

**Ministry of Natural  
Resources and Forestry**

Species Conservation  
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**Ministère des Richesses  
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Direction des politiques de  
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Ontario Stone, Sand & Gravel Association  
5720 Timberlea Blvd., Suite 103  
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July 29, 2015

Dear Mr. Wigdor,

We would like to once again share our appreciation for the OSSGA SAR Taskforce's input into the development of the Bank Swallow General Habitat Description under the *Endangered Species Act*. We are pleased that you are supportive of the final product. We believe that it has found a balance between protecting Bank Swallow habitat and recognizing the importance of aggregate operations in maintaining vertical faces for the species.

In response to your follow-up letter dated July 3, 2015, we offer the following reply:

- **Question:** A 50m boundary from the bank swallow colony bank face is to allow an open flyway for the birds. Temporary obstructions are permissible (permanent and semi-permanent obstructions within 50m of the colony bank face are not permitted);
  - This is correct.
- **Question:** Haul roads in front of banks with intermittent traffic including trucks and loaders are considered normal use in a pit, and are acceptable;
  - This is correct, as long as the roads are pre-existing.
- **Question:** Typical aggregate operations provide suitable open spaces for Bank Swallows and should not conflict with Category 3 GHD;
  - Indeed, open areas in aggregate sites can provide suitable foraging habitat for Bank Swallow. It is important to keep in mind, however, that whether an activity damages or destroys category 3 habitat depends upon a number of factors, including the scale of the activity and the quality of the habitat being impacted. For example, aggregate operations that cause

a small change in foraging habitat would likely not constitute damage or destruction of category 3 Bank Swallow habitat. Conversely, conversion of a large area of high-quality foraging habitat (e.g., wetland) to aggregate operation would generally not be compatible with category 3 habitat. Where an impact is likely to occur, it is recommended that producers register under the Pits and Quarries provision (O.Reg. 242/08 s. 23.14) or seek a permit under the ESA.

- **Question:** Open pit floor allows for birds to forage and should not conflict with foraging habitat;
  - Please see response above.
  
- **Question:** Provided there is no impact on slope stability of an active bank swallow colony during bird breeding season, there is no need to register;
  - Please refer to the list of compatible and incompatible activities in the general habitat description for Bank Swallow.
  
- **Question:** If in the prior year there were no bank swallows nesting in the site, there is no need to provide habitat moving forward, nor to register the site for final rehabilitation.
  - This is correct.
  
- **Question:** Per the Occupational Health and Safety Act, if the pit or quarry is intended to return to production, the area would be considered active and would not require sloping. Alternatively, the producer could cordon off the area to prevent access.
  - This is our general understanding of the options based on communications with Ministry of Labour (MOL) policy staff. Please note, this does not constitute legal advice, and whether or not an activity appropriately complies with OHSA may depend on site-specific factors. Producers should speak to an OHSA representative on a case-by-case basis if unsure whether or not they are in compliance with OHSA.

Producers are legally required to rehabilitate their site in accordance with the *Aggregate Resources Act* and the presence of Bank Swallow does not eliminate this requirement. There is, however, also a legal requirement to avoid harming or harassing species at risk or damaging or destroying their habitat under the ESA. If Bank Swallows or their habitat are in the vicinity of an area to be rehabilitated, a producer may contact the local MNRF office or species expert to discuss how impacts can be avoided during rehabilitation. If the impacts cannot be avoided, a producer will need to obtain

approvals under the ESA in order to meet their rehabilitation obligations and the requirements of the ESA. This could include registering under ESA Ontario Regulation 242/08 section 23.14 pits and quarries provision.

The pits and quarries provision enables an aggregate producer to contravene the ESA prohibitions, provided they register and follow the stringent conditions, including minimizing adverse effects and the development of a mitigation plan. In this case, a mitigation plan may include how the habitat will be rehabilitated (even if it is being rehabilitated to unsuitable Bank Swallow habitat) and the reasonable steps that will be taken to minimize adverse effects (e.g., timing restrictions).

Thank you once again for your input and commitment to protecting species at risk in Ontario.

Sincerely,

Glenn Desy  
A/Coordinator  
Species at Risk Recovery Section  
Species Conservation Policy Branch, MNRF

cc. Cynthia Robinson, OSSGA  
John Buhlman, Chair, OSSGA SAR Taskforce  
Pauline Desroches, MNRF  
Amy Mouganel, MNRF  
Stephen Casselman, MNRF