

August 29, 2018

(via e-mail: species.at.risk.BC@gov.bc.ca)

BC Ministry of Environment and Climate Change Strategy
P.O. Box 9360, Stn Prov Govt
Victoria, BC V8W 9M2

Dear Sir/Madam:

Re: B.C. Species at Risk Legislation

The Canadian Association of Petroleum Producers appreciates the opportunity to provide feedback on the development of B.C. Species at Risk legislation. We recognize the Government's intent to improve and to modernize its approach to wildlife and habitat management. The design of the Species at Risk Legislation should take into account this broader context, leveraging the strengths of a modernized system with measured adjustment to the approach consistent with elevated risks to maintenance and recovery of at-risk species. To this end, the new strategy should provide a clear line of sight from early stewardship using multi-species or ecosystem-based approaches transitioning to prioritized and targeted action for high priority species only where coarse filter approaches are insufficient.

We believe that a well-designed policy and legislative framework can effectively support conservation and prevent the creation of species at risk while enabling compatible and responsible resource development that benefits British Columbians. To this end, we offer the following comments for consideration in the development of a more robust and renewed wildlife and habitat management strategy:

- **Maintaining Economic Competitiveness**

Certain and predictable regulatory processes are necessary for project proponents to reasonably develop business plans and compete for project financing globally. In order to attract investment and maintain a competitive regulatory framework, the Government of B.C. needs to balance policy change with the investment community's expectation for a consistent, predictable, and efficient regulatory process to render durable decisions.

Any changes to wildlife management and habitat conservation should maintain the clarity and transparency in regulatory process through the Oil and Gas Commission (OGC).

Recommendation: *We expect B.C to undertake a gap analysis to identify elements that are missing from the current regulatory approach for our industry, particularly in view of recent enhancements to better address high priority wildlife. If substantive changes are contemplated, we strongly encourage the Government of B.C. to undertake a regulatory impact assessment that includes a comparison in other jurisdictions producing comparable commodities for which oil and natural gas companies are competing for investment capital.*

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- **Enabling Meaningful Input Amid Numerous Change Initiatives**

The Government is working on several interrelated initiatives aimed at strengthening the system of land and resource management to ensure better social, cultural, economic and environmental outcomes for British Columbians. CAPP can only offer meaningful comment to the extent that the implications of change to oil and natural gas projects is understood. CAPP cannot presuppose the full extent and nature of changes and associated implications.

Furthermore, several interdependent policy initiatives are in various stages of completion: the enactment of species-at-risk legislation, improvement to wildlife management and habitat conservation policy, plans for caribou recovery, modernization of land-use planning, advancement of the cumulative effects, revitalization of the environmental assessment, framework, the implementation of comprehensive climate action, review of professional reliance, and reinvestment in provincial parks and the Conservation Officer Service. Additionally, there is little recognition of recent and ongoing improvements to the Environmental Information Management System (EIMS) to improve coverage of high priority wildlife and their habitat in areas where oil and natural gas activity are prevalent.

The outcomes of some of these initiatives will have implications for others. Consequently, we are not able to assess nor provide meaningful input that addresses the dynamics between interconnected policy consultations. The risk of misalignment is elevated. The multitude of consultations with partially overlapping outcomes relevant to species at risk may create confusion about where the authoritative and durable resolution of these issues will occur.

Recommendation: *We believe that the structural relationships amongst interrelated policy consultations should be clarified for the whole of Government of B.C. and its agencies. We request further engagement on the net effect of all the changes contemplated on competitiveness and regulatory certainty to better understand the potential implications. We believe that some consideration of sequencing and phased implementation may be needed. CAPP is undertaking some analysis of this and will be offering our views once this work has concluded.*

- **Implications of Species at Risk Legislation**

In CAPP's experience with the federal Species at Risk Act (SARA), the legislation is not built for speed, suffering from slow, expansive application to a rapidly growing list of at-risk species without consideration of the consequences. Once a species is added to the list, SARA dictates that strong protections are to be put in place to help recover the species. While SARA enables many species to be addressed at the same time, there has been a tendency to pursue single-species approaches. The consequence of this has been the exponential growth of administrative duties for both levels of government in the development, implementation and assessment of progress in relation to management plans for lower risk species and recovery strategies and action plans for higher risk species. Specifically, the federal legislation exhibits the following short-comings:

- assumes that by returning habitat to its pre-disturbance state species recovery is possible and can be naturally self-sustaining without further or ongoing human intervention which may not be realistic for all species (i.e., Garry Oak, Okanagan).

