



Canadian Wildlife Service
Environment and Climate Change Canada
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Edmonton, Alberta
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Registry File #: 80123

February 2, 2021

Barbara Pullishy
Impact Assessment Agency of Canada
Suite 1145, 9700 Jasper Avenue
Edmonton, Alberta T5J 4C3

RE: Acknowledgement of receipt of a notification pursuant to ss.79 (1) of the *Species at Risk Act*

Dear Ms. Pullishy,

This letter confirms receipt of your letter of notification pursuant to ss. 79(1) of the *Species at Risk Act* (SARA), on November 13, 2020 in the context of the Springbank Off-stream Reservoir Project and provides additional information about species that may be in the area of the project.

Notification: SARA-listed species

Your letter indicates the Springbank Off-stream Reservoir Project is likely to affect the following SARA listed species and/or their critical habitat, for which the Minister of ECCC is the competent minister under SARA:

- a. Mammals, SARA Schedule 1
 - i. Little Brown Myotis (*Myotis lucifugus*)
 - ii. American Badger (*Taxidea taxus taxus*)
 - iii. Grizzly Bear – Western population (*Ursus arctos*)
- b. Birds, SARA Schedule 1, MBCA
 - i. Common Nighthawk (*Chordeiles minor*)
 - ii. Olive-sided Flycatcher (*Contopus cooperi*)
 - iii. Loggerhead Shrike – Prairie subspecies (*Lanius ludovicianus excubitorides*)
 - iv. Bank Swallow (*Riparia riparia*)
 - v. Barn Swallow (*Hirundo rustica*)
 - vi. Yellow Rail (*Coturnicops noveboracensis*)
 - vii. Long-billed Curlew (*Numenius americanus*)
 - viii. Horned Grebe (*Podiceps auritus*)
 - ix. Western Grebe (*Aechmophorus occidentalis*)
- c. Amphibians, SARA Schedule 1



- i. Northern Leopard Frog (*Lithobates pipiens*)
- ii. Western Toad (*Anaxyrus boreas*)
- iii. Western Tiger Salamander (*Ambystoma mavoritium*)

In addition, your letter indicates that the following species may have range overlap but anticipated to have limited potential interaction with the Project given habitat conditions:

- a. Birds, SARA Schedule 1, *Migratory Birds Convention Act, 1994* (MBCA)
 - i. Red Knot (*Calidris canutus rufa*)
 - ii. Sprague's Pipit (*Anthus spragueii*)
 - iii. Bobolink (*Dolichonyx oryzivorus*)
 - iv. Baird's Sparrow (*Ammodramus bairdii*)
- b. Birds, SARA Schedule 1
 - i. Short-eared Owl (*Asio flammeus*)
 - ii. Peregrine Falcon (*Falco peregrinus*)
 - iii. Rusty Blackbird (*Euphagus carolinus*)

ECCC also recommends you advise the proponent to contact the Department of Fisheries and Oceans (DFO) regarding species under their jurisdiction (see jurisdiction sub-section).

Missing species

Section 79(1) requires notification of all SARA listed species likely to be affected by the project. The following SARA listed species or their critical habitat were not identified in the notification letter but can potentially be affected by the project. **Species or their critical habitat that need further evaluation include:**

- a. Birds, SARA Schedule 1, MBCA
 - i. Evening Grosbeak (*Coccothraustes vespertinus*)
- b. Invertebrates, SARA Schedule 1
 - i. Gypsy Cuckoo Bumble Bee (*Bombus bohemicus*)

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 can potentially be affected by the project:

- a. Invertebrates
 - i. Nine-spotted Lady Beetle (*Coccinella novemnotata*)
 - ii. Transverse Lady Beetle (*Coccinella transversoguttata*)
 - iii. Western Bumble Bee occidentalis subspecies (*Bombus occidentalis occidentalis*)



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 MBCA and/or are not located on federal lands, you are also advised to consult the appropriate provincial government for species-specific technical information. These species include:

- a. Mammals, SARA Schedule 1
 - i. Little Brown Myotis (*Myotis lucifugus*)
 - ii. American Badger (*Taxidea taxus taxus*)
 - iii. Grizzly Bear – Western population (*Ursus arctos*)
- b. Birds, SARA Schedule 1
 - i. Short-eared Owl (*Asio flammeus*)
 - ii. Peregrine Falcon (*Falco peregrinus*)
 - iii. Rusty Blackbird (*Euphagus carolinus*)
- c. Amphibians, SARA Schedule 1
 - i. Northern Leopard Frog (*Lithobates pipiens*)
 - ii. Western Toad (*Anaxyrus boreas*)
 - iii. Western Tiger Salamander (*Ambystoma marmoratum*)
- d. Invertebrates, SARA Schedule 1
 - i. Gypsy Cuckoo Bumble Bee

DFO is the lead federal jurisdiction for the following SARA-listed aquatic species and their critical habitat that are likely to be affected by the project:

- Bull Trout (*Salvelinus confluentus*)
- Westslope Cutthroat Trout (*Oncorhynchus clarkii lewisi*)

You are advised to send a letter of notification to the DFO and 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 federal 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

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



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 action plans can be found on the SARA Public 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, DFO or Parks Canada Agency 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,

<original signed by>

Vanessa Charlwood
Regional Director
Regional Operations Directorate
Canadian Wildlife Service
Prairie Region

Cc: Jody Small, Head Environmental Assessment South, Prairie and Northern Region, EPOD, ECCC
Orlagh O'Sullivan, A/Senior Environmental Assessment Officer, Prairie and Northern Region, EPOD, ECCC