Draft Analysis Report for GTA West and Bradford Bypass Projects

ECCC – CWS – Orig April 15, 2021 (modified v5 April 16, 2021)

Summary of Considerations and Risks

The proposed projects would occur almost entirely on non-federal lands; there is possibility that a very small area of federally-owned land (approximately 40 to 50 metres away from the right-of-way) may be affected. With respect to terrestrial species at risk[1], mechanisms for protection exist under a combination of environmental assessment legislation and endangered species provincial legislation. Outside of any environmental assessment process, the *Endangered Species Act* (ESA) provides protection for species provincially listed as threatened and endangered, and their habitats.

For migratory bird that are also species at risk, the federal *Species at Risk Act* (SARA) and *Migratory Birds Convention Act* (MBCA) provide protections for individuals, nests and other residences. Impacts that cannot be avoided (e.g., through timing restrictions) could trigger SARA permitting requirements.

There are currently no federal Orders that would bring SARA prohibitions into force with respect to individuals or residences of non-migratory birds (i.e terrestrial species), or with respect to critical habitat for any species at risk in the project area.

Of the terrestrial species[1] likely to occur in the project area, three species listed threatened under SARA do not currently receive any protection (and are not subject to authorizations) under Ontario's Endangered Species Act (ESA):

- Western Chorus Frog, Great Lakes/ St Lawrence – Canadian Shield population (not listed under ESA[2]),
- Red-Headed Woodpecker (special concern under ESA[3]), and
- Wood Thrush (special concern under ESA[4]).

Both Red-headed Woodpecker and Western Chorus Frog have final critical habitat that may be affected by the proposed projects and for which there is no legal protection under the ESA or SARA. No critical habitat has been identified for Wood Thrush. It should also be noted that where there are potential gaps in protection of federally-listed species at risk, there is a risk that these projects could increase pressure on ECCC to form an opinion on effective protection and recommend to GIC that an Order be put in place to protect unprotected portions critical habitat under s. 61 of SARA, and/or in the case of Western Chorus Frog, to protect individuals and residences under s. 34 of SARA. Similarly, there is a risk that

[1] Terrestrial species means all species for which the Minister of the Environment is responsible, except those on federal lands administered by that the Parks Canada Agency and aquatic species for which the Minister of Fisheries and Oceans is responsible.
[2] The debate among experts over the genetic classification of the Western Chorus Frog and the Boreal Chorus Frog in Ontario led the committee on the Status of Species at Risk in Ontario (COSSARO) to treat Western Chorus Frog as a single population in Ontario, and classified it as not at risk under the ESA (COSSARO 2009)
[3] The Red-headed Woodpecker was already assessed by COSSARO as a species of special concern when the *Endangered Species Act* took effect in 2008 and is currently up for reassessment.
[4] Based on Ontario's COSSARO report Wood Thrush status and trends in Ontario appear to be somewhat better than for other Canadian jurisdicitons.

ECCC may be called on to undertake an assessment of imminent threat under s. 80 of SARA in relation to the proposed developments. If the Minister is of the opinion that a species faces imminent threats to its survival or recovery, he is required to recommend to GIC that an emergency Order be made to protect the species.

Both project areas have experienced significant historic wetland loss, and it is not clear whether a provincial Environmental Assessment process would result in an outcome consistent with the Federal Policy on Wetland Conservation (FPWC) and the goal of no further loss of wetland functions or area.

Conclusion

At this time ECCC has limited information and time to do a complete analysis to assess whether a provincial Environmental Assessment process would adequately address mitigation for these species and wetland loss. ECCC has identified gaps for SARA terrestrial species and the possible requirement for SARA permit for the projects and implications under the FPWC if the project was designated.

