



Fisheries and Oceans Canada
Species at Risk Act
Listing Policy
and
Directive for “Do Not List” Advice

Preamble

The *Fisheries and Oceans Canada (DFO) Species at Risk Act (SARA) Listing Policy and Directive for “Do Not List” Advice* have been developed by DFO to operationalize the *Species at Risk Act*. Policy instruments establish consistent approaches; identify how to manage significant risks; and put into action guiding principles for implementation. Policies are directed at deputy heads and their delegates and are designed to achieve certain high-level management objectives. They are supported by other policy instruments, such as guidelines and tools, which explain how to achieve the policy objective and are usually directed at managers and functional specialists.

The *DFO SARA Listing Policy and Directive for “Do Not List” Advice* (the Policy and Directive) support the implementation of SARA which seeks to conserve Canada’s biological diversity. They support the Government of Canada’s commitment to protect and advance the public interest by working with Canadians and other governments to ensure that federal regulatory activities result in the greatest overall benefit to current and future generations of Canadians. Specifically, these policy instruments clarify key terms, requirements and responsibilities to advance efficiency and effectiveness and to ensure that the benefits of regulation justify the costs, focus human and financial resources where they can do the most good and demonstrate tangible results for Canadians.

The processes described in the Policy and Directive will ensure that decision-making is transparent, knowledge-based, adopts a precautionary approach, respects jurisdictional roles and responsibilities, encourages protection through existing measures and complementary legislation, and promotes stewardship.

DFO will revise these policy instruments from time to time in consultation with management and staff in the Regions and in implicated sectors to maintain a suite of policy instruments that adequately respond to the risks in a cost-effective manner.

Listing Process for Aquatic Species not on Schedule I of the *Species at Risk Act* (SARA)

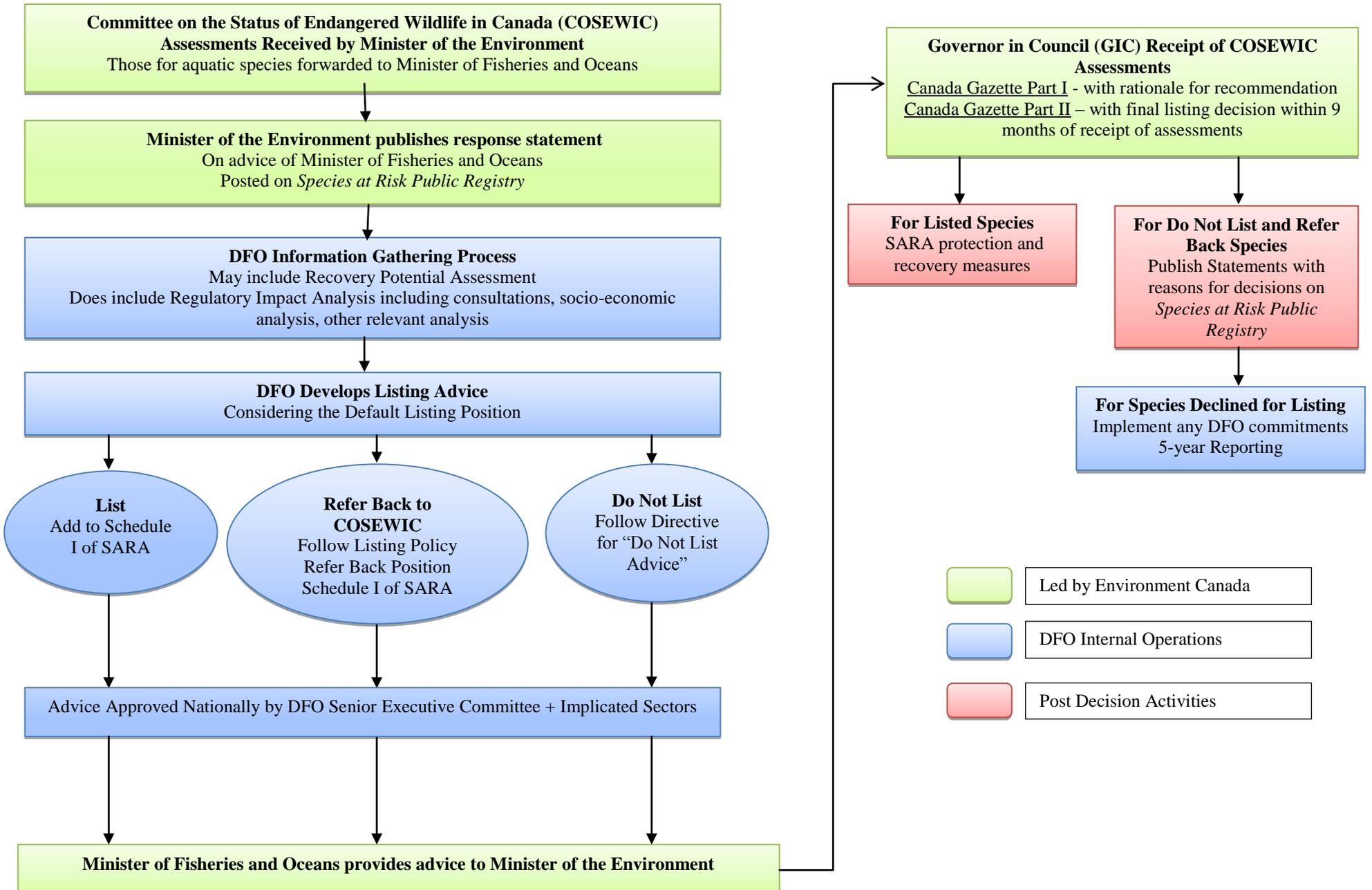


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1. Approval Authority, Effective Date and Review Date

This Policy was approved by the Members of the Deputy Minister's Policy Committee for Fisheries and Oceans Canada (DFO) on December 11, 2013, and takes immediate effect.

