



ASSEMBLY OF FIRST NATIONS
Species at Risk Act Survival Guide

March, 2009



Reference Guide to *Species At Risk Act* Toolkit

Introduction	3
Jurisdiction	4
Recognition of Aboriginal Peoples	4
Implementation of SARA	6
Flow chart	
The SARA Listing Process	7
Assessments Under SARA	
1. The COSEWIC selection process	
2. Setting priorities	
3. The COSEWIC status Report	
4. Assessment of Wildlife Species	
SARA Timelines For Species Listing	9
Step 1. Assessment and Classification	
Step 2. Listed species as Extirpated, Endangered, Threatened SARA Exceptions	
Step 3. Management or Recovery Plans for Listed Species	
SARA and Recovery of Extirpated, Endangered, Threatened Species	13
Critical Habitat Protection	16
The Process for De-listing a SARA Species	16
ATK and SARA	16
First Nations and Public Involvement in SARA	18
Habitat Stewardship For SARA	19
Funding opportunities	
SARA and Aboriginal Land Claim Authorities	20
SARA and Compensation	20
SARA Regulations	21
Enforcement of SARA	24
Reports and Reviews of SARA	24



Introduction

The *Species at Risk Act (SARA)* is Canada's response, as signatories, to the Convention on Biological Diversity (CBD). The *Species at Risk Act (SARA)* came into full force in June 2004 and is legislation to protect, recover and to ensure the sustainable management of wildlife in Canada.

The purpose of *SARA* is to:

“prevent wildlife species from being extirpated or becoming extinct, to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity and to manage species of special concern to prevent them from becoming endangered or threatened” SARA s. 6

This protection of wildlife and its habitat is provided in *SARA* sections 32 & 33:

“No person shall kill, harm, harass, capture or take an individual of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species” SARA s. 32(1)

“No person shall damage or destroy the residence the residence of one or more individuals of a wildlife species that is listed as an endangered species, or a threatened species, or that is listed as extirpated species if a recovery strategy has recommended the reintroduction of the species into the wild of Canada” SARA s. 33

These are the cores sections of *SARA* and are the triggering elements of the Act. This Toolkit will assist you and your community through the *SARA* listing process and how it can impact your community or how your community can use *SARA* to protect species.

Endangered, extirpated or threatened species are listed by the federal government in Schedule 1 of *SARA*. Section 120 of *SARA* requires the creation of a public registry to provide information on the act. A complete list of protected species and related information on *SARA* can be obtained from Environment Canada or from the *SARA* registry at:

www.sararegistry.gc.ca



The Jurisdiction of SARA

SARA is a federal act that applies to federal lands and to federal jurisdictions, such as reserves lands and would include fisheries and oceans. The *Species At Risk Act* is one pillar in a three-pillar national strategy intended to protect wildlife species deemed to be at risk, and to protect their critical habitats. The other two pillars of the national strategy are the *Accord for the Protection of Species at Risk* and the *Habitat Stewardship Program for Species at Risk* (see page for more information)

Under SARA s. 34(1) the Minister can recommend to the Governor in Council that SARA protection and prohibitions provided in Sections 32 and 33, can apply **to non federal lands** if the Minister is of the opinion that the laws of the province or territory do not adequately protect a species or its habitat.

SARA s. 34(1) provides a **safety net for species protection** not on federal lands. First Nations can invoke this section if species are not protected on adjacent provincial lands by writing to the Minister of Environment. First Nations are encouraged to use this section to protect species that are not on reserve lands and fall under provincial jurisdiction. . To invoke this section write to the Minister with your concerns regarding species protection on adjacent provincial or territorial lands. A sample letter is provided in this guide.

The Honourable Jim Prentice
Minister of the Environment
Les Terrasses de la Chaudière
10 Wellington Street, 28th Floor
Gatineau, Quebec
K1A 0H3

Contact the Minister at:

Tel.: 819-997-1441

Fax: 819-953-0279

Email: Minister@ec.gc.ca



Recognition of Aboriginal Peoples in SARA

The *Species at Risk Act (SARA)* for the first time recognizes the special relationship and acknowledges the valuable role Aboriginal people can play in the recovery and protection of species at risk. The preamble recognizes this important role and states:

“the traditional knowledge of the aboriginal peoples of Canada should be considered in the assessment of which species may be at risk and in developing and implementing recovery measures”

This recognition, while historic, must not be without warning, as a potential infringement to Aboriginal rights and treaty rights may exist. The prohibitions under *SARA* aimed at protecting species and critical habitat, under sections 32 & 33, can impose limitations on hunting, gathering, fishing, kinship gatherings, knowledge transfers, and other related cultural or spiritual practices relating to observance, offerings or memorial services.

SARA also provides for the establishment of two committees by Environment Canada that are significant to First Nations:

1. Section 8.1 creates the *National Aboriginal Council on Species at Risk (NACOSAR)*. NACOSAR will advise the Minister of the Environment on the administration of *SARA* and provide advice and recommendations to the Canadian Endangered Species Conservation Council.

If your community would like to provide information or find out more about the Council you can write to:

The National Aboriginal Council on Species At Risk
c/o Canadian Wildlife Services
Environment Canada
Ottawa Ontario K1A 0H3

NACOSAR is in the process of developing a website to provide information on the Council's role and mandate and allow First Nation communities the ability to provide information to the council.



