



Why Canada needs SARA's jeopardy test

Canada's Species at Risk Act (SARA) is the federal law enacted in 2002 to protect and recover endangered wildlife in Canada.^[1] In 2026, Ottawa proposed an unprecedented change that would allow Cabinet to exempt major projects from Section 73 of SARA, one of Canada's most important safeguards for endangered wildlife.^[2]

THE JEOPARDY TEST

Known as the jeopardy clause, Section 73 of SARA has a strict legal requirement that a project must not jeopardize the survival or recovery of a species.^[3] This is the jeopardy test.

What are at-risk species?

- ✓ Under SARA, species at-risk refers to extirpated, endangered, or threatened species, or those of special concern.^[4]
- ✓ SARA requires recovery plans and protection for the Critical Habitat of threatened and endangered species.^[5]

What is the jeopardy clause?

- ✓ The SARA jeopardy clause is designed to prevent species extinction as a result of a project undertaken in Critical Habitat.^[6]

Why would a project need a SARA permit?

Under SARA Section 73, Ottawa may permit activities in Critical Habitat of an endangered species.^[7] A permit can be granted if these three conditions are met:^[8]

- ✓ Alternatives were considered and the best reasonable option is selected;
- ✓ all feasible measures will minimize harm; and
- ✓ there is no threat (jeopardy) to survival or recovery.

The legal backstop for SARA

The jeopardy test looks at harm remaining after considering alternatives, offsetting, and mitigation.

- ✓ If remaining harm from a proposed project still threatens a SARA-listed species, a section 73 permit cannot be issued.^[9]

Is Ottawa putting SARA at risk?

Cabinet is proposing to exempt Projects deemed Of National Interest (PONI) from the jeopardy test.^[10] PONI designation for two major projects affecting Southern Resident killer whales have been proposed:

- ✓ Expansion of the Roberts Bank cargo terminal (RBT2).^[11]
- ✓ Construction of a new West Coast Oil Pipeline (WCOP) with its terminal at Roberts Bank.^{[12][13]}

Why it matters

- ✓ An exemption from SARA's jeopardy clause would allow a project to proceed despite its harm.^{[14][15]}
- ✓ Such an exemption would threaten species with extinction, running contrary to the purpose of SARA.^[16]
- ✓ Projects exempted in Southern Resident killer whale Critical Habitat will increase underwater noise, pollution, vessel strike risk, and harm salmon habitat.^{[17][18]}
- ✓ They also increase the risk of oil spills.^{[19][20][21]}

