



Français

Endangered Species Act, 2007

ONTARIO REGULATION 242/08

GENERAL

Consolidation Period: From July 1, 2022 to the e-Laws currency date.

Last amendment: 328/22.

Legislative History: [+]

This is the English version of a bilingual regulation.

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INTERPRETATION

Application

0.1 (1) This Regulation applies to all species on the Species at Risk in Ontario List, as that list read on January 26, 2022, subject to subsections (2) and (3). O. Reg. 328/22, s. 1.

(2) If a regulation is made under section 8.1 of the Act that temporarily suspends the application of all of the prohibitions in subsections 9 (1) and 10 (1) of the Act with respect to a species listed on the Species at Risk in Ontario List, this Regulation does not apply to the species during the period of suspension. O. Reg. 328/22, s. 1.

(3) If a regulation is made under section 8.1 of the Act that temporarily suspends the application of one or more, but not all, of the prohibitions in subsections 9 (1) and 10 (1) of the Act with respect to a species listed on the Species at Risk in Ontario List, this Regulation shall apply to the species during the period of suspension, but only in respect of the prohibitions that are not suspended by the regulation made under section 8.1 of the Act. O. Reg. 328/22, s. 1.

Definitions

1. (1) In this Regulation,

“ecoregion” means an ecoregion identified in the document entitled “The Ecosystems of Ontario, Part 1: Ecozones and Ecoregions” that is published by the Government of Ontario, dated 2009, as amended from time to time, and available on a website maintained by the Government of Ontario; (“*écocoréion*”)

“game wildlife” has the same meaning as in the *Fish and Wildlife Conservation Act, 1997*; (“*gibier sauvage*”)

“land classification system for southern Ontario” means the land classification system set out in the document entitled *Ecological Land Classification for Southern Ontario: First Approximation and its Application*, dated September, 1998 and published by the Ontario Ministry of Natural Resources; (“*système de classification écologique des terres du Sud de l’Ontario*”)

“Registry” means the registry maintained on a website of the Government of Ontario for the purposes of the submission of notice forms under this Regulation and Ontario Regulation 830/21 made under the Act; (“Registre”)

“specially protected wildlife” has the same meaning as in the *Fish and Wildlife Conservation Act, 1997*; (“animal sauvage spécialement protégé”)

“wildlife custodian” has the same meaning as in section 44 of the *Fish and Wildlife Conservation Act, 1997*. (“gardien d’animaux sauvages”) O. Reg. 242/08, s. 1; O. Reg. 176/13, s. 2; O. Reg. 323/13, s. 1; O. Reg. 232/14, s. 1; O. Reg. 831/21, s. 1 (1, 2); O. Reg. 833/21, s. 1.

(2) A reference in this Regulation to a geographic area is a reference to a geographic area named and described in Schedule 1 or 2 to Ontario Regulation 180/03 (Division of Ontario into Geographic Areas) made under the *Territorial Division Act, 2002*. O. Reg. 122/12, s. 1.

(3) A reference in this Regulation to a district manager is deemed to be a reference to a manager of the branch of the Ministry that is responsible for species at risk on and after December 1, 2021. O. Reg. 831/21, s. 1 (3).

(4) For the purposes of this Regulation, the expression of geographic coordinates shall,

- (a) use the UTM grid coordinate system or latitude and longitude;
- (b) identify the datum used; and
- (c) be accurate to 0.1 kilometre. O. Reg. 831/21, s. 1 (3).

(5) Subsection (4) does not apply in respect of an activity described in subsection 23.4 (1) for which notice is submitted under subparagraph 1 i of subsection 23.4 (6) before December 1, 2021. O. Reg. 831/21, s. 1 (3).

EXEMPTIONS APPLICABLE TO SPECIFIC SPECIES

Algonquin Wolf

1.1 (1) Subject to subsection (2), clause 9 (1) (a) of the Act does not apply to a person who kills, harms, harasses or captures an Algonquin Wolf if the person is hunting or trapping in accordance with the *Fish and Wildlife Conservation Act, 1997* and the regulations made under it and,

- (a) under the authority of,
 - (i) a licence issued under the *Fish and Wildlife Conservation Act, 1997*, or
 - (ii) subsection 6 (3) of the *Fish and Wildlife Conservation Act, 1997*; or
- (b) to protect property from an Algonquin Wolf pursuant to section 31 of the *Fish and Wildlife Conservation Act, 1997*. O. Reg. 308/16, s. 2.

(2) Subsection (1) does not apply in an area listed in Column 2 of item 8 of Table 6 of Ontario Regulation 670/98 (Open Seasons - Wildlife) made under the *Fish and Wildlife Conservation Act, 1997*. O. Reg. 308/16, s. 2; O. Reg. 218/18, s. 2.

(3) Clause 9 (1) (b) of the Act does not apply to a person in respect of an Algonquin Wolf if,

- (a) pursuant to subsection (1), clause 9 (1) (a) of the Act did not apply to the killing, harming, harassing or capturing of the Algonquin Wolf; and
- (b) the person is acting in accordance with the *Fish and Wildlife Conservation Act, 1997* and the regulations made under it. O. Reg. 308/16, s. 2.

American ginseng

2. (1) Subsection 9 (1) of the Act does not apply to field-cultivated American ginseng if,

- (a) it is cultivated on land in respect of which licence fees are payable to the Ontario Ginseng Growers’ Association under Ontario Regulation 340/01 (Designation — Ontario Ginseng Growers’ Association) made under the *Farm Products Marketing Act*;

(b) it is cultivated without the use of any material from American ginseng, such as seeds, roots or cuttings, that was taken from the wild in Ontario on or after June 30, 2008; and

(c) it is cultivated using structures that produce artificial shade. O. Reg. 242/08, s. 2 (1).

(2) REVOKED: O. Reg. 323/13, s. 2.

3., 4. REVOKED: O. Reg. 65/12, s. 1.

Bobolink, eastern meadowlark

4.1 (1) Clause 9 (1) (a) of the Act does not apply to a person who kills, harms or harasses a bobolink or an eastern meadowlark while carrying out an agricultural operation. O. Reg. 197/11, s. 2 (1); O. Reg. 65/12, s. 2 (1).

(2) Clause 9 (1) (b) of the Act does not apply to the possession or transport of a bobolink or an eastern meadowlark if, pursuant to subsection (1), clause 9 (1) (a) did not apply to the killing or harming of the bobolink or eastern meadowlark, as the case may be. O. Reg. 197/11, s. 2 (1); O. Reg. 65/12, s. 2 (2).

(3) Subsection 10 (1) of the Act does not apply to a person who damages or destroys the habitat of a bobolink or an eastern meadowlark while carrying out an agricultural operation if the area of habitat damaged or destroyed remains suitable for an agricultural operation. O. Reg. 197/11, s. 2 (1) ; O. Reg. 65/12, s. 2 (3).

(4) In this section,

“agricultural operation” means an agricultural, aquacultural, horticultural or silvicultural operation that is carried on in the expectation of gain or reward and includes,

(a) draining, irrigating or cultivating land,

(b) growing, producing or raising farm animals,

(c) the production of agricultural crops, including greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, trees and turf grass,

(d) the production of eggs, cream and milk,

(e) the operation of agricultural machinery and equipment,

(f) ground and aerial spraying,

(g) the management of materials containing nutrients for farm purposes,

(h) the processing by a farmer of the products produced primarily from the farmer’s agricultural operation, and

(i) activities that are a necessary but ancillary part of an agricultural operation such as the use of transport vehicles for the purposes of the agricultural operation. O. Reg. 197/11, s. 2 (1).

Note: On December 31, 2025, section 4.1 is revoked. See: O. Reg. 197/11, ss. 2 (2), 4 (2); O. Reg. 178/ 14, s. 1; O. Reg. 387/15, s. 1.

5. REVOKED: O. Reg. 176/13, s. 4.

Eastern flowering dogwood

5.1 Subsection 10 (1) of the Act does not apply to a person who damages or destroys an area that is the habitat of the eastern flowering dogwood, if the only eastern flowering dogwood that exists in the area is a cultivar and was not,

(a) cultivated for purposes of disease resistance; or

(b) derived from eastern flowering dogwood indigenous to Ontario or any state of the United States of America with which Ontario shares a border. O. Reg. 293/11, s. 2.

Northern bobwhite

6. (1) Clause 9 (1) (a) of the Act does not apply to a person who is hunting northern bobwhite on a game bird hunting preserve within the meaning of the *Fish and Wildlife Conservation Act, 1997* if the person is hunting in accordance with that Act and the regulations made under that Act. O. Reg. 242/08, s. 6 (1).

(2) Clause 9 (1) (b) of the Act does not apply to the possession or transport of a northern bobwhite by a person who, pursuant to subsection (1), lawfully kills the northern bobwhite. O. Reg. 242/08, s. 6 (2).

(3) Clause 9 (1) (a) and subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person in respect of northern bobwhite if the person is acting under the authority of and in accordance with,

(a) a licence to own or operate a game bird hunting preserve under the *Fish and Wildlife Conservation Act, 1997*; or

(b) a licence to keep game birds in captivity under the *Fish and Wildlife Conservation Act, 1997*. O. Reg. 242/08, s. 6 (3).

(4) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person who transports anything that, pursuant to subsection (3), the person is entitled to possess. O. Reg. 242/08, s. 6 (4).

Virginia mallow

6.1 Subsection 10 (1) of the Act does not apply to a person who damages or destroys an area that is the habitat of the Virginia mallow if the only Virginia mallow present in the area,

(a) did not originate from plants native to Ontario; or

(b) was planted for purposes other than species recovery, ecological restoration or rehabilitation or habitat creation. O. Reg. 122/12, s. 2.

Caribou (boreal population) — cast antlers

7. Clause 9 (1) (b) of the Act does not apply to antlers that dropped naturally from living caribou (boreal population). O. Reg. 308/16, s. 3.

OTHER EXEMPTIONS**Protection of health or safety, etc.**

8. (1) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who is acting to protect a human being or animal if the person reasonably believes that there is an imminent risk to the health or safety of the human being or animal. O. Reg. 242/08, s. 8 (1).

(2) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a police officer, firefighter or other person if,

(a) he or she is exercising powers or performing duties under an Act of Ontario or Canada or is acting under the direction of a person who is exercising powers or performing duties under an Act of Ontario or Canada;

(b) he or she is engaged in an activity that is intended to,

(i) protect the health or safety of any human being,

(ii) search for a living or dead human being,

(iii) prevent or reduce significant damage to property or the environment, or

(iv) enforce the law; and

(c) in the circumstances, it is not reasonable to comply with clause 9 (1) (a) or subsection 10 (1) of the Act. O. Reg. 242/08, s. 8 (2).

Protection of property

9. (1) If all of the criteria set out in subsection (2) are met,

(a) clause 9 (1) (a) of the Act does not apply to the harassing, capturing or taking of an animal;

(b) subclause 9 (1) (b) (i) of the Act does not apply to the possession or transport of a living animal that is captured or taken pursuant to clause (a); and

(c) subsection 10 (1) of the Act does not apply to the habitat of an animal. O. Reg. 242/08, s. 9 (1).

(2) Subsection (1) applies if all of the following criteria are met:

1. There are reasonable grounds to believe that the animal is damaging property.
2. The animal is harassed, captured, taken, possessed or transported, or its habitat is damaged or destroyed, by or at the direction of the owner or occupier of the land on which the property is located.
3. The owner or occupier has entered into an agreement with the Minister respecting action that may be taken to protect the property.
4. The agreement specifically provides that it applies to the species that the animal belongs to.
5. The agreement states that,
 - i. the Minister is of the opinion that the agreement requires the owner or occupier to take reasonable steps to minimize adverse effects on the species, and
 - ii. the Minister is of the opinion that the action described in the agreement will not jeopardize the survival or recovery of the species in Ontario.
6. The agreement is in force.
7. The owner or occupier has complied with the agreement. O. Reg. 242/08, s. 9 (2).

(3) Without limiting the generality of paragraph 3 of subsection (2), an agreement under that paragraph may require the owner or occupier to use the services of a person who is engaged in the business of removing nuisance animals, a person who holds a trapping licence under the *Fish and Wildlife Conservation Act, 1997* or any other person described in the agreement. O. Reg. 242/08, s. 9 (3).

Escape or unauthorized release from captivity

10. (1) Clause 9 (1) (a) of the Act does not apply to a person who is complying with clause 46 (3) (b) of the *Fish and Wildlife Conservation Act, 1997* with respect to game wildlife or specially protected wildlife. O. Reg. 242/08, s. 10 (1).

(2) Clause 9 (1) (b) of the Act does not apply to the possession or transport, by a person who is complying with clause 46 (3) (b) of the *Fish and Wildlife Conservation Act, 1997*, of the wildlife referred to in that clause. O. Reg. 242/08, s. 10 (2).

11. REVOKED: O. Reg. 176/13, s. 5 (4).

R.H. Saunders Station — American eel

11.1 (1) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who is engaged in the operation of the R.H. Saunders Station on the St. Lawrence River and who, in the course of operating the R.H. Saunders Station, kills, harms, harasses, captures or takes American eel, or damages or destroys the habitat of American eel, if all of the following criteria are met:

1. The person who operates the station has entered into an agreement with the Minister relating to American eel.
2. The agreement states that,
 - i. the Minister is of the opinion that the agreement requires the person who operates the station to take reasonable steps to minimize adverse effects on American eel,
 - ii. the Minister is of the opinion that, if the agreement is complied with, the operation of the station will not jeopardize the survival or recovery of American eel in Ontario, and
 - iii. the Minister is of the opinion that the agreement does not conflict with the obligation of the Minister to ensure the implementation of any action under subsection 12.1 (5) of the Act.

3. The agreement provides for monitoring the effects of the operation of the station on American eel.
4. The agreement is in force.
5. The person who operates the station has complied with the agreement. O. Reg. 176/13, s. 6; O. Reg. 831/21, s. 2.

(2) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

- (a) pursuant to subsection (1), clause 9 (1) (a) of the Act did not apply with respect to the member of the species; or
- (b) the possession or transport of the member of the species is necessary in order to satisfy the terms of the agreement referred to in subsection (1). O. Reg. 176/13, s. 6.

Commercial cultivation of vascular plants, etc.

12. (1) Clauses 9 (1) (a) and (b) of the Act do not apply in respect of a vascular plant species to a person who is engaged in the commercial cultivation of that species, if,

- (a) the person cultivates the species without the use of any material from the species, such as seeds, roots or cuttings, that was taken from the wild in Ontario on or after the date the species was listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species;
- (b) the person is not engaged in cultivating the species in the wild in Ontario; and
- (c) the person is not engaged in cultivating the species in a manner that is likely to spread disease or pests to, or to compromise the genetic integrity of, wild populations of the species.
- (d), (e) REVOKED: O. Reg. 176/13, s. 7 (1).

O. Reg. 242/08, s. 12 (1); O. Reg. 294/11, s. 2 (1); O. Reg. 176/13, s. 7 (1).

(1.1) REVOKED: O. Reg. 176/13, s. 7 (2).

(2) Clause 9 (1) (b) of the Act does not apply to a person who buys, sells, leases, trades, possesses or transports a vascular plant cultivated in the manner described in subsection (1) unless the person does so for the purpose of growing a member of the species in the wild in Ontario. O. Reg. 176/13, s. 7 (2).

(3) In this section,

“pest” means any thing that is injurious or potentially injurious, whether directly or indirectly, to plants or to products or by-products of plants. O. Reg. 176/13, s. 7 (2).

Fishing — incidental catch

13. (1) Clause 9 (1) (a) of the Act does not apply to a person who incidentally catches a fish or other animal that belongs to a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, if,

- (a) the person is fishing under the authority of,
 - (i) a licence under the *Fish and Wildlife Conservation Act, 1997*,
 - (ii) a licence under the Ontario Fishery Regulations, 2007 made under the *Fisheries Act (Canada)*, or
 - (iii) a licence under the Aboriginal Communal Fishing Licences Regulations made under the *Fisheries Act (Canada)*;
- (b) the person is fishing in accordance with the licence;
- (c) the person is fishing in accordance with,
 - (i) the Ontario Fishery Regulations, 2007 made under the *Fisheries Act (Canada)*, in the case of a person fishing under the authority of a licence referred to in subclause (a) (i) or (ii), or
 - (ii) the Ontario Fishery Regulations, 2007 and the Aboriginal Communal Fishing Licences Regulations made under the *Fisheries Act (Canada)*, in the case of a person fishing under the authority of a licence referred to in subclause (a) (iii); and
- (d) subject to clause (b),

- (i) the incidentally caught fish or other animal is immediately returned to the waters from which it is caught, and
 - (ii) if the incidentally caught fish or other animal is alive, it is released in a manner that causes the least harm to the fish.
- O. Reg. 242/08, s. 13 (1).

(2) In the case of an incidentally caught fish, clause (1) (d) applies whether or not section 12 of the Ontario Fishery Regulations, 2007 applies to the fish. O. Reg. 242/08, s. 13 (2).

(3) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a fish or other animal if,

- (a) pursuant to subsection (1), clause 9 (1) (a) of the Act did not apply to the catching of the fish or other animal; and
- (b) the fish or other animal was not required to be returned to the waters from which it was caught. O. Reg. 242/08, s. 13 (3).

14. REVOKED: O. Reg. 176/13, s. 8.

Veterinarians

15. (1) Subclause 9 (1) (b) (i) of the Act does not apply to the possession or transport of an animal by a member of the College of Veterinarians of Ontario for the purpose of providing treatment to the animal. O. Reg. 242/08, s. 15 (1).

(2) Clause 9 (1) (a) of the Act does not apply to the killing of an animal by a member of the College of Veterinarians of Ontario, if the member is of the opinion that the animal should be euthanized. O. Reg. 242/08, s. 15 (2).

(3) Clause 9 (1) (b) of the Act does not apply to the possession or transport of an animal by any person, if the person possesses the animal for less than 24 hours for the purpose of transporting it to a member of the College of Veterinarians of Ontario for treatment. O. Reg. 242/08, s. 15 (3).

Rehabilitation or care — wildlife custodians

16. (1) Subclause 9 (1) (b) (i) of the Act does not apply to the possession or transport of game wildlife or specially protected wildlife by a wildlife custodian, if the wildlife custodian is authorized to keep the wildlife in captivity under section 44 of the *Fish and Wildlife Conservation Act, 1997*. O. Reg. 242/08, s. 16 (1).

(2) Clause 9 (1) (a) of the Act does not apply to the capturing or taking of game wildlife or specially protected wildlife by a wildlife custodian for the purpose of rehabilitating or caring for it, if the wildlife custodian is authorized to keep it in captivity under section 44 of the *Fish and Wildlife Conservation Act, 1997*. O. Reg. 242/08, s. 16 (2).

(3) Subclause 9 (1) (b) (i) of the Act does not apply to the possession and transport of game wildlife or specially protected wildlife by any person if the person possesses it for less than 24 hours for the purpose of transporting it, for the purpose of rehabilitation or care, to a wildlife custodian who is authorized to keep it in captivity under section 44 of the *Fish and Wildlife Conservation Act, 1997*. O. Reg. 242/08, s. 16 (3).

(4) Clause 9 (1) (a) of the Act does not apply to the killing of game wildlife or specially protected wildlife by a wildlife custodian, if the wildlife custodian is authorized to kill it under section 44 of the *Fish and Wildlife Conservation Act, 1997*. O. Reg. 242/08, s. 16 (4).

Rehabilitation or care — transfer to Ministry employees

17. Subclause 9 (1) (b) (i) of the Act does not apply to the possession and transport by any person of an animal that belongs to a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, if the person possesses the animal for less than 24 hours for the purpose of transporting it, for the purpose of rehabilitation or care, to a person employed in the Ministry. O. Reg. 242/08, s. 17.

Stewardship activities

17.1 (1) Subsections (2) to (6) apply with respect to all or part of a stewardship activity that is intended to assist in the protection or recovery of one or more species listed on the Species at Risk in Ontario List as an endangered or threatened species if,

- (a) the person proposing to carry out the stewardship activity has received notice from the Ministry indicating that the stewardship activity, or the part thereof, will be part of the Species at Risk in Ontario Stewardship Program and will be funded by a grant made by the Minister under subsection 47 (3) of the Act; and
- (b) the stewardship activity is carried out in accordance with the conditions of the grant referred to in clause (a). O. Reg. 831/21, s. 3.

(2) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who, while carrying out a stewardship activity, kills, harms, harasses, captures or takes a member of a species that is the object of the activity, or damages or destroys the habitat of such a species, if the person satisfies the conditions set out in subsection (4). O. Reg. 831/21, s. 3.

(3) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person who, while carrying out a stewardship activity, possesses, collects or transports a living or dead member of a species that is the object of the activity, or a part of a member of such species, if the person satisfies the conditions set out in subsection (4). O. Reg. 831/21, s. 3.

(4) The following are the conditions that a person must satisfy for the purposes of the exemptions in subsections (2) and (3):

1. If the stewardship activity requires the handling of a member of a species listed on the Species at Risk in Ontario List as an endangered or threatened species that is an amphibian, bird, reptile, mammal or fish, the person must, before commencing the activity, prepare a document that sets out,
 - i. the procedures relating to the handling and care of the species, including,
 - A. procedures relating to the appropriate treatment that will be provided to a member of the species if it becomes sick or accidentally injured as a result of the stewardship activity, and
 - B. if the procedures referred to in sub-subparagraph A include procedures to be followed by the person in order to euthanize a member of the species, the procedures for euthanasia, and
 - ii. a written opinion prepared by an animal care committee established under subsection 17 (1) of the *Animals for Research Act*, stating that the procedures included under subparagraph i provide for the proper handling and care of the species.
2. The person must,
 - i. ensure that the procedures set out in the document referred to in paragraph 1 are followed while carrying out the activity,
 - ii. retain a copy of the document referred to in paragraph 1 for at least five years after the activity is completed, and
 - iii. provide a copy of the document referred to in paragraph 1 to the Ministry within 14 days of receiving a request for it.
3. If the stewardship activity requires the handling of a member of a species listed on the Species at Risk in Ontario List as an endangered or threatened species that is a plant, lichen, moss, mollusc or insect and the person intends to possess the member for longer than seven days, the person must, before commencing the activity, prepare a document that sets out the procedures relating to the handling and care of the species.
4. The person must,
 - i. ensure that the procedures set out in the document referred to in paragraph 3 are followed while carrying out the activity,
 - ii. retain a copy of the document referred to in paragraph 3 for at least five years after the activity is completed, and
 - iii. provide a copy of the document referred to in paragraph 3 to the Ministry within 14 days of receiving a request for it.

5. If, while carrying out a stewardship activity, a living member of a species that is the object of the activity is captured, collected or taken, the person must ensure that,
 - i. any living member of a species that is captured, collected or taken does not remain in the person's possession for longer than is necessary to complete the activity, and
 - ii. any living member of a species that is captured or taken is released,
 - A. back into the area from which it was captured or taken, or
 - B. if the grant made under subsection 47 (3) of the Act in respect of the activity specified that the living member was to be released, for one of the following purposes, into an area specified in the grant that is not the area from which it was captured or taken, into that area:
 1. augmenting the population of the species in the area,
 2. reintroducing the species to an area from which it has been extirpated, or
 3. introducing it to an area where it is not known to have occurred previously.
6. If, while carrying out a stewardship activity, a dead member of a species, or a part of a living or dead member of a species, that is the object of the activity is collected, the person must ensure that the dead member or the part of the living or dead member does not remain in the person's possession for longer than is necessary to complete the activity.
7. If a stewardship activity requires that the person carrying out the activity keep a living member of the species that is the object of the activity in their possession for more than seven days in order to complete the activity or requires that the person release a living member of such a species into an area other than the area in which the member was captured or taken for a purpose described in sub-subparagraph 5 ii B, the person must,
 - i. follow the rules set out in subsection (5) to mitigate the impact of the stewardship activity on the living member of the species and any of its progeny that resulted while in the person's possession, and
 - ii. follow the monitoring, recording and reporting requirements set out in subsection (6) with respect to the living member or any of its progeny that resulted while in the person's possession.
8. If a member of a species that is the object of the stewardship activity becomes ill or is injured as an incidental consequence of the activity, the person must not carry out the euthanasia of the member unless,
 - i. the procedures prepared under paragraph 1 include procedures to be followed by the person when euthanizing members of the species, and
 - ii. the euthanasia is carried out in accordance with the procedures prepared under paragraph 1 by a person with expertise in the species who is trained in respect of the procedures and who is acting on the advice of a member of the College of Veterinarians of Ontario or a person employed by the Ministry.
9. The person must prepare a record of the following information for each member of the species euthanized:
 - i. the reason the member required euthanasia,
 - ii. the name and contact details of the person who carried out the euthanasia,
 - iii. a summary of the person's expertise related to the species and the person's training in the euthanasia procedures referred to in paragraph 1, and
 - iv. the name, position and contact details of the member of the College of Veterinarians of Ontario or employee of the Ministry who advised that the member of the species needed to be euthanized.

10. The person must retain a copy of the record referred to in paragraph 9 for at least five years after it was prepared and provide a copy of the record to the Ministry within 14 days of receiving a request for it.
 11. If the person or an employee or agent of the person observes a species that is the object of the stewardship activity in the course of carrying out the activity, the person must ensure that, on or before March 31 after the sighting, the Ontario Species at Risk Observation Reporting Form available on a website maintained by the Government of Ontario is completed, detailing the species and the number of individual members that were observed, the date and location of the observation and any other information requested on the form. O. Reg. 831/21, s. 3.
- (5) The following are the mitigation rules that a person must follow for the purposes of subparagraph 7 i of subsection (4):
1. While the stewardship activity is ongoing, the person shall take reasonable steps to avoid or minimize adverse effects on a member of a species that is the object of the stewardship activity, and on any of the member's progeny that resulted while in the person's possession, using the best available information including consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available.
 2. The person shall ensure that all reasonable steps are taken during the following periods of time in order to avoid spreading diseases and pests to, or compromising the genetic integrity of, the member of the species that is the object of the stewardship activity and any of the member's progeny that resulted while in the person's possession:
 - i. in the case of a member of the species that the person is required to be in their possession for more than seven days, during the entire time the member and its progeny are in the person's possession, or
 - ii. in the case of a member of the species that is required to be released into an area other than the area from which it was captured or taken, during the release of the member.
 3. The person shall ensure that any member of a species that is the object of the stewardship activity and is required to be in their possession for more than seven days, and any of the member's progeny that resulted while in the person's possession, is maintained in a manner that supports the health and viability of the member of the species and its progeny for as long as they remain in the person's possession.
 4. During a stewardship activity that involves the release of a member of a species that is the object of the activity, and any of its progeny that resulted while in the person's possession, into an area other than the area from which it was captured or taken, the person shall ensure that, so long as the activity continues, reasonable steps are taken to manage the habitat of the species in that area in a manner that supports the necessary life processes of the member, and any of its progeny, that are released.
 5. The person shall ensure that, so long as the stewardship activity continues, all reasonable steps are taken to promote the genetic integrity and health of each member of the species that is the object of the activity and of the member's progeny that resulted while the member was in the person's possession.
 6. The stewardship activity must be carried out by or under the supervision of a person with expertise in relation to the species that is the object of the activity.
 7. The person shall not release a member of the species that is the object of the stewardship activity, or the progeny that resulted while the member was in the person's possession, to an area or in a manner that would pose a significant risk to the member, its progeny or to any other members of the species. O. Reg. 831/21, s. 3.
- (6) The following are the monitoring and recording requirements that a person must follow for the purposes of subparagraph 7 ii of subsection (4):
1. While carrying out the stewardship activity, the person shall ensure that the following are monitored:
 - i. the effects of the activity on,
 - A. any member of a species that is the object of the activity and that the person keeps in their possession for more than seven days or releases into an area other than the area from which the member was captured or taken, and
 - B. any progeny of a member referred to in sub-subparagraph A that resulted while the member was in the person's possession, and

- ii. the effectiveness of measures taken under the mitigation rules set out in subsection (5) to avoid or minimize the adverse effects of the activity on the members of the species.
2. While carrying out the stewardship activity, the person must create and maintain a record of,
 - i. the effects of the activity on the member of the species that is the object of the activity and that the person keeps in their possession for more than seven days, and on any of the member's progeny that resulted while the member was in the person's possession, or the member of the species that the person releases into an area other than the area from which the member was captured or taken,
 - ii. the measures that are taken by the person carrying out the activity to minimize the adverse effects of the activity on the member of the species referred to in subparagraph i, including the measures set out in subsection (5), including the locations where the measures are taken, and an assessment of the effectiveness of those measures, and
 - iii. the names of each individual with expertise who was responsible for carrying out or supervising the activity.
3. The person must,
 - i. retain a copy of the record created under paragraph 2 for at least five years after it is prepared, and
 - ii. provide a copy of the record created under paragraph 2 to the Ministry within 14 days of receiving a request for it.
4. Before the expiry of the grant made by the Minister under subsection 47 (3) of the Act, the person must prepare a report about the members of a species that is the object of the stewardship activity that the person has kept in their possession for more than seven days, and any progeny that resulted while such members were in the person's possession, and about any members of such a species that the person has released under sub-subparagraph 5 ii B of subsection (4), and the person must submit the report to the Ministry.
5. The report referred to in paragraph 4 must include:
 - i. A description of the stewardship activity, including its nature and purpose.
 - ii. The identity of each species that is the object of the activity.
 - iii. If a member of a species that is the object of the activity was captured, collected or taken,
 - A. the date on which a member of the species was captured, collected or taken,
 - B. details regarding the capture, collection or taking of the member, including, if applicable, the name and contact information of the person who captured, collected or took the member, a description of the legal authorization for the capture, collection or taking and, if applicable, the identifying number of the authorization, and
 - C. the location from which the member was captured or taken, using geographic coordinates, and a description of the location.
 - iv. A copy of the record referred to in paragraph 2.
 - v. A summary of the outcome of the stewardship activity, including a detailed assessment of the extent to which the activity achieved its purpose.
 - vi. Details about any species injuries, deaths or complications that occurred during the stewardship activity, including a copy of the record developed under paragraph 9 of subsection (4), if applicable.
6. If the person possesses one or more living members of a species that is the object of the activity for longer than seven days, the report referred to in paragraph 4 must include,

- i. The number of living members of the species possessed, or an estimate of the number if the exact quantity is unavailable.
 - ii. A description of the life stage and condition of each member of the species when possession began and when possession ended.
 - iii. If applicable, the number of progenies that resulted while the member was kept in possession, or an estimate of the number if the exact quantity is unavailable,
 - iv. If the member is released in accordance with sub-subparagraph 5 ii A of subsection (4), the location in which the member was released to or, if subparagraph v applies, the person to whom the member was transferred,
 - v. If the person transfers one or more members of a species in their possession to another person instead of releasing it back to the area from which it was captured or taken:
 - A. An explanation for doing so, demonstrating that the release of the member back to the area from which it was captured or taken posed significant risk to the member or receiving population that could not be mitigated or was not reasonable or feasible.
 - B. The number of members transferred.
 - C. The date of transfer.
 - D. The name and contact information of the person to whom the members were transferred, a description of the authorization under which the person is authorized to possess the members and, if applicable, the identifying number of the authorization.
 - E. The address of the location where the member is now located and a description of the location.
7. If the person releases one or more living members of a species that is the object of the stewardship activity into an area other than the area from which the members were captured or taken, the report referred to in paragraph 4 must include,
- i. The number of members of the species that have been released, or an estimate of the number if the exact quantity is unavailable.
 - ii. The date of the release of the members of the species.
 - iii. A description of the life stage and condition of the member at the time of the release of the members of the species.
 - iv. Which of the purposes of release set out in sub-subparagraph 5 ii B of subsection (4) applies to the release.
 - v. The location at which the members were released using the geographic coordinates for the location.
 - vi. A description of the conditions of the release location when the release occurred.
 - vii. If the purpose of the release is to provide for an augmentation of the population of the species in the area of the release, information about the receiving population, including the number of members, or estimates if the exact quantity is unavailable, and condition of the other members of the population of the species at the time of release. O. Reg. 831/21, s. 3.