2. Section 18(1) creates the *Aboriginal Traditional Knowledge Subcommittee on Species at Risk, of the Committee on the Status of Endangered Wildlife in Canada (COSEWIC)*. The Aboriginal Traditional Knowledge Sub-Committee (ATK-SC) provides expertise on Aboriginal Traditional Knowledge (ATK) in conducting COSEWIC assessments and reports, and to assist in the incorporation of this knowledge into COSEWIC's species status assessment and classification processes. The role of the ATK-SC can be critically important to First Nations in ensuring that First Nations have had an opportunity to be:

- Informed of a species being assessed;
- Consider the societal purposes of species (sustenance, societal, spiritual etc);
- Convey information based upon findings to support COSEWIC assessment
- Establish interest in species and the future of species; and
- Consider the socio-economic benefits and impacts in preparation for future SARA processes (*strategy planning, action plans, regulations, enforcement re-assessment etc*)

COSEWIC (The committee on the Status of Endangered Wildlife in Canada) is an independent committee of wildlife experts and scientists from federal, provincial and territorial governments, universities, and non-government organizations. COSEWIC meets annually to review status reports on species suspected of being at risk and provides assessments to government and the public. The primary purpose of this Committee is to provide Canadians and their governments with advice regarding the status of species that are nationally at risk of extinction or extirpation, threatened or of special concern.

Exceptions are provided for medicinal and ceremonial uses of a species protected under SARA by an Aboriginal person under s. 83(5)b if:

“it is used by an Aboriginal person for ceremonial or medicinal purposes, or it is part of a ceremonial dress used for ceremonial or cultural purpose by an Aboriginal person” SARA s. 83(5)b

If your community would like more information on the ATK Subcommittee you can go to the following website:

http://www.cosewic.gc.ca/eng/sct6/index_e.cfm

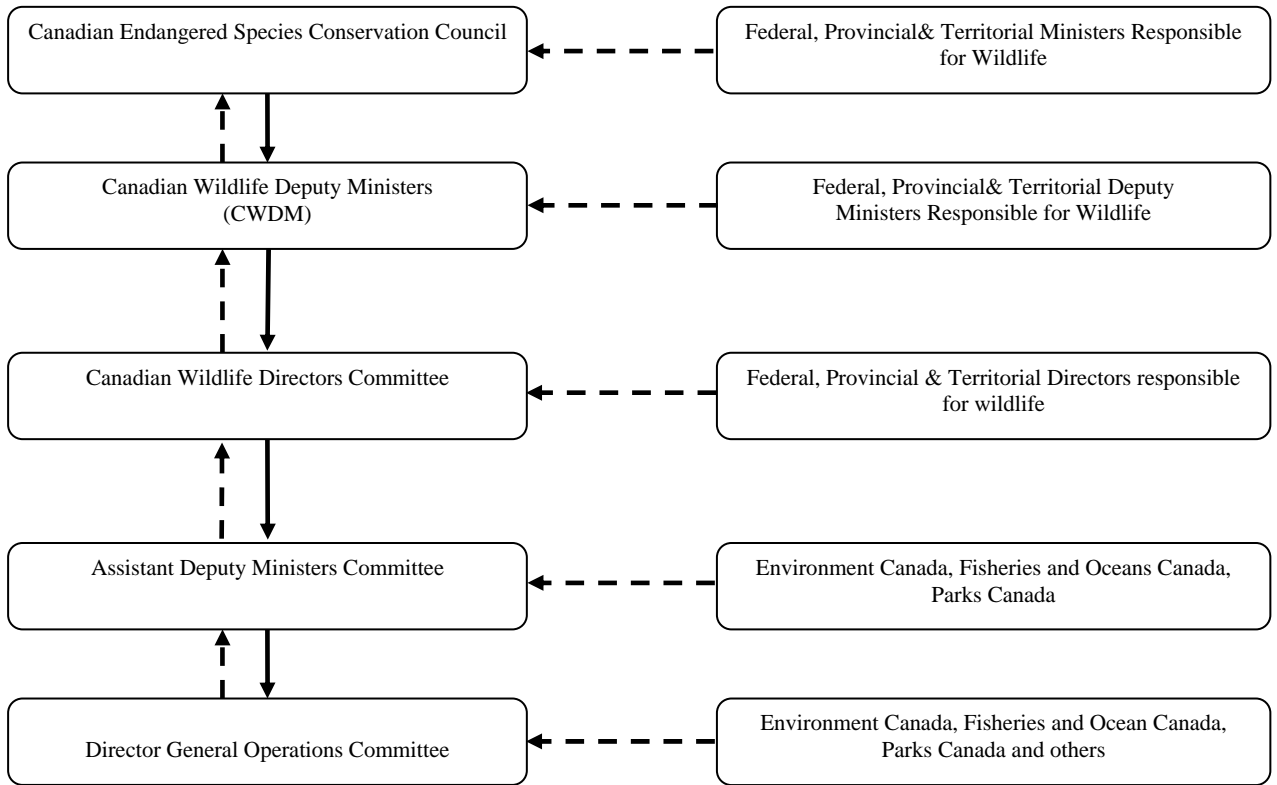


Implementation of the *Species At Risk Act* Flow Chart

Under *SARA* the Minister of Environment is responsible for the administration of the Act and where the Act gives responsibility to another Minister that includes:

- Environment Canada
- Fisheries and Oceans Canada
- Parks Canada Agency
- Indian and Northern Affairs Canada under *SARA* s. 59(5) & 71(2)

The Governor in Council (GIC) is the federal cabinet. The GIC makes a number of important decisions under *SARA* that includes the listing of species once an assessment is received.



