Endangered Species Act, 2007

[ONTARIO REGULATION 242/08](https://www.ontario.ca/laws/regulation/R08242)

general

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This is the English version of a bilingual regulation.

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Interpretation

Application

**0.1**  This Regulation applies to all species on the Species at Risk in Ontario List, as that list read on June 2, 2017. O. Reg. 176/13, s. 1; O. Reg. 179/14, s. 1; O. Reg. 308/16, s. 1; O. Reg. 218/18, s. 1.

Definitions

**1.**  (1)  In this Regulation,

“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”)

“game wildlife” has the same meaning as in the Fish and Wildlife Conservation Act, 1997; (“gibier sauvage”)

“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 and published by the Ontario Ministry of Natural Resources; (“système de classification écologique des terres du Sud de l’Ontario”)

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

“specially protected wildlife” has the same meaning as in the Fish and Wildlife Conservation Act, 1997; (“animal sauvage spécialement protégé”)

“watercourse segment” means a section of the watercourse that,

(a) consists of relatively similar hydrography and surficial geology which is not separated by in-stream barriers that would prevent fish movement, and

(b) is delineated in accordance with the document entitled “Protocol for Applications Used in the Aquatic Landscape Inventory Software Application for Delineating, Characterizing and Classifying Valley Segments within the Great Lakes Basin”, dated September 2002, that is published by the Ontario Ministry of Natural Resources and available on a website of the Government of Ontario; (“tronçon de cours d’eau”)

“wildlife custodian” has the same meaning as in section 44 of the Fish and Wildlife Conservation Act, 1997. (“gardien d’animaux sauvages”) O. Reg. 242/08, s. 1; O. Reg. 176/13, s. 2; O. Reg. 323/13, s. 1; O. Reg. 232/14, s. 1.

(2)  A reference in this Regulation to a geographic area is a reference to a geographic area named and described in Schedule 1 or 2 to Ontario Regulation 180/03 (Division of Ontario into Geographic Areas) made under the Territorial Division Act, 2002. O. Reg. 122/12, s. 1.

Exemptions Applicable to Specific Species

Algonquin Wolf

**1.1**(1)  Subject to subsection (2), clause 9 (1) (a) of the Act does not apply to a person who kills, harms, harasses or captures an Algonquin Wolf if the person is hunting or trapping in accordance with the Fish and Wildlife Conservation Act, 1997and the regulations made under it and,

(a) under the authority of,

(i) a licence issued under the Fish and Wildlife Conservation Act, 1997, or

(ii) subsection 6 (3) of the Fish and Wildlife Conservation Act, 1997; or

(b) to protect property from an Algonquin Wolf pursuant to section 31 of the Fish and Wildlife Conservation Act, 1997. O. Reg. 308/16, s. 2.

(2)  Subsection (1) does not apply in an area listed in Column 2 of item 8 of Table 6 of Ontario Regulation 670/98 (Open Seasons - Wildlife) made under the Fish and Wildlife Conservation Act, 1997. O. Reg. 308/16, s. 2; O. Reg. 218/18, s. 2.

(3)  Clause 9 (1) (b) of the Act does not apply to a person in respect of an Algonquin Wolf if,

(a) pursuant to subsection (1), clause 9 (1) (a) of the Act did not apply to the killing, harming, harassing or capturing of the Algonquin Wolf; and

(b) the person is acting in accordance with the Fish and Wildlife Conservation Act, 1997 and the regulations made under it. O. Reg. 308/16, s. 2.

American ginseng

**2.**(1)  Subsection 9 (1) of the Act does not apply to field-cultivated American ginseng if,

(a) it is cultivated on land in respect of which licence fees are payable to the Ontario Ginseng Growers’ Association under Ontario Regulation 340/01 (Designation — Ontario Ginseng Growers’ Association) made under the Farm Products Marketing Act;

(b) it is cultivated without the use of any material from American ginseng, such as seeds, roots or cuttings, that was taken from the wild in Ontario on or after June 30, 2008; and

(c) it is cultivated using structures that produce artificial shade. O. Reg. 242/08, s. 2 (1).

(2)  Revoked: O. Reg. 323/13, s. 2.

**3., 4.**Revoked: O. Reg. 65/12, s. 1.

Bobolink, eastern meadowlark

**4.1**(1)  Clause 9 (1) (a) of the Act does not apply to a person who kills, harms or harasses a bobolink or an eastern meadowlark while carrying out an agricultural operation. O. Reg. 197/11, s. 2 (1); O. Reg. 65/12, s. 2 (1).

(2)  Clause 9 (1) (b) of the Act does not apply to the possession or transport of a bobolink or an eastern meadowlark if, pursuant to subsection (1), clause 9 (1) (a) did not apply to the killing or harming of the bobolink or eastern meadowlark, as the case may be. O. Reg. 197/11, s. 2 (1); O. Reg. 65/12, s. 2 (2).

(3)  Subsection 10 (1) of the Act does not apply to a person who damages or destroys the habitat of a bobolink or an eastern meadowlark while carrying out an agricultural operation if the area of habitat damaged or destroyed remains suitable for an agricultural operation. O. Reg. 197/11, s. 2 (1) ; O. Reg. 65/12, s. 2 (3).

(4)  In this section,

“agricultural operation” means an agricultural, aquacultural, horticultural or silvicultural operation that is carried on in the expectation of gain or reward and includes,

(a) draining, irrigating or cultivating land,

(b) growing, producing or raising farm animals,

(c) the production of agricultural crops, including greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, trees and turf grass,

(d) the production of eggs, cream and milk,

(e) the operation of agricultural machinery and equipment,

(f) ground and aerial spraying,

(g) the management of materials containing nutrients for farm purposes,

(h) the processing by a farmer of the products produced primarily from the farmer’s agricultural operation, and

(i) activities that are a necessary but ancillary part of an agricultural operation such as the use of transport vehicles for the purposes of the agricultural operation. O. Reg. 197/11, s. 2 (1).

Note: On December 31, 2025, section 4.1 is revoked. See: O. Reg. 197/11, ss. 2 (2), 4 (2); O. Reg. 178/ 14, s. 1; O. Reg. 387/15, s. 1.

**5.**Revoked: O. Reg. 176/13, s. 4.

Eastern flowering dogwood

**5.1**Subsection 10 (1) of the Act does not apply to a person who damages or destroys an area that is the habitat of the eastern flowering dogwood, if the only eastern flowering dogwood that exists in the area is a cultivar and was not,

(a) cultivated for purposes of disease resistance; or

(b) derived from eastern flowering dogwood indigenous to Ontario or any state of the United States of America with which Ontario shares a border. O. Reg. 293/11, s. 2.

Northern bobwhite

**6.**(1)  Clause 9 (1) (a) of the Act does not apply to a person who is hunting northern bobwhite on a game bird hunting preserve within the meaning of the Fish and Wildlife Conservation Act, 1997 if the person is hunting in accordance with that Act and the regulations made under that Act. O. Reg. 242/08, s. 6 (1).

(2)  Clause 9 (1) (b) of the Act does not apply to the possession or transport of a northern bobwhite by a person who, pursuant to subsection (1), lawfully kills the northern bobwhite. O. Reg. 242/08, s. 6 (2).

(3)  Clause 9 (1) (a) and subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person in respect of northern bobwhite if the person is acting under the authority of and in accordance with,

(a) a licence to own or operate a game bird hunting preserve under the Fish and Wildlife Conservation Act, 1997; or

(b) a licence to keep game birds in captivityunder the Fish and Wildlife Conservation Act, 1997. O. Reg. 242/08, s. 6 (3).

(4)  Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person who transports anything that, pursuant to subsection (3), the person is entitled to possess. O. Reg. 242/08, s. 6 (4).

Virginia mallow

**6.1**Subsection 10 (1) of the Act does not apply to a person who damages or destroys an area that is the habitat of the Virginia mallow if the only Virginia mallow present in the area,

(a) did not originate from plants native to Ontario; or

(b) was planted for purposes other than species recovery, ecological restoration or rehabilitation or habitat creation. O. Reg. 122/12, s. 2.

Caribou (boreal population) — cast antlers

**7.**Clause 9 (1) (b) of the Act does not apply to antlers that dropped naturally from living caribou (boreal population). O. Reg. 308/16, s. 3.

Other Exemptions

Protection of health or safety, etc.

**8.**(1)  Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who is acting to protect a human being or animal if the person reasonably believes that there is an imminent risk to the health or safety of the human being or animal. O. Reg. 242/08, s. 8 (1).

(2)  Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a police officer, firefighter or other person if,

(a) he or she is exercising powers or performing duties under an Act of Ontario or Canada or is acting under the direction of a person who is exercising powers or performing duties under an Act of Ontario or Canada;

(b) he or she is engaged in an activity that is intended to,

(i) protect the health or safety of any human being,

(ii) search for a living or dead human being,

(iii) prevent or reduce significant damage to property or the environment, or

(iv) enforce the law; and

(c) in the circumstances, it is not reasonable to comply with clause 9 (1) (a) or subsection 10 (1) of the Act. O. Reg. 242/08, s. 8 (2).

Protection of property

**9.**(1)  If all of the criteria set out in subsection (2) are met,

(a) clause 9 (1) (a) of the Act does not apply to the harassing, capturing or taking of an animal;

(b) subclause 9 (1) (b) (i) of the Act does not apply to the possession or transport of a living animal that is captured or taken pursuant to clause (a); and

(c) subsection 10 (1) of the Act does not apply to the habitat of an animal. O. Reg. 242/08, s. 9 (1).

(2)  Subsection (1) applies if all of the following criteria are met:

1. There are reasonable grounds to believe that the animal is damaging property.

2. The animal is harassed, captured, taken, possessed or transported, or its habitat is damaged or destroyed, by or at the direction of the owner or occupier of the land on which the property is located.

3. The owner or occupier has entered into an agreement with the Minister respecting action that may be taken to protect the property.

4. The agreement specifically provides that it applies to the species that the animal belongs to.

5. The agreement states that,

i. the Minister is of the opinion that the agreement requires the owner or occupier to take reasonable steps to minimize adverse effects on the species, and

ii. the Minister is of the opinion that the action described in the agreement will not jeopardize the survival or recovery of the species in Ontario.

6. The agreement is in force.

7. The owner or occupier has complied with the agreement. O. Reg. 242/08, s. 9 (2).

(3)  Without limiting the generality of paragraph 3 of subsection (2), an agreement under that paragraph may require the owner or occupier to use the services of a person who is engaged in the business of removing nuisance animals, a person who holds a trapping licence under the Fish and Wildlife Conservation Act, 1997 or any other person described in the agreement. O. Reg. 242/08, s. 9 (3).

Escape or unauthorized release from captivity

**10.**(1)  Clause 9 (1) (a) of the Act does not apply to a person who is complying with clause 46 (3) (b) of the Fish and Wildlife Conservation Act, 1997 with respect to game wildlife or specially protected wildlife. O. Reg. 242/08, s. 10 (1).

(2)  Clause 9 (1) (b) of the Act does not apply to the possession or transport, by a person who is complying with clause 46 (3) (b) of the Fish and Wildlife Conservation Act, 1997, of the wildlife referred to in that clause. O. Reg. 242/08, s. 10 (2).

Hydro-electric generating stations

**11.**(1)  With respect to a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who is operating a hydro-electric generating station if all of the following criteria are met:

1. The person who operates the station has entered into an agreement with the Minister before June 30, 2013.

2. The agreement specifically provides that it applies to the species.

3. 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 the species,

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 the species 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.

4. The agreement provides for monitoring the effects of the operation of the station on the species.

5. The agreement is in force.

6. The person who operates the station has complied with the agreement. O. Reg. 242/08, s. 11 (1); O. Reg. 176/13, s. 5 (1).

(2)-(6)  Revoked: O. Reg. 176/13, s. 5 (2).

(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; and

(b) the agreement referred to in subsection (1) is in force and the person who operates the station has complied with the agreement. O. Reg. 242/08, s. 11 (7).

(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. O. Reg. 176/13, s. 5 (3).

Note: On July 1, 2018, section 11 is revoked. (See: O. Reg. 176/13, ss. 5 (4), 16 (3))

Note: On July 1, 2018, the Regulation is amended by adding the following section: (See: O. Reg. 176/13, ss. 6, 16 (3))

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. O. Reg. 176/13, s. 6.

(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). O. Reg. 176/13, s. 6.

Commercial cultivation of vascular plants, etc.

**12.**(1)  Clauses 9 (1) (a) and (b) of the Act do not apply in respect of a vascular plant species to a person who is engaged in the commercial cultivation of that species, if,

(a) the person cultivates the species without the use of any material from the species, such as seeds, roots or cuttings, that was taken from the wild in Ontario on or after the date the species was listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species;

(b) the person is not engaged in cultivating the species in the wild in Ontario; and

(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.

(d), (e) Revoked: O. Reg. 176/13, s. 7 (1).

O. Reg. 242/08, s. 12 (1); O. Reg. 294/11, s. 2 (1); O. Reg. 176/13, s. 7 (1).

(1.1)  Revoked: O. Reg. 176/13, s. 7 (2).

(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. O. Reg. 176/13, s. 7 (2).

(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. O. Reg. 176/13, s. 7 (2).

Fishing — incidental catch

**13.**(1)  Clause 9 (1) (a) of the Act does not apply to a person who incidentally catches a fish or other 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 fishing under the authority of,

(i) a licence under the Fish and Wildlife Conservation Act, 1997,

(ii) a licence under the Ontario Fishery Regulations, 2007 made under the Fisheries Act (Canada), or

(iii) a licence under the Aboriginal Communal Fishing Licences Regulations made under the Fisheries Act (Canada);

(b) the person is fishing in accordance with the licence;

(c) the person is fishing in accordance with,

(i) the Ontario Fishery Regulations, 2007 made under the Fisheries Act (Canada), in the case of a person fishing under the authority of a licence referred to in subclause (a) (i) or (ii), or

(ii) the Ontario Fishery Regulations, 2007 and the Aboriginal Communal Fishing Licences Regulations made under the Fisheries Act (Canada), in the case of a person fishing under the authority of a licence referred to in subclause (a) (iii); and

(d) subject to clause (b),

(i) the incidentally caught fish or other animal is immediately returned to the waters from which it is caught, and

(ii) if the incidentally caught fish or other animal is alive, it is released in a manner that causes the least harm to the fish. O. Reg. 242/08, s. 13 (1).

(2)  In the case of an incidentally caught fish, clause (1) (d) applies whether or not section 12 of the Ontario Fishery Regulations, 2007 applies to the fish. O. Reg. 242/08, s. 13 (2).

(3)  Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a fish or other animal if,

(a) pursuant to subsection (1), clause 9 (1) (a) of the Act did not apply to the catching of the fish or other animal; and

(b) the fish or other animal was not required to be returned to the waters from which it was caught. O. Reg. 242/08, s. 13 (3).

**14.**Revoked**:** O. Reg. 176/13, s. 8.

Veterinarians

**15.**(1)  Subclause 9 (1) (b) (i) of the Act does not apply to the possession or transport of an animal by a member of the College of Veterinarians of Ontario for the purpose of providing treatment to the animal. O. Reg. 242/08, s. 15 (1).