This Policy shall be reviewed 5 years after coming into effect, or sooner as needed.

2. Application

This Policy applies to individuals within DFO involved in activities related to the *Species at Risk Act* (SARA or the Act), in particular those involved in the process of developing advice for the Minister of Fisheries and Oceans regarding a species assessed as at risk by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC).

In addition, this Policy applies to individuals within DFO required to take action regarding species assessed as at risk by COSEWIC, but which are not added to Schedule 1 of SARA (the List).

3. Context

3.1. Background on SARA

SARA is the legislative basis for the Government of Canada's strategy for the protection of wildlife species at risk. The Act received Royal Assent on December 12, 2002, and came fully into force on June 1, 2004. SARA is an important tool for conserving and protecting Canada's biological diversity. The purposes of the Act are:

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

SARA supports the domestic implementation of certain international conventions, in particular, the Convention on Biological Diversity, as well as complements existing legislation including:

- the *Fisheries Act*, which provides authority to manage aquatic species; and
- the *Oceans Act*, which provides authority to create marine protected areas.

DFO, the Parks Canada Agency, and Environment Canada are the three government organizations, informally referred to as the competent departments, which share responsibility for the implementation of SARA. The Minister of Fisheries and Oceans is the competent minister responsible for aquatic species at risk, other than individuals in or on federal lands administered by the Parks Canada Agency. The Minister of the Environment is the Minister responsible for the overall administration of SARA.

Under SARA, the scientific assessment of a species' status and the decision whether to amend the List are two distinct processes. These two separate processes help to ensure that scientists can work independently when assessing the biological status of wildlife species and that Canadians have the opportunity to participate in the decision-making process to determine whether or not species are listed under SARA.¹

COSEWIC is a committee of experts that assesses the status of wildlife species it considers to be at risk in Canada. COSEWIC assesses the status of a wildlife species using the best available information on the biological status of a species, including scientific knowledge, community knowledge and Aboriginal traditional knowledge.

COSEWIC assessments may be for species that were not previously assessed or for species previously assessed as at risk (also called reassessments). Species previously assessed as at risk may or may not be on the List due to past listing decisions.

COSEWIC may classify a species as extinct, extirpated, endangered, threatened or a species of special concern. COSEWIC may also indicate that the species is not currently at risk or that there is insufficient information to classify the species (informally referred to as "data deficient"). For species at risk, COSEWIC must review the classification at least once every 10 years, or at any time the Committee believes the status has changed. Assessments of wildlife species are provided to the Minister of the Environment annually.

3.2. The SARA Listing Process

Upon receiving a COSEWIC assessment or reassessment for a species assessed as at risk, the Minister of the Environment has 90 days to include, in the *Species at Risk Public Registry*, a report on how the Minister of the Environment intends to respond to the assessment and, to the extent possible, the timelines for action. For reassessments where a species is on the List and the species' classification is unchanged from the existing classification, the Minister of the Environment can confirm the risk classification in the response statement. No further measures or actions are required.

Before making a recommendation regarding the COSEWIC assessment to the Governor in Council, the Minister of the Environment must:

- take into account the assessment by COSEWIC;
- consult the competent minister(s); and
- consult the appropriate wildlife management board.

The Minister of the Environment consults the Minister of Fisheries and Oceans, as the competent minister for aquatic species other than individuals in or on federal lands administered by the Parks Canada Agency. As the competent department, DFO undertakes the consultation and analysis necessary to provide advice to the Minister of Fisheries and Oceans who in turn provides a suggested listing recommendation when consulted by the Minister of the Environment. The Minister of the Environment then forwards the COSEWIC assessment, with a

¹ While SARA separates the process, consultations with Canadians is a requirement of the *Cabinet Directive on Regulatory Management*, not SARA.

recommendation to the Governor in Council. The Governor in Council must then take a course of action.

For a species not currently on the List, the Governor in Council, on the recommendation of the Minister of the Environment, has 9 months to take a course of action or the Minister of the Environment shall, by Order, amend the List in accordance with the COSEWIC assessment.

For a species not currently on the List (whether this is the species' first assessment or is a reassessment), the Governor in Council may, on the recommendation of the Minister of the Environment:

- accept the assessment and amend the List by adding the species (“list”);
- decide not to add the species to the List (“do not list”); or
- refer the matter back to COSEWIC for further information or consideration (“refer back”).

