



# Canadian Legal Context for Permitting Tagging Activities on Marine Mammals

September 12<sup>th</sup>, 2023

North Atlantic Right Whale (NARW) Tagging Workshop  
Herndon, VA

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Photo credit : DFO

# Canadian Regulatory Context

## Tagging of marine mammals

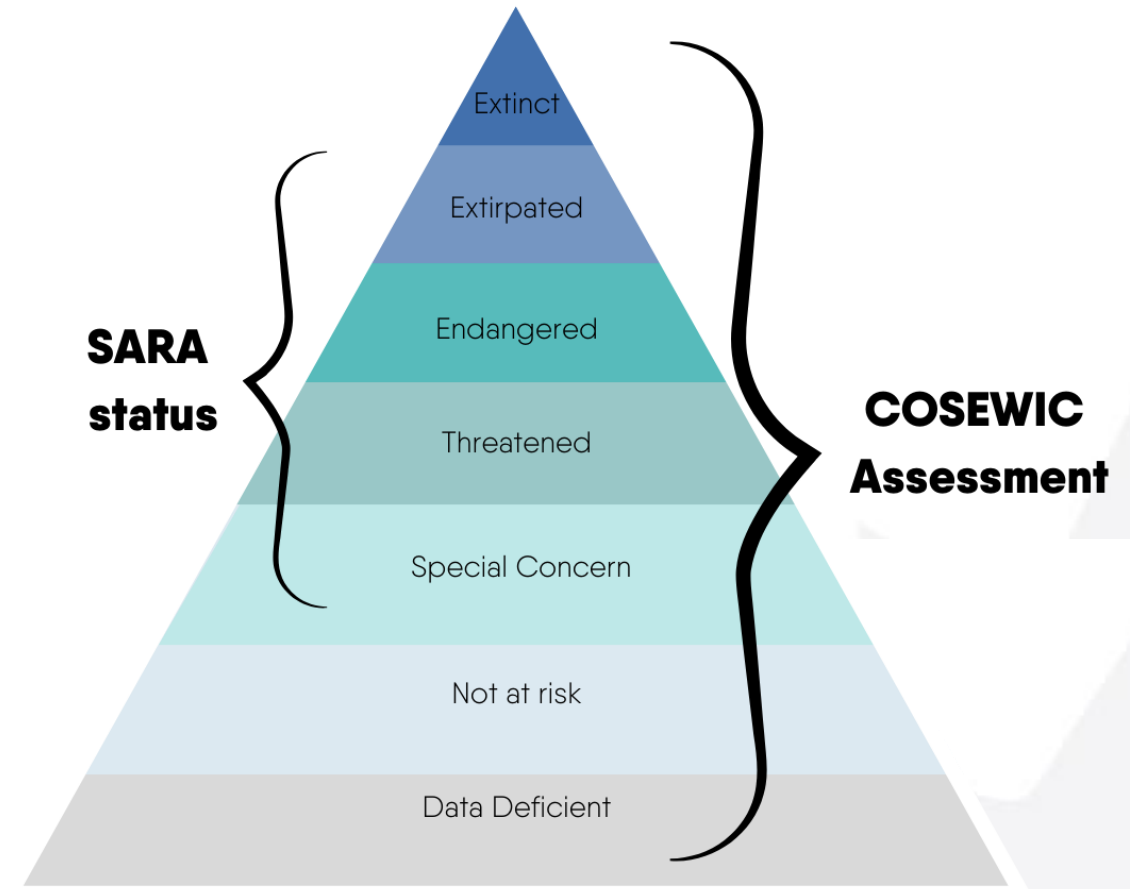


# SARA Legal Context

SARA was enacted in 2002

## Purposes

- prevent wildlife species from becoming **extirpated** or **extinct**
- provide for the recovery of wildlife species that are **extirpated, endangered** or **threatened** as a result of human activity, and
- manage species of **special concern** to prevent them from becoming endangered or threatened.



Wildlife species assessed at risk (i.e. Special Concern, Threatened, Endangered or Extirpated) by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) may or may not be listed under Schedule 1 of SARA.

# SARA's General Prohibitions



**s.32:** prohibits the killing, **harming, harassing**, capturing, taking, possessing, collecting, buying, selling or trading of individuals and parts of individuals of endangered, threatened and extirpated species

**s.33:** prohibits the damage or destruction of listed species' residences

**s.58:** allows for the legal protection of a species' Critical Habitat when a Ministerial Order is signed.



The SARA prohibitions **don't** apply to species listed as **Special Concern**

# SARA Permits – Requirements of s.73

Under SARA (s.73(1)), permits may be issued to authorize certain activities that would otherwise contravene these prohibitions.

