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**NATURE AND BIODIVERSITY ACT:
A GREENPEACE CANADA REPORT**

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Introduction

Canada is experiencing a nature crisis. This Greenpeace Canada report first summarizes key scientific evidence showing dramatic losses in wildlife and ecosystems due to destruction and pollution of habitat. It then highlights federal government failures to protect these natural life support systems. Key weaknesses in Canada's legislation and multiple failures to meet international commitments under the *Convention on Biological Diversity* (CBD)¹ are discussed.

We argue that the federal government's commitment to protect 30% of lands, waters and oceans by 2030 and the *Post-2020 Global Biodiversity Framework*² likely to be signed later this year present a generational opportunity to restore nature and our relationship with the natural world around us. This opportunity can only be properly achieved, however, if implemented in a publically transparent and accountable manner that centers on Indigenous rights and advances decolonization.

The report concludes with a framework for a federal *Nature and Biodiversity Act* prepared for Greenpeace Canada by Josh Ginsberg and Stephen Hazell.³ This new law would mandate government accountability for delivering on the critical reforms and commitments described in this report. Such a federal law must be developed in full partnership with Indigenous Nations.

¹ *Convention on Biological Diversity*, 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993).

² *Convention on Biological Diversity*, "A New Global Framework for Managing Nature Through 2030: First Detailed Draft Agreement Debuts" (7 June 2021), online: *Convention on Biological Diversity* <www.cbd.int/article/draft-1-global-biodiversity-framework>.

³ Josh Ginsberg is Ecojustice's Ottawa University Clinic Director, and Stephen Hazell is Counsel with Ecovision. Liat Podolsky, Ecojustice's Senior Scientist and Sarah Sevier, an Ecovision intern, contributed to this section as well.

01



Natural life support systems and wildlife are *collapsing*

The science is clear. Nature and wildlife are being lost at rates unprecedented in human history, according to a landmark 2019 report by the *Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services* (IPBES).⁴ Fully one million individual species are at risk of extinction globally.⁵ Industrial activity and deforestation for commodities like palm oil⁶ are major causes. So too is our unsustainable food system. While agriculture overall is responsible for 80% of deforestation globally,⁷ around 75-80% of this agricultural land is needed just to produce feed for livestock.⁸ Transformative change is now needed to stop the destruction of ecosystems and rescue the planet from human-caused mass extinction of species, as concluded in a 2022 study by 50 researchers from 23 countries.⁹

In Canada, 1,231 species are listed under the *Species at Risk Act*.¹⁰ Populations of at risk species have declined a further 59% since 1970.¹¹ Between 1970 and

⁴ Sandra Diaz et al., “Global Assessment Report on Biodiversity and Ecosystem Services: Summary for Policy Makers” (2019) online (pdf): *IPBES*, <doi.org/10.5281/zenodo.3831673>.

⁵ Andy Purvis, “How did IPBES Estimate ‘1 Million Species At Risk of Extinction’ in #GlobalAssessment Report” (2022), online: *IPBES* <ipbes.net/news/how-did-ipbes-estimate-1-million-species-risk-extinction-globalassessment-report>.

⁶ Shane Moffatt, “What’s the beef with palm oil? 7 things you need to know about Buttergate” (4 March 2021), online: *Greenpeace* <www.greenpeace.org/canada/en/story/46330/whats-the-beef-with-palm-oil-7-things-you-need-to-know-about-buttergate/>.

⁷ Noriko Hosonuma et al., “An assessment of deforestation and forest degradation drivers in developing countries” (2012) 7:4 *Environmental Research Letters*, online (pdf): <iopscience.iop.org/article/10.1088/1748-9326/7/4/044009/pdf>.

⁸ Johnathan A Foley et al., “Solutions for a cultivated planet” (2011) 478 *Nature* 337, online (pdf): <www.nature.com/articles/nature10452.pdf?origin=ppub>.

⁹ Leina Al-Awadhi, *Draft Report of the Meeting*, UNCBD, 2022, CBD/WG2020/3/Part2/L.1 at para 11, online: <www.cbd.int/doc/c/e562/43b6/222f4ed508153eed764331a5/wg2020-03-part2-l-01-en.pdf>.

¹⁰ Government of Canada, “Species at Risk Public Registry” (20 May 2022), online: *Government of Canada* <www.canada.ca/en/environment-climate-change/services/species-risk-public-registry.html>.

¹¹ World Wildlife Fund Canada, “Living Planet Report Canada: 2020 Wildlife at Risk” (2020) online (pdf): <wwf.ca/wp-content/uploads/2020/09/Living-Planet-Report-Canada-2020.pdf>.

