Thoughts on a Species at Risk/Endangered Species Act for BC

Prepared by

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Below are my general thoughts and reflections for consideration when developing a 'Species at Risk Act/Endangered Species Act' for BC. I am uncertain on the type or level of input that is being requested by the BC Ministry of Environment and Climate Change. Thus, I will focus on the general strengths and weaknesses of species at risk legislation applied across Canada. These thoughts are based on a deep professional interest in conservation ecology including ~18 years assisting with the science and recovery of woodland caribou across Canada, 8+ years as a member/Co-Chair of the COSEWIC Species Specialist Subcommittee, and considerable study of the science and policy of the cumulative impacts of human activities.

Regional or landscape-level approaches for conservation planning deserve more consideration if we are to maintain or recover the province's biodiversity. If effective, such approaches will lessen the need for crisis-oriented SAR legislation. However, some species will be missed by even the most thoughtful and well-resourced coarse-filter approaches. We still need effective SAR legislation to recover species that find their way past the filter because of unique ecology, distribution or threats and risks not related to habitat loss (e.g., invasive species, overharvest, environmental/demographic stochasticity).

There are 4 primary components to the application of SAR legislation: 1) Assessment, 2) Listing, 3) Powers under the Act, and 4) Recovery Planning. I will comment on those 4 elements. Across Canada SAR legislation has attempted to 'balance' conservation protections with the socioeconomic implications of those protections. I will apply that philosophy when framing my comments.

1) Species Status Assessment

The first step in applying SAR legislation is assessing the magnitude of risk to individual species or plant and animal communities. Typically, this is a technical process with no political or socioeconomic considerations or implications. The obvious options for BC are COSEWIC's process and determinations or the application of the NatureServe process as used by the BC Conservation Data Centre.

Adopt COSEWIC's Criteria and Assessment Decision

Adopting the recommendations of COSEWIC's well-established, accepted and uncontroversial process would provide considerable efficiencies and legitimacy for provincial SAR (PSAR) legislation. Also, there are advantages to a nationally standardised assessment and reporting procedure. The COSEWIC process, however, may be too coarse to effectively evaluate trends for species that occur across multiple Canadian jurisdictions. For example, COSEWIC would provide an assessment of Endangered or Threatened for a species that is abundant or increasing in BC if it is decreasing across the national distribution. More concerning, a species could be abundant across most of Canada, but at risk in BC. In such circumstances the species would not receive an assessment from COSEWIC or would receive a status that does not represent the provincial trend.

Recent assessments by COSEWIC of the Barren-Ground Caribou Designatable Unit and the Grizzly Bear are examples of the potential distortion resulting from the application of national trends to provincial/territorial jurisdictions. The Porcupine caribou, distributed mostly in the Yukon, are stable or increasing, but are assessed as Threatened because other populations across Canada have declined steeply. The Grizzly Bear are assessed by COSEWIC as Special Concern, but within Alberta the species is struggling and is recognised as Threatened under Alberta's Wildlife Act. From a Yukon perspective, the listing of Barren-Ground caribou is liberal in scope, but protections for Porcupine caribou help to maintain Canada's biodiversity. In the case of the Grizzly Bear, the Alberta government would provide insufficient protection for bears in that province if they relied simply on the COSEWIC assessment.

As a hybrid approach, BC could adopt COSEWIC's 5 quantitative criteria and assess trends in abundance/distribution that were specific to the province. This would provide an internationally accepted set of criteria and some standardisation of process across the country. However, the province would not be able to apply the COSEWIC assessment decision directly. Furthermore, adopting COSEWIC's criteria would lead to duplicate assessment processes (i.e., NatureServe), doubling the work for the BC CDC or the agency/committee that is charged with status assessment for the province.

