



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Environmental Legislation

- Fisheries Act
- Canadian Environmental Assessment Act (CEAA)
- Species at Risk Act (SARA)



Canada



Part 2: Outline

Fisheries Act

- Important Sections

Canadian Environmental Assessment Act

- Roles and Responsibilities
- Triggers

Species at Risk Act

- Overview
- Role





DFO's Role in Alberta

- Review proposals which may impact fish habitat
- Increase awareness and support for habitat conservation
- Ensure compliance with the *Fisheries Act*
- Work cooperatively with provincial government agencies





Legal Context

Constitution Act

- s.91(12) gives the federal government exclusive authority over ‘Sea Coast and Inland Fisheries’, including fish habitat

Fisheries Act

- Two key Habitat Provisions
 - s.35: Prohibits Harmful Alteration, Disruption or Destruction (HADD) of fish habitat, unless authorized by Minister
 - s.36: Prohibits pollution except by regulation (DOE)

Canadian Environmental Assessment Act

- Law List Regulations: Environmental assessments of projects prior to making regulatory decisions under *Fisheries Act*, *Navigable Waters Protection Act (NWPA)* and *National Energy Board Act (NEBA)*



Important Sections of the *Fisheries Act*:

Subsection 20(1), 20(3)

Obstructions must ensure fish passage.

Section 32

No person shall kill fish by means other than fishing, unless authorized.

Section 35

Prohibits work that results in the harmful alteration, disruption or destruction of fish habitat (*HADD*).

Section 36

Prevents the deposit of a deleterious substance into waters frequented by fish.

(MOU with Environment Canada)





Section 20: culverts should...



- provide proper velocities for fish passage (without baffles)
- be of sufficient length
- be properly maintained





Section 30(1):

Minister may require fish guards or screens on water diversions or intakes

Section 30(2):

- Size of Screen Specified prescribed by Minister
- Screens built and maintained subject to approval by DFO

Freshwater Intake End-of-Pipe Fish Screen Guidelines





Section 32:

- General prohibition of destruction of fish by means other than fishing
- Provision to obtain authorization
- Can apply to fish entrainment
- Most often applied to in-water use of explosives
 - ie. Beaver Dam removal

Guidelines for Use of Explosives in or near Canadian Fisheries Waters





Section 35(1): Prohibits work that results in the harmful alteration, disruption or destruction of fish habitat (HADD)

Section 35(2):

Allows the minister to authorize a HADD





Section 35: What is a HADD?

Any change in fish habitat that prevents the physical, biological or chemical attributes from providing:

- food
- reproduction
- cover
- migration corridors



“Any change in fish habitat that reduces its capacity to support one or more of the life processes of fish” (DFO 1998).





Activities that may cause a HADD

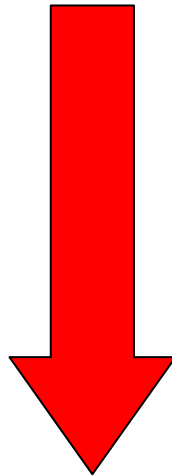
- removal of sand or gravel from beaches, riverbanks or streambeds
- diverting, dyking and channelizing streams
- filling foreshore, marshes and floodplains
- stream crossings (road, pipeline)
- clearing land for agricultural or urban development
- removal of streamside vegetation
- Bank stabilization, construction of water intakes



HADD

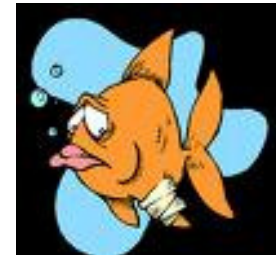
Options if a HADD is likely:

