

**Questions and Answers:
Legislation and Policy for the Protection of Garry Oak Ecosystems**

This is an overview of the legislative and policy framework that guides the work of the Garry Oak Ecosystems Recovery Team (GOERT) and associated efforts to protect Garry oak ecosystems in British Columbia.

Disclaimer: This information has been prepared for communication purposes and convenience of reference only. It is not a substitute for the *Species at Risk Act*, any other federal or provincial legislation or associated regulations. In the event of an inconsistency between the information included here and specific Acts or their regulations, the latter would prevail. Official or more detailed information can be found in the legal text of specific legislation (e.g. the *Species at Risk Act*) and from government sources (e.g. SARA Public Registry www.sararegistry.gc.ca and BC Ministry of Environment www.env.gov.bc.ca/wld/serisk).

1. What is the legal basis for the protection of species at risk found in Garry oak ecosystems?

The protection of Garry oak ecosystems is predicated on interests and responsibilities of the governments of Canada and British Columbia, set out in federal and provincial legislation and agreements to cooperate on the conservation of species at risk:

- A. Federal-provincial cooperation** – Federal, provincial and territorial government ministers endorsed an *Accord for the Protection of Species at Risk* in 1996. The Accord was strengthened with increased recognition of stewardship in 1998. More recently, in 2005, the BC Minister of Water, Land and Air Protection and the federal Ministers of Environment and Fisheries and Oceans signed the *Canada-British Columbia Agreement on Species at Risk*, establishing joint species at risk steering and coordinating committees to support cooperative and effective effort (see www.speciesatrisk.gc.ca/recovery/accord_bac_e.cfm).
- B. Federal *Species at Risk Act* (SARA)** – SARA, proclaimed in June 2003 and brought into full force in 2004, sets out a rationale, committee structure, responsibilities, processes and administrative provisions for identifying, protecting and recovering species at risk in Canada. The Act is the legislative tool by which the federal government honours its commitments under the *Accord for the Protection of Species at Risk*. Extensive information about SARA, at various levels of detail, is available at www.speciesatrisk.gc.ca/recovery/accord_bac_e.cfm.
- C. BC *Wildlife Act* and other provincial legislation** – The *Wildlife Act*, once the *Wildlife Amendment Act* of 2004 is brought into force, will enable the provincial Cabinet to “list” plant, animal and invertebrate species at risk – congruent with the federal SARA – and also to define and protect the residence of a listed species. Currently, the *Wildlife Act* lists four species at risk (sea otter, white pelican, burrowing owl and Vancouver Island marmot). Additional information and links to the legislation can be found at www.env.gov.bc.ca/wld/faq.htm#2 and www.env.gov.bc.ca/wld/serisk. There are also provisions for the protection of

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“identified wildlife” (such as species at risk) in other provincial legislation, such as the *Forest and Range Practices Act* and the *Private Managed Forest Land Act*.

2. What federal and provincial government agencies are responsible for the protection of species at risk and recovery of Garry oak ecosystems?

Core federal departments and agencies responsible for actions under the *Species at Risk Act* (SARA) are Environment Canada (www.speciesatrisk.gc.ca), Fisheries and Oceans Canada (www.dfo-mpo.gc.ca/species-especies/home_e.asp) and the Parks Canada Agency (www.pc.gc.ca/nature/eep-sar). The Minister of Environment has primary responsibility for administration of SARA.

Provincially, the Ministry of Environment (formerly Ministry of Water, Land and Air Protection) is responsible for administration of the *Wildlife Act*. The Conservation Data Centre (CDC) provides information on species and ecosystems at risk (see www.env.gov.bc.ca/cdc), and the Environmental Stewardship Division coordinates species at risk recovery planning (see www.env.gov.bc.ca/wld/serisk).

The Garry Oak Ecosystems Recovery Team (GOERT) undertakes recovery planning for species at risk in Garry oak and associated ecosystems. GOERT receives resources from provincial and federal government agencies, as well as many other organizations and individuals with an interest in Garry oak ecosystems and their associated species at risk. GOERT is chaired by a staff member from the Parks Canada Agency. The Parks Canada Agency is the lead SARA agency responsible for recovery planning for most federally-listed GOERT species.

