

Environment and Climate Change Canada  
Canadian Wildlife Service  
5019 52<sup>nd</sup> Street, 3<sup>th</sup> Floor  
P.O. Box 2310  
Yellowknife, NT X1A 2P7

ECCC File: 5100 000 036/015  
MVEIRB File: EA2021-01



27 September 2021

Chuck Hubert  
Mackenzie Valley Environmental Impact Review Board  
200 Scotia Centre  
Box 938, 5102-50<sup>th</sup> Ave  
Yellowknife, NT X1A 2N7

via email: [chubert@reviewboard.ca](mailto:chubert@reviewboard.ca)

Dear Chuck Hubert:

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

This letter confirms receipt of your letter of notification pursuant to ss. 79(1) of the *Species at Risk Act* (SARA), on 31 August 2021 in the context of the Pine Point Mine Project and provides additional information about species that may be in the area of the project.

**Notification: SARA-listed species**

Your letter indicates the Pine Point Mine 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:

- Whooping Crane
- Little Brown Myotis
- Northern Myotis
- Gypsy Cuckoo Bumble Bee
- Boreal Caribou
- Wood Bison
- Bank Swallow
- Barn Swallow
- Common Nighthawk
- Olive-sided Flycatcher
- Wolverine
- Short-eared Owl
- Horned Grebe
- Rusty Blackbird
- Yellow Rail



- Yellow-banded Bumble Bee
- Northern Leopard Frog

ECCC recommends you advise the proponent to consult with ECCC for expertise and advice that is available to the department for these species.

ECCC refers the Review Board to GNWT-ENR's comments during the Technical Scoping Session (Registry document #55, p.14) regarding the presence of Wood Bison and Northern Leopard Frog near the project. These species will not require assessment.

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 that need further evaluation include:

- Red-necked Phalarope (Special Concern)
- Transverse Lady Beetle (Special Concern)
- Evening Grosbeak (Special Concern)

Please note, ECCC cannot advise on any missing species for which the Department of Fisheries and Ocean (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:

- Lesser Yellowlegs (Threatened)
- Suckley's Cuckoo Bumble Bee (Threatened)
- Harris's Sparrow (Special Concern)

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 Government of the Northwest Territories – Environment and Natural Resources for species-specific technical information. These species include:

- Little Brown Myotis
- Northern Myotis
- Gypsy Cuckoo Bumble Bee
- Boreal Caribou

- Wolverine
- Short-eared Owl
- Rusty Blackbird
- Yellow-banded Bumble Bee
- Transverse Lady Beetle
- Suckley's Cuckoo Bumble Bee

### General

Section 79 of SARA requires the “person”, as defined in ss.79(3), 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 the applicable recovery strategy or action plan are taken to avoid or lessen and monitor those effects. Links to available recovery strategies, actions plans and other relevant recovery documents on the SARA Public Registry <http://www.sararegistry.gc.ca> can be found in Annex 1. Where they are not available you can advise the Proponent to consult COSEWIC assessments, territorial recovery documents, peer reviewed literature, management plans for species of special concern and species experts, as appropriate.

ECCC’s advice on adverse effects is guided by information found in recovery documents, most notably the population and distribution objectives, and is consistent with SARA’s protection outcome that no individual or residence be harmed, or portion of critical habitat be destroyed, except under conditions (discretion) allowed under SARA itself. (As presented in the *Species at Risk Policies: Policy on Critical Habitat Protection on Non-federal Lands* ([https://registrelep-sararegistry.gc.ca/virtual\\_sara/files/policies/CH\\_Protection\\_NFL\\_EN.pdf](https://registrelep-sararegistry.gc.ca/virtual_sara/files/policies/CH_Protection_NFL_EN.pdf)(proposed))

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 an environmental assessment is to provide technical advice and support to the Review Board in addressing s. 79 of SARA. However, the competent minister also has certain specific obligations related to species and critical habitat protection stemming from SARA itself, separate from the environmental assessment process.

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.*

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](http://www.registrelep-sararegistry.gc.ca)

Sincerely,



Bruce MacDonald  
Regional Director – Northern Region  
Canadian Wildlife Service

cc.

Eri Hiraga, Environmental Assessment Scientist III (Interoperability), Parks Canada

James Hodson, Manager, Habitat and Environmental Assessment, Environment and Natural Resources, GNWT

Jody Small, Head, Environmental Assessment North, Environmental Protection Operations Directorate

### *Attachments:*

ANNEX 1: List of SARA Schedule 1 species at risk or species assessed by COSEWIC that are likely to interact with the project.

ANNEX 1: List of SARA Schedule 1 species at risk or species assessed by COSEWIC that are likely to interact with the project.

