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Species at Risk Act Permitting Policy

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1.0 Introduction

Section 73 of the *Species at Risk Act* ('SARA', the Act) sets out conditions that must be met before a competent minister can issue a permit for an activity affecting a listed wildlife species, any part of its critical habitat or the residences of its individuals. This policy sets out interpretations of key terms used in the permitting provisions of SARA and will guide competent ministers when interpreting these parts of the Act.

Guidelines on the use of biodiversity offsets¹ as a tool to avoid jeopardizing the survival or recovery of a species at risk by activities permitted under section 73 of SARA are attached as an annex to this policy.

This document is not a substitute for SARA or any of its regulations. In the event of any inconsistency between this document and SARA or any of its regulations, the latter will prevail. For the most up-to-date versions of SARA and its regulations, please consult the Department of Justice website: <http://laws.justice.gc.ca/en/>.

This policy may be updated periodically. To ensure that you have the most up-to-date version, please consult the Species at Risk Public Registry: www.sararegistry.gc.ca/default_e.cfm.

2.0 Policy Objectives

- To clarify the permitting provisions of SARA and support the issuance of permits in a predictable manner aligned with the purposes of the Act.
- To outline the key considerations relevant to a determination of whether to issue a permit under section 73 or section 74 of SARA.

¹ Biodiversity offsets are also referred to as “conservation offsets”, “conservation allowances”, “offsetting measures” and “offsets”, among other terms. Offsets have been described as “[providing] *measurable conservation outcomes through implementation of project-based actions* [and providing] *a balancing effect by establishing new environmental features (such as habitat or ecosystem types) to compensate for those that have been impacted.*” [From: “Operational Framework for Use of Conservation Allowances”, Environment Canada, 2012, p. 1, available at:

<http://www.ec.gc.ca/Publications/default.asp?lang=En&xml=58A4AECD-A096-458C-B457-0E67CADF911D>]

3.0 Policy Requirements

3.1 Agreements under section 73 of SARA

Policy Statement

Section 73 refers to agreements and permits. The purposes and pre-conditions set out in section 73 apply equally to permits and agreements. Therefore, requirements for permits set out in this policy apply to agreements under SARA.

Clarification

To avoid repetition, for the purposes of this policy the use of the word “permit” is interchangeable with “agreement”.

3.2 Interpretation of terms

3.2.1 Subsection 73(1)

Subsection 73(1) states:

The competent minister may enter into an agreement with a person, or issue a permit to a person, authorizing the person to engage in an activity affecting a listed wildlife species, any part of its critical habitat or the residences of its individuals.

Policy Statement

For the purposes of section 73 of SARA, the phrase “an activity affecting” will be interpreted as an action that would be prohibited under SARA without a permit.

Clarification

Only prohibited activities require a permit under SARA. The general reference to “affecting” does not imply that non-prohibited activities require a permit under SARA.

3.2.2 Subsection 73(2)

Subsection 73(2) states:

The agreement may be entered into, or the permit issued, only if the competent minister is of the opinion that

- (a) the activity is scientific research relating to the conservation of the species and conducted by qualified persons;
- (b) the activity benefits the species or is required to enhance its chance of survival in the wild; or
- (c) affecting the species is incidental to the carrying out of the activity.

3.2.2.1 “Scientific research” and “qualified persons” – paragraph 73(2)(a)

Policy Statement

To satisfy paragraph 73(2)(a), the scientific research in question: 1) must have as its main purpose the conservation of the species at risk; 2) must be consistent with the recovery documents that have been developed for the species under SARA; 3) in the absence of a recovery document, must support the recovery of the species based on an assessment of the best information available; 4) must be intended to generate scientific results that will be used to advance the recovery of the species, and any such results must be accessible to the public, unless doing so could place a species at risk at greater risk; and 5) must be overseen by individuals with demonstrated expertise relevant to the species.

Clarification

Recovery documents required under SARA, such as recovery strategies and action plans, guide the recovery of species at risk. Any scientific research related to the conservation of the species must be consistent with the direction and desired outcomes in any relevant recovery documents that have been developed for the species. This could include research directed at understanding what may prevent or limit recovery as well as what may promote recovery.

In cases where a recovery document under SARA is not yet available, other relevant information will be considered, including a provincial or territorial recovery document or the species status assessment prepared by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC).

In the context of SARA, a “qualified person” cannot be a generalist; he or she must have expertise related to the biological requirements of, and threats to, the species at risk in question or similar species. Criteria for determining whether a person is qualified include, but are not limited to, previous experience, knowledge of the species and specific training related to the proposed handling of the species.

