Why British Columbia Needs a Provincial Act to Protect Species at Risk and Their Habitats

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ABSTRACT

Both Canada and British Columbia currently lack specific legislation to protect species at risk. I review the background to this deficiency and comment briefly on the form of upcoming federal endangered species legislation. I propose that a stand-alone British Columbia Endangered Species Act would complement the new federal legislation ideally, and would be the most appropriate way to fulfil British Columbia's obligations under the National Accord for the Protection of Species at Risk. Finally, I consider the form and content of such an act, and whether British Columbia currently has the capability to implement such an act.

Key words: Canada, Endangered Species Act, legislation.

Modern enthusiasm for conservation has deep roots (Norton 1987, Meffe and Carroll 1997), but the subject came of age politically and academically in the 1980s. In that decade, influential academics like Paul R. Ehrlich, Michael E. Soulé, and Edward O. Wilson dedicated their careers to explaining the nature and global extent of conservation problems (e.g., Soulé 1986, Wilson 1988), and mentored an energetic generation of younger scientists. These people firmly established the fact that biological diversity is being lost and some of the causes of the losses (summaries in textbooks by Primack 1993, Hunter 1996, Caughley and Gunn 1996, Meffe and Carroll 1997).

At about the same time, non-government organizations interested in conservation raised public awareness about habitat loss and degradation, and lobbied governments to address these problems. New remote-sensing techniques, particularly LANDSAT images, allowed the extent and severity of global habitat losses to be visualized by all informed citizens (e.g., Skole and Tucker 1993).

Subsequent studies of the patterns of biological extinction (e.g., Pimm et al. 1995, Steadman 1995) have revealed that species and populations are lost when the restricted ranges of endemic species and populations coincide with severe, human-induced modifications of the environment. Although Canada is fortunate in having relatively few endangered organisms compared to tropical and island nations, and even the adjacent United States, we are nevertheless prone to the same processes that generate extinction elsewhere.

By the early 1990s, political leaders in many countries began to recognize publicly that the effects of human population growth and consumption of natural resources by developed nations had become globally unsustainable. This realization led in turn to several international summits, in particular the pivotal Rio Summit in 1992.

THE PROTECTION OF ENDANGERED SPECIES IN CANADA

When Canada played a leading role in promoting the Biodiversity Convention at Rio De Janeiro in 1992, there seemed good reason to hope that a cascade of regulatory and legal safeguards would be rapidly set up for endangered species within Canada. Progress, however, has been slow since the convention was signed in 1993. Indeed, our record of providing legal protection for endangered species has been so poor that we are currently facing threats of international legal action for our failure to protect our species at risk.

A full understanding of why we have failed to create satisfactory protection for Canadian wild species is beyond the scope of this essay, but a brief summary of some key events may be useful. After the failure of the Meech Lake Accord in 1990, successive national governments have moved to devolve responsibility for many key regulatory matters to the provinces. One such matter is the protection of species at risk. A key federal-provincial agreement, the National Accord for the Protection of Species At Risk, was signed by provincial and federal wildlife ministers in October 1996. The next year a federal Endangered Species Act (ESA), Bill C-65, died on the order paper when a federal election was called. A new federal ESA has been promised within the

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term of the current Liberal government and its content has already been widely discussed at stakeholder meetings, public information sessions, and electronic forums.

THE LIKELY FORM OF A NEW FEDERAL ACT

The new federal ESA is likely to be tabled in the summer of 1999 and to pass into law in the fall or winter of 1999 or 2000. Judging from information provided by Environment Canada (http://www.ec.gc.ca/cws-sci/forum/frame.htm), the new bill will have the following features: 1) it will apply only to federal lands; 2) it will protect the "residences" of listed species and penalize those who kill listed species or willfully damage these residences, but it will not explicitly require the identification and protection of critical habitat for listed species; 3) its formal listing process will resemble the current unofficial one carried out by COSEWIC (Committee on the Status of Endangered Wildlife in Canada), a group of 26 federal and provincial appointees and species-specialist chairs (see Green 2000); and 4) it will contain stewardship initiatives for providing funding to protect listed species on private lands.

The forthcoming federal act is likely to have 2 key limitations: it will not apply to provincial Crown lands, where most of our listed species live; and it will leave the identification and protection of critical habitat, the keys to protection of threatened organisms (Caughley and Gunn 1996, Meffe and Carroll 1997), to be decided case by case at the discretion of the federal government of the day. It is also uncertain if species on the current COSEWIC list will immediately gain legal protection under the new act. There is also concern that new listings may be subject to political interference through CESCC (the Canadian Endangered Species Conservation Council, made up of the federal, provincial and territorial wildlife ministers), which will publish all new listings jointly with COSEWIC.

