

Addressing *Species at Risk Act* Considerations under the *Canadian Environmental Assessment Act*

A federal policy and procedures guide

Final draft V3

August 2005

SARA-CEAA Guidance Working Group
CWS/Environment Canada and the Canadian Environmental Assessment Agency

Note to Readers

Acknowledgements This work is based on a draft document prepared by Tom Shillington for the SARA-CEAA Guidance Working Group. The work was further developed and updated through the Working Group under the direction of Environment Canada, Fisheries and Oceans Canada, Parks Canada, the Canadian Environmental Assessment Agency and representatives from the Department of Justice.

Document information

This document may be reviewed and updated periodically. To ensure that you have the most up-to-date version, please consult the:

- Canadian Wildlife Service's environmental assessment guidelines Webpage at www.cws-scf.ec.gc.ca/publications/eval/index_e.cfm; or
- Canadian Environmental Assessment Agency's guidance material Webpage at www.ceaa-acee.gc.ca/012/newguidance_e.htm.

This document has been issued in French under the title: *Considérations relatives à la Loi sur les espèces en péril dans le contexte de la Loi canadienne sur l'évaluation environnementale.*

Catalogue No.: *(to be inserted)*
ISBN: *(to be inserted)*

Comments?

To submit comments on the guide, please contact:

Environment Canada / Environnement Canada
Canadian Wildlife Service/Service canadien de la faune
351 St. Joseph Boulevard • Gatineau, Quebec
Telephone: 819-997-1095 • Fax: 819-997-2756
E-mail: cws-scf@ec.gc.ca

Table of Contents

GUIDE OVERVIEW	1
PART 1. SARA PROVISIONS RELATING TO PROJECT REVIEW.....	3
OVERVIEW.....	3
1.1 <i>SARA Notification Requirement</i>	6
1.2 <i>SARA Project Review Requirements</i>	11
1.3 <i>Amendment to the CEEA Definition of “Environmental Effect”</i>	16
PART 2. INCORPORATING SARA CONSIDERATIONS INTO THE CEEA PROCESS.....	19
OVERVIEW.....	19
2.1 <i>Initial Considerations</i>	21
2.2 <i>Notification of the Competent Ministers</i>	24
2.3 <i>Responsibilities of the Competent Ministers</i>	26
2.4 <i>Federal-Provincial Harmonization</i>	28
2.5 <i>Registry Requirements</i>	30
2.6 <i>Analysis of Potential Project Effects on Species at Risk</i>	32
2.7 <i>Consideration of Alternatives</i>	34
2.8 <i>Consideration of Cumulative Environmental Effects</i>	37
2.9 <i>Mitigation Measures</i>	40
2.10 <i>Exemptions to the Release of Information</i>	43
2.11 <i>Determination of Significance</i>	46
2.12 <i>SARA Permit Decision</i>	50
2.13 <i>Monitoring and Follow-up Programs</i>	55
2.14 <i>Adaptive Management</i>	58
APPENDICES: BACKGROUND TO THE SPECIES AT RISK ACT	60
OVERVIEW.....	60
Appendix A. <i>Introduction to SARA</i>	61
Appendix B. <i>SARA Definitions</i>	63
Appendix C. <i>Summary of Responsibilities under SARA</i>	66
Appendix D. <i>Key SARA Instruments</i>	68
Appendix E. <i>SARA Notification Template</i>	73

Figures and Tables

TABLE 1: SARA PROVISIONS THAT RELATE DIRECTLY TO PROJECT REVIEW	4
TABLE 2: AMENDING PROVISION OF SARA.....	5
TABLE 3: WHO MUST BE NOTIFIED?.....	7
TABLE 4: ALTERNATIVES UNDER CEAA	34
FIGURE 1: SARA CONSIDERATIONS DURING AN EA.....	20

DRAFT

Guide Overview

Purpose of guide This guide has been prepared to provide federal policy and procedural guidance on specific obligations under the *Species at Risk Act* (SARA) as they relate to federal environmental assessment. Specifically, the guide shows how certain SARA requirements may be addressed at each step of an environmental assessment conducted under the *Canadian Environmental Assessment Act* (CEAA).

Intended users The guide is primarily intended for those who are already familiar with federal environmental assessment and would like to know how to incorporate SARA requirements into their project reviews under CEAA.

The guide will be relevant for:

- persons responsible for federal environmental assessments;
 - responsible authorities and federal authorities under CEAA;
 - environmental assessment practitioners responsible for conducting or contributing to environmental assessments involving the federal government;
 - managers and project proponents responsible for projects that are subject to an environmental assessment under CEAA; and
 - other jurisdictions that may have an interest in such projects.
-

Contents This publication contains the following topics:

Topic	Page
Part 1. SARA Provisions relating to Project Review	3
Part 2. Incorporating SARA Considerations into the CEAA Process	19
Appendices: Background to the <i>Species at Risk Act</i>	59

Part 1 of this guide focuses on the SARA provisions that relate to federal project review. It identifies the relevant SARA requirements, as well as the federal policy associated with the requirements.

Part 2 of this guide examines how the SARA provisions can best be integrated into each step of the CEAA process. It presents guidance on the additional procedures that an environmental assessment practitioner or responsible authority may need to consider during an environmental assessment.

The appendices provide additional SARA background information of particular relevance to an environmental assessment practitioner. The appendices include an overview of SARA, definitions, responsibilities, key instruments, information sources and a template for notification.

Related guidance

This guide complements related guidance available for both SARA and CEAA. For additional information on related topics, please refer to the following:

- Canadian Wildlife Service environmental assessment guidelines at www.cws-scf.ec.gc.ca/publications/eval/index_e.cfm;
- SARA background material and guidance on the SARA Public Registry Web site at www.sararegistry.gc.ca; and
- CEAA guidance on the Canadian Environmental Assessment Agency's Web site at www.ceaa-acee.gc.ca/012/newguidance_e.htm.

Note: Additional guidance on integrating SARA considerations into federal environmental assessments in the North is currently in development.

Disclaimer

This document has been prepared for information purposes only. It is not a substitute for the *Canadian Environmental Assessment Act* (CEAA), the *Species at Risk Act* (SARA) or any regulations under these acts. In the event of an inconsistency between this guide and the Acts or their regulations, the Acts or their regulations, as the case may be, would prevail.

Official or more detailed information can be found in the legal text of the [*Species at Risk Act*](#) and the [*Canadian Environmental Assessment Act*](#), available on the Department of Justice Canada Web site at <http://laws.justice.gc.ca/en/index.html>.

Individuals with specific questions about either legislation are urged to seek legal advice.

Part 1. SARA Provisions relating to Project Review

Overview

Purpose of Part 1

The *Species at Risk Act* (SARA) provides a framework for the protection and recovery of species at risk in Canada. The measures it provides for, and the information generated, will be highly relevant to the conduct of environmental assessments.

In addition, SARA contains four provisions that directly relate to federal project review.

Part 1 of the guide provides:

- an overview of the four SARA provisions that relate directly to federal environmental assessments; and
- background for the more detailed consideration of each of these provisions.

Contents

This part contains the following topics:

Topic	Page
1.1 SARA Notification Requirement	6
1.2 SARA Project Review Requirements	11
1.3 Amendment to the CEAA Definition of “Environmental Effect”	16

Table 1: SARA Provisions that Relate Directly to Project Review

Three provisions in SARA directly relate to the conduct of environmental assessments. The following table summarizes these three provisions. Each provision is then considered in more detail in following sections.

SARA Provision	Description	For Details See:
ss.79(1)	Requires every person who is required by a federal Act to ensure that a federal environmental assessment is conducted to notify the competent minister(s) without delay if the project is likely to affect a listed wildlife species or its critical habitat.	1.1 SARA Notification Requirement
ss.79(2)	Requires that, where a federal environmental assessment is being carried out on a project that may affect a listed wildlife species or its critical habitat, the person responsible for ensuring the assessment is conducted must: <ul style="list-style-type: none"> • identify potential adverse effects on the listed wildlife species and its critical habitat; and • if the project is carried out: <ul style="list-style-type: none"> › ensure that measures are taken to avoid or lessen those adverse effects and to monitor them, and › ensure that such measures are consistent with any applicable recovery strategy and action plans. 	1.2 SARA Project Review Requirements
ss.79(3)	Defines “person” as: <ul style="list-style-type: none"> • including an association or organization, and a responsible authority as defined in subsection 2(1) of CEAA Defines “project” as: <ul style="list-style-type: none"> • defined in subsection 2(1) of CEAA 	Definition of responsible authority Definition of project

Definition of responsible authority

The term “responsible authority” is defined in subsection 2(1) of CEAA.

In relation to a project, it means “*a federal authority that is required pursuant to subsection 11(1) to ensure that an environmental assessment of the project is conducted.*”

Definition of project

“Project” is defined in subsection 2(1) of CEAA as

- a) in relation to a physical work, any proposed construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work, or*
- b) any proposed physical activity not relating to a physical work that is prescribed or is within a class of physical activities that is prescribed pursuant to regulations made under paragraph 59(b).*

Table 2: Amending Provision of SARA

SARA also contains one amending provision which is summarized in the following table.

Provision	Description	For Details See:
SARA s. 137	Amends the definition of “environmental effect” under CEAA to clarify, for greater certainty, that environmental effects include any change the project may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species.	1.3 Amendment to the CEAA Definition of “Environmental Effect”

1.1 SARA Notification Requirement

SARA notification requirement

The *Species at Risk Act* (SARA) confers an obligation on a responsible authority to notify the [competent minister\(s\)](#) if a project is likely to affect a listed wildlife species or its critical habitat.

Specifically, subsection 79(1) of SARA states that:

“79. (1) Every person who is required by or under an Act of Parliament to ensure that an assessment of the environmental effects of a project is conducted must, without delay, notify the competent minister or ministers in writing of the project if it is likely to affect a listed wildlife species or its critical habitat.”

Species to which the notification requirement applies

The SARA notification requirement covers all species [listed](#) in Schedule 1 of SARA, regardless of whether they are found on federal, provincial or territorial lands.

Schedule 1 species are identified on the SARA Public Registry at www.sararegistry.gc.ca/species/default_e.cfm.

Notification for other species

Notification is required for listed wildlife species only; however, when a [COSEWIC](#) species in the process of being listed is likely to be affected by a project, a responsible authority is encouraged to send in a notification. While there is no legal requirement to do so, notification would be required if listing occurs before the environmental assessment is completed.

For the reasons stated above, a responsible authority may choose to provide notification if a project is likely to affect any COSEWIC-listed wildlife species.

Who is responsible for notification?

Under the *Canadian Environmental Assessment Act* (CEAA), the person who is required to ensure that an environmental assessment is conducted is the responsible authority. Thus, the onus is on the responsible authority to comply with subsection 79(1) of SARA.

If there is more than one responsible authority, then each has a responsibility to notify the competent minister(s). Their responsibilities may be met by coordinating a joint notification that each should sign, or alternatively, each sending in a separate notification.

For example, in a project with three responsible authorities, all three could sign a single notification or three separate notifications could be sent.

Note: Formal notification is required even if discussions have occurred between a responsible authority and the department or agency offering advice on the species.

Table 3: Who must be notified?

A responsible authority must send a notification to the department or agency reporting to the competent minister responsible for the listed wildlife species.

In other words:

For...	Notification must be sent to...
<ul style="list-style-type: none"> any species and their critical habitat found exclusively or partly in or on federal lands administered by the Parks Canada Agency, 	Parks Canada .
<ul style="list-style-type: none"> for aquatic species and their critical habitat, 	Fisheries and Oceans Canada (<i>see note</i>).
<ul style="list-style-type: none"> for migratory birds protected by the <i>Migratory Birds Act, 1994</i> and their critical habitat, and all other species and critical habitat, 	Environment Canada (<i>see note</i>).

Note: To find out whether more than one notification is required, please refer to [Is more than one notification required?](#) below.

How should notification be done?

Notification should follow existing environmental assessment channels.

For example, notification letters should be sent to the regional environmental assessment department or agency contacts who would normally be contacted under the procedures of the *CEAA Federal Coordination Regulations*.

Contact lists are available through department or agency members of the Regional Environmental Assessment Committees (REACs). For a list of contacts, please contact your Canadian Environmental Assessment Agency [regional office](#). Contact information is available on the Agency's Web site at www.ceaa.gc.ca/001/regions_e.htm.

