



## Legal Context

The purposes of the *Endangered Species Act, 2007* (“ESA” or “the Act”) are:

- to identify species at risk based on the best available scientific information, including information obtained from community knowledge and Aboriginal traditional knowledge;
- to protect species that are at risk and their habitats, and to promote the recovery of species that are at risk; and
- to promote stewardship activities to assist in the protection and recovery of species that are at risk.

Under section 17 of the ESA, the Minister of Natural Resources (Minister) may issue a permit to a person, with respect to one or more species at risk<sup>1</sup>, authorizing the person to engage in an activity<sup>2</sup> that would otherwise be prohibited by subsection 9(1) or 10(1) of the Act.

A permit under clause 17(2)(c) of the ESA (“overall benefit permit”) may be issued by the Minister where the following legislated requirements are satisfied:

the Minister is of the opinion that the main purpose of the activity authorized by the permit is not to assist in the protection or recovery of the species specified in the permit, but,

- (i) the Minister is of the opinion that an overall benefit to the species will be achieved within a reasonable time through requirements imposed by conditions of the permit,
- (ii) the Minister is of the opinion that reasonable alternatives have been considered, including alternatives that would not adversely affect the species, and the best alternative has been adopted, and
- (iii) the Minister is of the opinion that reasonable steps to minimize adverse effects on individual members of the species are required by conditions of the permit.

In addition to the above, subsection 17(3) of the ESA requires the Minister to consider any Government Response Statement (GRS) that has been published under subsection 11(8) of the Act with respect to the species specified in the permit before an overall benefit permit may be issued.

The Minister is not obligated to issue an overall benefit permit. As noted above, an overall benefit permit can only be issued where it is the Minister’s opinion that the legislated requirements under clause 17(2)(c) of the ESA are likely to be met through the conditions of the permit. Completion of this application does not constitute an approval to proceed with all or any part of the proposed activity. A permit holder must fulfil all of the conditions within the overall benefit permit. Failure to do so may lead to prosecution under the Act. Where a permit holder uses a third party to fulfil the conditions of the permit, the permit holder remains responsible for ensuring the permit conditions are satisfied.

Permissions, approvals or other authorizations may be required from landowners or other agencies and/or levels of government (e.g., a conservation authority, municipality, federal or provincial government, etc.) before an activity can be initiated. Additional authorizations from the Ministry of Natural Resources (MNR) may also be required for some activities (e.g., Wildlife Scientific Collectors Authorizations). Proponents are encouraged to seek the necessary input from the appropriate landowners and authorities early in the process to enhance coordination by identifying any requirements they may have. It is the proponent’s responsibility to ensure that all other permissions, approvals and authorizations are acquired prior to proceeding with the proposed activity.

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<sup>1</sup> Species at risk refers to species that receive protection under the ESA; these species are listed on the Species at Risk in Ontario (SARO) List (O.Reg. 230/08) as extirpated, endangered, or threatened, on e-laws available at: [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_080230\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_080230_e.htm).

<sup>2</sup> In the context of this form, activity is defined broadly to include all components associated with all stages of the activity including, but not limited to, site access and investigation, site preparation and construction, operation and maintenance, closure, decommissioning and completion, rehabilitation and restoration stages.

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## Purpose and Instructions

The purpose of this Avoidance Alternatives Form (AAF) is to assist the proponent with considering alternatives that would not adversely affect protected species or habitat(s). While avoidance alternatives may be discussed with the MNR throughout the preliminary screening, information gathering, activity review and assessment phases, the submission of the AAF by the proponent is required prior to applying for an overall benefit permit (i.e., prior to filling out the Application for an Overall Benefit Permit (C-PAF) under clause 17(2)(c) of the *Endangered Species Act*).

The AAF should be completed in consultation with the local MNR office. Due to the iterative nature of the permitting process, it is strongly recommended that proponents contact their local MNR office as early as possible in the planning and design phase of their activity. Proponents may choose to seek input from species experts, as appropriate, when completing this form. For additional information about this permitting process, please refer to the Endangered Species Act Submission Standards for Activity Review and 17(2)(c) Overall Benefit Permits available at: <http://www.mnr.gov.on.ca/en/Business/Species/2ColumnSubPage/244440.html>.

It is recognized that in many cases a proponent may have developed comprehensive reports that may contain information requested in this form. In such cases, the proponent can copy and paste the relevant information into the appropriate spaces provided in this form. Where proponents are copying and pasting relevant information, references to the title, author, and date of the report(s) from which the copy and paste sections originate should be included. MNR may request copies of the referenced report(s) and other related information.

Once proponents have completed the documents, they are encouraged to save them to their local hard drives, print the files for their records and click the email button to submit the form to their local MNR office.

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## 2. Consideration of reasonable alternatives

MNR will consider the information provided and assess whether or not it completely avoids adverse effects on protected species or habitat.

These alternatives may include a combination of:

- a. conducting the activity in an alternative location;
- b. using alternative methods, equipment and technical designs for carrying out the proposed activity;
- c. adjusting timelines to avoid periods when the species are present or sensitive to disturbance; and
- d. any other alternative approaches that completely avoid adverse effects (in both the short and long term) of the proposed activity on the protected species at risk or habitat present at or near<sup>3</sup> the proposed activity.

Please explain how well each alternative meets the fundamental objectives of the proposed activity in the column labelled **"Effectiveness in meeting the main purpose of the activity."**

If there are important potential limitations, such as constraints imposed by biological, technical, social or economic feasibility considerations, please explain these limitations to help inform MNR's assessment.

MNR will notify the proponent if one or more of the proposed alternatives are sufficient to entirely avoid adverse effects on protected species or habitats, or other contraventions of the ESA. Should proponents elect to proceed with one of these alternatives, they may proceed with the proposed activity without acquiring a permit.

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## Help Section

### Date this form was submitted to the local MNR office

Once this form has been submitted to the local MNR office, MNR will assess the completeness of the form. Proponents will be notified if more information is required to complete the form. When sufficient information has been submitted by the proponent, MNR will proceed in assessing and determining whether the proposed activity is likely to contravene subsection 9(1) or 10(1) of the ESA.

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<sup>3</sup> An activity is considered "near" a species at risk or its habitat if the activity is physically located within a reasonable distance from the species or habitat and there is a reasonable likelihood that the adverse effects of the activity will affect the species or extend into its habitat.