

PROPOSED

Species at Risk Act
Policies and Guidelines Series

Species at Risk Act Policies

Listing Policy for Terrestrial Species at Risk

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Preface

Policy purpose

For the provisions of the *Species at Risk Act* to apply, a wildlife species that has been assessed as Special Concern, Threatened, Endangered or Extirpated, must first be included on Schedule 1, the List of Wildlife Species at Risk (Schedule 1, the List). The Governor in Council, who is the Governor General acting on the advice of Cabinet, makes the decisions on amending the List, based on the recommendations of the Minister of the Environment (the Minister) for both aquatic and terrestrial species.

The *Species at Risk Act* ('SARA', the Act) sets out a prescribed process for amendments to the List in its sections 25 – 31 (the listing process), including changes to the status of species already included on the List. This policy includes an explanation of those prescribed steps. Its main purpose however is to clarify the guiding principles of the Minister of the Environment for weighing considerations with respect to listing recommendations, specifically for terrestrial species and for matters that are not prescribed by SARA.

'Terrestrial species' means all wildlife species¹ that are migratory birds that are protected under the *Migratory Birds Convention Act, 1994* (MBCA) as well as all species that are managed by provincial and territorial governments. This includes birds that are not protected under the MBCA and species such as mammals, reptiles, amphibians, terrestrial molluscs, plants and insects.

For information on the listing of aquatic species² please refer to the Fisheries and Oceans Canada *Species at Risk Act* Listing Policy and Directive for "Do Not List" Advice at:

http://www.registrelep-sararegistry.gc.ca/document/default_e.cfm?documentID=1712

1.0 Policy Statement

For terrestrial species, the Minister of the Environment typically recommends that Governor in Council amend Schedule 1 according to the assessment of the Committee on the Status of Endangered Wildlife in Canada (COSEWIC). The Minister's recommendation will include information on other considerations, as required by the federal policy *Cabinet Directive on Regulatory Management*.

¹ Wildlife species are 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 is native to Canada; or has extended its range into Canada without human intervention and has been present in Canada for at least 50 years.

² SARA defines aquatic species as "aquatic species" means a wildlife species that is a fish, as defined in section 2 of the *Fisheries Act* (includes marine mammals and marine reptiles) or a marine plant, as defined in section 47 of that Act.

2.0 The prescribed steps of the SARA listing process

2.1 The roles of SARA's competent ministers and the departments

SARA makes the Minister of the Environment responsible for the administration of SARA. In addition, for both terrestrial and aquatic species, the Minister of the Environment is responsible for making recommendations to the Governor in Council regarding amendments to the List.

The Governor in Council, who is the Governor General acting on the advice of Cabinet, makes the actual decisions on amending the List.

Environment and Climate Change Canada, Fisheries and Oceans Canada and the Parks Canada Agency are informally referred to as the competent departments, sharing responsibility for the implementation of SARA on behalf of their respective ministers.

SARA assigns to the Minister of the Environment the role of competent minister for terrestrial species at risk. As the Minister responsible for the Parks Canada Agency, the Minister of the Environment is also the competent minister for individuals of all species at risk found on lands administered by the Parks Canada Agency. Environment and Climate Change Canada consults and analyses information to support the listing recommendations of the Minister of the Environment for terrestrial species.

