

Maritime Aboriginal Peoples Council – IKANAWTIKET

Policy Critique of the Draft Species at Risk Act Overarching Policy Framework

Perspectives for the Improvement of the Government of Canada's
Implementation of the Species at Risk Act

Joshua E. McNeely and Roger J. Hunka

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Of Aboriginal Peoples Continuing to Reside on Traditional Homelands*

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*Back cover: “Micmac Indians of Tufts Cove”
Tufts Cove, Dartmouth, Nova Scotia
1912*

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FORWARD – A New Reality Emerging Around the World

The *Species at Risk Act* (SARA)¹ was assented on December 12, 2002 as a new, comprehensive tool in the toolbox of federal acts expected to advance several new Government of Canada policies and strategies and an international convention, within the constricts of the Canadian Federation. The Canadian Federation consists of a division of constitutional powers between the federal national government, provincial governments, territorial governments, including the new territorial land claims agreements governments. SARA, working under a national accord and framework, is required to address the substantial and escalating loss of biodiversity throughout Canada.

Stated on numerous occasions at House of Commons and Senate Committee meetings and working group meetings, held in the mid-1990s for the purpose of drafting federal species at risk legislation, was the ideal to extend an invitation and accommodation to Canadians, especially the Aboriginal Peoples of Canada, as key to the implementation of SARA. There was a need for the invitation to exchange information, cooperate in conservation, share the workload for species conservation, and advance knowledge – scientific, Aboriginal, and local. Lawmakers were clear to reiterate in several clauses in the preamble of SARA that:

- biodiversity is a part of our collective Canadian “*natural heritage*”,
- biodiversity is an integral part of our “*national identity and history*”, and
- wildlife, in all its forms, has “*value in and of itself*” and is “*valued by Canadians*”.

SARA, as a tangible, action-oriented Canadian biodiversity law, is the pivotal federal government response to the *United Nations* (UN) *Convention on Biological Diversity* (CBD). For most western societies, predominantly modeled on *laissez faire* economics, and structured on the tenets of resource exploration and exploitation for economic development, particularly true in a resource rich and diverse country such as Canada, the CBD, with its three strategic pillars, is a new and difficult concept to accept:

- the conservation of biological diversity,
- the sustainable use of its components, and
- the fair and equitable sharing of benefits arising from the use of genetic resources.

Long before the consumer driven economies of western society, and their exploitation of resources and trespass on Aboriginal Peoples’ lands, the Aboriginal Peoples of Canada existed throughout all of Canada as *eco-centric societies*, which in some areas date 10,000 years. The continuation of Aboriginal Peoples on their homelands is due to their ability to adapt to local environmental conditions and use natural resources in ways which respect the natural world and Aboriginal Peoples place in that world. Aboriginal Peoples worldview is that “*we are interconnected and interdependent with all life and all life-giving forces*”.

¹ *An Act respecting the protection of wildlife species at risk in Canada*, S.C. 2002, c. 29; referred to as the Species at Risk Act (SARA).

Over many generations, a sophisticated and wide body of Aboriginal knowledge, innovations, and practices have been developed throughout the traditional ancestral homelands of the Aboriginal Peoples of Canada, which enables the continuum of Aboriginal Peoples to present day. So ingrained is the knowledge, innovations, and practices of Aboriginal Peoples, which naturally includes *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources*, that Aboriginal cultures and languages have captured these practical ideals as a *matter of course* and have evolved to reveal themselves within Aboriginal Peoples' "*eco-centric worldview*".

A tenant of the eco-centric worldview is that humankind is an integral part of the natural world, interconnected and interdependent on all other creation. Dr. Pobihushchy describes the "eco-centric worldview" as "*the 'self', is made up not only of the individual person, but also of the various elements or parts of being or existence – i.e. the Great Spirit, the spirits, animals, plants, and the rest of creation.*" The ecology of a place is paramount, with humankind as part of that, no greater and no lesser than any other part of creation.²

Many people recognize the potential that Aboriginal Peoples, possessing Aboriginal knowledge, practices, and innovations, can share, teach, and guide others to understand the concepts of conservation and sustainability, realized through the practices of "*ecosystem-based management*" and a "*precautionary approach*", which are already found in the psyche and everyday life pattern of the Aboriginal person.^{3,4}

² S. I. Pobihushchy, *A Perspective on the Indian Nations in Canada*, Department of Political Science, University of New Brunswick, July 16, 1984. Pobihushchy's work focuses on uncovering the root obstacles for Aboriginal Peoples to realize self-governance within the confines of a European dominated Canadian 'western' society and political system; and is a critique of the *Report of the Special Committee on Indian Self-Governance in Canada*, 1983 (commonly referred to as the "*Penner Report*"). The work is an excellent source for coalescing and exploring such topics as the difference between European and Aboriginal Peoples mindsets, value systems, and particularly worldviews; and highlights the fundamental differences between these. Pobihushchy shows how the dominance of Europeans (and the homo-centric worldview) over Aboriginal Peoples (and the eco-centric worldview) are the root causes that, to this day, continue to prevent the meaningful inclusion of the Aboriginal Peoples of Canada within the current European dominated Canadian system.

³ International Union for the Conservation of Nature, *World Conservation Strategy*, 1980, c. 14. Though focused on strategic world conservation outcomes, the Strategy does elude to the fact that "*rural communities often have profound and detailed knowledge of the ecosystems and species with which they are in contact and effective ways of ensuring they are used sustainably*". Conservation planners should recognize that governments, academics, or industry may not have the best solutions, especially when it comes to agriculture, fishing, and other forms of resource extraction. Instead, the Strategy suggests that conservation planners should learn from and apply traditional knowledge to modern problems, especially in rural areas, or otherwise risk a continued history of transforming traditional sustainable subsistence societies into western model poor cash societies, such as is the legacy of the so called "Green Revolution".

⁴ International Union for the Conservation of Nature, United Nations Environment Programme, World Wildlife Fund, *Caring for the Earth – A Strategy for Sustainable Living*, 1991, c. 6 & 7. The "*Caring for the Earth Strategy*" expands upon the *World Conservation Strategy* to discuss some root causes of western society's broad acceptance of "rampant exploitation for wealth creation", which leads to unsustainable lifestyles. A key element toward achieving environmental sustainability highlighted in the Strategy is the exposure of all peoples to a way of thinking about the natural environment as nurturing and necessary for human survival (what Aboriginal Peoples call an eco-centric worldview), not something to be conquered for human profit. The Strategy postulates that if people have the proper knowledge and incentives, they can be persuaded that sustainable living is right and necessary and they will themselves adopt sustainable living and thus push forward the sustainable living agenda in their respective sectors. The Strategy postulates that together these many small actions can accumulate into broad societal changes toward environmental sustainability. The Strategy also calls for the enabling of local communities, including

The opportunity for sharing in the work and promise envisioned by SARA for Aboriginal Peoples remains unrealized. Aboriginal Peoples' ability to participate in decision-making and initiatives for *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources* have been denied and discouraged by many historic and current economic and social factors – equal or greater in measure to the federal government's more recent efforts to invite Aboriginal Peoples to participate in SARA activities.

In Canada, the Indian Act reserve system, residential schools, treaty relations, and the long standing Indian Policy to dispossess Aboriginal Peoples of their lands, resources, knowledge, and culture; the constant acts to disinherit and denounce the birthright identity of the Aboriginal Peoples of their Aboriginal Nations throughout Canada; the creation of a "Paper Indian" manifestation of the "Indian" living on the "Reserve"; and denying Aboriginal Peoples a sense of place within the Federation of the Peoples of Canada, and much more, is all cause for a gap between worldviews.

Pobihushchy shows these to be manifestations of a European system based on a "homo-centric" worldview (i.e. the understanding and belief in the dominance of humans over nature). One inherent issue with a "homo-centric governance model" is the ease in which justification can be made for the dominance and superiority of European immigrants over the Aboriginal Peoples of Canada.

*"The problem is much more fundamental than...any analysis by government has ever admitted. The existence of the basic difference between the 'homo-centric' worldview and the 'eco-centric' worldview has profound implications for any just solutions in future Aboriginal-Canadian relations." "[It] is unjust for Canadians to assume that the Aboriginal Peoples should follow the prevalent Canadian mode of economic development. If we seriously consider the fundamentally conflicting worldviews of the Aboriginal Peoples and the immigrant Europeans (i.e. Canadian society), then we cannot in all honesty advocate that the Aboriginal Peoples can borrow a homo-centric economic system and still remain true to their Aboriginal ways. Furthermore, it is that same homo-centric economic system that represents perhaps the greatest threat to the Aboriginal way of life. The exploitation, for profit, of the land and the peoples on it, if continued, will mean the eventual elimination of the Aboriginal Peoples as Aboriginal Peoples."*⁵

In 1957, the International Labour Organization (ILO) recognized the reality that Indigenous Peoples continue to exist throughout the world as distinct Indigenous Peoples and that modern Peoples living in the post-WWII era will not accept that Indigenous Peoples be denied the "rights and advantages enjoyed by other Peoples".

"There exist in various independent countries indigenous and other tribal and semi-tribal populations which are not yet integrated in the national community and whose social, economic or cultural situation hinders them from benefiting fully from the rights and advantages enjoyed by other elements of the population".

Aboriginal Peoples, to care for their own environments, thus preserving traditional knowledge, innovations, and practices and empowering local communities to share with others their ways to achieve sustainable livelihoods.

⁵ S. I. Pobihushchy, *A Perspective on the Indian Nations in Canada*, Department of Political Science, University of New Brunswick, July 16, 1984, p. 31-33.

"It is desirable both for humanitarian reasons and in the interest of the countries concerned to promote continued action to improve the living and working conditions of these populations by simultaneous action in respect of all the factors which have hitherto prevented them from sharing fully in the progress of the national community of which they form part".⁶

These ILO Convention 107 statements demonstrated an emerging reality; however, they still did not reflect the reality and view held by the Indigenous Peoples of the world, who wanted to continue life and their societies with their own knowledge, innovations, technologies, and practices of interconnectedness and interdependency with the surrounding natural world.

In Canada, reflecting on the reality of Aboriginal-Canadian relations from Aboriginal Peoples perspectives, Patterson turns around the common Canadian school 'textbook' teaching of Aboriginal-Canadian relations.

"Another way of thinking about the history of Indians in Canada is to see them as a People with a distinct past of their own; to see that the coming of the whites does not change the Indian's continuity with his own past, that his story must be told in terms of his own experience with the white man, placing him at the centre of the narrative, regardless of the fact that he has ceased to occupy the centre of Canadian affairs. The shift in control of the land and in numerical and cultural balance is then seen as part of the experience of the Indian. The territory is not the theme of the story, and the narrative does not centre on the people who constitute either the majority, or the most dynamic and dominant group in that territory. The Indian is the centre, no matter how many people displace him or how deeply he is driven into the remote areas of the land, or to what extent he is forced to conform to the invaders in order to survive. The story still centres on him and his surviving identity."⁷

The establishment of the UN in 1945 set the stage to advance the realities and rights of colonized Peoples, such as was the case of the Aboriginal Peoples in Canada. This was manifest in the UN Charter as the *"principle of equal rights and self-determination of Peoples"*. The past few decades, since the beginning of the 1960s, have been characterized as the *"greatest political transition in human history"*. UN member States, under the guidance and political negotiating process of the UN, were deeply involved in a decolonization process, which came about because of two important events:

1. the agreement by UN member States to the principle of *"equal rights and self-determination of Peoples"*, and advanced by the UN through the establishment of the International Trusteeship Council to accelerate decolonization; and
2. more importantly, the aspirations and struggles of subjugated Peoples themselves to assert their rights and aspirations through the UN system and domestic struggles.

⁶ *International Labour Conference Convention 107.*

⁷ E. Palmer Patterson II, *The Canadian Indian: A History Since 1500*, 1972, p. 3.

In 1960, the UN adopted the “*Declaration on Decolonization*”⁸, which proclaims that “*the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the United Nations Charter, and is an impediment to the promotion of world peace and cooperation*”.

The UN attributes that, more than any other action or event, the transfer of power from colonizers to former colonies throughout the world in the 1950s and 1960s has made possible the modern international community of relatively stable States, with an almost universal membership in the UN, cooperating through international forums, most predominantly UN assemblies, councils, treaty conferences, advisory bodies, and courts of justice.⁹

These aspirations are not simply idealistic, modern manifestations. Rather, Indigenous Peoples’ worldviews and desire to continue as unique Indigenous Peoples come from each Indigenous Peoples’ relationship of interconnectedness and interdependency with the living world and their place within their traditional ancestral territory.

*“Land cannot be given or taken away. We belong to the land; our birth does not sever the cord of life which comes from the land. Our spirituality, our culture and our social life depend on it.”*¹⁰

*“All the knowledge of our people is based on a permanent relationship with the places in which we live. The Indian territories are not only physically but also culturally located. The people who live in a valley see rivers and mountains in a very different way from a geologist or a biologist. A mountain for us has a name, has children, has loves.”*¹¹

Since 1982, the Indigenous Peoples of the world had been working on drafting an international declaration of rights as Peoples¹², which would clearly enunciate libertarian principles and fundamental human rights to apply to Indigenous Peoples such as:

“Indigenous Peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”

⁸ Officially called the *UN Declaration on the Granting of Independence to Colonial Countries and Peoples*, 1960, the Declaration is to help speed up the process of decolonization of 750 million people who lived in non-self-governing territories or colonies, as of 1960, as required by the UN Charter.

⁹ For a summary about the global and local political impacts from the decolonization process in eighteen Trustees and Non-Self-Governing Territories, refer to the UN publication, *Decolonization – The Task Ahead*, 1991.

¹⁰ Remarks made to the International Labour Organization in celebration of ILO Conventions 107 and 169, which paved the way for Indigenous Peoples recognition and participation in international affairs and indeed domestic affairs for many countries. In fact, ILO Convention 107 stood for thirty-two years as the only international convention on Indigenous Peoples rights, until the signing of ILO Convention 169. Remarks made by Pat Dobson in the International Labour Office publication *Indigenous and Tribal Peoples and the ILO*, 1994, p. 4.

¹¹ *ibid*, remarks made by Ailton Krenaki, p. 4.

¹² Including the *Mattatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples*, 1993; the *Kimberley Declaration on Indigenous Peoples and Sustainable Development*, 2002; *International Cancun Declaration on Indigenous Rights*, 2003; and others.

“Indigenous Peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous Peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous Peoples concerned.”

“Indigenous Peoples have the right to maintain, control, protect, and develop their cultural heritage, traditional knowledge, and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions. In conjunction with Indigenous Peoples, States shall take effective measures to recognize and protect the exercise of these rights.”¹³

In 1989, the enunciated realities of the Indigenous Peoples of the world and their worldviews were better understood and recognized. UN member States determined that the considerations in ILO Convention 107 were not truly reflective or responsive to the realities of Indigenous Peoples; and determined that Indigenous Peoples must hold a stronger place in the international order. Accordingly, a new international convention, ILO Convention 169, was passed to build on the groundwork of ILO Convention 107, while taking a quantum leap forward to recognize clearly the existence of Indigenous Peoples, as Peoples. ILO Convention 169 further called on member States to:

“recognize the aspirations of these Peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live.”

At the same time, ILO Convention 169 also brought to light on the international stage that Indigenous Peoples carried within themselves vital aspects and contributions to humankind by calling attention to:

“the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding.”¹⁴

¹³ These and other articles of declared rights were drafted over three decades by Indigenous Peoples, particularly through the UN Permanent Forum on Indigenous Issues. Expressed numerous times through “Indigenous Declarations” on various issues and also within some UN conventions and declarations, a formal, more inclusive iteration of Indigenous Peoples rights were not formally adopted by the UN General Assembly until September 12, 2007, as the *UN Declaration on the Rights of Indigenous Peoples*. Represented are Articles 25, 26, and 31 of that declaration, respectively.

¹⁴ *International Labour Conference Convention 169*. For a more thorough understanding of Indigenous Peoples rights, the *Universal Declaration on Human Rights, 1948*; *ILO Convention 107, 1957*; the *International Covenant on Economic, Social and Cultural Rights, 1966*; the *International Covenant on Civil and Political Rights, 1966*; the *Optional Protocol to the International Covenant on Civil and Political Rights, 1966*; *ILO Convention 169, 1989*;

The growing international recognition of Indigenous Peoples and the invaluable contribution of Indigenous Peoples throughout the world were similarly echoed in the draft proposals for an international biodiversity convention, which called for States to recognize biodiversity as the *“common heritage of humankind”*.

When drafting the *Convention on Biological Diversity* (CBD), states rejected the ideal of the *common heritage of humankind*, (i.e. to recognize nature or biodiversity to be equal or paramount to the manmade manifestation of “governing States”) and instead opted to assert State sovereign rights over biodiversity.¹⁵ The “Grand Compromise” of the CBD was to use the term *“common concern of humankind”* to imply a common responsibility by all Peoples for *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources*. States agreed that at least these are paramount to the international community as a whole.

Signed in 1992, the CBD became the first comprehensive global agreement to address all aspects of biodiversity: genetic resources, species, and ecosystems. For the first time, an international convention recognized that conservation of biodiversity is *“a common concern of humankind”* and an integral component in development, especially as it may affect Indigenous Peoples. To date, 193 nations have signed the CBD, making it one of the most widely ratified international treaties in the world, on any issue.

The importance of the CBD to Indigenous Peoples cannot be understated. The CBD recognizes and advances the reality, rights, and fundamental human rights of Indigenous Peoples to be both a part of national decision-making about biodiversity and at the same time to have their being protected, as distinctive Indigenous Peoples, with distinctive knowledge, customs, innovations, and practices in this world.

Two of the more important provisions for Indigenous Peoples in the CBD are Articles 8(j) and 10(c).

Subject to its national legislation, respect, preserve, and maintain knowledge, innovations, and practices of Indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations, and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations, and practices. (8j)

Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements. (10c)

and the *Declaration on the Rights of Indigenous Peoples*, 2007 all should be consulted as a “Covenant Chain” on human rights.

¹⁵ The concept of the *common heritage of humankind* does exist in international law, most notably in the *United Nations Convention on the Law of the Sea*, 1982.

These articles, coupled together with other CBD articles concerning access to genetic resources, access to and transfer of technologies, exchange of information, the handling of biotechnology, and the distribution of benefits, provides a platform for advancing Indigenous Peoples rights, while also promoting *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources.*

In fact, the promotion of cooperation and respect among member States and Indigenous Peoples is the only way to achieve the CBD objectives.

Testing the ideal of the “*common heritage of humankind*” in Canadian domestic law, SARA, as the Canadian flagship for CBD implementation, reintroduced the ideal that biodiversity is both the “*common heritage*” and “*common concern*” of all Canadians.¹⁶ For that and many other reasons, CBD Articles 8, 10, 15, 16, 17, and 19 each require a clear and special relationship between the Government of Canada and the Aboriginal Peoples of the Aboriginal Nations of Peoples throughout Canada, appreciating their distinctive contributions to ecological harmony and understanding.

SARA recounts these purposes by stating in its preamble that “*the roles of the Aboriginal Peoples of Canada...in the conservation of wildlife in this country are essential.*” This is a decisively important statement for the Aboriginal Peoples of Canada, as just twenty years previously, Canada had recognize and affirmed in the highest domestic law of the country, the *Constitution Act, 1982*, in Part II, Section 35, the existing Treaty and Aboriginal Rights of the Aboriginal Peoples in Canada; and in Part I, Section 25, that:

“the guarantee in the Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any Aboriginal, Treaty, or Other Rights or freedoms that pertain to the Aboriginal Peoples of Canada including
(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.”

SARA, as Canada’s leading biodiversity legislation, equally accorded a special place for the Aboriginal Peoples of Canada within the Act. SARA, as national legislation in Canada, could be used to both recognize and reconcile the assaults of the past by acknowledging that the Aboriginal Peoples eco-centric worldview can also be shared with all Canadians. From that vantage point, Aboriginal Peoples, working in partnerships with the Government of Canada and other Canadians, can begin to work together for the *conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources.*

Unfortunately, the federal government, as the government lead for SARA and the CBD, has failed to seize the opportunity and take federal leadership to effectively involve and support participation of Aboriginal Peoples in SARA. The Office of the Auditor General of Canada –

¹⁶ Specifically the SARA preamble states that “*Canada’s natural heritage is an integral part of our national identity and history*”, that “*Canadian wildlife species and ecosystems are also part of the world’s heritage*” and that “*wildlife, in all its form, is valued by Canadians*”.

Commissioner on Environment and Sustainable Development, in several reports, has criticized the federal government's lack to fully implement the CBD.¹⁷ One of the Commissioner's reoccurring concerns is the lack of leadership at the federal level to advance species at risk and the CBD within Canada.

During the early Aboriginal Working Groups era contributing to the drafts of the three federal species at risk Bills¹⁸, it was postured that the enactment of SARA would address several key concerns, namely: engagement of Canadians, especially Aboriginal Peoples, increased consideration of science in decision-making, clear implementation policy and actions, development of key indicators for monitoring biodiversity and evaluating actions, better and more predictable cooperation between federal, provincial, and territorial jurisdictions, and most importantly, SARA showed that the federal government, under the CBD and CBS, was taking a leadership role for species at risk.

SARA has the required language to be the flagship for timely and tangible actions to halt biodiversity loss in Canada. Under the *National Accord for the Protection of Species at Risk* (National Accord), SARA was to be the model Act and the focal point for species at risk conservation, regardless of jurisdiction. SARA is designed and can be implemented to be complementary to many other national, provincial, and local initiatives which have been underway in Canada for decades. For example, pre-SARA initiatives later brought under the SARA umbrella include the:

- *Recovery of Nationally Endangered Wildlife* (RENEW) – Since 1988, RENEW has provided guidance and credence to local volunteer species recovery teams and in-turn provides local recovery teams a vital mechanism to provide advice, through national recovery plans, to ministers responsible for species at risk as to what is required for the conservation of species at risk and the restoration of their habitats.
- *Committee on the Status of Endangered Wildlife In Canada* (COSEWIC) – Since 1978, COSEWIC's panel of volunteer experts have been assessing the status of species at risk. SARA enshrines COSEWIC to be the legislative authority for initiating most SARA Schedule 1 Listing sequences.
- *Hinterland's Who's Who* – In the 1960s and 1970s, Hinterland's Who's Who sixty second TV vignettes raised awareness about the loss of Canada's natural heritage and helped to create a "culture of conservation" among the Canadian public. The work of many volunteers through SARA has revived these vignettes and created new ones, again issuing forth the culture defining "fluted loon call" that grabs the attention of even the most distracted person.