2014, Canadian mammal populations dropped 43 per cent, amphibian and reptile populations dropped 34 per cent, and fish populations declined by 20 per cent, according to a 2017 study.¹² Birds are vanishing around us - also between 1970 and 2014, grassland birds declined by 69 per cent, aerial insectivores fell 51 per cent, and shorebird populations declined by 43 per cent.¹³ In Canada, habitat loss has pushed “many more species than expected” to the brink of extinction for a region with extensive wilderness.¹⁴ Wetlands, prairie grasslands and old-growth forests continue to lose ground every year.¹⁵ At the same time, powerful lobbyists in the logging industry deny the existence of a problem and question the science to effectively delay urgently needed conservation measures.¹⁶

Notable examples of threatened or endangered species include the following:



Caribou are on a pathway to extinction in every region of Canada. Every one of the eleven units of boreal, barren-ground and mountain caribou across Canada are in some danger, and more than half are endangered;¹⁷



Woodpeckers (Red-headed and White-headed) are endangered and **Swallows** (Barn and Bank) are threatened;¹⁸



Whales (North Atlantic Right Whale, Blue Whale, Southern Resident Killer Whale, St Lawrence Beluga) are endangered or threatened (other Killer Whale, Beluga populations);¹⁹ and



Pacific Salmon populations of all five species (Chinook, Chum, Coho, Pink, Sockeye) have collapsed since the 1980s due to overfishing and other factors.²⁰

¹² World Wildlife Fund Canada, “Living Planet Report Canada: A National Look at Wildlife Loss” (2017) at 6, 22, 24, 28, 30, 36, online (pdf): < wwf.ca/wp-content/uploads/2020/07/LPRC-Executive-Summary.pdf>.
¹³ *Ibid.*
¹⁴ Laura E Coristine & Jeremy T Kerr, “Habitat loss, climate change, and emerging conversation challenges in Canada” (2011) 89 Can J of Zoology 435, online(pdf): <cdnsiencepub.com/doi/pdf/10.1139/z11-023>.
¹⁵ Graham Saul, “There’s Good News on the Nature Front” (2022) 30:1 WLA 3 online(pdf): <albertawilderness.ca/wp-content/uploads/2022/04/20220300_ar_wla_good_news_on_nature_front_gsaul.pdf>.
¹⁶ Julee J Boan et al, “From Climate to Caribou: How Manufactured Uncertainty is Affecting Wildlife Management” (2018) 42:2 Wildlife Society Bulletin 366, online(pdf): <wildlife.onlinelibrary.wiley.com/doi/pdf/10.1002/wsb.891>.
¹⁷ Justina Ray, “Saving Our Caribou Forces us to Face Tough Questions” (16 May 2019), online: *The Narwhal* <thenarwhal.ca/saving-our-caribou-forces-us-to-face-tough-questions/>.
¹⁸ *Supra* note 11.
¹⁹ *Ibid.*
²⁰ Pacific Salmon Foundation, “State of Pacific Salmon” (2022), online: *Pacific Salmon Foundation* <psf.ca/salmon/>.

The continued pressure on cultural keystone species (such as moose²¹, blueberries²² and orcas) poses an existential threat not just to life itself, but also the preservation of the many Indigenous cultures and food systems that are grounded in reciprocal relations between human and non-human beings. The use of pesticides in agriculture and aerial herbicide spraying in forestry²³ are also taking a heavy toll. Insecticides, such as neonicotinoids, have decimated insect populations that many birds and other species depend on.²⁴ Spraying glyphosate on forests within Indigenous lands has been described as “eco-genocide” by impacted communities²⁵ due to the toxic impacts on animals, food systems, people and culture.

In response to this growing crisis, the Liberal government committed to protecting 30% of lands and waters nationally by 2030, as well as to funding certain Indigenous conservation measures.²⁶ Commitments to protect 30% of nature by 2030 are an important, if partial, solution. We have yet to see a plan describing how this will be achieved, however. Aspirational targets lacking serious commitment to implementation will be insufficient to address the multiple threats driving species extinction and the destruction of nature.

²¹ Susan Bell, “Declines in moose population a concern for Quebec Cree” (10 February 2022), online: *CBC News* <www.cbc.ca/news/canada/north/cree-moose-indigenous-bay-james-conservation-decline-population-1.634424>.

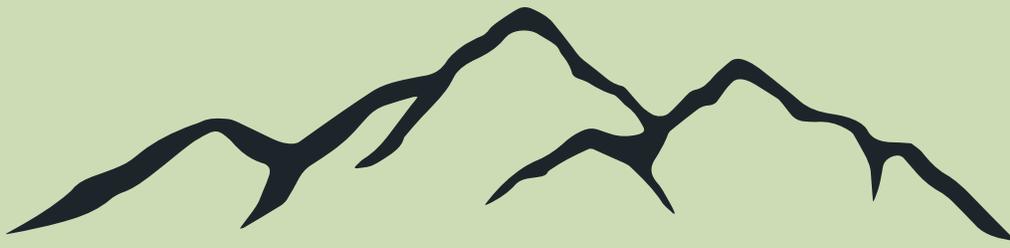
²² Willow Fiddler, “Blueberries feeling the heat as drought stress takes its toll on harvest” (27 August 2021), online: *Globe and Mail* <www.theglobeandmail.com/canada/article-blueberries-feeling-the-heat-as-drought-stress-takes-its-toll-on/>.