Zoos

18. (1) Subject to subsection (2), with respect to any species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person acting under the authority of and in accordance with a licence to keep specially protected and game wildlife in a zoo under the *Fish and Wildlife Conservation Act, 1997*. O. Reg. 242/08, s. 18 (1).

(2) Subsection (1) does not authorize the purchase, sale, lease or trade of, or the offer to buy, sell, lease or trade,

(a) a dead member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species; or

(b) any part of a dead member of a species referred to in clause (a). O. Reg. 242/08, s. 18 (2).

(3) Subsection (2) does not prevent the purchase, sale, lease or trade of gametes, or the offer to buy, sell, lease or trade gametes. O. Reg. 242/08, s. 18 (3).

(4) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person who transports anything that, pursuant to subsection (1), the person is entitled to possess. O. Reg. 242/08, s. 18 (4).

(5) Clause 9 (1) (a) of the Act does not apply to the killing of an animal by an employee of a zoo if,

(a) the zoo possesses the animal under the authority of a licence to keep specially protected and game wildlife in a zoo under the *Fish and Wildlife Conservation Act, 1997*;

(b) the employee is of the opinion that the animal should be euthanized; and

(c) it is not reasonable in the circumstances to obtain the services of a member of the College of Veterinarians of Ontario to kill the animal. O. Reg. 242/08, s. 18 (5).

Falconry

19. (1) Subclause 9 (1) (b) (i) of the Act does not apply to a person in respect of a live falconry bird within the meaning of Part III of Ontario Regulation 668/98 (Wildlife in Captivity) made under the *Fish and Wildlife Conservation Act, 1997*, if,

(a) the person is acting under the authority of and in accordance with a general falconry licence, commercial falconry licence or apprentice falconry licence issued under that Act; and

(b) the person is acting in accordance with Ontario Regulation 668/98 (Wildlife in Captivity) made under the *Fish and Wildlife Conservation Act, 1997*. O. Reg. 242/08, s. 19 (1).

(2) If, pursuant to subsection (1), a person is entitled to possess a live falconry bird, clause 9 (1) (b) of the Act does not apply to the person with respect to the transport of the bird. O. Reg. 242/08, s. 19 (2).

Possession prior to listing, etc.

20. (1) With respect to any species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, clause 9 (1) (b) of the Act does not apply in the following circumstances to the possession of anything described in subclause 9 (1) (b) (i), (ii) or (iii) of the Act:

1. The person who possesses the thing was lawfully in possession of the thing immediately before the species was first listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species.

2. The person who possesses the thing lawfully acquired it from a person who was entitled to possess it pursuant to paragraph 1 or this paragraph. O. Reg. 242/08, s. 20 (1).

(2) Clause 9 (1) (b) of the Act does not apply to the transport of a thing by any person if, pursuant to subsection (1), the person is entitled to possess it. O. Reg. 242/08, s. 20 (2).

(3) Subclause 9 (1) (b) (iii) of the Act does not apply to the purchase, sale, lease or trade of any artwork, jewellery, furniture or other crafted thing, or to the offer to purchase, sell, lease or trade any artwork, jewellery, furniture or other crafted thing, if,

- (a) pursuant to subsection (1), a person is entitled to possess the artwork, jewellery, furniture or other crafted thing; and
- (b) the market value of the artwork, jewellery, furniture or other crafted thing is primarily attributable to factors other than the fact that it is derived from a living or dead animal, plant or other organism. O. Reg. 242/08, s. 20 (3).
- (4) Subsection (3) does not apply to anything that has been treated, stuffed or mounted, in whole or in part, by a taxidermist. O. Reg. 242/08, s. 20 (4).

Tanning or taxidermy

21. Clause 9 (1) (b) of the Act does not apply to the possession or transport by a tanner or taxidermist of a dead animal that, pursuant to this Regulation, a person is entitled to possess, if the person gives the dead animal to the tanner or taxidermist for the purpose of tanning, plucking, treating, stuffing or mounting it. O. Reg. 242/08, s. 21.

22. REVOKED: O. Reg. 176/13, s. 9 (2).

22.1 REVOKED: O. Reg. 176/13, s. 10 (2) and O. Reg. 219/18, s. 1.

Transition — development and infrastructure

23. (1) This section applies to the following activities:

1. Construction or demolition of a building under the authority of a building permit that was issued before June 30, 2008 under section 8 of the *Building Code Act, 1992*.
2. Laying down highways and lots upon the ground within a draft plan of subdivision under the authority of subsection 51 (57) of the *Planning Act*, if the draft plan was approved before June 30, 2008.
3. Development of a lot, if,
 - i. the lot is within a draft plan of subdivision that was approved under the *Planning Act* before June 30, 2008,
 - ii. the plan of subdivision has not been registered under the *Registry Act* or *Land Titles Act*, and
 - iii. the development is not prohibited by any zoning by-law passed under subsection 34 (1) of the *Planning Act* or by any order made under section 47 of that Act.
4. Development of a lot, if,
 - i. the lot was created by a provisional consent that was given under section 53 of the *Planning Act* before June 30, 2008,
 - ii. the lot has not been registered under the *Registry Act* or *Land Titles Act*, and
 - iii. the development is not prohibited by any zoning by-law passed under subsection 34 (1) of the *Planning Act* or by any order made under section 47 of that Act.
5. Development in a site plan control area that is designated under subsection 41 (2) of the *Planning Act*, if an approval that applies to the development was obtained under subsection 41 (4) of that Act before June 30, 2008.
6. Development that is authorized by a development permit issued before June 30, 2008 under Ontario Regulation 608/06 (Development Permits) made under the *Planning Act*.
7. Development of a unit within the meaning of the *Condominium Act, 1998*, if,
 - i. the unit is within a draft declaration and description that were approved pursuant to subsection 9 (2) of the *Condominium Act, 1998* before June 30, 2008,
 - ii. the declaration and description have not been registered under the *Land Titles Act*, and

- iii. the development is not prohibited by any zoning by-law passed under subsection 34 (1) of the *Planning Act* or by any order made under section 47 of that Act.
8. Development that is authorized by a development permit issued before June 30, 2008 under By-law 2004-180 of the Township of Lake of Bays, including any amendments made to the by-law before that day.
 9. Carrying out an undertaking, if approval to proceed with the undertaking was given under Part II of the *Environmental Assessment Act* before June 30, 2008.
 10. Carrying out an undertaking, if proceeding with the undertaking was authorized before June 30, 2008 under,
 - i. the Class Environmental Assessment Process for Management Board Secretariat and Ontario Realty Corporation that was approved under the *Environmental Assessment Act* on April 28, 2004,
 - ii. the Class Environmental Assessment for Minor Transmission Facilities that was approved under the *Environmental Assessment Act* on April 23, 1992,
 - iii. the Class Environmental Assessment for Modifications to Hydroelectric Facilities that was approved under the *Environmental Assessment Act* on August 19, 1993, as extended on August 5, 1998, August 15, 2000, August 19, 2003 and August 8, 2005.
 - iv. the Class Environmental Assessment for Provincial Transportation Facilities approved under the *Environmental Assessment Act* on October 6, 1999 and amended on July 14, 2000,
 - v. the Class Environmental Assessment for Remedial Flood and Erosion Control Projects by Conservation Authorities that was approved under the *Environmental Assessment Act* on June 26, 2002,
 - vi. the GO Transit Class Environmental Assessment Document that was approved under the *Environmental Assessment Act* on December 13, 1995 and amended on August 8, 2005, or
 - vii. the Municipal Class Environmental Assessment approved under the *Environmental Assessment Act* on October 4, 2000 and amended on September 6, 2007.
 11. Carrying out an undertaking, if proceeding with the undertaking was authorized before June 30, 2008 under,
 - i. Ontario Regulation 116/01 (Electricity Projects) made under the *Environmental Assessment Act*, or
 - ii. Ontario Regulation 101/07 (Waste Management Projects) made under the *Environmental Assessment Act*.
 12. Carrying out the undertaking described in the order made under section 3.2 of the *Environmental Assessment Act* and approved by Order in Council 2174/99 on December 8, 1999 with respect to hydroelectric facilities on the Mattagami River.
 13. Constructing a hydrocarbon line or station under the authority of an order made under Part VI of the *Ontario Energy Board Act, 1998* before June 30, 2008.
 - 14.-16. REVOKED: O. Reg. 176/13, s. 11 (1).

O. Reg. 242/08, s. 23 (1); O. Reg. 176/13, s. 11 (1).

(2) With respect to a species listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who is engaging in an activity described in subsection (1), if the person has entered into an agreement with the Minister that complies with subsection (3), the agreement is in force and the person has complied with the agreement. O. Reg. 242/08, s. 23 (2).

(3) An agreement referred to in subsection (2) complies with this subsection if,

(a) the agreement was entered into before June 30, 2010;

(b) the agreement specifically provides that it applies to the species; and

(c) the agreement states that,

(i) the Minister is of the opinion that the agreement requires the person who engages in the activity to take reasonable steps to minimize adverse effects on the species,

(ii) the Minister is of the opinion that, if the agreement is complied with, the activity will not jeopardize the survival or recovery of the species in Ontario, and

(iii) the Minister is of the opinion that the agreement does not conflict with the obligation of the Minister to ensure the implementation of any action under subsection 11 (9) of the Act, as it read immediately before June 30, 2010.

O. Reg. 242/08, s. 23 (3); O. Reg. 831/21, s. 4.

(4) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

(a) pursuant to subsection (2), clause 9 (1) (a) of the Act did not apply with respect to the member of the species; and

(b) the agreement referred to in subsection (2) is in force and the person who engages in the activity described in subsection (1) has complied with the agreement. O. Reg. 242/08, s. 23 (4).

(5) Despite subsection (2), with respect to a species listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, clause 9 (1) (a) and subsection 10 (1) of the Act do not apply during the period from June 30, 2008 to September 30, 2008 to a person who is,

(a) maintaining drainage works, if an agreement for the maintenance was filed under subsection 2 (2) of the *Drainage Act* before June 30, 2008;

(b) maintaining or repairing drainage works, if a report that applies to the drainage works was adopted under subsection 3 (15) or 45 (1) of the *Drainage Act* before June 30, 2008; or

(c) maintaining a ditch constructed under *The Ditches and Watercourses Act*, being chapter 109 of the Revised Statutes of Ontario, 1960, in accordance with subsection 3 (18) of the *Drainage Act*. O. Reg. 242/08, s. 23 (5).

(6) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if, pursuant to subsection (5), clause 9 (1) (a) of the Act did not apply with respect to the member of the species. O. Reg. 242/08, s. 23 (6).

(7) This section does not apply to the operation of a hydro-electric generating station. O. Reg. 242/08, s. 23 (7).

(8) REVOKED: O. Reg. 176/13, s. 11 (3)

Development and infrastructure — reddsides dace

23.1 (1) This section applies to a person who carries out any of the following activities if the activity is likely to kill, harm or harass reddsides dace or to damage or destroy the habitat of reddsides dace:

1. Development of land permitted by an official plan amendment approved or made final under the *Planning Act* if,

i. the impact that the development might have on reddsides dace living in the area or outside of the area was considered in making or approving the amendment,

ii. the amendment,

A. was made or approved after September 27, 2002 and before July 1, 2011,

B. specifies the limits of the valley and stream corridors in the area to be developed, and

C. has been reviewed by the conservation authority for the area to be developed, and

iii. the development is not prohibited by any zoning by-law passed under subsection 34 (1) of the *Planning Act* or by any order made under section 47 of that Act.

2. Development of a lot, including a lot registered under the *Registry Act* or the *Land Titles Act*, if,
 - i. the lot is within a draft plan of subdivision that was approved under the *Planning Act* after September 27, 2002 and before December 31, 2012,
 - ii. the approval has not lapsed, and
 - iii. the development is not prohibited by any zoning by-law passed under subsection 34 (1) of the *Planning Act* or by any order made under section 47 of that Act.
3. Development of a unit within the meaning of the *Condominium Act, 1998*, including a unit in respect of which a declaration and description are registered under the *Land Titles Act*, if,
 - i. the unit is within a draft declaration and description that were approved under subsection 9 (2) of the *Condominium Act, 1998* after September 27, 2002 and before December 31, 2012,
 - ii. the approval has not lapsed, and
 - iii. the development is not prohibited by any zoning by-law passed under subsection 34 (1) of the *Planning Act* or by any order made under section 47 of that Act.
4. Carrying out an undertaking if,
 - i. approval to proceed with the undertaking was given under Part II of the *Environmental Assessment Act* after September 27, 2002 and before July 1, 2011, and
 - ii. the impact that the undertaking might have on redside dace living in the area or outside of the area was considered in the approval.
5. Carrying out an undertaking if,
 - i. the undertaking is an undertaking to which one of the following class environmental assessments approved under Part II.1 of the *Environmental Assessment Act* applies,
 - A. the Class Environmental Assessment for Provincial Transportation Facilities that was approved on October 6, 1999 and amended on July 14, 2000,
 - B. the Class Environmental Assessment for Remedial Flood and Erosion Control Projects by Conservation Authorities that was approved on June 26, 2002 and amended in September 2009,
 - C. the GO Transit Class Environmental Assessment Document that was approved on December 13, 1995 and amended on August 8, 2005, or
 - D. the Municipal Class Environmental Assessment that was approved on October 4, 2000 and amended on September 6, 2007,
 - ii. proceeding with the undertaking was authorized after September 27, 2002 and before July 1, 2011 under the applicable class environmental assessment, and
 - iii. the impact that the undertaking might have on redside dace living in the area or outside of the area was considered when authorizing the undertaking or otherwise under the applicable class environmental assessment. O. Reg. 293/11, s. 3 (1).

(2) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply, with respect to redside dace, to a person carrying on an activity described in subsection (1), if the conditions set out in subsection (4) are satisfied. O. Reg. 293/11, s. 3 (1).

(3) Clause 9 (1) (b) of the Act does not apply to the possession or transportation of redbreasted nuthatch by a person in the course of carrying on an activity described in subsection (1), if the conditions set out in subsection (4) are satisfied. O. Reg. 293/11, s. 3 (1).

(4) A person who wishes to carry out an activity described in subsection (1) shall comply with the following conditions:

1. Before beginning any part of the activity that is likely to kill, harm or harass redbreasted nuthatch or damage or destroy the habitat of redbreasted nuthatch,
 - i. the person must prepare a mitigation report in accordance with subsection (5),
 - ii. the person must submit the mitigation report to the district manager of the Ministry, and
 - iii. the district manager must approve the mitigation report, subject to subsection (6), and the person must have received written notice of the approval.
2. After the mitigation report is approved by the district manager of the Ministry, the person may carry out the activity but shall do so in accordance with the mitigation report and with the conditions specified in subsection (7). O. Reg. 293/11, s. 3 (1).

(4.1) Despite subsections (2), (3) and (4), this section does not apply to a person who has submitted a mitigation report to the district manager unless the person receives a written notice of approval of the mitigation report from the district manager on or before December 31, 2014. O. Reg. 176/13, s. 12.

(5) A mitigation report referred to in paragraph 1 of subsection (4) shall include the following:

1. The name and contact information of the person on whose behalf the activity described in the report is being carried out.
2. A map indicating the geographic location of the property on which the activity will occur and the names of all watercourses on the property.
3. With respect to the activity that the person proposes to carry out,
 - i. a description of the activity,
 - ii. the proposed start and completion dates of the activity,
 - iii. a description of all of the stages of the activity and a timeline for the stages, and
 - iv. a description of how the activity may affect redbreasted nuthatch or its habitat, including a list of any works to be carried out in or adjacent to the habitat of redbreasted nuthatch, such as works involving water crossings, storm water management facilities or changes to the alignment of a part of a stream or other watercourse, or any other works that may affect redbreasted nuthatch or its habitat.
4. A description of the location where each stage of the activity identified in subparagraph 3 iii will occur, including a detailed map and any detailed drawings of the works referred to in subparagraph 3 iv.
5. A description of any background studies related to environmental conditions completed for the location identified in paragraph 2 and available at the time of the preparation of the mitigation report.
6. Detailed plans on the steps the person shall take during the activity to minimize effects on redbreasted nuthatch, including,
 - i. a plan to control erosion and sediment,
 - ii. details on the planting of native plants, and
 - iii. restrictions on the time of year at which works may be carried out in a part of a stream or other watercourse that is included in the habitat of redbreasted nuthatch.
7. A description of the steps the person shall take to rescue redbreasted nuthatch affected by the activity.

8. A description of the steps the person shall take to monitor the effectiveness of the actions taken to minimize effects of the activity on redbide dace, including details and timelines of inspections of sediment control fencing and other sediment and erosion control measures by a qualified inspector or professional engineer. O. Reg. 293/11, s. 3 (1).

(6) A district manager for the Ministry to whom a mitigation report is submitted under subparagraph 1 ii of subsection (4) may refuse to approve the report if, in his or her opinion,

(a) the person carrying out the activity referred to in the mitigation report has not taken reasonable steps to design water crossings, storm water management facilities or other works constructed or modified as part of the activity in a manner to effectively minimize the effects on redbide dace; or

(b) the measures set out in the mitigation report may not be sufficient to,

(i) effectively protect the habitat of redbide dace from sediment or deleterious substances,

(ii) prevent the activity from causing an unacceptable impairment of water quality, or

(iii) otherwise effectively mitigate the impacts of the activity on redbide dace. O. Reg. 293/11, s. 3 (1).

(7) If the mitigation report is approved by a district manager for the Ministry, the person responsible for carrying out the activity referred to in the report shall comply with all of the following conditions to minimize the effects of the activity on redbide dace:

1. The flow of a stream or other watercourse through the habitat of redbide dace shall be maintained without interruption.

2. If the activity involves changes to the alignment of a part of a stream or other watercourse that is situated in the habitat of redbide dace,

i. the changes shall be designed and carried out in a manner that minimizes adverse effects on redbide dace, and

ii. the stream or other watercourse shall be changed to provide suitable conditions for redbide dace.

3. If a water crossing situated in the habitat of redbide dace is constructed or modified in the course of the activity,

i. in the case of a culvert, the culvert shall be an open-bottom culvert and the substrate shall be restored to provide suitable conditions for redbide dace, and

ii. in the case of a bridge, the bridge shall be designed and constructed to minimize adverse effects on redbide dace.

4. If, as a result of the activity, soil, earth or substrate becomes exposed within 30 metres of the meander belt of the part of a stream or other watercourse that is included in the habitat of redbide dace, the exposed soil, earth or substrate shall be stabilized to prevent sediment or deleterious substances from entering the stream or watercourse within,

i. 15 days after the soil, earth or substrate becomes exposed, or

ii. a period of time longer than 15 days after the soil, earth or substrate becomes exposed, as may be approved in writing by the district manager of the Ministry if, in his or her opinion, such longer period will be sufficient to prevent sediment or deleterious substances from entering the stream or watercourse.

5. Any equipment, stockpiled material or construction material shall be stored outside the habitat of redbide dace and in a manner that prevents sediment or deleterious substances from entering the habitat of redbide dace.

6. A double row of sediment control fencing consisting of a non-woven material with staked straw bales shall be installed and maintained to prevent sediment from entering any part of a stream or other watercourse that is included in the habitat of redbide dace.

7. Any water that is laden with sediment that the person proposes to discharge shall be filtered to remove the sediment before it enters any part of a stream or other watercourse that is included in the habitat of redbide dace.

8. If, as part of the activity, an area situated within 30 metres of the habitat of redbide dace is altered but no structures or other things are constructed in the area, native plants shall be planted in the area.

9. If the activity involves constructing a stormwater management facility that will discharge water into the habitat of redbreasted nuthatch, the facility shall be designed and constructed either as an extended detention wet pond or a hybrid wet pond and wetland system and shall include a bottom draw outlet or a subsurface trench outlet in accordance with the document entitled "Stormwater Management Planning and Design Manual, 2003", dated March 2003 and published by the Ministry of the Environment and available on a website maintained by that Ministry.
10. If, as part of the activity, a pipeline, sewer main or hydro conduit is to be installed across a part of a stream or other watercourse that is included in the habitat of redbreasted nuthatch, it shall be installed using trenchless techniques. O. Reg. 293/11, s. 3 (1).

Development — bobolink, eastern meadowlark

23.2 (1) This section applies to a person who carries out any of the following development activities in an area where it is likely to damage or destroy the habitat of bobolink or eastern meadowlark:

1. Development of land designated as an area of settlement in an official plan of a municipality approved under the *Planning Act* before January 1, 2013.
2. Development of land within a plan of subdivision, including a plan of subdivision registered under the *Registry Act* or the *Land Titles Act*, if,
 - i. the land is within a draft plan of subdivision that was approved under the *Planning Act* before November 1, 2014,
 - ii. the approval has not lapsed, and
 - iii. the development is not prohibited by any zoning by-law passed under subsection 34 (1) of the *Planning Act* or by any order made under section 47 of that Act.
3. Development of a unit within the meaning of the *Condominium Act, 1998*, including a unit in respect of which a declaration and description are registered under the *Land Titles Act*, if,
 - i. the unit is within a draft declaration and description that were approved or exempted under section 9 of the *Condominium Act, 1998* before November 1, 2014,
 - ii. the approval has not lapsed, and
 - iii. the development is not prohibited by any zoning by-law passed under subsection 34 (1) of the *Planning Act* or by any order made under section 47 of that Act. O. Reg. 65/12, s. 3.

(2) Subsection 10 (1) of the Act does not apply, with respect to the habitat of bobolink or eastern meadowlark, to a person carrying on a development activity if the following conditions are satisfied:

1. Before beginning any part of the development activity, the person must prepare a development plan in accordance with subsection (3) and submit it to the Ministry.
2. After the development plan is submitted to the Ministry, the person may begin the development activity, but shall not perform any part of the development activity that is likely to damage or destroy the habitat of bobolink or eastern meadowlark between May 1 and July 31 of any year.
3. The development activity shall be carried out in accordance with the development plan.
4. In an area that is situated outside of the area where the development activity occurs and that meets the criteria set out in subsection (4), the person carrying on the development activity shall,
 - i. within 12 months of the commencement of the activity, create new habitat for bobolink or eastern meadowlark, or if habitat for bobolink or eastern meadowlark already exists in the outside area, enhance the existing habitat, by ensuring that the area meets the requirements of subsection (5), and
 - ii. in each of the five years following the creation of the new habitat or the enhancement of the existing habitat, maintain the habitat by carrying out the measures described in subsection (6). O. Reg. 65/12, s. 3.

(3) A development plan referred to in paragraph 1 of subsection (2) shall include the following:

1. The name and contact information of the person on whose behalf the development activity is being carried out.
2. With respect to the area of bobolink or eastern meadowlark habitat that is likely to be damaged or destroyed by the development activity, a description of,
 - i. the area's location, including a detailed map,
 - ii. the ecoregion in which the area is located, and
 - iii. the size of the area in hectares.
3. With respect to the development activity that the person proposes to carry out, a description of,
 - i. the activity, including evidence that it meets the description of one of the types of development activity set out in subsection (1),
 - ii. the proposed start date of the activity, and
 - iii. the location where each stage of the activity will occur, including a detailed map.
4. With respect to the area intended as new or enhanced habitat under subparagraph 4 i of subsection (2), a description of,
 - i. the area's location, including a detailed map,
 - ii. the ecoregion in which the area is located,
 - iii. the size of the area in hectares,
 - iv. the composition of the soils covering the area, and
 - v. the percentage of the area covered by grass species at the time the development plan is submitted to the Ministry under paragraph 1 of subsection (2). O. Reg. 65/12, s. 3.

(4) The following are the criteria that an area must meet as to its size and location before being converted into new habitat, or being enhanced as habitat, under subparagraph 4 i of subsection (2):

1. It must be located in the same ecoregion as the area in which the development activity is to be carried out.
2. The minimum size of the area must be as follows:
 - i. if the creation or enhancement of the habitat is required because of a development activity described in paragraph 1 of subsection (1), an area equal to the size of the habitat for bobolink or eastern meadowlark that the development activity is likely to damage or destroy,
 - ii. if the creation or enhancement of the habitat is required because of the development of land or of a unit described in paragraph 2 or 3 of subsection (1) and the approval of the development under the *Planning Act* or under the *Condominium Act, 1998*, as the case may be, was given before January 1, 2013, an area equal to 10 per cent of the habitat for bobolink or eastern meadowlark that the development is likely to damage or destroy, and
 - iii. if the creation or enhancement of the habitat is required because of the development of land or of a unit described in paragraph 2 or 3 of subsection (1) and the approval of the development under the *Planning Act* or under the *Condominium Act, 1998*, as the case may be, was given on or after January 1, 2013 but before November 1, 2014 an area equal to 50 per cent of the habitat for bobolink or eastern meadowlark that the development is likely to damage or destroy. O. Reg. 65/12, s. 3; O. Reg. 122/12, s 3.

(5) The following are the requirements that habitat created or enhanced under subparagraph 4 i of subsection (2) must meet within 12 months of the commencement of the development activity:

1. 50 to 80 per cent of the habitat must be covered with at least three different grass species and the remainder of the habitat must be covered with forbs or legumes.
2. Among the grass species referred to in paragraph 1, at least one must grow greater than 50 centimetres high under normal growing conditions. O. Reg. 65/12, s. 3.

(6) The following are the measures required to maintain new or enhanced habitat for bobolink or eastern meadowlark under subparagraph 4 ii of subsection (2):

1. If the habitat is used for pasture, exclude grazing farm animals from at least 50 per cent of the habitat from September 16 of any given year until July 31 of the following year, for a five-year period after the habitat is created or enhanced.
2. In each of the five years following the creation or enhancement of the habitat, take such actions as are necessary to maintain the grass species, forbs and legumes in the area in the proportions described in paragraph 1 of subsection (5). O. Reg. 65/12, s. 3.

(7) In this section,

“development activity” means an activity described in paragraph 1, 2 or 3 of subsection (1). O. Reg. 65/12, s. 3; O. Reg. 176/13, s. 13.

EXEMPTIONS REQUIRING NOTICE TO MINISTER AND OTHER CONDITIONS

Notices — submission, amendment and cancellation

23.3 (1) This section applies with respect to the following notice forms:

1. A notice of activity form that a person or entity is required to submit to the Minister through the Registry under sections 23.4 to 23.20.
2. A notice of drainage works form that a person is required to submit to the Minister through the Registry under paragraph 1 of subsection 23.9 (6).
3. A notice of incidental trapping form that a person is required to submit to the Minister through the Registry under subclause 23.19 (1) (f) (i). O. Reg. 831/21, s. 6 (1).

(2) Before submitting a notice form listed in subsection (1) to the Minister, a person or entity shall ensure that,

- (a) all mandatory information requested on the form, including the contact information for the person or entity, has been provided; and
- (b) the information provided on the form is complete and accurate. O. Reg. 176/13, s. 14; O. Reg. 831/21, s. 6 (2).

(3) After submitting a notice form listed in subsection (1) to the Minister, the person or entity shall,

- (a) promptly upon obtaining from the Ministry confirmation that a notice form listed in subsection (1) submitted through the Registry has been received by the Minister, make a record of the confirmation;
- (b) for as long as the activity is being carried out,
 - (i) keep the record of the confirmation and, if applicable, ensure that a copy of the record is kept at the site where the activity is being carried out, and
 - (ii) make the record of the confirmation available to the Ministry upon receiving a request for it; and
- (c) if there is a change to or an error or omission in the administrative information provided in a notice form, update the information on the Registry within 10 business days after the change or becoming aware of the error or omission. O. Reg. 176/13, s. 14; O. Reg. 831/21, s. 6 (2, 3).

(4) A person or entity who provides incomplete, false or misleading information on a notice form listed in subsection (1) or when updating information on the Registry shall be deemed to have not submitted the notice form listed in subsection (1). O. Reg. 176/13, s. 14; O. Reg. 831/21, s. 6 (2).

(5) A person or entity who submitted a notice form listed in paragraph 1 or 2 of subsection (1) may submit an amended notice form to the Minister through the Registry in accordance with the following rules, for the purpose of making one or more of the following amendments to the notice form previously registered:

1. An amended notice form may be submitted to make the following changes to the notice form previously registered if the amended notice form is submitted before the commencement of the activity described in the previous notice form:
 - i. a change to the description of the activity, or
 - ii. a change to the start date of the activity.
2. An amended notice form may be submitted to change the end date of the activity identified in the notice form previously registered, if the amended notice form is submitted before the previously identified end date.
3. An amended notice form may be submitted to add a species listed on the Species at Risk in Ontario List and to which an exemption set out in section 23.4, 23.9, 23.10, 23.11, 23.12, 23.14, 23.15, 23.16, 23.17, 23.18 or 23.20 applies to the list of species that are the object of the activity as identified in the notice form previously registered, if the amended notice form is submitted before there is any impact to the species or its habitat by the activity.
4. An amended notice form may be submitted to remove a species from the notice form previously registered if more than one species is identified in the notice form and,
 - i. before the activity commences, the person or entity determines that the species will not be impacted by the activity, or
 - ii. the status of the species has changed such that it is no longer listed as an endangered or threatened species on the Species at Risk in Ontario List.
5. An amended notice form may be submitted to change the name of the person or entity identified on the notice form as the person or entity carrying out the activity if,
 - i. the person or entity identified on the notice form previously registered provides written consent to the amendment to the person or entity identified on the amended notice form, and
 - ii. the person or a representative of the entity identified on the amended notice form provides the Ministry with a written attestation that the person or entity agrees to comply with the conditions to the applicable exemption under this Regulation. O. Reg. 831/21, s. 6 (4).

