in subsection (1) on the species, the person shall,



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- i. take such actions as are necessary to increase the effectiveness of those steps, or
- ii. take such other reasonable steps as may be necessary to minimize the adverse effects of an activity described in subsection (1) on the species.

(14) An annual report required under paragraph 6 of subsection (6) must include,

- (a) a record of the steps taken by the person when carrying out an activity described in subsection (1) in the previous 12 months, to minimize adverse effects of the activity on a species identified in the notice of drainage works form submitted under subparagraph 1 i of subsection (6);
- (b) an assessment of the effectiveness of the steps referred to in clause (a); and
- (c) details of any observations of a species identified in the notice of drainage works form submitted under subparagraph 1 i of subsection (6) in the course of carrying out the activity in the previous 12 months, including,
  - (i) the name of the species,
  - (ii) the location of the observation, and
  - (iii) the date and time of the observation.

(15) This section does not apply to a person carrying on an activity described in subsection (1) who has entered into an agreement with the Minister with respect to that activity under subsection 23 (2) until the earlier of,

- (a) the day the person gives notice to the Minister under paragraph 1 of subsection (6); and
- (b) July 1, 2015.

(16) If a person described in subsection (15) plans to give notice to the Minister under paragraph 1 of subsection (6) of the activity referred to in subsection (15), the mitigation plan that is required to be prepared with respect to the activity under subparagraph 1 ii of subsection (6) must be prepared by the person before the notice of drainage works form is submitted to the Minister under subparagraph 1 i of subsection (6), and not within three years after the notice of drainage works form is given as would otherwise be the case.

#### **Early exploration mining**

**23.10** (1) This section applies with respect to a mining activity that constitutes early exploration as defined in subsection 1 (1) of Ontario Regulation 308/12 (Exploration Plans and Exploration Permits) made under the *Mining Act* if,

- (a) the activity is listed in Schedule 2 of Ontario Regulation 308/12 and is included in an exploration plan that was submitted to the Director under section 5 of that regulation;
- (b) the activity is listed in Schedule 3 of Ontario Regulation 308/12 and is authorized by a permit issued under section 78.3 of the *Mining Act*; or
- (c) the activity is authorized by a permit issued under section 78.3 of the *Mining Act* that was required by a Director under section 18 of Ontario Regulation 308/12.

(2) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who, while

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carrying out an activity described in subsection (1), kills, harms, harasses, captures or takes a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, or damages or destroys the habitat of such a species, if the person satisfies all of the conditions set out in subsection (4).

(3) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

- (a) pursuant to subsection (2), clause 9 (1) (a) of the Act did not apply with respect to the member of the species; or
- (b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (4).

(4) The following are the conditions that a person who carries on an activity described in subsection (1) must satisfy for the purposes of subsection (2):

1. Before doing anything, in the course of carrying out the activity, that is prohibited under clause 9 (1) (a) or subsection 10 (1) of the Act, the person must,
  - i. subject to subsection (5), give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry,
  - ii. subject to subsection (6), prepare in accordance with subsection (7) a mitigation plan that meets the requirements of subsection (8).
2. The person must ensure that the notice of activity form includes,
  - i. the proposed start and end dates for the activity,
  - ii. the location at which the activity will be carried out, and
  - iii. a list of all the species that are listed on the Species at Risk in Ontario List as endangered or threatened species and that will likely be affected by the activity.
3. The person must follow the requirements set out in section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
4. While carrying out the activity, the person must,
  - i. comply with the requirements of the mitigation plan, and
  - ii. ensure that reasonable steps are taken to minimize the adverse effects of the activity on the species identified in the notice of activity form, including the steps described in subsection (10) and such other steps as may be described in the mitigation plan.
5. The person must,
  - i. retain a copy of the mitigation plan for at least five years after the activity is complete,
  - ii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it, and

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- iii. ensure that, at the times determined under section (9), the mitigation plan is updated in accordance with subsection (7) to include information obtained while monitoring the effects of the activity under paragraph 6.
6. While carrying out the activity, the person must monitor,
    - i. the effects of the activity on each species identified in the notice of activity form, and
    - ii. the effectiveness of the steps taken to minimize or avoid adverse effects on each species.
  7. Within 180 days of the completion of the activity, the person must,
    - i. prepare a report on the activity in accordance with subsection (11), and
    - ii. if the activity occurs within the habitat of woodland caribou (forest-dwelling boreal population), prepare the information specified in subsection (12) and submit it to the Minister.
  8. The person must retain a copy of the report on the activity referred to in subparagraph 7 i for at least five years after it is prepared and provide a copy of it to the Ministry within 14 days of receiving a request for it.
  9. If the person or an employee or agent of the person observes a species identified in the notice of activity form in the course of carrying out the activity, the person must ensure that, within three months of the observation, the Natural Heritage Information Centre Rare Species Reporting Form available on the Ministry website is completed, detailing the species and number of individual members that were observed, the date and location of observation and any other information requested on the form.
- (5) If a person commences an activity described in subsection (1) before a species that is listed on the Species at Risk in Ontario List as endangered or threatened first appears in the area where the activity is being carried out, the person is not required to submit a notice of activity form before doing anything in relation to that species that is prohibited under clause 9 (1) (a) or subsection 10 (1) of the Act, so long as the person submits the notice of activity form to the Minister as soon as is reasonably possible after the date the species first appears.
- (6) A person who carries out an activity described in subsection (1) is not required to complete the preparation of a mitigation plan until the following dates if the following circumstances apply:
1. If the mitigation plan relates to a species that was added to the Species at Risk in Ontario List as an endangered or threatened species for the first time on January 24, 2013, the second anniversary of that day.
  2. If the mitigation plan relates to a species that first appears in the area of the activity after the activity commences, the earlier of,
    - i. three years after the date the species first appears in the area, and
    - ii. if the activity is completed before the end of the three-year period described in subparagraph i, the day the person begins to restore, create or enhance habitat as required under paragraph 11 of subsection (10).

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(7) A mitigation plan shall be prepared and updated by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available.

(8) A mitigation plan prepared with respect to an activity described in subsection (1) must include the following information:

1. The name and contact information of the person carrying out the activity.
2. The following information with respect to the activity:
  - i. the proposed start and completion dates of the activity,
  - ii. a description of all of the stages of the activity and a timeline for the stages, and
  - iii. a map indicating the geographic location of the activity at a scale of no greater than 1:20,000.
3. A list of species that are listed on the Species at Risk in Ontario List as endangered or threatened species that will likely be affected by the activity and an assessment of those effects on the individual members of the species and their habitat.
4. Details of the steps the person will take during the activity to minimize or avoid the adverse effects on species identified under paragraph 3, including,
  - i. details of the steps described in subsection (10), such as the dates on which, and locations at which, each step will be taken, and
  - ii. the times during the year at which a species identified under paragraph 3 is likely to be carrying out a life process related to hibernation or reproduction, including rearing, and at which activities that are likely to kill, harm or harass a member of the species should not be carried out.
5. Details regarding the steps the person will take to monitor the effects of the activity on members of the species identified under paragraph 3 and the effectiveness of the steps taken to minimize adverse effects on the species.

(9) A person who is carrying out an activity described in subsection (1) shall update the mitigation plan prepared with respect to the activity on or before the following time:

1. If the activity is included in an exploration plan referred to in clause (1) (a) and the plan reaches the end of its effective period before the activity is complete, the day the effective period ends.
2. If the activity is authorized by a permit referred to in clause (1) (b) or (c) and the permit expires before the activity is complete, the day the permit expires.

(10) The following are the steps that a person must take to minimize the adverse effects of the activity described in the notice of activity form submitted to the Minister under subparagraph 1 i of subsection (4) on the species identified in the form:

1. The person must not kill, harm or harass woodland caribou (forest-dwelling boreal population) during a time of year when woodland caribou (forest-dwelling boreal

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population) are likely to be carrying out a life process related to feeding, migration or reproduction, including rearing.

2. The person must take reasonable steps to minimize or avoid killing, harming or harassing a member of a species identified in the notice of activity form, other than the woodland caribou (forest-dwelling boreal population), during a time of year when the species is likely to be carrying out a life process related to hibernation or reproduction, including rearing.
3. The person must not carry out any part of the activity in an area that is being used, or has been used at any time in the previous three years, by a member of a species identified in the notice of activity form to carry out a life process related to hibernation or reproduction, including rearing.
4. The person must not possess or transport a member of a species identified in the notice of activity form for a period longer than is necessary to avoid or minimize adverse effects to the member.
5. If the person encounters an animal that is a member of the species while carrying out the activity, the person must cease carrying out the activity in the area of the encounter and provide the animal with a reasonable amount of time to leave the area before continuing the activity.
6. If, after providing an animal with a reasonable amount of time in accordance with paragraph 5 the animal does not leave the area, the person must take measures to relocate the animal to a nearby location that is suitable and safe for the animal.
7. If the person encounters a moss, lichen or vascular plant that is a member of the species in the course of carrying out the activity and it is not necessary to kill or harm the member for the purpose of carrying out the activity, the person must,
  - i. cease the activity in the area of the encounter,
  - ii. install and maintain barriers or other structures to create a protective zone around the species, and
  - iii. after establishing the protective zone referred to in subparagraph ii, continue the activity in a manner that does not impair the ability of the species to carry out its life processes, including reproduction.
8. If it is necessary to kill or harm a moss, lichen or vascular plant referred to in paragraph 7 for the purpose of carrying out the activity, the person must relocate the moss, lichen or vascular plant to a nearby location within the species' habitat that is suitable and safe for the species so that it is not killed or harmed, provided it is feasible to do so.
9. The determination under paragraph 8 as to whether it is feasible to relocate a moss, lichen or vascular plant must be made by the person using the best available information with respect to the suitability of relocating that species, including information obtained from the Ministry.
10. The relocation of an animal or of a moss, lichen or vascular plant in accordance with paragraph 6 or 8 must be undertaken by, or in consultation with, a person who is

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knowledgeable about, or has training in, the handling of the species.

11. Before the end of the activity, the person must take reasonable steps to,
- i. restore any habitat of the species that was damaged or destroyed by the activity, to the extent it is feasible to do so, or
  - ii. create habitat for the species, or enhance an existing habitat for the species, in the same ecoregion as the habitat that was damaged or destroyed by the activity, in a manner that minimized the overall loss of habitat for the species resulting from the activity.

(11) The report on the activity that the person is required to prepare under subparagraph 7 i of subsection (4) shall include,

- (a) a list of the species identified in the notice of activity form submitted to the Minister under subparagraph 1 i of subsection (4) that were observed in the course of carrying out the activity and the circumstances relating to the observation, including the location, date and time of the observation; and
- (b) a description of the steps taken by the person in the course of carrying out the activity to minimize adverse effects on the species identified in the notice, including the locations where the steps were taken, and an assessment of the effectiveness of those steps.

(12) The information that a person is required to prepare under subparagraph 7 ii of subsection (4) shall include a detailed description of,

- (a) the nature of the activity; and
- (b) the area within the habitat of woodland caribou (forest-dwelling boreal population) in which the activity was carried out, including its geographic location and size.

(13) This section does not apply to Golden Eagle.

#### **Ecosystem protection**

23.11 (1) This section applies with respect to an activity consisting of ecological conservation work that is carried out for the purpose of protecting, maintaining, enhancing or restoring an ecosystem native to Ontario, other than an ecosystem described in subsection (2), if the activity is carried out by or on behalf of one of the following entities:

1. A conservation authority established under the *Conservation Authorities Act*.
2. A municipality.
3. The Ministry.
4. A band as defined in the *Indian Act* (Canada).
5. A post-secondary institution that is a member of the Association of Universities and Colleges of Canada.
6. A corporation incorporated under the *Not-for-Profit Corporations Act, 2010* or a predecessor of that Act or under the *Not-for-Profit Corporations Act, 2011* (Canada) or a predecessor of that Act, if the corporation has among its primary objectives natural heritage conservation, ecological conservation or a similar objective.

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7. A corporation that is a registered charity under the *Income Tax Act* (Canada) if the corporation has among its primary objectives natural heritage conservation, ecological conservation or a similar objective.
  8. A trustee of a charitable foundation that is a registered charity under the *Income Tax Act* (Canada) if the foundation has among its primary objectives natural heritage conservation, ecological conservation or a similar objective.
- (2) This section does not apply to an activity that is carried out for the purpose of protecting, maintaining, enhancing or restoring an ecosystem in the following areas:
1. An area belonging to any of the following community classes, as identified under the land classification system for southern Ontario:
    - i. A fen.
    - ii. A bog.
    - iii. A sand barren or dune.
    - iv. A beach bar.
    - v. An alvar.
    - vi. A cliff.
    - vii. A talus.
  2. An area situated in a part of Ontario to which the land classification system for southern Ontario does not apply but that has all of the characteristics necessary to be classified as a community class referred to in subparagraphs 1 i to vii if it were situated in a part of southern Ontario to which the classification system applies.
- (3) In subsection (2),
- “land classification system for southern Ontario” means the land classification system set out in the document entitled *Ecological Land Classification for Southern Ontario: First Approximation and its Application*, dated September, 1998, that is published by the Ministry of Natural Resources and available at the Ministry of Natural Resources District offices and the Ministry of Natural Resources corporate library in Peterborough, Ontario.
- (4) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who kills, harms, harasses, captures or takes a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, or damages or destroys its habitat, while carrying out an activity described in subsection (1) if the entity referred to in subsection (1) who carries out the activity, or on whose behalf the activity is carried out, satisfies all of the conditions set out in subsection (6).
- (5) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,
- (a) pursuant to subsection (4), clause 9 (1) (a) of the Act did not apply with respect to the member of the species; or
  - (b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (6).

