



Species at Risk Act (SARA) Consultation,
Cooperation and Accommodation Project

SARA Legislation in BC: Participant Summary Report #2

Created by:
The Centre for Indigenous Environmental Resources



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Project Summary

The Centre for Indigenous Environmental Resources (CIER) is partnering with Environment and Climate Change Canada (ECCC) on a Species At Risk Act (SARA) Consultation, Cooperation, and Accommodation Project in BC. This one-year project will facilitate Indigenous communities' and organizations' participation in federal recovery planning for seven terrestrial Species at Risk: Grizzly Bear, Southern Mountain Caribou, Bank Swallow, Western Screech-Owl (two subspecies), Oregon Forestsnail, American Badger, and Marbled Murrelet.

CIER will support Indigenous communities and organizations and ECCC in their collaborative work including: recovery document development, knowledge and language sharing.

Key Project Components

1. Consultation and Cooperation workshops (January – March 2021)
2. Modest capacity funding (Call for Expressions of Interest - EOIs - closed February 22nd, 2021)
3. Project evaluation report: outcomes, successes, challenges, needs assessment and recommendations for project extension.

Additional information on the project is available for download on CIER's website:

<http://www.yourcier.org/sara-consultation-cooperation-and-accommodation-project-in-british-columbia.html>

1.0 Training Session Background

Following the SARA overview workshops in January & February of 2021, we heard from participants that there was a need for additional training with regards to SARA legislation in BC for communities to effectively participate in recovery planning. CIER and ECCC worked together to organize a virtual workshop on March 2nd, 2021 and one on May 6th, 2021 to share information on the federal Species at Risk Act (SARA) and species at risk related processes and legislation in BC. Representatives from ECCC and the provincial Ministry of Forests, Lands, Natural Resource Operations and Rural Development provided the training. A fictitious creature (Spiky Green Puff Ball) was used in a mock example to walk participants through the federal and provincial approaches to recovering species at risk. A total of 39 people participated in the March 2nd training session. A total of 36 people participated in the May 6th training session. Participants represented 24 Indigenous communities across British Columbia and Alberta, as well as government representatives, and project consultants.

The SARA training session provided an opportunity for representatives of Indigenous communities and organizations to ask questions, provide insight, and outline concerns. The comments and questions raised during the second session are organized into themes and listed below:

1.1 The SARA process

In the BC conservation framework, where does the traditional and ecological knowledge with the Elders come in? *The conservation framework is actually being redeveloped.*

- *Provincial Response: The Province is currently updating and refining its approach towards setting priorities for conservation action by streamlining the process for determining appropriate management actions. A cost-benefit analysis may be undertaken if there are significant socio-economic implications to recovery. This involves engagement with First Nations, including elders, to assist in identifying and prioritizing wildlife values management.*
- *Federal Response: In terms of recovery planning in the federal SARA process, we engage and consult on draft recovery documents which includes asking what are some of the aspects that are important to Indigenous people and what is missing from the recovery documents. Indigenous knowledge is a key component of recovery planning, and we are continually looking at ways to do this that makes sense for the communities choosing to share their knowledge with us.*

Where does the approval happen? Are the traditional Chiefs involved?

- *Federal Response: When a document is formulated it goes out for engagement and consultation and ECCC engages with the community and Chief and Council to see if something is missing.*

Provincial Response: The Province undertakes a similar process wherein feedback from engagement and consultation is discussed with Indigenous Advisors and incorporated where possible. Additional discussions are had with the Ministry of Indigenous Relations and Reconciliation to ensure treaty rights are not infringed upon.

How do you go about contacting the community, other than band councils?

- *Provincial Response: BC FLNRORD staff consult with FLNRORD Indigenous Advisors to identify appropriate contacts within Indigenous communities. Indigenous Advisors undertake a territorial analysis to identify Indigenous communities and organizations that may be interested in a particular*

file and compile a comprehensive list of engagement contacts. During the engagement process, those contacts identified are invited to participate, with notification normally via letters. Engagement thereafter is subject to the level of engagement identified within the letter, and the interest of the Indigenous community or organization representative(s).

- *Federal Response: For ECCC, the process is similar except that we do a territorial analysis to identify which communities and Indigenous organizations may be interested in a recovery document and we start by sending an invitation to engage. When people let us know if there are different or better contacts, we update our contact list. We try to be as inclusive as possible when we reach out. Consultations are also posted on the SARA registry so anyone can let us know if they are interested in contributing to the recovery document.*

When a party breaks the rules, does not follow suit with the policy and regulations, there is usually a fine implemented. If that fine is implemented in the territory of an Indigenous Nation, does that Nation share the fine or does it all go to the government?