For reassessments where a species is on the List and COSEWIC has changed the classification, the Governor in Council may, on the recommendation of the Minister of the Environment:

- determine that no action is necessary and the species will remain on the List at the original risk classification (“do not reclassify”);²
- amend the List to reclassify a species as assessed by COSEWIC (“reclassify”); or
- refer the matter back to COSEWIC for further information or consideration (“refer back”).

Species on the List are eligible for Government of Canada SARA program funding and benefit from protection and recovery planning required by SARA:

- For species listed as special concern, this means that a management plan must be developed.
- For extirpated, endangered or threatened aquatic species on the List, this includes:
 - Legal protection wherever the species is found, making it an offense to:
 - Kill, harm, harass, capture or take an individual;
 - Possess, collect, buy, sell or trade an individual or any of its parts or derivatives; and
 - Damage or destroy the residence of one or more individuals.
 - Development of a recovery strategy and one or more action plans.
 - Identification and legal protection of critical habitat.

Species assessed as at risk by COSEWIC that are not on the List may be managed or protected by other legislative tools (e.g. federal, provincial, territorial or wildlife management board) and/or non-legislative tools (e.g. voluntary actions) and may have limited access to species at risk grants and contributions.

² This Policy does not include specific requirements for instances when DFO may consider advice to “do not reclassify”. This option will be addressed in future policy instruments.

4. Policy Statement

4.1. Objective

DFO is committed to transparency and ensuring:

- nationally consistent standards in the development of listing advice on aquatic species, for provision to the Minister of Fisheries and Oceans; and
- that DFO's intentions are articulated, documented and reported when a decision is made to not list an aquatic species assessed as at risk by COSEWIC.

4.2. Expected Results

This Policy will contribute to conserving Canada's biological diversity by ensuring that the decision-making process for the protection of aquatic species assessed as at risk is rigorous, consistent and takes into full account the range of tools available to governments and to Canadians.

5. Definitions (Annex A)

Definitions used in the interpretation of this Policy are found in Annex A.

6. Requirements

This Policy describes two levels of requirements:

- Overall requirements which flow from SARA and the *Cabinet Directive on Regulatory Management*; and
- Specific requirements which flow from the Default Listing Position, the Directive for "Do Not List" Advice, and the Refer Back to COSEWIC Position in this Policy.

Detailed guidance to support these requirements is found in the *Fisheries and Oceans Canada Species at Risk Act Listing Guidelines*.

6.1. Overall Requirements

6.1.1. *Species at Risk Act*

DFO must ensure that the SARA requirements for listing advice are met when developing such advice for the Minister of Fisheries and Oceans to provide, when consulted by the Minister of the Environment. To develop this advice, DFO must:

- take into account the COSEWIC assessment;
- consult any other competent minister; and
- consult the appropriate wildlife management board.

In addition, SARA requires that the Minister of the Environment, with the approval of the Governor in Council, include a statement in the *Species at Risk Public Registry* setting out the reasons for a decision of "do not list" or "refer back." DFO leads in the drafting of this statement when it is the competent department.

For species on the List, the option available to the Governor in Council, as identified in SARA, is to amend the List by reclassifying a species based on a COSEWIC assessment (“reclassify”). For species not on the List, the options available to the Governor in Council, as identified in SARA, are the “do not list” option in addition to the option to add the species to the List (“list”).

Orders for Governor in Council decisions to amend the List (i.e. “list”, “reclassify”) are regulations under the *Statutory Instruments Act* and must follow the requirements of the *Cabinet Directive on Regulatory Management*, summarized below. A Regulatory Impact Analysis Statement with the analysis to support recommendations to amend the List is published in the *Canada Gazette, Part I* and with the Statutory Order in the *Canada Gazette, Part II*.

Orders for Governor in Council decisions that do not amend the List (i.e. “do not list”, “refer back”) are not regulations under the *Statutory Instruments Act*. While the *Cabinet Directive on Regulatory Management* does not strictly apply to these Orders, best practice is to undertake similar regulatory impact analysis when developing advice, other than for “refer back” advice. The analysis for a “refer back” statement explains what new information is available and how it could affect the status assessment.

Authority has been granted under section 14 of the *Statutory Instruments Regulations* for publication in the *Canada Gazette* of Orders of Decisions not to add certain species to the List and Orders of Referral Back to COSEWIC. A Regulatory Impact Analysis Statement with the analysis to support recommendations to not amend the List is published in the *Canada Gazette, Part I*, as part of the overall set of listing recommendations. The Orders of the Governor in Council decisions to not amend the List are published in the *Canada Gazette, Part II* accompanied by an Annex which includes a statement required by SARA for publication in the *Species at Risk Public Registry*.

