Draft Policies
Federal Species at Risk Act

Transboundary Grasslands Workshop

Jan 12, 2017
Draft SARA Policies

• On Sept 19, ECCC notified provincial and territorial governments, Indigenous groups and industry and ENGO organizations about the publication of 7 draft SARA policies
• The policies are available for comment until Mar. 31, 2017.
• The policies can be viewed at: http://www.sararegistry.gc.ca/involved/consultation/default_e.cfm
• Comments can be sent to: ec.registrelep-sararegistry.ec@canada.ca
The seven draft policies are:

- Listing policy for terrestrial species at risk
- Policy on survival and recovery
- Policy regarding the identification of anthropogenic structures as critical habitat under the *Species at Risk Act*
- Approach to the identification of critical habitat when habitat loss is not believed to be a significant threat to the species
- Policy on critical habitat protection on non-federal lands
- Policy on protecting critical habitat with conservation agreements under Section 11 of the *Species at Risk Act*
- *Species at Risk Act* permitting policy
Critical Habitat Protection Policy – on non-federal land

- Critical habitat is the “habit that is necessary for the survival or recovery of a listed wildlife species”.

- SARA requirements for CH protection differ depending on whether the land is federal land or non-federal land.

- On non-federal land, s.61 of SARA identifies what is required.

- **SARA s.61(1)** No person shall destroy any part of the critical habitat of a listed endangered species or a listed threatened species that is in a province or territory and that is not part of federal lands.

- **SARA s. 61(2)** Subsection (1) applies only to portions of critical habitat that the Governor in Council may, on the recommendation of the Minister, by order, specify.
Protection provisions

- **SARA 61(4)** The Minister must make a recommendation [for an Order] if he or she is of the opinion, after consultation with the appropriate provincial or territorial minister, that

  (a) there are no provisions in, or other measures under, this or any other Act of Parliament that protect the particular portion of the critical habitat, including agreements under section 11; and

  (b) the laws of the province or territory do not effectively protect the critical habitat.

- The **policy** sets out the *factors guiding the assessment* of whether existing laws and measures protect CH on non-federal lands, and describes the *actions to be taken* following the completion of that assessment.
Overarching Policy Statements

• Protection and Effective Protection
  – Critical habitat will be considered to be protected or effectively protected where provisions in, or measures under SARA or other Acts of Parliament, or the laws of the province or territory, have the same protection outcome as would be the case if the SARA s.s.61(1) prohibitions were in place.
  – The protection outcome is that critical habitat is not being and will not be destroyed except in ways that SARA’s discretionary measures would allow.

• Risk-Based Approach to Protection & Effective Protection
  - Where there are no provisions in, or measures under SARA or other Acts of Parliament, or the laws of the P/T that provide for protection, critical habitat will also be considered to be protected or effectively protected if there is a low level of risk that the critical habitat will be destroyed.
CHPA – Preliminary Information (not Minister’s opinion)

Step 1: **Assess provincial/territorial laws** to determine whether they protect CH (i.e. assessed as strong/moderate).

Step 2: If gaps in protection are identified in Step 1, assess Acts of Parliament to determine whether there are measures under Acts of Parliament (including SARA s.11) that protect CH (i.e. assessed as strong/moderate).

Step 3: If gaps still remain, **assess risk of CH destruction**. If low, considered protection / effective protection for preliminary assessment.

Step 4: **Verify efficacy of CH protection**. Continue to monitor for evidence that any protection that is in place is not effective.

*Step 1 indicates if effective protection appears to be in place*

*Step 2 indicates if protection appears to be in place*

*Step 3 indicates risk of CH destruction occurring*

*Step 4 verifies the effectiveness of protection over time*
Formation of Minister’s Opinion

• If instrument strength is strong / moderate in Steps 1 or 2, OR Step 3 indicates a low / very low risk of CH destruction, ECCC will consider critical habitat to be protected.

• If initial assessment indicates that CH is not protected, ECCC will consult with provincial and other governments and if possible, put protection in place.

• If CH remains unprotected following consultations, ECCC will recommend that the Minister form an opinion that CH is not protected.
Policy on CH Protection by Section 11 Agreements

- **Section 11** of SARA authorizes the Minister to enter into a conservation agreement to benefit a species at risk. The agreement must pertain to conservation measures among which measures to protect critical habitat may be included.

- **Sections 58 and 61** of the Act indicate that a section 11 agreement can serve as a mechanism to protect critical habitat.
Section 11 and CH Protection
Policy Statement

A section 11 agreement will be considered to protect critical habitat if:

• The risk of CH destruction is low following the implementation of conservation measures stipulated in the agreement;
• It remains apparent that the measures are being undertaken.
Section 11 & CH Protection
Policy Requirements

• The species and the geographical area are specified in the agreement;
• The habitat to which the measures apply is identified as critical habitat in the a SARA recovery document;
• The conservation measures address gaps in protection such that there is a low level of risk that the critical habitat will be destroyed;
• Terms of the agreement are structured in a manner that assure that the conservation measures will continue to be undertaken;
• The duration of the agreement is specified, and does not exceed five years;
Section 11 & CH Protection Policy Requirements (p.2)

• The agreement includes a provision stating that if its terms are not met, it will be concluded that the critical habitat is not being protected;
• The “competent minister” or a federal official designated by the competent minister signs the agreement