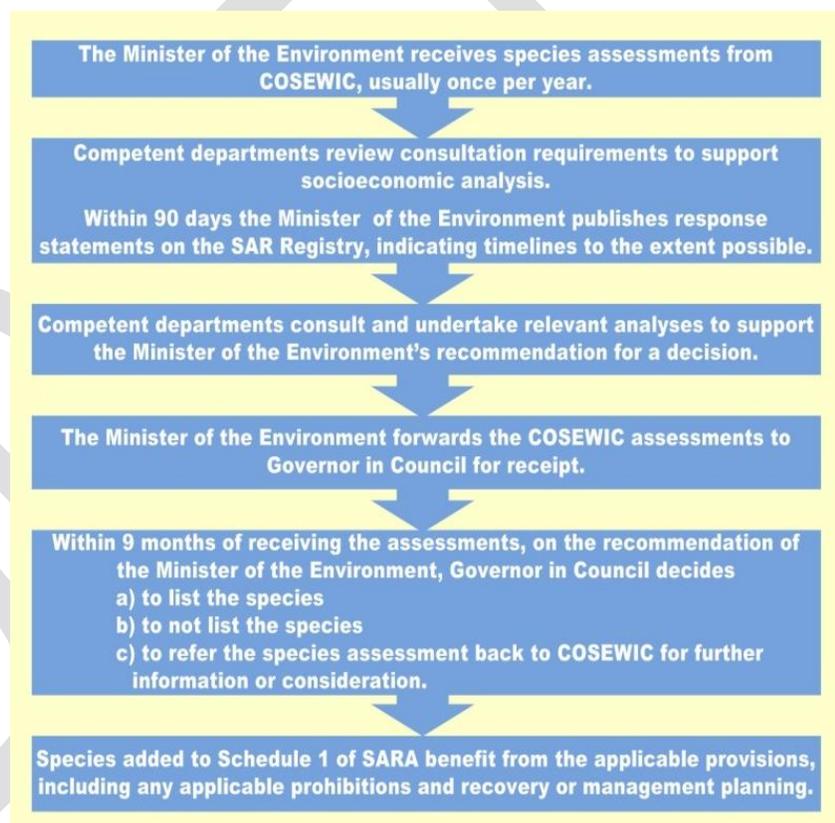


Figure 1: Species listing under SARA

The Minister of Fisheries and Oceans is the competent minister responsible for aquatic species, other than individuals in or on federal lands administered by the Parks Canada Agency. Fisheries and Oceans Canada consults and analyses information to advise the Minister of Fisheries and Oceans on aquatic species. Prior to making a recommendation for an aquatic species, the Minister of the Environment must consult with the Minister of Fisheries and Oceans.

2.2 SARA's scientific assessment process

COSEWIC functions are established by SARA. They include the assessment of the status of 'wildlife species', a term which is defined in SARA to mean a species, subspecies, variety, or geographically or genetically distinct population (also called a designatable unit)³. COSEWIC prioritizes wildlife species as candidates for assessment by drawing on a number of sources. These can include (among others):

- the General Status of Wild Species in Canada;
- information derived from monitoring by provinces or territories or combined jurisdictions;
- international assessment processes;
- COSEWIC's Aboriginal Traditional Knowledge Subcommittee.⁴

When COSEWIC assesses a wildlife species, it does so solely on the basis of the best available information relevant to the biological status of the species. COSEWIC then submits the assessment to the Minister of the Environment. Species that COSEWIC has assessed as being Special Concern, Threatened, Endangered or Extirpated are eligible to be added to the List. Species that are already on the list may be eligible for a change in status, or if they are no longer at risk, to be removed.

The Minister considers the COSEWIC assessment when making the listing recommendation to the Governor in Council. Before the Minister makes a recommendation to Governor in Council, Environment and Climate Change Canada undertakes consultations to provide the Governor in Council with an understanding of the potential social and economic impacts of the proposed change to the List of Wildlife Species at Risk, and of the potential consequences of not adding a species to the List.

2.3 Response statements and the listing consultations

COSEWIC usually submits its assessments to the Minister of the Environment once a year. Once assessments have been received from COSEWIC, the Minister must publish response statements within 90 days. These indicate the timeline, to the extent possible, for the consultation for each species. Before the response statements are posted, Environment and Climate Change Canada officials examine the requirements for consultations for any terrestrial species eligible for inclusion on Schedule 1 (i.e., species that have been assessed by COSEWIC as Special Concern, Threatened, Endangered or Extirpated). Response statements usually indicate that the consultations follow either a normal timeline (typically three to four months) or an extended timeline (typically nine months to a year).

The response statements indicating these timelines are posted on the Species at Risk Public Registry⁵.