3.2.2.2 “Benefits the species” – paragraph 73(2)(b)

Policy Statement

To satisfy paragraph 73(2)(b), the activity in question must support the implementation of recovery actions as described in recovery documents for the species, where these are available. Where recovery documents are not available, the activity must support the recovery of the species based on an assessment of the best information available.

Clarification

Recovery documents, such as recovery strategies and action plans, are developed using the best available information on the species and the threats to the survival and recovery of the species. As such, they are the best reference for activities that could be considered beneficial for a species at risk.

When recovery documents are not available for a species, other relevant information will be considered, including a provincial or territorial recovery document or the species status assessment prepared by COSEWIC. In addition, species experts and best-available peer-reviewed information about the species or similar species, including its recovery needs and threats to its survival, can be consulted to support determining whether an activity benefits the species.

At a minimum, it must be clear that the species would be better off as a result of the activity and any accompanying actions². In the case of research intended to help with the conservation of species at risk, the timeframe for achieving the overall benefit for the species may be long-term.

3.2.2.3 “Incidental to” – paragraph 73(2)(c)

Policy Statement

Paragraph 73(2)(c) will be interpreted as meaning that the effect that carrying out the activity has upon the species must not be the purpose of the activity.

Clarification

While some definitions of “incidental” consulted in the development of this policy include the notion of minor, all of the definitions of “incidental to” did not include this notion. Accordingly, the scale of the project, or its impact, is not a consideration for meeting this condition. Scale will be taken into account when determining if the activity is likely to jeopardize survival or recovery (see sub-section 3.2.3.3).

With the exception of activities covered by paragraphs 73(2)(a) and (b), activities where the intent is to affect the species cannot be permitted. For example, hunting and fishing where the target species is listed would be prohibited, even if the activity does not result in mortality (e.g. catch-and release fishing). If the listed species, however, is accidentally harmed during hunting or fishing activities aimed at other species (e.g., by-catch), this may qualify for permitting further to this provision of SARA.

Industrial development projects will usually satisfy this paragraph of SARA, as they are usually not directed at wildlife species. However, this does not mean that they will satisfy the other permitting provisions of SARA.

² “Accompanying actions” are any actions benefitting a species at risk that, when considered in conjunction with a proposed activity, would meet the jeopardy pre-condition in paragraph 73(3)(c) of SARA. Examples of accompanying actions could include biodiversity offsets and measures that would increase species survival rates, increase recruitment or reduce primary threats to a species at risk.

3.2.3 Subsection 73(3)

Subsection 73(3) states:

The agreement may be entered into, or the permit issued, only if the competent minister is of the opinion that

(a) all reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted;

(b) all feasible measures will be taken to minimize the impact of the activity on the species or its critical habitat or the residences of its individuals; and

(c) the activity will not jeopardize the survival or recovery of the species.

Applying the subsection 73(3) preconditions requires having a detailed understanding of the extent and degree of the effects of proposed activities on species at risk. As outlined in paragraph 2(1)(3) of the *Permits Authorizing an Activity Affecting Listed Wildlife Species Regulations*, applicants are expected to provide the information needed to assess whether the subsection 73(3) conditions have been met. (Note: these regulations apply only to permits and not to agreements).

3.2.3.1 “All reasonable alternatives” – paragraph 73(3)(a)

Policy Statement

Paragraph 73(3)(a) will be interpreted as meaning that the applicant is required to consider all reasonable alternatives to their activity with a view to reducing the impact on the species, make a choice among the alternatives considered, and justify why this choice is the best one. The range of alternatives considered will be proportional to the significance of the activity’s anticipated impact on species at risk. Costs may be considered when deciding whether a given alternative is reasonable. Among the reasonable alternatives identified, the solution that best advances conservation of the species must be adopted.

Clarification

The English version of SARA specifies that it is “reasonable” alternatives that must be considered. While the qualification of “reasonable” is not in the French version, as a matter of policy, applicants will only be expected to consider reasonable alternatives.

The determination of whether an application meets the requirements of this paragraph will be case-specific based on the facts of the situation. The decision whether to issue a permit must be evidence-based and the amount of analysis undertaken must reflect the significance of the impact of the activity on species at risk.

Applicants need to demonstrate that all reasonable alternatives to their proposed activity were considered and that the needs of the species were considered when doing so.

The option of not proceeding with the activity must be considered among the alternatives, although it would not necessarily be identified as a reasonable alternative (i.e., it must be considered whether not proceeding with the activity is a reasonable alternative).

Biological, ecological, technical and economic limitations are to be considered when determining what alternatives can be considered “reasonable”.