Adopt BC's NatureServe Conservation Status Ranks

The BC CDC currently uses the NatureServe method and associated ranks to assess the conservation status of BC's species and ecological communities. Although the final rankings are similar, there are some differences between the COSEWIC/IUCN and NatureServe processes:

- NatureServe adopts a weight of evidence approach with minimum criteria based on 10 conservation status factors, whereas the COSEWIC process is based on 5 discrete quantitative criteria for Endangered and Threatened categories (Special Concern is more subjective).
- NatureServe can apply a status range, whereas COSEWIC adopts a single status category.
- Although COSEWIC will bundle related species and the federal SARA (FSARA) will allow recovery action plans for associated species, the process does not formally assess ecological communities – there is more flexibility to do so with NatureServe.
- NatureServe provides a multi-scale assessment that provides some perspective on the status of BC's species and communities both provincially (i.e., Subnational), nationally, and internationally. COSEWIC takes a national perspective only.

Given the infrastructure of the BC CDC, large number of currently assessed species and communities, and provincial application of the NatureServe status categories it would appear that this is the most efficient approach for supporting PSAR legislation. However, there are a number of outstanding questions if the province is to use the current NatureServe process:

- Will the province continue to use a purely technical internal process to assess the status of species or will they form a COSEWIC/COSSARO like organisation to perform that task? The process will be more transparent and credible if it adopts the COSEWIC model and involves a wide-range of expertise (including ATK) at arms-length from government.

- What will be the schedule for species reassessment? For the FSARA the 10-year reassessment period is becoming burdensome; the ever increasing number of listed species is resulting in a backlog of reassessment.
- What process will be used to prioritise new species for assessment? COSEWIC has a technical process that is applicable to a provincial jurisdiction.
- Status assessment is a lengthy multi-year process. Will the province establish a process for emergency assessment and listing for species that are experiencing new and serious risks or that are rapidly declining?

2) Listing Decision

Before a species receives protections of the FSARA it must navigate a 3-step process: 1) assessment with determination that the species is at risk (Endangered, Threatened, Special Concern); 2) consultation with the Canadian public and governments, effectively asking about the implications (economic, social, cultural) of listing a species; and 3) Minister of ECCC makes a determination to list the species or not. This discretionary listing is the most controversial component of the FSARA. Depending on an individual's values or desire to see some balance between the "environment and the economy" one may argue that all at risk species should receive protections, regardless of socioeconomic implications. At the other extreme, one may argue that recovery, following listing, could have significant effects for the BC economy and that this decision should be made by our representatives in government.

This is a difficult question with no technical answer. Ultimately, we are discussing political governance and more broadly how our elected officials represent our values and how we influence our elected officials. BC could adopt a process of mandatory protection for species at risk. Many in the conservation community would lobby for such an approach. If BC moves forward with political/socioeconomic (discretionary) rather than a technical decision on listing then that process must be rapid and transparent.

- At risk species become more imperilled as well as more difficult and more expensive to recover as time drags on. PSAR legislation must have a mechanism to ensure that unlike FSARA, listing decisions follow set timelines. For example, where a listing decision is not provided by government within 1 year following assessment the species automatically receives the protections of the Act. As proposed in Bill M 208 the minister has 9 months to list a species following an assessment.
- The process needs to be transparent. I don't believe that such a requirement can be effectively codified in legislation, but for credibility and effectiveness the minister making the listing decision must provide a full documentation of the consultation process and a substantive rationale for listing or not listing a species.
- Ontario has mandatory listing/automatic protection under their provincial ESA. Although this may appear to avoid many of the 'issues' associated with discretionary listing under the FSARA, there are still some lessons to be learned by BC. In particular, permits or "agreements" (Bill M 208) that provide exceptions to the protections within that Act are controversial and may

effectively reduce the ability to protect or recover those listed species. If BC chooses a process for mandatory listing then such permits should not be at the discretion of government or the minister. An independent permit committee (science, government, First Nations representative) would allow some flexibility in permitting activities that might contravene the regulations within a PSARA, but operate in a way that is not perceived or actually controlled by political powers.

3) Protections within an Act

Considering FSARA, I have relatively few objections to prohibitions on harvest/collecting or protections for a species "residence" (although that term is nondescript and would be better replaced with 'habitat feature'). These tools are well defined and easily implemented (although prohibitions on harvest have constrained listing decisions within the FSARA). The most difficult issue for PSAR legislation will be the identification and more importantly legal protections for "critical habitat". There is no simple solution, but if the Act is to have some power to achieve the goal of reducing the number of at risk species in the province then we must protect important habitats for those species. Protecting habitat has socioeconomic implications, especially for broadly distributed species. Thus, there will be trade-offs between conservation and economic development. Government should develop a process to measure and report those trade-offs. There has been much progress in the decision making sciences to help with that task.

