



Public Consultation on the Policy on Assessing Imminent Threats under Sections 29 and 80 of the *Species at Risk Act* – terrestrial species

What We Heard Report



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Executive Summary

Environment and Climate Change Canada posted the *Policy on Assessing Imminent Threats under Sections 29 and 80 of the Species at Risk Act – terrestrial species* (the Policy) on the Species at Risk Public Registry for a 60-day comment period between April 20 – June 30, 2023. The process sought input from key conservation partners and the Canadian public. This What We Heard Report provides a summary of the comments received and Environment and Climate Change Canada's response to the comments.

Key themes in the comment submissions include:

- **Transparency:** Greater transparency around the process and basis for decisions.
- **Consultations:** Stronger commitment to consultation with provincial and territorial governments and Indigenous peoples.
- **Indigenous rights:** Need to reflect the Government of Canada's commitment to uphold the Honour of the Crown, Aboriginal and treaty rights, and implementation of the *United Nations Declaration on the Rights of Indigenous Peoples Act*.
- **Timeliness:** Timelines should be included to ensure timely decision making.
- **Information:** A variety of information sources can help inform an imminent threat assessment.
- **Defining Imminent Threat:** Lack of clarity regarding the definition of imminent threat.
- **Other:** Other comments that did not result in changes to the Policy or are outside the scope of the Policy.

Introduction

While the responsibility for wildlife conservation is shared between federal, provincial and territorial governments, provinces and territories have primary responsibility for terrestrial species at risk on non-federal lands. The *Species at Risk Act* (SARA; the Act) is intended to be implemented in cooperation with all levels of government to achieve the protection and recovery of species at risk through national standards for conservation and complementary legislation and programs. All species listed under SARA face threats, and the Act provides a suite of authorities and tools to support the recovery of species and protect individuals, their residences, and critical habitat from those threats, including regulatory measures and collaborative stewardship-based tools. The emergency provisions under sections 29 and 80 of SARA are distinct provisions that are designed as protection tools of last resort, to be considered in exceptional circumstances, when action outside of the standard SARA process and measures may be warranted.

The Policy supports the use of SARA's emergency provisions. Its purposes are to

- Provide consistency in the timely assessment of imminent threats to the survival (under section 29) and to the survival or recovery (under section 80) of a terrestrial wildlife species under SARA; and

- Support the transparency of how Environment and Climate Change Canada and Parks Canada conduct imminent threat assessments in support of the forming of ministerial opinions under section 29 and section 80 of SARA.

The Policy applies to species that fall under the responsibility of the Minister of the Environment and the Minister responsible for Parks Canada.

Engagement Overview

Environment and Climate Change Canada (ECCC or the Department) conducted a broad email campaign to notify provincial and territorial governments, Indigenous communities and organizations, environmental non-governmental organizations, and industry stakeholders of a 60-day public comment period on the draft Policy. The Department continued to accept comments and engage with partners and stakeholders beyond the 60-day comment period. The Department invited more than 2,350 individuals and organizations to submit their written comments and offered bilateral discussions. Plain language factsheets, document translation, presentations, and meetings were provided upon request. Departmental officials presented at three Wildlife Management Board meetings and engaged in bilateral discussions with a Northern Indigenous Government, a National Indigenous Organization, and an Industry Stakeholder Association.

The Department received 19 written submissions. We thank each engagement partner that took the time to consider and provide feedback on the draft Policy.

Key Themes

The comments reflected that the policy is a welcome development and that many are encouraged by the Department's efforts to provide a clear and consistent approach to imminent threat assessments. This section summarizes the key themes that came out of the comments provided during the engagement period. The Department's response to the comments follows.

Transparency

The need for greater transparency was a recurring comment. Most submissions sought greater transparency in the process, including the thresholds for triggering imminent threat assessments. Comments in a number of submissions also indicated the need for greater transparency in how Indigenous Knowledge is valued throughout an imminent threat assessment process.

