

MEMORANDUM OF UNDERSTANDING

Between:

The Department of National Defence

and

The Department of the Environment and Parks Canada Agency

Concerning

**Cooperation on Terrestrial Species at Risk matters Under the Responsibility of the
Minister of Environment and Present on Defence Establishments**

February 2011

Table of Contents

1.0.....	3
2.0 Introduction	3
3.0 Definitions	3
4.0 Objectives	5
5.0 Critical Habitat Protection	6
6.0 Exceptions to the Prohibitions	6
7.0 Areas for Consultation and Cooperation	8
8.0 Finance	11
9.0 Security and Access to Defence Establishments	12
10.0 MoU Committees	12
11.0 Work Plans	13
12.0 Compliance Verification and Enforcement	13
13.0 Approval Process	13
14.0 Point of Contact	14
15.0 Settlement of Disputes	14
16.0 Amendment	14
17.0 Duration, Withdrawal and Termination	15
18.0 Language	15
19.0 Effective Date and Signatures	15

Preamble

1.0

- 1.1 Whereas the purposes of the *Species at Risk Act* (SARA) are “to prevent wildlife species from being extirpated or becoming extinct, to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity and to manage species of special concern to prevent them from becoming endangered or threatened (s.6)”.
- 1.2 Whereas the Department of National Defence (DND) primarily conducts military training, research, and other activities related to public safety required to protect Canada, defend North America, and contribute to international peace and security, on Defence Establishments. These activities are authorized under the *National Defence Act* and the *Explosives Act*.
- 1.3 Whereas SARA is binding on Her Majesty in right of Canada or a province. DND is, therefore, also bound by the provisions of SARA (s.5).

2.0 Introduction

- 2.1 The purpose of this Memorandum of Understanding (MoU) is to set out roles and responsibilities of the DND, Environment Canada (EC) and the Parks Canada Agency (PCA) and procedural details for the protection and management of terrestrial species on Schedule 1 of SARA, their individuals, residences and critical habitats, and for the management of threats to these species on Defence Establishments.
- 2.2 The authorities under which the Participants engage in this MoU are SARA and the *National Defence Act* as well as policies made in accordance with these statutes, including the Defence Administrative Orders and Directive (DAOD) 4003-0.
- 2.3 This MoU will not be construed as creating any duty, granting any power, or preventing either Participant from exercising their legislative mandate and regulatory authority.

3.0 Definitions

- 3.1 Within the context of this MoU the following definitions apply:

“**Action Plan**” - as defined under section 2 of SARA

“**Activities necessary for National Security**” – as defined in section 6.1 b) of this MoU

“Activities necessary for Public Safety” – as defined in section 6.1 c) of this MoU

“Adaptive management” – process for ensuring that recovery and management actions are improved and adapted to take into account any new information or changed circumstances in the environment or species population trends.

“Committee(s)” to this MoU include 1) SAR Oversight Committee for Defence Establishments; and 2) SAR Regional Committee for Defence Establishments.

“Consult” and **“Consultation”** mean

(a) providing the other Participant(s) with notice of the matter to be decided with sufficient information to allow that Participant(s) to prepare its view on the matter;

(b) providing a reasonable period of time in which the Participant(s) being consulted may prepare its view on the matter, and an opportunity to present its views to the Participant obliged to consult;

(c) providing full and fair consideration by the Participant obliged to consult of any views presented, and to provide a clear rationale for the final decision.; and

(d) where required under SARA, a requirement to cooperate or cooperation.

“Critical habitat” – as defined under section 2 of SARA.

“Defence Establishment” – any area or structure under the control of the Minister of National Defence, and the materiel and other things situated in or on any such area or structure; for greater certainty, it includes all Bases/Wings/Formations, properties and airspaces under the administrative control of DND. Appendix 1 of the MoU will list all applicable Establishments.

“Defence Establishment Commander” – the military officer or government official responsible for all activities relating to or affecting a specific Defence Establishment.

