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**Protected on Paper Only:  
An Evaluation of  
New Brunswick's  
Legal Obligations  
under the  
*Species at Risk Act***

Prepared by  
**East Coast Environmental Law**

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## EAST COAST ENVIRONMENTAL LAW

The East Coast Environmental Law Association is a regional environmental law charity based in Halifax, Nova Scotia, that works to support the development and fair application of innovative and effective environmental laws throughout Atlantic Canada.

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## EXECUTIVE SUMMARY

The New Brunswick *Species at Risk Act* (“NB *SARA*” or the “Act”) lays out a clear path to facilitate identification, assessment, recovery, and protection for species at risk. If the steps were followed as designed, the process could be quite effective. The first step is to list the species at risk, the second step is to assess the feasibility of recovery for the species, the third step is to develop the appropriate recovery or management plan, and the final step is to put legal protections in place. Unfortunately, this Report reveals that in the 8 years since the Act was passed, New Brunswick’s Minister of Natural Resources and Energy Development (“the Minister”) has taken very few of these critical steps, and the Government of New Brunswick has failed to clearly meet all of the Act’s requirements.

### Extirpated Species

None of the 5 species that are listed as extirpated have received protection assessments. This may violate subsection 25(1) of the Act, but an alternative interpretation is that a protection assessment is not required if a species’ recovery has been deemed unfeasible. The legal meaning of subsection 25(1) is not entirely clear at this time, and our analysis takes that uncertainty into account.

### Endangered Species

Among the 39 species that are listed as endangered, only 4 have received provincial feasibility of recovery assessments, 3 have provincial recovery strategies and none have received a protection assessment as required by the Act.

Some of the 39 species have received assessments or protections by other means, but whether or not the requirements of the Act have been met is unclear. For example, 14 species, including the Inner Bay of Fundy Atlantic Salmon and the Eskimo Curlew, have been assessed through a federal process and are included in a federal recovery strategy or management plan with a New Brunswick Addendum. A handful of other species enjoy protections that were imported from New Brunswick’s former *Endangered Species Act*. However, it is not clear if these steps fully meet the requirements of the NB *SARA* or are providing real protection for these species.

The numbers do clearly show that there are 23 endangered species, including the Porbeagle shark and Tri-coloured Bat, that have never received an

assessment to determine if their recovery is feasible, nor have there been any steps taken to protect these species in accordance with the NB *SARA*.

### Threatened Species

None of the 20 species that are listed as threatened have received a provincial feasibility of recovery assessment, recovery strategy, or protection assessment. Although there are 7 species that have a federal recovery plan in place, only 1 of the 7 federal recovery plans includes a New Brunswick Addendum.

### Species of Special Concern

None of the 24 species that are listed as species of special concern have a published provincial management plan as required by the Act. 4 species have federal management plans that include a New Brunswick Addendum, suggesting—but not explicitly communicating—provincial adoption of the federal program.

### The Committee on the Status of Species at Risk

As part of the strategy to identify, assess, and protect species at risk, the Act establishes an independent advisory committee of experts to assess the biological status of species at risk and make recommendations to the Minister. Under the Act, the Minister is required to appoint members to the Committee; however, we could find no evidence that the Minister has appointed any members to the committee in the eight years since the Act’s inception.

### The Public Registry

Section 67 of the Act requires the Minister to maintain a public registry that enables members of the public to review New Brunswick’s List of Species at Risk, check the biological status of each species, and see the recovery, management, and protection measures that have been put in place or are in development for each species. The Minister is also required to publish timelines for the completion of required recovery strategies, management plans, and protection assessments. The public registry is intended to maintain government transparency and enhance government accountability. The public registry was last updated in 2013, making it impossible to know if key requirements of the Act are being met.

## 1.0 INTRODUCTION

In 2012, the Government of New Brunswick took an important step to address mounting threats to species at risk in the province by replacing its *Endangered Species Act*<sup>1</sup> (the “NB *ESA*”) with a new *Species at Risk Act*<sup>2</sup> (“NB *SARA*” or the “Act”).

As section 2 of the NB *SARA* states, its purposes are:

[...] to prevent wildlife species from becoming extirpated from the Province, to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity, and to conserve species of special concern to prevent them from becoming endangered or threatened.

To meet those purposes, the Act established a regime that required New Brunswick’s Minister of Natural Resources, now the Minister of Natural Resources and Energy Development (the “Minister”), to create an advisory committee called the Committee on the Status of Species at Risk (the “COSSAR”) and work in conjunction with it to assess the biological status of each species at risk in the province and take action to recover or support the species’ local existence.<sup>3</sup>

The Act lays out a series of further steps that are required following the appointment of the COSSAR to ensure that the Act’s purposes are met:

<b>Listing Species</b>	The Minister is required to establish a List of Species at Risk through regulation (section 18).
<b>Feasibility Assessment</b>	The Minister is required to ensure that assessments are conducted for all extirpated, endangered, and threatened species to determine if recovery is feasible (subsection 21(1)).
<b>Recovery Strategy</b>	If the feasibility assessment concludes that recovery is feasible, the Minister is required to prepare or adopt a recovery strategy (subsection 21(4)).
<b>Management Plan</b>	The Minister is required to prepare or adopt a management plan for all species listed as species of special concern (subsection 20(1)).
<b>Protection Assessment</b>	The Minister must prepare protection assessments for all extirpated, endangered, and threatened species to determine whether prohibitions to protect the species and their habitats should be applied (section 25(1)).