3. What is a “species at risk” and how is species status assessed?

As defined in the *Species at Risk Act* (SARA), a “species at risk” means an *extirpated*, *endangered* or *threatened* species, or a species of *special concern*. An extirpated species is a wildlife species that no longer exists in the wild in Canada but exists elsewhere in the wild. An endangered species is one facing imminent extirpation or extinction. A threatened species is one that is likely to become endangered if nothing is done to reverse the factors leading to its extirpation or extinction. A species of special concern is one that may become a threatened or endangered species because of a combination of biological characteristics and identified threats. SARA includes a schedule of “listed” species under each of these categories.

The status of species at risk in Canada is assessed at both provincial and national levels, and these processes inform one another. At the national level, the assessment and recommended categorization of wildlife species (as endangered, threatened, extirpated or of special concern) is the responsibility of the *Committee on the Status of Endangered Wildlife in Canada* (COSEWIC), a committee with expert knowledge of species at risk appointed by the federal Minister of Environment under terms set out in SARA (www.cosewic.gc.ca). COSEWIC provides recommendations to the federal minister, as well as to the Canadian Endangered Species Conservation Council (made up of federal, provincial and territorial ministers). The federal Minister of Environment is responsible for either updating the list of species at risk based on recommendations of COSEWIC, or posting a rationale for alternative actions on the SARA Public Registry (www.sararegistry.gc.ca).

In British Columbia, specialists with the Conservation Data Centre, in consultation with other experts, assign species conservation status ranks according to an internationally

established set of criteria. On the basis of these ranks, species are categorized into a *red list* (candidates for extirpated, endangered or threatened status) and a *blue list* (species not immediately threatened, but of concern). Provincially, vertebrate species on the provincial red list, or assessed by COSEWIC as extirpated, endangered, threatened or special concern, are among the candidates for legal listing under the *Wildlife Act*. When the *Wildlife Amendment Act* is brought into force, invertebrates and plants will be eligible for listing, and residences may be prescribed for listed species. Species on the red and blue lists affected by forest and range practices are also eligible for listing as a category of species at risk in the *Forest and Range Practices Act* (FRPA) and the *Private Managed Forest Land Act*. Once listed, management tools enabled under FRPA, such as wildlife habitat areas and general wildlife measures, can be used to address the species' habitat requirements. Species included in the category of species at risk, along with regionally important wildlife, are known as "identified wildlife", and are managed under the Identified Wildlife Management Strategy (IWMS). The IWMS provides direction, policy, procedures and guidelines for managing Identified Wildlife. Additional information, and a figure describing the links between the national and British Columbia assessment processes, is available at www.env.gov.bc.ca/wld/faq.htm#2.

4. What is an "ecosystem at risk"? What is a "multi-species approach" to planning for the recovery of species at risk?

The BC Ministry of Environment uses the following definition of an ecosystem: "a dynamic complex of plant, animal, and microorganism communities and the nonliving environment interacting as a functional unit (ecosystems vary enormously in size: a temporary pond in a tree hollow and an ocean basin can both be ecosystems)." The Ecosystems Branch of the Ministry further defines an "ecosystem at risk" as: "an extirpated, endangered or threatened ecosystem or an ecosystem of special concern" (see www.env.gov.bc.ca/atrisk/glossary). While the federal *Species at Risk Act* does not explicitly use the term "ecosystem at risk", it does enable the adoption of a "multi-species or an ecosystem approach when preparing the management plan if he or she considers it appropriate to do so" (SARA sec. 67).

The Garry Oak Ecosystems Recovery Team (GOERT) has been established with an explicit focus on Garry oak and associated ecosystems. These include a complex of closely related coastal bluff, maritime meadow, vernal pool, grassland, rock outcrop and transitional forest ecosystems in southwest British Columbia. These ecosystems are home to more than 100 species that are on British Columbia's red and blue lists of species at risk. GOERT has adopted, wherever possible, a multi-species approach towards planning for recovery of species at risk in specified ecosystems within Garry oak habitats because they contain a large number of closely associated species with common biological characteristics and/or habitat requirements.

5. What are the legal tools and processes for protecting and recovering species at risk in Garry oak ecosystems that have been identified and listed under the *Species at Risk Act*?

