

A ASSESSMENT

B LEGAL LISTING

C
RECOVERY

D
PROTECTION

SARA and the Habitat Management Program

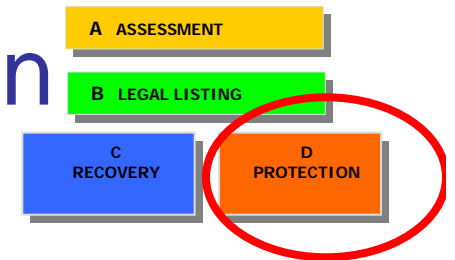
Anne Phelps
Habitat Program Services
CEA - St. John's, June 2004

SARA and the Habitat Management Program

Overview

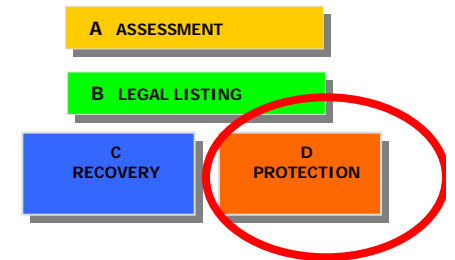
1. SARA and the Habitat protection provisions of the *Fisheries Act*
2. SARA and changes to the federal environmental assessment process

1. SARA and the habitat protection provisions of the *Fisheries Act*



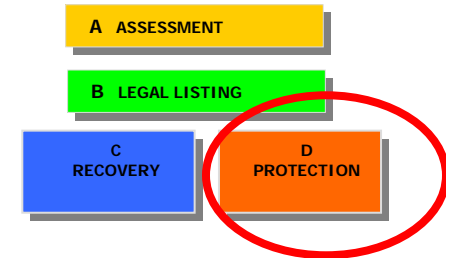
Prohibitions

- The SARA prohibitions [s. 32, 33, 58(1)] apply to aquatic species at risk that are classified as extirpated, endangered or threatened on the *List of Wildlife Species at Risk* (currently Schedule 1)
- These prohibitions apply to non-aquatic extirpated, endangered or threatened species only on federal land
- In order for the prohibitions to apply to non-aquatics on lands other than federal lands, the GIC may, on the recommendation of the MoE, make an order for the prohibitions to apply (safety net)



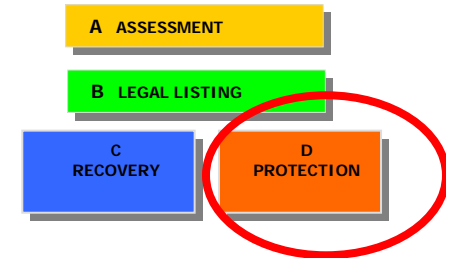
Prohibitions

- DFO is legally required to protect listed aquatic SAR, their residence and their critical habitat
- The *Fisheries Act* provides for the legal protection of fish and fish habitat
- *Fisheries Act* authorizations conform to requirements of SARA [S32,33,58(1)]
- DFO may not be able to authorize impacts to SAR, residence or critical habitat



Prohibitions

- Other habitat protection provisions of the *Fisheries Act* must also conform to SARA [S32,33,58(1)]
 - S.20 requires safe passage around obstructions
 - S. 22 requires appropriate water flows at obstructions
 - S. 30 provides for fish guards or screens where needed
 - S. 32 protects fish from destruction by means other than fishing (eg explosives)

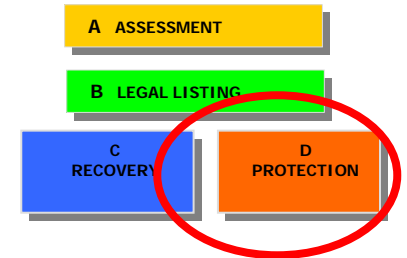


Prohibitions

- Sections 73/74 provide mechanism for issuing permits or agreements (including *Fisheries Act* authorizations), that may “affect” SAR, residence or critical habitat, preconditions **must** be met
- Interpretation of “affect” for aquatics should be restricted to the 3 prohibitions
- Not intended as broad permitting mechanism

Protection

Section 73 preconditions

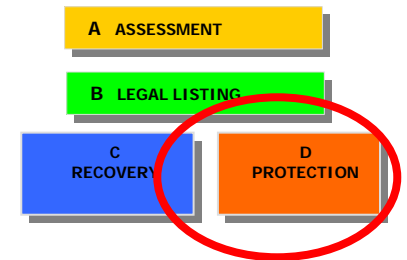


73(3) The agreement may be entered into, or the permit issued, only if the competent minister is of the opinion that:

- (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.