¹⁷ Most notable being Status Reports for 1998 and 2000. Unfortunately, the Commissioner has still been unsatisfied with the federal government response, as evidenced by the Commissioner's reports for 2005 and 2008.

¹⁸ C-65 (1st Reading 1996), C-33 (1st Reading 2000), and C-5 (Assented to in 2002). The legislative history of species at risk in Canada, bill summaries, and commentary about protected species at risk can be accessed through the Parliamentary Research Branch of the Library of Parliament: entries BP-417E (for C-65), LS-369E and PRB 00-19E (for C-33), and LS-438E (for C-5). Evidence presented at legislative committee debates can be accessed at: for the House Standing Committee on Environment and Sustainable Development – www2.parl.gc.ca/CommitteeBusiness; and for the Senate Standing Committee on Energy, Environment, and Natural Resources – www.parl.gc.ca/Common/Committee_SenList.asp.

- And countless biodiversity conservation initiatives by universities, botanical gardens, zoos, biospheres, atriums, and community groups, which together create a fabric of biodiversity conservation throughout Canada.

SARA was meant to strengthen these volunteer efforts and initiatives and at the same time give the federal government more legislative power to implement the CBD and take the lead for all levels of government, under the National Accord.

SARA is a unique piece of national biodiversity legislation in Canada, which recognizes the importance of inviting and accommodating Aboriginal Peoples, because of their long continuum on traditional ancestral homelands and their intimate knowledge of biodiversity. Several sections of SARA require the federal government to consult or engage Aboriginal Peoples. To assure Aboriginal Peoples that their participation will not affect their access to biodiversity or lands, SARA states that nothing in SARA “*shall be construed so as to abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the Aboriginal Peoples of Canada by the recognition and affirmation of those rights in section 35 of the Constitution Act, 1982.*”¹⁹

For almost five years, the Aboriginal Working Group provided recommendations on the drafts of SARA. The Aboriginal Working Group envisioned that SARA would be a uniting and knowledge liberating force across Canada on that common subject – *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources*. For Aboriginal Peoples, SARA would expose, analyze, and eradicate the root causes of biodiversity loss – namely, poor public education, a lack of citizen empowerment, a lack of national coordination and leadership, and unwillingness to include the Aboriginal Peoples of Canada in decision-making about biodiversity. The National Aboriginal Council on Species at Risk (NACOSAR), the Aboriginal Traditional Knowledge Subcommittee (ATK-SC) of COSEWIC, and the Aboriginal Funds for Species at Risk (AFSAR) were created under SARA as first steps for the invitation and participation of Aboriginal Peoples.

To achieve this paradigm shift in Canadian governance about biodiversity and also improve Canadian-Aboriginal relations to help achieve that, SARA requires and has built in a continual self-assessment process of activities, strategies, management plans, habitats, species, policies, and the Act itself, under the guidance of the CBD objectives.

Several SARA evaluation reports have previously criticized the federal government’s species at risk approach, including reports by the federal Commissioner on the Environment and Sustainable Development,²⁰ several petitions to the Auditor General of Canada²¹, one petition to the North American Commission on Environmental Cooperation²², several independent reports commissioned by Environmental Non-Government Organizations²³, numerous letters and

¹⁹ Species at Risk Act, s.3

²⁰ Office of the Auditor General of Canada, *Status Report of the Commissioner of the Environment and Sustainable Development to the House of Commons*, 2008, c. 5.

²¹ Petitions can be accessed at www.oag-bvg.gc.ca

²² SEM-06-005, Oct. 10, 2006. Petitions can be accessed at www.cec.org

²³ Three concise report cards on the federal government’s lack of implementation of SARA are *Species at Risk Act Three Years Later – An Interim Report, 2006* by the Canadian Nature Network; *Left Off the List, 2007*, by the David

meetings held by Aboriginal Organizations²⁴, scientific papers,²⁵ and even a report commissioned by the SARA lead federal departments²⁶. All point to a continued absence of national coordination and absence of national leadership, through a strong and clear federal SARA policy to be the obstacle.

In fact, several expert witnesses provided evidence to the House Standing Committee on Environment and Sustainable Development for the Legislative Review of SARA in 2010²⁷, which indicated that most of the achievements made under SARA since 2002 can be attributed to actions and working relations that existed prior to 2002 or from partnerships that have since formed and advanced for the common good, despite “legal or bureaucratic obstacles and restrictions” put forward by the federal government in the sluggish implementation of SARA.

As a contribution to the continual assessment process of SARA implementation, IKANAWTIKET reviewed the *Draft Species at Risk Act Policies – Overarching Policy Framework*, prepared by the Government of Canada and presented for public consultation on December 7, 2009.²⁸ The authors hope that the understanding shared here will better inform the federal government to redraft the draft Policy Framework to reflect the requirements of the Aboriginal Peoples of Canada to be involved in the implementation of SARA and also the intent of SARA, as a federal government legislative response to the CBD, itself to be the flagship in Canada for *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources*.

Suzuki Foundation; and *Canada's Species at Risk Act: Implementation at a Snail's Pace, 2009* by the David Suzuki Foundation, EcoJustice, Environmental Defence, and Nature Canada.

²⁴ Including two NACOSAR round tables in 2006 and one in 2009.

²⁵ In a 2007 analysis of SARA listing success, Mooers, et. al. provides substantial proof that there is a bias in SARA toward listing terrestrial species, especially those already protected under provincial legislation or which a province has primary responsibility. In the cases where the federal government has exclusive or primary responsibility for species at risk conservation through SARA, especially for marine species and in the North, the federal government has been very slow or has refused to accept proposed SARA listings. Moores, et. al. found that only 9% of all COSEWIC marine fish assessments/recommendations have been accepted for SARA listing vs. nearly 100% of the assessments for terrestrial herpetofauna, birds, and plants. The researchers proposed two main reason for the bias: 1) DFO's (for marine species) and Wildlife Management Boards' (for northern species) unwillingness to accept the additional stewardship responsibilities required by SARA and 2) deficiencies in cost-benefit analysis may steer decision-makers away from endorsing COSEWIC recommendations for a SARA listing.

²⁶ Stratos Inc., *Formative Evaluation of Federal Species at Risk Programs*, July 2006

²⁷ Witness evidence can be obtained at

<http://www2.parl.gc.ca/CommitteeBusiness/CommitteeMeetings.aspx?Cmte=ENVI&Stac=3048685&Language=E&Mode=1&Parl=40&Ses=3>

²⁸ Since the posting of the draft policy on the SARA Registry (www.sararegistry.gc.ca), IKANAWTIKET, or its affiliate organizations: the Maritime Aboriginal Peoples Council, the Native Council of Nova Scotia, the New Brunswick Aboriginal Peoples Council, the Native Council of Prince Edward Island, have not been contacted by the federal government for consultation. The Government of Canada does have both real and construed knowledge that the SARA Policy Framework does affect Mi'kmaq, Maliceet, and Passamaquoddy Aboriginal and Treaty Rights. Public consultation ended on February 5, 2010. At the time of writing, the final policy has not been posted on the SARA Registry.

THE AUTHORS

IKANAWTIKET is the Aboriginal Environmental Respect Organization for Aboriginal Peoples continuing on Traditional Ancestral Homelands throughout the Maritime Provinces of Nova Scotia, New Brunswick, and Prince Edward Island. IKANAWTIKET closely follows biodiversity issues, locally, regionally, nationally, and internationally, especially issues of species at risk.

IKANAWTIKET has participated in numerous sessions and activities about SARA, namely the Legislative Review in 2009-2010, ATK policy development, NACOSAR annual workshops, National SARA Roundtable in 2007, several local recovery teams, and the CBD 2010 International Year of Biodiversity and IUCN Countdown 2010 initiatives.



IKANAWTIKET has produced several publications about species at risk, including *Kespiatuksitew Wsitqamuey – muk nqatmu wetaptu'tip (Species at Risk – leave no footprint)* and the *Aboriginal Community Species at Risk Reference Library CD-ROM*. IKANAWTIKET also holds workshops and training sessions, notably the ARISES series to educate and train Aboriginal Youth about how to take the lead for species at risk conservation.

IKANAWTIKET is the recipient of the Nova Scotia Environmental Network **2010 Marshall Award for Aboriginal Environmental Leadership** and was selected by the IUCN as a feature partner for *Countdown 2010*. In 2009, IKANAWTIKET was also selected as a “Biodiversity Best Practice” for the Canadian Environmental Network *Biodiversity Best Practices Handbook*.

Mawqatmuti'kw is the free quarterly journal of IKANAWTIKET, which covers an array of topics by regional elders and experts about how we can all live together as a part of the natural world.

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INTRODUCTION

The backdrop leading to SARA

This critique of the *Draft Species at Risk Act Policies – Overarching Policy Framework* is undertaken against a backdrop analysis of a series of federal strategies and acts in place before this Policy Framework was drafted in 2009, much of which was ongoing even before SARA was assented to in 2002. The most notable of these for this critique are:

- *Canada Wildlife Act, 1985,*
- *Fisheries Act, 1985,*
- *Recovery of Nationally Endangered Wildlife, 1988,*
- *Canadian Environmental Assessment Act, 1992,*
- *Migratory Birds Convention Act, 1994,*
- *Canadian Biodiversity Strategy, 1995,*
- *National Accord for the Protection of Species at Risk, 1996,*
- *Oceans Act, 1996,*
- *Caring for Canada's Biodiversity – Canada's First National Report to the Conference of the Parties to the Convention on Biological Diversity, 1998,*
- *Canadian Environmental Protection Act, 1999,*
- *Canada National Parks Act, 2000,*
- *Habitat Stewardship Program, 2000,*
- *Canada's Stewardship Agenda, 2002,*
- *Aboriginal Species at Risk Program, 2004,*
- *Cooperative Management Framework for the Strategy for the Protection of Species at Risk, 2006,*
- *A Biodiversity Outcomes Framework for Canada, 2006, and*
- *National Framework for Species at Risk Conservation, 2007.*

Each of these contributes to the protection of habitats, species, and processes necessary for ecosystems to function and species to survive – in short to minimize environmental degradation. All activities of all federal departments affect species and habitats. Authority is granted to each federal minister under their respective acts and the National Accord, to implement SARA.

The Interdepartmental Recovery Fund was developed in 2002 as a starting point to engage all federal departments with the lead departments of Environment Canada, Fisheries and Oceans Canada, and Parks Canada Agency in applying SARA within the federal family of departments and agencies. In this way, such acts as the *Canada Transportation Act, National Defence Act, Agriculture and Rural Development Act, Canada Oil and Gas Operations Act, Canada Shipping Act, Customs Act, Agreement on International Trade Implementation Act, Economic Recovery Act, Forestry Act, Hazardous Products Act, Telecommunications Act, World Trade Organization Agreement Implementation Act, Canada Human Rights Act,* and other acts can also be tooled to enforce the intent of SARA, spinning a web of species habitat protection, public education, public involvement, and the removal of threats and obstacles impeding species at risk conservation.

Aside from the cursory review of the Acts and strategies, the draft Policy Framework was assessed against specific provisions in international conventions and statements, to which Canada is a signatory, or which are recognized around the world as important for international biodiversity initiatives or rights of Indigenous Peoples to participate in environmental decision-making. First among these are the:

- *World Conservation Strategy*, 1980,
- *Brundtland Commission Report on Sustainable Development*, 1987,
- *Caring for the Earth – A Strategy for Sustainable Living*, 1991,
- *Global Biodiversity Strategy*, 1992,
- *Convention on Biological Diversity*, 1992,
- *Agenda 21*, 1992, and
- *Johannesburg Declaration on Sustainable Development*, 2002.

In 2007, UN member States recognized the reality of Indigenous Peoples by accepting the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIPs) – a declaration over twenty-five years in the making.

The CBD family of conventions, declarations and strategies²⁹ call on all nations to safeguard and protect the natural world – the *common concern of humankind*. This is accomplished primarily through involvement and actions among citizens, with strong leadership from governments to encourage and support citizens' involvement, while also protecting human rights, protecting environmental rights, providing legal recourse, and setting into policy a wide variety of implementation tools suitable to identify, understand, and initiate recovery for habitats, species, and physical and genetic biodiversity.

It is also necessary to understand the implementation of these in the unique Canadian context of a Federation of the Peoples of Canada, existing as diverse Peoples, living throughout diverse lands, and evolving over a diverse history. For example, eco-regions and bio-regions melt all elements together, often flowing as a continuum from one region to the next, and all of which are influenced by the elements of weather, the seasons, the phases of celestial bodies, and solar, electrical, and spiritual energies – the spirit of life throughout all that is living. All of these forces are interconnected and interdependent. It is unrealistic to think that one worldview alone can capture or understand these myriad intricate influences on biodiversity or Canadians' efforts for *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources*.

²⁹ The *Ramsar Convention on Wetlands*, 1971; the *World Heritage Convention*, 1972; the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, 1975; the *Convention on the Conservation of Migratory Species of Wild Animals*, 1979; the *Convention on Biological Diversity*, 1993; the *Cartagena Protocol on Biosafety*, 2000; the *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization*, 2002; the *Addis Ababa Principles and Guidelines for Sustainable Use of Biodiversity*, 2004; the *International Treaty on Plant Genetic Resources for Food and Agriculture*, 2004; and the *Akwé: Kon Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments Affecting Indigenous and Local Communities*, 2004.

To appreciate the thrust of this critique on the draft Policy Framework and to understand, the short-comings, failure to grasp or embody the vision and focus of SARA, and the minimal treatment about habitats, species, physical and genetic biodiversity, and influencing Earth forces throughout the prolific eco-regions and bio-regions expanded across Canada, require government or leadership for SARA to look at SARA through a broad lens to show us a “*vast diversity*”. A *vast diversity* requires a broad approach that is flexible, yet responsive and direct.

The vast biodiversity of Canada

Biodiversity and Canada are synonymous. Canada is the second largest land mass in the world, with fifteen terrestrial eco-zones, covering ten million square kilometres, and is comprised of countless lakes, rivers, streams, bogs, forests, grasslands, mountains, tundra, and many other land and water features, making up diverse ecosystems, each home to a diverse array of species (Fig. 1). Canada is also surrounded by three oceans with twelve marine bio-regions, covering over four million square kilometres, giving Canada the longest shoreline of any country in the world, and one of the largest marine economic-exclusion zones of any country in the world (Fig. 2). The diverse marine benthic and pelagic environments are habitat for a vast array of aquatic biodiversity, as diverse, if not more, than Canada’s terrestrial and freshwater biodiversity. Furthermore, Canada’s oceans pierce into the very interior of Canada’s landmass through the Hudson Bay, James Bay, and countless other bays, inlets, straights, and gulfs. Canada’s lands and freshwaters extend far into its surrounding oceans, through three large continental shelves, numerous large islands and peninsulas, and countless small ones, and through several deep river discharges. The mixing of terrestrial and marine environmental all along the ‘vast edge environments’ of Canada provides a bountiful array of unique biodiversity and habitats.

Within this vast terrestrial and aquatic biodiversity within many eco-regions and bio-regions, Canada has seventy-three Aboriginal Nations of Aboriginal Peoples. (Fig. 3) Each People continues as a part of the eco-region or bio-region. Each People has their own knowledge, customs, practices, innovations, understanding, and respect for all that is life and life-giving.

Add to this *vast diversity* of lands, waters, biodiversity, and Aboriginal Peoples, in the east there is at least 500, if not 1,000, years of contact relationships between Aboriginal Peoples and Europeans. Reoccurring collisions over five centuries continue between the eco-centric worldview of Aboriginal Peoples and homo-centric worldview of Europeans. Included is a diversity of first settlements on Aboriginal Peoples lands, the 175 year history with the French, the forming of the ‘Canadian’, and, post-1760, the forming of the “Peace, Friendship, and Trade Treaty” relationships with the English. Added to this diversity of history and relationships, there are the seventy-three Aboriginal Nations of the Aboriginal Peoples of Canada, included within the Federation of the Peoples of Canada, with Aboriginal and Treaty Rights recognized, affirmed, and protected under Sections 25 and 35 of the *Constitution Act, 1982*.

The diversity of Aboriginal-European relations, especially Treaty Relations, shaped the history of the Canadian Federation. Aboriginal-European relations allowed for the joining of four colonies to form the first four provinces of the Federation of Canada. The relationships impacted the division of constitutional powers between the federal government and provincial governments. The provisions for new provincial entrants in the west became possible with the numbered treaty relationships, which involved the Aboriginal Nations of Aboriginal Peoples

west and northwest of York and Ottawa. Then included was the entry of Newfoundland with the disputed Labrador coasts, lands, and waters. Yet to be dealt with is the Ungava. In the post-2000 era, also added to the growing evolving Canadian Federation is the unique diversity of four northern, modern land-claims agreements, advancing orders of governments to the existing and changing territories to include Inuvialuit, Nunavut, Nunavik, and Nunatsiavut.

The diversity of fifteen terrestrial eco-zones and twelve marine bio-regions, expressed as over 200 distinct eco-regions, gives Canada a rich, dynamic, and diverse biodiversity, with diverse Aboriginal Peoples, a fascinating history, and a diversity of cultures and worldviews, which together forms a diverse Federation of the Peoples of Canada, as a modern State. This diversity continues to grow into the future as different Peoples learn how to co-exist with each other on the land.

However, the lands, waters, and biodiversity are continually threatened by over-exploitation for wealth creation. The Government of Canada still refers to Canada as 'frontier lands'.

The diversity of lands, Peoples, relationships, and biodiversity is real. Any attempt to put that *vast diversity* into a box to fulfill the expectations of SARA does not work and will never work. The diversity alone requires thought, imagination, and actions, which reflect, respect, and accommodate the diversity in land and water mass of Canada, its eco-regions, habitats, species residences, human habitation, human exploitation, and all the other forces which affect the living environment and the home of biodiversity in Canada.

Protecting Canada's vast diversity

At enactment in 2002, SARA recognized this *vast diversity*. For the first time in national law, SARA raises the significance and importance of inviting and encouraging the participation of the Aboriginal Peoples of Canada to become involved in *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources*.

The draft Policy Framework must understand this and must be a policy that reflects and sees this diversity through a broad lens. It must always look at and incorporate a diversity of understanding and involvement as vital, within a suite of federal policies that provide government leadership. A policy must be prepared to treat honourably with the Aboriginal Peoples of Canada to learn and utilize innovation and new knowledge. It must be responsive to the increasing and changing human effects on biodiversity within this vast and diverse country.

From the authors' perspective, we look at SARA through the broad lens and the reality of a broad, *vast diversity* of eco-regions and bio-regions, including a diversity of the Aboriginal Peoples within Canada, who in many instances have a long continuum throughout KA-NA-DA (*the place there*) for well over 10,000 years. Throughout this continuum, the remaining seventy-three Aboriginal Nations of the Aboriginal Peoples of Canada study, discuss, understand, appreciate, respect, and share knowledge of actions, reactions, and results of natural phenomena and Earthly forces, including human-made activities and events, captured as Traditional Ecological Knowledge (TEK), Indigenous Knowledge (IK), Aboriginal Traditional Knowledge (ATK) or Aboriginal Peoples eco-centric worldview of the living environment.

To the people who came to this continent later, they were blessed with an unspoiled, bountiful, and profuse biodiversity. The lands and waters were not polluted by human-made concepts or providences, such as the divine rights of kings, subjugation of nature by force, or the philosophical Greek dogma advancing the ideal that ‘mankind is the center of the universe and all life on Earth’ – a homo-centric worldview.

An eco-centric worldview still remains within the soles, minds, and spirits of Indigenous Peoples, both on this continent and around the world. However, the sheer mass and continual movement to adopt western values, beliefs, and governance models around the world has relegated “eco-centric peoples and countries” to be seen as burdens. Only now that a global biodiversity and environmental crisis is upon the world, is the eco-centric worldview seen as a possible salvation. SARA, just as the CBD, requires Aboriginal Peoples knowledge as essential. Without it, a vital ingredient is missing in the collective understanding or ability to recognize the extent of horrendous actions that have lead to the destruction of biodiversity, residences, habitats, eco-regions, and which ultimately endanger *our place here* in Canada and the world.

The political map of Canada is shaped by the multitude and volumes of treaty relationships with the Aboriginal Peoples of Canada. These relationships form the *tapestry of boundaries*, or better described: the areas of transition from the duty of one People’s responsibilities to that of another. Sadly, the draft Policy Framework remains completely silent about the treaty compacts and the territorial, provincial, and land-claims settlement jurisdictions. It is completely silent about the boundaries of the traditional ancestral homelands of the Aboriginal Peoples of Canada. In short, it leaves the whole subject of trans-boundary approaches as something to be worked out later. Both RENEW and the National Accord requires trans-boundary issues to be worked out throughout all acts and actions for species at risk conservation.

This is of vital importance for all species at risk, not just migratory and large range species, because RENEW and the National Accord both recognize that a novel approach is needed, unburdened by jurisdictional quarrels and the push and pull of the federation.

To this day, treaties live with the Aboriginal Peoples of Canada. This is particularly true in the East with the Mi’kmaq People. The treaties are recognized and protected under the *Constitution Act, 1982* and form part of the fabric of the Federation of the Peoples of Canada.³⁰ The Federation continues today because of these international relationships with Aboriginal Peoples continuing throughout the diverse twenty-seven eco-zones of Canada. As a Federation of Peoples, Canadians should be able to sit with each other, openly discuss issues, and work together for the peace, order, and well-being of the Peoples – *the promise that is Canada*.

To maintain and extend that promise, the Peoples of today must ensure the continued existence of healthy and productive natural environments with diverse habitats and species, for the continuation of the Peoples of Canada. The promise to allow the Federation of the Peoples of Canada to continue hinges on the ability of the Peoples of Canada to take care of their national natural identity and history – the natural life which identifies to the world that Aboriginal and non-Aboriginal Peoples collectively are the Peoples of KA-NA-DA.

³⁰ Native Communications Society of Nova Scotia, *The Mi’kmaq Treaty Handbook*, 1987.

For that reason, the first statement of SARA is:

Canada's natural heritage is an integral part of our national identity and history and that wildlife, in all its forms, has value in and of itself and is valued by Canadian for aesthetic, cultural, spiritual, recreational, educational, historical, economic, medical, ecological and scientific reasons.

The diversity of species and natural spaces is an emotional experience, which invokes artistic work, spiritual inspiration, and a cleansing of mental health.³¹ Canada's biodiversity is a part of cultural identity, especially for Aboriginal Peoples, whose songs, dances, stories, art, innovations, technologies, languages, beliefs, craft, and much more hold rich detail and lessons about the natural world and peoples' respectful place within it – not above it or the center of it, but interconnected and interdependent with the natural world.