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(6) The following are the conditions that an entity referred to in subsection (1) must satisfy for the purposes of subsection (4):

1. Before commencing an activity described in subsection (1), the entity must,
  - i. subject to subsection (7), give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry, and
  - ii. subject to subsection (8), prepare a mitigation plan in accordance with subsections (9) and (10) to identify the steps that will be taken,
    - A. to minimize the adverse effects of the activity on the species identified in the notice of activity form, and
    - B. to monitor the effectiveness of the steps referred to in sub-subparagraph A.
2. The notice of activity form shall include,
  - i. a description of the activity,
  - ii. the proposed start and end dates for the activity,
  - iii. the location at which the activity will be carried out, and
  - iv. a list of all the species that are listed on the Species at Risk in Ontario List as endangered or threatened species and that will be affected by the activity.
3. The entity must follow the requirements set out in section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
4. While carrying out the activity, the entity must,
  - i. comply with the requirements of the mitigation plan, and
  - ii. ensure that reasonable steps are taken to minimize the adverse effects of the activity on the species identified in the notice of activity form, including the steps described in subsection (12), and such other steps as may be described in the mitigation plan.
5. The entity must,
  - i. retain a copy of the mitigation plan until at least five years after the activity is complete,
  - ii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it, and
  - iii. ensure that the mitigation plan is updated in accordance with subsections (9) and (10) at least once every five years to include information obtained while monitoring the effects of the activity under paragraph 6.
6. While carrying out the activity, the entity shall ensure that the following is monitored:
  - i. the effects of the activity on each species identified in the notice, and



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- ii. the effectiveness of the steps taken to minimize adverse effects on each species.
7. Within 180 days of the completion of the activity, the entity must prepare a report in accordance with subsection (13) and thereafter the entity must,
- i. retain a copy of the report for at least five years after it is prepared, and
  - ii. provide a copy of the report to the Ministry within 14 days of receiving a request for it.
8. If an employee or agent of the entity observes a species identified in the notice of activity form in the course of carrying out the activity, the entity must ensure that the employee or agent, within three months of the observation, completes the Natural Heritage Information Centre Rare Species Reporting Form available on the Ministry website detailing the species and number of individual members that were observed, the date and location of observation and any other information requested on the form.
- (7) If a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species first appears in an area in which an entity is carrying out an activity described in subsection (1) after the activity is commenced, the notice of activity form required under subparagraph 1 i of subsection (6) may, for the purposes of subsections (4) and (5), be provided after a member of the species is killed, harmed, harassed, captured or taken, or its habitat is damaged or destroyed, so long as the entity submits the notice of activity form to the Minister in accordance with subparagraph 1 i of subsection (6) as soon as is reasonably possible after the date the species first appears, and in no case later than 30 days after that date.
- (8) If a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species first appears in an area in which an entity is carrying out an activity described in subsection (1) after the activity is commenced, and the activity is likely to continue thereafter for at least another 60 days, the entity is not required to complete the preparation of a mitigation plan relating to that species until 60 days after the day the species first appeared in the area.
- (9) A mitigation plan shall be prepared and updated by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available.
- (10) A mitigation plan shall include the following information:
- 1. The following information with respect to the activity identified in the notice of activity form submitted under subparagraph 1 i of subsection (6) that an entity referred to in subsection (1) proposes to carry out:
    - i. a description of the activity and its purpose,
    - ii. the proposed start and completion dates of the activity,
    - iii. a description of all of the stages of the activity and a timeline for the stages, and

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- iv. a map indicating the geographic location of the property on which the activity will occur.
  - 2. A list of species that are listed on the Species at Risk in Ontario List as endangered or threatened species that will likely suffer adverse effects as a result of the activity and an assessment of those effects on the local population of each species.
  - 3. With respect to each species identified under paragraph 2, a written opinion prepared by a person with expertise in relation to the species and stating that the activity is not likely to have an enduring adverse effect on a local population of the species, and in particular will not have either of the following adverse effects:
    - i. An overall decrease in the number of members of a local population of the species over the period of time commencing on the date the person gives notice, and ending on the earlier of,
      - A. the end of the period of time it is expected to take three generations of the species to be born and die off after the date the notice is given, and
      - B. ten years after the date the person gives notice.
    - ii. The elimination of conditions that are necessary to allow members of a local population of the species to move through an area that,
      - A. is contiguous to the area that is the habitat of that local population and to areas that are the habitat of one or more other local populations of the species, and
      - B. provides conditions that are suitable for foraging, dispersal or migration.
  - 4. Detailed plans on the steps an entity referred to in subsection (1) will take during the activity to minimize the adverse effects on the species identified under paragraph 2, including,
    - i. details of the steps described in subsection (12), including the times, locations and methods applicable to each step,
    - ii. the times during the year at which a species identified under paragraph 2 is likely to be carrying out a life process related to hibernation or reproduction, including rearing, and at which activities that are likely to kill, harm or harass a member of the species should not be carried out.
  - 5. Details regarding the steps an entity referred to in subsection (1) will ensure are taken to monitor the effects of the activity on members of the species identified under paragraph 2 and the effectiveness of steps taken to minimize adverse effects on the species.
- (11) In paragraph 3 of subsection (10),
- “local population”, with respect to a species, means a geographically distinct group of the species that has little demographic or genetic exchange with other groups of the species in Ontario.
- (12) The following are the steps that an entity referred to in subsection (1) must take to minimize the adverse effects of the activity described in the notice of activity form submitted

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under subparagraph 1 i of subsection (6) on the species identified in the form:

1. The entity must ensure that the activity is carried out by or under the supervision of a person with expertise in the type of ecological conservation work involved in the activity.
2. The entity must ensure that the entity's employees, agents and contractors receive training on the following subjects before carrying out any part of the activity that is likely to affect the species identified in the form:
  - i. a list of the species identified in the form that are present in the area where the activity is carried out,
  - ii. how to identify the species and their habitat,
  - iii. potential threats posed to the species and their habitat by the activity, and
  - iv. the steps that must be taken under paragraphs 3 to 14 to minimize adverse effects of the activity on individual members of the species.
3. The entity must ensure that a person acting on its behalf takes reasonable steps to avoid killing, harming or harassing members of a species identified in the form during a time of year when the species are likely to be carrying out a life process related to hibernation or reproduction, including rearing.
4. The entity must ensure that reasonable steps are taken to control erosion and sediment, and to stabilize banks, in any area of water affected by the activity if,
  - i. the area is the habitat of a species identified in the form, or
  - ii. a member of a species referred to in subparagraph i is likely to be present in the area.
5. If carrying out the activity would pose a risk to members of a species identified in the form who might enter the area of the activity, the entity must ensure that reasonable steps are taken to prevent the members of the species from entering the area, including, if appropriate, installing temporary fencing around the area.
6. The entity must ensure that, if a person carrying out the activity encounters an animal that is a member of a species identified in the form in the course of carrying out the activity, the person ceases carrying out the activity in the area of the encounter and provides the animal with a reasonable amount of time to leave the area before continuing the activity.
7. If, after providing an animal with a reasonable amount of time in accordance with paragraph 6 the animal does not leave the area, the person must take measures to relocate the animal to a nearby location that is suitable and safe for the animal.
8. If a person carrying out the activity encounters a moss, lichen or vascular plant that is a member of the species in the course of carrying out the activity and it is not necessary to kill or harm the member for the purpose of carrying out the activity, the entity must ensure that the person,
  - i. ceases the activity in the area of the encounter,

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- ii. installs and maintains barriers or other structures to create a protective zone around the species, and
- iii. after establishing the protective zone referred to in subparagraph ii, continues the activity in a manner that does not impair the ability of the species to carry out its life processes, including reproduction.
9. If it is necessary to kill or harm a moss, lichen or vascular plant referred to in paragraph 8 for the purpose of carrying out the activity, the entity must ensure that the person carrying out the activity relocates the moss, lichen or vascular plant to a nearby location within the species' habitat that is suitable and safe for the species so that it is not killed or harmed, provided it is feasible to do so.
10. The determination under paragraph 9 as to whether it is feasible to relocate a moss, lichen or vascular plant must be made by the entity using the best available information with respect to the suitability of relocating that species, including information obtained from the Ministry.
11. The relocation of an animal or of a moss, lichen or vascular plant in accordance with paragraph 7 or 9 must be undertaken by, or in consultation with, a person who is knowledgeable about, or has training in, the handling of the species.
12. If a member of a species is relocated in accordance with paragraph 7 or 9, the entity, or a person carrying out the activity on the entity's behalf, must not possess the member for longer than is necessary to carry out the relocation, and in no case longer than seven days.
13. If the activity is carried out in only a part of the habitat of a species identified in the form, the entity must ensure that steps are taken to avoid impairing the ability of members of the species to move within and between other parts of the habitat that the species depends on to carry out life processes related to hibernation or reproduction, including rearing.
14. The entity must ensure that reasonable steps are taken to avoid the spread of disease,
- i. among the species identified in the notice, and
  - ii. between the species identified in the notice and any other species.
- (13) The report referred to in paragraph 7 of subsection (6) must include,
- (a) a description of the reasonable steps taken by the person carrying out the activity described in the notice of activity form submitted under subparagraph 1 i of subsection (6) to minimize the adverse effects of the activity on the species identified in the notice of activity form, including the locations in which, and times at which, the steps were taken, the methods according to which the steps were taken and an assessment of the effectiveness of those steps; and
  - (b) a summary of the results of the activity, including a detailed assessment of the extent to which the activity assisted with protecting, maintaining, enhancing or restoring the ecosystem native to Ontario that was the object of the activity, with recommendations for how similar activity may be conducted in the future.

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**Hydro-electric generating stations**

**23.12** (1) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who is engaged in the operation of a hydro-electric generating station and who, in the course of operating the station, kills, harms, harasses, captures or takes a member of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, or damages or destroys the habitat of such a species, if the person satisfies the following conditions:

1. Before doing anything, in the course of operating the hydro-electric generating station, that is prohibited under clause 9 (1) (a) or subsection 10 (1) of the Act,
  - i. the person must give the Minister notice of the fact that the person is operating a hydro-electric generating station by submitting a notice of activity form available on the Registry to the Minister through the Registry, and
  - ii. subject to subsection (2), prepare in accordance with subsection (3) a mitigation plan that meets the requirements of subsection (4).
2. The person must ensure that the notice of activity form includes,
  - i. the location of the hydro-electric generating station, and
  - ii. the name of every species listed on the Species at Risk in Ontario List as an endangered or threatened species that will likely be affected by the operation of the hydro-electric generating station.
3. The person must follow the requirements of section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
4. While operating the hydro-electric generating station, the person must,
  - i. comply with the requirements of the mitigation plan,
  - ii. take reasonable steps to minimize the adverse effects of the operation of the hydro-electric generating station on the species identified in the notice of activity form, including the steps described in subsection (5) and such other steps as may be described in the mitigation plan.
5. The person must,
  - i. retain a copy of the mitigation plan while operating the hydro-electric generating station and for a period of five years after the person ceases to operate the station,
  - ii. ensure that the plan is updated in accordance with subsection (3) at least once every five years to include information obtained while carrying out the monitoring requirements described in paragraph 6, and
  - iii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it.
6. The person must monitor the effects that the operation of the station has on the species identified in the notice of activity form and the effectiveness of the mitigation plan.

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7. On or before December 31 of each year, the person must prepare an annual report in accordance with subsection (6) on the effects that the operation of the station has on the species identified in the notice of activity form and the person must,
    - i. retain a copy of the annual report for at least five years after it is prepared, and
    - ii. provide a copy of the annual report to the Ministry within 14 days of receiving a request for it.
  8. If the person, or an employee or agent of the person, observes a species identified in the notice of activity form in the vicinity of the station in the course of operating the station, the person must ensure that, within three months of the observation, the Natural Heritage Information Centre Rare Species Reporting Form available on the Ministry website is completed, detailing the species and number of individual members that were observed, the date and location of observation and any other information requested on that form.
- (2) A person who operates a hydro-electric generating station is not required to complete the preparation of a mitigation plan until the following dates if the following circumstances apply:
1. If the mitigation plan relates to a species that was added to the Species at Risk in Ontario List as an endangered or threatened species on January 24, 2013, the third anniversary of that day.
  2. If the mitigation plan relates to a species that first appears in the area of the hydro-electric generating station after the station begins operation, three years after the date the species first appears in the area of the station.
- (3) A mitigation plan shall be prepared and updated by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available.
- (4) A mitigation plan shall include the following information:
1. The name and contact information of the person who operates the hydro-electric generating station.
  2. A map indicating the geographic location of the hydro-electric generating station and any associated structures.
  3. A list of the species that are identified in the notice of activity form submitted under paragraph 1 of subsection (1) and that are the subject of the mitigation plan.
  4. A description of the adverse effects that the operation of the hydro-electric generating station may have on the species referred to in paragraph 3, including effects,
    - i. on the ability for the members of the species to carry out their life processes, including migration and spawning, and
    - ii. on areas that are habitat of the species.
  5. Details on how the person will carry out the steps described in subsection (5) to

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minimize the adverse effects of the operation of the hydro-electric generating station on the species referred to in paragraph 3, including the dates on which, and locations at which, each step will be carried out.

