

## SUBMISSION TO THE NWMB FOR

Information: X

Decision:

**Issue:** The protection of Critical Habitat for Ivory Gull (*Pagophila eburnea*) in Nunavut

### **Background**

The Ivory Gull is a seabird found only in the Arctic that was listed as *Endangered* on Schedule 1 of the *Species at Risk Act* (SARA) in 2009.

Ivory Gulls are medium-sized, pure white gulls that nest in the High Arctic in Nunavut, and migrate to Davis Strait in the winter. The population in Nunavut has declined by more than 70% since the 1980s, as confirmed by local ecological knowledge (LEK) and survey work. Ivory Gulls also nest in Greenland, Norway and Russia, and populations there seem to have declined a little, but not as much as in Canada.

We presented the proposed Recovery Strategy to the NWMB for decision at the regular meeting held October 17-21 in 2011. After careful review of the information presented at the meeting, the NWMB made the final decision to approve the recovery strategy for the Ivory Gull and to further approve the critical habitat identified so far in Appendix A of the recovery strategy. The Recovery Strategy for Ivory Gull is in the final stages of posting on the Species at Risk Registry.

### **Critical Habitat**

Critical habitat is defined in SARA (Subsection 2(1)) as “*the habitat that is necessary for the survival or recovery of a listed wildlife species and that is identified as the species’ critical habitat in the recovery strategy or in an action plan for the species*”.

Section 58 of SARA states:

- (1) *Subject to this section, no person shall destroy any part of the critical habitat of any listed endangered species or of any listed threatened species – or of any listed extirpated species if a recovery strategy has recommended the reintroduction of the species in the wild in Canada – if*
  - (a) *The critical habitat is on federal land, in the exclusive economic zone of Canada or on the continental shelf of Canada;*
  - (b) *The listed species is an aquatic species; or*
  - (c) *The listed species is a species of migratory birds protected by the Migratory Birds Convention Act, 1994.*

Critical habitat that has been identified for species listed as threatened or endangered (or extirpated species in which the recovery strategy recommends reintroduction) must be protected from destruction on federal lands, in the exclusive economic zone or on the continental shelf of Canada. The competent minister must, within 180 days of the identification of critical habitat in a recovery strategy or action plan, determine whether the critical habitat is legally protected by provisions in or measures under SARA or any other Act of Parliament, including agreements under s.11 of SARA. In the competent ministers' determination of whether critical habitat is legally protected, he or she will consider whether mandatory and enforceable provisions and measures prevent activities, such as those identified in the recovery strategy or action plan, that are likely to destroy critical habitat.

If, after consultation with the federal minister that has authority of the land in which the critical habitat is found, the competent minister determines that such protection exists, he or she must provide a statement explaining how the critical habitat is legally protected on the SARA Public Registry. If no protection measures exist for the critical habitat, the competent minister must make a recommendation to the Governor in Council to enter into a conservation agreement (under section 11 of SARA) with any government in Canada, organization or person through an order under subsection 58(4) and (5) applying the prohibition against the destruction of critical habitat, or by recommending a regulation under section 59.

The protection measures in SARA are applied in a different manner to critical habitat that is in a national park, a marine protected area, a migratory bird sanctuary or a national wildlife area, than they are on other federal lands. The competent minister must, within 90 days of the identification of critical habitat in a recovery strategy or action plan, publish a description of the critical habitat or portion of the critical habitat that is within a park, area or sanctuary in the *Canada Gazette*. Protection of that area will take effect 90 days following the publication.

The Nunavut Land Claims Act (NLCA; section 5.2.34) states: "*the Nunavut Wildlife Management Board (NWMB) shall...approve plans for management and protection of particular wildlife habitats including areas within Conservation Areas, Territorial Parks and National Parks.*"

### **Critical Habitat for Ivory Gulls**

Critical habitat locations for Ivory Gulls were identified in the recovery strategy based on the following criterion:

- Colonies where at least one Ivory Gull has been observed nesting at least once from 2002-2009 (since one gull can represent a nesting pair). Ivory Gulls may use colonies in one year, then move to another location in the following year and return to the initial colony in a following year, so all recently occupied sites are considered critical habitat.

For each location identified using the above criterion, a 2-km radius around the approximate centroid of the colony was used as the extent of critical habitat around a colony. The recovery strategy states past survey work has suggested that disturbance within a 2-km radius of the centre of a colony may affect the ability of the Ivory Gulls to use the habitat for nesting. Critical habitat for Ivory Gulls is identified in the recovery strategy for 39 locations in the Canadian High Arctic (Figure 1). Additional critical habitat will be identified in an action plan following further studies to identify critical habitat, including wintering habitat if in Canada.