Although much of BC is Crown land (with tenure and license encumbrances) there are regions in BC that are largely private land (e.g., SE Vancouver Island, Okanagan). In anticipate strong opposition to legislation that applies government powers to private lands or restricts the activities of land owners (e.g., see difficulties in establishing a national park in South Okanagan-Similkameen). There will need to be a broad strategy for not only recovering species on private land, but preventing species from being listed.

The PSAR Act should be one component of a strategy that will adopt innovative and meaningful solutions, as well as the necessary operating resources, for conserving habitat and habitat features (i.e., residences). Obviously this is a subject that deserves much consideration, but there are tools including conservation covenants, conservation tax credits, stewardship education and outreach, land purchase in limited situations, regional conservation planning, etc. A proactive approach to the conservation of biodiversity will not only address the issue of conserving species on private land, but also help to keep species on crown land off the list.

4) Recovery Planning

As with listing decisions, effectiveness of the FSARA has been hampered by slow or delayed recovery planning. Under the FSARA, legislated timelines are aggressive and appropriate (e.g., 1 year for species listed as Endangered or 2 years for species listed as Threatened). These timelines, however, are almost always ignored. In some cases the species has a complex ecology and set of threats, and may occur across multiple jurisdictions (e.g., Boreal Caribou). A 1-year timeline is unrealistic in such circumstances.

However, simply ignoring timelines, as witnessed for the FSARA, would threaten the credibility of the recovery process and more generally the proposed PSAR legislation. There should be provisions within the Act to formally grant an extension to regulated timelines for recovery planning.

Recovery planning would benefit from standardised process and the requirement for specific content within a strategy/RAP. Under the FSARA (s.41), there are few content requirements. The approach, including composition of recovery teams and resulting strategies/RAPs, is highly variable and differs greatly across taxa and even jurisdiction for the same listed species. In some cases, a broad team of experts develops a strategy/RAP. In other cases, the document emerges from a black-box, often with no apparent connection to the underlying strategy or science. BC's Draft Boreal Caribou Implementation Plan, for example, was an internal process that invented new scientific rationale that ignored the federal Recovery Strategy. In that case, the underlying science appears to be subverted by the costs of recovery (e.g., restoration of Critical Habitat). In contrast, past recovery planning for mountain caribou involved a Recovery Implementation Group (RIG) that was composed of experts of all stripes (scientists to guide outfitters to First Nations representatives). The RIG was asked to not represent their sector, but to focus exclusively on the best available approach for recovering caribou. Such an approach brought a diversity of perspectives to the problem and helped to foster broad buy-in to the recovery planning process.

If biodiversity and species recovery is the priority of the PSAR legislation, then the strategy/RAP should be developed by an expert-based team. The team should be focused exclusively on strategies and activities that will recover the species. The socioeconomic considerations can be the responsibility of government when deciding to implement a strategy/plan. Government may choose not to adopt a plan or send the plan back for further consideration. At the very least, divorcing the science from the socioeconomic implications of recovery will provide transparency and ultimately legitimacy to the workings of the Act.

At minimum, a recovery strategy/plan should:

1) Be formulated by non-partisan experts with an understanding of the ecology and conservation of the species.
2) Report threats to persistence and obstacles to recovery.
3) Formally identify critical habitat and residences for the species.
4) Identify actions for protecting features, critical habitat as well as other threats (e.g., invasive species, stochastic events, harvest).
5) Set quantitative science-based criteria that establish a threshold for a species reaching self-sustaining numbers (i.e., recovery).
6) Be constrained by legislated timelines for producing the strategy/plan (but see above for regulated provisions to grant extensions to the process).
7) Be constrained by legislated timelines for government to accept or reject the strategy/plan with supporting consultation and rationale for that decision.