



ORDER SUMMARY



Critical Habitat of the Cerulean Warbler (*Setophaga cerulea*) Order

The objective of the [Critical Habitat of the Cerulean Warbler \(*Setophaga cerulea*\) Order](#) (the Order) is to support the survival and recovery of the Cerulean Warbler through the legal protection of its critical habitat on federal land in Quebec.

The Order was made under section 58 of the *Species at Risk Act* (SARA). It came into force on May 6, 2022 and applies to all the critical habitat of the Cerulean Warbler identified in the [Recovery Strategy for the Cerulean Warbler \(*Setophaga cerulea*\) in Canada](#) (2021) that is located on federal properties¹.

This Order applies to approximately 800 hectares of Cerulean Warbler critical habitat that is found in three contiguous federal properties located in the Gatineau Park, Quebec and is administered by the National Capital Commission (NCC). The three federal properties on which Cerulean Warbler critical habitat is found are identified as follows:

- [DFRP 1632](#):² 1810 chemin de la Montagne
- [DFRP 2139](#): Rangs 6 to 13, Canton d'Eardley
- [DFRP 4333](#): Rangs 8 to 12, Canton de Hull

An overview map of the Cerulean Warbler's critical habitat area, including federally owned lands, is provided in Figure 1 below.

¹ With the exclusion of lands found (a) in a place referred to in subsection 58(2) of the Act; or (b) found on a reserve or any other lands that are set apart for the use and benefit of a band under the *Indian Act*.

² DFRP refers to [Directory of Federal Real Property](#), the core real property system of the federal government. It contains Common real property data for 72 custodian organizations including the National Capital Commission (NCC).

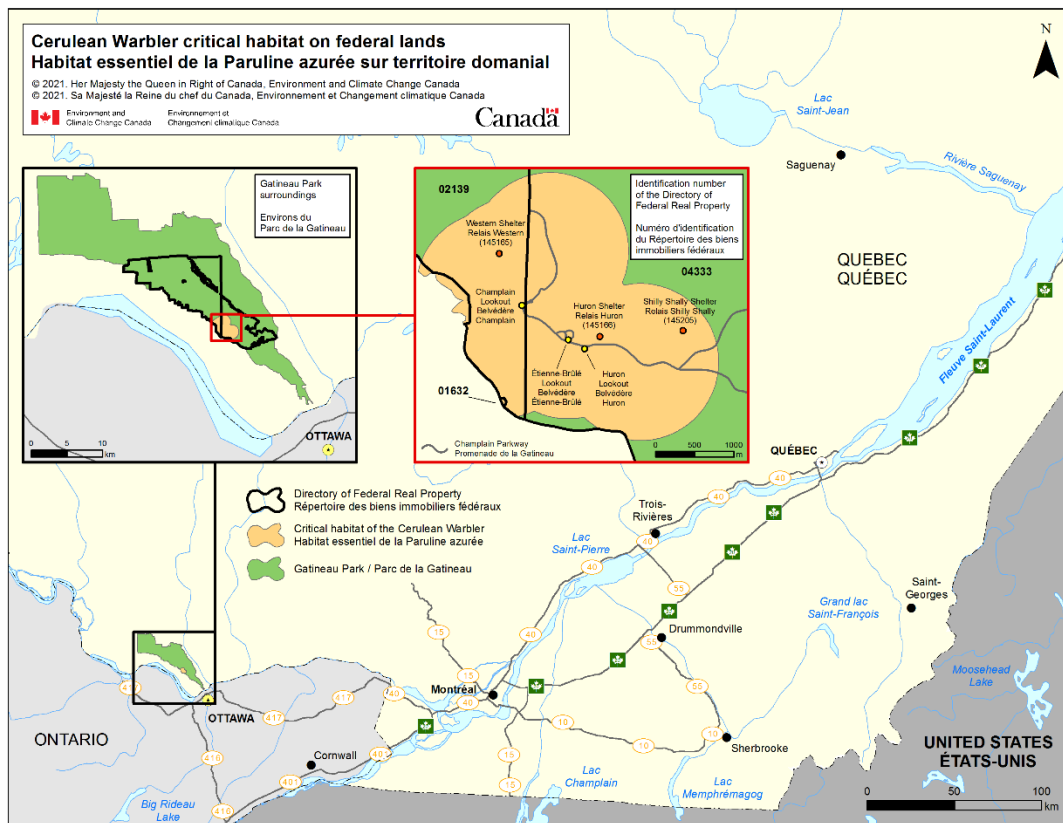


Figure 1. The map shows the Cerulean Warbler’s critical habitat on federal Crown lands in Quebec.