6. A description of the reasonable steps the person will carry out to minimize the adverse effects of the operation of the station on the species referred to in paragraph 3 in addition to the steps described in subsection (5), including a description of,
  - i. steps the person will take to avoid killing, harming or harassing individual members of the species or damaging or destroying habitat,
  - ii. actions that are necessary to help provide suitable conditions to enable the members of the species to carry out the life processes that are adversely affected by the station, including spawning, attraction, hibernation, nesting and migration or if such actions are not feasible, provide the reasons why they are not feasible at this time,
  - iii. if the operation of the station results in the damage or destruction of the habitat of the species, measures to replace or restore habitat in a suitable area for the species,
  - iv. training that will be provided to all employees, agents and contractors that are likely to encounter members of the species while performing their duties, in order to satisfy the obligations under this section, and
  - v. steps the person will take if an individual member of the species is encountered or injured in the vicinity of the station.

7. A description of the steps the person will take to monitor the effects of the operation of the station on the species referred to in paragraph 3 and the effectiveness of the actions set out in the mitigation plan.

(5) The following are the steps that a person must take to minimize the adverse effects of the operation of a hydro-electric generating station on a species identified in a notice of activity form submitted under paragraph 1 of subsection (1):

1. The person must inform all employees, agents and contractors conducting activities at the station that members of the species are present at or near the station and of the steps required under paragraphs 2 to 4.
2. If the species uses nests or hibernacula or other terrestrial features to carry out its life processes, the person must, before and during the period of time when the species is likely to require the terrestrial features to carry out its life process,
  - i. install and maintain barriers or other structures to create a protective zone around the terrestrial features and to protect the terrestrial features and limit the adverse effects that may be caused by the operation of the station, and
  - ii. make adjustments to the operation of the station so as to minimize the adverse effects of the operation of the station on the terrestrial features and the species' life processes.
3. The person must, if feasible, undertake maintenance activities of the station at such

**00113** times and in such a manner as to minimize the impact of such activities on the species and must, if feasible, select maintenance activities that may have a benefit to the species and carry them out in a manner that may have a benefit to the species.

4. If, in carrying out the steps required under the person's mitigation plan, it is necessary to capture, take, possess or transport a member of the species, such actions must be undertaken by, or in consultation with, a person who is knowledgeable about, or has training in, the handling of the species.

5. If the person discovers that the steps described in paragraphs 1 to 4 or in the mitigation plan have not been effective in minimizing the adverse effects of the operation of the station on the species, the person shall,

- i. take such actions as are necessary to increase the effectiveness of those steps, or
- ii. take such other reasonable steps as may be necessary to minimize the adverse effects of the operation of the station on the species.

(6) The annual report required under paragraph 7 of subsection (1) shall include,

- (a) the steps taken by the person who operates the hydro-electric generating station to minimize adverse effects of the station on the species identified in the notice of activity form submitted under paragraph 1 of subsection (1) and an assessment of their effectiveness;
- (b) information collected during the monitoring referred to in paragraph 6 of subsection (1);
- (c) records of any activities carried out in accordance with the mitigation plan; and
- (d) details of any encounters with members of the species identified in the notice of activity form submitted under paragraph 1 of subsection (1).

(7) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

- (a) pursuant to subsection (1), clause 9 (1) (a) of the Act did not apply with respect to the member of the species; or
- (b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (1).

(8) This section does not apply to a person who operates a hydro-electric generating station and who, pursuant to section 11, is exempt from clause 9 (1) (a) and subsection 10 (1) of the Act.

(9) This section does not apply to the following species:

1. Hungerford's Crawling Water Beetle.
2. Pygmy Snaketail.

(10) This section does not apply to the person who operates the R.H. Saunders Station on the St. Lawrence River near Cornwall in respect of American eel.

**Newly-listed and transition species — development**



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**23.13 (1)** In this section,

“effective date” means,

- (a) with respect to a newly-listed species, January 24, 2013, and
- (b) with respect to a transition species, June 30, 2013, being the date on which clause 10 (1) (a) of the Act begins to apply to transition species; (“date d’effet”)

“newly-listed species” means a species that was listed on the Species at Risk in Ontario List as an endangered or threatened species for the first time on January 24, 2013; (“espèce nouvellement inscrite”)

“transition species” means a species that is listed in Schedule 3 or 4 to the Act and to which clause 10 (1) (a) of the Act does not apply until June 30, 2013. (“espèce touchée par des mesures transitoires”)

(2) Subsections (5) to (15) apply with respect to the following activities that have an adverse effect on a transition species or a newly-listed species and that are commenced within the following time periods in relation to the species’ effective date:

1. Constructing drainage works under an agreement filed under subsection 2 (2) of the *Drainage Act* if,
  - i. the agreement is filed before the effective date or within two years after that date, and
  - ii. the construction is commenced before the effective date or it is commenced after the effective date but no later than,
    - A. in a case relating to a newly-listed species,
      1. the fifth anniversary of the day the agreement is filed, where the agreement is filed on or after June 30, 2010, or
      2. June 30, 2015 where the agreement was filed before June 30, 2010, or
    - B. in a case relating to a transition species, June 30, 2015.
2. Constructing drainage works in respect of which an engineer’s report was adopted under subsection 45 (1) of the *Drainage Act* if,
  - i. the report is adopted before the effective date or within two years after that date, and
  - ii. the construction is commenced before the effective date or it is commenced after the effective date but no later than,
    - A. in a case relating to a newly-listed species,
      1. the fifth anniversary of the day the report is adopted where the report is adopted on or after June 30, 2010, or
      2. June 30, 2015 where the report was adopted before June 30, 2010, or
    - B. in a case relating to a transition species, June 30, 2015.

00115. Laying down highways and lots upon the ground within a plan of subdivision under the authority of subsection 51 (57) of the *Planning Act* if,
- i. the draft plan of subdivision is approved under the *Planning Act* before the effective date or within two years after that date, and
  - ii. the laying down of highways and lots is commenced before the effective date or it is commenced after that date but no later than,
    - A. in a case relating to a newly-listed species,
      1. the fifth anniversary of the day the draft plan of subdivision is approved where the draft plan of subdivision is approved on or after June 30, 2010, or
      2. June 30, 2015 where the draft plan of subdivision was approved before June 30, 2010, or
    - B. in a case relating to a transition species, June 30, 2015.
4. Development of land within a plan of subdivision approved under the *Planning Act*, including a plan of subdivision registered under the *Registry Act* or the *Land Titles Act* if,
- i. the land is within a draft plan of subdivision approved under the *Planning Act* before the effective date or within two years after that date,
  - ii. the development is commenced before the effective date or is commenced after that date but no later than,
    - A. in a case relating to a newly-listed species,
      1. the fifth anniversary of the day the draft plan of subdivision is approved where the draft plan of subdivision is approved on or after June 30, 2010, or
      2. June 30, 2015 where the draft plan of subdivision was approved before June 30, 2010, or
    - B. in a case relating to a transition species, June 30, 2015,
  - iii. the approval of the plan of subdivision has not lapsed, and
  - iv. the development is not prohibited by any zoning by-law passed under subsection 34 (1) of the *Planning Act* or by any order made under section 47 of that Act.
5. Development in an area designated as a site plan control area under subsection 41 (2) of the *Planning Act* and in respect of which appropriate approvals have been obtained under subsection 41 (4) of that Act if,
- i. the appropriate approvals are obtained under the *Planning Act* before the effective date or within two years after that date, and
  - ii. the development is commenced before the effective date or after that date but no later than,
    - A. in a case relating to a newly-listed species,

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1. the fifth anniversary of the day the approvals are obtained where the approvals are obtained on or after June 30, 2010, or
  2. June 30, 2015 where the approvals were obtained before June 30, 2010, or
- B. in a case relating to a transition species, June 30, 2015.
6. Development that is authorized by a development permit issued under Ontario Regulation 608/06 (Development Permits) made under the *Planning Act* after 2005 if,
- i. the development permit is issued before the effective date or within two years after that date, and
  - ii. the development is commenced before the effective date or is commenced after that date but no later than,
- A. in a case relating to a newly-listed species,
1. the fifth anniversary of the day the development permit is issued where the development permit is issued on or after June 30, 2010, or
  2. June 30, 2015 where the development permit was issued before June 30, 2010, or
- B. in a case relating to a transition species, June 30, 2015.
7. Development of a unit within the meaning of the *Condominium Act, 1998*, including a unit in respect of which a declaration and description are registered under the *Land Titles Act*, in respect of which a declaration and description are approved or exempted under section 9 of the *Condominium Act, 1998* if,
- i. the declaration and description are approved or exempted before the effective date or within two years after that date, and
  - ii. the development is commenced before the effective date or is commenced after that date but no later than,
- A. in a case relating to a newly-listed species,
1. the fifth anniversary of the day the declaration and description are approved or exempted where the declaration and description are approved or exempted on or after June 30, 2010, or
  2. June 30, 2015 where the declaration and description were approved or exempted before June 30, 2010, or
- B. in a case relating to a transition species, June 30, 2015,
- iii. the approval or exemption has not lapsed, and
  - iv. the development is not prohibited by any zoning by-law passed under subsection 34 (1) of the *Planning Act* or by any order made under section 47 of that Act.
8. Carrying out an undertaking in respect of which approval to proceed was given under Part II of the *Environmental Assessment Act* if,

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- i. the approval to proceed is given before the effective date or within two years after that date, and
  - ii. the undertaking is commenced before the effective date or is commenced after that date but no later than,
    - A. in a case relating to a newly-listed species,
      1. the fifth anniversary of the day the approval to proceed is given where the approval to proceed is given on or after June 30, 2010, or
      2. June 30, 2015 where the approval to proceed was given before June 30, 2010, or
    - B. in a case relating to a transition species, June 30, 2015.
9. Carrying out an undertaking to which a class environmental assessment approved under Part II.1 of the *Environmental Assessment Act* applies and in respect of which the requirements that are necessary to proceed with the undertaking under the class environmental assessment have been satisfied if,
- i. the requirements are satisfied before the effective date or within two years after that date, and
  - ii. the undertaking is commenced before the effective date or is commenced after that date but no later than,
    - A. in a case relating to a newly-listed species,
      1. the fifth anniversary of the day the requirements to proceed with the undertaking are satisfied where they are satisfied on or after June 30, 2010, or
      2. June 30, 2015 where the requirements to proceed with the undertaking were satisfied before June 30, 2010, or
    - B. in a case relating to a transition species, June 30, 2015.
10. Carrying out a transit project, as defined in subsection 1 (1) of Ontario Regulation 231/08 (Transit Projects and Metrolinx Undertakings) made under the *Environmental Assessment Act*, in respect of which the Minister has given a notice to proceed with the transit project under clause 12 (1) (a) or (c) of Ontario Regulation 231/08 if,
- i. the notice is given before the effective date or within two years after that date, and
  - ii. the transit project is commenced before the effective date or is commenced after that date but no later than,
    - A. in a case relating to a newly-listed species,
      1. the fifth anniversary of the day the notice is given where the notice is given on or after June 30, 2010, or
      2. June 30, 2015 where the notice was given before June 30, 2010, or

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B. in a case relating to a transit species, June 30, 2015.

11. Carrying out an undertaking that is designated as an undertaking to which the *Environmental Assessment Act* applies under Ontario Regulation 116/01 (Electricity Projects) made under that Act, that is required under that regulation to be carried out in accordance with the Environmental Screening Process described in that regulation and in respect of which all the requirements of the Environmental Screening Process that are necessary to proceed with the undertaking have been satisfied if,

- i. the requirements are satisfied before the effective date or within two years of that date, and
- ii. the undertaking is commenced before the effective date or is commenced after that date but no later than,

A. in a case relating to a newly-listed species,

1. the fifth anniversary of the day the requirements to proceed with the undertaking are satisfied where they are satisfied on or after June 30, 2010, or
2. June 30, 2015 where the requirements to proceed with the undertaking were satisfied before June 30, 2010, or

B. in a case relating to a transition species, June 30, 2015.

12. Carrying out an undertaking that is designated as an undertaking to which the *Environmental Assessment Act* applies under Ontario Regulation 101/07 (Waste Management Projects) made under that Act, that is required under that regulation to be carried out in accordance with the Environmental Screening Process for Waste Management Projects described in that regulation and in respect of which all the requirements of the Environmental Screening Process for Waste Management Projects that are necessary to proceed with the undertaking have been satisfied if,

- i. the requirements are satisfied before the effective date or within two years of that date, and
- ii. the undertaking is commenced before the effective date or is commenced after that date but no later than,

A. in a case relating to a newly-listed species,

1. the fifth anniversary of the day the requirements to proceed with the undertaking are satisfied where they are satisfied on or after June 30, 2010, or
2. June 30, 2015 where the requirements to proceed with the undertaking were satisfied before June 30, 2010, or

B. in a case relating to a transition species, June 30, 2015.

13. Constructing a hydrocarbon line or station under the authority of an order made under Part VI of the *Ontario Energy Board Act, 1998* if,

- i. the order is made before the effective date or within two years after that date,