- *Federal Response: On the federal side, charges under the SARA go into the Environmental Damages Fund. As far as I'm aware, there has not been discussion about those funds going to the Nations who reside in those territories. There is a call for proposals for projects in the area where the damage took place and anyone can apply.*
- *Provincial Response: Provincial administrative penalties, including fines, can be issued under several Acts, and therefore, it depends on the nature of the violation. For example, a charge under the Wildlife Act may result in funds being transferred to the Habitat Conservation Trust Fund (HCTF). These monies are available to fund grants that First Nations can apply for to support specific projects related to wildlife conservation.*

Can the Syilx design and apply their own SAR rights and protections if the standard SAR process doesn't line up the way we want it to?

- *Federal Response: At ECCC, that is one of the things we explore when developing conservation agreements (e.g., MOUs, SARA s.11) and one of areas that could be funded through funding programs such as the Aboriginal Fund for Species at Risk (AFSAR).*

Do any of you have experience working in the Yukon territory?

- *Federal Response: We are going to see the same general SARA process happening, but there may be differences in how we consult with various groups. For example, in the Yukon there is a greater number of Wildlife Management Boards we consult with.*

Can the protection zones of critical habitat be put onto rivers to protect the species that rely on the river?

- *Federal Response: Critical Habitat can be applied to rivers and aquatic areas (freshwater and marine). At ECCC we are responsible for terrestrial species and migratory birds. For the most part, the Department of Fisheries and Oceans are responsible for aquatic species. When it comes to consulting on recovery plans, we make critical habitat maps available online through the open data portal when available and we can share draft critical habitat maps through a data sharing agreement. There is information on [CIER's website](#) for how to request a data sharing agreement.*

We work with community knowledge keepers to gain feedback on SAR from the ground up through the referral system. I appreciate the levels of technical comments and feedback and the more jurisdictional comments. I think these are closely related. At a technical level hands may be tied due to legislation, but there is a major gap in BC without SARA legislation and without protections for wetlands. I think it is safe to say there are some pretty significant gaps. It is important to have these community voices heard at decision level tables. These people speak on behalf of those species and life forms that cannot speak. There are things in place, but they are not working. I would be interested in hearing the challenges the provincial and federal folks face.

- *Federal Response: Thank you. Federally, as we try to get voices heard and incorporated, one challenge would be our capacity. There are so many SAR, unfortunately, and our ability to be able to work really effectively on all species in all places is constrained. If we can make the process easier for you, then it becomes easier for us. When input is coming to us, having advice on what forums work best, what information is super critical, and what we can do to support would help us close the gaps. Other challenges we face are things such as incorporating the information into recovery strategies. It can be challenging if the information doesn't fit into the specific categories we have. We have been finding more creative ways to make sure Indigenous voices are meaningfully included in recovery strategies. That is something we are continuing to work on. Sharing draft strategies is one way we try to ensure the sections are including Indigenous knowledge correctly.*
- *Provincial Response: Provincially, one of the biggest challenges is the lack of species at risk legislation. Patchwork of rules do not effectively nor consistently protect all species at risk and their associated habitats from human-related impacts across different types of land use. For example, there are limited provincial protections for plants and invertebrates. As a wildlife biologist I must consider the species and its habitat, as well as socioeconomic considerations. Having diverse representation at decision tables may result in efficiencies by allowing information to be easily transferred to support wildlife stewardship and help inform wildlife plans and management actions.*

Does SARA refer to reserve lands and traditional lands?

- *SARA applies on all lands and waters across Canada. How it applies differs depending on land tenure.*

We submitted a ECCC data sharing agreement request recently, just wondering what the average response time would be?

- *We can typically respond quite quickly.*

What is an example of a multiple species action plan? Why would someone take one on?

- *Federal Response: That decision depends on timing and where the species are at in the SARA process. When there are multiple species in a geographical area it can make sense to do a multiple species recovery plan. In the action planning phase, which follows the recovery planning phase, we intend on looking at all species that have commonalities in a regional area. Action plans are about what people are going to do to help the species recover. The people involved are important in determining what an action plan looks like.*

Can you provide an example of what challenges you face with some of the acts?

- *Provincial Response: BC's Wildlife Act does not include invertebrates nor plants. This gap in existing legislation is significant provided we have routinely heard from First Nations and Metis that many*

species of plants are important and at risk. So, how do we protect those? At present, one available option is via. sector-specific Acts such as Forest & Range Protections Act.

