



# Policy Regarding the Identification of Anthropogenic Structures as Critical Habitat

*Species at Risk Act Policies*



Recommended citation:

Government of Canada. 2019. Policy Regarding the Identification of Anthropogenic Structures as Critical Habitat. Species at Risk Act: Policies and Guidelines Series. Government of Canada, Ottawa. 6 pp.

Cat. No.: En4-378/2019E-PDF

ISBN: 978-0-660-31430-3

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## 1.0 Introduction

The federal *Species at Risk Act* (SARA)<sup>1</sup> requires that critical habitat be identified to the extent possible for all listed endangered, threatened and extirpated wildlife species based on the best available information. Critical habitat is necessary to support the population and distribution objectives which are set out to assist the recovery and/or survival of listed species in Canada and established in the recovery strategy. Depending on where the listed species is found, the federal recovery strategy and action plan are prepared to the extent possible in cooperation with the appropriate federal, provincial and territorial ministers, wildlife management boards, Indigenous organizations that are considered to be directly affected by the recovery strategy and action plan, as well as other persons or organizations considered appropriate. To the extent possible, consultation on the preparation of the recovery strategy will also take place with landowners, and other persons considered to be directly affected by the recovery strategy and action plan, including lessees, municipalities and the government of any other country in which the species is found.

Some SARA-listed species have adapted to, and become dependent, to varying degrees, upon anthropogenic (i.e. human-constructed) structures. The definition of *habitat* and *critical habitat* can, where necessary, encompass anthropogenic structures, and as such competent ministers under SARA require a consistent approach regarding identification of such structures as critical habitat in recovery planning.

## 2.0 Purpose

The purpose of this policy is to outline the SARA competent ministers' approach to the identification and protection of anthropogenic structures as critical habitat under SARA.

## 3.0 Legislative Context

Under SARA, a recovery strategy or action plan which identifies critical habitat must be prepared for all listed extirpated, endangered, and threatened species. Critical habitat must be

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<sup>1</sup> This document is not a substitute for SARA or any of its regulations. In the event of any inconsistency between this document and SARA or any of its regulations, the Act and its regulations will prevail. For the most up-to-date versions of SARA and its regulations, please consult the Department of Justice website: <http://www.justice.gc.ca/eng/>.

This policy may be updated periodically. To ensure that you have the most up-to-date version, please consult the Species at Risk Public Registry: <https://www.registrelep-sararegistry.gc.ca/default.asp?lang=En&n=24F7211B-1>

identified to the extent possible for all of those species. Provided below is the rationale for identifying anthropogenic structures as critical habitat under the federal SARA.

The definition of “habitat” for non-aquatic species in subsection 2(1) of SARA is:

“...the area or type of site where an individual or wildlife species naturally occurs or depends on directly or indirectly in order to carry out its life processes or formerly occurred and has the potential to be reintroduced.”

The definition of “habitat” for aquatic species in subsection 2(1) of SARA is:

“...spawning grounds and nursery, rearing, food supply, migration and any other areas on which aquatic species depend directly or indirectly in order to carry out their life processes, or areas where aquatic species formerly occurred and have the potential to be reintroduced.”

The definition of “critical habitat” in subsection 2(1) of SARA is:

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

The contents of a species’ recovery strategy where recovery is feasible are described in subsection 41(1) of SARA and must include:

“...an identification of the species’ critical habitat, to the extent possible, based on the best available information, including the information provided by COSEWIC, and examples of activities that are likely to result in its destruction.”

The contents of a species’ recovery strategy where recovery is not feasible are described in subsection 41(2) of SARA and must include:

“... an identification of the species’ critical habitat, to the extent possible,”

Similarly, the contents of an action plan are described in subsection 49(1) of SARA and must include, with respect to the area to which the action plan relates:

“an identification of the species’ critical habitat to the extent possible, based on the best available information and consistent with the recovery strategy, and examples of activities that are likely to result in its destruction.”

Anthropogenic structures may constitute an area or type of site upon which the species depends *directly or indirectly* in order to carry out its life processes.