Once the reasonable alternatives have been identified based on consideration of the above-noted factors, the solution that best advances conservation (i.e., “the best solution”) must be adopted. As all the alternatives have been deemed “reasonable”, the only determining factor for selecting the best solution must be the impact on conservation of species at risk.

3.2.3.2 “All feasible measures” – paragraph 73(3)(b)

Policy Statement

For the purposes of paragraph 73(3)(b), the feasibility of measures will be determined based on an evaluation of biological, ecological, technical and economic factors. The amount of analysis required to identify all feasible measures, and the nature of such measures, must be proportional to the significance of the activity’s impact on species at risk.

Clarification

The determination of whether an application meets the requirements of this paragraph will be case-specific based on the facts of the situation. The decision whether to issue a permit must be evidence-based and the amount of analysis undertaken must reflect the significance of the impact of the activity on species at risk.

The applicant is responsible for demonstrating that the needs of the species were considered during the design of the activity and for identifying feasible measures to minimize impacts of the activity. Consideration must be given by the applicant to identifying and adopting best practices for the species.

Biological, ecological, technical and economic limitations are to be considered when considering what measures are “feasible”.

3.2.3.3 “Jeopardize the survival or recovery of the species” – paragraph 73(3)(c)

Policy Statement

For the purposes of paragraph 73(3)(c), an activity would be considered to jeopardize the survival or recovery of a species at risk if the activity would prevent the attainment of the population and distribution objectives described in a recovery strategy for a species at risk. Where a proposed activity would jeopardize the survival or recovery of the species,

a permit could be issued only if the activity were accompanied by actions to benefit the species such that the residual effects of the activity would not jeopardize its survival or recovery.

Clarification

The assessment of whether an activity would jeopardize the survival or recovery of the species will be determined on a case-by-case basis.

Where there is a proposed or final recovery strategy that describes the population and distribution objectives of the species at risk, an activity that would prevent such objectives from being met would be considered to jeopardize the survival or recovery of that species. The consideration of population and distribution objectives would also take into account any relevant information related to the recovered state of a species at risk that was not available at the time of publication of the recovery strategy.

In the absence of a proposed or final recovery strategy that describes the population and distribution objectives for a species at risk, the assessment of jeopardy will consider survival in the context of the survival threshold, and recovery in the context of the “best achievable scenario”, as described in the Policy on Survival and Recovery. In the absence of a proposed or final recovery strategy, the determination will also consider the population and distribution objectives of a draft proposed recovery strategy, where one exists.

As the degree of uncertainty increases about whether an activity would jeopardize the survival or recovery of a species, the likelihood decreases that a permit can be issued. Where data is sufficient to support the completion of quantitative analyses, such as population viability, this should be done. However, in many cases, such analyses will not be possible and a precautionary approach should guide the assessment of jeopardy based on the best available information and the weight of available evidence.

In addition, the following will be considered in applying the above policy statement:

- The best-available scientific knowledge, community knowledge and aboriginal traditional knowledge, including from species status assessments, federal recovery documents (such as recovery strategies and action plans), provincial and territorial recovery and other documents, and peer-reviewed research;
- Biological requirements of the species, spatially and over time, including the number of individuals needed to support the survival and recovery of the species; and, the status of the species at risk, as listed on Schedule 1 of SARA;
- The nature and extent of the threats that the activity poses to the species at risk, including in particular those threats already identified in applicable recovery strategies and/or status assessments, as well as any threats resulting from a potential delay in recovery caused by the activity;
- The impact of the activity on individuals and their residences, including but not limited to impacts during key stages or phases of the species life cycle, taking into account

the ecological and life history of the species.

- The impact of the activity on the availability of the species' habitat during periods when that habitat is needed by the species; and,
- Accompanying actions intended to benefit the species, such that the residual effects of the activity would not jeopardize the survival or recovery of the species. Accompanying actions must be biologically relevant to the species, temporally and spatially. Completing these actions will be included as terms and conditions of the permit, as per subsection 73(6) of SARA.

3.2.3.3.1 Addressing jeopardy with biodiversity offsets

Biodiversity offsets¹ proposed by an applicant are among the tools and actions that will be considered when assessing whether the survival or recovery of the species would be jeopardized by a proposed activity. The applicant must demonstrate that the proposed activity, with any proposed offsets and any other accompanying actions, would not jeopardize the survival or recovery of the species. The applicant must also demonstrate that the offset is being used only to address residual effects after applying avoidance and mitigation measures to comprehensively reduce the effects of the activity on species at risk individuals, residences and critical habitat, as required under paragraphs 73(3)(a)&(b) of SARA.