Species	SARA Status	COSEWIC Status	Management	Relevant Recovery Documents
<b>Whooping Crane</b>	Endangered	Endangered	ECCC	Residence Description: <a href="https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/residence-descriptions/whooping-crane.html">https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/residence-descriptions/whooping-crane.html</a> Recovery Strategy: <a href="https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/recovery-strategies/whooping-crane.html">https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/recovery-strategies/whooping-crane.html</a>
<b>Little Brown Myotis</b>	Endangered	Endangered	GNWT	Recovery Strategy: <a href="https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/recovery-strategies/little-brown-myotis-2018.html">https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/recovery-strategies/little-brown-myotis-2018.html</a>
<b>Northern Myotis</b>	Endangered	Endangered	GNWT	Recovery Strategy: <a href="https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/recovery-strategies/little-brown-myotis-2018.html">https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/recovery-strategies/little-brown-myotis-2018.html</a>
<b>Gypsy Cuckoo Bumble Bee</b>	Endangered	Endangered	GNWT	None
<b>Woodland Caribou, Boreal population</b>	Threatened	Threatened	GNWT	Recovery Strategy: <a href="https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/recovery-strategies/woodland-caribou-boreal-2020.html">https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/recovery-strategies/woodland-caribou-boreal-2020.html</a> Critical Habitat Order: <a href="https://gazette.gc.ca/rp-pr/p2/2019/2019-06-26/html/sor-dors188-eng.html">https://gazette.gc.ca/rp-pr/p2/2019/2019-06-26/html/sor-dors188-eng.html</a> Conservation Agreement: <a href="https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/administrative-agreements/agreement-conservation-woodland-caribou-boreal-northwest-territories.html">https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/administrative-agreements/agreement-conservation-woodland-caribou-boreal-northwest-territories.html</a>
<b>Bank Swallow</b>	Threatened	Threatened	ECCC	Residence Description: <a href="https://species-registry.canada.ca/index-en.html#/species/1233-894#residence_description">https://species-registry.canada.ca/index-en.html#/species/1233-894#residence_description</a> Recovery Strategy: <a href="https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/recovery-strategies/bank-swallow-proposed-2021.html">https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/recovery-strategies/bank-swallow-proposed-2021.html</a>

ANNEX 1: List of SARA Schedule 1 species at risk or species assessed by COSEWIC that are likely to interact with the project.

Species	SARA Status	COSEWIC Status	Management	Relevant Recovery Documents
<b>Barn Swallow</b>	Threatened	Special Concern	ECCC	Residence Description: <a href="https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/residence-descriptions/barn-swallow.html">https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/residence-descriptions/barn-swallow.html</a>
<b>Common Nighthawk</b>	Threatened	Special Concern	ECCC	Recovery Strategy: <a href="https://sararegistry.gc.ca/default.asp?lang=En&amp;n=B3F43CCD-1">https://sararegistry.gc.ca/default.asp?lang=En&amp;n=B3F43CCD-1</a>
<b>Olive-sided Flycatcher</b>	Threatened	Special Concern	ECCC	Recovery Strategy: <a href="https://sararegistry.gc.ca/default.asp?lang=En&amp;n=4BCEA3FA-1">https://sararegistry.gc.ca/default.asp?lang=En&amp;n=4BCEA3FA-1</a>
<b>Wolverine</b>	Special Concern	Special Concern	GNWT	None
<b>Short-eared Owl</b>	Special Concern	Threatened	GNWT	Management Plan: <a href="https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/management-plans/short-eared-owl-2018.html">https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/management-plans/short-eared-owl-2018.html</a>
<b>Horned Grebe</b>	Special Concern	Special Concern	ECCC	Management Plan: <a href="https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/management-plans/horned-grebe-western-population-proposed-2021.html">https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/management-plans/horned-grebe-western-population-proposed-2021.html</a>
<b>Rusty Blackbird</b>	Special Concern	Special Concern	GNWT	Management Plan: <a href="https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/management-plans/rusty-blackbird-2015.html">https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/management-plans/rusty-blackbird-2015.html</a>
<b>Yellow Rail</b>	Special Concern	Special Concern	ECCC	Management Plan: <a href="https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/management-plans/yellow-rail-2013.html">https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/management-plans/yellow-rail-2013.html</a>
<b>Yellow-banded Bumble Bee</b>	Special Concern	Special Concern	GNWT	None
<b>Red-necked Phalarope</b>	Special Concern	Special Concern	ECCC	None
<b>Lesser Yellowlegs</b>	No Status	Threatened	ECCC	None
<b>Suckley's Cuckoo Bumble Bee</b>	No Status	Threatened	GNWT	None

ANNEX 1: List of SARA Schedule 1 species at risk or species assessed by COSEWIC that are likely to interact with the project.

<b>Species</b>	<b>SARA Status</b>	<b>COSEWIC Status</b>	<b>Management</b>	<b>Relevant Recovery Documents</b>
<b>Transverse Lady Beetle</b>	Special Concern	Special Concern	GNWT	None
<b>Evening Grosbeak</b>	Special Concern	Special Concern	ECCC	None
<b>Harris's Sparrow</b>	No Status	Special Concern	ECCC	None