Note that while this section focuses on the legal provisions of the federal *Species at Risk Act*, there are many other avenues available for protecting and supporting the recovery of species at risk and Garry oak ecosystems. Local government, for example, is empowered to make bylaws, set land use zoning and development permit areas, and place restrictive covenants for protection of the environment (under the BC *Community Charter*,

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Local Government Act and *Land Title Act*). Additional information is available from West Coast Environmental Law (www.wcel.org/resources/publications/default.cfm) and MOE Environmental Best Management Practices (www.env.gov.bc.ca/wld/BMP/bmpintro.html) for urban and rural land development.

The *Species at Risk Act* (SARA) sets out a series of steps and identifies legal tools for the protection and recovery of species at risk that may be used by the responsible federal ministers and agencies. The Act also contains provisions for consultation and posting of information that must be followed. The SARA Public Registry (www.sararegistry.gc.ca) is the central repository for posting of required information, as well as additional material concerning the Act and associated regulations and guidelines.

Recovery strategies – are the primary tools for planning the recovery of endangered, threatened and extirpated species that have been listed under SARA (sections 37-46). The Act requires a recovery strategy to be prepared in cooperation with provincial governments and aboriginal organizations, and in consultation with any landowners or other persons who are directly affected by the strategy – and posted on the SARA Public Registry prior to finalization. A recovery strategy sets out an assessment of the threats to the species' survival and the actions needed for its (or their) recovery. Elements of a recovery strategy include: a description of the species and its needs; identification of threats to the survival of the species and threats to its habitat and description of “the broad strategy to be taken to address those threats”; identification of the species' *critical habitat* and a schedule of studies to identify critical habitat where available information is inadequate; recovery goals and objectives in terms of population size and distribution; and a statement of when one or more *action plans* in relation to the recovery strategy will be completed.

Critical habitat – is an important component of recovery strategies and subsequent action plans for the recovery of species at risk. SARA recognizes that “the habitat of species at risk is key to their conservation” and defines critical habitat as “the habitat that is necessary for the survival or recovery of a listed wildlife species and that is identified as the species critical habitat in the recovery strategy or in an action plan for the species.” The Act sets out obligations of the Minister, and consultation, application and compensation provisions associated with the protection of critical habitat (sections 56-64).

Federal policy for identification and protection of critical habitat emphasizes “cooperation and stewardship first” – recognizing that while “SARA contains strong mechanisms and powers for the federal government to directly and unilaterally regulate the protection of residence and critical habitat in Canada, cooperative, voluntary measures must be viewed as the first option to securing the protection required for these crucial elements to species recovery.” This approach is reiterated in the 2005 Canada-British Columbia Agreement on Species at Risk which affirms as principles that: “stewardship by land and water owners and users is fundamental to preventing species from becoming at risk and in protecting and recovering species that are at risk”; “cooperative, voluntary measures are the first approach to securing the protection and recovery of species at risk”; and “Canada and British Columbia are committed to carrying out consultations with those who may be directly affected by protection and recovery of species at risk.”

Action plans – are prepared following direction set out in a recovery strategy and share the same cooperative and consultative process requirements as recovery strategies. Ac-

tion plans must contain specific measures proposed to achieve population goals and objectives for the species at risk. Such measures include protection of critical habitat, identification of critical habitat that has not been protected, actions to address threats to the species and to help achieve species population and distribution objectives, and methods to monitor the recovery of the species and its long term viability. Action plans must include an evaluation of the socio-economic costs, as well as the benefits to be derived from their implementation (sections 47-55).

General prohibitions – are measures set out in SARA to protect listed species. The Act prohibits killing, harming, harassing, capturing, taking, or possessing individuals of a SARA-listed wildlife species. The damage or destruction of the “residence” (such as a den or nest) of a listed species is also prohibited. These prohibitions apply to listed species on all federal lands and waters, aquatic species protected by the *Fisheries Act*, and migratory birds protected by the *Migratory Birds Convention Act*. “Federal lands” as defined in SARA include internal waters, territorial seas and “reserves and any other lands that are set apart for the use of a band under the *Indian Act*.” Provinces and territories may accord similar protection to listed species on lands and waters under their jurisdiction. The federal minister may make an “order” extending protection if he or she “is of the opinion that the laws of the province do not effectively protect the species or the residences of its individuals” but only after consultation with the provincial minister. The federal and BC provincial governments have established senior and working level bilateral committees to coordinate and provide consistency in species at risk planning, protection and recovery initiatives.