Cerulean Warbler’s Description

The [Recovery Strategy for the Cerulean Warbler \(*Setophaga cerulea*\) in Canada](#) (2021) describes the species as a small (11.5 cm in length, 8-10.5 g in weight) songbird in the wood-warbler family that breeds in the deciduous forests of eastern North America but has a patchy distribution. Adult males are sky blue on top and white below, while adult females are blue-green above and whitish below. Both sexes have white wing-bars and white tail spots.

In Canada, the Cerulean Warbler’s breeding grounds consist of two main clusters in southeastern and southwestern Ontario, mainly within the Frontenac Axis region. A small number of breeding individuals are also found in southwestern Quebec. The Cerulean Warbler winters in the eastern Andes of South America, from Venezuela to northwestern Bolivia.

Status of the species and prohibitions under SARA

In 1993, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) assessed the Cerulean Warbler as special concern. In 2005, its status was re-examined, confirmed, and the Cerulean Warbler was subsequently listed as special concern under SARA. Its status was later reassessed as endangered by COSEWIC in 2010. The Cerulean Warbler was then listed as endangered on Schedule 1 of SARA in 2017.



The Cerulean Warbler is protected by the general prohibitions under [section 32 \(individuals\)³ and section 33 \(residences\) of SARA](#) when it is on federal lands. Therefore, on these lands, it is prohibited to:

- kill, harm, harass, capture or take an individual (e.g. a specimen of the Cerulean Warbler); and
- possess, collect, buy, sell or trade an individual (e.g. a specimen of the Cerulean Warbler) or any part or derivative of such; and
- damage or destroy the residence of the Cerulean Warbler.

Further, the Cerulean Warbler is a migratory bird afforded protection under the *Migratory Birds Convention Act, 1994* (MBCA). The MBCA applies to all activities by individuals, industries and organizations, and is applicable in all of Canada and its exclusive economic zone. As such, it is prohibited to:

- disturb, destruct or take any migratory bird, its nest, eggs or nest shelter; and
- possess, trade, or exchange a migratory bird (alive or dead), its nest or eggs.

The Cerulean Warbler is also listed as threatened under Ontario's *Endangered Species Act, 2007* and as threatened under Quebec's *Loi sur les espèces menacées ou vulnérables*. The species benefits from protection under both pieces of provincial legislature.

Critical habitat

The [Recovery Strategy for the Cerulean Warbler \(*Setophaga cerulea*\) in Canada](#) (2021) partially identified critical habitat for the species. Critical habitat for Cerulean Warbler in Canada includes the habitat patch required to carry out breeding activities as well as the surrounding 1 km radius of forest habitat. A schedule of studies has been developed to provide the information necessary to complete the identification of critical habitat.

Critical habitat is identified where the following biophysical attributes occur⁴:

- **Breeding Habitat** (includes courtship, territory defence, nesting and foraging)
 - deciduous forest with the following characteristics:
 - presence of large diameter (i.e. $\geq 38\text{cm}$); and
 - basal area $\geq 23 \text{ m}^2 / \text{ha}$; and
 - presence of canopy gaps (gaps typically 40 to 100 m^2 , at densities of approximately 1 per 0.5 ha).
- **Landscape Forest Matrix**
 - deciduous, mixed or coniferous forest.

