

Government
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Species at Risk Act
Policies and Guideline Series

Submitted by Oil Sands Environmental Coalition (OSEC)

Date: November 14, 2012

**Addressing *Species at Risk Act*
Considerations Under the *Canadian
Environmental Assessment Act* for
Species Under the Responsibility of
the Minister responsible for
Environment Canada and Parks
Canada**

Environment Canada and Parks Canada

Canada

1.2 SARA Project Review Requirements

SARA project review requirements

Under subsection 79(2), SARA confers obligations on a responsible authority to identify adverse effects of the project on a listed wildlife species and its critical habitat, and, if the project is carried out, to ensure that those effects are mitigated and monitored. These obligations are in addition to the requirements set out in CEAA for an assessment of the environmental effects of the project, including in particular 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 SARA.

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 for every environmental assessment to consider the “environmental effects” of a project. It is also supported by the CEAA definition of “environmental effect” that specifically includes any change that the project 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 SARA.

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, it would be best practice to ensure that any species at risk in the project area is identified as a valued ecosystem component.

The analysis should consider how a project affects the listed wildlife species or its critical habitat, including direct, indirect and cumulative effects. As well, effects on habitat that may adversely affect the species should be considered in the analysis. Special attention should be directed to habitat that has been identified 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”.

However, 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, 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 2.9, Mitigation Measures.

Note: While CEAA recognizes restitution for damage to the environment as a mitigation measure, restitution should be considered as a last resort. For species at risk, restitution may not be acceptable.

**Monitoring the
adverse effects
under SARA**

Subsection 79(2) of SARA also requires monitoring of the actual adverse 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 where appropriate.

Monitoring is discussed further in section 2.13, Monitoring and Follow-up Programs.

Consistency with recovery strategies or action plans

Subsection 79(2) of SARA also requires that measures taken to avoid or lessen the adverse effects, and to monitor those effects, are 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 are posted on the Species at Risk Public Registry at:
www.sararegistry.gc.ca/sar/recovery/default_e.cfm

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 Species at Risk Public Registry at www.sararegistry.gc.ca/sar/assessment/status_e.cfm);
- draft recovery strategies or action plans, where available;
- existing plans relating to the wildlife species (see note below); 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.

2.6 Analysis of Potential Project Effects on Species at Risk

SARA obligations to address potential effects

SARA establishes obligations to address potential effects on listed wildlife species in a federal environmental assessment. This obligation reinforces the requirements of 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 and their critical habitat.

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), all listed wildlife species found within the project area should be included as VECs. In addition, it is best practice to include, as VECs, other wildlife at risk found within the project area, such as species that are provincially listed but not listed under SARA.

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, when possible, 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 authorized under SARA if a permit is issued. The activity must not only meet specified conditions as outlined in SARA but also 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, see also, in this guide, sections:

- 1.2 SARA Project Review Requirements
- 2.12 SARA Permit Decision
- Precautionary approach

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 Practice 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)