The *Canadian Endangered Species Conservation Council* (CESCC), created under *SARA* s. 7, is responsible for providing general direction to COSEWIC. The CESCC is made up of federal Ministers of Environment, Fisheries and Oceans, and Heritage, and provincial and territorial ministers with responsibilities for wildlife species. CESCC also serves as a forum for resolving any disputes that may arise out of implementation of the *Accord for the Protection of Species at Risk*.



Government policy and technical support are provided to CESCC by:

- Deputy Ministers' Committees (DMC) responsible for oversight and direction,
- Assistant Deputy Ministers' Committee (ADMC) responsible for overseeing implementation of direction and reporting by the Director General who acts as Chair of the Wildlife Directors Committee (WDC).

Additional support can be provided to CESCC by other bodies.

The SARA Species Listing Process

Assessments under SARA

Species assessments are done by the Committee on the Status of Wildlife in Canada (COSEWIC) and consist of an evaluation of a species. Under SARA s. 15(2) the evaluation must be based on the best available information on the biological status of a species and includes scientific, community and *Aboriginal traditional knowledge* to assign a designation to species as extirpated, extinct, threatened or of special concern. COSEWIC may also determine that they do not have sufficient information to classify the species or indicate that the species is not currently at risk.

SARA s. 15(3) requires that COSEWIC take “*into account any applicable provisions of treaty and land claims agreements when carrying out its functions*”.

The assessment determines the present status of a species and is based on the information provided in a COSEWIC status report. The COSEWIC assessment and criteria process is divided into four sequential steps with solid outcomes:

1. The selection of wildlife species requiring assessment - the COSEWIC Candidate List

Species Specialist Subcommittees (SSC)

COSEWIC is supported by *Species Specialist Subcommittees (SSC)* lead by designated *Species Specialist Subcommittee co-chairs* who provide expertise on particular taxonomic groups. Each SSC is composed of co-chairs and usually five additional members who are experts in relevant fields with knowledge, experience and a demonstrated commitment to wildlife conservation. SSC members are drawn from universities, provincial wildlife agencies, museums, Conservation Data Centres, and other sources of wildlife expertise. These experts with support of the SSC co-chairs, develop candidate lists of species to be considered for assessment, commission status reports for priority species, review reports for scientific accuracy and thoroughness, and propose to COSEWIC a status for each species.

Source: www.cosewic.gc.ca

Any species may be considered for an assessment that has not been assessed by COSWIC and are put forward by a **Species Specialist Subcommittee (SSC)** or the ATK Subcommittee based on information that the species may be at risk. Species that are on the Not at Risk or on the Data Deficient list are also eligible if new information or data becomes available that suggest a potential risk.

COSEWIC decides if a species is eligible for an assessment based on criteria. To be eligible, wildlife species must meet certain criteria



regarding taxonomic validity, native origin, regularity of occurrence and dependence on Canadian habitat that are set by COSEWIC in Table 1. Determining eligibility of wildlife species for status assessment.

In some cases species protection may fall below the ideal levels, justification must be provided and fall within COSEWIC's Guidelines for Recognizing Designatable Units below the Species Level.

2. Setting priorities: COSEWIC prioritizes assessments of species that are at greatest risk of extinction or extirpation. This is done using a “coarse filter system” to prioritize species and to place on them on the SSC Prioritized Candidate Wildlife Species List. The “coarse filter system” combines apparent risk with taxonomic distinctness, global distribution, and proportion range within Canada to group species into categories of similar priority. This system has 3 priority groups for COSEWIC assessments: highest priority, medium and low. Species not in need of an assessment are excluded.

3. The COSEWIC status report is a compilation of the best up to date and reliable biological data available that was used to make the priority determination. COSEWIC will prepare a status report for species that are listed as extirpated, endangered, threatened, or special concern. They will also prepare updated reports on all listed species. Status reports include information on distribution, extent of occurrence, area of occupancy, abundance including population estimates, population and habitat trends and the factors or threats to species. For more information see Instructions for the Preparation of COSEWIC Status Report available on COSEWIC website.

Contracts for the preparation of status reports are available on the COSEWIC website and are open to the public. Bidders are expected to provide a work plan and budget, qualification and a statement giving up the intellectual property and moral rights to the Crown on behalf of COSEWIC.

For each wildlife species considered at a **COSEWIC Wildlife Species Assessment Meeting**, COSEWIC considers each of the five items sequentially to determine a Canadian status designation:

1. Is there sufficient information presented in the report to determine wildlife species eligibility?
2. Given sufficient information, is the wildlife species eligible for assessment?
3. Is the status report adequate and acceptable for assessment purposes?
4. What status is suggested by application of approved COSEWIC quantitative assessment criteria and guidelines (e.g. rescue effect)?
5. Does the suggested status conform to the COSEWIC definition for the proposed status category?

Source: www.cosewic.gc.ca



The draft report is sent to the SSC co-chairs to begin the review and approval process and produce a Provisional Status Report that will be followed by the Interim Status Report. The Interim Status Report is distributed to the COSEWIC Secretariat who distributes to the appropriate range jurisdictions, wildlife management boards, the ATK Subcommittee, SSC members and the chairs of the recovery team, if the species has already been assessed and the recovery team established.

The Interim Status report is then distributed in preparation for the **COSEWIC Wildlife Species Assessment Meeting**. Once the report is on the COSEWIC agenda it can only be withdrawn, deferred or modified by COSEWIC.