(6) For greater certainty, an amendment to a notice form under subsection (5) does not affect the application of an exemption under this Regulation. O. Reg. 831/21, s. 6 (4).

(7) A person or entity who submitted a notice form may request that the notice be struck from the Registry by submitting a notice of cancellation form to the Minister through the Registry if,

- (a) the person or entity has decided not to proceed with the activity and submits the notice of cancellation form before the activity has commenced; or
- (b) every species identified in the notice form is no longer listed as an endangered or threatened species on the Species at Risk in Ontario List. O. Reg. 831/21, s. 6 (4).

Aquatic species

23.4 (1) Subject to subsection (2), this section applies to a person who is carrying out one of the following activities in or adjacent to a river, creek, stream, brook or similar watercourse, other than a watercourse identified in subsection (3), if the watercourse is the habitat of a species identified in Columns 3 and 4 of the Table to this section by its common and scientific names, and belonging to the species grouping referred to in Column 2 of the Table opposite the identified species:

1. The maintenance, repair, modification, expansion, removal or replacement of a bridge, culvert, pier or other structure.

2. The construction, maintenance, repair, modification, expansion, removal or replacement of a pipeline or conduit other than a pipeline or conduit situated under a watercourse that was or will be installed using open-cut trench techniques. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 2 (1).

(2) This section does not apply to the following activities:

1. Any modification or replacement of a structure that would increase the portion of the existing footprint of the structure that is within the bankfull width of the watercourse by more than 25 per cent.
2. Any activity that would damage,
 - i. more than a total of 300 square metres of land situated either within the watercourse or outside of the watercourse but within 30 metres of the bankfull width of the watercourse, subject to subparagraph ii, or
 - ii. more than 100 square metres of land situated within the watercourse below the bankfull width.
3. Any activity that involves,
 - i. the installation of a temporary bridge or a temporary culvert, or
 - ii. the deposition of material in a watercourse to establish a temporary road access.
4. Any activity that involves a change to the alignment of any part of a watercourse.
5. Any activity described in subsection (1) that would have an incidental impact on a coastal wetland, lake or other body of water that is not a river, creek, stream, brook or similar watercourse.
6. Any activity to which section 23.9 applies.
7. Any construction, maintenance, repair, modification, expansion, removal or replacement of a dam or hydro-electric generating station. O. Reg. 176/13, s. 14.

(3) This section does not apply to activities carried out in or adjacent to the following watercourses or portions of watercourses:

1. The Detroit River.
2. The Niagara River.
3. The St. Clair River.
4. The St. Lawrence River.
5. The portion of the main channel of the Sydenham River from the downstream edge of the bridge on Tupperville Road within the Municipality of Chatham-Kent extending upstream to the upstream edge of the bridge on County Road 77/Murphy Drive within the Township of Adelaide-Metcalf.
6. The portion of the main channel of the Ausable River from the downstream edge of the bridge on Bog Line/Parkhill Drive/County Road 18 within the Municipality of Lambton Shores to the upstream edge of the bridge on Crediton Road/County Road 10 within the Municipality of South Huron. O. Reg. 176/13, s. 14.

(4) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who is engaged in an activity described in subsection (1) and who, in the course of carrying out the activity, kills, harms, harasses, captures or takes a member of a species identified in Columns 3 and 4 of the Table to this section, or damages or destroys the habitat of such a species, if the person satisfies the conditions set out in subsection (6). O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 2 (2).

(5) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

- (a) pursuant to subsection (4), clause 9 (1) (a) of the Act did not apply with respect to the member of the species; or
- (b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (6). O. Reg. 176/13, s. 14.

(6) The following are the conditions that a person who carries out an activity described in subsection (1) must satisfy for the purposes of subsection (4):

1. Before commencing the activity, the person must,
 - i. give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry, and
 - ii. prepare in accordance with subsection (7) a mitigation plan that meets the requirements of subsection (8).
2. The person must ensure that the notice of activity includes,
 - i. a description of the activity,
 - ii. the proposed start and end dates of the activity and the location at which it will be carried out, and
 - iii. the name of every species identified in Columns 3 and 4 of the Table to this section that will likely be affected by the activity.
3. The person must follow the requirements of section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
4. While carrying out the activity, the person must,
 - i. comply with all the requirements of the mitigation plan, including the requirements that relate to the action that the person must complete under paragraph 8 in order to provide a benefit to the species identified in the notice of activity form, and
 - ii. ensure that reasonable steps are taken to minimize the adverse effects of the activity on the species identified in the notice of activity form, including the steps described in subsection (9) and such other steps as may be described in the mitigation plan.
5. After the plan is prepared, the person must,
 - i. retain a copy of the mitigation plan for at least five years after the activity is completed, and
 - ii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it.
6. While carrying out the activity and for a period of five years following the completion of the activity, the person shall monitor the effectiveness of,
 - i. the steps taken under subparagraph 4 ii to minimize the adverse effects of the activity on each species identified in the notice of activity form, and
 - ii. the action completed under paragraph 8 to benefit each species identified in the notice of activity form.
7. While the person is carrying out the activity and carrying out the monitoring requirements of paragraph 6, the person must create and maintain a monitoring record and the person must,
 - i. retain the record for at least five years after the activity is completed, and
 - ii. provide a copy of the record to the Ministry within 14 days of receiving a request for it.
8. Subject to subsection (12), within one year of the completion of the activity, the person must complete one of the actions described in subsection (11) in order to provide a benefit to each species identified in the notice of activity form and the action must be carried out in an area that would benefit the species.

9. If the person or an employee or agent of the person observes a species identified in the notice of activity form in the course of carrying out the activity, the person must ensure that, within three months of the observation, the Ontario Species at Risk Observation Reporting Form available on a website maintained by the Government of Ontario is completed, detailing the species and number of individual members that were observed, the date and location of observation and any other information requested on the form. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 2 (3); O. Reg. 218/18, s. 4 (1); O. Reg. 831/21, s. 17.

(7) A mitigation plan shall be prepared and updated by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available. O. Reg. 176/13, s. 14.

(8) A mitigation plan shall include the following information:

1. The name and contact information of the person who is proposing to carry out an activity described in subsection (1).
2. A map indicating the geographic location of the property on which the activity will occur and the names and location of all watercourses on the property.
3. With respect to the activity that the person proposes to carry out,
 - i. a description of the activity,
 - ii. the proposed start and completion dates of the activity, and
 - iii. a description of all of the stages of the activity and a timeline for the stages.
4. A list of species identified in Columns 3 and 4 of the Table to this section that may be affected by the activity and,
 - i. a description of the survey methodology used or the records reviewed to determine if a species identified in Columns 3 and 4 of the Table to this section could be affected by the activity, and
 - ii. a description of how the activity may affect the species or its habitat, including a list of any works to be carried out in or adjacent to the habitat of the species, such as works involving water crossings, structures, or any other works that may affect the species or its habitat.
5. Detailed plans on the steps the person shall take during the activity to minimize the adverse effects on the species, including,
 - i. details of the steps described in subsection (9), including the specific dates, locations and methods applicable to each step,
 - ii. the times during the year at which a species identified under paragraph 4 is likely to be carrying out a life process related to reproduction or rearing and at which activities should not be carried out in the habitat of a species,
 - iii. details of the steps the person must take in accordance with paragraph 2 of subsection (9) to isolate the work area and relocate a species identified under paragraph 4, including the geographic coordinates of the relocation area, and
 - iv. details of the steps the person must take to restore substrate and riparian areas that are damaged during the activity in accordance with paragraph 13 of subsection (9).
6. A description of the steps the person must take in accordance with subsection (10) to monitor the effectiveness of,
 - i. the actions taken to minimize the adverse effects of the activity on the species, and
 - ii. the action completed under paragraph 8 of subsection (6) to benefit the species identified in the notice of activity form.

7. With respect to an action described under paragraph 8 of subsection (6) that will be completed to benefit the species identified in the notice of activity form, reports or other evidence that the action will meet the requirements of one of the paragraphs of subsection (11), such as studies or evidence of the conditions of the area before the beneficial action was undertaken.
 8. Details of the action that will be completed under paragraph 8 of subsection (6) to benefit the species identified in the notice of activity form, including the dates, locations at which the action will be completed and the methods that will be employed to carry it out. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 2 (4, 5); O. Reg. 831/21, s. 7.
- (9) The following are the steps that a person must take to minimize the adverse effects of the activity described in the notice of activity form on the species identified in the form:
1. The person must not carry out any part of the activity that is likely to kill, harm or harass a member of the species or damage or destroy the habitat of the species while the species is likely to be carrying out a life process related to reproduction, including rearing.
 2. The person must isolate the work area within the watercourse in a manner that prevents members of the species from entering the work area, and must relocate any fishes or mussels from within the work area to suitable habitat for the species.
 3. If the activity will take place in the habitat of a mussel species identified in Columns 3 and 4 of the Table to this section, any relocation of mussels must be carried out in accordance with the requirements for mussel relocation described in the document entitled "Protocol for the detection and relocation of freshwater mussel species at risk in Ontario-Great Lakes Area (OGLA)", dated 2008, a Canadian Manuscript Report of Fisheries and Aquatic Sciences 2790, published by Fisheries and Oceans Canada and available on the Fisheries and Oceans Canada website.
 4. No vehicles or machinery may enter the watercourse at any time, except in an area of the watercourse in which the species have been isolated and from which they have been relocated in accordance with paragraph 2, and after the area has been de-watered.
 5. The flow of the watercourse that is redirected around the work area must be maintained to ensure that water quantity and quality is not affected downstream of the activity.
 6. If the activity involves the maintenance, repair, modification, expansion or replacement of an open-bottom culvert, the culvert must remain as an open-bottom culvert or may be converted to a clear span bridge.
 7. If the activity involves the construction, maintenance, repair, modification, or expansion of a pipeline or conduit under the watercourse,
 - i. the activity must not take place in an area that a fish species uses to carry out a life process related to reproduction, including rearing,
 - ii. the activity must be conducted using trenchless techniques, which must be applied at a minimum of two metres below the bed of the watercourse,
 - iii. no part of the activity may be conducted in the watercourse and there must be no damage to the watercourse bed or banks as a result of the activity,
 - iv. bore pits for directional drilling must be located outside the floodplain and bore pits for other trenchless techniques must be located a minimum of five metres outside of the bankfull width, and must include the appropriate erosion and sediment controls, as set out in paragraph 11, and
 - v. a contingency plan, including an emergency response plan to deal with a failure of the trenchless techniques referred to in subparagraph ii, must be prepared and all necessary equipment and materials to implement the plan must be available on site until the activity is complete.
 8. All construction equipment used for the purpose of carrying out the activity must be operated in a way that minimizes adverse effects on the habitat of the species and prevents deleterious substances from entering the watercourse.
 9. No machinery or equipment may be maintained or refuelled within 30 metres of the watercourse.

10. Any equipment, stockpiled material or construction material must be stored a minimum distance of 30 metres from the habitat of the species and in a manner that prevents sediment or deleterious substances from entering the habitat of the species.
 11. The person must establish and maintain sediment and erosion control measures, which must include installing and maintaining a double row of sediment control fencing consisting of a non-woven material with staked straw bales, to prevent sediment from entering any part of the watercourse.
 12. Any water that is laden with sediment that the person proposes to discharge must be filtered to remove the sediment before it enters any part of the watercourse.
 13. Riparian areas that are damaged during the activity must be restored to provide suitable conditions for the species, by stabilizing exposed soils and planting native non-invasive plants, as soon as possible after the area is damaged.
 14. If the person discovers that steps described in paragraphs 1 to 13 or in the mitigation plan have not been effective in minimizing the adverse effects of the activity on the species or that the action completed to benefit the species under paragraph 8 of subsection (6) has not been effective, the person shall take such actions as are necessary to increase their effectiveness, including,
 - i. adjusting the sediment and erosion control measures,
 - ii. installing tree guards or wire mesh to protect trees or shrubs,
 - iii. replacing dead plants, and
 - iv. repairing areas that have suffered due to failed sediment and erosion control measures. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 2 (6).
- (10) The monitoring required by paragraph 6 of subsection (6) must include,
- (a) daily inspections of the activity site while the activity and the action for the benefit of the species required under paragraph 8 of subsection (6) are being carried out; and
 - (b) annual inspections of the activity site for a period of five years after the activity is completed. O. Reg. 176/13, s. 14.
- (11) For the purposes of paragraph 8 of subsection (6), the following are the actions that a person may complete in order to provide a benefit to the species identified in the notice of activity form:
1. Remediation of an area of degraded riparian habitat to create the conditions that are required by the species adversely affected by the activity, which may include bank stabilization and riparian planting, if,
 - i. the area is in a degraded state prior to the activity taking place, and
 - ii. the area of degraded riparian habitat is at least two times the size of the total area that is adversely affected by the activity, including the areas that are both in the watercourse and adjacent to the watercourse.
 2. Improvement of an existing storm water management facility, by planting native non-invasive plants that will shade the storm water management pond, in order to reduce the water temperature and improve the quality of water being discharged at the outlet of the facility and, in so doing, create the conditions that are required by the species adversely affected by the activity, if,
 - i. the area is not adequately vegetated prior to the activity taking place, and
 - ii. the area planted is at least two times the size of the total area that is adversely affected by the activity, including the areas that are both in the watercourse and adjacent to the watercourse.
 3. Improvement of an existing storm water management facility, by installing a bottom draw outlet or a cooling trench to the facility, in order to reduce the temperature of water being discharged at the outlet of the facility and, in so doing, create the conditions that are required by the species adversely affected by the activity.

4. Remediation of an existing perched culvert to remove barriers to fish passage that exist in the watercourse and, in so doing, create the conditions that are required by the species adversely affected by the activity. O. Reg. 176/13, s. 14.

(12) The requirement in paragraph 8 of subsection (6) to complete an action described in subsection (11) in order to provide a benefit to the species identified in the notice of activity form does not apply if the activity identified in the notice of activity form is the replacement of a closed-bottom culvert with an open-bottom culvert or a clear span bridge. O. Reg. 176/13, s. 14.

(13) The monitoring record required under paragraph 7 of subsection (6) shall,

- (a) document the data and information collected during monitoring conducted at the site, such as the effectiveness of erosion control measures and the growing progress of riparian plantings;
- (b) evaluate and summarize the effectiveness of the steps taken by the person to minimize adverse effects of the activity on the species identified in the notice of activity form;
- (c) evaluate and summarize the effectiveness of the action completed under paragraph 8 of subsection (6) in order to provide a benefit to the species identified in the notice of activity form, such as the effectiveness of bank stabilization measures or the growing progress of riparian plantings;
- (d) document details of any encounters with members of the species identified in the notice of activity form; and
- (e) describe any measures that were followed during the course of carrying out the activity described in the notice of activity form or of the action that was completed under paragraph 8 of subsection (6) to increase the effectiveness of the steps taken to minimize the adverse effects of the activity or the effectiveness of the action completed under paragraph 8 of subsection (6). O. Reg. 176/13, s. 14.

(14) In this section,

“bankfull width” means the width of a watercourse at the point where the water begins to leave the channel and move into the floodplain. O. Reg. 176/13, s. 14.

SCHEDULE REVOKED: O. REG. 179/14, S. 2 (7).

TABLE
SPECIES TO WHICH SECTION 23.4 APPLIES

Column 1 Item	Column 2 Species Grouping	Column 3 Common Name	Column 4 Scientific Name
1.	Molluscs	Eastern Pondmussel	<i>Ligumia nasuta</i>
2.	Molluscs	Fawnsfoot	<i>Truncilla donaciformis</i>
3.	Molluscs	Hickorynut	<i>Obovaria olivaria</i>
4.	Molluscs	Kidneyshell	<i>Ptychobranchus fasciolaris</i>
5.	Molluscs	Lilliput	<i>Toxolasma parvum</i>
6.	Molluscs	Mapleleaf Mussel	<i>Quadrula quadrula</i>
7.	REVOKED: O. Reg. 218/18, s. 4 (2).		
8.	Molluscs	Rayed Bean	<i>Villosa fabalis</i>
9.	Molluscs	Round Pigtoe	<i>Pleurobema sintoxia</i>
10.	Molluscs	Salamander Mussel	<i>Simpsonaias ambigua</i>
11.	Molluscs	Snuffbox	<i>Epioblasma triquetra</i>
12.	Molluscs	Threehorn Wartyback	<i>Obliquaria reflexa</i>
13.	Molluscs	Wavy-rayed Lampmussel	<i>Lampsilis fasciola</i>
14.	Fishes	Black Redhorse	<i>Moxostoma duquesnei</i>
15.	Fishes	Channel Darter	<i>Percina copelandi</i>

16.	Fishes	Cutlip Minnow	<i>Exoglossum maxillingua</i>
17.	Fishes	Eastern Sand Darter	<i>Ammocrypta pellucida</i>
18.	Fishes	Pugnose Shiner	<i>Notropis anogenus</i>
19.	Fishes	Redside Dace	<i>Clinostomus elongatus</i>
20.	Fishes	Silver Shiner	<i>Notropis photogenis</i>
21.	Fishes	Spotted Gar	<i>Lepisosteus oculatus</i>
22.	Fishes	Warmouth	<i>Lepomis gulosus</i>

O. Reg. 179/14, s. 2 (8); O. Reg. 308/16, s. 5; O. Reg. 218/18, s. 4 (2).

23.5-23.7 REVOKED: O. Reg. 831/21, s. 8.

Chimney swift

23.8 (1) In this section,

“chimney swift active season” means the period of each year when chimney swift carry out life processes relating to breeding, nesting, rearing and roosting, and that begins around the end of April and ends around the middle of October, the exact dates varying according to the area of the Province in which the chimney swift are located and the climate conditions of each year.

O. Reg. 176/13, s. 14; O. Reg. 308/16, s. 7 (1).

(2) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who harms or harasses a chimney swift, or who damages or destroys its habitat, while carrying out the maintenance, repair, modification, replacement or demolition of a chimney that provides chimney swift habitat, if the person satisfies the conditions set out in subsections (3) to (11). O. Reg. 176/13, s. 14.

(3) The conditions that a person must satisfy for the purposes of subsection (2) are as follows:

1. Before commencing an activity described in subsection (2), the person must,

i. give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry,

ii. ensure that the notice includes,

A. a description of the activity,

B. the proposed start and end dates for the activity,

C. the location of the chimney that will be the object of the activity, and

D. notice of the fact that the activity will impact chimney swift,

iii. prepare a chimney swift mitigation and restoration record in accordance with subsection (4).

2. The person must follow the requirements of section 23.3 with respect to the completion of the notice of activity form referred to in subparagraph 1 i, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.

3. Before, during and after carrying out the activity described in subsection (2), the person must,

i. follow the steps set out in subsections (5) to (7) to minimize the adverse effects of the activity on chimney swift and its habitat, and

ii. update the chimney swift mitigation and restoration record to include the steps referred to in subparagraph i.

4. The person must carry out the monitoring and record keeping activities described in subsections (8) to (11).
 5. Every year that the person is required to monitor chimney swift habitat under subsection (8), the person must notify the Ministry of chimney swift observed during monitoring by completing, within three months following the completion of the monitoring, the Ontario Species at Risk Observation Reporting Form available on a website maintained by the Government of Ontario detailing the species, number of chimney swifts, the date and location of observation and any other information requested on that form. O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 6; O. Reg. 831/21, s. 17.
- (4) A chimney swift mitigation and restoration record referred to in subparagraph 1 iii of subsection (3) shall, when first prepared, include the following information:
1. The name and contact information of the person who is proposing to carry out an activity described in subsection (2).
 2. A description of the activity the person proposes to carry out, including the proposed start and completion dates.
 3. A description of the chimney that will be affected by the activity, including the height, internal square footage and material.
 4. An estimation of the number of chimney swift using the chimney. O. Reg. 176/13, s. 14.
- (5) The following are the steps a person who proposes to carry out an activity described in subsection (2) must follow to minimize the adverse effects of the activity on chimney swift and its habitat:
1. If any part of the activity is to be carried out during the chimney swift active season, the person must take measures, such as capping the chimney, to prevent chimney swift from accessing the chimney that will be affected by the activity both before and during the chimney swift active season.
 2. If, despite following the measures described in paragraph 1, chimney swift begin to use the chimney during their active season to breed, nest, rear or roost, any part of the activity that would affect the chimney must be suspended until the end of the chimney swift active season.
 3. If, as a result of carrying out the activity, a chimney that provides habitat for chimney swift will be unavailable for chimney swift breeding, nesting, rearing or roosting during the chimney swift active season, but will be available by the following chimney swift active season and will provide at least the same amount of suitable habitat for chimney swift at that time, the person must improve the conditions for chimney swift breeding, nesting, rearing or roosting provided by the chimney by ensuring that the activity includes measures such as any of the following:
 - i. increasing the height of the chimney,
 - ii. installing a sun collar on the opening of the chimney, or
 - iii. cutting back vegetation encroaching on the chimney's opening.
 4. The person must create new habitat for chimney swift in accordance with subsection (6) if, as a result of carrying out the activity, a chimney that provides habitat for chimney swift,
 - i. will be destroyed,
 - ii. will be altered so that it no longer provides suitable conditions for chimney swift breeding, nesting, rearing or roosting or provides a smaller area for chimney swift breeding, nesting, rearing or roosting, or
 - iii. will be unavailable for chimney swift breeding, nesting, rearing or roosting for more than one chimney swift active season.
 5. The person must maintain habitat created under paragraph 4 for a period of three years after the habitat is created. O. Reg. 176/13, s. 14; O. Reg. 308/16, s. 7 (2-5).
- (6) If a person is required to create new habitat for chimney swift under paragraph 4 of subsection (5), the habitat must be created as follows:
1. The habitat shall be created by either,

- i. constructing one or more new structures, which may or may not be chimneys, that provide appropriate conditions for chimney swift breeding, nesting, rearing or roosting, or
 - ii. modifying one or more existing structures which may or may not be chimneys, that do not currently provide habitat for chimney swift to provide appropriate conditions for chimney swift breeding, nesting, rearing or roosting.
2. The habitat must include features to attract chimney swift to the structure or to enhance the suitability of the structure for chimney swift, such as installing a sun collar at the opening of the chimney or planting native shrubs, trees or flowers to attract insects.
 3. The structure that is constructed or modified must be located within two kilometres of the chimney that will be affected by the activity described in subsection (2) and must be capable of providing habitat for more chimney swifts than the chimney that was affected by the activity.
 4. If a single structure is constructed or modified, the structure must be of a greater height and have greater internal square footage available to chimney swift than the chimney affected by the activity described in subsection (2), but must not be greater than one and a half times the size of the chimney affected by the activity.
 5. If more than one structure is constructed or modified, one of the structures must be of at least the same height and have at least the same internal square footage available to chimney swift as the chimney affected by the activity described in subsection (2).
 6. A structure must be constructed or modified so as to provide suitable conditions for chimney swift breeding, nesting, rearing or roosting, including the following:
 - i. the structure must have a temperature range that is suitable for chimney swift breeding, nesting, rearing or roosting during the chimney swift active season,
 - ii. the opening of the structure must be accessible for chimney swift to enter and exit,
 - iii. the interior surface of the structure must be composed of unpainted, rough-textured material such as brick or cinder block appropriate for clinging and nest adherence,
 - iv. the interior dimensions of the structure must be suitable for chimney swift breeding, nesting, rearing or roosting,
 - v. the height of the structure must be suitable for chimney swift breeding, nesting, rearing or roosting having regard to the ground level, the roofline of associated structures and other structures or vegetation within reasonable proximity. O. Reg. 176/13, s. 14; O. Reg. 308/16, s. 7 (6-9).

(7) A person who proposes to carry out an activity described in subsection (2) and is required to create habitat for chimney swift under paragraph 4 of subsection (5) must do so within one of the following time frames:

1. If the activity will begin outside of the chimney swift active season, before the beginning of the next chimney swift active season.
2. If the activity will begin during the chimney swift active season, before the beginning of that chimney swift active season. O. Reg. 176/13, s. 14.

(8) After a person has created habitat for chimney swift under paragraph 4 of subsection (5), the person shall monitor the use of the habitat by chimney swift during the chimney swift active season for a period of years determined under subsection (9) and shall record information collected during monitoring, including the following information:

1. An estimate of the number of chimney swift entering or exiting the structure.
2. Evidence of chimney swift nesting in the structure. O. Reg. 176/13, s. 14.

(9) The number of years during which a person must monitor the effectiveness of habitat under subsection (8) shall be determined in accordance with the following rules:

1. If chimney swift are observed and recorded entering and exiting the structure during the first three years of monitoring, the person is not required to conduct further monitoring after the end of the three-year period.
2. If chimney swift are not observed and recorded entering and exiting the structure during the first three years of monitoring, the person shall continue to monitor the habitat until five years have passed after the creation of the habitat under paragraph 4 of subsection (5). O. Reg. 176/13, s. 14.

(10) A person who carries out an activity described in subsection (2) shall retain the chimney swift mitigation and restoration record created under subsection (4) for a period of five years after the activity is completed and shall update the record from time to time to include the following information:

1. A description of the steps followed by the person in accordance with subsection (5) to minimize the adverse effects of the activity on chimney swift and its habitat, including the location, square footage and description of the habitat created under paragraph 4 of subsection (5) or improved under paragraph 3 of subsection (5).
2. The information recorded during monitoring activities described in subsection (8).
3. Any change to the information included in the record under subsection (4). O. Reg. 176/13, s. 14.

(11) A person who carries out an activity described in subsection (2) shall provide a copy of the chimney swift mitigation and restoration record to the Ministry within 14 days of receiving a request for it. O. Reg. 176/13, s. 14.

Drainage works

23.9 (1) This section applies to a person who carries out one of the following activities in a drainage works or ditch that is the habitat of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species:

1. Improving or maintaining drainage works, if an agreement for the improvement or maintenance was filed under subsection 2 (2) of the *Drainage Act*.
2. Improving, maintaining or repairing drainage works, if a report that applies to the drainage works was adopted under subsection 45 (1) of the *Drainage Act* or under subsection 3 (15) of that Act, as that subsection read on October 24, 2010.
3. Maintaining a ditch constructed under *The Ditches and Watercourses Act*, being chapter 109 of the Revised Statutes of Ontario, 1960, in accordance with subsection 3 (18) of the *Drainage Act*. O. Reg. 176/13, s. 14.

(2) This section does not apply with respect to a species identified in Columns 3 and 4 of the Table to this subsection by its common and scientific names, and belonging to the species grouping referred to in Column 2 of the Table opposite the identified species, except in the circumstances described in subsection (3).

TABLE
EXCLUDED SPECIES

Column 1 Item	Column 2 Species Grouping	Column 3 Common Name	Column 4 Scientific Name
1.	Vascular plants	Cherry Birch	<i>Betula lenta</i>
1.1	Vascular plants	Eastern False Rue-anemone	<i>Enemion biternatum</i>
2.	Vascular plants	False Hop Sedge	<i>Carex lupuliformis</i>
3.	REVOKED: O. Reg. 328/22, s. 2 (2).		
4.	Vascular plants	Heart-leaved Plantain	<i>Plantago cordata</i>
5.	Vascular plants	Scarlet Ammannia	<i>Ammannia robusta</i>
6.	Vascular Plants	Lowland Toothcup	<i>Rotala ramosior</i>
7.	Insects	Bogbean Buckmoth	<i>Hemileuca sp</i>
8.	Fishes	Pugnose Minnow	<i>Opsopoeodus emiliae</i>
8.1	Fishes	Spotted Gar	<i>Lepisosteus oculatus</i>

9.	Amphibians	Small-mouthed Salamander	<i>Ambystoma texanum</i>
9.1	Amphibians	Unisexual <i>Ambystoma</i> (Small-mouthed Salamander dependent population)	<i>Ambystoma laterale — texanum</i>
10.	Mammals	Gray Fox	<i>Urocyon cinereoargenteus</i>

O. Reg. 179/14, s. 4 (1); O. Reg. 218/18, s. 7; O. Reg. 328/22, s. 2.

(3) This section applies with respect to a species referred to in the Table to subsection (2) if a person is carrying out an activity described in subsection (1) in an area that is the habitat of, or used by, the species and,

- (a) before June 30, 2010, the person had entered into an agreement with the Minister under subsection 23 (2);
- (b) the agreement applied specifically to the species and with respect to an activity described in subsection (1); and
- (c) the person submits a notice of drainage works form to the Minister in accordance with paragraph 1 of subsection (6) and complies with the other conditions set out in subsection (6). O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 4 (2).

(4) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who, while carrying out an activity described in subsection (1), kills, harms, harasses, captures or takes a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, or damages or destroys the habitat of such a species, if the person satisfies all of the conditions set out in subsection (6). O. Reg. 176/13, s. 14.

(5) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

- (a) pursuant to subsection (4), clause 9 (1) (a) of the Act did not apply with respect to the member of the species; or
- (b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (6). O. Reg. 176/13, s. 14.

(6) The following are the conditions that a person who carries on an activity described in subsection (1) must satisfy for the purposes of subsection (4):

1. Before doing anything, in the course of carrying out an activity described in subsection (1), that is prohibited under clause 9 (1) (a) or subsection 10 (1) of the Act, the person must,
 - i. submit a notice of drainage works form available on the Registry to the Minister through the Registry, thereby giving the Minister notice that,
 - A. the person is responsible for the improvement, maintenance or repair of the drainage works or ditch, and
 - B. as part of the improvement, maintenance or repair of the drainage works or ditch, an activity described in subsection (1) will be carried out at various times in the future in the drainage works or ditch that will likely affect one or more species listed on the Species at Risk in Ontario List as endangered or threatened species, and
 - ii. subject to subsection (10), prepare in accordance with subsection (11) a mitigation plan that,
 - A. meets the requirements of subsection (12), and
 - B. applies to all activities described in subsection (1) that will be carried out in the future in the drainage works or ditch with respect to the species listed on the Species at Risk in Ontario List as endangered or threatened species that are identified in the notice of drainage works form.