(2)  Clause 9 (1) (a) of the Act does not apply to the killing of an animal by a member of the College of Veterinarians of Ontario, if the member is of the opinion that the animal should be euthanized. O. Reg. 242/08, s. 15 (2).

(3)  Clause 9 (1) (b) of the Act does not apply to the possession or transport of an animal by any person, if the person possesses the animal for less than 24 hours for the purpose of transporting it to a member of the College of Veterinarians of Ontario for treatment. O. Reg. 242/08, s. 15 (3).

Rehabilitation or care — wildlife custodians

**16.**(1)  Subclause 9 (1) (b) (i) of the Act does not apply to the possession or transport of game wildlife or specially protected wildlife by a wildlife custodian, if the wildlife custodian is authorized to keep the wildlife in captivity under section 44 of the Fish and Wildlife Conservation Act, 1997. O. Reg. 242/08, s. 16 (1).

(2)  Clause 9 (1) (a) of the Act does not apply to the capturing or taking of game wildlife or specially protected wildlife by a wildlife custodian for the purpose of rehabilitating or caring for it, if the wildlife custodian is authorized to keep it in captivity under section 44 of the Fish and Wildlife Conservation Act, 1997. O. Reg. 242/08, s. 16 (2).

(3)  Subclause 9 (1) (b) (i) of the Act does not apply to the possession and transport of game wildlife or specially protected wildlife by any person if the person possesses it for less than 24 hours for the purpose of transporting it, for the purpose of rehabilitation or care, to a wildlife custodian who is authorized to keep it in captivity under section 44 of the Fish and Wildlife Conservation Act, 1997. O. Reg. 242/08, s. 16 (3).

(4)  Clause 9 (1) (a) of the Act does not apply to the killing of game wildlife or specially protected wildlife by a wildlife custodian, if the wildlife custodian is authorized to kill it under section 44 of the Fish and Wildlife Conservation Act, 1997. O. Reg. 242/08, s. 16 (4).

Rehabilitation or care — transfer to Ministry employees

**17.**Subclause 9 (1) (b) (i) of the Act does not apply to the possession and transport by any person of 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 the person possesses the animal for less than 24 hours for the purpose of transporting it, for the purpose of rehabilitation or care, to a person employed in the Ministry. O. Reg. 242/08, s. 17.

Zoos

**18.**(1)  Subject to subsection (2), with respect to any species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species,subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person acting under the authority of and in accordance with a licence to keep specially protected and game wildlife in a zoo under the Fish and Wildlife Conservation Act, 1997. O. Reg. 242/08, s. 18 (1).

(2)  Subsection (1) does not authorize the purchase, sale, lease or trade of, or the offer to buy, sell, lease or trade,

(a) 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

(b) any part of a dead member of a species referred to in clause (a). O. Reg. 242/08, s. 18 (2).

(3)  Subsection (2) does not prevent the purchase, sale, lease or trade of gametes, or the offer to buy, sell, lease or trade gametes. O. Reg. 242/08, s. 18 (3).

(4)  Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person who transports anything that, pursuant to subsection (1), the person is entitled to possess. O. Reg. 242/08, s. 18 (4).

(5)  Clause 9 (1) (a) of the Act does not apply to the killing of an animal by an employee of a zoo if,

(a) the zoo possesses the animal under the authority ofa licence to keep specially protected and game wildlife in a zoo under the Fish and Wildlife Conservation Act, 1997;

(b) the employee is of the opinion that the animal should be euthanized; and

(c) it is not reasonable in the circumstances to obtain the services of a member of the College of Veterinarians of Ontario to kill the animal. O. Reg. 242/08, s. 18 (5).

Falconry

**19.**(1)  Subclause 9 (1) (b) (i) of the Act does not apply to a person in respect of a live falconry bird within the meaning of Part III of Ontario Regulation 668/98 (Wildlife in Captivity) made under the Fish and Wildlife Conservation Act, 1997, if,

(a) the person is acting under the authority of and in accordance with a general falconry licence, commercial falconry licence or apprentice falconry licence issued under that Act; and

(b) the person is acting in accordance with Ontario Regulation 668/98 (Wildlife in Captivity) made under the Fish and Wildlife Conservation Act, 1997. O. Reg. 242/08, s. 19 (1).

(2)  If, pursuant to subsection (1), a person is entitled to possess a live falconry bird, clause 9 (1) (b) of the Act does not apply to the person with respect to the transport of the bird. O. Reg. 242/08, s. 19 (2).

Possession prior to listing, etc.

**20.**(1)  With respect to any species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, clause 9 (1) (b) of the Act does not apply in the following circumstances to the possession of anything described in subclause 9 (1) (b) (i), (ii) or (iii) of the Act:

1. The person who possesses the thing was lawfully in possession of the thing immediately before the species was first listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species.

2. The person who possesses the thing lawfully acquired it from a person who was entitled to possess it pursuant to paragraph 1 or this paragraph. O. Reg. 242/08, s. 20 (1).

(2)  Clause 9 (1) (b) of the Act does not apply to the transport of a thing by any person if, pursuant to subsection (1), the person is entitled to possess it. O. Reg. 242/08, s. 20 (2).

(3)  Subclause 9 (1) (b) (iii) of the Act does not apply to the purchase, sale, lease or trade of any artwork, jewellery, furniture or other crafted thing, or to the offer to purchase, sell, lease or trade any artwork, jewellery, furniture or other crafted thing, if,

(a) pursuant to subsection (1), a person is entitled to possess the artwork, jewellery, furniture or other crafted thing; and

(b) the market value of the artwork, jewellery, furniture or other crafted thing is primarily attributable to factors other than the fact that it is derived from a living or dead animal, plant or other organism. O. Reg. 242/08, s. 20 (3).

(4)  Subsection (3) does not apply to anything that has beentreated, stuffed or mounted, in whole or in part, by a taxidermist. O. Reg. 242/08, s. 20 (4).

Tanning or taxidermy

**21.**Clause 9 (1) (b) of the Act does not apply to the possession or transport by a tanner or taxidermist of a dead animal that, pursuant to this Regulation, a person is entitled to possess, if the person gives the dead animal to the tanner or taxidermist for the purpose of tanning, plucking, treating, stuffing or mounting it. O. Reg. 242/08, s. 21.

**22.**Revoked: O. Reg. 176/13, s. 9 (2).

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, 2020 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. O. Reg. 176/13, s. 10 (1); O. Reg. 218/18, s. 3.

(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.

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. O. Reg. 176/13, s. 10 (1).

(3)  Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who kills, harms or harasses a caribou (boreal population), or damages or destroys its habitat, while conducting forest operations described in subsection (1) within the caribou (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 caribou (boreal population), both spatially and temporally,

ii. the establishment and growth of areas of conifer foreststhat are suitable to provide caribou (boreal population) habitat in the future, and

iii. road-use management strategies that assist in maintaining or improving habitat conditions for caribou (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 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. O. Reg. 176/13, s. 10 (1); O. Reg. 308/16, s. 4 (1).

(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. O. Reg. 176/13, s. 10 (1).

(5)  In this section,

“caribou (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 (population boréale)”)

“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”) O. Reg. 176/13, s. 10 (1); O. Reg. 308/16, s. 4 (2, 3).

Note: On July 1, 2022, section 22.1 is revoked. (See: O. Reg. 176/13, ss. 10 (2), 16 (4) and O. Reg. 219/18)

Transition — development and infrastructure

**23.**(1)  This section applies to the following activities:

1. Construction or demolition of a building under the authority ofa building permit that was issued before June 30, 2008 under section 8 of the Building Code Act, 1992.

2. Laying down highways and lots upon the ground within a draft plan of subdivision under the authority ofsubsection 51 (57) of the Planning Act, if the draft plan was approved before June 30, 2008.

3. Development of a lot, if,

i. the lot is within a draft plan of subdivision that was approved under the Planning Act before June 30, 2008,

ii. the plan of subdivision has notbeen registered under the Registry Act or Land Titles Act, and

iii. 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.

4. Development of a lot, if,

i. the lot was created by a provisional consent that was given under section 53 of the Planning Act before June 30, 2008,

ii. the lot has notbeen registered under the Registry Act or Land Titles Act, and

iii. 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 a site plan control area that is designated under subsection 41 (2) of the Planning Act, if an approval that applies to the development was obtained under subsection 41 (4) of that Act before June 30, 2008.

6. Development that is authorized by a development permit issued before June 30, 2008 under Ontario Regulation 608/06 (Development Permits) made under the Planning Act.

7. Development of a unit within the meaning of the Condominium Act, 1998, if,

i. the unit is within a draft declaration and description that were approved pursuant to subsection 9 (2) of the Condominium Act, 1998 before June 30, 2008,

ii. thedeclaration and description have not been registered under the Land Titles Act, and

iii. 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. Development that is authorized by a development permit issued before June 30, 2008 under By-law 2004-180 of the Township of Lake of Bays, including any amendments made to the by-law before that day.

9. Carrying out an undertaking, if approval to proceed with the undertaking was given under Part II of the Environmental Assessment Act before June 30, 2008.

10. Carrying out an undertaking, if proceeding with the undertaking was authorized before June 30, 2008 under,

i. the Class Environmental Assessment Process for Management Board Secretariat and Ontario Realty Corporation that was approved under the Environmental Assessment Act onApril 28, 2004,

ii. the Class Environmental Assessment for Minor Transmission Facilities that was approved under the Environmental Assessment Act on April 23, 1992,

iii. the Class Environmental Assessment for Modifications to Hydroelectric Facilities that was approved under the Environmental Assessment Act on August 19, 1993, as extended on August 5, 1998, August 15, 2000, August 19, 2003 and August 8, 2005.

iv. the Class Environmental Assessment for Provincial Transportation Facilities approved under the Environmental Assessment Act on October 6, 1999 and amended on July 14, 2000,

v. the Class Environmental Assessment for Remedial Flood and Erosion Control Projects by Conservation Authorities that was approved under the Environmental Assessment Act on June 26, 2002,

vi. the GO Transit Class Environmental Assessment Document that was approved under the Environmental Assessment Act on December 13, 1995 and amended on August 8, 2005, or

vii. the Municipal Class Environmental Assessment approved under the Environmental Assessment Act on October 4, 2000 and amended on September 6, 2007.

11. Carrying out an undertaking, if proceeding with the undertaking was authorized before June 30, 2008 under,

i. Ontario Regulation 116/01 (Electricity Projects) made under the Environmental Assessment Act, or

ii. Ontario Regulation 101/07 (Waste Management Projects) made under the Environmental Assessment Act.

12. 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.

13. Constructing a hydrocarbon line or station under the authority of an order made under Part VI of the Ontario Energy Board Act, 1998 before June 30, 2008.

14.-16. Revoked: O. Reg. 176/13, s. 11 (1).

O. Reg. 242/08, s. 23 (1); O. Reg. 176/13, s. 11 (1).

(2)  With respect to a species listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who is engaging in an activity described in subsection (1), if the person has entered into an agreement with the Minister that complies with subsection (3), the agreement is in force and the person has complied with the agreement. O. Reg. 242/08, s. 23 (2).

(3)  An agreement referred to in subsection (2) complies with this subsection if,

(a) the agreement was entered into before June 30, 2010;

(b) the agreement specifically provides that it applies to the species; and

(c) the agreement states that,

(i) the Minister is of the opinion that the agreement requires the person who engages in the activity to take reasonable steps to minimize adverse effects on the species,

(ii) the Minister is of the opinion that, if the agreement is complied with, the activity will not jeopardize the survival or recovery of the species 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. O. Reg. 242/08, s. 23 (3).

(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 (2), clause 9 (1) (a) of the Act did not apply with respect to the member of the species; and

(b) the agreement referred to in subsection (2) is in force and the person who engages in the activity described in subsection (1) has complied with the agreement. O. Reg. 242/08, s. 23 (4).

(5)  Despite subsection (2), with respect to a species listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, clause 9 (1) (a) and subsection 10 (1) of the Act do not apply during the period from June 30, 2008 to September 30, 2008 to a person who is,

(a) maintaining drainage works, if an agreement for the maintenance was filed under subsection 2 (2) of the Drainage Act before June 30, 2008;

(b) maintaining or repairing drainage works, if a report that applies to the drainage works was adopted under subsection 3 (15) or 45 (1) of the Drainage Act before June 30, 2008; or

(c) 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. O. Reg. 242/08, s. 23 (5).

(6)  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, pursuant to subsection (5), clause 9 (1) (a) of the Act did not apply with respect to the member of the species. O. Reg. 242/08, s. 23 (6).

(7)  This section does not apply to the operation of a hydro-electric generating station. O. Reg. 242/08, s. 23 (7).

(8)  Revoked: O. Reg. 176/13, s. 11 (3)

Development and infrastructure — redside dace

**23.1**(1)  This section applies to a person who carries out any of the following activities if the activity is likely to kill, harm or harass redside dace or to damage or destroy the habitat of redside dace:

1. Development of land permitted by an official plan amendment approved or made final under the Planning Act if,

i. the impact that the development might have on redside dace living in the area or outside of the area was considered in making or approving the amendment,

ii. the amendment,

A. was made or approved after September 27, 2002 and before July 1, 2011,

B. specifies the limits of the valley and stream corridors in the area to be developed, and

C. has been reviewed by the conservation authority for the area to be developed, and

iii. 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.

2. Development of a lot, including a lot registered under the Registry Act or the Land Titles Act, if,

i. the lot is within a draft plan of subdivision that was approved under the Planning Act after September 27, 2002 and before December 31, 2012,

ii. the approval has not lapsed, and

iii. 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.

3. 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, if,

i. the unit is within a draft declaration and description that were approved under subsection 9 (2) of the Condominium Act, 1998 after September 27, 2002 and before December 31, 2012,

ii. the approval has not lapsed, and

iii. 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.

4. Carrying out an undertaking if,

i. approval to proceed with the undertaking was given under Part II of the Environmental Assessment Act after September 27, 2002 and before July 1, 2011, and

ii. the impact that the undertaking might have on redside dace living in the area or outside of the area was considered in the approval.

5. Carrying out an undertaking if,

i. the undertaking is an undertaking to which one of the following class environmental assessments approved under Part II.1 of the Environmental Assessment Act applies,

A. the Class Environmental Assessment for Provincial Transportation Facilities that was approved on October 6, 1999 and amended on July 14, 2000,

B. the Class Environmental Assessment for Remedial Flood and Erosion Control Projects by Conservation Authorities that was approved on June 26, 2002 and amended in September 2009,

C. the GO Transit Class Environmental Assessment Document that was approved on December 13, 1995 and amended on August 8, 2005, or

D. the Municipal Class Environmental Assessment that was approved on October 4, 2000 and amended on September 6, 2007,

ii. proceeding with the undertaking was authorized after September 27, 2002 and before July 1, 2011 under the applicable class environmental assessment, and

iii. the impact that the undertaking might have on redside dace living in the area or outside of the area was considered when authorizing the undertaking or otherwise under the applicable class environmental assessment. O. Reg. 293/11, s. 3 (1).

(2)  Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply, with respect to redside dace, to a person carrying on an activity described in subsection (1), if the conditions set out in subsection (4) are satisfied. O. Reg. 293/11, s. 3 (1).

(3)  Clause 9 (1) (b) of the Act does not apply to the possession or transportation of redside dace by a person in the course of carrying on an activity described in subsection (1), if the conditions set out in subsection (4) are satisfied. O. Reg. 293/11, s. 3 (1).