³ COSEWIC Guidelines for Recognizing Designatable Units: http://www.cosewic.gc.ca/eng/sct2/sct2_5_e.cfm

⁴ COSEWIC quantitative criteria and guidelines for the status assessment: http://www.cosewic.gc.ca/eng/sct0/assessment_process_e.cfm#tbl2

⁵ <http://www.registrelep-sararegistry.gc.ca/default.asp?lang=En&n=24F7211B-1>

2.3.1 Response statements for species eligible for an amendment to the List

In addition to species eligible to be added to the List, COSEWIC reviews the classification and status of previously listed species at risk; either once every 10 years or at any time that it believes that the species' status may have changed significantly. Changes may include the species status or how it is defined (as a species, subspecies, variety, or geographically or genetically distinct population). For example if a species is divided into two populations at the time of a COSEWIC review of classification, the status of each population will be examined separately. This could result in each population retaining the same status, or alternatively, one population could retain the original status, while the other population may be assessed at a different status. In cases where designation below the species level is desirable, justification is provided by COSEWIC.

If Environment and Climate Change Canada officials conclude that an amendment to Schedule 1 for a listed species would change the regulatory environment for affected parties, they typically advise that consultations be undertaken along with those of newly eligible species (i.e. species not previously listed). Generally, the regulatory environment changes when the proposed change in status to the species would result in a change to the application of SARA's prohibitions for that species.

2.3.2 Response statements for species whose status on the List has been confirmed by COSEWIC

When COSEWIC re-assesses a species that is already on Schedule 1 of SARA and concludes that the status has not changed, the response statement acknowledges that the species status on Schedule 1 has been confirmed. No further action is taken since no amendment to the Schedule 1 is required.

In some cases, species are redefined by COSEWIC such that the component populations or subspecies are not the same as the listed version, but for which there is no change to the regulatory environment for affected parties. In such cases, the response statement explains the change and indicates that a regulatory amendment to bring the List into line with the COSEWIC assessment would have no social or economic impact on the public, and therefore no consultations are required.

3.0 Application of federal regulatory policy to the SARA

listing process

In preparing information to support the Minister's listing recommendations, Environment and Climate Change Canada respects the SARA Listing process, the federal *Cabinet Directive on Regulatory Management* (the Cabinet Directive) and the Minister's recommendation objective. The Cabinet Directive requires that in addition to relevant considerations under SARA, the regulatory impact analysis informs decision makers on the potential impacts on affected parties.

What are SARA's General Prohibitions?

For species listed under Schedule 1 as Extirpated, Endangered or Threatened it is prohibited to:

- *kill, harm, harass, capture or take an individual*
- *possess, collect, buy, sell or trade an individual*

For species listed under Schedule 1 as Endangered or Threatened or Extirpated it is prohibited to:

- *damage or destroy the residence of one or more individuals*

For extirpated species, the prohibition against the damage or destruction of the residence applies only if a recovery strategy has recommended the reintroduction of the species into the wild in Canada.

SARA's general prohibitions do not apply for species listed as Special Concern.

3.1 Listing Consultations

COSEWIC bases its assessments solely on its evaluation of best available information, including scientific, community and Aboriginal Traditional Knowledge of the biological status of each species. Information on other considerations is also gathered and examined during the consultations and is included in the regulatory impact analysis statement that is transmitted to the Governor in Council along with the Minister's recommendation. These considerations may include, as appropriate, information on the potential impact of the decision on health and safety, security, the environment, and the social and economic well-being of Canadians⁶. Listing consultation feedback received from provincial and territorial jurisdictions informs the regulatory impact analysis statement. These considerations are examined equally for recommendations to list and for recommendations not to list, thus meeting the SARA requirement that decisions 'not to list' be supported by a statement of reasons. Accordingly, before the Minister makes recommendations to Governor in Council, Environment and Climate Change Canada officials consult with those affected to the extent possible, and they then analyze the costs, benefits and other impacts of the proposed change.

⁶ Cabinet Directive on Regulatory Management <http://www.tbs-sct.gc.ca/rtrap-parfa/cdrm-dcgr/cdrm-dcgrtb-eng.asp>

3.1.1 *Identifying affected parties for consultations*

Consultations required by the Cabinet Directive provide an opportunity to examine views on the additions or changes to the List, and to gather information on impacts and benefits of listing, to the extent possible. Consultations also support an assessment of the benefits and costs of measures that result from the listing.

