June 29, 2023

Tara Shannon, Assistant Deputy Minister
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351 Saint-Joseph Boulevard
Gatineau, QC K1A 0H3

Sent via email to ec.registrelep-sararegistry.ec@canada.ca

Re: Draft Policy on Assessing Imminent Threats under Sections 29 and 80 of the Species at Risk Act – terrestrial species

Dear Ms. Shannon:

Thank you for the opportunity to comment on the draft imminent threats assessment (ITA) policy. We are submitting this letter as scientists with Wildlife Conservation Society (WCS) Canada specializing in wildlife ecology (including species at risk), conservation ecology, land use planning, impact assessment, and cumulative impacts. Both of us have significant familiarity with the listing and recovery components of the Species at Risk Act (SARA): We have served as co-chair of the terrestrial mammals subcommittee of the Committee on the Statue of Endangered Wildlife in Canada (COSEWIC), deputy chair of the Committee on the Status of Species At Risk in Ontario (COSSARO), and members of the Endangered Species Act Review Advisory Panel for the Ontario Ministry of Natural Resources through to the passage of the Ontario ESA (2008), federal and provincial recovery teams and critical habitat advisory groups, and the current federal Nature Advisory Committee.

We are encouraged to see this critical SARA policy released for public consultation, given the foundational scientific role of assessing imminent threats on non-federal lands for implementing and/or informing emergency order and safety net order provisions as instruments under the Act. These are key tools for preventing extirpation and extinction and recovering threatened and endangered species at risk in Canada and for meeting federal commitments to halt and reverse nature loss by 2030. Just a few months ago, however, the Commissioner of the Environment and Sustainable Development (CESD) issued a report -- Discretionary Powers to Protect Species at Risk1 -- that called attention to how rarely these instruments have been used over the past 20 years, despite continuing (and growing) evidence that many species at risk are not recovering, or even more concerning, are being reassessed into high risk categories2 and that one in five species is a some level of risk in Canada3.

1 https://www.oag-bvg.gc.ca/internet/docs/parl_cesd_202304_03_e.pdf
3 https://www.wildspecies.ca/summary
Key recommendations in the CESD report included the need to 1) complete and approve policies on SARA provisions to address imminent threats to species on non-federal lands, and 2) proactively collect and assess available information and data to carry out ITAs so that the Minister can receive relevant timely advice to inform the use of these provisions to “help protect threatened species where and when needed” (p. iii of CESD Report).

Environment and Climate Change Canada (ECCC) agreed with all recommendations in the CESD report, and the issuance of this draft policy is one key step. But, as we point out here, the draft policy provides no indication of any discernible shift in the processes of collecting information and decision making that is reflected in the CESD recommendations.

Having no wish to repeat what is already described in sufficient detail in the CESD report, we outline below our three overarching concerns about the draft policy: 1) it does not clearly establish a robust and proactive science-based process of information gathering and analysis to provide advice to the Minister; 2) it lacks a clear definition of “imminent threat” and 3) it contains a weak articulation and apparent conception of “measures” to address imminent threat.

1) The draft policy does not clearly establish a robust and proactive science-based process of information gathering and analysis to provide advice to the Minister

Most of the draft ITA policy is focused on both providing the context for the policy and describing what happens after an imminent threats assessment has been made. The brief sections on the ITA process itself, including information gathering, contain nothing that suggests any shift in direction to a proactive, iterative, systematic, and transparent process of collecting and assessing information to form the basis of any opinion on imminent threat. This comment is not based on a lack of detail in the draft policy, but the absence of any indication of intention to establish processes that will “regularly solicit information”, “develop accessible guidance on the information needs to provide advice to the minister”, “establish an approach to support timely, transparent and informed decisions”, etc. as indicated in various responses by ECCC to the CESD recommendations.

We recognize that ECCC’s stated timeline in its response to the CESD to deliver on these promised actions is not until November 2024. We strongly question, however, the utility of issuing and implementing a policy that appears to merely continue the status quo process even in full awareness that it is ineffective. A few illustrations of this:

- “To the extent possible, the department of the competent minister may also consult with the relevant Indigenous organizations, communities, and other partners and stakeholders”: there is no indication that ECCC will move to proactively soliciting information from experts and knowledge holders (including those outside government) who have evidence of species experiencing imminent threat in certain geographies. The kind of language we see in the current draft policy is more typical of that used by government for traditional consultation, which generally occurs after the government seriously considers a particular course of action. This is quite distinct from proactive information gathering.
• Passive language (e.g., “the information can originate”, “the competent minister is in possession of sufficient and credible information”, etc.) makes it impossible to understand the internal or external process of information gathering; and

• The statement “An imminent threat assessment can be initiated when the department of the competent minister is in possession of sufficient and credible information....” appears to view the gathering of information and the ITA as two distinct actions. While the ultimate ITA does occur at the end of the process, we submit that evaluating imminent threat to species on federal and non-federal lands alike must be continuous and iterative, requiring analysis along the way in an adaptive approach to allow for targeted information gathering when needed.