Therefore, if a given anthropogenic structure is necessary for the survival or recovery of a listed wildlife species, its identification as critical habitat is consistent with the purposes of the Act, which includes preventing wildlife species from being extirpated or becoming extinct, and to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity. As such, if it is determined during the recovery planning process that anthropogenic structures are required for the survival or recovery of the species, these structures must be identified as critical habitat.

In practice, the quantity, distribution and attributes of critical habitat are those that are required to achieve the population and distribution objectives stated in the recovery strategy.

## **4.0 Policy**

### **4.1 Scope of Application**

This policy applies to anthropogenic structures, which are defined for the purposes of this policy as human-constructed structures:

- 1) the primary purpose of which are not to provide habitat for wildlife, such as barns, silos, bridges and chimneys
- 2) that require human intervention to maintain the biophysical attributes of critical habitat for species at risk, such as compost piles, or
- 3) that are created intentionally for use by species at risk, such as wildlife crossings or nesting platforms

This policy does not apply to: 1) anthropogenically created habitats that approximate natural landscape features or habitat types such as mines (similar in attributes to caves), or waterbodies created as a result of dams; or, 2) habitat types converted or modified as a result of human activity (e.g., managed woodlots or agricultural fields), although these may otherwise be identified as critical habitat based on their biophysical attributes. These types of habitat, considered as natural habitat in this policy, are part of the broader continuum of anthropogenically influenced habitat on the landscape (most habitat being influenced to some degree by human activity), and will be addressed through standard federal guidance for the identification of critical habitat.

## 4.2 Including Anthropogenic Structures as Critical Habitat

### *Application of Precaution*

Recovery practitioners will weigh the best available information gathered during the recovery planning process in determining whether anthropogenic structures are required for the survival or recovery of the species.

In carrying out its responsibilities under SARA, the Government of Canada will apply precaution, consistent with the *Framework for the Application of Precaution in Science-based Decision Making about Risk (Government of Canada, 2003)*; and the preamble and section 38 of SARA which state that "...if there are threats of serious or irreversible damage to a wildlife species, cost-effective measures to prevent the reduction or loss of the species should not be postponed for a lack of full scientific certainty."

### *Use of a Critical Habitat Schedule of Studies*

If it is unknown whether there is sufficient natural habitat available to support survival or recovery of the species, a determination as to whether the anthropogenic structures in question are required for survival or recovery must be made. Recovery practitioners will consider the best available information in making this determination. In these cases, a critical habitat schedule of studies can be used to address the knowledge gaps/uncertainty.

#### 4.2.1 Recovery Feasible Scenario

A return to a *recovered* state in Canada must be ultimately based on a return to the use of natural habitat features, rather than anthropogenic structures. However, there are SARA-listed species which have adapted to anthropogenic structures as habitat, often as a result of the loss or degradation of natural habitat, and those anthropogenic structures are now what is supporting, in whole or in part, the continued existence of the species in Canada.

- For such species, in a recovery scenario, the anthropogenic structures will be identified as an essential component of critical habitat needed to achieve the population and distribution objectives, but cannot be the entirety of the critical habitat for the species in the long term
- In these cases, anthropogenic structures will be identified as a bridge until natural habitat can be restored to allow for recovery of the species. In some cases, the creation of structures intended for use by the species (e.g., nesting platforms) may also be used to supplement the habitat requirements for survival or recovery

- When it is determined that anthropogenic structures are required to meet the population and distribution objectives, the recovery document will include a clear rationale for including these structures in the critical habitat identification
- If the available information indicates that there is not sufficient natural habitat to meet the population and distribution objectives and anthropogenic structures are identified as critical habitat, the strategic direction for recovery will include measures regarding the creation/restoration of natural habitats, and measures to promote their use/selection by the species, even if this process is expected to take many years/decades/etc. (e.g., regeneration of old-growth forest)

#### 4.2.2 Recovery Non-feasible Scenario

If it is determined that it is not technically or biologically feasible to restore sufficient natural habitat to support recovery of the species in a biologically relevant time frame, then recovery would be deemed non-feasible and a non-feasible recovery strategy would be prepared under SARA subsection 41(2).