(4)  A person who wishes to carry out an activity described in subsection (1) shall comply with the following conditions:

1. Before beginning any part of the activity that is likely to kill, harm or harass redside dace or damage or destroy the habitat of redside dace,

i. the person must prepare a mitigation report in accordance with subsection (5),

ii. the person must submit the mitigation report to the district manager of the Ministry, and

iii. the district manager must approve the mitigation report, subject to subsection (6), and the person must have received written notice of the approval.

2. After the mitigation report is approved by the district manager of the Ministry, the person may carry out the activity but shall do so in accordance with the mitigation report and with the conditions specified in subsection (7). O. Reg. 293/11, s. 3 (1).

(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, 2014. O. Reg. 176/13, s. 12.

(5)  A mitigation report referred to in paragraph 1 of subsection (4) shall include the following:

1. The name and contact information of the person on whose behalf the activity described in the report is being carried out.

2. A map indicating the geographic location of the property on which the activity will occur and the names 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,

iii. a description of all of the stages of the activity and a timeline for the stages, and

iv. a description of how the activity may affect redside dace or its habitat, including a list of any works to be carried out in or adjacent to the habitat of redside dace, such as works involving water crossings, storm water management facilities or changes to the alignment of a part of a stream or other watercourse, or any other works that may affect redside dace or its habitat.

4. A description of the location where each stage of the activity identified in subparagraph 3 iii will occur, including a detailed map and any detailed drawings of the works referred to in subparagraph 3 iv.

5. A description of any background studies related to environmental conditions completed for the location identified in paragraph 2 and available at the time of the preparation of the mitigation report.

6. Detailed plans on the steps the person shall take during the activity to minimize effects on redside dace, including,

i. a plan to control erosion and sediment,

ii. details on the planting of native plants, and

iii. restrictions on the time of year at which works may be carried out in a part of a stream or other watercourse that is included in the habitat of redside dace.

7. A description of the steps the person shall take to rescue redside dace affected by the activity.

8. A description of the steps the person shall take to monitor the effectiveness of the actions taken to minimize effects of the activity on redside dace, including details and timelines of inspections of sediment control fencing and other sediment and erosion control measures by a qualified inspector or professional engineer. O. Reg. 293/11, s. 3 (1).

(6)  A district manager for the Ministry to whom a mitigation report is submitted under subparagraph 1 ii of subsection (4) may refuse to approve the report if, in his or her opinion,

(a) the person carrying out the activity referred to in the mitigation report has not taken reasonable steps to design water crossings, storm water management facilities or other works constructed or modified as part of the activity in a manner to effectively minimize the effects on redside dace; or

(b) the measures set out in the mitigation report may not be sufficient to,

(i) effectively protect the habitat of redside dace from sediment or deleterious substances,

(ii) prevent the activity from causing an unacceptable impairment of water quality, or

(iii) otherwise effectively mitigate the impacts of the activity on redside dace. O. Reg. 293/11, s. 3 (1).

(7)  If the mitigation report is approved by a district manager for the Ministry, the person responsible for carrying out the activity referred to in the report shall comply with all of the following conditions to minimize the effects of the activity on redside dace:

1. The flow of a stream or other watercourse through the habitat of redside dace shall be maintained without interruption.

2. If the activity involves changes to the alignment of a part of a stream or other watercourse that is situated in the habitat of redside dace,

i. the changes shall be designed and carried out in a manner that minimizes adverse effects on redside dace, and

ii. the stream or other watercourse shall be changed to provide suitable conditions for redside dace.

3. If a water crossing situated in the habitat of redside dace is constructed or modified in the course of the activity,

i. in the case of a culvert, the culvert shall be an open-bottom culvert and the substrate shall be restored to provide suitable conditions for redside dace, and

ii. in the case of a bridge, the bridge shall be designed and constructed to minimize adverse effects on redside dace.

4. If, as a result of the activity, soil, earth or substrate becomes exposed within 30 metres of the meander belt of the part of a stream or other watercourse that is included in the habitat of redside dace, the exposed soil, earth or substrate shall be stabilized to prevent sediment or deleterious substances from entering the stream or watercourse within,

i. 15 days after the soil, earth or substrate becomes exposed, or

ii. a period of time longer than 15 days after the soil, earth or substrate becomes exposed, as may be approved in writing by the district manager of the Ministry if, in his or her opinion, such longer period will be sufficient to prevent sediment or deleterious substances from entering the stream or watercourse.

5. Any equipment, stockpiled material or construction material shall be stored outside the habitat of redside dace and in a manner that prevents sediment or deleterious substances from entering the habitat of redside dace.

6. A double row of sediment control fencing consisting of a non-woven material with staked straw bales shall be installed and maintained to prevent sediment from entering any part of a stream or other watercourse that is included in the habitat of redside dace.

7. Any water that is laden with sediment that the person proposes to discharge shall be filtered to remove the sediment before it enters any part of a stream or other watercourse that is included in the habitat of redside dace.

8. If, as part of the activity, an area situated within 30 metres of the habitat of redside dace is altered but no structures or other things are constructed in the area, native plants shall be planted in the area.

9. If the activity involves constructing a stormwater management facility that will discharge water into the habitat of redside dace, the facility shall be designed and constructed either as an extended detention wet pond or a hybrid wet pond and wetland system and shall include a bottom draw outlet or a subsurface trench outlet in accordance with the document entitled “Stormwater Management Planning and Design Manual, 2003”, dated March 2003 and published by the Ministry of the Environment and available on a website maintained by that Ministry.

10. If, as part of the activity, a pipeline, sewer main or hydro conduit is to be installed across a part of a stream or other watercourse that is included in the habitat of redside dace, it shall be installed using trenchless techniques. O. Reg. 293/11, s. 3 (1).

Development — bobolink, eastern meadowlark

**23.2**(1)  This section applies to a person who carries out any of the following development activities in an area where it is likely to damage or destroy the habitat of bobolink or eastern meadowlark:

1. Development of land designated as an area of settlement in an official plan of a municipality approved under the Planning Actbefore January 1, 2013.

2. Development of land within a plan of subdivision, 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 that was approved under the Planning Act before November 1, 2014,

ii. the approval has not lapsed, and

iii. 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.

3. 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, if,

i. the unit is within a draft declaration and description that were approved or exempted under section 9 of the Condominium Act, 1998 before November 1, 2014,

ii. the approval has not lapsed, and

iii. 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. O. Reg. 65/12, s. 3.

(2)  Subsection 10 (1) of the Act does not apply, with respect to the habitat of bobolink or eastern meadowlark, to a person carrying on a development activity if the following conditions are satisfied:

1. Before beginning any part of the development activity, the person must prepare a development plan in accordance with subsection (3) and submit it to the Ministry.

2. After the development plan is submitted to the Ministry, the person may begin the development activity, but shall not perform any part of the development activity that is likely to damage or destroy the habitat of bobolink or eastern meadowlark between May 1 and July 31 of any year.

3. The development activity shall be carried out in accordance with the development plan.

4. In an area that is situated outside of the area where the development activity occurs and that meets the criteria set out in subsection (4), the person carrying on the development activity shall,

i. within 12 months of the commencement of the activity, create new habitat for bobolink or eastern meadowlark, or if habitat for bobolink or eastern meadowlark already exists in the outside area, enhance the existing habitat, by ensuring that the area meets the requirements of subsection (5), and

ii. in each of the five years following the creation of the new habitat or the enhancement of the existing habitat, maintain the habitat by carrying out the measures described in subsection (6). O. Reg. 65/12, s. 3.

(3)  A development plan referred to in paragraph 1 of subsection (2) shall include the following:

1. The name and contact information of the person on whose behalf the development activity 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 development activity, a description of,

i. the area’s location, including a detailed map,

ii. the ecoregion in which the area is located, and

iii. the size of the area in hectares.

3. With respect to the development activity that the person proposes to carry out, a description of,

i. the activity, including evidence that it meets the description of one of the types of development activity set out in subsection (1),

ii. the proposed start date of the activity, and

iii. the location where each stage of the activity will occur, including a detailed map.

4. With respect to the area intended as new or enhanced habitat under subparagraph 4 i of subsection (2), a description of,

i. 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 development plan is submitted to the Ministry under paragraph 1 of subsection (2). O. Reg. 65/12, s. 3.

(4)  The following are the criteria that an area must meet as to its size and location before being converted into new habitat, or being enhanced as habitat, under subparagraph 4 i of subsection (2):

1. It must be located in the same ecoregion as the area in which the development activity is to be carried out.

2. The minimum size of the area must be as follows:

i. if the creation or enhancement of the habitat is required because of a development activity described in paragraph 1 of subsection (1), an area equal to the size of the habitat for bobolink or eastern meadowlark that the development activity is likely to damage or destroy,

ii. if the creation or enhancement of the habitat is required because of the development of land or of a unit described in paragraph 2 or 3 of subsection (1) and the approval of the development under the Planning Act or under the Condominium Act, 1998, as the case may be, was given before January 1, 2013, an area equal to 10 per cent of the habitat for bobolink or eastern meadowlark that the development is likely to damage or destroy, and

iii. if the creation or enhancement of the habitat is required because of the development of land or of a unit described in paragraph 2 or 3 of subsection (1) and the approval of the development under the Planning Act or under the Condominium Act, 1998, as the case may be, was given on or after January 1, 2013 but before November 1, 2014 an area equal to 50 per cent of the habitat for bobolink or eastern meadowlark that the development is likely to damage or destroy. O. Reg. 65/12, s. 3; O. Reg. 122/12, s 3.

(5)  The following are the requirements that habitat created or enhanced under subparagraph 4 i of subsection (2) must meet within 12 months of the commencement of the development activity:

1. 50 to 80 per cent of the habitat must be covered with at least three different grass species and the remainder of the habitat must be covered with forbs or legumes.

2. Among the grass species referred to in paragraph 1, at least one must grow greater than 50 centimetres high under normal growing conditions. O. Reg. 65/12, s. 3.

(6)  The following are the measures required to maintain new or enhanced habitat for bobolink or eastern meadowlark under subparagraph 4 ii of subsection (2):

1. If the habitat is used for pasture, exclude grazing farm animals from at least 50 per cent of the habitat from September 16 of any given year until July 31 of the following year, for a five-year period after the habitat is created or enhanced.

2. 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 (5). O. Reg. 65/12, s. 3.

(7)  In this section,

“development activity” means an activity described in paragraph 1, 2 or 3 of subsection (1). O. Reg. 65/12, s. 3; O. Reg. 176/13, s. 13.

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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

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 identified in Columns 3 and 4 of the Table to this section by its common and scientific names, and belonging to the species grouping referred to in Column 2 of the Table opposite the identified species:

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. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 2 (1).

(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. O. Reg. 176/13, s. 14.

(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-Metcalfe.

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. O. Reg. 176/13, s. 14.

(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 identified in Columns 3 and 4 of the Table to this section, or damages or destroys the habitat of such a species, if the person satisfies the conditions set out in subsection (6). O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 2 (2).

(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). O. Reg. 176/13, s. 14.

(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).

2. The person must ensure that the notice of activity includes,

i. a description of the activity,

ii. the proposed start and end dates of the activity and the location at which it will be carried out, and

iii. the name of every species identified in Columns 3 and 4 of the Table to this section that will likely be affected by the activity.

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,

i. comply with all the requirements of the mitigation plan, including the requirements that relate to the action that the person must complete under paragraph 8 in order to provide a benefit to the species identified in the notice of activity form, 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 (9) and such other steps as may be described in the mitigation plan.

5. After the plan is prepared, the person must,

i. retain a copy of the mitigation plan for at least five years after the activity is completed, and

ii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it.

6. While carrying out the activity and for a period of five years following the completion 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 Ontario Species at Risk Observation 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. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 2 (3); O. Reg. 218/18, s. 4 (1).

(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. O. Reg. 176/13, s. 14.

(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 identified in Columns 3 and 4 of the Table 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 identified in Columns 3 and 4 of the Table to this section could be 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. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 2 (4, 5).

(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 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 identified in Columns 3 and 4 of the Table 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.

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. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 2 (6).

(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. O. Reg. 176/13, s. 14.

(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 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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

Schedule Revoked: O. Reg. 179/14, s. 2 (7).

Table  
Species to which section 23.4 applies

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| --- | --- | --- | --- |
| Column 1  Item | Column 2  Species Grouping | Column 3  Common Name | Column 4  Scientific Name |
| 1. | Molluscs | Eastern Pondmussel | Ligumia nasuta |
| 2. | Molluscs | Fawnsfoot | Truncilla donaciformis |
| 3. | Molluscs | Hickorynut | Obovaria olivaria |
| 4. | Molluscs | Kidneyshell | Ptychobranchus fasciolaris |
| 5. | Molluscs | Lilliput | Toxolasma parvum |
| 6. | Molluscs | Mapleleaf Mussel | Quadrula quadrula |
| 7. | Revoked: O. Reg. 218/18, s. 4 (2). | | |
| 8. | Molluscs | Rayed Bean | Villosa fabalis |
| 9. | Molluscs | Round Pigtoe | Pleurobema sintoxia |
| 10. | Molluscs | Salamander Mussel | Simpsonaias ambigua |
| 11. | Molluscs | Snuffbox | Epioblasma triquetra |
| 12. | Molluscs | Threehorn Wartyback | Obliquaria reflexa |
| 13. | Molluscs | Wavy-rayed Lampmussel | Lampsilis fasciola |
| 14. | Fishes | Black Redhorse | Moxostoma duquesnei |
| 15. | Fishes | Channel Darter | Percina copelandi |
| 16. | Fishes | Cutlip Minnow | Exoglossum maxillingua |
| 17. | Fishes | Eastern Sand Darter | Ammocrypta pellucida |
| 18. | Fishes | Pugnose Shiner | Notropis anogenus |
| 19. | Fishes | Redside Dace | Clinostomus elongatus |
| 20. | Fishes | Silver Shiner | Notropis photogenis |
| 21. | Fishes | Spotted Gar | Lepisosteus oculatus |
| 22. | Fishes | Warmouth | Lepomis gulosus |

O. Reg. 179/14, s. 2 (8); O. Reg. 308/16, s. 5; O. Reg. 218/18, s. 4 (2).

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”) O. Reg. 176/13, s. 14.

(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 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). O. Reg. 176/13, s. 14.

(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 Ontario Species at Risk Observation 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. O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 5.

(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).

2. 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. O. Reg. 176/13, s. 14.

(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), (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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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 200 metres of an area that provides suitable foraging conditions for barn swallow and that is accessible to barn swallow. O. Reg. 176/13, s. 14; O. Reg. 323/13, s. 3.

(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. O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

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. O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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):

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 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. O. Reg. 176/13, s. 14.

(5)  A habitat management plan shall be prepared by one or more persons with expertise in relation to bobolink or eastern meadowlark, or both, as the case may be, using the best available information on steps that may help minimize or avoid adverse effects on the species to which the plan relates, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available. O. Reg. 179/14, s. 3.

(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,

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). O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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.

2. Among the grass species referred to in paragraph 1, at least one must grow greater than 50 centimetres high under normal growing conditions. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

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”) O. Reg. 176/13, s. 14.

(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.