6.1.2. Cabinet Directive on Regulatory Management

As indicated above, Orders for Governor in Council decisions to amend the List (i.e. “list”, “reclassify”) must follow the *Cabinet Directive on Regulatory Management*. As part of the requirements of the *Cabinet Directive on Regulatory Management*, the regulatory impact analysis conducted by DFO will:

- provide opportunities for consultation;
- identify and assess the public policy issue and identify the need for intervention;
- set out public policy objectives and expected outcomes;
- assess a mix of government instruments to achieve the policy objectives, including the proposed regulatory option (e.g. “list”) and options that do not require new regulations (e.g. “do not list”);
- assess legal implications;
- ensure compliance with international obligations;
- analyze the benefits and costs of the regulatory change;
- recommend an option that maximizes net benefits to Canadians while considering administrative burden, impacts on small businesses, impacts on the environment of Canadians and other considerations;

- coordinate with other departments and agencies to maximize effectiveness and minimize cumulative and unintended impacts;
- cooperate with provincial and territorial governments, jurisdictions in other countries and/or with the international community;
- plan for implementation, compliance and enforcement; and
- measure, evaluate and review the regulatory frameworks.

The results of the regulatory impact analysis, including the rationale for the recommended option, are summarized in the Regulatory Impact Analysis Statement, which is published in the *Canada Gazette, Parts I and II* for regulatory changes (for details on the publication of Orders for Governor in Council decisions, please refer to section 6.1.1 of this Policy). The rationale flows from the information in the impact analysis and explains how the recommended option results in the greatest net benefit to Canadians while meeting the regulatory objective and taking into account other priority issues, such as limiting administrative burden and impacts on small businesses.

Recognizing that regulatory impact analysis can be resource intensive, the *Cabinet Directive on Regulatory Management* emphasizes the principle of proportionality. This is put in practice with the use of the Triage Statement required by Treasury Board Secretariat, which uses available information to identify greater analytical requirements for proposals with higher expected impacts and/or risks.

While only decisions to amend the List are required to follow the *Cabinet Directive on Regulatory Management*, best practice is to undertake similar regulatory impact analysis when developing listing advice, which supports the Default Listing Position (see below in section 6.2.1). In order to develop advice for the Minister of Fisheries and Oceans, a regulatory impact analysis is conducted for all COSEWIC assessments that could result in a regulatory amendment to the List (“list”, “reclassify”) with analysis of options that do not require regulatory change under SARA (e.g. “do not list”, “do not reclassify”, “refer back”).

Supported by the principle of proportionality, the resources DFO allocates to a regulatory impact analysis may take into account the expected level of impact of the options, which can differ based on the species and by the COSEWIC assigned classification. In support of compliance with the *Cabinet Directive on Regulatory Management*, for situations where the level of impact is expected to be low, at a minimum, DFO must:

- describe management scenarios both for the regulatory option under SARA (e.g. “list”) and the option which does not require regulatory change under SARA (e.g. “do not list”);
- conduct a qualitative analysis of the economic benefits and costs of the scenarios;
- consult with provincial/territorial governments, Aboriginal groups, stakeholders and Canadians; and
- consider administrative costs and impacts on small businesses.

For situations where the level of impact is not expected to be low, DFO may undertake additional activities, which support the analysis required by the *Cabinet Directive on Regulatory Management*. These activities may include development of:

- a Recovery Potential Assessment which is peer-reviewed scientific advice including, among other things, the current status of the species and the potential for recovery;
- formally approved management scenarios; and
- a quantitative analysis of the economic benefits and costs of the management scenarios.

6.2. DFO Specific Requirements

6.2.1. Default Listing Position

DFO has adopted the Default Listing Position to provide a common and consistent starting point in the consideration of all COSEWIC assessments. The Default Listing Position means that DFO will advise that the List be amended for a species as assessed by COSEWIC, unless DFO can provide a Compelling Rationale not to do so. A Compelling Rationale must stem from a rigorous, structured, comprehensive and transparent analysis described in the Directive for “Do Not List” Advice (Annex B).

The preamble to SARA recognizes the many values of wildlife to Canadians and the role of Canada’s wildlife species and ecosystems as part of the world’s heritage. The Default Listing Position therefore aligns with SARA by stating that advice will be developed to list a species in accordance with the COSEWIC assessment to provide the species with the benefits from the protection and recovery planning under SARA. The regulatory analysis required under the Default Listing Position will result in rigorous consideration of the means available in SARA to mitigate potential negative social and economic impacts of listing, including permits and exemptions from prohibitions, and the reduced requirements for recovery strategies for species where recovery is not feasible.

The preamble to SARA recognizes that all Canadians have a role to play in the conservation of wildlife, including the prevention of wildlife species from becoming extirpated or extinct. Additionally, the preamble recognizes that providing legal protection for species at risk will complement existing legislation. To align with these concepts, the Default Listing Position recognizes the benefits for a species of being on the List, but respects those cases where a Compelling Rationale can be made to allow use of other federal authority, or stewardship actions by partners (i.e. provinces or territories), resource users or others to protect and recover the species at risk. The required discussion of net benefits in the Compelling Rationale would set out why, among other things, the alternative approach is a more efficient use of Canadian resources than listing.

The preamble to SARA also recognizes the precautionary principle; that is, where there are threats of serious or irreversible damage to a wildlife species, cost-effective measures to prevent the reduction or loss of the species should not be postponed for a lack of full scientific certainty. The Default Listing Position is aligned with this principle, as it requires “do not list” advice be compelling and based on rigorous, structured, comprehensive and transparent analysis.

Additionally, the Default Listing Position is aligned with the following requirements:

- The SARA requirement that, for species not yet on the List, the Minister of the Environment amend the List in accordance with the COSEWIC assessment in the

absence of a decision by the Governor in Council within 9 months of official receipt of an assessment by the Governor in Council.