Parks Canada contacts

Parks Canada has 32 field units which are groupings of National Parks, National Historic Sites and National Marine Conservation Areas whose proximity to each other allows them to share management and administrative resources. There are four Service Centres: Halifax, Quebec City, Cornwall/Ottawa and Winnipeg/Calgary/Vancouver.

Most field units have an Environmental Assessment Coordinator and there are also Environmental Assessment Specialists in each of the Service Centre offices. The Environmental Assessment Coordinators and Specialists are the primary contacts for environmental assessments.

Fisheries and Oceans contacts

Fisheries and Oceans Canada departmental information can be accessed at www.dfo-mpo.gc.ca/home-accueil_e.htm.

Environment Canada contacts

Environment Canada regional contacts are identified at www.ec.gc.ca/ea-ee/home/regions_e.asp.

Is more than one notification required?

When more than one listed wildlife species or critical habitat may be affected, a single notification may cover all the species.

If there is more than one competent minister responsible for the listed wildlife species or critical habitat, notification must be sent to each department or agency with responsibility for the species.

For example:

- If a project could affect a listed wildlife species that is terrestrial and is on both federal lands administered by the Parks Canada Agency and on other lands, both the Parks Canada Agency and Environment Canada regional contacts should be notified.
- Similarly, if a project could affect an aquatic species that is found both on federal lands administered by the Parks Canada Agency and elsewhere, both the Parks Canada Agency and Fisheries and Oceans Canada regional contacts should be notified.

Additional notification may be needed should it become known, later in the environmental assessment process, that additional listed wildlife species or their critical habitat are likely to be affected.

When must notification be

Notification must be made as soon as a responsible authority identifies that a project is likely to affect one or more listed wildlife species or its critical

provided?	<p>habitat.</p> <p>In practice, this could occur at any phase of the environmental assessment, such as very early during the review of a project description, during the scoping phase, as a result of field work, or later on during the analysis of environmental effects or even the follow-up. Notification is required at any of these stages if it is only then discovered that the project is likely to affect a listed wildlife species or its critical habitat.</p> <p>The responsible authority should not delay notification until after the identification of mitigation measures. By informing the competent minister of the potential effect early in the process, discussions may be held or information or advice provided that will assist the responsible authority in avoiding or minimizing adverse effects. Early notification allows the competent department or agency to provide advice in the development of mitigation measures, including alternatives that may not be possible at a later stage of planning.</p>
Must the effects be adverse or significant?	<p>The notification requirement is independent of the significance of the effects.</p> <p>Notification is legally required even for minor effects, and notification is required regardless of whether effects are beneficial or adverse.</p>
Information to be included in the notification	<p>Subsection 79(1) of SARA does not specify what must be included in the notification. In keeping with the principle of notifying as early as possible in the environmental assessment process, it is recognized that some information, such as the nature or severity of the effect, may not be available at the time of notification.</p> <p>When available, the following information should be provided:</p> <ul style="list-style-type: none"> • identification of the responsible authority(ies); • name, location and a brief description of the project; • federal environmental assessment process under which the project is being assessed; • listed wildlife species and/or critical habitat that are likely to be affected by the project; • information source (NatureServe, sightings, recent surveys, etc); and • signature of the responsible authority(ies). <p>While notification should not be delayed until additional information can be produced, where it is available, the following could also be provided:</p>

- Canadian Environmental Assessment Registry reference number;
- location data for the species or critical habitat, or any residences of individuals of those species, if known.
- nature of the potential effect;
- mitigation measures being considered or alternative means of carrying out the project, if known;
- need for confidentiality (for example, location data for some species vulnerable to poaching may be sensitive), if known.

A [notification template](#) for this information is provided in Appendix E.

**Related
guidance**

For related information, also see this guide's sections:

- [2.2 Notification of the Competent Ministers](#)
 - [2.3 Responsibilities of the Competent Ministers](#)
-

**SARA
references**

- Notification of Minister: subsection 79(1)
 - Schedule 1 - List of Wildlife Species at Risk
-

**CEAA
references**

- [Federal Coordination Regulations](#)
-

1.2 SARA Project Review Requirements

SARA project review requirements

The *Species at Risk Act* (SARA) confers obligations on a responsible authority, beyond the requirements of the *Canadian Environmental Assessment Act* (CEAA), to identify adverse effects on a listed wildlife species and its critical habitat, and to ensure that those effects are mitigated and monitored.

Specifically, subsection 79(2) of SARA states that the responsible authority

“must identify the adverse effects of the project on the listed wildlife species and its critical habitat and, if the project is carried out, must ensure that measures are taken to avoid or lessen those effects and to monitor them. The measures must be taken in a way that is consistent with any applicable recovery strategy and action plans”.

Identifying adverse effects

Identifying the adverse effects of a project on a listed wildlife species and its critical habitat is a requirement under subsection 79(2) of SARA. This is reinforced by the requirement of subsection 16(1) of CEAA to consider the environmental effects of a project. It is also supported by the CEAA definition of [environmental effect](#) that specifically refers to effects on listed wildlife species, their critical habitat and residences of individuals of those species.

Thus, both Acts underscore the need to ensure that an environmental assessment fully considers how a project may affect species at risk and their habitats, including, but not limited to, effects on [critical habitats](#) and [residences](#). For example, if using an approach based on valued ecosystem components (VECs), it would be best practice to ensure that any species at risk in the project area is identified as a VEC.

The analysis should consider how a project affects the listed wildlife species or its critical habitat, including direct and indirect effects. As well, effects on habitat that may adversely affect the species should also be considered in the analysis. When critical habitat has not yet been identified in a finalized [recovery strategy](#) or [action plan](#), special attention should be directed to habitat that has been designated as high quality or of special importance by the recovery team since adverse effects on such habitat may, in turn, adversely affect the species.

For [species of special concern](#), critical habitat will not be identified under SARA, but [management plans](#) for those species may assist in determining when habitat may be of particular importance to the species.

Identifying potential adverse effects is discussed further in section [2.6 Analysis of Potential Project Effects on Species at Risk](#).

Mitigating adverse effects

Under paragraph 16(1)(d) of CEAA, a responsible authority is required to identify “*measures that are technically and economically feasible and that would mitigate any significant adverse environmental effect of the project*”. Best practice environmental assessments under the CEAA, in keeping with the spirit and purpose of that Act, design mitigation measures to address all adverse effects, not only those deemed to be “significant”.

Likewise, subsection 79(2) of SARA establishes a requirement to avoid or lessen all adverse effects of a project on listed wildlife species and critical habitat, regardless of the significance of those effects. Thus, while mitigation is a requirement of good environmental assessment practice, SARA sets the bar higher for adverse effects on species at risk than for other adverse effects.

In developing mitigation measures for listed wildlife species, the approach should be systematic and rigorous. The following mitigation sequence should be followed (*see note*):

1. Avoidance of the adverse effect.
2. Minimization of the adverse effect.
3. Restitution for the adverse effect (e.g., replacement, restoration or compensation).

Mitigation is discussed further in section [2.13 Monitoring and Follow-up Programs](#).

Note: While CEAA recognizes restitution for damage to the environment as a mitigation measure, restitution should be considered as a last resort, and for species at risk may be acceptable only under specific circumstances.

Monitoring the adverse effects under SARA

The requirements of subsection 79(2) of SARA also set the bar higher in terms of monitoring the actual effects of a project once it is carried out.

Subsection 79(2) requires a responsible authority to ensure that measures are taken to monitor the actual adverse effects on the listed wildlife species or its critical habitat. This implies a need to understand the actual on-the-ground effects once a project is implemented. This may involve verifying the accuracy of the predictions and determining the effectiveness of the mitigation measures; however, this requirement is independent of the significance of the predicted effects, the technology involved in the mitigation

measures, or any other factors.

In an assessment under CEAA, the need for a follow-up program is discretionary for a screening, but is mandatory for a comprehensive study, mediation and an assessment by a review panel. As a result of SARA's subsection 79(2) requirements, monitoring of adverse effects on listed wildlife species must occur regardless of whether a follow-up program under CEAA is initiated. Although there may be similarities between the objectives of the subsection 79(2) monitoring and the CEAA follow-up program, these are two distinct requirements.

When a follow-up program under CEAA is required or deemed to be appropriate, and SARA monitoring is also required, the two may be combined for greater efficiency.

Mitigation is discussed further in section [2.9 Mitigation Measures](#).

Consistency with recovery strategies or action plans

As also mentioned in subsection 79(2) of SARA, measures taken to avoid or lessen the adverse effects, and to monitor those effects, must be consistent with any applicable recovery strategy or action plan.

SARA requires that the competent minister prepare a recovery strategy for a wildlife species that is listed as [extirpated](#), [endangered](#) or [threatened](#). Where recovery is deemed to be technically and biologically feasible, the recovery strategy must address the threats to the survival of the species, including any loss of habitat, and must include specific elements as identified in section 41 of SARA. The competent minister may adopt a multi-species or an ecosystem approach when preparing the recovery strategy.

One or more action plans based on the recovery strategy must also be prepared by the competent minister. The contents of action plans are defined by SARA in section 49.

Proposed and finalized recovery strategies and action plans will be posted on the SARA Public Registry at www.sararegistry.gc.ca.

If there is no recovery strategy or action plan

In the absence of completed recovery strategies or action plans, the environmental assessment should use the best available information, such as:

- COSEWIC status reports (available on the SARA Public Registry at www.sararegistry.gc.ca/status/status_e.cfm);
- draft recovery strategies or action plans, where available;
- existing plans relating to the wildlife species (*see note*); and

- specific advice from any jurisdiction that manages the species.

A jurisdiction that manages the species may also recommend consulting the recovery team or another expert. Any input from the recovery team into the environmental assessment should reflect the position of the team and not of individual members.

For species of special concern, it would be best practice to ensure that measures in the environmental assessment are consistent with the direction provided in SARA management plans prepared for these species, if available.

Advice regarding whether the measures are consistent with applicable recovery strategies, action plans or best available information, may be provided by the department or agency responsible for the species.

Note: Subsections 44(1), 51(1) and 69(1) of SARA state that existing plans relating to a wildlife species may be adopted as the proposed recovery strategy, action plan or management plan, under specified circumstances, when they meet the requirements of SARA.

Compliance with SARA

In meeting the requirements of CEAA, the obligations under SARA are not necessarily met. For example:

- An environmental assessment under CEAA may conclude that a project will not result in significant adverse environmental effects. Nonetheless, that project could still involve certain activities that are prohibited under SARA, such as handling species at risk for scientific purposes. Such prohibited activities could not start unless a permit is obtained under SARA.
- Similarly, any identified residual adverse environmental effect must follow the process for determining significance under CEAA, even if the proposed activity is not prohibited under SARA.

Related guidance

For related information, also see this guide's sections:

- [2.6 Analysis of Potential Project Effects on Species at Risk](#)
- [2.9 Mitigation Measures](#)
- [2.13 Monitoring and Follow-up Programs](#)
- [Appendix D: Key SARA Instruments](#)

**SARA
references**

- Required action: subsection 79(2)
 - Recovery strategies and action plans: sections 41 and 49
 - Existing plans: subsections 44(1), 51(1) and 69(1)
 - Agreements and Permits: sections 73 -75
-

**CEAA
references**

- Definitions: subsection 2(1)
 - Factors to be considered: subsection 16(1)
 - Follow-up programs: subsections 38(1) to 38(5)
-

DRAFT

1.3 Amendment to the CEAA Definition of “Environmental Effect”

Amended definition of environmental effect

The *Species at Risk Act* (SARA) provides for the amendment of the *Canadian Environmental Assessment Act* (CEAA) definition of “environmental effect” through a consequential amendment. This amendment reinforces the obligation to consider the potential environmental effects on listed wildlife species when conducting an environmental assessment under CEAA.

Pursuant to section 137 of SARA, the definition of “environmental effect” in subsection 2(1) of CEAA is amended as follows. The change explicitly states that “environmental effect” means, in respect of a project:

- (a) any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the Species at Risk Act,*
- (b) any effect of any change referred to in paragraph (a) on*
 - (i) health and socio-economic conditions,*
 - (ii) physical and cultural heritage,*
 - (iii) the current use of lands and resources for traditional purposes by aboriginal persons, or*
 - (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, or*
- (c) any change to the project that may be caused by the environment, whether any such change or effect occurs within or outside Canada.*

Implications of the amendment

As per section 16 of CEAA, every environmental assessment conducted under CEAA is required to consider the environmental effects of a project and the significance of those environmental effects.

CEAA’s section 2 defines “environment” to include all biophysical components of the Earth and their interactions. The definition of “environmental effect” as amended by SARA does not change this, but rather reinforces the obligation to consider, in all environmental assessments conducted under CEAA, the potential adverse effects on listed wildlife species, residences of individuals of those species and critical habitats.