The impacts of listing vary with the type of species, its status and where it is found, as well as whether or not the species already benefits from other federal protection similar to SARA's general prohibitions. The general prohibitions are against the killing, harming or harassing or possession of individuals, they also prohibit the possession of parts or derivatives of individuals and the damaging or destroying of the residence of one or more individuals. (To find out more about these prohibitions and when they apply, please refer to the text box on section 3.0 and **Error! Reference source not found.**) herefore, prior to recommending a consultation path for the Minister's response statements, Environment and Climate Change Canada officials examine the likely impacts of the proposed change to Schedule 1, arriving at an understanding as to who should be consulted and to what extent.

In addition to its general prohibitions, SARA includes provisions for more targeted protection measures. For instance, while the Act supports stewardship activities for the conservation of wildlife species and their habitat, critical habitat may require further protection. If the species is on federal land, this may happen without a subsequent decision by Governor in Council. However, at the time of listing, further information is usually required before the goals, objectives and approaches for the survival and recovery of the species and its critical habitat can be identified. Accordingly, protection decisions beyond those of the general prohibitions are typically considered at a later date, and the impacts of measures requiring a separate decision by Governor in Council are not examined during the listing consultations.

3.1.2 *Consultation process and Aboriginal Peoples*

Consultations provide Environment and Climate Change Canada with an opportunity to ensure that the proposed change to the List is consistent with obligations relating to Aboriginal and treaty rights. To that end, Environment and Climate Change Canada officials consult with Aboriginal Peoples towards ensuring that obligations in relation to rights protected by section 35 of the *Constitution Act, 1982*, are met. Their engagement is of particular significance, acknowledging their extensive traditional territories and their role in the management of reserve and settlement lands. To the extent possible, where changes to Schedule 1 could affect Aboriginal Peoples, they will be contacted during the consultation process.

The federal government must consult with wildlife management boards that are authorized under land claims agreements to perform functions for that species. Wildlife management boards are established under land claims agreements as the main instruments of wildlife management within the land settlement areas and in some cases have roles in relation to species at risk. This includes almost all of Nunavut, northern Northwest Territories, Yukon, and parts of Quebec and British Columbia. The process

for consulting with wildlife management boards as outlined in the land claims agreements of the boards is respected.

3.1.3 *Launch of consultations and public participation*

Environment and Climate Change Canada officials, having identified who should be consulted and the appropriate timelines for consultations, launch consultations with the posting of the response statements on the Species at Risk Public Registry. In addition to more targeted consultations, including with provincial and territorial governments, the general public has the opportunity to be informed and participate via the Public Registry where consultation document(s) are posted.

During the consultations, Environment and Climate Change Canada officials inform and engage the public on the nature and implications of the proposed listing, based on available evidence, science, or knowledge. Information on the willingness of people, particularly of those who may be affected, to participate in the recovery of species is also sought during the consultations.

3.1.4 *Analysis of the results of the consultations*

The summary and analysis of the consultations inform the regulatory impact analysis statement. The analysis of the consultations can also inform the costs and benefits analysis which is part of the regulatory impact analysis. The depth and detail of this analysis varies with the amount of available information and the significance of the situation. For more information on this process see the *Cabinet Directive on Regulatory Management*: <http://www.tbs-sct.gc.ca/rtrap-parfa/cdrm-dcgr/cdrm-dcgrpr-eng.asp?format=print>

The proposed regulatory impact analysis statement is included in the publication of the proposed amendment to the List, in *Canada Gazette I*. A public comment period on the draft regulation follows the publication in *Canada Gazette I*. The final version of the regulatory impact analysis statement is published along with the Order Amending Schedule 1 of SARA, in *Canada Gazette II*. Both documents can also be found on the Species at Risk Public Registry.

