

DRAFT – FOR CONSULTATION PURPOSES

This proposal for a regulation is provided solely to facilitate public consultation in accordance with section 16 of the Environmental Bill of Rights, 1993 (EBR). Should the decision be made to proceed with the making of a regulation, comments received during consultation will be considered during the final preparation of a regulation.

The content, structure and form of any final regulation are subject to change as a result of matters such as the consultation process and further review by the Office of Legislative Counsel.

ONTARIO REGULATION

made under the

ENDANGERED SPECIES ACT, 2007

GENERAL

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INTERPRETATION

Definitions

1. In this Regulation,

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

“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”)

EXEMPTIONS APPLICABLE TO SPECIFIC SPECIES

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.

(2) Clause 9 (1) (b) of the Act does not apply until June 30, 2009 with respect to,

- (a) living or dead American ginseng that was taken from the wild in Ontario before June 30, 2008;
- (b) any part of a living or dead American ginseng that was taken from the wild in Ontario before June 30, 2008; or
- (c) anything derived from living or dead American ginseng that was taken from the wild in Ontario before June 30, 2008.

Atlantic salmon (Great Lakes population)

3. (1) Clause 9 (1) (a) of the Act does not apply to Atlantic salmon (Great Lakes population) that are caught by a person who is sport fishing in accordance with the Ontario Fishery Regulations, 2007 made under the *Fisheries Act* (Canada).

(2) Clause 9 (1) (b) of the Act does not apply to the possession or transport of a fish if, pursuant to subsection (1), clause 9 (1) (a) of the Act did not apply to the catching of the fish.

(3) Subsection 9 (1) of the Act does not apply to Atlantic salmon (Great Lakes population) that are cultured under the authority of and in accordance with an aquaculture licence under the *Fish and Wildlife Conservation Act, 1997*.

Aurora trout

4. (1) Clause 9 (1) (a) of the Act does not apply to aurora trout that are caught by a person who is sport fishing in accordance with the Ontario Fishery Regulations, 2007 made under the *Fisheries Act* (Canada).

(2) Clause 9 (1) (b) of the Act does not apply to the possession or transport of a fish if, pursuant to subsection (1), clause 9 (1) (a) of the Act did not apply to the catching of the fish.

Butternut

5. (1) Clause 9 (1) (a) of the Act does not apply to a person who kills a butternut tree if,

- (a) a person or member of a class of persons designated by the Minister has determined that the butternut tree is affected by butternut canker and is not likely to make a significant contribution to the protection or recovery of the butternut species in Ontario; or
- (b) the tree did not occur naturally but was cultivated, and the butternut tree is killed by or at the direction of the owner or occupier of the land on which the tree is located.

(2) Clause 9 (1) (b) of the Act does not apply with respect to a butternut tree that is killed pursuant to subsection (1).

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.

(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.

(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*.

(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.

Woodland caribou (forest-dwelling boreal population) — cast antlers

7. (1) Clause 9 (1) (b) of the Act does not apply to a person who is acting under the authority of and in accordance with a hides and cast antlers dealer's licence under the *Fish and Wildlife Conservation Act, 1997* with respect to antlers that dropped naturally from living woodland caribou (forest-dwelling boreal population).

(2) Clause 9 (1) (b) of the Act does not apply to a person who transports anything that, pursuant to subsection (1), the person is entitled to possess.

(3) Clause 9 (1) (b) of the Act does not apply to,

- (a) a person who takes antlers that dropped naturally from living woodland caribou (forest-dwelling boreal population) from the wild; or
- (b) a person who lawfully acquires antlers that dropped naturally from living woodland caribou (forest-dwelling boreal population) from a person who sold them pursuant to subsection (1).

OTHER EXEMPTIONS

Protection of health or safety, etc. under an Act

8. Clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person if,

- (a) the person 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) the person is engaged in an activity that is intended to,
 - (i) protect the health or safety of any human being,

- (ii) prevent or reduce serious and imminent damage to property or the environment, or
 - (iii) 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.

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; and
- (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).

(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 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 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 remains in force.
7. The owner or occupier has complied with the agreement.

(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.

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.

(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.

Hydro-electric generating stations

11. (1) With respect to a species that is 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 operating a hydro-electric generating station if all of the following criteria are met:

1. The person who operates the station has entered into an agreement with the Minister.
2. The agreement specifically provides that it applies to the species.
3. 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 the species,
 - 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 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.
4. The agreement provides for monitoring the effects of the operation of the station on the species.
5. The agreement remains in force.
6. The person who operates the station has complied with the agreement.