SARA permits may only be issued when:

(a) the activity is **scientific research** relating to the conservation of the species and conducted by **qualified persons**;

- Examples : Tagging, biopsies, photo-identification, blow and/or fecal sampling

(b) the activity benefits the species or is required to enhance its chance of survival in the wild; or

- Examples : disentanglement activities, relocation of individuals, public education

(c) affecting the species is incidental to the carrying out of the activity.

- Examples : incidental captures of individuals



# SARA Conditions for Permits

SARA (s.73(3)) requires that **all** the following pre-conditions be met before a permit may be issued :

**a) all reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted;**

- Other activities and/or technical or research designs were considered
- Other locations and/or timelines were considered
- Other species were considered
- Linkages with other projects and collaboration with other researchers has been demonstrated or considered

# SARA Conditions for Permits

SARA (s.73(3)) requires that **all** the following pre-conditions be met before a permit may be issued :

- a) all reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted;
- b) 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;**
  - Specific mitigation measures used to minimize impacts to the species
  - Appropriate personnel will conduct the activities

# SARA Conditions for Permits

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- a) all reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted;
- b) 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;
- c) the activity will not jeopardize the survival or recovery of the species.**



# SARA Permitting Provisions and Conditions

SARA (s.73(6)) also requires that the permit contain **any terms and conditions governing the activity necessary for:**

- protecting the species
- minimizing the impact of the authorized activity on the species
- providing for the recovery of the species.



# Permit Conditions – Tagging Mitigation

## Vessel approaches

- Minimal distances must be respected between an individual and the vessel

## RPAS (remotely piloted aircraft system)

- Minimal altitude of the RPAS within a radius of one-half nautical miles
- Log of each flight is required

## Interaction time

- Limited time per day being within 100 m of an individual for photo-ID and tagging

## Notification

- 48h before the start of activities, permit holders must inform Fishery Officers of when and where they will go out

## Tagging

- Only anchored tags and suction-cup tags have been authorized for NARW
- Anchors must be sterilized before use
- Only inflatable vessels must be used
- Individuals in poor physical health or mother and calf pairs must not be tagged
- Tag must be placed posterior ( $\geq 1$  m) to blow holes and  $\geq 2$  m anterior to the peduncle
- Limited numbers of individuals that can be tagged
- Photo-ID required before tagging in order to make sure an individual is not already tagged

