

Chapter

12

Listing of Species at Risk

All of the audit work in this chapter was conducted in accordance with the standards for assurance engagements set by The Canadian Institute of Chartered Accountants. While the Office adopts these standards as the minimum requirement for our audits, we also draw upon the standards and practices of other disciplines.

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Previous Audits of Responses to Environmental Petitions

Listing of Species at Risk

Main Points

What we examined

We sought to determine whether Environment Canada had made satisfactory progress in addressing a significant observation made in our 2005 audit of the response to a petition submitted in 2002 on developing guidelines for listing species at risk. In the response, the Minister of the Environment agreed to develop such guidelines. Our 2005 audit noted that the Department planned to have these guidelines in place by 2006.

Why it's important

The *Species at Risk Act* is one of the legal cornerstones for the protection of wildlife in Canada, helping to conserve and protect species and ultimately biodiversity. Under the Act, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) assesses the status of species and advises on whether the species should be added to the List of Wildlife Species at Risk. A species not listed does not benefit from the provisions of the Act. Currently, there are no public guidelines available for the government and the Minister to use when deciding not to list a species that the Committee has assessed as being at risk. Final guidelines would help confirm that the government's decision-making process on the protection of species at risk is consistent, systematic, and transparent.

What we found

Progress is unsatisfactory. Environment Canada has not yet finalized its guidelines for dealing with cases in which the Minister recommends not adding to the List of Wildlife Species at Risk a species assessed by COSEWIC as being at risk. Although the Department has drafted guidelines, they are not publicly available, have changed over time, and are not applied consistently or systematically. In the meantime, 20 species that COSEWIC has assessed as at risk have not been listed due to socio-economic reasons and a requirement for additional consultation with the Nunavut Wildlife Management Board.

Environment Canada has responded. Environment Canada agrees with our recommendation. The Department's detailed response follows the recommendation in the chapter.

Introduction

Federal lands—Lands that belong to Her Majesty in right of Canada, or that Her Majesty in right of Canada has the power to dispose of, and all waters on and airspace above those lands. Federal lands also include the internal waters of Canada and the territorial sea of Canada, as well as reserves and any other lands that are set apart for the use and benefit of a band under the *Indian Act*, and all waters on and airspace above those reserves and lands.

Committee on the Status of Endangered Wildlife in Canada (COSEWIC)—The Committee assesses the status of wildlife species in Canada that may be at risk. It currently consists of 30 members from the provinces and territories, federal agencies, Aboriginal groups, and other organizations.

Governor in Council (in the context of the *Species at Risk Act*)—Refers to the Governor General acting with the advice and consent of Privy Council, who may, on the recommendation of the Minister of the Environment, amend the List of Wildlife Species at Risk by adding, reclassifying, or removing a species.

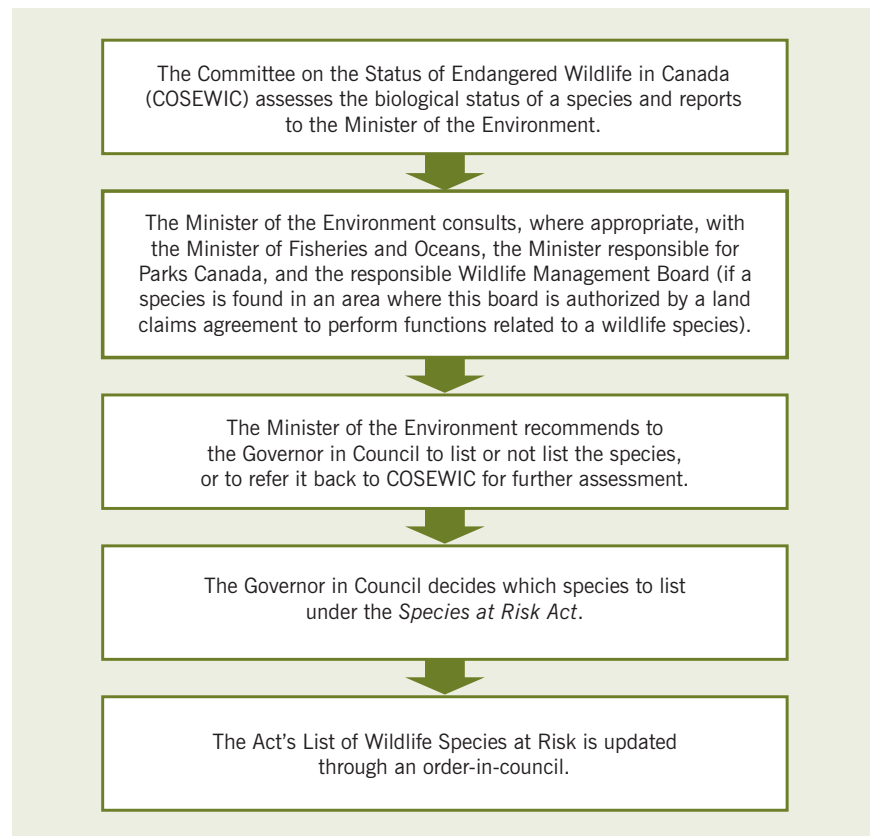
12.1 Parliament passed the *Species at Risk Act* in December 2002, and most of the Act's provisions came into force in June 2003. The Act is one of the legal cornerstones for the protection of wildlife in Canada, helping to conserve and protect species and ultimately biodiversity. The Act provides for the protection and recovery of species considered at risk and found on **federal lands** or under federal jurisdiction, and also for the protection of critical habitat. The *Species at Risk Act* is designed to complement related provincial and territorial legislation.