As a final point on this issue, we stress how important it is for the policy to clearly indicate a science-based process for ITAs. To be sufficiently robust, this process must use the best available information, involve external experts and/or quality control or peer review approach, and be unfettered by (i.e., protected from) social, economic and political considerations. For a policy of this nature to be meaningful, it should provide the structure towards a science, Indigenous and community-based knowledge analysis on which the Minister can form an opinion. We see no indication of this in the draft ITA policy.

2) The draft policy lacks a clear definition of “imminent threat”

We cannot overemphasize the need for ECCC to define the term ‘imminent threat’ to ensure both transparency and consistency in future ITAs. Unfortunately, the draft policy goes about this by treating “imminent” and “threat” separately; the definition provided for “threat” is generic, and “imminent” will be defined on a “case by case” basis.

We submit that this will not be helpful to anyone. Leaving the definition of ‘imminent threat’ to be determined case by case will put more burden on the department to explain their thinking each time, thereby increasing the chance for conflict and confusion.

In consideration of defining the term ‘imminent threat’, we highlight the following:

• ‘Imminent’ is used in the definition of ‘endangered species’ in SARA (‘a wildlife species that is facing imminent extirpation or extinction’). While not defined in the Act, ‘imminent’ extinction or extirpation is defined by COSEWIC and the IUCN as ‘20% or greater probability of extinction or extirpation within 20 years or 5 generations (up to a maximum of 100 years).’

• COSEWIC determines the magnitude of threats to species at risk during the assessment process through the COSEWIC threats classification and assessment calculator. The threats calculator is intended to provide an objective, comprehensive, and transparent assessment of threats, and could be explored as a tool for defining imminent threat

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under SARA. Similar threat assessment tools are also available from the IUCN Red List of Threatened Species and NatureServe.

- ‘Imminent threat’ is used in the US Endangered Species Act (ESA)\(^6\), assigning a ‘listing priority number’ to species that is, in part, based on the magnitude of the threats.

We strongly recommend that ECCC organize a few workshops to define ‘imminent threat’, using the above as starting points, and including experts and knowledge holders from both inside and outside the federal family (and outside Canada). This should be followed by testing potential definitions on past examples of ITA and case studies across different taxa and situations to ensure consistency of application. Fisheries and Oceans Canada have developed numerous science-based frameworks that could serve as models for application to the type of process we envision for developing the definitions and structures for a robust ITA policy.

3) The draft policy contains a weak articulation and apparent conception of “measures” to address imminent threat

The emphasis in section 9 is on “appropriate measures to implement to address the threats” and “other relevant provisions of SARA”. The latter is particularly confusing, because the Minister has no legal option available under s. 80 of the Act other than to recommend an order that effectively protects the species and its critical habitat. We note that the final section in the draft policy -- “Re-assessment to Inform the Repeal of an Emergency Order” -- does refer to “the recommendation for the emergency order”, but then refers to s. 8 rather than s. 9, where the measures are supposed to be described.

So, although section 9 of the draft policy is about measures, and the policy is about discretionary powers in s. 29 and 80, the focus of section 9 is on measures other than these. Moreover, there is little indication of how the deployment of these “other” measures will result in improved effectiveness in addressing the well-documented lack of recovery and increasing degradation of species habitat, considering they largely represent the status quo. For example, “collaborative agreements” (i.e., caribou conservation agreements) referred to in this section, received some scrutiny in the CESD report, which recommended that ECCC “strengthen conservation agreements to include milestones, measurable targets, clear accountability measures, and sufficient information to track and assess meaningful progress and results to generate conservation agreements that can be used as mechanisms to protect critical habitat.” ECCC agreed with this, yet there is no reflection of any different approach from the status quo in this draft policy.

Overall, our comments about this section point to the need for consistent and strong guidance that would enable ECCC to assist the Minister in fulfilling their statutory duties under SARA.

In closing, our recommendation is to wait to issue the policy until ECCC is ready to provide:

1) a clear articulation of the process for proactively gathering information to inform ITAs (in keeping with CESD recommendations). This must be science-based, including

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guidance for how knowledgeable individuals and organizations can be involved in the process (rather than wait to be consulted), and independently peer reviewed;

2) a clear definition of imminent threat developed through workshops and exploring how existing threat assessment tools could be used in ITAs, and

3) clarity on the legal measures available to the Minister in fulfilling their statutory duties under SARA.

We urge you not to issue the policy the way it is right now and believe it should be possible to develop a more robust policy in keeping with the CESD recommendations and ECCC’s responses well before November 2024.

As always, we would be more than happy to discuss any of these ideas further and to provide support to ECCC. Thank you in the meantime for considering these comments.

Yours sincerely,

Justina C. Ray, Ph.D.
President & Senior Scientist

Daniel Kraus
Director of National Conservation