4. Assessment of a wildlife species' risk of extinction or extirpation and subsequent designation - the record of COSEWIC assessment results. All recommendations from the meeting are incorporated into the COSEWIC Assessment and Status Report, prepared for publication and is posted on the *SARA* public registry: www.sararegistry.gc.ca

The following website provides the lists and tables referred to in this guide and detailed information on the COSEWIC assessment process and criteria. (Table 1 Determining eligibility of wildlife species for status assessment; Guidelines for Recognizing Designatable Units below the Species Level; Prioritized Candidate Wildlife Species List; and Instructions for the Preparation of COSEWIC Status Report):

http://www.cosewic.gc.ca/eng/sct0/assessment_process_e.cfm

SARA Timeline for Species Listing

Step 1: Assessment and Classification

Upon receipt of COSEWIC's species status report The Minister of Environment must respond within **90 days** under *SARA* s. 25(3), and post on the *SARA* registry how the Minister intends to respond and provide timelines for action.

The Cabinet has a series of options available: add, reclassify, remove or send back to COSEWIC for further information under *SARA* s. 27.

The Environment Minister, if the species is added or not, with Cabinet approval, is required to set out in the public registry the reasons for the action. Before the Minister makes recommendations to Cabinet, he or she must:



- a. Take into account COSEWIC's assessment of a species; consult the competent minister or ministers; and
- b. Consult any wildlife management board that was responsible for the species, *SARA* s. 27(2)

Under section 27(3), if Cabinet has not acted, under section 27(1.1), within **nine months**, the Minister would be required to amend the List in accordance with the COSEWIC assessment.

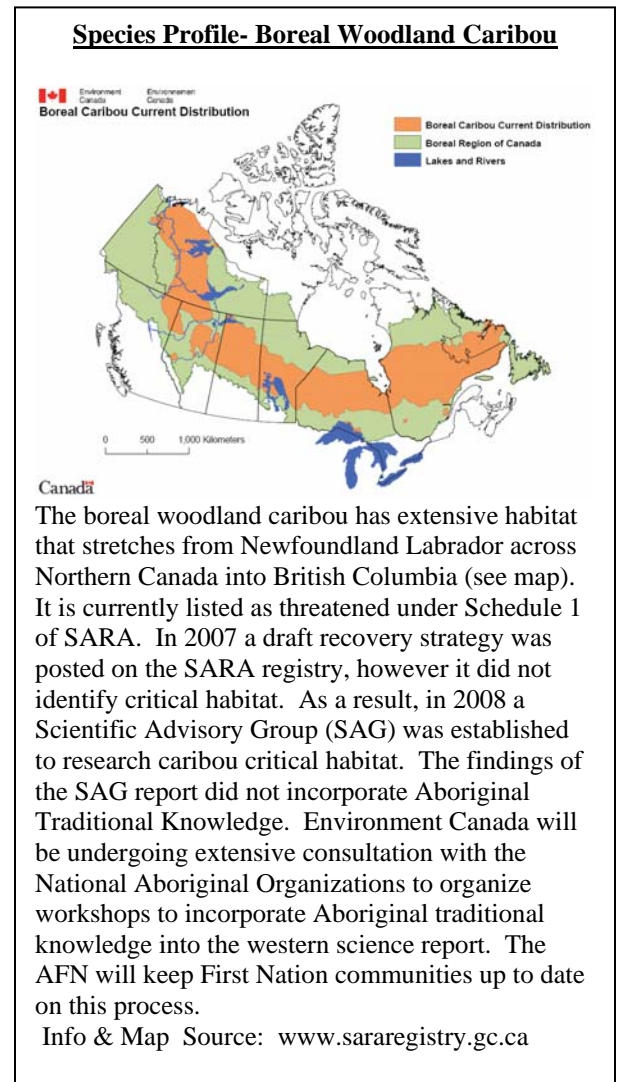
The decision to list and provide habitat protection is made by the Canadian government officials in accordance to *SARA*.

SARA recognizes the following authorities:

- The Governor in Council (GIC) or the federal cabinet has the final authority on listing a species or protecting its habitat, *SARA* s. 27
- The Canadian Endangered Species Conservation Council (CESCC), *SARA* s.7 (1). CESCC consists of all the provincial and territorial Ministers responsible for the conservation and management of wildlife species, as well as the federal Ministers of the Environment, Fisheries and Oceans and Parks Canada.
- Two competent Ministers for Environment and Fisheries, *SARA* s. 8(2) however only the Minister of Environment recommends to the Governor in Council or Cabinet
- The Committee on the Status of Endangered Wildlife in Canada (COSEWIC), sections 14 & 15

Aboriginal Authorities recognized by *SARA*:

- *SARA* recognizes **Wildlife Management Boards** that are established under land claim agreements and must consult with the WMB prior to listing, *SARA* s. 35(4)b.





SARA does not explicitly require that the Minister consult with First Nations that will be directly affected by the listing of a species. The AFN takes the position that the Minister under the Constitution Act, 1982, s. 35 and in accordance with established case law, is required to consult with affected First Nations. If your First Nation is affected by the listing or the failure to list a species write to the Minister of Environment requesting that appropriate accommodation and consultation is required with your community.

Contact the Minister

Tel.: 819-997-1441

Fax: 819-953-0279

Email: Minister@ec.gc.ca

The Honourable Jim Prentice
Minister of the Environment
Les Terrasses de la Chaudière
10 Wellington Street, 28th Floor
Gatineau, Quebec
K1A 0H3

* A sample letter is provided in this guide

Step 2: Listed Species as Extirpated, Endangered, Threatened or Special Concern

A species and its habitat, that is listed on Schedule 1 is protected by SARA sections 32(1)& 33 restrictions and recovery measures on federal lands.