Environment and Climate Change Canada, Fisheries and Oceans Canada and the Parks Canada Agency have developed guidance on the use of offsets when assessing jeopardy for the issuance of section 73 SARA permits. The guidance, attached as an annex to this policy, lays out pertinent information to be considered when an applicant includes a proposed offset as part of a SARA section 73 permit application.

There are limits to what can be offset. For example, offsetting is not possible where critical habitat is irreplaceable, and is not appropriate where there is a high probability of the offset failing, or where the impacts on the species at risk, its residences or its critical habitat from the failure of the offset would be significant. The above-noted guidance outlines principles to be adhered to by the applicant in developing a biodiversity offset, including:

- **Additionality:** an offset must provide benefits to the species that would not have occurred without it.
- **Duration:** the benefits from an offset must last at least as long as the adverse impacts from the activity.
- **Risk Management:** Applicants must propose an offset that replaces or protects more individuals, residences or critical habitat than are likely to be adversely affected by the activity.

- **Costs:** all costs associated with the offset are the responsibility of the applicant and the applicant must provide assurances that the offset plan will be fully implemented.

3.2.3.3.2 Critical habitat destruction in the context of assessing “jeopardy”

Policy Statement

Where the destruction of critical habitat would jeopardize the survival or recovery of the species, jeopardy can be eliminated only by:

1. Implementing the offset before the impact occurs; or
2. Any offset that cannot be implemented at the time of the impact needs to compensate for the additional impact incurred as a result of the time lag. or,
3. Implementing non-habitat measures until the impact of the activity no longer affects the species.

Any replacement of critical habitat must be biologically relevant, temporally and spatially.

Clarification

It must be determined whether the survival or recovery of the species at risk would be jeopardized by the destruction of critical habitat. This will be determined on a case-by-case basis as described in subsection 3.2.3.3 above.

In cases involving the destruction of critical habitat, the following must be taken into account when considering actions intended to avoid jeopardizing survival or recovery:

- If offsetting measures are fully implemented before the impact occurs, the destruction of that critical habitat would not be considered to jeopardize the survival and recovery of a species at risk. If possible, destroyed critical habitat is to be offset prior to its destruction.
- If the critical habitat cannot be replaced before it is destroyed, a minor lag between the destruction of critical habitat and the offset is allowed, provided that the scale of the offset accounts for the impact of the lag on the survival or recovery of the species.
- Any offsetting measures must be biologically relevant, temporally and spatially. For example, any replacement of critical habitat must be as suitable for use by the species as the critical habitat to be destroyed.

Considerations where critical habitat is not protected under SARA

A SARA permit would always be required if destroying critical habitat would result in affecting an individual, or damaging or destroying the residence of individuals of a species that is protected under SARA (e.g., an aquatic species at risk; a species at risk on federal lands; migratory bird species at risk; and, species protected through a federal order or regulation). In such cases where critical habitat is not yet protected, the permit

to be issued would be for effects on individuals or residences, not for the destruction of critical habitat. A permit could be issued only if the section 73 conditions, including the jeopardy pre-condition, are satisfied.

In a case where a project undergoing an environmental assessment includes the destruction of identified and unprotected critical habitat, a SARA permit could later be required in the event that the critical habitat is later protected, prior to its destruction. The proponent would then have to meet SARA permitting requirements to undertake or continue the activity that would result in the destruction of that now-protected critical habitat. Consequently, project proponents are advised to address the s.73 conditions as part of their initial project planning and development, in particular to apply the above-noted measures for offsetting destroyed critical habitat.

3.3 Migratory birds that are species at risk

Policy Statement

SARA permits shall not be issued for an activity that would contravene the *Migratory Birds Convention Act, 1994* or its regulations.

Clarification

SARA and the *Migratory Birds Convention Act, 1994* and its regulations protect migratory birds from harm and the prohibitions of both Acts and their regulations must be respected.

Where an activity would have a prohibited effect on a listed migratory bird for which a permit or other authorization could not be issued under the *Migratory Birds Convention Act, 1994* and its regulations, the *Migratory Birds Convention Act, 1994* and its regulations can be respected only by not issuing a SARA permit. This is possible because there is no requirement for a competent minister to issue a permit under SARA.

ANNEX

GUIDELINES FOR THE USE OF BIODIVERSITY OFFSETS AS PART OF AN APPLICATION FOR A *SPECIES AT RISK ACT* SECTION 73 PERMIT

DOCUMENT INFORMATION

This document is not a substitute for the *Species at Risk Act* (SARA) or any of its regulations. In the event of any inconsistency between this document and SARA or any of its regulations, the latter will prevail. For the most up-to-date versions of SARA and its regulations, please consult the Department of Justice website: <http://laws.justice.gc.ca/en/>.