- Relocation
- Redesign
- Mitigation
- Compensation



Most Preferred

Least Preferred





Section 36: Deleterious Substance



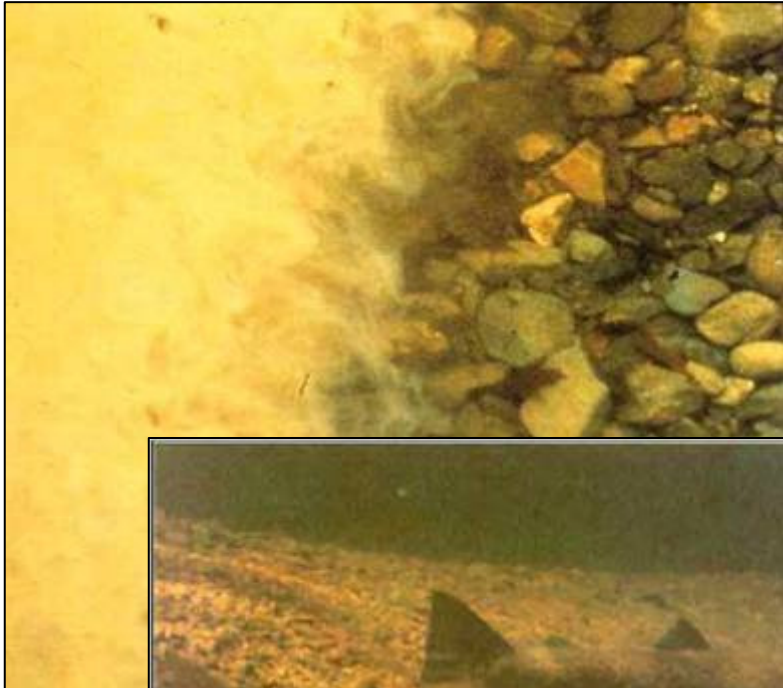
Any substance that, if added to any water, would degrade the water quality rendering it deleterious (harmful) to fish or fish habitat.

- *Includes sediment*



Sediment can be harmful to fish and fish habitat

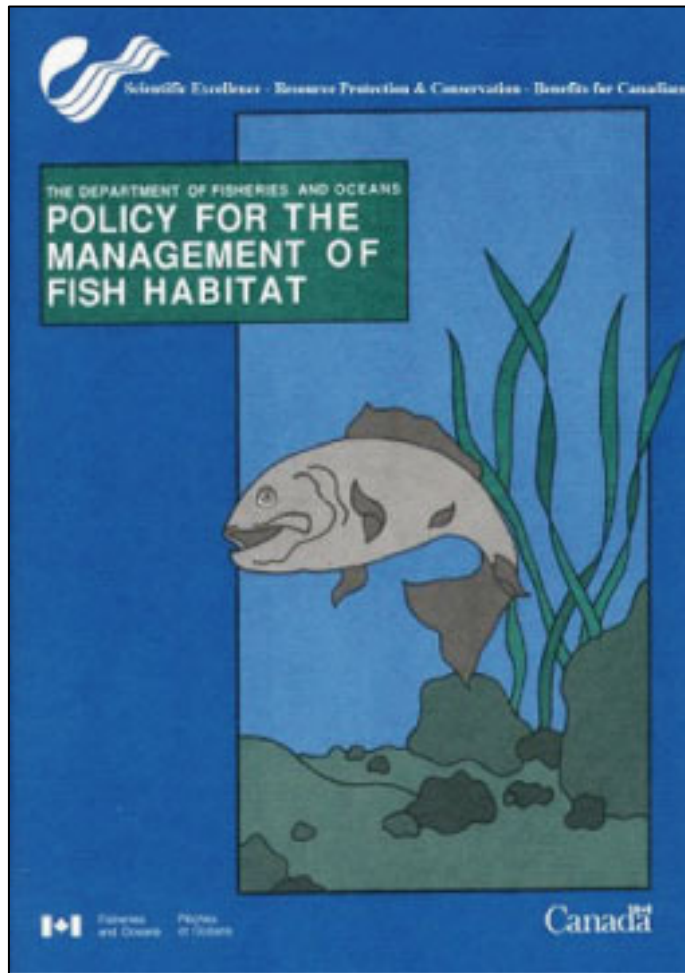
- abrasion of gill membranes
- Filling in gravel spawning areas and smothering eggs
- Destroying food production areas (invertebrates)
- eliminating rearing refuge for young





- **Section 38 (6):**
Inspector's Direction
- Serious or imminent danger of a deposit (e.g. Sediment) of a deleterious substance
- Direction given to stop, minimize or fix





No Net Loss

of productive capacity of
fish habitats (objective
Net Gain)

- *the guiding principle in
DFO's decision making
process*





Canadian Environmental Assessment Act (CEAA)

Applies to projects where the Government of Canada exercises a power, duty or function

When the Government of Canada:

- is a proponent of a project
- controls sells or leases land for a project
- provides financial assistance (funding) for a project
- makes a regulatory decision that allows a project to proceed (e.g. authorization)