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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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:

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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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;

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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

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 butternut tree at full growth,

iv. five 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 record maintained under paragraph 13. O. Reg. 176/13, s. 14; O. Reg. 323/13, s. 4.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(13)  Clause 9 (1) (b) of the Act does not apply with respect to butternut. O. Reg. 176/13, s. 14.

(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 (11). O. Reg. 176/13, s. 14; O. Reg. 308/16, s. 6.

(15)  Subsection 9 (1) of the Act does not apply to nuts from a butternut tree. O. Reg. 176/13, s. 14.

(16)  Section 12 of this Regulation does not apply to the commercial cultivation of butternut trees. O. Reg. 176/13, s. 14.

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, rearing and roosting, 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. O. Reg. 176/13, s. 14; O. Reg. 308/16, s. 7 (1).

(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). O. Reg. 176/13, s. 14.

(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 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 Ontario Species at Risk Observation 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. O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 6.

(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. O. Reg. 176/13, s. 14.

(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 breed, nest, rear or roost, any part of the activity that would affect the chimney must be suspended until the end of the chimney swift active season.

3. If, as a result of carrying out the activity, a chimney that provides habitat for chimney swift will be unavailable for chimney swift breeding, nesting, rearing 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 breeding, nesting, rearing 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 breeding, nesting, rearing or roosting or provides a smaller area for chimney swift breeding, nesting, rearing or roosting, or

iii. will be unavailable for chimney swift breeding, nesting, rearing or roosting 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. O. Reg. 176/13, s. 14; O. Reg. 308/16, s. 7 (2-5).

(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 breeding, nesting, rearing 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 breeding, nesting, rearing 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 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 breeding, nesting, rearing or roosting, including the following:

i. the structure must have a temperature range that is suitable for chimney swift breeding, nesting, rearing or 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 breeding, nesting, rearing or roosting,

v. the height of the structure must be suitable for chimney swift breeding, nesting, rearing or roosting having regard to the ground level, the roofline of associated structures and other structures or vegetation within reasonable proximity. O. Reg. 176/13, s. 14; O. Reg. 308/16, s. 7 (6-9).

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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 habitat until five years have passed after the creation of the habitat under paragraph 4 of subsection (5). O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

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. O. Reg. 176/13, s. 14.

(2)  This section does not apply with respect to a species identified in Columns 3 and 4 of the Table to this subsection by its common and scientific names, and belonging to the species grouping referred to in Column 2 of the Table opposite the identified species, except in the circumstances described in subsection (3).

Table  
Excluded Species

|  |  |  |  |
| --- | --- | --- | --- |
| Column 1  Item | Column 2  Species Grouping | Column 3  Common Name | Column 4  Scientific Name |
| 1. | Vascular plants | Cherry Birch | Betula lenta |
| 2. | Vascular plants | False Hop Sedge | Carex lupuliformis |
| 3. | Vascular plants | False Rue-anemone | Enemion biternatum |
| 4. | Vascular plants | Heart-leaved Plantain | Plantago cordata |
| 5. | Vascular plants | Scarlet Ammannia | Ammannia robusta |
| 6. | Vascular Plants | Lowland Toothcup | Rotala ramosior |
| 7. | Insects | Bogbean Buckmoth | Hemileuca sp |
| 8. | Fishes | Pugnose Minnow | Opsopoeodus emiliae |
| 8.1 | Fishes | Spotted Gar | Lepisosteus oculatus |
| 9. | Amphibians | Small-mouthed Salamander | Ambystoma texanum |
| 9.1 | Amphibians | Unisexual Ambystoma (Small-mouthed Salamander dependent population) | Ambystoma laterale — texanum |
| 10. | Mammals | Gray Fox | Urocyon cinereoargenteus |

O. Reg. 179/14, s. 4 (1); O. Reg. 218/18, s. 7.

(3)  This section applies with respect to a species referred to in the Table to 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). O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 4 (2).

(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). O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

(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

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. O. Reg. 176/13, s. 14.

(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 information, has been provided; and

(b) the information provided on the form is complete and accurate. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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 or after January 24, 2013, but no later than the date specified in section 0.1, the third anniversary of the day the species was so added.

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. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 4 (3)

(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. O. Reg. 176/13, s. 14.

(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.

3. 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. O. Reg. 176/13, s. 14.

(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,

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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

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. O. Reg. 176/13, s. 14.

(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 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). O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

(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

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 caribou (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 Ontario Species at Risk Observation 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. O. Reg. 176/13, s. 14; O. Reg. 308/16, s. 8 (1); O. Reg. 218/18, s. 8.

(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. O. Reg. 176/13, s. 14.

(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 or after January 24, 2013, but no later than the date specified in section 0.1, the second anniversary of the day the species was so added.

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). O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 5.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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 caribou (boreal population) during a time of year when caribou (boreal 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 caribou (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 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. O. Reg. 176/13, s. 14; O. Reg. 308/16, s. 8 (2).

(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. O. Reg. 176/13, s. 14.

(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 caribou (boreal population) in which the activity was carried out, including its geographic location and size. O. Reg. 176/13, s. 14; O. Reg. 308/16, s. 8 (3).

(13)  This section does not apply to Golden Eagle. O. Reg. 176/13, s. 14.

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.

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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(3)  Revoked: O. Reg. 323/13, s. 5.

(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). O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

(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

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 Ontario Species at Risk Observation 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. O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 9.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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

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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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 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,

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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

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.

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 Ontario Species at Risk Observation 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. O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 10.

(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 or after January 24, 2013, but no later than the date specified in section 0.1, the third anniversary of the day the species was so added.

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. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 6.

(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. O. Reg. 176/13, s. 14.

(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 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. O. Reg. 176/13, s. 14.

(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 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. O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(9)  This section does not apply to the following species:

1. Hungerford’s Crawling Water Beetle.

2. Pygmy Snaketail. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

Transition - development ongoing when species first listed, etc.

**23.13**(1)  In this section,

“effective date” means,

(a) with respect to a relevant species other than a transition species, the date on which the species was listed on the Species at Risk in Ontario List as an endangered or threatened species for the first time, being,

(i) in the case of a 2013-listed species, January 24, 2013,

(ii) in the case of a 2014-listed species, June 27, 2014,

(iii) in the case of a 2016-listed species, June 15, 2016, and

(iv) in the case of a 2017-listed species, June 2, 2017, and

(b) with respect to a transition species, June 30, 2013, being the date on which clause 10 (1) (a) of the Act began to apply to the species; (“date d’effet”)

“relevant species” means a transition species, a 2013-listed species, a 2014-listed species, a 2016-listed species or a 2017-listed species; (“espèce concernée”)

“transition species” means the species identified in Columns 3 and 4 of Table 1 to this section by their common and scientific names, and belonging to the species grouping referred to in Column 2 of the Table opposite the identified species, which include,

(a) all species originally referred to in Schedule 3 or 4 to the Act, to which clause 10 (1) (a) of the Act did not apply until June 30, 2013, but not including any such species that was reclassified in accordance with sections 5, 6 and 7 of the Act after June 30, 2008, and

(b) the species known as massasauga (Great Lakes/St. Lawrence population); (“espèce touchée par des mesures transitoires”)

“2013-listed species” means those species that were listed on the Species at Risk in Ontario List as endangered or threatened species for the first time in 2013 and that are identified in Columns 3 and 4 of Table 2 to this section by their common and scientific names, and belonging to the species grouping referred to in Column 2 of the Table opposite the identified species; (“espèce inscrite en 2013”)

“2014-listed species” means those species that were listed on the Species at Risk in Ontario List as endangered or threatened species for the first time in 2014 and that are identified in Columns 3 and 4 of Table 3 to this section by their common and scientific names, and belonging to the species grouping referred to in Column 2 of the Table opposite the identified species; (“espèce inscrite en 2014”)

“2016-listed species” means those species that were listed on the Species at Risk in Ontario List as endangered or threatened species for the first time in 2016 and that are identified in Columns 3 and 4 of Table 4 to this section by their common and scientific names, and belonging to the species grouping referred to in Column 2 of the Table opposite the identified species; (“espèce inscrite en 2016”)

“2017-listed species” means those species that were listed on the Species at Risk in Ontario List as endangered or threatened species for the first time in 2017 and that are identified in Columns 3 and 4 of Table 5 to this section by their common and scientific names, and belonging to the species grouping referred to in Column 2 of the Table opposite the identified species. (“espèce inscrite en 2017”) O. Reg. 179/14, s. 7 (1); O. Reg. 308/16, s. 9 (1-3); O. Reg. 218/18, s. 11 (1-3).

(2)  Subsections (5) to (15) apply with respect to an activity listed in Column 2 of the Table to this subsection that may have an adverse effect on a relevant species if,

(a) the action or approval that is a prerequisite to carrying out the activity and is listed in Column 3 of the Table is completed or obtained before the effective date for the relevant species, or within two years of that date; and

(b) the activity is commenced within the time period specified in subsection (2.1).

Table  
Activities and prerequisite actions and approvals

|  |  |  |
| --- | --- | --- |
| Column 1  Item | Column 2  Activity | Column 3  Prerequisite action or approval |
| 1. | Constructing drainage works under an agreement under subsection 2 (2) of the Drainage Act | Filing of agreement under subsection 2 (2) of the Drainage Act |
| 2. | Constructing drainage works in respect of which an engineer’s report was adopted under subsection 45 (1) of the Drainage Act | Adoption of engineer’s report under subsection 45 (1) of the Drainage Act |
| 3. | Laying down highways and lots upon the ground within a plan of subdivision under the authority of subsection 51 (57) of the Planning Act | Approval of the draft plan of subdivision under the Planning Act |
| 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 | Approval of draft plan of subdivision under the Planning 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 | Granting of appropriate approvals under the Planning Act |
| 6. | Development that is authorized by a development permit issued under Ontario Regulation 608/06 (Development Permits) made under the Planning Act after 2005 | Issuance of development permit |
| 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 | Approval or exemption of declaration and description |
| 8. | Carrying out an undertaking in respect of which approval to proceed was given under Part II of the Environmental Assessment Act | Granting of approval to proceed with the undertaking |
| 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 | Meeting the necessary requirements |
| 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 | Giving of notice to proceed with the transit project |
| 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 | Meeting all the necessary requirements of the Environmental Screening Process |
| 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 | Meeting all the necessary requirements of the Environmental Screening Process for Waste Management Projects |
| 13. | Constructing a hydrocarbon line or station under the authority of an order made under Part VI of the Ontario Energy Board Act, 1998 | Making the order under Part VI of the Ontario Energy Board Act, 1998 |
| 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 | Issuance of the renewable energy approval under Part V.0.1 of the Environmental Protection Act |
| 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 | Provision of confirmation of registration under section 20.22 of the Environmental Protection Act |
| 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 receipt of a certified closure plan under subsection 140 (5) of that Act or a written notice of filing of amendments to a certified closure plan under subsection 143 (8) of that Act | Receipt of written acknowledgement or notice from the Director of Mine Rehabilitation |
| 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 notice of filing of amendments to a certified closure plan under subsection 143 (8) of that Act | Receipt of written acknowledgement or notice from the Director of Mine Rehabilitation |
| 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 | Filing of certified closure plan |
| 19. | Voluntary rehabilitation of a mine hazard that was approved by the Director of Mine Rehabilitation under section 139.2 of the Mining Act | Granting of approval by the Director of Mine Rehabilitation |

O. Reg. 179/14, s. 7 (1).

(2.1)  For the purposes of clause (2) (b), an activity listed in Column 2 of the Table to subsection (2) that may have an adverse effect on a relevant species must have been commenced within a time period that begins at any time before the effective date for the relevant species and ends after the effective date, but no later than,

(a) in the case of a transition species, June 30, 2015;

(b) in the case of a 2013-listed species,

(i) the fifth anniversary of the day the prerequisite action or approval listed in Column 3 of the Table to subsection (2) was completed or obtained, or

(ii) if the prerequisite action or approval was completed or obtained before June 30, 2010, June 30, 2015;

(c) in the case of a 2014-listed species,

(i) the fifth anniversary of the day the prerequisite action or approval listed in Column 3 of the Table to subsection (2) was completed or obtained, or

(ii) if the prerequisite action or approval was completed or obtained before June 30, 2011, June 30, 2016;

(d) in the case of a 2016-listed species,

(i) the fifth anniversary of the day the prerequisite action or approval listed in Column 3 of the Table to subsection (2) was completed or obtained, or

(ii) if the prerequisite action or approval was completed or obtained before June 30, 2013, June 30, 2018; or

(e) in the case of a 2017-listed species,

(i) the fifth anniversary of the day the prerequisite action or approval listed in Column 3 of the Table to subsection (2) was completed or obtained, or

(ii) if the prerequisite action or approval was completed or obtained before June 30, 2014, June 30, 2019. O. Reg. 179/14, s. 7 (1); O. Reg. 308/16, s. 9 (4); O. Reg. 218/18, s. 11 (4).

(3)  The carrying out of an undertaking referred to in item 8, 9 or 11 of the Table to 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. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (2).

(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 Table to that section. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (3).

(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 relevant species if the conditions set out in subsection (7) are satisfied. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (4).

(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 relevant species other than a transition species if the conditions set out in subsection (7) are satisfied. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (5).

(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 relevant species that will be affected by the activity.

3. The person must give the notice of activity form before the activity is commenced or,

i. in the case of an activity that may have an adverse effect on a transition species or a 2013-listed species and that has already commenced on June 30, 2013, promptly after that date,

ii. in the case of an activity that may have an adverse effect on a 2014-listed species and that has already commenced on September 12, 2014, promptly after that date,

iii. in the case of an activity that may have an adverse effect on a 2016-listed species and that has already commenced on September 14, 2016, promptly after that date, or

iv. in the case of an activity that may have an adverse effect on a 2017-listed species and that has already commenced April, 6, 2018, promptly after that date.

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.

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 Ontario Species at Risk Observation 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. O. Reg. 176/13, s. 14 ; O. Reg. 179/14, s. 7 (6, 7); O. Reg. 308/16, s. 9 (5); O. Reg. 218/18, s. 11 (5, 6).

(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 relevant 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.

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 caribou (boreal population) to carry out a life process related to reproduction, including rearing. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (8); O. Reg. 308/16, s. 9 (6).

(9)  A mitigation plan must be prepared and updated by one or more persons with expertise in relation to every relevant 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. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (9).

(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 relevant 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 relevant species.

3. Details on the steps the person will take to minimize adverse effects of the activity on the species identified in paragraph 2, including,

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. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (10).

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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 relevant 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 relevant species that is damaged or destroyed by the activity, to the extent that it is feasible to do so,

(ii) create habitat for the relevant species or enhance any existing habitat for the relevant species in a manner that minimizes the overall loss of habitat for the relevant species resulting from the activity, or

(iii) otherwise effectively minimize the adverse effects of the activity on the relevant species. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (11).

(14)  An annual report referred to in 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 relevant species identified in the notice of activity form, including the locations where the steps were taken. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (12).

(15)  Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a relevant 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). O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (13).

(16)  Subsection 10 (1) of the Act does not apply to a person who damages or destroys the habitat of a relevant 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). O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (14).

(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 relevant species, other than a 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). O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (15).

(18)  Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a relevant 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). O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (16).