The GIC may, on the Minister's recommendation, accept the COSEWIC assessment and place the species on Schedule 1 of SARA, which is the List of Wildlife Species at Risk (Legal List) SARA s.2(1) & 27(1)

Species that are found in Land Claim areas, the Minister must "consult" with Wildlife Management Boards before making a listing recommendation to the GIC under SARA s.27(2)(c) & relevant Land Claim Agreements.

SARA Prohibitions

No person is permitted to kill, harm, harass, take, capture, possess, sell, collect, buy or trade an extirpated, endangered or threatened species SARA s. 32(1)

No person is permitted to destroy the residence or any part of the critical habitat of such as species SARA s. 33

A listing of extirpated (extinct), endangered or threatened automatically triggers a number of restrictions and recovery measures found in SARA sections 32 to 64.



SARA Exceptions

These prohibitions generally do not apply to provincial and territorial lands, except for aquatic species and protected migratory birds under SARA s.35(2).

The SARA prohibitions may be applied to provincial and territorial lands under specific circumstances if application is made under SARA sections:

- s. 34 – Application - certain species in provinces
- s. 35 – Application – certain species in territories
- s. 58 – Destruction of Critical Habitat
- s.59 – Regulations re: Federal lands
- s. 61 – Destruction of Critical Habitat
- s. 71 - Regulations

SARA s. 83(3)

These prohibitions do not apply to a person “*engaging in activities in accordance with conservation measures for wildlife species under a land claims agreement*”

SARA s. 83(5)(b)

The prohibition against possession does not apply to an Aboriginal person, if that person uses the animal or plant “*for ceremonial or medicinal purposes, or it is part of ceremonial dress used for ceremonial or cultural purposes by an Aboriginal person*”

SARA s. 83(4)

These prohibitions also do not apply to a person engaging in activities permitted by a SARA recovery strategy, action plan or management plan, and who is authorized under an Act of Parliament to engage in that activity.

SARA s. 73

You may also apply for a permit under Section 73 to conduct activity that may affect a protected species (see “*SARA Permits & Agreements*” for more information)

Step 3: Management or Recovery Plan for the Species

The Minister has **one year** to post a recovery strategy on the SARA public Registry under SARA. S. 42(1).

The public has **60 days** to provide written comment to the Minister, under SARA s 43(1). The current process has been with the use of a workbook that is posted on the SARA public registry.

The Minister, under SARA s. 43(2) has **30 days** to consider comments and make changes to the recovery plan.



If a species is listed as extirpated, endangered or threatened, the Minister must prepare a recovery strategy, and one or more action plans based on the strategy, SARA s.37(1) & 47.

If a species is listed as one of special concern, the Minister must prepare a management plan for the species and its habitat, SARA s.65.

To the extent possible each strategy, action plan, and management plan must be prepared in cooperation with the relevant Wildlife Management Board and every Aboriginal organization directly affected by it under SARA s.39(1), 48(1) & 66(1).

To the extent that a strategy, action plan, or management plan will apply in a Land Claims area, it must be prepared in accordance with the terms of the applicable Land Claims Agreement under SARA s.39(2), 48(2) & 66(2).

SARA and the Recovery of Extirpated, Endangered and Threatened Species

SARA s. 37(1) requires:

“if a wildlife species is listed as an extirpated species, an endangered species or a threatened species the competent minister must prepare a recovery strategy for its recovery”

If there is more than one competent Minister involved in the species recovery then they must prepare the strategy together under SARA s. 37(2).

SARA s. 39(d) requires that the recovery strategy be prepared in cooperation with “every Aboriginal organization that the minister considers will be directly affected by the recovery strategy” and under SARA s. 39(2) also in cooperation with the appropriate Wildlife Management Boards under Land Claims Agreements.

SARA s. 40 requires that the Minister must determine whether the recovery of a species is “technically and biologically feasible”, based upon the best available information, including information provided by COSEWIC.

The **Contents of a Recovery Strategy** is provided in SARA s. 41(1):

- 41(1)a. Description of the Species and its needs
- 41(1)b. An identification of the threats to species survival and habitat
- 41(1)c. Identification of critical habitat, including a schedule of studies of critical habitat where information is lacking
- 41(1)d. Statement of the population and distribution objectives and a general description of research and management activities needed



- 41(1)f Any other matter prescribed by the regulations
- 41(1)f A statement about whether additional information is required about the species
- 41(1)g A statement of when on or more action plans in relation to the recovery strategy will be completed

SARA section 41(3) permits a multi-species or ecosystem approach in preparing a recovery strategy.

An **Action Plan**, under SARA s. 49(1), must contain the following:

- 49(1)a Identification of the species critical habitat, based on best available information
- 49(1)b Statement of the measures proposed to be taken in action plan
Including the entering of agreement under SARA s. 11
- 49(1)c Identification of species critical habitat that has not been protected
- 49(1)d Statement of the measures taken to implement recovery strategy and indication when measure are to take place
- 49(1)e Evaluation of the socio-economic costs of the action plan and the benefits to be derived from its implementation
- 49(1)f any other matters that are prescribed by the regulations

REGULATIONS (see SARA and Regulations)

Under SARA s, 53(1), if the recovery strategy or action plan is for aquatic species, migratory birds protected under the *Migratory Birds Convention Act*, or species on federal lands the Minister may make regulations that are necessary to implement the measures in an action plan. Under SARA s. 59, the Governor in Council, upon recommendation from the Minister(s), makes the regulations to protect critical habitat on federal lands, this would include reserve lands.

