

Backgrounder

MAY 2023

Do's and don'ts for new nature & biodiversity protection legislation

Context

In December 2022, Minister of the Environment and Climate Change Steven Guilbeault [committed](#) to passing new legislation to enshrine Canada's international biodiversity commitments into law. [Greenpeace Canada](#), our supporters and allies had been calling on the Minister to make this step in response to the global extinction crisis using a variety of tactics including a [report](#), [petition](#), [public polling](#), [media commentary](#), and [creative demonstrations](#).

The Minister's announcement came alongside a new global deal to protect and restore nature — [the Kunming-Montreal Global Biodiversity Framework \(GBF\)](#). Negotiated under the auspices of the Convention on Biological Diversity (CBD), the Agreement sets 23 new targets that all states party to the Convention must achieve by 2030. These include more protected areas and reducing pesticides while ensuring respect for [Indigenous rights](#) and knowledge.

Why do we need new legislation to protect nature & biodiversity?

Canada has [failed to fully meet](#) any of its previous global nature commitments under the CBD. For instance, the federal government [has not achieved](#) its target to protect 17% of terrestrial areas. These kinds of big protections are crucial for maintaining existing biodiversity and the healthy functioning of natural life support systems everywhere.

Furthermore, [existing laws](#) to protect biodiversity are inadequate, under-resourced and weakly enforced. In some instances the federal government is itself even holding back progress with [contradictory actions](#) across ministries that enables more biodiversity destruction by industry on the ground.

Biodiversity in Canada is paying the price for these missed commitments, weak laws and inconsistent approach - [more than 2,000 wild species](#) face a high risk of being wiped out according to a groundbreaking 2022 study.

An important solution to these ongoing failures and inconsistencies is new legislation to ensure Canada's international nature commitments are implemented — a Nature and Biodiversity Act. A poll commissioned by Greenpeace Canada in November last year [revealed](#) that more than 7 in 10 people in Canada would support such legislation. Over 40,000 Canadians have signed our [petition](#) calling for its swift passage.

What should be included in an effective legislation?

1. Respect for Indigenous rights and knowledge

Canada was founded on stolen Indigenous lands. The most important component of the new Global Biodiversity Framework is the [strong language](#) on respecting the rights of Indigenous Peoples in achieving targets. Greenpeace stands in allyship with [Indigenous leaders](#), our activities in Montreal during COP15 are a [perfect example](#), and we strongly believe this foundational principle must be robustly reflected in Canadian legislation.

Respect for Indigenous treaty and inherent rights, Indigenous knowledge, and Indigenous jurisdiction over traditional territory, should be the first priority of the Minister when setting targets and pursuing actions in furtherance of the Act's purposes. New legislation should advance implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Act, including the right to free, prior and informed consent for activities impacting Indigenous territories.

2. Clear direction on how Canada will meet its commitments to protect biodiversity

Under the Kunming-Montreal deal, countries promised to protect at least 30% of nature by 2030. But as we have seen before, protection targets without clear plans can be empty promises.

The new legislation must therefore adopt the GBF's long-term goals and 2030 targets as Canada's binding domestic objectives, with detail on what these will specifically mean for the Canadian context. The law must then map out clear and measurable interim targets for every two years until 2030, to ensure Canada is put on course to halt and reverse biodiversity loss.

3. Independent annual reporting

According to our polling, [over 80% of people in Canada](#) are worried about the future because of the nature crisis. They deserve to know exactly what the federal government is doing to address it. Therefore, the Minister of the Environment must be required to publish and table in Parliament independent, annual reports on progress towards achieving the 2030 targets. This reporting should identify barriers to progress, within government or otherwise. If the government is again not achieving its targets, the Minister must explain why and come up with immediate plans to address failures.

This will allow the public to learn exactly why habitat is still being destroyed, the factors and who is responsible. With such provisions, we can expect a more holistic approach across federal government departments in line with clear political and ecological imperatives.

4. Public accountability mechanism

To further ensure the government is held accountable, the legislation must provide new powers to the public to sue when the government fails to deliver on its nature commitments. Having such a legal right will shift power back to local communities negatively impacted by unwanted harm to their natural environment. Perhaps unsurprisingly, [in the polling](#) we commissioned, people with lower household incomes showed some of the strongest support for a new law with these public powers.

Combined with regular independent reporting, the threat of lawsuits and mandated court action will be a powerful motivator for the government to live up to its promises and embrace a [“whole of government”](#) approach to halting biodiversity loss with less contradictory actions.

5. Enabling greater access to nature

We are a part of nature, not apart from it. Our health, and the health of everyone we love, depends on biodiversity and a healthy natural world. It has been scientifically [proven](#) that greater exposure to nature is associated with better health and well-being. Targets 11 and 12 of the Kunming-Montreal Agreement therefore emphasize increasing people’s connections to nature and green spaces in an inclusive manner.

In Canada, access to the [great outdoors](#) is often unequal and divided along racial lines. So too is access to green spaces [in urban centers](#). Effective legislation should therefore explicitly enable people [to connect with nature](#) so all people can experience the natural world and contribute to its restoration.

What should stay out of the new legislation? (Mistakes/things to avoid)

1. Offsetting mechanisms

“Offsetting” is a scheme that [allows corporations to continue business as usual](#), pumping out more greenhouse emissions or destroying more biodiversity, in return for a shaky promise to restore nature somewhere else. For Greenpeace Canada, this presents a major threat to global progress on climate change and biodiversity loss. We fundamentally disagree with nature being commodified to the benefit of big polluters.

A [“carbon offset”](#) describes an amount of greenhouse gas emissions that is allegedly sequestered in order to compensate for emissions occurring elsewhere. For example in case of [forest offsets](#), an area of forest is protected or trees are planted to make up for ongoing pollution into the atmosphere. So an oil company might pay someone else to plant some trees or say they’re protecting a forest, to continue emitting carbon as usual.

However, [the science is clear](#): to prevent this global crisis from getting worse, we need to cut greenhouse gas emissions immediately, while simultaneously protecting and restoring vast

natural ecosystems.

Unfortunately, there is a [worrying trend](#) in Canada to create protected areas for big polluters to offset their emissions. The federal government is even rolling out [plans to use forests](#) across the country in this way. Oil and gas giants [like Shell](#) have already used “offsets” to claim their fossil fuel in Canada are carbon neutral.

Biodiversity offsets use the same [flawed logic](#) as carbon offsets, but in this case the idea is that developers can wipe out biodiversity in one area if they agree to somehow restore or prevent biodiversity loss somewhere else. Nevermind halting biodiversity loss, the federal government recently put forward [a proposal](#) that opens up the possibility for industry to destroy biodiversity by simply paying a fee.

As we move forward with new legislation to protect nature and biodiversity over the next 10 years in Canada, we must focus on ending the destruction of nature. Otherwise we risk seeing nature and biodiversity even more degraded, in return for a bunch of empty promises, such as for example, nature restoration in some distant future.

2. Fortress conservation

“[Fortress conservation](#)” locks up parcels of land to exclude the presence, cultures and rights of Indigenous Peoples. This has caused tremendous [harm globally](#), as well as in [Canada’s park systems](#). During negotiations in Montreal, Indigenous Peoples and their allies once again [rejected](#) this colonial approach to conservation. Instead, federal legislation and other measures should recognise and enable 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](#).