Each of these steps carries with it important obligations that the Minister must meet in order to comply with the law and ensure that species are appropriately assessed and protected. In the eight years since the Act was created, the Minister has met few of the legal obligations that the Act imposes. Numerous species that have been listed in the provincial List of Species at Risk have not received the benefit of management plans or recovery strategies that the Act requires the Minister to prepare or adopt. The vast majority of listed species have not received the protection assessments that the Act requires the Minister to carry out, and New Brunswick's Public Registry of Species at Risk (the "public registry") has not been updated since May 2013. It is also notable that no species have been added to or removed from the province's List of Species at Risk since the Act was passed—a troubling fact which exacerbates our concern that governmental attention to species at risk in the province has stagnated.

In this Report, we identify the Minister's key legal obligations under the Act and demonstrate through research and analysis the Minister's systemic failure to meet those obligations. Further, we call on the Government of New Brunswick to take the steps necessary to comply with the law, conduct the assessments, and provide the protections that are needed to address the abysmal situation of at-risk species in the province.

## 2.0 GOVERNMENT OBLIGATIONS AND FAILURES UNDER THE ACT

### 2.1 Appointing Members to the COSSAR

One of the key elements of the strategy established by the Act was the creation of an independent advisory committee of experts who would assess the biological status of species at risk and make recommendations to the Minister. The role of the committee, referred to as the COSSAR, is to assist with the identification and prioritization of species for assessment and, if necessary, assist with management and recovery processes as well.<sup>4</sup>

Sections 8 to 17 of the Act establish the COSSAR. According to the Act, the COSSAR must include at least five voting members, and it is expected to function independently from the Department of Natural Resources (now the

Department of Natural Resources and Energy Development). The COSSAR is intended to play a crucial role in the assessment and listing of species by evaluating species that the Minister deems "at-risk" and providing the Minister with scientific expertise and Indigenous traditional knowledge to determine the biological statuses of those species. The COSSAR is also supposed to review and assess status reports provided by the Minister, identify and prioritize new species for the Minister to assess, and review the classification of each listed species at least once every ten years.<sup>5</sup>

Section 10 of the Act specifically requires the Minister to appoint members to the COSSAR. There is no evidence to indicate that the Minister has appointed any members. The Minister's failure to appoint members to the COSSAR not only violates section 10 of the Act but also means that valuable scientific information and Indigenous traditional knowledge is absent from the assessment and protection process.

### 2.2 Listing Species<sup>1</sup>

Section 18 of the Act requires the Minister to establish a List of Species at Risk. The Minister fulfilled this obligation by creating the *List of Species at Risk Regulation* when the Act came into force in 2013.<sup>6</sup> At that time, there were 88 species on the List of Species at Risk.

- 5 species are listed as extirpated from the province;
- 39 species are listed as endangered;
- 20 species are listed as threatened; and
- 24 species are listed as species of special concern.<sup>7</sup>

The extirpated species are the Atlantic Walrus, the Dwarf Wedgemussel, the Grey Wolf, the Wolverine, and the Woodland Caribou. Examples of endangered species include the Bald Eagle, the Blue Whale, the Butternut tree, and Vole Ears Lichen. Examples of threatened species include the American Eel, the Canada Warbler, the Wood Turtle, and Van Brunt's Jacob's Ladder. Examples of species of special concern include the Eastern Wood-pewee, the Harbour Porpoise, the Monarch butterfly, and Beach Pinweed.

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<sup>1</sup> All data relating to the status and classification of currently listed species can be found in Appendix A of this report.



There has been no change to the *List of Species at Risk Regulation* since 2013: no new species have been added, and no species have been removed or moved to new categories. In our view, the Minister's failure to appoint members to the COSSAR has likely contributed to this troubling reality, as one of the COSSAR's responsibilities under the Act is to assist the Minister in identifying species in trouble that may require assessment and classification.<sup>8</sup>

### 2.3 Assessing Feasibility of Recovery

After species have been listed in the *List of Species at Risk Regulation*, subsection 21(1) of the Act requires the Minister to ensure that feasibility of recovery assessments are conducted for species that are listed as extirpated, endangered, or threatened. As their name implies, such assessments aim to determine if the local recovery of a species is feasible.

