



Canadian Wildlife Service
Environment and Climate Change Canada
5019 – 52nd Street
Yellowknife, NT X1A 2P7

MVEIRB File: EA1213-02

April 30, 2024

Catherine Fairbairn Senior Environmental Assessment Officer
Mackenzie Valley Review Board
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RE: Acknowledgement of receipt of a notification pursuant to ss.79 (1) of the *Species at Risk Act*

Dear Ms. Fairbairn,

This letter confirms receipt of your letter of notification pursuant to ss. 79(1) of the *Species at Risk Act* (SARA), on March 28, 2024 in the context of the Mackenzie Valley Highway Project and provides additional information about species that may be in the area of the project.

Notification: SARA-listed species

Your letter indicates the Mackenzie Valley Highway Project is likely to affect the following SARA listed species and/or their critical habitat, for which the Minister of Environment and Climate Change Canada (ECCC) is the competent minister under SARA:

- a. Mammals, SARA Schedule 1
 - I. Little Brown Myotis (*Myotis lucifugus*)
 - II. Grizzly Bear (*Ursus arctos*)
 - III. Wolverine (*Gulo gulo*)
 - IV. Caribou, Boreal population (*Rangifer tarandus*)

- b. Birds, SARA Schedule 1
 - I. Yellow Rail (*Coturnicops noveboracensis*)
 - II. Red-necked Phalarope (*Phalaropus lobatus*)
 - III. Short-eared Owl (*Asio flammeus*)
 - IV. Common Nighthawk (*Chordeiles minor*)
 - V. Olive-sided Flycatcher (*Contopus cooperi*)



- VI. Bank Swallow (*Riparia riparia*)
- VII. Barn Swallow (*Hirundo rustica*)
- VIII. Rusty Blackbird (*Euphagus carolinus*)
- IX. Horned Grebe (*Podiceps auratus*)

c. Invertebrates, SARA Schedule 1

- I. Gypsy Cuckoo Bumble Bee (*Bombus bohemicus*)
- II. Yellow-banded Bumble Bee (*Bombus terricola*)
- III. Transverse Lady Beetle (*Coccinella transversoguttata*)

ECCC also further notes that Peregrine Falcon (*Falco peregrinus anatum/tundrius*) was re-examined and removed from the federal Schedule 1 listing in November of 2017. Lesser Yellowlegs (listed in your letter of notification) is not listed under the federal SARA Schedule 1 at present, however it is under consideration for SARA listing by COSEWIC (Status: *Threatened*, November 2020).

ECCC also recommends you advise the proponent to contact the Department of Fisheries and Ocean (DFO) regarding species under their jurisdiction -- Bull Trout and Dolly Varden (see jurisdiction sub-section below).

Missing species

Section 79(2) requires notification of all SARA listed species likely to be affected by the project. The following SARA listed species was not identified in the notification letter but can potentially be affected by the project. Species or their critical habitat that need further evaluation include:

- Harris's Sparrow (*Zonotrichia querula*), Special Concern (added February 2023)

Please note, ECCC cannot advise on any missing species for which the Department of Fisheries and Ocean (DFO) is the competent minister under SARA (see below).

COSEWIC-assessed species

The following species are not currently listed under SARA, but have been assessed by COSEWIC and may be affected by the project:

- Suckley's Cuckoo Bumble Bee (*Bombus suckleyi*)
- Lesser Yellowlegs (*Tringa flavipes*)
- Caribou, Barren-ground population (*Rangifer tarandus*)

These species may become listed under SARA within the timeframe of this project, requiring further action to meet statutory and regulatory requirements. As such, you are advised that it is best practice to consider these species as though they were listed under SARA and to identify ways to avoid and lessen adverse environmental effects to these species and to monitor them.



Jurisdiction

For SARA listed or COSEWIC assessed species on the above list(s) that are not protected under the *Migratory Birds Convention Act* (MBCA) and/or are not located on federal lands, you are also advised to consult the Territorial Government (Government of the Northwest Territories) for species-specific technical information. These species include:

- a. Mammals
 - i. Grizzly Bear (*Ursus arctos*)
 - ii. Little Brown Myotis (*Myotis lucifugus*)
 - iii. Wolverine (*Gulo gulo*)
 - iv. Caribou, Boreal population (*Rangifer tarandus*)
 - v. Caribou, Barren-ground population (*Rangifer tarandus*)

- b. Birds
 - i. Rusty Blackbird (*Euphagus carolinus*)
 - ii. Short-eared Owl (*Asio flammeus*)

- c. Invertebrates:
 - i. Gypsy Cuckoo Bumble Bee (*Bombus bohemicus*)
 - ii. Suckley's Cuckoo Bumble Bee (*Bombus suckleyi*)
 - iii. Yellow-banded Bumble Bee (*Bombus terricola*)
 - iv. Transverse Lady Beetle (*Coccinella transversoguttata*)

ECCC will be sending further correspondence to clarify its role in administering the federal Species at Risk Act in regard to SAR and expertise related to boreal caribou.