Location of effects	<p>Section 16 of CEAA requires that a responsible authority consider all environmental effects of a project, regardless of where those effects may occur.</p> <p>Consequently, when a species at risk will be affected by a project, the environmental assessment must consider all the environmental effects on the species, the residences of its individuals and its critical habitat even if that species or its habitat are also regulated under provincial law.</p> <hr/>
Effects on other species at risk	<p>The requirements of SARA apply to species that are legally listed under Schedule 1 of SARA in the List of Wildlife Species at Risk. Therefore, federal environmental assessments are legally required to address the potential effects of a proposed project on listed wildlife species, their critical habitat, and residences of individuals of those species.</p> <p>In addition, CEAA requires consideration of the potential adverse effects of a project on <i>all</i> species as part of the consideration of environmental effects. This includes species that are not legally listed under SARA, but that are recognized as “at risk” by COSEWIC or by provincial or territorial agencies (e.g., species that are in the process of being legally listed). This approach is in keeping with Canada’s commitments under the Convention on Biological Diversity and the Accord for the Protection of Species at Risk between the federal government and provinces and territories.</p> <p>Environmental assessment is a tool which, by allowing early consideration of the effects of projects on wildlife, may assist in preventing other wildlife species from becoming at risk; therefore it is best practice to consider the potential effects on all species.</p> <hr/>
Related guidance	<p>For related information, also see this guide’s section:</p> <ul style="list-style-type: none"> • 2.6 Analysis of Potential Project Effects on Species at Risk <p>For more information, please see:</p> <ul style="list-style-type: none"> • <i>Environmental Assessment Best Practice Guide for Wildlife at Risk in Canada</i> at www.cws-scf.ec.gc.ca/publications/eval/guide/index_e.cfm. • <i>A Guide on Biodiversity and Environmental Assessment</i> at www.ceaa-acee.gc.ca/012/newguidance_e.htm#7. <hr/>
SARA references	<ul style="list-style-type: none"> • Amendment to “environmental effect”: section 137 <hr/>

**CEAA
references**

- Definitions: sections 2(1)
 - Factors to be considered: subsection 16(1)
-

DRAFT

Part 2. Incorporating SARA Considerations into the CEAA Process

Overview

Purpose of Part 2

Part 2 of this guide:

- identifies considerations associated with the *Species at Risk Act* (SARA) that may arise during specific steps of an environmental assessment conducted under the *Canadian Environmental Assessment Act* (CEAA);
- provides guidance for responsible authorities on addressing SARA considerations and incorporating them into an environmental assessment in a timely manner; and
- identifies, where appropriate, sources for more detailed guidance or information.

The guidance in this section is intended to complement and support best practices for environmental assessment practitioners.

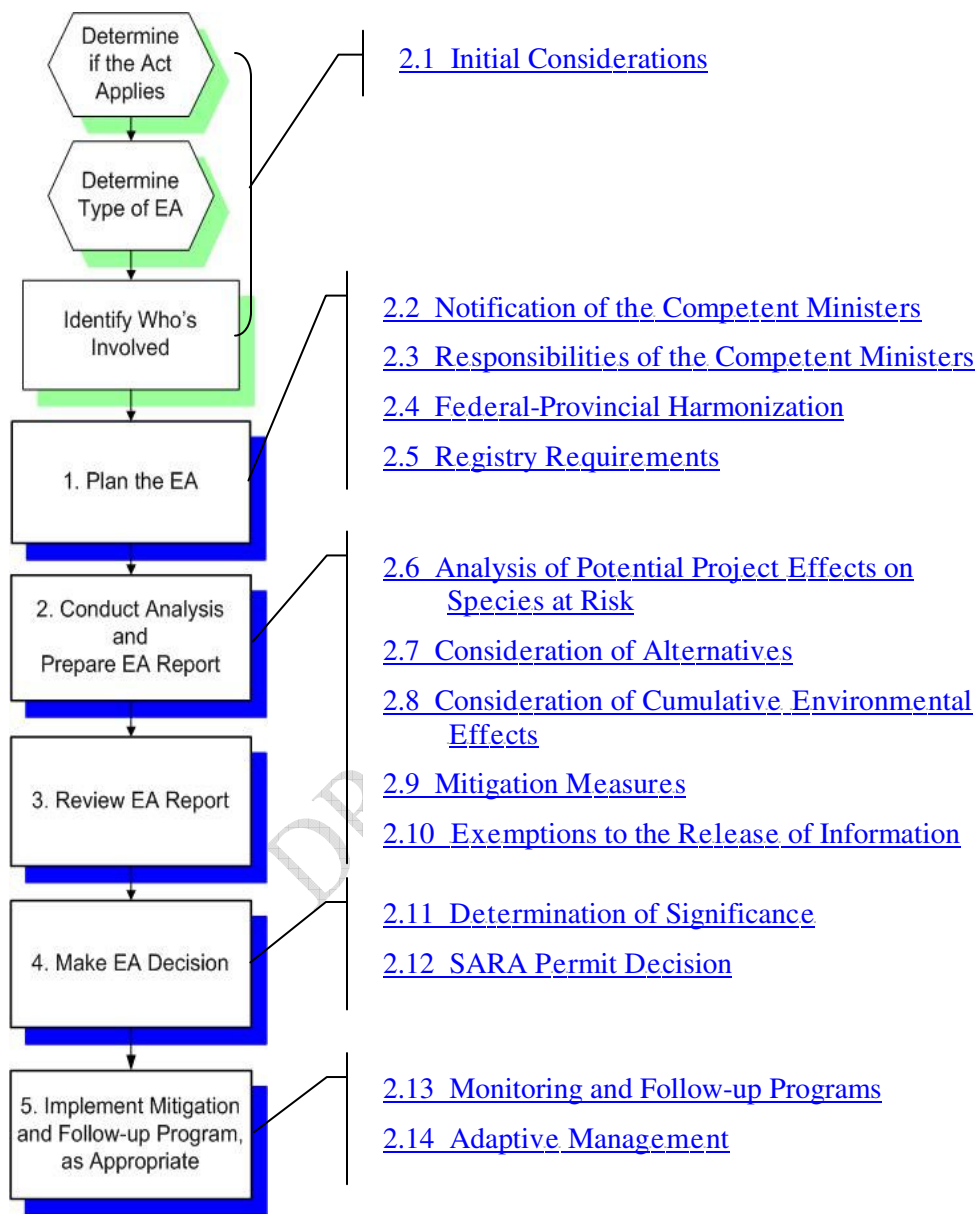
Contents

This part contains the following topics:

Topic	Page
2.1 Initial Considerations	21
2.2 Notification of the Competent Ministers	24
2.3 Responsibilities of the Competent Ministers	26
2.4 Federal-Provincial Harmonization	28
2.5 Registry Requirements	30
2.6 Analysis of Potential Project Effects on Species at Risk	32
2.7 Consideration of Alternatives	34
2.8 Consideration of Cumulative Environmental Effects	37
2.9 Mitigation Measures	40
2.10 Exemptions to the Release of Information	43
2.11 Determination of Significance	46
2.12 SARA Permit Decision	49
2.13 Monitoring and Follow-up Programs	54
2.14 Adaptive Management	57

**Figure 1:
SARA
Considerations
during an EA**

Figure 1 illustrates the major phases of an environmental assessment and identifies where the SARA-related considerations may typically arise.



**Additional
information**

For more information on environmental assessment best practices related to species at risk, please refer to the Canadian Wildlife Service's *Environmental Assessment Best Practices Guide for Wildlife at Risk in Canada* at www.cws-scf.ec.gc.ca/publications/eval/guide/index01_e.cfm.

2.1 Initial Considerations

Determining if CEAA applies	<p>Before initiating the federal environmental assessment process, the first step is to determine if the <i>Canadian Environmental Assessment Act</i> (CEAA) applies and an environmental assessment for the project is required. The <i>Species at Risk Act</i> (SARA) does not change this step.</p> <p>For detailed guidance on determining if an environmental assessment is required under CEAA, please refer to the Canadian Environmental Assessment Agency's Guide to Determining if the Act Applies.</p>
SARA does not trigger CEAA	<p>The presence of a listed wildlife species, a residence of individuals of the species or a critical habitat does not, in itself, trigger CEAA.</p> <p>Likewise, issuing a SARA permit does not, on its own, trigger the need for an environmental assessment under CEAA. Under section 74 of SARA, a permit can be issued, using existing laws and regulations, to authorize activities that may affect a listed wildlife species, any part of its critical habitat or the residences of its individuals, provided that the permitting requirements of SARA are met. Since SARA permits have not been added to the Law List Regulations under CEAA, they do not trigger an environmental assessment.</p>
Issues that may trigger CEAA	<p>If...</p> <ul style="list-style-type: none"> • there is a project as defined by CEAA, • that project is not excluded from assessment under CEAA or its Exclusion List Regulations, and • a competent minister is using a legislative or regulatory power that is included in the <i>Law List Regulations</i> under CEAA, <p>then...</p> <ul style="list-style-type: none"> • an environmental assessment will be required. <p>Examples of such legislative or regulatory powers in the <i>Law List Regulations</i> include:</p> <ul style="list-style-type: none"> • an authorization under subsection 35(2) of the <i>Fisheries Act</i>, • a permit issued under paragraph 15(1)(a) of the <i>National Parks Wildlife Regulations</i> made under the <i>Canada National Parks Act</i>, or • a permit issued under subsection 19(1) of the <i>Migratory Birds Regulations</i> pursuant to the <i>Migratory Birds Convention Act, 1994</i>.

Activities that are projects undertaken under SARA recovery strategies or action plans, or through SARA funding, may also trigger an environmental assessment if they meet the criteria under CEAA, as described in the *Guide to Determining if the Act Applies*.

Determining the type of EA

As per CEAA subsection 18(1), if a project that requires an assessment under CEAA is not described in the [Comprehensive Study List Regulations](#), a screening of the project is required.

Under section 21 of CEAA, when a project is described in the *Comprehensive Study List Regulations*, the responsible authority must report to the Minister on various aspects of the project and recommend whether the project should be assessed as a comprehensive study or referred to a mediator or an assessment by a review panel.

The potential of the project to cause adverse effects on a listed wildlife species at risk or its critical habitat may be a factor to consider when recommending the appropriate environmental assessment track.

Starting the EA

Once an environmental assessment has been triggered by a proposed federal decision or action, SARA requires that the potential effects on a listed wildlife species, its critical habitat or residences of individuals of that species, must be considered in that assessment.

Therefore, as early as possible in the environmental assessment process, a responsible authority should consider whether such species may be present or affected by the project.

If no EA is required

Regardless of whether an environmental assessment is triggered, compliance with SARA is required at all times and can entail other responsibilities such as taking measures to protect and recover species at risk, the residences of individuals of such species and their critical habitat.

See the [SARA Public Registry](#) for further information on compliance responsibilities.

Related guidance

For related information, also see this guide's section:

- [2.12 SARA Permit Decision](#)

For guidance on determining if an environmental assessment is required under CEAA, please refer to the Canadian Environmental Assessment Agency's [Guide to Determining if the Act Applies](#).

For guidance on how to determine if a species at risk may be present or affected by a project, please see the *Environmental Assessment Best Practice Guide for Species at Risk in Canada* at www.cws-scf.ec.gc.ca/publications/eval/guide/index01_e.cfm.

SARA references

- Agreements and Permits: sections 73 and 74
-

CEAA references

- Projects to be assessed: section 5
 - Excluded projects: section 7
 - Types of environmental assessment: sections 18 and 21
 - [Inclusion List Regulations](#), [Exclusion List Regulations](#), [Law List Regulations](#) and [Comprehensive Study List Regulations](#).
-

2.2 Notification of the Competent Ministers

SARA notification requirements

The *Species at Risk Act* (SARA) establishes obligations to notify certain parties. These obligations are independent of the requirements of the *Canadian Environmental Assessment Act* (CEAA) or its [Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements](#); commonly known as the *Federal Coordination Regulations*.

Under subsection 79(1) of SARA, the person required to ensure that a federal environmental assessment of a project is conducted (known as the responsible authority under CEAA) must notify the competent minister(s) without delay if the project is likely to affect a listed wildlife species or its critical habitat.

This notification must occur as soon as it becomes known that a listed wildlife species or its critical habitat is likely to be affected. This can happen at any time during the course of an environmental assessment.