Implicated governments and Indigenous peoples expressed that imminent threat assessments should be shared with them so that they can provide input and facilitate their involvement on addressing the species' threats. Comments consistently called for publishing finalized imminent threat assessments.

ECCC Response – Ensuring transparency and predictability of the process

- To complement the Policy, the Department has released the *Operational Guide: Requesting an imminent threat assessment for terrestrial species under the Species at Risk Act*, on the

[Species at Risk Public Registry](#). The *Operational Guide* outlines the process and information requirements to request an imminent threat assessment.

- The Department clarified in the 'Application' section that an imminent threat assessment may be triggered by an external request or undertaken by Environment and Climate Change Canada or Parks Canada independent of a request. However, as highlighted above, emergency provisions are a tool of last resort, and not the first choice for achieving the protection and recovery of species at risk. The Department will continue to regularly solicit information in order to complement information on existing protections and potential threats to wildlife species.
- The Policy has been updated to include Transparency as a principle and purpose. Specific sections that operationalize transparency include:
 - The 'Policy Statement - Consultation' section outlines consultations with provincial and territorial governments, and Indigenous peoples. In practice, this entails frequent communication with implicated parties and the sharing of information during the development of an imminent threat assessment.
 - The 'Policy Statement – Monitoring and Reporting' and 'Additional Information' sections outline that imminent threat assessments and ministerial opinions are published on the [Species at Risk Public Registry](#).

Consultations and collaboration

We heard that the Policy should make consultation with Indigenous peoples mandatory and that the Policy should use stronger language that would enforce the Crown's common law Duty to Consult.

There was support for provincial and territorial governments leading on the responsibility to protect species at risk and their habitats within their jurisdictions; however, some expressed concern that collaborative agreements and provincial/territorial measures to address the imminent threat would be relied upon too heavily. We heard there should be more clarity on how provincial and territorial governments will be consulted.

ECCC Response – Commitment to consultations and collaborative approaches

- The Policy was updated to:
 - Emphasize that provincial and territorial governments lead on the protection and recovery of terrestrial species at risk on non-federal lands (section 'Introduction').
 - Strengthen language regarding consultations with provincial and territorial governments ('Policy Statement' section).
 - Strengthen language regarding Indigenous consultation and engagement in 'Policy Statement', 'Policy Interpretation' and 'Principles' sections, to recognize the Government of Canada's obligations under the *United Nations Declaration on the Rights of Indigenous Peoples Act*.
 - The Policy has been updated in the 'Policy Interpretation' section to clarify how various protection and recovery measures including collaborative approaches are considered when conducting an imminent threat assessment.
- To complement the Policy, the Department released the *Operational Guide: Requesting an imminent threat assessment for terrestrial species under the Species at Risk Act* that outlines

how sharing imminent threat assessment information with implicated governments and Indigenous rights holders is procedure.

Indigenous rights

Several comments expressed it was important that the federal government uphold Aboriginal and treaty rights and the Honour of Crown but that the draft Policy lacks mechanisms to do so. Comments recommended that impacts to Indigenous rights be added as a consideration when conducting imminent threat assessments. We also heard requests for the Policy to consider and, when relevant, protect the ability for Indigenous peoples to exercise their treaty rights, specifically the right to hunt, fish, trap, and harvest species of cultural importance to treaty rights holders. We heard that Indigenous communities should be consulted to determine recovery objectives for a species under consideration.

ECCC Response – Affirming commitment to respect Indigenous rights

- The Policy was updated to:
 - Strengthen the language regarding consultations with Indigenous governments and peoples ('Policy Statement', 'Policy Interpretation' and 'Principles' sections).
 - Clarify that consultation timelines would take into account the emergency nature of a situation ('Policy Statement' section).
 - Reflect that what constitutes recovery for a given species may take into account Indigenous interpretations of recovery, as brought forward by affected Indigenous Peoples ('Policy Interpretation' section).