²³ Reykia Fick, “Here is where your lands will be poisoned without your consent: The Ontario government has notified First Nations that their territories are about to be sprayed with glyphosate” (13 September 2021), online: *Greenpeace* <www.greenpeace.org/canada/en/story/49966/here-is-where-your-lands-will-be-poisoned-without-your-consent/>.

²⁴ Marc Fawcett-Atkinson, “Bees are dying from toxic chemicals and the feds won’t save them” (31 May 2021), online: *Canada’s National Observer* <<https://www.nationalobserver.com/2021/05/31/news/bees-dying-toxic-chemicals-feds-wont-save-them>>.

²⁵ Moira Donovan, “Glyphosate spraying in N.B. akin to ‘eco-genocide,’ Indigenous communities say” (1 June 2022), online: *Canada’s National Observer* <www.nationalobserver.com/2022/06/01/news/glyphosate-spraying-akin-eco-genocide-nb-indigenous-communities-say>.

²⁶ Letter from Prime Minister Justin Trudeau to Minister Steven Guilbeault (16 December 2021), “Minister of Environment and Climate Change Mandate Letter”, online: <pm.gc.ca/en/mandate-letters/2021/12/16/minister-environment-and-climate-change-mandate-letter>.



02

The system of laws and policies is failing

Canada's Commissioner of Environment and Sustainable Development reported in 2018 that "the federal government had no plan for achieving Canada's biodiversity targets."²⁷ From our analysis, the situation has not improved since then. We identify here four factors holding back progress: failed commitments, failing laws, a colonial framework and conservation-for-carbon.

1. Failed commitments

Canada has failed to meet international commitments under the 1992 Convention for Biological Diversity as well as its targets under the 2010 Aichi Protocol to the Convention.²⁸ No targets set out in the *2020 Biodiversity Goals and Targets for Canada*²⁹ approved by Canada's governments in 2015 have been fully achieved, and only a few have been even partially achieved.³⁰ For example, the target of 17% for terrestrial protected areas was not achieved, while the target of 10% for marine protected areas was met³¹, albeit weakly.³² Another missed target was to integrate biodiversity considerations in all municipal planning across Canada - no province even has a strategy to achieve that integration.

²⁷ Commissioner of the Environment and Sustainable Development, "Report 3—Conserving Biodiversity" (2018), online: *Office of the Auditor General of Canada* <www.oag-bvg.gc.ca/internet/English/parl_cesd_201804_03_e_42994.html#>.

²⁸ Secretariat of the Convention on Biological Diversity, "Aichi Biodiversity Targets" (2020), online: *Convention on Biological Diversity* <www.cbd.int/sp/targets/>.

²⁹ Biodivcanada, "2020 Biodiversity Goals and Targets for Canada" (last visited 2022), online (pdf): <static1.squarespace.com/static/613fb778a76e244eef08775d/t/619a942bd9d01b27f1cf83c3/1637520474350/2020_Biodiversity_Goals_Targets_for_Canada.pdf>.

³⁰ Secretariat of the Convention on Biological Diversity, "Global Biodiversity Outlook 5" (18 August 2020), online (pdf): <www.cbd.int/gbo/gbo5/publication/gbo-5-en.pdf>.

³¹ *Ibid.*

³² Chris Brackley "Marine protected areas in Canada may not be as protected as we think" (1 June, 2022), online: *Canadian Geographic* <<https://canadiangeographic.ca/articles/marine-protected-areas-in-canada-may-not-be-as-protected-as-we-think/>>.

2. Failing laws

Canada's laws are systemically failing to protect biodiversity. A bewildering array of federal and subnational laws and policies prioritize resource development and provide only fragmented and inadequate protection for species and ecosystems, according to a groundbreaking 2021 analysis.³³ Federal and most provincial laws fail to even require the assessment of biodiversity impacts of mining, oil and gas, dams and other resource projects with the exception of a small proportion of projects deemed to be "major."³⁴

The federal government's unwillingness to properly implement and enforce the *Species at Risk Act* (SARA) is a case in point. SARA is one of the primary mechanisms intended to make the CBD "a reality" in Canada.³⁵ But according to an article in the journal *Science*, SARA has become a "legislative iceberg of delayed recovery plans, failure to designate critical habitat and general non enforcement."³⁶ Very few SARA-listed species have ever recovered and the number of species at risk continues to increase.³⁷ Since SARA was enacted in 2002, the federal government has been reluctant to exercise its authority with respect to provincially managed species and has made almost no use of its discretionary powers, such as safety net or emergency orders.³⁸ SARA's species-by-species approach is also failing to protect endangered ecosystems such as prairie grasslands and Carolinian forests.