2. The person must ensure that the notice of drainage works form includes,

- i. the location of the drainage works or ditch, and

- ii. the name of every species listed on the Species at Risk in Ontario List as endangered or threatened species that will be affected by the activity.
3. The person must follow the requirements of section 23.3 with respect to the completion of the notice of drainage works form, the keeping of records relating to the notice of drainage works form and the updating of the information on the Registry.
 4. Whenever carrying out an activity described in subsection (1) in the drainage works or ditch identified in the notice of drainage works form, the person must,
 - i. comply with the requirements of the mitigation plan,
 - ii. take reasonable steps to minimize adverse effects of the activity on the species identified in the notice of drainage works form, including the steps described in subsection (13).
 5. After the mitigation plan is prepared, the person must,
 - i. retain a copy of the mitigation plan for as long as the person continues to be responsible for the improvement, maintenance and repair of the drainage works or ditch,
 - ii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it, and
 - iii. ensure that the mitigation plan is updated in accordance with subsections (11) and (12) at least once every five years to include information obtained from observing the effects of the activity on the species.
 6. For as long as the person continues to be responsible for the improvement, maintenance and repair of the drainage works or ditch, the person must,
 - i. on or before January 31 of each year, prepare an annual report in accordance with subsection (14) on the effects that any activity described in subsection (1) that was carried out in the course of the previous calendar year has had on the species identified in the notice of drainage works form,
 - ii. retain a copy of the annual report for at least five years after it is prepared, and
 - iii. provide a copy of the annual report to the Ministry within 14 days of receiving a request for it. O. Reg. 176/13, s. 14; O. Reg. 831/21, s. 9 (1, 2).

(7)-(9) REVOKED: O. Reg. 831/21, s. 9 (3).

(10) A person who carries out an activity described in subsection (1) is not required to complete the preparation of a mitigation plan until the following dates if the following circumstances apply:

1. If the mitigation plan relates to a species that was added to the Species at Risk in Ontario List as an endangered or threatened species for the first time on or after January 24, 2013, but no later than the date specified in section 0.1, the third anniversary of the day the species was so added.
2. If the mitigation plan relates to a species that first appears in the drainage works or ditch after the person begins being responsible for the improvement, maintenance and repair of the drainage works or ditch, three years after the date the species first appears in the drainage works or ditch. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 4 (3)

(11) A mitigation plan must be prepared and updated by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available. O. Reg. 176/13, s. 14.

(12) A mitigation plan prepared with respect to an activity identified in a notice of drainage works form submitted to the Minister under subparagraph 1 i of subsection (6) must include the following information:

1. The name and contact information of the person who is carrying out the activity.
2. A description of the area within the drainage works or ditch that will be affected by the activity and that is used by, or is the habitat of, a member of a species identified in the notice of drainage works form.
3. Details of how the person will carry out the steps described in subsection (13) that are required to minimize the adverse effects of the activity on a species identified in the notice of drainage works form, including the dates during the year when the species is likely to be carrying out a life process related to hibernation or reproduction, including rearing, and when the person must take reasonable steps to minimize or avoid killing, harming or harassing members of the species.
4. A description of any steps the person will take to minimize the adverse effects of the activity on a species identified in the notice of drainage works form, in addition to the steps described in subsection (13), including a description of any measures to restore or enhance the habitat of the species that is affected by the activity. O. Reg. 176/13, s. 14.

(13) The following are the steps that a person must take to minimize the adverse effects of an activity described in the notice of drainage works form submitted to the Minister under subparagraph 1 i of subsection (6) on a species identified in the form:

1. The person must take reasonable steps to minimize or avoid the killing, harming or harassing of members of the species during a time of year when the species is likely to be carrying out a life process related to hibernation, overwintering, or reproduction, including rearing.
2. If the person encounters an animal that is a member of a species while carrying out the activity, the person must cease carrying out the activity in the area of the encounter and provide the animal with a reasonable amount of time to leave the area before continuing with the activity.
3. If, after providing an animal with a reasonable amount of time in accordance with paragraph 2 the animal does not leave the area, the person must take measures to relocate the animal to a nearby location that is suitable and safe for the animal.
4. The relocation of an animal in accordance with paragraph 3 must be undertaken by or in consultation with a person knowledgeable about, or having training in, the handling of the species.
5. The person must take reasonable steps to exclude members of the species from an area in the drainage works or ditch in which the activity is being carried out or is likely to be carried out, such as installing temporary fencing to prevent members of the species from accessing the area.
6. If the species is a turtle species, the person must not reduce the level of the water in an area of a drainage works or ditch where a member of the turtle species is likely to be hibernating.
7. The person must take reasonable steps to control erosion and sediment, and to stabilize water banks in any area affected by the activity if,
 - i. the area is the habitat of the species, or
 - ii. a member of the species is likely to be present in the area.
8. If the person discovers that the steps described in paragraphs 1 to 7 or in the mitigation plan have not been effective in minimizing the adverse effects of an activity described in subsection (1) on the species, the person shall,
 - i. take such actions as are necessary to increase the effectiveness of those steps, or
 - ii. take such other reasonable steps as may be necessary to minimize the adverse effects of an activity described in subsection (1) on the species. O. Reg. 176/13, s. 14.

(14) An annual report required under paragraph 6 of subsection (6) must include,

- (a) a record of the steps taken by the person when carrying out an activity described in subsection (1) in the previous calendar year, to minimize adverse effects of the activity on a species identified in the notice of drainage works form submitted under subparagraph 1 i of subsection (6);
- (b) an assessment of the effectiveness of the steps referred to in clause (a); and

(c) details of any observations of a species identified in the notice of drainage works form submitted under subparagraph 1 i of subsection (6) in the course of carrying out the activity in the previous calendar year, including,

- (i) the name of the species,
- (ii) the location of the observation, and
- (iii) the date and time of the observation. O. Reg. 176/13, s. 14; O. Reg. 831/21, s. 9 (4).

(15) This section does not apply to a person carrying on an activity described in subsection (1) who has entered into an agreement with the Minister with respect to that activity under subsection 23 (2) until the earlier of,

- (a) the day the person gives notice to the Minister under paragraph 1 of subsection (6); and
- (b) July 1, 2015. O. Reg. 176/13, s. 14.

(16) If a person described in subsection (15) plans to give notice to the Minister under paragraph 1 of subsection (6) of the activity referred to in subsection (15), the mitigation plan that is required to be prepared with respect to the activity under subparagraph 1 ii of subsection (6) must be prepared by the person before the notice of drainage works form is submitted to the Minister under subparagraph 1 i of subsection (6), and not within three years after the notice of drainage works form is given as would otherwise be the case. O. Reg. 176/13, s. 14.

Early exploration mining

23.10 (1) This section applies with respect to a mining activity that constitutes early exploration as defined in subsection 1 (1) of Ontario Regulation 308/12 (Exploration Plans and Exploration Permits) made under the *Mining Act* if,

- (a) the activity is listed in Schedule 2 of Ontario Regulation 308/12 and is included in an exploration plan that was submitted to the Director under section 5 of that regulation;
- (b) the activity is listed in Schedule 3 of Ontario Regulation 308/12 and is authorized by a permit issued under section 78.3 of the *Mining Act*; or
- (c) the activity is authorized by a permit issued under section 78.3 of the *Mining Act* that was required by a Director under section 18 of Ontario Regulation 308/12. O. Reg. 176/13, s. 14.

(2) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who, while carrying out an activity described in subsection (1), kills, harms, harasses, captures or takes a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, or damages or destroys the habitat of such a species, if the person satisfies all of the conditions set out in subsection (4). O. Reg. 176/13, s. 14.

(3) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

- (a) pursuant to subsection (2), clause 9 (1) (a) of the Act did not apply with respect to the member of the species; or
- (b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (4). O. Reg. 176/13, s. 14.

(4) The following are the conditions that a person who carries on an activity described in subsection (1) must satisfy for the purposes of subsection (2):

1. Before doing anything, in the course of carrying out the activity, that is prohibited under clause 9 (1) (a) or subsection 10 (1) of the Act, the person must,
 - i. subject to subsection (5), give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry,
 - ii. subject to subsection (6), prepare in accordance with subsection (7) a mitigation plan that meets the requirements of subsection (8).
2. The person must ensure that the notice of activity form includes,
 - i. the proposed start and end dates for the activity,

- ii. the location at which the activity will be carried out, and
 - iii. a list of all the species that are listed on the Species at Risk in Ontario List as endangered or threatened species and that will likely be affected by the activity.
 3. The person must follow the requirements set out in section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
 4. While carrying out the activity, the person must,
 - i. comply with the requirements of the mitigation plan, and
 - ii. ensure that reasonable steps are taken to minimize the adverse effects of the activity on the species identified in the notice of activity form, including the steps described in subsection (10) and such other steps as may be described in the mitigation plan.
 5. The person must,
 - i. retain a copy of the mitigation plan for at least five years after the activity is complete,
 - ii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it, and
 - iii. ensure that, at the times determined under section (9), the mitigation plan is updated in accordance with subsection (7) to include information obtained while monitoring the effects of the activity under paragraph 6.
 6. While carrying out the activity, the person must monitor,
 - i. the effects of the activity on each species identified in the notice of activity form, and
 - ii. the effectiveness of the steps taken to minimize or avoid adverse effects on each species.
 7. Within 180 days of the completion of the activity, the person must,
 - i. prepare a report on the activity in accordance with subsection (11), and
 - ii. if the activity occurs within the habitat of caribou (boreal population), prepare the information specified in subsection (12) and submit it to the Minister.
 8. The person must retain a copy of the report on the activity referred to in subparagraph 7 i for at least five years after it is prepared and provide a copy of it to the Ministry within 14 days of receiving a request for it.
 9. If the person or an employee or agent of the person observes a species identified in the notice of activity form in the course of carrying out the activity, the person must ensure that, within three months of the observation, the Ontario Species at Risk Observation Reporting Form available on a website maintained by the Government of Ontario is completed, detailing the species and number of individual members that were observed, the date and location of observation and any other information requested on the form. O. Reg. 176/13, s. 14; O. Reg. 308/16, s. 8 (1); O. Reg. 218/18, s. 8; O. Reg. 831/21, s. 17.
- (5) If a person commences an activity described in subsection (1) before a species that is listed on the Species at Risk in Ontario List as endangered or threatened first appears in the area where the activity is being carried out, the person is not required to submit a notice of activity form before doing anything in relation to that species that is prohibited under clause 9 (1) (a) or subsection 10 (1) of the Act, so long as the person submits the notice of activity form to the Minister as soon as is reasonably possible after the date the species first appears. O. Reg. 176/13, s. 14.
- (6) A person who carries out an activity described in subsection (1) is not required to complete the preparation of a mitigation plan until the following dates if the following circumstances apply:

1. If the mitigation plan relates to a species that was added to the Species at Risk in Ontario List as an endangered or threatened species for the first time on or after January 24, 2013, but no later than the date specified in section 0.1, the second anniversary of the day the species was so added.
2. If the mitigation plan relates to a species that first appears in the area of the activity after the activity commences, the earlier of,
 - i. three years after the date the species first appears in the area, and
 - ii. if the activity is completed before the end of the three-year period described in subparagraph i, the day the person begins to restore, create or enhance habitat as required under paragraph 11 of subsection (10). O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 5.

(7) A mitigation plan shall be prepared and updated by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available. O. Reg. 176/13, s. 14.

(8) A mitigation plan prepared with respect to an activity described in subsection (1) must include the following information:

1. The name and contact information of the person carrying out the activity.
2. The following information with respect to the activity:
 - i. the proposed start and completion dates of the activity,
 - ii. a description of all of the stages of the activity and a timeline for the stages, and
 - iii. a map indicating the geographic location of the activity at a scale of no greater than 1:20,000.
3. A list of species that are listed on the Species at Risk in Ontario List as endangered or threatened species that will likely be affected by the activity and an assessment of those effects on the individual members of the species and their habitat.
4. Details of the steps the person will take during the activity to minimize or avoid the adverse effects on species identified under paragraph 3, including,
 - i. details of the steps described in subsection (10), such as the dates on which, and locations at which, each step will be taken, and
 - ii. the times during the year at which a species identified under paragraph 3 is likely to be carrying out a life process related to hibernation or reproduction, including rearing, and at which activities that are likely to kill, harm or harass a member of the species should not be carried out.
5. Details regarding the steps the person will take to monitor the effects of the activity on members of the species identified under paragraph 3 and the effectiveness of the steps taken to minimize adverse effects on the species. O. Reg. 176/13, s. 14.

(9) A person who is carrying out an activity described in subsection (1) shall update the mitigation plan prepared with respect to the activity on or before the following time:

1. If the activity is included in an exploration plan referred to in clause (1) (a) and the plan reaches the end of its effective period before the activity is complete, the day the effective period ends.
2. If the activity is authorized by a permit referred to in clause (1) (b) or (c) and the permit expires before the activity is complete, the day the permit expires. O. Reg. 176/13, s. 14.

(10) The following are the steps that a person must take to minimize the adverse effects of the activity described in the notice of activity form submitted to the Minister under subparagraph 1 i of subsection (4) on the species identified in the form:

1. The person must not kill, harm or harass caribou (boreal population) during a time of year when caribou (boreal population) are likely to be carrying out a life process related to feeding, migration or reproduction, including rearing.
 2. The person must take reasonable steps to minimize or avoid killing, harming or harassing a member of a species identified in the notice of activity form, other than the caribou (boreal population), during a time of year when the species is likely to be carrying out a life process related to hibernation or reproduction, including rearing.
 3. The person must not carry out any part of the activity in an area that is being used, or has been used at any time in the previous three years, by a member of a species identified in the notice of activity form to carry out a life process related to hibernation or reproduction, including rearing.
 4. The person must not possess or transport a member of a species identified in the notice of activity form for a period longer than is necessary to avoid or minimize adverse effects to the member.
 5. If the person encounters an animal that is a member of the species while carrying out the activity, the person must cease carrying out the activity in the area of the encounter and provide the animal with a reasonable amount of time to leave the area before continuing the activity.
 6. If, after providing an animal with a reasonable amount of time in accordance with paragraph 5 the animal does not leave the area, the person must take measures to relocate the animal to a nearby location that is suitable and safe for the animal.
 7. If the person encounters a moss, lichen or vascular plant that is a member of the species in the course of carrying out the activity and it is not necessary to kill or harm the member for the purpose of carrying out the activity, the person must,
 - i. cease the activity in the area of the encounter,
 - ii. install and maintain barriers or other structures to create a protective zone around the species, and
 - iii. after establishing the protective zone referred to in subparagraph ii, continue the activity in a manner that does not impair the ability of the species to carry out its life processes, including reproduction.
 8. If it is necessary to kill or harm a moss, lichen or vascular plant referred to in paragraph 7 for the purpose of carrying out the activity, the person must relocate the moss, lichen or vascular plant to a nearby location within the species' habitat that is suitable and safe for the species so that it is not killed or harmed, provided it is feasible to do so.
 9. The determination under paragraph 8 as to whether it is feasible to relocate a moss, lichen or vascular plant must be made by the person using the best available information with respect to the suitability of relocating that species, including information obtained from the Ministry.
 10. The relocation of an animal or of a moss, lichen or vascular plant in accordance with paragraph 6 or 8 must be undertaken by, or in consultation with, a person who is knowledgeable about, or has training in, the handling of the species.
 11. Before the end of the activity, the person must take reasonable steps to,
 - i. restore any habitat of the species that was damaged or destroyed by the activity, to the extent it is feasible to do so, or
 - ii. create habitat for the species, or enhance an existing habitat for the species, in the same ecoregion as the habitat that was damaged or destroyed by the activity, in a manner that minimized the overall loss of habitat for the species resulting from the activity. O. Reg. 176/13, s. 14; O. Reg. 308/16, s. 8 (2).
- (11) The report on the activity that the person is required to prepare under subparagraph 7 i of subsection (4) shall include,
- (a) a list of the species identified in the notice of activity form submitted to the Minister under subparagraph 1 i of subsection (4) that were observed in the course of carrying out the activity and the circumstances relating to the observation, including the location, date and time of the observation; and
 - (b) a description of the steps taken by the person in the course of carrying out the activity to minimize adverse effects on the species identified in the notice, including the locations where the steps were taken, and an assessment of the effectiveness of those steps. O. Reg. 176/13, s. 14.
- (12) The information that a person is required to prepare under subparagraph 7 ii of subsection (4) shall include a detailed description of,

(a) the nature of the activity; and

(b) the area within the habitat of caribou (boreal population) in which the activity was carried out, including its geographic location and size. O. Reg. 176/13, s. 14; O. Reg. 308/16, s. 8 (3).

(13) This section does not apply to Golden Eagle. O. Reg. 176/13, s. 14.

Ecosystem protection

23.11 (1) This section applies with respect to an activity consisting of ecological conservation work that is carried out for the purpose of protecting, maintaining, enhancing or restoring an ecosystem native to Ontario, other than an ecosystem described in subsection (2), if the activity is carried out by or on behalf of one of the following entities:

1. A conservation authority established under the *Conservation Authorities Act*.
2. A municipality.
3. The Ministry.
4. A band as defined in the *Indian Act* (Canada).
5. A post-secondary institution that is a member of the Association of Universities and Colleges of Canada.
6. A corporation incorporated under the *Not-for-Profit Corporations Act, 2010* or a predecessor of that Act or under the *Not-for-Profit Corporations Act, 2011* (Canada) or a predecessor of that Act, if the corporation has among its primary objectives natural heritage conservation, ecological conservation or a similar objective.
7. A corporation that is a registered charity under the *Income Tax Act* (Canada) if the corporation has among its primary objectives natural heritage conservation, ecological conservation or a similar objective.
8. A trustee of a charitable foundation that is a registered charity under the *Income Tax Act* (Canada) if the foundation has among its primary objectives natural heritage conservation, ecological conservation or a similar objective. O. Reg. 176/13, s. 14.

(2) This section does not apply to an activity that is carried out for the purpose of protecting, maintaining, enhancing or restoring an ecosystem in the following areas:

1. An area belonging to any of the following community classes, as identified under the land classification system for southern Ontario:
 - i. A fen.
 - ii. A bog.
 - iii. A sand barren or dune.
 - iv. A beach bar.
 - v. An alvar.
 - vi. A cliff.
 - vii. A talus.
2. An area situated in a part of Ontario to which the land classification system for southern Ontario does not apply but that has all of the characteristics necessary to be classified as a community class referred to in subparagraphs 1 i to vii if it were situated in a part of southern Ontario to which the classification system applies. O. Reg. 176/13, s. 14.

(3) REVOKED: O. Reg. 323/13, s. 5.

(4) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who kills, harms, harasses, captures or takes a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, or damages or destroys its habitat, while carrying out an activity described in subsection (1) if the entity referred to in subsection (1) who carries out the activity, or on whose behalf the activity is carried out, satisfies all of the conditions set out in subsection (6). O. Reg. 176/13, s. 14.

(5) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

(a) pursuant to subsection (4), clause 9 (1) (a) of the Act did not apply with respect to the member of the species; or

(b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (6). O. Reg. 176/13, s. 14.

(6) The following are the conditions that an entity referred to in subsection (1) must satisfy for the purposes of subsection (4):

1. Before commencing an activity described in subsection (1), the entity must,

i. subject to subsection (7), give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry, and

ii. subject to subsection (8), prepare a mitigation plan in accordance with subsections (9) and (10) to identify the steps that will be taken,

A. to minimize the adverse effects of the activity on the species identified in the notice of activity form, and

B. to monitor the effectiveness of the steps referred to in sub-subparagraph A.

2. The notice of activity form shall include,

i. a description of the activity,

ii. the proposed start and end dates for the activity,

iii. the location at which the activity will be carried out, and

iv. a list of all the species that are listed on the Species at Risk in Ontario List as endangered or threatened species and that will be affected by the activity.

3. The entity must follow the requirements set out in section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.

4. While carrying out the activity, the entity must,

i. comply with the requirements of the mitigation plan, and

ii. ensure that reasonable steps are taken to minimize the adverse effects of the activity on the species identified in the notice of activity form, including the steps described in subsection (12), and such other steps as may be described in the mitigation plan.

5. The entity must,

i. retain a copy of the mitigation plan until at least five years after the activity is complete,

ii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it, and

iii. ensure that the mitigation plan is updated in accordance with subsections (9) and (10) at least once every five years to include information obtained while monitoring the effects of the activity under paragraph 6.

6. While carrying out the activity, the entity shall ensure that the following is monitored:
 - i. the effects of the activity on each species identified in the notice, and
 - ii. the effectiveness of the steps taken to minimize adverse effects on each species.
7. Within 180 days of the completion of the activity, the entity must prepare a report in accordance with subsection (13) and thereafter the entity must,
 - i. retain a copy of the report for at least five years after it is prepared, and
 - ii. provide a copy of the report to the Ministry within 14 days of receiving a request for it.
8. If an employee or agent of the entity observes a species identified in the notice of activity form in the course of carrying out the activity, the entity must ensure that the employee or agent, within three months of the observation, completes the Ontario Species at Risk Observation Reporting Form available on a website maintained by the Government of Ontario detailing the species and number of individual members that were observed, the date and location of observation and any other information requested on the form. O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 9; O. Reg. 831/21, s. 17.

(7) If a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species first appears in an area in which an entity is carrying out an activity described in subsection (1) after the activity is commenced, the notice of activity form required under subparagraph 1 i of subsection (6) may, for the purposes of subsections (4) and (5), be provided after a member of the species is killed, harmed, harassed, captured or taken, or its habitat is damaged or destroyed, so long as the entity submits the notice of activity form to the Minister in accordance with subparagraph 1 i of subsection (6) as soon as is reasonably possible after the date the species first appears, and in no case later than 30 days after that date. O. Reg. 176/13, s. 14.

(8) If a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species first appears in an area in which an entity is carrying out an activity described in subsection (1) after the activity is commenced, and the activity is likely to continue thereafter for at least another 60 days, the entity is not required to complete the preparation of a mitigation plan relating to that species until 60 days after the day the species first appeared in the area. O. Reg. 176/13, s. 14.

(9) A mitigation plan shall be prepared and updated by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available. O. Reg. 176/13, s. 14.

(10) A mitigation plan shall include the following information:

1. The following information with respect to the activity identified in the notice of activity form submitted under subparagraph 1 i of subsection (6) that an entity referred to in subsection (1) proposes to carry out:
 - i. a description of the activity and its purpose,
 - ii. the proposed start and completion dates of the activity,
 - iii. a description of all of the stages of the activity and a timeline for the stages, and
 - iv. a map indicating the geographic location of the property on which the activity will occur.
2. A list of species that are listed on the Species at Risk in Ontario List as endangered or threatened species that will likely suffer adverse effects as a result of the activity and an assessment of those effects on the local population of each species.
3. With respect to each species identified under paragraph 2, a written opinion prepared by a person with expertise in relation to the species and stating that the activity is not likely to have an enduring adverse effect on a local population of the species, and in particular will not have either of the following adverse effects:

- i. An overall decrease in the number of members of a local population of the species over the period of time commencing on the date the person gives notice, and ending on the earlier of,
 - A. the end of the period of time it is expected to take three generations of the species to be born and die off after the date the notice is given, and
 - B. ten years after the date the person gives notice.
 - ii. The elimination of conditions that are necessary to allow members of a local population of the species to move through an area that,
 - A. is contiguous to the area that is the habitat of that local population and to areas that are the habitat of one or more other local populations of the species, and
 - B. provides conditions that are suitable for foraging, dispersal or migration.
4. Detailed plans on the steps an entity referred to in subsection (1) will take during the activity to minimize the adverse effects on the species identified under paragraph 2, including,
- i. details of the steps described in subsection (12), including the times, locations and methods applicable to each step,
 - ii. the times during the year at which a species identified under paragraph 2 is likely to be carrying out a life process related to hibernation or reproduction, including rearing, and at which activities that are likely to kill, harm or harass a member of the species should not be carried out.
5. Details regarding the steps an entity referred to in subsection (1) will ensure are taken to monitor the effects of the activity on members of the species identified under paragraph 2 and the effectiveness of steps taken to minimize adverse effects on the species. O. Reg. 176/13, s. 14.

(11) In paragraph 3 of subsection (10),

“local population”, with respect to a species, means a geographically distinct group of the species that has little demographic or genetic exchange with other groups of the species in Ontario. O. Reg. 176/13, s. 14.

(12) The following are the steps that an entity referred to in subsection (1) must take to minimize the adverse effects of the activity described in the notice of activity form submitted under subparagraph 1 i of subsection (6) on the species identified in the form:

1. The entity must ensure that the activity is carried out by or under the supervision of a person with expertise in the type of ecological conservation work involved in the activity.
2. The entity must ensure that the entity’s employees, agents and contractors receive training on the following subjects before carrying out any part of the activity that is likely to affect the species identified in the form:
 - i. a list of the species identified in the form that are present in the area where the activity is carried out,
 - ii. how to identify the species and their habitat,
 - iii. potential threats posed to the species and their habitat by the activity, and
 - iv. the steps that must be taken under paragraphs 3 to 14 to minimize adverse effects of the activity on individual members of the species.
3. The entity must ensure that a person acting on its behalf takes reasonable steps to avoid killing, harming or harassing members of a species identified in the form during a time of year when the species are likely to be carrying out a life process related to hibernation or reproduction, including rearing.

4. The entity must ensure that reasonable steps are taken to control erosion and sediment, and to stabilize banks, in any area of water affected by the activity if,
 - i. the area is the habitat of a species identified in the form, or
 - ii. a member of a species referred to in subparagraph i is likely to be present in the area.
 5. If carrying out the activity would pose a risk to members of a species identified in the form who might enter the area of the activity, the entity must ensure that reasonable steps are taken to prevent the members of the species from entering the area, including, if appropriate, installing temporary fencing around the area.
 6. The entity must ensure that, if a person carrying out the activity encounters an animal that is a member of a species identified in the form in the course of carrying out the activity, the person ceases carrying out the activity in the area of the encounter and provides the animal with a reasonable amount of time to leave the area before continuing the activity.
 7. If, after providing an animal with a reasonable amount of time in accordance with paragraph 6 the animal does not leave the area, the person must take measures to relocate the animal to a nearby location that is suitable and safe for the animal.
 8. If a person carrying out the activity encounters a moss, lichen or vascular plant that is a member of the species in the course of carrying out the activity and it is not necessary to kill or harm the member for the purpose of carrying out the activity, the entity must ensure that the person,
 - i. ceases the activity in the area of the encounter,
 - ii. installs and maintains barriers or other structures to create a protective zone around the species, and
 - iii. after establishing the protective zone referred to in subparagraph ii, continues the activity in a manner that does not impair the ability of the species to carry out its life processes, including reproduction.
 9. If it is necessary to kill or harm a moss, lichen or vascular plant referred to in paragraph 8 for the purpose of carrying out the activity, the entity must ensure that the person carrying out the activity relocates the moss, lichen or vascular plant to a nearby location within the species' habitat that is suitable and safe for the species so that it is not killed or harmed, provided it is feasible to do so.
 10. The determination under paragraph 9 as to whether it is feasible to relocate a moss, lichen or vascular plant must be made by the entity using the best available information with respect to the suitability of relocating that species, including information obtained from the Ministry.
 11. The relocation of an animal or of a moss, lichen or vascular plant in accordance with paragraph 7 or 9 must be undertaken by, or in consultation with, a person who is knowledgeable about, or has training in, the handling of the species.
 12. If a member of a species is relocated in accordance with paragraph 7 or 9, the entity, or a person carrying out the activity on the entity's behalf, must not possess the member for longer than is necessary to carry out the relocation, and in no case longer than seven days.
 13. If the activity is carried out in only a part of the habitat of a species identified in the form, the entity must ensure that steps are taken to avoid impairing the ability of members of the species to move within and between other parts of the habitat that the species depends on to carry out life processes related to hibernation or reproduction, including rearing.
 14. The entity must ensure that reasonable steps are taken to avoid the spread of disease,
 - i. among the species identified in the notice, and
 - ii. between the species identified in the notice and any other species. O. Reg. 176/13, s. 14.
- (13) The report referred to in paragraph 7 of subsection (6) must include,

- (a) a description of the reasonable steps taken by the person carrying out the activity described in the notice of activity form submitted under subparagraph 1 i of subsection (6) to minimize the adverse effects of the activity on the species identified in the notice of activity form, including the locations in which, and times at which, the steps were taken, the methods according to which the steps were taken and an assessment of the effectiveness of those steps; and
- (b) a summary of the results of the activity, including a detailed assessment of the extent to which the activity assisted with protecting, maintaining, enhancing or restoring the ecosystem native to Ontario that was the object of the activity, with recommendations for how similar activity may be conducted in the future. O. Reg. 176/13, s. 14.

Hydro-electric generating stations and dams

23.12 (1) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who is engaged in the operation of a hydro-electric generating station or dam and who, in the course of operating the station or dam, kills, harms, harasses, captures or takes a member of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, or damages or destroys the habitat of such a species, if the person satisfies the following conditions:

1. Before doing anything, in the course of operating the hydro-electric generating station or dam, that is prohibited under clause 9 (1) (a) or subsection 10 (1) of the Act,
 - i. the person must give the Minister notice of the fact that the person is operating a hydro-electric generating station or dam by submitting a notice of activity form available on the Registry to the Minister through the Registry, and
 - ii. subject to subsection (2), prepare in accordance with subsection (3) a mitigation plan that meets the requirements of subsection (4).
2. The person must ensure that the notice of activity form includes,
 - i. the location of the hydro-electric generating station or dam, and
 - ii. the name of every species listed on the Species at Risk in Ontario List as an endangered or threatened species that will likely be affected by the operation of the hydro-electric generating station or dam.
3. The person must follow the requirements of section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
4. While operating the hydro-electric generating station or dam, the person must,
 - i. comply with the requirements of the mitigation plan,
 - ii. take reasonable steps to minimize the adverse effects of the operation of the hydro-electric generating station or dam on the species identified in the notice of activity form, including the steps described in subsection (5) and such other steps as may be described in the mitigation plan.
5. The person must,
 - i. retain a copy of the mitigation plan while operating the hydro-electric generating station or dam and for a period of five years after the person ceases to operate the station or dam,
 - ii. ensure that the plan is updated in accordance with subsection (3) at least once every five years to include information obtained while carrying out the monitoring requirements described in paragraph 6, and
 - iii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it.
6. The person must monitor the effects that the operation of the station or dam has on the species identified in the notice of activity form and the effectiveness of the mitigation plan.
7. On or before January 31 of each year, the person must prepare an annual report in respect of the previous calendar year in accordance with subsection (6) on the effects that the operation of the station or dam has on the species identified in the notice of activity form and the person must,

- i. retain a copy of the annual report for at least five years after it is prepared, and
- ii. provide a copy of the annual report to the Ministry within 14 days of receiving a request for it.