Timeliness

The Department received several comments requesting that the Policy include timelines related to the development of departmental advice and ministerial decision making, notably timelines for initiating an assessment and providing advice to the competent minister. We received one comment requesting that ministerial opinions formed pursuant to the policy be made public within 30 days of determination.

ECCC Response – Supporting timely evidence-based advice

- The Department did not add any timelines to the Policy to allow flexibility in balancing the need for providing advice to the competent minister in a timely manner with the need to ensure advice and decisions are evidence-based and that appropriate engagement has been undertaken.
- The Policy has been updated to include Timeliness as a principle ('Principles' section).

Information

Many submissions suggested that the list of information sources in the 'Policy Interpretation' section be broader to include completed environmental/impact assessments, special research programs, unpublished scientific data or analysis, practitioner knowledge, and COSEWIC assessments.

ECCC Response – Imminent threat assessments developed using best-available information

- The Policy has been updated to reflect an illustrative set of information sources, noting that the list is not intended to be exhaustive.

Defining imminent threat

Many submissions provided feedback on the interpretation of “imminent threat”. Concerns were expressed that:

- Assessing the imminence of a threat on a case-by-case basis is too vague and could lead to a lack of clarity and consistency.
- “Highly unlikely or impossible” as the assessment standard sets a high bar that contradicts the precautionary principle.
- Assessing a species’ survival on a national level would render subspecies and individual species populations vulnerable.

Comments recommended that:

- The Policy be clearer in its consideration of cumulative impacts of activities as threats.
- The definition of “imminent threat” should establish a quantitative threshold.
- The definition of “threat” should take into account natural threats.
- The scope and scale of imminent threat assessments are to be proportional to the nature of the threats.
- The Policy use definitions and tools from COSEWIC and the IUCN Red List of Threatened Species as a guide to more clearly define “imminent threat”.

Some comments said that re-assessment of an imminent threat for the repeal of an emergency order should be as robust as the initial assessment, including appropriate consultation with Indigenous peoples. We heard concerns that re-assessments could lead to the premature repeal of an emergency order.

ECCC Response – Clarifying the interpretation of “imminent threat” and continuing development for “imminent threat” guidance

- The definition of threat in the Policy is limited to human-induced threats. This is consistent with SARA’s purpose which is “...to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity...”.
- The Policy was updated to
 - Clarify that the interpretation of “threats” in the Policy is consistent with the internationally accepted standard and the definition of threat used by COSEWIC and by the International Union for the Conservation of Nature.
 - Align the interpretation of ‘imminent threat’ to the survival of a species in the context of emergency listing (section 29) with COSEWIC’s approach to emergency listing assessments.
 - Increase clarity and transparency of the interpretation of ‘imminent threat’ to the survival or recovery of a species in the context of the emergency order provisions (section 80).
 -
- These changes to are intended to retain broad application to a range of threats and ecological considerations while more closely aligning with COSEWIC’s interpretation of imminent threats to survival. The Department is of the view that these interpretations will provide consistency on how the Department advises the minister that a species is facing imminent threat.
- The Department intends to further develop:
 - A framework for imminency
 - A framework for cumulative impacts

Other comments

This section summarizes the comments that did not fall within the scope of the Policy or did not result in changes at this time.

Comments recommended that:

- The Policy should consider aquatic species and/or that the Department work with the Department of Fisheries and Oceans Canada to establish a consistent approach for assessing an imminent threat.

ECCC Response

- The Policy was developed in consultation with the Department of Fisheries and Oceans Canada (DFO). Environment and Climate Change Canada will continue to work with DFO and Parks Canada Agency on future updates to the Policy.

Issues raised with other aspects of SARA that are outside the scope of the policy include consideration of Indigenous Knowledge in recovery planning, interpretations of the definition of “recovery”, the effectiveness of SARA conservation agreements, and other comments related to specific scientific methods or approaches. The Department makes note of these comments and will consider them through the appropriate processes.