CEAA notification requirements

Under the *Federal Coordination Regulations* of CEAA, when a federal authority determines that a project is likely to require an environmental assessment and it has identified itself as a likely responsible authority for that project, it must provide written notice to other federal authorities that are likely to:

- be a responsible authority; or
- be in possession of specialist or expert information or knowledge that is relevant to the conduct of the environmental assessment.

This notice should include a description of the proposed project and of the environment likely to be affected.

SARA does not change or replace the need to contact federal authorities under the *Federal Coordination Regulations*. The CEAA notification is required even if the parties have been notified under subsection 79(1) of SARA.

Coordinating notification

To the extent practical, notification under SARA may be facilitated through the coordination activities directed by the *Federal Coordination Regulations*.

This could occur when the description of the environment likely to be affected is sufficiently detailed to identify listed wildlife species or critical habitat likely to be affected by the project.

For example, a single letter of notification, signed by all responsible authorities, may be sent to a competent department or agency, providing the information that is required under both the *Federal Coordination Regulations* and under subsection 79(1) of SARA. Alternatively, each responsible authority may send a separate letter of notification.

At any time, if further work reveals that other listed wildlife species or critical habitat may be affected, an additional SARA notification would be required later in the process, even if the department or agency is already providing advice on the environmental assessment as an expert federal authority.

Other responsibilities of competent departments or agencies

SARA does not change the need to contact the competent departments or agencies under the *Federal Coordination Regulations* regarding their potential involvement in an environmental assessment as a result of other aspects of their legislated mandate.

Related guidance

For related information, also see this guide's sections:

- [1.1 SARA Notification Requirement](#)
- [Appendix E: SARA Notification Template](#)

For additional information about notifications under the CEAA *Federal Coordination Regulations*, please see the Canadian Environmental Assessment Agency's guide entitled [Federal Coordination: Identifying Who's Involved](#) at www.ceaa-acee.gc.ca/012/newguidance_e.htm.

SARA references

- Notification of Minister: subsection 79(1)

CEAA references

- [Federal Coordination Regulations](#)
-

2.3 Responsibilities of the Competent Ministers

Response to SARA notification

In response to notification sent under 79(1) of the *Species at Risk Act* (SARA), the department or agency representing the competent minister responsible for a species will indicate its likely involvement in the environmental assessment. Responsibility for some species may be shared with other jurisdictions.

Advice to responsible authorities

Upon receiving a notice from a responsible authority, the department or agency representing the competent minister responsible for the species will indicate its involvement in the environmental assessment.

- The department or agency will provide expert advice when the information or expertise is available within the department or agency.
- When the information is not available, the department or agency will:
 - forward the referral to the provincial or territorial authorities that manage the species, with a copy to the responsible authority;
 - forward the referral to the recovery team or other appropriate expert, if advised by, or following notification of, the province or territory;
 - when the referral has been forwarded to the province or territory, or to the recovery team or other expert, the department or agency will request a copy of the advice provided by the other party in response to the responsible authority; and
 - the department or agency may continue to provide general comments on the assessment, depending on the circumstances.

This approach recognizes that responsibility for, and information on, species at risk is shared with other jurisdictions.

In addition to the above, when a notification is received for a project that is likely to affect a listed wildlife species that is managed by a province or territory, the department or agency will forward the notification to that province or territory.

Nature of advice provided

Advice provided on species at risk by a competent minister constitutes specialist information and knowledge by an expert federal authority under the *Canadian Environmental Assessment Act* (CEAA).

Advice provided may include, but is not limited to:

- advice on the likely presence of a listed wildlife species or critical habitat in the project area;
- information on the ecology of the listed wildlife species;
- advice on how the project may affect the listed wildlife species, residences of individuals of the species, or its critical habitat and the potential significance of those effects;
- identification of measures to reduce or avoid adverse environmental effects;
- identification of monitoring requirements or follow-up recommendations and,
- advice on other applicable requirements under SARA (for example, relating to what is prohibited under SARA, permitting requirements, future regulations that may be developed, recovery strategies etc.).

While the department or agency will provide specialist or expert information in their possession, including possible contacts where further information can be obtained, it remains the responsibility of the responsible authority to ensure that the information acquired is sufficient to meet the requirements of CEAA.

Responding to CEAA federal coordination notices

SARA does not change the need to notify, and coordinate the involvement of, federal authorities with an expertise in listed wildlife species (i.e., a department or agency representing a competent minister).

Issues related to potential adverse effects on listed wildlife species may be coordinated through the work of the federal environmental assessment coordinator (and a federal project committee, if one has been established), in the same manner as any other issue requiring the involvement of other expert federal authorities.

Related guidance

For more information on coordination under CEAA, please see the Canadian Environmental Assessment Agency's guide [Federal Coordination: An Overview](#).

SARA references

- Notification of Minister: subsection 79(1)

CEAA references

- Federal coordination: sections 12 to 12.5

2.4 Federal-Provincial Harmonization

Shared responsibility for species at risk

Responsibility for species at risk is shared among federal and provincial and territorial jurisdictions. Thus, it is important to consider the importance of involving or cooperating with other jurisdictions when undertaking environmental assessments.

Harmonization under CEAA

Federal, provincial and territorial governments have moved towards greater harmonization of their environmental assessment procedures. In 1998, the Canadian Council of Ministers of the Environment signed the [Canada-Wide Accord on Environmental Harmonization](#) and the [Sub-agreement on Environmental Assessment](#).

The sub-agreement promotes the effective application of environmental assessment when two or more governments are required by law to assess the same proposed project. It includes provisions for shared principles, common information elements, a defined series of assessment stages and a provision for a single cooperative assessment.

The sub-agreement is implemented through bilateral agreements between the federal government and individual provinces and territories. Many such bilateral agreements are in place or are under negotiation. For a list of these agreements, please consult the Canadian Environmental Assessment Agency's Web site at www.ceaa-acee.gc.ca/013/agreements_e.htm#1.

In the absence of a bilateral agreement, project-specific agreements are usually used to provide for a single assessment that meets the legal requirements of both jurisdictions.

Harmonization under SARA

Under the 1996 [Accord for the Protection of Species at Risk](#), the federal, provincial and territorial signatory governments committed to working together on legislation, programs and policies to protect wildlife species at risk throughout Canada.

Under section 3 of the Accord, parties agree to: “*establish complementary legislation and programs that provide for effective protection of species at risk throughout Canada, and that will ... consider the needs of species at risk as part of environmental assessment processes.*”

As per section 10 of the *Species at Risk Act* (SARA), the Accord will be implemented through bilateral agreements between the federal government and individual provinces and territories. The bilateral

agreements are expected to recognize the importance of and commit to sharing information and expert advice on species at risk in the context of environmental assessments. These bilateral agreements will be posted on the SARA Public Registry as per SARA paragraph 123(b).

In addition, it is best practice in federal environmental assessments to address potential adverse effects on all species even if they are not listed on Schedule 1 of SARA and hence do not entail specific legal obligations under SARA. Such species include those that are identified as at risk by COSEWIC or by other jurisdictions. This approach is in keeping with the commitment to cooperation advanced in the Accord.

Integrating the two approaches to harmonization

The effectiveness of both SARA and the *Canadian Environmental Assessment Act* (CEAA) is grounded in the cooperation of all governments.

Issues related to listed wildlife species should be an important part of the full range of issues that are addressed when establishing a cooperative environmental assessment between jurisdictions. In screenings and comprehensive studies, the federal environmental assessment coordinator typically would facilitate communication and cooperation among federal authorities and other participants. For joint review panels, the Canadian Environmental Assessment Agency would undertake this task.

Related guidance

For related information, also see the *Accord for the Protection of Species at Risk* at www.speciesatrisk.gc.ca/recovery/accord_bac_e.cfm.

SARA references

- Administrative agreements: section 10 and paragraph 123(b)
- Provincial and Territorial classifications: section 36

CEAA references

- Other jurisdictions: subsections 12(4) and 12(5)
 - Federal coordination: subsection 12(3) and sections 12.1 to 12.5
-

2.5 Registry Requirements

Two distinct registries

A responsible authority must meet specific obligations with regards to the Canadian Environmental Assessment Registry established under the *Canadian Environmental Assessment Act (CEAA)*.

The *Species at Risk Act (SARA)* Public Registry plays a different role and does not establish new obligations for responsible authorities.

Canadian Environmental Assessment Registry

The Canadian Environmental Assessment Registry is a government-wide mechanism to facilitate public access to records related to environmental assessments conducted under CEAA. The Registry consists of two complementary components: an Internet site and a project file.

- The Internet site is an electronic registry administered by the Canadian Environmental Assessment Agency. A responsible authority or the Agency contributes specific records relating to an environmental assessment.
- The project file is a file maintained by a responsible authority or the Agency during an environmental assessment, and made available to the public in a convenient manner. The project file includes all records produced, collected or submitted with respect to the environmental assessment of the project (including all records on the Internet site).

The Internet site component of the Registry can be viewed on the Canadian Environmental Assessment Agency's Web site at www.ceaa-acee.gc.ca/050/index_e.cfm.

SARA Public Registry

The SARA Public Registry is an on-line service that provides access to information and documents about SARA, including the list of species protected under the Act (Schedule 1 of SARA), regulations, orders, agreements, status reports on species assessments, recovery strategies, actions plans and management plans for species of special concern. It supports public participation in decision making by providing the public opportunity to comment on SARA related documents being developed by the Government of Canada.

The SARA public registry can be viewed on the SARA Registry Web site at www.sararegistry.gc.ca.

Responsibility for the SARA Public Registry	<p>The SARA Public Registry is maintained by Environment Canada. Information on the public registry is provided by Environment Canada, the Parks Canada Agency and Fisheries and Oceans Canada.</p> <p>A responsible authority conducting an environmental assessment under the CEAA Act has no responsibilities to post records on the SARA Public Registry.</p>
Information source for responsible authority	<p>Information in the SARA Public Registry, such as status reports on species, recovery strategies, action plans, and management plans for species of special concern, is an excellent source of information for environmental assessment practitioners about many listed wildlife species.</p>
Related guidance	<p>For more information on the operations and records of the Canadian Environmental Assessment Registry, please see the Canadian Environmental Assessment Agency's Guide to the Canadian Environmental Assessment Registry.</p>
SARA references	<ul style="list-style-type: none"> • Public Registry: sections 120 to 124
CEAA references	<ul style="list-style-type: none"> • Registry contents: sections 55, 55.1 and 55.4

2.6 Analysis of Potential Project Effects on Species at Risk

SARA obligations to address potential effects

The *Species at Risk Act* (SARA) establishes obligations to address potential effects on listed wildlife species in a federal environmental assessment. This obligation reinforces the requirements of the *Canadian Environmental Assessment Act* (CEAA).

Under subsection 79(2) of SARA, the person required to ensure that an assessment of the environmental effects is conducted (i.e., the responsible authority under CEAA) must identify the adverse effects of the project on the listed wildlife species and its critical habitat.

The obligation to identify adverse effects applies to all listed wildlife species, including species of special concern, and not only the extirpated, endangered or threatened species to which prohibitions apply.

This obligation to identify adverse effects on listed wildlife species is independent of the likely significance of the adverse effect.

CEAA obligations to address environmental effects

Under subsection 16(1) of CEAA, every environmental assessment must include a consideration of the environmental effects of the project and the significance of these effects. As discussed in section 1.3 of this guide, the CEAA definition of “environmental effect” includes any change that the project may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species.

Required analysis

From a practical perspective, the obligations under subsection 79(2) of SARA reinforce the need for federal environmental assessments to pay particular attention to listed wildlife species, their critical habitat, and residences of individuals of those species.

The analysis in the environmental assessment must provide a basis on which to determine whether the project will adversely affect the listed wildlife species or its critical habitat. For example, when the analysis is based on the use of valued ecosystem components (VECs), it is best practice to include the following as VECS: any listed wildlife species, as well as other species at risk, that are found within the project area.

The analysis should also consider those potential effects on habitat which may in turn adversely affect the species itself. Recovery strategies, action plans, management plans for species of special concern and status reports can all be helpful sources of information for the analysis. Even when critical

habitat has not been identified, existing sources of information may assist in identifying key habitat that, if adversely affected, may have repercussions on the species.

**SARA
permitting
analysis**

The SARA permitting analysis should be coordinated with the environmental assessment analysis. The analysis should therefore address, among other considerations, the overall impact on the listed wildlife species in terms of its potential survival or recovery.