In such a case, while any existing/restorable natural habitat would be identified as critical habitat, anthropogenic structures that the species has become adapted to and dependent upon would also be identified as part of the critical habitat to prevent extirpation or extinction of the species.

#### 4.2.3 Anthropogenic Structures Where Natural Habitat is Sufficient

If, during the recovery planning process, it is determined that there is sufficient natural habitat available to support the recovery or survival of a listed wildlife species and anthropogenic structures are not required to meet the population and distribution objectives, anthropogenic structures will not be identified as critical habitat.

In cases where anthropogenic structures are not identified as critical habitat due to the existence of sufficient natural habitat, the potential contribution of these structures to the survival or recovery of the species can be noted in recovery documents in terms of stewardship opportunities and further study on the value of these structures can be noted in the recovery planning table.

In cases where the description of critical habitat biophysical attributes could lead to confusion as to whether anthropogenic structures are identified as critical habitat, the recovery document

will clearly indicate whether anthropogenic structures are identified as part of the critical habitat or not.

#### 4.2.4 Habitat Sink Situations

When determining if anthropogenic structures are required to meet the population and distribution objectives for a species, an assessment will be made as to whether the structures contribute positively to the survival or recovery of the species. This assessment is required because some artificial structures may attract individuals of a species but result in reduced individual level fitness and represent population-level sinks, thereby undermining the long-term success of recovery efforts. In such cases, those anthropogenic structures may be excluded from the critical habitat identification; this will be clearly noted in the recovery document.

#### 4.2.5 Follow-up Measures/Actions

As with all species for which critical habitat has been identified, habitat quantity, condition and configuration will need to be assessed periodically to ensure that sufficient critical habitat is present to support the survival or recovery of the species. In cases where anthropogenic structures have been identified as part of the critical habitat, the recovery strategy and/or action plan will set out measures to be taken to track the quantity, condition and configuration of both anthropogenic structures and natural habitat available to the species, to assess the potential for the species to transition back to the usage of natural habitat.

## 5.0 Additional Information

### *Operation, Maintenance, Modification and Decommissioning of Existing Anthropogenic Structures*

It is recognized that the identification of anthropogenic structures as critical habitat brings with it unique considerations related to its management and protection (e.g., public health and safety, building codes). The Government of Canada will work with provinces, territories, Indigenous peoples, the owners/managers of those structures and others directly affected, as appropriate, to achieve compliance under SARA and promote species recovery.

When anthropogenic structures are identified as critical habitat, the Minister will make use of stewardship, mitigation and other measures as appropriate (e.g., compliance promotion, section 11 conservation agreements, species at risk funding programs, codes of practice, habitat offsets and best management practices) in order to maximize the effectiveness of conservation measures enabled by SARA to manage and protect these habitats and minimize impacts on landowners and property managers.



The recovery document that identifies anthropogenic structures as critical habitat will identify examples of activities likely to result in destruction of critical habitat. The inclusion of examples of activities likely to result in destruction of critical habitat is mandatory under section 41 of SARA and although they do not constitute a regulatory statement, they do inform and support the protection and management of critical habitat as well as provide information to Canadians to support recovery by proactively avoiding harming and destroying critical habitat.

In those cases where critical habitat is protected by regulations under SARA, exceptions with respect to the protection of critical habitat exist under paragraph 83(1)(a) of SARA where activities related to public safety, health or national security are authorized by or under any other Act of Parliament or activities under the *Health of Animals Act* and the *Plant Protection Act* for the health of animals and plants. Under subsection 83(2), the person exercising the power under an Act described above must determine that the activity is necessary for the protection of public safety, health, including animal and plant health, or national security; and respects the purposes of SARA to the greatest extent possible. Exceptions also exist under paragraph 83(1)(b) of SARA where activities are authorized under section 73, 74 or 78 by an agreement, permit, licence, order or similar document.