- The *Cabinet Directive on Regulatory Management* requirement that a mix of government instruments be assessed, in addition to the regulatory option under SARA. The Default Listing Position recognizes options that do not require regulatory change under SARA (e.g. “do not list”), whereby DFO can avail itself of options under other authority, such as the *Fisheries Act*, to protect and recover species assessed as at risk by COSEWIC.

6.2.2. Directive for “Do Not List” Advice (Annex B)

The Directive sets out the requirements for “do not list” advice. The Directive requires that “do not list” advice be approved by the DFO Senior Executive Committee plus appropriate representation from implicated sectors. The Directive identifies the information that must be provided to support the advice and reporting requirements following a decision to not add a species to the List. Specifically, when providing “do not list” advice, DFO must:

1. Provide a Compelling Rationale that, at a minimum, addresses an alternative approach in the absence of listing, the expected outcome for the species under the approach and a discussion of the net benefits to Canadians of a “do not list” decision;
2. Provide a proposed DFO Work Plan if DFO will undertake incremental activities;
3. Gain approval from the DFO Senior Executive Committee plus appropriate representation from implicated sectors;
4. Implement the DFO Work Plan (if applicable); and
5. Report after 5 years to the DFO Senior Executive Committee plus appropriate representation from implicated sectors.

Details on the requirements and responsibilities for the Directive for “Do Not List” Advice are described in Annex B.

6.2.3. Refer Back to COSEWIC Position

If DFO is unclear about aspects of a COSEWIC assessment, it will contact COSEWIC for clarification prior to drafting a response statement and initiating consultations.

SARA provides an option for a species assessment to be referred back to COSEWIC for further information or consideration (“refer back”). DFO will consider advice to “refer back” when there is significant, credible information (including Aboriginal traditional knowledge) that:

- was not available to, or not considered by, COSEWIC at the time of the assessment, and
- could lead to a change in the conclusion that COSEWIC reached regarding the status of the species.

When providing advice to “refer back” to the Minister of Fisheries and Oceans, DFO must ensure that the referral:

- is accompanied by new or existing supporting information that was not taken into account at the time of the assessment;
- is likely to lead to a change in the status assessment; and

- gain approval from the DFO Senior Executive Committee plus appropriate representation from implicated sectors.

In addition, DFO must ensure the supporting information is the best available information on the biological status of the wildlife species and is:

- scientific knowledge such as Departmental scientific information or advice; or
- community knowledge; or
- Aboriginal traditional knowledge.

A Regulatory Impact Analysis Statement with the analysis to support recommendations to refer back to COSEWIC is published in the *Canada Gazette, Part I* as part of the overall set of listing recommendations. The analysis for a “refer back” statement explains what new information is available and how it could affect the status assessment. The Orders of Referral Back to COSEWIC are published in the *Canada Gazette, Part II* accompanied by an Annex which includes a statement required by SARA for publication in the *Species at Risk Public Registry*.

7. Roles and Responsibilities

The Species at Risk program is delivered through an organization of departmental officials in various sectors and in each Region across the country. Roles and responsibilities of managers and functional specialists relevant to the listing process are described in more detail in the *Fisheries and Oceans Canada Species at Risk Act Listing Guidelines*.

The **Deputy Minister** is responsible for providing listing advice to the Minister of Fisheries and Oceans for approval and submission of a suggested listing recommendation to the Minister of the Environment, who submits a recommendation to the Governor in Council. The Deputy Minister also participates in relevant departmental and interdepartmental governance Committees and meetings for the Species at Risk program.

DFO senior management is responsible for ensuring all the provisions of the *Cabinet Directive on Regulatory Management* have been adequately addressed, such that the listing decision advances the public interest in health, safety, and security, the quality of the environment, and the social and economic well-being of Canadians, while meeting the purposes of SARA.

The **Members of the DFO Senior Executive Committee** are responsible for reviewing and approving all listing advice and for ensuring any sectors not represented on the Committee but potentially implicated by a decision, are present to review and approve “list”, “refer back”, and “do not list” advice, DFO Work Plans (if applicable) and 5-year reports.

The **Assistant Deputy Ministers (ADMs) with responsibility for the Species at Risk program** are responsible for providing timely listing advice to the Deputy Minister and participating in relevant departmental and interdepartmental Committees and meetings to provide direction and oversight for the program.

The **Assistant Deputy Minister with responsibility for Science** is responsible for ensuring the scientific work required to support the DFO listing process is incorporated into the science work plan and provided during the development of the listing advice.

The **Regional Director General of the Lead Region** is responsible for ensuring coordination and agreement between Supporting Regions and across all relevant sectors and for participating in relevant departmental meetings. The Regional Director General of the Lead Region must bring “do not list” advice, DFO Work Plans (if applicable) and 5-year reports for review and approval by the DFO Senior Executive Committee plus appropriate representation from implicated sectors.

The **Regional Directors General of the Lead and Supporting Regions** are responsible for ensuring that program areas implicated by the Governor in Council decision under SARA regarding an aquatic species are aware of the decision.