This guidance may be updated periodically. To ensure that you have the most up-to-date version, please consult the Species at Risk Public Registry: www.sararegistry.gc.ca/default_e.cfm.

1. PURPOSE

This guide has been prepared by Environment and Climate Change Canada (ECCC), the Department of Fisheries and Oceans (DFO) and Parks Canada Agency (PCA) to provide guidance on the use of biodiversity offsets as part of section 73 permit applications under SARA. This guide should be read in conjunction with the accompanying SARA Permitting Policy and the *Permits Authorizing an Activity Affecting Listed Wildlife Species Regulations*.

- **An applicant considering including an offset (hereafter “offset applicant”) with an application for a section 73 permit or agreement are encouraged to contact the competent department(s) before submitting the permit application to allow for discussion of the suitability of the proposed offset.**

The submission of an offsetting plan does not guarantee the issuance of a section 73 permit or approval of a proposed offset.

2. BIODIVERSITY OFFSETS AS PART OF A SECTION 73 PERMIT APPLICATION

General

Section 73 of SARA does not require that an offsetting plan be submitted with an application for a permit. In some cases, however, an offset may be the only practical way to satisfy the conditions in section 73.

If an offsetting plan is submitted, the competent minister will take into account the proposed plan in determining whether or not to issue a permit.

The applicant is responsible for demonstrating the suitability of the proposed offset.

Consideration must be given to the estimated residual harm to the species at risk prior to the application of the offset, the nature of that harm, and how these compare to the expected benefits of the offset.

Biodiversity offsets and SARA permit requirements

Environment and Climate Change Canada's *Operational Framework for Use of Conservation Allowances*³ and the Fisheries and Oceans Canada's *Fisheries Productivity Investment Policy: A Proponent's Guide to Offsetting*⁴ describe the Government's overall approach to biodiversity offsets.

Avoidance and mitigation are the preferred means for managing the potential adverse impacts of an activity on species at risk, their critical habitat or residences of the individuals. Offsets will only be considered after all avoidance and mitigation options have been exhausted. While avoidance and mitigation measures reduce the scale and severity of adverse impacts, offsets do not change the direct impacts of the activity, but instead aim to counterbalance any residual adverse impacts that may remain after accounting for avoidance and mitigation measures.

- **Offset applicants must describe the possible residual adverse impacts of the activity that will be counterbalanced. Subject to review and approval by ECCC, this will establish the reference point from which the offsetting plan will be assessed.**

SARA sets out specific requirements for the consideration of alternatives to the proposed activity that would reduce the impact on the species (e.g., avoidance) in paragraph 73(3)(a), and for the taking of feasible measures to minimize the impact of the activity (i.e., mitigation) in paragraph 73(3)(b). Therefore, offsets will not be considered as a measure to avoid or minimize adverse impacts for the purposes of meeting the preconditions in paragraphs 73(3)(a) and (b). When an offset is proposed, it will be considered in making the determination of jeopardy under paragraph 73(3)(c).

- **Offset applicants must demonstrate that the activity, with the proposed offset, will not jeopardize the survival or recovery of the species.**

For the purpose of demonstrating that the activity, with the proposed offset, will not jeopardize the survival or recovery of the species, an offset applicant must include information on how the activity, with proposed offset, will address jeopardy in the manner set out in the accompanying SARA Permitting Policy.

In-lieu fee arrangements are not considered to be a form of a biodiversity offset for the purpose of this guidance as they do not counterbalance any residual adverse impact of the proposed activity.

Additionality

³ See: <http://www.ec.gc.ca/Publications/default.asp?lang=En&xml=58A4AECD-A096-458C-B457-0E67CADF911D>

⁴ See: <http://www.dfo-mpo.gc.ca/pnw-ppe/offsetting-guide-compensation/index-eng.html>

An offset must provide benefits to the species beyond what would be provided under a business-as-usual scenario.

- **Offset applicants must demonstrate that the benefits to the species, its critical habitat or residences of its individuals will be a direct result of the offset and would not have occurred without it.**

Whether the benefits of the offset are considered to be additional will be assessed on a case-by-case basis by the competent department(s).

Timing, duration and location

It is preferred that the benefits resulting from an offset start either before, or at the same point in time as the impacts of the activity occur.

Applicant-led banking provides a practical approach to achieving this since the bank is created in advance of the impact of the activity. Banks must be administered in a transparent manner that ensures that no portion of the bank is used more than once for a biodiversity offset. The competent department(s) will determine on a case-by-case basis whether the conserved area (or some portion of it) qualifies as an offset for the purpose of supporting an application for a section 73 permit.