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and

- ii. the construction is commenced before the effective date or is commenced after that date but no later than,
  - A. in a case relating to a newly-listed species,
    - 1. the fifth anniversary of the day the order is made, where the order is made on or after June 30, 2010, or
    - 2. June 30, 2015, where the order was made before June 30, 2010, or
  - B. in a case relating to a transition species, June 30, 2015.
- 14. Constructing a renewable energy generation facility under the authority of, and in accordance with, a renewable energy approval issued under Part V.0.1 of the *Environmental Protection Act* if,
  - i. the approval is issued before the effective date or within two years after that date, and
  - ii. the construction is commenced before the effective date or is commenced after that date but no later than,
    - A. in a case relating to a newly-listed species,
      - 1. the fifth anniversary of the day the approval is issued, where the approval is issued on or after June 30, 2010, or
      - 2. June 30, 2015, where the approval was issued before June 30, 2010, or
    - B. in a case relating to a transition species, June 30, 2015.
- 15. An activity described in section 3 of Ontario Regulation 350/12 (Registrations under Part II.2 of the Act — Solar Facilities) made under the *Environmental Protection Act* in respect of which a confirmation of registration has been provided under section 20.22 of that Act by the Director appointed under section 5 of that Act if,
  - i. the confirmation of registration is provided before the effective date or within two years of that date, and
  - ii. the activity is commenced before the effective date or is commenced after that date but no later than,
    - A. in a case relating to a newly-listed species,
      - 1. the fifth anniversary of the day the confirmation of registration is provided, where the confirmation of registration is provided on or after June 30, 2010, or
      - 2. June 30, 2015, where the confirmation of registration was provided before June 30, 2010, or
    - B. in a case relating to a transition species, June 30, 2015.
- 16. Advanced exploration carried out under Part VII of the *Mining Act* in respect of which the Director of Mine Rehabilitation has issued a written acknowledgement of

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receipt of a certified closure plan under subsection 140 (5) of that Act or a written acknowledgement of receipt of amendments to a certified closure plan under subsection 143 (8) of that Act if,

- i. the written acknowledgement is received before the effective date or within two years of that date, and
- ii. advanced exploration is commenced before the effective date or is commenced after that date but no later than,

A. in a case relating to a newly-listed species,

1. the fifth anniversary of the day the written acknowledgement is received where it is received on or after June 30, 2010, or
2. June 30, 2015, where the written acknowledgement was received before June 30, 2010, or

B. in the case of a transition species, June 30, 2015.

17. Mine production carried out under Part VII of the *Mining Act* in respect of which the Director of Mine Rehabilitation has issued a written acknowledgement of receipt of a certified closure plan under clause 141 (4) (a) of that Act or a written acknowledgement of receipt of amendments to a certified closure plan under subsection 143 (8) of that Act if,

- i. the written acknowledgement is received before the effective date or within two years of that date, and
- ii. mining production is commenced before the effective date or is commenced after that date but no later than,

A. in a case relating to a newly-listed species,

1. the fifth anniversary of the day the written acknowledgement is received where it is received on or after June 30, 2010, or
2. June 30, 2015, where the written acknowledgement was received before June 30, 2010, or

B. in the case of a transition species, June 30, 2015.

18. Rehabilitation of a mine hazard in compliance with a certified closure plan filed pursuant to an order made under subsection 147 (1) of the *Mining Act* if,

- i. the certified closure plan is filed before the effective date or within two years of that date, and
- ii. rehabilitation of the mine hazard is commenced before the effective date or is commenced after that date but no later than,

A. in a case relating to a newly-listed species,

1. the fifth anniversary of the day the certified closure plan is filed where it is filed on or after June 30, 2010, or
2. June 30, 2015, where the certified closure plan was filed before June

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30, 2010, or

B. in the case of a transition species, June 30, 2015.

19. Voluntary rehabilitation of a mine hazard that was approved by the Director of Mine Rehabilitation under section 139.2 of the *Mining Act* if,

- i. the written approval of the Director was granted before the effective date or within two years of that date, and
- ii. the voluntary rehabilitation of the mine hazard is commenced before the effective date or is commenced after that date but no later than,

A. in a case relating to a newly-listed species,

1. the fifth anniversary of the day the approval is granted where it is granted on or after June 30, 2010, or
2. June 30, 2015, where the approval was granted before June 30, 2010, or

B. in the case of a transition species, June 30, 2015.

(3) The carrying out of an undertaking referred to in paragraph 8, 9 or 11 of subsection (2) does not include the operation of a hydro-electric generating station or the operation of a wind facility within the meaning of Ontario Regulation 359/09 (Renewable Energy Approvals under Part V.0.1 of the Act) made under the *Environmental Protection Act*.

(4) Despite anything in subsection (2), subsections (5) to (15) do not apply to an activity described in section 23.4 in respect of a species listed in the Schedule to that section.

(5) Subsection 10 (1) of the Act does not apply to a person who, while engaging in an activity described in subsection (2), damages or destroys the habitat of a newly-listed species or transition species if the conditions set out in subsection (7) are satisfied.

(6) Clause 9 (1) (a) of the Act does not apply to a person who, while engaging in an activity described in subsection (2), kills, harms, harasses, captures or takes a member of a newly-listed species if the conditions set out in subsection (7) are satisfied.

(7) The following are the conditions that a person carrying out an activity described in subsection (2) must satisfy for the purposes of the exemptions set out in subsections (5) and (6):

1. The person must give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry.
2. The person must ensure that the notice of activity form includes;
  - i. a description of the activity the person is carrying out or is proposing to carry out,
  - ii. a statement that the activity has already commenced or the date the activity will commence,
  - iii. the location at which the activity is being carried out or will be carried out, and
  - iv. the name of every newly-listed or transition species that will be affected by the activity.



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3. The person must give notice under paragraph 1,
  - i. promptly after June 30, 2013, if the activity has already commenced on that date, or
  - ii. before the activity is commenced, if the activity has not commenced on or before June 30, 2013.
4. The person must follow the requirements of section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
5. While carrying out the activity, the person must take reasonable steps to minimize the adverse effects of the activity on each species identified in the notice of activity form, including those steps identified in subsection (8).
6. The person must,
  - i. ensure that a mitigation plan is prepared in accordance with subsections (9) and (10),
  - ii. subject to subsection (11), ensure that the mitigation plan referred to in subparagraph i is prepared within two years of the day a notice of activity form is submitted to the Minister under paragraph 1 and before the person begins to take steps to restore, create or enhance habitat as required under paragraph 10 of subsection (8), and
  - iii. in the case of a person described in subsection (11), ensure that the conditions set out in subsection (12) are satisfied.
7. After a mitigation plan is prepared, the person must,
  - i. carry out the activity in accordance with the mitigation plan,
  - ii. ensure that the mitigation plan is updated in accordance with subsections (9) and (10) at least once every five years to include information obtained while monitoring the effects of the activity under paragraph 8.
  - iii. retain a copy of the mitigation plan until at least five years after the activity is complete, and
  - iv. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it.
8. The person must,
  - i. monitor the effects of the activity on the species identified in the notice of activity form until the day the activity is complete,
  - ii. monitor the effectiveness of steps described in paragraphs 1 to 9 of subsection (8) that are taken to minimize adverse effects of the activity on the species until the day those steps are complete, and
  - iii. monitor the effectiveness of the steps taken to restore, create or enhance habitat under paragraph 10 of subsection (8) until 12 months after those steps are completed.

- 00123** 9. On or before December 31 of each year in which the activity is carried out and in which the person is required under paragraph 8 to monitor the effectiveness of any steps taken to minimize adverse effects of the activity, the person must prepare an annual report in accordance with subsection (14) and thereafter the person must,
- i. retain a copy of the annual report for at least five years after it is prepared, and
  - ii. provide a copy of the annual report to the Ministry within 14 days of receiving a request for it.
10. If the person or an employee or agent of the person observes a species identified in the notice of activity form in the course of carrying out the activity, the person must ensure that, within three months of the observation, the Natural Heritage Information Centre Rare Species Reporting Form available on the Ministry website is completed, detailing the species and number of individual members that were observed, the date and location of the observation and any other information requested on that form.
- (8) The following are the steps that a person must take to minimize adverse effects of an activity described in a notice of activity form submitted under paragraph 1 of subsection (7) on a species identified in the notice of activity form:
1. The person shall take steps to minimize or avoid the killing, harming or harassing of members of the species during a time of year when the species is likely to be carrying out a life process related to hibernation or reproduction, including rearing.
  2. The person must not carry out any part of the activity in an area while it is being used by a member of the species to carry out a life process related to hibernation or reproduction, including rearing.
  3. The person shall take steps to exclude animals that are members of the species from an area in which the activity is occurring or is likely to occur, such as installing temporary fencing to prevent members of the species from accessing the area.
  4. If the person encounters an animal that is a member of the species in the course of carrying out the activity, the person must cease carrying out the activity and provide the animal with a reasonable amount of time to leave the area in which the activity is occurring before continuing with the activity.
  5. If, after providing an animal with a reasonable amount of time in accordance with paragraph 4 the animal does not leave the area, the person must take measures to relocate the animal to a nearby location that is suitable and safe for the animal.
  6. If the person encounters a moss, lichen or vascular plant that is a member of the species in the course of carrying out the activity and it is not necessary to kill or harm the member for the purpose of carrying out the activity, the person must,
    - i. cease the activity in the area of the encounter,
    - ii. install and maintain barriers to create a protective zone around the species, and
    - iii. after establishing the protective zone referred to in subparagraph ii, continue the activity in a manner that does not impair the ability of the species to carry out its life processes, including reproduction.

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7. If it is necessary to kill or harm a moss, lichen or vascular plant for the purpose of carrying out the activity, the person must relocate the moss, lichen or vascular plant to a nearby location within the species' habitat that is suitable and safe for the species so that it is not killed or harmed, provided it is feasible to do so.
  8. The determination under paragraph 7 as to whether it is feasible to relocate a moss, lichen or vascular plant must be made by the person using the best available information with respect to the suitability of relocating that species, including information obtained from the Ministry.
  9. The relocation of an animal or of a moss, lichen or vascular plant in accordance with paragraph 5 or 7 must be undertaken by, or in consultation with, a person who is knowledgeable about, or has training in, the handling of the species.
  10. Within two years of the day the person submitted the notice of activity form to the Minister under paragraph 1 of subsection (7), the person shall begin to take steps to,
    - i. restore any habitat of the species that is damaged or destroyed by the activity, to the extent that it is feasible to do so, or
    - ii. create habitat for the species or enhance any existing habitat for the species in an area that is in the same ecoregion as the habitat that was damaged or destroyed by the activity and in a manner that minimizes the overall loss of habitat for the species resulting from the activity.
  11. The person must not carry out any part of the activity in an area that is being used, or has been used at any time in the previous three years, by woodland caribou (forest-dwelling boreal population) to carry out a life process related to reproduction, including rearing.
- (9) A mitigation plan must be prepared and updated by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available.
- (10) A mitigation plan prepared in respect of an activity described in subsection (2) must include the following information:
1. The following information with respect to the activity:
    - i. a description of the activity,
    - ii. the proposed start and completion dates of the activity,
    - iii. a description of all of the stages of the activity and a timeline for the stages, and
    - iv. a map indicating the geographic location of the property on which the activity will occur.
  2. A list of the newly-listed species or transition species that will likely suffer adverse effects as a result of the activity and an assessment of the activity's likely effects on the local population of each newly-listed or transition species.
  3. Details on the steps the person will take to minimize adverse effects of the activity on

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- i. a description of each step to be taken and the dates and locations at which the steps will be taken,
  - ii. the times during the year at which a species identified under paragraph 2 is likely to be carrying out a life process related to hibernation or reproduction, including rearing, and at which activities that are likely to kill, harm or harass a member of the species, or damage or destroy its habitat, must not be carried out.
4. Details regarding the monitoring the person plans to conduct to assess the effects of the activity on members of the species identified under paragraph 2 and the effectiveness of steps taken to minimize adverse effects on the species.

(11) A person who proposes to carry out an activity described in paragraph 14 of subsection (2) and who has not been issued a renewable energy approval under Part V.0.1 of the Environmental Protection Act on or before the effective date must prepare a mitigation plan in respect of the activity before either of the following days:

1. If the person has not submitted an application for a renewable energy approval under Part V.0.1 of the Environmental Protection Act on or before the effective date, the day the person submits the application.
2. If the person has submitted an application for a renewable energy approval under Part V.0.1 of the Environmental Protection Act on or before the effective date, the day the renewable energy approval is issued.

(12) A person who prepares a mitigation plan under subsection (11) shall ensure that the following conditions are satisfied:

1. The person must submit the mitigation plan to the Minister promptly after it is prepared.
2. The Minister must approve the mitigation plan, subject to subsection (13).
3. The person must receive written notice of the approval of the Minister.

(13) The Minister may refuse to approve a mitigation plan submitted under subsection (12) if, in his or her opinion,

- (a) the mitigation plan has not been prepared by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information; or
- (b) the steps set out in the mitigation plan may not be sufficient to,
  - (i) restore any habitat of the species that is damaged or destroyed by the activity, to the extent that it is feasible to do so,
  - (ii) create habitat for the species or enhance any existing habitat for the species in a manner that minimizes the overall loss of habitat for the species resulting from the activity, or
  - (iii) otherwise effectively minimize the adverse effects of the activity on the species.

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(14) An annual report referred to paragraph 9 of subsection (7) shall document, and assess the effectiveness of, the steps taken by the person in the previous 12 months to minimize adverse effects of an activity described in a notice of activity form submitted under paragraph 1 of subsection (7) on the newly-listed or transition species identified in the notice of activity form, including the locations where the steps were taken.

(15) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

- (a) pursuant to subsection (5) or (6), clause 9 (1) (a) or subsection 10 (1) of the Act did not apply with respect to the species or its habitat; or
- (b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (7).

