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Summary

- The law must function to recover populations of at-risk species and rare plant communities first by protecting functional habitat and the ecological processes upon which the relevant species rely, and second by restoring habitat that has been degraded so that the necessary ecological processes can be recovered.
 - The law must provide interim habitat protection to ensure that species do not continue to decline as recovery plans are completed and implemented.
 - Interim and long-term habitat protection must be based on the knowledge of independent scientists and Aboriginal Traditional Knowledge holders.
- The law must list and recover individual species at risk (including geographically or genetically isolated populations). Rare plant communities, including rare types of old-growth forests, should also be assessed and listed, while ensuring the individual species at risk residing within these communities are also assessed and listed separately. Assessing and listing rare plant communities must be in addition to the assessment and listing of individual species at risk.
- The law must be proactive and include provisions to prevent species from becoming threatened or endangered. This includes, where appropriate, extending protections to special concern species and their habitat.
- The law must be guided by a precautionary approach where scientific certainty is not required before taking preventive measures.
- The law must be prefaced by a clearly defined and compelling moral imperative against the extinction of species and against compromising the functioning of ecosystems.
- The law must recognize the inherent value of species and ecosystems, and the critical role healthy ecosystems play in supporting healthy human societies and economies.
- The law must recognize that mitigation, such as offsets, is not possible in certain habitats and for certain species. Some habitat types, such as old growth forests, are the natural product of long-term processes and, once lost, cannot be recovered over the short time periods necessary for species recovery. Therefore, this law must never approve of the destruction or degradation of these forest types.
- At every stage, the law must clearly separate the scientific and Aboriginal traditional knowledge components of decision-making from the political, social and economic components. Political, social and economic considerations must not influence the assessment or listing of a species, or the contents of its recovery strategy.
- The entire process must be fully transparent, with all documents, including raw scientific data, available on a public registry.

Purpose of this law

The law's express purpose should be to prevent species and rare plant communities from becoming extirpated, extinct, endangered or threatened by:

- Identifying at-risk species, at-risk rare plant communities and rare old-growth forests.
- Protecting and recovering at-risk species, their habitats, and the ecological processes they depend on.
- Protecting and recovering rare plant communities, including old growth forests.

- Providing for species' and rare plant communities' recovery by taking timely actions to identify and overturn both the proximate and ultimate causes of decline.
- Protecting and restoring habitat.
- Promoting stewardship activities.

Guiding principles

The legislation must be interpreted and administered in accordance with the following guiding principles:

1. Non-human species and natural communities hold value and possess moral standing independent of human interest; humans have an ethical obligation to maintain and recover them.
2. Non-human species and natural communities are valued by British Columbians for moral, aesthetic, cultural, spiritual, recreational, educational, historical, economic, medical, and scientific reasons.
3. Healthy ecosystems are essential to healthy human societies and economies.
4. Biodiversity is essential to healthy ecosystems.
5. Protecting and restoring habitat and functioning ecosystems is central to recovering at-risk species.
6. Because climate change can exacerbate pressures imposed by present and future resource extraction, habitat should be protected in a precautionary way in order to limit the impacts of extraction on important habitats and ecological processes. Uncertainty about the effects of climate change on habitat must not be used as an excuse to increase resource extraction or other activities resulting in habitat destruction.
7. Decisions made under this legislation that affect at-risk species must be made on the basis of the best available scientific information and informed by Aboriginal traditional knowledge.
8. Where a risk exists of significant reduction or loss of biological diversity, lack of full scientific certainty must not be used as a reason for postponing measures to avoid or minimize the threat and taking necessary recovery measures.
9. Recovering species at risk requires commitment to the identification and reversal of causes of decline.
10. The present generation should ensure that the health and diversity of the environment is maintained or enhanced for the benefit of future generations.

Recovery – Definition

A successfully recovered species will: (a) be self-sustaining demographically and ecologically, (b) be genetically robust, (c) have healthy populations, (d) have representative populations distributed across the historical range in ecologically representative settings, (e) have replicate populations within each ecological setting, and (f) be resilient across the range.¹ Where climate change has rendered the habitat in a locale permanently incapable, recovery goals should include consideration for connected habitats

¹ Kent H. Redford, George Amato, Jonathan Baillie, Pablo Beldomenico, Elizabeth L. Bennett, Nancy Clump, Robert Cook, Gustavo Fonseca, Simon Hedges, Frederic Launay, Susan Lieberman, Georgina M. Mace, Akira Murayama, Andrea Putnam, John G. Robinson, Howard Rosenbaum, Eric W. Sanderson, Simon N. Stuart, Patrick Thomas, John Thorbjarnarson; What Does It Mean to Successfully Conserve a (Vertebrate) Species?, *BioScience*, Volume 61, Issue 1, 1 January 2011, Pages 39–48, <https://doi.org/10.1525/bio.2011.61.1.9>

made newly capable² by climatic change [where it poses no risk to natural ecological processes and no conflict with the recovery of other imperiled species].