Conservation of biodiversity is also vital for the continuum of the Aboriginal Peoples of Canada. Mi'kmaq teachings lend to the realization that those alive today are but a continuum of Peoples, from ancestors to descendents, charged with maintaining that continuum by respecting the teachings of those who have come several generations before and always thinking about those who will come several generations from now. A comparable or better world with a continued *quality of life*³² and surrounding supporting environment must equally be available for the seventh generation to continue as an unbroken continuum of the Mi'kmaq Peoples throughout Mi'kma'ki.

The loss of biodiversity in Canada

Aboriginal Peoples have known for centuries, and new Canadians are now beginning to realize, that to view biodiversity and ecosystems from the single view point of only today's generation or from only the recent knowledge gained through western science, hides the substantial destruction and loss of Canada's environments and biodiversity which has occurred over the past five centuries. Canadians are beginning to realize that they were lied to or have been ignorant of the fact that the world they were born into, whether they are ten years old or one hundred years old, was not an untainted or pristine world. Their assumption to only base current biodiversity loss and environmental degradation from the sole vantage point of their "perceived pristine world" gives a false sense as to the true extent and impact of five centuries of exploitation. Without traditional knowledge about the true historic state of the natural world, this phenomenon has continued among the non-Aboriginal Peoples of Canada from each generation to the next, and it continues to compound. As traditional knowledge and Aboriginal languages are lost, this is also occurring among the younger generations of Aboriginal Peoples, especially those Aboriginal persons no longer living on traditional ancestral homelands.

³¹ Government of Canada, *Caring for Canada's Biodiversity – Canada's First National Report to the Conference of the Parties to the Convention on Biological Diversity*, 1998.

³² The concept of *the quality of life* is most notably found in Canadian environmental law in the Canadian Environmental Assessment Act, and is also found in environmental legislations of several other States. The concept of *the quality of life* is even beginning to be advanced to the status of constitutional rights, such as for the Constitution of Kenya, signed in 2010, which guarantees in its Bill of Rights, that any Kenyan has the right to a "clean and healthy environment" and for the enforcement of that right "any person can bring an action on their own behalf, or on that of another person, as a member of, or in the interest of, a group, or, in the public interest."

Over several generations Canadians have been experiencing, and continue to be clouded by, a “*shifting base-line*” about the state of the natural environment and humankind’s place within³³.

Species are not going extinct in Canada, because of a single action or within a single day. The disappearance of *our natural heritage* and *our national identity* is the result of three historic conditions in Canada:

1. changes in governance priorities for lands, waters, and seas, which European governments began and brought with them to Canada several centuries ago;
2. a general lack of understanding by Canadians about Canada’s biodiversity, within Canada’s diverse eco-regions; and
3. a homo-centric or market-based governance model that is fundamentally flawed for the purposes of achieving biodiversity conservation and sustainable use.

The loss continues today in Canada under a governance psyche focused to promote the exploration and exploitation of resources as paramount, regardless of the cost to biodiversity, life giving forces, intricate ecosystems, and even Aboriginal Peoples – *exploitation for the sole purpose to create wealth and thus power*.

The subjugation of nature for the benefit of the few takes on the cloak of the homo-centric worldview. This continued imbalance in governance has upset natural systems and natural habitats to the point that many species, especially marine species, invertebrates, and species yet to be discovered or of which little is known, are faced with imminent extinction. A governance cycle that prioritizes unbridled exploration and exploitation of resources for wealth creation undermines *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources*.

To correct the imbalance, Canadians are calling for a re-writing of policy and law to force a change of thinking and decision-making to foremost consider *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources*.

Unfortunately Canadians do not have another five hundred years to reach that goal. Between fifteen and seventy species become extinct every day in the world³⁴ and in Canada alone approximately 600 species have been assessed as ‘at risk’ by COSEWIC, some now already extinct. These rates are at least one hundred to one thousand times higher than the normal extinction rate, which classifies the modern period of humans as the *Holocene Mass Extinction Event*. It is estimated that within the next two decades, twenty percent of all species

³³ Callum Roberts provides numerous examples of how the “*shifting base-line*” effect has caused the long-term demise of many fish stocks around the world, and particularly in Europe, European colonies, and European “daughter nations”, such as Canada and the USA, in his 2007 book *The Unnatural History of the Sea*.

³⁴ Estimates for extinction rates vary widely, because scientists estimate that they have assessed the extinction risk of less than 3% of all known species. In fact, most scientists believe that science has only identified about 10% of all species in the world. Regardless of the numbers, a widely cited 1998 poll of scientists by the American Museum of Natural History shows that any of the estimated extinction rates are high enough to cause alarm. The poll reported that 70% of scientists believed that they were currently witnessing a ‘mass extinction event’. Numerous reports at national and global levels, including IUCN Red List reports, have since confirmed this fear.

populations will disappear.³⁵ Canadians do not want their national identity to disappear – the loon, the beaver, the polar bear, the wolf, the bison, the moose, the caribou, the eagle, the maple leaf – but they are all threatened and will continue to fade as generations pass, unless the Government of Canada rethinks the governance model of “exploitation at all costs”.

These are not trivial matters

Our past experience has shown that “saving biodiversity” is not solely a technical, mechanical, or machinery of government responsibility or approach. Rather, the draft Policy Framework for the administration and implementation of SARA must be a truly “*whole of society exercise*”, because biodiversity is the *common concern of all humankind*.

To achieve this, citizens require government guidance and leadership. Needed is the support and tools to realize measurable, tangible outcomes – outcomes which can only be described as evidence of Canada having healthy habitats, containing rich biodiversity, no less than what existed in 1992 when the CBD was signed by Canada. A visible reduction in the endangerment and extinction/extirpation within all taxa of life is only a first step.

Through SARA two paths can be taken: 1) the path of regulation to protect and recover species and 2) the path of stewardship to prevent species from becoming ‘at risk’.

Neither path is effective without the other. No one will make it to the end of the road without the knowledge of their surrounding environment or how to achieve, as a whole, *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources*. With supportive guidance and leadership for complete and total citizen participation, every Canadian can contribute to an effective implementation of SARA. Anything less is an exercise of “blowing in the wind”, while unbridled exploration and exploitation continue to consume the living heritage of all Peoples and species of all form.

³⁵ The world renowned E.O. Wilson, who is widely credited with coining the term biodiversity, provides details on the Holocene Mass Extinction Event and the current extinction rate in his 2005 book *The Future of Life*.

FOUNDATIONAL ELEMENTS & GUIDING PRINCIPLES

In 1992, nations around the world, “determined to conserve and sustainably use biological diversity for the benefit of present and future generations”³⁶. Through the Convention on Biological Diversity (CBD), States knitted together progressive thought about the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources (Access and Benefit Sharing - ABS) into one international convention, with those three key elements as its strategic objectives. Paramount in this thinking was the need for the three CBD strategic objectives to be integrated into every day national decision-making.³⁷

The CBD recognized that, although nations have the sovereign right to exploit resources, the right comes with an international responsibility to exercise restraint and caution.³⁸ These restrictions on States are enshrined in a series of UN charters, conventions, declarations, protocols, and jurisprudence in international law.

Through the CBD, States also acknowledge that the intellect of the day concerning biodiversity is still in its infancy. Therefore, to understand biodiversity, the CBD encourages States to invite the Indigenous Peoples within their borders, who have keen understanding about biodiversity, based on a continuum within habitats and eco-regions, to share their knowledge of thousands of years. Indigenous Peoples, scientists and the *whole of society* must be brought together by States. Meaningful partnerships, which show respect, must be developed to seek out ways to best implement actions and activities that achieve the desired results of the CBD – the protection and continuation of biodiversity throughout the world through *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources*.³⁹

In 1995, with the publication of the *Canadian Biodiversity Strategy (CBS) – Canada’s Response to the CBD*, the Government of Canada proclaimed that:

*“implementation of the Convention will require a significant shift in the way we use and manage living things”, that “governments cannot act alone”, and that “a successful implementation of the Strategy will be determined, in large measure, by the degree to which all parts of society adopt [a core vision and principles of a society that lives and develops as part of nature, values the diversity of life, takes no more than can be replenished and leaves to future generations a nurturing and dynamic world, rich in its biodiversity]”.*⁴⁰

³⁶ Convention on Biological Diversity, preamble

³⁷ *ibid*, a. 6, 10(a), and 15.7

³⁸ *ibid*, a. 3

³⁹ *ibid*, a. 8(j), 11, 12, 13, 14.1(a, b), 17, 18

⁴⁰ CBS, forward and executive summary

In 1995, an invitation was made to the Aboriginal Peoples of Canada to be a vital part of Canada's response, through the CBS.⁴¹ Over the last number of years, the broad invitation has become quiet. Aboriginal Peoples participation has been limited to individual initiatives, not an involvement within the whole of the CBS or CBD. One such example is the exclusion of the Aboriginal Peoples of Canada from learning about or participating directly, side-by-side with the Canadian Delegation, at the international negotiating forums leading to the Nagoya Protocol on *Access and Benefit Sharing* (ABS).⁴² Indigenous Peoples were lumped away as unimportant and burdensome and relegated to two seats, global-wide, as representatives of all the Indigenous Peoples of the world. As such, the Nagoya Protocol of 2010 is nothing more than a bio-pirate's dream come true and an explicit example of States still subjugating, dispossessing, and denying the rights, traditional ancestral homelands, knowledge, innovations, and technologies of Indigenous Peoples.⁴³

It is vital to understand the complexity and breadth of the CBD and CBS for the implementation of any act, policy, strategy, or action plan that flows from that ideal.⁴⁴ Contained in the CBD and CBS, and by extension the multitude of other pre-existing international and national documents discussed earlier, are the foundational rules or guidance for better biodiversity decision-making.

RENEW and the Voluntary Sector

In Canada in 1988, the *Recovery of Nationally Endangered Wildlife* (RENEW), summarized the core rules or guiding principles that Canadian's should follow as vital for peoples' involvement in habitat and species conservation:

1. ***Engender Direct Action:*** *Species recovery ultimately depends on changing human behaviour to allow species to maintain self-sustaining populations. That all planning, research, and actions should engender this objective [which] will be a primary measuring stick to gauge progress toward species recovery.*

2. ***Responsibility:*** *Recovery is the responsibility of all Canadians but responsible jurisdictions are ultimately responsible for recovery plan implementation.*

⁴¹ *ibid*, s. 7

⁴² Officially, the *Nagoya Protocol for the Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization* – passed by the Tenth Conference of the Parties to the CBD in October, 2010

⁴³ Prior to COP 10, forty-eight Indigenous Peoples organizations, and like-minded organizations, from around the world issued "*Draft Protocol: Indigenous Peoples' Objections to the Current Text – A Call for Justice and Solidarity*" a.k.a. "*Concerns Related to CBD Process, Revised Draft Protocol and Indigenous Peoples' Human Rights*" (CBD Document: UNEP/CBD/WG-ABS/9/INF/21), which raised many issues with the draft ABS Protocol – that it is neither fair nor equitable and that it fails to respect the intent and objectives of the CBD. The final Nagoya Protocol does not adequately address the realities of Indigenous Peoples. Several key Indigenous Peoples representatives who followed the ABS negotiations maintain that the Nagoya Protocol opens the door to legitimize continued and increased bio-piracy.

⁴⁴ Article 6 is the most far-reaching article of the CBD: that States must "*develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity*" and must "*integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies*". The article emphasizes processes, rather than outcomes, that should be flexible, adaptive, and inclusive of all sectors, public and private. For example, the CBD Secretariat focuses work on twenty-six thematic areas, including development, trade, economics, gender, technology, tourism, and liability.

3. Multiple-Jurisdictional Recovery: Where multiple responsible jurisdictions are involved, the federal government will be responsible for the initiation and facilitation of multijurisdictional recovery teams, and coordination to develop recovery plans.

4. Multi-Party Involvement: Recovery plan preparation and implementation should involve a wide range of stakeholders, Aboriginal Peoples, and interested parties to ensure an open and transparent process that acknowledges their valuable role in the process. The primary interest of all participants should be to recover the species.

5. Key Role of Teams: Recovery teams should be established to lead the development and implementation of recovery actions. Recovery teams should report through the responsible jurisdictions to the Canadian Wildlife Directors Committee, which will assist the Canadian Endangered Species Conservation Council in fulfilling its commitment to establish complementary legislation and programs that provide for effective protection of species at risk.

6. Adaptive Management: Recovery planning and implementation should follow an adaptive management model. That is, recovery teams should regularly review and revise, as necessary, both the recovery strategy and action plan in response to new information gained and progress made. In so doing, recovery planning and implementation should focus on recovery actions with less emphasis on plan development and approval.

7. Retain Process Flexibility: Recovery planning and implementation systems should be flexible to allow for the different needs of Canada's diverse flora and fauna and the wide variety of needs, issues and implications associated with the recovery of Canada's species at risk.

8. Time Frame for Actions: Contingent on recovery priorities "at risk" designations should immediately trigger the recovery planning and implementation process, which should continue until the species is downlisted to vulnerable (or Species of Special Concern) or de-listed.

9. Focus on Appropriate Scale: Recovery planning and implementation will use broader ecosystem management and multi-species approaches where feasible.

10. Socio-Economic Values: The socio-economic context will be considered when deciding on the most appropriate recovery actions.

11. Optimize Resource Use: To maximize species recovery, resources should be used wisely. This includes providing for increased funding, cooperative arrangements among agencies/ groups/individuals, and efficient and prioritized allocation of resources.

12. Evaluate Success: Recovery implementation should provide for assessment of the effectiveness of recovery actions, which should involve identification of performance measures and long-term monitoring, where appropriate.

When drafting RENEW in 1988, the Canadian Wildlife Director's Committee⁴⁵, which is responsible for RENEW implementation, identified the vital contribution that stewards make toward species protection and recovery. As recovery programs grew over the following decade the necessity of volunteers became more apparent.

Species at risk was not the only area in which governments of the 1980s and 1990s were recognizing the importance of volunteers. In fact, hundreds of thousands of voluntary sector organizations exist across Canada, including tens of thousands of registered charities, which tap the work efforts, financial contributions, and vision of millions of Canadians. Indeed, the voluntary sector is ranked as one of the three pillars of Canadian society, along with the public and private sectors.⁴⁶

Most important was for the Government of Canada, through an accord, to formally and publicly recognize the voluntary sector as vital for *"citizen engagement, giving voice to the voiceless, promoting multiple perspectives to be heard on issues, and providing effective and inclusive mechanisms, support, and education for Canadians to participate in democracy."*⁴⁷

In the 1999 Speech from the Throne, the Government of Canada committed to creating and implementing a *Voluntary Sector Initiative* in 2001, which included *An Accord Between the Government of Canada and the Voluntary Sector* (Voluntary Sector Accord).⁴⁸

*"Canadians expect their national government to focus on areas where it can and must make a difference. And they want [the Voluntary Sector Accord] done in the Canadian way - working together, balancing individual and government action, and listening to citizens".*⁴⁹

The Voluntary Sector Accord, signed in 2001, marked a new "starting point for developing a relationship between the Government of Canada and the voluntary sector". Built upon six interrelated values, the Voluntary Sector Accord espouses to "create a climate for improving and enhancing the lives of all Canadians":

⁴⁵ The CWDC is comprised of the wildlife director generals of each respective federal, provincial, and territorial ministries and chaired by Environment Canada. The CWDC prepares annual reports that are posted on the SARA Registry, under the Recovery Section - www.sararegistry.gc.ca.

⁴⁶ In 2001, those estimates were: 180,000 non-profit organizations, 80,000 registered charities, 6.5 million volunteers, and 1.3 million employees – taken from the publication *An Accord Between the Government and the Voluntary Sector*, 2001, prepared by Social Development Canada and the Voluntary Sector Forum.

⁴⁷ The "Broadbent Report", (*Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector*, 1999) provides 41 recommendations about how the Government of Canada and the voluntary sector can work better together.

⁴⁸ The Initiative is implemented through the Voluntary Sector Initiative, which includes a Voluntary Sector Forum, Assistant Deputy Ministers Committee, Ministerial Consultative Group, and Joint Oversight Committee. When the Initiative was developed from 1999 to 2001, it also included a Ministers Reference Group chaired by Treasury Board and also the Voluntary Sector Task Force, which reported directly to the Deputy Secretary of the Cabinet. Unfortunately, since the end of Phase II in 2005, the work and government priority for the Voluntary Sector Initiative has become unclear. From experience, most species at risk volunteers in the past several years and even many high level federal government SARA officials cannot recall any meaningful linkages or priority actions to include the Voluntary Sector Initiative in the implementation of SARA.

⁴⁹ Government of Canada, *Speech from the Throne*, October 12, 1999.

- **Democracy** – upholding the right to associate freely, express views freely, and engage in advocacy.
- **Active Citizenship** – welcoming active involvement or engagement of individuals and communities to shape society.
- **Equality** – respecting the rights of Canadians, as defined under the *Canadian Charter of Rights and Freedoms* and under UN Covenants and Declarations.
- **Diversity** – respecting the rich diversity of cultures, languages, identities, interests, views, abilities, and communities in Canada.
- **Inclusion** – welcoming the expression and representation of diversity and upholding the right Canadians to speak and to be heard.
- **Social Justice** – ensuring the full participation of Canadians in social, economic and political life.

One of the three key commitments of the Government of Canada under the Voluntary Sector Accord is to:

“Recognize and consider the implications of [Canadian] legislation, regulations, policies, and programs on the voluntary sector organizations, including the importance of funding policies and practices for the further development of the relationship and strengthening of the voluntary sector’s capacity.”

From the work of the RENEW and the commitments made under the Voluntary Sector Accord, the Federal-Provincial-Territorial Stewardship Working Group⁵⁰ drafted *Canada’s Stewardship Agenda*⁵¹ in 2002. The Stewardship Agenda calls for a “national network of coordinated stewards with the support and capacity to carry out Canada’s conservation activities”. To achieve this, the Stewardship Agenda sets four objectives to:

1. invest in stewardship,
2. recognize and strengthen the application of stewards knowledge,
3. strengthen policy and legislative support for stewards, and
4. foster cooperation among stewards.⁵²

To implement the Stewardship Agenda, SARA grants the Competent Ministers responsible for SARA⁵³ the authority to enter into Stewardship Agreements or Conservation Agreements. Under these agreements with the Crown, any Canadian individual or Canadian organization can, through their plans and actions, become a recognized part of the legal framework for the protection and/or recovery of species and habitats.⁵⁴

⁵⁰ The working group is comprised of federal, provincial, and territorial ministries of forest, wildlife, fisheries, and aquaculture and chaired by Environment Canada. The committee has evolved into Stewardship Canada, which includes industry and ENGOs - www.stewardshipcanada.ca.

⁵¹ Canadian Wildlife Service, *Canadian Stewardship Agenda – Naturally Connecting Canadians*, 2002.

⁵² Like the Voluntary Sector Initiative, the Stewardship Agenda seems to have fallen by the wayside in recent years. The Stewardship Agenda is rarely cited in any SARA policy, recovery document, or public communication.

⁵³ CEO of Parks Canada Agency (through the Minister of Environment) for species within national parks, national historic sites, or other federal lands protected by the *Parks Canada Agency Act*; the Minister of Fisheries and Oceans for all aquatic species not within PCA lands or waters, and the Minister of Environment for all other species on federal lands and including migratory birds protected under the *Migratory Birds Convention Act*.

⁵⁴ SARA, s.11, 12, 13, and 62.

This makes SARA a powerful tool, calling for Canadian's involvement under the umbrella of Canada's Stewardship Agenda.⁵⁵

SARA and Aboriginal Peoples

Specifically for the relationship between the Government of Canada and the Aboriginal Peoples of Canada, SARA's legal requirements can be considerably complex. Compounding the issue is the continued reluctance by the Government of Canada to grasp and adopt a paradigm shift as called for by the CBD, and especially those articles of international law requiring recognition and reconciliation with Indigenous Peoples, respecting the diversity of Indigenous Peoples within UN member States.

During the Bill C-5 discussions, the Aboriginal Working Group realized that full SARA implementation would be difficult, if not impossible, without a specific Aboriginal Peoples and Government of Canada collaborative working accord. Bill C-5 readings in the House of Commons intermittently included elements of consultations and Aboriginal advisory groups, but did not elaborate. The Aboriginal Working Group expressed a lot of concern with the Bill C-5 text. The language did not fully grasp the needs or requirements of Aboriginal Peoples or the responsibilities of Canada under Treaties, the Constitution, and court dicta to recognize, consult, accommodate, and reconcile with the Aboriginal Peoples of Canada.⁵⁶ It was evident, given Canada's track record and the mistrust between Aboriginal Peoples and governments, that an additional national framework agreement or accord was needed, beyond SARA, which could be used to implement SARA with the Aboriginal Peoples of Canada – an accord similar to the federal/provincial/territorial National Accord, which eases the ability for those governments to work together, as the Government of Canada, on species at risk.

In 2001, before SARA became law, the Aboriginal Working Group agreed that a national accord between Aboriginal Peoples and the Government of Canada was necessary as an umbrella document to clarify, find common ground, and set requirements and priorities for each of the parties. Through consultations, five National Aboriginal Organizations⁵⁷ agreed upon a draft “national Aboriginal accord” under the CBD, CBS, and the soon to be passed SARA.

The draft Aboriginal accord was founded on guiding principles which reflected the growing international call for governments to make available to Aboriginal Peoples mechanisms and tools to allow Aboriginal Peoples to meaningfully participate in national decision-making and at the same time to protect their knowledge, innovations, practices, cultures, languages, etc.

⁵⁵ To date, the federal government has not entered into any such agreements.

⁵⁶ Examples of some concerns can be found in the evidence presented to the House Standing Committee on Environment and Sustainable Development on May 1 & 2, 2001.

⁵⁷ Congress of Aboriginal Peoples, Assembly of First Nations, Inuit Tapirisat of Canada, Métis National Council, and Native Women's Association of Canada.

Under the draft Aboriginal accord the Government of Canada and Aboriginal Peoples would have adopted guiding principles and commitments to:

- fully engage the governments of Aboriginal Peoples in decision-making,
- assist Aboriginal Peoples to build capacity,
- actively cooperate with Aboriginal Peoples,
- give full and equal consideration to scientific knowledge and ATK, and
- provide sufficient funding to fully enable such commitments.

The draft Aboriginal accord also raised three key administrative and implementation requirements, as fundamental and a point of departure, for the meaningful involvement of Aboriginal Peoples in the implementation of SARA:

- ongoing consultation with affected Aboriginal Peoples throughout the SARA cycle,
- establishment of a national council of Aboriginal Peoples to advise governments on SARA implementation and administration, and
- establishment of a committee of ATK-holders to ensure ATK was considered and accepted in SARA.