Other tools – set out in SARA are available for the protection and recovery of species at risk in Garry oak ecosystems. The Act allows establishment of a *stewardship action plan* “that creates incentives and other measures to support voluntary stewardship actions.” The federal minister (of environment) may also enter into a *conservation agreement* “to benefit a species at risk or enhance its survival in the wild” that includes funding or other contributions. *Management plans* must be prepared for species listed as a species of special concern. *Agreements* or *permits* may be issued for specific activities affecting a listed species, any part of its critical habitat or residences of its individuals – for scientific research or activities that benefit or have only “incidental” effect on the species. The federal Cabinet, on recommendation of the Minister of Environment, may also make an *emergency order* to provide for the protection of a listed wildlife species. This order may only be made if the Minister is “of the opinion that the species faces imminent threats to its survival or recovery” and following consultation with “every other competent minister.”

6. What incentives are available for the protection of species at risk in Garry oak ecosystems?

There are many programs available to private landowners, community organizations, government agencies and the academic research community that are intended to support the protection and recovery of species at risk. They have been established by federal and provincial governments, and other organizations, in the spirit of supporting stewardship and cooperation to protect species at risk. Programs include:

Habitat Stewardship Program – (HSP) for Species at Risk is one of the “three pillars” of the federal strategy for species at risk (the other two being the cooperative Accord for Protection of Species at Risk and the *Species at Risk Act*). The HSP allocates up to \$10 million per year to projects that conserve and protect species at risk and their habitats.

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The overall goal of the HSP is to "contribute to the recovery of endangered, threatened, and other species at risk, and to prevent other species from becoming a conservation concern, by engaging Canadians from all walks of life in conservation actions to benefit wildlife." The HSP provides funding to "stewards" for implementing activities that protect or conserve habitats for species designated by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) as nationally "at risk" (endangered, threatened or of special concern). These activities must take place on private lands, provincial Crown lands, Aboriginal lands, or in aquatic and marine areas across Canada. The program also fosters partnerships among organizations interested in the recovery of species at risk (see www.cws-scf.ec.gc.ca/hsp-pih).

Interdepartmental Recovery Fund – (IRF) supports federal organizations in their efforts to meet the requirements of the proposed Species at Risk Act. It provides funding to federal departments and departmental corporations for implementing recovery activities for listed species that are on federal lands or under federal jurisdiction. IRF also supports surveys of endangered, threatened and extirpated species on federal lands (see www.speciesatrisk.gc.ca/support/irf_fir).

Endangered Species Recovery Fund – is a joint initiative of Environment Canada and World Wildlife Fund (Canada) and intended for university researchers and conservation and other groups to support recovery activities (see www.wwf.ca/NewsAndFacts/Projects/ESRF.asp).

Ecological Gifts – program is intended for private landowners and corporations wishing to donate land without incurring a tax related penalty. An "ecogift" can be a donation of land or a partial interest in land - such as a conservation easement, covenant or servitude (see www.cws-scf.ec.gc.ca/egp-pde).

EcoAction – is a federally supported community funding program that provides financial support to community groups for projects leading to positive and measurable results for the environment (see www.ec.gc.ca/ecoaction/index_e.htm).

7. I own private land in southwestern British Columbia that may be Garry oak habitat. How does species at risk legislation affect me?

GOERT has coordinated the development and approval of several "multi-species" recovery strategies for species at risk associated with Garry oak ecosystems (Garry oak woodlands, maritime meadows, vernal pools and other ephemeral wet areas). These recovery strategies emphasize a cooperative approach in working with landowners and land managers to protect and manage areas of important habitat for species at risk in these ecosystems. Critical habitat for listed species under each of the recovery strategies will be identified in subsequent recovery action plans, following consultation with relevant landowners and land managers.

Information for private landowners about the *Species at Risk Act* is provided on the SARA Public Registry at www.sararegistry.gc.ca/gen_info/featureditems/privland_e.cfm.