Rare plant communities – Definition

A natural plant community that has been assigned to the red (endangered and threatened) or blue (special concern) lists by the BC Conservation Data Centre.

Rare old-growth forest types – Definition

Forest stands that are classified by the BC Forest Service as age class 8 (140 years or more) or 9 (250 years or more), partitioned by site productivity (low, medium, or high), that belong to plant communities listed by the BC Conservation Data Centre as on the red or blue lists, or that are assessed as rare by an independent committee (see below).

Assessment and listing

- Assessment should be done by an independent committee (Committee) comprising scientists with expert knowledge in conservation biology, population ecology, landscape ecology, taxonomy, systematics or genetics or from community knowledge or Aboriginal traditional ecological knowledge of the conservation of wildlife species.
- Assessments should be based on the best-available science and informed by relevant Aboriginal traditional knowledge.
- The Committee should classify species as extinct, extirpated, endangered, threatened or special concern.
- Legal listing must follow automatically from the Committee's assessment without delay.
- The public may nominate species, rare plant communities and rare old-growth forests for assessment and listing, and all the evidence and processes involved in the Committee's determination of all decisions concerning species and community listings should be made publicly available.
- Assessments of species at risk will include maps of currently occupied habitat.

Immediate protections (upon listing)

- The law should immediately protect endangered and threatened species from being killed, harmed, or harassed.
- The law should immediately protect rare plant communities and rare old-growth forests from being damaged by logging, mining, oil and gas extraction, hydroelectric power, and other major commercial resource industry activities.
- The law should immediately protect interim habitat pending implementation of long-term habitat protection. Protection will be based on a map of currently-occupied habitat produced by the listing Committee at the time the relevant species is added to the legal list.
 - Interim habitat will generally be the habitat presently occupied by the species.
 - If in the Committee's opinion protecting a species' occupied habitat will not be enough to guarantee the species' survival in the near-term, the Committee should give a precautionary

² Capable habitat is habitat that can be recruited over time. The concept is used in [the Recovery Strategy for the Northern Spotted Owl](#).

description and map of “survival” habitat (which would extend interim habitat protections beyond the species’ currently-occupied range).

- The Committee should also have the option of extending basic protections (from killing and other harms) and habitat protection to special concern species in all or part of their range. These protections must apply in cases where loss/degradation of habitat or direct harm to a species is contributing to its decline.

Recovery Strategy

- A recovery strategy must be produced for an endangered species within one year of listing, within two years of the listing of a threatened species, and within three years of listing a special concern species.
- A recovery strategy should be produced by an independent recovery team comprised of scientists with expertise in population ecology and conservation biology specific to the particular species, and informed by Aboriginal traditional knowledge holders.
- A recovery strategy should provide independent scientific advice on what the species needs to achieve recovery (see definition of recovery provided above in this document).
- The development of a recovery strategy must be a fully transparent and science-based process.
 - The recovery team should not include representation from organizations who have a financial stake in the outcome of the species’ recovery process. Recovery team members must perform their functions in an independent manner, and not as representatives of their current or former employers or of any other person or body.
- A recovery strategy must include:
 - Identification (mapping & attributes) of a species’ critical habitat
 - Critical habitat is the habitat that is necessary for the recovery of listed extirpated, endangered, or threatened species, and that is identified as critical habitat in a recovery strategy or action plan.³
 - Critical habitat includes the geo-spatial information containing the biological and environmental features (“biophysical attributes”) that complete the definition of a species’ critical habitat.⁴ This includes spatial and temporal aspects of biophysical attributes used throughout the species’ life cycle, and considered both physical and functional characteristics of the habitat.⁵ Where appropriate, critical habitat must include areas that are not currently occupied by the species but that will be necessary for its conservation and recovery.⁶
 - The identification of critical ecological processes like disturbance regimes, or the continuance of a functioning prey base for predators;
 - Examples of activities that are likely to result in destruction of critical habitat, and of activities that would be compatible with the species’ recovery;
 - Identification of threats to the species, and recommendations for addressing those threats;
 - A commitment to update critical habitat identification as new information is available; and,