“Ecosystem approach”- promote the integrated management of multiple species, land, water and other living resources that recognize the interconnectedness and interdependent nature of the components of ecosystem and among ecosystems.

“Management Plan” – as defined under section 2 of SARA.

“Participants”– DND, EC and PCA

“Precautionary Approach” – consistent with s. 38 of SARA, if there are threats of serious or irreversible damage to a listed wildlife species, cost-effective measures to prevent the reduction or loss of a species will not be postponed for a lack of full scientific certainty.

“Recovery Strategy” – as defined under section 2 of SARA.

“SARA” – means the *Species at Risk Act* (S.C. 2002, c.29).

“Species at Risk” and **“SAR”** – as defined under section 2 of SARA.

“Species at Risk Recovery and Management Planning Documents” – recovery strategies and action plans for extirpated, endangered and threatened species and management plans for species of special concern under SARA.

“Terrestrial Species at Risk” –a Species at Risk as defined by SARA other than an aquatic species and for which the Minister of the Environment, responsible for the Department of the Environment and for the Parks Canada Agency, is the competent minister.

“Work Plans” – a document developed under this MoU for each DND Establishment where SAR are located, to identify actions required for the protection and management of Species at Risk, their individuals, residences and critical habitat, and the roles and responsibilities for implementing such actions.

4.0 Objectives

4.1 The objectives of this MoU and the Work Plans are:

- a) To clarify the actions, roles and responsibilities that must be taken by the Participants for the protection and management of Species at Risk, their individuals, residences and critical habitats on Defence Establishments;
- b) To guide the use of available resources to address protection and management of Species at Risk, their individuals, residences and critical habitats efficiently and effectively on Defence Establishments;
- c) To identify and manage priorities and/or emerging issues which may impede the protection and management of Species at Risk,

their individuals, residences and critical habitats on Defence Establishments;

- d) To encourage the timely sharing of information and transfer of knowledge between the Participants regarding Species at Risk on Defence Establishments; and
- e) To facilitate, where required, consultation and cooperation among the Participants regarding SARA initiatives that will affect or be affected by activities that occur on Defence Establishments.

4.2 As signatories to this MoU, Participants:

- a) Recognize that some Defence Establishments are of high conservation value and are home to wildlife species of regional, national or international significance;
- b) Concur that consultation and cooperation allow DND to provide for ongoing military use of Defence Establishments that is compliant with SARA;
- c) Recognize that the Minister of National Defence has delegated the management of Defence Establishments to the respective Establishment Commanders. This delegation includes all decision making authority for activities within the property;
- d) Apply the precautionary approach, and, where appropriate, the use of adaptive management;
- e) Recognize that an ecosystem approach for the management of Species at Risk, their individuals, residences and critical habitats on Defence Establishments will be used wherever appropriate; and,
- f) Recognize that, where appropriate, resources may be focused on the highest SARA related priorities.

5.0 Critical Habitat Protection

5.1 Where appropriate, an Order under SARA, which applies the SARA prohibitions against the destruction of critical habitat, will be the primary means of protecting critical habitat on DND lands; however, the use of other regulatory measures will also be explored.

6.0 Exceptions to the Prohibitions

6.1 In accordance with subsections 83(1) and (2) of SARA:

- a) Activities listed below in b) and c) that have the potential to affect a listed wildlife species, its individuals or residences, or any part of its critical habitat may occur within Defence Establishments in the absence of an authorization under section 73 or 74 of SARA if the activity is authorized under another Act of Parliament and by the Defence Establishment Commanding Officer.

In authorizing activities, the Defence Establishment Commanding Officer will:

- i.
- Determine that there is authority for conducting the activity;
 - Determine that the activity is necessary for national security or public safety;
 - Respect the purposes of SARA to the greatest extent possible;
 - Consults with EC and/or PCA, who will have ten business days to highlight any issues to DND, once all the necessary information is available to the Participants;
 - Documents the decision and rationale, including the consideration of alternatives and mitigation measures, for allowing the activity to proceed; and
 - Provides a copy of the documentation to EC and/or PCA to inform the posting of notices of exceptions on the Species at Risk Public Registry;

and be of the opinion

- ii.
- That all reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted; and
 - That 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.