Our analysis of the Minister's performance with respect to feasibility of recovery assessments, based on information contained in the public registry, indicates the following:

#### **For the 5 species that are listed as extirpated,**

- 2 species have feasibility of recovery assessments prepared by the province.
- 3 species have federal recovery strategies, with New Brunswick addenda, where feasibility of recovery may have been determined.

#### **For the 39 species that are listed as endangered,**

- 4 species have feasibility of recovery assessments prepared by the province.
- 23 species have no feasibility of recovery assessment; however, for 7 of those species, there may be existing protections imported from the former NB *ESA* regime.
- For the remaining 12 species, the public registry indicates that the Minister is relying on a federal process to determine feasibility of recovery.

#### **For the 20 species that are listed as threatened,**

- 0 species have a provincial feasibility of recovery assessment.
- 19 species have no feasibility of recovery assessment.

- For 1 species, the Least Bittern, the public registry indicates that the Minister is relying on a federal process to determine the feasibility of recovery.

For the 64 species listed as extirpated, endangered, or threatened, the Minister has clearly met the requirement to ensure that feasibility of recovery assessments are completed for just 6 species. Although the Minister may have relied on a federal process for assessing feasibility of recovery for some of the remaining species, and although other species may have protections imported from the former NB *ESA* regime, the Minister has not been explicit about either, which creates uncertainty as to whether the Act's requirements have been met for those species. This uncertainty is outlined in greater detail below. What is clear, however, is that there are at least 35 species that have received no feasibility of recovery assessment in any form.

Determining the feasibility of recovery is a key step in the process to protect and recover species at risk in New Brunswick. The Minister has failed to complete this critical first step for key species including the Atlantic Bluefin Tuna, the Porbeagle shark, the Atlantic Sturgeon, and the Wood Turtle.

### 2.4 Recovery Strategies

Once a species has been listed in the *List of Species at Risk Regulation*, the Minister must take certain actions for the protection of the species. The required actions vary according to the species' categorization.

As discussed above, for species that are listed as extirpated, endangered, or threatened, subsection 21(4) of the Act requires the Minister to ensure that a feasibility of recovery assessment is conducted to determine whether local recovery of the species is feasible. If the Minister concludes that recovery is feasible, the Minister must then prepare or adopt a recovery strategy for the species.

In general, recovery strategies include advice to governments, landowners, and others that will help to ensure the survival of the species. Specifically, the Act states that a recovery strategy should include descriptions of the species, its habitat needs, the threats it faces, objectives for its population and distribution, and strategies required to address threats to the species.<sup>9</sup>

If the Minister concludes that recovery of a species is not feasible, the Minister must publish that conclusion, with an explanation, in the public registry.<sup>10</sup> The Minister has deemed that recovery is not feasible for 9 species (all 5 of the extirpated species and 4 of the endangered species). The Minister is not required by the Act to prepare or adopt recovery strategies for these species. Interestingly, there are New Brunswick addenda to federal recovery strategies for all 4 of the listed endangered species whose recovery has been deemed not feasible.

Drawing from the information contained in the public registry, our analysis concerning the Minister's performance with respect to recovery strategies for endangered and threatened species indicates that:

**For the 39 species that are listed as endangered,**

- 3 species have provincial recovery strategies.
- 22 species have no provincial recovery strategy or New Brunswick addenda to a federal recovery strategy.
- For 14 species the public registry indicates the Minister is relying on a federal process: 11 of these have federal recovery strategies with New Brunswick addenda, and 3 species have a federal management plan.

**For the 20 species listed as threatened,**

- 0 species have a provincial recovery strategy.
- 19 species have no recovery strategy.
- For 1 species, the public registry indicates that the Minister is relying on a federal process; this species, the Least Bittern, has a federal recovery strategy with a New Brunswick Addendum.

## 2.5 Management Plans

For species that are listed as species of special concern, the Minister must create or adopt a management plan that identifies appropriate measures for the conservation of the species.<sup>11</sup>

There are 24 species that are listed as species of special concern under the Act. According to subsections 20(1) and 20(2) of the Act, the Minister is required to prepare or adopt management plans for these species. Moreover, subsection 20(6) requires the Minister to publish management plans in the public registry “without delay” after they are made or adopted.

Relying on the information contained in the public registry, our analysis concerning the Minister's performance with respect to management plans indicates that:

**For the 24 species that are listed as species of special concern:**

- No species have provincial management plans published in the public registry.
- 4 species appear to be addressed in federal management plans through the addition of New Brunswick addenda.

## 2.6 Adoption Concerns for Feasibility Assessments, Recovery Strategies, and Management Plans

Subsection 21(4) of the Act requires the Minister to prepare recovery strategies for species that are listed as extirpated, endangered, or threatened when feasibility of recovery assessments have determined that recovery is feasible; however, subsection 21(5) enables the Minister to satisfy the requirement of subsection 21(4) by adopting, in whole or in part, a recovery strategy that has been prepared by someone else, with or without modifications.