³ See SARA [Critical Habitat Identification Toolbox](#)

⁴ Taken from the dataset of [Critical Habitat for federally-listed species at risk](#)

⁵ See the SARA [Scientific Review for the Identification of Critical Habitat for Woodland Caribou](#)

⁶ See U.S. [Fish and Wildlife Service Endangered Species](#) definition of critical habitat

- Scientific advice which addresses and recommends measures to avoid negative cumulative effects for species.
- The independent recovery team can recommend “bundling” two or more species at risk recovery strategies into one – known as a multi-species recovery strategy – when multiple species at risk exist in the same area with similar needs, where recovery actions will overlap in time and space, and where including the relevant species in a multi-species recovery strategy would not jeopardize their recovery. Multi-species recovery strategies can group species by region, ecosystem, or common threat.
 - Multi-species recovery strategies generally will not work for wide-ranging species, sensitive species, or rare species with few known locations – these categories of species will generally need their own individual recovery strategies. Species needing additional recovery steps besides the ones outlined in the multi-species recovery strategy must also have individual recovery strategies made.
- The contents of a recovery strategy should be technical and based on scientific decisions independent of socio-economic considerations.

Action Plan and Critical Habitat protection

- Critical habitat must be protected automatically within 6 months of the time it is identified in the recovery strategy or in an updated critical habitat identification.
- Rare plant communities and rare old-growth forests must be protected within 6 months of the time they are identified by the independent committee.
- Action plans must be completed within two years after the recovery plan is released.
- Action planning must be a fully transparent process, and the documentation of meetings, planning, and decisions (including those influenced by socio-economic concerns) must be recorded and made public.
- The cause(s) of decline must be rigorously identified and documented (in the recovery strategy), and recovery actions that address these cause(s) must be prioritised over others that do not (in the action plan).
- An evaluation of the economic costs of the recovery actions and any implementation benefits may happen at this stage.
 - Socio-economic considerations can be included in the action plan. Any time an action plan is altered from the science-based recovery strategy, a publicly-available statement regarding these changes must be made. This statement will include the details of the socio-economic evaluation including those (companies, organizations and/or individuals) that are impacted (negatively and positively) by recovery actions and how these changes are likely to impact the recovery of the species at risk.
- The action plan must include:
 - Proposed measures for protecting all critical habitat;
 - The identification of any portions of the species’ critical habitat that have not been protected;
 - Proposed measures for protecting critical ecological processes identified in the recovery plan;
 - Proposed measures to implement the recovery strategy, including those that address the threats to the species and those that help to achieve the population and distribution objectives, as well as a timeline setting out when these measures will take place; recovery measures that address ultimate cause(s) of decline must be prioritised over actions which address proximate

causes. Proximate causes of decline must not be managed without actively addressing ultimate causes;

- Proposed methods to be used to monitor the recovery of the species and its long-term viability; and,
- An evaluation of socio-economic considerations relevant to carrying out action plans (including an evaluation of the costs of failing to recover a species or community in a timely way).

➤ Deadlines for other recovery actions in legislation:

- The Minister of Environment and Climate Change must implement the action plan in her or his area of responsibility (within 6 months of release of the action plan), and other ministers must also implement in their areas of responsibility (by the same deadline).
- An internal review of the action plan must be conducted by the recovery team every 3 years to assess and monitor the progress towards meeting objective for protection, survival and recovery. This review will result in a publicly-available report. Recovery actions must be adjusted when objectives in the recovery strategy are not being met.

Permits and exemptions

- There should be no permits or exemptions (including “offsets”) granted for activities that result in a reduction in the supply of critical habitat, or that contribute to negative cumulative effects that may pose risk to species recovery.
- There should be no loopholes like the ones in Ontario’s *Endangered Species Act*, which give Cabinet the power to exempt parts of the province or particular industries from compliance with the law. Ministers or other decision-makers should not have broad discretionary powers to issue permits or exemptions for activities that will harm species or their habitat, but will result in “social or economic benefit.”
- All permit applications will be independently assessed and any permit application that is found to have a medium to high conservation risk must be reviewed by the Species at Risk Permit Board.
 - Projects with medium to high conservation risk are defined as having a risk to a species’ recovery, or a risk that a species’ critical habitat will be destroyed or degraded.