If these five guiding principles and three implementation requirements could have been embodied in an Aboriginal accord between Aboriginal Peoples and the Government of Canada, Aboriginal Peoples would have been assured a comprehensive mechanism, with tools, guidance, support, and requisite Government of Canada and Aboriginal leadership, to allow for the meaningful interchange and relevant input to support the many aspects of SARA.⁵⁸ Sadly, the draft Aboriginal accord was rejected by the federal government; which puts into question Canada's ability to fully implement SARA with the meaningful involvement and participation of the Aboriginal Peoples of Canada.

Although the suggested elements of: consultation with Aboriginal Peoples, the establishment of an Aboriginal Peoples ministerial advisory body on the implementation of SARA, and the inclusion of ATK were accepted into SARA⁵⁹, they are extremely limited, when considering that there are over seventy-three Aboriginal Nations of Aboriginal Peoples throughout Canada. A few members of an advisory committee, at best can only speak on behalf of their respective Aboriginal Nation or from the knowledge they have acquired from their respective traditional homeland. Likewise, ATK is not a homogenous, all inclusive knowledge – it is as specific and diverse as the people who hold the ATK.

⁵⁸ Such as stewardship, COSEWIC assessments, listing consultations, recovery strategies, action plans, management plans, critical habitat identification and protection, project reviews, policy development, alternative measures for offences and punishments, Minister's biannual roundtable, Minister's reports to Parliament, developing guidelines for gathering and using ATK, promoting conservation initiatives, and encouraging stewardship.

⁵⁹ SARA s. 3, which would require consultation for SARA listings, protection of critical habitat, or other similar orders which may affect Aboriginal or Treaty Rights; s. 39(1)(d), which requires consultation on draft recovery strategies; s. 48(1)(d), which requires consultation on draft action plans; s. 66(1)(d), which requires consultation on draft management plans; s. 8.1, which establishes NACOSAR; and s. 18(1), which establishes the ATK-SC of COSEWIC.

Even so, these elements are a beginning step. Unfortunately, many obstacles have slowed, confused, or even halted the implementation of these. For example, NACOSAR does not have control over its own administrative budget or, frequently, its own agenda. It does not even have an office or telephone. Administration of NACOSAR is controlled by EC public servants, and thus the Minister of Environment (hereafter referred to as 'the Minister') is sheltered through several layers of bureaucracy, preventing NACOSAR from gaining direct access to advise the Minister.⁶⁰ NACOSAR contracts a coordinator from time to time who is left to try to operate out of any office they can find. The role of NACOSAR is not respected or understood by Government of Canada officials. NACOSAR members (NACOSARians) are viewed to be persons who can provide answers on the minutia of all things Aboriginal, even to provide opinions on ATK, proposed species listings under SARA, and much more. NACOSAR does not have the funds and is not allowed the flexibility to undertake the vital work it needs to accomplish so that it can advise the Minister and provide advice and recommendations to Canadian Endangered Species Conservation Council (CESCC)⁶¹, such as undertaking studies and submitting independent findings directly to EC, DFO, PCA, or CESCC on the obvious problems with the implementation of SARA.

The ATK-SC, instead of being a body to provide advice on the use of ATK throughout the SARA process, is instead a body of COSEWIC. This restricts or requires the ATK-SC to conform to certain COSEWIC scientific independence norms and processes. While these norms are necessary for COSEWIC to maintain credibility among the rigorous scientific community, they have proved problematic for the ATK-SC in maintaining credibility among some authoritative ATK-holders. It has been shown that COSEWIC western scientific norms cannot effectively bridge the two sciences of western science and Aboriginal science. There is a need for a *Two-Eyed Seeing Approach*⁶² to be allowed to grow and advance to bridge the two sciences and consider the two sciences, for a fuller understanding of the true nature of biodiversity.

⁶⁰ The Minister of Environment is the minister responsible for the implementation of SARA, and thus the overall lead for SARA. The Minister of Fisheries and Oceans and CEO of Parks Canada Agency are only responsible for species at risk under their respective portfolios. Traditionally they have managed certain aspects of SARA implementation, such as reviewing proposed species at risk projects and administering funds; however, the Minister of Environment still remains the legislative final authority on the implementation of SARA.

⁶¹ CESCC is comprised of the federal and provincial ministers responsible for species at risk within their respective jurisdictions. CESCC operates under the *National Accord for the Protection of Species at Risk*.

⁶² The advancement of the *Two-Eyed Seeing Approach* is largely accredited to Mi'kmaq Elder Albert Marshall to advance our collective (Aboriginal Peoples and non-Aboriginal Peoples) understanding about the natural world. *Two Eyed Seeing* recognizes that both ATK and western science have valuable insights and contributions toward understanding the natural world. However, each is also limited in certain aspects. For example, benefits include: for ATK, a long-term and eco-system based knowledge; and for western science, an ability to conduct controlled testing to achieve repeatable results. Drawbacks include: for ATK, a subjectivity of the ATK-holder to time and place; and for western science, the inability to grasp many cause and effect relationships existing simultaneously within a large living eco-system. The approach of *Two-Eyed Seeing* is to recognize that each "science" is different and cannot be directly compared to the other; but a person who understands both "sciences" has a more holistic and more realistic view, better than what either "science" can capture on its own. A good place to start for a general discussion about "ATK vs. western science" is Alan Emery & Associates, *Guidelines for Environmental Assessments and Traditional Knowledge*, 1997.

One good measure to begin the path toward a *Two-Eyed Seeing Approach* is to allow the ATK-SC full independence from COSEWIC norms and procedures; and at the end bring both ATK findings from the ATK-SC and scientific findings from COSEWIC together, with equal consideration, to formulate decisions about species at risk. Currently, lack of full ATK-SC independence from COSEWIC has the result of again subjugating ATK to be less than western knowledge.

As for SARA consultation, it has occurred at different levels within different regions, at different times. For example, some Aboriginal organizations or groups that have pre-existing relationships with the federal government, such as through the DFO Aboriginal Aquatic Resources and Oceans Management initiative or PCA park programs, there is evidence that SARA consultation has improved between some Aboriginal organizations and some federal government departments over the years. There is also some evidence of more detailed consultation with some Aboriginal Peoples on SARA proposed listings, recovery strategies, action plans, and management plans. However, for many Aboriginal Peoples across Canada, SARA is still something of an unknown and far from their sights, even after eight years since SARA was assented. There are many reasons for this. Most noticeably looming is that, to date, there is no overarching federal policy as to consultation, accommodation, reconciliation, and compensation for Aboriginal Peoples. There is no federal policy on consultation with Aboriginal Peoples about SARA, despite the explicit requirements in SARA for the federal government to undertake extensive ongoing consultations with Aboriginal Peoples throughout the SARA cycle.⁶³

Aboriginal Peoples continue to bring up the deficiencies that hinder or block their involvement in the many aspects of the administration or implementation of SARA. Without a framework agreement to advance fundamental principles like: *engender direct action, responsibility, multi-jurisdictional recovery, multi-party involvement, key role of teams, adaptive management, retain process flexibility, time frame for actions, focus on appropriate scale, socio-economic values, optimize resource use, and evaluate success toward reaching the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources*, Aboriginal Peoples have found over the past few years that their participation in SARA has been very fragmented, misunderstood, a passing thought, and in many cases limited to some small one-time projects, which are heavily impeded, scrutinized, and subject to the focused priorities of the responsible authority's funding system.^{64,65}

⁶³ Such as explicitly stated under SARA s. 39, 48, and 66 (concerning recovery strategies, action plans, and management plans, respectfully) and also required through other acts, regulations, and directives of the federal government triggered when the federal government contemplates a decision which would require consultation, or when a decision would affect Aboriginal or Treaty Rights, in which case SARA s. 3 is triggered.

⁶⁴ Evidence provided to the Standing Committee on Environment and Sustainable Development for the SARA Legislative Review by national, regional, and local Aboriginal Organizations and NACOSAR on April 13th and 15th, 2010.

⁶⁵ Testimony provided to NACOSAR by several national, regional, and local Aboriginal Organizations during national Aboriginal species at risk workshops: Mar. 1-2, 2006, Nov. 7-9, 2006, and Feb. 10-12, 2008.

Narrow views = narrow implementation

To achieve the open involvement of Aboriginal Peoples in SARA, with meaningful results for Canada, it is essential that federal government decision-makers focus their lens to ensure that constant consideration is given to the intent of the CBD, CBS, RENEW, Treaties, Aboriginal Rights, Treaty Rights, other rights, the *Constitution Act of 1982*, and UNDRIPS. These documents contain principles to guide the implementation of SARA with the Aboriginal Peoples of Canada. Aboriginal Peoples require a draft Policy Framework which equally must echo these same realities and principles, rather than one which tries to ignore them, minimize them, or in this instance, misses the point completely. Aboriginal Peoples have been calling for their inclusion and calling for a clear federal government policy on the administration and implementation of SARA, nested within the elements contained in the CBD, CBS, RENEW, UNDRIPS, acts, policies, strategies and programs, which together will enable the Government of Canada and Canadians to realize *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources*.

The draft Policy Framework only mentions the *National Accord for the Protection of Species at Risk* (National Accord) and its umbrella implementation tool, the *National Framework for Species at Risk Conservation* (National Accord Framework) in a passing manner, although these two documents provide substantive principles for guidance. With the passing treatment of these two documents, the draft Policy Framework narrowly defines the federal government's responsibilities and involvement to be only what is the "practice of the day", i.e. the "sluggish crawl of SARA implementation". It is evident from expert testimony presented for the SARA Legislative Review and that contained in many reports by Aboriginal organizations, ENGOS, and the Commissioner on Environment and Sustainable Development, that the "practice of the day" is both inadequate and unacceptable, and must change.

Fundamental Oversights, Discrepancies, and Short-Comings

The draft Policy Framework does not provide any guidance on how SARA should be advanced toward full implementation. Instead, it only reiterates what is already understood as the current common practice:

- to provide supports to COSEWIC and to work with COSEWIC;
- to layout a simplified seven step version of the SARA listing process, beginning with a COSEWIC species assessment and ending with the addition of the species to Schedule 1 of SARA;
- a reiteration of SARA wording concerning the protection of Critical Habitat, applicability of SARA on non-federal lands, applicability of provincial species at risk laws on federal lands, emergency orders, compliance, enforcement, permits, authorizations, and environmental assessments, monitoring, and reporting; and
- maintaining a split in policy between EC, DFO, and PCA regarding recovery planning, identification of critical habitat or its threats, socio-economic considerations, and implementation.

It is evident when the draft Policy Framework is read as a whole and looked at through the lens of what it is meant to capture, as cited in the previous elements that we have mentioned, the foundation of the draft Policy Framework is totally inadequate. The weak foundation and narrow view of the draft Policy Framework leads to false assumptions that SARA is a stand-alone act and that it is a solely federal government owned process.

For example, the draft Policy Framework states that “a COSEWIC assessment is a first and critical step in species at risk protection and recovery”. We counter that a COSEWIC assessment is not the “first and critical step”. The “first and critical step” occurs as a call by citizens at large or interests, who are concerned about a species, habitat, eco-system, or biodiversity and who raise an alarm for something to begin or some authority to assess the issue. That call can happen through any of the five “steps” of the SARA cycle, or more often, through processes and activities outside of SARA or not directly tied to the five SARA cycle steps.

In addition, the responding assessment can be initiated by any agency or department of the federal or provincial government or outside agency or organization working in partnership with the government (e.g., enforcement officer, conservation officer, environmental assessment officer, game warden, park ranger, river keeper, habitat enhancement group, hunting and trapping association, Aboriginal harvester, Aboriginal community, NACOSAR, an elder, etc.). From there, COSEWIC has a responsibility to track and follow-up with a preliminary assessment, and if needed, include that species into the COSEWIC process for a full species assessment.

In the Conservation Cycle, there is no “first step”. All “steps” are equally important, as the cycle continues; just as the cycle of life takes on many steps. The area of human intervention can be at any point that is necessary. Conservation is an accumulation of the cumulative effects of many actions at different times and by different means, reflecting the diversity of regions, progress, and Peoples. The National Accord Framework lists five “steps”, but only for the benefit of a broad summary, and that is premised on a foundation of conservation, governance and legislative framework, knowledge, consultation, socio-economic analysis, stewardship, education, and awareness, all of which are concurrent and continually evolving under an adaptive management approach.

Considering the widely recognized need for stewardship and the essential involvement of Aboriginal Peoples in SARA, the absence of either in the draft Policy Framework is very discouraging. For example, ATK is only mentioned as part of the COSEWIC assessment process. Also, public participation in SARA is limited to the “implementation step”, which given the linear approach of the Policy Framework, would be read to mean the approved activities under a ministerial approved action plan. Considering that only one action plan has been approved to date, and that being an action plan for a species only found in a national park⁶⁶, it can easily be argued that under the existing implementation framework there has been zero stewardship, ATK, or any other involvement by Aboriginal Peoples in SARA, or for that matter, Canadians in general have been excluded from SARA.

⁶⁶ At the time of writing, the only action plan to receive ministerial approval is for the Banff Springs Snail, located in Banff National Park. A few other draft action plans have been posted on the SARA registry, most since 2009. Several dozens more are well overdue.

Others may argue that, as a federal government policy, the draft Policy Framework is only meant to give direction on the legal role of the federal government as defined by the Department of Justice and the Minister's Office. However, here too the draft Policy Framework does not live up to the expectations of Canada's commitments under the CBD and CBS. For example, the draft Policy Framework does not mention certain principles which the National Accord Framework espouses as key, notably:

- be knowledge based with a variety of sources of knowledge
- continually improve data and information systems
- protection should be based on the level of risk and urgency for the species and be timely with protection decisions and warning systems
- recovery planning will be informed by sound and credible science, technical advice, and ATK
- pragmatic solutions will be sought for species recovery and recovery planning will promote collaboration among responsible jurisdictions and foster stewardship – *the whole of society* involved in conservation
- continually investigate and address uncertainty
- formal protection through a suite of measures, which includes voluntary compliance
- recovery planning will result in a public commitment to action

As drafted, the draft Policy Framework is too narrow and does not look at the suite of conventions, declarations, strategies, protocols, acts, programs, and actions together through a broad lens, which would enable SARA to meaningfully involve Canadians, and particularly Aboriginal Peoples, for the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources.

To highlight the disparity in thought, it is useful to compare the principles and some actions set out in the federal government's draft Policy Framework to those in the National Accord Framework, CBS, CBD, and other documents noted earlier. We will show the most obvious disparities in the five sections, modeled after the draft Policy Framework sections which include:

Section 1 – Assessments
Section 2 – Protection
Section 3 – Recovery Planning
Section 4 – Implementation
Section 5 – Monitoring & Evaluation

Please note, when comparing the language used to explain principles found in the five sections of the draft Policy Framework to the language found in other documents about species at risk and biodiversity, there are contradictions in meaning. In particular, we have found that the terms *assessment*, *protection*, *recovery planning*, *implementation*, *monitoring*, and *evaluation* (the key elements of the "SARA Conservation Cycle") are much more narrowly defined in the draft Policy Framework than what is defined or understood when discussing the CBD, CBS, and National Accord.

We believe that, at its core, the draft Policy Framework is not drafted with the mindset of “developing relationships with the Aboriginal Peoples of Canada and other Canadians to become active partners in developing and achieving the long-term vision and goals of the CBD and CBS”. This is a central commitment by the Government of Canada under the Biodiversity Outcomes Framework for Canada, but is missing in the draft Policy Framework.⁶⁷

The inclusion of some widely accepted principles and the exclusion of other principles, or the partial inclusion or change in language to describe principles, is worrisome and raises the question of ‘why’. For example, why is the federal government’s commitment to apply the precautionary approach limited only to the recovery planning stage? SARA contemplates applying the precautionary approach as fundamental to all activities under SARA, but the draft Policy Framework excludes the principle of precautionary approach from the other four “steps” in the SARA cycle.

We do draw attention to changes of language or omissions in the guiding principles found in the five sections of the draft Policy Framework to highlight the contradictions or lack of commitment by the federal government to implement SARA in a principle-based manner, i.e., applying all guiding principles throughout the whole process as we have previously discussed. Through a principle-based approach, SARA may have the flexibility to encourage and accommodate the meaningful involvement of the Aboriginal Peoples of Canada and also be responsive to address complex or evolving situations.

The SARA policy implementation proposed through the draft Policy Framework is lacking in vision and leadership which is so essential and so required by all the Peoples of the Federation of Canada, and most particularly the Aboriginal Peoples of Canada, who wish to have the CBD and CBS implemented in Canada.

The implementation of the CBD and CBS is a prerequisite for SARA; and at the same time SARA provides an important mechanism for the implementation of the CBD and CBS. The three must be taken together.

In other words, SARA is poised to be, and can be, used as an effective tool to “*mainstream biodiversity*”⁶⁸.

⁶⁷ A Biodiversity Outcomes Framework for Canada is the overarching policy framework for Canada’s implementation of the CBS. Its mission is “working together to sustain Canada’s natural assets and enrich the lives of Canadians”; and it calls on Canadians and governments to work together to achieve shared management outcomes of “Assess-Plan-Do-Track” within an adaptive management and ecosystem approach.

⁶⁸ The “*mainstreaming of biodiversity*” is the central and key objective of the CBD 2011-2020 Strategic Plan. Previous CBD implementation plans focused on a machinery of government and scientific approaches. While a vast amount of information has been amassed under the CBD since 1992, the world failed to meet global targets to halt biodiversity loss by 2010. The *Global Biodiversity Outlook 3* largely attributes the failure to meet CBD targets to be the inability or unwillingness of States to incorporate biodiversity objectives into all policies and programs and to promote the widest possible involvement of civil society and the private sector in drafting and implementing biodiversity strategies and plans (i.e. to “*mainstream biodiversity*” throughout all of society). The 2011-2020 Strategic Plan urges member States and other Governments to “*enable participation at all levels to foster the full and effective contributions of women, indigenous and local communities, civil society organizations, the private sector, and stakeholders from all other sectors in the full implementation of the objectives of the Convention and the Strategic Plan.*” In fact, the first four objectives of the Strategic Plan concerns the “*mainstreaming of biodiversity*”: to increase public awareness; to integrate biodiversity values into all accounting, strategies, and planning by

Achieving the “*mainstreaming of biodiversity*” throughout all sectors of society, in turn provides for better implementation of the CBD and CBS. This pays dividends back to SARA in the form of a more knowledgeable and open environment for more complete SARA implementation.

SARA implementation through the host of CBD and CBS principles and guidance is the only way to ensure that SARA has the flexibility to encourage and accommodate the meaningful involvement of the Aboriginal Peoples of Canada for *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources*.

Finally, there are many aspects of SARA, which have not been covered by the draft Policy Framework, that are specific and important to Aboriginal Peoples, such as:

- alternative measures for infractions
- compensation
- the protection at law and internationally of intellectual properties
- the matter of determining abrogation or derogation of Aboriginal or Treaty Rights when it comes to a species used for medicines, which then is also classified as a species at risk

These subjects need to be addressed and we suggest that they become agenda items for the federal government working with NACOSAR, the ATK-SC, and the Aboriginal Peoples of Canada to advance and flush out. We do not broach these topics here. Instead, this critique follows the layout and topics of the five chapters (steps) in the draft Policy Framework, as a point of departure to begin discussions on how to better implement SARA.

governments; to eliminate “perverse incentives” (such as economic subsidies or permitting systems for exploration, which could negatively impact biodiversity); to develop and apply positive incentives; and for governments, businesses, and stakeholders at all levels to take steps to achieve or implement plans for sustainable production and consumption.

ASSESSMENT

Assessment of species at risk

The draft Policy Framework states, “Under SARA, assessment is the process by which COSEWIC, an independent body of experts, evaluates the conservation status of a wildlife species...” The Policy Framework then goes on to briefly explain the role of COSEWIC, the federal government’s relationship with COSEWIC, the role of status reports in the “assessment” step, and briefly, the steps the Governor-in-Council (GiC) will undertake if he/she disagrees with the species assessment.

The species assessment process is already clearly and fully laid out in COSEWIC policy, including the COSEWIC Terms of Reference⁶⁹, the ATK-SC Terms of Reference⁷⁰, and the COSEWIC Assessment Process and Criteria.⁷¹ As far as understanding the COSEWIC species assessment process, the few pages spent on this topic in the draft Policy Framework provides nothing new. We maintain that a better approach in the draft Policy Framework would be to briefly summarize the COSEWIC species assessment process and refer the reader to the COSEWIC website for more details.

Instead, the federal government re-commits to several key actions required under SARA or which have been in place for several years under the COSEWIC Terms of Reference, which includes the involvement of the federal government. Considering that the Assessment Section fails to consider other aspects of learning about and determining the state of Canada’s biodiversity, which will be shown later, we find this redundancy worrisome. Will the federal government advance the concept of “assessment” throughout SARA, as is called for by the CBD and CBS, to better assess the overall implementation of SARA?

Examples of the federal government’s unnecessary recommitments toward assessments include:

- Undertake all reasonable efforts to compile, review, interpret and assess information for COSEWIC species assessments.
- Monitor the COSEWIC Candidate List.
- Inform COSEWIC of significant research.
- Identify and facilitate the acquisition of information from other sources.
- Engage in dialog with Status Report authors and COSEWIC about data and interpretation.
- Participate in the species assessment review process.
- Work with COSEWIC to identify and address information gaps.
- Priorize information for emergency species assessments.

⁶⁹ Last updated and approved by CESCC in April 2010.

⁷⁰ Last updated and approved by COSEWIC in February 2004.

⁷¹ Last updated and approved by COSEWIC in August 2010.

However, these commitments have already been made and approved of by EC and CESCC through adoption of the COSEWIC Terms of Reference:

- Attend COSEWIC meetings, including Emergency Assessment meetings as requested by the Chair.
- Review draft and interim status reports and contribute to status assessment deliberations to the best of their knowledge and ability.
- For jurisdictional members, to advise writers of status reports of known sources of information, suggest species for the priority list and for status reports, guide report writers to appropriate contacts within their jurisdictions, review draft and interim reports, and provide regional expertise on the status of, and threats to species within their jurisdiction.

The COSEWIC Terms of Reference, as one implementation mechanism under SARA and the National Accord, requires that the thirty-two government members and alternates, plus species subcommittee members from government organizations, undertake an extra duty, beyond independent discussion and analysis, to liaise between COSEWIC and governments. This is also in addition to the federal government's commitment to provide a COSEWIC Secretariat for administrative support functions, species assessment contracting services, and funding administration.⁷² The federal government is a large stakeholder in the COSEWIC species assessment process. The "commitments" made in the Policy Framework to participate or work with COSEWIC are either redundant or obvious to the point of not requiring further iteration.

