

Response to the

Protecting Vulnerable Species – A Draft 5-Year Plan for BC

By the Land Trust Alliance of British Columbia LTABC

Executive Summary

The Land Trust Alliance of British Columbia (LTABC) represents 30 not-for-profit land trusts that work in B.C. Our members are committed to improving outcomes for species-at-risk in this Province.

Reviewing the proposed “Protecting Vulnerable Species – A Draft 5-Year Plan for BC” LTABC is pleased that the government has brought the issue of species at risk protection to the discussion stage. However LTABC has concerns that include:

- the lack of commitment to any actions which directly benefit species and ecosystems at risk in the Province.
- the lack of commitment to comprehensive species at risk legislation
- the focus on landscape level planning, which will not benefit species and ecosystems that are in fractured, urbanized, and largely privately owned areas of the Province, where most species and ecosystems at risk occur.

Species and ecosystems at risk deserve and need immediate, direct action to ensure their continued existence in B.C. Land Trusts are eager to partner with the Province, industry, and private citizens to protect landscapes, improve stewardship, and provide education that help species-at-risk directly.

Who We Are

The Land Trust Alliance of British Columbia (LTABC) represents 30 land trust members concentrated in areas of greatest development - the Okanagan, Lower Mainland, east Vancouver Island and the Kootenays. As noted in the draft five-year plan¹, this matches the locations of a high proportion of species at risk.

Land trusts are typically community-based not-for-profit non-government organizations that assist private landowners in creating legal protection for special areas, usually areas with ecologically-significant attributes. Such activity has become increasingly important in British Columbia over the past number of years. While private land makes up only about five percent of the land base in the province, much is concentrated in scarce and heavily-altered ecological zones such as Coastal Douglas Fir along Georgia Strait and the grasslands of the Okanagan Valley. This attribute amplifies the importance of ecological values of private land, making conservation very significant to individuals, communities and the entire province.

¹ **Protecting Vulnerable Species: A Draft Five-Year Plan for Species at Risk in BC**, 2013 [hereinafter, **PLAN**] at 32.

Several options are available to a landowner who wants to protect ecologically special property or land with other significant values. One option is for a landowner to commit to a stewardship agreement, although this option is only binding on the current landowner, not successive owners. Another option is for the landowner to make a gift or sell the land to a land trust. This option requires the landowner to part with the land and requires the land trust to take on administrative requirements such as property taxes, occupiers' liability insurance, maintenance of the ecological values and so on. A more popular and effective option to protect land is for the landowner to grant a conservation covenant to a land trust. A conservation covenant is a long-term commitment to stewardship of the land by the landowner and the land trust. It provides permanent protection of the important values of the land according to the terms of the covenant while allowing the landowner to retain possession and use, albeit somewhat restricted use, of the land.

BC land trusts, with the help of willing landowners, have now protected well over one million acres of significant private land. Given that threats to BC ecosystems and habitats are presently concentrated in areas of greatest development, particularly at lower elevations, land trusts are ideally situated to assist in acquiring permanent protection of habitats of species at risk on private lands.

In this response, we will first offer general comments on conservation of species at risk. Second, we will comment on the five-year plan. Finally, we will provide comments specific to the role of land trusts in such conservation.

Requirements for Conservation of Species at Risk

The province has much more responsibility for species at risk and their habitats than does the federal government. Therefore, the efficacy of the federal *Species at Risk Act* is severely restricted. Unfortunately, BC is one of only two provinces without a stand-alone *Endangered Species Act*. The *BC Wildlife Act* incorporates only some very rudimentary provisions to protect several threatened and endangered species and, in rare situations, to conserve their habitats. In 2004, amendments were passed to do somewhat more for endangered and threatened species, but those amendments are still not in force a decade later. More broadly, there is limited but effective protection from many impacts of forestry and range activities on habitats of species at risk and winter ranges of large game species under the *Forest and Range Practices Act*. BC's weak legislation deals with Crown lands, not private land, and this creates a large problem. Where most species at risk are located, such as the Okanagan, the Fraser Valley and southern Vancouver Island, there is very little Crown land; what habitat remains is on private land.

What is required to effectively conserve species at risk is legislation - legally enforceable protection and conservation. Such legislation should have broad scope. Lichens, mosses, vascular plants, molluscs, insects, fish, amphibians, reptiles, birds and mammals should all be eligible for inclusion in species at risk. It should use the Conservation Data Centre to identify which species and habitats require protection. Actual designation should be decided by elected officials, not appointed biologists. Government should be required, in a defined time period, to

produce a recovery plan on how best to reverse any decline, with actions triggered if the time limits aren't met. Most importantly, the legislation should deal with conservation and restoration of essential habitat features. The final important attribute is enforcement of the protective legislation.

In conclusion, the use of several “coordinated” Acts has long been ineffective in managing, protecting or conserving species at risk in BC. Stand-alone species at risk legislation is long overdue and continues to be required.

Comments on the draft Five-Year Plan

The five-year plan recommends reviewing and amending the existing patchwork of laws,² rejecting a stand-alone statute. Instead, it advocates more and expanded consultation, discussion and engagement with a broad and cumbersome range of organizations: stewardship groups; conservation partners; First Nations, federal, provincial and local governments;³ industry;⁴ area-based local stakeholders;⁵ and the public.⁶ It should be apparent that many species at risk cannot wait for completion of such a protracted process; what is needed is some immediate action on the ground. Additional outreach and discussion is always beneficial, but will not actually protect and conserve anything.