Permit applications to Species at Risk Permit Board:

- If a proponent can prove how and why an activity poses extremely low risk to a listed species, including the contribution of the activity to future cumulative impacts, permission can be requested from the Species at Risk Permit Board (Board). This Board is comprised of independent experts who take an oath of commitment to the recovery and preservation of listed species. This Board will be composed of species experts knowledgeable in:
 - A scientific discipline such as conservation biology, population dynamics, taxonomy, systematics, genetics or climatology; or
 - Aboriginal traditional knowledge.
- The Board should not include representation from anyone who has a financial stake in granting or rejecting a project. Board members must perform their functions in an independent manner, and not as representatives of their current or former employers or of any other person or body.
- The Board cannot grant permits or exemptions for activities that would jeopardize the recovery of an endangered or threatened species, or result in the destruction or adverse modification of

its critical habitat, regardless of the alleged social or economic benefits that would come from approving the activity.

- While the application is under the Board's consideration, absolutely no activities can occur that may harm the species or its critical habitat. If the applicant engages in harmful activities before the Board approves the exemption or permit, then the applicant's request for exemption will automatically be denied and regulatory sanctions (including fines or imprisonment) may follow.

Enforcement

- There should be a citizen suit provision where members of the public or organizations can bring actions for damages on behalf of species.
- Citizens should be able to request investigations of potential violations of the law.
- Compliance and enforcement officers should be authorised to issue a restraining order to prevent any activities that may harm a listed species or its habitat.
- There should be fines and penalties for harming a species or its habitat, with vicarious liability for employers, officers, or the Board of corporations and other organizations.
- The Minister should have the power to make a habitat protection order.

Indigenous communities

- The BC government must consult with and accommodate Indigenous communities before introducing the law.
- The law must include a non-derogation clause.

Stewardship on private lands

- Species and ecosystems provide *public goods* whose values are not generally captured by the market; for example, the services given for free by the planet's remaining natural ecosystems have been estimated to be worth the same amount as the gross domestic products of all nations combined (\$US 30 trillion per year).⁷
- Governments have the power to correct "market failure" and to protect public goods (species and ecosystems) on private lands: governments have several tools available to them to protect biodiversity on private lands, including regulation, economic incentives, economic disincentives, public education and the encouragement of voluntary initiatives.
- Wherever possible, species at risk and their habitat must be protected on private lands: BC's approach to protecting species at risk will fail unless the primary threat of habitat loss is addressed throughout the province, including on private lands and on lands covered by other tenures. This calls for imaginative approaches that seek to reconcile the benefits of private land ownership with the obligation to protect biodiversity as a public good.
- BC should learn from other jurisdictions: BC has the benefit of being able to review the approaches that several other jurisdictions have taken to address the issue of private lands and species at risk.

⁷ See S. Nixon, D. Page, S. Pinkus et al. *The Last Place on Earth: British Columbia needs a law to protect species from habitat loss and global warming*. Ecojustice, David Suzuki Foundation, ForestEthics and Wilderness Committee. October 2008. Page 10, and footnotes 33 & 34.

http://protectbiodiversity.ca/images/uploads/reports/Last_Place_on_Earth.pdf

The United States has had a strong *Endangered Species Act* since the early 1970s. Ontario passed a comprehensive *Endangered Species Act* in 2007. Other Canadian provinces have passed legislation to protect threatened species, as has the Canadian federal government. BC can learn from these experiences.