Assessment of policies and programs for effects on biodiversity and perverse incentives

The draft Policy Framework misses in fact that, a SARA, "assessment" does not necessarily refer solely to a COSEWIC "species assessment". The term "assessment" is used in SARA in Sections 14-26 (concerning the COSEWIC species assessment process); however, the term "assessment" is not defined in SARA. In fact, "assessment" can refer to any assessment in the SARA process. Assessments are called for throughout all of SARA. For example, ministerial departments conduct "assessments" every day to aid ministers in making decisions. In the numerous instances, where SARA uses the language "if the minister is of the opinion", it can be inferred that the minister is making that "opinion" based on a departmental assessment of some form with information at hand.

For ministers to make recommendations requiring GiC Orders to change regulations, which includes the Minister's recommendations for species listings under SARA or a Competent Minister's protection of critical habitat under SARA, the respective department must provide a Regulatory Impact Analysis Statement (RIAS). A RIAS is an assessment of proposed regulation undertaken to identify potential impacts of the regulation on the health, safety, security,

⁷² The Secretariat is provided through Environment Canada, within the Population and Wildlife Management Division of the Canadian Wildlife Service.

environment, and social and economic wellbeing of Canadians, including the costs and benefits to the Government of Canada, businesses, and the public. Also potential impacts on all levels of government, foreign affairs policies and relationships, and the degree of interest among Canadians are considered.⁷³

Beyond preparing RIAs for proposed regulations, it is also common policy and practice for departments to provide various assessments for a myriad of reasons, usually because there is reason to believe that a proposed governance instrument could affect other policies, practices, and regulations of the department, affect other federal departments, or affect Canada's international commitments or relations.⁷⁴ All official assessments of governance instruments prepared by federal departments are guided by Cabinet and Treasury Board guidelines, which are clear that detailed assessments are mandatory so that the federal government can select appropriate governance instruments and streamline regulations. For example, before this draft Policy Framework is implemented, EC will have to prepare an assessment of its potential impacts on other aspects of Government of Canada decisions, such as exploration or exploitation licensing. The inverse should also be true, that government departments should assess the impacts of other Government of Canada policies, programs, and strategies on SARA, especially those related to natural resources, environment, finance, industry, and trade.

Assessment of government policies, programs, and strategies is a key topic of the CBD. Through a combination of articles, the CBD requires member States to assess all areas of government to identify actions or policies which may have adverse impacts on biological diversity and, with that knowledge, take corrective action, so as not to undermine the objectives of the CBD.⁷⁵ Glowka et al. describes the synergy of three key CBD articles, which together leaves no questions regarding the requirement for member States to undertake broad and detailed assessments of core governance policies and actions.

*"Article 14.1(b) extends the concept underlying environmental impact assessment to all programs and policies of government. It complements Article 10(a) (integrate consideration of conservation and sustainable use of biological resources into national decision-making) and Article 6(b) (integrate conservation and sustainable use of biological diversity into relevant sectoral and cross-sectoral plans, programs, and policies). Article 14.1(b) covers, for example, areas such as trade, taxation, agriculture, fisheries, environment, energy, and transport, indeed any program or policy that could have environmental consequences likely to have significant adverse impacts on biological diversity. Therefore, this is a very novel obligation, which calls for considerable changes in the way government programs and policies are developed and implemented. It clearly extends beyond the requirement in Article 14.1(b) to undertake environmental impact assessments on projects; in fact it fills any gaps or ambiguities created by the word 'projects'."*⁷⁶

⁷³ Government of Canada, *Cabinet Directive on Streamlining Regulation*, 2007.

⁷⁴ One example is that Treasury Board requires federal departments to conduct assessments to select the appropriate suite of instruments to achieve policy objectives, to reduce the practice of creating superfluous regulation – *Assessing, Selecting, and Implementing Instruments for Government Action*, 2007.

⁷⁵ CBD, a. 14.1(b).

⁷⁶ Glowka et al., *A Guide to the Convention on Biological Diversity*, 1994, p. 72-73.

Assessments of all governance instruments for CBD compliance can take a long time and use a large amount of resources, but there is at least one extremely important reason for doing so – many governance instruments can act as “*perverse incentives*”.

The CBD *Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity* describes *perverse incentives* as “international or national policies, laws, and regulations that distort markets, which contribute to habitat degradation [among other things] that undermine conservation and sustainable use of biodiversity” and calls for member States to identify and remove/mitigate economic mechanisms, incentive systems, market distortions, and unnecessary or inadequate regulations which may be *perverse incentives*.⁷⁷

Callum Roberts, in his book, *An Unnatural History of the Sea*, provides numerous examples of how past and current government subsidies, lax regulations, flawed management, and a worldview and governance model to exploit the sea at the cost of biodiversity, provides many incentives for commercial fishers to increase fishing capacity, switch to more destructive fishing methods, explore farther to catch fish, and seek out and fish out every last safe haven, all the while fish stocks collapse, habitats are destroyed, and biodiversity dwindles.

A few examples of *perverse incentives* just from the fisheries experience alone includes, preferential licensing for large, mature, more fecund fish, exchanges of licenses so that fishers who deplete one stock or fish species can move on to the next, subsidies to upgrade fish-finding and fishing-volume technologies, and free replacement of lost fishing gear (which continues to ‘ghost fish’ even though it is not attended). Many scientists believe that the fisheries are at a crisis point now, where “the last few fishermen are fighting over the last few fish” and unless drastic measures are taken, the ocean may be dead within the next forty years. Fisheries around the globe have reached this point in large part because many, if not most, subsidies, regulations, and fisheries management promote *perverse incentives* – encouraging fishers, especially corporate fishers to ‘fish for money and shareholder return’, instead of the sustainability of the biodiversity.⁷⁸ *Perverse incentives* have been the main cause in all corners of the world which have prevented the conservation of fish, have rewarded short-sighted, unsustainable fishing, have largely driven out sustainable artisanal fishing, and through corporatization, have impeded the fair access to fish and the equitable sharing of benefits.

In 1995, through the CBS, the Government of Canada also recognized the need to assess government policies and programs for CBD compliance. In fact, the CBS prioritizes assessments of Government of Canada policies and programs for agriculture, aquatic resources, forests, invasive alien species, and living modified organisms, to identify those governance instruments which may have adverse effects on biodiversity or promote *perverse incentives*.⁷⁹ Unfortunately, we have not seen any results from any such assessments.

⁷⁷ CBD Secretariat, *Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity*, 2004, Practical Principle 3.

⁷⁸ Callum Roberts does provide evidence of a few marine reserves, where protection of fish in a marine reserve not only leads to increased biodiversity and more healthy and numerous fish, but can also lead to significant increases in fish density and health in adjacent fishing grounds. Where governments and fishers worked together on policy and agreed to not fish certain areas, it was a ‘positive incentive’, with positive results for both biodiversity and industry. *An Unnatural History of the Sea*, 2007.

⁷⁹ CBS, s. 1.39, 1.51, 1.65, 1.81, and 1.83

Assessment of cumulative effects, public knowledge, and support

The CBS also recognizes the magnitude of the cumulative effects from hundreds of years of rampant exploitation of resources throughout Canada and the fact that little environment remains that has not been altered or affected by humankind in some way. For these two reasons, the CBS requires Canada to first develop a suite of measures to focus research, develop methods for inventorying and monitoring, and create biodiversity indicators. With a suite of research, methods, and indicators in place, the CBS then requires ongoing assessments of all ecosystems, landscapes, waterscapes, and biological resources and their ecologies, and especially the short and long-term incremental and cumulative effects on these from human impacts and exploitation.⁸⁰

The CBS also acknowledges that biodiversity is threatened through a lack of public support or understanding about biodiversity. Lack of information, public perceptions, and consumer demand all have serious consequences for biodiversity conservation. Many biodiversity conservation projects, including species at risk projects, have been undermined by others operating out of ignorance, or because the project did not correctly anticipate public reaction. A few well documented examples include:

- knowingly destroying critical habitat before it is protected in order to avoid conservation burdens;
- knowingly hunting endangered species for the high price their ‘endangered’ status demands; and
- purchasing products from manufacturers who knowingly emit toxic pollution, because those manufacturers receive an “environmental subsidy” due to lax or unenforced regulations and thus their products are less expensive than more “environmentally friendly” products.

To avoid undermining *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources*, the CBS also requires concurrent assessments of policy, levels of knowledge and known knowledge gaps, particularly ATK, the level of public understanding and knowledge about biodiversity conservation, sustainable use, and the current status of industry and consumer practices.⁸¹ All these must be considered by decision-makers as part of the “assessment process”.

Lack of assessments

Unfortunately, Canada has shown an unwillingness to assess domestic policies, programs, public knowledge, and public support to integrate the CBD into all aspects of public and private sectors. Despite having a world leading CBD implementation strategy in the CBS, Canada has failed to assess how all sectors, public and private, including all government departments, agencies, programs, and policies, can be retooled to “*mainstream biodiversity*”.

⁸⁰ *ibid.*, s. 1.93 and 2.2

⁸¹ *ibid.*, s. 2.2(c), 2.3, and 3.1(a)

The Government of Canada has ignored a founding CBD objective, which calls for States to develop a myriad of mechanisms and tools to assess all public and private actions and attitudes. With this knowledge, States can then identify avenues, other than government regulations, for the public and private sectors to similarly achieve the CBD objectives. Numerous examples can be cited, including recent SARA court cases, environmental report cards, and international criticisms of Canada for being an obstacle towards the implementation of the CBD. Unless Canada is forced through the courts, it has made little progress to realize the objectives of the CBD. The evidence has shown that Canada does the minimum and then promotes a public misconception that “the minimum is enough” or that to do more would cost too much.

One example of “floating a perception” exists where the Minister of Fisheries and Oceans has yet to sign-off on the *Eastern Scotian Shelf Integrated Management (ESSIM) Plan*. The ESSIM plan was developed by the ESSIM Stakeholder Advisory Council (a broad stakeholder group involving public interests and support). The plan has been ready for ministerial sign-off since 2007. This Large Oceans Management Area plan has developed strategic goals and strategic actions for a multitude of private and public interests, as well as federal and provincial governments’ needs, and would greatly assist to reduce uncertainty when designating new Marine Protected Areas, protecting species habitats, developing sustainable fishing plans, and determining the extent of protection versus exploitation on the Eastern Scotian Shelf; as well as, cumulative effects from all activities. The various ESSIM public forums and meetings provide predictable and meaningful mechanisms to address issues as they arise and allow opportunities to work out pragmatic solutions.⁸² The absence of ministerial support for the ESSIM Plan and continued jurisdictional posturing, are now causing some Stakeholder Advisory Council members to walk away from this public/private process. Furthermore, the large potential of volunteer human resources, ideas, and activities from the public, private, and voluntary sectors remains untapped, because the ESSIM plan has not been approved by the Minister of Fisheries and Oceans, nor given the go-ahead to be implemented.⁸³

By narrowing the definition of “assessment” in the draft Policy Framework, the federal government does not bring to the forefront the need to expand and build on government’s and public’s understanding of how “daily business and daily life” affects biodiversity. Without assessments of Government of Canada policies and programs and of government and public knowledge, decision-makers are “left in the dark” about appropriate actions the federal government could take in areas such as financial policy, foreign policy, taxation, education, import & export of goods, strengthening courts’ abilities to rule on environment infractions, and harmonizing and advancing public and private sectors to strive for the common goals and principles of the CBD – an advancement that places foremost the need to prevent species from becoming at risk.

⁸² *Eastern Scotian Shelf Integrated Ocean Management Plan: Strategic Plan*, 2007.

⁸³ See *ESSIM: Eastern Scotian Shelf Integrated Management Plan: A case study of a successful IMCAM plan (ESSIM Plan) lacking leadership for implementation*, submitted by MAPC-MAARS for the CBD study on Integrated Marine and Coastal Areas Management - www.cbd.int/CASE-STUDIES

If left to the federal government's current narrow definition of a "species assessment of status for consideration for SARA Listing", without broader understanding of the factors which lead to species and habitat depletion, the draft Policy Framework creates and promotes a "blind process", which will pump out hundreds or thousands of species assessments into a paper library, as a paper process, consuming valuable government public resources and jamming SARA with bureaucratic and legal motions, collectively stalling the implementation of SARA, CBS, and CBD to the overall detriment of biodiversity – *our natural heritage and identity*.

PROTECTION

SARA legal protection

The draft Policy Framework expends a fair amount of discussion on protection; or more specifically, the legal listing process in which species can be added to SARA Schedule 1, to receive SARA protection under Section 32 and 33 prohibitions. The federal government, through the draft Policy Framework, more clearly lays out in one document, the circumstances, prerequisites, criteria, and steps for species protection by Order-in-Council under SARA, including species listed under Section 32 (the “standard listing process”), and emergency orders under Section 29, and compliance with Orders under Section 93, and authorizations under Sections 73 and 74.

The draft Policy Framework also sets the conditions necessary for the Minister to consider when requesting an Order-in-Council to extend SARA protection to species on federal lands which are listed under provincial species at risk legislation, but not listed under SARA. The prerequisites necessary for the Minister to consider the extension of SARA protection to SARA listed species on non-federal lands (i.e., SARA “Safety Net” Provision) is also discussed.

For the “standard listing process”, flowing from a COSEWIC species assessment, the draft Policy Framework is clear that the Competent Ministers will consult with “affected” Aboriginal Peoples, Aboriginal Organizations, and Wildlife Management Boards.⁸⁴ However, without a federal policy on Aboriginal consultation, accommodation, and reconciliation, it is unclear how or to what extent the federal government will consult with “affected Aboriginal Peoples”. How does the federal government determine who are the Aboriginal Peoples, when at present does not acknowledge the Aboriginal Nations of the Aboriginal Peoples of Canada, nor their traditional ancestral homelands, except when entering comprehensive land-claims agreement, and even then, the federal government qualifies the “Aboriginal Nationhood”?

For emergency listings, “safety net” provisions, or authorizations/permits, the draft Policy Framework makes no mention of consultation with affected Aboriginal Peoples.

For example, it is understood that it may be necessary for the Minister to use the emergency listing provision under SARA in order to make an immediate response to a situation in which the Minister believes that a species faces imminent threats and that the normal SARA Listing

⁸⁴ According to court dicta (e.g. in Supreme Court of Canada (SCC) Decisions for *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 and *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74 [i.e. the *Taku-Haida Decision*]), there are levels of consultations which the Government of Canada is obliged to undertake with Aboriginal Peoples based on any real or construed knowledge of potential effects on Aboriginal Peoples. The onus for consultation falls on the Crown, based on Section 35 of the Constitution Act, 1982. However, we feel that, given the federal government’s poor track record of consultation and numerous court challenges by Aboriginal Peoples, it is prudent for Aboriginal Peoples to report or highlight to the Ministers’ offices and the Competent Ministers’ respective departments their issues, needs, concerns, and interests in SARA and the work of Aboriginal Peoples, including their interest to be invited and fully supported for involvement. We understand that, for many people, the evidence may seem comparatively small to that of COSEWIC, SARAC, academic institutions, and federal government departments; however, considering the lack of support for the involvement of Aboriginal Peoples, the evidence should be given much greater weight.

process is too slow to respond to the threat of extinction.⁸⁵ After an emergency listing, SARA requires that COSEWIC immediately collect the best available knowledge and prepare a full status report and assess the status of the species within one year.

However, a question remains after SARA Section 30(2) is invoked. What happens after COSEWIC has made a recommendation to the Minister to confirm, reclassify, or remove a species Listed under the emergency listing order, other than that the Minister must post the report on the SARA Registry and that the Minister **may** make a recommendation to the GiC to amend the SARA List? It may have been the intent of lawmakers that a new COSEWIC recommendation on a species would initiate the normal Section 27 Listing process. However, SARA is not clear and the federal government has not made an emergency listing decision yet to set precedent.

It cannot be assumed that the federal government will follow the normal Section 27 Listing process after COSEWIC assesses a species listed under emergency orders. The federal government has in the past successfully argued against common public assumptions about the SARA process, such as the intent or time-frame for socio-economic impact analyses and the timeframe for species listing.⁸⁶ We suggest that the draft Policy Framework clarify and guide SARA officials as to how to proceed with a COSEWIC species assessment after an emergency listing order.

The Aboriginal Peoples of Canada expect full and meaningful consultations with any emergency order, with the intent to be fully informed and able to contribute to a more knowledge-based SARA listing decision, after the emergency order expires.

⁸⁵ SARA s. 29 – the emergency listing order circumvents the normal SARA Section 27 Listing process and the Minister does not have to undertake any consultation, except with the other federal Competent Ministers, nor is the draft order forwarded to the Privy Council for review.

⁸⁶ For example, SARA s. 49(e) is the only place in SARA where a socio-economic impact analysis (SEIA) is explicitly verbalized in SARA, and because of this there is a common assumption that the Action Plan stage is the only place where the federal government can consider the costs and benefits of species at risk conservation to the economy and society. It is widely believed by many proponents of SARA that the Act requires a species listing to be based solely on the knowledge about its status. However, the federal government has successfully argued that the SEIA must also be included in all SARA listing decisions, due to requirements under the *Cabinet Directive on Streamlining Regulation*, and thus a species listing is always weighed against economic costs. The federal government still has not articulated the social benefits or costs for most proposed species listings. Most SARA proponents find the SEIAs for proposed SARA listings suspect. A second example on SARA interpretation is that the federal government has successfully argued that the nine month timeline dictated by SARA to ensure a timely GiC decision after a COSEWIC assessment, does not begin immediately after the COSEWIC assessment. Instead of the common intention held by many SARA proponents that the “legislated nine month timeline” begins when the Minister receives the COSEWIC assessment on behalf of the federal government, the federal government maintains that the Minister does not receive the COSEWIC assessment on behalf of the GiC and therefore, the nine month timeline only begins once the Minister delivers the COSEWIC assessment to the GiC; and furthermore, that there is no “legislated timeline” for the Minister to deliver the COSEWIC assessment to the GiC. The narrow interpretation of SARA allows the Minister to routinely delay the start of the “legislated nine month timeline” several months or even more than a year after COSEWIC has made the assessment. In some cases, the Minister has utilized this loophole, in conjunction with sending assessments back to COSEWIC, to postpone SARA listing recommendations for years or possibly indefinitely. In 2008, the Joint Committee on the Scrutiny of Regulations agreed with the federal government and recommended that if lawmakers wanted to make the nine months, or any timeline for that matter, begin with the COSEWIC assessment, then SARA must be amended to make the timeline explicit.

The extension of SARA provisions to provincially listed species, safety net orders, and authorizations/permits would not likely require the circumvention of the normal SARA process or requirements. In fact, it is anticipated that those decisions would be made after extensive analysis and deliberations. Aboriginal Peoples expect the federal government to undertake full consultations to ascertain the effects of such orders, authorizations, or permits on Aboriginal and Treaty Rights. The draft Policy Framework is silent on this requirement or about how the Federal government would undertake such consultations.

As a final note on the “normal SARA protection process”, SARA also allows for any person to make an application to COSEWIC for a species assessment. SARA recommends that the Minister make regulations to establish procedures how the public can apply for a species assessment and how COSEWIC is to deal with such applications.⁸⁷ Again the draft Policy Framework misses the opportunity to promote public participation in the protection of species by not mentioning that the public can initiate their own status reports or assessments or call on COSEWIC to undertake that on their behalf.⁸⁸ Again the draft Policy Framework, promotes SARA to be an exclusive affair of the federal government, alone.

Protection via the “mainstreaming of biodiversity”

Beyond these particular gaps in SARA Section 32 and 33 protections, the draft Policy Framework also misses the broader meaning of the term “protection”, as understood in the whole of the CBD. Beyond Article 8(f) requiring the “rehabilitation and restoration of habitats and species”, the CBD also requires other forms of protection to “spin a web of conservation and sustainable use”. We believe that all of these should be addressed through SARA:

- *Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes, and policies.*
- *Promote the protection of ecosystems, natural habitats, and the maintenance of viable populations of species in natural surroundings.*
- *Establish or maintain means to regulate, manage, or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health.*
- *Prevent the introduction of, control, or eradicate those alien species which threaten ecosystems, habitats, or species.*
- *Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.⁸⁹*

⁸⁷ SARA s. 22 and 28.

⁸⁸ The application procedures and forms to request a COSEWIC assessment can be found at www.cosewic.gc.ca.

⁸⁹ CBD, a. 6(b), 8(d), 8(g), 8(h), and 8(j), respectively.

In fact, Article 8 (*In-situ Conservation*), when read together as a whole, encompasses the whole of biodiversity protection within a State, with other CBD Articles in a supporting role. It is clear from this article that the CBD places more emphasis on removing threats, adjusting policies and activities, and protection which leads to biodiversity conservation, than the mechanics of a formal process for listing species. In other words, it is not necessary to list species to achieve species at risk protection, nor may it be desirable to do so, as a sole approach.

In fact, the drafters of the CBD outright rejected the idea of species lists, as ineffective and possibly subversive toward actual biodiversity conservation, because such lists inherently impose biodiversity conservation requirements, instead of encouraging and supporting broader conservation efforts.

As an example, in Canada several federal and provincial government agencies and management boards take the position that until a species is listed under Schedule 1 of SARA, there is no onus on them to avert habitat damage or habitat alterations, or to change their modes of operation. It is legal for them to destroy the habitat or species with their projects, works, or activities, until the species is formally listed. They maintain they are within the law – and they are.

CBD drafters believed that more effective outcomes may be reached by addressing policies, programs, ecosystems, habitats and human activities which threaten species, before a species becomes ‘at risk’, or in a more broad manner, to protect all three biodiversity components: ecosystems, species, and genetic make-up.⁹⁰ The CBD requires the monitoring of these components to measure the progress States make through implementing the other CBD Articles. We believe this is a good best practices lesson for Canada’s implementation of SARA – the Canadian flagship for the implementation of the CBD.

The CBS follows the broad thinking of the CBD, by requiring the Government of Canada to conserve ecosystems, reduce the release of harmful substances, and modify, develop, and implement government policies and programs for sustainable use of resources, all with the aim to protect species.⁹¹ A particularly important biodiversity protection mechanism required by the CBS is for the Government of Canada to assist Canadians to understand the impacts and implications from their everyday consumer decisions.⁹²

The Executive Secretary to the CBD, the Executive Director of the UN Environment Programme, the Secretary General of the UN, and others have called for the *mainstreaming of biodiversity*, meaning that everyone must understand and consider biodiversity in everyday decision-making from strategic decisions by industry and States to point-of-sale consumer decisions. This is the greatest challenge of the CBD, but has the largest potential to meet biodiversity targets. In Canada, *mainstreaming of biodiversity* has been prioritized under the CBS since 1995.

⁹⁰ Glowka, et. al, *A Guide to the Convention on Biological Diversity*, 1994, p. 3-5.