This critical habitat protection order applies to the identified critical habitat of the Cerulean Warbler that is found on federal land, approximately 800 hectares of land in the Gatineau Park in Quebec, administered by the NCC. A portion of the critical habitat for this species is also identified in the Philipsburg Migratory Bird

³ An individual of a wildlife species, whether living or dead, at any developmental stage and includes larvae, embryos, eggs, sperm, seeds, pollen, spores and asexual propagules.

⁴ Biophysical attributes are grouped into 1) Breeding Habitat and 2) Landscape Forest Matrix, both of which support local breeding populations of the Cerulean Warbler.



Sanctuary in Quebec, which is described in part V of the schedule to the *Migratory Bird Sanctuary Regulations*. Since this portion of the critical habitat is in a protected area referred to in subsection 58(2) of SARA (a migratory bird sanctuary), protection of this portion of critical habitat under this Order is not necessary. Critical habitat of the Cerulean Warbler is also found on federal properties along the Rideau Canal National Historic Site, notably on two sites at Morton Dam and Jones Falls. The properties, administered by Parks Canada Agency, are excluded from this Order as Indigenous consultations are still in progress but will be addressed once consultations are complete.

Activities likely to result in the destruction of critical habitat

The Order applies the prohibition against the destruction of critical habitat, as set out in subsection 58(1) of SARA, to the critical habitat of the Cerulean Warbler on federal lands. The Recovery Strategy for the species describes the types of activities that would likely result in the destruction of critical habitat, and how those activities, if undertaken, could destroy suitable habitat.

Examples of these activities include, but are not limited to:

- removal of forested areas (e.g. development, road construction, clearing for agriculture, etc.);
- forest harvesting that results in unsuitable forest/stand conditions;
- removal of large-diameter deciduous trees (i.e. trees ≥ 38 cm DBH); or
- creation/maintenance of edge habitat within forests via creation or maintenance of trails, skid roads, utility line construction etc. that results in unsuitable forest/stand conditions.

Applying for an agreement or a permit under SARA

If you plan to undertake activities on the federal land to which the Order applies, and those activities could affect the Cerulean Warbler or destroy any part of its critical habitat, then you will need to apply to Environment and Climate Change Canada for an agreement or permit under section 73 of SARA.

The agreement may be entered into, or the permit may be issued, only if the competent minister is of the opinion that:

- the activity is scientific research relating to the conservation of the species and conducted by qualified persons;
- the activity benefits the species or is required to enhance its chance of survival in the wild; or
- affecting the species is incidental to the carrying out of the activity.

The competent minister must also be of the opinion that the following pre-conditions have been met:

- all reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted;
- all feasible measures will be taken to minimize the impact of the activity on the species or its critical habitat or the residences of its individuals; and
- the activity will not jeopardize the survival or recovery of the species.



To apply for a permit, please refer to the [Species at Risk Permit System](#).⁵

Offences and punishment under SARA

[Enforcement officers](#) designated under SARA may conduct inspections, investigations and search and seizure operations to verify compliance with the law. In the event of a contravention of the Act, SARA provides for penalties, including liability for costs, fines or imprisonment or both, alternative measures agreements, seizure and forfeiture of things seized or of the proceeds of their disposition. For example, under the penalty provision of the Act, a corporation, other than a non-profit corporation found guilty of an indictable offence, could found liable to a maximum fine of \$1,000,000.

For more information

Cerulean Warbler information and recovery documents are available on the [Cerulean Warbler Species profile page](#), on the [Species at Risk Public Registry](#). For more details on SARA and how it may apply to you, please visit the [Species at Risk Education Centre](#).

WARNING

This Order Summary and any documents it refers to are intended to provide general guidance only with respect to the [Critical Habitat of the Cerulean Warbler \(*Setophaga cerulea*\) Order](#). These documents are not a substitute for the Species at Risk Act (SARA). In the event of any inconsistency between this document, its accompanying documents and the Act, SARA prevails. The official legal publication of the Species at Risk Act can be found on the [Justice Laws Website](#). Individuals with specific legal concerns are urged to seek advice from their legal counsel.

⁵ For more information on how to apply for a permit, please consult the [Species at Risk Act \(SARA\) permits and agreements webpage](#).