



Environment and Climate Change Canada  
Prairie & Northern Region  
5019 52<sup>nd</sup> Street, 4<sup>th</sup> Floor  
Yellowknife, NT X1A 2P7  
P.O. Box 2310

ECCC File: 5410 000 001/027

August 23, 2022

Chuck Hubert  
Senior EA Officer  
Mackenzie Valley Environmental Impact Review Board  
200 Scotia Centre  
Box 938, 5102-50th Ave  
Yellowknife, NT X1A 2N7

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

Dear Chuck Hubert,

This letter confirms receipt of your letter of notification pursuant to ss. 79(1) of the *Species at Risk Act* (SARA), on June 6, 2022, in the context of the Imperial Oil Resource Ltd.'s Waste Management Facility Project and provides additional information about species that may be in the area of the project.

Notification: SARA-listed species

Your letter indicates the Waste Management Facility 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:

Terrestrial Species at Risk <sup>1</sup>	Scientific Name	SARA Status
Bank Swallow	<i>Riparia riparia</i>	Threatened (2017)
Barn Swallow	<i>Hirundo rustica</i>	Threatened (2017)
Caribou (Boreal population)	<i>Rangifer tarandus</i>	Threatened (2003)
Common Nighthawk	<i>Chordeiles minor</i>	Threatened (2010)



Grizzly Bear (Western population)	<i>Ursus arctos</i>	Special Concern (2018)
Gypsy Cuckoo Bumble Bee	<i>Bombus bohemicus</i>	Endangered (2018)
Horned Grebe (Western population)	<i>Podiceps auritus</i>	Special Concern (2017)
Olive-sided Flycatcher	<i>Contopus cooperi</i>	Threatened (2010)
Peregrine Falcon (anatum/tundrius complex)	<i>Falco peregrinus anatum/tundrius</i>	Special Concern (2012)
Red-necked Phalarope	<i>Phalaropus lobatus</i>	Special Concern (2019)
Rusty Blackbird	<i>Euphagus carolinus</i>	Special Concern (2009)
Short-eared Owl	<i>Asio flammeus</i>	Special Concern (2012)
Transverse Lady Beetle	<i>Coccinella transversoguttata</i>	Special Concern (2021)
Wolverine	<i>Gulo gulo</i>	Special Concern (2018)
Yellow-banded Bumble Bee	<i>Bombus terricola</i>	Special Concern (2018)

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

ECCC also recommends you advise the proponent to contact the Department of Fisheries and Oceans (DFO) or the Parks Canada Agency (PCA) regarding species under their jurisdiction.

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:

<b>Terrestrial Species at Risk<sup>1</sup></b>	<b>Scientific Name</b>	<b>COSEWIC Designation</b>
Harris's Sparrow	<i>Zonotrichia querula</i>	Special Concern (2017)
Lesser Yellowlegs	<i>Tringa Flavipes</i>	Threatened (2020)
Suckley's Cuckoo Bumble Bee	<i>Bombus suckleyi</i>	Threatened (2019)

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 for species-specific technical information. These species include:

Caribou (Boreal population)	Short-eared Owl
Grizzly Bear (Western population)	Suckley's Cuckoo Bumble Bee
Gypsy Cuckoo Bumble Bee	Transverse Lady Beetle
Peregrine Falcon (anatum/tundrius complex)	Wolverine
Rusty Blackbird	Yellow-banded Bumble Bee

### General

Section 79 of SARA requires the “person”<sup>1</sup>, as defined in ss. 79(3), responsible for ensuring that an assessment of the environmental effects of a project<sup>2</sup> 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 documents 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 the applicable recovery documents 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.

Additionally, the key components of s.77(1) require an authorizing body to only authorize an activity that may result in the destruction of critical habitat where it is of the opinion that:

---

<sup>1</sup> **person** includes an association, an organization, a *federal authority* as defined in section 2 of the *Impact Assessment Act*, and any body that is set out in Schedule 4 to that Act.

<sup>2</sup> **project** means (a) a *designated project* as defined in section 2 of the *Impact Assessment Act* or a *project* as defined in section 81 of that Act; (b) a project as defined in subsection 2(1) of the *Yukon Environmental and Socio-economic Assessment Act*; or (c) a development as defined in subsection 111(1) of the *Mackenzie Valley Resource Management Act*.

- a) all reasonable alternatives to the project that would reduce impacts to the critical habitat of a SARA-listed species have been considered and the best solution has been adopted; and
- b) all feasible measures will be taken to minimize the impact of the activity on the species' critical habitat.

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 (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 an environmental assessment is to provide technical advice and support to the "person" in addressing s. 79 of SARA and the 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 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 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 may be 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 ss. 53, 59 or 71.

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

Sincerely,

Craig Machtans, A/Regional Director  
Canadian Wildlife Service – Northern Region  
Environment and Climate Change Canada

cc.

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

Jennifer Sabourin, Environmental Assessment Coordinator, Environmental Protection Operations Directorate

Georgina Williston, Head, Environmental Assessment, Northern Region, Canadian Wildlife Service

Krupesh Patel, Environmental Assessment Officer, Northern Region, Canadian Wildlife Service

Kathy Unger, Manager, Environmental Assessment & Habitat, Environment and Natural Resources, GNWT