If such a federal ESA is passed, it will delegate most responsibility for managing endangered species to the governments of the provinces and territories, and to First Nations groups with settled land claim agreements. The National Accord for the Protection of Species At Risk (http://www.ec.gc.ca/press/wild_b_e.htm) clearly expresses the intent of developing parallel and effective provisions for protecting species on federal and provincial/territorial lands. Only in this way, can Canada fulfil its full obligations as a signatory of the Rio Biodiversity Convention. To me, the most effective way to achieve this protective net is to pass provincial ESAs that match or exceed in scope the protection provided by a federal ESA.

THE FORM OF A PROVINCIAL ESA FOR BRITISH COLUMBIA

I shall not comment in detail on the legal issues arising when drafting a new provincial law. It is, however, worth noting that Canadian legal traditions stress discretionary actions by the responsible minister, rather than compulsory actions flowing directly from the written law. The desirable features of a provincial Endangered Species Act are the same as those in a desirable federal act: 1) a scientifically-credible listing process; 2) a series of stringent prohibitions on the deliberate killing or harming of listed species and damaging of their habitats on provincial lands, and perhaps also on other lands; 3) a reasonable list of exemptions to the prohibitions (e.g., forestry operations may reasonably, but inadvertently, remove the nests of a listed species like the coastal subspecies of the northern goshawk [*Accipiter gentilis laingii*]); 4) a process that assesses the habitat needs of listed species and that protects or renews these habitats; 5) other actions to help depleted populations of the listed species to recover; and 6) measures designed to promote stewardship of listed species and their habitats on private and aboriginal lands.

Does British Columbia have the expertise to make such an act work? I think we do. Despite recent losses of senior personnel from the Ministry of Environment, Lands and Parks through forced early retirement, many knowledgeable and dedicated people remain in government service. British Columbia is also fortunate to have many fine naturalists (e.g., Cannings and Cannings 1996) and a strong group of independent wildlife ecologists and conservation biologists, many of whom made presentations at this conference. In particular, recent work at the British Columbia Conservation Data Centre (CDC) in the Ministry of Environment, Lands and Parks, and research work funded by Forest Renewal British Columbia, has done much to establish the status of our populations of wildlife at risk. The files of the CDC and the national COSEWIC lists could provide a firm scientific basis for a provincial list of species requiring protection.

The principal threats to British Columbia's species at risk lie where development pressures coincide with the distribution of rare habitats. These rare habitats lie mostly in the grasslands, riparian areas, and ponderosa pine forests of the southern Interior, and in the Georgia Depression ecoprovince, where human activity and population growth are concentrated. While there are conservation problems in forested habitats, these mostly concern vulnerable but still reasonably abundant species like the marbled murrelet (*Brachyramphus marmoratus*) and the grizzly bear (*Ursus arctos*), and poorly-known species like canopy invertebrates (Winchester 2000). What is lacking currently is not scientific expertise, executive ability in government, or public support, but political will, leadership from top levels in government, and sustained public commitment.

OTHER LEGAL AND POLICY OPTIONS

The current British Columbia government seems unenthusiastic about a provincial ESA (according to statements by the Minister of Environment, Lands and Parks, Cathy McGregor, and the Deputy Minister, Jim Walker, at this conference). According to Walker, British Columbia is contemplating revising the Wildlife Act to meet its commitments under the National Accord. Conservationists in British Columbia can perhaps be forgiven some scepticism over the likely effectiveness of this approach, when the existing powers under the British Columbia Wildlife Act and the British Columbia Forest Practices Code have been so little used to list species or protect their habitats. The province of Alberta is also on record as favouring this minimalist approach (Francis 2000). In my opinion, modifying the Wildlife Act is not only likely to be ineffective, but it constitutes a serious violation of the principles of the National Accord, agreed to by the provinces in 1996. There may be other policy and legal options to protect species at risk in British Columbia (an Environmental Stewardship Act?), but they have yet to be debated widely.

CONCLUSIONS

We live in an information age, when knowledgeable and scientifically aware citizens expect much of their governments. Paradoxically, governments now often respond to these public expectations by taking a risk-averse approach to policy matters and by attempting to conceal policy options from the public, rather than debating their merits openly. While a new provincial ESA to protect species at risk will not, by itself, guarantee the protection of species and habitats, it can nevertheless play several key roles. First, it could be part of a broader package of environmental regulations to deal with land use, invasive exotic species, and industrial impacts on the environment. Second, it could assure the majority of British Columbia citizens, who favour a strong approach to environmental protection, that government is genuinely attentive to their wishes. Third, it could signal to industry groups that potentially costly decisions about habitat protection will be made only when scientific evidence requires considered action, and not at the whim of a special interest group. Finally, a strong bill in British Columbia, which has more of Canada's biological diversity than any other province (Harding and McCullum 1993), would be a timely signal to others that 1 key province is willing to implement the National Accord for the Protection of Species at Risk fully.

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