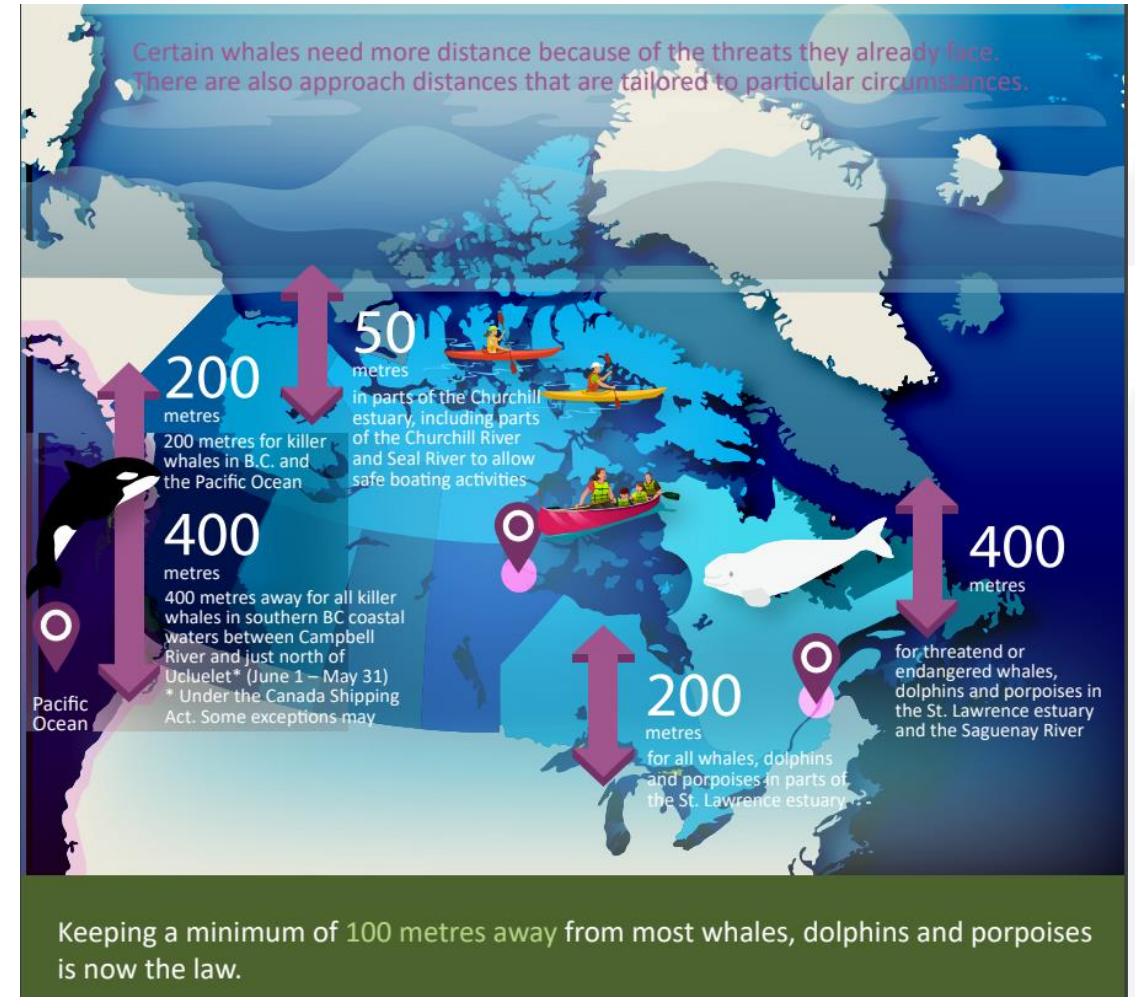


# Marine Mammal Regulations (MMR) Prohibitions

MMRs are set out by the Government of Canada through the *Fisheries Act*.

MMRs s.38 **prohibits the disturbance of any marine mammal** (whales, dolphins, porpoises, seals, etc)

- Minimal approach distances to marine mammals are mandatory under specific situations
- Specific regulations regarding the **use of an aircraft** (RPAS/drone)



# MMRs Prohibitions



The Regulations state that when using an aircraft (a RPAS/drone) over a marine mammal:

- an altitude of 1,000 ft within a radius of one-half nautical mile from a marine mammal must be maintained
- no flight manoeuvre for the purpose of bringing the aircraft closer to a marine mammal (in the air or in the water) or otherwise disturbing it shall be performed



# MMR Permits and Conditions

MMR **s.38** : Disturbance may be authorized if it **contributes to marine scientific research**.

The MMR authorization may be subject to several conditions related to :

- the species targeted
- the manner in which marine mammals may be disturbed
- the measures that are required to mitigate or minimize the negative effects of disturbing the species.



# Tagging activities on North Atlantic Right Whales



## **s.38 MMR authorization and s.74 permit under SARA**

Conditions related to tagging activities and to the use of a RPAS will be added to the permit.



## **Stand-alone s.73 SARA permit**

Conditions related to tagging activities only will be added to the permit.

# Permit monitoring



- A section of all SARA permits is dedicated to conditions about **reporting** and **monitoring**.
- A report is required ~2 months after the end of the activities.

*Examples of information requested in report and monitoring conditions*

- For any interaction/sightings of NARW
  - Date, time, location
  - Description of interactions
  - Identification/condition of the individual
  - Details of any adverse reactions
- Brief description of the activities carried out
  - Nb of whales encountered
  - Nb of RPAS flights over whales
  - Nb of tags deployed and/or unsuccessful tagging attempts
- Summary of methods
  - Problems encountered, improvements made, mitigation measures implemented

**SARA Section 73 Permit Report**

**SECTION A: PERMIT INFORMATION**

REPORTING YEAR:		PERMIT/LICENCE#:	
PERMIT HOLDER NAME:		PERMIT HOLDER ORGANIZATION:	
PERMIT ISSUANCE DATE:		PERMIT EXPIRY DATE:	

**SECTION B: PROJECT STATUS**

PROJECT STATUS:  COMPLETED  CONTINUING  SUSPENDED  TERMINATED

PROPOSED END DATE OF PROJECT: [Click here to enter a date.](#)

WILL A PERMIT RENEWAL BE REQUESTED IN THE FUTURE?  YES  NO  NOT SURE

IF YES, FOR WHAT YEAR(S)

WERE ANY OF THE ACTIVITIES AUTHORIZED BY THIS PERMIT PERFORMED WITHIN THE EFFECTIVE DATES OF THE PERMIT?  YES  NO

IF YES, COMPLETE ALL RELEVANT SECTIONS OF THIS REPORT.

IF NO, EXPLAIN WHY, USING THE SPACE BELOW, AND GO TO SECTION G OF THIS REPORT.