(16) Subsection 10 (1) of the Act does not apply to a person who damages or destroys the habitat of a newly-listed or transition species while carrying out the undertaking described in the order made under section 3.2 of the *Environmental Assessment Act* and approved by Order in Council 2174/99 on December 8, 1999 with respect to hydroelectric facilities on the Mattagami River if the person satisfies the conditions set out in subsection (7).

(17) Clause 9 (1) (a) of the Act does not apply to a person who kills, harms, harasses, captures or takes a living member of a newly-listed species while carrying out the undertaking described in the order made under section 3.2 of the *Environmental Assessment Act* and approved by Order in Council 2174/99 on December 8, 1999 with respect to hydroelectric facilities on the Mattagami River if the person satisfies the conditions set out in subsection (7):

(18) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

- (a) pursuant to subsection (16) or (17), clause 9 (1) (a) or subsection 10 (1) of the Act did not apply with respect to the species or its habitat; or
- (b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (7).

(19) Clause 10 (1) (a) of the Act does not apply to a person who, after the effective date, damages or destroys the habitat of a transition species while carrying out an activity that is authorized by a permit issued under section 17 of the Act before June 30, 2013 if,

- (a) the permit is still in effect; and
- (b) the activity is carried out in accordance with the conditions of the permit.

#### **Pits and quarries**

**23.14** (1) This section applies with respect to a pit or quarry that,

- (a) is operated under the authority of a licence, wayside permit or aggregate permit issued under the *Aggregate Resources Act*; or
- (b) is located in an area in Ontario to which the *Aggregate Resources Act* does not apply and operated in accordance with the applicable zoning by-laws.

(2) This section does not apply with respect to the following species:

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1. Blue racer.

2. Butler's gartersnake.

3. Common five-lined skink (Carolinian population).

4. Henslow's sparrow.

5. Small-mouthed salamander.

6. Virginia mallow.

7. Yellow-breasted chat.

(3) Subject to subsection (5), clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who operates a pit or quarry and who, in the course of operating a pit or quarry, kills, harms, harasses, captures or takes a member of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, or damages or destroys the habitat of such a species, if,

- (a) in the case of a species that was listed on the Species at Risk in Ontario List as an endangered or threatened species before January 24, 2013, the pit or quarry began operations,
  - (i) before the day the species was listed on the Species at Risk in Ontario List as an endangered or threatened species, or
  - (ii) before the day the species first appeared on the site on which the pit or quarry is located; or
- (b) in the case of a species that was listed on the Species at Risk in Ontario List as an endangered or threatened species for the first time on January 24, 2013,
  - (i) the pit or quarry began operations before January 24, 2013,
  - (ii) the pit or quarry began operations before the day the species first appeared on the site on which the pit or quarry is located, or
  - (iii) the pit or quarry begins operations after January 24, 2013, so long as on or before January 24, 2015,
    - (A) an application for a licence, wayside permit or aggregate permit has been made under the *Aggregate Resources Act* in respect of the land comprising the pit and quarry, and
    - (B) the Ministry has given the applicant notice that the application complies with the requirements of the *Aggregate Resources Act*.

(4) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

- (a) pursuant to subsection (3), clause 9 (1) (a) and subsection 10 (1) of the Act did not apply with respect to the member of the species; or
- (b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (5).

(5) Subsection (3) does not apply unless the person referred to in that subsection satisfies

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the following conditions:

1. Before doing anything, in the course of operating the pit or quarry, that is prohibited under clause 9 (1) (a) or subsection 10 (1) of the Act in respect of a species to which subsection (3) applies, the person must,
  - i. give the Minister notice of the fact that the person is operating a pit or quarry by submitting a notice of activity form available on the Registry to the Minister through the Registry, and
  - ii. subject to subsection (6), prepare in accordance with subsection (7) a mitigation plan that meets the requirements of subsection (8).
2. The person must ensure that the notice of activity form includes,
  - i. the location of the pit or quarry, and
  - ii. the name of every species to which subsection (3) applies that will likely be affected by the operation of the pit or quarry.
3. The person must follow the requirements of section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
4. For as long as the operation of the pit or quarry is likely to adversely affect the species identified in the notice of activity form, the person must,
  - i. comply with the requirements of the mitigation plan,
  - ii. ensure that reasonable steps are taken to minimize the adverse effects of the activity on the species identified in the notice of activity form, including the steps described in subsection (9), and such other steps as may be described in the mitigation plan.
5. The person must,
  - i. retain a copy of the mitigation plan while operating the pit or quarry and for a period of five years after the person ceases to operate the pit or quarry,
  - ii. ensure that the plan is updated in accordance with subsections (7) and (8) at least once every five years to include information obtained while carrying out the monitoring requirements described in paragraph 6, and
  - iii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it.
6. The person must monitor the effectiveness of the steps taken to minimize the adverse effects of the operation of the pit or quarry on the species identified in the notice of activity form.
7. The person must,
  - i. on or before December 31 of each year, prepare an annual report in accordance with subsection (10) on the effects that the operation of the pit or quarry has on the species identified in the notice of activity form,

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- ii. retain a copy of the annual report for at least five years after it is prepared, and
- iii. provide a copy of the annual report to the Ministry within 14 days of receiving a request for it.

8. If the person or an employee or agent of the person observes a species identified in the notice of activity form in the course of carrying out the activity, the person must ensure that, within three months of the observation, the Natural Heritage Information Centre Rare Species Reporting Form available on the Ministry website is completed, detailing the species and number of individual members that were observed, the date and location of the observation and any other information requested on that form.

(6) A person who carries out an activity described in subsection (1) is not required to complete the preparation of a mitigation plan until the following dates if the following circumstances apply:

1. If the mitigation plan relates to a species that was added to the Species at Risk in Ontario List as an endangered or threatened species on January 24, 2013, the second anniversary of that day.
2. If the mitigation plan relates to a species that first appears on the site of the pit or quarry after the pit or quarry begins operation, two years after the date the species first appears on the site.

(7) A mitigation plan must be prepared and updated by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available.

(8) A mitigation plan must include the following information:

1. The name and contact information of the person who operates the pit or quarry.
2. A map indicating the geographic location of the pit or quarry.
3. A list of the species identified in a notice of activity form submitted under paragraph 1 of subsection (5) and that are the subject of the mitigation plan.
4. A description of the places within the pit or quarry that are the habitat of, or used by, the species identified under paragraph 3.
5. Details on how the person will carry out the steps described in subsection (9) that the person must take to minimize the adverse effects of the operation of the pit or quarry on the species referred to in paragraph 3, including,
  - i. the dates on which, and locations at which, each step will be carried out, and
  - ii. the dates during the year when the species is likely to be carrying out a life process related to hibernation or reproduction, including rearing, and during which the person must avoid killing, harming or harassing members of the species.
6. A description of the steps the person plans to take to minimize the adverse effects of the operation of the pit or quarry on the species identified under paragraph 3, in



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addition to the steps described in subsection (9), including a description of,

- i. the training that will be provided to employees, agents and contractors that are likely to encounter members of the species while performing their duties, in order to satisfy the obligations under this section,
  - ii. if the operation of the pit or quarry results in the damage or destruction of the habitat of the species, any measures to enhance or restore habitat for the species,
  - iii. the steps the person will take to avoid or minimize killing, harming or harassing members of the species or damaging or destroying habitat, in addition to the steps described in paragraph 1 of subsection (9), and
  - iv. the steps the person will take if a member of the species is encountered during the operation of the pit or quarry, in addition to the steps described in paragraphs 2, 3, 4, 5 and 6 of subsection (9).
7. A description of the steps the person will take to monitor the effectiveness of the steps taken to minimize the adverse effects of the operation of the pit or quarry on the species identified under paragraph 3.

(9) The steps that a person must take to minimize the adverse effects of the operation of a pit or quarry on a species identified in a notice of activity form submitted under paragraph 1 of subsection (5) are as follows:

1. The person must take steps to avoid or minimize killing, harming or harassing members of the species during a time of year when the species is likely to be carrying out a life process related to hibernation or reproduction, including rearing.
2. If the person encounters an animal that is a member of the species while operating the pit or quarry, the person must cease operations in the area of the encounter and provide the animal with a reasonable amount of time to leave the area before continuing the operation of the pit or quarry.
3. If, after providing an animal with a reasonable amount of time in accordance with paragraph 2 the animal does not leave the area, the person must take measures to relocate the animal to a nearby location that is suitable and safe for the animal.
4. If the person encounters a moss, lichen or vascular plant that is a member of the species while operating the pit or quarry and it is not necessary to kill or harm the member for the purpose of carrying out the activity, the person must,
  - i. cease the activity in the area of the encounter,
  - ii. install and maintain barriers or other structures to create a protective zone around the species, and
  - iii. after establishing the protective zone referred to in subparagraph ii, continue the operation of the pit or quarry in a manner that does not impair the ability of the species to carry out its life processes, including reproduction.
5. If it is necessary to kill or harm a moss, lichen or vascular plant referred to in paragraph 4 for the purpose of operating the pit or quarry, the person must, provided

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6. The determination under paragraph 5 as to whether it is feasible to relocate a moss, lichen or vascular plant must be made by the person using the best available information with respect to the suitability of relocating that species, including information obtained from the Ministry.
  7. The relocation of an animal in accordance with paragraph 3, or the relocation of a moss, lichen or vascular plant in accordance with paragraph 5, must be undertaken by, or in consultation with, a person who is knowledgeable about, or has training in, the handling of the species.
  8. The person must take steps to exclude members of the species from an area of activity in the pit or quarry, such as installing fencing to prevent reptiles and amphibians from accessing active stockpiles of aggregates or areas of operation.
  9. If the species uses nests or hibernacula to carry out its life processes, the person must, before and during the period of time when the species is likely to use the nests or hibernacula, install and maintain barriers or other structures to create a protective zone around the nests or hibernacula to limit the adverse effects that may be caused by the operation of the pit or quarry.
  10. During a period of time when the species is likely to be using the nests or hibernacula to carry out life processes, the person must not carry out operations,
    - i. within the protective zone installed under paragraph 8, or
    - ii. in a manner that would impair the ability of the species to carry out its life processes within the protective zone.
  11. The person must inform all employees, agents and contractors engaged in operating the pit or quarry that the species are present at the pit or quarry and of the steps required under paragraphs 1 to 10 and must install signs at the pit or quarry to that effect.
  12. If the person discovers that the steps described in paragraphs 1 to 11 or in the mitigation plan have not been effective in minimizing the adverse effects of the operation of the pit or quarry on the species, the person shall,
    - i. take such actions as are necessary to increase the effectiveness of those steps; or
    - ii. take such other reasonable steps as may be necessary to minimize the adverse effects of the operation of the pit or quarry on the species.
- (10) The annual report required under paragraph 7 of subsection (5) shall include,
- (a) the steps taken by the person operating the pit or quarry to minimize adverse effects of the operation of the pit or quarry on the species identified in the notice of activity form submitted under paragraph 1 of subsection (5) and an assessment of their effectiveness;
  - (b) information collected during the monitoring referred to in paragraph 6 of subsection (5);

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- (c) records of any activities carried out in accordance with the mitigation plan; and
- (d) details of any observations of the species identified in the notice of activity form submitted under paragraph 1 of subsection (5) in the course of operating the pit or quarry, including,
  - (i) the name of the species,
  - (ii) the location of the observation, and
  - (iii) the date and time of the observation.

(11) This section does not apply to a person who operates a pit or quarry and who has entered into an agreement with the Minister under clause 22 (1) (b) or (2) (b), unless the person gives notice to the Minister in accordance with paragraph 1 of subsection (5).

**Possession for educational purposes, etc.**

23.15 (1) In this section,

“educational organization” means, subject to subsection (2),

- (a) a curatorial institution, including a museum or science centre, that is owned or operated by the Province or by a municipality,
- (b) a post-secondary institution that is a member of the Association of Universities and Colleges of Canada, or
- (c) a college of applied arts and technology established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*.

(2) This section applies to an educational organization only if it,

- (a) gives the Minister notice that it is engaged in scientific or educational activities that require that, from time to time, it acquire and possess living or dead members of various species that are listed on the Species at Risk in Ontario List as extirpated, endangered or threatened species, parts of members of such species or anything derived from members of such species;
- (b) gives the notice under clause (a) by submitting a notice of activity form available on the Registry to the Minister through the Registry;
- (c) includes in the notice of activity form a description of the scientific or educational activities which it carries out; and
- (d) follows the requirements of section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.

(3) Clause 9 (1) (b) of the Act does not apply to an educational organization that possesses or collects, for scientific or educational purposes, a living or dead member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, a part of a member of such a species or anything derived from a member of such a species, if the following conditions are met:

1. The educational organization must acquire the member of the species, the part or the thing, from a person who is authorized to possess it under the Act.