⁹¹ CBS s. 1.2, 1.7, and 1.32, respectively. Like CBD Article 8, the CBS Section 1 should be read as a whole and when it is, it is evident that the whole of the section is the conservation of biodiversity.

⁹² CBS s. 1.36.

However, the draft Policy Framework's usage of the term "protection" restricts its understanding to be only something that happens through Order-in-Council, and thus, the draft Policy Framework further marginalizes the potential involvement of the *whole of society* to make everyday choices which would protect species and habitats.

The protection of species can occur under several mechanisms, one of which is legal SARA listing. The federal government has all the tools necessary to implement this one aspect of protection and, while it is understandable that the draft Framework Policy would spend time to further clarify the legal SARA listing process and requirements, it should also equally provide guidance to ensure that subversive acts do not undermine conservation efforts.

Protection via public and private participation and incentives

Many additional tools exist, outside the realm of SARA Schedule 1 listing orders and habitat protection orders, even if the federal government is not the sole or primary exerciser of those powers. Such examples include easements, covenants, accords, and SARA "Stewardship and Conservation" Agreements under Sections 11, 12, 13, and 62, to name but a few directly mentioned in SARA. Many other tools exist in private operations and volunteer efforts.

To illustrate our point, the federal government, under the umbrella of SARA, can initiate actions to work with conservation organizations, consumer groups, and businesses to identify products which directly or indirectly harm species at risk and to promote less harmful products. The decrease in demand for harmful products adds a layer of protection for those species. This level of protection is both outside normal government regulatory process and, even if regulation is made, it would be difficult to enforce. In addition, better consumer awareness and decisions would be preferred additions to the suite of SARA policies in the federal government's tool kit.

The federal government, through Treasury Board guidelines, promotes the use of all available instruments to address a particular policy problem and requires regulators to consider each as a means by which policy objectives are pursued, before drafting new regulation.⁹³ In this way, innovative and pragmatic solutions can be found and at the same time superfluous, contradictory, or complex regulations can be avoided. Below are some well known and proven methods for augmenting policy objectives, without solely relying on regulation.

<i>market-based instruments</i>	<i>public expenditures</i>	<i>formalized partnerships</i>	<i>taxes and fees</i>
<i>information and education</i>	<i>self-regulation</i>	<i>public ownership</i>	<i>standards</i>

The Protection Section of the draft Policy Framework does not discuss a single one of these opportunities for augmenting SARA objectives. Instead it promotes regulation as if it is the only tool for species at risk protection, rather than also advancing the many other supplemental tools as called for in the CBD, CBS, and even Treasury Board guidelines. In addition, the absence of their mention in this overarching framework excludes the vast opportunities for all Canadians can use to protect species and habitats in a myriad of ways outside of government regulations alone, or before the point that government regulations are required under SARA as the only source of protection.

⁹³ Treasury Board of Canada, *Assessing, Selecting, and Implementing Instruments for Government Action*, 2007

RECOVERY PLANNING

RENEW and SARA working together under the National Framework

The Recovery Planning Section of the draft Policy Framework is extremely worrisome. There is no reference to RENEW, save for an obscure one sentence footnote on RENEW as a program that EC coordinates to prepare recovery strategies. Since 1988, RENEW has taken the lead role in recovery activities and promoting multi-party participation of diverse Canadians. However, the language of this Recovery Planning Section gives the impression that the draft Policy Framework is the only guideline ‘in town’ for species at risk recovery.

By omitting RENEW, the draft Policy Framework infers that SARA requires only EC, DFO, or PCA to prepare all recovery strategies, action plans, and management plans for ministerial approval, and, if the Competent Minister chooses, may include input from other governments or stakeholders. Does this mean that the federal government now scrap RENEW, in favour of a ‘sole federal government approach’ under SARA? If the draft Policy Framework does not role in RENEW, does it have to rewrite all guidance material to create “SARA compliant” recovery documents?

In reality, SARA supplements RENEW. SARA and RENEW together, operating under the CBD, CBS, and National Accord, form the backbone of species at risk recovery in Canada. In fact, specific measures were included in SARA to make it “RENEW compliant” and *vice versa*. For example, although SARA requires specific information for SARA documentation, it also allows the Competent Minister to adopt any recovery strategy, action plan, or management plan, or a part thereof, as a SARA document, as long as it contains the necessary information or can be amended to contain the necessary information, making it “SARA compliant”.⁹⁴ SARA also allows the Competent Minister establish recovery teams to draft recovery documents⁹⁵ and, in fact, SARA follows the RENEW ROMAN *Guidelines* for writing recovery strategies.

In 1988, federal, provincial, and territorial governments formulated and agreed to RENEW as the national coordination mechanism for all governments’ species at risk recovery planning and implementation. In 1999, the mandate of RENEW was expanded under the 1996 National Accord to coordinate all recovery measures and report on all recovery activities for all species which are assessed by COSEWIC. RENEW was again expanded in 2002 by the addition of SARA⁹⁶, which at the time was a large catalyst for RENEW.

⁹⁴ SARA s. 44

⁹⁵ SARA s. 9(1), specifically this section states that the Minister may create any advisory body to advise the Minister on the implementation of any aspect of SARA (which would include recovery teams to determine recovery goals & objectives, write appropriate text, identify knowledge gaps, list threats, identify critical habitat, compile and reference a base of knowledge, and other activities necessary for recovery planning). Recovery Teams are particularly important to address SARA requirements for a Competent Minister to prepare recovery strategies, action plans, and management plans in cooperation with other departments, other jurisdictions, Aboriginal Peoples, and others who hold knowledge or are affected.

⁹⁶ Additional guidance sections were added to the RENEW ROMAN Handbook to help recovery planner make existing National Recovery Plans “SARA compliant”.

The addition of SARA to RENEW brought with it a 70% increase in species at risk funding, for a total of about 40 million dollars per year between 2002 and 2006. In fact, successive Director Generals of the Canadian Wildlife Service and RENEW co-chairs from provincial departments, recognized that SARA does not remove the existence of RENEW, nor diminishes its mandate under the National Accord, but in fact SARA is an important addition to the RENEW program.⁹⁷

At this point it is beneficial to revisit the twelve principles of RENEW detailed earlier. They serve to guide the vision of Canadians to recover species across Canada, regardless of landownership or jurisdiction. With these twelve principles, a strong foundation is provided for all Canadians, in all sectors, public, business, and civil society, to come together and work out pragmatic local solutions through collective recovery planning and implementation:

- | | |
|--|------------------------------------|
| 1 <i>direct action</i> | 2 <i>responsibility</i> |
| 3 <i>multi-partner jurisdictional recovery</i> | 4 <i>multi-partner involvement</i> |
| 5 <i>key role of recovery teams</i> | 6 <i>adaptive management</i> |
| 7 <i>process flexibility</i> | 8 <i>time frame for actions</i> |
| 9 <i>focus on appropriate scale</i> | 10 <i>socio-economic values</i> |
| 11 <i>optimized resource use</i> | 12 <i>evaluation of success</i> |

When taken into context with the CBD, CBS, and National Accord, it is obvious that RENEW remains an important vehicle for designing and developing recovery planning across all jurisdictions. RENEW can be added to by federal or provincial acts or policies, such as SARA, but RENEW cannot be lessened, nor should it be.

In fact, under the National Accord Framework, federal, provincial, and territorial governments set out a series of recovery principles under the National Accord, to promote further cooperation and collaboration among governments, which was in addition to the work between governments and the public under RENEW. These principles, along with the twelve RENEW principles, form the basis for recovery actions:

1. ***Be Knowledge-based:*** *The identification of goals, objectives and strategic approaches to recover species at risk will be informed by sound and credible scientific and technical advice, including aboriginal traditional knowledge and community knowledge as appropriate.*
2. ***Address uncertainty:*** *Where feasible and warranted, additional work (e.g., studies) will be undertaken to address areas of uncertainty or lack of information.*
3. ***Develop pragmatic solutions:*** *A wide range of measures will be considered for the survival and recovery of species at risk and their habitats. This will be done with due regard for socio-economic considerations and the feasibility of timely and effective implementation by jurisdictions and stakeholders.*

⁹⁷ National species recovery reporting is contained in *Annual Reports of the Recovery of National Endangered Wildlife*, which includes reports until at least 2005. After 2005, reports have not been posted on the SARA Registry www.sararegistry.gc.ca; though the RENEW program and the Canadian Wildlife Directors Committee, which oversees the program, both continue to exist, though ignored in draft Policy Framework.

4. ***Use an appropriate level and manner of cooperation and consultation:*** *Recognizing that there is no 'one size fits all' approach to planning, the extent and type of cooperation and consultation will be tailored (as circumstances and resources permit) to obtain community support and input to the planning process. Consultation efforts will be proportional to the expected social and economic impact of decisions to implement recovery actions.*
5. ***Result in a commitment to action:*** *Governments will make public, in a timely manner, their commitment to undertake actions for recovery of species at risk.*

Comparing the draft Policy Framework's four Recovery Planning Section principles to the pre-existing seventeen guiding principles of RENEW and the National Accord Framework, it appears that the intent of the draft Policy Framework is to shift away from the concept of public ownership, with Government of Canada support and leadership, and instead move to a less inclusive model of federal government ownership, with public support, without any leadership or leadership in a vacuum. In large measure, it is this vacuum of who takes ownership and who takes the lead (federal government, provincial/territorial governments, or Canadians) that has left SARA by itself to sluggishly crawl up a mountain, daily faced with an urgent need to deal with *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources.*

Comparing the four draft Policy Framework recovery planning principles

1. Respects jurisdictional roles and responsibilities:

The competent ministers are aware of concurrent provincial and territorial jurisdictional responsibilities and programs with respect to the protection and recovery of listed species at risk. In fulfilling their commitments under SARA, under the Accord for the Protection of Species at Risk and under any related agreements, the competent ministers will cooperate with the provinces and territories to complete recovery and management planning.

With this statement, the federal government shies away from accepting lead responsibilities under the National Accord, RENEW, and the CBS to coordinate and advance species at risk recovery across Canada. Under the National Accord, federal, provincial, and territorial governments agree to cooperate as single body of the Government of Canada, because species do not recognize political boundaries. Cooperation is supposed to happen through the CESCC, which is also supposed to be the arbitration mechanism for any disputes. The National Accord promotes, on one hand, collaboration among governments to address species at risk and, on the other hand, a mechanism by which each jurisdiction can review and challenge others to uphold and advance species at risk standards. In this way, Canadians have more say in overall species at risk recovery, as multiple democratically elected governments are responsible for overseeing the implementation of the National Accord.

On the other hand, as part of Canada's implementation of the CBS, the federal government is also responsible for taking the leadership under the National Accord, to coordinate and advance species at risk recovery across Canada, even though a provincial or territorial

government may have management responsibilities.⁹⁸ This highlights a unique aspect of the Federation of the Peoples of Canada, that even though the federal government may have final responsibility for SARA, it is the overall responsibility of the Government of Canada as a whole, i.e. the Crown, acting through federal and provincial governments, to create complimentary species at risk legislation and also work together to implement the complimentary legislations in a unified manner under the National Accord.

What purpose does the third paragraph of Section 4.4 serve other than to state the obvious jurisdictional history of ‘push and pull’? Preferably, the guidance should reiterate principles in the National Accord, which emphasize that multi-jurisdictional cooperation for the protection of species that cross borders should be encouraged and advanced in the development and implementation of recovery plans.

The draft Policy Framework does not expand on the principles of “respecting provincial roles and responsibilities” and does not reference the significance of the National Accord, which allows the federal government to take leadership when a province fails to do so or does not have the capacity to do so. When left without explanation and read with some of the limiting, narrowing approaches in the draft Policy Framework, one could erroneously assume that the federal government’s application of SARA is restricted or limited solely to SARA Schedule 1 listed species at risk and only then when they are on federal lands or waters, or if they are a migratory bird protected under the *Migratory Birds Convention Act*, in addition to SARA. That erroneous assumption has already crept into federal funded programs, thereby excluding some Canadian efforts in provincial jurisdictions, where there is no provincial mechanism, human capacity, or financial support to work on species at risk.

2. Is priority based:

In meeting the timelines set out in SARA for recovery and management planning, the competent ministers will manage departmental resources based on priorities, considering a number of factors such as the status of the species in Canada and globally, threats to the species and its habitat, and the likelihood of achieving recovery.

SARA was passed in 2002 in part to prioritize and facilitate a rapid federal government response to the most serious cases of biodiversity endangerment. As discussed earlier, SARA also carries with it obligations of the federal government to take steps to reduce threats which could lead to species becoming “at risk”. The regulatory requirements of SARA are understandably beyond *normal daily government machinery*. SARA recognizes that to be effective, it must require action by the Government of Canada, which, in the current climate of *laissez fair* capitalism, would run against the priorities and objectives of business and industry. On the one hand SARA encourages Canadian’s to take ownership of species at risk and continually advance SARA, and on the other hand, carries with it a suite of ‘big sticks’ to force compliance, including that of the federal government.

⁹⁸ This is also a reality in Canadian law, as under the Canadian Constitution, provinces do not have automatic ‘ownership’ of biodiversity resources. Provinces can only exercise jurisdiction or management responsibilities if included in their provincial constitution or if transferred to the province by the federal government, such as is the case for Manitoba, Saskatchewan, and Alberta under the “Natural Resources Transfer Acts” passed by the Canadian legislature in 1930.

Given that Cabinet requires that any proposed SARA Listing first go through a Regulatory Impact Analysis Statement, a SARA Treasury Board review, and a Privy Council review before Cabinet considers a regulatory amendment to list a species under Schedule 1 of SARA, Cabinet is well aware of the consequences if it should either accept or reject the SARA Listing.

Notifications to the federal government and the inclusion of federal government officials at the earliest stages of a SARA listing, including: before COSEWIC conducts an assessment, discussions with COSEWIC throughout the assessment cycle, and during the official SARA timeline for SARA listing, all provide federal government departments ample time to prepare economic analyses, prepare regulatory analyses, and consult with affected Canadians, the Aboriginal Peoples of Canada, other governments, and within the federal family of departments, agencies, and boards to determine the costs, benefits, and how to proceed if a species is listed under Schedule 1 of SARA. In fact, SARA has built into it a priority ranking system of endangered, threatened, extirpated, and special concern (in order from highest to lowest priority).

The priorities have already been set by Cabinet's decision to list the species. In fact, even after a SARA listing, SARA still allows for the Competent Minister to declare a species "unrecoverable", despite a COSEWIC recommendation and SARA listing, thereby removing the requirement for the federal government to create and implement a full recovery strategy and suite of action plans.

With a species listing under SARA, the federal government has made a commitment to protect and recover a species at "*all reasonable costs*" and with a suite of "*all available cost-effective means*". While it is important for departments to properly manage their resources, SARA requires additional funds. There is no excuse that funding is not available or timelines are too short to acquire funding. The adoption of an expanded principle to "*acquiring new resources and managing existing resources to meet the increasing demands of projected SARA listings and expanding involvement of Canadians, especially the Aboriginal Peoples of Canada*" would do a lot to advance the implementation of SARA.

At most, the inclusion of the current "priority based" principle, with the caveat or restriction "subject to department resources", creates a hollow promise of financial capacity or federal government funding for the effective implementation of SARA. As noted above, there is more than ample time and funding tools available to the Competent Minister to adequately plan for and acquire the requisite funds to effectively implement recovery strategies and action plans. It should be noted, as has been revealed in public, that the vast majority of funds approved or expended to date for SARA activities have been directed towards the substantial augmentation of over two hundred public servants to the three responsible federal government authorities for SARA (EC, DFO, and PCA). In fact, very little has been spent on supporting public involvement in the implementation of SARA, recovery planning, or recovery actions.

Conversely, the statement about “funding woes” could be used as a backdoor for the Government of Canada to avoid assigning new money to meet the increase in listed species and recovery actions. A guiding principle of “priority based” at the recovery planning stage, indicates that federal government will at best have to maintain current financial resources, which department SARA officials will have to manage to service the growing number of recovery strategies, action plans, management plans, educational initiatives, studies, investigations, etc. for the conservation of species at risk and their habitats.

In reality, we have seen the proportional net funding for on-the-ground recovery projects decreased in the past number of years. The current “priority based” principle focuses federal department accountability to the financial resources allocated to it by Treasury Board, instead of what Canadians’ require to be allocated to adequately fund works and the implementation of species at risk programs. If that requires reallocation from other areas, such as from resource development, royalties, or a species at risk conservation fee included as part of exploration and exploitation licenses and permits, then it must be implemented to provide funds to “get the job done”.

3. Takes an adaptive approach:

Recovery and management planning requires an iterative approach that considers the long-term population and distribution objectives for the species, that involves a periodical review of priority actions and approaches and that reflects on progress in achieving these objectives.

Adaptive management is a preferred method for Canada to achieve biodiversity targets under the CBS. In the *Biodiversity Outcomes Framework for Canada*, the adaptive management approach is described as:

“the cyclical process of taking stock, planning and decision-making, followed by implementation and tracking to see whether management response to problems improve over time based on the new knowledge and better information.”⁹⁹

For SARA, an “adaptive management approach” is in essence the whole of the SARA cycle of assessment, protection, recovery planning, implementation, and monitoring & evaluation.

However, the adaptive management approach described in the Biodiversity Outcomes Framework goes beyond just a cyclical process for assessing, protecting, and recovering species. The Biodiversity Outcomes Framework states that Canada will use an adaptive management approach in conjunction with an ecosystem approach to achieve the shared outcomes of healthy and diverse ecosystems, viable populations of species, protected genetic resources, and the sustainable use of biological resources.

“In an ecosystem approach, ecological goals are considered at the same time as economic and social goals. It places the trade-offs front and centre when decisions are being made.”¹⁰⁰

⁹⁹ A *Biodiversity Outcomes Framework for Canada*, p. 6.

¹⁰⁰ *ibid*, p. 6.

The draft Policy Framework misses completely the aspect of an ecosystem approach, in conjunction with an adaptive management approach. The draft Policy Framework only mentions an ecosystem approach or multi-species approach in passing; that the federal government may pursue a multi-species or ecosystem approach to recovery planning, but does not discuss the content of “ecosystem recovery strategies” or “multi-species recovery strategies” or how recovery planners should go about creating or implementing such recovery strategies under SARA.

In fact, other than one sentence stating that the Competent Minister may consider a multi-species or ecosystem approach for species that co-occur in the same habitat, species that are affected by similar threats, and/or species that are taxonomically similar, the draft Policy Framework is completely silent on any discussion about an adaptive management approach, as understood in the Biodiversity Outcomes Framework.

It is unclear why the draft Policy Framework includes the principle of adaptive management approach only in the Recovery Planning Section (though it is again mentioned, but not as a principle, in the Implementation Section), instead of considering it as an overarching principle for the entire SARA cycle. Further, why has the interdependent principle of an ecosystem approach been excised from the draft Policy Framework set of guiding principles?

4. Adopts a precautionary approach:

Consistent with Section 38 of SARA, if there are threats of serious or irreversible damage to a listed wildlife species, the competent ministers will not postpone cost-effective measures to prevent the reduction or loss of a species for a lack of full scientific certainty.

The inclusion of the precautionary approach in the Recovery Planning Section of the draft Policy Framework is curious. Like the “adaptive management approach”, the “precautionary approach” is a foundational principle for the whole of SARA, set out in the SARA preamble. The precautionary approach is not limited to only recovery planning.¹⁰¹ If the federal government is serious about implementing a precautionary approach for SARA, it should do so for the whole of SARA; and therefore the precautionary approach should appear in the draft Policy Framework as a foundational principle in Section 1.

In another light, the exclusion of the precautionary approach to only recovery planning in the draft Policy Framework can be seen as an underhanded attempt to try to lessen the federal government’s responsibilities under SARA, while maintaining a façade about adopting or applying a precautionary approach.

Curiously the statement is stronger as it relates to the preparation of recovery strategies, action plans, and management plans.

¹⁰¹ Though it is explicitly reiterated again in Section 38 of SARA, concerning the development of recovery strategies, action plans, and management plans.

Compare the commitments to a precautionary approach in the SARA preamble vs. the draft Policy Framework

SARA Preamble

The Government of Canada is committed to conserving biological diversity and to the principle that, if there are threats of serious or irreversible damage to a wildlife species, cost-effective measures to prevent the reduction or loss of the species should not be postponed for a lack of full scientific certainty. [emphasis added]

Draft Policy Framework

Consistent with Section 38 of SARA, if there are threats of serious or irreversible damage to a listed wildlife species, the competent ministers will not postpone cost-effective measures to prevent the reduction or loss of a species for a lack of full scientific certainty. [emphasis added]

What is most curious is that the draft Policy Framework on one hand lessens the federal government's commitment to a precautionary approach toward ***all wildlife species*** by qualifying the statement with Section 38 of SARA (which only concerns the preparation of recovery strategies, action plans, and management plans for SARA listed species) and by inserting the qualifier "listed" to more narrowly define "wildlife species" – "*if there are threats of serious or irreversible damage to a listed wildlife species ...*"

On the other hand, the draft Policy Framework strengthens Section 38 of SARA by changing the federal government's commitment from "*the Competent Minister should not postpone cost-effective measures for a lack of full scientific certainty*", as is written in SARA, to a new policy commitment that "*the Competent Minister will not postpone cost-effective measures...*"

The draft Policy Framework does not explain the reasons for these changes. Why is the precautionary approach only a requirement in the preparation of recovery strategies, action plans, and management plans for SARA listed species? Why is the principle of a precautionary approach not applied to all the other steps of the SARA cycle anywhere else in the draft Policy Framework? What is the federal government's commitment to the precautionary approach under SARA, outside of Section 38?

Why is the federal government's commitment to the precautionary approach strengthened to "must be applied" when developing recovery strategies, action plans, and management plans, yet silent on the application of the precautionary approach in the other steps of SARA?

Under the National Accord Framework, the precautionary approach is considered fundamental to the whole cycle for species at risk conservation and is an integral part of the CBD and CBS. If the federal government is indeed strengthening its commitment to the precautionary approach, why is the precautionary approach not reiterated throughout all the steps of the draft Policy Framework, or included as a guiding principle for the whole of the framework?

This draws the reader to form a conclusion that the draft Policy Framework is: 1) not in tune with the commitments of the Government of Canada under SARA and the CBD, 2) meant to lessen the federal government's responsibilities for SARA or to limit the application of the precautionary approach throughout the SARA cycle, or 3) meant to confuse the public as to what is governments' commitments to apply the precautionary approach throughout SARA.