- emphasizes prescriptive process (i.e., species assessment and listing, recovery planning, and habitat protection and reporting) that is resource intensive and takes too long,
- favours less efficient, single-species approaches to the development of recovery strategies and action plans (once recovery objectives are set for single species, integration under a multi-species plans is challenging),
- distorts problem definition through emphasis on habitat loss and drives recovery action towards habitat measures even when near-term risks (e.g. disease, predation, competition) may require immediate attention,
- considers socio-economics too late in the recovery planning process leading to overly ambitious management plans, recovery strategies and action plans,
- polarizes industries, communities and Indigenous peoples who may be negatively impacted to various extent without remedy for harm,
- precludes discretion needed by provinces to address multiple land uses such that provincial regimes are by design deficient for effective protection, and
- drives inefficient and sometimes ineffective allocation of conservation resources.

More recently, policies to support implementation of SARA have resulted in emphasis on effective protection of critical habitat. Some have interpreted this as non-discretionary, legal protection for the exclusive purpose of recovery, precluding all other land uses. This approach, while appearing aligned with species recovery, may erode capacity to support the implementation of recovery measures. A Federal Protection Order (FPO) may occur if the measures taken by the Province to protect a listed species are deemed insufficient by the Federal government.

The threat of an FPO may create temptation to rely on legally protected areas to maintain species at risk, but this approach has not always proven effective. In 2009, an avalanche in Banff National Park resulted in extirpation of the last remaining members of the Banff caribou herd. Legal designations can sometimes create false assurance that species at risk will be sustained when ongoing, active management may be necessary to address non-habitat pressures (i.e., diseases, pests, parasites, etc.) and achieve the extent and quality of habitat in areas where public access is still allowed. Without sufficient and sustainable resourcing, these objectives may not be attainable.

Recommendation: *We believe that the design of the B.C. Species at Risk Act needs to consider the following to inform the design of robust, effective and efficient legislation:*

- **Enabling Approach:** *The drafting of species at risk legislation should reflect the intent of the National Accord for the Protection of Species at Risk by enabling co-operative, collaborative approach based on conservation programs, with supportive regulations. The emphasis should favour adaptive recovery planning through the alignment and integration of existing policies, plans and regulations (rather than sanctions) wherever possible. Other measures and special management approaches should be recognized (i.e., voluntary habitat restoration in Parker Caribou Range). Wherever possible, the legislation should enable statutory decision-makers to build off existing policies and programs in order to align and integrate efforts of various Ministries and agencies in a manner that is strategic and prevents duplicative effort. There are systems that have already been improved and should be continued. For example, improvements to the Environmental Information Management System (EIMS) within the Oil and Gas*

- Commission's area-based analysis has integrated caribou habitat considerations to predictably and consistently inform approvals supportive of recovery.*
- **Economic and Social Analysis:** *A predictable framework for socio-economic analysis is required in order to make informed decisions on listing and recovery planning (e.g., critical habitat designation, measures to protect species at risk and their habitat cost/benefit assessments). The economic and social cost of programs should be balanced against the conservation benefit. The scale and scope of such socio-economic analysis be proportionate to the magnitude and complexity of the potential risks. Providing clarity will reduce litigation surrounding this issue as well as creating a more consistent, transparent approach.*
 - **Robust Toolkit:** *There should be a dual focus on population measures and habitat conservation to achieve recovery:*
 - *Vancouver Island Marmot¹ once numbered less than 30 animals now have a population of 200-300 individuals due to a collaborative recovery efforts of Toronto Zoo, the Calgary Zoo and the Tony Barrett Mount Washington Marmot Breeding Center on population management measures and local land users to improve habitat conditions.*
 - *Swift fox² was extirpated from Canada in 1938 but through collaborative partnerships swift fox have been successfully reintroduced throughout SW Saskatchewan and SE Alberta and are now considered stable (prior to the implementation of federal SARA).*
 - **Partnership-Based Approaches:** *In our experience we have found that partnership-based approaches that are non-punitive and help give land users a hand up in understanding how to manage private lands in ways that benefit species at risk are by far the most effective mechanisms for identifying and expediting politically feasible recovery measures. These programs start with a solid foundation of understanding what the land user needs and then exploring how to land management practices to support species and habitat outcomes for recovery on working landscapes. Examples include:*
 - *In 2010, CAPP, the Explorer and Producers Association of Canada (EPAC) and the Government of British Columbia entered into an MOU establishing a framework for collaboration to support implementation of the B.C. Government's Boreal Caribou Implementation Plan. The plan balances habitat protection and management actions with future petroleum and natural gas development activities.*
 - *The [MULTISAR](#) program in southern Alberta involved government, industry, landholders (mostly ranchers), the Prairie Conservation Forum, Alberta Conservation Association, Alberta Environment and Parks, Cows and Fish, Canadian Cattlemen's Association, Alberta Beef Producers and Canadian Roundtable for Sustainable Beef. Through this collaboration, the focal activities are:*
 - *Habitat conservation strategies implemented through agreement with landowners;*
 - *Species at Risk Conservation Plans developed through experts meeting with landowners to understand land management practices and how activity can be made more compatible with species at risk and wildlife on the property; and*

