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CANADA'S PLAN for
PROTECTING
SPECIES at RISK

AN UPDATE

DECEMBER 1999

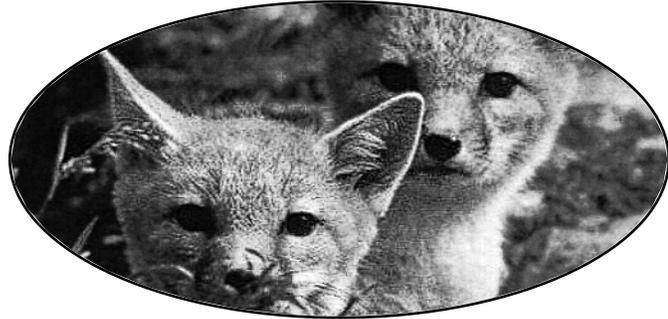
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INTRODUCTION

The Government's approach would emphasize providing assistance to help Canadians take voluntary actions to protect species, and create a climate which makes responsible stewardship an easy choice.



Canada's natural heritage is perhaps our most priceless possession. Our country is blessed with great natural beauty, and a vast diversity of marine and wildlife species, many of them unique to Canada. We are stewards of approximately 20% of the world's remaining natural areas, 25% of the world's wetlands, 9% of the world's renewable freshwater, and 15% of forests. Canadians have a duty to the world and to future generations to protect this inheritance.

Unfortunately, species are becoming endangered in Canada, as elsewhere around the world, at an alarming rate. While science predicts that species will disappear due to natural causes at a rate of about one every 1,000 years, in recent years species have been disappearing much more rapidly. Of the 340 species classified as being at risk in Canada, 12 are now extinct, and 15 more have been extirpated (lost from the wild in Canada). Of 97 species that have had their status re-evaluated in recent years, 26 have become even more endangered. Scientists tell us that a major reason for species loss is the destruction of habitat – in other words, the land and natural features species require to survive. The relationship is clear: no habitat, no species. These declines of species and their habitat are unacceptable, and as Canadians, we have a responsibility to turn these trends around.

Environment Canada has engaged in extensive consultations with Canadians to develop a new approach to protecting species at risk. This update discusses the progress that has been made towards developing a new strategy, and outlines the major elements of the Government's strategy to date and the proposed Species at Risk Act (SARA).

The vast majority of Canadians want to protect endangered species. The Government's approach would emphasize providing assistance to help Canadians take voluntary actions to protect species, and create a climate which makes responsible stewardship an easy choice. In addition, the Government of Canada would have the tools to make sure that threatened or endangered species are protected in Canada, no matter where they live. We are developing an approach that is fair and pragmatic, that respects the roles of provincial and territorial jurisdictions, private landowners, land users and Aboriginal peoples. Mandatory measures would be used only where other efforts have failed. The Government of Canada believes that this balanced approach is the most sustainable, sensible and effective strategy for protecting species and their habitat.

WHY WE NEED TO PROTECT SPECIES



Our economy benefits

directly from our

natural diversity.

The 1996 Survey on **Protecting Species Ensures Biodiversity**

the Importance of

Nature to Canadians

estimated that

The diversity of the Earth's species is essential to the quality of life, and even to the survival of life, on this planet. The loss of one species has effects – sometimes unpredictable or incalculable – on all of the others. The biological diversity of the environment is the essential support network for all human existence - it is the foundation on which our economies, societies, states, and cultures are built.

Canadians and foreign

tourists spend almost

\$12 billion per year on

nature-related activities.

International and National Commitments

Since species do not recognize geopolitical boundaries, and ecosystems transcend national borders, the entire international community recognizes the need for action on species preservation. Just as Canadians would be saddened by the loss of the Giant Panda or the African Elephant, the rest of the world depends on Canada to preserve such species as the Right Whale, the Whooping Crane, and the Swift Fox.

In 1992, Canada signed, and subsequently became the first industrialized country to ratify, the United Nations Convention on Biological Diversity. In doing so, Canada committed itself to "Develop or maintain necessary legislation and/or regulatory provisions for the protection of threatened species and populations." Since that time, the Government of Canada has been working towards an improved protective framework for species at risk to fulfill this international obligation.

In 1996, the Government of Canada joined with provinces and territories in supporting the Accord for the Protection of Species at Risk, which committed all of Canada's jurisdictions to "establish complementary legislation and programs that provide for effective protection of species at risk throughout Canada." Since then, six provinces and territories have introduced new or improved endangered species legislation, in addition to four provinces that already had legislation. Federal legislation on species at risk is the next logical and necessary step. Therefore, in the Speech from the Throne of October 1999, the Government committed itself to bringing in a new Species at Risk Act as one of its first environmental priorities for the new millennium.