The **Directors General with responsibility for the Species at Risk policies and program implementation** are responsible for ensuring interdepartmental coordination, and for developing and implementing departmental policies regarding DFO listing processes in accordance with the Act.

The **National Directors with responsibility for the Species at Risk policies and program implementation** are responsible for chairing policy and program management Committees with the Regional Managers to ensure national consistency in program implementation and for coordinating the development of listing advice for the Minister of Fisheries and Oceans.

Species at Risk Managers and Program Staff are responsible for developing and supporting the development of the listing advice for the Minister of Fisheries and Oceans, and for ensuring all views and information are considered during the development of materials and advice for senior management.

Program Staff in other relevant sectors are responsible for supporting the development of the listing advice.

8. Monitoring, Evaluation and Reporting

The Deputy Minister and senior management are responsible for ensuring relevant departmental, interdepartmental and Treasury Board Secretariat policies and guidelines on program monitoring, evaluation and reporting are followed and implemented.

The Species at Risk program has a performance management strategy to support program planning, monitoring and reporting through the identification and implementation of a suite of performance indicators that inform decision-making and support audit and evaluation activities over time. The performance management strategy is integrated into program activities at all levels, including the listing process, and is reviewed regularly to ensure that it is providing the best possible performance information to support program management.

Additionally, information on listing is reported through:

- **SARA Annual Report:** The Minister of the Environment is obliged under section 126 of the Act to annually prepare a report on the administration of SARA for each calendar year. DFO must provide appropriate input to Environment Canada related to, among other things, the listing process as it relates to aquatic species such as the number of listed aquatic species.
- **Canada Gazette, Part I:** The rationales for all listing recommendations are published in *Canada Gazette, Part I*.
- **Species at Risk Public Registry:** The Minister of the Environment is obliged under section 120 of the Act to establish a *Species at Risk Public Registry* to facilitate access to documents related to matters under the Act. There are also specific statutory requirements for certain information to be included in the Registry including, among other things, the List of wildlife species at risk and the Order and statements with reasons for “do not list” or “refer back” decisions.

9. Compliance

DFO is committed to achieving compliance with the *Species at Risk Act*, relevant regulations and policies, including Species at Risk program policies. All persons involved in delivering the requirements of the listing process are expected to comply with the requirements in this Policy.

10. References

10.1. Acts and Regulations

Fisheries Act, 2012, R.S.C., 1985, c.F-14.

Oceans Act, 2005, S.C. 1996, c.31.

Species at Risk Act, 2012, S.C. 2002, c. 29.

Statutory Instruments Act, 2003, R.S.C., 1985, c.S-22.

Statutory Instruments Regulations, 2006, C.R.C., c. 1509.

10.2. Policies and Directives

Cabinet Directive on Regulatory Management, 2012 (<http://www.tbs-sct.gc.ca/rtrap-parfa/cdrm-dcgr/cdrm-dcgrtb-eng.asp>)

11. Enquiries

Enquiries may be directed to:

Species at Risk Policy
Fisheries and Oceans Canada
200 Kent Street, Ottawa, ON K1A 0E6
Ph: 613-949-7424

ANNEX A: Definitions

“aquatic species” – means 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.

“competent minister” – means:

- a) the Minister responsible for the Parks Canada Agency with respect to individuals in or on federal lands administered by that Agency;
- b) the Minister of Fisheries and Oceans with respect to aquatic species, other than individuals mentioned in paragraph (a); and
- c) the Minister of the Environment with respect to all other individuals.

“COSEWIC” – is the Committee on the Status of Endangered Wildlife in Canada established by section 14 of SARA.

“DFO” – Fisheries and Oceans Canada.

“do not list” – to not add a species, assessed by COSEWIC as at risk, to the List.

“do not reclassify” – for species on the List, where the COSEWIC reassessment with a revised classification is not accepted, and the species remains at the existing classification.

“endangered species” – means a wildlife species that is facing imminent extirpation or extinction.

“extirpated species” – means a wildlife species that no longer exists in the wild in Canada, but exists elsewhere in the wild.

“Governor in Council” – is the Governor General of Canada, acting by and with the advice of the federal Cabinet.

“Lead Region” – means the DFO Region that leads the listing process for a species. The Lead Region is identified by the department based on factors in the Region including geographic range of the species, social and economic importance of the species, importance of the species to Aboriginal groups, scientific expertise in the Region, and resource availability in the Region.

“the List” – means the List of Wildlife Species at Risk set out in Schedule I of SARA.

“list” – to add a species, assessed by COSEWIC as at risk, to the List.

“listed” – means listed on the List.

“reclassify” – to change the classification of a species on the List based on a COSEWIC reassessment.

“refer back” – to refer an assessment for a species back to COSEWIC for further information or consideration.

“SARA” – Species at Risk Act.

“senior management” – DFO management at the Director General level and above, up to and including the Deputy Minister.

“Senior Executive Committee” – is the DFO Ecosystems and Fisheries Management Operations Committee or the equivalent, which consists of the Senior ADM of Ecosystems and Fisheries Management, the ADM of Program Policy and the Regional Directors General.