Recovery Teams and Recovery Implementation Groups

The draft Policy Framework makes the statement "*the competent minister may establish an expert advisory group, for example, a recovery team, to conduct recovery or management planning.*"

While technically correct; under SARA, the Competent Minister does have the authority to establish advisory committees, such as Recovery Teams,¹⁰² the vague language "*may establish*" fails to recognize the vital role and importance of RENEW Recovery Teams to species at risk recovery in Canada. Recall, that one of the twelve guiding principles of RENEW is to establish and support the "*key role of Recovery Teams*".

Furthermore, the mention of RENEW Recovery Implementation Groups is totally absent from the draft Policy Framework; once again throwing into question, who prepares action plans under SARA, using what template, and how is that accomplished?

Recovery Teams and Recovery Implementation Groups are vital for species at risk recovery in Canada. They comprise two of the five species at risk bodies vital to implement the species at risk cycle, which also includes COSEWIC (assessment), CESSC (provides oversight and overall coordination), and the responsible jurisdictions (provides overall leadership for implementation).

The most important aspects of Recovery Teams and Recovery Implementation Groups are that 1) they bring together a wide variety of interests and knowledge to work together in a supportive and collaborative atmosphere to develop specific, achievable, timely, measurable, and realistic recovery strategy goals and objectives (the primary role of Recovery Teams), and 2) they develop pragmatic solutions to achieve those objectives (the primary role of Recovery Implementation Groups).¹⁰³

It is important to note that the involvement of Aboriginal Peoples with Recovery Teams and Recovery Implementation Groups, as called for under RENEW, is vital to begin to provide insights into the worldviews that Aboriginal Peoples possess about species, habitats, and how to conserve those.

¹⁰² SARA s. 9(1). Note that Section 9 allows the Minister to establish any advisory committee for any aspect of SARA, not just recovery planning, as is lead to be believed in the draft Policy Framework.

¹⁰³ Details of the roles and importance of Recovery Teams and Recovery Implementation Groups can be found in the RENEW ROMAN Handbook.

Although SARA doesn't explicitly require these two elements, which are required under RENEW, Recovery Teams and Recovery Implementation Groups are much more effective means for developing and implementing recovery strategies, action plans, and management plans, than the federal government working alone. In fact, under RENEW, Recovery Teams and Recovery Implementation Groups are considered the traditional or default mechanism for recovery planning.

To quote previous RENEW co-Chairs David Bracket, past Director General of the CWS, and Adair Ireland-Smith, Managing Director of Ontario Parks,

"Recovery teams operate in physical and social environments that are characterized by many competing interests. The nature of team work is critical to recovery success, as "an incredible synergism" (to quote one team chair) is created when aboriginal people, volunteers, professors and their graduate students, stakeholders, jurisdictional representatives and others with a direct interest in the species or its habitat come together to develop a course of action for recovery. The passion for species recovery that characterizes both salaried and volunteer team members and associates never seems to wane. We take our hats off to them all!"¹⁰⁴

Circumventing Canadian participation in recovery

RENEW does recognize, where only one jurisdiction has most of the responsibility for recovery planning, and if there is little or no public interest in the recovery of a certain species or if the government doesn't believe a species can be recovered, then a government may then choose to create a Short-term Recovery Team or Jurisdictional Planning Team to quickly and inexpensively complete recovery planning documents. However, these two methods are not preferred, because many species at risk cross jurisdictional boundaries and are of concern to Canadians, even if that concern is only expressed by Canadians' broad concern for biodiversity, as *our collective natural heritage* throughout Canada. Again, the roles and values of volunteers should not be underestimated or dealt with as an aside.

Sadly, since 2002, the federal government has increasingly taken this more narrow approach and distanced itself from the more traditional RENEW participation.¹⁰⁵

¹⁰⁴ Taken from the 2000-2001 Annual RENEW Report from the Co-Chairs.

¹⁰⁵ Speaking from experience, coming from years of involvement in all aspects of SARA, including discussions leading to the Bill C-5 legislation, the formation of NACOSAR and the ATK-SC, and the development and involvement in several local Recovery Teams, it is our opinion that the federal government is attempting to segregate RENEW from SARA and hide RENEW from the public. Aside from the evidence provided by our critique of the draft Policy Framework, we also cite as evidence the facts that the Canadian Wildlife Directors Committee has met infrequently in the past five years (and only once in the past two years) and has not released an annual report, that we know of, to the public since 2005. This committee is directly responsible for RENEW implementation and is administered and chaired by EC. The failure of the EC chair to call meetings or issue reports on RENEW is inexcusable. Furthermore, EC officials at the national level rarely, if ever, make reference to RENEW or the RENEW *ROMAN Handbook*. In fact, the SARA Registry, which is also administered by EC to be the SARA focal point clearinghouse site for the public, does not mention RENEW as part of Canada's species at risk strategy, and the only reference to RENEW on the site is an obscure link to old RENEW annual reports, prior to 2005, and to an "achieved" *ROMAN Handbook*, last updated in 2005.

For new SARA listed species, the establishment of traditional Recovery Teams is becoming less common. Our experience has been that the federal government has preferred to establish “Short-term Recovery Teams” with the mandate to feed into the development of a recovery strategy. However, following the completion of that mandate, the team is either dissolved or only becomes an annual or biannual meeting to share information. “Short-term Recovery Teams” have little to no formal oversight or advisory capacity on recovery strategy implementation.

What is also becoming more common-place is the establishment of “Jurisdictional Planning Teams” which may bring together stakeholders to “workshop” or share goals and objectives and possibly provide input into other sections of the recovery strategy. Workshop attendees do not have a formal mandate under SARA to draft and implement recovery strategies, with Terms of Reference agreed to by the Competent Minister. After the workshop, stakeholders, in most cases, do not even have a mechanism to review or comment, as a stakeholder group, on the drafts of the recovery strategy or its implementation. Many fear that the next step by the federal government for newly listed species at risk will be for federal government departments to draft recovery documents without any input by stakeholders, Aboriginal Peoples, academics, industry, or other interested or affected people.

Though many Recovery Teams for SARA listed species exist across Canada, the vast majority of these existed prior to SARA. Since 2002, they have steadfastly remained; continually demanding that the federal government recognize and adopt their recovery strategies; and furthermore, that they not be excluded from recovery strategy implementation and oversight.

Without Recovery Teams and Recovery Implementation Groups, species at risk recovery measures run the risk of failing on multiple accounts. Most obvious being the:

- lack of public or private support to implement actions;
- failure to fully identify and protect and critical habitat;
- failure to recognize or stop activities which run counter to the objectives of the CBD; and
- failure to see the bigger picture of the *conservation of biological diversity, considered together with the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources.*

Action Plans

As for action plans, we do not know of any that have been developed by a Recovery Team or Recovery Implementation Group. In fact, of the Recovery Teams in the Atlantic that have advanced to completing a recovery strategy, stakeholders have made continued requests to the federal government for the Recovery Team to take the lead on developing action plans, or for the Recovery Team to develop Recovery Implementation Groups to develop action plans. These requests have been continually denied or ignored. In fact, in the Atlantic the only action plans we know of were developed by federal government department staff with little or no involvement from a broad-based Recovery Team or Recovery Implementation Group, other than to provide cursory approval of the federal government document.

This again points to a sole federal government SARA approach, which does not value the diversity of Canadian interests or involvement in *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources*.

Management Plans

As for management plans, from our experience, the development of management plans has been completely internalized with little or no input from Canadians. Departments themselves continue to keep the lead, because they produce other management plans for the lands, waters, and resources under their respective portfolios, such as DFO fisheries management plans.

RENEW doesn't explicitly discuss management plans and SARA doesn't require the establishment of 'management plan teams'. In the case of marine species, where DFO has exclusive control over the management of fisheries, one could argue that DFO should develop or update management plans to reflect requirements of SARA for species listed as "Special Concern". However, the federal government does not have exclusive management responsibilities for other species, even migratory birds protected under the *Migratory Birds Convention Act*; and the argument for the federal government to unilaterally draft management plans quickly falls apart. Even for marine species, fisheries may only be one threat to the species. Thus, a management plan drafted solely by DFO in many cases would miss many other management options and tools available to other jurisdictions, to industry, or to the Canadian public.

In the best interests of species of concern, 'management plan teams' should be established, and where available they should work with regional integrated management planning committees, to develop effective management plans. Such approaches would better address all the threats to a species and provide a suite of pragmatic management options, which are available to a wide variety of parties to prevent a species of concern from becoming threatened or endangered. Also, this is one excellent way to include Aboriginal Peoples to share their knowledge or eco-centric worldview about a species of concern, before that species becomes endangered or threatened.

Critical Habitat

The omission of RENEW, and thus Canadians, from the recovery planning process and the inability of the draft Policy Framework to grasp the vast amount of work and potential embodied in the twelve principles of RENEW does have serious consequences for species at risk recovery in Canada. The most evident consequences will be in the identification and protection of critical habitat, which does require broad-based, multi-stakeholder involvement and approaches to be effective.

It is well understood by Aboriginal Peoples, scientists, and others, and well documented in the CBS, World Conservation Strategy, and other leading biodiversity documents, that the protection of habitat is paramount for achieving *in-situ* species protection and ultimately the recovery of viable populations of species. SARA goes to great lengths to require recovery planners to identify critical habitat; and further, for the federal government to protect critical habitat identified in recovery strategies and action plans.

The draft Policy Framework expends a few paragraphs to reiterate SARA requirements. However, the federal government's record on identifying and protecting critical habitat has been dismal.¹⁰⁶ In fact, to date, the federal government has only issued fifteen critical habitat statements (which details how the Competent Minister believes that a portion of critical habitat is protected under existing law),¹⁰⁷ four Gazetted Critical Habitat Descriptions (which gives notice about the additional protection of a critical habitat found within an already protected area, such as a national park, marine protected area, or national wildlife area),¹⁰⁸ and only one Critical Habitat Protection Order (to extend SARA Section 58 prohibitions to critical habitat not found within a protected area or not believed to be adequately protected under existing law).¹⁰⁹

In instances where critical habitat has been identified in a recovery strategy, such as in the ten inner Bay of Fundy watersheds that are critical to the survival of the iBoF population of Atlantic Salmon, DFO has been slow to protect the identified critical habitat. Squeaking under the wire at the last minute of the three month timeline allowed by SARA, DFO did release a "Gazette Description" statement that the critical habitat found within one national park was considered protected. However, to date, DFO has been silent as to the status of protection for the other 90% of the identified critical habitat, which lies outside the protection afforded by the National Park. In fact, there has been little or no discussion at the Recovery Team level as to approaches to best achieve protection of critical habitats identified by a Recovery Team in the iBoF Atlantic Salmon Recovery Strategy.

¹⁰⁶ For example, in 2007, facing a Federal Court challenge by conservation groups over the failure of EC to include critical habitat in the Piping Plover Recovery Strategy, EC officials decided to withdraw the Recovery Strategy in order to include identification of critical habitat and thus avoid a court challenge. At the time, EC promised to review over fifty other recovery strategies for the sole purpose to include critical habitat. However, in 2009, in *Alberta Wilderness Association v. Minster of Environment*, the Federal Court ruled that EC was still failing to include critical habitat in the Sage Grouse Recovery Strategy. The Court found that EC was unreasonable in its approach to require minute details before it identified any critical habitat. SARA requires that the Competent Minister identify critical habitat, as far as possible, and with the best information available at the time of drafting a recovery strategy. Further the Federal Court found that the EC *draft Policy on the Identification and Protection of Critical Habitat under SARA, July 31, 2006* was inadequate and in some cases contradictory to SARA. To our knowledge, that policy was never finalized, nor has another policy on identifying critical habitat been posted on the SARA Registry. If the draft Policy Framework is the federal government's response to posting a policy on the identification of critical habitat, we do not see how EC would be able to defend another court challenge using this draft Policy Framework. The policy on identifying critical habitat in the draft Policy Framework is much less than the former draft critical habitat policy shot down by the Federal Court in 2009.

¹⁰⁷ Banff Springs Snail*, Black-footed Ferret*, Cucumber Tree*, Engelmann's Quillwort, Greater Sage-Grouse*, Horsetail Spike-rush*, Nooksack Dace, North Atlantic Right Whale, Northern Bottlenose Whale, Pink Sand-verbena*, Piping Plover*, Roseate Tern*, and Whooping Crane*. * - only for critical habitat found in an already protected area.

¹⁰⁸ Inner Bay of Fundy Populations of Atlantic Salmon within a national park, Lake Chubsucker in national wildlife areas and a national park, Northern Bottlenose Whale in a marine protected area, and Water-pennywort in a national park.

¹⁰⁹ Northeast Pacific Northern and Southern Resident Populations of Killer Whales.

Given that the federal government has attempted to reduce the importance of Recovery Teams, we question how Canadian's will be able to hold the Government of Canada accountable to the protection of critical habitat, without resorting to court challenges. For example, under SARA Section 59(2), if a recovery strategy or action plan identifies that a portion of critical habitat is unprotected, then the Competent Minister must make a recommendation to the GiC to protect that critical habitat.

If Canadians are not allowed to be an integral and vital part of recovery planning under SARA, how can Canadians be sure that critical habitat is adequately identified and protected, and thus be reasonably assured that Canada is addressing the root causes of species loss – that being the destruction and alteration of habitats.

This is an especially important matter for Aboriginal Peoples. RENEW specifically seeks the inclusion of Aboriginal Peoples, as full members of Recovery Teams and Recovery Implementation Groups, for the drafting, implementation, and oversight of recovery strategies and action plans. We believe that to capture Aboriginal Peoples efforts and ATK, the RENEW process of involvement in Recovery Teams and Recovery Implementation Groups is far better process than that which is proposed by the draft Policy Framework – federal government drafting recovery documents and then later possibly consulting with Aboriginal Peoples.

The preferred recovery planning process for Aboriginal Peoples, would be to have direct involvement in Recovery Teams and Recovery Implementation Groups, under RENEW guidance, from point of brainstorming to final recovery document posting, followed by formal consultation with representatives of Aboriginal Peoples, and finally, Recovery Team or Recovery Implementation Group, with Aboriginal Peoples, oversight of Recovery Strategy implementation.

We believe that the process suggested by the draft Policy Framework will fail on multiple accounts.

IMPLEMENTATION

Machinery of government approach

The Implementation Section contains the strongest policy commitments of all the draft Policy Framework sections toward involving Canadians to work together with the federal government to seek solutions toward halting the continued loss of species. The opening statement of this section states that the draft Policy Framework provides policy direction and guiding principles for activities undertaken by the federal government to not only implement recovery strategies, action plans, and management plans, but also to *“encourage and facilitate appropriate implementation activities by other governments, organizations, and persons.”*

However, we find that the following few pages of the draft Policy Framework are scant on actually providing direction or guidance on how federal government officials will use the many tools available to the federal government to achieve SARA implementation.

The draft Policy Framework makes the commitment that:

“the competent departments have a key role to play in supporting and encouraging stewardship actions by a broad range of organizations, institutions, and persons across Canada. At all stages in the implementation of recovery strategies, action plans, and management plans, the competent departments will seek partnerships to carry out specific actions.”

In addition, the draft Policy Framework recognizes that:

“the involvement of Aboriginal Peoples is integral to the implementation of recovery strategies, action plans, and management plans for many species at risk” and “where appropriate, the competent ministers will work with Aboriginal Peoples in the implementation of recovery strategies, action plans, and management plans.”

When will the federal government engage Aboriginal Peoples? How will the federal government do that? Who is expected to participate in recovery actions and in what ways? What will the federal government do to accommodate Aboriginal Peoples to implement recovery and management measures? How will the federal government address the many policy, social, economic, and cultural roadblocks which now prevent the meaningful involvement and participation of Aboriginal Peoples in SARA? How will the federal government guarantee that Aboriginal and Treaty Rights will not be abrogated or derogated, because of the involvement of some Aboriginal persons or sharing of some ATK?

Unfortunately, the draft Policy Framework does not answer any of these questions. What the draft Policy Framework does instead is:

- list the names of the four main funding mechanisms the federal government now uses under SARA to fund citizens, academics, and federal government departments recovery activities;
- list the names of the five main land protection measures the federal government now uses under SARA to protect critical habitat;

- list the names of the five main regulatory mechanisms the federal government now uses under SARA to implement recovery strategies, action plans, and management plans; and
- very briefly discuss the need for engaging and educating recovery practitioners and the public (but again, the who, what, when, where, and how are all missing).

We are concerned about the lack of discussion and guidance in this section. Even though the federal government makes commitments to implement recovery strategies, action plans, and management plans, the draft Policy Framework does not provide any guidance to department officials as to how the federal government intends on doing that.

Also, as the volume of COSEWIC assessed species increases, it is evident that there are many actions that the federal government, working with Canadians, needs to undertake to make progress on SARA. How are the Government of Canada's priorities balanced between exploitation/exploration and conservation/sustainable use? How can some initiatives be brought together to be more effective? In what ways will the federal government work with other levels of government, agencies, and boards to address systemic obstacles which prevent or slow the implementation of SARA, or to raise those issues to the Cabinet for direction? What are the current priorities and actions of the federal government to address even larger systemic problems which prevent the full and meaningful implementation of the CBS and CBD? In what ways is the federal government working to integrate, *as far as possible, the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources* into sectoral and cross-sectoral plans, programs, and policies, as called for by the CBD?

One obvious mechanism which we believe that the federal government should prioritize, and which should be included in the draft Policy Framework, is for the federal government to actively seek out Aboriginal Peoples or their Aboriginal organizations to explore SARA "Stewardship and Conservation" Agreements under Sections 11, 12, 13, and 62. In the draft Policy Framework, we expect and require that the federal government move beyond reciting language of intent; and provide more details about the who, what, when, where, why, and how the federal government will implement SARA.

The other area, where the draft Policy Framework is lacking, is on its narrow definition of "implementation". The draft Policy Framework gives the strong impression, most particularly in the 'context paragraph', that the federal government understands "implementation" to only mean the implementation of a recovery strategy, action plan, or management plan – or more specifically, one that has been finalized by a federal government department and approved by the Competent Minister.

Although the Implementation Section states, as a principle, that the federal government *"promotes early action by Canadians, which may require action prior to the completion of a recovery strategy, action plan, or management plan"*, the remainder of the section only discusses the implementation of these documents after completion and ministerial approval.

How would the government promote early action when, in fact, throughout the previous sections of the draft Policy Framework (i.e., assessment, protection, and recovery planning), the invitation for broad-based involvement of Canadians, and especially Aboriginal Peoples, is almost totally absent?

Whole of society approach

The CBD, CBS, and other precedent documents are clear; implementation of measures go far beyond normal machinery of government approaches. The CBD notes in the preamble that:

“it is vital to anticipate, prevent, and attack the causes of significant reduction or loss of biological diversity at source”

By this, the CBD specifically means that, at least, States shall:

- *integrate, as far as possible, and appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes, and policies;*
- *endeavour to provide the conditions needed for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components;*
- *identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity and monitor their effects;*
- *where a significant adverse effect on biological diversity has been determined, regulate or manage the relevant processes and categories of activities;*
- *support local populations to develop and implement remedial actions;*
- *adopt social and economically sound measures that act as incentives for the conservation of biological diversity and sustainable use of components of biological diversity;*
- *provide and/or facilitate access for and transfer to other Contracting Parties of technologies that are relevant to the conservation and sustainable use of biological diversity;*
- *facilitate the exchange of information from all publicly available sources, relevant to the conservation and sustainable use of biological diversity; and*
- *provide, in accordance with [a States] capabilities, financial support and incentives in respect of those national activities which are intended to achieve the objectives of the CBD.¹¹⁰*

Sadly, the draft Policy Framework does not address any one of these actions, which would enhance and advance the implementation of SARA. Instead, the federal government continues to choose the narrow, limiting road, so that Canadians' inputs, and even the inputs of other federal departments and agencies, are restricted solely to the implementation of the federal government approved recovery strategies, action plans, and management plans.

In Canada, the requisite agreements are in place for all jurisdictions to act on these articles. The Government of Canada does have the tools to “anticipate, prevent, and attack the root causes of biodiversity loss”. In fact, the Government of Canada response to the CBD (i.e., the CBS) goes beyond what is required by the CBD.

¹¹⁰ CBD, a. 6(b), 8(i), 7(c), 8(l), 10(d), 11, 16.1, 17.1, and 20.1, respectively.

The CBS calls on the Government of Canada to:

“challenge and invite all Canadians to contribute toward achieving the goals of the CBS.”

Further to that, the Biodiversity Outcomes Framework states that “governments are committed to take the lead in [directly engaging Canadians to achieve biodiversity outcomes] by providing Canadians with the opportunity to become partners in developing and achieving the long-term vision and goals for the natural communities that keep this country healthy and prosperous.”¹¹¹

To do this, the National Accord Framework states, as a key implementation principle, that government will “make use of existing landscape, ecosystem, and species management systems, with a multi-species approach, where practical and proactively pursue opportunities for collaboration among responsible jurisdictions and interested parties.”¹¹²

How will the federal government take the lead to provide Canadians, particularly the Aboriginal Peoples of Canada, the opportunities and invitation to become partners with the Government of Canada to implement SARA? How is the Government of Canada challenging Canadians, and especially industry, to contribute toward the implementation of SARA? The draft Policy Framework does not answer these either. It only hints at a few possible SARA implementation mechanisms administered by the federal government. It does not actually provide guidance as to how the federal government intends to use those few federal government mechanisms, let alone how the federal government could use the many other acts, policies, strategies, programs, and plans available in the tool chest of the federal government to effectively govern the Federation of the Peoples of Canada with an effective SARA, implemented with the broadest involvement possible – *the whole of society*.

SARA goes to great lengths to cite the inclusion and participation of Aboriginal Peoples, as necessary throughout the whole of SARA. This relates back to two key articles in the CBD and CBS, which call for a new relationship between the Government of Canada and Aboriginal Peoples to work together toward the objectives of the CBD.

Article 8(j) of the CBD calls for States to respect, preserve, and maintain the knowledge, innovations, and practices of Indigenous Peoples and further more to work with Indigenous Peoples to promote Indigenous Peoples’ knowledge, innovations, and practices for consideration and adoption by a larger segment of society and by governments.¹¹³

¹¹¹ Biodiversity Outcomes Framework, p. 6.

¹¹² National Accord Framework, p. 6-7.

¹¹³ In more detail, Article 8(j) requires that States shall “subject to its national legislation, respect, preserve, and maintain knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.” Clearly, this is a much farther reaching article than what we present here. It is of paramount importance to Indigenous Peoples. We refer the reader to Glowka et. al., *A Guide to the Convention on Biological Diversity*, p. 45-47, as a starting point to better understand the importance of Article 8(j).