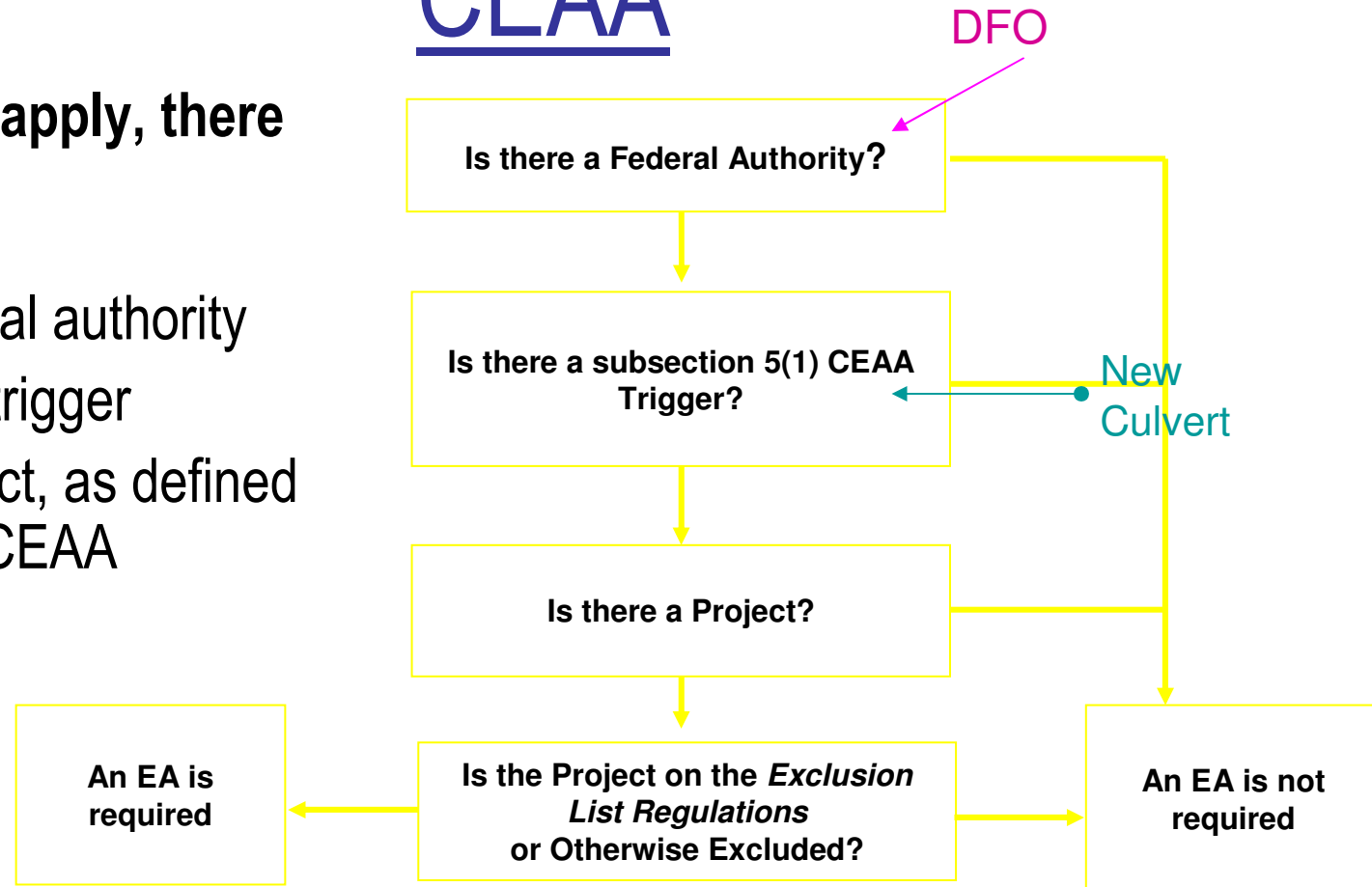




CEAA

For CEAA to apply, there must be:

- A federal authority
- CEAA trigger
- A project, as defined under CEAA





Link to CEAA

- CEAA triggered when a DFO authorization is issued
- CEAA is not triggered when mitigation will avoid a HADD and there is no impact on Navigation
- before an Authorization can be issued must conclude no significant environmental effects
- maintain a Public Registry, projected posted on CEAR website 15 days



Fisheries Act CEAA Triggers

Examples

- Triggers for CEAA are items included on the Law List
- These include Section 35(2) Fisheries Act Authorizations
- Include various works including culvert installations, stream diversions, water intakes, and various in-stream structures





CEAA Registry

- When a work or an undertaking triggers CEAA, this work or undertaking must be posted on the Canadian Environmental Assessment Registry (CEAR) for a minimum of 15 days before making a decision under CEAA.
- If contested, it will remain on the CEAA Registry until all related problems have been resolved.

http://www.ceaa-acee.gc.ca/050/index_e.cfm





What are my experiences with CEAA?