- *Federal Response: Species of Special Concerns do not have direct protections under SARA. They are listed because they are sensitive to human activities, but we recognize that small changes may increase their listing status and we want to make sure they do not become more at risk (i.e., threatened, endangered, or extirpated).*

In the environmental assessment process, how does the federal government and ECCC provide advice on a species like Caribou when that species is protected under a treaty as part of a way of life constitutionally guaranteed?

- *Federal Response: When ECCC, through the Canadian Wildlife Service, provides advice to the impact assessment agency, we only provide one small piece of the puzzle. The western science piece of advice. We are trying to see how that may be broadened. Right now, this is how it is. All the other important factors are taken into consideration by other departments and agencies that are speaking to those considerations from a federal perspective. When it comes to SAR, we are looking at all aspects, such as socioeconomic factors when a species is listed and an action plan is developed, as well as bigger broader holistic issues, etc. When we do recovery planning, we use the best available information which includes Indigenous Knowledge and languages. We hold discussions, workshops, and work with wildlife advisory boards, as well as write reports and undertake research which could involve all these elements. When it comes to impact assessments, at this time, the only thing we provide is western science.*

Where would someone find more information on having a solidified referral process in place

- *Provincial Response: Provincially, this is something we hear often and unfortunately there are many different referral processes and no easy solution. Truthfully, there are capacity issues on both ends. One way to streamline the process is to have community voices represented at decision tables. Entering into co-management agreements (CMA), and/or other agreements would allow for a more collaborative process. With these agreements in place, co-management and shared decision making may relieve pressures on the referral system.*
- *Federal Response: Federally, we can enter into protocol agreements or work together on stewardship and land use planning that benefits species at risk which is a proactive way to build all of our capacity and hopefully make referrals easier in future.*

The previous provincial government has SAR legislation in their mandate, but not in this current term. Is there any talk or discussion on this happening in the future in BC?

- *Provincial response: In 2017 the Province mandated the enactment of an endangered species law in BC and several engagement sessions were held. The concerns raised and feedback received from First Nations, stakeholders, organizations, different sectors, and public was diverse. At this time, the Province is reviewing the feedback to determine next steps. Is there a timeline? Presently no, mainly due to the identified complexity of developing species at risk legislation and the need to develop a robust solution.*

1.2 Land Claims and Indigenous Rights and Title

When they do up the policies and action plans, is it written in there that they have to respect the lands of the Indigenous people where this work is happening?

- *Province Response: When documents are drafted, such as a Recovery Document or Implementation Document, the Province is legally obligated to consult and accommodate First Nations on land and resource decisions that could impact their Indigenous Interests. We must engage to understand and address concerns and questions. Consultation is done throughout document development, with a final draft approved by the Designated Decision Maker.*
- *Federal Response: At ECCC we do this in different ways such as working directly with communities and getting advice from the National Aboriginal Council on Species at Risk (NACOSAR)*

How do you work in areas of contention with competing land claims & visions for SAR protection?

- *Federal Response: I think this might be something we chat more about during the protection part of the presentation. The approach would be case specific and would have to assess all the different aspects of the situation. Typically, we consult with any Indigenous communities that have the potential to be impacted. So, we tend to consult quite broadly. Depending on the information we gather, we may need to shift and do specific consultations with specific groups.*
- *Provincial Response: The Province consults with all identified Indigenous communities that have the potential to be impacted. The Ministry of Indigenous Relations and Reconciliation leads discussions regarding Rights and Title, specifically negotiation and implementing agreements, partnerships, and treaties. FLNRORD is present at tables when discussing values such as wildlife, forestry, etc.*

We had problems with timber companies harvesting right up to creeks and rivers, during the times of the seasons when Indigenous people needed to be by the river to harvest. The timber companies were difficult to work with. Has that scenario changed?

- *Province Response: There are several tenures on the land base, ranging from large tenure holders to smaller woodlot licensees. Each party undertakes planning, for example Forest Stewardship Plans (FSPs), and Woodlot Licence Plans (WLPs). The plans not only detail potential harvesting but also include protection provisions. For example, a Section 7 notice for Wildlife Habitat Areas under the Forest and Range Practices Act would trigger amendments to plans.*

If we are in the mode of recognizing Indigenous title, then that statement of 80% of the land being owned by the Crown completely obliterates the recognition the Indigenous lands. Those types of statements have to be torn apart so that it is equal.

- *Province Response: When I used the term Provincial Crown land, I did so in the legal sense of the term “Crown land” – that is, land, or land covered by water like rivers or lakes that is owned by the provincial government. I recognize that as part of the Province’s commitment to reconciliation with Indigenous Peoples certain terminology will need to be reviewed and revised; however, I am bound to the terms currently in practice. My use of the term Provincial Crown land was not intended as a form of disrespect, nor meant to convey that the Province does not recognize the rights and titles of Indigenous Peoples.*

Is there a process for requesting those types of studies from the provincial or territorial governments?

