

CANADA'S SPECIES AT RISK ACT:
**IMPLEMENTATION
AT A SNAIL'S PACE**

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ENVIRONMENTAL | DEFENCE



THE BANFF SPRINGS SNAIL IS A TINY MOLLUSC FOUND ONLY IN HOT SPRINGS protected within Banff National Park. It has the dubious distinction of being the only species in Canada for which the six-year-old Species at Risk Act (SARA) has been fully implemented.

SARA was enacted in 2002 to prevent Canadian wildlife and plants from becoming extinct or extirpated and to provide for their recovery.¹ There are three federal authorities responsible for implementing the Act: Environment Canada, Fisheries and Oceans Canada, and the Parks Canada Agency.

A mandatory five-year review of the Act's effectiveness has been initiated by Parliament. Four of Canada's leading not-for-profit environmental organizations working to protect Canada's biodiversity -- the David Suzuki Foundation, Ecojustice, Environmental Defence, and Nature Canada -- have collaborated to highlight the major shortcomings of the Act and to grade its implementation.

Our analysis examines each major stage of species protection, according to the elements set out in the Act itself: *Listing, Recovery Strategies, Action Planning, Habitat Protection, and the Safety Net.*



The Banff Spring Snail

Photo Credit: © Mark and Leslie Degner / www.markandlesliedegner.com

LISTING – In order for the Act to apply to a species, it must first be listed for protection. This involves a two-step process. First, a species must be assessed by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC), an independent scientific body that assesses the status of species and designates them as extirpated, endangered, threatened, special concern, or not at risk. Second, for a species designated in one of the “at risk” categories, the federal government must decide whether to add it to the formal list under SARA. If it does not decide within nine months, the Minister of Environment must list it.

In practice, however, the government has failed to meet this nine-month timeline. Although there is no provision for it in the Act, the government has created an “extended listing process” that has resulted in limbo for many species. At least 53 species at risk are likely continuing to decline while government takes between 17 and 29 months (i.e. two to three times longer than what is legally allowable) to determine whether or not to add them to the list, and for some species the delays are indefinite. Such delays can jeopardize the recovery of a species that is already on the brink of extinction.

In addition, there appears a clear bias against listing certain kinds of species. Overall, COSEWIC has assessed 551 species as extirpated, endangered, threatened, or special concern. The number of species listed under SARA is 449. Chances of eventual listing have been fairly good for most species - with the exception of species found in the oceans or in northern Canada. Since 2004, only 35% of marine fish assessed by COSEWIC as “at risk” have been added to the list and no marine fish have been listed as endangered or threatened, which would automatically grant them protection against harm. Ten of the 23 species whose listing has been outright rejected are found in the north.²



RECOVERY STRATEGIES – The primary cause of decline for 84% of species at risk in Canada is habitat loss.⁴ In order to maintain, protect and restore the habitat that is needed by a species, that habitat must first be identified. The Act requires that critical habitat — the habitat needed by a species to survive or recover — must be identified, to the extent possible based on the best available information, in a recovery strategy under SARA.

PEARY CARIBOU

Peary caribou, found only in Canada's Arctic, have undergone a precipitous decline of approximately 80% since the 1980s. They are threatened by climate change and the potential for industrial development in their habitat.³ COSEWIC assessed the Peary caribou as endangered in May 2004, yet in July 2005, the government decided not to list the species and instead put it into an “extended consultation” limbo. A listing decision on Peary caribou is still pending.



Peary Caribou Source: istockphoto.com

However, not only have recovery strategies often failed to identify critical habitat when it was possible to do so, the majority of recovery strategies have been delayed, ignoring legal timelines. Recovery strategies are due for 282 species, but have only been completed for 99 species. And out of those recovery strategies that have been released, only 21% identify at least some part of the species' critical habitat.⁵

➔ GRADE: D-

ACTION PLANNING – Action plans are where decisions are made about the most cost-effective means for achieving recovery of a species, based on the recovery strategy. Unfortunately, as the Act is written, there is no legal deadline for the completion of action plans. Although recovery strategies must identify a timeline for action planning, these timelines are not legally binding and most are not met. Thirteen action plans are past the timelines promised in the corresponding recovery strategies.

The development of an action plan is especially important in those cases where the recovery strategy did not identify any critical habitat. However, of the 78 species for which final recovery strategies failed to identify critical habitat, none has a completed action plan. To date, in fact, there is only one completed action plan: for the Banff Springs snail, a species located entirely within a National Park.

➔ GRADE: INCOMPLETE

HABITAT PROTECTION – The ultimate measure of the effectiveness of SARA for most species is whether the habitat that the species needs to survive and recover is actually being protected on the ground. Once critical habitat is identified in a recovery strategy or action plan, the Minister must determine whether that habitat is protected. If it isn't, the Minister must order its protection if it is on federal lands or waters, and in any case must report on it and on the steps taken to protect it.