(19)  Clause 10 (1) (a) of the Act does not apply to a person who damages or destroys the habitat of a transition species after June 30, 2013 while carrying out an activity that was 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. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (17).

Table 1  
Transition Species

|  |  |  |  |
| --- | --- | --- | --- |
| Column 1  Item | Column 2  Species Grouping | Column 3  Common Name | Column 4  Scientific Name |
| 1. | Vascular Plants | American Chestnut | Castanea dentata |
| 2. | Vascular Plants | American Columbo | Frasera caroliniensis |
| 3. | Vascular Plants | American Ginseng | Panax quinquefolius |
| 4. | Vascular Plants | American Water-willow | Justicia americana |
| 5. | Vascular Plants | Branched Bartonia | Bartonia paniculata |
| 6. | Vascular Plants | Bluehearts | Buchnera americana |
| 7. | Vascular Plants | Butternut | Juglans cinerea |
| 8. | Vascular Plants | Cherry Birch | Betula lenta |
| 9. | Vascular Plants | Colicroot | Aletris farinosa |
| 10. | Revoked: O. Reg. 218/18, s. 11 (7). | | |
| 11. | Vascular Plants | Deerberry | Vaccinium stamineum |
| 12. | Vascular Plants | Dense Blazing Star | Liatris spicata |
| 13. | Vascular Plants | Dwarf Hackberry | Celtis tenuifolia |
| 14. | Vascular Plants | False Rue-anemone | Enemion biternatum |
| 15. | Vascular Plants | Forked Three-awned Grass | Aristida basiramea |
| 16. | Vascular Plants | Gattinger’s Agalinis | Agalinis gattingeri |
| 17. | Vascular Plants | Goldenseal | Hydrastis canadensis |
| 18. | Vascular Plants | Hill’s Thistle | Cirsium hillii |
| 19. | Vascular Plants | Houghton’s Goldenrod | Solidago houghtonii |
| 20. | Vascular Plants | Kentucky Coffee-tree | Gymnocladus dioicus |
| 21. | Vascular Plants | Lakeside Daisy | Tetraneuris herbacea |
| 22. | Vascular Plants | LowlandToothcup | Rotala ramosior |
| 23. | Vascular Plants | Round-leaved Greenbrier | Smilax rotundifolia |
| 24. | Vascular Plants | Scarlet Ammannia | Ammannia robusta |
| 25. | Vascular Plants | Small-flowered Lipocarpha | Lipocarpha micrantha |
| 26. | Vascular Plants | White Prairie Gentian | Gentiana alba |
| 27. | Vascular Plants | White Wood Aster | Eurybia divaricata |
| 28. | Vascular Plants | Wild Hyacinth | Camassia scilloides |
| 29. | Vascular Plants | Willowleaf Aster | Symphyotrichum praealtum |
| 30. | Molluscs | Kidneyshell | Ptychobranchus fasciolaris |
| 31. | Molluscs | Mapleleaf Mussel | Quadrula quadrula |
| 32. | Molluscs | Northern Riffleshell | Epioblasma torulosa rangiana |
| 33. | Revoked: O. Reg. 218/18, s. 11 (7). | | |
| 34. | Molluscs | Rayed Bean | Villosa fabalis |
| 35. | Molluscs | Round Hickorynut | Obovaria subrotunda |
| 36. | Molluscs | Round Pigtoe | Pleurobema sintoxia |
| 37. | Molluscs | Salamander Mussel | Simpsonaias ambigua |
| 38. | Molluscs | Snuffbox | Epioblasma triquetra |
| 39. | Insects | Aweme Borer Moth | Papaipema aweme |
| 40. | Fishes | American Eel | Anguilla rostrata |
| 41. | Fishes | Black Redhorse | Moxostoma duquesnei |
| 42. | Fishes | Channel Darter | Percina copelandi |
| 43. | Fishes | Cutlip Minnow | Exoglossum maxillingua |
| 44. | Fishes | Lake Chubsucker | Erimyzon sucetta |
| 45. | Fishes | Northern Madtom | Noturus stigmosus |
| 46. | Fishes | Shortjaw Cisco | Coregonus zenithicus |
| 47. | Fishes | Shortnose Cisco | Coregonus reighardi |
| 48. | Fishes | Spotted Gar | Lepisosteus oculatus |
| 49. | Amphibians | Allegheny Mountain Dusky Salamander | Desmognathus ochrophaeus |
| 50. | Amphibians | Small-mouthed Salamander | Ambystoma texanum |
| 51. | Reptiles | Blanding’s Turtle | Emydoidea blandingii |
| 52. | Reptiles | Eastern Hog-nosed Snake | Heterodon platirhinos |
| 53. | Reptiles | Massasauga (Great Lakes/ St. Lawrence population) | Sistrurus catenatus |
| 54. | Reptiles | Spiny Softshell | Apalone spinifera |
| 55. | Reptiles | Spotted Turtle | Clemmys guttata |
| 56. | Birds | Acadian Flycatcher | Empidonax virescens |
| 57. | Birds | Least Bittern | Ixobrychus exilis |
| 58. | Birds | Northern Bobwhite | Colinus virginianus |
| 59. | Mammals | Caribou (Boreal population) | Rangifer tarandus |
| 60. | Mammals | Gray Fox | Urocyon cinereoargenteus |
| 61. | Mammals | Wolverine | Gulo gulo |

O. Reg. 308/16, s. 9 (7); O. Reg. 218/18, s. 11 (7, 8).

Table 2  
2013-listed species

|  |  |  |  |
| --- | --- | --- | --- |
| Column 1  Item | Column 2  Species Grouping | Column 3  Common Name | Column 4  Scientific Name |
| 1. | Fishes | Pugnose Minnow | Opsopoeodus emiliae |
| 2. | Fishes | Silver Chub | Macrhybopsis storeriana |
| 3. | Birds | Yellow-breasted Chat | Icteria virens |
| 4. | Mammals | Little Brown Myotis | Myotis lucifugus |
| 5. | Mammals | Northern Myotis | Myotis septentrionalis |

O. Reg. 179/14, s. 7 (18).

Table 3  
2014-listed species

|  |  |  |  |
| --- | --- | --- | --- |
| Column 1  Item | Column 2  Species Grouping | Column 3  Common Name | Column 4  Scientific Name |
| 1. | Molluscs | Lilliput | Toxolasma paryum |
| 2. | Molluscs | Threehorn Wartyback | Obliquaria reflexa |
| 3. | Birds | Bank Swallow | Riparia riparia |
| 4. | Mammals | Eastern Small-footed Myotis | Myotis leibii |

O. Reg. 179/14, s. 7 (18).

TABLE 4  
2016-LISTED SPECIES

|  |  |  |  |
| --- | --- | --- | --- |
| Column 1  Item | Column 2  Species Grouping | Column 3  Common Name | Column 4  Scientific Name |
| 1. | Vascular Plants | Blue Ash | Fraxinus quadrangulata |
| 2. | Mammals | Algonquin Wolf | Canis sp. |
| 3. | Mammals | Tri-colored Bat | Perimyotis subflavus |

O. Reg. 308/16, s. 9 (8).

Table 5  
2017-listed species

|  |  |  |  |
| --- | --- | --- | --- |
| Column 1  Item | Column 2  Species Grouping | Column 3  Common Name | Column 4  Scientific Name |
| 1. | Birds | Louisiana Waterthrush | Parkesia motacilla |

O. Reg. 218/18, s. 11 (9).

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. O. Reg. 176/13, s. 14.

(2)  This section does not apply with respect to a species identified in Columns 3 and 4 of the following Table by its common and scientific names, and belonging to the species grouping referred to in Column 2 of the Table opposite the identified species:

Table  
Species to which section 23.14 does not apply

|  |  |  |  |
| --- | --- | --- | --- |
| Column 1  Item | Column 2  Species Grouping | Column 3  Common Name | Column 4  Scientific Name |
| 1. | Vascular plants | Virginia Mallow | Sida hermaphrodita |
| 2. | Amphibians | Small-mouthed Salamander | Ambystoma texanum |
| 2.1 | Amphibians | Unisexual Ambystoma (Small-mouthed Salamander dependent population) | Ambystoma laterale — texanum |
| 3. | Reptiles | Blue Racer | Coluber constrictor foxii |
| 4. | Reptiles | Butler’s Gartersnake | Thamnophis butler |
| 5. | Reptiles | Common Five-lined Skink (Carolinian population) | Plestiodon fasciatus |
| 6. | Birds | Henslow’s Sparrow | Ammodramus henslowii |
| 7. | Birds | Yellow-breasted Chat | Icteria virens |

O. Reg. 179/14, s. 8 (1); O. Reg. 218/18, s. 12 (1).

(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 or after January 24, 2013, but no later than the date specified in section 0.1,

(i) the pit or quarry began operations before the date the species was listed on the Species at Risk in Ontario List as an endangered or threatened species for the first time,

(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 the date the species was listed on the Species at Risk in Ontario List as an endangered or threatened species for the first time, so long as on or before the second anniversary of that date,

(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 or quarry, and

(B) the Ministry has given the applicant notice that the application complies with the requirements of the Aggregate Resources Act. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 8 (2-4).

(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). O. Reg. 176/13, s. 14.

(5)  Subsection (3) does not apply unless the person referred to in that subsection satisfies 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,

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 Ontario Species at Risk Observation 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. O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 12 (2).

(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 or after January 24, 2013, but no later than the date specified in section 0.1, the second anniversary of the day the species was so added.

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. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 8 (5).

(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. O. Reg. 176/13, s. 14.

(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 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. O. Reg. 176/13, s. 14.

(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 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.

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 9, 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. O. Reg. 176/13, s. 14; O. Reg. 232/14, s. 2.

(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);

(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. O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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.

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:

i. 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,

ii. if more than one member of the species, or more than one part or thing is acquired, the number of members, parts or things,

iii. the date the member of the species, the part or the thing comes into the possession of the educational organization,

iv. 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,

v. 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

vi. 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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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,

(a) possesses the member or part for no more than seven days; and

(b) after possessing the member or part for a maximum of seven days, transports it to an educational organization. O. Reg. 176/13, s. 14.

(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,

(a) 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;

(b) gives the notice under clause (a) by submitting a notice of possession form available 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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

Safe harbour habitat

**23.16**(1)  In this section,

“safe harbour habitat” means the habitat of a species listed on the Species at Risk in Ontario List as an endangered, threatened or special concern 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 for a species listed on the Species at Risk in Ontario List as an endangered or threatened species 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 for a species listed on the Species at Risk in Ontario List as an endangered, threatened or special concern species and that meets the requirements of subsection (3). (“acte concernant un habitat refuge”) O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 13 (1, 2).

(2)  This section applies to the habitat of a species listed on the Species at Risk in Ontario List as an endangered, threatened or special concern 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 of habitat for the species was created or enhanced,

(i) in fulfilment of a condition of a safe harbour instrument, and

(ii) for the purpose of ensuring that the habitat exists for the species for the time period specified in the safe harbour instrument. O. Reg. 176/13, s. 14; O. Reg. 232/14, s. 3 (1); O. Reg. 218/18, s. 13 (3).

(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, threatened or special concern 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, 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,

(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. O. Reg. 176/13, s. 14; O. Reg. 232/14, s. 3 (2); O. Reg. 218/18, s. 13 (4).

(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). O. Reg. 176/13, s. 14.

(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 the name of every other species that is listed on the Species at Risk in Ontario List as an endangered, threatened or special concern species that is likely to be affected by the activity, 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 activity and of the effects of the activity on members of,

A. the species for which the safe harbour habitat was created or enhanced, and

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. O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 13 (5, 6).

(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.

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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(9)  Clause (9) (1) (a) of the Act does not apply to a person who kills, harms, harasses, captures or takes a member of a species for which a 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,

(a) 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; and

(b) the killing, harming, harassing, capturing or taking occurred while destroying or damaging the safe harbour habitat in the circumstances set out in subsection (4) or while taking steps to minimize adverse effects of the destruction or damaging of the safe harbour habitat on the species for which the safe harbour habitat was created or enhanced or on any other species listed in the Species at Risk in Ontario List as an endangered or threatened species. O. Reg. 218/18, s. 13 (7).

(10)  Clause 9 (1) (b) of the Act does not apply to the possession, collection or transport of a member of a species for which a 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,

(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 to assist in minimizing the adverse effects on the species. O. Reg. 218/18, s. 13 (7).

Species protection, recovery activities

**23.17**(1)  Subsections (4) to (9) apply with respect to the following activities 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:

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. O. Reg. 176/13, s. 14.

(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 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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

(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 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 (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 Ontario Species at Risk Observation 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. O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 14.

(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. O. Reg. 176/13, s. 14.

(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.

6. 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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

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 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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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

(b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (5). O. Reg. 176/13, s. 14.

(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 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 Ontario Species at Risk Observation 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. O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 15 (1).

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(8)  Subsection (3) does not apply with respect to a species identified in Columns 3 and 4 of the Table to this subsection by its common and scientific names, and belonging to the species grouping referred to in Column 2 of the Table opposite the identified species:

table  
Species to which subsection 23.18 (3) does not apply

|  |  |  |  |
| --- | --- | --- | --- |
| Column 1  Item | Column 2  Species Grouping | Column 3  Common Name | Column 4  Scientific Name |
| 1. | Vascular plants | Bird’s-foot Violet | Viola pedata |
| 2. | Vascular plants | Bluehearts | Buchnera americana |
| 3. | Vascular plants | Forked Three-awned Grass | Aristida basiramea |
| 4. | Vascular plants | Heart-leaved Plantain | Plantago cordata |
| 5. | Vascular plants | Juniper Sedge | Carex juniperorum |
| 6. | Vascular plants | Spotted Wintergreen | Chimaphila maculate |
| 7. | Vascular plants | Virginia Goat’s-rue | Tephrosia virginiana |
| 8. | Vascular plants | Virginia Mallow | Sida hermaphrodita |
| 9. | Molluscs | Proud Globelet | Patera pennsylvanica |
| 10. | Insects | Mottled Duskywing | Erynnis martialis |
| 10.1 | Insects | Hoptree Borer | Prays atomocella |
| 10.2 | Insects | Lake Huron Grasshopper | Trimerotropis huronia |
| 10.3 | Insects | Nine-Spotted Lady Beetle | Coccinella novemnotata |
| 11. | Reptiles | Massasauga (Carolinian population) | Sistrurus catenatus |

O. Reg. 179/14, s. 9; O. Reg. 308/16, s. 10; O. Reg. 218/18, s. 15 (2).

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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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,

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

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. O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

(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,

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 Ontario Species at Risk Observation 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. O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 16.

(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 or after January 24, 2013, but no later than the date specified in section 0.1, the third anniversary of the day the species was so added.

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. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 10.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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). O. Reg. 176/13, s. 14.

(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. adjusting 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. O. Reg. 176/13, s. 14; O. Reg. 323/13, s. 6.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(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. O. Reg. 176/13, s. 14.

(16)  This section does not apply with respect to the Golden Eagle. O. Reg. 176/13, s. 14.

Habitat

American badger habitat

**24.**  (1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the following areas are prescribed as the habitat of the American badger:

1. An American badger den that is being used by an American badger or was used by an American badger at any time during the previous 12 months.

