

# CHAPTER 31

## The Species at Risk Act and recovery planning

*Tamee Mawani, Don Lawseth and \*Carole Eros, Species at Risk Program,  
Fisheries and Oceans Canada, Vancouver, BC, Canada*

*\*Presenter - Carole Eros, Coordinator, Species at Risk Recovery Planning, Fisheries and Oceans  
Canada, Suite 200-401 Burrard St., Vancouver, BC, V6C 3S4 Canada*

---

### Abstract

Canada's Strategy for the Protection of Species at Risk is three-fold: the Federal-Provincial Accord for the Protection of Species at Risk, the Habitat Stewardship Program of Canada, and the Species at Risk Act. Each element provides a part of the foundation for this strategy. The Canadian Species at Risk Act (SARA) is the first of its kind to provide legal protection for species and their habitats and aims to protect wildlife at risk in Canada from becoming extinct or lost from the wild, with the ultimate objective of helping their numbers to recover. The Act has five key elements, a species status assessment process by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) and response to the status designation by the responsible Minister, a formal legal listing process for species designated by COSEWIC under SARA, immediate protection measures upon species being listed under SARA, a recovery planning process including the development of recovery strategies, action plans and management plans, and stewardship. A fundamental component of the Act is the requirement for transparency and public participation in the decision-making processes throughout the various elements of the Act.

### Introduction

The Species at Risk Act (SARA) came into force on June 5, 2003, bringing to a close a nine-year legislative process to protect Canada's species at risk and their habitats. The Act was introduced in a phased approach with several provisions coming into force as of June 5, 2003, while others will come into force in June 2004. SARA is one of three elements of the government's Strategy for the Protection of Species at Risk. Other elements include the Federal/Provincial Accord for the Protection of Species at Risk and Stewardship initiatives.

Under the Federal-Provincial Accord for the Protection of Species at Risk the Government of Canada works with provinces and territories on a common approach to protecting species at risk. This includes complementary legislation and programs to protect habitat(s) and species. Stewardship, the other key component of the federal strategy, is a cornerstone of the Government of Canada's approach to species protection. One such initiative is the federal government's Habitat Stewardship Program for Species at Risk which funds projects that support habitat conservation and stewardship.

The Species at Risk legislation ensures that species designated by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) are assessed under a rigorous and independent scientific process that operates at arm's length from the federal government. It also requires the development of recovery strategies and action plans for species that are found to be most at risk. The Act also recognizes the essential role of Aboriginal Peoples in the conservation of wildlife by requiring the establishment of a National Aboriginal Council on Species at Risk and an Aboriginal Traditional Knowledge sub-committee of COSEWIC.

The three federal departments responsible for implementing SARA are Environment Canada, Fisheries and Oceans Canada (DFO) and Parks Canada, with Environment Canada being responsible for the overall coordination of the Act. This approach respects that the authority for species management lies with the responsible jurisdictions but also recognizes that successful protection and recovery needs to be a collaborative approach between all three ministers. DFO is responsible for protecting and recovering aquatic species and their habitats listed under SARA.

The key responsibilities of DFO are to enforce the Act, provide technical support to the species assessment phase, initiate the development of recovery strategies and action plans for *endangered* and *threatened* species, and develop management plans for species listed as *special concern*. DFO will also, in cooperation with other governments, First Nations and interested parties, carry out on-the-ground species recovery work.

Canada has long been waiting for such an Act to be created in order to protect the intrinsic value of our multitude of species. This paper introduces the key elements of Canada's Species at Risk Program, and how species are assessed and designated as being at a particular level of risk.

### **The legislation**

The purposes of the Act are to prevent Canadian wildlife from becoming extirpated or extinct, to provide for the recovery of *endangered* or *threatened* species, and to manage species of *special concern* to prevent them from becoming endangered or threatened. Designation of species status occurs through COSEWIC. Significantly, the Act serves to protect species and their habitat(s) by creating prohibitions preventing the killing or harming of the listed wildlife species. Compensation may be provided at the Minister's discretion for losses incurred by any extraordinary impact of protecting critical habitat. This will be subject to regulations which have yet to be developed.

A fundamental element of the Act is transparency. The Minister of the Environment is required to post SARA-related documents and decisions on a public registry. The web-based public registry ([www.sararegistry.gc.ca](http://www.sararegistry.gc.ca)) acts as a comprehensive source of information relating to matters under the Act. The public registry serves as a key instrument in fulfilling the government's commitment to encourage public participation in environmental decision-making by providing timely and comprehensive access to public documents relating to the administration of SARA.

The main elements of the SARA include science-based species assessments, response statements, a legal listing process, immediate species protection, recovery and management planning, stewardship measures, and enforcement.

