



Aboriginal Women And Species at Risk

**An Integrated and Inclusive Approach to
Protection and Recovery**

An Issue Paper

Background

Aboriginal peoples in Canada have always possessed a unique spiritual connection to the earth, including, water, plants and species. In fact, Indigenous legal traditions encompassed social, political and spiritual customs to guide their relationship and interactions in regards to all matters of governance, community, relationships and the environment.¹

In recognition of the unique legal traditions of Indigenous peoples and the traditional ecological knowledge of Aboriginal peoples, the *Convention on Biological Diversity*² (CBD) attempts to incorporate the role of Indigenous people's rights into the CBD as follows:

Parties to the (CBD) recognize:

the close and traditional dependence of many Indigenous groups and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components.³

Canada was one of the first countries to ratify the CBD.⁴ In meeting the commitment to protecting biological diversity, Canada had enacted the *Species at Risk Act*.⁵

Due to the sui generis nature of Aboriginal rights, Aboriginal participation in developing the legislation and the traditional relationship of Aboriginal peoples and the environment, the *Species at Risk Act* provides for Aboriginal involvement within the legislation through the establishment of the National Aboriginal Council on Species at Risk⁶ (NACOSAR), and the establishment of the Aboriginal Traditional Knowledge (ATK) sub-committee⁷ of the Committee on the Status of Wildlife in Canada (COSEWIC)⁸.

Although, SARA was enacted in 2002 legislated Aboriginal provisions have been operating for a much shorter period.

¹ Law Commission of Canada: Justice Within: Indigenous Legal Traditions- Discussion paper, 2 iii

² United Nations *Convention on Biological Diversity*

³ Ibid preamble, Para 12

⁴ Canadian Biodiversity Strategy: Canada's: A commitment to its Conservation and Sustainable use; Conserving Wildlife Diversity (Minister of Supply and Services 1998)

⁵ *Species At Risk Act*, Statute of Canada 2002

⁶ *Species at Risk Act*, Statute of Canada 2002,c.29 s8(1)

⁷ Ibid at s18(1)

⁸ Committee on the Status of Wildlife in Canada

NACOSAR

In the fall of 2005, NACOSAR was officially appointed. The National Aboriginal Council on Species at Risk (NACOSAR) has been established and in the shorter period of operation is achieving success and has invited the Native Women's Association of Canada to participate through various avenues including the appointment of NWAC's President as Chairperson of NACOSAR.

Aboriginal women have participated in a series of workshops and conferences on species at risk and were both contributors and participants at the national conferences. Based upon the collaboration between NACOSAR and the Native Women's Association of Canada, an Aboriginal Women's Environmental Network has been developed. The environmental network has been an excellent resource for the Native Women's Association of Canada and our continued work with NACOSAR and other environmental issues.

NACOSAR has been successful in the promoting awareness in its outreach efforts for Aboriginal peoples in Canada and federal/provincial/territorial governments; however, there is a need to further develop the relationship and advisory capacity to the Minister and CESSC.

COSEWIC Aboriginal Traditional Knowledge (ATK) Sub-committee

The ATK sub-committee received their inaugural appointment in May 2007 and although the ATK-sub committee of COSEWIC has only been recently established serious issues regarding the nature and use of Aboriginal Traditional Knowledge have been identified.

❖ Aboriginal Input into selection and sufficiency of Knowledge holders

Under section 18 (3), Subject to subsection (2), the chairperson and members of the aboriginal traditional knowledge subcommittee must be appointed by the Minister after consultation with any aboriginal organization he or she considers appropriate.

Recently, the Native Women's Association of Canada and COSEWIC recommended an Aboriginal candidate identified through a national selection process for appointment to the ATK sub-committee. Unfortunately, the Minister did not accept the recommendation. Instead the Minister made a discretionary appointment without consultations with Aboriginal organizations and without COSEWIC input.

The Native Women's Association of Canada asserts that the Minister may have set an unwanted precedent by making an appointment to a national independent advisory body on species at risk instead of using the approved process.

The need for independence is critical in order for the scientific body to make decisions and assessments without fear of political influence as set out in s.16 (6) of the *SARA*.