- Questions??



Species at Risk Act (SARA)



Lake Sturgeon



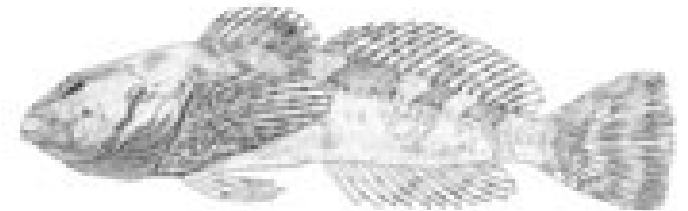
Westslope Cutthroat Trout



W. Silvery Minnow



Banff Springs Snail



Eastslope Sculpin



Species at Risk Act (SARA)

2 fish species listed in Alberta (Treaty 7):

- western silvery minnow (Milk River system)
- eastslope sculpin (Milk and St. Mary's systems)
 - *main threats: water use, diversions and reservoirs*

2 fish species recommended for listing:

- lake sturgeon (Saskatchewan River system)
 - *main threats: over harvest and dams*
- westslope cutthroat trout (headwater streams)
 - *main threats: over harvest, habitat degradation and hybridization with rainbow trout*





Purpose

- To prevent flora and fauna species from becoming extinct in Canada
- To secure the recovery of Extirpated, Endangered or Threatened species
- To manage Special Concern species to prevent them from becoming further at risk





Species at Risk Act

Started on June 4th, 2003

Two Responsible Ministers:

1) **Environment Canada** - Lead agency

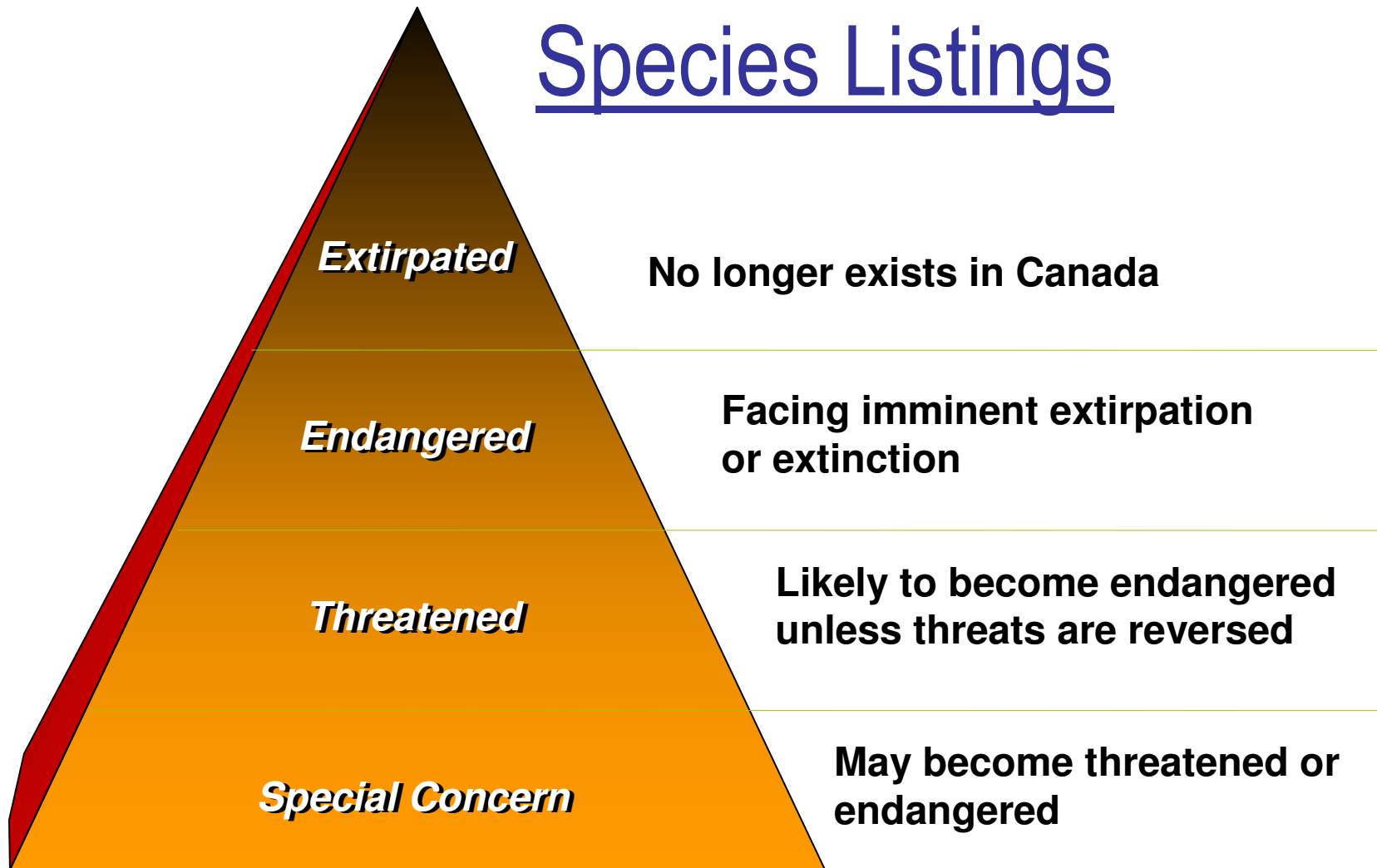
- Canadian Wildlife Service – responsible migratory birds and terrestrial species other than those on Parks Canada lands
- Parks Canada Agency – responsible for SARA species on Parks Canada lands