The Expectations of Canadians

In addition to these firm international and national commitments, Canadians strongly expect their governments to act. According to a recent Decima Research poll, 76% of Canadians believe that governments in Canada should be doing more to protect species at risk, and 88% of Canadians support laws to protect the habitat of endangered species. A majority of Canadians expect leadership from the Government of Canada on this issue.

This combination of reasons: strong scientific evidence that species are at risk, the need to protect biodiversity, Canada's international and national commitments, and the expectations of Canadian citizens, make it imperative that the Government act in this area and bring in a comprehensive strategy for protecting species at risk.

In September and October 1999, Decima Research conducted a poll for Environment Canada which interviewed 2,695 Canadians to survey their concerns about endangered species and their habitat.

The study showed that:

- *88% of Canadians would support legislation to protect the habitat of endangered species;*
- *76% of Canadians feel that governments should do "more" or "much more" to protect endangered species;*
- *68% of Canadians believe that governments cannot protect endangered species unless their habitats are also protected; and,*
- *53% of Canadians believe that the amount of habitat areas available in Canada to sustain plant and animal species have decreased over the past 10 years, with 48% believing that this downward trend will continue.*

Why we
need
to protect
species

Partnership with Aboriginal Peoples

Aboriginal peoples have an important role to play in the protection of species at risk. Individuals of more than half of the 340 species at risk can be found on Indian Reserve lands, demonstrating the stewardship of First Nations people. Management Boards set up under comprehensive land claims agreements are actively managing wildlife. These boards are the primary instruments for wildlife management in the claim settlement areas.

The Government will continue to work closely with Aboriginal peoples to ensure their participation in species assessment and recovery efforts. Under the proposed SARA, species assessments, application of prohibitions, and recovery and management activities would be carried out in a manner consistent with the provisions of self government agreements and land claims agreements and in consideration of Aboriginal and Treaty Rights.

The traditional knowledge of Aboriginal peoples regarding many species is a valuable source of information, and species assessments and recovery planning would take this knowledge into account. Aboriginal communities would be given the opportunity to participate in recovery action planning groups.

Partnership with Rural Communities

The challenge of protecting species at risk and their critical habitats directly affects the lives of rural Canadians as the primary landowners and land users where these species are found. The Government understands that many rural communities are concerned about the proposed SARA. The Government wishes to reiterate to these communities its commitment to a fair and balanced approach that would use voluntary stewardship, including funding, as the primary way to engage rural Canadians. This approach would allow rural Canadians to be full partners in developing solutions for the protection of species at risk, and is consistent with the type of approach the Government has been encouraging through the Federal Framework for Action in Rural Canada.

THE GOVERNMENT OF CANADA'S SPECIES AT RISK STRATEGY



A History of Commitment

The Government of Canada has been active in protecting species for many years. One of the earliest pieces of legislation was the *Fisheries Act*, which provides for the protection of exploited aquatic species and their habitats. Since 1885, the Government has been establishing national parks which provide for the protection of the habitat of species across Canada. In 1916, Canada and the United States signed the Migratory Birds Convention to regulate hunting and promote conservation programs. In 1947, the Dominion Wildlife Service (now the Canadian Wildlife Service) was established to coordinate the conservation of birds and animals.

In 1973, the *Canada Wildlife Act* was passed, giving the Minister of the Environment additional conservation tools. In 1976, Canada became a signatory to the Convention on the International Trade of Endangered Species of Wild Fauna and Flora (CITES), which prohibits the import and export of an agreed list of species endangered internationally. In 1978, the federal, provincial, and territorial governments joined with three non-governmental organizations to establish the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) as an independent body of scientific experts to help identify species at risk. In 1996, the federal, provincial and territorial governments supported the Accord for the Protection of Species at Risk.

The strategy and new legislation to protect species at risk would build on these earlier achievements and commitments, modernizing them to respond to the needs of the twenty-first century.

A Three Part Strategy to Protect Species

The Government of Canada's strategy to protect species at risk consists of three main elements:

- build on the Accord for the Protection of Species at Risk;
- promote stewardship and incentive programs to assist citizens, organizations, Aboriginal peoples, land users and private landowners who are helping to protect species and habitat; and,
- introduce a new Species at Risk Act.

This three-part strategy reflects the roles that different levels of government, Aboriginal peoples, stakeholders, and private citizens all have to play in helping to preserve species at risk.