You identified two aquatic SARA listed species in the project area. DFO is the lead federal jurisdiction for these aquatic species and their critical habitat. You also sent the letter of notification to DFO and are advised to consult with this department for species-specific technical information.

General

Section 79 of SARA requires the “person”¹, as defined in ss. 79(3), responsible for ensuring that environmental assessments are conducted to notify the competent minister under SARA of the potential adverse effects of a project if it is likely to affect a listed wildlife species (i.e. endangered, threatened and extirpated species, as well as species of special concern) or its critical habitat and to identify those effects. If the project is carried out, the “person” must ensure that measures consistent with applicable recovery strategy or action plan are taken to avoid or lessen and monitor those effects. Available recovery strategies and actions plans can be found on the SARA Public

¹ “person” includes an association, an organization, a federal authority as defined in subsection 2(1) of the *Canadian Environmental Assessment Act, 2012*, and any body that is set out in Schedule 3 to that Act



Registry: (<http://www.sararegistry.gc.ca>). Where they are not available, proponents are advised to consult COSEWIC assessments, provincial and territorial recovery documents, peer reviewed literature, management plans for species of special concern and species experts, as appropriate.

ECCC's advice on adverse effects, as a general approach, is guided by information found in recovery documents, most notably the population and distribution objectives, and is consistent with SARA's protection outcome (as presented in the *Species at Risk Policies: Policy on Critical Habitat Protection on Non-federal Lands* (proposed) that no individual or residence be harmed, or portion of critical habitat be destroyed, except under the conditions (discretion) allowed under SARA itself. Thus, a key foundation of ECCC's advice is the requirement under SARA ss. 73(3) that:

- all reasonable alternatives that would reduce the impact on the listed species have been considered and that the best solution has been adopted,
- all feasible measures will be taken to minimize the impact of the activity on the species or its critical habitat or the residences of its individuals; and,
- the activity "will not jeopardize survival or recovery" of a species.

Effective Protection

The SARA competent minister's role within a federal environmental assessment is to provide technical advice and support to the "person" in addressing s. 79 of SARA and the federal environmental assessment requirements. However, it should be noted that the competent minister also has certain specific obligations related to species and critical habitat protection stemming from SARA itself, separate from federal environmental assessment processes.

Specifically, if the Minister is of the opinion that existing laws/instruments are not effective at protecting individuals, residences, or critical habitat; this may lead the minister to have to conclude that protection is not sufficient. If so, the Minister may be obligated to make a recommendation to Governor in Council for one or several Order(s) (depending upon the circumstances, this may be a s. 34 "Safety Net" type order for protection of individuals, s. 61 "Safety Net" critical habitat protection order or a s. 80 emergency protection order).

SARA Permits

Permits are required by those "persons" conducting activities that affect species listed on [Schedule 1](#) of SARA as Extirpated, Endangered, or Threatened, that is, activities which contravene the Act's general or critical habitat prohibitions, an Emergency Order issued under s.80 of SARA or regulations made under subs. 53, 59 or 71.

Under subsection 73(2) of SARA, permits may only be issued if the proposed activity falls under one or more of the following purposes: *the activity is scientific research relating to the conservation of the species and conducted by qualified persons; the activity benefits the species or is required to*



enhance its chance of survival in the wild; or affecting the species is incidental to the carrying out of the activity.

If you are unsure if your activity is prohibited, please contact your regional ECCC or DFO office. For more information on SARA permitting please consult *SARA Guidelines* and the SARA Permitting Policy on the Species at Risk Public Registry: www.registrelep-sararegistry.gc.ca

Sincerely,

Bruce MacDonald

Regional Director – Northern Region

Canadian Wildlife Service

Cc. James Hodson, Manager, Habitat and Environmental Assessment, Environment and Climate Change, GNWT