2) **Fisheries and Oceans Canada** - responsible for all aquatic species (fish and marine plants as defined in the Fisheries Act) except those located in Parks.





Species Listings





Nothing in the Species at Risk Act “abrogates or derogates” (meaning abolishes/detracts/degrades) aboriginal and treaty rights.





Exceptions to the Prohibitions



- *Ceremonial clothing*
- *Collections already in possession*





A ASSESSMENT

- *Status Reports*
- *COSEWIC Designation*



B LEGAL LISTING

- *Response Statements*
- *List of Wildlife SAR*



C PROTECTION

Automatic Prohibitions:

Protection for species and their residence

4 components of SARA

Mandatory Recovery Planning:

D RECOVERY

Development of Recovery Strategies and Action Plans

Critical habitat protection



How does the act protect these species?

As of June 1, 2004 listed extirpated, endangered and threatened species are protected and you cannot:

- Kill, harm, harass or take
- Possess, buy, sell or trade
- Damage or destroy their residence





Prohibitions

Applicable to Extirpated, Endangered and Threatened Schedule 1 species only:

32. Individual Organisms

- Prohibitions against killing, harming, harassing, buying, collecting, selling extirpated, endangered or threatened schedule 1 species

33. Residences

- Only applies for those species to which the concept of residence applies
- To date, not defined for any aquatic species

58. Critical Habitat

- Prohibitions against destroying Critical Habitat as defined in recovery plan





DFO's Approach

Projects that do not cause a HADD (Harmful Alteration, Disruption, or Destruction of Fish Habitat:

- Fish:
 - SAR protected through mitigation
 - Will not likely result in impacts to critical habitat (CH)
- Mussels:
 - May need to relocate
 - Science review and approval needed

Projects that do cause a HADD:

- Authorizations will not likely be issued in habitat identified as CH (Critical Habitat)
- If no CH identified, due diligence applied to ensure protection





When do I need a SAR Permit?

- Project activities that may cause incidental harm to a SAR, in particular the contravention of any one of the 3 SARA prohibitions (Sections 32, 33 and 58)
- Field surveys to detect fish or mussel SAR
- SAR mussel relocations (i.e. mitigation strategy)
- Fish salvage operations where there is potential harm to a SAR



** *Contact your DFO designated biologist if you suspect that a SAR permit may be needed for your project*

** *Note that a permit is only required for Extirpated, Endangered or Threatened Schedule 1 fish or mussel SAR*





How is a species recovered?

- The Act requires recovery strategies within timelines - developed by a team of experts
- People who are directly affected will be consulted
- The first priority is protection through cooperation and stewardship

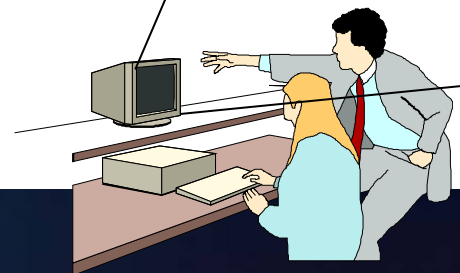




Where can I learn more?

Species at Risk Act

www.sararegistry.gc.ca





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Questions???



Canada