BUILDING ON THE ACCORD FOR THE PROTECTION OF SPECIES AT RISK



In a country as vast and diverse as Canada, with different levels of government, no one government can protect all species and their habitats by itself. The Canadian Constitution gives different powers and responsibilities to each jurisdiction, so all of them must work together to effectively protect species. Federal and provincial/territorial governments are working together extensively to protect species and their habitats through joint designation of protected areas, implementation of international wildlife agreements, and a collective commitment to conserving biodiversity.

In 1996, federal, provincial, and territorial ministers responsible for wildlife supported the creation of the Accord for the Protection of Species at Risk. In this Accord, the jurisdictions agreed to the following basic principles:

- species do not recognize jurisdictional boundaries;
- conservation of species is essential for biodiversity;
- governments must play a leadership role in providing information and taking appropriate measures to protect species at risk;
- species conservation requires a combination of complementary federal and provincial/territorial legislation, regulations, policies and programs;
- stewardship activities are an integral element of protecting species at risk by providing assistance and incentives to encourage voluntary conservation action; and,
- lack of absolute scientific certainty must not be used as a reason to delay measures to protect species.

Under the Accord, the ministers agreed to coordinate their activities through a new Canadian Endangered Species Conservation Council (Council). The Council held its inaugural meeting in September 1999. The role of COSEWIC as an independent scientific advisory body on the status of species at risk was affirmed. All governments agreed to establish complementary programs and legislation to protect Canada's species at risk through:

- legally designating threatened and endangered species;
- protection of species and their habitats;
- planning and implementing the recovery of species and habitats;
- ensuring multi-jurisdictional cooperation for the protection of species that cross borders; and,
- preventive measures such as stewardship programs, information campaigns, and voluntary action.

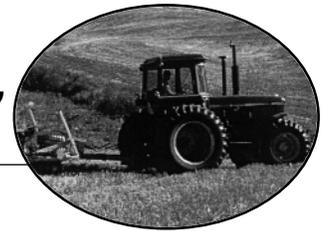
The Council will ensure that species protection activities are coordinated throughout Canada, and that duplication or conflicts between governments are minimized. The Council will also provide overall direction and help set priorities for protecting species across Canada.

Since 1996, federal, provincial and territorial jurisdictions have been actively implementing the Accord. Six provinces and territories have already brought in new or strengthened legislation to protect species at risk under their jurisdiction, in addition to four provinces which already had legislation. Extensive consultations have been held in towns and cities across Canada to discuss implementation of the Accord "on the ground."

Complementary federal legislation is the next step in fulfilling the Government's commitments under the Accord. The Government looks forward to continuing cooperation with the provinces and territories throughout this process.

Why we need to protect species

STEWARDSHIP AND INCENTIVE PROGRAMS: ASSISTING LANDOWNERS AND OTHER STAKEHOLDERS



Habitat protection is essential to the survival of many species at risk. The best way to protect species habitat is through voluntary preventive measures, rather than having to resort to legal restrictions on land use. Landowners, farmers, ranchers, and other stakeholders, in addition to provincial and territorial governments and Aboriginal peoples, are already playing a crucial role in these kinds of preventive measures.

The Government's strategy will build on and support these efforts by emphasizing stewardship and incentives through funding and other means as the preferred option for protecting habitat. Stewardship funds could support a wide range of actions and activities that foster a sustainable approach to land management. Existing stewardship activities (see box on page 9) show that this is an effective, cost efficient means of protecting habitat and therefore saving species.

Stewardship funding and incentive programs would allow individuals and organizations – landowners and land users, municipalities, and private organizations and citizens – to get directly involved in assisting species and their habitats. Funds could also assist with activities on lands where Aboriginal peoples have proprietary or conservation interests. Stewardship programs can include such activities as:

- information and awareness campaigns about species at risk and better land use practices;
- conservation agreements between landowners, managers, and governments for the implementation of species recovery planning;
- private land acquisition programs to purchase land for species habitat;
- providing economic incentives and removing disincentives for better land practices (e.g., improving tax treatment of environmentally sensitive lands, conservation easements on land);
- creating voluntary guidelines or codes of conduct for land, water, and resource use practices;
- development of selective fishing gear methods to reduce bycatch of species at risk; and,
- recognition and awards to those individuals and groups who have undertaken voluntary measures.

Stewardship would be the first line of defence to protect critical habitat on private land. The Government of Canada would support these efforts both in the recovery process, and in preventive measures recognizing that "an ounce of prevention is worth a pound of cure."