8. If the person, or an employee or agent of the person, observes a species identified in the notice of activity form in the vicinity of the station or dam in the course of operating the station or dam, the person must ensure that, within three months of the observation, the Ontario Species at Risk Observation Reporting Form available on a website maintained by the Government of Ontario is completed, detailing the species and number of individual members that were observed, the date and location of observation and any other information requested on that form. O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 10; O. Reg. 831/21, s. 10 (1-3), 17.

(2) A person who operates a hydro-electric generating station or dam is not required to complete the preparation of a mitigation plan until the following dates if the following circumstances apply:

1. If the mitigation plan relates to a species that was added to the Species at Risk in Ontario List as an endangered or threatened species on or after January 24, 2013, but no later than the date specified in section 0.1, the third anniversary of the day the species was so added.
2. If the mitigation plan relates to a species that first appears in the area of the hydro-electric generating station or dam after the station or dam begins operation, three years after the date the species first appears in the area of the station or dam. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 6; O. Reg. 831/21, s. 10 (1, 2).

(3) A mitigation plan shall be prepared and updated by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available. O. Reg. 176/13, s. 14.

(4) A mitigation plan shall include the following information:

1. The name and contact information of the person who operates the hydro-electric generating station or dam.
2. A map indicating the geographic location of the hydro-electric generating station, including any associated structures, or the dam.
3. A list of the species that are identified in the notice of activity form submitted under paragraph 1 of subsection (1) and that are the subject of the mitigation plan.
4. A description of the adverse effects that the operation of the hydro-electric generating station or dam may have on the species referred to in paragraph 3, including effects,
 - i. on the ability for the members of the species to carry out their life processes, including migration and spawning, and
 - ii. on areas that are habitat of the species.
5. Details on how the person will carry out the steps described in subsection (5) to minimize the adverse effects of the operation of the hydro-electric generating station or dam on the species referred to in paragraph 3, including the dates on which, and locations at which, each step will be carried out.
6. A description of the reasonable steps the person will carry out to minimize the adverse effects of the operation of the station or dam on the species referred to in paragraph 3 in addition to the steps described in subsection (5), including a description of,
 - i. steps the person will take to avoid killing, harming or harassing individual members of the species or damaging or destroying habitat,
 - ii. actions that are necessary to help provide suitable conditions to enable the members of the species to carry out the life processes that are adversely affected by the station or dam, including spawning, attraction, hibernation, nesting and migration or if such actions are not feasible, provide the reasons why they are not feasible at this time,

- iii. if the operation of the station or dam results in the damage or destruction of the habitat of the species, measures to replace or restore habitat in a suitable area for the species,
- iv. training that will be provided to all employees, agents and contractors that are likely to encounter members of the species while performing their duties, in order to satisfy the obligations under this section, and
- v. steps the person will take if an individual member of the species is encountered or injured in the vicinity of the station or dam.

7. A description of the steps the person will take to monitor the effects of the operation of the station or dam on the species referred to in paragraph 3 and the effectiveness of the actions set out in the mitigation plan. O. Reg. 176/13, s. 14; O. Reg. 831/21, s. 10 (1, 2, 4).

(5) The following are the steps that a person must take to minimize the adverse effects of the operation of a hydro-electric generating station or dam on a species identified in a notice of activity form submitted under paragraph 1 of subsection (1):

1. The person must inform all employees, agents and contractors conducting activities at the station or dam that members of the species are present at or near the station or dam and of the steps required under paragraphs 2 to 4.
2. If the species uses nests or hibernacula or other terrestrial features to carry out its life processes, the person must, before and during the period of time when the species is likely to require the terrestrial features to carry out its life process,
 - i. install and maintain barriers or other structures to create a protective zone around the terrestrial features and to protect the terrestrial features and limit the adverse effects that may be caused by the operation of the station or dam, and
 - ii. make adjustments to the operation of the station or dam so as to minimize the adverse effects of the operation of the station or dam on the terrestrial features and the species' life processes.
3. The person must, if feasible, undertake maintenance activities of the station or dam at such times and in such a manner as to minimize the impact of such activities on the species and must, if feasible, select maintenance activities that may have a benefit to the species and carry them out in a manner that may have a benefit to the species.
4. If, in carrying out the steps required under the person's mitigation plan, it is necessary to capture, take, possess or transport a member of the species, such actions must be undertaken by, or in consultation with, a person who is knowledgeable about, or has training in, the handling of the species.
5. If the person discovers that the steps described in paragraphs 1 to 4 or in the mitigation plan have not been effective in minimizing the adverse effects of the operation of the station or dam on the species, the person shall,
 - i. take such actions as are necessary to increase the effectiveness of those steps, or
 - ii. take such other reasonable steps as may be necessary to minimize the adverse effects of the operation of the station or dam on the species. O. Reg. 176/13, s. 14; O. Reg. 831/21, s. 10 (1, 2).

(6) The annual report required under paragraph 7 of subsection (1) shall include in respect of the previous calendar year,

- (a) the steps taken by the person who operates the hydro-electric generating station or dam to minimize adverse effects of the station or dam on the species identified in the notice of activity form submitted under paragraph 1 of subsection (1) and an assessment of their effectiveness;
- (b) information collected during the monitoring referred to in paragraph 6 of subsection (1);
- (c) records of any activities carried out in accordance with the mitigation plan; and
- (d) details of any encounters with members of the species identified in the notice of activity form submitted under paragraph 1 of subsection (1). O. Reg. 176/13, s. 14; O. Reg. 831/21, s. 10 (1, 2, 5).

(7) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

- (a) pursuant to subsection (1), clause 9 (1) (a) of the Act did not apply with respect to the member of the species; or
 - (b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (1). O. Reg. 176/13, s. 14.
- (8) This section does not apply to cofferdams or any other temporary dams. O. Reg. 831/21, s. 10 (6).
- (9) This section does not apply to the following species:
- 1. Hungerford's Crawling Water Beetle.
 - 2. Pygmy Snaketail. O. Reg. 176/13, s. 14.
- (10) This section does not apply to the person who operates the R.H. Saunders Station on the St. Lawrence River near Cornwall in respect of American eel. O. Reg. 176/13, s. 14.
- (11) In this section,

“dam” means a structure constructed to forward, hold back or divert water in a river, lake, pond or stream for the purpose of,

- (a) raising the water level,
- (b) creating a reservoir to control flooding, or
- (c) diverting the flow of water. O. Reg. 831/21, s. 10 (7).

Transition — activity ongoing when prohibitions first apply

23.13 (1) In this section,

“prohibition date” means the day determined in accordance with the rules set out in subsection (2.1); (“date d’interdiction”)

“regulatory condition” means a regulatory condition described in Column 3 of Table 1 of this section that applies to a Table 1 activity set out in Column 2 of the Table opposite the regulatory condition; (“condition réglementaire”)

“relevant species” means,

- (a) a transition species, or
- (b) a species identified in Columns 3 and 4 of Table 2 of this section that was listed as a species on the Species at Risk in Ontario List as an endangered or threatened species for the first time in 2013 or in a subsequent year referred to in Column 2 of that Table; (“espèce concernée”)

“Table 1 activity” means an activity described in Column 2 of Table 1 of this section; (“activité figurant au tableau 1”)

“transition species” means a species identified in Columns 3 and 4 of Table 2 of this section that was listed on the Species at Risk in Ontario List as an endangered or threatened species for the first time before 2013. (“espèce touchée par des mesures transitoires”) O. Reg. 328/22, s. 3 (1).

- (2) Subsections (5) to (15) apply with respect to a Table 1 activity that may have an adverse effect on a relevant species if,
- (a) the regulatory condition for the Table 1 activity is satisfied on a day that is either before or after, but no later than two years after, the prohibition date for the relevant species; and
 - (b) the Table 1 activity is commenced no later than the date determined under subsection (2.2). O. Reg. 328/22, s. 3 (1).
- (2.1) The prohibition date for a relevant species is determined in accordance with the following rules:

- 1. In the case of a transition species, the prohibition date is June 30, 2013, being the date on which the prohibitions in clause 10 (1) (a) of the Act began to apply to transition species.
- 2. In the case of a relevant species in respect of which a regulation made under section 8.1 of the Act has temporarily suspended the application of one or more of the prohibitions in subsection 9 (1) or 10 (1) of the Act, the prohibition date is,
 - i. the day immediately following the end of the period of suspension, or

ii. if the regulation made under section 8.1 of the Act provided for different periods of suspension in relation to different prohibitions in subsections 9 (1) and 10 (1) of the Act, the day immediately following the end of the period of suspension that ends the latest.

3. In the case of a relevant species other than a relevant species described in paragraph 1 or 2, the prohibition date is the day on which the relevant species is listed on the Species at Risk in Ontario List as an endangered or threatened species for the first time. O. Reg. 328/22, s. 3 (1).

(2.2) For the purposes of clause (2) (b), the date by which a Table 1 activity must be commenced is,

(a) where the activity may have an adverse effect on a transition species, June 30, 2015; and

(b) where the activity may have an adverse effect on a relevant species other than a transition species,

(i) the day that is five years after the day the regulatory condition for the activity is satisfied, unless the regulatory condition was satisfied three years or more before the prohibition date for the relevant species, and

(ii) if the regulatory condition for the activity was satisfied three years or more before the prohibition date for the relevant species, the day that is two years after the prohibition date for the relevant species. O. Reg. 328/22, s. 3 (1).

(3) The carrying out of an undertaking referred to in item 9, 10 or 12 of Table 1 to this section does not include the operation of a hydro-electric generating station or the operation of a wind facility within the meaning of Ontario Regulation 359/09 (Renewable Energy Approvals under Part V.0.1 of the Act) made under the *Environmental Protection Act*. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (2); O. Reg. 328/22, s. 3 (2).

(4) Despite anything in subsection (2), subsections (5) to (15) do not apply to an activity described in section 23.4 in respect of a species listed in the Table to that section. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (3).

(5) Subsection 10 (1) of the Act does not apply to a person who, while engaging in a Table 1 activity, damages or destroys the habitat of a relevant species if the conditions set out in subsection (7) are satisfied. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (4); O. Reg. 328/22, s. 3 (3).

(6) Clause 9 (1) (a) of the Act does not apply to a person who, while engaging in a Table 1 activity, kills, harms, harasses, captures or takes a member of a relevant species other than a transition species if the conditions set out in subsection (7) are satisfied. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (5); O. Reg. 328/22, s. 3 (3).

(7) The following are the conditions that a person carrying out a Table 1 activity must satisfy for the purposes of the exemptions set out in subsections (5) and (6):

1. The person must give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry.

2. The person must ensure that the notice of activity form includes,

i. a description of the activity the person is carrying out or is proposing to carry out,

ii. a statement that the activity has already commenced or the date the activity will commence,

iii. the location at which the activity is being carried out or will be carried out, and

iv. the name of every relevant species that will be affected by the activity.

3. The person must give the notice of activity form before commencing the activity, subject to paragraph 3.1.

3.1 If a species has been listed on the Species at Risk in Ontario List as an endangered or threatened species for the first time and the activity has commenced before the day a regulation is made amending this section by adding the species as a relevant species listed in Table 2 of this section, the person must give the notice of activity form promptly after the day the amending regulation comes into force.

4. The person must follow the requirements of section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
 5. While carrying out the activity, the person must take reasonable steps to minimize the adverse effects of the activity on each species identified in the notice of activity form, including those steps identified in subsection (8).
 6. The person must,
 - i. ensure that a mitigation plan is prepared in accordance with subsections (9) and (10),
 - ii. subject to subsection (11), ensure that the mitigation plan referred to in subparagraph i is prepared within two years of the day a notice of activity form is submitted to the Minister under paragraph 1 and before the person begins to take steps to restore, create or enhance habitat as required under paragraph 10 of subsection (8), and
 - iii. in the case of a person described in subsection (11), ensure that the conditions set out in subsection (12) are satisfied.
 7. After a mitigation plan is prepared, the person must,
 - i. carry out the activity in accordance with the mitigation plan,
 - ii. ensure that the mitigation plan is updated in accordance with subsections (9) and (10) at least once every five years to include information obtained while monitoring the effects of the activity under paragraph 8.
 - iii. retain a copy of the mitigation plan until at least five years after the activity is complete, and
 - iv. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it.
 8. The person must,
 - i. monitor the effects of the activity on the species identified in the notice of activity form until the day the activity is complete,
 - ii. monitor the effectiveness of steps described in paragraphs 1 to 9 of subsection (8) that are taken to minimize adverse effects of the activity on the species until the day those steps are complete, and
 - iii. monitor the effectiveness of the steps taken to restore, create or enhance habitat under paragraph 10 of subsection (8) until 12 months after those steps are completed.
 9. On or before January 31 of the year after the activity commenced and in each following year in which the person is required under paragraph 8 to monitor the effectiveness of any steps taken to minimize adverse effects of the activity, the person must prepare an annual report, in respect of the previous calendar year, in accordance with subsection (14) and thereafter the person must,
 - i. retain a copy of the annual report for at least five years after it is prepared, and
 - ii. provide a copy of the annual report to the Ministry within 14 days of receiving a request for it.
 10. If the person or an employee or agent of the person observes a species identified in the notice of activity form in the course of carrying out the activity, the person must ensure that, within three months of the observation, the Ontario Species at Risk Observation Reporting Form available on a website maintained by the Government of Ontario is completed, detailing the species and number of individual members that were observed, the date and location of the observation and any other information requested on that form. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (6, 7); O. Reg. 308/16, s. 9 (5); O. Reg. 218/18, s. 11 (5, 6); O. Reg. 831/21, s. 11 (1), 17; O. Reg. 328/22, s. 3 (4, 5).
- (8) The following are the steps that a person must take to minimize adverse effects of a Table 1 activity described in a notice of activity form submitted under paragraph 1 of subsection (7) on a relevant species identified in the notice of activity form:

1. The person shall take steps to minimize or avoid the killing, harming or harassing of members of the species during a time of year when the species is likely to be carrying out a life process related to hibernation or reproduction, including rearing.
2. The person must not carry out any part of the activity in an area while it is being used by a member of the species to carry out a life process related to hibernation or reproduction, including rearing.
3. The person shall take steps to exclude animals that are members of the species from an area in which the activity is occurring or is likely to occur, such as installing temporary fencing to prevent members of the species from accessing the area.
4. If the person encounters an animal that is a member of the species in the course of carrying out the activity, the person must cease carrying out the activity and provide the animal with a reasonable amount of time to leave the area in which the activity is occurring before continuing with the activity.
5. If, after providing an animal with a reasonable amount of time in accordance with paragraph 4 the animal does not leave the area, the person must take measures to relocate the animal to a nearby location that is suitable and safe for the animal.
6. If the person encounters a moss, lichen or vascular plant that is a member of the species in the course of carrying out the activity and it is not necessary to kill or harm the member for the purpose of carrying out the activity, the person must,
 - i. cease the activity in the area of the encounter,
 - ii. install and maintain barriers to create a protective zone around the species, and
 - iii. after establishing the protective zone referred to in subparagraph ii, continue the activity in a manner that does not impair the ability of the species to carry out its life processes, including reproduction.
7. If it is necessary to kill or harm a moss, lichen or vascular plant for the purpose of carrying out the activity, the person must relocate the moss, lichen or vascular plant to a nearby location within the species' habitat that is suitable and safe for the species so that it is not killed or harmed, provided it is feasible to do so.
8. The determination under paragraph 7 as to whether it is feasible to relocate a moss, lichen or vascular plant must be made by the person using the best available information with respect to the suitability of relocating that species, including information obtained from the Ministry.
9. The relocation of an animal or of a moss, lichen or vascular plant in accordance with paragraph 5 or 7 must be undertaken by, or in consultation with, a person who is knowledgeable about, or has training in, the handling of the species.
10. Within two years of the day the person submitted the notice of activity form to the Minister under paragraph 1 of subsection (7), the person shall begin to take steps to,
 - i. restore any habitat of the species that is damaged or destroyed by the activity, to the extent that it is feasible to do so, or
 - ii. create habitat for the species or enhance any existing habitat for the species in an area that is in the same ecoregion as the habitat that was damaged or destroyed by the activity and in a manner that minimizes the overall loss of habitat for the species resulting from the activity.
11. The person must not carry out any part of the activity in an area that is being used, or has been used at any time in the previous three years, by caribou (boreal population) to carry out a life process related to reproduction, including rearing. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (8); O. Reg. 308/16, s. 9 (6); O. Reg. 328/22, s. 3 (6).

(9) A mitigation plan must be prepared and updated by one or more persons with expertise in relation to every relevant species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (9).

(10) A mitigation plan prepared in respect of a Table 1 activity must include the following information:

1. The following information with respect to the activity:

- i. a description of the activity,
 - ii. the proposed start and completion dates of the activity,
 - iii. a description of all of the stages of the activity and a timeline for the stages, and
 - iv. a map indicating the geographic location of the property on which the activity will occur.
2. A list of the relevant species that will likely suffer adverse effects as a result of the activity and an assessment of the activity's likely effects on the local population of each relevant species.
 3. Details on the steps the person will take to minimize adverse effects of the activity on the species identified in paragraph 2, including,
 - i. a description of each step to be taken and the dates and locations at which the steps will be taken,
 - ii. the times during the year at which a species identified under paragraph 2 is likely to be carrying out a life process related to hibernation or reproduction, including rearing, and at which activities that are likely to kill, harm or harass a member of the species, or damage or destroy its habitat, must not be carried out.
 4. Details regarding the monitoring the person plans to conduct to assess the effects of the activity on members of the species identified under paragraph 2 and the effectiveness of steps taken to minimize adverse effects on the species. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (10); O. Reg. 328/22, s. 3 (7).

(11) If a person proposes to carry out a development activity described in item 15 of Table 1 of this section and the issuance of a renewable energy approval under Part V.0.1 of the *Environmental Protection Act* has not occurred on or before the prohibition date for a relevant species that may be adversely affected by the activity, the person must prepare a mitigation plan in respect of the activity before,

- (a) in the case of a person who has submitted an application for the renewable energy approval on or before the prohibition date, the day the renewable energy approval is issued; or
- (b) in the case of a person who has not submitted an application for the renewable energy approval on or before the prohibition date, the day the person submits the application. O. Reg. 328/22, s. 3 (8).

(12) A person who prepares a mitigation plan under subsection (11) shall ensure that the following conditions are satisfied:

1. The person must submit the mitigation plan to the Minister promptly after it is prepared.
2. The Minister must approve the mitigation plan, subject to subsection (13).
3. The person must receive written notice of the approval of the Minister. O. Reg. 176/13, s. 14.

(13) The Minister may refuse to approve a mitigation plan submitted under subsection (12) if, in his or her opinion,

- (a) the mitigation plan has not been prepared by one or more persons with expertise in relation to every relevant species that is the subject of the plan, using the best available information; or
- (b) the steps set out in the mitigation plan may not be sufficient to,
 - (i) restore any habitat of the relevant species that is damaged or destroyed by the Table 1 activity, to the extent that it is feasible to do so,
 - (ii) create habitat for the relevant species or enhance any existing habitat for the relevant species in a manner that minimizes the overall loss of habitat for the relevant species resulting from the Table 1 activity, or
 - (iii) otherwise effectively minimize the adverse effects of the Table 1 activity on the relevant species. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (11); O. Reg. 328/22, s. 3 (9).

(14) An annual report referred to in paragraph 9 of subsection (7) shall document, and assess the effectiveness of, the steps taken by the person in the previous calendar year to minimize adverse effects of a Table 1 activity described in a notice of activity form submitted under paragraph 1 of subsection (7) on the relevant species identified in the notice of activity form, including the locations where the steps were taken. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (12); O. Reg. 831/21, s. 11 (2); O. Reg. 328/22, s. 3 (10).

(15) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a relevant species if,

(a) pursuant to subsection (5) or (6), clause 9 (1) (a) or subsection 10 (1) of the Act did not apply with respect to the species or its habitat; or

(b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (7). O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (13).

(16) Subsection 10 (1) of the Act does not apply to a person who damages or destroys the habitat of a relevant species while carrying out the undertaking described in the order made under section 3.2 of the *Environmental Assessment Act* and approved by Order in Council 2174/99 on December 8, 1999 with respect to hydroelectric facilities on the Mattagami River if the person satisfies the conditions set out in subsection (7). O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (14).

(17) Clause 9 (1) (a) of the Act does not apply to a person who kills, harms, harasses, captures or takes a living member of a relevant species, other than a transition species while carrying out the undertaking described in the order made under section 3.2 of the *Environmental Assessment Act* and approved by Order in Council 2174/99 on December 8, 1999 with respect to hydroelectric facilities on the Mattagami River if the person satisfies the conditions set out in subsection (7). O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (15).

(18) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a relevant species if,

(a) pursuant to subsection (16) or (17), clause 9 (1) (a) or subsection 10 (1) of the Act did not apply with respect to the species or its habitat; or

(b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (7). O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (16).

(19) Clause 10 (1) (a) of the Act does not apply to a person who damages or destroys the habitat of a transition species after June 30, 2013 while carrying out a Table 1 activity that was authorized by a permit issued under section 17 of the Act before June 30, 2013 if,

(a) the permit is still in effect; and

(b) the activity is carried out in accordance with the conditions of the permit. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 7 (17); O. Reg. 328/22, s. 3 (11).

TABLE 1
ACTIVITIES AND REGULATORY CONDITIONS

Column 1 Item	Column 2 Activity	Column 3 Regulatory Condition
1.	Constructing drainage works under an agreement under subsection 2 (2) of the <i>Drainage Act</i>	Filing of agreement under subsection 2 (2) of the <i>Drainage Act</i>
2.	Constructing drainage works in respect of which an engineer's report was adopted under subsection 45 (1) of the <i>Drainage Act</i>	Adoption of engineer's report under subsection 45 (1) of the <i>Drainage Act</i>
3.	Laying down highways and lots upon the ground within a plan of subdivision under the authority of subsection 51 (57) of the <i>Planning Act</i>	Approval of the draft plan of subdivision under the <i>Planning Act</i>

4.	Development of land within a plan of subdivision approved under the <i>Planning Act</i> , including a plan of subdivision registered under the <i>Registry Act</i> or the <i>Land Titles Act</i>	Approval of draft plan of subdivision under the <i>Planning Act</i>
5.	Development in an area designated as a site plan control area under subsection 41 (2) of the <i>Planning Act</i> and in respect of which appropriate approvals have been obtained under subsection 41 (4) of that Act	Granting of appropriate approvals under the <i>Planning Act</i>
6.	Development that is authorized by a development permit issued under Ontario Regulation 608/06 (Development Permits) made under the <i>Planning Act</i> after 2005	Issuance of development permit
7.	Development that is authorized by a community planning permit system established in accordance with section 70.2 of the <i>Planning Act</i> .	Issuance of community planning permit
8.	Development of a unit within the meaning of the <i>Condominium Act, 1998</i> , including a unit in respect of which a declaration and description are registered under the <i>Land Titles Act</i> , in respect of which a declaration and description are approved or exempted under section 9 of the <i>Condominium Act, 1998</i>	Approval or exemption of declaration and description
9.	Carrying out an undertaking in respect of which approval to proceed was given under Part II of the <i>Environmental Assessment Act</i>	Granting of approval to proceed with the undertaking
10.	Carrying out an undertaking to which a class environmental assessment approved under Part II.1 of the <i>Environmental Assessment Act</i> applies and in respect of which the requirements that are necessary to proceed with the undertaking under the class environmental assessment have been satisfied	Meeting the necessary requirements
11.	Carrying out a transit project, as defined in subsection 1 (1) of Ontario Regulation 231/08 (Transit Projects and Metrolinx Undertakings) made under the <i>Environmental Assessment Act</i> , in respect of which the Minister has given a notice to proceed with the transit project under clause 12 (1) (a) or (c) of Ontario Regulation 231/08	Giving of notice to proceed with the transit project
12.	Carrying out an undertaking that is designated as an undertaking to which the <i>Environmental Assessment Act</i> applies under Ontario Regulation 116/01 (Electricity Projects) made under that Act, that is required under that regulation to be carried out in accordance with the Environmental Screening Process described in that regulation and in respect of which all the requirements of the Environmental Screening Process that are necessary to proceed with the undertaking have been satisfied	Meeting all the necessary requirements of the Environmental Screening Process

13.	Carrying out an undertaking that is designated as an undertaking to which the <i>Environmental Assessment Act</i> applies under Ontario Regulation 101/07 (Waste Management Projects) made under that Act, that is required under that regulation to be carried out in accordance with the Environmental Screening Process for Waste Management Projects described in that regulation and in respect of which all the requirements of the Environmental Screening Process for Waste Management Projects that are necessary to proceed with the undertaking have been satisfied	Meeting all the necessary requirements of the Environmental Screening Process for Waste Management Projects
14.	Constructing a hydrocarbon line or station under the authority of an order made under Part VI of the <i>Ontario Energy Board Act, 1998</i>	Making the order under Part VI of the <i>Ontario Energy Board Act, 1998</i>
15.	Constructing a renewable energy generation facility under the authority of, and in accordance with, a renewable energy approval issued under Part V.0.1 of the <i>Environmental Protection Act</i>	Issuance of the renewable energy approval under Part V.0.1 of the <i>Environmental Protection Act</i>
16.	An activity described in section 3 of Ontario Regulation 350/12 (Registrations under Part II.2 of the Act — Solar Facilities) made under the <i>Environmental Protection Act</i> in respect of which a confirmation of registration has been provided under section 20.22 of that Act by the Director appointed under section 5 of that Act	Provision of confirmation of registration under section 20.22 of the <i>Environmental Protection Act</i>
17.	Advanced exploration carried out under Part VII of the <i>Mining Act</i> in respect of which the Director of Mine Rehabilitation has issued a written confirmation of filing of a closure plan under clause 140 (2) (a) of that Act	Receipt of written confirmation from the Director of Mine Rehabilitation
18.	Mine production carried out under Part VII of the <i>Mining Act</i> in respect of which the Director of Mine Rehabilitation has issued a written confirmation of filing of a closure plan under clause 141 (2) (a) of that Act	Receipt of written confirmation from the Director of Mine Rehabilitation
19.	Rehabilitation of a mine hazard in compliance with a closure plan submitted pursuant to an order made under subsection 147 (1) of the <i>Mining Act</i>	Filing of closure plan
20.	Voluntary rehabilitation of a mine hazard that was approved by the Director of Mine Rehabilitation under section 139.2 of the <i>Mining Act</i>	Granting of approval by the Director of Mine Rehabilitation

O. Reg. 328/22, s. 3 (12).

TABLE 2
RELEVANT SPECIES

Column 1 Item	Column 2 Year of Listing	Column 3 Species Grouping	Column 4 Common Name	Column 5 Scientific Name
1.	Prior to 2013	Vascular Plants	American Chestnut	<i>Castanea dentata</i>
2.	Prior to 2013	Vascular Plants	American Columbo	<i>Frasera caroliniensis</i>
3.	Prior to 2013	Vascular Plants	American Ginseng	<i>Panax quinquefolius</i>
4.	Prior to 2013	Vascular Plants	American Water-willow	<i>Justicia americana</i>
5.	Prior to 2013	Vascular Plants	Branched Bartonnia	<i>Bartonia paniculata</i>

6.	Prior to 2013	Vascular Plants	Bluehearts	<i>Buchnera americana</i>
7.	Prior to 2013	Vascular Plants	Butternut	<i>Juglans cinerea</i>
8.	Prior to 2013	Vascular Plants	Cherry Birch	<i>Betula lenta</i>
9.	Prior to 2013	Vascular Plants	Colicroot	<i>Aletris farinosa</i>
10.	Prior to 2013	Vascular Plants	Deerberry	<i>Vaccinium stamineum</i>
11.	Prior to 2013	Vascular Plants	Dense Blazing Star	<i>Liatris spicata</i>
12.	Prior to 2013	Vascular Plants	Dwarf Hackberry	<i>Celtis tenuifolia</i>
13.	Prior to 2013	Vascular Plants	Eastern False Rue-anemone	<i>Enemion biternatum</i>
14.	Prior to 2013	Vascular Plants	Forked Three-awned Grass	<i>Aristida basiramea</i>
15.	Prior to 2013	Vascular Plants	Gattinger's Agalinis	<i>Agalinis gattingeri</i>
16.	Prior to 2013	Vascular Plants	Hill's Thistle	<i>Cirsium hillii</i>
17.	Prior to 2013	Vascular Plants	Houghton's Goldenrod	<i>Solidago houghtonii</i>
18.	Prior to 2013	Vascular Plants	Kentucky Coffee-tree	<i>Gymnocladus dioicus</i>
19.	Prior to 2013	Vascular Plants	Lakeside Daisy	<i>Tetranneuris herbacea</i>
20.	Prior to 2013	Vascular Plants	Lowland Toothcup	<i>Rotala ramosior</i>
21.	Prior to 2013	Vascular Plants	Round-leaved Greenbrier	<i>Smilax rotundifolia</i>
22.	Prior to 2013	Vascular Plants	Scarlet Ammannia	<i>Ammannia robusta</i>
23.	Prior to 2013	Vascular Plants	Small-flowered Lipocarpha	<i>Cyperus subsquarrosus</i>
24.	Prior to 2013	Vascular Plants	White Prairie Gentian	<i>Gentiana alba</i>
25.	Prior to 2013	Vascular Plants	White Wood Aster	<i>Eurybia divaricata</i>
26.	Prior to 2013	Vascular Plants	Wild Hyacinth	<i>Camassia scilloides</i>
27.	Prior to 2013	Vascular Plants	Willowleaf Aster	<i>Symphotrichum praealtum</i>
28.	Prior to 2013	Molluscs	Kidneyshell	<i>Ptychobranchus fasciolaris</i>
29.	Prior to 2013	Molluscs	Mapleleaf	<i>Quadrula quadrula</i>
30.	Prior to 2013	Molluscs	Northern Riffleshell	<i>Epioblasma torulosa rangiana</i>
31.	Prior to 2013	Molluscs	Rayed Bean	<i>Villosa fabalis</i>
32.	Prior to 2013	Molluscs	Round Hickorynut	<i>Obovaria subrotunda</i>
33.	Prior to 2013	Molluscs	Round Pigtoe	<i>Pleurobema sintoxia</i>
34.	Prior to 2013	Molluscs	Salamander Mussel	<i>Simpsonaias ambigua</i>
35.	Prior to 2013	Molluscs	Snuffbox	<i>Epioblasma triquetra</i>
36.	Prior to 2013	Insects	Aweme Borer Moth	<i>Papaipema aweme</i>
37.	Prior to 2013	Fishes	American Eel	<i>Anguilla rostrata</i>
38.	Prior to 2013	Fishes	Black Redhorse	<i>Moxostoma duquesnei</i>
39.	Prior to 2013	Fishes	Channel Darter	<i>Percina copelandi</i>
40.	Prior to 2013	Fishes	Cutlip Minnow	<i>Exoglossum maxillingua</i>
41.	Prior to 2013	Fishes	Lake Chubsucker	<i>Erimyzon sucetta</i>

42.	Prior to 2013	Fishes	Northern Madtom	<i>Noturus stigmosus</i>
43.	Prior to 2013	Fishes	Shortjaw Cisco	<i>Coregonus zenithicus</i>
44.	Prior to 2013	Fishes	Shortnose Cisco	<i>Coregonus reighardi</i>
45.	Prior to 2013	Fishes	Spotted Gar	<i>Lepisosteus oculatus</i>
46.	Prior to 2013	Amphibians	Allegheny Mountain Dusky Salamander	<i>Desmognathus ochrophaeus</i>
47.	Prior to 2013	Amphibians	Small-mouthed Salamander	<i>Ambystoma texanum</i>
48.	Prior to 2013	Reptiles	Blanding's Turtle	<i>Emydoidea blandingii</i>
49.	Prior to 2013	Reptiles	Eastern Hog-nosed Snake	<i>Heterodon platirhinos</i>
50.	Prior to 2013	Reptiles	Massasauga (Great Lakes/ St. Lawrence population)	<i>Sistrurus catenatus</i>
51.	Prior to 2013	Reptiles	Spiny Softshell	<i>Apalone spinifera</i>
52.	Prior to 2013	Reptiles	Spotted Turtle	<i>Clemmys guttata</i>
53.	Prior to 2013	Birds	Acadian Flycatcher	<i>Empidonax virescens</i>
54.	Prior to 2013	Birds	Least Bittern	<i>Ixobrychus exilis</i>
55.	Prior to 2013	Birds	Northern Bobwhite	<i>Colinus virginianus</i>
56.	Prior to 2013	Mammals	Caribou (Boreal population)	<i>Rangifer tarandus</i>
57.	Prior to 2013	Mammals	Gray Fox	<i>Urocyon cinereoargenteus</i>
58.	Prior to 2013	Mammals	Wolverine	<i>Gulo gulo</i>
59.	2013	Fishes	Pugnose Minnow	<i>Opsopoeodus emiliae</i>
60.	2013	Fishes	Silver Chub	<i>Macrhybopsis storeriana</i>
61.	2013	Birds	Yellow-breasted Chat	<i>Icteria virens</i>
62.	2013	Mammals	Little Brown Myotis	<i>Myotis lucifugus</i>
63.	2013	Mammals	Northern Myotis	<i>Myotis septentrionalis</i>
64.	2014	Molluscs	Lilliput	<i>Toxolasma parvum</i>
65.	2014	Molluscs	Threehorn Wartyback	<i>Obliquaria reflexa</i>
66.	2014	Birds	Bank Swallow	<i>Riparia riparia</i>
67.	2014	Mammals	Eastern Small-footed Myotis	<i>Myotis leibii</i>
68.	2016	Vascular Plants	Blue Ash	<i>Fraxinus quadrangulata</i>
69.	2016	Mammals	Algonquin Wolf	<i>Canis sp.</i>
70.	2016	Mammals	Tri-colored Bat	<i>Perimyotis subflavus</i>
71.	2017	Birds	Louisiana Waterthrush	<i>Parkesia motacilla</i>
72.	2022	Vascular Plants	Black Ash	<i>Fraxinus nigra</i>
73.	2022	Birds	Hudsonian Godwit	<i>Limosa haemastica</i>
74.	2022	Birds	Red-headed Woodpecker	<i>Melanerpes erythrocephalus</i>

TABLES 3-5 REVOKED: O. REG. 328/22, S. 3 (12).