Likewise, subsection 20(1) of the Act requires the Minister to prepare management plans for species that are listed as special concern; however, subsection 20(2) enables the Minister to satisfy the requirement of subsection 20(1) by adopting, in whole or in part, a management plan that has been prepared by someone else, with or without modifications.

The public registry often cites federal recovery strategies and management plans for listed species as though the existence of such strategies and plans satisfies the requirements of subsections 21(4) and 20(1) of the Act.

Entries within the public registry do not state clearly that the Minister has adopted federal recovery strategies or management plans in accordance with subsections 21(5) and 20(2) of the Act. In some cases, the presence of New Brunswick addenda to federal recovery strategies or management plans suggests—without stating clearly—that the Minister may have adopted the federal plan or strategy. In other cases, the Minister's failure to properly maintain the public registry makes it impossible to determine, based on the information provided, whether the Minister has adopted federal recovery

strategies or management plans for listed species. And, in many other cases, it is clear that the Minister has deferred to federal processes that may not be in place.

In response to an inquiry that East Coast Environmental Law submitted under New Brunswick's *Right to Information and Protection of Privacy Act*, the Honourable Tom MacFarlane, current Deputy Minister of Natural Resources and Energy Development, indicated that the existence of a New Brunswick addendum to a federal recovery strategy or management plan signifies provincial adoption of the federal strategy or plan.

East Coast Environmental Law acknowledges this position, but we are not convinced that this informal statement by the Deputy Minister meets the requirement for adoption of federal documents as required by subsections 21(5) and 20(2) of the Act.

## 2.7 Protection Assessments

Under the Act, protection assessments are a necessary first step in determining whether legal prohibitions should be imposed to protect species at risk from human activities that would harm, kill, harass, or otherwise contribute to the disappearance of such species.<sup>12</sup>

Despite the apparently straightforward wording of subsection 25(1), other provisions of the Act imply that the Minister may only be required to undertake protection assessments for extirpated, endangered, and threatened species when the species' recovery has been deemed feasible. For this reason, the legal meaning of subsection 25(1) is not entirely clear at this time, and our analysis takes that uncertainty into account.

Putting that uncertainty aside, it is absolutely clear that the Act requires the Minister to undertake protection assessments for extirpated, endangered, and threatened species when the species' recovery has been deemed feasible, and the vast majority of such species under the Act have not received the benefit of that process.

None of the extirpated, endangered, or threatened species that are listed under the Act have been given protection assessments.

15 of the species that are listed as endangered had formerly been given protections under the NB *ESA*, and those protections were carried forward

under the Act when it came into force. It is not clear whether importing protections that existed under the NB *ESA* fulfils the protection assessment requirements of NB *SARA*.

Notably, 2 of the species that are currently receiving protections imported from the NB *ESA* (the Harlequin Duck and the Maritime Ringlet) are among the species for which recovery has been deemed not feasible, and the Minister's obligation to undertake protection assessments for those species under NB *SARA* is doubly uncertain.

For the remaining 44 endangered and threatened species for which the Minister has a responsibility to conduct protection assessments, the Minister's failures are clear.

## 2.8 Maintaining the Public Registry

It is possible that the Minister has adopted federal recovery strategies or management plans to protect certain species at risk in the province since the public registry was last updated in 2013; however, the Minister's failure to properly maintain the public registry as required by law makes it difficult to tell if that is the case.

Public access to information plays a key role in ensuring transparency and allowing members of the public to hold governments to account. Section 67 of the Act requires the maintenance of a public registry that will serve, among other things, as a written record of the Minister's performance under the Act.

According to the Act, the Minister must publish in the public registry:

- The dates by which the Minister intends to publish recovery strategies or management plans for listed species;<sup>13</sup>
- recovery strategies and management plans;<sup>14</sup>
- a conclusion and explanation if the recovery of a species is deemed not feasible;<sup>15</sup>
- the dates by which the Minister intends to have protection assessments completed;<sup>16</sup>
- action plans prepared or adopted by the Minister;<sup>17</sup>



- any decision by the Minister not to recommend that prohibitions be applied for the protection of a species, along with reasons for the decision;<sup>18</sup> and
- any decision by the Minister not to recommend that a survival habitat designation or recovery habitat designation be made, along with reasons for the decision.<sup>19</sup>

The public registry has not been updated since May 2013, resulting in several violations of the Minister’s publishing obligations under the Act. Since at least some of that information could equip members of the public with knowledge they need to help protect species at risk, the Minister’s failures to make such information accessible are more than technical violations; they undermine the core purposes of the Act.

### **3.0 TIMELINES FOR SPECIES ASSESSMENT AND PROTECTION MEASURES UNDER THE ACT**

The Act establishes a relatively straightforward process through which the Minister must see to it that the biological statuses of species at risk in New Brunswick are assessed and steps are taken to recover or support such species’ continued existence in the province. Unfortunately, the absence of clear deadlines for the most significant requirements of the Act undermines both the purpose and the efficacy of the Act on the whole.