¹ See: <http://www.torontozoo.com/conservation/captive-breeding.asp?pg=vim>; <https://vancouverisland.ctvnews.ca/once-nearly-extinct-vancouver-island-marmots-reach-recovery-milestone-1.3490838>

² See: <https://www.calgaryzoo.com/sites/default/files/pdf/news-media/News%20Release%20-%20Swift%20Fox.pdf>

- *Beneficial management practices for site-specific measures tailored to characteristics and priorities for each area in view of the multiple species found in each area.*
- *Environment Canada (now Environment and Climate Change Canada) and the Saskatchewan Ministry of the Environment led a partnership-based approach with local land users and conservation organizations to undertake a multi-species action plan in the [South of the Divide](#). This initiative aims to define a workable approach to meet competing habitat needs of 13 species listed under the federal Species at Risk Act on private and crown lands while assuring stakeholders that the approach will not be punitive under SARA.*
- ***Critical Habitat Identification:*** *The purpose for identifying critical habitat should be clearly stated: To describe critical habitat in a way that is consistent with maintaining the functional uses of the habitat necessary to ensure the survival or recovery of the species is to ensure protection whereby human activities are managed. To this end, there is a need for a consistent, transparent, and efficient process for critical habitat identification that describes the value that the habitat and key features provide in the life history strategies of focal species. Enshrining this purpose provides the appropriate direction in the identification of critical habitat, the threats to critical habitat and permitted activities within critical habitat as well as providing direction for the issuance of permits. This purpose indicates that critical habitat is a management zone, not an exclusion zone for human activities.*
- ***Prioritization:*** *While the major reason for the decline in many of the Canadian species at risk is due to habitat loss, some species are declining due to other factors such as increased predation, loss of overwintering grounds in other countries, etc. The legislation must be flexible enough to drive the adoption of the most appropriate recovery measures first. Currently, the emphasis on critical habitat may limit the use of other recovery tools that are critical for significant, near-term risks.*
- ***Integration/Alignment of Nested Regulatory Frameworks:*** *Development activities assessed and approved within the context of a Recovery Plan must not be subject to judicial review.*
 - *If a project is subject to the EAO's environmental assessment process, the regulator should be able to issue a permit without further analysis.*
 - *B.C. Species at Risk Legislation should enable meaningful integration of existing regulatory decision-making structures. (i.e., The OGC should be given authority to impose recovery measures by adding the species at risk legislation to specified enactments under OGAA and by enabling an audit under Section 10 to support the assessment and validation of effective protection on working landscapes subject to special management.*
 - *Government accountability should occur through the political process, not the courts.*
- ***Durable Permits:*** *Oil and natural gas operations may be spread over a large geographic area for several decades in an area that overlaps the habitat for multiple species. The lack of certainty over what might be required makes planning of new operations difficult, especially when consideration is given to the level of financial commitment required for them to go forward. An approach to enable ecosystem-based authorizations that apply to all related activities and impacted species for the life of the proposed activity should be enabled. This approach will allow for the reconciliation of incompatible needs of overlapping species at risk.*

- **Mechanism to Address Harm:** *Many land users view the presence of species at risk in or near their operational area as a risk. This view must change to support recovery action. Good faith can be demonstrated by ensuring that there are mechanisms for compensation for any regulatory taking of resource exploration and development rights.*
- **Adaptive Management:** *Adopting an adaptive management approach will be necessary to adjust measures as further information becomes available. Adaptive management should be mandatory as part of periodic review. While determining the effectiveness of the recovery strategy is the first step, the next step is to implement changes to the recovery strategy to adapt to changing circumstances and information. Amending the recovery strategy need not wait until the five year review, it could be done at any time if pertinent, key information becomes available by convening a meeting of the recovery team.*
- **Sustainable Conservation Resources:** *The oil and natural gas industry, as one of many land users, as a role to play in the species recovery. In many cases, the recovery effort needs to be sustained for a long period of time. A working landscape is necessary to maintain thriving and healthy oil and natural gas industry. Only industries that are healthy are able to contribute to sustained recovery action.*

Stewardship of Species at Risk on Private Lands

CAPP understands that the Government B.C. recognizes the value of a stewardship approach. While the science highlights viable options, acceptance for more intrusive (i.e., population management) or impactful (i.e., prohibitions on land use within species at risk habitat) recovery measures can be elusive. The former because views on the appropriateness of choosing between the needs of different species and the latter due to social or economic harm to various land users. The best way to overcome this is by establishing a system to consider, align and integrate stewardship measures of many stakeholders, communities and Indigenous peoples.

