



Environment and Climate Change Canada
PO Box 2310, 5019-52nd Street, 4th Floor
Yellowknife, Northwest Territories
X1A 2P7

EA1819-01

May 6, 2019

Mackenzie Valley Environmental Impact Review Board
Box 938, #200 Scotia Centre 5102-50th Avenue
Yellowknife, NT
X1A 2N7

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 19, 2019 in the context of Diavik's proposal to deposit and store processed kimberlite in mine workings and provides additional information about species that may be in the area of the project.

Notification: SARA-listed species

Your letter indicates that the Diavik proposal 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: Peregrine Falcon, Grizzly Bear, Wolverine, Short-eared Owl, Rusty Blackbird and Barn Swallow. ECCC recommends you advise the proponent to consult with ECCC for expertise and advice that is available within the department for these species. Your letter also includes the following SARA listed species for which ECCC advises that no assessment is required based on our current understanding of their range: Common Nighthawk, Olive-sided Flycatcher and Horned Grebe.

Missing species

Subsection 79(2) 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: Bank Swallow. Please note, ECCC cannot advise on any missing species for which the Department of Fisheries and Oceans (DFO) is the competent minister under SARA.

COSEWIC-assessed species

The following species are not currently listed under SARA, but have been assessed by COSEWIC and are likely to be affected by the project: Barren-ground caribou, Red-necked Phalarope, Harris' Sparrow and Transverse Lady Beetle. 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 for species-specific technical information. These species are indicated in Annex 1.

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 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 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

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.



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, then 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 sections 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.

Should you require further information, please contact Jean-François Dufour at (867) 669-4766 or Jean-Francois.Dufour2@canada.ca.

Sincerely,

Christian Bertelsen
A/Regional Director – Northern Region
Canadian Wildlife Service

cc. Georgina Williston, Head, Environmental Assessment North, Environmental Protection Operations Directorate

Attachment: Annex 1 – List of species at risk potentially occurring within the project area.

ANNEX 1 – List of species at risk potentially occurring within the project area.

Species at risk	COSEWIC Designation	SARA Status	Primary management responsibility	Recovery Documents
Barn Swallow	Threatened	Threatened	ECCC	
Bank Swallow	Threatened	Threatened	ECCC	
Grizzly Bear, Western population	Special Concern	Special Concern	GNWT-ENR	
Wolverine	Special Concern	Special Concern	GNWT-ENR	
Short-eared Owl	Special Concern	Special Concern	GNWT-ENR	Management Plan
Rusty Blackbird	Special Concern	Special Concern	GNWT-ENR	Management Plan
Peregrine Falcon, <i>anatum/tundrius</i>	Not at Risk	Special Concern	GNWT-ENR	Management Plan
Caribou, Barren-ground population	Threatened	No status	GNWT-ENR	
Red-necked Phalarope	Special Concern	No status	ECCC	
Harris's Sparrow	Special Concern	No status	ECCC	
Transverse Lady Beetle	Special Concern	No status	GNWT-ENR	