The absence of clear deadlines for the completion of feasibility of recovery assessments, the preparation or adoption of management plans and recovery strategies, and the completion of protection assessments is particularly concerning. Appendix B to this Report provides a tabular overview of the relevant timelines. As the table makes clear, the Act assigns several deadlines that the Minister and the COSSAR must meet. Certain steps must be taken “without delay”, and others must be done within relatively short timeframes.

Despite the importance of the deadlines that the Act includes, however, the absence of clear deadlines for the completion of feasibility of recovery assessments, the preparation or adoption of management plans and recovery strategies, and the completion of protection assessments is deeply concerning, as those assessments, plans, and strategies are absolutely essential for the protection of species at risk in New Brunswick.

For these reasons, East Coast Environmental Law calls upon the Government of New Brunswick to amend the Act to include clear deadlines for the completion of feasibility of recovery assessments, management plans, recovery strategies, and protection assessments.

### **4.0 ACTION PLANS**

Under the Act, the Minister can decide whether or not to prepare an action plan in response to a recovery strategy. If an action plan is prepared, it must identify what measures will be taken to address the issues identified in the corresponding recovery strategy, indicate who is responsible for taking those measures, and set a proposed timeline for the completion of whatever tasks are required.<sup>20</sup>

In our view, if action plans were made mandatory by the Act, rather than being left to the discretion of the Minister, they would provide much needed direction and accountability for the Department of Natural Resources and Energy Development in the recovery of species at risk.

### **5.0 HABITAT IDENTIFICATION AND PROTECTION**

Under the Act, the Minister can decide whether or not to designate recovery habitat or survival habitat for species. According to subsection 27(1), after carrying out a protection assessment, the Minister must decide, without delay, whether or not to recommend to the Lieutenant-Governor in Council that a survival habitat designation or a recovery habitat designation should be made to protect the species concerned. If the Minister recommends that survival or recovery habitat be designated, the Lieutenant-Governor in Council must decide whether or not to approve the recommended designation. If the designation is approved, then a regulation must be drafted to implement the designation.

To date, no such regulations have been created under the Act. In our view, the process for designating survival or recovery habitat under the Act should not be left to the discretion of the Minister but should instead be a mandatory requirement under the law. No real protections for species exist if we do not protect their habitats.

## 6.0 CONCLUSION

Eight years ago, the Government of New Brunswick passed the *Species at Risk Act* and reaffirmed its commitment to protect species on the brink throughout the province. Although the Act promised significant improvements to the provincial regime that protected species at risk, the Minister has demonstrated a clear record of failure under the Act.

East Coast Environmental Law strongly reproves the Minister's failures to meet the requirements of the Act, and we emphasize the acute necessity of completing feasibility of recovery assessments, management plans, recovery strategies, and protection assessments, along with the critical value of properly maintaining the public registry.

## 7.0 CALLS TO GOVERNMENT

Research and analysis completed by East Coast Environmental Law has identified clear failures by the Minister to ensure that all feasibility of recovery assessments, recovery strategies, management plans, protection assessments, and publications that the Act requires have been properly carried out and published in the public registry.

East Coast Environmental Law calls on the Government of New Brunswick to immediately take action to comply with the Act by:

- appointing members to the COSSAR;
- completing outstanding feasibility of recovery assessments, management plans, recovery strategies, and protection assessments; and
- updating the public registry of Species at Risk.

Furthermore, we call on the Government of New Brunswick to amend the Act to include clear deadlines for the completion of feasibility of recovery assessments, management plans, recovery strategies, and protection assessments.

In addition, we strongly recommend that action plans be made mandatory under the Act instead of being left to the discretion of the Minister, and we likewise recommend strongly that the Government of New Brunswick amend the Act to require habitat protections for species at risk instead of

allowing Ministerial discretion to determine whether recovery habitat and survival habitat will be designated.



## APPENDIX A

### Current Status of Listed Species by Classification

**Legend:**

The Requirements of the Act <b>Have</b> Been Met
The Requirements of the Act <b>Have Not</b> Been Met
The Requirements of the Act <b>May Not</b> Have Been Met (reflecting the uncertainty outlined in subsection 2.6 of this Report)

#### Extirpated Species

Species Name	NB Feasibility of Recovery Assessment Completed or Adopted?	NB Recovery Strategy Completed or Adopted and Published?	NB Protection Assessment Completed?
<b>Atlantic Walrus</b>	No, but NB Addendum to federal recovery strategy. Recovery deemed not feasible.	No, but NB Addendum to federal recovery strategy.	No
<b>Dwarf Wedgemussel</b>	No, but NB Addendum to federal recovery strategy. Recovery deemed not feasible.	No, but NB Addendum to federal recovery strategy.	No
<b>Grey Wolf</b>	Yes, recovery deemed not feasible.	No	No
<b>Wolverine (Eastern Population)</b>	Yes, recovery deemed not feasible.	No	No
<b>Woodland Caribou (Atlantic (Gaspesie) Population)</b>	Unknown, but NB Addendum to federal recovery strategy. Recovery deemed not feasible.	No, but NB Addendum to federal recovery strategy.	No