Federal government funds for stewardship activities requiring out of pocket expenses would be provided through a variety of mechanisms following a transparent project selection process. Wherever possible, stewardship funding would be provided in cooperation with existing organizations such as Ducks Unlimited Canada, the World Wildlife Fund (Canada) and the Nature Conservancy of Canada, or in collaboration with provincial and territorial governments. To the extent possible, federal investment in stewardship would seek to lever additional funding from other sources.

There are many stewardship success stories which can provide role models for the future:

- *the **North American Waterfowl Management Plan**, in which partners have invested \$1.7 billion to secure 750,000 hectares of wetland and upland habitat across North America;*
- *donations of ecological gifts, including wetlands and habitat for endangered species, made possible through amendments to the **Income Tax Act**;*
- ***Operation Burrowing Owl**, involving some 700 landowners in Alberta and Saskatchewan in protecting the nesting habitat of this endangered species;*
- ***Natural Legacy 2000**, a Millennium Partnership Program, supporting citizen and community engagement in conserving Canada's wildlife and habitat heritage;*
- *the **Department of National Defence** designated a unique and diverse tract of land on the CFB Suffield base in Alberta as an environmentally sensitive area;*
- *the **Alberta Riparian Habitat Management Project**, commonly known as the "Cows and Fish Project", fosters a better understanding of how changes in grazing management on riparian areas can enhance landscape health and productivity; and,*
- *the **Department of Fisheries and Oceans Habitat Stewardship Conservation Program** supporting the rebuilding of the Pacific salmon fishery.*

PROPOSED LEGISLATION: THE SPECIES AT RISK ACT (SARA)

The Government of Canada's legislation on species at risk is an essential part of fulfilling our obligations under the Accord and our commitment to protect species. First, the Government is responsible for species under its jurisdiction or on its lands. The Government has a direct responsibility for fisheries species and their habitats, migratory birds as covered by the Migratory Birds Convention Act, and all species on federal lands (such as National Parks) and in federal waters.

Second, federal legislation must provide a safety net for species and habitats which are not effectively protected by voluntary measures such as stewardship or by existing provincial and territorial legislation. This safety net concept is outlined in greater detail on page 16.

The proposed SARA would cover the following key elements of species preservation:

- ***listing** - identifying which species are at risk;*
- ***prohibitions** - ensuring that species are protected;*
- ***recovery** - ensuring that there is a long-term plan for species restoration and survival; and,*
- ***habitat** - ensuring that species have the space they need to live.*

Everything in the legislation would follow from these basic concepts. The legislation would not regulate every possible situation in detail, but rather would give the Government a variety of tools to enable it, in cooperation with provincial and territorial governments, to respond appropriately to different conditions affecting species at risk.

LISTING OF SPECIES

Under the proposed Species at Risk Act, COSEWIC would continue to operate at arm's length from governments, scientifically assessing and identifying species at risk, and making decisions on the basis of the best available information. COSEWIC members would be appointed by the Minister of the Environment after consultation with the Council.

The process for listing species at risk would be as follows:

- COSEWIC would make assessments of the status of species based on science, and traditional and local knowledge, and compile a list indicating if species are species of special concern, threatened, endangered, extirpated, or extinct;
- COSEWIC would report on its assessments to the Council;
- within 45 days of the Council receiving the list, the Council and COSEWIC would jointly publish the list of species assessments as compiled by COSEWIC. The Council would not be able to modify the scientific judgments of COSEWIC;
- following the publishing of the list, the Council would release Response Statements outlining its recommended actions for each species listed as threatened or endangered; and,
- the Minister of the Environment would have the authority to submit COSEWIC's list for federal government adoption. Following adoption, the list would have the force of federal law under the proposed SARA.

The proposed listing process provides for a sound balance between impartial scientific judgment and ensuring political accountability for environmental decision making. COSEWIC would be independent of governments in its assessment process. The Council must publish the COSEWIC list, complete with COSEWIC's underlying scientific reasoning, as a public document available to all.

However, federal adoption of the list remains a necessary step. When a species is listed as threatened or endangered, legal protections would automatically come into force, which could carry social and economic implications, including legal sanctions and penalties. Such a process must involve political accountability for both those who want species to be listed and for those concerned about possible negative impacts of listing.

To guarantee overall transparency and accountability, the Minister of the Environment would be obliged under SARA to justify fully any differences between COSEWIC's recommendations and the legal list approved by the Government of Canada.



CATEGORIES OF LISTED SPECIES:

Under SARA, COSEWIC would be responsible for listing species at risk in several different categories.