“species of special concern” – means a wildlife species that may become a threatened or an endangered species because of a combination of biological characteristics and identified threats.

“Supporting Region” – means any Region in which a species at risk occurs and where the listing of the species under SARA could have impacts, but which is not the Lead Region.

“threatened species” – means 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 management board” – means any board or other body established under a land claims agreement that is authorized by the agreement to perform functions in respect of wildlife species.

“wildlife species” – means 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.

Annex B: *Species at Risk Act* Directive for “Do Not List” Advice

B.1. Context

The *Fisheries and Oceans Canada (DFO) Species at Risk Act (SARA) Listing Policy* refers to this Directive for those instances when the Department will provide “do not list” advice to the Minister of Fisheries and Oceans for an aquatic species which has been assessed as at risk by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC). The Default Listing Position within the Policy states DFO will recommend the List be amended as assessed by COSEWIC, unless DFO can provide a Compelling Rationale not to do so.

This Directive describes what constitutes a Compelling Rationale as well as additional requirements that have been determined as appropriate in situations when “do not list” advice will be provided.

The requirements in this Directive are in addition to those in the Listing Policy, which includes reference to the *Species at Risk Act* requirement that a statement setting out the reasons for a “do not list” decision be posted in the *Species at Risk Public Registry*.

Orders for Governor in Council decisions that do not amend the List (e.g. “do not list”) are not regulations under the *Statutory Instruments Act*. While the *Cabinet Directive on Regulatory Management* does not strictly apply to these Orders, best practices suggest use of similar regulatory impact analysis when developing advice. This practice supports transparency and well-informed decision-making. A Regulatory Impact Analysis Statement with the analysis to support “do not list” recommendations is published in the *Canada Gazette, Part I* as part of the overall set of listing recommendations. The Orders of Decisions not to add certain species to the List are published in the *Canada Gazette, Part II* accompanied by an Annex which includes a statement required by SARA for publication in the *Species at Risk Public Registry*.

The “Rationale” section of the Regulatory Impact Analysis Statement justifies the selection of the recommended option for each species and flows from the regulatory impact analysis, links to the other sections (e.g. Objectives, Benefits and Costs) and incorporates the consultation results.³ Writers of a Regulatory Impact Analysis Statement are asked to describe how the recommended option:

- results in the greatest overall benefit (called net benefits in *Cabinet Directive on Regulatory Management*);
- meets the regulatory objectives for the issue (e.g. purpose of SARA); and
- is proportionate to the degree and type of risk presented by the issue.

³ Treasury Board Secretariat. RIAS Writer’s Guide 2009. Available at: <http://www.tbs-sct.gc.ca/rtrap-parfa/riaswg-grrier/riaswg-grrier05-eng.asp>

B.2. Expected Results

This Directive will result in nationally consistent, rigorous standards for:

- “do not list” advice from DFO to the Minister of Fisheries and Oceans;
- statements in the *Species at Risk Public Registry* on the reasons for the “do not list” decision; and
- documentation and reporting of DFO commitments for species that are declined for listing.

B.3. Requirements

The requirements of this Directive are to be guided by the principle of proportionality, with resources focused where larger impacts to the species, Canadians or the department are expected.

As part of this Directive, the Lead Region must adhere to five key requirements. The Lead Region must:

- coordinate the development of a Compelling Rationale for “do not list” advice;
- coordinate and develop a proposed DFO Work Plan if DFO will undertake incremental activities;
- gain approval for the “do not list” advice and proposed DFO Work Plan (if applicable) from the DFO Senior Executive Committee plus appropriate representation from implicated sectors;
- ensure the implementation of the DFO Work Plan (if applicable); and
- report back after 5 years to the DFO Senior Executive Committee plus appropriate representation from implicated sectors.

Detailed guidance for these requirements are available in the *Fisheries and Oceans Canada Species at Risk Listing Guidelines*, published separately.

The Compelling Rationale and proposed DFO Work Plan required by this Directive will form the basis of the rationale in the Regulatory Impact Analysis Statement in the *Canada Gazette, Part I* and for the statement of reasons published as an Annex with the Order in the *Canada Gazette, Part II*. These publications are public statements by DFO about how it anticipates the species will be managed and of DFO’s commitments to managing the species using options outside of SARA (e.g. *Fisheries Act*), or with partners such as provinces and territories, wildlife management boards or other organizations. Publication creates a reasonable expectation on the part of Canadians that the commitments to action will be respected.

B.3.1. Compelling Rationale

The Compelling Rationale is generated from the regulatory impact analysis conducted under the *Cabinet Directive on Regulatory Management* when developing listing advice. At a minimum, the regulatory impact analysis considers the COSEWIC assessment, the results of the consultation process, the impacts of the management scenarios, and a qualitative analysis of benefits and costs. For some species additional information may be available (i.e. Recovery

Potential Assessment, formally approved management scenarios, quantitative cost-benefit analysis) and may be included in the Compelling Rationale.

Where there are concerns or questions with regard to the COSEWIC assessment, the requirements of the refer back to COSEWIC position should be considered.