Annex I: Analysis Summary Table

Adverse Effect or Public Concern in Relation to Subsection 9(1) of the *Impact Assessment Act*	GTA West Effects and Mitigation Proposed by the Proponent and the Agency's Findings	Bradford Bypass Effects and Mitigation Proposed by the Proponent and the Agency's Findings	Legislative Mechanisms Relevant to GTA West* and Bradford Bypass~ *Mechanisms that apply to only one of the projects are denoted by either a * or ~ as applicable*
A change to SARA listed species other than an aquatic species or a migratory bird as defined in subsection 2(1) of the *Species at Risk Act*	• Based on a preliminary evaluation, there are likely 6 species (Western Chorus Frog, Rapids Clubtail, Butternut, Little Brown Myotis, Northern Myotis, and Tri-coloured Bat) that are not an aquatic species or a migratory bird that may be affected by the Project. • Based on a preliminary evaluation, of these species, Rapid's Clubtail and Western Chorus Frog are likely the only terrestrial SARA listed species with identified Critical Habitat that may be affected by the project. Canada adopted Ontario's Recovery Strategy and habitat description in their regulation for Rapid's Clubtail. The identified Critical Habitat for these species is currently not protected under SARA. • For one of these species (Western Chorus Frog), there is a gap in protection due to taxonomic uncertainty, as the species not currently listed under the Ontario *Endangered Species Act*. • The Project would likely only be undertaken on non-federal lands;	• Based on a preliminary evaluation, there are likely 7 species (Western Chorus Frog, Jefferson Salamander, Little Brown Myotis, Northern Myotis, Tri-colored Bat, Butternut, and Blanding's Turtle) that are not an aquatic species or a migratory bird that may be affected by the Project. • Based on a preliminary evaluation, it is unlikely that there is Critical Habitat for any terrestrial SARA listed species that may be affected by the project. • For one of these species (Western Chorus Frog), there is a gap in protection, as the species not currently listed under the Ontario *Endangered Species Act*. • The Project would likely only be undertaken on non-federal lands; these species are federally listed and can only be protected under SARA on non-federal lands through an order made by the Governor in Council (GIC), on the recommendation of the Minister of the Environment. There is currently no Order in place.	• If an emergency order (s. 80) or regular order (s.61) were to be put in place, a SARA permit may be required if the species would be affected. • A permit under the Ontario *Endangered Species Act* may be required to provide surveying, mitigation, compensation and monitoring requirements of certain species at risk that are provincially listed.

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	these species are federally listed and can only be protected under SARA on non-federal lands through an order made by the Governor in Council (GIC), on the recommendation of the Minister of the Environment. There is currently no Order in place. • The proponent may mitigate effects through measures identified in the GTA West Transportation Corridor Route Planning and Environmental Assessment Study: Response to the Impact Assessment Agency of Canada, such as implementing avoidance through timing windows, exclusion measures, offsetting and monitoring. However, in the absence of information detailing baseline conditions (e.g., presence of terrestrial species at risk, extent and type of habitat loss), specific project effects and proposed mitigation measures, ECCC is unable to evaluate the potential impacts of the Project on SARA listed species.	• The proponent may mitigate effects through measures identified in the GTA West Transportation Corridor Route Planning and Environmental Assessment Study: Response to the Impact Assessment Agency of Canada, such as implementing avoidance through timing windows, exclusion measures, offsetting and monitoring. However, in the absence of information detailing baseline conditions (e.g., presence of terrestrial species at risk, extent and type of habitat loss), specific project effects and proposed mitigation measures, ECCC is unable to evaluate the potential impacts of the Project on SARA listed species.	
A change to migratory birds, as defined in subsection 2(1) of the Migratory Birds	• There are likely 5 SARA listed migratory bird (Red-headed Woodpecker, Bobolink, Eastern Meadowlark, Bank Swallow, Wood	• There are likely 10 SARA listed migratory bird (Red-headed Woodpecker, Bank Swallow, Barn Swallow, Bobolink, Chimney Swift, Eastern Meadowlark, Eastern Whip-	• The proponent is responsible for complying with the MBCA, using ECCC's guidance on avoiding harm to migratory birds. ECCC does not issue permits for incidental harm to migratory