- b) Activities occurring on Defence Establishments that are considered necessary for national security in accordance with paragraph a) above and authorized under the *National Defence Act* are:

- Canadian military training and operations;
- Military training and operations of NATO and non-NATO allies:
 - such as training pursuant to international treaties or training of other nations in support of coalition and collective defence and national security objectives;

- Non-defence related training and operations related to national security conducted by DND and/or other government organizations:
 - such as training by police forces, counter-terrorism training, training related to chemical, biological, radiological and nuclear events;
 - Military Testing:
 - such as the testing of equipment related to national defence/security during the development and acquisition of such equipment;
 - Research related to military defence objectives;
 - such as research directly linked to building capacity for “use of force”:
 - Research related to national counter terrorism/public safety;
 - such as research related to non-defence national security issues:
 - Operations directed to ensuring that training areas are sustainable for activities related to national defence/security:
 - such as ground remediation, controlled burns, removal of invasive weeds, maintenance of training area infrastructures; and,
 - Range training area development to meet operational requirements:
 - such as developing range infrastructure to ensure military training reflects current operating environments.
- c) Activities occurring on Defence Establishments that are considered necessary for public safety in accordance with paragraph a) above and authorized under the *National Defence Act* and the *Explosives Act* are:
- Remediation of contaminated sites; and
 - Securing, handling, destruction or disposal of unsafe munitions, including unexploded explosive ordnance.
- d) The Participants will monitor the use of exemptions to the prohibitions and strive for consistency between DND Establishments.
- e) In the event of a dispute regarding the application of paragraph 83(1) and 83 (2) of SARA, Participants will seek to mutually concur on mitigation measures through the settlement of disputes process, established under section 15 of this MoU on Defence Establishments.

7.0 Areas for Consultation and Cooperation

7.1 The approach to Species at Risk conservation is a process based on a cycle composed of five elements: assessment, protection, recovery planning, implementation, and monitoring and evaluation. Where appropriate, the Participants will consult and cooperate on the following relevant elements of the cycle with respect to the protection and management of Species at Risk, their individuals, residences and critical habitats with regards to Defence Establishments:

a) Assessment

i. DND will:

- Share available data gathered through proactive species monitoring on Species at Risk prior to species assessment by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC).

ii. EC will:

- Inform DND prior to species assessment by COSEWIC.

b) Protection

i. DND will:

- Consult and cooperate with the Participants when developing policies and guidelines on SAR and implementing management processes for the protection and management of Species at Risk, their individuals, residences and critical habitats; and,
- Request permits from EC under sections 73-74 of SARA and implement terms and conditions associated with the issuance of permits for activities not authorized under section 83 of SARA related to exceptions.

ii. EC will:

- Inform DND of regulatory decisions related to listing of Species at Risk;
- Provide advice on the development of DND policies, guidelines, practices and other materials with respect to the protection and management of Species at Risk, their individuals, residences and critical habitats, and SARA enforcement activities;
- Review and make timely permitting decisions based on EC permitting policies; and
- Provide training for SARA enforcement activities and may delegate enforcement authorities, subject to conditions in a negotiated annex.

iii. EC and PCA will:

- Consult and cooperate with DND regarding upcoming SAR critical habitat identification.
- c) Recovery Planning
- i. DND will:
 - Consult and cooperate with Participants in recovery planning and provide input to related recovery planning documents; and
 - Consult and cooperate with Participants in identification of critical habitat and provide input to related documents.
 - ii. EC and PCA will:
 - Consult and cooperate with DND on recovery planning when finalizing the recovery planning documents and provide a draft;
 - Consult and cooperate with DND in the identification of critical habitat; and
 - Provide DND with final recovery planning documents.
- d) Implementation
- i. DND will, where appropriate:
 - Consult and cooperate with the Participants when developing Work Plans;
 - Implement activities for the protection and management of Species at Risk, their individuals, residences and critical habitats as identified in the Work Plans;
 - Implement recovery actions outlined in SAR recovery planning documents;
 - When conducting environmental assessments (EA), follow the requirement under section 79 of SARA and include Species at Risk, their individuals, residences and critical habitats considerations during EAs and the decision-making phase; and
 - Consult and cooperate with EC and/or PCA, and document the decision and rationale for allowing the activity authorized under section 83 of SARA to proceed.
 - ii. EC and PCA will, where appropriate:
 - Provide advice in the development of the Work Plans;
 - Provide advice in the development of DND Interdepartmental Recovery Fund (IRF) applications;
 - Review and make IRF decisions within service standards and the IRF application and review processes;
 - Provide advice on the implementation of recovery activities;

- Provide advice on the requirements under section 79 of SARA and on the considerations regarding Species at Risk, their individuals, residences and critical habitats to be included during EAs and the decision-making phase; and,
 - Provide advice, once all the necessary information is available to the Participants, within two weeks on the use of section 83 regarding exceptions as per section 6.0 of this MoU.
- e) Monitoring and Evaluation
- i. The Participants will:
 - Develop tools and guidance to provide for consultation and the timely sharing of information regarding Species at Risk, their individuals, residences and critical habitats and recovery actions.
 - ii. DND will:
 - Collect and analyse data on the implementation of Work Plans;
 - Report annually on progress with regards to the implementation of Work Plans; and,
 - Share data on Species at Risk while ensuring that concerns of national security are considered.
 - iii. EC and PCA will:
 - Provide advice on best practices for reporting on progress;
 - Share EC publically available reports regarding SARA with DND;
 - Share data on Species at Risk and,
 - Provide information to DND regarding Species at Risk, for which the release of information related to the location or its habitat is to be restricted in the best interest of the species.

8.0 *Finance*

- 8.1 This MoU does not impose any financial responsibility on the Participants; except that each Participant will be responsible for the cost incurred in support of this MoU.

9.0 Security and Access to Defence Establishments

- 9.1 National Defence security and regulations regarding access to Defence Establishments will be defined in Work Plans and will be respected.

10.0 MoU Committees

- 10.1 To provide for national consistency in the implementation of this MoU, including its Work Plans, the following two committees will be established under this MoU:
- 1) A national MoU oversight committee (titled: SAR Oversight Committee for Defence Establishments); and
 - 2) Defence Establishment-specific operational committees (titled: SAR Regional Committee for Defence Establishments).
- 10.2 SAR Oversight Committee for Defence Establishments: National oversight of this MoU will be provided by this committee. At a minimum this committee will consist of the Participants' Director General responsible for SARA implementation. This committee will meet annually. Chairing responsibilities of annual meetings will rotate between Participants in successive years. Responsibilities of this committee include:
- a) Developing terms of reference for the committee;
 - b) Reviewing and providing advice regarding the annual report on progress with regards to the implementation of Work Plans;
 - c) Ensuring that outputs from this MoU are consistent with federal governmental policy and do not impair the ability of the Participants to achieve their respective mandates under their legislation and SARA;
 - d) Annually reviewing this MoU, Work Plans and appendices and their implementation;
 - e) Endorsing instructions for the development of Work Plans, in order to provide for national consistency;
 - f) Using bests efforts to seek that consensus is reached in the decision making process;
 - g) Monitoring the uses of exemption to the prohibitions and strive for consistency between DND Establishments;
 - h) Developing mechanism for final dispute resolution; and

- i) All other matters relating to this MoU.

