



## Where's the Law?

# BC's Species at Risk Need Strong Legal Protection

**PUBLIC OPINION POLLING' SHOWS THAT BRITISH** Columbians place a high value on biodiversity and strongly support efforts to protect species at risk and their habitat. A 2008 BC government poll, for example, concluded, "The majority of respondents indicated that the protection and recovery of species at risk should be given priority over economic considerations.... most respondents were in favour of restricting future industrial development in order to protect and restore species at risk and their habitats, including the limiting of timber harvesting<sup>2</sup>..."

Despite such clear indications of the public's priorities, BC is one of only two provinces with no stand-alone provincial law to protect species at risk, the other being Alberta, and the patchwork of laws and policies BC does have are clearly not working. For instance, 43% of BC's species are at risk of disappearing from the province<sup>3</sup>, 86% of them succumbing primarily to habitat loss and degradation. At least 49 species or subspecies are already gone or likely gone from the province<sup>4</sup>, while four biogeoclimatic zones are at risk, as are over half of our ecological communities.

In BC's worst hotspots for species at risk, urban and agricultural development rather than forestry are the key causes. But species in the province's forests are not faring well either. Of forest-associated<sup>5</sup> species in BC, 31% of freshwater fish are at risk, as are 25% of amphibians, 5% of mammals and 8% of breeding birds. At least 27% of the province's red-listed species are forest-associated. And 44% of BC's 36 forest-associated mammals with known habitat trends already had contracting ranges in the year 2000. These findings do not instill confidence that BC is practising 'sustainable forestry' or 'good stewardship based on sound ecological principles,' nor that BC's existing laws are adequate to protect species at risk and their habitats.

While the unfortunate circumstance in BC's forests finds its roots in historical practices, the *Forest and Range Practices Act* is not a sufficient solution. It does result in some protections for species at risk, such as flow

from objectives for wildlife, for biodiversity in riparian areas, and for biodiversity at the landscape and stand levels. However, all of these objectives are highly constrained by the requirement to not "unduly reduce the supply of timber," and the Identified Wildlife Management Strategy is subject to the one percent policy cap on short-term harvest impact. Nor do species fare much better under BC's *Wildlife Act*: it lists just four species as threatened or endangered, and provides no habitat protection. Further, BC's system of parks and protected areas, while important for biodiversity, do not overlap the habitat of most species at risk and were not designed with species recovery in mind. And while land use planning processes have resulted in some conservation gains, there is no systematic conservation-based land use planning process in BC.

Federally, the *Species At Risk Act* (SARA) automatically protects individuals and residences of aquatic species, migratory birds, and species on federal lands. It also protects identified critical habitat of aquatic species and of species on federal lands. In all other cases, SARA's protections only apply if the federal cabinet passes a discretionary 'safety net' order—something it has never done. Thus currently in BC, SARA's protections do not apply to most forest-associated species or their habitat. Given the lack of effective BC laws for species at risk, it may only be a matter of time until the federal Minister of Environment is forced to recommend a safety net order under SARA for a species at risk on forest lands in BC.

In summary, current laws and policies applicable in BC fall far short of requiring good stewardship of the province's species at risk, despite a clear public mandate to do so.

British Columbia has in the past made commitments to comprehensively protect species at risk. It supported Canada's ratification of the 1992 Convention on Biological Diversity, and in 1996, signed the National Accord for the Protection of Species at Risk. Ecojustice believes it is time for BC to live up to those commitments. That is why environmental or-

### Comment on this article online

To comment on this article, visit the ABCFP Discussion Forum. We have posted this article at Susan Pinkus' request to allow her to communicate with our members and hear their thoughts on her and Keith Ferguson's article.

ganizations are proposing a comprehensive BC Species and Ecosystem Protection Act (SEPA).

The provincial government recently announced it would establish a task force to suggest a new defining vision for BC in relation to species at risk protection. We believe any such vision must include new legislation which does the following:

- Is based on sound science,
- Identifies species at risk,
- Plans for their recovery,
- Identifies and protects their essential habitat,
- Requires transparency and accountability; and,
- Is adequately enforced and funded.

Of course, merely avoiding species loss is not enough. Maintaining ecological integrity and the services that ecosystems provide will necessitate much more. But preventing species being lost from the province must be a basic bottom line. Currently BC law does not ensure even that.

For information on the campaign to pass a BC Species and Ecosystems Protection Act, visit [www.protectbiodiversity.ca](http://www.protectbiodiversity.ca)

*Keith Ferguson, PhD, has been a staff lawyer at Ecojustice Canada since 2006. Keith's recent work includes the Mackenzie pipeline hearings, litigation under Canada's Species at Risk Act (SARA) to ensure critical habitat is identified and submissions to Parliament on the five year review of SARA.*

*Susan Pinkus, RPBio, has been a conservation biologist at Ecojustice Canada since 2007. Susan has spent the past 15 years working with plants, animals and ecosystems at risk on four continents.*

ENDNOTES on Page 28



**Canadian Institute of Forestry**  
Voice of Forest Practitioners since 1908

*The Forestry Chronicle*  
the national journal for forest practitioners

Our membership includes foresters, forest technicians and technologists, educators, scientists and others with a professional interest in forestry.