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Convention Act, 1994	Thrush) species at risk may be affected by the Project. • Of these, the Red-headed Woodpecker has federally identified critical habitat in the area. Critical can only be protected under SARA on non-federal lands through an order made by the Governor in Council (GIC), on the recommendation of the Minister of the Environment. There is currently no Order in place. • While individuals and residences are protected under SARA, there is a gap in protection of habitat for Red-headed Woodpecker due to the species being listed as Special Concern under the *Ontario Endangered Species Act* and therefore not receiving habitat protection under that Act. • The Proponent would likely mitigate effects through measures such as implementing avoidance timing windows to avoid effects on birds during the breeding season; undertaking a breeding bird and nest survey if activities are proposed during the general nesting period. However, in the absence of information detailing baseline conditions (e.g., presence of	poor-will, Henslow's Sparrow, Least Bittern, Louisiana Waterthrush) species at risk may be affected by the Project. • Of these, the Red-headed Woodpecker has federally identified critical habitat in the area. Critical can only be protected under SARA on non-federal lands through an order made by the Governor in Council (GIC), on the recommendation of the Minister of the Environment. There is currently no Order in place. • While individuals and residences are protected under SARA, there is a gap in protection of habitat for Red-headed Woodpecker due to the species being listed as Special Concern under the *Ontario Endangered Species Act* and therefore not receiving habitat protection under that Act. • The Proponent would likely mitigate effects through measures such as implementing avoidance timing windows to avoid effects on birds during the breeding season; undertaking a breeding bird and nest survey if activities are proposed during the general nesting period. However, in the absence of	birds, their nests or eggs. A permit under the *Migratory Birds Convention Act, 1994,* is not required for either project. There may be permitting requirements under the *Species at Risk Act* if the project will affect migratory birds • A permit *under the Ontario Endangered Species Act* may be required to provide surveying, mitigation, compensation and monitoring requirements of certain species at risk that are provincially listed. • The Proponent would have to comply with the *Ontario Environmental Protection Act* with respect to minimizing and responding to spill events.

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	migratory birds, extent and type of habitat loss), specific project effects and proposed mitigation measures, ECCC is unable to evaluate the potential impacts of the Project on migratory birds.	information detailing baseline conditions (e.g., presence of migratory birds, extent and type of habitat loss), specific project effects and proposed mitigation measures, ECCC is unable to evaluate the potential impacts of the Project on migratory birds.	

ANNEX II: SARA Species Status[5]

Common Name	GTA West	Bradford Bypass	COSEWIC	SARA	ESA
Amphibians					
Jefferson Salamander		X	END	END	END
Western Chorus Frog[6] (Great Lakes St.Lawrence / Canadian Shield)	X	X	THR	THR	Not at Risk
Reptiles					
Blanding's Turtle		X	END	THR	THR
Eastern Milksnake	X	X	SC	SC	Not at Risk
Rapids Clubtail	X		END	END	END
Snapping Turtle	X	X	SC	SC	SC
Plants					
Butternut	X	X	END	END	END
Mammals					
Little Brown Myotis	X	X	END	END	END
Northern Myotis	X	X	END	END	END
Tri-coloured Bat	X	X	END	END	END
Migratory Bird					

[5] The species list was developed based on the information provided in the GTA West Project: Response to the Impact Assessment Agency of Canada Request #3 and the Bradford Bypass Project: Response to the Impact Assessment Agency of Canada Request #3 prepared by the Ontario Ministry of Transportation, with additional species added based on a CWS preliminary analysis.

[6] The debate among experts over the genetic classification of the Western Chorus Frog and the Boreal Chorus Frog in Ontario led the committee on the Status of Species at Risk in Ontario (COSSARO) to treat Western Chorus Frog as a single population in Ontario, and classified it as not at risk under the ESA (COSSARO 2009)

Red-headed Woodpecker	X	X	THR	THR	SC
Bank Swallow		X	THR	THR	THR
Barn Swallow		X	THR	THR	THR
Bobolink	X	X	THR	THR	THR
Chimney Swift		X	THR	THR	THR
Eastern Meadowlark	X	X	THR	THR	THR
Eastern Whip-poor-will		X	THR	THR	THR
Eastern Wood Pewee	X		SC	SC	SC
Grasshopper Sparrow	X		SC	SC	SC
Henslow's Sparrow		X	END	END	END
Least Bittern		X	THR	THR	THR
Louisiana Waterthrush		X	THR	THR	THR
Wood Thrush	X		THR	THR	SC