In addition, the *Canada Wildlife Act* and *Migratory Birds Convention Act* are outdated and in need of reform,³⁹ while better laws are also urgently needed to eliminate the use of pesticides harmful to wild species.

At the provincial level, the situation is no better. Ontario has significantly weakened its *Endangered Species Act* (ESA) with numerous changes and exemptions that will no longer adequately protect species at risk.⁴⁰ For example, the amendments now provide for landscape agreements that allow multiple industrial projects to take place

³³ Justina C Ray, Jaime Grimm & Andrea Olive, "The biodiversity crisis in Canada: Failures and challenges of federal and sub-national strategic and legal frameworks" (2021) 6:1 FACETS 1104, online: <doi.org/10.1139/facets-2020-0075>.

³⁴ Stephen D Hazell, "Project Impact Assessments Triggering and Coverage" in Meinhard Doelle and A John Sinclair (eds) *The Next Generation of Impact Assessment: A Critical Review of the Canadian Impact Assessment Act*, (Toronto: Irwin Law, 2021) 140.

³⁵ Government of Canada, "About the Species at Risk Act" (27 January 2016), online: *Government of Canada* <www.canada.ca/en/environment-climate-change/services/environmental-enforcement/acts-regulations/about-species-at-risk-act.html>.

³⁶ Andrew Park, "Ethics and politics of conversation triage" (2018) 362:6412 *Science* 297, online: <www.science.org/doi/10.1126/science.aav4382>.

³⁷ Supra note 11.

³⁸ Liat Podolsky & Barry Robinson, "With species loss rampant in Canada, how is the Species At Risk Act protecting wildlife?" (3 September 2020), online: *Ecojustice* <ecojustice.ca/how-is-sara-protecting-wildlife/>.

³⁹ Stephen Hazell, "National Wildlife Areas should be for Wildlife" (18 July 2019), online: *Toronto Star* <www.thestar.com/opinion/contributors/2019/07/18/national-wildlife-areas-should-be-for-wildlife.html>.

⁴⁰ Allegra Bethlenfalvy & Andrea Olive, "Recent amendments to the Endangered Species Act and an uncertain future for species at risk: A Case study of Ontario's Niagara Region" (2021) 6:1 FACETS 1168, online(pdf): <www.facetsjournal.com/doi/pdf/10.1139/facets-2020-0074>.

in one geographic area despite the presence of endangered species.⁴¹ Nova Scotia is the sole province with even a shaky biodiversity law⁴² and several provinces lack standalone species at risk laws, including British Columbia, the most biodiverse province in Canada.⁴³



3. Colonial framework

Canada was founded on stolen Indigenous lands, which have been the territories of numerous Indigenous Peoples since time immemorial.

So when we speak of nature in this context, we are referring first and foremost to Indigenous Cultural Landscapes to which Indigenous Peoples attribute “social, cultural and economic value because of their enduring relationship with the land, water, fauna, flora and spirits and their present and future importance to their cultural identity.”⁴⁴

Through their diverse cultures and knowledge, these Nations have maintained healthy ecosystems and economies in harmony. Globally, lands inhabited by Indigenous People are estimated to contain 80% of the world’s remaining biodiversity.⁴⁵ Biodiversity on Indigenous-managed lands is consistently higher than any other forms of protection.⁴⁶

⁴¹ Justina Ray, “Ontario turns Endangered Species Act into an empty shell” (10 May 2019), online: *WCS Canada* <www.wcscanada.org/Muddy-Boots/ID/12364/Ontario-turns-Endangered-Species-Act-into-an-empty-shell.aspx>.

⁴² Lisa Mitchell, “Understanding Nova Scotia’s Biodiversity Act Part One: The Public Process” (9 July 2021), online: *Ecelaw* <www.ecelaw.ca/blog/understanding-nova-scotia-s-biodiversity-act-part-one-the-public-process.html>.

⁴³ Alana R Westwood et al, “Protecting Biodiversity in British Columbia: Recommendations for developing species at risk legislation” (2019) 4:1 *FACETS* 136, online(pdf): <www.facetsjournal.com/doi/pdf/10.1139/facets-2018-0042>. Note: since this article was published, BC has confirmed they will not be enacting provincial endangered species legislation, despite committing to.

⁴⁴ Forest Stewardship Council Canada, “Intact Forest Landscapes & Indigenous Cultural Landscapes: Working Together to Find a Functional Approach” (2016), online(pdf): <ca.fsc.org/sites/default/files/assets/FSC_report_1452547949_file.pdf#viewer.action=download>.

⁴⁵ Gillian Rutherford, “Research project aims to curb decline of biodiversity and improve health of Indigenous peoples worldwide” (12 January 2022), online: *University of Alberta: Folio* <www.ualberta.ca/folio/2022/01/research-project-aims-to-curb-decline-of-biodiversity-and-improve-health-of-indigenous-peoples.html>.