2. The area within five metres of the entrance of a den described in paragraph 1.

3. A woodchuck burrow or Franklin’s ground squirrel burrow that,

i. is being used by a woodchuck or Franklin’s ground squirrel or was used by a woodchuck or Franklin’s ground squirrel at any time in the past, and

ii. is within 850 metres of a den described in paragraph 1. O. Reg. 437/09, s. 1.

(2)  In this section,

“American badger” means an American badger (Northwestern Ontario population) and an American badger (Southwestern Ontario population). O. Reg. 308/16, s. 11.

American white pelican habitat

**24.0.1**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the geographic areas of Thunder Bay, Kenora and Rainy River are prescribed as the habitat of American white pelican. O. Reg. 122/12, s. 4.

(2)  Subsection (1) applies to the following areas:

1. An area that is being used, or was used at any time during the previous 10 years, for nesting by a single American white pelican or a colony of American white pelicans.

2. The area within 300 metres of an area described in paragraph 1. O. Reg. 122/12, s. 4.

Barn owl habitat

**24.1**  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the following areas are prescribed as the habitat of the barn owl:

1. A nesting or roosting site that is being used by a barn owl or was used by a barn owl at any time during the previous 12 months.

2. A barn, building or other structure, or a tree or other natural feature, on or in which a nesting or roosting site described in paragraph 1 is located.

3. If a nesting or roosting site described in paragraph 1 is located on a tree or other natural feature, the area within 25 metres of the base of the tree or other natural feature.

4. Those parts of the area within one kilometre of an area described in paragraph 1 or 2 that provide suitable foraging conditions for a barn owl. O. Reg. 437/09, s. 1.

Bent spike-rush habitat

**24.1.1**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the following geographic townships are prescribed as the habitat of bent spike-rush:

1. The geographic Township of Walsingham within the County of Norfolk.

2. The geographic Township of Raleigh within the Municipality of Chatham-Kent. O. Reg. 122/12, s. 4.

(2)  Subsection (1) applies to the following areas:

1. An interdunal pond in which bent spike-rush exists or on which bent spike-rush depends to carry on its life processes.

2. An area belonging to a Great Lakes coastal meadow marsh or any other ecosite identified under the land classification system for southern Ontario if bent spike-rush exists in that area or depends on the area to carry on its life processes.

3. Any other area in which bent spike-rush exists or on which bent spike-rush depends to carry on its life processes. O. Reg. 122/12, s. 4.

(3)  For the purposes of paragraph 1 of subsection (2), the boundaries of an interdunal pond referred to in that paragraph shall be determined based on its maximum historic extent. O. Reg. 122/12, s. 4.

(4)  Revoked: O. Reg. 323/13, s. 7.

Bogbean buckmoth habitat

**24.1.1.1**(1)  For the purposes of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the following geographic townships are prescribed as the habitat of bogbean buckmoth:

1. The geographic Townships of Goulbourn and Marlborough, within the City of Ottawa.

2. The geographic Township of McNab, within the County of Renfrew.

3. The geographic Township of Pakenham, within the County of Lanark. O. Reg. 323/13, s. 8.

(2)  Subsection (1) applies to the following areas:

1. An area that belongs to a community class identified as a fen under the land classification system for southern Ontario and that,

i. is being used by a bogbean buckmoth or is a fen on which a bogbean buckmoth depends to carry on its life processes, or

ii. was used by a bogbean buckmoth at any time during the previous three years and provides suitable conditions for a bogbean buckmoth to carry on its life processes.

2. Any area within 120 metres of an area described in paragraph 1. O. Reg. 323/13, s. 8.

Common five-lined skink (Carolinian population) habitat

**24.1.2**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the geographic areas of Chatham-Kent, Elgin, Essex, Haldimand, Halton, Lambton, Middlesex and Niagara are prescribed as the habitat of the common five-lined skink (Carolinian population). O. Reg. 122/12, s. 4.

(2)  Subsection (1) applies to the following areas:

1. A naturally occurring area that is being used, or was used at any time in the past three years, by a common five-lined skink (Carolinian population) as a nesting or hibernation site.

2. The area within 30 metres of the area described in paragraph 1.

3. An area other than a naturally occurring area being used by a common five-lined skink (Carolinian population) as a nesting site from the time it is used until the following August 31.

4. An area other than a naturally occurring area being used by a common five-lined skink (Carolinian population) as a hibernation site from the time it is used until the following May 31.

5. An area that is being used, or has been used at any time in the previous three years, by a common five-lined skink (Carolinian population) to carry on life processes other than nesting or hibernation.

6. If an area described in paragraph 1, 2, 3, 4 or 5 is located in an area belonging to a land classification described in subsection (3), the entire area so classified and any other contiguous areas, or areas connected by swamp or marsh, that also belong to a land classification described in subsection (3).

7. An area within 50 metres of an area described in paragraph 3, 4 or 5 if that area provides suitable conditions for a common five-lined skink (Carolinian population) to carry on its life processes. O. Reg. 122/12, s. 4.

(3)  The following are the land classifications referred to in paragraph 6 of subsection (2):

1. Any of the following community classes identified under the land classification system for southern Ontario:

i. A beach/bar.

ii. A sand dune.

iii. A sand barren.

iv. A tallgrass prairie, savannah or woodland.

v. A forest.

2. A community series identified as cultural meadow under the land classification system for southern Ontario. O. Reg. 122/12, s. 4.

(4)  Revoked: O. Reg. 323/13, s. 9.

Eastern flowering dogwood habitat

**24.2**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the following municipalities are prescribed as the habitat of eastern flowering dogwood:

1. The cities of Brantford, Hamilton, London and Windsor.

2. The counties of Brant, Elgin, Essex, Haldimand, Lambton, Middlesex, Oxford and Norfolk.

3. The Municipality of Chatham-Kent.

4. The regional municipalities of Halton and Niagara. O. Reg. 293/11, s. 4.

(2)  Subsection (1) applies to the following areas:

1. A terrestrial area within 20 metres of the stem of an eastern flowering dogwood.

2. An area populated by a vegetation type referred to in the land classification system for southern Ontario if,

i. the vegetation type occurs naturally in Ontario, and

ii. eastern flowering dogwood also exists in the area. O. Reg. 293/11, s. 4; O. Reg. 323/13, s. 10.

(3)  In paragraph 1 of subsection (2),

“terrestrial area” means an area where,

(a) the water table is rarely or briefly above the substrate surface, and

(b) hydric soils have not developed. O. Reg. 293/11, s. 4.

(4)  The document referred to in paragraph 2 of subsection (2) is available at the Ministry of Natural Resources District offices and the Ministry of Natural Resources corporate library in Peterborough, Ontario. O. Reg. 293/11, s. 4.

Eastern Foxsnake (Carolinian population) habitat

**24.3**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the following geographic areas and parts of geographic areas are prescribed as the habitat of eastern foxsnake (Carolinian population):

1. The geographic areas of Chatham-Kent, Essex, Haldimand, Lambton and Norfolk.

2. The parts of the geographic area of Elgin composed of the lower-tier municipalities of Bayham and West Elgin. O. Reg. 122/12, s. 4.

(2)  Subsection (1) applies to the following areas:

1. An eastern foxsnake (Carolinian population) hibernaculum.

2. The area within 100 metres of the area described in paragraph 1.

3. A naturally occurring eastern foxsnake (Carolinian population) egg laying site that is being used, or has been used at any time in the previous three years, by an eastern foxsnake (Carolinian population).

4. An eastern foxsnake (Carolinian population) egg laying site, other than a naturally occurring egg laying site, being used by an eastern foxsnake (Carolinian population) from the time it is used until the following November 30.

5. A naturally occurring eastern foxsnake (Carolinian population) shedding or basking site that is being used, or has been used at any time in the previous three years, by two or more eastern foxsnakes (Carolinian population).

6. An eastern foxsnake (Carolinian population) shedding or basking site, other than a naturally occurring shedding or basking site, that is being used by two or more eastern foxsnakes (Carolinian population) from the time it is used until the following November 30.

7. The area within 30 metres of an area described in paragraph 3, 4, 5 or 6.

8. Any part of a prairie, savannah, hedge row, shoreline, marsh, old field, forest, sand dune or similar area that is being used by an eastern foxsnake (Carolinian population) or on which an eastern foxsnake (Carolinian population) directly depends to carry on its life processes.

9. An area that provides suitable foraging, thermoregulation, or hibernation conditions for eastern foxsnake (Carolinian population) that is within 1,500 metres of any area described in paragraph 8.

10. An area that provides suitable conditions for an eastern foxsnake (Carolinian population) to move between areas described in paragraphs 1 through 9. O. Reg. 122/12, s. 4.

(3)  Subsection (1) does not apply to an area that is part of a lake or river below the historical low water mark. O. Reg. 122/12, s. 4.

Eastern Foxsnake (Georgian Bay population) habitat

**24.4**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the following geographic areas and parts of geographic areas are prescribed as the habitat of eastern foxsnake (Georgian Bay population):

1. The geographic areas of Parry Sound and Sudbury.

2. The part of the geographic area of Muskoka composed of the lower-tier municipality of Georgian Bay.

3. The parts of the geographic area of Simcoe composed of the lower-tier municipalites of Midland, Penetanguishene, Severn, Tay and Tiny. O. Reg. 122/12, s. 4.

(2)  Subsection (1) applies to the following areas:

1. An eastern foxsnake (Georgian Bay population) hibernaculum.

2. The area within 100 metres of the area described in paragraph 1.

3. A naturally occurring eastern foxsnake (Georgian Bay population) egg laying site that is being used, or has been used at any time in the previous three years, by an eastern foxsnake (Georgian Bay population).

4. An eastern foxsnake (Georgian Bay population) egg laying site, other than a naturally occurring egg laying site, being used by an eastern foxsnake (Georgian Bay population) from the time it is used until the following November 30.

5. A naturally occurring eastern foxsnake (Georgian Bay population) shedding or basking site that is being used, or has been used at any time in the previous three years, by two or more eastern foxsnakes (Georgian Bay population).

6. An eastern foxsnake (Georgian Bay population) shedding or basking site, other than a naturally occurring shedding or basking site, that is being used by two or more eastern foxsnakes (Georgian Bay population) from the time it is used until the following November 30.

7. The area within 30 metres of an area described in paragraph 3, 4, 5 or 6.

8. Any part of a rock barren, open forest, old field, marsh, shoreline or similar area that is being used by an eastern foxsnake (Georgian Bay population) or on which an eastern foxsnake (Georgian Bay population) directly depends to carry on its life processes.

9. An area that provides suitable foraging, thermoregulation, or hibernation conditions for eastern foxsnake (Georgian Bay population) that is,

i. within 3,600 metres of an area described in paragraph 8 and no more than 500 metres above the high water mark of Georgian Bay, or

ii. within 1,500 metres of any area described in paragraph 8 and within the boundaries set out in subsection (3).

10. An area that provides suitable conditions for an eastern foxsnake (Georgian Bay population) to move between areas described in paragraphs 1 through 9. O. Reg. 122/12, s. 4.

(3)  The boundaries referred to in subparagraph 9 ii of subsection (2) are as follows:

1. Beginning at the point where the northern limit of the road allowance between Concessions 6 and 7 of the Geographic Township of Baxter meets the waters edge of Georgian Bay.

2. Thence easterly along said limit to the western limit of Highway 400.

3. Thence southerly along the western limit of Highway 400 to the northern waters edge of Tug Channel.

4. Thence northerly along the shore of Georgian Bay to the point of commencement. O. Reg. 122/12, s. 4.

(4)  Subsection (1) does not apply to,

(a) an area that is part of a lake or river below the historical low water mark; or

(b) an area that was used to grow corn, potatoes, soya beans, wheat or any other row crop in the previous 12 months. O. Reg. 122/12, s. 4.

Eastern prairie fringed-orchid habitat

**25.**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the following areas are prescribed as the habitat of the eastern prairie fringed-orchid:

1. Areas described in subsection (2) where eastern prairie fringed-orchids exist or existed at any time in the past in,

i. the City of Ottawa,

ii. the counties of Bruce, Essex, Grey, Lambton, Lanark, Lennox and Addington and Simcoe,

iii. the Municipality of Chatham-Kent,

iv. The Regional Municipality of York, and

v. the United Counties of Leeds and Grenville and the United Counties of Stormont, Dundas and Glengarry. O. Reg. 436/09, s. 1.

(2)  Paragraph 1 of subsection (1) applies to the following areas:

1. Fens.

2. Tallgrass prairies.

3. Moist old fields. O. Reg. 436/09, s. 1.

Eastern sand darter habitat

**25.1**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the following geographic areas and parts of geographic areas are prescribed as the habitat of eastern sand darter:

1. The geographic areas of Brant, Chatham-Kent, Essex, Elgin, Haldimand, Middlesex, Norfolk and Prince Edward, including the water bodies of Lake Erie, Lake St. Clair and the Detroit River that are adjacent to those geographic areas.

2. The parts of the geographic area of Lambton composed of the lower tier municipalities of Brooke-Alvinston and Dawn-Euphemia. O. Reg. 232/14, s. 4.

(2)  Subject to subsection (3), subsection (1) applies to the following areas:

1. Any part of a river, stream or other watercourse, other than the Detroit River, up to the high water mark, that is being used, or has been used at any time in the previous four years, by an eastern sand darter.

2. Any part of a river, stream or other watercourse, up to the high water mark, that is within the same watercourse segment as the area described in paragraph 1.

3. Any area adjacent to the part of a river, stream or other watercourse described in paragraph 1 or 2 that is,

i. an area consisting primarily of vegetation that occurs naturally or with minimal human intervention, such as a forest, woodland, thicket, wetland, old field, pasture or meadow, and

ii. within 30 metres of the relevant high water mark.

4. Any part of the Detroit River or other body of water, other than a watercourse described in paragraph 1, up to the high water mark, that is being used, or has been used at any time in the previous 4 years, by an eastern sand darter.

5. Any part of a body of water that is within the same body of water as an area described in paragraph 4 if that part is,

i. dominated by sand or fine gravel substrate, and

ii. within 1000 metres of the area described in paragraph 4. O. Reg. 232/14, s. 4.

(3)  Subsection (1) does not apply to the following areas:

1. The part of the Sydenham River downstream of the downstream edge of the bridge on County Road 21 in the town of Dresden within the Municipality of Chatham-Kent.

2. A river, stream or watercourse that would be part of a watercourse segment described in paragraph 2 of subsection (2) that is a tributary to the watercourse containing the area described in paragraph 1 of subsection (2), unless that tributary is being used, or has been used at any time in the previous 4 years, by an eastern sand darter. O. Reg. 232/14, s. 4.

Engelmann’s quillwort habitat

**26.**For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the following areas are prescribed as the habitat of Engelmann’s quillwort:

1. The area shown as “Engelmann’s Quillwort Habitat” on a map entitled “Engelmann’s Quillwort (Isoetes engelmannii) Habitat / Habitat de l’isoète d’Engelmann (Isoetes engelmannii) – Rivière Gull River” that is filed in the office of the Surveyor General and is dated July 28, 2016, but not including,

i. any part of the area that has quickly flowing turbulent water,

ii. any part of the area where the water is more than five metres deep, or

iii. any part of the area that is heavily shaded by trees or other vegetation between June 1 and September 30.