00133. 2. After acquiring the member of the species, the part or the thing, the educational organization must create a record relating to it containing the following information:
- a statement describing what was acquired, whether a living or dead member of a species, a part of a member of a species or a thing derived from a member of a species, and identifying the relevant species,
  - if more than one member of the species, or more than one part or thing is acquired, the number of members, parts or things,
  - the date the member of the species, the part or the thing comes into the possession of the educational organization,
  - the person from whom the member of the species, the part or the thing was acquired and a description of the circumstances under which it was acquired,
  - in the case of a living member of a species, a description of any injury to the member and, if applicable, the time and circumstances of the death and of the disposal of the member, and
  - if the member of the species, the part or the thing is transferred to another educational organization, the date of the transfer and the name of the other educational organization.
3. The educational organization must maintain the records required under paragraph 2 for as long as the member of the species, the part or the thing is in its possession and provide copies of the records to the Ministry on request.
4. In the case of a living member of a species, the educational organization must take reasonable steps to ensure that the member is safe from harm while in its possession.
- (4) Clause 9 (1) (b) of the Act does not apply to the transport by an educational organization of anything that the organization is permitted to possess or collect under subsection (3), if the transportation is to another educational organization or to a veterinarian.
- (5) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person who possesses or transports a dead member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, or a part of a member of such a species, if the person,
- possesses the member or part for no more than seven days; and
  - after possessing the member or part for a maximum of seven days, transports it to an educational organization.
- (6) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person who possesses a dead member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, or a part of a member of such a species, for the purpose of carrying out a scientific or educational activity, if the person,
- upon acquiring the member or part, gives notice to the Minister that the person has possession of the member or part for the purpose of carrying out a scientific or educational activity;
  - gives the notice under clause (a) by submitting a notice of possession form available

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on the Registry to the Minister through the Registry;

- (c) includes in the notice of possession form,
    - (i) the identity of the species to which the member or part belongs,
    - (ii) the date on which the member or part was acquired, and
    - (iii) a description of the scientific or educational activity that the person is carrying out;
  - (d) follows the requirements of subsections (7) and (8) with respect to the completion of the notice of possession form, the keeping of records relating to the notice of possession form and the updating of the information on the Registry; and
  - (e) after completing the scientific or educational activity, transports the member or part to an educational organization.
- (7) Before submitting a notice of possession form to the Minister, a person shall ensure that,
- (a) all mandatory information requested on the form, including the contact information for the person, has been provided; and
  - (b) the information provided on the form is complete and accurate.
- (8) After submitting a notice of possession form to the Minister, the person shall,
- (a) promptly upon obtaining from the Ministry confirmation that a notice of possession form submitted through the Registry has been received by the Minister, make a record of the confirmation;
  - (b) for as long as the scientific or educational activity referred to in subsection (6) is being carried out,
    - (i) keep the record of the confirmation at the premises where the activity is being carried out, and
    - (ii) make the record of the confirmation available to the Ministry upon receiving a request for it; and
  - (c) if there is a change in the contact information for the person who submitted the notice of possession form, update the information on the Registry within 10 business days of the change.
- (9) A person who provides incomplete, false or misleading information on a notice of possession form or when updating information on the Registry shall be deemed to have not submitted the notice of possession form.
- (10) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person who transports a dead member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, or a part of a member of such a species, to an educational organization in accordance with clause (6) (e).

**Safe harbour habitat**

23.16 (1) In this section,

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"safe harbour habitat" means the habitat of a species listed on the Species at Risk in Ontario List as an endangered or threatened species that was created or enhanced in accordance with subsection (2); ("habitat refuge")

"safe harbour instrument" means one of the following instruments:

1. A permit issued under clause 17 (2) (b) or (c) of the Act that includes a condition that safe harbour habitat be created or enhanced and that meets the requirements of subsection (3).
2. A stewardship agreement entered into under section 16 of the Act that includes a condition that safe harbour habitat be created or enhanced and that meets the requirements of subsection (3). ("acte concernant un habitat refuge")

(2) This section applies to the habitat of a species listed on the Species at Risk in Ontario List as an endangered or threatened species only if,

- (a) the habitat was created,
  - (i) in fulfilment of a condition of a safe harbour instrument, and
  - (ii) for the purpose of providing habitat to the species for a limited period of time specified in the safe harbour instrument; or
- (b) in the case of habitat of bobolink or eastern meadowlark, an area that is existing habitat for the species is enhanced,
  - (i) in fulfilment of a condition of a safe harbour instrument, and
  - (ii) for the purpose of ensuring that the habitat continue as habitat for the species for a limited period of time specified in the safe harbour instrument.

(3) A safe harbour instrument under which safe harbour habitat is created or enhanced shall include a statement by the Minister that he or she is of the opinion that,

- (a) in the case of an area in which it is proposed that safe harbour habitat be created for a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, other than bobolink or eastern meadowlark, the area,
  - (i) is not currently the habitat of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, and
  - (ii) is suitable for the creation of habitat for the species in question;
- (b) in the case of an area of habitat for bobolink or eastern meadowlark that is proposed to be enhanced as safe harbour habitat for either or both of those species, the area,
  - (i) is not currently the habitat of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, other than bobolink or eastern meadowlark, and
  - (ii) is suitable for the enhancement of habitat for bobolink or eastern meadowlark; and
- (c) the period of time specified in the safe harbour instrument as the period of time for which the safe harbour habitat must continue to provide habitat for a particular

species is sufficient to,

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- (i) in the case of a stewardship agreement or of a permit issued under clause 17 (2) (b) of the Act, assist with the protection or recovery of the species in Ontario, and
- (ii) in the case of a permit issued under clause 17 (2) (c) of the Act, achieve an overall benefit to the species.

(4) Subsection 10 (1) of the Act does not apply to a person who damages or destroys safe harbour habitat if,

- (a) the damage or destruction occurs after the end of the period of time specified in the safe harbour instrument as the period of time for which the habitat must continue to provide habitat for a particular species;
- (b) all the requirements of the safe harbour instrument under which the habitat was created or enhanced that are applicable to the habitat have been satisfied; and
- (c) the person satisfies the conditions set out in subsection (5).

(5) The following are the conditions that a person who damages or destroys safe harbour habitat must satisfy for the purposes of clause (4) (c):

1. Before beginning an activity that will damage or destroy the safe harbour habitat, the person must give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry.
2. The person must ensure that the notice of activity form includes,
  - i. a description of the activity,
  - ii. the proposed start and end dates of the activity,
  - iii. the location at which the activity will be carried out,
  - iv. the name of the species for which the safe harbour habitat was created or enhanced, and
  - v. the identification number given by the Minister to the applicable safe harbour instrument and that appears on the safe harbour instrument.
3. The person must follow the requirements of section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
4. While carrying out the activity, the person must take reasonable steps to minimize adverse effects of the activity on members of the species for which the safe harbour habitat was created or enhanced, including the steps described in subsection (6).
5. Within 90 days of the completion of the activity that damages or destroys safe harbour habitat, the person must prepare a report that includes,
  - i. a description of the effects of the activity on members of,
    - A. the species for which the safe harbour habitat was created or enhanced, and

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B. any other species listed on the Species at Risk in Ontario List as endangered, threatened or of special concern,

- ii. a description of the reasonable steps the person took in accordance with paragraph 4 to minimize adverse effects of the activity on the species for which the safe harbour habitat was created or enhanced, and
  - iii. the date on which the damage or destruction of the habitat began and the date on which it ended.
6. The person must retain the report referred to in paragraph 5 for no less than five years after it is created, and provide a copy of the report to the Ministry within 14 days of receiving a request for the report from the Ministry.

(6) The following are the steps that a person must take to minimize the adverse effects of an activity to damage or destroy safe harbour habitat on the species for which the safe harbour habitat was created or enhanced:

1. The person must take steps to minimize damaging or destroying the habitat of the species at a time of year when the species is likely to be carrying out a life process related to hibernation or reproduction, including rearing.
2. If the person encounters an animal that is a member of the species while carrying out the activity, the person must cease carrying out the activity in the area of the encounter and provide the animal with a reasonable amount of time to leave the area before continuing with the activity.
3. If, after providing an animal with a reasonable amount of time in accordance with paragraph 2 the animal does not leave the area, the person must take measures to relocate the animal to a nearby location that is suitable and safe for the animal.
4. If the person encounters a moss, lichen or vascular plant that is a member of the species in the course of carrying out the activity and it is not necessary to kill or harm the member for the purpose of carrying out the activity, the person must,
  - i. cease the activity in the area of the encounter,
  - ii. install and maintain barriers or other structures to create a protective zone around the species, and
  - iii. after establishing the protective zone referred to in subparagraph ii, continue the activity in a manner that does not impair the ability of the species to carry out its life processes, including reproduction.
5. If it is necessary to kill or harm a moss, lichen or vascular plant referred to in paragraph 4 for the purpose of carrying out the activity, the person must, provided it is feasible to do so, relocate the moss, lichen or vascular plant to a nearby location within the species' habitat that is suitable and safe for the species.
6. The determination under paragraph 5 as to whether it is feasible to relocate a moss, lichen or vascular plant must be made by the person using the best available information with respect to the suitability of relocating that species, including information obtained from the Ministry.



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7. The relocation of an animal in accordance with paragraph 3, or the relocation of a moss, lichen or vascular plant in accordance with paragraph 5 must be undertaken by, or in consultation with, a person who is knowledgeable about, or has training in, the handling of the species.
8. The person must not capture, collect, take, possess or transport a member of the species unless,
  - i. doing so is necessary to minimize adverse effects on the member,
  - ii. the member is captured, collected, taken or possessed in the safe harbour habitat that was created or enhanced in accordance with this section or is transported from the safe harbour habitat, and
  - iii. the capture, collection, taking, possessing or transporting of the member is carried out by, or in consultation with, a person with expertise or training related to the species.

(7) Subsection (4) applies to a safe harbour habitat even if, since the day the safe harbour habitat was created or enhanced for a particular species, the area of the safe harbour habitat has become the habitat of one or more other species listed on the Species at Risk in Ontario List as endangered or threatened species.

(8) Subsection 10 (1) of the Act does not apply to a person who damages or destroys the habitat of a species listed on the Species at Risk in Ontario List as an endangered or threatened species if,

- (a) the habitat is located within the same area as a safe harbour habitat;
- (b) the damage or destruction of the habitat occurs while the person carries out an activity to damage or destroy the safe harbour habitat in respect of which notice has been given to the Minister under paragraph 1 of subsection (5); and
- (c) pursuant to subsection (4), subsection 10 (1) of the Act does not apply to the damage or destruction of the safe harbour habitat by the person.

(9) Clause 9 (1) (a) of the Act does not apply to a person who, while carrying out an activity to damage or destroy safe harbour habitat, kills, harms, harasses, captures or takes a member of a species for which the safe harbour habitat was created or enhanced, or a member of any other species that is listed in the Species at Risk in Ontario List as an endangered or threatened species if, pursuant to subsection (4), subsection 10 (1) of the Act does not apply to the damage or destruction of the safe harbour habitat by the person.

(10) Clause 9 (1) (b) of the Act does not apply to the possession, collection or transport of a member of a species if,

- (a) pursuant to subsection (9), clause 9 (1) (a) of the Act did not apply with respect to the member of the species; or
- (b) the possession, collection or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (6).

#### **Species protection, recovery activities**

23.17 (1) Subsections (4) to (9) apply with respect to the following activities intended to

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assist in the protection or recovery of one or more species listed on the Species at Risk in Ontario List as an endangered or threatened species:

1. Any activity that implements, or that supports or assists in the implementation of, an action that the Government intends to take or support in response to a recovery strategy prepared for the species under subsection 11 (1) of the Act and that is identified in a statement published by the Minister under subsection 11 (8) of the Act.
  2. If the Minister has not yet published a statement under subsection 11 (8) of the Act in response to a recovery strategy prepared for the species under subsection 11 (1) of the Act, any activity that is identified as an approach to achieving the recommended objectives set out in the recovery strategy.
  3. If a recovery strategy has not yet been prepared for the species under subsection 11 (1) of the Act, any activity that implements, or assists in the implementation of, an action or approach recommended in a recovery strategy prepared for the species under subsection 37 (1) of the *Species at Risk Act* (Canada) or in a management plan prepared for the species under section 65 of that Act.
  4. If a recovery strategy has not yet been prepared for the species under subsection 11 (1) of the Act and if neither a recovery strategy nor a management plan has been prepared for the species under subsection 37 (1) or section 65 of the *Species at Risk Act* (Canada), any of the following activities:
    - i. an activity to enhance, maintain or restore the species' habitat, including,
      - A. the maintenance or enhancement of vegetation that forms a component of the species' habitat,
      - B. the maintenance or restoration of the ecological integrity of a species habitat,
      - C. the maintenance of water quality, quantity or flow within the species' habitat at levels that are suitable for the species to carry out its life processes, or the enhancement of water quality, quantity or flow within the species' habitat to such levels, or
      - D. the creation or enhancement of habitat features for the species such as nesting or hibernation sites,
    - ii. an activity to reduce a threat to the species that is identified in a status report referred to in section 21 of the *Species at Risk Act* (Canada),
    - iii. an activity to develop scientific knowledge related to,
      - A. the distribution or abundance of the species or its habitat in Ontario,
      - B. the manner in which the species depends upon or uses its habitat, or
      - C. a threat to the species identified in a status report referred to in subparagraph ii.
- (2) The reference to ecological integrity in sub-subparagraph 4 i B of subsection (1) refers to a condition in which biotic and abiotic components of ecosystems and the composition

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and abundance of native species and biological communities are characteristic of their natural regions, and rates of change and ecosystem processes are unimpeded and, when used with reference to an area, indicates that the area,

(a) has healthy and viable populations of native species, including species listed on the Species at Risk in Ontario List, and maintains the habitat on which the species depend; and

(b) has levels of air and water quality consistent with protection of biodiversity.

(3) Despite subsection (1), subsections (4) to (9) do not apply to any activity described in that subsection if the killing of one or more members of a species listed on the Species at Risk in Ontario List as an endangered or threatened species was an intentional part of the activity, rather than an incidental consequence of the activity.

(4) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who, while carrying out an activity described in subsection (1), kills, harms, harasses, captures or takes a member of a species that is the object of the activity, or damages or destroys the habitat of such a species, if the person satisfies all of the conditions set out in subsection (6).