⁴⁶ Richard Schuster, “Biodiversity Highest on Indigenous-managed lands”, *UBC News* (31 July 2019), online: <news.ubc.ca/2019/07/31/biodiversity-highest-on-indigenous-managed-lands/>.

Yet Canadian laws and regulations still “create disconnections for Indigenous people from their lands, waters, and each other.”⁴⁷ Indigenous Land Defenders are often criminalized for their activities,⁴⁸ while injunctions against Land Defenders have become “a tool of colonialism”.⁴⁹

Even when communities offer the knowledge and vision to deliver big solutions for biodiversity in their territories, like Lac Simon First Nation in Quebec for example,⁵⁰ they can find their initiatives stuck between squabbling levels of colonial provincial and federal governments.



4. Conservation for carbon

The world’s biggest polluters are rushing to make use of nature for so-called carbon offsets that enable their ongoing greenhouse gas emission.⁵¹ “Offsetting” is where companies and governments try to meet their emissions reduction targets while still emitting vast amounts. They commonly do this by paying others to plant trees or protect forests from logging (thereby sequestering carbon) in return for being allowed to keep polluting the atmosphere. Recently, the federal government announced a new system to enable this false “solution” to climate change.⁵²

⁴⁷ Yellowhead Institute, “Land Back: A Yellowhead Institute Red Paper”, (October 2019), online: <<https://redpaper.yellowheadinstitute.org/wp-content/uploads/2019/10/red-paper-report-final.pdf>>.

⁴⁸ Jorge Barrera, “RCMP arrest 14, clear road on Wet’suwet’en territory in ongoing dispute over land rights, pipeline” (18 November 2021), online: *CBC News* <www.cbc.ca/news/canada/british-columbia/rcmp-wet-suwet-en-pipeline-resistance-1.6254245>.

⁴⁹ Kate Gunn, “Injunctions as a Tool of Colonialism” (30 July 2020), online: *First Peoples Law* <www.firstpeopleslaw.com/public-education/blog/injunctions-as-a-tool-of-colonialism>.

⁵⁰ Benjamin Powless, “First Nations demand caribou protection as feds and Quebec argue over jurisdiction” (18 May 2022), online: *Toronto Star* <www.thestar.com/news/canada/2022/05/18/first-nations-demand-caribou-protection-as-feds-and-quebec-argue-over-jurisdiction.html>.

⁵¹ Dina Ni, “Greenpeace Canada files Competition Bureau complaint against misleading Shell advertising” (10 November 2019), online: *Greenpeace* <www.greenpeace.org/canada/en/press-release/50740/driving-carbon-neutral-with-fossil-fuels-greenpeace-canada-files-competition-bureau-complaint-against-misleading-shell-advertising/>.

⁵² Mia Rabson, “Big industry can lower carbon pricing costs as feds launch first offset credit market” (8 June 2022), online: *CBC News* <www.cbc.ca/news/politics/carbon-offset-market-coming-1.6481371>.

This is bad public policy both for biodiversity and climate change, as Greenpeace Canada summarized in a science-based submission to the government in 2021.⁵³ The science is clear - we must be reducing emissions and protecting and restoring natural ecosystems at the same time, not trading them off against each other and commodifying nature for the benefit of the biggest polluters.

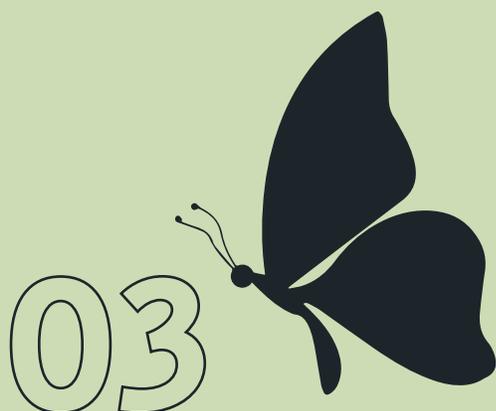
In the absence of coherent biodiversity legislation and essential mechanisms like consistent nature funding for Indigenous Peoples and local communities, we are likely to see more profit-driven “conservation” that comes at the terrible cost of more greenhouse gas emissions and the privatization of nature.⁵⁴ Such practices cannot be allowed to become the norm for nature conservation in Canada.

In 2018, the Climate Land Ambition and Rights Alliance (CLARA)⁵⁵, a consortium of climate justice advocates, land rights campaigners, faith groups, scientists and others released “Missing Pathways”, a report emphasizing pathways to climate mitigation through land use grounded in concerns for rights and biodiversity. As described in that report, Greenpeace’s position is that “a focus on biodiversity and rights delivers greater mitigation ambition than only focusing on carbon.”

⁵³ Greenpeace Canada, “Greenpeace Canada submission to the Strategic Assessment of Climate Change: Draft Technical Guide” (25 October 2021), online (pdf): Greenpeace <www.greenpeace.org/static/planet4-canada-stateless/2021/10/0d100314-greenpeace-canada-submission-to-the-strategic-assessment-of-climate-change---draft-technical-guide-october-25th-2021.docx-1.pdf>.