(2) Despite subsection (1), with respect to a species that is 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 operating a hydro-electric generating station described in subsection (3) until the third anniversary of the later of the following dates:

1. The date the species is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species.
2. The earliest date the species existed at the station.

(3) Subsection (2) applies to a hydro-electric generating station if,

- (a) construction of the station began before the later of the dates referred to in paragraphs 1 and 2 of subsection (2); or
- (b) all approvals required to begin construction of the station were obtained before the later of the dates referred to in paragraphs 1 and 2 of subsection (2).

(4) For the purpose of subsection (3), construction is deemed to have begun,

- (a) on the date on which the first contract was awarded for carrying out part or all of the construction, if any contracts were awarded for that purpose; and
- (b) on the date on which the construction started, if no contracts were awarded for carrying out part or all of the construction.

(5) Subsection (2) ceases to apply to a person with respect to a species if the person enters into an agreement with the Minister and the agreement has the characteristics described in paragraphs 2, 3 and 4 of subsection (1).

(6) Subsection (2) does not apply on or after June 30, 2009 with respect to American eels at the R. H. Saunders Station on the St. Lawrence River near Cornwall.

(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 by a person if, pursuant to subsection (1) or (2), clause 9 (1) (a) of the Act did not apply with respect to the member of the species.

Commercial cultivation of vascular plants

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 has received a written acknowledgment from the Minister that, in the opinion of the Minister, the manner in which the person cultivates the species will not jeopardize the survival or recovery of the species in Ontario;
- (c) in reaching the opinion referred to in clause (b), the Minister considered,
 - (i) the proximity of the area where the person cultivates the species to known wild populations of the species,
 - (ii) whether the cultivation of the species by the person is likely to spread disease to, or compromise the genetic integrity of, wild populations of the species, and
 - (iii) the obligation of the Minister to ensure the implementation of actions under subsection 11 (9) of the Act; and
- (d) the person cultivates the species in the manner that was considered by the Minister in reaching the opinion referred to in clause (b).

(2) Clause 9 (1) (b) of the Act does not apply to,

- (a) the purchase, sale, lease or trade by any person, or the offer by any person to buy, sell, lease or trade,
 - (i) a living or dead plant that was cultivated pursuant to subsection (1),
 - (ii) any part of a living or dead plant that was cultivated pursuant to subsection (1), or
 - (iii) anything derived from a living or dead plant that was cultivated pursuant to subsection (1); or
- (b) the possession or transport by any person of anything that the person acquired pursuant to clause (a).

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);
- (d) the person took steps to avoid catching members of the species that the incidentally trapped fish or other animal belongs to; and
- (e) 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.

(2) In the case of an incidentally caught fish, clause (1) (e) applies whether or not section 12 of the Ontario Fishery Regulations, 2007 applies to the fish.

(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.

Trapping — incidental catch

14. (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 and in accordance with 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 took steps to avoid trapping members of the species that the incidentally trapped animal belongs to;
- (d) the person reports the incidental trapping to the district manager of the Ministry within seven days; and
- (e) 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; and
- (f) the incidentally trapped animal is surrendered to the district manager of the Ministry within seven days after the report referred to in clause (d) is made, or within such longer period as may be authorized by the district manager, if the animal is dead when it is found or is killed under subclause (e) (ii).

(2) Clause 9 (1) (b) of the Act does not apply to the possession or transport of a dead animal for the purpose of surrendering it to the district manager of the Ministry under clause (1) (f).

(3) Clause (1) (f) does not apply if the district manager of the Ministry is of the opinion that not requiring the dead animal to be surrendered would not increase any risk to any living member of the species that the animal belongs to.

(4) In reaching the opinion referred to in subsection (3), the district manager of the Ministry shall consider the following matters:

1. Whether the person who incidentally trapped the animal has been convicted of any offence under the *Endangered Species Act, 2007* or any offence in respect of trapping under the *Fish and Wildlife Conservation Act, 1997*.
2. The number of other occasions in the previous five years where reports were provided under clause (1) (d) by the person who incidentally trapped the animal.
3. The steps that the person who incidentally trapped the animal took to avoid trapping members of the species that the animal belongs to.
4. Other matters that the district manager of the Ministry considers relevant.