It is imperative that First Nations are instrumental in the drafting of regulations on reserve lands. To date this section of SARA has not been implemented.

MANAGEMENT OF SPECIES OF SPECIAL CONCERN

SARA s. 65 provides for the protection of species listed as “special concern” and requires that a management plan is prepared for the species and its habitat. The plan must include measures for the conservation of the species that the Minister considers appropriate. The minister must also consult with “*every aboriginal organization that the competent minister considers will be directly affected by the management plan*” SARA s. 66(1)d.



Critical Habitat Protection

SARA defines critical habitat as the “*habitat necessary for the survival or recovery of a listed wildlife species and that is identified as the species and that is identified as the species critical habitat in the recovery strategy or action plan for the species*”.

SARA sets out the following on critical habitat:

No person is permitted to destroy the residence or any part of the critical habitat of such as species SARA s. 33

Every recovery strategy or action plan must identify species critical habitat and include examples of activities that will result in its destruction SARA s. 41(1)c & 49(1)a.

Every action plan must include a statement of proposes measures to be taken to protect critical habitat and identify critical habitat not yet protected SARA s. 49(1)

The GIC may make regulations to protect critical habitat on federal lands

The competent Minister may establish codes of practice, national standards or guidelines with respect to the protection of critical habitat SARA s. 56.

SARA s. 58(1)b protects the critical habitat of aquatic species this could affect activities on Aboriginal lands.

New bylaws or regulations could be required for activities that potentially impact species at risk and their critical habitats. Environmental assessments and reviews for development projects on and off Aboriginal lands must take into account the impacts on species at risk. It is essential that First Nations are included in any consultations leading to the establishment of codes, agreements, standards, guideline or regulations.



The Process for De-listing a SARA Species

The de-listing process (i.e. the process by which a species is removed from the lists of endangered or threatened species), timelines and COSEWIC criteria are currently unclear.

The Committee on the Status of Endangered Wildlife in Canada (COSEWIC) strives to re-examine the status of each species on its list at least every decade. All new and pertinent information on species is included in an update report. On the basis of the report, a species may be placed in a higher risk category if its status has worsened, remain in the same category, be down-listed to a lesser category, or even be removed from the list altogether.

If your community has knowledge on the status of a listed species contact COSEWIC:

The Committee on the Status of Endangered Wildlife in Canada
Canadian Wildlife Services
Environment Canada
Ottawa Ontario K1A 0H3

Phone, fax or email:

Weekdays 7:30 am to 3:30 pm
(Eastern Time) except holidays
Tel.: (819) 953-3215
Fax: (819) 994-3684
cosewic/cosepac@ec.gc.ca

Or you can check the COSEWIC website at:

www.cosewic-cosep.gc.ca

Aboriginal Traditional Knowledge and SARA

Aboriginal Traditional Knowledge can play a critical role in species assessment especially where data deficiencies exist and for species that don't have historic western scientific data on species distribution, timing and specific sub-species attributes.

In preparation of the Species Status Report COSEWIC relies upon its [COSEWIC Aboriginal Traditional Knowledge Sub-Committee](#) (ATK-SC) to facilitate access to the



best available ATK, and to incorporate this knowledge into its species status assessment and classification processes. ATK has proven to be a very valuable source of knowledge in understanding species and its relation to the environment. This knowledge is the accumulation of observation and reasoning that is the very foundations of our cultures and spiritual beliefs. ATK encompasses our knowledge of plants, animals, aquatic species and our interrelation with them and to the whole of creation.

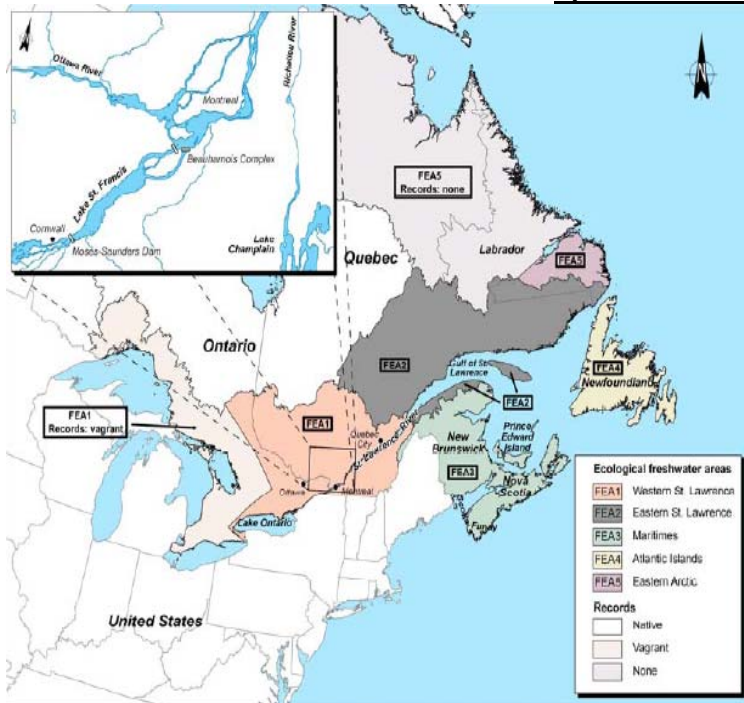
Under SARA, it is important to ask whether status reports include the best available Aboriginal Traditional Knowledge under SARA s.15(2), 15(3), 21(1), 130(1), & 130(6).