In addition, the benefits from an offset must last at least as long as the adverse impacts from the activity.

- **Offset applicants must demonstrate that measures (e.g., securing site tenure, securing financial assurances, and monitoring) have been put in place to ensure the benefits from the offset last for at least as long as the adverse impacts from the activity, and preferably in perpetuity.**

In selecting the location of the offset, it is important that an offset applicant consider regional impacts of the offset with a view to avoiding fragmentation or creation of isolated areas of habitat.

The management of risk and uncertainty associated with offsets

There are limits to what can be offset.

For example, offsetting is not possible where critical habitat is irreplaceable, and is not appropriate where there is a high probability of the offset failing or where the impacts on the species at risk, its critical habitat or the residences of its individuals from the failure of the offset are significant. The risk to the species in the case that the offset should fail to meet its objectives must be taken into account.

In cases where an offset may be appropriate, it will be necessary to design the offset to address the various sources of uncertainty associated with offsets. For example, there may be uncertainty in the assessment of the residual impacts of an activity that are to be offset, in the estimate of the

benefits of an offset, in the estimated ability to provide a timely, biologically-functional offset or in the likelihood of the offset functioning as planned.

Offset applicants must address uncertainty:

- **Offset applicants must propose an offset that replaces or protects more individuals, residences or critical habitat than are likely to be adversely affected by the activity. The choice of ratio for each offset will be case-specific, based on factors such as the intensity, frequency and duration of the adverse impact being offset and the likelihood of the offset not working as planned or failing completely.**
- **Offset applicants must:**
 - **assess and identify the likelihood of partial and complete failure and all uncertainties associated with the offset; and**
 - **identify and commit to the contingency measures they will take if the offset is not functioning as planned.**

Monitoring and Reporting

Monitoring and reporting are necessary to determine whether an offset is providing the benefits to the species described in the offsetting plan and whether further measures are needed. Monitoring and reporting conditions will be included as terms and conditions of the permit.

- **Offset applicants are responsible for implementing the offset, monitoring its effectiveness (verified by a third party), reporting on implementation of the offset and monitoring results.**

Enforceability

All aspects of an approved offset will be part of the terms and conditions of a section 73 permit. This includes the details of the offset itself, monitoring and reporting obligations, and any contingency measures to be undertaken in the event of poor or non-performance.

Non-compliance with the terms and conditions of a section 73 permit, including those relating to offsets, can result in a permit being revoked or charges being laid under SARA.

- **Where a permit holder becomes aware that it may not be able to fulfil a term or a condition of the permit, it must contact the competent department(s) to discuss the matter and determine what options are available to remedy the situation.**

Costs

All costs associated with an offset are the responsibility of the applicant, including the costs for its design, implementation, monitoring and contingency measures.

- **Offset applicants must demonstrate that they have in place the necessary financial and technical capacity and resources to ensure the ongoing implementation of each element of the offsetting plan.**

An offset applicant must provide assurances that the offset plan will be implemented for the full duration of the plan, including whatever steps need to be taken if the offset does not function as planned or fails. Providing some form of financial security (such as a letter of credit) may be the only practical way to provide this assurance. The nature and value of the security must be sufficient to cover the costs of implementing all elements of the offsetting plan as well as any additional expenses that could be incurred, including monitoring and maintenance costs, administration, cost of external expertise, etc.⁵

- **Offset applicants should contact the competent department(s) to discuss financial security before submitting a section 73 permit application.**

Considerations in the assessment of offsets

In determining the suitability of a proposed offset, the competent department(s) will apply a precautionary approach and will consider science and community and traditional knowledge.

The competent department(s) will consider relevant information about the species being affected, including the COSEWIC status report on the species, draft or final recovery strategies and action plans, and any recovery potential assessment (for aquatic species). The competent department(s) also may consider additional sources such as provincial or territorial information on the species, its habitat, including its critical habitat, the residences of its individuals, peer-reviewed scientific literature, and any input from affected parties. An offset applicant should refer to these sources and provide any other relevant information in support of their proposed offset.

3. CORE ELEMENTS OF AN OFFSETTING PLAN AND APPLICATION TEMPLATES

Applicants proposing an offsetting plan involving an aquatic species at risk must provide information using the Template 1.

Applicants proposing an offsetting plan involving non-aquatic species at risk must provide information using the Template 2.

In either case, the competent department(s) will review the proposed offsetting plan on a case-by-case basis, and may ask applicants to provide additional information.