Special Concern: *a species with characteristics that make it particularly vulnerable to human activities or natural events (examples: Grizzly Bear, Atlantic Cod, Monarch Butterfly)*

Threatened: *a species likely to become endangered if limiting factors are not reversed (examples: Wood Bison, Peregrine Falcon, American Chestnut Tree)*

Endangered: *a species facing imminent extinction or extirpation (examples: St. Lawrence Beluga Whale, Swift Fox, Burrowing Owl, Leatherback Turtle)*

Extirpated: *a species no longer existing in the wild in Canada, but still found elsewhere (examples: Black Footed Ferret, Pygmy Short-horned Lizard)*

Extinct: *a species that no longer exists anywhere (examples: Great Auk, Passenger Pigeon)*

COUNCIL RESPONSE STATEMENTS

Following the publishing of COSEWIC's list of species at risk, the responsible jurisdictions on the Council would issue a Response Statement for each threatened or endangered species. The statement would identify the immediate actions to be taken by responsible jurisdictions and preliminary recovery information. The Response Statement would include:

- assessment of the priorities for recovery efforts;
- description of what actions are already under way;
- identification of federal species, or of federal lands or waters where species are to be recovered;
- identification of the provinces/territories where the species is to be recovered;
- identification of gaps in research and knowledge;
- identification of the agency responsible for leading recovery efforts;
- jurisdiction membership for the Recovery Team; and,
- advice in situations where it is helpful to implement recovery actions for multiple species in a coordinated manner.

The involvement of the Council would ensure that all jurisdictions act in a coordinated fashion, and that different governments do not duplicate or disrupt each other's efforts. The Response Statements would be concrete and focused on results, to help ensure that recovery efforts for species are effectively implemented.

EMERGENCY LISTINGS

Procedures for emergency listings would allow prompt action when there is evidence of a rapid decline of a given species.

Any person who believes they have sufficient evidence to support such action could submit a request for an emergency listing to COSEWIC. COSEWIC would evaluate the requests, and those which meet emergency assessment criteria would be forwarded to the Minister of the Environment and the Council with a recommendation for an emergency listing. COSEWIC would then begin a status report on the species immediately.

An emergency listing by the Minister would automatically trigger the application of prohibitions preventing the destruction of a species or its residence even before a full COSEWIC report on the status of a species has been prepared.

Emergency listings are intended to be an extraordinary procedure, not a back door to list species more quickly than usual. COSEWIC would be responsible for establishing objective criteria to determine what is truly an emergency situation.

PROHIBITIONS

Once a species is listed as threatened or endangered, prohibitions must be put in place to prevent that species from being killed and its residence from being destroyed, with provisions for exceptions as described below. Federal, provincial, and territorial jurisdictions are committed under the Accord to introduce measures that prohibit the killing or harming of threatened or endangered species or destroying their residences under their jurisdiction. The federal prohibitions would apply to all species under federal jurisdiction or on federal lands.

If each jurisdiction acts in its own area of competence, the result will be comprehensive protection for listed species. However, there would also be a federal safety net which would protect any threatened or endangered species which are not effectively protected by provincial or territorial legislation or regulation. The Minister of the Environment would consult with the provinces or territories affected before applying any federal safety net prohibitions against the destruction of a species or its residence.

The proposed wording of these federal prohibitions in the SARA is:



"No person shall kill, harm, chase, harass, capture or collect an individual of a listed endangered or threatened species"

and

"No person shall possess, collect, buy, sell or trade an individual of a listed endangered or threatened species, or any part or derivative of one"

and

"No person shall damage or destroy the residence of an individual of a listed endangered or threatened species"

Exceptions to Prohibitions

There are limited circumstances where prohibitions on killing, harming and possession of a threatened or endangered species, or on the destruction of its residence, may not be appropriate or effective. The proposed SARA would provide for exceptions in cases where public health or safety or national security required it, or where harm to species is accidental and unforeseeable. SARA would also allow exceptions for activities undertaken under the terms of an Aboriginal treaty or land claims agreement where such activities would not jeopardize species recovery efforts.

There could be instances of incidental harm to individuals of a threatened or endangered species while otherwise lawful activities are being conducted. A process to permit or authorize such incidental harm would be provided for by SARA. SARA would also recognize existing permits, licences and orders made under other legislation. In both cases, consideration would have to be given to reasonable alternatives to reduce impact on the species.

There are limited cases where possession of an endangered species may be tolerable, or where the possession or killing of a small number of a species may be necessary for research beneficial to the species as a whole. In addition, there are some species for which rigid application of the prohibitions would not be the most effective method of preserving them, as the species may require human intervention to survive (e.g., some endangered plant species require grazing or burning of grassland to prevent the encroachment of other plants). In these cases, incentives would be more effective, and agreements with the landowner or land manager would serve to provide an exception to the prohibitions.