The oil and natural gas industry has a long history of meaningfully contributing to species at risk recovery in areas where we operate. The maintenance of a working landscape with predictable rules to support at-risk species and their habitat needs is essential for our sector to maintain capacity for long-term recovery action.

At the same time, the oil and natural gas industry needs assurance that investment in stewardship, research, technological or practice innovation and monitoring will be seen as providing value to the recovery of species at risk. Industry should not be penalized for early action and innovation. Instead, the emphasis should be on accelerating the learning cycles for adaptive management by testing new technologies and practices, monitoring, assessing efficacy, and making adjustments to improve outcomes for the benefit of species at risk.

Collaborative approaches that coordinate stewardship initiatives amongst different land users can be enabling to politically feasible wildlife management and habitat conservation. Many different organizations and individuals can then describe how they can lend their unique strengths to the wildlife management and habitat conservation. Based on our experience with similar collaborative initiatives this could include:

- Indigenous peoples describing how treaty rights should be accommodated within updated land use plans, traditional ecological knowledge could inform local management and restoration as is already enabled through consultative processes under administered by the OGC;
- Universities and research institutes addressing critical knowledge gaps about wildlife species and their habitat or supporting interdisciplinary studies to design and test innovative new technologies or practices to reduce impacts;
- Zoos supporting applied research on conservation biology for population management including captive breeding and/or translocation;
- Non-governmental conservation organizations sharing experience with species and habitat stewardship/enhancement programs and leveraging funds for wildlife and habitat management initiatives;
- Land users describing industry-specific stewardship practices to address wildlife impacts and industrial footprint through best practices, research, data sharing to enable more robust monitoring on efficacy management; and
- The public playing a role in citizen science and stewardship on private lands.

Recognizing how industry invests in stewardship initiatives, there is a strong need to describe the landscape in a way that identifies areas where multiple public policy outcomes can be achieved: species at risk recovery, creation of carbon sinks, reduction in legacy footprint, and protection of Indigenous values. A mechanism that allows companies to identify strategic areas of focus and gain recognition for targeted action is needed.

Recommendation: *The Government of B.C. is encouraged to review various successful initiatives to understand the role that they can play in augmenting coordination of stewardship efforts including:*

- *Standardizing protocols for the collection of data about wildlife and their habitat and enable a common portal for sharing information and making it accessible to various audiences (i.e., a robust and transparent monitoring system for species at risk);*
- *Undertaking spatial analytics to define priority areas to stimulate targeted and relevant stewardship investment in areas in the public interest of British Columbians;*
- *Exploring potential expansion of the Clean Infrastructure Royalty Credit to support the restoration of legacy footprint (seismic lines, industrial roads, etc.);*
- *Enabling partnership programs for key functions needed to support the implementation of recovery measures (i.e., citizen science, sharing of company data, land user education programs, technical advisory services for private land holders, etc.);*
- *Creating directories of case studies of successful stewardship initiatives that may be shared and tailored for application by different sectors;*
- *Providing awards, recognition programs and financial incentives to promote behaviours compatible with wildlife management and habitat conservation objectives; and*
- *Developing capacity for land owners or lease holders to access expertise in the management of wildlife and habitat on private or leased Crown land.*

- **Application of Ecosystem or Multi-species Approach**

The goal of an ecosystem-based or multi-species is to achieve an effective and efficient system to deploy conservation resources and to take meaningful action to support the recovery of multiple species at risk co-occurring in a given area. The volume of recovery strategies and action plans to be developed is a challenge for all relevant ministries/departments, Indigenous and non-Indigenous communities, scientific experts, industries, and non-governmental organizations (NGOs). Every recovery strategy and action plan requires experts to develop, approve, implement and verify action and efficacy of action.