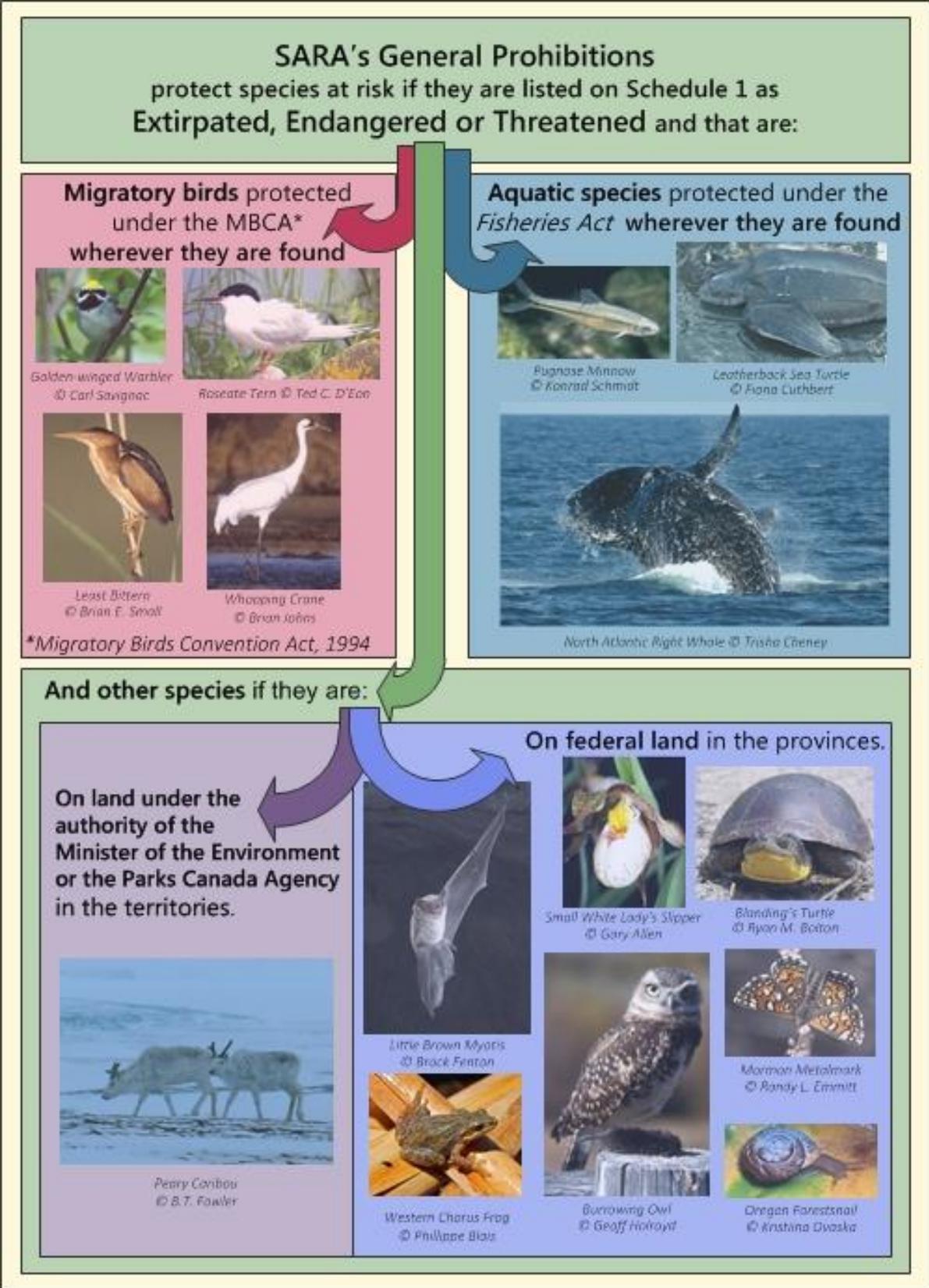


Figure 2: SARA's general prohibitions, where they apply

4.0 The Minister's recommendation to Governor in Council

The options for the Governor in Council's decision are specified under SARA. They are to:

- a. accept the assessment and add the species to the List;
- b. decide not to add the species to the List; or
- c. refer the matter back to COSEWIC for further information or consideration.

The Governor in Council decision is made on the recommendation of the Minister. In making a recommendation for terrestrial species, the Minister typically recommends that Governor in Council amend Schedule 1 according to the COSEWIC assessments. The status of the species as it is received from COSEWIC is respected, as well as how it is defined, unless there is information to support the species being referred back to COSEWIC for further consideration.

Before the Minister makes a recommendation to Governor in Council the Minister takes into account the COSEWIC assessment, consultations with wildlife management boards authorized for that species by a lands claims agreement, the regulatory impact analysis statement and, in the case of aquatic species, the advice of the Minister of Fisheries and Oceans.