## Endangered Species

Species Name	NB Feasibility of Recovery Assessment Completed or Adopted?	NB Recovery Strategy Completed or Adopted and Published?	NB Protection Assessment Completed?
<b>Anticosti Aster</b>	Public Registry indicates reliance on federal process.	No, but NB Addendum to federal recovery strategy.	Existing protections under NB ESA imported.
<b>Atlantic Bluefin Tuna</b>	No	No	No
<b>Atlantic Cod (Laurentian South Population)</b>	No	No	No
<b>Atlantic Cod (Southern Population)</b>	No	No	No
<b>Atlantic Salmon (Inner Bay of Fundy Population)</b>	Public Registry indicates reliance on federal process.	No, but NB Addendum to federal recovery strategy.	No
<b>Atlantic salmon (Outer Bay of Fundy Population)</b>	No	No	No
<b>Bald Eagle</b>	No	No	Existing protections under NB ESA imported.
<b>Bathurst Aster (Bathurst Population)</b>	No	No	Existing protections under NB ESA imported.
<b>Boreal Felt Lichen (Atlantic Population)</b>	Yes, recovery deemed not feasible.	No, but NB Addendum to federal recovery strategy.	No
<b>Blue Whale (Atlantic Population)</b>	Public Registry indicates reliance on federal process.	No, but NB Addendum to federal recovery strategy.	No
<b>Butternut</b>	Public Registry indicates reliance on federal process.	No, but NB Addendum to federal recovery strategy.	No
<b>Canada Lynx</b>	No	No	Existing protections under NB ESA imported.
<b>Cobblestone Tiger Beetle</b>	Public Registry indicates reliance on federal process.	No, but NB Addendum to federal recovery strategy.	No
<b>Cusk</b>	No	No	No
<b>Eskimo Curlew</b>	Public Registry indicates reliance on federal process. Recovery deemed not feasible.	No, but NB Addendum to federal recovery strategy.	No
<b>Furbish's Lousewort</b>	Yes (2006)	Yes (2006)	Existing protections under NB ESA imported.
<b>Gulf of St Lawrence Aster</b>	Yes (2007)	Yes (2007)	Existing protections under NB ESA imported.
<b>Harlequin Duck</b>	Public Registry indicates reliance on federal process. Recovery deemed not feasible.	No, but federal management plan cited in public registry.	Existing protections under NB ESA imported.
<b>Leatherback Sea Turtle (Atlantic Population)</b>	Public Registry indicates reliance on federal process.	No, but NB Addendum to federal recovery strategy.	Existing protections under NB ESA imported.
<b>Little Brown Myotis</b>	No	No	No

Species Name	NB Feasibility of Recovery Assessment Completed or Adopted?	NB Recovery Strategy Completed or Adopted and Published?	NB Protection Assessment Completed?
Loggerhead Sea Turtle	No	No	No
Maritime Ringlet	Yes (2006) Recovery deemed not feasible.	Yes (2006)	Existing protections under NB ESA imported.
North Atlantic Right Whale	Public Registry indicates reliance on federal process.	No, but NB Addendum to federal recovery strategy.	No
Northern Myotis	No	No	No
Parker's Pipewort	No	No	Existing protections under NB ESA imported.
Peregrine Falcon	No	No, but federal management plan cited in public registry.	Existing protections under NB ESA imported.
Pinedrops	No	No	Existing protections under NB ESA imported.
Piping Plover	Public Registry indicates reliance on federal process.	No, but NB Addendum to federal recovery strategy.	Existing protections under NB ESA imported.
Porbeagle	No	No	No
Prototype Quillwort	Public Registry indicates reliance on federal process.	No, but federal management plan cited in public registry.	Existing protections under NB ESA imported.
Red Knot	No	No	No
Roseate Tern	Public Registry indicates reliance on federal process.	No, but NB Addendum to federal recovery strategy.	No
Southern Twayblade	No	No	Existing protections under NB ESA imported.
Skillet Clubtail	No	No	No
Striped Bass (Bay of Fundy Population)	No	No	No
Tri-colored Bat	No	No	No
Vole Ears	No	No	No
White Shark (Atlantic Population)	No	No	No
Winter Skate (Southern Gulf of St. Lawrence Population)	No	No	No