⁵ Guidance on letters of credit is available in the Treasury Board Policy on Letters of Credit (Appendix R), which can be found at: www.tbs-sct.gc.ca/pubs_pol/dcgpubs/Contracting/contractingpol_r_e.asp

TEMPLATE 1: PREPARING AN OFFSETTING PLAN FOR AQUATIC SPECIES AT RISK TO ACCOMPANY AN APPLICATION TO FISHERIES AND OCEANS CANADA FOR A SECTION 73 PERMIT

The offsetting plan is expected to provide:

- a description of the measures that will be implemented to offset the effects to listed aquatic species at risk; their habitat or the residences of the individuals, whether these measures have been tried before, and what is their known efficacy;
- an analysis of how those measures will benefit the listed aquatic species at risk, their habitat or the residences of the individuals;
- a description of the measures and standards that will be put in place during the implementation of the offsetting plan to avoid or minimize any adverse effects on species at risk, their habitat or the residences of the individuals that could result from the offsetting plan's implementation and an analysis of how those measures will avoid or mitigate those adverse effects;
- a description of the monitoring measures that will be put in place to assess the effectiveness of the selected measures to offset effects on species at risk;
- a description of the contingency measures and associated monitoring measures that will be put into place if the measures are not successful in offsetting the effects to listed aquatic species at risk;
- a description of the timeline for the implementation of the offsetting plan;
- an estimate of the cost of implementing each element of the offsetting plan;
- an irrevocable letter of credit issued by a recognized Canadian financial institution to cover the costs of implementing the offsetting plan submitted in support of the application; and
- written evidence that the applicant has obtained the required authorizations for accessing the lands or waters that they need to access to implement the offsetting plan. Those authorizations must extend to the Department of Fisheries and Oceans and anyone authorized to act on the Department's behalf.

If the applicant is applying for a combined permit under the *Fisheries Act* and SARA, this information is to be provided in addition to the requirements set out in the *Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations (SOR/2013-191)*.

TEMPLATE 2: PREPARING AN OFFSETTING PLAN FOR NON-AQUATIC SPECIES AT RISK TO ACCOMPANY AN APPLICATION TO ENVIRONMENT AND CLIMATE CHANGE CANADA AND PARKS CANADA AGENCY FOR A SECTION 73 PERMIT

In preparing an offsetting plan, an offset applicant must use scientifically defensible methods and techniques, and may be asked to provide a rationale to explain the methods and techniques chosen.

Section 1: Description of the residual impacts of the activity for which a section 73 permit is requested on the species at risk, its residences and critical habitat

- Describe the residual impacts that are likely to result from the activity, including the extent, duration and magnitude of the impacts on:
 - the number of individuals killed, harmed, harassed, captured or taken;
 - the number of residences damaged or destroyed; and
 - the area, biophysical attributes and location of critical habitat affected [e.g., destroyed, permanently altered, disrupted].

Section 2: Offset description

- Describe the proposed offset, and explain how it will counterbalance the residual impacts of the activity.
- Identify the location of the offset, including a map (e.g., ratio of 1:50 000) and geographic coordinates.
- Describe both the impact and offset sites, including existing land uses, present conditions, and relationship to the species, its residences and critical habitat.
- Provide all timelines associated with the offsetting plan, including:
 - when the impact of the activity for which a permit is requested will occur;
 - when the benefits of the offset measures are expected to be realized; and
 - the timelines for implementation of each element of the plan.
- Identify the parties, roles and responsibilities for implementing each aspect of the offset (including the party responsible for monitoring – see Section 6, below).
- Describe the measures to avoid or mitigate any adverse impacts from the implementation of the offset itself. This includes the identification of the possible adverse impacts from the offset and analysis of how proposed measures will avoid or mitigate those adverse impacts, as well as the identification of the possible adverse impacts on other species, habitat or ecological processes.

Section 3: Offset ownership

- Identify who owns the offset, and provide proof that the offset can be undertaken by the relevant parties.
- Confirm that all commitments vis à vis the offset will be transferred to any new owner or operator.

Section 4: Offset assessment

- Describe the projected future conditions at the impact and offset sites (use conservative estimates):
 - without the offset; and
 - with the offset.
- Describe the timing of the short term and long term benefits, in particular in relation to the timing of the adverse impacts of the activity.
- Describe the short-term and long-term benefits of the offset, including how they:
 - compare to the anticipated residual impacts of the activity (from Section 1),
 - compare to the duration of the adverse impacts of the activity, and
 - contribute to the survival and recovery of the species, including attainment of the population and distribution objectives for the species in question (where the Government has established those objectives).
- Explain how the benefits of the offset were determined.
 - Include a description of the extent to which the type of offset has been demonstrated to be effective , particularly in similar circumstances;
 - Describe all relevant uncertainties.
- Demonstrate that the offset is additional:
 - Describe how the offset will provide benefits to the species above what is already taking place or planned. This must include the description of the business-as-usual scenario.
 - If applicable, describe any government funding received to help pay for the offset.