Of the 21 species that have had critical habitat identified to date, in only two cases has SARA been used to protect critical habitat that wasn't already in a federal protected area. And these two, the northern and southern resident killer whales, only received this protection as a result of legal action taken by the environmental community. Further, despite the Minister's obligation to do so, no reports on steps taken to protect critical habitat have been issued.

➔ GRADE: F
and detention for uncongenial behaviour!

BOREAL WOODLAND CARIBOU

The government recently engaged a team of 18 independent scientists, supported by additional experts and a management team at Environment Canada, to develop a scientific review for the identification of critical habitat for the boreal population of woodland caribou. In April, a robust, science-based review was released that recommended critical habitat for the caribou. The science in this report should provide government, industry and conservationists with the tools needed to ensure the persistence of boreal woodland caribou populations in Canada.



Boreal Woodland Caribou Photo credit: Bruce Petersen / Ontario Nature

KIDNEYSHELL

The kidneyshell is a freshwater mussel that had a historic range throughout south-western Ontario. Its range has been severely reduced. The federal recovery strategy for the kidneyshell failed to identify the kidneyshell's critical habitat. This means the habitat this species requires to survive is not protected under SARA. However, recovery and survival habitat for the kidneyshell were identified in a separate provincial recovery strategy for the Ausable River. Despite referencing the provincial recovery strategy, the kidneyshell recovery strategy ignores its results!



Kidneyshell Mussel Source: Darby Creek Association / www.darbycreeks.org

SAFETY NET – As the national law to protect species, one would think that SARA covers all of Canada. In fact, however, habitat protection is mandatory only for aquatic species and on federal lands (such as post offices, military bases and much of the Territories).

This is unfortunate, as species do not recognize political boundaries. However, the Act is equipped with what is called a “safety net” that allows the federal government to order SARA’s protections to apply to other species on other lands. SARA requires the Minister to recommend such an order to protect a species and/or the habitat upon which it depends if he or she is of the opinion that a province is failing to effectively do so. To date however, despite the fact that several provinces don’t even have species at risk legislation, no Minister has ever made such a recommendation, and the government has never passed such an order.

➔ **GRADE: F**

CONCLUSION – The shortcomings of SARA’s implementation highlighted in this report are directly impacting species at risk in Canada. Discouragingly, after six years of SARA implementation, only two species have had critical habitat protected outside of existing protected areas, and these only in response to a court case! In the absence of habitat protection for at-risk species, habitat degradation continues and we can expect Canadian species to continue to decline. As it stands now, the implementation of SARA is failing at its key goals of providing for the survival and recovery of species at risk and the protection of their critical habitat. The five-year review creates an opportunity for government to change its ways and to start effectively harnessing the Act’s potential to protect species and their habitats. Government must take strong actions to ensure that our imperilled species are given a fighting chance at survival and to truly facilitate species recovery.

➔ **OVERALL GRADE: F**

COVER PHOTOGRAPH of the
BANFF SPRINGS SNAIL:

Photo Credit: © Mark and Leslie Degner /
www.markandlesiedegner.com

SPOTTED OWL

The spotted owl is a perfect example of an instance in which the safety net should have been applied. In 2004, conservation organizations submitted a legal petition asking the Minister of Environment to employ the safety net to prevent the northern spotted owl from going extinct in Canada. At the time, there were less than 20 spotted owls documented in the wild. However, the Minister was of the opinion that the species did not face an immediate threat to its survival despite ongoing logging pressures in its habitat; the government failed to intervene and now the spotted owl is being extirpated in the wild. Most recently, only seven northern spotted owls have been counted in the wild.



Northern Spotted Owl Photo Sharon Toochin

ENDNOTES

- ¹ *Species at Risk Act* preamble.
- ² See Mooers, A. O., L. R. Prugh, M. Fest-Bianchet and J. A. Hutchings. 2007. Biases in legal listing under Canadian Endangered Species Legislation. *Conservation Biology* 21(3): 572-575.
- ³ COSEWIC 2004. COSEWIC assessment and update status report on the Peary caribou *Rangifer tarandus pearyi* and the barren-ground caribou *Rangifer tarandus groenlandicus* (Dolphin and Union population) in Canada. Committee on the Status of Endangered Wildlife in Canada. Ottawa, pp. 46 and 54.
- ⁴ Venter, O., N. N. Brodeur, L. Nemiroff, B. Belland, I. J. Dolinsek and J. W. A. Grant. 2006. Threats to endangered species in Canada. *Bioscience* 56(11): 903 – 910.
- ⁵ See Status Report of the Commissioner of the Environment and Sustainable Development to the House of Commons, March 2008.