## Threatened Species

Species Name	NB Feasibility of Recovery Assessment Completed or Adopted?	NB Recovery Strategy Completed or Adopted and Published?	NB Protection Assessment Completed?
Acadian Redfish (Atlantic Population)	No	No	No
American Eel	No	No	No
American Plaice (Maritime Population)	No	No	No
Atlantic Sturgeon (Maritimes Population)	No	No	No
Barn Swallow	No	No	No
Bicknell's Thrush	No	No	No
Bobolink	No	No	No
Canada Warbler	No	No	No
Chimney Swift	No	No	No
Common Nighthawk	No	No	No
Eastern Meadowlark	No	No	No
Least Bittern	Public Registry indicates reliance on federal process.	No, but NB Addendum to federal recovery strategy.	No
Olive-sided Flycatcher	No	No	No
Rainbow Smelt (Lake Utopia Large-Bodied Population)	No	No	No
Rainbow Smelt (Lake Utopia Small-Bodied Population)	No	No	No
Shortfin Mako (Atlantic Population)	No	No	No
Van Brunt's Jacob's Ladder	No	No	No
Whip-poor-will	No	No	No
Wood Thrush	No	No	No
Wood Turtle	No	No	No

## Species of Special Concern

Species Name	NB Management Plan Completed or Adopted and Published?
Atlantic salmon (Gaspé-Southern Gulf of St. Lawrence Population)	No
Atlantic Wolffish	No, but NB Addendum to federal management plan.
Barrow's Goldeneye (Eastern Population)	No, but NB Addendum to federal management plan.
Beach Pinweed	No
Blue Felt Lichen	No
Blue Shark (Atlantic Population)	No
Brook Floater	No
Eastern Wood-pewee	No
Fin Whale (Atlantic Population)	No
Harbour Porpoise (Northwest Atlantic Population)	No
Horned Grebe (Western Population)	No
Monarch	No
Pygmy Snaketail	No
Rusty Blackbird	No
Short-eared Owl	No
Shortnose Sturgeon	No
Smooth skate (Laurentian-Scotian Population)	No
Snapping Turtle	No
Spiny Dogfish (Atlantic Population)	No
Striped Bass (Southern Gulf of St. Lawrence Population)	No
Thorny Skate	No
Winter Skate (Georges Bank-Western Scotian Shelf-Bay of Fundy Population)	No
Yellow Lampmussel	No, but NB Addendum to federal management plan.
Yellow Rail	No, but NB Addendum to federal management plan.

## APPENDIX B

### Obligations and Associated Timelines

Obligations	Associated Timelines
<b>Preparatory Matters</b>	
Section 8 of the Act established the COSSAR. Subsection 10(1) requires the Minister to appoint members to the COSSAR (something the Minister has not yet done).	No timeline specified, although the purposes of the Act and the Act's formal establishment of the committee suggest that <b>members should have been appointed as soon as possible</b> . The Act was passed 7 years ago.
Subsection 16(1) requires the Minister to provide the COSSAR with status reports on wildlife species that the Minister considers to be at risk for the COSSAR's assessment. In view of paragraph 15(1)(c), the COSSAR may play a role in bringing species to the Minister's attention, but the Act does not require the Minister to rely on the COSSAR in this regard.	No timeline specified.
After the Minister delivers a status report to the COSSAR, the committee must determine whether the report's quality and completeness will allow it to assess the biological status of the species in question; if the committee determines that the report is not acceptable, it must say so to the Minister and identify the report's deficiencies; if the committee determines that the report is acceptable, it must assess the biological status of the species in accordance with paragraph 15(1)(a).	No timeline specified for situations in which the COSSAR determines that a status report is not acceptable, but if the committee determines that the report is acceptable and proceeds to conduct an assessment in accordance with paragraph 15(1)(a), subsection 16(4) requires the committee to deliver that assessment to the Minister <b>without delay</b> .
Subsection 17(1) says that after the COSSAR delivers an assessment to the Minister, the Minister must publish a copy of that assessment, together with a copy of the status report that prompted it, in the public registry.	The Minister must do this <b>within 30 days</b> .
<b>Listing of Wildlife Species</b>	
Subsection 18(1) requires the Minister to establish, by regulation, a List of Species at Risk (the "List"). If the COSSAR delivers an assessment to the Minister that classifies a wildlife species as an extirpated species, an endangered species, a threatened species, or a species of special concern, the Minister must either amend the List so that it includes that species or refer the matter back to the COSSAR for reassessment.	No timeline specified for the establishment of the List (it has been established and is in effect); the Minister's obligation to amend the List or refer the matter back to the COSSAR must be fulfilled <b>within 120 days</b> after the COSSAR delivers its assessment.
<b>Management Plans</b>	
Subsection 20(1) requires the Minister to prepare a management plan for wildlife species that are listed as species of special concern, and subsection 20(2) allows the Minister to adopt a management plan that has been prepared by another person, agency, or body, whether in whole or in part, with or without modifications.	No timeline specified.