Pits and quarries

23.14 (1) This section applies with respect to a pit or quarry that,

(a) is operated under the authority of a licence, wayside permit or aggregate permit issued under the *Aggregate Resources Act*; or

(b) is located in an area in Ontario to which the *Aggregate Resources Act* does not apply and operated in accordance with the applicable zoning by-laws. O. Reg. 176/13, s. 14.

(2) This section does not apply with respect to a species identified in Columns 3 and 4 of the following Table by its common and scientific names, and belonging to the species grouping referred to in Column 2 of the Table opposite the identified species:

TABLE
SPECIES TO WHICH SECTION 23.14 DOES NOT APPLY

Column 1 Item	Column 2 Species Grouping	Column 3 Common Name	Column 4 Scientific Name
1.	Vascular plants	Virginia Mallow	<i>Ripariosida hermaphrodita</i>
2.	Amphibians	Small-mouthed Salamander	<i>Ambystoma texanum</i>
2.1	Amphibians	Unisexual Ambystoma (Small-mouthed Salamander dependent population)	<i>Ambystoma laterale — texanum</i>
2.2	Insects	False-foxglove Sun Moth	<i>Pyrrhia aurantiago</i>
3.	Reptiles	Blue Racer	<i>Coluber constrictor foxii</i>
4.	Reptiles	Butler's Gartersnake	<i>Thamnophis butleri</i>
5.	Reptiles	Common Five-lined Skink (Carolinian population)	<i>Plestiodon fasciatus</i>
6.	Birds	Henslow's Sparrow	<i>Ammodramus henslowii</i>
7.	Birds	Yellow-breasted Chat	<i>Icteria virens</i>

O. Reg. 179/14, s. 8 (1); O. Reg. 218/18, s. 12 (1); O. Reg. 328/22, s. 4.

(3) Subject to subsection (5), clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who operates a pit or quarry and who, in the course of operating a pit or quarry, kills, harms, harasses, captures or takes a member of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, or damages or destroys the habitat of such a species, if,

(a) in the case of a species that was listed on the Species at Risk in Ontario List as an endangered or threatened species before January 24, 2013, the pit or quarry began operations,

(i) before the day the species was listed on the Species at Risk in Ontario List as an endangered or threatened species, or

(ii) before the day the species first appeared on the site on which the pit or quarry is located; or

(b) in the case of a species that was listed on the Species at Risk in Ontario List as an endangered or threatened species for the first time on or after January 24, 2013, but no later than the date specified in section 0.1,

(i) the pit or quarry began operations before the date the species was listed on the Species at Risk in Ontario List as an endangered or threatened species for the first time,

(ii) the pit or quarry began operations before the day the species first appeared on the site on which the pit or quarry is located, or

(iii) the pit or quarry begins operations after the date the species was listed on the Species at Risk in Ontario List as an endangered or threatened species for the first time, so long as on or before the second anniversary of that date,

(A) an application for a licence, wayside permit or aggregate permit has been made under the *Aggregate Resources Act* in respect of the land comprising the pit or quarry, and

(B) the Ministry has given the applicant notice that the application complies with the requirements of the *Aggregate Resources Act*. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 8 (2-4).

(4) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

(a) pursuant to subsection (3), clause 9 (1) (a) and subsection 10 (1) of the Act did not apply with respect to the member of the species; or

(b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (5). O. Reg. 176/13, s. 14.

(5) Subsection (3) does not apply unless the person referred to in that subsection satisfies the following conditions:

1. Before doing anything, in the course of operating the pit or quarry, that is prohibited under clause 9 (1) (a) or subsection 10 (1) of the Act in respect of a species to which subsection (3) applies, the person must,

i. give the Minister notice of the fact that the person is operating a pit or quarry by submitting a notice of activity form available on the Registry to the Minister through the Registry, and

ii. subject to subsection (6), prepare in accordance with subsection (7) a mitigation plan that meets the requirements of subsection (8).

2. The person must ensure that the notice of activity form includes,

i. the location of the pit or quarry, and

ii. the name of every species to which subsection (3) applies that will likely be affected by the operation of the pit or quarry.

3. The person must follow the requirements of section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.

4. For as long as the operation of the pit or quarry is likely to adversely affect the species identified in the notice of activity form, the person must,

i. comply with the requirements of the mitigation plan,

ii. ensure that reasonable steps are taken to minimize the adverse effects of the activity on the species identified in the notice of activity form, including the steps described in subsection (9), and such other steps as may be described in the mitigation plan.

5. The person must,

i. retain a copy of the mitigation plan while operating the pit or quarry and for a period of five years after the person ceases to operate the pit or quarry,

ii. ensure that the plan is updated in accordance with subsections (7) and (8) at least once every five years to include information obtained while carrying out the monitoring requirements described in paragraph 6, and

iii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it.

6. The person must monitor the effectiveness of the steps taken to minimize the adverse effects of the operation of the pit or quarry on the species identified in the notice of activity form.

7. The person must,

- i. on or before January 31 of each year, prepare an annual report in respect of the previous calendar year in accordance with subsection (10) on the effects that the operation of the pit or quarry has on the species identified in the notice of activity form,
- ii. retain a copy of the annual report for at least five years after it is prepared, and
- iii. provide a copy of the annual report to the Ministry within 14 days of receiving a request for it.

8. If the person or an employee or agent of the person observes a species identified in the notice of activity form in the course of carrying out the activity, the person must ensure that, within three months of the observation, the Ontario Species at Risk Observation Reporting Form available on a website maintained by the Government of Ontario is completed, detailing the species and number of individual members that were observed, the date and location of the observation and any other information requested on that form. O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 12 (2); O. Reg. 831/21, s. 12 (1), 17.

(6) A person who carries out an activity described in subsection (1) is not required to complete the preparation of a mitigation plan until the following dates if the following circumstances apply:

1. If the mitigation plan relates to a species that was added to the Species at Risk in Ontario List as an endangered or threatened species on or after January 24, 2013, but no later than the date specified in section 0.1, the second anniversary of the day the species was so added.
2. If the mitigation plan relates to a species that first appears on the site of the pit or quarry after the pit or quarry begins operation, two years after the date the species first appears on the site. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 8 (5).

(7) A mitigation plan must be prepared and updated by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available. O. Reg. 176/13, s. 14.

(8) A mitigation plan must include the following information:

1. The name and contact information of the person who operates the pit or quarry.
2. A map indicating the geographic location of the pit or quarry.
3. A list of the species identified in a notice of activity form submitted under paragraph 1 of subsection (5) and that are the subject of the mitigation plan.
4. A description of the places within the pit or quarry that are the habitat of, or used by, the species identified under paragraph 3.
5. Details on how the person will carry out the steps described in subsection (9) that the person must take to minimize the adverse effects of the operation of the pit or quarry on the species referred to in paragraph 3, including,
 - i. the dates on which, and locations at which, each step will be carried out, and
 - ii. the dates during the year when the species is likely to be carrying out a life process related to hibernation or reproduction, including rearing, and during which the person must avoid killing, harming or harassing members of the species.
6. A description of the steps the person plans to take to minimize the adverse effects of the operation of the pit or quarry on the species identified under paragraph 3, in addition to the steps described in subsection (9), including a description of,
 - i. the training that will be provided to employees, agents and contractors that are likely to encounter members of the species while performing their duties, in order to satisfy the obligations under this section,
 - ii. if the operation of the pit or quarry results in the damage or destruction of the habitat of the species, any measures to enhance or restore habitat for the species,

iii. the steps the person will take to avoid or minimize killing, harming or harassing members of the species or damaging or destroying habitat, in addition to the steps described in paragraph 1 of subsection (9), and

iv. the steps the person will take if a member of the species is encountered during the operation of the pit or quarry, in addition to the steps described in paragraphs 2, 3, 4, 5 and 6 of subsection (9).

7. A description of the steps the person will take to monitor the effectiveness of the steps taken to minimize the adverse effects of the operation of the pit or quarry on the species identified under paragraph 3. O. Reg. 176/13, s. 14.

(9) The steps that a person must take to minimize the adverse effects of the operation of a pit or quarry on a species identified in a notice of activity form submitted under paragraph 1 of subsection (5) are as follows:

1. The person must take steps to avoid or minimize killing, harming or harassing members of the species during a time of year when the species is likely to be carrying out a life process related to hibernation or reproduction, including rearing.
2. If the person encounters an animal that is a member of the species while operating the pit or quarry, the person must cease operations in the area of the encounter and provide the animal with a reasonable amount of time to leave the area before continuing the operation of the pit or quarry.
3. If, after providing an animal with a reasonable amount of time in accordance with paragraph 2 the animal does not leave the area, the person must take measures to relocate the animal to a nearby location that is suitable and safe for the animal.
4. If the person encounters a moss, lichen or vascular plant that is a member of the species while operating the pit or quarry and it is not necessary to kill or harm the member for the purpose of carrying out the activity, the person must,
 - i. cease the activity in the area of the encounter,
 - ii. install and maintain barriers or other structures to create a protective zone around the species, and
 - iii. after establishing the protective zone referred to in subparagraph ii, continue the operation of the pit or quarry in a manner that does not impair the ability of the species to carry out its life processes, including reproduction.
5. If it is necessary to kill or harm a moss, lichen or vascular plant referred to in paragraph 4 for the purpose of operating the pit or quarry, the person must, provided it is feasible to do so, relocate the moss, lichen or vascular plant to a nearby location within the species' habitat that is suitable and safe for the species.
6. The determination under paragraph 5 as to whether it is feasible to relocate a moss, lichen or vascular plant must be made by the person using the best available information with respect to the suitability of relocating that species, including information obtained from the Ministry.
7. The relocation of an animal in accordance with paragraph 3, or the relocation of a moss, lichen or vascular plant in accordance with paragraph 5, must be undertaken by, or in consultation with, a person who is knowledgeable about, or has training in, the handling of the species.
8. The person must take steps to exclude members of the species from an area of activity in the pit or quarry, such as installing fencing to prevent reptiles and amphibians from accessing active stockpiles of aggregates or areas of operation.
9. If the species uses nests or hibernacula to carry out its life processes, the person must, before and during the period of time when the species is likely to use the nests or hibernacula, install and maintain barriers or other structures to create a protective zone around the nests or hibernacula to limit the adverse effects that may be caused by the operation of the pit or quarry.
10. During a period of time when the species is likely to be using the nests or hibernacula to carry out life processes, the person must not carry out operations,
 - i. within the protective zone installed under paragraph 9, or
 - ii. in a manner that would impair the ability of the species to carry out its life processes within the protective zone.

11. The person must inform all employees, agents and contractors engaged in operating the pit or quarry that the species are present at the pit or quarry and of the steps required under paragraphs 1 to 10 and must install signs at the pit or quarry to that effect.
12. If the person discovers that the steps described in paragraphs 1 to 11 or in the mitigation plan have not been effective in minimizing the adverse effects of the operation of the pit or quarry on the species, the person shall,
 - i. take such actions as are necessary to increase the effectiveness of those steps, or
 - ii. take such other reasonable steps as may be necessary to minimize the adverse effects of the operation of the pit or quarry on the species. O. Reg. 176/13, s. 14; O. Reg. 232/14, s. 2.

(10) The annual report required under paragraph 7 of subsection (5) shall include, in respect of the previous calendar year,

- (a) the steps taken by the person operating the pit or quarry to minimize adverse effects of the operation of the pit or quarry on the species identified in the notice of activity form submitted under paragraph 1 of subsection (5) and an assessment of their effectiveness;
- (b) information collected during the monitoring referred to in paragraph 6 of subsection (5);
- (c) records of any activities carried out in accordance with the mitigation plan; and
- (d) details of any observations of the species identified in the notice of activity form submitted under paragraph 1 of subsection (5) in the course of operating the pit or quarry, including,
 - (i) the name of the species,
 - (ii) the location of the observation, and
 - (iii) the date and time of the observation. O. Reg. 176/13, s. 14; O. Reg. 831/21, s. 12 (2).

(11) This section does not apply to a person who operates a pit or quarry and who has entered into an agreement with the Minister under clause 22 (1) (b) or (2) (b), unless the person gives notice to the Minister in accordance with paragraph 1 of subsection (5). O. Reg. 176/13, s. 14.

Possession for educational purposes, etc.

23.15 (1) In this section,

“educational organization” means, subject to subsection (2),

- (a) a curatorial institution, including a museum or science centre, that is owned or operated by the Province or by a municipality,
- (b) a post-secondary institution that is a member of the Association of Universities and Colleges of Canada, or
- (c) a college of applied arts and technology established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*. O. Reg. 176/13, s. 14.

(2) This section applies to an educational organization only if it,

- (a) gives the Minister notice that it is engaged in scientific or educational activities that require that, from time to time, it acquire and possess living or dead members of various species that are listed on the Species at Risk in Ontario List as extirpated, endangered or threatened species, parts of members of such species or anything derived from members of such species;
- (b) gives the notice under clause (a) by submitting a notice of activity form available on the Registry to the Minister through the Registry;
- (c) includes in the notice of activity form a description of the scientific or educational activities which it carries out; and
- (d) follows the requirements of section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry. O. Reg. 176/13, s. 14.

(3) Clause 9 (1) (b) of the Act does not apply to an educational organization that possesses or collects, for scientific or educational purposes, a living or dead member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, a part of a member of such a species or anything derived from a member of such a species, if the following conditions are met:

1. The educational organization must acquire the member of the species, the part or the thing, from a person who is authorized to possess it under the Act.
2. After acquiring the member of the species, the part or the thing, the educational organization must create a record relating to it containing the following information:
 - i. a statement describing what was acquired, whether a living or dead member of a species, a part of a member of a species or a thing derived from a member of a species, and identifying the relevant species,
 - ii. if more than one member of the species, or more than one part or thing is acquired, the number of members, parts or things,
 - iii. the date the member of the species, the part or the thing comes into the possession of the educational organization,
 - iv. the person from whom the member of the species, the part or the thing was acquired and a description of the circumstances under which it was acquired,
 - v. in the case of a living member of a species, a description of any injury to the member and, if applicable, the time and circumstances of the death and of the disposal of the member, and
 - vi. if the member of the species, the part or the thing is transferred to another educational organization, the date of the transfer and the name of the other educational organization.
3. The educational organization must maintain the records required under paragraph 2 for as long as the member of the species, the part or the thing is in its possession and provide copies of the records to the Ministry on request.
4. In the case of a living member of a species, the educational organization must take reasonable steps to ensure that the member is safe from harm while in its possession. O. Reg. 176/13, s. 14.

(4) Clause 9 (1) (b) of the Act does not apply to the transport by an educational organization of anything that the organization is permitted to possess or collect under subsection (3), if the transportation is to another educational organization or to a veterinarian. O. Reg. 176/13, s. 14.

(5) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person who possesses or transports a dead member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, or a part of a member of such a species, if the person,

- (a) possesses the member or part for no more than seven days; and
- (b) after possessing the member or part for a maximum of seven days, transports it to an educational organization. O. Reg. 176/13, s. 14.

(6) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person who possesses a dead member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, or a part of a member of such a species, for the purpose of carrying out a scientific or educational activity, if the person,

- (a) upon acquiring the member or part, gives notice to the Minister that the person has possession of the member or part for the purpose of carrying out a scientific or educational activity;
- (b) gives the notice under clause (a) by submitting a notice of activity form available on the Registry to the Minister through the Registry;
- (c) includes in the notice of activity form,
 - (i) the identity of the species to which the member or part belongs,
 - (ii) the date on which the member or part was acquired, and
 - (iii) a description of the scientific or educational activity that the person is carrying out;

(d) follows the requirements of section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry; and

(e) after completing the scientific or educational activity, transports the member or part to an educational organization. O. Reg. 176/13, s. 14; O. Reg. 831/21, s. 13 (1, 2).

(7)-(9) REVOKED: O. Reg. 831/21, s. 13 (3).

(10) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person who transports a dead member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, or a part of a member of such a species, to an educational organization in accordance with clause (6) (e). O. Reg. 176/13, s. 14.

Safe harbour habitat

23.16 (1) In this section,

“safe harbour habitat” means the habitat of a species listed on the Species at Risk in Ontario List as an endangered, threatened or special concern species that was created or enhanced in accordance with subsection (2); (“habitat refuge”)

“safe harbour instrument” means one of the following instruments:

1. A permit issued under clause 17 (2) (b) or (c) of the Act that includes a condition that safe harbour habitat be created or enhanced for a species listed on the Species at Risk in Ontario List as an endangered or threatened species and that meets the requirements of subsection (3).
2. A stewardship agreement entered into under section 16 of the Act that includes a condition that safe harbour habitat be created or enhanced for a species listed on the Species at Risk in Ontario List as an endangered, threatened or special concern species and that meets the requirements of subsection (3). (“acte concernant un habitat refuge”) O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 13 (1, 2).

(2) This section applies to the habitat of a species listed on the Species at Risk in Ontario List as an endangered, threatened or special concern species only if,

(a) the habitat was created,

- (i) in fulfilment of a condition of a safe harbour instrument, and
- (ii) for the purpose of providing habitat to the species for a limited period of time specified in the safe harbour instrument; or

(b) in the case of habitat of bobolink or eastern meadowlark, an area of habitat for the species was created or enhanced,

- (i) in fulfilment of a condition of a safe harbour instrument, and
- (ii) for the purpose of ensuring that the habitat exists for the species for the time period specified in the safe harbour instrument. O. Reg. 176/13, s. 14; O. Reg. 232/14, s. 3 (1); O. Reg. 218/18, s. 13 (3).

(3) A safe harbour instrument under which safe harbour habitat is created or enhanced shall include a statement by the Minister that he or she is of the opinion that,

(a) in the case of an area in which it is proposed that safe harbour habitat be created for a species that is listed on the Species at Risk in Ontario List as an endangered, threatened or special concern species, the area,

- (i) is not currently the habitat of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, and
- (ii) is suitable for the creation of habitat for the species in question;

(b) in the case of an area of habitat for bobolink or eastern meadowlark that is proposed to be enhanced as safe harbour habitat for either or both of those species, the area,

- (i) is not currently the habitat of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, other than bobolink or eastern meadowlark, and
- (ii) is suitable for the enhancement of habitat for bobolink or eastern meadowlark; and

- (c) the period of time specified in the safe harbour instrument as the period of time for which the safe harbour habitat must continue to provide habitat for a particular species is sufficient to,
- (i) in the case of a stewardship agreement or of a permit issued under clause 17 (2) (b) of the Act, assist with the protection or recovery of the species in Ontario, and
 - (ii) in the case of a permit issued under clause 17 (2) (c) of the Act, achieve an overall benefit to the species. O. Reg. 176/13, s. 14; O. Reg. 232/14, s. 3 (2); O. Reg. 218/18, s. 13 (4).
- (4) Subsection 10 (1) of the Act does not apply to a person who damages or destroys safe harbour habitat if,
- (a) the damage or destruction occurs after the end of the period of time specified in the safe harbour instrument as the period of time for which the habitat must continue to provide habitat for a particular species;
 - (b) all the requirements of the safe harbour instrument under which the habitat was created or enhanced that are applicable to the habitat have been satisfied; and
 - (c) the person satisfies the conditions set out in subsection (5). O. Reg. 176/13, s. 14.
- (5) The following are the conditions that a person who damages or destroys safe harbour habitat must satisfy for the purposes of clause (4) (c):
1. Before beginning an activity that will damage or destroy the safe harbour habitat, the person must give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry.
 2. The person must ensure that the notice of activity form includes,
 - i. a description of the activity,
 - ii. the proposed start and end dates of the activity,
 - iii. the location at which the activity will be carried out,
 - iv. the name of the species for which the safe harbour habitat was created or enhanced and the name of every other species that is listed on the Species at Risk in Ontario List as an endangered, threatened or special concern species that is likely to be affected by the activity, and
 - v. the identification number given by the Minister to the applicable safe harbour instrument and that appears on the safe harbour instrument.
 3. The person must follow the requirements of section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
 4. While carrying out the activity, the person must take reasonable steps to minimize adverse effects of the activity on members of the species for which the safe harbour habitat was created or enhanced, including the steps described in subsection (6).
 5. Within 90 days of the completion of the activity that damages or destroys safe harbour habitat, the person must prepare a report that includes,
 - i. a description of the activity and of the effects of the activity on members of,
 - A. the species for which the safe harbour habitat was created or enhanced, and
 - B. any other species listed on the Species at Risk in Ontario List as endangered, threatened or of special concern,
 - ii. a description of the reasonable steps the person took in accordance with paragraph 4 to minimize adverse effects of the activity on the species for which the safe harbour habitat was created or enhanced, and
 - iii. the date on which the damage or destruction of the habitat began and the date on which it ended.

6. The person must retain the report referred to in paragraph 5 for no less than five years after it is created, and provide a copy of the report to the Ministry within 14 days of receiving a request for the report from the Ministry. O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 13 (5, 6).

(6) The following are the steps that a person must take to minimize the adverse effects of an activity to damage or destroy safe harbour habitat on the species for which the safe harbour habitat was created or enhanced:

1. The person must take steps to minimize damaging or destroying the habitat of the species at a time of year when the species is likely to be carrying out a life process related to hibernation or reproduction, including rearing.
2. If the person encounters an animal that is a member of the species while carrying out the activity, the person must cease carrying out the activity in the area of the encounter and provide the animal with a reasonable amount of time to leave the area before continuing with the activity.
3. If, after providing an animal with a reasonable amount of time in accordance with paragraph 2 the animal does not leave the area, the person must take measures to relocate the animal to a nearby location that is suitable and safe for the animal.
4. If the person encounters a moss, lichen or vascular plant that is a member of the species in the course of carrying out the activity and it is not necessary to kill or harm the member for the purpose of carrying out the activity, the person must,
 - i. cease the activity in the area of the encounter,
 - ii. install and maintain barriers or other structures to create a protective zone around the species, and
 - iii. after establishing the protective zone referred to in subparagraph ii, continue the activity in a manner that does not impair the ability of the species to carry out its life processes, including reproduction.
5. If it is necessary to kill or harm a moss, lichen or vascular plant referred to in paragraph 4 for the purpose of carrying out the activity, the person must, provided it is feasible to do so, relocate the moss, lichen or vascular plant to a nearby location within the species' habitat that is suitable and safe for the species.
6. The determination under paragraph 5 as to whether it is feasible to relocate a moss, lichen or vascular plant must be made by the person using the best available information with respect to the suitability of relocating that species, including information obtained from the Ministry.
7. The relocation of an animal in accordance with paragraph 3, or the relocation of a moss, lichen or vascular plant in accordance with paragraph 5 must be undertaken by, or in consultation with, a person who is knowledgeable about, or has training in, the handling of the species.
8. The person must not capture, collect, take, possess or transport a member of the species unless,
 - i. doing so is necessary to minimize adverse effects on the member,
 - ii. the member is captured, collected, taken or possessed in the safe harbour habitat that was created or enhanced in accordance with this section or is transported from the safe harbour habitat, and
 - iii. the capture, collection, taking, possessing or transporting of the member is carried out by, or in consultation with, a person with expertise or training related to the species. O. Reg. 176/13, s. 14; O. Reg. 831/21, s. 18.

(7) Subsection (4) applies to a safe harbour habitat even if, since the day the safe harbour habitat was created or enhanced for a particular species, the area of the safe harbour habitat has become the habitat of one or more other species listed on the Species at Risk in Ontario List as endangered or threatened species. O. Reg. 176/13, s. 14.

(8) Subsection 10 (1) of the Act does not apply to a person who damages or destroys the habitat of a species listed on the Species at Risk in Ontario List as an endangered or threatened species if,

- (a) the habitat is located within the same area as a safe harbour habitat;

- (b) the damage or destruction of the habitat occurs while the person carries out an activity to damage or destroy the safe harbour habitat in respect of which notice has been given to the Minister under paragraph 1 of subsection (5); and
- (c) pursuant to subsection (4), subsection 10 (1) of the Act does not apply to the damage or destruction of the safe harbour habitat by the person. O. Reg. 176/13, s. 14.

(9) Clause (9) (1) (a) of the Act does not apply to a person who kills, harms, harasses, captures or takes a member of a species for which a safe harbour habitat was created or enhanced or a member of any other species that is listed in the Species at Risk in Ontario List as an endangered or threatened species if,

- (a) pursuant to subsection (4), subsection 10 (1) of the Act does not apply to the damage or destruction of the safe harbour habitat by the person; and
- (b) the killing, harming, harassing, capturing or taking occurred while destroying or damaging the safe harbour habitat in the circumstances set out in subsection (4) or while taking steps to minimize adverse effects of the destruction or damaging of the safe harbour habitat on the species for which the safe harbour habitat was created or enhanced or on any other species listed in the Species at Risk in Ontario List as an endangered or threatened species. O. Reg. 218/18, s. 13 (7).

(10) Clause 9 (1) (b) of the Act does not apply to the possession, collection or transport of a member of a species for which a safe harbour habitat was created or enhanced or a member of any other species that is listed in the Species at Risk in Ontario List as an endangered or threatened species if,

- (a) pursuant to subsection (9), clause 9 (1) (a) of the Act did not apply with respect to the member of the species; or
- (b) the possession, collection or transport of the member of the species is necessary to assist in minimizing the adverse effects on the species. O. Reg. 218/18, s. 13 (7); O. Reg. 831/21, s. 18.

Species protection, recovery activities

23.17 (1) Subject to subsections (2.1) and (3), subsections (4) to (9) apply with respect to the following activities intended to assist in the protection or recovery of one or more species listed on the Species at Risk in Ontario List as an endangered or threatened species:

1. Any activity that implements, or that supports or assists in the implementation of, an action that the Government of Ontario plans to take and that is identified in a government response statement published by the Minister under subsection 12.1 (1) of the Act.
2. If the Minister has not yet published a statement under subsection 12.1 (1) of the Act in response to a recovery strategy prepared for the species under subsection 11 (1) of the Act, any activity that is identified as an approach to achieving the recommended objectives set out in the recovery strategy.
3. If a recovery strategy has not yet been prepared for the species under subsection 11 (1) of the Act, any activity that implements, or assists in the implementation of, an action or approach recommended in a recovery strategy prepared for the species under subsection 37 (1) of the *Species at Risk Act* (Canada) or in a management plan prepared for the species under section 65 of that Act.
4. If a recovery strategy has not yet been prepared for the species under subsection 11 (1) of the Act and if neither a recovery strategy nor a management plan has been prepared for the species under subsection 37 (1) or section 65 of the *Species at Risk Act* (Canada), any of the following activities:
 - i. an activity to enhance, maintain or restore the species' habitat, including,
 - A. the maintenance or enhancement of vegetation that forms a component of the species' habitat,
 - B. the maintenance or restoration of the ecological integrity of a species habitat,
 - C. the maintenance of water quality, quantity or flow within the species' habitat at levels that are suitable for the species to carry out its life processes, or the enhancement of water quality, quantity or flow within the species' habitat to such levels, or
 - D. the creation or enhancement of habitat features for the species such as nesting or hibernation sites,

- ii. an activity to reduce a threat to the species that is identified in a status report referred to in section 21 of the *Species at Risk Act* (Canada),
- iii. an activity to develop scientific knowledge related to,
 - A. the distribution or abundance of the species or its habitat in Ontario,
 - B. the manner in which the species depends upon or uses its habitat, or
 - C. a threat to the species identified in a status report referred to in subparagraph ii. O. Reg. 176/13, s. 14; O. Reg. 831/21, s. 14 (1-3).