Protection

Section 73 preconditions

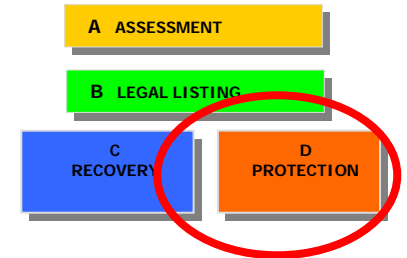


Additional conditions in subsections 73(4-9)

- Consult with wildlife management boards concerning the species at risk in that area
- Consult with bands (under the *Indian Act*) concerning the species at risk in that reserve or other lands
- The SARA permit or agreements (FA authorization) should:
 - contain terms and conditions necessary for protecting the species
 - be reviewed if an emergency order is made
 - not be issued for a term longer than 3 years

Protection

Section 73 preconditions

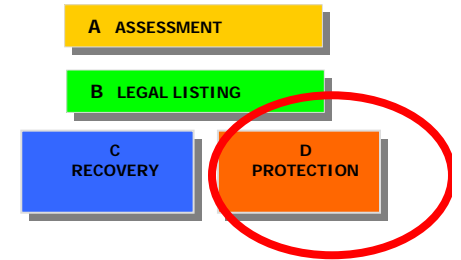


- If HMP determines that it is appropriate to issue a *Fisheries Act* authorisation that may affect SAR, critical habitat or residence, a separate SARA will not be issued.
- The necessary conditions will be added to the *Fisheries Act* authorisation.

Proposed approaches:

SARA and Interpretation Bulletins

- Integrate SARA into these bulletins upfront



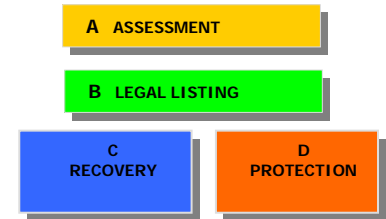
SARA and *Fisheries Act* authorisations

- The harmful alteration, disruption or destruction of fish habitat (“HADD”) is likely despite contemplated preventive measures
- The HADD is acceptable to DFO;
- An adequate fish habitat compensation has been proposed
- Undertake EA, ensure effects are not significant

NEW

- Meet criteria in section 73 of SARA
- Undertake requirements of SARA s.79 within an EA

2. SARA Linkages to CEAA



SARA is not a CEAA trigger.

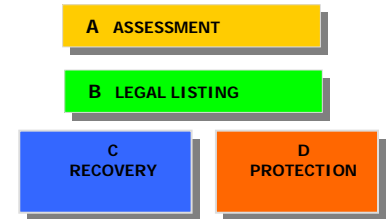
SARA:

137. The definition “environmental effect” in subsection 2(1) of the *Canadian Environmental Assessment Act* is replaced by the following:

“environmental effect” means, in respect of a project,

- (a) any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the *Species at Risk Act*,

SARA Linkages to CEAA



- **SARA 137. Continued**

(b) any effect of any change referred to in paragraph (a) on

(i) health and socio-economic conditions,

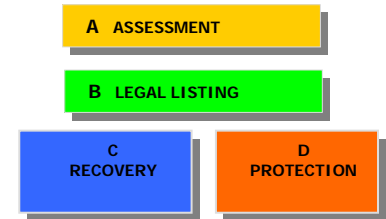
(ii) physical and cultural heritage,

(iii) the current use of lands and resources for traditional purposes by aboriginal persons, or

(iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, or

(c) any change to the project that may be caused by the environment, whether any such change or effect occurs within or outside Canada.

SARA Linkages to CEAA

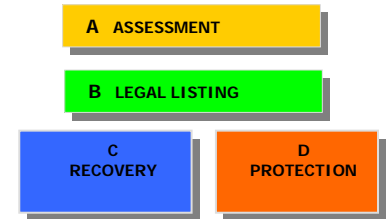


S. 79. (1) Every person who is required by or under an Act of Parliament to ensure that an assessment of the environmental effects of a project is conducted must, without delay, notify the competent minister or ministers in writing of the project if it is likely to affect a listed wildlife species or its critical habitat.

“person” includes an association or organization, and a responsible authority as defined in subsection 2(1) of the *Canadian Environmental Assessment Act*.

“project” means a project as defined in subsection 2(1) of the *Canadian Environmental Assessment Act*.

SARA Linkages to CEAA



S. 79. (2) The person must identify the adverse effects of the project on the listed wildlife species and its critical habitat and, if the project is carried out, **must ensure that measures are taken to avoid or lessen those effects and to monitor them.** The measures must be taken in a way that is consistent with any applicable recovery strategy and actions plans.

Note that monitoring under SARA is not necessarily Follow-up under CEAA