Reduced membership fees for ABCFP members

[www.cif-ifc.org](http://www.cif-ifc.org)



**WESTHAVEN FORESTRY LAW**  
*Big City Advice, Small Town Price*

**Jeff Waatainen**  
BARRISTER & SOLICITOR

Phone: 250.758.9485  
Cell: 250.618.5776  
Facsimile: 250.758.9486  
Email: [jeff@bcforestrylaw.com](mailto:jeff@bcforestrylaw.com)  
Website: [www.bcforestrylaw.com](http://www.bcforestrylaw.com)

5350 Bayshore Drive, Nanaimo BC, V9V 1R4

**PRO GROUP Sales and Leasing Inc.**  
*"The Way Professionals Buy Cars"*

Tel: 604-270-4466  
Fax: 604-270-8355  
Toll Free: 1-888-385-4466

**New Car Purchase Plan**  
All Makes & Models

member benefit

for members of  
the Association of B.C.  
Forest Professionals

since 1985

390 Howard Avenue  
Burnaby, B.C.  
V5B 3P8  
Canada

Visit Us On-Line:  
[www.progroupbc.ca](http://www.progroupbc.ca)

**GROUP HOME INSURANCE**

PROTECTION MADE EASY...  
GROUP RATES MADE EASIER!

Request a quote and you could  
**WIN**  
1 OF 4 TRIPS TO PARADISE!  
Destination of your choice!  
(OR \$15,000 IN CASH)

**MelocheMonnex.com**  
**1 866 269 1371**  
(Monday to Friday, 8 a.m. to 8 p.m.)

**TD Insurance**  
Meloche Monnex

The TD Insurance Meloche Monnex home insurance program is underwritten by SECURITY NATIONAL INSURANCE COMPANY and distributed by Meloche Monnex Financial Services Inc.  
\*No purchase required. Contest ends on January 16, 2010. Skill-testing question required. Odds of winning depend on number of entries received. Complete contest rules available at [MelocheMonnex.com](http://MelocheMonnex.com).  
Meloche Monnex® is a trade-mark of Meloche Monnex Inc.  
TD Insurance is a trade-mark of The Toronto-Dominion Bank, used under license.

ENDNOTES for LEGAL PROTECTION Continued from Page 23

<sup>1</sup>A poll conducted in March, 2008 found that 88 percent of British Columbians polled agreed with the statement that "Species at risk protection and recovery in the area where I live is important to me." Results were similar for protection of species at risk in other areas besides where the respondent lived. Harshaw, H.W. 2008. British Columbia Species at Risk Public Opinion Survey 2008: Final technical report. Vancouver, BC: University of British Columbia Collaborative for Advanced Landscape Planning. Available at: [www.sar-pos.ca/BC-SaR-POS\\_Final-Technical-Report\\_08-06-24.pdf](http://www.sar-pos.ca/BC-SaR-POS_Final-Technical-Report_08-06-24.pdf). A poll conducted in July, 2008 found that 83 percent of British Columbians polled support the creation of a single, effective provincial law to protect endangered species in BC. The results are considered accurate to within +/- 4.0 percent, 19-times-in-20, of what they would have been had the entire population of eligible British Columbia voters been polled. Stratcom. 2008. BC Omnibus Summer 2008. Vancouver, BC: Western Canada Wilderness Committee. A poll conducted in March 2007 found that 70% of British Columbians sided with the point of view that it is important to conserve and protect wildlife and habitats even if it means slowing

down or scaling down economic developments. Synovate Research. 2007. Species at Risk Public Opinion Survey for Greater Vancouver and Fraser Valley Regional Districts. Vancouver, BC: South Coast Conservation Program. Available at: <http://www.shim.bc.ca/atlas/sar/sccp/SCCP%20SAR%20Poll%20March%202007.pdf>

<sup>2</sup>Harshaw, H.W. 2008. British Columbia Species at Risk Public Opinion Survey 2008: Final technical report. Vancouver, BC: University of British Columbia Collaborative for Advanced Landscape Planning. Available at: [www.sar-pos.ca/BC-SaR-POS\\_Final-Technical-Report\\_08-06-24.pdf](http://www.sar-pos.ca/BC-SaR-POS_Final-Technical-Report_08-06-24.pdf)

<sup>3</sup>The following taxonomic groups were considered: all vertebrates except marine fish and cetaceans, all vascular plants (ferns and fern allies, conifers, monocots, and dicots), and the better-known invertebrates (butterflies and skippers, dragonflies and damselflies, and nonmarine molluscs). See: Austin, M.A., D.A. Buffett, D.J. Nicolson, G.G.E. Scudder and V. Stevens (eds.). 2008. Taking Nature's Pulse: The Status of Biodiversity in British Columbia. Victoria: Biodiversity BC. Available at: [www.biodiversitybc.org](http://www.biodiversitybc.org)

<sup>4</sup>For a full list, see Moola, F., D. Page, M. Connolly and L. Coulter. 2007. Rich Wildlife, Poor Protection: The urgent need for strong legal protection of British Columbia's biodiversity. Vancouver: David Suzuki Foundation and Sierra Legal (Ecojustice), at page 32. Available at: <http://www.ecojustice.ca/publications/reports/rich-wildlife-poor-protection/attachment>

<sup>5</sup>We follow the Canadian Council of Forest Ministers definition of forest-associated species as "species with a measurable dependence on a forest ecosystem(s) for any aspect of its life history (including indirect dependence, such as consuming forest-based or forest-derived resources." Canadian Council of Forest Ministers. 2005. Criteria and Indicators of Sustainable Forest Management in Canada – National Status 2005. Indicator 1.2.1 – Status of forest-associated species at risk. Available at [http://www.ccfm.org/ci/rprt2005/English/pg31-47\\_1-2-1.htm](http://www.ccfm.org/ci/rprt2005/English/pg31-47_1-2-1.htm)