10.3 SAR Regional Committee(s) for Defence Establishments: Details pertaining to the protection and management of Species at Risk, their individuals, residences and critical habitats per Defence Establishment or group of Defence Establishments will be reviewed by these committees. At a minimum these committees will consist of one representative from the regional office of EC and PCA, when required, and one representative from the Defence Establishment(s). These committees will meet at least twice a year. Responsibilities of these committees include:

- a) Developing terms of reference for the committees;
- b) Reviewing and endorsing Work Plans;
- c) Monitoring the use of exemptions to the prohibitions and strive for consistency between DND Establishments;
- d) Identifying local priorities for the protection and management of Species at Risk, their individuals, residences and critical habitats; and
- e) Consulting on various elements under this MoU.

11.0 Work Plans

11.1 Work Plans for each Defence Establishment or group of Defence Establishments will be developed by DND and will be reviewed and endorsed by the respective SAR Regional Committees for Defence Establishments. The Work Plans will be developed based on the best available knowledge and will be subject to modifications resulting from new information and findings.

12.0 Compliance Verification and Enforcement

12.1 A separate document to clarify the operational roles, responsibilities and accountabilities for compliance verification and enforcement under this MoU will be established under Appendices to the MoU and approved by the Participants.

13.0 Approval Process

13.1 The approval authorities for this MoU are the Assistant Deputy Minister Infrastructure and Environment for the Department of National Defence,

the Assistant Deputy Minister Environmental Stewardship Branch for the Department of the Environment, and the Director General National Parks for the Parks Canada Agency.

14.0 *Point of Contact*

- 14.1 Points of contact for the MoU are the Participants' Director General responsible for SARA implementation.
- 14.2 For Work Plans, the points of contact are the Defence Establishment Commander for DND and the Regional Directors of EC and PCA responsible for SARA implementation.

15.0 *Settlement of Disputes*

15.1

- a) In the event of a dispute arising under the terms of this MoU, the Participants agree to make an attempt in good faith to settle the dispute within the SAR Regional Committee for Defence Establishments;
- b) In the event that it is not possible to settle the dispute within the SAR Regional Committee for Defence Establishment, the Participants agree to make an attempt in good faith to settle the dispute within the SAR Oversight Committee for Defence Establishments;
- c) In the event that it is not possible to settle the dispute within the SAR Oversight Committee for Defence Establishment, the Participants agree to make an attempt in good faith to settle the dispute within the Assistant Deputy Ministers of their respective departments.

16.0 *Amendment*

- 16.1 The MoU may be amended at any time, in writing, with the Participant's mutual written consent. Any amendments concurred to by the Participant will be effected in a manner identical to the expectation of this MoU and attached as an appendix to this MoU.
- 16.2 The Work Plans may be amended at any time, in writing with the mutual written consent of the Defence Establishment Commanders and the Director General of EC and/or PCA responsible for SARA implementation.
- 16.3 Initiatives pursuant to this MoU will be maintained regardless of organizational changes to either Participant.

17.0 *Duration, Withdrawal and Termination*

- 17.1 This MoU will be in effect until terminated, and will include a mandatory review after five years from the date on which it has been signed by the Participants.
- 17.2 A Participant may withdraw from this MoU or any of its ancillary documents with a minimum of 60 days written notice to the other Participant.
- 17.3 This MOU may be terminated, effective immediately, by the Participant's mutual written consent.

18.0 *Language*

- 18.1 This MoU is written in English and in French, each text being equally valid.

19.0 *Effective Date and Signatures*

For the Department of National Defence:

_____ Date: _____
Assistant Deputy Minister of the Infrastructure and Environment
J. Scott Stevenson, on the X of month in 2011 in Ottawa, Ontario

For the Department of the Environment and Parks Canada Agency:

_____ Date: _____
Environment Canada's Assistant Deputy Minister of the Environmental Stewardship
Branch (ESB), Coleen Volk, on the X of the month in 2011 in Gatineau, Québec

_____ Date: _____
Environment Canada's Chief Enforcement Officer of the Enforcement Branch, Gordon T
Owen, on the X of the month in 2011 in Gatineau, Québec

_____ Date: _____
Parks Canada Agency Director General, National Parks, Ron Hallman, on the X of the
month in 2011 in Gatineau, Québec