Use and Access of Aboriginal Traditional Knowledge

The use and access to ATK must be determined by First Nations and requires that COSEWIC follow culturally appropriate Codes of Conduct governing access and use.

First Nations need to develop or amend existing protocols for application of access and use of ATK in species status reports. It is advised that your community develop codes on ATK access, use and benefit.

Species Profile: American Eel



The American Eel was last assessed by the Committee on the Status of Wildlife in Canada (COSEWIC) in 2006 as a species of special concern. Consultation on the listing of the American Eel to schedule 1 of SARA was completed in 2208 with the Legal Listing Consultation Workbook American Eel. The American Eel is of great cultural, spiritual and economic significance to Maritime First Nations and has been the center of a decade long legal battle regarding commercial eel fishing in the 1999 Marshall case. The species was found in Sandy Pond NFLD, a freshwater body scheduled for use for mine tailings, contrary to the purpose of the *Species at Risk Act* "to manage species of special concern to prevent them from becoming endangered or threatened (SARA s. 6)". Check the SARA registry for updated information on the results of the consultation workbook. Map Source: www.sararegistry.gc.ca



First Nation and the Public's Involvement in Species Conservation

SARA Section 22(1) allows ANY PERSON to apply to COSEWIC for a species status assessment. Under SARA 28(1) any person who considers that there is an imminent threat to the survival of a wildlife species, may apply to the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) for an assessment and have the species listed on an emergency basis. This is unique feature of SARA allows the general public to have a role in species protection.

Species Profile - Polar Bear



The polar bear habitat extends from the southern edge of the permanent multi-year pack ice of the Arctic Ocean, to include sea ice and coastal areas of Greenland, the Canadian Arctic Archipelago, east to the Labrador coast, south to James Bay and west to the Bering Sea (see map). The polar bear was recently assessed as a species of special concern. The 2008 COSEWIC status report using Western Science and Aboriginal Traditional Knowledge found climate change to be the ultimate limiting factor to polar bears. A National Roundtable on Polar Bears was held in 2008. The purpose of the Polar Bear Roundtable was to increase awareness of the many conservation actions underway by various parties, to hear views regarding priority areas for action from a broad cross-section of knowledgeable opinion leaders and to set the scene for consultations related to listing the polar bear under the federal *Species at Risk Act*. Representatives from First Nations and Inuit attended and the AFN will ensure that a broader First Nation interest will be included in the upcoming consultations on the listing of the polar bear under SARA.

Map Source: www.ec.gc.ca; www.cosewic-cosep.gc.ca

Write to COSEWIC if your First Nation is interested in having a species listed on an emergency basis or assessed at:



c/o Canadian Wildlife Services
Environment Canada
Ottawa Ontario K1A 0H3

Phone, fax or email:

Weekdays 7:30 am to 3:30 pm
(Eastern Time) except holidays
Tel.: (819) 953-3215
Fax: (819) 994-3684
cosewic/cosepac@ec.gc.ca

Or you can check the COSEWIC website at:

www.cosewic-cosep.gc.ca



Habitat Stewardship Program for Species at Risk

The Habitat Stewardship Program (HSP) is one of the five main federal funding programs for protection and recovery of species at risk and is being implemented by Environment Canada, Fisheries and Oceans Canada, and the Parks Canada Agency. The overall goal of the HSP is to:

"Contribute to the recovery of endangered, threatened, and other species at risk, and to prevent other species from becoming a conservation concern, by engaging Canadians from all walks of life in conservation actions to benefit wildlife."

These activities must take place on private lands, provincial Crown lands, Aboriginal lands, or in aquatic and marine areas across Canada. The program also fosters partnerships among organizations interested in the recovery of species at risk. The HSP supports many organizations and individuals in their efforts to meet the requirements of the National Recovery Program and the *Species at Risk Act*.

Additional Funding Opportunities

The four other federal funding programs directly involved in the protection and recovery of species at risk are the:

1. Interdepartmental Recovery Fund
2. The Endangered Species Recovery Fund
3. Aboriginal Capacity Building Fund
4. Aboriginal Critical Habitat Protection Fund.

For information more information on the various funds visit:

<http://www.cws-scf.ec.gc.ca/hsp-pih/default.asp?lang=En&n=59BF488F-1>.



SARA and Aboriginal Land Claim Authorities

The Minister must consult or consider Wildlife Management Boards established under Land Claims or self government agreements or any Aboriginal organizations under SARA sections:

- Certain Species in Provinces and Territories section 34(4)b & s.35(3)b;
- Recovery Strategies sections 39d & s.39(2);
- Action Plan s. 48c & s.48d; 48(2);53(3)
- Protection of Critical Habitat s. 59(6)
- Management of Species of Special Concern s. 66d & s. 66(2); s.71(3)
- Agreements and Permits s. 73(4) & s. 73(5), s.75(3)
- Exceptions under land claims agreements is provided in s. 83(3)

SARA and Compensation

The Minister may provide compensation under SARA:

“provide fair and reasonable compensation to any person for losses suffered as a result of any extraordinary impact on the application of
a) *section 58, 60, 61 or*
b) *an emergency order SARA s. 64*

SARA attempts to provide negotiations for voluntary measures for the protection of critical habitat through Conservation Agreements. Compensation is of particular importance to First Nations when the Government unilaterally imposes a restriction or requirement to protect species critical habitat. However the details compensation are not set out in SARA and are to be provided in future **regulations** established by the GIC.