RECOVERY PLANNING

Recovery planning activities for each threatened or endangered species would be coordinated by a Recovery Team. The Response Statement issued by the responsible jurisdictions on the Council would establish the Recovery Team under the leadership of the designated lead jurisdictions or agencies. The Recovery Team would include experts from all the responsible jurisdictions and would bring together the best available scientific, traditional, and local knowledge of a species to assess the threats affecting a species and the ecological needs for its survival.

Recovery planning would be a dynamic, two-part process. The first part, led by the Recovery Team directly, involves experts gathering accurate baseline information about threatened or endangered species, defining the long-term recovery goal and short-term objectives (including identifying the critical habitat required for recovering the species whenever possible). Landowners, landusers, stakeholders, Aboriginal peoples, and other concerned individuals, where appropriate, would be given opportunities for input at this stage of the recovery process. The Recovery Team would be responsible for producing a Recovery Strategy.

The second part of the process is preparing an Action Plan or Plans. The Recovery Team would create an Action Planning Group (or Groups) which would involve regional or local stakeholders including representatives from the resource sector, environmental organizations, Aboriginal peoples, local communities, landowners, people with traditional or local knowledge of species conditions and others as appropriate. These groups would be responsible for producing Action Plans, which would describe specific measures needed to recover species, and associated timelines.

The two parts of the recovery planning process would be complementary to each other, as the Recovery Team developing and updating the Recovery Strategy would interact with the group(s) developing and implementing the Action Plan(s), and back and forth dialogue would ensure that the overall Recovery Strategy and Action Plan(s) are coherent, cohesive and integrated and take account of local and socio-economic conditions.

Recovery Strategy



The Recovery Strategy would include elements such as the following:

- the potential for species recovery;
- the data and information available regarding the species, and the gaps in knowledge which need further research;
- the goals and objectives against which species progress can be measured;
- the threats facing species;
- the approaches, strategies and actions necessary to mitigate threats to the species, enhance its viability, and ensure its recovery;
- the habitat requirements of a species, including identifying critical habitat; and,
- the conflicts, difficulties, or obstacles to recovery which must be overcome.

Under the proposed SARA, Recovery Teams would have up to one year to prepare a Recovery Strategy for a species that is listed as endangered, or up to two years for a species listed as threatened. Critical habitat would be defined in the Recovery Strategy whenever and wherever sufficient information is available. In circumstances where adequate habitat information is not available, critical habitat would be identified later through the Action Plan(s).

How Would the Species at Risk Act Work?



Action Plan(s)

The overall Recovery Strategy would require Action Plan(s) to lay out the specific measures necessary to recover the species. An Action Plan would detail the recovery activities to be implemented for each year of a five-year period. The Plan would define the level of priority, the estimated cost, and the lead and cooperating organizations responsible for each recommended action. Action Plans would be adapted to local conditions and consider socio-economic implications. Action planning would be an ongoing process as the specific actions required to protect species may change according to geography, weather, migration patterns and so on.

Action Plans could recommend specific activities such as:

- population surveys and monitoring;
- habitat enhancement and restoration projects;
- public awareness and education campaigns;
- ecological, physiological, or toxicological studies; and,
- captive breeding and reintroduction of species.

Recovery Implementation

Recovery Strategies and Action Plans would be approved by the lead jurisdictions. The Council would be responsible for coordinating the approval process and facilitating resolution of any disagreements between jurisdictions, as referred to them.

Recovery Teams would also provide advice in situations where it is helpful to implement recovery actions for several species in a co-ordinated manner, perhaps through an ecosystem recovery plan, threat abatement plan or similar broadly-based strategy.

After any Recovery Strategy or Action Plan(s) recommended by the Recovery Team is approved by the Responsible Minister(s), that Minister(s) would be responsible for putting in place any regulations or other means of protection, called for in the Recovery Strategy or Action Plan(s). If, following the completion of a Recovery Strategy or Action Plan(s), effective measures for the protection of the critical habitat identified in those documents have not been taken, the federal Minister would be responsible for taking steps to protect critical habitat as outlined in the next section.

Implementation of other activities proposed by Action Plans would be implemented by government agencies, landowners, land users, Aboriginal communities, conservation organizations, university researchers, zoos, botanical gardens, and others. The federal government would support the participation of groups and individuals involved in recovery planning and implementation through various means, including funding and stewardship incentives. Recovery implementation would be subject to ongoing reviews, including scientific peer review, to ensure that the actions are meeting the goals of the recovery strategy and are still necessary.