12.2 Before a species can be added to the List of Wildlife Species at Risk under the Act, it must first be assessed as at risk by the **Committee on the Status of Endangered Wildlife in Canada (COSEWIC)**. Based on this scientific assessment, and with input where applicable from the ministers responsible for Fisheries and Oceans Canada and Parks Canada, the Minister of the Environment considers a variety of factors and recommends to the **Governor in Council** to list or not to list the species or to refer it back to COSEWIC for further assessment (Exhibit 12.1). As of June 2007, there were 389 species on the List of Wildlife Species at Risk.

12.3 Whether a species is listed or not can have significant implications. When a species is listed as endangered or threatened under the *Species at Risk Act*, killing or harming the species, or harming its residence, is prohibited for a species found on federal lands and/or under federal jurisdiction. Planning for recovery of the species must also be done. A species that is not listed does not benefit from the provisions of the Act, although it may benefit from other federal, provincial, or territorial conservation efforts. Guidelines for making listing decisions are important because they ensure a transparent and consistent approach to determining whether or not to list species.

Environment Canada committed to finalizing the guidelines for listing species at risk

12.4 In November 2002, petition 61 was submitted requesting information about the criteria used to determine whether or not to list species on the List of Wildlife Species at Risk. The Minister of the Environment responded that the federal government was developing guidelines for dealing with cases in which the Minister decided not to follow COSEWIC advice to list a species as being at risk under the Act. However, the Minister did not provide a time frame for finalizing the new guidelines.

Exhibit 12.1 Process to list a species at risk

What we found in 2005

12.5 In the Commissioner’s 2005 Report, Chapter 8, we reported that Environment Canada expected to have the guidelines in place in 2006 to assist the government and the Minister when considering science-based advice from COSEWIC. While we made no specific recommendation at the time, we stated in conclusion that “until these guidelines are in place, Environment Canada cannot ensure that decisions being made to list or not to list a species at risk are transparent or consistent.”

Focus of the audit

12.6 We sought to determine whether Environment Canada had made satisfactory progress in developing guidelines to assist with recommendations to list or not to list species at risk and in addressing the above-noted key observation from our 2005 audit.

12.7 More details on the audit objective, scope, approach, and criteria are in **About the Audit** at the end of this chapter.

Other chapters in this report also contain information on the *Species at Risk Act*:

- Chapter 4: Federal Protected Areas for Wildlife
- Chapter 5: Protection of Species at Risk

Observations and Recommendation

Guidelines for listing species at risk are still not in place

12.8 No timelines exist for finalizing the guidelines. Given the importance of decisions on listing species at risk, we expected that Environment Canada had finalized the guidelines by the end of 2006 and used them in recommending whether or not to list species. In 2005, Environment Canada provided us with a set of draft guidelines consisting of criteria that the Minister considered when recommending not to list a species assessed as at risk by COSEWIC. However, during this follow-up audit, we noted that these draft guidelines had changed over time and still not been finalized. Environment Canada indicated that it expected the guidelines to be approved by December 2007, following approval of the new National Framework for Species at Risk Conservation. More recent information from the Department indicates that it expects the key policies of the Act to be in place in the winter of 2008 and the guidelines to be completed shortly thereafter. However, there are still no definitive timelines for finalizing these guidelines.

12.9 Environment Canada considers some criteria from the draft guidelines in its consultation and ministerial recommendations on listing, but it could not demonstrate that it uses the draft guidelines consistently or systematically. The Department told us that it considers some criteria on a case-by-case basis but acknowledged that it could be more systematic and consistent in its approach.