2. The area shown as “Engelmann’s Quillwort Habitat” on a map entitled “Engelmann’s Quillwort (Isoetes engelmannii) Habitat / Habitat de l’isoète d’Engelmann (Isoetes engelmannii) – Rivière Severn River” that is filed in the office of the Surveyor General and is dated July 28, 2016, but not including,

i. any part of the area that has quickly flowing turbulent water,

ii. any part of the area where the water is more than five metres deep, or

iii. any part of the area that is heavily shaded by trees or other vegetation between June 1 and September 30.

3. The area above the high water mark that is within five metres of an area described in paragraph 1 or 2. O. Reg. 436/09, s. 1; O. Reg. 308/16, s. 12.

Few-flowered club-rush habitat

**27.**For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the following areas are prescribed as the habitat of few-flowered club-rush:

1. Dry fresh oak deciduous forest located in,

i. Lot 32, ranges 2 and 3, in the geographic Township of Pickering, located in the City of Pickering in The Regional Municipality of Durham,

ii. Lots 21 to 26, Concession 1, in the Royal Botanical Gardens in the geographic Township of Flamborough, located in the City of Hamilton, or

iii. Lot 1, Concession Gore, in the Royal Botanical Gardens in the geographic Township of Ancaster, located in the City of Hamilton.

2. Dry fresh oak-maple-hickory deciduous forest located in,

i. Lot 32, ranges 2 and 3, in the geographic Township of Pickering, located in the City of Pickering in The Regional Municipality of Durham,

ii. Lots 21 to 26, Concession 1, in the Royal Botanical Gardens in the geographic Township of Flamborough, located in the City of Hamilton, or

iii. Lot 1, Concession Gore, in the Royal Botanical Gardens in the geographic Township of Ancaster, located in the City of Hamilton.

3. Dry tallgrass woodland located in,

i. Lots 21 to 26, Concession 1, in the Royal Botanical Gardens in the geographic Township of Flamborough, located in the City of Hamilton, or

ii. Lot 1, Concession Gore, in the Royal Botanical Gardens in the geographic Township of Ancaster, located in the City of Hamilton. O. Reg. 436/09, s. 1; O. Reg. 65/12, s. 4.

Four-leaved milkweed habitat

**27.0.1**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the following geographic areas and parts of geographic areas are prescribed as the habitat of four-leaved milkweed:

1. The geographic area of Prince Edward.

2. The parts of the geographic area of Hastings composed of the single-tier municipality of Belleville and the lower-tier municipality of Tyendinaga.

3. The part of the geographic area of Lennox and Addington composed of the lower-tier municipality of Greater Napanee.

4. The parts of the geographic area of Niagara composed of the lower-tier municipalities of Niagara Falls and Niagara-on-the-Lake. O. Reg. 323/13, s. 11.

(2)  Subsection (1) applies to the following areas:

1. An area where a four-leaved milkweed exists or existed at any time in the previous six years.

2. Any area within 50 metres of an area described in paragraph 1.

3. Any area that is beyond 50 metres of an area described in paragraph 1 but within 200 metres of that area if the area is suitable for natural colonization by four-leaved milkweed such as a treed alvar, woodland, cultural meadow, thicket, young deciduous forest or similar area. O. Reg. 323/13, s. 11.

Fowler’s toad habitat

**27.0.2**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the following geographic areas are prescribed as the habitat of fowler’s toad:

1. The geographic Township of Bayham within Elgin county.

2. The geographic Townships of Harwich and Howard within the Municipality of Chatham-Kent.

3. The geographic Townships of Bertie, Humberstone and Wainfleet within the Regional Municipality of Niagara.

4. The geographic Townships of Charlotteville, Houghton and Walsingham within Norfolk County.

5. The geographic Townships of Cayuga, Dunn, Moulton, Rainham and Sherbrooke within Haldimand County. O. Reg. 323/13, s. 11.

(2)  Subsection (1) applies to the following areas:

1. Any part of a wetland, pond or other body of water, including a vernal or other temporary pool, that is being used, or was used at any time in the previous five years, by a Fowler’s toad for breeding, egg laying or tadpole development.

2. Any area within 30 metres of an area described in paragraph 1.

3. An area that is being used, or was used at any time in the previous five years, by a Fowler’s toad as a hibernation site or for any purpose other than migration or dispersal.

4. Any of the following types of areas near Lake Erie that fall within a surrounding zone described in subsection (3):

i. a sand or pebble beach that is open or populated by shrubs or trees,

ii. a sand dune or sand barren that is open or populated by shrubs or trees,

iii. a marsh or a pond, pool or other body of water, including vernal or other temporary pools, or

iv. a rock shoal.

5. An area that is being used, or was used at any time in the previous five years, by a Fowler’s toad to migrate between two or more areas described in paragraphs 1, 3 or 4 if,

i. the areas are within one kilometre of each other, and

ii. the areas belong to a community series identified in the land classification system for southern Ontario.

6. An area situated between two areas described in paragraph 4, whether or not the two areas are within the same surrounding zone, if,

i. the two areas are within one kilometre of each other, as measured along the water’s edge of Lake Erie, and

ii. the area provides suitable conditions for Fowler’s toad to disperse from one of the two areas to the other. O. Reg. 323/13, s. 11.

(3)  A surrounding zone referred to in paragraph 4 of subsection (2) is a zone that is in the shape of an approximate square or rectangle and that surrounds a habitat area described in paragraph 1 or 3 of subsection (2) near Lake Erie. The limits of the surrounding zone are determined as follows:

1. Trace two lines beginning from the outer edges of a habitat area described in paragraph 1 or 3 of subsection (2) and extending in both directions parallel to the water’s edge for 150 metres to reach either side of the square or rectangle.

2. Then, changing direction and beginning at the end of both lines traced under paragraph 1, trace two lines towards the water’s edge of Lake Erie until it is reached on both sides of the square or rectangle.

3. The water’s edge of Lake Erie between the two lines traced under paragraph 2 forms the bottom line of the square or rectangle.

4. The top line of the square or rectangle is parallel to the bottom line and runs between the two side lines of the square or rectangle determined under paragraph 2, and is situated at a distance from the bottom line determined by extending the two side lines above the high water mark of Lake Erie to a distance of,

i. 700 metres, in the case of a surrounding zone situated in the geographic township of Walsingham within Norfolk County, or

ii. 300 metres, in any other case. O. Reg. 323/13, s. 11.

Gray ratsnake (Carolinian population) habitat

**27.1**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the following geographic areas and parts of geographic areas are prescribed as the habitat of gray ratsnake (Carolinian population):

1. The geographic areas of Brant, Elgin, Haldimand, Niagara and Norfolk.

2. The part of the geographic area of Middlesex composed of the upper-tier municipality of Middlesex. O. Reg. 122/12, s. 4.

(2)  Subsection (1) applies to the following areas:

1. A gray ratsnake (Carolinian population) hibernaculum.

2. The area within 150 metres of the area described in paragraph 1.

3. A naturally occurring gray ratsnake (Carolinian population) egg laying site that is being used, or has been used at any time in the previous three years, by a gray ratsnake (Carolinian population).

4. A gray ratsnake (Carolinian population) egg laying site, other than a naturally occurring egg laying site, being used by a gray ratsnake (Carolinian population) from the time it is used until the following November 30.

5. A naturally occurring gray ratsnake (Carolinian population) shedding or basking site that is being used, or has been used at any time in the previous three years, by two or more gray ratsnakes (Carolinian population).

6. A gray ratsnake (Carolinian population) shedding or basking site, other than a naturally occurring shedding or basking site, that is being used by two or more gray ratsnakes (Carolinian population) from the time it is used until the following November 30.

7. The area within 30 metres of an area described in paragraph 3, 4, 5 or 6.

8. Any part of a meadow, forest, hedge row, shoreline, old field, wetland or similar area that is being used by a gray ratsnake (Carolinian population) or on which a gray ratsnake (Carolinian population) directly depends to carry on its life processes.

9. An area that provides suitable foraging, thermoregulation, or hibernation conditions for gray ratsnake (Carolinian population) that is within 2,000 metres of an area described in paragraph 8.

10. An area that provides suitable conditions for gray ratsnake (Carolinian population) to move between areas described in paragraphs 1 through 9. O. Reg. 122/12, s. 4; O. Reg. 232/14, s. 5.

(3)  Subsection (1) does not apply to an area that is part of a lake or river below the historical low water mark. O. Reg. 122/12, s. 4.

Gray ratsnake (Frontenac Axis population) habitat

**27.2**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the following geographic areas and parts of geographic areas are prescribed as the habitat of gray ratsnake (Frontenac Axis population):

1. The geographic area of Leeds and Grenville.

2. The parts of the geographic area of Frontenac composed of the lower-tier municipalities of Central Frontenac, Frontenac Islands and South Frontenac and the single-tier municipality of Kingston.

3. The parts of the geographic area of Lanark composed of the lower-tier municipalities of Drummond-North Elmsley and Tay Valley. O. Reg. 122/12, s. 4.

(2)  Subsection (1) applies to the following areas:

1. A gray ratsnake (Frontenac Axis population) hibernaculum.

2. The area within 150 metres of the area described in paragraph 1.

3. A naturally occurring gray ratsnake (Frontenac Axis population) egg laying site that is being used, or has been used at any time in the previous three years, by a gray ratsnake (Frontenac Axis population).

4. A gray ratsnake (Frontenac Axis population) egg laying site, other than a naturally occurring egg laying site, being used by a gray ratsnake (Frontenac Axis population) from the time it is used until the following November 30.

5. A naturally occurring gray ratsnake (Frontenac Axis population) shedding or basking site that is being used, or has been used at any time in the previous three years, by two or more gray ratsnakes (Frontenac Axis population).

6. A gray ratsnake (Frontenac Axis population) shedding or basking site, other than a naturally occurring shedding or basking site, that is being used by two or more gray ratsnakes (Frontenac Axis population) from the time it is used until the following November 30.

7. The area within 30 metres of an area described in paragraph 3, 4, 5 or 6.

8. Any part of a rock barren, forest, hedge row, shoreline, old field, wetland or similar area that is being used by a gray ratsnake (Frontenac Axis population) or on which a gray ratsnake (Frontenac Axis population) directly depends to carry on its life processes.

9. An area that provides suitable foraging, thermoregulation, or hibernation conditions for gray ratsnake (Frontenac Axis population) that is within 1,000 metres of an area described in paragraph 8.

10. An area that provides suitable conditions for gray ratsnake (Frontenac Axis population) to move between areas described in paragraphs 1 through 9. O. Reg. 122/12, s. 4; O. Reg. 232/14, s. 6.

(3)  Subsection (1) does not apply to,

(a) an area that is part of a lake or river below the historical low water mark; or

(b) an area that was used to grow corn, potatoes, soya beans, wheat or any other row crop in the previous 12 months. O. Reg. 122/12, s. 4.

Hine’s emerald habitat

**27.3**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the parts of the geographic area of Simcoe composed of the single-tier municipality of Barrie and the lower-tier municipalities of Adjala-Tosorontio, Clearview, Essa, Innisfil, Springwater and Wasaga Beach are prescribed as the habitat of Hine’s emerald. O. Reg. 232/14, s. 7.

(2)  Subsection (1) applies to the following areas:

1. Any part of a fen, marsh, seepage area, pond or other body of water, including a vernal or other temporary pool, that is being used, or has been used at any time in the past, by a Hine’s emerald for egg laying or larval development.

2. Any part of a wetland, watercourse, pond or other body of water, including a vernal or other temporary pool, up to the high water mark, that is within 1600 metres of an area described in paragraph 1.

3. Any area that does not have an impervious surface and that is within 500 metres of an area described in paragraph 2. O. Reg. 232/14, s. 7.

(3)  In this section,

“impervious surface” means a surface that does not permit the infiltration of water, such as a rooftop, sidewalk, paved roadway, driveway or parking lot; (“surface imperméable”)

“seepage area” means a site of emergence of ground water where the water table is present at the ground surface, including a spring. (“surface de suintement”) O. Reg. 232/14, s. 7.

Hungerford’s crawling water beetle habitat

**27.4**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the following geographic areas are prescribed as the habitat of Hungerford’s crawling water beetle:

1. The parts of the geographic area of Bruce composed of the lower-tier municipalities of Arran-Elderslie, Brockton, South Bruce and South Bruce Peninsula.

2. The parts of the geographic area of Grey composed of the lower-tier municipalities of Chatsworth, Hanover and West Grey. O. Reg. 232/14, s. 7.

(2)  Subsection (1) applies to the following areas:

1. Any part of a river, stream or other watercourse, up to the high water mark, that is being used, or has been used at any time in the previous five years, by a Hungerford’s crawling water beetle.

2. Any part of a river, stream or other watercourse, up to the high water mark, that is within 400 metres of an area described in paragraph 1.

3. Any area adjacent to the part of a river, stream or other watercourse described in paragraph 1 or 2 that is,

i. an area consisting primarily of vegetation that occurs naturally or with minimal human intervention, such as forest, woodland, thicket, wetland, old field, pasture or meadow, and

ii. within 30 metres of the relevant high water mark. O. Reg. 232/14, s. 7.

Jefferson salamander habitat

**28.**For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the following areas are prescribed as the habitat of the Jefferson salamander:

1. In the City of Hamilton, the counties of Brant, Dufferin, Elgin, Grey, Haldimand, Norfolk and Wellington and the regional municipalities of Halton, Niagara, Peel, Waterloo and York,

i. a wetland, pond or vernal or other temporary pool that is being used by a Jefferson salamander or Jefferson dominated polyploid or was used by a Jefferson salamander or Jefferson dominated polyploid at any time during the previous five years,

ii. an area that is within 300 metres of a wetland, pond or vernal or other temporary pool described in subparagraph i and that provides suitable foraging, dispersal, migration or hibernation conditions for Jefferson salamanders or Jefferson dominated polyploids,

iii. a wetland, pond or vernal or other temporary pool that,

A. would provide suitable breeding conditions for Jefferson salamanders or Jefferson dominated polyploids,

B. is within one kilometre of an area described in subparagraph i, and

C. is connected to the area described in subparagraph i by an area described in subparagraph iv, and

iv. an area that provides suitable conditions for Jefferson salamanders or Jefferson dominated polyploids to disperse and is within one kilometre of an area described in subparagraph i. O. Reg. 436/09, s. 1.

Laura’s clubtail habitat

**28.0.0.1**(1)  For the purposes of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the following geographic areas or parts of geographic areas are prescribed as the habitat of Laura’s clubtail:

1. The geographic areas of Brant and Norfolk.

2. The parts of the geographic area of Elgin composed of the lower-tier municipalities of Bayham and Malahide.

3. The parts of the geographic area of Oxford composed of the lower-tier municipalities of Norwich, South-West Oxford and Tilsonburg. O. Reg. 323/13, s. 11.

(2)  Subsection (1) applies to the following areas:

1. Any part of a river, stream or other body of water, up to the high water mark, that is being used by a Laura’s clubtail or on which a Laura’s clubtail directly depends in order to carry on its life processes.

2. Any part of a river, stream or other body of water, up to the high water mark, that was used by a Laura’s clubtail at any time during the previous 5 years and that provides suitable conditions for a Laura’s clubtail to carry on its life processes.

