




Fisheries and Oceans Canada
Species at Risk Act

Directive on the Application of *Species at Risk Act* Section 33 (Residence) to Aquatic Species at Risk

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Directive on the Application of SARA Section 33 (Residence) to Aquatic Species at Risk

 Fisheries and Oceans Canada Ecosystems and Fisheries Management Species at Risk Program	Pêches et Océans Canada Écosystèmes et Gestion des pêches Programme d'espèces en péril	Directive on the Application of <i>Species at Risk Act</i> Section 33 (Residence) to Aquatic Species at Risk	
To be read in conjunction with: <i>1. Guidelines for the Identification of Residence and Preparation of a Residence Statement for Aquatic Species at Risk</i>		Approved by: Deputy Minister's Policy Committee	Date Approved: 2015-01-28

Enquires may be directed to:

Species at Risk Program
Ecosystems Management Directorate
Fisheries and Oceans Canada

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1. Approval Authority and Effective Date

This Directive was approved by the Members of the Deputy Minister's Policy Committee for Fisheries and Oceans Canada (DFO) on January 28, 2015, and takes immediate effect.

2. Introduction

Section 33 of the *Species at Risk Act* (SARA) prohibits damage to or destruction of a listed threatened, endangered or extirpated species' residence:

“no person shall damage or destroy 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 an extirpated species if a recovery strategy has recommended the reintroduction of the species into the wild in Canada” (s.33).

The SARA defines “residence” as:

“a dwelling-place, such as a den, nest or other similar area or place, that is occupied or habitually occupied by one or more individuals during all or part of their life cycles, including breeding, rearing, staging, wintering, feeding or hibernating” (s.2(1)).

Under the SARA, the Minister of Fisheries and Oceans is the competent minister for aquatic species and is responsible for applying section 33 of the SARA to aquatic species, other than those found in or on federal lands administered by the Parks Canada Agency.

3. Purpose

This directive is consistent with related departmental and Government of Canada policies and guidelines; it describes how Fisheries and Oceans Canada will interpret and implement section 33 of the SARA and provides guidance on:

- what constitutes a “residence” for an aquatic species and how it will be described; and
- what is considered damage or destruction of a “residence.”

In applying this directive together with the *Guidelines for the Identification and Preparation of a Residence Statement for Aquatic Species at Risk*, Fisheries and Oceans Canada intends to apply section 33 of the SARA in a manner that:

1. protects a specific structure that individual(s) of an aquatic species at risk have invested energy to create and/or modify and that they occupy during all or part of their life cycle; and
2. protects the capacity of specific structures that support functions necessary for one or more essential life-cycle processes of an aquatic species at risk.

4. Application

The concept of residence does not apply to all aquatic species. The following conditions will be used to determine whether the concept of residence applies to an aquatic species at risk:

1. There is a discrete dwelling-place that has a structural form and function similar to a den or nest;
2. An individual of the species has made an investment in the creation and/or modification of the dwelling-place;
3. The dwelling-place makes possible the successful performance of essential life-cycle functions such as spawning and rearing; and
4. The dwelling-place is occupied by one or more individuals during all or parts of their life cycle.

When the above four conditions are met, the prohibition against damage or destruction of the residence applies immediately upon listing a species as threatened or endangered and upon posting of a final recovery strategy recommending the reintroduction of an extirpated species. The concept does not apply to species of special concern. Damage or destruction of a residence may be permitted pursuant to the conditions prescribed in section 73 of the SARA. Additionally, damage or destruction of a residence may also violate the conditions of section 32 of the SARA when an individual is present at the time of damage or destruction to the residence.

While there is no legal requirement to identify or describe a residence, it is practical to do so when the concept applies in order to facilitate the residence's conservation and protection. Therefore, Fisheries and Oceans Canada will develop species-specific residence descriptions based on the best available information, when the concept applies. In all cases, a residence statement will be placed in the recovery strategy for a species and/or the SAR Public Registry. As necessary, the Department will collaborate or consult with other participating jurisdictions and species experts to develop a residence statement. For more details on the identification of residences and the development of a residence statement, refer to the *Guidelines for the Identification and Preparation of a Residence Statement for Aquatic Species at Risk*.

5. Interpretation

5.1. Residence as a dwelling-place

The SARA definition of "residence" is interpreted to mean that a residence is a structure (pre-existing, constructed or modified by the species) at a specific location or area within a species' habitat to which individuals of the species exhibit strong site-fidelity. Furthermore, an individual of the species should make an investment (e.g., energy and/or time) in creating and/or modifying the structure. In addition, one or more individuals, who may be different than those involved in creating and/or modifying the structure, must occupy the structure during some part of their life cycle. "Dwelling-place" as a residence is further defined by linking its structure to one or more essential life-cycle

functions of habitat and residence as defined in section 2(1) of the SARA. These functions describe the purpose of the residence; for aquatic species at risk, they most likely relate to functions such as spawning and rearing.

5.2. Occupancy of a residence

A residence must be “occupied or habitually occupied.” There are many possible temporal patterns in the use of a residence. A residence may be occupied continuously throughout the individual’s life cycle, once and never again, or seasonally every year. Most aquatic species will use the same location each year to construct a residence that is occupied by an individual of the species for part of their life cycle and abandon the residence after its use. The prohibition against the damage or destruction of a residence remains in effect as long as one individual uses the residence. Following this, individuals of an extirpated species cannot have a residence until the species has been reintroduced.

6. Damage and destruction of a residence

The terms “damage” and “destroy” used in section 33 of the SARA are not defined in the Act. Fisheries and Oceans Canada will interpret these terms as follows:

“Damage” is interpreted in a manner similar to the concept of harmful alteration or disruption under the *Fisheries Act*:

“Damage would result if the residence were degraded permanently or temporarily such that its capacity to serve its function when needed by the species is reduced.”

“Destroy” is interpreted in a manner similar to the concept of destruction of critical habitat pursuant to the SARA:

“Destruction would result if the residence were degraded permanently or temporarily, such that its capacity to serve its function when needed by the species is eliminated.”

7. References

Canada. Environment Canada. *Federal Policy Discussion Paper: Residence*. Ottawa: Government of Canada, 2008.

Canada. Fisheries and Oceans Canada. Canadian Science Advisory Secretariat. Science Advisory Report 2009/065. *Guidelines for Terms and Concepts Used in the Species at Risk Program*. Ottawa: Government of Canada, 2010.

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Canada. Environment Canada. *Species at Risk Act Implementation Guidance Technical Guidelines on the Application and Description of Residence* (DRAFT). Ottawa: Government of Canada, 2005.