Management Plans for Species of Special Concern

The Act would require a Responsible Minister to prepare management plans for species listed as being of special concern, within three years of listing. Such plans would be prepared in cooperation and consultation with affected provinces, management boards under comprehensive land claims agreements, Aboriginal peoples and with stakeholder input as appropriate.



*Habitat loss
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How Would
the Species at Risk
Act Work?

HABITAT MEASURES

Habitat loss is the greatest factor affecting the well-being of wild species in Canada. COSEWIC has identified habitat issues as an important threat for about 75% of the species currently listed as threatened or endangered in Canada. Habitat is disappearing or becoming degraded at an unacceptable rate in Canada.

Protecting Critical Habitat

Clearly, protecting the immediate residences of species, like nests or dens, is usually not enough. The critical habitat of a species may extend beyond its actual place of residence to include its hunting grounds or food supply, sheltered areas, nearby streams, or other natural features which may be necessary for a species' survival.

When the Recovery Planning process identifies a certain habitat area as critical for a species' survival, each jurisdiction has a responsibility to protect the identified habitat using the tools at its disposal. Governments would protect habitat on federal or provincial Crown Lands, using legislation or regulation, while both levels of government would implement stewardship programs to encourage protection of habitat. Aboriginal peoples would be involved with stewardship activities on reserve lands and in traditional territories where they have a proprietary or conservation interest. The designation of land as a critical habitat area need not require that the land become off-limit to human activity. A variety of land uses may be compatible with critical habitat designation.

The Action Plan process would allow various stakeholders to discuss specific stewardship measures. Non-governmental organizations could continue to be involved in helping to secure, acquire and protect habitat on private lands. Stewardship and incentive measures, as discussed previously, would be the primary and preferred means for protecting habitat on privately owned lands.

The Critical Habitat Safety Net

The proposed federal approach would balance the rights of individual landowners and the roles of other jurisdictions with the need to ensure that a critical habitat safety net is available as a backstop when other measures fail.

Most of the time, federal and provincial/territorial actions on the lands in their own jurisdiction, combined with stewardship and incentive programs to protect habitat on private lands, should be sufficient to protect critical habitat as defined in the recovery planning process. However, where comprehensive federal efforts on federal lands, combined with provincial/territorial efforts and private stewardship initiatives are not sufficient to protect identified critical habitat, the Government of Canada believes it cannot simply let the habitat be destroyed or remain unprotected. Ultimately, the Government must have a safety net to prohibit critical habitat destruction on non-federal lands where other effective means are not in place or cannot be put in place to achieve that goal. Moreover, the Government would only use the safety net if measures necessary for protecting critical habitat have already been initiated on federal lands.

The proposed federal approach would balance the rights of individual landowners and the roles of other jurisdictions with the need to ensure that a critical habitat safety net is available as a backstop when other measures fail. While some advocate that federal prohibitions on all identified critical habitat areas should be automatic, the Government of Canada believes it would be inappropriate to impose automatic habitat prohibitions without first relying on individuals, organizations and jurisdictions to act within their own areas of responsibility. Provinces, territories, Aboriginal peoples, and individual landowners and land users share our deep commitment to protect species, and must have every opportunity to make all best efforts.

On the other hand, the Government does not accept the view that it should never invoke habitat prohibitions on non-federal lands. If all possible stewardship, incentive and other efforts are insufficient, the Government cannot allow species and their habitats to "fall through the cracks." We believe the federal approach must strike the right balance between these two considerations.

Use of the safety net would only be considered if:

- an affected province or territory requests its use;
- the Council requests its use; or,
- the Minister of the Environment determines that its use is necessary following consultation and where efforts by affected jurisdictions and/or private landowners are assessed to be insufficient to effectively protect critical habitat.

In this latter scenario the process would be as follows. Upon receipt of a recommendation of the Recovery Team in an approved Recovery Strategy or Action Plan that critical habitat requires protection, the federal Minister would be responsible for reviewing and assessing those measures already in place or initiated by the federal, provincial and territorial governments and landowners to protect that critical habitat. The Minister would determine that critical habitat is not at risk where:

- other federal legislation is already effectively protecting the critical habitat in question;
- effective provincial or territorial protection is already in place; or,
- for private lands, where an effective agreement protecting the critical habitat in question has already been reached with the landowner or land manager.

If the Minister determines that critical habitat remains unprotected, the Minister would be required to recommend to the Government use of the critical habitat safety net prohibition, after all appropriate notification and discussion with affected jurisdictions, and further efforts with landowners, fail to secure the protection of that critical habitat. At this stage, the unprotected part of the critical habitat would, following Government approval, be identified in a federal regulation that triggers a prohibition against destroying the identified critical habitat.