Certain activities may be prohibited under SARA, and in such cases the competent minister may only issue a permit or agreement if he/she is of the opinion that, among other criteria that must be met, the activity will not jeopardize the survival or recovery of the listed wildlife species.

**Uncertainty in
the analysis**

Where there is uncertainty regarding the likelihood or possible significance of adverse effects on wildlife species at risk, it is best practice to adopt a precautionary approach in the analysis, given their vulnerability.

**Related
guidance**

For related information, also see this guide's sections:

- [1.2 Project Review Requirements](#)
- [2.12 SARA Permit Decision](#)

Applicable status reports, recovery strategies, action plans and management plans for species of special concern may be able to provide direction to responsible authorities on the identification and analysis of potential effects on listed wildlife species.

Information on methods for assessing potential effects on species at risk is available in the [Environmental Assessment Best Practices Guide for Wildlife at Risk in Canada](#).

**SARA
references**

- Agreements and permits: section 73
- Required action: subsection 79(2)
- Amendment to “environmental effect”: section 137

**CEAA
references**

- Definition of environmental effect: subsection 2(1)
- Factors to be considered: subsection 16(1)

2.7 Consideration of Alternatives

Avoiding adverse effects by considering alternatives

The *Species at Risk Act* (SARA) requires mitigation of all adverse effects on listed wildlife species and their critical habitat, and the consideration of alternatives may provide the means of avoiding or minimizing adverse effects.

In addition, one of the pre-conditions to issuing permits under SARA is the consideration of alternatives. Accordingly, consideration of alternatives in a screening may be necessary in order to meet requirements under SARA when a permit or an agreement under the Act is necessary.

Alternatives under CEAA

Under CEAA, there are two aspects to the consideration of alternatives: alternatives to the project and alternative means of carrying out the project.

Alternatives to the project are the functionally different ways to meet the project need and achieve the project purpose.

- For example, extending a bus route rather than widening a route to address traffic congestion.

Alternative means of carrying out the project are the various ways that the project or any of its activities or components can be implemented or carried out. The alternative means are to be technically and economically feasible, and the environmental assessment must consider the environmental effects of any such alternative means.

- For example, alternative locations, routes and methods of development, implementation and mitigation.

Table 4:
Alternatives
under CEAA

The consideration of alternatives is not always a requirement for environmental assessment under the *Canadian Environmental Assessment Act* (CEAA). The table below indicates when it is required under CEAA.

Consideration of...	in a Screening is...	in a Comprehensive Study, Mediation or an Assessment by a Review Panel is...
alternatives to the project	at the discretion of the responsible authority	is at the discretion of the Minister of the Environment, in consultation with the responsible authority.
alternative means of carrying out the project	at the discretion of the responsible authority	Mandatory.

Alternatives under SARA

SARA establishes one obligation with respect to the consideration of alternatives. When a permit is requested under sections 73, 74 or 78, the permit can be issued only if the competent minister is of the opinion that “*all reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted.*”

In addition, among other requirements, the competent minister must be of the opinion that all feasible measures will be taken to minimize the effect of the activity on the species, its critical habitat or residences of individuals of the species, and that the activity will not jeopardize the recovery or survival of the listed wildlife species.

Subsection 79(2) requires a responsible authority to identify measures to avoid or lessen the effects of a project on a listed wildlife species or its critical habitat. Fulfilling this obligation may require an examination of alternatives to the project or alternative means of carrying out the project. As such, the environmental assessment could consider alternative means or even alternatives to the project when there are adverse effects on a listed wildlife species or its critical habitat.

Integrating SARA considerations into the EA

A responsible authority conducting an environmental assessment of a project that has the potential to affect a listed wildlife species or its critical habitat should bear in mind the provisions of CEAA paragraph 16(1)(e) regarding the consideration of alternatives. The responsible authority should include consideration of the following in the assessment:

- alternatives to the activity, or alternative means of undertaking the activity, that would reduce the effect on the species and,
- a recommendation on the best solution to adopt.

Information on alternatives considered by the competent minister under the permitting process, and by the responsible authority in the environmental assessment process, should be shared to inform both processes, avoid duplication of effort and promote consistency.

Related guidance

For related information, also see this guide’s sections:

- [2.9 Mitigation Measures](#)
- [2.11 Determination of Significance](#)
- [2.12 SARA Permit Decision](#)

Applicable recovery strategies, action plans or management plans for species of special concern may provide direction to responsible authorities on the

consideration of alternatives.

For further guidance on addressing alternatives, please see the Canadian Environmental Assessment Agency's Operational Policy Statement: *Addressing "Need for", "Purpose of" "Alternatives to" and "Alternative Means" under the Canadian Environmental Assessment Act* at www.ceaa-acee.gc.ca/013/0002/addressing_e.htm.

**SARA
references**

- Agreements and permits: subsection 73(3)
 - Required action: subsection 79(2)
-

**CEAA
references**

- Factors to be considered: subsections 16(1) and 16(2)
-

DRAFT

2.8 Consideration of Cumulative Environmental Effects

Importance of cumulative environmental effects

Cumulative environmental effects are environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out.

The need to assess cumulative environmental effects stems from the very nature of species at risk. For the most part, such species have already been adversely affected by a combination of threats to the extent that their very survival is in question.

Cumulative environmental effects under CEAA

Under paragraph 16(1)(a) of the *Canadian Environmental Assessment Act* (CEAA), every environmental assessment must consider “*the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out.*”

Since the definition of "environmental effect" includes any change a project may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, it is important that cumulative environmental effects on listed wildlife species are considered in the environmental assessment process.

In addition, section 16.2 of CEAA, recognizes the value of regional studies as a means of identifying possible future projects that may occur within a region and that may contribute to cumulative environmental effects. Regional studies could be an effective means of identifying and managing species at risk issues raised by multiple project proposals.

Cumulative environmental effects under SARA

The *Species at Risk Act* (SARA) establishes no specific obligations to address cumulative environmental effects on listed wildlife species. However, many listed wildlife species are at risk precisely because of cumulative environmental effects that have occurred in the past, such as gradual loss of habitat.

It is important, in the cumulative environmental effects analysis that environmental assessments **always** consider the potential for cumulative environmental effects on listed wildlife species, the residences of their individuals and their critical habitat, in the context of the combined past threats the species has faced, as well as any additional present or future threats that can reasonably be expected to occur.

In addition, if an activity requires a permit under SARA, several requirements set out in section 73 of SARA must be met before the permit can be issued. In particular, a determination must be made as to whether the activity jeopardizes the survival or recovery of the species. The draft SARA permitting policy indicates that this “non-jeopardy determination” must take cumulative environmental effects into consideration.

A broad-scale approach

The adoption of best practice approaches may include considering wildlife issues at broader planning levels, and avoiding the undertaking of projects in species at risk hotspots; thus contributing to the goals of preventing species from becoming at risk may be achieved.

Regional studies may be valuable tools in this regard. Such studies may provide a venue for sharing information and effectively addressing cumulative environmental effects issues through a cooperative approach. Regional studies may also provide greater scope for mitigation after all project-specific impact avoidance and reduction opportunities have been exhausted. A proponent may address cumulative environmental effects by contributing to mitigation on a scale broader than the project study area (e.g., off-site issues within the species range).

Related guidance

COSEWIC status reports provide information on threats facing species at risk. Recovery strategies, action plans and management plans for species of special concern also consider threats, as well as strategies and measures to deal with these threats, and they will also identify population and distribution objectives for the species. This information should assist in the evaluation of the cumulative environmental effects of projects. In the absence of such information, the assessment of cumulative environmental effects must be undertaken based on best available information. See the [SARA Public Registry](#) for more information.

For related information, also refer to:

- SARA permitting policy at www.sararegistry.gc.ca.
- The Canadian Wildlife Service’s [Environmental Assessment Best Practices Guide for Wildlife at Risk in Canada](#) at www.cws-scf.ec.gc.ca/publications/eval/guide/index01_e.cfm.

For more information about cumulative environmental effects assessment, please refer to the Canadian Environmental Assessment Agency’s:

- Operational Policy Statement [Addressing Cumulative Environmental Effects under the Canadian Environmental Assessment Act](#) at www.ceaa-acee.gc.ca/013/0002/cea_ops_e.htm; and

- [Cumulative Effects Assessment Practitioners Guide](http://www.ceaa-acee.gc.ca/013/0001/0004/index_e.htm) at www.ceaa-acee.gc.ca/013/0001/0004/index_e.htm.
-

**SARA
references**

- Recovery strategies and action plans: sections 41 and 49
 - Management plans: section 65
 - Agreements and permits: section 73
-

**CEAA
references**

- Factors to be considered: subsection 16(1)
-

DRAFT

2.9 Mitigation Measures

Obligations to mitigate

The *Species at Risk Act* (SARA) establishes an obligation for responsible authorities to ensure that adverse effects on listed wildlife species or critical habitat are avoided or lessened if a project undergoing a federal environmental assessment is to be carried out. SARA also states that the mitigating measures must be taken in a way that is consistent with any applicable recovery strategy and action plans.

This confers additional obligations on the responsible authority, beyond the requirements of the *Canadian Environmental Assessment Act* (CEAA).

Mitigation under CEAA

Mitigation is defined in section 2 of CEAA to mean, “*in respect of a project, the elimination, reduction or control of the adverse environmental effects of the project, and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means*”.

Under subsection 16(1) of CEAA, every environmental assessment must include a consideration of the environmental effects of the project, of the significance of these effects and of technically and economically feasible measures to mitigate any significant adverse environmental effects. CEAA therefore requires mitigation for any significant adverse effects on listed wildlife species, their critical habitat or the residences of individuals of those species.

Under subsections 20(1.1) and 37(2.1), the responsible authority, when making decisions about proposed projects, may consider mitigation measures that will be implemented by another body such as a provincial government. The responsible authority must be satisfied that the mitigation measures will be implemented by the other body and must then ensure that they are implemented.

Note: Best practices dictate that mitigation measures be designed to address **all** adverse effects, not only those deemed to be “significant”.

Mitigation under SARA

Under subsection 79(2) of SARA, the responsible authority must ensure that measures are taken to avoid or lessen all adverse effects of the project on all listed wildlife species and its critical habitat, regardless of the significance of those effects. These measures must be consistent with applicable species recovery strategies and action plans. It is best practice to ensure that measures taken to mitigate adverse effects on species of special concern be consistent

with applicable management plans for those species.

SARA also establishes requirements that must be met before permits can be issued for activities that are otherwise prohibited. One of these requirements relates directly to mitigation measures: When a permit is requested under sections 73, 74 or 78, the permit can be issued only if the competent minister is of the opinion that “*all feasible measures will be taken to minimize the impact of the activity on the species or its critical habitat or the residences of its individuals*”.

A responsible authority could assist the competent minister in this regard by ensuring that commitments to “*to minimize the impact of the activity on the species or its critical habitat or the residences of its individuals*” are documented in the environmental assessment.

Preferred mitigation sequence

SARA underscores the importance of the mitigation sequence. The preferred approach is to first adopt measures that would avoid the adverse effect, followed by measures that could minimize the impact. [Ecological or habitat compensation](#) is the least preferred option of the mitigation sequence and should only be considered under certain circumstances.

For example, where an adverse effect on habitat is unavoidable, new habitat may be made available through restoration, provided that the adverse effect itself is not prohibited under SARA. For this reason, ecological or habitat compensation would be difficult to apply in the context of critical habitat or in cases where other SARA prohibitions apply. In addition, scientific uncertainty of restoration techniques may limit the success of this approach.

Ecological compensation under SARA

Ecological compensation in the context of environmental assessment should not be confused with the use of the term “compensation” in SARA, where, under certain circumstances, persons may be compensated for losses suffered as a result of any extraordinary impact of the application of the prohibitions with respect to critical habitat or an emergency order in respect of habitat.

Mitigation implemented by others

SARA requires the responsible authority to ensure that mitigation measures are taken for all adverse effects on listed wildlife species or critical habitat.

In some cases the responsible authority may not have the regulatory tools to ensure the implementation of all measures. For example, in some cases species managed by a province may be affected and the provincial government may be in the best position to implement mitigation through its legislation.

Subsections 20(1.1) and 37(2.1) of CEAA allow the responsible authority to consider such mitigation in the environmental assessment if the responsible authority is satisfied that the mitigation measures will be implemented.

**Related
guidance**

For related information, also see this guide's sections:

- [1.2 SARA Project Review Requirements](#)
- [2.12 SARA Permit Decision](#)

Applicable recovery strategies, action plans and management plans for species of special concern may provide direction to responsible authorities on mitigation.