Obligations	Associated Timelines
Subsection 20(6) requires the Minister to publish management plans in the public registry after they are made or adopted. Subsection 20(7) allows the Minister to amend a management plan, and it also requires the Minister to incorporate such an amendment into the management plan as published in the public registry.	The Minister must do this <b>without delay</b> after the management plan is made, adopted, or amended.
<b>Feasibility of Recovery Assessments</b>	
Subsection 21(1) requires the Minister to ensure that feasibility of recovery assessments are completed for species that are listed as extirpated, endangered, or threatened: the purpose of such assessments is to determine whether the recovery of a species is feasible.	No timeline specified.
Subsection 21(3) says that if a feasibility of recovery assessment concludes that the recovery of the species is not feasible, the Minister must publish that conclusion in the public registry, along with an explanation.	The Minister must do this <b>without delay</b> after the assessment is concluded.
<b>Recovery Strategies</b>	
Subsection 21(4) says that if a feasibility of recovery assessment concludes that the recovery of the species in question is feasible, the Minister must prepare a recovery strategy for that species. Subsection 21(5) allows the Minister to adopt a recovery strategy that has been prepared by another person, agency, or body, whether in whole or in part, with or without modifications.	No timeline specified.
Subsection 22(6) requires the Minister to publish a recovery strategy in the public registry after the recovery strategy has been made or adopted. Subsection 22(7) allows the Minister to amend a recovery strategy, and it also requires the Minister to incorporate such an amendment into the recovery strategy as published in the public registry.	The Minister must do this <b>without delay</b> after the recovery strategy is made, adopted, or amended.
<b>Action Plans</b>	
Subsection 23(1) enables (but does not require) the Minister to prepare one or more action plans in response to a recovery strategy or to adopt an action plan that has been prepared by another person, agency, or body, whether in whole or in part, with or without modifications.	No timeline specified.
Subsection 23(3) requires the Minister to publish an action plan in the public registry after the action plan has been made or adopted. Subsection 23(4) allows the Minister to amend an action plan, and it also requires the Minister to incorporate such an amendment into the action plan as published in the public registry.	The Minister must do this <b>without delay</b> after the action plan is made, adopted, or amended.
<b>Protection Assessments and Prohibitions</b>	
Section 24 says that after the Minister has published a recovery strategy in the public registry, the Minister must identify in the public registry a date by which the Minister intends to have a protection assessment for the species completed.	The Minister must do this <b>within 90 days</b> of a recovery strategy being published. Importantly, subsections 25(4) and 25(6) make it clear that the Minister does not have to wait until a recovery strategy has been completed before carrying out a protection assessment for a species.

Obligations	Associated Timelines
<p>Subsection 26(1) says that after a protection assessment has been completed, the Minister must decide whether to recommend to the Lieutenant-Governor in Council that the prohibitions listed in section 28 should be applied with respect to the species in question.</p>	<p>The Minister must make this decision <b>without delay</b> once the protection assessment has been completed.</p> <p>Subsection 26(2) says that if the Minister decides not to recommend that the prohibition be applied, the Minister must publish reasons for the decision in the public registry <b>without delay</b>.</p>
<p><b>Habitat Designation</b></p>	
<p>Subsection 27(1) says that after a protection assessment has been completed, the Minister must decide whether to recommend to the Lieutenant-Governor in Council that a survival habitat designation or recovery habitat designation be made for the species in question.</p>	<p>The Minister must make this decision <b>without delay</b> once the protection assessment has been completed.</p> <p>Subsection 27(2) says that if the Minister decides not to recommend that a designation be made, the Minister must publish reasons for the decision in the public registry <b>without delay</b>.</p>



## Endnotes

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<sup>1</sup> *Endangered Species Act*, SNB 1996, chapter E-9.101.

<sup>2</sup> *Species at Risk Act*, SNB 2012, chapter 6 [“NB *SARA*” or the “Act”]. All statutory references are to NB *SARA* unless otherwise noted.

<sup>3</sup> NB *SARA*, *supra* note 2 at sections 8-17.

<sup>4</sup> *Ibid* at section 15.

<sup>5</sup> *Ibid*.

<sup>6</sup> *List of Species at Risk Regulations – Species at Risk Act*, NB Reg 2013-38.

<sup>7</sup> *Ibid* at Schedule A.

<sup>8</sup> NB *SARA*, *supra* note 2 at subsection 15(1)(c).

<sup>9</sup> NB *SARA*, *supra* note 2 at subsection 22(1).

<sup>10</sup> *Ibid* at subsection 21(3).

<sup>11</sup> *Ibid* at subsection 20(1).

<sup>12</sup> *Ibid* at subsection 25(1) and sections 28-29.

<sup>13</sup> *Ibid* at subsection 18(3).

<sup>14</sup> *Ibid* at subsections 20(6) and 22(6).

<sup>15</sup> *Ibid* at subsection 21(3).

<sup>16</sup> *Ibid* at section 24.

<sup>17</sup> *Ibid* at subsection 23(3).

<sup>18</sup> *Ibid* at subsection 26(2).

<sup>19</sup> *Ibid* at subsection 27(2).

<sup>20</sup> *Ibid* at section 23.