The federal Minister would be required to publicly account for any variation from the recommendation of the Recovery Team, in an approved Recovery Strategy or Action Plan that critical habitat requires protection, within 180 days of receiving the recommendation. The Minister would be required to specify the scientific or other reasons for any variance.

It should be noted that certain federal lands such as Farm Credit Corporation lands, which are leased to private farmers, would be treated as private lands for the purposes of the critical habitat safety net.

The Criminal Law Power

The authority to invoke the critical habitat safety net on provincial or private lands is rooted in a part of the Government of Canada's Constitutional authority called the criminal law power. The use of the criminal law power does not mean that an infraction of proposed SARA habitat regulations would be a *Criminal Code* offence, or that violators would have a criminal record. The criminal law power is the basis for prohibitions in many federal statutes, such as certain sections of the *Canadian Environmental Protection Act*, the *Competition Act*, the *Tobacco Act*, and the *Food and Drugs Act*.

Compensation

Protecting species	Canadians recognize that it would be unreasonable to impose the entire economic burden of protecting threatened or endangered species on individual landowners, land users, or Aboriginal peoples. Protecting species is everybody's responsibility, and nobody should be asked to bear an unfair part of the load.
is everybody's responsibility,	If the use of one's land has to be highly restricted by the use of the federal habitat safety net to protect species' habitats, then individuals should be able to apply for compensation. The proposed SARA would give the Minister of the Environment the authority to draft regulations governing just compensation.
and nobody should be asked to bear an unfair part of the load.	<p>Compensation differs from stewardship incentives. Compensation becomes a consideration when stewardship and other measures have been insufficient to protect critical habitat, and where the critical habitat safety net is required.</p> <p>Compensation could be granted, when necessary, according to fair and objective principles when the critical habitat safety net is used. Under SARA, the Minister would be responsible for developing principles for a compensation regime, which could include:</p> <ul style="list-style-type: none">• compensation should ensure fairness so that particular individuals do not have to bear the costs associated with a public good;• compensation may take various forms, such as land swaps, or assistance in changing to alternative land uses or land management practices;• landowners could be compensated for the costs associated with normal use of the land, not for the highest possible or future potential value of lands;• Aboriginal peoples could be compensated for the costs associated with normal use of reserve lands;• compensation should generally not exceed the value of incentives that were made available through stewardship programs. Perverse incentives to avoid responsible public behaviour in hopes of gaining greater compensation must be avoided; and,• compensation should only be available where there is significant impact on the landowner, and alternative acceptable economic uses of land are not available.

Based on these kinds of principles, in those rare cases where compensation proves necessary, SARA would be designed to provide for compensation that is just and fair to those affected by habitat designations, but would not reward or encourage irresponsible behaviour.

How Would the Species at Risk Act Work?

COMPLIANCE AND ENFORCEMENT

The proposed SARA would include measures to ensure compliance with the Act and effective enforcement of its provisions. These measures could include inspections, monitoring, investigations, and prosecutions. Enforcement activities would be undertaken in close cooperation between federal, provincial/territorial and local enforcement agencies.

The proposed legislation would impose penalties on those violating the legislation or its regulations. Violations of the Act would be statutory offences that may carry stiff penalties. All SARA offences would be enforceable through the courts. The courts would also have discretionary power to impose community service or fines to pay for remedial measures. Due diligence would be a legal defence under SARA.

SARA would include provisions enabling individuals to request an investigation of alleged offences under the Act, as exists under a number of federal and provincial statutes. It would be necessary to report back to the person(s) requesting the investigation on the results of the investigation or any actions taken.

Dispute Avoidance and Resolution

The Government is committed to working collaboratively to avoid or resolve disputes or disagreements which may occur in administering the Act. If problems can be effectively addressed at an early stage, people will be less inclined to seek legal remedies or pursue other more confrontational approaches.

A variety of mechanisms are currently being considered, each of which would have the goal of making the Act more effective, efficient, and accountable, without creating a costly and litigious process. The Government is no longer considering civil suit provisions within the proposed SARA.

Mechanisms to resolve disputes should allow maximum flexibility for governments to resolve disputes in a non-adversarial way. As well, they should provide for appropriate use of third parties for expert assistance and advice while ensuring democratic accountability by elected officials. The Government may seek assistance of a third party for fact-finding, evaluation, advice, or mediation. The approaches being considered would emphasize timeliness, transparency and cooperation.