3. An area within 200 metres of a high water mark referred to in paragraph 1 or 2 that is populated by a vegetation type referred to in the land classification system for southern Ontario if the vegetation type occurs naturally in Ontario. O. Reg. 323/13, s. 11.

Northern barrens tiger beetle habitat

**28.0.1**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the following areas in the geographic Township of Bosanquet, located in the County of Lambton are prescribed as the habitat of northern barrens tiger beetle:

1. An area that,

i. is being used, or has been used at any time in the previous five years, by a northern barrens tiger beetle, and

ii. provides suitable conditions for a northern barrens tiger beetle to carry on its life processes.

2. An area of exposed sand substrate that is contiguous with an area described in paragraph 1 and within 250 metres of an area described in paragraph 1.

3. An area suitable for foraging, thermoregulation, hibernation, reproduction, or dispersal within 250 metres of an area described in paragraph 1. O. Reg. 122/12, s. 4.

(2)  For greater certainty, an area of exposed sand substrate referred to in paragraph 2 of subsection (1) may include trails, hydro corridors, access roads, and other similar areas. O. Reg. 122/12, s. 4.

Ogden’s pondweed habitat

**28.1**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the following geographic townships are prescribed as the habitat of Ogden’s pondweed:

1. The geographic Township of South Crosby, located in the Municipality of Rideau Lakes in the United Counties of Leeds and Grenville.

2. The geographic Township of Burgess, located in the Municipality of Tay Valley in the County of Lanark. O. Reg. 293/11, s. 5.

(2)  Subsection (1) applies to the following areas:

1. An aquatic vegetation community where Ogden’s pondweed exists or has existed at any time in the past that is in an area of a stream, river or other body of water that is less than five metres deep.

2. Any part of a river, stream or other body of water within an area described in paragraph 1, up to the high water mark.

3. The area above the high water mark that is within five metres of an area described in paragraph 2. O. Reg. 293/11, s. 5.

Pale-bellied frost lichen habitat

**28.2**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the following geographic areas, parts of geographic areas and provincial park are prescribed as the habitat of pale-bellied frost lichen:

1. Algonquin Provincial Park.

2. The geographic areas of Haliburton, Hastings, Lanark, Lennox and Addington, Peterborough and Renfrew.

3. The parts of the geographic area of Frontenac composed of the lower-tier municipalities of Central Frontenac, North Frontenac and South Frontenac.

4. The parts of the geographic area of Leeds and Grenville composed of the lower-tier municipalities of Athens, Elizabethtown-Kitley, Merrickville-Wolford and Rideau Lakes.

5. The parts of the geographic area of Nipissing composed of the lower-tier municipality of South Algonquin. O. Reg. 323/13, s. 12 (1).

(2)  Subsection (1) applies to the following areas:

1. The host tree on which the pale-bellied frost lichen exists and the area within 50 metres of the trunk of the host tree.

2. An area within 100 metres of pale-bellied frost lichen that falls within a water body, watercourse or an area belonging to a community series identified under the land classification system for southern Ontario and that,

i. is suitable for natural colonization from an existing population of pale-bellied frost lichen, or

ii. contributes to the maintenance of suitable microsite characteristics for pale-bellied frost lichen to exist. O. Reg. 122/12, s. 4.

(3)  Revoked: O. Reg. 323/13, s. 12 (2).

Pitcher’s thistle habitat

**28.3**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the following geographic areas and geographic townships are prescribed as the habitat of Pitcher’s thistle:

1. The part of the geographic area of Bruce composed of the lower-tier municipality of Kincardine.

2. The part of the geographic area of Lambton composed of the lower-tier municipality of Lambton Shores.

3. The parts of the geographic area of Manitoulin composed of the single-tier municipalities of Burpee and Mills, Central Manitoulin, Cockburn Island, Northeast Manitoulin and the Islands and Tehkummah.

4. The geographic townships of Dawson and Robinson within the geographic area of Manitoulin. O. Reg. 232/14, s. 7.

(2)  Subsection (1) applies to the following areas:

1. A sand dune with less than 25 per cent tree cover, where Pitcher’s thistle exists or has existed at any time in the previous five years.

2. Any area that is within 15 metres of the area referred to in paragraph 1, if the area consists primarily of vegetation that occurs naturally or with minimal human intervention and has greater than 25 per cent tree cover. O. Reg. 232/14, s. 7.

Queensnake habitat

**29.**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the geographic areas of Brant, Bruce, Chatham-Kent, Essex, Haldimand, Huron, Lambton, Oxford, Middlesex, Norfolk and Waterloo are prescribed as the habitat of queensnake. O. Reg. 323/13, s. 13.

(2)  Subsection (1) applies to the following areas:

1. A queensnake hibernaculum.

2. All areas within 50 metres of an area described in paragraph 1.

3. Any part of a river, stream or other body of water or marsh that is below the high water mark and that,

i. is being used, or has been used at any time in the previous five years, by a queensnake,

ii. is within 250 metres of an area described in subparagraph i, or

iii. is situated between two or more areas described in subparagraph ii that are within 500 metres of each other and provides suitable conditions for dispersal of queensnake.

4. The area adjacent to the part of a river, stream or other body of water or marsh described in subparagraph 3 i or ii and within 30 metres above the relevant high water mark.

5. The area adjacent to the part of a river, stream or other body of water or marsh described in subparagraph 3 iii and within five metres above the relevant high water mark. O. Reg. 323/13, s. 13.

Rapids clubtail habitat

**29.0.1**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the following parts of geographic areas are prescribed as the habitat of rapids clubtail:

1. The part of the geographic area of Lanark composed of the lower-tier municipality of Mississippi Mills.

2. The part of the geographic area of Middlesex composed of the lower-tier municipality of Thames Centre.

3. The parts of the geographic area of Oxford composed of the lower-tier municipalities of South-West Oxford and Zorra.

4. The part of the geographic area of Peel composed of the lower-tier municipality of Caledon.

5. The parts of the geographic area of York composed of the lower-tier municipalities of King and Vaughan. O. Reg. 122/12, s. 4.

(2)  Subsection (1) applies to the following areas:

1. Any part of a river, stream or other body of water, up to the high water mark, that is being used by a rapids clubtail or on which a rapids clubtail directly depends in order to carry on its life processes.

2. Any part of a river, stream or other body of water, up to the high water mark, that was used by a rapids clubtail at any time during the previous 5 years and that provides suitable conditions for a rapids clubtail to carry on its life processes.

3. An area of deciduous or mixed forest or of deciduous or mixed treed swamp that is adjacent to an area identified in paragraph 1 or 2 and within 200 metres of the relevant high water mark. O. Reg. 122/12, s. 4.

Redside dace habitat

**29.1**For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the following areas are prescribed as the habitat of redside dace:

1. Within the cities of Hamilton and Toronto, the counties of Bruce, Grey, Huron, Simcoe and Wellington, the regional municipalities of Durham, Halton, Peel and York, the Townships of St. Joseph, Jocelyn and Hilton, and the Village of Hilton Beach,

i. any part of a stream or other watercourse that is being used by a redside dace,

ii. any part of a stream or other watercourse that was used by a redside dace at any time during the previous 20 years and that provides suitable conditions for a redside dace to carry out its life processes,

iii. the area encompassing the meander belt width of an area described in subparagraph i or ii,

iv. the vegetated area or agricultural lands that are within 30 metres of an area described in subparagraph iii, and

v. a stream, permanent or intermittent headwater drainage feature, groundwater discharge area or wetland that augments or maintains the baseflow, coarse sediment supply or surface water quality of a part of a stream or other watercourse described in subparagraph i or ii, provided the part of the stream or watercourse has an average bankfull width of 7.5 metres or less.

2. Within the City of Hamilton, counties of Bruce, Grey, Huron, Simcoe and Wellington and the regional municipalities of Durham, Halton, Peel and York,

i. any part of a stream or other watercourse used by a redside dace at any time in the past that is located in the same or adjacent sub-watershed as the area identified in subparagraph 1 i or ii that provides suitable conditions for successful stream corridor rehabilitation and for natural recolonization of redside dace,

ii. the area encompassing the meander belt width of an area described in subparagraph i,

iii. the vegetated area or agricultural lands that are within 30 metres of an area described in subparagraph ii, and

iv. a stream, permanent or intermittent headwater drainage feature, groundwater discharge area or wetland that augments or maintains the baseflow, coarse sediment supply or surface water quality of a part of a stream or other watercourse described in subparagraph i, provided the part of the stream or watercourse has an average bankfull width of 7.5 metres or less. O. Reg. 293/11, s. 6.

Rusty-patched bumble bee habitat

**29.1.1**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located south of 45°30’0” north latitude are prescribed as the habitat of the rusty-patched bumble bee. O. Reg. 323/13, s. 13.

(2)  Subject to subsection (3), subsection (1) applies to the following areas:

1. An area that is being used by a rusty-patched bumble bee as a nesting or hibernation site.

2. All areas within 30 metres of the area described in paragraph 1.

3. Any area that is part of a prairie, savannah, woodland, marsh, bog, forest, sand dune, old field or similar area that,

i. is being used by a rusty-patched bumble bee for any purpose, or was used by a rusty-patched bumble bee for any purpose at any time in the previous five years,

ii. is within 500 metres of an area described in subparagraph i and provides suitable foraging conditions for a rusty-patched bumble bee,

iii. is beyond the area described in subparagraph ii but within 1000 metres of an area described in subparagraph i and provides suitable foraging conditions for a rusty-patched bumble bee during the period from April 1 to May 31 of any given year,

iv. is within 500 metres of an area described in subparagraph ii and contiguous to that area and provides suitable foraging conditions for a rusty-patched bumble bee. O. Reg. 323/13, s. 13.

(3)  Subsection (1) does not apply to an area that was used in the past 12 months for,

(a) pasture;

(b) growing, producing or raising farm animals;

(c) producing agricultural crops; or

(d) growing a garden or lawn. O. Reg. 323/13, s. 13.

Virginia mallow habitat

**29.2**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the areas described in subsection (2) that are located in the following geographic townships are prescribed as the habitat of the Virginia mallow:

1. The geographic townships of Cayuga and Oneida, within the County of Haldimand.

2. The geographic townships of Clinton and Grimsby, within The Regional Municipality of Niagara. O. Reg. 122/12, s. 4.

(2)  Subsection (1) applies to the following areas:

1. If Virginia mallow exists in an area belonging to a vegetation type identified under the land classification system for southern Ontario and the vegetation type occurs naturally in Ontario, the entire area so classified.

2. If Virginia mallow exists in an area other than an area described in paragraph 1, the area within 50 metres of a Virginia mallow that provides suitable conditions for Virginia mallow to carry on its life processes. O. Reg. 122/12, s. 4.

(3)  Revoked: O. Reg. 323/13, s. 14.

Wavy-rayed lampmussel habitat

**29.3**(1)  For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the following areas are prescribed as the habitat of wavy-rayed lampmussel:

1. In the geographic areas of Brant, Chatham-Kent, Huron, Lambton, Middlesex, Oxford, Perth, Waterloo and Wellington,

i. any part of a river, stream or other watercourse, other than the St. Clair River, up to the high water mark, that is being used, or has been used at any time in the past, by a wavy-rayed lampmussel,

ii. any part of a river, stream or other watercourse, up to the high water mark, that is,

A. within the same watercourse segment as the area described in subparagraph i, and

B. of a stream order greater than two,

iii. the area adjacent to the part of a river, stream or other watercourse described in subparagraphs i or ii that is,

A. an area consisting primarily of vegetation that occurs naturally or with minimal human intervention, such as a forest, woodland, thicket, wetland, old field, pasture or meadow, and

B. within 30 metres of the relevant high water mark.

2. In Lake St. Clair,

i. any part of Lake St. Clair, up to the high water mark, that has a water depth of two metres or less and that is being used, or has been used at any time in the past, by a wavy-rayed lampmussel,

ii. any part of Lake St. Clair, up to the high water mark, that has a water depth of two metres or less and that is within 5 kilometres of an area described in subparagraph i.

3. In the St. Clair River,

i. any part of the St. Clair River, up to the high water mark, that is being used, or has been used at any time in the past, by a wavy-rayed lampmussel,

ii. any part of the St. Clair River, up to the high water mark, that is within 5 kilometres of an area described in subparagraph i. O. Reg. 232/14, s. 7.

(2)  Subsection (1) does not apply to the part of the Sydenham River located downstream of the downstream edge of the bridge on County Road 21 in the town of Dresden within the Municipality of Chatham-Kent. O. Reg. 232/14, s. 7.

(3)  In this section,

“stream order” means the ordering of streams in which the smallest unbranched channels are considered first order, the joining of such channels forms a second order and subsequent unions of similar stream orders results in successively higher stream orders. (“ordre de cours d’eau”) O. Reg. 232/14, s. 7.

Western silvery aster habitat

**30.**For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the following areas are prescribed as the habitat of the western silvery aster:

1. Bur oak savannah where a western silvery aster exists in the part of Ontario shown on a map entitled “Geographic Scope of Western Silvery Aster (Symphyotrichum sericeum) regulated habitat in Ontario / Étendue géographique de l’habitat réglementé de l’aster soyeux (Symphyotrichum sericeum) en Ontario – Cliff Island / Île Cliff” that is filed in the office of the Surveyor General and is dated July 28, 2016.

2. Bur oak savannah where a western silvery aster exists in the part of Ontario shown on a map entitled “Geographic Scope of Western Silvery Aster (Symphyotrichum sericeum) regulated habitat in Ontario / Étendue géographique de l’habitat réglementé de l’aster soyeux (Symphyotrichum sericeum) en Ontario – Big Traverse Bay / Grande baie Traverse” that is filed in the office of the Surveyor General and is dated July 28, 2016. O. Reg. 436/09, s. 1; O. Reg. 308/16, s. 13.

Wood turtle habitat

**31.**For the purpose of clause (a) of the definition of “habitat” in subsection 2 (1) of the Act, the following areas are prescribed as the habitat of the wood turtle:

1. In the regional municipalities of Halton, Niagara and Waterloo and the counties of Huron and Simcoe,

i. any part of a river, stream or other body of water, up to the high water mark, that is being used by a wood turtle or on which a wood turtle directly depends in order to carry on its life processes,

ii. any part of a river, stream or other body of water up to the high water mark that is within 2000 metres of the area described in subparagraph i and that provides suitable conditions for a wood turtle to carry out its life processes,

iii. the area above the high water mark that is within 200 metres of an area described in subparagraph i or ii, and

iv. an area above the high water mark that is not described in subparagraph iii and that is being used by a wood turtle as a nesting site or that is within 300 metres of that area.

2. In the territorial districts of Algoma, Nipissing and Parry Sound, the City of Greater Sudbury, and the County of Renfrew,

i. any part of a river, stream or other body of water, up to the high water mark, that is being used by a wood turtle or on which a wood turtle directly depends in order to carry on its life processes,

ii. any part of a river, stream or other body of water up to the high water mark that is within 6,000 metres of the area described in subparagraph i and that provides suitable conditions for a wood turtle to carry out its life processes,

iii. the area above the high water mark that is within 500 metres of an area described in subparagraph i or ii, and

iv. an area above the high water mark that is not described in subparagraph iii and that is being used by a wood turtle as a nesting site or that is within 300 metres of that area. O. Reg. 437/09, s. 2.