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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



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Draft SARA Policies

- 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 “*habitat 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 1 indicates if effective protection appears to be in place

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 2 indicates if protection appears to be in place

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

Step 3 indicates risk of CH destruction occurring

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

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.



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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



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