⁵⁴ Mia Rabson, “Swatch of boreal forest twice the size of Toronto to be protected in northern Ontario” (22 April 2022), online: Global News<<https://globalnews.ca/news/8778440/boreal-forest-hearst-northern-ontario-protected/>>; Rochelle Baker, “Logging company’s deferrals of old-growth jewels bittersweet, environmentalists say” (5 April 2022), online: *Toronto Star* <www.thestar.com/news/canada/2022/04/05/logging-companys-deferrals-of-old-growth-jewels-bittersweet-environmentalists-say.html>.

⁵⁵ Greenpeace International is also a member.



Legislating system change: *A Nature and Biodiversity Act*

In light of this unprecedented ecological crisis and inadequate system of laws, we propose that a legislative solution is urgently required. While we are mindful of the importance of further defining the details of any legislative reform in particular with Indigenous Peoples and communities who have historically experienced environmental racism, there are a number of principles for legislative reform we would emphasize based on Canada's experience to date.

As discussed, the federal government has committed to protecting 30% of lands and waters by 2030.^[21] It is expected that the CBD will also set new 10-year biodiversity targets, reflecting a range of urgent actions.⁵⁶ After chronic delays in delivering on past biodiversity commitments, legislation can ensure we avoid a repeat and this time follow through with concrete actions.

Accountability, for instance, is key. Canada has no law setting out an accountability framework for measuring progress on halting and reversing nature loss similar to that for carbon emissions under the *Canada Net-Zero Emissions Accountability Act*. We draw on elements of that law, which sets targets and imposes accountability mechanisms for climate action.

⁵⁶ Francis Ogawa & Basile Van Havre, First Draft of the Post-2020 Global Biodiversity Framework UNCBD, 2022, CBD/WG2020/3/3 online (pdf): <www.cbd.int/doc/c/abb5/591f/2e46096d3f0330b08ce87a45/wg2020-03-03-en.pdf>.

The purpose and principles of an effective and equitable *Nature and Biodiversity Act* would include the following:

✓ **Targets with plans to halt biodiversity loss**

Canada seeks to preserve 30% of its land and water by 2030, and will soon adopt new targets under the CBD. The Act should clarify what such protection entails, and put Canada on a course to achieving it. Progress toward 30% protection and beyond should include:



Protected spaces: Terrestrial and marine environments free from industrial activity (while respecting Indigenous rights⁵⁷ and local community use) are essential for achieving biodiversity outcomes, but these spaces are rapidly eroding.⁵⁸ New science indicates that at least half of these intact natural environments must be protected to avoid massive biodiversity loss and the worst effects of climate change.⁵⁹ Canada's participation will be essential, since it hosts approximately a quarter of the Earth's wetlands and boreal forests, 20 percent of its fresh water, and the longest coastline in the world.⁶⁰



Connectivity: Structural connectivity of protected areas is critical for ecosystem function and resilience.⁶¹ When ecosystems are fragmented, habitat quality is degraded, species and gene pools can be isolated and lost, and the natural processes required to sustain ecosystem health are compromised. Recognizing the importance of connectivity, the Post-2020 Global Biodiversity Framework aims to achieve a net gain of at least 15% in the area, connectivity and integrity of natural systems.⁶² The proposed Act would enshrine that goal in Canadian law.



Thriving Species: In the face of the global extinction crisis and the failure of existing legal frameworks to halt it, the proposed Act would set a goal reflective of the Framework targets and in line with Canada's ambition of a full recovery: e.g. all species currently listed by the Committee on the Status of Endangered Wildlife in Canada as endangered or threatened will no longer be at risk, and all other species will remain healthy and viable.

⁵⁷ Protection on Indigenous lands requires the Free, Prior and Informed Consent (FPIC) of impacted Nations.

⁵⁸ Michelle Ward et al, "Just ten percent of the global terrestrial protected area network is structurally connected via intact land" (2020) 11 *Nature Communications*, online (pdf): <www.nature.com/articles/s41467-020-18457-x.pdf>

⁵⁹ Eric Dinerstein et al, "A Global Deal For Nature: Guiding principles, milestones, and targets" (2019) 5:4 *Science Advances*, online: <www.science.org/doi/10.1126/sciadv.aaw2869>.

⁶⁰ Government of Canada, "Protecting our nature: Canada's story" (15 February 2021), online: *Government of Canada* <www.canada.ca/en/environment-climate-change/services/nature-legacy/about.html>.

⁶¹ *Supra* note 56.

⁶² *Ibid.*

The Act would also require the relevant Minister (or Ministers), within a reasonable time after the Act's passage, to set interim targets for each year on the way to 2030 and plans for meeting the interim targets. Similar targets will be set reflecting Canada's forthcoming commitments under the CBD.