**SARA
references**

- Agreements and permits: sections 73, 74 and 78
 - Required action: subsection 79(2)
-

**CEAA
references**

- Factors to be considered: subsection 16(1)
 - Mitigation measures: 20(1.1) to 20(2.1) and 37(2) to 37(2.3)
-

DRAFT

2.10 Exemptions to the Release of Information

Sensitive information

Under certain circumstances, the release of information related to listed wildlife species could be harmful to the species.

Exempted information under CEAA

Under the *Canadian Environmental Assessment Act* (CEAA) all information related to the environmental assessment is publicly available, with a few exceptions, either in the Canadian Environmental Assessment Registry's Internet site or the project file.

The exceptions to public access relate to the withholding of certain information, including:

- documentation obtained in confidence from the government of a province or an institution, as per paragraph 13(1)(c) of the [Access to Information Act](#) (AIA);
- information related to the conduct of the government of Canada relating to federal provincial affairs, as per section 14 of the *Access to Information Act*;
- information relating to law enforcement and investigations, as per section 16 of the *Access to Information Act*;
- third party information as defined in section 20 of the *Access to Information Act*, such as trade secrets of a third party.

In addition, under section 35 of CEAA, a review panel may hold hearings *in-camera* and keep information confidential to prevent the release of information that might cause specific harm to the environment. For example, a review panel could withhold information that may be used by poachers to locate the residences of individuals of a listed wildlife species.

Exempted information under SARA

Under section 124 of the *Species at Risk Act* (SARA), the Minister of the Environment, on the advice of COSEWIC, may restrict the release of any information required to be included in the SARA Public Registry if that information relates to the location of a wildlife species or its habitat and restricting its release would be in the best interests of the species.

For example, the precise location of a listed wildlife species, its residence or critical habitat could be withheld to prevent poachers from killing or stealing individuals of that species.

Integrating the SARA provision

The responsible authority:

- should consider, at a very early stage of the environmental assessment, the potential for the environmental assessment to generate specific information that, if released, may be harmful to a listed wildlife species;
- should inform the federal environmental assessment coordinator and the appropriate competent department or agency (i.e., Environment Canada, the Parks Canada Agency or Fisheries and Oceans Canada) of any such potential; and
- must take care not to make publicly available nor to include in the Canadian Environmental Assessment Registry any information that would not be disclosed under the *Access to Information Act*, including information that the Minister of the Environment has restricted under section 124 of SARA for the purposes of the SARA public registry and that the responsible authority determines would not be disclosed to the public under the *Access to Information Act* (e.g., in technical studies or the environmental assessment report available through the Canadian Environmental Assessment Registry).

Environment Canada, Fisheries and Oceans Canada and/or Parks Canada should, as soon as possible upon receipt of a 79(1) notification, inform the responsible authority and expert federal authorities of any restrictions on the release of information that have been ordered by the Minister under section 124 of SARA. If a project has been referred to a mediator or a review panel, then the department or agency should notify the Canadian Environmental Assessment Agency of any such restrictions.

In a screening or comprehensive study, the responsible authority, in consultation with Environment Canada, Parks Canada and/or Fisheries and Oceans Canada, may need to consider approaches for providing information relevant to the technical studies and the environmental assessment report, without disclosing detailed, precise descriptions of locations that could pose a threat to the listed wildlife species. In the case of a mediation or an assessment by a review panel, the Canadian Environmental Assessment Agency may need to work with Environment Canada, Parks Canada or Fisheries and Oceans Canada on the appropriate approach.

SARA references

- Public Registry restrictions: section 124

CEAA references

- Information to be made available: section 55.5

AIA references

- Exemptions: paragraph 13(1)(c), sections 14, 16 and 20
-

DRAFT

2.11 Determination of Significance

Need for special attention The status of species at risk should be taken into consideration when determining the significance of adverse effects of a proposed project.

Significance under CEAA Under the *Canadian Environmental Assessment Act (CEAA)*, the critical “test” in the environmental assessment decision is whether the project is likely to cause significant adverse environmental effects after taking into account the implementation of any mitigation measures that a responsible authority considers to be appropriate.

The conclusion determines the next steps in the environmental assessment process (i.e., whether the responsible authority can provide federal support for the project).

In addition, CEAA commits responsible authorities to “... *exercise their powers in a manner that protects the environment and human health and applies the precautionary principle*” (subsection 4(2)).

Significance with respect to species at risk The *Species at Risk Act (SARA)* requires that all adverse effects on listed wildlife species and their critical habitat be identified in a federal environmental assessment, regardless of their significance, and that all such effects be mitigated and monitored. SARA does not use the concept of significance, but it provides criteria that may assist in determining whether a project’s effects are significant under CEAA. These are outlined in the sections below.

The purposes of SARA The purposes of SARA are to prevent wildlife species from being extirpated or becoming extinct, to provide for the recovery of wildlife species that are extirpated, endangered and threatened as a result of human activity, and to manage species of special concern to prevent them from becoming endangered or threatened. Therefore, project effects should be considered in terms of these purposes.

For example, adverse effects that increase the level of endangerment of a species, that threaten their survival or recovery, or that may result in the listing of a species previously not considered to be at risk, would be counter to the purposes of SARA and therefore should be considered to be “significant”.

Survival and recovery of listed wildlife species

SARA provides a framework for the survival and recovery of listed wildlife species. Such species have usually already been adversely affected by a combination of threats which cumulatively have resulted in their precarious status. It follows therefore that their tolerance to adverse effects will be lower than for other species and, as a result, the threshold of significance must be considered in this context.

Pre-conditions for issuing permits

SARA establishes requirements that must be met before activities that may affect listed extirpated, endangered and threatened species are authorized.

This includes pre-conditions for issuing permits under sections 73, 74 or 78, to the effect that all adverse effects must be avoided or minimized wherever possible, and that residual effects must not jeopardize the survival or recovery of the species.

The fact that the pre-conditions are met does not necessarily mean that there is no significant environmental effect. An environmental effect may be significant even if it does not jeopardize the survival or recovery of the species affected.

Objectives of recovery strategies

Recovery strategies for listed extirpated, endangered and threatened species must include a statement of the population and distribution objectives that will assist the recovery and survival of the species. These objectives should be considered when determining the significance of an adverse effect. Management plans for species of special concern will also provide relevant information for those species. In the absence of completed strategies or plans or detailed population objectives, the responsible authority should use the best available information.

Protecting critical habitat and residences

Similarly, SARA has provisions to protect critical habitat and residences of individuals of listed wildlife species. Adverse effects on critical habitat and residences of individuals must also be considered in the determination of significance.

**SARA
prohibitions**

While certain activities are prohibited under SARA, prohibitions in themselves are not necessarily an indication of the significance of adverse effects. Some activities that are not prohibited may still have significant adverse effects.

For example, there are no prohibitions covering species of special concern; however, adverse effects on such species could be deemed significant, (such as in certain cases where the effects are important regionally or when the effect may cause the species to become threatened). Conversely, some prohibited activities would not necessarily result in significant adverse effects, for example handling certain listed wildlife species for scientific studies.

Proponents should be aware of the requirements of SARA, including any permitting requirements, even when the environmental assessment concludes that adverse effects are not significant.

**Related
guidance**

For related information, also see this guide's section:

- [2.12 SARA Permit Decision](#)

Applicable recovery strategies, action plans and management plans for species of special concern (either posted on the SARA public registry or published elsewhere) may provide direction to responsible authorities for the determination of significance.

For information on the methodology of determining whether adverse effects on listed wildlife species may be significant, please see:

- [Environmental Assessment Best Practices Guide for Wildlife at Risk in Canada](#) at www.cws-scf.ec.gc.ca/publications/eval/guide/index01_e.cfm.
- [Determining Whether a Project is Likely to Cause Significant Adverse Environmental Effects](#) at www.ceaa.gc.ca/013/0001/0008/guide_e.htm.

**SARA
references**

- Purposes: section 6
- Agreements and permits: section 73

**CEAA
references**

- Purposes: subsection 4(2)
- Course of action decision: sections 20 and 37

DRAFT

2.12 SARA Permit Decision

Prohibited activities

A project undergoing a federal environmental assessment may involve an activity that is prohibited under the *Species at Risk Act* (SARA). In order to proceed, such a project will require a permit under SARA. The need to obtain a permit under SARA may give rise to additional considerations during the environmental assessment.

Issuing permits under SARA

Under sections 73, 74 and 78 of SARA, permits, agreements, licences, orders or other similar documents can be issued or made for activities that are otherwise prohibited, where:

- 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.

Three pre-conditions must be met before such permits can be issued or agreements made:

- all reasonable alternatives to the activity that would reduce the impact on the listed wildlife species have been considered and the best solution has been adopted;
- all feasible measures will be taken to minimize the impact of the activity on the listed wildlife species or its critical habitat or the residences of its individuals; and
- the activity will not jeopardize the survival or recovery of the listed wildlife species.

Permits may be issued for a period of up to three years, while agreements may be made for a maximum of five years. All permits or agreements must be accompanied by an explanation of why they were issued, and this explanation is to be posted in the SARA Public Registry.

Prohibited activities vs. adverse effects

There is no direct link between the SARA subsection 79(2) requirement to identify adverse effects on listed wildlife species and their critical habitat, and the prohibitions set out in the Act.

In other words, determining that an activity will lead to an adverse effect does not necessarily mean that the activity itself is prohibited. Prohibitions are identified in sections 32-36 and 58-61 of SARA and their applicability depends on a variety of circumstances. For information on the prohibitions, please refer to [Appendix D](#).

Exemptions to prohibitions under SARA

In certain cases, activities are exempted from prohibitions where they are permitted by a recovery strategy, an action plan or a management plan for species of special concern and are authorized under an Act of Parliament (subsection 83(4) of SARA).

In such cases, a SARA permit would not be required; however, such activities would still need to be considered in the environmental assessment where they are components of a project for which CEAA has been triggered. The significance of such effects would need to be assessed on the same basis that other effects would be considered.

Course of action decision under CEAA

Following the environmental assessment conclusion regarding significance of environmental effects, the responsible authority must make a decision regarding whether it can exercise any power, duty or function that would permit the project to proceed (e.g., to provide funding, lease land, issue a permit or grant a license). This is called the responsible authority's course of action decision.

Coordinating the SARA permitting and EA decisions

The SARA permitting decision and the environmental assessment process under CEAA address several similar issues. For example, an assessment under CEAA could consider alternatives and would identify mitigation measures to avoid or minimize adverse effects on the listed wildlife species, its residence or critical habitat. In considering environmental effects, the assessment would need to consider cumulative environmental effects and overall impacts on the survival or recovery of the listed wildlife species. Thus, the assessment would consider many, if not all, of the pre-conditions for permitting.

Steps taken to assure compliance with CEAA and SARA should be concurrent and mutually supportive. The environmental assessment could include a discussion on the proposed approach for compliance with SARA prohibitions, and if a permit is required, how permitting pre-conditions would be satisfied. That is, the CEAA and SARA compliance efforts should be

aligned and concurrent as much as reasonably possible.

At a minimum, there should be communication between the parties responsible for the two processes to ensure that information is shared, to avoid duplication of effort, and to ensure consistency between the two analyses.

Implications of a CEAA decision

A decision under CEAA that permits a responsible authority to provide federal support for a project does not constitute an authorization to violate the SARA prohibitions which stand on their own and must still be respected. The environmental assessment can mention a proposed approach, but this cannot be substituted for an authorization by the competent minister under SARA.

In addition, the potential significance of an adverse environmental effect under CEAA is not necessarily an indication of whether an activity is prohibited under SARA, nor of whether the activity would meet the pre-conditions for a SARA permit.

Integrating the SARA permit and CEAA course of action decisions

The need to directly integrate a SARA permit decision into a responsible authority's course of action decision will arise only in circumstances when:

- a competent minister is acting under another Act of Parliament, pursuant to section 74 of SARA, to authorize activities that would otherwise be prohibited under SARA; and
- this authorizing mechanism itself has triggered the need for a federal environmental assessment.

For example, this could occur when certain provisions of the *Fisheries Act* (Fisheries and Oceans Canada), the *Canada National Parks Act* (Parks Canada), or the *Migratory Birds Convention Act, 1994* (Environment Canada) are used to permit activities that would otherwise be prohibited under SARA.

The decision of a competent minister to permit activities affecting a listed wildlife species can be integrated with the responsible authority's course of action decision. Mitigation measures identified in the environmental assessment may be required to be added as terms or conditions to the SARA permit authorization to ensure that adverse effects are minimized, that the listed wildlife species protected and also that any necessary mitigation measures required by CEAA are implemented.