(2) The reference to ecological integrity in sub-subparagraph 4 i B of subsection (1) refers to a condition in which biotic and abiotic components of ecosystems and the composition and abundance of native species and biological communities are characteristic of their natural regions, and rates of change and ecosystem processes are unimpeded and, when used with reference to an area, indicates that the area,

(a) has healthy and viable populations of native species, including species listed on the Species at Risk in Ontario List, and maintains the habitat on which the species depend; and

(b) has levels of air and water quality consistent with protection of biodiversity. O. Reg. 176/13, s. 14.

(2.1) This section does not apply to an activity to which section 23.17.2 applies. O. Reg. 831/21, s. 14 (4).

(3) Subject to subsection (3.1), the exemption under subsection (4) of the killing of one or more members of a species listed on the Species at Risk in Ontario List as an endangered or threatened species that occurs while carrying out an activity described in subsection (1) does not apply to an intentional killing. O. Reg. 831/21, s. 14 (5).

(3.1) The exemption in subsection (4) applies to the intentional killing of one or more members of a species listed on the Species at Risk in Ontario List as an endangered or threatened species that occurs during an activity described in subsection (1), if the killing is,

(a) for the purpose of euthanasia in respect of a member of an amphibian, bird, reptile, mammal or fish species that has become ill or is injured accidentally as a consequence of the activity with no possibility of survival; and

(b) carried out in accordance with the procedures relating to the handling and care of the species referred to in subparagraph 5 i of subsection (8) by a person with expertise in the species who is trained in respect of the procedures and who is acting on the advice of,

(i) a member of the College of Veterinarians of Ontario, or

(ii) a person employed by the Ministry. O. Reg. 831/21, s. 14 (5).

(3.2) The exemption under subsection (5) does not apply with respect to the possession, collection or transport of all or part of a dead member of a species listed on the Species at Risk in Ontario List as an endangered or threatened species if the member of the species was killed in such circumstances that subsection (3) would apply with respect to the killing but subsection (3.1) would not. O. Reg. 831/21, s. 14 (5).

(4) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who, while carrying out an activity described in subsection (1), kills, harms, harasses, captures or takes a member of a species that is the object of the activity, or damages or destroys the habitat of such a species, if the person satisfies all of the conditions set out in subsection (6). O. Reg. 176/13, s. 14.

(5) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person who, while carrying out an activity described in subsection (1), possesses, collects or transports a living or dead member of a species listed in the Species at Risk in Ontario List as an endangered or threatened species, or a part of a member of such a species, if the person satisfies all the conditions set out in subsection (6). O. Reg. 831/21, s. 14 (6).

(6) The following are the conditions that a person who carries out an activity described in subsection (1) must satisfy for the purposes of subsection (4):

1. Before commencing the activity, the person must,
 - i. give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry, and
 - ii. prepare in accordance with subsection (7) a mitigation plan that meets the requirements of subsection (8) and that identifies the steps that will be taken,
 - A. to minimize the adverse effects of the activity on the species that is the object of the activity, and
 - B. to monitor the effectiveness of the steps referred to in sub-subparagraph A.
2. The person must ensure that the notice of activity form includes,
 - i. a description of the activity,
 - ii. the proposed start and end dates for the activity,
 - iii. the location at which the activity will be carried out, and
 - iv. the name of each species that is the object of the activity.
3. The person must follow the requirements set out in section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
4. After the mitigation plan is prepared, the person must,
 - i. ensure that the activity is carried out in accordance with the mitigation plan,
 - ii. retain a copy of the mitigation plan for at least five years after the activity is complete,
 - iii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it, and
 - iv. if the activity occurs over a period of more than five years, ensure that, at least once every five years, the mitigation plan is updated in accordance with subsection (7) to include information obtained while monitoring the effects of the activity under paragraph 6.
5. While carrying out the activity, the person must ensure that the steps described in subsection (9), and such other steps as may be described in the mitigation plan, are taken to minimize the adverse effects of the activity on each species that is the object of the activity.
6. While carrying out the activity, the person shall ensure that the following are monitored:
 - i. the effects of the activity on each species that is the object of the activity, and
 - ii. the effectiveness of the steps taken to minimize adverse effects on each species.
7. While carrying out the activity, the person must create and maintain a record of,
 - i. the effects of the activity on each species that is the object of the activity,
 - i.1 if a member of a species that is the object of the activity is euthanized, the following information:
 - A. the reason the member required euthanasia,

- B. the name and contact details of the person who carried out the euthanasia,
- C. a summary of the person's expertise related to the species and the person's training in the euthanasia procedures outlined in the mitigation plan, and
- D. the name, position and contact details of the member of the College of Veterinarians of Ontario or employee of the Ministry who advised that the member of the species needed to be euthanized,

- ii. the steps that are taken by the person carrying out the activity to minimize the adverse effects of the activity on each species that is the object of the activity, including the locations where the steps are taken, and an assessment of the effectiveness of those steps, and
- iii. the names of each individual with expertise who was responsible for carrying out or supervising the activity.

8. The person must,

- i. retain a copy of the record created under paragraph 7 for at least five years after it is prepared, and
- ii. provide a copy of the record created under paragraph 7 to the Ministry within 14 days of receiving a request for it.

9. Within 180 days of the completion of the activity, the person must prepare a report on the activity and submit it to the Ministry and the report must include the following information:

- i. a description of the activity, including its purpose and a statement as to whether the activity is a type of activity described in paragraph 1, 2, 3 or 4 of subsection (1),
- ii. a copy of the record created under paragraph 7, and
- iii. a summary of the outcome of the activity, including a detailed assessment of the extent to which the activity achieved its purpose.

10. If the person or an employee or agent of the person observes a species identified in the notice of activity form in the course of carrying out the activity, the person must ensure that, within three months of the observation, the Ontario Species at Risk Observation Reporting Form available on a website maintained by the Government of Ontario is completed, detailing the species and number of individual members that were observed, the date and location of observation and any other information requested on the form. O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 14; O. Reg. 831/21, s. 14 (7, 8), 17.

(7) A mitigation plan shall be prepared and updated by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available. O. Reg. 176/13, s. 14.

(8) A mitigation plan prepared with respect to an activity identified in a notice of activity form submitted to the Minister under subparagraph 1 i of subsection (6) must include the following information:

- 1. The name and contact information of the person carrying out the activity.
- 2. The following information with respect to the activity:
 - i. a description of the activity, including an explanation of its nature and purpose,
 - ii. the proposed start and completion dates of the activity,
 - iii. a description of all of the stages of the activity and a timeline for the stages, and
 - iv. a description of the location of the activity.

3. The identity of the species that is the object of the activity and an assessment of the likely effects of the activity on the members of the species.
4. Detailed plans of the steps the person will take during the activity to minimize the adverse effects of the activity on the species that is the object of the activity, including details of the steps described in subsection (9), such as the dates on which and locations at which each step will be taken.
5. If the activity requires the handling of a member of a species listed on the Species at Risk in Ontario List as an endangered or threatened species that is an amphibian, bird, reptile, mammal or fish,
 - i. the procedures relating to the handling and care of the species, including,
 - A. procedures relating to the appropriate treatment that will be provided to a member of the species if it becomes sick or accidentally injured as a result of the activity, and
 - B. if the procedures referred to in sub-subparagraph A include procedures to be followed by the person when euthanizing members of the species, the procedures for euthanasia, and
 - ii. a written opinion prepared by an animal care committee established under subsection 17 (1) of the *Animals for Research Act*, stating that the procedures included under subparagraph i provide for the proper handling and care of the species.
6. Details regarding the steps the person will take to monitor the effects of the activity on members of the species that is the object of the activity and the effectiveness of the steps taken to minimize adverse effects on the species. O. Reg. 176/13, s. 14; O. Reg. 831/21, s. 14 (9).

(9) The following are the steps that a person must take to minimize the adverse effects of the activity described in the notice of activity form submitted to the Minister under subparagraph 1 i of subsection (6) on a species that is the object of the activity:

1. The person must ensure that the activity is carried out by or under the supervision of a person with expertise in the type of species protection or recovery work involved in the activity.
2. The person, and any employee, agent or contractor of the person, must receive training on the following subjects before carrying out any part of the activity that is likely to affect the species:
 - i. the identity of the species,
 - ii. how to identify the species and its habitat,
 - iii. potential threats posed to the species and its habitat by the activity, and
 - iv. the steps that must be taken under paragraphs 3 to 5 to minimize adverse effects on members of the species.
3. Any part of the activity that could reasonably be expected to have an adverse effect on a member of the species must be carried out by or in consultation with a person with expertise related to the species.
4. If a member of the species is captured, collected or taken while carrying out the activity, the person must not,
 - i. possess a living member of the species for a period longer than is necessary to carry out the activity or minimize adverse effects to the member, and in no case longer than seven days,
 - ii. possess a dead member, or a part of a living or dead member, of the species for a period longer than is necessary to carry out the activity, or
 - iii. release a living member of the species into an area other than the area from which the member was captured or taken.

5. The person must ensure that steps are taken to avoid the spread of diseases or pests to members of the species and to avoid compromising their genetic integrity. O. Reg. 176/13, s. 14; O. Reg. 831/21, s. 14 (10, 11), 18.

(10)-(12) REVOKED: O. Reg. 831/21, s. 14 (12).

Incubation of turtle eggs

23.17.1 (1) In this section,

“clutch” means a group of eggs produced at one time by a female turtle that is a member of a threatened turtle species or an endangered turtle species; (“ponte”)

“endangered turtle species” means a turtle species listed on the Species at Risk in Ontario List as an endangered species of turtle; (“espèce de tortue en voie de disparition”)

“nest zone” means the area bounded by a circle with a radius of one kilometre, the centre of which is the nest where equipment is first used after being disinfected; (“zone de nid”)

“threatened turtle species” means a turtle species listed on the Species at Risk in Ontario List as a threatened species of turtle; (“espèce de tortue menacée”)

“vulnerable nest” means a nest that contains one or more eggs of a threatened turtle species or an endangered turtle species and that is likely to be damaged or destroyed and includes nests that are,

- (a) located in an area where regular or planned human activities are likely to harm the eggs or damage or destroy the nest,
- (b) at a higher risk of predation than would be expected under natural ecological conditions, or
- (c) under imminent threat of being damaged or destroyed by flooding or other natural phenomena. (“nid vulnérable”) O. Reg. 831/21, s. 15.

(2) Subsections (4) and (5) apply with respect to an activity described in subsection (3) if the activity is intended to assist in the protection or recovery of one or more threatened turtle species or endangered turtle species by,

- (a) incubating eggs of a threatened turtle species or an endangered turtle species and releasing the hatchlings in accordance with the rules set out in subsection (13); and
- (b) implementing, or supporting or assisting in the implementation of, an action that the Government has identified in a government response statement published by the Minister under subsection 12.1 (1) of the Act. O. Reg. 831/21, s. 15.

(3) The following are the activities referred to in subsection (2):

1. Taking one or more eggs of a threatened turtle species or an endangered turtle species from,
 - i. a vulnerable nest for which other measures of protecting eggs, such as installing a nest cage, are not feasible or would not protect the eggs from being harmed,
 - ii. a nest that is accidentally disturbed,
 - iii. a sick or injured member of the species, or
 - iv. a recently deceased member of the species.
2. Possessing one or more eggs from a source described in paragraph 1 or possessing one or more hatchlings from such eggs. O. Reg. 831/21, s. 15.

(4) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who, while carrying out an activity described in subsection (3), kills, harms, harasses, captures or takes a member of a threatened turtle species or an endangered turtle species that is the object of the activity, or damages or destroys the habitat of such a species, if the person satisfies the conditions set out in subsection (10). O. Reg. 831/21, s. 15.

(5) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person who possesses, collects or transports a member of a threatened turtle species or an endangered turtle species if the person satisfies all of the conditions set out in subsection (10). O. Reg. 831/21, s. 15.

(6) Despite subsections (2) and (4), subsection (4) does not apply to the intentional killing of a member of a threatened turtle species or an endangered turtle species that occurs during an activity described in subsection (3) unless,

(a) the killing is for the purposes of euthanasia in respect of a member that has become ill or accidentally injured as a consequence of the activity with no possibility of survival; and

(b) the euthanasia is carried out in accordance with the procedures referred to in subparagraph 5 ii of subsection (11) by a person with expertise in the species who is trained in respect of the procedures and who is acting on the advice of,

(i) a member of the College of Veterinarians of Ontario, or

(ii) a person employed by the Ministry. O. Reg. 831/21, s. 15.

(7) The exemption under subsection (5) does not apply with respect to the possession, collection or transport of all or part of a dead member of a threatened turtle species or endangered turtle species if the member of the species was killed intentionally in circumstances other than those described in clauses (6) (a) and (b). O. Reg. 831/21, s. 15.

(8) Despite subsections (2) and (4), if, in any given calendar year, a person takes 100 eggs of an endangered turtle species or 200 eggs of a threatened turtle species while carrying out an activity described in paragraph 1 of subsection (3), the prohibitions in clause 9 (1) (a) and subsection 10 (1) of the Act shall apply with respect to the taking of any further eggs of an endangered turtle species or threatened turtle species, while carrying out the activity described in paragraph 1 of subsection (3), until the end of the calendar year. O. Reg. 831/21, s. 15.

(9) Despite subsections (2) and (5), if, at any time, a person possesses 100 eggs of an endangered turtle species, or 200 eggs of a threatened turtle species, that were taken while carrying out an activity described in paragraph 2 of subsection (3), the prohibitions in subclause 9 (1) (b) (i) of the Act shall apply to the person in respect of the possession of any eggs so taken that are in excess of the 100 eggs of an endangered turtle species or 200 eggs of a threatened turtle species that the person already possesses. O. Reg. 831/21, s. 15.

(10) The following are the conditions that a person who carries out an activity described in subsection (3) must satisfy for the purposes of subsections (4) and (5):

1. Before commencing the activity, the person must,

i. give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry, and

ii. prepare a mitigation plan in accordance with subsection (11) that sets out the steps that will be taken to,

A. minimize the adverse effects of the activity on each threatened turtle species or endangered turtle species that is the object of the activity, and

B. monitor the effectiveness of the steps referred to in sub-subparagraph A.

2. The person must ensure that the notice of activity form includes,

i. a description of the activity,

ii. the proposed start and end dates for the activity,

iii. the location at which the activity will be carried out, and

iv. the name of each threatened turtle species or endangered turtle species that is the object of the activity.

3. The person must follow the requirements set out in section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
4. The person must ensure that any eggs of a threatened turtle species or endangered turtle species taken in the course of the activity are taken from a source listed in paragraph 1 of subsection (3).
5. After the mitigation plan is prepared, the person must,
 - i. ensure that the activity is carried out in accordance with the mitigation plan,
 - ii. retain a copy of the mitigation plan for at least five years after the activity is complete,
 - iii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it, and
 - iv. if the activity occurs over a period of more than five years, ensure that, at least once every five years, the mitigation plan is updated in accordance with subsection (11) to include information obtained while monitoring the effects of the activity under subsection (16).
6. The person must conduct monitoring, prepare and retain records, and submit records and reports in accordance with subsections (16) to (19).
7. If the person or an employee or agent of the person observes a species identified in the notice of activity form in the course of carrying out the activity, the person must ensure that, within three months of the observation, the Ontario Species at Risk Observation Reporting Form available on a website maintained by the Government of Ontario is completed, detailing the turtle species and number of individual members that were observed, the date and location of observation and any other information requested on the form. O. Reg. 831/21, s. 15.

(11) The mitigation plan referred to in subparagraph 1 ii of subsection (10) and the update of the plan referred to in subparagraph 5 iv of subsection (10) shall be prepared by one or more persons described in subsection (12) and shall include the following information:

1. The name and contact information of the person carrying out the activity.
2. The following information with respect to the activity:
 - i. a description of the activity, including an explanation of its nature and purpose,
 - ii. the proposed start and completion dates of the activity,
 - iii. a description of all of the stages of the activity and a timeline for each stage, and
 - iv. a description of the location of the activity.
3. The identity of each threatened turtle species or endangered turtle species that is the object of the activity and an assessment of the likely effects of the activity on the members of the species.
4. Details of each step that will be taken to minimize the adverse effects of the activity on the members of the species, including the dates on which, and the locations at which, the steps will be taken.
5. The procedures that will be followed relating to the handling and care of a member of a threatened turtle species or an endangered turtle species, including,
 - i. procedures relating to the appropriate treatment that will be provided to a member of the species if it becomes sick or accidentally injured as a result of the activity, and
 - ii. if the procedures referred to in subparagraph i include procedures to be followed by the person when euthanizing members of the species, the procedures for euthanasia.

6. A written opinion prepared by an animal care committee established under subsection 17 (1) of the *Animals for Research Act*, stating whether the procedures referred to in paragraph 5 provide for the proper handling and care of the species.
7. Details of each step that will be taken to monitor the effects of the activity on each of the threatened turtle species or the endangered turtle species that is the object of the activity and the effectiveness of the steps taken to minimize adverse effects on the species. O. Reg. 831/21, s. 15.

(12) The mitigation plan and any update to the plan shall be prepared by one or more persons with expertise in relation to every threatened turtle species or endangered turtle species that is the object of the activity using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available. O. Reg. 831/21, s. 15.

(13) The steps required to be set out in the mitigation plan under subparagraph 1 ii of subsection (10) shall include,

- (a) ensuring that the activity is carried out by or under the supervision of a person with expertise in respect of the activity;
- (b) before the activity is carried out, providing training with respect to the following subjects to each person who carries out any part of the activity that is likely to adversely affect the threatened turtle species or the endangered turtle species,
 - (i) procedures referred to in paragraph 5 of subsection (11) relating to the handling and care of each threatened turtle species or endangered turtle species that is the object of the activity, and
 - (ii) the steps that must be taken under clauses (c) and (d) to minimize adverse effects on members of the turtle species and its habitat;
- (c) using the best available information to avoid or minimize adverse effects on the threatened turtle species or the endangered turtle species and their habitat when excavating nests, transporting and incubating eggs, and caring for and transporting hatchlings; and
- (d) taking all reasonable steps to avoid the spread of diseases to members of a threatened turtle species or an endangered turtle species, including,
 - (i) disinfecting any equipment used in respect of turtle eggs and hatchlings in nests, before using the equipment in a nest that is in a different nest zone,
 - (ii) washing and disinfecting hands or, if wearing gloves, changing gloves when handling turtle eggs or hatchlings from different clutches,
 - (iii) keeping turtle eggs and hatchlings from different clutches in separate containers,
 - (iv) disinfecting any equipment that has come in contact with amphibians or reptiles in captivity before the equipment is used in respect of a member of a threatened turtle species or an endangered turtle species whose possession is authorized under this section, and
 - (v) keeping turtle eggs and hatchlings isolated from amphibians and reptiles other than those whose possession is authorized under this section. O. Reg. 831/21, s. 15.

(14) Subject to subsection (15), the following are the rules that apply to the release of hatchlings resulting from the incubation of the eggs of a threatened turtle species or an endangered turtle species in the course of an activity described in subsection (3):

1. If one or more eggs were taken from a vulnerable nest or a nest that has been accidentally disturbed, the hatchlings shall be released in an aquatic habitat that is suitable and safe for the turtle species, that is as close as possible to the location from which the eggs were taken, and, in any event, that is no more than one kilometre from that location.
2. If one or more eggs were taken from a sick, injured or dead turtle, the hatchlings shall be released in an aquatic habitat that is suitable and safe for the turtle species, that is as close as possible to the location at which the turtle was found and, in any event, that is no more than one kilometre from that location.
3. If the hatchlings are not transferred to a person authorized to carry out a captive-rearing program, the hatchlings shall be released no later than one week after the last hatchling from the clutch has hatched and absorbed its yolk sac.
4. If the hatchlings are transferred to a person authorized to carry out a captive-rearing program for the turtle species, hatchlings shall be released no later than two years after the last hatchling from the clutch has hatched. O. Reg. 831/21, s. 15.

(15) If there is any reason to believe that a hatchling or an egg from which a hatchling hatched has been exposed to a deleterious pathogen that may be spread to wild amphibian or reptile populations if the hatchling were to be released, the person shall:

1. Notify the ministry of the possible exposure immediately.
2. Delay the release of the hatchling until the person has confirmed that the hatchling does not carry a deleterious pathogen and will not pose a risk to wild amphibian or reptile populations.
3. Notify the ministry of the date and location of the release and provide the evidence that the hatchling does not carry a deleterious pathogen and will not pose a risk to wild amphibian or reptile populations upon release. O. Reg. 831/21, s. 15.

(16) For the purposes of paragraph 6 of subsection (10), the following shall be monitored:

1. The effects of the activity on each threatened turtle species or endangered turtle species that is the object of the activity.
2. The effectiveness of the steps taken to minimize adverse effects on each threatened turtle species or endangered turtle species. O. Reg. 831/21, s. 15.

(17) For the purposes of paragraph 6 of subsection (10), a record of the following information shall be prepared and retained for at least five years after it is prepared:

1. The effects of the activity on each threatened turtle species or endangered turtle species that is the object of the activity.
2. Each step taken to minimize the adverse effects of the activity on each threatened turtle species or endangered turtle species that is the object of the activity, including the location at which the step was taken and an assessment of the effectiveness of the step.
3. The name of each person who was responsible for carrying out or supervising the activity.
4. The total number of members of a threatened turtle species or an endangered turtle species euthanized as a result of carrying out the activity and, for each member that was euthanized,
 - i. the reason the turtle required euthanasia,
 - ii. the name and contact information of the person who carried out the euthanasia,
 - iii. a summary of the person's expertise related to the turtle species and training in the euthanasia procedures outlined in the mitigation plan, and
 - iv. the name, position and contact information of the member of the College of Veterinarians of Ontario or employee of the Ministry who advised that the turtle needed to be euthanized. O. Reg. 831/21, s. 15.

(18) The person who carries out an activity described in subsection (3) shall provide a copy of the record created under subsection (17) to the Ministry within 14 days after receiving a request for it. O. Reg. 831/21, s. 15.

(19) For the purposes of paragraph 6 of subsection (10), no later than January 31 in each year, a report containing a statement that the report has been prepared under this section and containing the following information in respect of each activity described in subsection (3) carried out during the previous calendar year shall be submitted to the Ministry:

1. A description of the activity, including its purpose and the actions identified in a government response statement published under section 12.1 of the Act that the activity implements or supports or assists in implementing.
2. A copy of the record created under subsection (17).
3. A summary of the outcome of the activity, including a detailed assessment of the extent to which the activity achieved its purpose during the reporting period.
4. If the person carrying out the activity took one or more eggs, the following information in respect of each clutch from which one or more eggs were taken:
 - i. the turtle species to which the eggs belong,

- ii. the total number of eggs taken,
 - iii. the date on which the eggs were taken,
 - iv. the geographic coordinates of the clutch,
 - v. an indication of which source set out in paragraph 1 of subsection (3) the eggs were taken from,
 - vi. if the eggs were taken from a vulnerable nest, the rationale used to determine that the nest was vulnerable,
 - vii. if the eggs were taken as a result of a nest being accidentally disturbed, the circumstances of the accidental disturbance, if known, and the rationale used to justify taking the eggs,
 - viii. if the eggs were taken from a sick or injured turtle,
 - A. the rationale used to justify taking the eggs from the turtle, and
 - B. the legal authority under which the person was authorized to take the eggs and, if applicable, the identifying number of the authorization,
 - ix. if eggs were transferred to another person authorized to incubate the eggs, the name and contact information of the person who received the eggs and the date of the transfer, and
 - x. a description of any harm that occurred to eggs while carrying out the activity, including the total number of eggs harmed.
5. If the person carrying out the activity incubated one or more eggs, the following information in respect of each clutch referred to in paragraph 4 that was incubated:
- i. the turtle species to which the eggs belong,
 - ii. the total number of eggs incubated,
 - iii. the start and end dates of incubation,
 - iv. if the person who is incubating the eggs is not the person who took the eggs,
 - A. the name and contact information of the person who took the eggs,
 - B. the date on which the eggs were taken,
 - C. the legal authority under which the person was authorized to take the eggs and the identifying number of the authorization, if applicable,
 - D. the geographic coordinates of the clutch, and
 - E. confirmation, including supporting documentation, if available, that the eggs were taken from a source set out in paragraph 1 of subsection (3),
 - v. the number of eggs that successfully hatched,
 - vi. the date on which the last hatchling hatched and, if the hatchlings were not transferred to a person authorized to carry out a captive-rearing program, the date on which the last hatchling absorbed its yolk sac,

- vii. if hatchlings were transferred to a person authorized to captive-rear the turtle species,
 - A. the number of hatchlings that were transferred,
 - B. the date of transfer,
 - C. the name and contact information of the person carrying out the captive-rearing program,
 - D. a description of the authorization under which the person is carrying out the captive-rearing program, and, if applicable, the identifying number of the authorization, and
 - E. the address of the captive-rearing facility,
- viii. the number of hatchlings that were released and the date of release,
- ix. the geographic coordinates of the clutch, and
- x. an explanation of each injury, death and complication that occurred in respect of a threatened turtle species or an endangered turtle species while carrying out the parts of the activity relating to the incubation and release of the members of the species, including any harm to eggs. O. Reg. 831/21, s. 15.

Species at risk surveys

23.17.2 (1) In this section,

“abundance” includes absolute and relative population size; (“abondance”)

“species at risk survey” means a species at risk survey described in subsection (3) and includes all steps related to conducting a survey with respect to species that are listed on the Species at Risk in Ontario List as an endangered or threatened species such as capturing a member of the species, removing a tissue sample from a member of a species for genetic testing, transporting the sample to a lab and analyzing the sample. (“enquête sur les espèces en péril”) O. Reg. 831/21, s. 15.

(2) Subsections (4) and (5) apply with respect to the conducting of a species at risk survey if, based on a review of all available information in respect of the proposed survey area, including any available provincial records, expert opinions and species distribution modelling, there is reason to believe that,

- (a) the survey is required to address a lack of information about the presence, absence or abundance of the species expected to be found at or near the proposed survey area; and
- (b) the species may reasonably be expected to be found at or near the proposed survey area. O. Reg. 831/21, s. 15.

(3) The following are the two types of species at risk surveys to which this section applies:

1. A species at risk survey to assess whether a species listed on the Species at Risk in Ontario List as an endangered or threatened species is present or absent in an area.
2. A species at risk survey to estimate the abundance of a species listed on the Species at Risk in Ontario List as an endangered or threatened species in an area. O. Reg. 831/21, s. 15.

(4) Clause 9 (1) (a) of the Act does not apply to a person who, while conducting a species at risk survey, kills, harms, harasses, captures or takes a member of a species that is the object of the survey, if the person satisfies all of the conditions set out in subsection (9). O. Reg. 831/21, s. 15.

(5) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to a person who, while conducting a species at risk survey, possesses, collects or transports a living or dead member of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, or a part of a member of such a species, if the person satisfies all of the conditions set out in subsection (9). O. Reg. 831/21, s. 15.

(6) Despite subsections (2), (4) and (5), subsections (4) and (5) do not apply to the intentional killing of a member of a species listed on the Species at Risk in Ontario List as an endangered or threatened species that occurs during a species at risk survey unless,

- (a) the killing is for the purposes of euthanasia in respect of a member of an amphibian, bird, reptile, mammal or fish species that has become ill or injured as an incidental consequence of the survey with no possibility of survival; and
- (b) the euthanasia is carried out in accordance with the procedures referred to in subparagraph 7 ii of subsection (10) by a person with expertise in the species who is trained in respect of the procedures and who is acting on the advice of,
 - (i) a member of the College of Veterinarians of Ontario, or
 - (ii) a person employed by the Ministry. O. Reg. 831/21, s. 15.

(7) The exemption under subsection (5) does not apply with respect to the possession, collection or transport of all or part of a dead member of a species listed on the Species at Risk in Ontario List as an endangered or threatened species if the member of the species was killed intentionally in circumstances other than those described in clauses (6) (a) and (b). O. Reg. 831/21, s. 15.

(8) Despite subsections (2), (4) and (5), subsections (4) and (5) do not apply in respect of a species at risk survey if the survey is conducted in any of the following areas:

1. A reach of a stream that is occupied by Redside Dace if the species that is the object of the survey is listed on the Species at Risk in Ontario List as an endangered or threatened fish species.
2. An area belonging to any of the following community classes, as identified under the land classification system for southern Ontario, if the area is known or likely to be occupied by a species that is listed on the Species at Risk in Ontario List as an endangered or threatened vascular plant species:
 - i. A fen.
 - ii. A bog.
 - iii. A sand barren.
 - iv. A sand dune.
 - v. A bluff.
3. An area situated in a part of Ontario to which the land classification system for southern Ontario does not apply but that has all of the characteristics necessary to be classified as a community class referred to in subparagraphs 2 i to v if it were situated in a part of southern Ontario to which the classification system applies. O. Reg. 831/21, s. 15.