The Compelling Rationale for “do not list” advice must address:

- a. The alternative approach for the species in the absence of listing;
 - b. The expected outcome(s) for the species in the absence of listing; and
 - c. The net benefits to Canadians of a “do not list” decision.
- a. The alternative approach is a description of the “do not list” management scenario considered in the regulatory impact analysis. The approach may consist of tools under other legislation (e.g. federal tools under the *Fisheries Act* or *Oceans Act*, or provincial, territorial or wildlife management board tools) and/or non-legislative tools (e.g. voluntary actions). When relevant, past and anticipated cooperation and coordination efforts with other federal departments, other governments in Canada and international organizations should be described. Any activities incremental to the status quo should be highlighted, with DFO regional and sectoral responsibilities indicated.

If incremental actions to benefit the species are not anticipated by DFO, partners or others (i.e. the status quo), then the reasons must be clearly articulated (e.g. all threats are outside of Canadian waters).

In all cases, the approach must identify how the status of the species will be monitored or evaluated over the next 5 or more years, and who will be responsible.

- b. The expected outcome(s) for the species describes how the species is expected to respond under the alternative approach in the absence of listing within the timeframe identified. The outcome(s) should be linked to a broader objective for the species, such as the purposes of SARA (e.g. prevent extinction), DFO fisheries conservation criteria (e.g. rebuild stock), or biodiversity or conservation criteria from other legislation, regulation or policies.
- c. The discussion of net benefits should illustrate why the overall benefits are greater under the “do not list” option (i.e. alternative approach) than under the “list” option. This includes discussion of the impacts and risks to the species and Canadians including how the approach is the most efficient use of resources, as well as other considerations such as impacts on small businesses.

B.3.2. Proposed DFO Work Plan (if applicable)

If the alternative approach, which is the “do not list” management scenario, identifies activities for DFO incremental to the status quo, a Work Plan is required.

The purpose of the Work Plan is to ensure the resource implications and timelines for the DFO incremental activities are understood by the department. The Regional Director(s) General for

Lead and Supporting Regions will determine the lead sector(s) for development and implementation of the Work Plan.

The proposed Work Plan must be developed by the identified sector(s) and, where possible, in collaboration with relevant partners including Aboriginal groups, provincial and territorial governments, communities and organizations.

The proposed Work Plan must:

- cover at least 5 years;
- clearly identify DFO commitments of funds and human resources incremental to the status quo, including for monitoring, evaluation and reporting activities, by sector and/or Region responsible for providing the resources; and
- identify performance indicators that can be used to determine the success of the Work Plan.

B.3.3. Approval by the DFO Senior Executive Committee

The Regional Director General of the Lead Region must obtain approval from the DFO Senior Executive Committee plus appropriate representation from implicated sectors for the “do not list” advice, which includes the Compelling Rationale and the proposed Work Plan (if applicable).

Assistant Deputy Ministers of DFO sectors identified in the alternative approach and proposed Work Plan (if applicable) are expected to support the advice and confirm that the commitments made under the alternate approach will be implemented.

B.3.4. Implementation of the DFO Work Plan (if applicable)

As described in the Work Plan, before or at the time of a “do not list” decision by the Governor in Council, the responsible DFO sector must finalize and implement the Work Plan.

B.3.5. Five-Year Reporting to the DFO Senior Executive Committee

Within 5 years of a “do not list” decision by the Governor in Council, the Regional Director General of the Lead Region must report on the status of the species, based on available information and the performance indicators of the Work Plan (if applicable), to the DFO Senior Executive Committee plus appropriate representation from implicated sectors. The reporting should include any changes to the alternative approach.

The Regional Director General of the Lead Region must also recommend an approach forward for Committee approval. Options may include continuation or modification of the approach, or recommending reassessment of the species by COSEWIC if it is determined that adding the species to the List should be reconsidered.

B.4. Roles and Responsibilities

Assistant Deputy Ministers from implicated sectors are responsible for confirming that the alternative approach and the Work Plan (if applicable) are reasonable and are supported.

The **Regional Director General from the Lead Region** is responsible for coordinating and presenting the “do not list” advice; the proposed Work Plan; and the 5-year report with the proposed approach forward to the DFO Senior Executive Committee plus appropriate representation from implicated sectors.

The **Regional Directors General for the Lead and Supporting Regions** are responsible for identifying the sector(s) responsible for non-listed species (e.g. Resource Management, Species at Risk Program, etc.), for ensuring development and implementation of the Work Plan, and for monitoring and evaluation necessary for reporting back after 5 years.

The **Regional Directors for sectors with responsibility for non-listed species** are responsible for developing and implementing the Work Plan, and for monitoring and evaluation necessary for reporting back in 5 years with a proposed future course of action.

The **Regional Species at Risk Manager** is responsible for coordinating the development of the Compelling Rationale and for supporting the development of the proposed Work Plan for species with “do not list” advice.

B.5. Monitoring, Evaluation and Reporting

In the case of a species that is not added to the List, reporting back in 5 years provides monitoring and evaluation by DFO of the alternative approach taken for recovery, with a focus on performance indicators. The Work Plan (if applicable) is an internal Departmental tool to ensure due diligence, consistency and follow-up on the activities undertaken for the species.

COSEWIC reviews the status of all species assessed as at risk at least every ten years including non-listed species.