12.10 The results of the listing decisions are published in the *Canada Gazette* along with the related regulatory impact analysis statements. We noted that more recent decisions reported in the *Canada Gazette* provide more details on the reasons for not listing species. However, these reports do not specify which criteria were considered in making a decision. For example, the *Canada Gazette* may indicate that a species was not listed for socio-economic reasons, but it does not discuss other criteria the Minister considered in developing a recommendation. Furthermore, the Department has not published or made available the current draft guidelines containing the criteria used in the decision-making process. Without final public guidelines, Environment Canada cannot demonstrate that recommendations being made to list or not to list a species at risk are consistent, systematic, and transparent (Exhibit 12.2).

Exhibit 12.2 Progress in addressing our finding on guidelines for listing species at risk is unsatisfactory

Finding	Progress
Environment Canada committed to having final guidelines in place by 2006 for dealing with cases in which the Minister does not follow COSEWIC advice to add a species to the List of Wildlife Species at Risk. Until these guidelines are in place, Environment Canada cannot ensure that decisions on listing or not listing a species at risk are transparent and consistent. (2005 Report of the Commissioner of the Environment and Sustainable Development, Chapter 8, see paragraph 8.40)	Unsatisfactory

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the finding was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the finding was made.

12.11 Recommendation. Environment Canada should ensure that the guidelines to make recommendations for listing species at risk are finalized, made publicly available, and implemented.

Environment Canada's response. The Department accepts the recommendation. Guidelines for listing/delisting wildlife species under the *Species at Risk Act* (SARA) were approved in principle in September 2006 by the Deputy Heads Steering Committee for Species at Risk (Environment Canada, Fisheries and Oceans Canada, and Parks Canada), and together with federal regulatory policy have guided subsequent decisions.

Due to evolving legislative and policy frameworks in provinces and territories, and the implications of this for SARA, a National Framework for Species at Risk Conservation was developed and endorsed by the Canadian Council of Resource Deputy Ministers in September 2007. As a result, the guidelines for listing/delisting wildlife species under SARA are being reviewed for consistency. Once this federal review is complete, the guidelines will be made public.

Twenty species assessed as at risk have not been listed

12.12 In the absence of final guidelines for decision making, we found that 20 species assessed as at risk by COSEWIC had not been recommended for listing by the Minister of the Environment (Exhibit 12.3). There were two main reasons given: socio-economic considerations (10 cases) and the need for further consultation with the Nunavut Wildlife Management Board (10 cases).

Exhibit 12.3 Species assessed as at risk by COSEWIC but not recommended for listing by the Minister of the Environment

Species name	Governor in Council Decision date	Rationale for not listing
Terrestrial species		
1. Grizzly Bear, Northwestern population	January 2005	Consultation with the Nunavut Wildlife Management Board (NWMB) required
2. Wolverine, Western population	January 2005	NWMB consultation required
3. Peary Caribou	July 2005	NWMB consultation required
4. Plains Bison	July 2005	Socio-economic considerations
5. Porsild's Bryum	July 2005	NWMB consultation required
6. Barren-ground Caribou, Dolphin and Union population	July 2005	NWMB consultation required
Aquatic species		
7. Pacific Sockeye Salmon, Cultus population	January 2005	Socio-economic considerations
8. Pacific Sockeye Salmon, Sakinaw population	January 2005	Socio-economic considerations
9. Coho Salmon, Interior Fraser population	April 2006	Socio-economic considerations
10. Atlantic Cod, Laurentian North population	April 2006	Socio-economic considerations
11. Atlantic Cod, Maritimes population	April 2006	Socio-economic considerations
12. Atlantic Cod, Newfoundland and Labrador population	April 2006	Socio-economic considerations
13. Beluga Whale, Cumberland Sound population	August 2006	NWMB consultation required
14. Beluga Whale, Eastern High Arctic and Baffin Bay populations	August 2006	NWMB consultation required
15. Beluga Whale, Eastern Hudson Bay population	August 2006	NWMB consultation required
16. Beluga Whale, Ungava Bay population	August 2006	NWMB consultation required
17. Beluga Whale, Western Hudson Bay population	August 2006	NWMB consultation required
18. Porbeagle Shark	August 2006	Socio-economic considerations
19. White Sturgeon, Lower Fraser River population	August 2006	Socio-economic considerations
20. White Sturgeon, Middle Fraser River population	August 2006	Socio-economic considerations

Source: *Canada Gazette* and Environment Canada data



The grizzly bear is not listed as a species at risk

In 2004, COSEWIC estimated that there were about 26,000 grizzly bears in Canada—about 14,000 in British Columbia (the largest population), 6,000–7,000 in the Yukon, 5,100 in the Northwest Territories, 800–2,000 in Nunavut, and 1,000 in Alberta. The grizzly bear has not been listed for protection in Canada under the *Species at Risk Act* pending consultation with the Nunavut Wildlife Management Board.