(9) The following are the conditions that a person who conducts a species at risk survey must satisfy for the purposes of subsections (4) and (5):

1. Before commencing the survey, the person must,
 - i. give the Minister notice of the survey by submitting a notice of activity form available on the Registry to the Minister through the Registry, and
 - ii. prepare a mitigation plan in accordance with subsection (10) that sets out the steps that will be taken to,
 - A. minimize the adverse effects of the survey on each species that is the object of the survey, and
 - B. monitor the effectiveness of the steps referred to in sub-subparagraph A.
2. The person must ensure that the notice of activity form includes,
 - i. a description of the survey,

- ii. the proposed start and end dates for the survey,
 - iii. the location at which the survey will be carried out, and
 - iv. the name of each species that is the object of the survey.
 3. The person must follow the requirements set out in section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.
 4. After the mitigation plan is prepared, the person must,
 - i. ensure that the survey is carried out in accordance with the mitigation plan,
 - ii. retain a copy of the mitigation plan for at least five years after the survey is complete,
 - iii. provide a copy of the mitigation plan to the Ministry within 14 days after receiving a request for it, and
 - iv. if the survey occurs over a period of more than five years, ensure that, at least once every five years, the mitigation plan is updated in accordance with subsection (10) to include information obtained while monitoring the effects of the survey under subsection (14).
 5. The person must conduct monitoring, prepare and retain records, and submit reports in accordance with subsections (14) to (17).
 6. If the person or an employee or agent of the person observes a species identified in the notice of activity form in the course of carrying out the survey, the person must ensure that, within three months of the observation, the Ontario Species at Risk Observation Reporting Form available on a website maintained by the Government of Ontario is completed, detailing the species and number of individual members that were observed, the date and location of observation and any other information requested on the form. O. Reg. 831/21, s. 15.
- (10) The mitigation plan referred to in subparagraph 1 ii of subsection (9) and the update of the plan referred to in subparagraph 4 iv of subsection (9) shall be prepared by one or more persons described in subsection (11) and shall include the following information:
1. The name and contact information of the person carrying out the species at risk survey.
 2. The following information with respect to the survey:
 - i. a description of the survey, including an explanation of its nature and purpose,
 - ii. the proposed start and completion dates of the survey,
 - iii. a description of all of the stages of the survey and a timeline for each stage, and
 - iv. a description of the location of the survey.
 3. The identity of each species that is the object of the survey and an assessment of the likely effects of the survey on the members of the species.
 4. The title, author and date of the protocol that meets the requirements of subsection (13) and that will be followed in carrying out the survey and confirmation that the protocol is designed to achieve the objective of the survey and that it applies in respect of,
 - i. the location at which the survey will be carried out, and
 - ii. the species at risk that is the object of the survey and all relevant life stages of the species.
 5. If the protocol that will be followed is a protocol described in paragraph 3 of subsection (13), a copy of the protocol.

6. Details of each step described in subsection (12) that will be taken to minimize the adverse effects of the survey on the members of the species, including the dates and locations at which the steps will be taken.
7. If the survey requires the handling of a member of a species listed on the Species at Risk in Ontario List as an endangered or threatened species that is an amphibian, bird, reptile, mammal or fish, procedures that will be followed relating to the handling and care of the member, including,
 - i. procedures relating to the appropriate treatment that will be provided to a member of the species if it becomes sick or accidentally injured as a result of the survey, and
 - ii. if the procedures referred to in subparagraph i include procedures to be followed by the person when euthanizing members of the species, the procedures for euthanasia.
8. A written opinion prepared by an animal care committee established under subsection 17 (1) of the *Animals for Research Act*, stating whether the procedures referred to in paragraph 7 provide for the proper handling and care of the species.
9. Details of each step that will be taken to monitor the effects of the survey on members of the species that are the object of the survey and the effectiveness of the steps taken to minimize adverse effects on the species. O. Reg. 831/21, s. 15.

(11) The mitigation plan and any update to the plan shall be prepared by one or more persons with expertise in relation to every species that is the object of the species at risk survey using the best available information on steps that may help avoid or minimize adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available. O. Reg. 831/21, s. 15.

(12) The following are the steps referred to in paragraph 6 of subsection (10):

1. Ensuring that the species at risk survey is carried out by or under the supervision of a person with expertise related to the part of the survey that the person is carrying out, including having expertise in either or both of the following areas:
 - i. the biology and ecology of each species that is the object of the survey, or a species with largely the same suite of biological and ecological traits as that species, or
 - ii. conservation genetics or other relevant conservation sciences.
2. Before the species at risk survey is carried out, providing training with respect to the following subjects to each person who carries out any part of the survey that is likely to adversely affect the species:
 - i. procedures referred to in paragraph 7 of subsection (10) relating to the handling and care of any animal species that is the object of the survey, and
 - ii. the steps that must be taken under paragraphs 3 and 4 to minimize adverse effects on members of the species and its habitat.
3. Using the best available information to avoid or minimize adverse effects on the species and their habitat when conducting the species at risk survey.
4. Taking all reasonable steps to avoid the spread of diseases or pests to, or compromise the genetic integrity of, members of the species that are the object of the species at risk survey.
5. Ensuring that, if a member or a part of a member of the species that is the object of the species at risk survey is captured, collected or taken while the survey is being conducted,
 - i. the member, if living, is not,
 - A. possessed for longer than is necessary to carry out the part of the survey for which the capture, collection or taking was required or to complete the procedures for the treatment of injured or sick animals or for the euthanasia of such an animal, or

B. removed from the area in which it was captured or taken unless the removal is necessary to complete the procedures for the treatment or the euthanasia of injured or sick animals, and

ii. the member, if dead, or a part of the member is not possessed for longer than is necessary to carry out the part of the survey for which the capture, collection or taking was required. O. Reg. 831/21, s. 15.

(13) The protocol referred to in paragraph 4 of subsection (10) shall be one of the following:

1. A protocol that has been published by the Government of Ontario and that is available on a website maintained by the Government of Ontario or available from the branch of the Ministry that is responsible for species at risk on request.
2. A protocol that has been listed by the branch of the Ministry that is responsible for species at risk on a website maintained by the Government of Ontario.
3. If a protocol for the species at risk survey has not been published or listed in accordance with paragraph 1 or 2, a protocol, prepared by a person with expertise related to the species that is the object of the survey, that uses,
 - i. the best available scientific methods, standards and information, including, as necessary, statistical methods of estimating detectability, population size and other relevant demographic parameters, and
 - ii. one of the following sampling or search effort intensities,
 - A. a sampling intensity sufficient to estimate the rate of occupancy at the spatial scale of the survey such that the standard error of accuracy is expected to be no greater than 5 per cent, if the survey is conducted for the purpose of determining abundance other than absolute abundance,
 - B. a sampling intensity sufficient to estimate population size such that the 95 per cent confidence intervals of the estimate are expected to overlap the actual population size and the relative error of accuracy is expected to be no greater than 5 per cent, if the survey is conducted for the purpose of determining absolute abundance of a species, or
 - C. a search effort intensity sufficient to detect the species at the spatial scale of the survey with a probability of at least 95 per cent, if the survey is conducted for the purpose of determining presence or absence of a species. O. Reg. 831/21, s. 15.

(14) For the purposes of paragraph 5 of subsection (9), the following shall be monitored:

1. The effects of the species at risk survey on each species that is the object of the survey.
2. The effectiveness of the steps taken to minimize adverse effects of the species at risk survey on each species. O. Reg. 831/21, s. 15.

(15) For the purposes of paragraph 5 of subsection (9), a record of the following information shall be prepared and retained for at least five years after it is prepared:

1. The effects of the species at risk survey on each species that is the object of the survey.
2. Each step taken to minimize the adverse effects of the species at risk survey on each species that is the object of the survey, including the location at which the step was taken and an assessment of the effectiveness of the step.
3. The name of each person who was responsible for carrying out or supervising the species at risk survey and a description of the part of the survey the person carried out and their relevant expertise.
4. The total number of members of a species listed on the Species at Risk in Ontario List as an endangered or threatened species that is an amphibian, bird, reptile, mammal or fish euthanized as a result of conducting the species at risk survey and, for each member that was euthanized,
 - i. the reason the member of the species required euthanasia,

- ii. the name and contact information of the person who carried out the euthanasia,
- iii. a summary of the person's expertise related to the species and training in the euthanasia procedures outlined in the mitigation plan, and
- iv. the name, position and contact information of the member of the College of Veterinarians of Ontario or employee of the Ministry who advised of the need for euthanasia.

5. For each species that is the object of the species at risk survey, a summary of any injuries, complications or deaths, other than deaths referred to in paragraph 4, that occurred as a result of conducting the survey. O. Reg. 831/21, s. 15.

(16) The person who carries out a species at risk survey shall provide a copy of the record created under subsection (15) to the Ministry within 14 days after receiving a request for it. O. Reg. 831/21, s. 15.

(17) For the purposes of paragraph 5 of subsection (9), within 180 days after the species at risk survey is completed, a report containing a statement that the report has been prepared under this section and containing the following information shall be submitted to the Ministry:

1. A description of the survey, including its purpose and a description of the survey area.
2. A summary of each stage of the survey, including the timing and location of each stage.
3. A description of the survey methods used, including the sampling or search effort intensity and the related error of accuracy, confidence interval or probability that was applied.
4. The title, author and date of the protocol that was followed and, if the protocol followed was a protocol described in paragraph 3 of subsection (13), a copy of the protocol.
5. The results of the survey, including conclusions about the presence, absence or abundance within the survey area of each species that is the object of the survey.
6. A copy of the records created under subsection (15). O. Reg. 831/21, s. 15.

Threats to health and safety, not imminent

23.18 (1) This section applies with respect to the following activities that are necessary to avoid or reduce a threat to human health or safety in situations where the threat is not imminent but is likely to have serious consequences in the short or long term if the activity is not carried out:

1. Work undertaken to prevent the contamination or pollution of the earth, air or water or to remove or clean an area that has been contaminated or polluted or any other work undertaken to protect the quality of the earth, air or water, but not including any part of the work that relates to the construction of new infrastructure.
2. Work undertaken to prevent the spread of disease, such as eliminating or removing bacteria, species or other disease causing agents from structures, buildings, lands or water and cleaning and disinfecting after their removal.
3. Work to maintain, repair, remove or replace an existing structure or any infrastructure described in subsection (2), including the decommissioning of a mine, or to upgrade an existing structure or any infrastructure described in subsection (2) to meet a safety standard, if,
 - i. the maintenance, repair, removal, replacement, decommissioning or upgrade does not require,
 - A. a temporary or permanent change to the location of the structure or infrastructure, or
 - B. a temporary or permanent extension of the area the structure or infrastructure occupies, except in the case of the replacement of an existing culvert with a new culvert that is larger than the one it replaces, or
 - ii. in the case of work to maintain, repair, replace or upgrade a structure or infrastructure, the work does not alter the way in which the structure or infrastructure is used or operated.

4. Work to protect against drought, flooding, forest fires, unstable slopes and erosion as long as the protection does not include the building of new infrastructure. O. Reg. 176/13, s. 14.

(2) Paragraph 3 of subsection (1) applies to infrastructure that is part of or related to,

- (a) a communications system;
- (b) an electric power system, oil or gas pipeline, alternative energy system or renewable energy system;
- (c) a road or railway system;
- (d) water works, wastewater works, stormwater works and associated facilities; or
- (e) drainage works designed to control surface water runoff, other than a drainage work to which section 23.9 applies. O. Reg. 176/13, s. 14.

(3) Subject to subsection (8), clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who, while carrying on an activity described in subsection (1), kills, harms, harasses, captures or takes a member of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, or damages or destroys the habitat of such a species, if all of the conditions set out in subsection (5) are satisfied. O. Reg. 176/13, s. 14.

(4) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

- (a) pursuant to subsection (3), clause 9 (1) (a) and subsection 10 (1) of the Act did not apply with respect to the member of the species or its habitat; or
- (b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (5). O. Reg. 176/13, s. 14.

(5) The following are the conditions that a person who carries on an activity described in subsection (1) must satisfy for the purposes of subsection (3):

1. Before commencing the activity, the person must,

- i. give the Minister notice of the activity by submitting a notice of activity form available on the Registry to the Minister through the Registry, and
- ii. in the case of an activity described in paragraph 3 of subsection (1) that results in the upgrade or removal of a structure or infrastructure, the decommissioning of a mine or the replacement of an entire structure or infrastructure, have a mitigation plan prepared in accordance with subsections (6) and (7).

2. The person must ensure that the notice of activity form includes,

- i. the proposed start and end dates of the activity described,
- ii. a description of the activity and of the area in which it will be carried out, and
- iii. the name of every species listed on the Species at Risk in Ontario List as endangered or threatened species that will likely be affected by the activity.

3. The person must follow the requirements set out in section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.

4. Once the mitigation plan is prepared, the person must,

- i. ensure that the activity is carried out in accordance with the mitigation plan,
- ii. retain a copy of the mitigation plan for at least five years after the activity is complete, and
- iii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it.

5. While carrying out the activity, the person must take reasonable steps to minimize the adverse effects of the activity on a species identified in the notice of activity form, including,
- i. taking steps to minimize or avoid killing, harming or harassing a member of the species and to avoid damaging or destroying its habitat, during a time of year when the species is likely to be carrying out a life process related to hibernation or reproduction, including rearing,
 - ii. if the person encounters an animal that is a member of a species while carrying out the activity, ceasing from carrying out the activity in the area of the encounter and providing the animal with a reasonable amount of time to leave the area before continuing with the activity,
 - iii. if, after providing an animal with a reasonable amount of time in accordance with subparagraph ii the animal does not leave the area, taking measures to relocate the animal to a nearby location that is suitable and safe for the animal,
 - iv. if the person encounters a moss, lichen or vascular plant that is a member of the species in the course of carrying out the activity and it is not necessary to kill or harm the member for the purpose of carrying out the activity,
 - A. ceasing the activity in the area of the encounter,
 - B. installing and maintaining barriers or other structures to create a protective zone around the species, and
 - C. after establishing the protective zone referred to in sub-subparagraph B, continuing the activity in a manner that does not impair the ability of the species to carry out its life processes, including reproduction,
 - v. if it is necessary to kill or harm a moss, lichen or vascular plant referred to in subparagraph iv for the purpose of carrying out the activity, relocating the moss, lichen or vascular plant to a nearby location within the species' habitat that is suitable and safe for the species so that it is not killed or harmed, provided it is feasible to do so,
 - vi. making the determination under subparagraph v as to whether it is feasible to relocate a moss, lichen or vascular plant using the best available information with respect to the suitability of relocating that species, including information obtained from the Ministry,
 - vii. ensuring that the relocation of an animal or of a moss, lichen or vascular plant in accordance with subparagraph iii or v is undertaken by or in consultation with a person knowledgeable about, or having training in, the handling of members of the species,
 - viii. taking steps to exclude members of the species from the area in which the activity is being carried out or is likely to be carried out, such as installing temporary fencing to prevent members of the species from accessing the area,
 - ix. refraining from carrying out work during a period of hibernation or reproduction, including rearing, for the species or any other sensitive period for the species unless the restriction on work would result in a delay that would render the threat to human health or safety unavoidable and unacceptable in the circumstances, and
 - x. if the activity is the maintenance, repair, replacement or upgrade of infrastructure, keep a schedule of the work or a copy of an engineer's report outlining the work that must occur and make the schedule or report available to the Ministry within 14 days of receiving a request for it.
6. If the person or an employee or agent of the person observes a species identified in the notice of activity form in the course of carrying out the activity, the person must ensure that, within three months of the observation, the Ontario Species at Risk Observation Reporting Form available on a website maintained by the Government of Ontario is completed, detailing the species and number of individual members that were observed, the date and location of observation and any other information requested on the form. O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 15 (1); O. Reg. 831/21, s. 17.

(6) A mitigation plan shall be prepared by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available. O. Reg. 176/13, s. 14.

(7) A mitigation plan prepared with respect to an activity described in subsection (1) must include the following information:

1. A description of the activity and its main purpose and an explanation of the threat to human health or safety that requires that the activity be carried out and of the serious consequences that would result, in the short or long term, if the activity was not carried out.
2. The proposed start and completion dates of the activity.
3. A description of all of the stages of the activity and a timeline for the stages.
4. A list of all the species that are listed on the Species at Risk in Ontario List as endangered or threatened species and that are likely to be affected by the activity.
5. An assessment of the activity's likely effects on members of each species identified under paragraph 4.
6. A map indicating the geographic location of the activity on the property where it will occur.
7. Details of how the person will carry out the steps described in paragraph 5 of subsection (5) that are required to minimize the adverse effects of the activity on a species identified under paragraph 4, including,
 - i. the dates on which, and locations at which, each step will be carried out, and
 - ii. the times during the year when the species is likely to be carrying out a life process related to hibernation or reproduction, including rearing, and during which the person must avoid killing, harming or harassing members of the species. O. Reg. 176/13, s. 14.

(8) Subsection (3) does not apply with respect to a species identified in Columns 3 and 4 of the Table to this subsection by its common and scientific names, and belonging to the species grouping referred to in Column 2 of the Table opposite the identified species:

TABLE
SPECIES TO WHICH SUBSECTION 23.18 (3) DOES NOT APPLY

Column 1 Item	Column 2 Species Grouping	Column 3 Common Name	Column 4 Scientific Name
0.1	Lichens	Golden-eye Lichen (Great Lakes population)	<i>Teloschistes chrysophthalmus</i>
1.	Vascular plants	Bird's-foot Violet	<i>Viola pedata</i>
2.	Vascular plants	Bluehearts	<i>Buchnera americana</i>
3.	Vascular plants	Forked Three-awned Grass	<i>Aristida basiramea</i>
4.	Vascular plants	Heart-leaved Plantain	<i>Plantago cordata</i>
5.	Vascular plants	Juniper Sedge	<i>Carex juniperorum</i>
6.	Vascular plants	Spotted Wintergreen	<i>Chimaphila maculate</i>
7.	Vascular plants	Virginia Goat's-rue	<i>Tephrosia virginiana</i>
8.	Vascular plants	Virginia Mallow	<i>Ripariosida hermaphrodita</i>
8.1	Vascular Plants	Gillman's Goldenrod	<i>Solidago gillmanii</i>
8.2	Vascular Plants	Hairy Valerian	<i>Valeriana edulis ssp. ciliata</i>
9.	Molluscs	Proud Globelet	<i>Patera pennsylvanica</i>
9.1	Molluscs	Carolina Mantleslug	<i>Philomycus carolinianus</i>

9.2	Molluscs	Eastern Banded Tigersnail	<i>Anguispira kochi kochi</i>
9.3	Molluscs	Shagreen	<i>Inflectarius inflectus</i>
9.4	Molluscs	Toothed Globe	<i>Mesodon zaletus</i>
10.	Insects	Mottled Duskywing	<i>Erynnis martialis</i>
10.1	Insects	Hoptree Borer	<i>Prays atomocella</i>
10.2	Insects	Lake Huron Grasshopper	<i>Trimerotropis huronia</i>
10.3	Insects	Nine-Spotted Lady Beetle	<i>Coccinella novemnotata</i>
10.4	Insects	False-foxglove Sun Moth	<i>Pyrrhia aurantiago</i>
10.5	Insects	Transverse Lady Beetle	<i>Coccinella transversoguttata</i>
10.6	Fishes	Lake Whitefish (Opeongo Lake Large-bodied populations)	<i>Coregonus clupeaformis</i>
10.7	Fishes	Lake Whitefish (Opeongo Lake Small-bodied populations)	<i>Coregonus clupeaformis</i>
11.	Reptiles	Massasauga (Carolinian population)	<i>Sistrurus catenatus</i>

O. Reg. 179/14, s. 9; O. Reg. 308/16, s. 10; O. Reg. 218/18, s. 15 (2); O. Reg. 328/22, s. 5.

Trapping — incidental catch

23.19 (1) Clause 9 (1) (a) of the Act does not apply to a person who incidentally traps an animal that belongs to a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, if,

- (a) the person is trapping under the authority of a trapping licence under the *Fish and Wildlife Conservation Act, 1997*;
- (b) the person is trapping in accordance with Ontario Regulation 667/98 (Trapping) made under the *Fish and Wildlife Conservation Act, 1997*;
- (c) the person traps the animal despite the exercise of all due diligence;
- (d) the incidentally trapped animal,
 - (i) is immediately released in a manner that causes it the least harm, if the animal is alive when it is found and has a reasonable chance of survival in the wild, or
 - (ii) is killed in a humane manner, if the animal is alive when it is found and does not have a reasonable chance of survival in the wild;
- (e) in cases where the animal is killed and is a furbearing mammal as defined in the *Fish and Wildlife Conservation Act, 1997*, the person obtains a licence to possess a pelt, as required under Part II of Ontario Regulation 666/98 (Possession, Buying and Selling of Wildlife) made under that Act; and
- (f) in cases where the animal is killed and is not a furbearing mammal as defined in the *Fish and Wildlife Conservation Act, 1997*, the person,
 - (i) promptly after the killing, gives notice of the incidental trapping and killing to the Minister by completing a notice of incidental trapping form available on the Registry and submitting it to the Minister through the Registry, and
 - (ii) follows the requirements of section 23.3 with respect to the completion of the notice of incidental trapping form, the keeping of records relating to the notice of incidental trapping form and the updating of the information on the Registry. O. Reg. 176/13, s. 14; O. Reg. 831/21, s. 16 (1).

(2)-(4) REVOKED: O. Reg. 831/21, s. 16 (2).

(5) Clause 9 (1) (b) of the Act does not apply to a person who possesses or transports a dead animal or a part of an animal if, pursuant to subsection (1), the person is exempt from clause 9 (1) (a) of the Act in respect of the incidental trapping of the animal. O. Reg. 176/13, s. 14; O. Reg. 831/21, s. 16 (3).

Wind facilities

23.20 (1) This section applies to a person who is engaged in the operation of a wind facility within the meaning of Ontario Regulation 359/09 (Renewable Energy Approvals under Part V.0.1 of the Act) made under the *Environmental Protection Act*. O. Reg. 176/13, s. 14.

(2) Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who is engaged in the operation of a wind facility and who, in the course of the operation of the wind facility, kills, harms or harasses a member of a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species, or damages or destroys the habitat of such a species, if the person satisfies the conditions set out in subsection (4). O. Reg. 176/13, s. 14.

(3) Subclauses 9 (1) (b) (i) and (ii) of the Act do not apply to the possession or transport of a member of a species if,

(a) pursuant to subsection (2), clause 9 (1) (a) and subsection 10 (1) of the Act did not apply with respect to the member of the species or its habitat; or

(b) the possession or transport of the member of the species is necessary in order to satisfy the conditions set out in subsection (4). O. Reg. 176/13, s. 14.

(4) The following are the conditions that a person who operates a wind facility must satisfy for the purposes of subsection (2):

1. Before doing anything, in the course of operating the wind facility, that is prohibited under clause 9 (1) (a) or subsection 10 (1) of the Act, the person must,

i. give the Minister notice of the fact that the person is operating a wind facility by submitting a notice of activity form, available on the Registry, to the Minister through the Registry,

ii. subject to subsections (5) and (6), prepare in accordance with subsection (9) a mitigation plan that meets the requirements of subsection (10), and

iii. in the case of a person described in subsection (6), ensure that the conditions set out in subsection (7) are satisfied.

2. The person must ensure that the notice of activity form includes,

i. the location of the wind facility, and

ii. the name of every species listed on the Species at Risk in Ontario List as an endangered or threatened species that will likely be affected as a result of the operation of the wind facility.

3. The person must follow the requirements of section 23.3 with respect to the completion of the notice of activity form, the keeping of records relating to the notice of activity form and the updating of the information on the Registry.

4. While the person is operating the wind facility, the person must,

i. comply with the requirements of the mitigation plan,

ii. ensure that reasonable steps are taken to minimize the adverse effects of the activity on the species identified in the notice of activity form, including the steps described in subsection (11), and such other steps as may be described in the mitigation plan.

5. The person must,

i. retain a copy of the mitigation plan while operating the wind facility and for a period of five years after the person ceases to operate the wind facility,

ii. ensure that the plan is updated in accordance with subsections (9) and (10) at least once every five years to include information obtained while carrying out the monitoring requirements described in paragraph 6, and

iii. provide a copy of the mitigation plan to the Ministry within 14 days of receiving a request for it.

6. Subject to subsection (12), the person must monitor,

- i. the effects of the operation of the wind facility on each species identified in the notice of activity form and its habitat, and
- ii. the effectiveness of the steps taken to minimize adverse effects on each species identified in the notice of activity form and its habitat,

7. At the times required under subsections (13) and (14), the person must prepare in accordance with subsection (15) a report on the effects that the operation of the wind facility has on each species identified in the notice of activity form.

8. The person must,

- i. retain a copy of a report required under paragraph 7 for at least five years after it is prepared, and
- ii. provide a copy of the report required under paragraph 7 to the Ministry within 14 days of receiving a request for it.

9. If the person or an employee or agent of the person observes a species identified in the notice of activity form in the course of carrying out the activity, the person must ensure that, within three months of the observation, the Ontario Species at Risk Observation Reporting Form available on a website maintained by the Government of Ontario is completed, detailing the species and number of individual members that were observed, the date and location of observation and any other information requested on the form. O. Reg. 176/13, s. 14; O. Reg. 218/18, s. 16; O. Reg. 831/21, s. 17.

(5) A person who operates a wind facility is not required to complete the preparation of a mitigation plan until the following dates if the following circumstances apply:

1. If the mitigation plan relates to a species that was added to the Species at Risk in Ontario List as an endangered or threatened species for the first time on or after January 24, 2013, but no later than the date specified in section 0.1, the third anniversary of the day the species was so added.
2. If the mitigation plan relates to a species that first appears in the area of the wind facility after the wind facility begins operation, three years after the date the species first appears in the area of the wind facility. O. Reg. 176/13, s. 14; O. Reg. 179/14, s. 10.

(6) A person who proposes to operate a wind facility and who has not been issued a renewable energy approval in respect of the wind facility under Part V.0.1 of the Environmental Protection Act on or before July 1, 2013 must prepare a mitigation plan in respect of the wind facility before either of the following days:

1. If the person has not submitted an application for a renewable energy approval under Part V.0.1 of the *Environmental Protection Act* on or before July 1, 2013, the day the person submits the application.
2. If the person has submitted an application for a renewable energy approval under Part V.0.1 of the *Environmental Protection Act* on or before July 1, 2013, the day the renewable energy approval is issued. O. Reg. 176/13, s. 14.

(7) A person who prepares a mitigation plan under subsection (6) shall ensure that the following conditions are satisfied:

1. The person must submit the mitigation plan to the Minister promptly after it is prepared.
2. The Minister must approve the mitigation plan, subject to subsection (8).
3. The person must receive written notice of the approval of the Minister. O. Reg. 176/13, s. 14.

(8) The Minister may refuse to approve a mitigation plan submitted under subsection (7) if, in his or her opinion,

- (a) the mitigation plan has not been prepared by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information; or
- (b) the steps set out in the mitigation plan do not include reasonable measures to,
 - (i) avoid the killing, harming or harassing of members of the species,

- (ii) create or enhance habitat for the species elsewhere in the ecoregion in which the wind facility is located,
- (iii) operate the wind facility in a manner that is unlikely to damage or destroy the habitat of the species, or
- (iv) otherwise effectively minimize the adverse effects of the activity on the species. O. Reg. 176/13, s. 14.

(9) A mitigation plan must be prepared and updated by one or more persons with expertise in relation to every species that is the subject of the plan, using the best available information on steps that may help minimize or avoid adverse effects on the species, which includes consideration of information obtained from the Ministry, aboriginal traditional knowledge and community knowledge if it is reasonably available. O. Reg. 176/13, s. 14.

(10) A mitigation plan must include the following information:

1. The name and contact information of the person who operates the wind facility.
2. A description of the location of the wind facility.
3. A list of the species that are listed on the Species at Risk in Ontario List as endangered or threatened species and are likely to be adversely affected by the operation of the wind facility.
4. Details of the steps the person plans to take to minimize the adverse effects of the operation of the wind facility on each species identified under paragraph 3 and its habitat, including the steps described in subsection (11). O. Reg. 176/13, s. 14.

(11) The steps that a person must take to minimize the adverse effects of the operation of a wind facility on a species identified in the notice of activity form submitted under subparagraph 1 i of subsection (4) and its habitat are as follows:

1. Implementing reasonable measures in the wind facility to avoid the killing, harming or harassing of members of the species such as,
 - i. adjusting the blades of wind turbines,
 - ii. adjusting cut-in speed of wind turbines, and
 - iii. periodically shutting the turbines down during times of day or of the year when the risk of killing, harming or harassing the species is highest.
2. Creating or enhancing habitat for the species elsewhere in the ecoregion in which the wind facility is located, if reasonable.
3. Operating the wind facility in a manner that is unlikely to damage or destroy the habitat of the species, including adopting any techniques to minimize adverse effects of the operation of the wind facility on the species that may be available from the Ministry from time to time.
4. If the person discovers that the steps described in paragraphs 1 to 3 or in the mitigation plan have not been effective in minimizing the adverse effects of an activity described in subsection (1) on the species, the person shall,
 - i. take such actions as are necessary to increase the effectiveness of those steps, or
 - ii. take such other reasonable steps as may be necessary to minimize the adverse effects of an activity described in subsection (1) on the species. O. Reg. 176/13, s. 14; O. Reg. 323/13, s. 6.

(12) The monitoring activities described in paragraph 6 of subsection (4) must be carried out by a person with expertise in the species identified in the notice of activity form submitted under subparagraph 1 i of subsection (4), using the best available information on how to carry out the monitoring activities, including information that may be available from the Ministry from time to time. O. Reg. 176/13, s. 14.

(13) A report required of a person under paragraph 7 of subsection (4) shall be completed,

- (a) annually for the first three years after the person submits a notice of activity form under paragraph 1 of subsection (4) and, thereafter, every five years; or

(b) in the case of a person who completes the preparation of a mitigation plan within the extended timelines provided for under subsection (5), annually for the first six years after the person submits a notice of activity form under subparagraph 1 i of subsection (4) and, thereafter, every five years. O. Reg. 176/13, s. 14.

(14) A report required under paragraph 7 of subsection (4) shall be in a form acceptable to the Ministry and shall be completed by March 31 that follows the end of the period in respect of which the report is prepared. O. Reg. 176/13, s. 14.

(15) A report required under paragraph 7 of subsection (4) shall,

- (a) compile information relating to the effects of the operation of the wind facility on each species identified in the notice of activity form submitted under subparagraph 1 i of subsection (4) and its habitat;
- (b) analyze the results of the information compiled under clause (a);
- (c) describe any encounters with the species that occurred while carrying out the activity; and
- (d) document the steps taken by the person to minimize adverse effects of the wind facility on each species identified in the notice of activity form submitted under subparagraph 1 i of subsection (4) and its habitat and assess their effectiveness. O. Reg. 176/13, s. 14.

(16) This section does not apply with respect to the Golden Eagle. O. Reg. 176/13, s. 14.

24.-31. REVOKED: O. Reg. 833/21, s. 2.

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