First Nations must provide input into the development of a SARA Compensation regulation. First Nations have a unique relationship with the Crown due to the constitutionally protection of our Aboriginal and treaty rights and interests in lands and resources. First Nations rights are not dependant on land ownership and are connected to Crown land on which SARA applies.

First Nations must ensure that the Government considers the following issues regarding compensation:

1. The *sui generis* quality of First Nations rights as set out by the Courts in the *Sparrow* decision



2. Our rights are constitutionally protected, established in case law and are afforded a higher value.
3. The food, social and ceremonial and other values that First Nations derive from our lands and resources.

If your community is entitled to compensation under *SARA* write to the Minister of Environment.

Contact the Minister

Tel.: 819-997-1441

Fax: 819-953-0279

Email: Minister@ec.gc.ca

The Honourable Jim Prentice
Minister of the Environment
Les Terrasses de la Chaudière
10 Wellington Street, 28th Floor
Gatineau, Quebec
K1A 0H3

SARA Regulations

SARA allows government to make up to 14 different sets of regulations to complete the Act and constitute a very important secondary legislation to SARA. All of the regulations should be considered of particular interest to Aboriginal peoples:

- 17 COSEWIC appointments
- 22(2) COSEWIC content of status reports
- 28(3) COSEWIC application for assessment for emergency listing
- 41(4) Contents of Recovery Strategy if recovery feasible
- 49(2) Contents of an Action Plan
- 53(1) Migratory birds, aquatic species and species on federal lands
- 59(1) Protection of critical habitat on federal lands
- 64(2) Compensation
- 71(1) Management plans for migratory birds, aquatic species and species on federal lands
- 73(10) Section 73 permits allowing engagement of activity affecting a listed species
- 84 Exemptions
- 119 Alternative measures
- 121 Public registry



- 125(1) Fees and charges and exemption from such fees

Regulations have not been drafted for the majority of these sections under SARA. First Nation must be included in the drafting process for any regulations that may impact on Aboriginal and treaty rights. The AFN works with Environment Canada and will provide information to First Nations on the drafting of any regulations under SARA.

SARA Permits and Agreements

Under Section 73 of SARA, the competent minister may enter into an agreement or issue a permit authorizing a person to engage in an activity affecting a listed wildlife species, any part of its critical habitat or its residences. If entered into or issued, the competent minister must include an explanation of why this was entered into or issued in the Public Registry.

Agreements or permits may be entered into or issued for the following purposes:

- 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.

Permit Applications

Permits are required by those persons conducting activities that may affect species listed on Schedule 1 of SARA, as extirpated, endangered, or threatened and which contravene the Act's general or critical habitat prohibitions. Depending on the species and it's location, applications should be directed to the appropriate authorities.

To apply for a permit for an activity affecting a Schedule 1 species in any national park, national historic site or national marine conservation area administered by Parks Canada (protected heritage areas), please visit the following;

- For research and collection activities, you should submit your application through Parks Canada's on-line research and collection [permit system](#)>
- For other activities, you should contact the specific protected heritage area directly; their contact details are available on the [Parks Canada website](#)>



To apply for a permit affecting a Schedule 1 aquatic species, please visit the [Department of Fisheries and Oceans website](#)>

ENFORCEMENT

SARA includes extensive enforcement powers, including with respect to inspections, searches and seizures under SARA s. 86 & 87.

An Enforcement Officer may not enter a dwelling place except with consent or under the authority of a warrant, SARA s. 86(3).

Punishment for offences under SARA can include prison terms and fines of up to \$250,000 for individuals and \$1,000,000 for corporations, SARA s. 108-109

SARA also includes the possibility of applying alternative measures, subject to certain pre-conditions, SARA s. 108-119.

REPORTS AND REVIEW OF THE ACT

The Minister must table in Parliament an annual report on the administration of SARA s. 125

The Minister must, at least once every two years, convene a round table to advise on matters respecting the protection of species at risk, SARA s. 127

The Minister must, every five years, table in parliament a general report on the status of wildlife species in Canada SARA s. 128

Five years after the Act comes into force a Parliamentary review of the Act is legislated under SARA s. 129, this process has begun in 2009. For information on the legislative review check with the Standing Committee on Environment and Sustainable Development at the following website:

<http://www2.parl.gc.ca/CommitteeBusiness/CommitteeHome.aspx?Cmte=ENVI&Language=E&Mode=1&Parl=39&Ses=2>

For general information about committees, please contact:

COMMITTEES DIRECTORATE



Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6
Canada

Tel.: 613-992-3150

Fax: 613-947-3089

E-mail: cmteweb@parl.gc.ca



SAMPLE LETTER TO A MINISTER

(Insert Date)

(Insert appropriate Minister)

Minister of (Insert Title)

(Insert mailing address)

Dear Minister (name),

The addition of a species as extirpated, endangered, threatened or of special concern under the *Species At Risk Act* could lead to costs for First Nation communities, federal and provincial governments and other affected parties. These costs include, but are not limited to, costs associated with the use of sustainable practices, mitigation efforts, developing and implementing recovery strategies, action plans, management plans, and enforcement costs.

Environment Canada's consultation method regarding *SARA* listings through a workbook posted on the *SARA* public registry does not, in our opinion, meet the legal duty of accommodation and consultation set out in the courts through *Taku* and *Haida*. We recommend that a separate process of consultation be immediately undertaken with (name of First Nation) in regards to the (listing/failure to list) of (name of species).

I look forward to discussing these matters with you and recommend we meet at your earliest convenience. If you have any questions please contact (provide contact information).

Sincerely,

(Insert Name)

(Insert Title)