The five-year plan states that both science and experience indicate that a single-species approach is not the best way to proceed. Instead, it advocates management of a bundle of species and their habitats, basically endorsing the Ministry of Environment's Conservation Framework process for reducing ecosystem and species at risk lists to more manageable levels and then directing priority levels to specific management and conservation policies and actions.⁷ The five-year plan fails to recognize that this is not an “either/or” situation – both single species and ecosystem approaches are required. Immediate protection of the most endangered species and their habitats by a stand-alone *Endangered Species Act* is the first and most essential step. Concurrently, the Conservation Framework can be used to refine and prioritize policies and further actions.

The five-year plan does not recognize that the province has had to react to federal initiatives rather than focusing on internally relevant, realistic provincial priorities. Reactivity has resulted because BC has, for decades, dragged its feet on conservation of species at risk. A prime example is the effort to hold back the (limited) federal powers to impose protection for species at risk by drafting the 2004 *Wildlife Amendment Act*, and then failing to bring even that into force. Fragmented legislation and accountability is the inevitable result of a longstanding refusal to deal with species at risk in provincial legislation.

² PLAN at 34 and 35.

³ PLAN at 30 and 31.

⁴ PLAN at 28.

⁵ PLAN at 35.

⁶ PLAN at 35.

⁷ PLAN at 19.

In conclusion, the five-year plan is simply a plan to plan. In direct contrast to the heading “Act Now”⁸ and thirty-one specific references to “actions”, there is no direct protective action proposed, no actual implementation to protect and recover species at risk, their habitats or ecosystems at risk as already identified in the Conservation Framework. Some actions, such as the heavy emphasis on landscape level planning,⁹ seem to miss the reality that our most at-risk ecosystems (Salish Sea, Lower Mainland, and Okanagan) are heavily fragmented and privately owned, ill-suited to landscape level planning.

In conclusion, we see almost nothing in the plan to actually conserve species at risk or their essential habitats in the short term - and such action is increasingly more urgent.

The Role of Land Trusts

Our overall response to the five-year plan, as described previously, is rather negative. However, those criticisms apply only at the broad regional scale. Much can be done more locally on private lands, and this is where land trusts have a major role.

The five-year plan recognizes the importance of protection of species at risk on private land. It notes that:

“A high proportion of B.C.’s species at risk occur in naturally productive areas that are also attractive for human settlement and consist primarily of private lands. Individuals and conservation groups whose efforts are primarily focussed on private lands make a big contribution to voluntary protection and recovery of species at risk.”¹⁰

We strongly agree. That fact is central to the creation and operation of land trusts.

However, there is no recognition in the five-year plan of a general lack of effective legislation and existing regulation for species at risk on private land. The plan tries to remedy this problem with a reliance on voluntary protection and recovery of species at risk.¹¹ And this is where land trusts come in. Land trusts are already conserving habitat for species at risk on private land, and doing so in entirely cooperative and voluntary ways – negotiating stewardship agreements and conservation covenants. Both can cover all or part of a parcel of property and can apply year-round or only to specific periods in the year. A conservation covenant is registered against title to the property in the British Columbia Land Title Register under section 219 of the *Land Title Act*. The land trust, as covenant holder, can enforce the terms of such a covenant indefinitely into the future.

However, land trusts are community based and small, with very limited capacity. They need help, so we are glad to see that the five-year plan proposes that government provide tools such as incentives and funding to “inspire, encourage and reward voluntary efforts to

⁸ PLAN at 11.

⁹ PLAN at 18, 19, 20 and 21.

¹⁰ PLAN at 32.

¹¹ PLAN at 32.

protect and manage species at risk". The Conservation Data Centre has the information and land trusts simply need the capacity to use the data and negotiate with landowners wherever the Conservation Data Centre and federal species at risk information indicate the likely presence of species at risk. If conservation covenants need to be purchased instead of donated, the land trust can raise funds locally, especially if the province matches such funds¹². It is an ideal partnership; the land trusts have local community support and involvement and the province has the data and can provide incentives, publicity and funding.

Conclusions

The five-year plan, in our view, is lacking in many respects. It rejects stand-alone legislation, recommending adjustments of the historically-unsuccessful patchwork of legislation. It rejects species-specific conservation, advocating landscape-level conservation, even though most species at risk, depending on fragmented Crown lands and private land, cannot be managed at such a level. It advocates more and more consultation but no on-the-ground protection – no action at all.

The five-year plan almost recognizes the potential of voluntary conservation covenants to protect habitat of species at risk on private lands - indefinitely. It is precisely habitat conservation on private lands has the greatest prospect of protecting the most critical habitats of species at risk – those in areas of greatest development - the Okanagan, Lower Mainland, east Vancouver Island and the Kootenays. A strong partnership, with government providing information, incentives and matching funding, and land trusts providing community support and voluntary permanent conservation on private lands, can effectively accomplish such conservation.

Ironically, although we maintain that BC needs a stand-alone *Endangered Species Act* to conserve habitats on Crown land, no new legislation is needed to effectively conserve and protect species at risk on private lands. Voluntary conservation covenants can do the job there simply using the existing *Land Title Act*.

¹² One potentially valuable measure, currently being implemented in Ontario, is associated with permits under Ontario's *Endangered Species Act* to manage activities that could damage or destroy protected habitat. Permit conditions can require developers to pay for habitat enhancement elsewhere – such as on private lands already protected under conservation covenants.