12.13 Although socio-economic considerations were cited in the decisions not to list 10 species, we found that Environment Canada could not demonstrate how it used socio-economic information in developing a recommendation to list or not to list a species. Officials told us that they are working to align approaches with Fisheries and Oceans Canada and Parks Canada to develop a common set of guidelines to assess socio-economic considerations in a consistent manner.

12.14 COSEWIC assessed a number of species within the area managed by the Nunavut Wildlife Management Board and advised that 10 of them be added to the list of species at risk. The Minister of the Environment recommended that none of these be listed, citing the need for further consultation with the Nunavut Wildlife Management Board. The Board expressed concern about insufficient consultation with Nunavut communities when the federal government was deciding whether to list the 10 species. Environment Canada officials told us that the listing of each species will be reconsidered when consultations are concluded.

12.15 Environment Canada, Fisheries and Oceans Canada, and Parks Canada have begun working with the Board to harmonize the designation and protection of rare and endangered species under the Nunavut Land Claims Agreement and the *Species at Risk Act*. Although they have made recent progress, at the end of our audit the harmonization agreement was still under development. Until this harmonization agreement is in place, there is no definitive timeline for concluding these consultations, and species assessed by COSEWIC as being at risk remain without federal protection.

12.16 Environment Canada's monitoring of species not listed is limited. COSEWIC reviews the status of species it assesses, whether they are listed or not, every 10 years, or less if warranted. In the interim, Environment Canada relies on other agencies as well as provincial and territorial governments to monitor the status of species. Department officials stated that monitoring of species not listed varies by species and jurisdiction, depending on the issues involved and the resources available. We noted that Environment Canada has done limited monitoring of some species not recommended for listing, such as the barren ground caribou. It is important that the Department know the status of a species not recommended for listing in order to understand the consequences of decisions not to list species for federal protection.

Conclusion

12.17 Environment Canada's progress on its commitment to finalize guidelines for listing species at risk by 2006 is unsatisfactory. The Department has not yet finalized its guidelines for dealing with cases in which the Minister recommends not adding to the List of Wildlife Species at Risk a species assessed by COSEWIC as being at risk. Although it has drafted guidelines, these are not publicly available, have changed over time, and are not applied consistently or systematically. In the meantime, 20 species assessed as being at risk have not been listed for federal protection.

About the Audit

Objective

The objective of our audit was to determine whether Environment Canada had made satisfactory progress in addressing a significant observation noted in our 2005 audit of guidelines for listing species at risk.

Scope and approach

Since 2003, the Commissioner of the Environment and Sustainable Development has conducted 11 petition response audits on a wide variety of subjects. To identify which of the 11 were suitable for follow-up audit, we examined the information available in our recommendations database, consulted with staff involved in the original audits, and conducted research. To rank the audits for potential follow-up audit work, we developed criteria based on internal guidance on performance auditing.

We also considered criteria pertaining to auditability, sensitivity, risk, and availability of resources. On the basis of assessments against these criteria, an advisory committee considered the top-ranked issues and selected four. The results for each of these audits are reported in four chapters—11, 12 (this chapter), 13, and 14.

In this audit, we evaluated the progress made by Environment Canada on its commitment to address our observation in the 2005 Report, Chapter 8, paragraph 8.40. To do so, we reviewed documentation and files and interviewed departmental officials and external experts.

Criteria

The criteria for the audit were derived from the findings from our 2005 audit of guidelines for listing species at risk.

We expected that the Department would have finalized guidelines by 2006 for dealing with cases in which the Minister of the Environment decided not to follow COSEWIC advice to add a species to the List of Wildlife Species at Risk.

Audit work completed

Audit work for this chapter was substantially completed on 29 October 2007.

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Appendix List of recommendations

The following recommendation is found in Chapter 12. The number in front of the recommendation indicates the paragraph number where it appears in the chapter. The numbers in parentheses indicate the paragraph numbers where the topic is discussed.

Recommendation	Response
Guidelines for listing species at risk are still not in place	
<p>12.11 Environment Canada should ensure that the guidelines to make recommendations for listing species at risk are finalized, made publicly available, and implemented. (12.8–12.10)</p>	<p>The Department accepts the recommendation. Guidelines for listing/delisting wildlife species under the <i>Species at Risk Act</i> (SARA) were approved in principle in September 2006 by the Deputy Heads Steering Committee for Species at Risk (Environment Canada, Fisheries and Oceans Canada, and Parks Canada), and together with federal regulatory policy have guided subsequent decisions.</p> <p>Due to evolving legislative and policy frameworks in provinces and territories, and the implications of this for SARA, a National Framework for Species at Risk Conservation was developed and endorsed by the Canadian Council of Resource Deputy Ministers in September 2007. As a result, the guidelines for listing/delisting wildlife species under SARA are being reviewed for consistency. Once this federal review is complete, the guidelines will be made public.</p>