Section 5: Contingency measures

- Describe and characterize the risks that the offset will not function as intended, and the potential impacts, accounting for the risks of partial and complete failure
- Describe the design features to prevent risks from occurring
- Describe the contingency measures that will be put in place if the offset does not function as intended.

Section 6: Monitoring and reporting

- Describe the monitoring measures that will be used to assess the effectiveness of the offset, including:
 - the methodology and parameters to be used to measure the effectiveness of the offset;
 - the methodology and parameters to be used to identify performance failures and to trigger contingency measures;
 - timelines (expected frequency of monitoring).
- Describe responsibilities and timelines for verification of offset implementation by a third party (can be an independent organization or a group of stakeholders).

- Provide the timelines and method for reporting.

Section 7: Resources and financial security

- Cost of the offset
 - Provide estimates of the cost of implementing each element of the offsetting plan.
 - Identify specific resources (funding and technical expertise) needed to implement the offset (including after the activity has ended but impacts persist).
- Capacity to implement the offset
 - Provide evidence relevant to the ownership or control of the offset site(s), such as land titles, deeds, leases, agreements and land surveys.
 - Describe the resources available to the applicant to implement the offset.
 - Provide assurances (including financial security) that the plan will be fully implemented, including any contingency actions that may be required, for the full duration of the plan.

Section 8: Declaration

I acknowledge that I have read, understood and agree to abide by all the terms, conditions, instructions, and notices set out in permit no XXXXX.

I acknowledge that the submission of this plan does not constitute nor does it guarantee the acceptance of the offset by Environment and Climate Change Canada, Parks Canada Agency or Fisheries and Oceans Canada.

I am authorized to sign this application.

I acknowledge that some of the information in this form may be translated and published on the SARA Registry website, and I consent to its publication in this manner.

I declare that the information provided in this application is accurate and complete.

Applicant: _____
(Name of entity applying for the section 73 permit and proposing the offset)

By: _____
(Print name of individual signing on behalf of the applicant)

Title: _____

Signature: _____

Signed this ____ day of _____, 20__

SUPPLEMENTAL INFORMATION: EXAMPLES OF BIODIVERSITY OFFSETS

Biodiversity offsets can be undertaken for residual impacts on critical habitat, residences, or individuals, either due to a one-time event (e.g., a construction project), or an ongoing loss (e.g., fish mortality in turbines).

Biodiversity offsets can take a variety of forms, ranging from localized improvements to habitat to more complex measures that address threats and limiting factors to the survival and recovery of a species at risk.

The choice of a suitable biodiversity offset will vary based on the type, scale and size of the adverse impact, the biology and ecology of the species, the threats to the species, its residences and critical habitat, as well as any other limiting factors affecting the species. If available, the recovery strategies and action plans will contain information about the type of activities needed to meet the population and distribution objectives for the species. This information can assist applicants in the development of their offsetting plans.

Biodiversity offsets can include, for example:

- Creation, restoration or enhancement of the affected species' habitat. Examples include: re-vegetation, reforestation, connecting separated critical habitat, removal of migration barriers, and creation or expansion of wetlands. Priority must be given to habitat that supports a life process that may be limiting the species' recovery, as indicated in the recovery strategy, action plan(s) and/or COSEWIC status report for the species (e.g., if population decline is due to a lack of nesting habitat, restoration of this kind of habitat must be a priority);
- Reducing sources of the species' mortality that are a threat to the species recovery. Examples include: immunizing individuals to reduce mortality from disease.
- Chemical or biological manipulations that reduce threats to the species or increase the amount of habitat. Examples include: control of invasive species. These measures should be used only when they are supported by the recovery strategy or action plan. An offset applicant must provide a sound rationale to demonstrate how the measure will benefit the species. The rationale should also provide scientifically defensible evidence of the successful application of the measure under similar conditions (e.g., similar ecosystems).
- Creation, restoration or enhancement of the species' residences. An example includes nesting boxes or overwintering structures, where the lack of residences is known to be limiting the recovery of the species, and the species is willing to use human-created residences.
- Artificial propagation of the species to augment natural reproduction. This option may only be considered when it is known to result in long-term increase or establishment of a population, enhance other recovery efforts, or provide the population with greater resilience to disturbance, and when all other options have been considered and exercised. An activity that transforms a naturally self-sustaining population to one that is dependent on ongoing human intervention will not be permitted.

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