(5) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

(a) pursuant to subsection (4), clause 9 (1) (a) of the Act did not apply with respect to the member of the species; or

(b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (6).

(6) The following are the conditions that a person who carries out an activity described in subsection (1) must satisfy for the purposes of subsection (4):

1. Before commencing the activity, the person must,

- i. give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry, and
- ii. prepare in accordance with subsection (7) a mitigation plan that meets the requirements of subsection (8) and that identifies the steps that will be taken,
  - A. to minimize the adverse effects of the activity on the species that is the object of the activity, and
  - B. to monitor the effectiveness of the steps referred to in sub-subparagraph A.

2. The person must ensure that the notice of activity form includes,

- i. a description of the activity,
- ii. the proposed start and end dates for the activity,
- iii. the location at which the activity will be carried out, and
- iv. the name of each species that is the object of the activity.

3. The person must follow the requirements set out in section 23.3 with respect to the

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completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.

4. After the mitigation plan is prepared, the person must,
  - i. ensure that the activity is carried out in accordance with the mitigation plan,
  - ii. retain a copy of the mitigation plan for at least five years after the activity is complete,
  - iii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it, and
  - iv. if the activity occurs over a period of more than five years, ensure that, at least once every five years, the mitigation plan is updated in accordance with subsection (7) to include information obtained while monitoring the effects of the activity under paragraph 6.
5. While carrying out the activity, the person must ensure that the steps described in subsection (9), and such other steps as may be described in the mitigation plan, are taken to minimize the adverse effects of the activity on each species that is the object of the activity.
6. While carrying out the activity, the person shall ensure that the following are monitored:
  - i. the effects of the activity on each species that is the object of the activity, and
  - ii. the effectiveness of the steps taken to minimize adverse effects on each species.
7. While carrying out the activity, the person must create and maintain a record of,
  - i. the effects of the activity on each species that is the object of the activity,
  - ii. the steps that are taken by the person carrying out the activity to minimize the adverse effects of the activity on each species that is the object of the activity, including the locations where the steps are taken, and an assessment of the effectiveness of those steps, and
  - iii. the names of each individual with expertise who was responsible for carrying out or supervising the activity.
8. The person must,
  - i. retain a copy of the record created under paragraph 7 for at least five years after it is prepared, and
  - ii. provide a copy of the record created under paragraph 7 to the Ministry within 14 days of receiving a request for it.
9. Within 180 days of the completion of the activity, the person must prepare a report on the activity and submit it to the Natural Heritage Information Centre and the report must include the following information:
  - i. a description of the activity, including its purpose and a statement as to whether the activity is a type of activity described in paragraph 1, 2, 3 or 4 of subsection

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(1),

- ii. a copy of the record created under paragraph 7, and
  - iii. a summary of the outcome of the activity, including a detailed assessment of the extent to which the activity achieved its purpose.
10. If the person or an employee or agent of the person observes a species identified in the notice of activity form in the course of carrying out the activity, the person must ensure that, within three months of the observation, the Natural Heritage Information Centre Rare Species Reporting Form available on the Ministry website is completed, detailing the species and number of individual members that were observed, the date and location of observation and any other information requested on the form.
- (7) A mitigation plan shall be prepared and updated by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available.
- (8) A mitigation plan prepared with respect to an activity identified in a notice of activity form submitted to the Minister under subparagraph 1 i of subsection (6) must include the following information:
- 1. The name and contact information of the person carrying out the activity.
  - 2. The following information with respect to the activity:
    - i. a description of the activity, including an explanation of its nature and purpose,
    - ii. the proposed start and completion dates of the activity,
    - iii. a description of all of the stages of the activity and a timeline for the stages, and
    - iv. a description of the location of the activity.
  - 3. The identity of the species that is the object of the activity and an assessment of the likely effects of the activity on the members of the species.
  - 4. Detailed plans of the steps the person will take during the activity to minimize the adverse effects of the activity on the species that is the object of the activity, including details of the steps described in subsection (9), such as the dates on which and locations at which each step will be taken.
  - 5. If the activity requires the handling of a member of a species listed on the Species at Risk in Ontario List as an endangered or threatened species that is an amphibian, bird, reptile or mammal,
    - i. procedures relating to the handling and care of the species that the person will ensure are followed, and
    - ii. a written opinion prepared by an animal care committee established under subsection 17 (1) of the *Animals for Research Act*, stating that the procedures included under subparagraph i provide for the proper handling and care of the species.

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8. Details regarding the steps the person will take to monitor the effects of the activity on members of the species that is the object of the activity and the effectiveness of the steps taken to minimize adverse effects on the species.

(9) The following are the steps that a person must take to minimize the adverse effects of the activity described in the notice of activity form submitted to the Minister under subparagraph 1 i of subsection (6) on a species that is the object of the activity:

1. The person must ensure that the activity is carried out by or under the supervision of a person with expertise in the type of species protection or recovery work involved in the activity.
  2. The person, and any employee, agent or contractor of the person, must receive training on the following subjects before carrying out any part of the activity that is likely to affect the species:
    - i. the identity of the species,
    - ii. how to identify the species and its habitat,
    - iii. potential threats posed to the species and its habitat by the activity, and
    - iv. the steps that must be taken under paragraphs 3 to 5 to minimize adverse effects on members of the species.
  3. Any part of the activity that could reasonably be expected to have an adverse effect on a member of the species must be carried out by or in consultation with a person with expertise related to the species.
  4. If a member of the species is captured, collected or taken while carrying out the activity, the person must not,
    - i. possess a living member of the species for a period longer than is necessary to carry out the activity or minimize adverse effects to the member, and in no case longer than seven days,
    - ii. possess a dead member, or a part of a living or dead member, of the species for a period longer than is necessary to carry out the activity, or
    - iii. release or introduce a living member of the species into an area other than the area from which the member was captured, collected or taken.
  5. The person must ensure that steps are taken to avoid the spread of disease,
    - i. among members of the species, and
    - ii. between the members of the species and members of any other species.
- (10) Subsections (11) and (12) apply with respect to a stewardship activity that is,
- (a) intended to assist in the protection or recovery of one or more species listed on the Species at Risk in Ontario List as an endangered or threatened species;
  - (b) part of the Species at Risk in Ontario Stewardship Program and funded by a grant made by the Minister under subsection 47 (3) of the Act; and
  - (c) carried out in accordance with the conditions of the grant.

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(11) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who, while carrying out an activity described in subsection (10), kills, harms, harasses, captures or takes a member of a species that is the object of the activity, or damages or destroys the habitat of such a species, if the person satisfies the following conditions:

1. If the activity requires the handling of a member of a species listed on the Species at Risk in Ontario List as an endangered or threatened species that is an amphibian, bird, reptile or mammal, then before commencing the activity the person must prepare a document that sets out,
  - i. procedures relating to the handling and care of the species that the person will ensure are followed while carrying out the activity, and
  - ii. a written opinion prepared by an animal care committee established under subsection 17 (1) of the *Animals for Research Act*, stating that the procedures included under subparagraph i provide for the proper handling and care of the species.
2. The person must,
  - i. retain a copy of the document referred to in paragraph 1 for at least five years after the activity is completed, and
  - ii. provide a copy of the document referred to in paragraph 1 to the Ministry within 14 days of receiving a request for it.
3. If a member of the species is captured, collected or taken while carrying out the activity, the person must not,
  - i. possess a living member of the species for a period longer than is necessary to carry out the activity or minimize adverse effects to the member, and in no case longer than seven days,
  - ii. possess a dead member, or a part of a living or dead member, of the species for a period longer than is necessary to carry out the activity, or
  - iii. release or introduce a living member of the species into an area other than the area from which the member was captured, collected or taken.

(12) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession, collection or transport of a member of a species if,

- (a) pursuant to subsection (11), clause 9 (1) (a) and subsection 10 (1) of the Act did not apply with respect to the member of the species or its habitat; or
- (b) the possession, collection or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (11).

#### Threats to health and safety, not imminent

23.18 (1) This section applies with respect to the following activities that are necessary to avoid or reduce a threat to human health or safety in situations where the threat is not imminent but is likely to have serious consequences in the short or long term if the activity is not carried out:

1. Work undertaken to prevent the contamination or pollution of the earth, air or water

- 00145** or to remove or clean an area that has been contaminated or polluted or any other work undertaken to protect the quality of the earth, air or water, but not including any part of the work that relates to the construction of new infrastructure.
2. Work undertaken to prevent the spread of disease, such as eliminating or removing bacteria, species or other disease causing agents from structures, buildings, lands or water and cleaning and disinfecting after their removal.
  3. Work to maintain, repair, remove or replace an existing structure or any infrastructure described in subsection (2), including the decommissioning of a mine, or to upgrade an existing structure or any infrastructure described in subsection (2) to meet a safety standard, if,
    - i. the maintenance, repair, removal, replacement, decommissioning or upgrade does not require,
      - A. a temporary or permanent change to the location of the structure or infrastructure, or
      - B. a temporary or permanent extension of the area the structure or infrastructure occupies, except in the case of the replacement of an existing culvert with a new culvert that is larger than the one it replaces, or
    - ii. in the case of work to maintain, repair, replace or upgrade a structure or infrastructure, the work does not alter the way in which the structure or infrastructure is used or operated.
  4. Work to protect against drought, flooding, forest fires, unstable slopes and erosion as long as the protection does not include the building of new infrastructure.
- (2) Paragraph 3 of subsection (1) applies to infrastructure that is part of or related to,
- (a) a communications system;
  - (b) an electric power system, oil or gas pipeline, alternative energy system or renewable energy system;
  - (c) a road or railway system;
  - (d) water works, wastewater works, stormwater works and associated facilities; or
  - (e) drainage works designed to control surface water runoff, other than a drainage work to which section 23.9 applies.
- (3) Subject to subsection (8), clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who, while carrying on an activity described in subsection (1), kills, harms, harasses, captures or takes a member of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, or damages or destroys the habitat of such a species, if all of the conditions set out in subsection (5) are satisfied.
- (4) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,
- (a) pursuant to subsection (3), clause 9 (1) (a) and subsection 10 (1) of the Act did not



apply with respect to the member of the species or its habitat; or

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(b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (5).

(5) The following are the conditions that a person who carries on an activity described in subsection (1) must satisfy for the purposes of subsection (3):

1. Before commencing the activity, the person must,
  - i. give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry, and
  - ii. in the case of an activity described in paragraph 3 of subsection (1) that results in the upgrade or removal of a structure or infrastructure, the decommissioning of a mine or the replacement of an entire structure or infrastructure, have a mitigation plan prepared in accordance with subsections (6) and (7).
2. The person must ensure that the notice of activity form includes,
  - i. the proposed start and end dates of the activity described,
  - ii. a description of the activity and of the area in which it will be carried out, and
  - iii. the name of every species listed on the Species at Risk in Ontario List as endangered or threatened species that will likely be affected by the activity.
3. The person must follow the requirements set out in section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
4. Once the mitigation plan is prepared, the person must,
  - i. ensure that the activity is carried out in accordance with the mitigation plan,
  - ii. retain a copy of the mitigation plan for at least five years after the activity is complete, and
  - iii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it.
5. While carrying out the activity, the person must take reasonable steps to minimize the adverse effects of the activity on a species identified in the notice of activity form, including,
  - i. taking steps to minimize or avoid killing, harming or harassing a member of the species and to avoid damaging or destroying its habitat, during a time of year when the species is likely to be carrying out a life process related to hibernation or reproduction, including rearing,
  - ii. if the person encounters an animal that is a member of a species while carrying out the activity, ceasing from carrying out the activity in the area of the encounter and providing the animal with a reasonable amount of time to leave the area before continuing with the activity,
  - iii. if, after providing an animal with a reasonable amount of time in accordance

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- with subparagraph ii the animal does not leave the area, taking measures to relocate the animal to a nearby location that is suitable and safe for the animal,
- iv. if the person encounters a moss, lichen or vascular plant that is a member of the species in the course of carrying out the activity and it is not necessary to kill or harm the member for the purpose of carrying out the activity,
- A. ceasing the activity in the area of the encounter,
- B. installing and maintaining barriers or other structures to create a protective zone around the species, and
- C. after establishing the protective zone referred to in sub-subparagraph B, continuing the activity in a manner that does not impair the ability of the species to carry out its life processes, including reproduction,
- v. if it is necessary to kill or harm a moss, lichen or vascular plant referred to in subparagraph iv for the purpose of carrying out the activity, relocating the moss, lichen or vascular plant to a nearby location within the species' habitat that is suitable and safe for the species so that it is not killed or harmed, provided it is feasible to do so,
- vi. making the determination under subparagraph v as to whether it is feasible to relocate a moss, lichen or vascular plant using the best available information with respect to the suitability of relocating that species, including information obtained from the Ministry,
- vii. ensuring that the relocation of an animal or of a moss, lichen or vascular plant in accordance with subparagraph iii or v is undertaken by or in consultation with a person knowledgeable about, or having training in, the handling of members of the species,
- viii. taking steps to exclude members of the species from the area in which the activity is being carried out or is likely to be carried out, such as installing temporary fencing to prevent members of the species from accessing the area,
- ix. refraining from carrying out work during a period of hibernation or reproduction, including rearing, for the species or any other sensitive period for the species unless the restriction on work would result in a delay that would render the threat to human health or safety unavoidable and unacceptable in the circumstances, and
- x. if the activity is the maintenance, repair, replacement or upgrade of infrastructure, keep a schedule of the work or a copy of an engineer's report outlining the work that must occur and make the schedule or report available to the Ministry within 14 days of receiving a request for it.
6. If the person or an employee or agent of the person observes a species identified in the notice of activity form in the course of carrying out the activity, the person must ensure that, within three months of the observation, the Natural Heritage Information Centre Rare Species Reporting Form available on the Ministry website is completed, detailing the species and number of individual members that were observed, the date

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and location of observation and any other information requested on the form.