- Most jurisdictions have taken a blended approach – BC should do the same: most jurisdictions have taken an approach that uses several different tools (e.g. regulation, incentives, voluntary approaches) to preserve biodiversity on private lands. Flexibility is useful so long as it does not undermine conservation efforts or provide an excuse to continue with “business-as-usual”. Where there is an imminent threat to BC’s species at risk or their habitat, or where voluntary and cooperative approaches are not working, there should be an immediate shift to firmer regulatory approaches. Bearing that caution in mind, BC should consider some or all of the following mechanisms for protecting species and habitat on private lands:
- Stewardship: stewardship is the voluntary implementation of good practices, especially on private property, to ensure conservation and recovery of species. Legislation should encourage and enable landowners to act as stewards of the species that inhabit their lands. Voluntary and cooperative stewardship approaches, backed by the threat of enforcement action, should be the preferred approach to protecting biodiversity on private lands.
 - Stewardship agreements: BC’s law should enable the province to enter stewardship agreements with landowners and other tenure-holders. Stewardship agreements should recognize and enable voluntary conservation tools, including conservation donations and easements. Provincial agreements should be designed to be compatible with current or future conservation agreements under section 11 of the federal *Species at Risk Act*.
 - Stewardship fund: Ontario and Nova Scotia both set up stewardship funds intended to support recovery, stewardship and the purchase of private lands. Permit fees, fines and penalties from new, well-enforced species legislation in BC could be redirected to this stewardship fund. A portion of the BC property transfer tax could also be directed to the fund. Funding will be critical to successful implementation of any new biodiversity legislation.
 - Safe-harbour provisions: As has been done in the United States, BC could authorize “safe harbour” restoration agreements and plans that would allow landowners to restore the habitat of species at risk without facing blanket restrictions on what can be done with the restored lands. Landowners would enter into an agreement with government that, after a baseline inventory, would not further restrict uses of the property if more species come to live there. This removes a significant disincentive to restoring habitat that has been identified through experiences in other jurisdictions.
 - Co-management: BC’s approach should enable and encourage the province to enter co-management and other agreements with Indigenous groups with proven or asserted Aboriginal or Treaty rights over lands underlying the habitat of species at risk.
 - Economic incentives: economic incentives can be positive (e.g. tax breaks, favourable loan terms) or negative (e.g. tax increases or other financial penalties). Economic incentives can help reduce landowners’ resistance to regulation, can assign value to landowners for providing important non-market social benefits, and can encourage increases in conservation efforts.
 - Public tax incentives: tax credits can be offered as incentives for landowners’ long-term commitments to manage land in a way that protects habitat. For example, under BC’s Natural Area Protection Tax Exemption Program (or NAPTEP), landowners are offered a 65% property tax exemption on portions of land protected by conservation easements if certain

conditions are met. Tax incentives could be offered for other landowner commitments to protect species at risk and their habitat.

- Regulation: regulation can provide a useful tool for injecting biodiversity considerations into a broad array of land-use decisions. For example, prohibitions against killing or harming listed species or against harming their critical habitat should certainly apply on private lands. Regulation provides an incentive for owners to plan to avoid conflicts between their activities and public environmental protection priorities. Regulation also provides a necessary alternative to voluntary and cooperative stewardship approaches; the threat of enforcement encourages landowners to participate in stewardship programs as a means of compliance with environmental laws. Reliance on voluntary initiatives or incentives alone leaves habitat protection vulnerable to landowners who may wish to “hold out” in the hopes of greater financial reward.
 - Purchasing land: permanent land conservation may be appropriate for property in areas that are critical for the protection of BC’s biodiversity (e.g. the last known habitat of an endangered species). Government can purchase the land outright (e.g. to add to the provincial park system), or purchase those attributes of the land that provide critical ecological goods and services. Government-funded land purchases can leverage and support private biodiversity efforts (e.g. where charitable organizations invest in land for conservation). The province should establish a dedicated, annual land acquisition fund of substantial size for such conservation purposes.
- In short, BC should adopt a mixture of legal approaches and policy incentives or disincentives that encourage landowners to protect at-risk species and their habitat.

Charlotte Dawe
Conservation and Policy Campaigner
Wilderness Committee



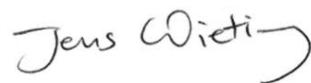
Sean Nixon
Lawyer
Ecojustice



Michelle Connolly
Director
Conservation North



Jens Wieting
Senior Forest and Climate Campaigner
Sierra Club BC



Jay Ritchlin
Director-General
David Suzuki Foundation

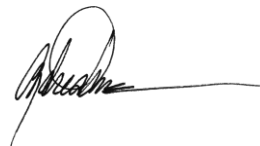


Bruce Passmore
Executive Director, BC Chapter
Canadian Parks and Wilderness Society

John Bergenske
Conservation Director
Wildsight



Andrea Inness
Forest Campaigner
Ancient Forest Alliance



Dr. Sara Dubois
Chief Scientific Officer
BC SPCA



Dr. Faisal Moola, PhD,
Raincoast Conservation Foundation and
University of Guelph



Alan E. Burger
President
BC Nature