- *Province Response: In my experience I have not been asked to provide cumulative effect studies as part of consultations. It is however in the best interest of the Province to understand pressures on values in order to manage threats. The strategy of co-locating SAR with other values, including Indigenous values, through partnerships to protect, restore, or acquire land is one option of how we can move forward – going beyond the species towards a multi-values approach on the landscape.*

- *Federal Response: I know there is a section of ECCC that deals with cumulative effects. When it comes to the listing, my understanding is with each species that is considered there is a scoping exercise done by COSEWIC to see what studies need to be undertaken. Communities could reach out to the Aboriginal Traditional Knowledge (ATK) Sub Committee to learn more, their contact information is on their website.*

When you list a species under SARA, does it impact any traditional harvesting, if the species is listed?

- *Federal Response: When species are listed there are certain protections that come into force that protect individuals and residences. In certain cases, there are also exemptions for Indigenous harvests. What we have seen in the past is that this is very case specific. When we have species that are traditionally harvested there is a deeper engagement with Indigenous groups on how we could minimize any potential impacts.*

1.3 SAR initiatives

I just wanted to comment. We are taking a little more of a proactive approach. We have people that like to visit the Avalanche Lilly when they are in bloom. The word has spread fast that we would like people to phone in to tell us when they are coming, because what people do not realize that we also view it as food. This way we do have an idea of how many visitors are on the land. We are working with an agency to measure the soil. In the future we would like to have a visiting/viewing area as well as a harvesting area.

1.4 Habitat and Invasive Species

With the major fires that have occurred in the past number of years, has there been an increase in the amount of species at risk or in their critical habitat?

- *Provincial Response: I am unaware of data specifically addressing the impact of the recent fires on species at risk.*
- *Federal Response: ECCC has a whole does not have that information at this time, but perhaps in the future we may see habitat use change due to the recent fires.*

You talk about the existing species, here in the St. Lawrence, there has been invasive species that have practically wiped out the natural habitat. Are any questions involved about the invasive species? How are they dealt with?

- *Federal Response: Invasive species do come up a lot, given that invasive species are key threats to many SAR. In the assessment phase, invasive species may be listed as one of the threats to a species at risk. When we look at listing, we are less focused on specific threats and more focused on trying to understand what the potential implications of listing are. For example, listing the species could benefit the ecosystem by lessening invasive species, but invasive species are more likely to come into play in the recovery planning stage. In the recovery planning stage, we are looking more at the threats to the species, and the recovery actions and the mitigation measures we can take to protect the species. For a species that is threatened by invasive species, this could involve invasive species removal, or signage to help reduce the spread of invasive species.*

1.5 COSEWIC (Committee on the Status of Endangered Wildlife in Canada)

Is there a policy or a TOR for the ATK Sub Committee that guides its function in the process? Do First Nations directly engage with that Committee body during the process?

- *Federal Response: There is information on the COSEWIC [website](#) on how they function. In terms of how they directly engage, it is based on the species. For some species they will do very large studies and reports working with many communities, especially if it is a very important culturally and economically important species (e.g., Grizzly Bear). Pretty much everything with SARA depends on the particular species, the particular community, and the threats the SAR faces.*

Has the COSEWIC ATK Committee always been a part of the process? Or is that a recent development?

- *Federal Response: COSEWIC started in 1977 and the ATK subcommittee started in 2000 and SARA started in 2002 so the subcommittee predates SARA. The ATK subcommittee was also written into the SARA from the beginning of SARA in 2002.*

There is a Caribou herd in the Yukon that has been in decline for quite some time. The listing process has been confusing. Is there a different process for particular Caribou herds?

- *Federal Response: There have been complexities around the Caribou listing and the different herds. The term we use to describe the different groupings of Caribou is “designable unit”. This unit is smaller than the species level and refers to population of caribou or groupings of individual herds. Different population units, or herds, may be listed under different statuses. COSEWIC will reassess a species every ten years. ECCC then reassesses the species following COSEWIC’s recommendations.*

Can a First Nation request a reassessment of a designation?

- *Federal Response: That is done through COSEWIC. COSEWIC reassess every 10 years, but may reassess in a shorter timeframe if there is information that indicates there has been a significant change or impact to the species. That request can be made to COSEWIC. This does happen, such as emergency assessments when a species is declining quite rapidly.*

1.6 Section 10 and 11 Agreements under the federal Species at Risk Act

What are the key differences between Section 10 and 11.