The plan for meeting interim targets should be informed by the advice of an expert independent body, including Indigenous knowledge⁶³ and Western science, and include:

- a) a description of the policies that will protect the spaces and species associated with the target;
- b) a description of how Canada's existing legal instruments (e.g. *Species at Risk Act*, *Fisheries Act*) will be used to achieve the targets;
- c) a summary of key cooperative measures or agreements with Indigenous Peoples, ensuring adherence to the United Nations *Declaration on the Rights of Indigenous Peoples*, inherent and Treaty rights;
- d) a summary of key cooperative measures or agreements with provinces and other governments in Canada;
- e) a description of how the plan contributes to fulfilling Canada's international commitments with respect to biodiversity, including commitments under the CBD and related pledges such as the *Glasgow Declaration on Ending Deforestation*;⁶⁴
- f) a science-based evaluation and description of how key biodiversity areas are considered in the plan;
- g) a description of how the plan promotes equitable access to nature, including access for racialized communities, persons with disabilities and others historically excluded from accessing nature; and
- h) a projected timetable for completion of the policies set out in the plan.

The plan should also include an explanation of progress, which sets out how far these policies described continue progress towards achieving the target.

⁶³ "Indigenous Knowledge is a systematic way of thinking applied to phenomena across biological, physical, cultural and spiritual systems. It includes insights based on evidence acquired through direct and long-term experiences and extensive and multigenerational observations, lessons, and skills. It has developed over millennia and is still developing in a living process, including knowledge acquired today and in the future, and it is passed on from generation to generation. Under this definition, it is recognized that Inuit Knowledge is a way of life. It goes beyond observations, ecological knowledge, and research, offering a unique 'way of knowing'." Utqiagvik Declaration (19 July 2018), *Inuit Circumpolar Council*, online: <<https://iccalaska.org/wp-icc/wp-content/uploads/2019/05/FINAL-Utqiagvik-Declaration-2018.pdf>>.

⁶⁴ United Nations Climate Change, "Glasgow Leaders' Declaration on Forests and Land Use" (2 November 2021), online: *UN Climate Change Conference UK 2021* <ukcop26.org>.

✓ Access and Equity

The proposed Act is an opportunity to articulate and defend everyone’s right to a healthy environment, without which we could not form a functioning society. The Act would provide redress to the public where the government of Canada fails to take action on a matter at the core of our wellbeing – a viable natural world. It can also promote equitable access to nature, so all people can experience the natural world and contribute to its restoration.

As many have noted, access to the great outdoors is often unequal and divided along racial lines.⁶⁵ So too are the green spaces closer to urban centers.⁶⁶ Effective legislation would enable people to connect with nature, not shut communities out of it.

To this end, the Act may state:

The Government of Canada has a duty to protect the right of every individual in Canada to healthy ecosystems and biodiversity, and to equal access to the natural environment, as provided under this Act.



✓ Decolonizing Nature

Walking the path of reconciliation requires a paradigm shift in our approach to conservation.

Canada’s entire system of protected and conserved areas should be identified and managed in partnership with Indigenous governments, consistent with the principle of Free Prior and Informed Consent (FPIC) as expressed in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).⁶⁷

“Fortress conservation”, which locks up parcels of land to exclude the presence, knowledge, cultures and rights of Indigenous Peoples, has caused tremendous harm globally.⁶⁸ Canada’s parks systems have too often harmed Indigenous peoples by excluding their presence, knowledge, cultures and

⁶⁵ Ania Bessonov “Toronto organization makes outdoor activities more accessible to BIPOC women,” (20 September 2020) online: *CBC News* <<https://www.cbc.ca/news/canada/toronto/brown-girl-outdoor-world-1.5731136>>.

⁶⁶ Dr. Faisal Moola, “Toronto is Canada’s most forested city - 28% tree canopy cover. But distribution of nature is not equitable” (28 october 2016), online: <https://twitter.com/faisal_moola/status/792068861310930946>.

⁶⁷ Indigenous Circle of Experts, “We Rise Together: Achieving Pathway to Canada Target 1 through the creation of Indigenous Protected and Conserved Areas in the spirit and practice of reconciliation” (2018) at 35, online (pdf): <static1.squarespace.com/static/57e007452e69cf9a7af0a033/t/5ab94aca6d2a7338ecb1d05e/1522092766605/PA234-ICE_Report_2018_Mar_22_web.pdf>.