(6) A mitigation plan shall be prepared by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available.

(7) A mitigation plan prepared with respect to an activity described in subsection (1) must include the following information:

1. A description of the activity and its main purpose and an explanation of the threat to human health or safety that requires that the activity be carried out and of the serious consequences that would result, in the short or long term, if the activity was not carried out.
2. The proposed start and completion dates of the activity.
3. A description of all of the stages of the activity and a timeline for the stages.
4. A list of all the species that are listed on the Species at Risk in Ontario List as endangered or threatened species and that are likely to be affected by the activity.
5. An assessment of the activity's likely effects on members of each species identified under paragraph 4.
6. A map indicating the geographic location of the activity on the property where it will occur.
7. Details of how the person will carry out the steps described in paragraph 5 of subsection (5) that are required to minimize the adverse effects of the activity on a species identified under paragraph 4, including,
  - i. the dates on which, and locations at which, each step will be carried out, and
  - ii. the times during the year when the species is likely to be carrying out a life process related to hibernation or reproduction, including rearing, and during which the person must avoid killing, harming or harassing members of the species.
- (8) Subsection (3) does not apply with respect to the following species of vascular plant:
  1. Bird's-foot Violet.
  2. Bluehearts.
  3. Forked Three-awned Grass.
  4. Heart-leaved Plantain.
  5. Juniper Sedge.
  6. Spotted Wintergreen.
  7. Virginia Goat's-rue.
  8. Virginia Mallow

**00149****Trapping — incidental catch**

**23.19** (1) Clause 9 (1) (a) of the Act does not apply to a person who incidentally traps an animal that belongs to a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, if,

- (a) the person is trapping under the authority of a trapping licence under the *Fish and Wildlife Conservation Act, 1997*;
  - (b) the person is trapping in accordance with Ontario Regulation 667/98 (Trapping) made under the *Fish and Wildlife Conservation Act, 1997*;
  - (c) the person traps the animal despite the exercise of all due diligence;
  - (d) the incidentally trapped animal,
    - (i) is immediately released in a manner that causes it the least harm, if the animal is alive when it is found and has a reasonable chance of survival in the wild, or
    - (ii) is killed in a humane manner, if the animal is alive when it is found and does not have a reasonable chance of survival in the wild;
  - (e) in cases where the animal is killed and is a furbearing mammal as defined in the *Fish and Wildlife Conservation Act, 1997*, the person obtains a licence to possess a pelt, as required under Part II of Ontario Regulation 666/98 (Possession, Buying and Selling of Wildlife) made under that Act; and
  - (f) in cases where the animal is killed and is not a furbearing mammal as defined in the *Fish and Wildlife Conservation Act, 1997*, the person,
    - (i) promptly after the killing, gives notice of the incidental trapping and killing to the Minister by completing a notice of incidental trapping form available on the Registry and submitting it to the Minister through the Registry, and
    - (ii) follows the requirements of subsections (2) and (3) with respect to the completion of the notice of incidental trapping form, the keeping of records relating to the notice of incidental trapping form and the updating of the information on the Registry.
- (2) Before submitting a notice of incidental trapping form to the Minister under clause (1) (f), a person must ensure that,
- (a) all mandatory information requested on the form, including the person's contact information, has been provided; and
  - (b) the information provided on the form is complete and accurate.
- (3) After submitting a notice of incidental trapping form to the Minister, a person who submitted the form must,
- (a) promptly upon obtaining from the Ministry confirmation that a notice of incidental trapping form submitted through the Registry has been received by the Minister, make a record of the confirmation;
  - (b) for as long as the person possesses the animal, or a part of the animal, that was incidentally trapped and killed,

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- (i) keep the record of the confirmation, and
- (ii) make the record of the confirmation available to the Ministry within 14 days of receiving a request for it;
- (c) if there is a change in the contact information of the person who submitted the notice of incidental trapping form, update the information on the Registry within 10 business days of the change.
- (4) A person who provides incomplete, false or misleading information on a notice of incidental trapping form or when updating information on the Registry shall be deemed not to have submitted the notice of incidental trapping form.
- (5) Clause 9 (1) (b) of the Act does not apply to a person who possesses or transports a dead animal or a part of an animal if, pursuant to subsections (1) to (4), the person is exempt from clause 9 (1) (a) of the Act in respect of the incidental trapping of the animal.

### Wind facilities

**23.20** (1) This section applies to a person who is engaged in the operation of a wind facility within the meaning of Ontario Regulation 359/09 (Renewable Energy Approvals under Part V.0.1 of the Act) made under the *Environmental Protection Act*.

(2) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who is engaged in the operation of a wind facility and who, in the course of the operation of the wind facility, kills, harms or harasses a member of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, or damages or destroys the habitat of such a species, if the person satisfies the conditions set out in subsection (4).

(3) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

- (a) pursuant to subsection (2), clause 9 (1) (a) and subsection 10 (1) of the Act did not apply with respect to the member of the species or its habitat; or
- (b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (4).

(4) The following are the conditions that a person who operates a wind facility must satisfy for the purposes of subsection (2):

1. Before doing anything, in the course of operating the wind facility, that is prohibited under clause 9 (1) (a) or subsection 10 (1) of the Act, the person must,
  - i. give the Minister notice of the fact that the person is operating a wind facility by submitting a notice of activity form, available on the Registry, to the Minister through the Registry,
  - ii. subject to subsections (5) and (6), prepare in accordance with subsection (9) a mitigation plan that meets the requirements of subsection (10), and
  - iii. in the case of a person described in subsection (6), ensure that the conditions set out in subsection (7) are satisfied.
2. The person must ensure that the notice of activity form includes,

- 00151 i. the location of the wind facility, and
- ii. the name of every species listed on the Species at Risk in Ontario List as an endangered or threatened species that will likely be affected as a result of the operation of the wind facility.
3. The person must follow the requirements of section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
4. While the person is operating the wind facility, the person must,
- i. comply with the requirements of the mitigation plan,
- ii. ensure that reasonable steps are taken to minimize the adverse effects of the activity on the species identified in the notice of activity form, including the steps described in subsection (11), and such other steps as may be described in the mitigation plan.
5. The person must,
- i. retain a copy of the mitigation plan while operating the wind facility and for a period of five years after the person ceases to operate the wind facility,
- ii. ensure that the plan is updated in accordance with subsections (9) and (10) at least once every five years to include information obtained while carrying out the monitoring requirements described in paragraph 6, and
- iii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it.
6. Subject to subsection (12), the person must monitor,
- i. the effects of the operation of the wind facility on each species identified in the notice of activity form and its habitat, and
- ii. the effectiveness of the steps taken to minimize adverse effects on each species identified in the notice of activity form and its habitat,
7. At the times required under subsections (13) and (14), the person must prepare in accordance with subsection (15) a report on the effects that the operation of the wind facility has on each species identified in the notice of activity form.
8. The person must,
- i. retain a copy of a report required under paragraph 7 for at least five years after it is prepared, and
- ii. provide a copy of the report required under paragraph 7 to the Ministry within 14 days of receiving a request for it.
9. If the person or an employee or agent of the person observes a species identified in the notice of activity form in the course of carrying out the activity, the person must ensure that, within three months of the observation, the Natural Heritage Information Centre Rare Species Reporting Form available on the Ministry website is completed, detailing the species and number of individual members that were observed, the date

and location of observation and any other information requested on the form. 00152

(5) A person who operates a wind facility is not required to complete the preparation of a mitigation plan until the following dates if the following circumstances apply:

1. If the mitigation plan relates to a species that was added to the Species at Risk in Ontario List as an endangered or threatened species for the first time on January 24, 2013, the third anniversary of that day.
2. If the mitigation plan relates to a species that first appears in the area of the wind facility after the wind facility begins operation, three years after the date the species first appears in the area of the wind facility.

(6) A person who proposes to operate a wind facility and who has not been issued a renewable energy approval in respect of the wind facility under Part V.0.1 of the Environmental Protection Act on or before July 1, 2013 must prepare a mitigation plan in respect of the wind facility before either of the following days:

1. If the person has not submitted an application for a renewable energy approval under Part V.0.1 of the *Environmental Protection Act* on or before July 1, 2013, the day the person submits the application.
2. If the person has submitted an application for a renewable energy approval under Part V.0.1 of the *Environmental Protection Act* on or before July 1, 2013, the day the renewable energy approval is issued.

(7) A person who prepares a mitigation plan under subsection (6) shall ensure that the following conditions are satisfied:

1. The person must submit the mitigation plan to the Minister promptly after it is prepared.
2. The Minister must approve the mitigation plan, subject to subsection (8).
3. The person must receive written notice of the approval of the Minister.

(8) The Minister may refuse to approve a mitigation plan submitted under subsection (7) if, in his or her opinion,

- (a) the mitigation plan has not been prepared by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information; or
- (b) the steps set out in the mitigation plan do not include reasonable measures to,
  - (i) avoid the killing, harming or harassing of members of the species,
  - (ii) create or enhance habitat for the species elsewhere in the ecoregion in which the wind facility is located,
  - (iii) operate the wind facility in a manner that is unlikely to damage or destroy the habitat of the species, or
  - (iv) otherwise effectively minimize the adverse effects of the activity on the species.

(9) A mitigation plan must be prepared and updated by one or more persons with

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expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available.

(10) A mitigation plan must include the following information:

1. The name and contact information of the person who operates the wind facility.
2. A description of the location of the wind facility.
3. A list of the species that are listed on the Species at Risk in Ontario List as endangered or threatened species and are likely to be adversely affected by the operation of the wind facility.
4. Details of the steps the person plans to take to minimize the adverse effects of the operation of the wind facility on each species identified under paragraph 3 and its habitat, including the steps described in subsection (11).

(11) The steps that a person must take to minimize the adverse effects of the operation of a wind facility on a species identified in the notice of activity form submitted under subparagraph 1 i of subsection (4) and its habitat are as follows:

1. Implementing reasonable measures in the wind facility to avoid the killing, harming or harassing of members of the species such as,
  - i. adjusting the blades of wind turbines,
  - ii. reducing cut-in speed of wind turbines, and
  - iii. periodically shutting the turbines down during times of day or of the year when the risk of killing, harming or harassing the species is highest.
2. Creating or enhancing habitat for the species elsewhere in the ecoregion in which the wind facility is located, if reasonable.
3. Operating the wind facility in a manner that is unlikely to damage or destroy the habitat of the species, including adopting any techniques to minimize adverse effects of the operation of the wind facility on the species that may be available from the Ministry from time to time.
4. If the person discovers that the steps described in paragraphs 1 to 3 or in the mitigation plan have not been effective in minimizing the adverse effects of an activity described in subsection (1) on the species, the person shall,
  - i. take such actions as are necessary to increase the effectiveness of those steps, or
  - ii. take such other reasonable steps as may be necessary to minimize the adverse effects of an activity described in subsection (1) on the species.

(12) The monitoring activities described in paragraph 6 of subsection (4) must be carried out by a person with expertise in the species identified in the notice of activity form submitted under subparagraph 1 i of subsection (4), using the best available information on how to carry out the monitoring activities, including information that may be available from the Ministry from time to time.



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(13) A report required of a person under paragraph 7 of subsection (4) shall be completed,

- (a) annually for the first three years after the person submits a notice of activity form under paragraph 1 of subsection (4) and, thereafter, every five years; or
- (b) in the case of a person who completes the preparation of a mitigation plan within the extended timelines provided for under subsection (5), annually for the first six years after the person submits a notice of activity form under subparagraph 1 i of subsection (4) and, thereafter, every five years.

(14) A report required under paragraph 7 of subsection (4) shall be in a form acceptable to the Ministry and shall be completed by March 31 that follows the end of the period in respect of which the report is prepared.

(15) A report required under paragraph 7 of subsection (4) shall,

- (a) compile information relating to the effects of the operation of the wind facility on each species identified in the notice of activity form submitted under subparagraph 1 i of subsection (4) and its habitat;
- (b) analyze the results of the information compiled under clause (a);
- (c) describe any encounters with the species that occurred while carrying out the activity; and
- (d) document the steps taken by the person to minimize adverse effects of the wind facility on each species identified in the notice of activity form submitted under subparagraph 1 i of subsection (4) and its habitat and assess their effectiveness.

(16) This section does not apply with respect to the Golden Eagle.

**15. Section 29 of the Regulation is revoked.**

#### **Commencement**

**16. (1) Subject to subsections (2), (3) and (4), this Regulation comes into force on the later of July 1, 2013 and the day it is filed.**

**(2) Subsections 9 (2), 11 (1) and (3) come into force on July 1, 2015.**

**(3) Subsection 5 (4) and section 6 come into force on July 1, 2018.**

**(4) Subsection 10 (2) comes into force on July 1, 2020.**

**Français**

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Wildlands League and  
Federation of Ontario Naturalists

and  
Lieutenant Governor in Council  
and Minister of Natural Resources

File No: 061016

Appellants

Respondents

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT Toronto

**Factum of the Appellants**

c/o Lintner Law  
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