### **Species assessment and response statements**

COSEWIC ([http://www.cosewic.gc.ca/eng/sct5/index\\_e.cfm](http://www.cosewic.gc.ca/eng/sct5/index_e.cfm)) is the body responsible for designating status to species according to the degree of risk of extinction. It has 28 members all appointed by the federal Minister of the Environment. Membership consists of thirteen provincial/territorial representatives, four federal government representatives (Environment Canada, Fisheries and Oceans, Parks Canada, Federal Biosystematics Partnership), representatives from the eight Species Specialist Sub-

Committees (SSC), and 3 representatives “at large” chosen through a public nomination process. The eight SSC’s are responsible for the production and revision of status reports for plants, freshwater fish, marine fish, molluscs, terrestrial mammals, marine mammals, birds, and reptiles. DFO interacts with, at minimum, the Marine Mammal, Marine Fish, Molluscs, Aboriginal Traditional Knowledge (ATK) and Freshwater Fish SSCs. The ATK sub-committee is responsible for ensuring that Aboriginal Traditional Knowledge is incorporated into COSEWIC’s assessment process. Species to be assessed/re-assessed are selected from priority candidate species lists based on information from jurisdictions, non-governmental organizations (NGOs), or from suggestions made by taxonomic specialists. Species are assigned a level of priority based on the perceived degree of risk, and are collated to comprise the SSC candidate species. Status Reports are then commissioned by COSEWIC through an open bidding process. The status assessment is based on biological factors and uses rigorous assessment criteria. COSEWIC usually meets twice a year (May and November) to assess status reports, release species designation decisions and publish species status reports. There are six status designations: *extinct*, *extirpated*, *endangered*, *threatened*, *of special concern* or *not at risk*.

Following the bi-annual meetings, COSEWIC reports on its designations to the Canadian Endangered Species Conservation Council (CESCC), and issues a press release indicating the results of decisions made at the meeting. The CESCC is a multi-jurisdictional body, composed of federal ministers of Environment Canada, Fisheries and Oceans Canada and Parks Canada, and provincial and territorial wildlife ministers. Upon receipt of the COSEWIC assessment the Minister of Environment must, within 90 days, post a Response Statement on the public registry, for each species designated by COSEWIC as *extirpated*, *endangered* and *threatened*. The Response Statement describes the reasons for designation by COSEWIC, key threats to the species, current protection or recovery measures, and it identifies lead jurisdictions for the species.

### **Legal listing**

A species designated by COSEWIC has not received the protection and recovery measures that SARA contains until the species is legally listed under the Act (i.e., added to Schedule 1). The decision to add a species to SARA is the responsibility of the Governor-in Council (GIC), a special cabinet committee. Specifically, the federal GIC, on the recommendation of the Minister of the Environment has nine months to:

1. Accept the assessment and add the species to the legal list under SARA;
2. Decide not to add the species to the legal list; or
3. Refer the matter back to COSEWIC for further information or consideration.

While the final recommendation to the GIC comes from the Minister of Environment, as far as aquatic species are concerned, in practice, the Minister of Fisheries and Oceans would provide a recommendation to the Minister of Environment. Should the GIC fail to take one of these three courses of action within nine months, the Minister of Environment will be required to list the species by order, as assessed by COSEWIC. Once a species is legally listed by the GIC it receives immediate protection and mandatory timelines for recovery strategy development.

### **Protection**

Once species are legally listed under SARA as *extirpated*, *endangered* or *threatened*, automatic prohibitions will apply to the species and their residences and critical habitat (if identified). The prohibitions in the Act pertaining to protection state include “No person shall kill, harm, harass, capture or take an individual of a wildlife species that is listed as an extirpated, endangered or threatened species...” (Section 32.1), and “No person shall damage or destroy the residence of one or more individuals of a wildlife species that is listed as endangered, threatened or extirpated...” (Section 33).

The Act authorizes the responsible minister to enter into an agreement with, or issue a permit to, a person to engage in activities that may affect a listed species, its critical habitat or residence under certain conditions (Section 74). However, this provision can only be used if certain conditions, as set out in Section 73.2 are satisfied. These conditions include:

- a) the activity is scientific research relating to the conservation of the species and conducted by qualified persons;
- b) the activity benefits the species or is necessary to enhance its chance of survival in the wild; or
- c) the activity affecting the species is incidental to carrying out the activity. In this case, authorizations will only occur if the Minister is of the opinion that:
  - all reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best alternative has been adopted, based on scientific, technical and socio-economic considerations;
  - all feasible measures will be taken to minimize the impact of the activity on the species or its critical habitat or the residence of its individuals; and
  - the activity will not jeopardise the survival and recovery of the species.

Issuance of a permit is subject to a formal assessment to determine whether the conditions above have been met.

### **Recovery**

Recovery planning under the SARA legislation consists of two components – a recovery strategy and an action plan. If a wildlife species is listed as *extirpated*, *endangered* or *threatened* under the Act, then the minister must prepare a recovery strategy and an action plan for the species. For species of *special concern*, a management plan must be prepared.