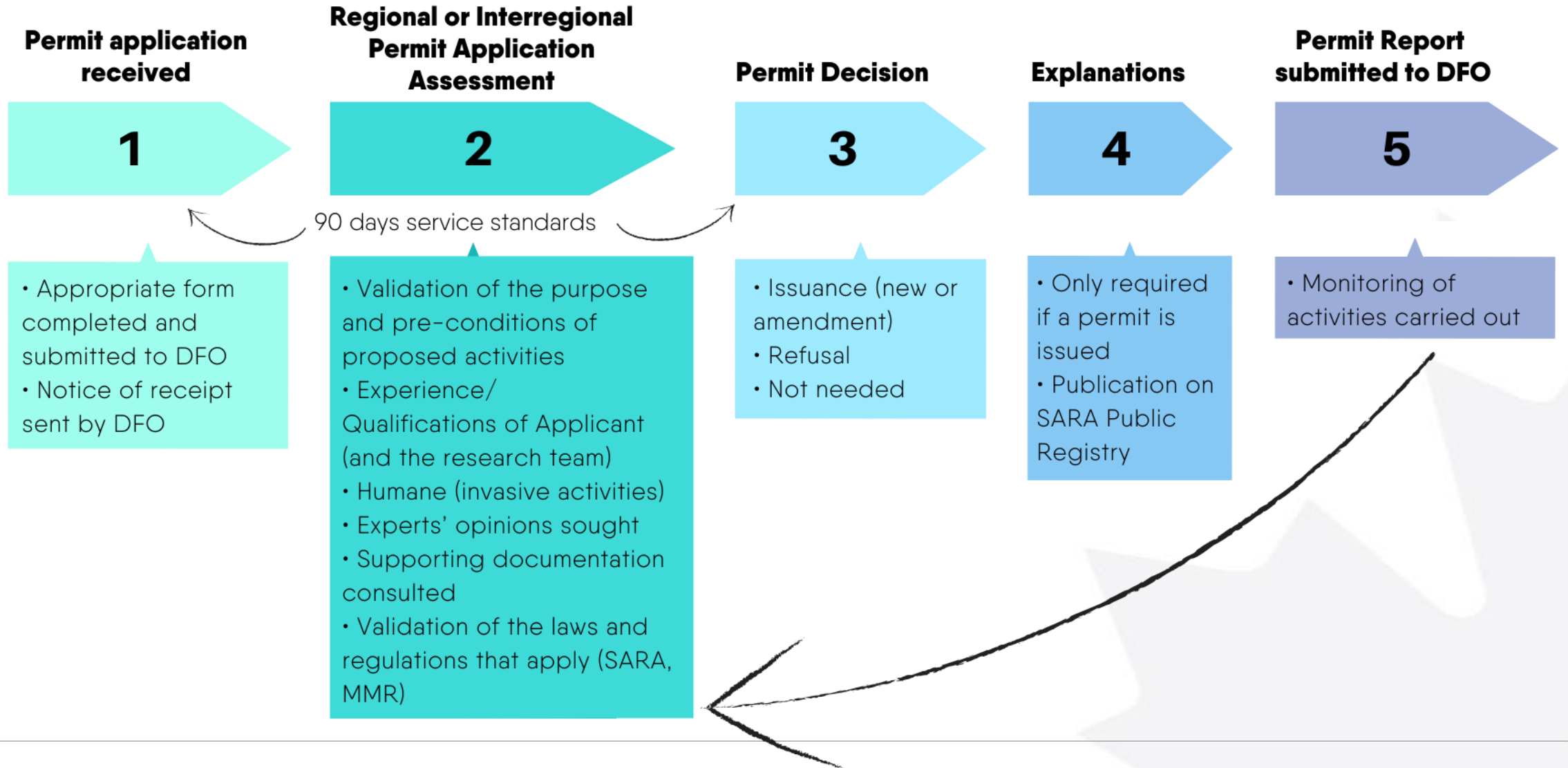
**INSTRUCTIONS: PLEASE COMPLETE SECTIONS C TO F BELOW. ADDITIONAL INFORMATION CAN BE PROVIDED IN A SEPARATE DOCUMENT USING SECTION HEADINGS CORRESPONDING TO THOSE BELOW IF NECESSARY.**

**SECTION C: REPORT OF ACTIVITIES**

Describe each activity, authorized by the SARA Section 73 Permit, that was undertaken. Provide details on who performed the activity, when it took place, where it took place, what methods and equipment were used, and whether or not performing the activity resulted in an interaction with the SARA-listed species. For any activities resulting in one or more interactions with the SARA-listed species, indicate the specific Record(s) of Interaction to refer to in Section D.



# General SARA Permit Process





# Other required authorizations

A permit under SARA and/or an authorization under the MMR do not eliminate the obligation to obtain required additional authorizations, permits or licences :



- Marine Protected Area Activity Approval
- Approved Animal Care Protocol
- Foreign Vessel Clearance
- Additional licences under the *Fisheries Act* (ex: biopsies or tissue samplings)
- Other permits required under a relevant provincial or federal Act
- ...

# Questions ?