The appointment was made without regard to previous nominations and consultations with Aboriginal organizations that have the primary expertise in identifying appropriate knowledge holders. The candidate recommended by the Native Women's Association of Canada was chosen based upon her knowledge and ability to contribute Indigenous and traditional knowledge specifically held by Indigenous women.

❖ **Disregard for International standards for the protection and integrity of Indigenous and traditional Knowledge**

The history of exploitation of Aboriginal traditional knowledge and Indigenous ecological knowledge has created an environment of mistrust among Indigenous peoples globally. The international community has recognized the potential contributions of Indigenous knowledge to the environmental integrity and biodiversity of the earth and has under article 8 (j) of the *Convention on Biological Diversity*, which Canada has ratified, adopted provisions to recognize and protect Indigenous and traditional knowledge from potential exploitation.

The nature of Indigenous and traditional knowledge requires Aboriginal knowledge holders and collective owners of knowledge to be the most appropriate authorities on such knowledge.

In addition, issues of concern regarding the COSEWIC appointment process, is that the mandatory review of the *Species at Risk Act* identified some underlying areas requiring further commitment and resources to promote Aboriginal participation within the *SARA*.

Formative Evaluation of Federal Species at Risk Programs

Under the *SAR Act*, a five-year mandatory review had to be conducted. In 2007, a Formative Evaluation and Audit was commissioned. The Evaluation reported significant shortfalls in the engagement of Aboriginal participation and reported funding levels well below what was initially committed for Aboriginal involvement.⁹

The report found

Aboriginal peoples input and Aboriginal traditional knowledge have not yet been adequately incorporated into *SARA*-related decision making. Opportunities do

⁹ Environment Canada: Audit and Evaluation: Formative Evaluation of Federal Species At Risk Programs. At 2.2

exist for Aboriginal input, but there are concerns that Aboriginal involvement has not been sufficient or well coordinated. This is an aspect of federal Species at Risk programs that presents significant risks. The policy issues related to Aboriginal involvement with SARA are complex. Addressing the risks and the significant number of outstanding issues and challenges will require more resources, increased Aboriginal involvement in program and policy development, and a more strategic federally coordinated approach¹⁰

In order to address the shortcomings of Aboriginal involvement, the following issues have been identified by the Native Women's Association of Canada as needing to be reconciled with Aboriginal women's goals and priorities.

Conclusion

The success of the partnership between Aboriginal peoples and Government of Canada must be continued and improved in the future to ensure the most effective approach to species protection and recovery.

The successful incorporation of Aboriginal peoples as partners and the use of Aboriginal traditional knowledge in species protection and recovery can only be achieved with the full and effective participation of Aboriginal women and their unique knowledge and commitment to species and habitat protection in Canada.

Recommendations

1. Eco-system Management to Aboriginal Involvement

Aboriginal women have a significant and spiritual connection and responsibility to water. The waters connect all species and eco-systems and indicate the significance of the holistic approach to environmental work. The significance of water to Aboriginal women also raises concerns regarding delivery of SARA programs under departmental categories. Artificial distinctions or criteria for resources limit the success of programs and services meant to protect the environment. A distinction between critical habitat and water-based eco-systems creates artificial boundaries for species recovery work.

2. Improvements to Aboriginal funds under SARA in regards to timeliness and funding levels.

There have been successes to date with the establishment of NACOSAR, however, commitments which reference treasury board guidelines, have experienced unusually long delays in regards to results based projects and

¹⁰ Ibid s. 2.2 at 11

programs regarding Aboriginal peoples. Species recovery initiatives may become inconsequential if the process to access funding resources continues to experience long unexplained delays.

3. Improved advisory capacity of NACOSAR.

Relationship issues were identified as needing improvement within the Formative Audit and Evaluation; efforts should be made by all three departments, Parks, Department of Fisheries and Oceans and Environment Canada, to establish effective relationships with NACOSAR and COSEWIC ATK committee whenever possible or deemed necessary.

4. Recognition, relevance and respect for the nature of traditional knowledge specific to Aboriginal Women.

Awareness and respect for the specific traditional knowledge which Aboriginal women possess must be recognized and specifically sought out in order to determine appropriateness and sufficiency of traditional knowledge. Without Aboriginal women's traditional knowledge significant considerations may be overlooked.