Recovery strategies and action plans must be updated every five years until the species is considered recovered. Generally, recovery teams are established by DFO to provide advice to the responsible minister, in the form of a recovery strategy, on how to recover the species. Recovery teams can be comprised of, but not limited to, technical experts, partners including First Nations, provincial and municipal governments, and other experts that can contribute to or advise on recovery efforts. The Act states that a recovery strategy should contain:

- a) a description of the species and its needs that is consistent with information provided by COSEWIC;
- b) an identification of the threats to the survival of the species and threats to its habitat that is consistent with information provided by COSEWIC, and a description of the broad strategy to be taken to address those threats;
- c) an identification of the species' critical habitat, to the extent possible, based on the best available information, including the information provided by COSEWIC, and examples of activities that are likely to result in its destruction; a schedule of studies to identify critical habitat, where available information is inadequate;
- d) a statement of the population and distribution objectives that will assist the recovery and survival of the species, and a general description of the research and management activities needed to meet those objectives;
- e) any other matters that are prescribed by the regulations;
- f) a statement about whether additional information is required about the species; and
- g) a statement of when one or more action plans in relation to the recovery strategy will be completed.

Upon completion of the recovery strategy, the competent minister is required to include the proposed recovery strategy in the public registry. This provides the public with an opportunity to file written comments with the minister within 60 days. Following the expiry of the 60 days the minister is required, within 30 days, to consider any comments received, make appropriate changes and include a final copy in the public registry.

Development of an action plan will flow from the recovery strategy which sets out how the recovery strategy will be implemented. The Act also states what must be included in an action plan:

- a) an identification of the species' critical habitat, to the extent possible, based on the best available information and consistent with the recovery strategy, and examples of activities that are likely to result in its destruction;
- b) a statement of the measures that are proposed to be taken to protect the species' critical habitat;
- c) an identification of any portions of the species' critical habitat(s) that have not been protected;
- d) a statement of the measures that are to be taken to implement the recovery strategy, including those that address the threats to the species and those that help to achieve the population and distribution objectives, as well as an indication as to when these measures are to take place; the methods to be used to monitor the recovery of the species and its long-term viability;
- e) an evaluation of the socio-economic costs of the action plan and the benefits to be derived from its implementation.

As with the recovery strategy, the competent minister must also include a copy of the action plan in the public registry.

In anticipation of the Act coming into force, DFO has completed a recovery strategy for Northern abalone, and has several in progress including recovery strategies for the North Pacific right whale, sea otter, sticklebacks and the Pacific leatherback turtle, as well as action plans for Northern abalone and Pacific leatherback turtle. Several others have been identified as next in priority for recovery strategy development, including three populations of Pacific salmon, Southern and Northern resident killer whale populations, Salish sucker and Nooksack dace.

### **Schedules and timelines**

There are four lists of species in the Act, Schedules 1, 2 and 3 and 'Newly Listed', each with different timelines for protection and the development of recovery strategies.

Schedule 1 (the SARA 'legal list') lists all species for which SARA now applies. These species will be subject to automatic prohibitions as of June 2004 and require the development of recovery strategies within specified timelines. From the date the Act came into force (June 2003) recovery strategies must be developed for species on Schedule 1 within three years for *endangered* species and four years for *threatened* and *extirpated* species, and a management plan must be developed within five years for species *of special concern*.

Schedule 2 includes all endangered and threatened species on the COSEWIC list that have not yet been assessed against the new International Union for the Conservation of Nature (IUCN) criteria. Once COSEWIC reassesses these species and designates a status, these species will go through a normal regulatory legal listing process.

Schedule 3 contains species *of special concern* that are on the COSEWIC list but have yet to be reassessed. However, there is no automatic requirement for COSEWIC to reassess these species.

Newly Listed Species are those species that have been assessed or re-assessed by COSEWIC since May 2002 (after the Act was introduced to the House of Commons, but before the Act came into force). Therefore, these species are not yet legally listed in Schedule 1 of SARA and are required to go through a normal regulatory listing process. Once legally listed, the development of recovery strategies and/or management plans will be required within one year for *endangered* species, two years for *threatened* species and three years for species *of special concern*.

### **Salmon listings in BC**

Currently COSEWIC has designated three salmon populations in the Pacific. These species are considered newly listed and include: Interior Fraser coho, Sakinaw Lake sockeye, and Cultus Lake sockeye. Interior Fraser coho were designated as endangered by COSEWIC in May 2002. Both the Sakinaw and Cultus Lake sockeye populations were designated as *endangered* by emergency listing in October 2002. COSEWIC confirmed both designations in May 2003. Listing of the two separate sockeye populations is possible under SARA because COSEWIC considered each to be a “wildlife species”, which under SARA is defined as: a species, subspecies, variety or geographically or genetically distinct population...” (Section 2).

Fisheries and Oceans Canada has identified the three COSEWIC-designated populations of salmon as a priority for recovery planning and is anticipating the completion of recovery strategies by early 2005. Recovery teams will be established for each of the three salmon populations to provide technical expertise required to develop the recovery strategies. The recovery planning process will work in cooperation and consultation with a diverse range of interests and partners including First Nations, municipal, provincial and regional governments.

### **Conclusion**

The Species at Risk Act provides a framework for actions across Canada to ensure the survival of wildlife species and the protection of our natural heritage. This Act represents a milestone in that it provides legal protection for species, puts stewardship at the forefront of recovery initiatives, and establishes penalties for failure to obey the law. Together, we can work to ensure the ongoing survival of species by using the Act as a tool in our joint efforts for conservation.