An ecosystem-based or multi-species approach to protecting species at risk should be the preferred approach to enable an efficient use of limited resources for recovery planning. A multi-species approach would improve the quality of involvement by oil and gas companies that are active throughout B.C., in areas used by species at risk. Industry needs more efficient and integrated processes to provide relevant data to inform listing determinations, share understanding of our operations and opportunities to avoid, mitigate and reduce impacts, share experience with applied conservation research to support species at risk recovery on a working landscape, and conduct monitoring to assess and to improve the efficacy of methods used.

There are several examples of species at risk with competing habitat needs. The federal SARA does not offer mechanisms for addressing conflicts but this will be necessary for B.C.

Examples include:

- i. The inclusion of feeding grounds in the critical habitat for Orca effectively locked up salmon fisheries. This unintended consequence of a habitat-based approach had significant consequences to the economy. The use of additional conservation tools might have enabled a more flexible approach to habitat management on a working landscape.
- ii. [Caribou status and trend is affected by relationships with other species](#): primary prey (e.g. moose, white-tailed deer) and predators (e.g. grizzly, wolves). Actions that help one species can harm another. For this reason, a multi-species approach serves to harmonize.

Recommendation: *A timely and efficient expression of recovery effort is key to addressing multiple overlapping species at risk. Multi-species and ecosystem based approaches can enable an efficient coarse filter approach. Other countries, such as Australia, have opted to use this multi-species approach for co-occurring taxa of birds predominantly in eucalypt open forests and savanna woodlands of northern Australia. In some regions, a multi-species and ecosystem based approach (coarse-filter) may need to be augmented with single-species (fine-filter) approaches for those species with narrow habitat needs and specialized life history strategies.*

- **Information Needs for Species at Risk**

Oil and natural gas producers have extensive experience gathering wildlife and habitat data in areas where we operate. This information is used by operators to make decisions about road routing, well pad siting and development plans so as to avoid sensitive areas and timing windows to avoid or mitigate the potential effects of our activities. The recent addition of high priority wildlife to OGC's Area Based Analysis has mechanisms that enable industry to share relevant field information.

The oil and natural gas industry, as one of many land users, has a role to play in the management of their activities so as to prevent effects to wildlife and their habitat. We believe that an adaptive

approach that assesses the efficacy of population and habitat actions to inform necessary adjustments to improve outcomes is essential to responsible development. This is why wildlife research has been a long-term focus through the Oil and Gas Research Innovation Society (OGRIS) and its predecessor, the Science, Community and Environmental Knowledge (SCEK) Fund.

- **Equitable Burden for Action on Species at Risk**

The oil and natural gas industry is one of many land users. Our capacity to contribute to recovery measures depends upon remaining a vibrant, thriving and competitive industry. The recovery approach is important: inflexible and prescriptive approaches may erode business viability and investor confidence in B.C. and Canada. A critical outcome for this program is to provide assurance of effective protection from threats affecting population and features of critical habitat under a predictable regulatory system on a working landscape. We believe a collaborative approach is crucial for efficient, effective and practical implementation of recovery actions while still ensuring that industry provides meaningful benefit to British Columbians.

To this end, the recovery of provincial species at risk should be a shared responsibility. While some industrial land uses may create the effects, all British Columbians have benefitted from this economic development. The involvement of Indigenous peoples, non-governmental conservation organizations, wildlife and habitat stakeholders, and the general public should be purposeful to support the implementation of recovery measures.

The province needs to direct, coordinate and monitor this effort. The Government of B.C. must define objectives, enable periodic assessment of populations and habitat at appropriate intervals to confirm objectives are being met, guide effective implementation of population and habitat management measures and track the individual contributions of Indigenous and non-Indigenous communities, scientific experts, industries, and non-governmental organizations (NGOs). The achievement of equitable burden needs to take into account the unique capacity of different land users to support recovery and current obligations and commitments.

Recommendation: *The Government of B.C. is encouraged to create a fiscal mechanism that enables the collection of funds from multiple sources and links the deployment of those resources to provincial priorities in terms of area- and threat-based pilots for species at risk. Furthermore, the Government is encouraged to develop mechanisms to enable strategic stewardship investments by growing industries within the province. We believe that this can be supported by:*

- *Designing funding programs that encourage collaborative undertakings and leverage funding from multiple sources; and*
- *Developing spatial tools for delineating areas where action beneficial to wildlife and their habitat can be undertaken with co-benefits to other public policy outcomes.*

CAPP looks forward to further engagement on the province of B.C.'s Species at Risk Legislation. Should you have any questions or require clarification on any elements of our submission, please feel free to contact me at (403) 267-1149 or sherry.sian@capp.ca.

Sincerely,



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Manager, Environment

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