Competent ministers as responsible authorities

A competent minister can also be a responsible authority when, acting under another Act of Parliament, it proposes to make a regulatory decision that appears on the *Law List Regulations* to authorize activities prohibited by SARA.

If CEAA is triggered in this manner, the competent minister, as a responsible authority, cannot exercise any power, or perform any duty or function under any Act of Parliament that would allow the project to be carried out in whole or in part until an environmental assessment is conducted and a course of action decision has been made under CEAA that allows the project to go forward (see subsection 11(2) or paragraphs 20(b) and 37(b) of CEAA). Thus, when the responsible authority is also the competent minister, the environmental assessment must be completed before a permit under SARA (or under other legislation) can be issued.

Note : If a responsible authority is a competent minister and as a result of the environmental assessment, is going to issue a permit that affects a listed wildlife species as per the SARA prohibitions, a justification must be posted in the SARA Public Registry, as per subsection 73(3.1).

Proponent compliance with SARA

Regardless of whether a project is likely to result in significant adverse environmental effects under CEAA, the proponent must still comply with the requirements under SARA, such as applying for permits or avoiding actions that would constitute an offence under SARA.

That is, the proponent's obligations may differ from the responsible authority's and extend beyond completion of the environmental assessment

Related guidance

For related information, also see this guide's sections:

- [2.1 Initial Considerations](#)
- [2.11 Determination of Significance](#)

For additional information, also refer to the SARA Permitting Policy posted on the [SARA Public Registry](#).

SARA references

- Agreements and Permits: sections 73 and 74
- Exemptions for permitted activities: subsection 83(4)

**CEAA
references**

- Timing of assessment: subsection 11(2)
 - Course of action decision: sections 20 and 37
 - [Law List Regulations](#)
-

DRAFT

2.13 Monitoring and Follow-up Programs

Obligations to monitor under SARA

The *Species at Risk Act* (SARA) establishes obligations to ensure that measures are taken to monitor the adverse effects of a project on listed wildlife species and their critical habitat after the environmental assessment decision has been taken.

Effects monitoring under SARA

Under subsection 79(2) of SARA, a responsible authority is required to ensure that measures are taken to monitor all adverse effects on listed wildlife species and their critical habitat. This is required regardless of the significance of those adverse effects, and is required for all listed wildlife species, not just those to which prohibitions apply.

Measures taken to monitor the adverse effects must be consistent with any applicable recovery strategy or action plan. In addition, it is best practice to ensure that measures taken to monitor adverse effects on species of special concern be consistent with relevant management plans for those species.

Follow-up under CEAA

Follow-up programs are recognized as an important tool for ensuring accountability in the environmental assessment process and for improving the quality of future environmental assessments. The results of a follow-up program can also be used for implementing adaptive management measures.

Following a decision to enable a project to be carried out under the *Canadian Environmental Assessment Act* (CEAA), a responsible authority must ensure implementation of all mitigation measures that it considers appropriate. In addition to this mitigation monitoring, a follow-up program may be undertaken to:

- a) verify the accuracy of the environmental assessment; and
- b) determine the effectiveness of any measures taken to mitigate the adverse environmental effects of the project.

Under CEAA, the need for a follow-up program in a screening is at the discretion of a responsible authority; however, a follow-up program is mandatory for a comprehensive study, an assessment by a review panel or a mediation. Where a follow-up program is deemed to be required, the responsible authority designs the follow-up program and ensures its implementation.

When a follow-up program under CEAA is initiated, the responsible authority has certain obligations in terms of informing the public and maintaining

records on the Canadian Environmental Assessment Registry.

These obligations are not triggered by the subsection 79(2) monitoring requirement.

**SARA
monitoring and
CEAA follow-
up**

The SARA monitoring obligation is independent and distinct from any CEAA follow-up program responsibilities. That is, even if a follow-up program is not undertaken under CEAA, a responsible authority must ensure that SARA monitoring is implemented if the project is carried out and there are potential adverse effects on a listed wildlife species or its critical habitat.

Undertaking monitoring as a result of the obligation under SARA does not necessarily constitute a follow-up program under CEAA; however, it is good practice to integrate the two requirements wherever possible.

For example, integrating the two programs would make sense if a follow-up program is deemed necessary under CEAA, and the objectives of the SARA monitoring are identical to the objectives of the follow-up program with regards to species at risk. In some cases, the need to monitor the project's effects on a listed wildlife species may constitute sufficient justification for a follow-up program under CEAA.

**Developing a
monitoring
plan**

If potential adverse effects on a listed wildlife species or its critical habitat are identified in an environmental assessment, to best comply with the SARA requirement for ensuring monitoring, it is best practice for the responsible authority to identify the objectives, scope, timelines, and responsibilities for carrying out the monitoring activity. Where possible, this should be done in the early planning stages of the environmental assessment and may be described directly in the environmental assessment report or as part of a monitoring plan linked to the environmental assessment.

The monitoring plan should also identify the circumstances under which corrective measures may be needed to address any issue or problem identified through the monitoring, for example, if unanticipated effects occur or the significance of the effects is greater than anticipated.

Results of monitoring and follow-up

Results of the monitoring under SARA should be provided to the competent minister(s).

It is best practice to include monitoring reports on the Canadian Environmental Assessment Registry and project file, even in they are not part of a CEAA follow-up program; however, confidentiality of information may need to be considered.

If the mitigation measures are found to not be effective and listed wildlife species are being adversely affected, then [adaptive management measures](#) under CEAA or under other legislation may be required. In some cases, these adaptive management measures may be considered conditions for the project approval.

Related guidance

For related information, also see this guide's sections:

- [1.2 SARA Project Requirements](#)
- [2.9 Mitigation Measures](#)
- [2.14 Adaptive Management](#)

Applicable recovery strategies, action plans, and management plans for species of special concern may provide direction to responsible authorities on issues related to monitoring and follow-up programs.

For more information, please refer to the Canadian Environmental Assessment Agency's Operational Policy Statement entitled: [Follow-up Programs under the Canadian Environmental Assessment Act](#) at www.ceaa.gc.ca/013/0002/followup_e.htm.

SARA references

- Required action: subsection 79(2)

CEAA references

- Mitigation measures: subsection 20(2)
- Follow-up programs: subsections 38(1) to 38(5)

2.14 Adaptive Management

Linking monitoring and adaptive management

The requirement for ensuring that measures are taken to monitor adverse effects on listed wildlife species and their critical habitat creates an opportunity to consider adaptive management measures.

What is adaptive management?

Unanticipated adverse environmental effects may arise during the life of a project calling for adaptive management. Adaptive management measures:

- involve the implementation of new or modified mitigation measures over the life of a project to address unanticipated environmental effects; and
- allow for the adoption of improved mitigation measures (e.g., due to technological advances) over the life of a project.

In other words, adaptive management measures are actions taken on the basis of new information, typically gathered from monitoring activities in a follow-up program, to avoid, reduce or compensate for the environmental effect of a project once a project is underway or completed.

Adaptive management may also involve the purposeful testing of alternative impact hypotheses and mitigation measures. For example, given uncertainty regarding the effectiveness of different mitigation measures, several such measures could be applied simultaneously to different portions of the affected valued ecosystem component (VEC) to determine the best approach.

Adaptive management under CEAA

The value of adaptive management is recognized in the *Canadian Environmental Assessment Act* (CEAA) under section 38(5) which states that the results of follow-up programs for all types of environmental assessments conducted under CEAA can be used for implementing adaptive management measures.

Adaptive management under SARA

The *Species at Risk Act* (SARA) establishes no specific obligations with respect to considering adaptive management measures; however, responsible authorities and project proponents may need to consider applying adaptive management measures to mitigate adverse effects on listed wildlife species.

Adaptive management is recognized as an important tool for mitigating effects on listed wildlife species and critical habitat that are identified during project implementation.

The environmental assessment report, for example, could note any potential

need for adaptive management measures with respect to listed wildlife species or critical habitat that may be identified through the effects monitoring activity.

Adaptive management as a compliance tool

Notwithstanding the environmental assessment, a proponent will still have a legal responsibility to comply with SARA, and adaptive management can be a tool to help ensure that listed wildlife species, their critical habitat and residences of individuals of the species are not adversely affected.

In addition, adaptive management may be a means of ensuring that implementation of a project does not adversely affect new species that may be listed, or that measures advanced in new recovery strategies, action plans or management plans for species of special concern can be adopted when appropriate.

Under section 80 of SARA, the Governor in Council has the authority to make an emergency order to provide for the protection of a listed wildlife species that is facing imminent threats to its survival or recovery. In such cases, the Governor in Council will act on the recommendation of the Minister of the Environment.

Related guidance

Applicable recovery strategies, action plans and management plans for species of special concern may be able to provide direction to responsible authorities on the issues related to adaptive management.

SARA references

- Emergency order: section 80
-

CEAA references

- Adaptive management: subsection 38(5)
-

Appendices: Background to the *Species at Risk Act*

Overview

Purpose of Appendices

The appendices provide additional SARA background information of particular relevance to an environmental assessment practitioner. The appendices include an overview of SARA, definitions, responsibilities, key instruments, information sources and a template for notification.

Contents

The appendices contain the following topics:

Topic	Page
Appendix A. Introduction to SARA	60
Appendix B. SARA Definitions	62
Appendix C. Summary of Responsibilities under SARA	65
Appendix D. Key SARA Instruments	67
Appendix E. SARA Notification Template	72

DRAFT

Appendix A. Introduction to SARA

Purposes of SARA

The purposes of SARA are to:

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

Scope of SARA

SARA applies to all extirpated, endangered or threatened species and species of special concern that are listed on the List of Wildlife Species at Risk set out in Schedule 1 of SARA.

A number of provisions in SARA apply specifically to:

- all listed wildlife species on all federal lands in Canada (e.g., national parks and reserve lands);
- all listed aquatic species (a fish or a marine plant as defined in the *Fisheries Act*, including fish, shellfish, crustaceans, marine animals, algae and phytoplankton) whether on federal lands or not; and
- all listed migratory birds protected by the *Migratory Birds Convention Act, 1994* whether on federal lands or not.

When SARA came into force, there were 233 species listed in Schedule 1. On January 12, 2005, an additional 73 species were added under the Act.

In addition, SARA refers to 39 endangered or threatened species (Schedule 2) and 103 species of special concern (Schedule 3). These species are not part of Schedule 1, but were designated at risk by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) prior to October 1999 and require re-assessment using revised criteria before they can be considered for addition to Schedule 1. Some of these species have since been reassessed and were listed in January 2005.

SARA sets out a process to add a species to the List of Wildlife Species at Risk or change its status on the List. The List, which will be updated regularly, can be viewed on the SARA Registry.

Key features of SARA

The following are the key features of SARA.

- Strongly promotes the role of stewardship and voluntary measures in

protecting species at risk.

- Promotes a cooperative approach among federal, provincial and territorial governments to protecting species at risk.
 - Establishes a process for legally listing wildlife species as extirpated, endangered, threatened, or special concern, recognizing the role of the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) in assessing and identifying species at risk.
 - Establishes a List of species at risk (Schedule 1).
 - Establishes a National Aboriginal Council on Species at Risk.
 - Provides legal protection for individuals of species, residences of individuals or critical habitats when those species are listed as extirpated, endangered or threatened.
 - Establishes a framework for the recovery of species listed as extirpated, endangered or threatened through the development of recovery strategies and action plans.
 - Establishes a framework for the management of species of special concern, through the development of management plans for those species, to prevent them from becoming further at risk and to promote their recovery.
 - Provides for the protection of critical habitat through a series of measures which may include prohibitions.
 - Creates a public registry to assist in making documents under the Act more accessible to the public and for consulting the public on them.
-

Appendix B. SARA Definitions

Definitions in SARA	The following sections provide definitions of some of the key terms from subsection 2(1) of SARA.
<i>Aquatic species</i>	A wildlife species that is a fish, as defined in section 2 of the Fisheries Act , or a marine plant, as defined in section 47 of that Act.
<i>Competent minister</i>	<p>a) the Minister responsible for the Parks Canada Agency with respect to individuals in or on federal lands administered by that Agency. Since December 12, 2003, the Minister of the Environment has been designated as the Minister responsible for the Parks Canada Agency.</p> <p>b) the Minister of Fisheries and Oceans with respect to aquatic species, other than individuals mentioned in paragraph (a); and</p> <p>c) the Minister of the Environment with respect to all other species.</p>
<i>COSEWIC</i>	The Committee on the Status of Endangered Wildlife in Canada established by section 14 of SARA.
<i>Critical habitat</i>	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.
<i>Endangered species</i>	A wildlife species that is facing imminent extirpation or extinction.
<i>Extirpated species</i>	A wildlife species that no longer exists in the wild in Canada, but exists elsewhere in the wild.