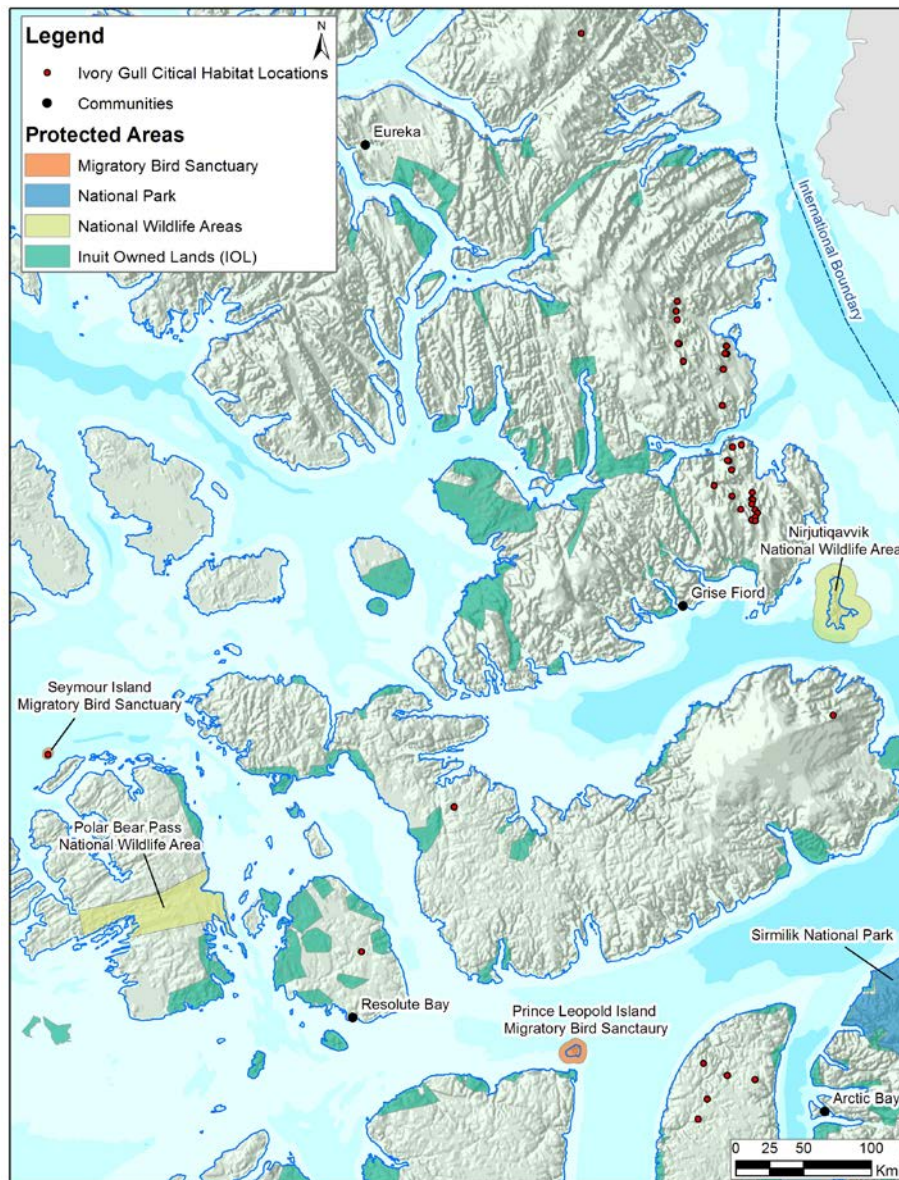


Figure 1. Locations of Ivory Gull critical habitat in Nunavut. Additional locations have been identified since the writing of the recovery strategy. These locations will be identified in the Action Plan.

Destruction of critical habitat is defined differently for different species. In general, destruction would result if part of the critical habitat were degraded, either permanently or temporarily, to the point that it would not serve its function when needed by the species. Destruction may result from a single or multiple activities at one point in time or from the cumulative effects of one or more activities over time.

Destruction of Ivory Gull critical habitat is identified in the recovery strategy as any alteration to the breeding colony that can adversely modify the biological, chemical or physical features to the extent that the critical habitat no longer exists or cannot be used. These activities may not result in destruction initially, but overtime or in combination with other activities may have a destructive effect.

### **What does this all mean?**

While SARA is a law of general application within the Nunavut Territory, it is (in case of conflict) superseded by the NLCA, which has specific provisions regarding Inuit right of access, land ownership, and creates institutes of public government for management of wildlife, land use planning and impact review. With some exceptions (federal protected areas, Department of National Defence Lands), most of the lands in Nunavut are federal crown lands under the administration and control of the Minister of Aboriginal Affairs and Northern Development Canada (AANDC). Environment Canada is going through a process to determine what legal tools (e.g. federal legislation, Nunavut Land Use Plan) in Nunavut may have a bearing on the protection of critical habitat for species at risk on federal crown lands in Nunavut. Environment Canada will brief the board for advice and approval when options for the legal protection of Ivory Gull critical habitat are identified.

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