⁶⁸ Rhett Butler “Reckoning with elitism and racism in conservation: Q&A with Colleen Begg” (28 June 2021), *Mongabay*, online: <<https://news.mongabay.com/2021/06/reckoning-with-elitism-and-racism-in-conservation-qa-with-colleen-begg/>>.

rights.⁶⁹ A new approach to maintaining biodiversity must recognize the Indigeneity of the spaces that we are trying to protect, including by returning lands to Indigenous management.⁷⁰

New legislation should recognize and support Indigenous governance of biodiversity as well as implement UNDRIP, as mandated by the *United Nations Declaration on the Rights of Indigenous Peoples Act*.⁷¹ The *Nature and Biodiversity Act* should recognize and enable sovereign Indigenous rights to manage protected areas, recover species at risk and manage culturally important and harvested species in traditional territories. The Act may state:

Respect for Indigenous treaty and inherent rights, Indigenous knowledge, and Indigenous jurisdiction over traditional territory, shall be the first priority of the Minister when setting targets and pursuing actions in furtherance of the Act's purposes.⁷²

The Act should provide funding and a transparent process for resourcing Indigenous Protected and Conserved Areas (“IPCAs”) - lands and waters where Indigenous governments have the primary role in protecting and conserving ecosystems through Indigenous laws, governance and knowledge systems. The recommendations of the Indigenous Circle of Experts (ICE) with respect to Indigenous Protected and Conserved Areas (IPCAs) will be invaluable.⁷³

In this way, the Act will encourage partnerships with Indigenous peoples, and their management of any new protected areas and species protection initiatives, fostering reconciliation along with protection and restoration of nature.



⁶⁹ Robert Jago, “Canada’s National Parks are Colonial Crime Scenes” (30 June 2017), online: *The Walrus* <thewalrus.ca/canadas-national-parks-are-colonial-crime-scenes/>.

⁷⁰ <https://e360.yale.edu/features/how-returning-lands-to-native-tribes-is-helping-protect-nature> Jim Robbins, “How Returning Lands to Native Tribes Is Helping Protect Nature” (3 June 2021), online: *Yale Environment 360* <e360.yale.edu/features/how-returning-lands-to-native-tribes-is-helping-protect-nature>.

⁷¹ See s. 5: “the Government of Canada must, in consultation and cooperation with Indigenous Peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration”.

⁷² There is precedent for a legislative mandate to consider an issue as a “first priority”: Canada’s national parks legislation, the National Parks Act, prioritizes “ecological integrity” as the first priority for management in s 8(2), The Nature and Biodiversity Act could apply that concept to prioritize decolonization.

⁷³ *Supra* note 67.

✔ **Transparent reporting**

Under this Act, the Minister of the Environment would prepare and table in Parliament yearly progress and assessment reports, which update the public on progress toward achieving the 2030 and post-2030 targets, indicating whether the interim targets have been achieved. If the Minister concludes that Canada has not achieved its interim targets, the Minister must include the following in the report:

- a) the reasons why Canada failed to meet the target;
- b) a description of actions the Government of Canada is taking or will take to address the failure to achieve the target; and
- c) any other information that the Minister considers appropriate.

✔ **Public Accountability**

In addition, the Act would empower and direct the *Commissioner of the Environment and Sustainable Development* to examine and report on the Government of Canada's implementation of the plans to achieve the biodiversity targets. The report may include recommendations related to improving the effectiveness of the Government of Canada's implementation of the goals that it has committed to deliver.

Since the purpose of the Act is to uphold rights⁷⁴ to healthy ecosystems and biodiversity, the Act should provide recourse to the public if the government fails to provide sufficient content or explanation in a plan or in a report setting out corrective action for failure to meet a target. It is important to ensure that people and communities across the country have access to the courts in order to challenge unreasonable actions under the Act. To guarantee that access, the Act should be clear that plans and corrective reports are justiciable decisions for the purpose of the *Federal Courts Act*.

The Act should also ensure that the goals it establishes are considered and respected systematically across all government decisions affecting the environment or natural resources and across Ministries (e.g. Natural Resources, Trade, Oceans, etc.). It should include a prohibition against any decision of a federal authority that jeopardizes or undermines the attainment

⁷⁴ A universal right: Brenda H Powell, "The right to a safe, clean, healthy and sustainable environment is recognized as a universal human right" (29 October 2021), online: *Environmental Law Centre* <elc.ab.ca/the-right-to-a-safe-clean-healthy-and-sustainable-environment-is-recognized-as-a-universal-human-right/>.

of the biodiversity targets, for instance by destroying the habitat of species-at-risk. The mechanism could be similar to one used effectively in the U.S. Endangered Species Act, known as the “jeopardy prohibition”, which requires federal agencies to ensure when making any decision that their actions are not “likely to jeopardize the continued existence” of any listed at-risk species.⁷⁵ Broadening the scope of that mechanism, Canadian authorities could be required to ensure that their actions do not jeopardize any feature of biodiversity as set out in plans under the Act.

04

Conclusion



In this report we have outlined numerous and significant problems with the current framework for ensuring the survival of biodiversity in Canada. The system is simply not working.

While the federal government has certainly not lived up to past promises when it comes to biodiversity and nature protection, Minister of the Environment and Climate Change Steven Guilbeault has an unprecedented opportunity to fix this. Acknowledging there is a problem is always a good first step. Committing to action is even better. We hope that our analysis and recommendations can kick start much-needed action and legislative reform by the Minister and Government of Canada.

⁷⁵ *Endangered Species Act*, SO 2007, c 6, s 7(a)(2).

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