<i>Federal land</i>	<p>a) land that belongs to Her Majesty in right of Canada, or that Her Majesty in right of Canada has the power to dispose of, and all waters on and airspace above that land;</p> <p>b) the internal waters of Canada and the territorial sea of Canada; and</p> <p>c) reserves and any other lands that are set apart for the use and benefit of a band under the <i>Indian Act</i>, and all waters on and airspace above those reserves and lands.</p>
<i>Habitat</i>	<p>a) in respect of aquatic species, 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; and</p> <p>b) in respect of other wildlife species, 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.</p>
<i>Individual</i>	<p>An individual of a wildlife species, whether living or dead, at any developmental stage and includes larvae, embryos, eggs, sperm, seeds, pollen, spores and asexual propagules.</p>
<i>List</i>	<p>Means the List of Wildlife Species at Risk set out in Schedule 1 of SARA.</p>
<i>Listed</i>	<p>Means listed on the List.</p>
<i>Residence</i>	<p>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.</p>
<i>Species at risk</i>	<p>An extirpated, endangered or threatened species or a species of special concern.</p>

Species of special concern

A wildlife species that may become a threatened or an endangered species because of a combination of biological characteristics and identified threats.

Threatened species

A wildlife species that is likely to become an endangered species if nothing is done to reverse the factors leading to its extirpation or extinction.

Wildlife species

A species, subspecies, variety or geographically or genetically distinct population of animal, plant or other organism, other than a bacterium or virus, that is wild by nature and

- a) is native to Canada; or
 - b) has extended its range into Canada without human intervention and has been present in Canada for at least 50 years.
-

DRAFT

Appendix C. Summary of Responsibilities under SARA

Responsibilities of key parties	The following sections summarize some of the major responsibilities of key parties under SARA:
<i>Minister of the Environment - Environment Canada</i>	<ul style="list-style-type: none"> • Overall administration of SARA. • Protection of all listed wildlife species, other than aquatic species, that occur anywhere in Canada other than on federal lands administered by the Parks Canada Agency. • Development of recovery strategies and action plans (for extirpated, threatened or endangered species) and management plans (for species of special concern) for all listed wildlife species, other than aquatic species, that occur anywhere in Canada other than on federal lands administered by the Parks Canada Agency. • Implementation of conservation and protection measures under SARA for listed wildlife species under the responsibility of Environment Canada, other than those in or on federal lands administered by the Parks Canada Agency.
<i>Minister of the Environment - Parks Canada Agency</i>	<ul style="list-style-type: none"> • Protection of all listed wildlife species in or on federal lands administered by the Parks Canada Agency. • Development of recovery strategies and action plans (for extirpated, threatened or endangered species) and management plans (for species of special concern) for aquatic and terrestrial listed wildlife species in or on federal lands administered by the Parks Canada Agency. • Implementation of conservation and protection measures under SARA for listed wildlife species in or on federal lands administered by the Parks Canada Agency.
<i>Minister of Fisheries and Oceans - Fisheries and Oceans Canada</i>	<ul style="list-style-type: none"> • Protection of listed aquatic species that occur anywhere in Canada other than in or on federal lands administered by the Parks Canada Agency. • Development of recovery strategies and action plans (for extirpated, threatened or endangered species) and management plans (for species of special concern) for all listed aquatic species other than aquatic species in or on federal lands administered by the Parks Canada Agency. • Implementation of conservation and protection measures under the SARA for listed aquatic species under the responsibility of the Minister of

Fisheries and Oceans, other than those that occur in or on federal lands administered by the Parks Canada Agency.

***Canadian
Endangered
Species
Conservation
Council
(CESCC)***

Members include: the Minister of the Environment, the Minister of Fisheries and Oceans Canada, and Ministers of the provincial and territorial governments responsible for the conservation and management of a wildlife species in the province or territory.

Responsibilities include:

- general direction on the activities of COSEWIC, the preparation of recovery strategies, and the preparation and implementation of action plans; and
 - coordination of the activities of the various governments represented on the Council relating to the protection of a species at risk.
-

***Committee on
the Status of
Endangered
Wildlife in
Canada
(COSEWIC)***

Members include: Qualified wildlife experts drawn from the federal, provincial, and territorial governments, wildlife management boards, Aboriginal groups, universities, national non-governmental organizations, museums and others.

Responsibilities include:

- assessment and classification of the status of wildlife species using the best available information on the biological status of a species, including scientific knowledge, community knowledge, and aboriginal traditional knowledge; and
 - provision of advice to the Minister and the CESCC.
-

***National
Aboriginal
Council on
Species at Risk
(NACOSAR)***

Members include: Six representatives of the aboriginal peoples of Canada selected by the Minister of the Environment based upon recommendations from aboriginal organizations.

Responsibilities include:

- advises the Minister of the Environment on the administration of SARA; and
 - provision of advice and recommendations to the CESCC.
-

Appendix D. Key SARA Instruments

Summary of key instruments

The following sections summarize the key instruments that can be used to help achieve SARA's objectives.

Note: In the following sections, the numbers in parentheses reference the relevant provisions of SARA.

Stewardship action plan (10.1-10.2)

A stewardship action plan may be established to create incentives and other measures to support voluntary stewardship actions.

Conservation and contribution agreements (11-13)

SARA provides authority for conservation agreements and contribution agreements to support conservation measures.

COSEWIC and the listing process (14-31)

SARA creates a framework whereby:

- COSEWIC independently assesses the status of wildlife species;
 - government responds to COSEWIC assessment;
 - a process is established to add or remove species from Schedule 1; and
 - a List of Wildlife Species at Risk is set out in Schedule 1.
-

General prohibitions (individuals and residences) (32-36)

These provisions make it an offence :

1. to 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;
2. to possess, collect, sell, buy or trade an individual of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species, or any part or derivative of such an individual; and
3. to 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 that species into the wild in Canada.

These prohibitions apply without an order from the Governor in Council:

- on federal lands, except in the territories;
- and on lands in the territories under the authority of the Minister of the Environment or the Parks Canada Agency;
- to listed extirpated, endangered or threatened migratory birds species that are protected by the *Migratory Birds Convention Act, 1994* wherever they are found; or
- to listed extirpated, endangered or threatened aquatic species wherever they are found.

These prohibitions also can be applied, by order of the Governor in Council, following consultations with relevant provinces and territories as set out in SARA and public consultations as required by the government of Canada regulatory policy:

- to a species that is not listed under SARA but that has been classified as threatened or endangered by a provincial or territorial minister, and that is found on federal lands; or
- to species on provincial or territorial land, where the laws of the province or territory do not effectively protect the species or the residence of its individuals (known as the “safety net” provision).

Recovery strategies (37-46)

The competent minister must prepare recovery strategies for listed endangered, extirpated and threatened species. A recovery strategy will, among other things:

- describe the species and its needs;
 - include a statement of the population and distribution objectives for the species;
 - identify threats to the survival of a species and its habitat and outline a broad strategy to respond to those threats; and
 - identify the species’ critical habitat to the extent possible, based on best available information.
-

**Action plans
(47-55)**

Action plans support the implementation of recovery strategies and will, among other things, include:

- a statement of measures to implement the recovery strategy, including those that address the threats to the species and those that help to achieve population and distribution objectives;
- an identification of a species' critical habitat and examples of activities that could destroy the critical habitat;
- a statement of measures proposed to protect the species' critical habitat; and
- methods to monitoring the recovery of the species and its long-term viability.

**Protection of
critical habitat
(56-64)**

Critical habitat is identified in recovery strategies or action plans. Critical habitat will then be protected through a range of mechanisms that could include stewardship agreements, voluntary measures, other federal or provincial legislation, or a prohibition.

Where a critical habitat prohibition applies, SARA makes it an offence to destroy any part of the critical habitat of a species listed under SARA as extirpated (if a recovery strategy has recommended its reintroduction into the wild in Canada), endangered or threatened.

For critical habitat in a national park of Canada named and described in Schedule 1 of the *Canada National Parks Act*, a marine protected area under the *Oceans Act*, a migratory bird sanctuary under the *Migratory Birds Convention Act, 1994* or a national wildlife area under the *Canada Wildlife Act* the prohibition applies ninety days after a description of the critical habitat is published in the *Canada Gazette* (which occurs ninety days after the critical habitat is identified in a recovery strategy or action plan).

For critical habitat of listed aquatic species located elsewhere, and for all critical habitat located on other federal lands, in the exclusive economic zone of Canada or on the continental shelf of Canada, the prohibition applies by way of an order from the competent minister. Otherwise, for the critical habitat prohibition to apply on lands that are not federal land, in the exclusive economic zone of Canada or on the continental shelf of Canada, an order from the Governor in Council is required.

**Management
plans (65-72)**

Management plans are developed for species of special concern, and will, among other things, set out measures for the conservation of a species and its habitat.

Agreements and permits or other documents (73-78)

These provisions allow agreements, permits, licences, orders or other similar documents to be issued or entered into for the following types of activities:

- 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.

Permits and agreements are subject to several requirements including the following pre-conditions:

- all reasonable alternatives to the activity that would reduce the impact on the listed wildlife species have been considered and the best solution has been adopted;
 - all feasible measures will be taken to minimize impact of the activity on the species, or its critical habitat or the residences of its individuals; and
 - the activity will not jeopardize the survival or recovery of the listed wildlife species.
-

Project review (79)

A responsible authority must notify the competent minister(s) if the project is likely to affect a listed wildlife species or its critical habitat.

When a federal environmental assessment is required under an Act of Parliament, the person responsible for ensuring that assessment is conducted must identify the adverse effects of the project being assessed on the listed wildlife species and its critical habitat.

If the project is carried out, the responsible authority must ensure that measures are taken to avoid or lessen those effects and to monitor them. The measures must be taken in a way that is consistent with any applicable recovery strategy and action plans.

Emergency orders (80-82)

Emergency orders provide authority for the federal government to take emergency action to protect a listed wildlife species or the habitat that is necessary for the survival or recovery of the species, when the competent minister believes that a listed wildlife species is facing imminent threats to its survival or recovery.

Exceptions (83)

Several exceptions to the prohibitions and emergency orders are provided for in the Act including exceptions for:

- activities related to public safety, health, or national security, that are authorized by or under any other Act of Parliament;
 - activities authorized under sections 73, 74 or 78 by an agreement, permit, license, order or similar document;
 - a person who is engaging in activities in accordance with conservation measures for wildlife species under a land claims agreement; and
 - a person who is engaging in activities that are permitted by a recovery strategy, and action plan or a management plan and who is also authorized under an Act of Parliament to engage in that activity.
-

Enforcement (85-119)

These provisions address a range of enforcement issues including:

- public applications for investigation (sections 93-96)
 - offences and punishments (sections 97-107); and
 - alternative measures (sections 108-119).
-

DRAFT

Appendix E. SARA Notification Template

INSERT ADDRESS OF SENDER

INSERT DATE

INSERT ADDRESS OF RECIPIENT

Dear Mr./Ms

RE: Notification pursuant to the requirements of subsection 79(1) of the *Species at Risk Act*.

Please be advised that (*name of department or agency*), as responsible authority for the environmental assessment for (*name of project*), has determined that this proposed project is likely to affect the following listed wildlife species or its critical habitat: (*name of species and/or critical habitat*). This determination is based on information from (*Information source, e.g., NatureServe, sightings, recent surveys, etc.*).

The (*name of project*), located at (*location information*), is proposed to involve (*brief description of proposed project*). The nature of the potential effect is (*potential effect on species or its critical habitat*). At this point, the following mitigation measures and alternatives are being considered (*mitigation and/or alternative means of carrying out the project, if known*).

The proposed project is subject to a (*type of environmental assessment*) under the (*applicable legislation*). Additional information about the environmental assessment is available through the (*location, e.g., Canadian Environmental Assessment Registry*) at (*reference number*).

Additional information (*e.g., location data for species or critical habitat, or any known residences of individuals of those species*) is attached.

Please note that we are (*aware of / not aware of*) a need for confidentiality regarding the location data for the species.

If you have any questions please feel free to call the contact for this environmental assessment: (*name of contact, address, e-mail and phone number*).

Sincerely,

Department Representative (Signature of all RAs if applicable)