To provide the appropriate level of information and facilitate the decision making process, the Minister's recommendations for species may, in some cases, be grouped to consider species in shared habitats or regions at the same time, or according to potential impacts.

Once the Minister has made a recommendation to Governor in Council, Governor in Council then considers, to the extent possible, relevant socio-economic impacts, including costs and benefits, before deciding whether to add the species to the List as assessed by COSEWIC, to not list it or to refer it back to COSEWIC for further consideration or information.

The Minister's listing recommendations to Governor in Council are a matter of Cabinet confidence.

4.1 Considerations for a decision to not list a species

In cases where the Governor in Council decides not to add the species to the List, the decision and a statement setting out the reasons for the decision are published by the Minister in *Canada Gazette II* and included on the SAR Public Registry. The reasons may include considerations regarding the species, management of the threats to it, and implications for the species of not listing, as well as social, economic or other factors relevant to the decision.

4.2 Considerations for referring a species assessment back to COSEWIC

Recommendations to refer an assessment back to COSEWIC are considered by the Minister when there is new information that was not considered by COSEWIC in its assessment and that is likely to change the status designation. To confirm if the new information could change the assessment, officials verify with COSEWIC before proceeding with the development of a recommendation to 'refer back'. Reasons are included in the decision to 'refer back', which is included along with the Order announcing the decision, published in *Canada Gazette II* and on the SAR Public Registry. A regulatory impact analysis will not be done, as a final decision is deferred until such time as COSEWIC has re-examined the species status. A refer back recommendation is considered only when it can be done without increasing the risk to the species.

The information to support decisions on whether to list or to refer the assessment back to COSEWIC will be based on the best available information.

5.0 Governor in Council's Decision

For species being added to Schedule 1, SARA requires the Governor in Council to take a course of action within nine months after receiving an assessment by COSEWIC. If there is no decision within nine months, the Minister will amend the List according to the COSEWIC assessments. The start of the nine months for Governor in Council's decision begins on the date that the *Order Acknowledging Receipt of the Assessments Done Pursuant to Subsection 23(1) of the Act* is made. These Orders are published in *Canada Gazette*, Part II and can also be found on the SAR Public Registry.

6.0 Outcomes of Decisions

Terrestrial species that are included on the List as Extirpated, Endangered, or Threatened are automatically protected by SARA's "general prohibitions" according to what type of species they are and where they are found. If they are migratory birds protected under the *Migratory Bird Convention Act*, 1994, the protections apply wherever they are found.⁷ Other listed Extirpated, Endangered, or Threatened species are protected where they are found on federal land in the provinces, or in the territories on lands under the authority of the Minister of the Environment or the Parks Canada Agency (see Figure 2).

⁷ These SARA general prohibitions are also automatic for aquatic species, which means a wildlife species that is a fish, as defined in section 2 of the Fisheries Act (which includes marine animals, shellfish and crustaceans) and or marine plants, as defined in section 47 of that Act.

Under SARA, recovery strategies must be prepared for all species listed as Extirpated, Endangered and Threatened species. When recovery of the species is deemed feasible, the preparation of an action plan must also follow. If the recovery of a species is determined to be “non-feasible”, a shorter recovery strategy is still prepared but an action plan is not required. The recovery strategy sets out the strategic direction to arrest or reverse the decline of the species including the population and distribution objectives and the identification of critical habitat to the extent possible. The action plan outlines what needs to be done to achieve these objectives through recovery measures. In addition, action plans are sometimes used to complete partial identification of critical habitat within recovery strategies and to the extent possible state measures that are proposed to protect it.

For species of Special Concern, management plans are prepared that include appropriate conservation measures for the species and for its habitat. Critical habitat is not identified in management plans.

All recovery documents are prepared in line with SARA requirements related to defined content as well as through cooperation and consultation with other interested jurisdictions and affected parties. They also must be based on the best available biological and ecological information.

7.0 Where to find the documents

Response statements, consultation documents and orders announcing the receipt by Governor in Council, proposed listing decisions and final decisions including the regulatory impact analysis statement, are all posted on the SAR Public Registry. <http://www.registrelep-sararegistry.gc.ca/default.asp?lang=En&n=24F7211B-1>