- *Section 10 is an administrative agreement that focuses on administration of SARA such as recovery planning, permitting, etc. Section 11 is much broader and can include anything that helps a species survive and recover such as stewardship actions, community engagement, etc.*

What are the first steps of a Section 10 agreement?

- *It could happen in a couple ways. One way is that we approach nations we know have a lot of species at risk in their area to see if a s.10 or s.11 agreement would be of interest. Another way is that people let me know they are interested in exploring a s.10 or 11 agreement and then ECCC looks at which species and habitat are there and then we discuss the things we could do together. We could look at some of the tools already in place that help species at risk. For example, some First Nations already have protected areas and enforcement measures. We have less experience developing S.10 agreements; there is no set process. We are seeking input from people on how to go about this work.*

Regarding conservation, there are a lot of traditional practices that need to be tied into the utilization of certain species. Are these traditional ceremonies and practices restricted by Section 11? Or can they continue to harvest?

- *Section 11 Conservation Agreements are co-developed so both parties need to agree to what is included. The agreement is around conservation measures and other measures that align with the SARA such as monitoring; education; outreach and public awareness; developing and implementing recovery strategies and action plans; protecting species and its habitat (including critical habitat); and, research for example. The Section 11 agreement could be a way to further support cultural practices because these practices often do protect SAR and their habitats.*

If the Section 11 agreement does not meet the objectives, then does the minister make an order to increase necessary protections?

- *SARA does enable the Minister to make Orders but we try to achieve the same outcomes without putting an Order in place. There have only been two orders. An order would be considered when things are very dire for the species.*

Does the agreement outline what is considered a conservation risk or is that by definition what is outlined in SARA?

- *That would be outlined in the recovery document for each species. In a Section 11 agreement there may be specific local considerations added to the more general risks identified in a recovery document.*

Section 80, emergency order, has only been initiated two times. Would it be safe to say that entering into a Section 10 or 11 agreement may be easier than a Section 80 emergency order?

- *Section 80 is a decision made by the Minister. What we do in the department is look at all the tools available to protect the species, such as Section 10 and 11 agreements, local laws, protected areas etc. We then provide that information to the Minister and the Minister decides whether they are of the opinion that an imminent action needs to be taken and then they would implement the emergency order. Section 10 and 11 can help to ensure protection in the area covered by the agreement. Section 80 could consider the species and its habitats as a whole, whereas Section 10 or 11 are specific to the localized area covered by the agreement.*

1.7 Specific Species

Last time I was in BC there was a lot of fisheries problems. Has there been action on addressing when fishing is allowed to occur?

- *Provincial Response: Regulations are in place for both commercial and recreational fishing within BC. Without knowing the particulars of the fisheries problems addressed in the question, I cannot sufficiently provide further answer.*

There are issues with the Caribou in northern BC. Can you give a practical example of how these regulations help protect the Caribou?

- *Provincial Response: I do not work on caribou in the Province and have limited knowledge on the issues. I can provide an example about a different species, Marbled Murrelet. Once a federal*

recovery document is published, it is the Province's responsibility for implementation of recovery objectives and actions. In the case of Marbled Murrelets, a Provincial Implementation Plan was approved by Cabinet in 2018. The plan describes the minimum amount of suitable habitat to be retained in each conservation region to recover the species. In order to meet the commitment, legal measures such as Land Use Objectives Regulation Order established under the Land Act, and Section 7 Notices established under Forest Planning and Practices Regulation (FPPR) and Forest and Range Practices Act (FRPA) are utilized to protect suitable habitat.

In our Caribou partnership agreement we are looking at the protection of some forest conservation areas that are characterised by the same overgrowth as fisher. If we can protect those habitats for Caribou, then we can put fisher under that protection umbrella. Fisher are a part of our trapping livelihood.

- *Provincial Response: Certainly, the co-location of values is one mechanism to protect species and Indigenous values that do not have sufficient legal protections.*

The Finlayson Caribou herd has its calving grounds within the traditional territory of the Kaska Nation. These Caribou are heavily integral with a lot of our First Nation's rights and title to our traditional land. The Finlayson Caribou herd have been in decline for a few decades. There are many industries trying to make their stake in our traditional territory. One of them is trying to make their stake right in between the calving ground and feeding ground of the Finlayson Caribou herd. We are trying to make the point that that would make the herd fall quicker into decline. Maybe we can set up a consultation later to talk more about that. This is one of our bigger challenges.

- *Provincial Response: While I do not directly work on caribou, I am open to a discussion.*