(5) Clause 9 (1) (b) of the Act does not apply to the possession or transport of a dead animal by any person if, pursuant to subsection (3), the animal is not required to be surrendered to the district manager of the Ministry.

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.

(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.

(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.

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*.

(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*.

(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 or 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*.

(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*.

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.

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*.

(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).

(3) Subsection (2) does not prevent the purchase, sale, lease or trade of, or the offer to buy, sell, lease or trade, gametes or asexual propagules.

(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.

(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.

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*.

(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.

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.

(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.

(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.

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.

Transition — pits and quarries

22. (1) 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 operating a pit or quarry under the authority of a licence, wayside permit or aggregate permit under the *Aggregate Resources Act*, if,

- (a) the land that is subject to the licence, wayside permit or aggregate permit was, on June 30, 2008, subject to a licence, wayside permit or aggregate permit under the *Aggregate Resources Act*; and
- (b) the person entered into an agreement with the Minister that complies with subsection (3) before June 30, 2010, the agreement remains in force, and the person has complied with the agreement.

(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 operates a pit or quarry on land described in Schedule 4 to Ontario Regulation 244/97 (General) made under the *Aggregate Resources Act* if,

- (a) an application was made to the Superior Court of Justice before June 30, 2008 under subsection 12.1 (3) of the *Aggregate Resources Act* with respect to the land on which the pit or quarry is operated and,
 - (i) the application has not been finally determined, or
 - (ii) the application has been finally determined, a judgment has been issued declaring that no zoning by-law prohibits the site from being used for the making, establishment or operation of pits and quarries and,
 - (A) a licence has not yet been issued to the person under the *Aggregate Resources Act*, or

- (B) a licence has been issued to the person under the *Aggregate Resources Act* and the person is operating the pit or quarry under the authority of the licence; and
 - (b) the person entered into an agreement with the Minister that complies with subsection (3) before June 30, 2010, the agreement remains in force, and the person has complied with the agreement.
- (3) An agreement referred to in clause (1) (b) or (2) (b) complies with this subsection if,
- (a) the agreement specifically provides that it applies to the species; and
 - (b) the agreement states that,
 - (i) the Minister is of the opinion that the agreement requires the person who enters into the agreement with the Minister 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 operation of the pit or quarry 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.

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*.
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) or order made under subsection 47 (1) of the *Planning 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. 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.
8. 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 Provincial Transportation Facilities approved under the *Environmental Assessment Act* on October 6, 1999 and amended on July 14, 2000,
 - iv. 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,

- v. 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
 - vi. the Municipal Class Environmental Assessment approved under the *Environmental Assessment Act* on October 4, 2000 and amended on September 6, 2007.
9. 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*.
 10. 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.
 11. Constructing, improving or maintaining drainage works, if an agreement for the construction, improvement or maintenance was filed under subsection 2 (2) of the *Drainage Act* before June 30, 2008.
 12. Constructing, 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* before June 30, 2008.

(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 all of the following criteria are met:

1. The person who engages in the activity entered into an agreement with the Minister before June 30, 2010.
2. The agreement specifically provides that it applies to the species.
3. 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.
- 4. The agreement remains in force.
 - 5. The person who engages in the activity has complied with the agreement.
- (3) This section does not apply to the operation of a hydro-electric generating station.

Transition — forest operations in Crown forests

24. (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) (a) and subsection 10 (1) of the Act do not apply to a person who conducts forest operations under the authority of a forest resource licence granted under the *Crown Forest Sustainability Act, 1994*, if,

- (a) the applicable forest management plan includes an operational prescription for an area of concern that specifically applies to the species and the forest operations are conducted in accordance with the prescription;
- (b) the applicable forest management plan does not include an operational prescription for an area of concern that specifically applies to the species, but the plan includes a management objective that specifically applies to the habitat of the species and the forest operations are conducted in accordance with provisions of the plan that specifically apply to that habitat; or
- (c) the applicable forest management plan does not include an operational prescription for an area of concern that specifically applies to the species or a management objective that specifically applies to the habitat of the species, but the forest operations are conducted in accordance with an operational prescription for an area of concern that specifically applies to the species and that is not included in the plan, and the holder of the licence has asked the Minister to amend the plan to include the prescription.

(2) This section is revoked on June 30, 2009.

COMMENCEMENT**Commencement**

25. This Regulation comes into force on June 30, 2008.