Section 7 of the CBS calls for the Government of Canada to encourage and respect Aboriginal Peoples to develop a uniquely Aboriginal Peoples approach to implement the CBD. The approach must reflect the distinct values, social networks, traditional economies, cultures, and worldviews which define the seventy-three distinct Aboriginal Nations of the Aboriginal Peoples of Canada. The CBS requires governments to work with Aboriginal Peoples in partnership to examine ways in which Aboriginal Peoples may share their unique approaches with others and how their approaches can be incorporated into the decision-making process.¹¹⁴

How will the federal government work with and respect Aboriginal Peoples to preserve and maintain Aboriginal Peoples knowledge, innovations, and practices about species at risk? Through what mechanisms will the federal government promote Aboriginal Peoples values, social networks, traditional economies, and cultures for the benefit of species at risk? Where in the draft Policy Framework, does the federal government prioritize the sharing of Aboriginal Peoples knowledge and involvement for species at risk, beyond just that for implementing a recovery strategy, action plan, or management plan? It does not exist in this draft.

It is sad that after decades of government and public cooperation and collaboration at various levels on species at risk protection and recovery, such as through RENEW during the late 80s, 90s, and early 2000s, the federal government now cannot come to grips with the magnitude of the broad meaning of “implementation”. Canadians, and especially Aboriginal Peoples, require that their elected governments take direct action and leadership on SARA. What SARA requires for implementation goes well beyond what only species at risk practitioners or regional federal government officials can initiate on-the-ground or out in the field and well beyond what can be written in a few pages of a recovery strategy, action plan, or management plan.

SARA requires a reckoning of all policies, strategies, programs, and plans and leadership within the whole of government to put Canada on the road as a nation that respects and protects its clean and pristine lands, waters, air, and biodiversity. What is needed is federal government leadership to promote, in all areas of government, a Canada which nurtures a rich and diverse array of ecosystems, species, and genes and where diverse and healthy populations of Canadians resolve to work together, within the Federation of the Peoples of Canada, for *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources.*

¹¹⁴ The CBS is very cognizant of the history and reality of the need for Aboriginal Peoples to be involved in the implementation of the CBD. Cited in Section 7 (*Indigenous Community Implementation*) as vital to understand and appreciate are Aboriginal and Treaty Rights, Constitutional recognition and guarantees, Supreme Court of Canada decisions, the Brundtland Commission Report on Sustainable Development, the CBD, and the “*range of expertise that could significantly contribute to the conservation of biodiversity and the sustainable use of biological resources.*”

MONITORING & EVALUATION

Recovery Strategies

Again, the draft Policy Framework chooses to take a linear approach to species at risk protection and recovery, by narrowly defining monitoring and evaluation to be solely a process that occurs during or after the implementation of species protection, recovery strategies, action plans, or management plans. In fact the Monitoring & Evaluation Section identifies “monitoring” to be:

“the action of collecting, organizing, and tracking information pertaining to progress toward achieving the population and distribution objectives stated in the recovery strategy for a species, its habitat, and its threats, or the objectives stated in the management plan for a species, or information pertaining to progress in implementing identified actions in a recovery strategy, action plan, or management plan.” [emphasis added]

The definition of “evaluation” follows that it is:

“assessing the significance of progress tracked through monitoring, in relation to goals, objectives, and actions.” [thus also referring solely to progress on recovery strategies, action plans, and management plans]

The draft Policy Framework goes on to state that “provisions for monitoring and evaluation should be taken into account from the outset of species recovery and management efforts through their incorporation into management plans and action plans. To this end, the Species at Risk Act specifies... that the competent minister must monitor the implementation of action plans and the progress toward meeting its objectives.”

It is quite clear in the draft Policy Framework that “monitoring and evaluation” refers solely to “monitoring and evaluation of Competent Minister approved recovery strategies, action plans, and management plans”.

Again, by narrowing definitions, the draft Policy Framework misses vital concepts, necessary to advance SARA. The narrowing of definitions for “assessment”, “protection”, “recovery planning”, and “implementation” have been discussed earlier. Whether by purpose, or because the narrowing of the previous terms in themselves restricts the draft Policy Framework from appreciating the more widely accepted terminology used in the CBD and CBS, the draft Policy Framework misses four very important concepts:

- monitoring and evaluating all biodiversity;
- sharing information and improving monitoring and evaluation systems;
- monitoring and evaluating legislation, policy, activities, education, and public knowledge; and
- the critical role of Canadians in monitoring and evaluation.

Without a broad understanding; that is to say, if the federal government chooses to restrict the definition of “monitoring” or “evaluation” solely to be a “step” in the SARA cycle, it will be extremely difficult for Canadians to build upon and improve SARA implementation.

In fact, the IUCN cautions against interpreting the terms “identification”, “monitoring”, or “evaluating” to be a single step process in a point in time. Rather, those terms should be interpreted as liberally as possible, as being broad, continuous, and inclusive processes, which directly influence all other process leading towards realizing the objectives of the CBD.¹¹⁵

Monitoring & evaluating all biodiversity

The drafters of the CBD were careful not to restrict their definitions of monitoring or evaluation to be a process for maintaining a list of species. It would be a futile exercise to enumerate or continually monitor tens of thousands of species within a country. Instead, under the CBD, States are required to carry out broad monitoring and evaluation, with the purpose to identify ecosystems, habitats, species, communities, and genomes that are distinctive, rich, representative, economically or culturally important, or threatened.¹¹⁶ In other words, monitoring and evaluation should not be for a species alone, or a list of species, but as a means to consider a larger picture, ultimately for the benefit of all biodiversity.

Taking the broad approach allows decision-makers to take in the bigger picture, which includes macroscopic human interactions and long-term cumulative effects. Dedicated and pointed efforts to address long-term, cumulative effects are, in most cases, far more effective at reaching the objective of the CBD, than simply accumulating multiple, separate recovery activities for a list of species. SARA is a tool and starting point to begin to look at all biodiversity and all human interactions with biodiversity.

For example, the National Accord requires governments to “*monitor, assess, and report regularly on the status of all wild species*”. Though the draft Policy Framework does briefly refer to the *General Status of Wild Species* report, prepared by the CWDC once every five years, beyond that, there is no other mention of the monitoring and evaluation of non-SARA Listed species. Does the five year *General Status of Wild Species* report, in itself, completely fulfill the Government of Canada’s obligation to “monitor, assess, and report regularly on the status of all wild species”? What about monitoring, evaluating, and incrementally reporting on the federal government’s progress to advance COSEWIC assessed species through the SARA process; or monitor the status of species which are denied SARA Schedule 1 status; or evaluating whether species on provincial or territorial lands have adequate protection?

¹¹⁵ Again the IUCN publication *A Guide to the Convention on Biological Diversity, 1994* prepared by Glowka et. al. is an excellent source for interpreting the language and intent of the CBD.

¹¹⁶ CBD a. 7.

Sharing information and improving monitoring & evaluation systems

Article 7 of the CBD requires the identification and monitoring of biodiversity components (i.e., ecosystems, species, and genes) and also processes and categories of activities which may impact biodiversity, paying closest attention to biodiversity that is in the most danger and also processes and activities most likely to have significant adverse effects. Article 7 also requires the storage and organization of that information so that it is useful.

When considering Article 7 with other articles, the CBD intends for that information to be accessed by a multitude of parties for their own monitoring and evaluation purposes, as biodiversity stakeholders sharing in the “*common concern of all humankind*” and providing additional independent oversight for the objectives of the CBD.

The CBS details many important instances where Canadians, as vital to the implementation of the CBS, need to conduct monitoring and evaluation to:

- determine the ecological requirements of species at risk;
- determine the potential impacts of ecosystem restoration and rehabilitation programs on ecosystems and species;
- identify alien organisms;
- identify potential harmful living modified organisms;
- track the effects of atmospheric changes on ecosystems, species, and genetic diversity;
- identify incremental and cumulative impacts; and
- rate the effects of human population density, land and resource development, and resource consumption patterns on biodiversity.¹¹⁷

The CBS lists more, but the point is that multiple points of monitoring and evaluating are needed to continually improve Canadians’ collective understanding about biodiversity and how to better govern human activities to conserve and sustainably use biodiversity.¹¹⁸ This is not a linear approach. Monitoring and evaluation must include a multitude of Canadians, in some cases working collaboratively with governments and in other cases working independently of governments, to compile the best information available and also to provide defensible critiques and honest analysis of progress made toward the objectives of the CBD. Monitoring and evaluating recovery strategies, action plans, and management plans only captures one measure and by themselves doesn’t do enough to accurately measure or grasp the level of work and results Canadians have made, or can make, toward the implementation of SARA.

¹¹⁷ CBS, s. 1.23, 1.31, 1.81, 1.83, 1.86, 1.93, and 1.96, respectively.

¹¹⁸ *ibid*, s. 2.2 and 2.1, respectively.

Legislation, policy, activities, education, and public knowledge

Articles 7(c) and 8(l) of the CBD combine to further extend the definition of “monitoring & evaluation” by requiring States to “*identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques*” (7c) and then to “*regulate or manage the relevant processes and categories of activities*” (8l).

The effect of these two articles together is to put the onus on States to proactively evaluate legislation, policies, industrial activities, education, public knowledge, and other “processes and categories of activities” (a very broad scope) to determine if they could have impacts on the conservation or sustainable use of biodiversity. In essence, what is happening today, which runs counter to the objectives of the CBD?

If current public, private, and volunteer processes and categories of activities are not evaluated, how will Canadians know if Canada can even begin to implement a recovery strategy? For example, if the public does not know of a species at risk, or if Government of Canada policy promotes certain industries that have a track record for harming habitats, then what good is a recovery strategy, other than a paper exercise to list a species status, needs, and threats? Meaningful recovery goals and objectives cannot be achieved, if a climate of knowledge, caring, and cooperation does not exist or is hostile towards recovery strategy objectives.

In fact, in several places, the CBS requires the continued development and improvement of methods for monitoring and evaluating progress. As well as acquiring better information for specific recovery activities, these ongoing actions are also necessary to advance the CBS, so that biodiversity legislation and programs in Canada, such as SARA, are dynamic and fluid to address broad or new challenges.

Develop and deliver effective biodiversity education and awareness programs by evaluating and monitoring the level of public understanding and knowledge regarding biodiversity conservation and the sustainable use of biological resources in order to design and target effective education and awareness programs.

Jurisdictions will examine their current legislative regimes with respect to the goals of [the CBS], and take the necessary and practical steps towards creating an improved legislative framework that supports the conservation of biodiversity and the sustainable use of biological diversity.

Jurisdictions will determine whether harmonization among Canadian jurisdictions and other countries of biodiversity-related legislation is necessary to reduce duplication and fill gaps and work towards harmonization where appropriate and practical.

Encourage the development of an indigenous community analysis of [the CBD] with reference to “knowledge, innovations, and practices of indigenous communities”...¹¹⁹

¹¹⁹ *ibid*, s. 3.1a, 4.7, 4.8, and 7.2, respectively.

Some may argue that the draft Policy Framework should narrowly define monitoring and evaluation to be only activities undertaken to ascertain the effectiveness of recovery strategies, action plans, and management plans, because the draft Policy Framework, as currently written, clearly intends to define SARA as a cyclical process of assessment, protection, recovery planning, implementation, and finally monitoring & evaluation.

However, we draw the reader's attention to another SARA implementation document, the EC/DFO/PCA *Cooperative Management Framework for the Strategy for the Protection of Species at Risk*,¹²⁰ which does draw connections between broad-based monitoring and evaluation (e.g. policies, education, programs, development, etc.) and more specific monitoring and evaluation required for recovery strategies, action plans, and management plans.

The Departments [i.e. EC, DFO, and PCA] will develop consistent parameters to monitor and assess their performance on: population trends, recovery planning, recovery implementation, critical habitat, habitat stewardship implementation, public awareness, community involvement, enforcement, and changes in stakeholder practices.

Even from this federal government Cooperative Management Framework, we see that a broader understanding of monitoring and evaluation is intended, more in-line with the understanding under the CBS and CBD.

Critical role of Canadians

We again point out that SARA cannot be a stand-alone act. It is the premier act in Canada to bring Canadians, especially Aboriginal Peoples, and specific interests together to develop and implement pragmatic solutions to halt or reverse the continued loss of biodiversity. SARA is the Canadian flagship for the implementation of the CBD in Canada. With this understanding, of what SARA is meant to be for Canadians, the Government of Canada cannot allow itself to fall into a narrow mindset or trap of viewing SARA as a linear or circular listing or de-listing process. The Government of Canada, working in partnership with Canadians, must be able to use SARA to broadly monitor and evaluate all biodiversity and all human interactions that may affect biodiversity.

We require the federal government to interpret SARA as broadly as possible through the draft Policy Framework and provide guidance and direction, and explore avenues that encourage and promote Canadians', and especially Aboriginal Peoples', participation to implement SARA and the CBD in Canada.

¹²⁰ *The Cooperative Management Framework for the Strategy for the Protection of Species at Risk*, lays out departmental responsibilities and roles for the implementation of the federal species at risk program, especially the responsibilities of Assistant Deputy Ministers, Director Generals, and program managers as they relate to CESCC, the SARA listing process, RENEW, and species at risk funding programs. The Cooperative Management Framework defines, the federal *Strategy for the Protection of Species at Risk*, as the federal government's involvement in three things: 1) the National Accord, 2) SARA, and 3) the funding programs of the Habitat Stewardship Program, Interdepartmental Recovery Fund, and Aboriginal Funds for Species at Risk.

Again, we raise that one area the federal government can begin to make headway for full monitoring and evaluation is through SARA “Stewardship and Conservation” Agreements under Sections 11, 12, 13, and 62 and through annual reporting from the Minister required under Section 126, which includes reporting on the progress of SARA agreements. We maintain that an important activity for EC, DFO, and PCA SARA officials is to create a climate of openness, invitation, and support for the involvement of Aboriginal Peoples and other Canadians in monitoring and evaluation. We also call for the federal government to recognize the role of NACOSAR and support it as a premier body to advise the Minister on the implementation of SARA and to provide advice and recommendations to CESSC about habitats, species, and Aboriginal Peoples involvement in *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources*.

It is not a matter of the federal government to simply produce its own reports on monitoring or evaluation of the status of species. Rather it is for the federal government to report on the activities and findings about what is happening in Canada for *the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources*, which is made by Canadians, public and civil society, NACOSAR, COSEWIC, ATK-SC, CESSC, RENEW, CWS, DFO, PCA, as much as possible the *whole of government and the whole of society*. It is for the Government of Canada to report to Parliament and Canadians that SARA, as the flagship for the CBS and CBD, is transparent, inclusive, and an open partnering process.

When adaptive management approaches, the precautionary approach, and the ultimate value which Canadians place on their “natural wildlife” as integral to their “national identity” are recognized, valued, and included in efforts to engage and accommodate the diversity of Peoples and draw on the knowledge and ideas of Aboriginal Peoples and other Canadians, that is when Canada will witness real monitoring and true evaluation of Canada’s *conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of benefits arising from the use of genetic resources*.

CLOSING VIEWS

With the release of the Canadian Biodiversity Strategy in 1995, Canada proclaimed that

“We are no longer planning and making decisions based exclusively on a species-by-species or sector-by-sector basis, but are practising ecological management.”¹²¹

The Aboriginal Peoples of Canada know what it means to “practice ecological management” – ultimately it is to recognize that humankind is an interconnected and interdependent part of the natural world, not a conqueror of nature. “Ecological management” is about managing human practices, as a part of the surrounding natural ecology, so that the natural world is respected and preserved. Under the eco-centric worldview humankind receives the gifts of life; it does not take for profit and power.

For a new governance model in Canada, proposed by the CBS, that requires changes in thinking, changes in values, and changes in practices. Those can only be achieved by all Canadians coming together to share and learn with the Aboriginal Peoples of Canada (the holders of traditional knowledge about Canada’s vast biodiversity), and together plan for a better future for biodiversity and for Canadians, as part of that biodiversity.

Unfortunately, we still do not see any evidence that Canada is in a new era of ecological management or governance. The necessary invitation is not extended to include Canadians and Aboriginal Peoples to protect and become involved in saving an integral part of their “national identity and heritage” – i.e., wildlife in all its forms and all its habitats throughout the vast diverse eco-systems of Canada, where each and every single animal and plant has value in and of itself and is valued by all Canadians. How can there be “ecological management” when the single largest management element, the work and ethics of people, is left out?

SARA recognizes that the machinery of government cannot or has not accepted the value of considering the conservation and sustainable use of biodiversity to be equal or greater than exploration and exploitation for profit. For this reason, SARA specifically requires certain legal actions, as the minimum, to assess, protect, and recover species at risk and critical habitats.

SARA also includes many opportunities to look at and address the deeper and more important issues in Canada that ultimately result in destruction of habitat and endangerment of species. If the opportunities presented in SARA are utilized, to advance SARA as Canada’s flagship for the implementation of the CBD, then Canada can use SARA to weave a fabric of protection and respect for our natural world and Canadian’s place within, a much greater protection than afforded through the legal measures of SARA.

Unfortunately, we see the federal government obsessed with the former and not active or even addressing the possibilities of the latter, as evidence by the draft Policy Framework. SARA struggles alone, crawling inch-by-inch, against an overwhelming tide of “Business as Usual”.

¹²¹ CBS s. 6

ACRONYMS & TERMS

Aboriginal Working Group	– Established for the purposes of providing input into the drafts of Bills C-65, C-33, and C-5.
ABS	– Access to Genetic Resources and Traditional Knowledge Associated with Genetic Resources and the Equitable Sharing of Benefits from their use
AFSAR	– Aboriginal Funds for Species at Risk
ATK	– Aboriginal Traditional Knowledge
ATK-SC	– Aboriginal Traditional Knowledge Subcommittee of COSEWIC
CBD	– Convention on Biological Diversity
CBS	– Canadian Biodiversity Strategy
CESCC	– Canadian Endangered Species Conservation Council
Competent Minister	– Minister of Environment, Minister of Fisheries and Oceans, or the CEO of Parks Canada Agency (via the Minister of Environment)
Cooperative Management Framework	– EC/DFO/PCA Cooperative Management Framework for the Strategy for the Protection of Species at Risk
COSEWIC	– Committee on the Status of Endangered Wildlife in Canada
CWDC	– Canadian Wildlife Directors Committee
DFO	– Department of Fisheries and Oceans Canada
EC	– Environment Canada
GiC	– Governor-in-Council
ILO	– International Labour Organization
IUCN	– International Union for the Conservation of Nature
Minister	– Minister of Environment
NACOSAR	– National Aboriginal Council on Species at Risk
National Accord	– National Accord for the Protection of Species at Risk
National Accord Framework	– National Framework for Species at Risk Conservation
PCA	– Parks Canada Agency
RENEW	– Recovery of Nationally Endangered Wildlife
RIAS	– Regulatory Impact Analysis Statement
SARA	– Species at Risk Act
SCC	– Supreme Court of Canada
SEIA	– Socio-Economic Impact Analysis
UN	– United Nations
UNDRIPS	– United Nations Declaration on the Rights of Indigenous Peoples
Voluntary Sector Accord	– An Accord Between the Government of Canada and the Voluntary Sector

REFERENCES

Austen, Catherine, The Canadian Nature Network, *Species at Risk Act Three Years Later: An Interim Report*, 2006, Ottawa, Ontario, Nature Canada.

Canada, Agriculture and Agri-Food Canada, Centre for Land and Biological Resources Branch, and Environment Canada, State of the Environment Directorate, *A National Ecological Framework for Canada*, by the Ecological Stratification Working Group, 1995, Ottawa, Ontario, Minister of Public Works and Government Services Canada.

Canada, *Cabinet Directive on Streamlining Regulation*, 2007, Ottawa, Ontario, Minister of Public Works and Government Services.

Canada, Canadian Endangered Species Conservation Council, *National Accord for the Protection of Species at Risk*, 1996, Ottawa, Ontario, Environment Canada.

Canada, Canadian Endangered Species Conservation Council, *National Framework for Species at Risk Conservation*, 2007, Ottawa, Ontario, Environment Canada.

Canada, Canadian Endangered Species Conservation Council, *Recovery of Nationally Endangered Wildlife Annual Report 2000-2001*, Chaired by David Bracket and Adair Ireland-Smith, 2001, Ottawa, Ontario, Minister of Public Works and Government Services Canada, RENEW Report 11.

Canada, Canadian Endangered Species Conservation Council, *Terms of Reference of the Committee on the Status of Endangered Wildlife in Canada*, Apr. 2010, Ottawa, Ontario, Environment Canada.

Canada, Environment Canada and Fisheries and Oceans Canada and Parks Canada Agency, *Cooperative Management Framework for the Strategy for the Protection of Species at Risk*, 2006, Ottawa, Ontario, Environment Canada.

Canada, Environment Canada, Biodiversity Convention Office, *Canadian Biodiversity Strategy: Canada's Response to the Convention on Biological Diversity*, 1995, Hull, Quebec, Minister of Supply and Services Canada.

Canada, Environment Canada, Biodiversity Convention Office, *Caring for Canada's Biodiversity – Canada's First National Report to the Conference of the Parties to the Convention on Biological Diversity*, 1998, Hull, Quebec, Public Works and Government Services Canada.

Canada, Environment Canada, Canadian Wildlife Service, *Canadian Stewardship Agenda – Naturally Connecting Canadians: A Federal-Provincial-Territorial Initiative*, by the Federal-Provincial-Territorial Stewardship Working Group, 2002, Ottawa, Ontario, Environment Canada.

Canada, Environment Canada, National Aboriginal Council on Species at Risk, *National Workshop for Aboriginal Peoples – Species at Risk: Our Heritage, Our Responsibility*, Nov. 7-9, 2006, *Draft Workshop Report*, March 2009, (unpublished) National Aboriginal Council on Species at Risk.

Canada, Fisheries and Oceans Canada, Canada Science Advisory Secretariat, *Development of a Framework and Principles for the Biogeographic Classification of Canadian Marine Areas*, 2009, Ottawa, Ontario, Fisheries and Oceans Canada, Science Advisory Report 2009/056.

Canada, Fisheries and Oceans Canada, *Eastern Scotian Shelf Integrated Ocean Management Plan: Strategic Plan*, by the ESSIM Stakeholders Advisory Council and Maritime Provinces Regional Committee on Oceans Management, 2007, Dartmouth, Nova Scotia, Fisheries and Oceans Canada.

Canada, Library of Parliament, Parliamentary Research Branch, *Bill-C5: The Species At Risk Act*, by Kristen Douglas, Oct. 10, 2002, Ottawa, Ontario, Library of Parliament, cat. no. LS-438E.

Canada, Library of Parliament, Parliamentary Research Branch, *Bill-C33: The Species At Risk Act*, Kristen Douglas, May 18, 2000, Ottawa, Ontario, Library of Parliament, cat. no. LS-369E.

Canada, Library of Parliament, Parliamentary Research Branch, *Protecting Wild Species at Risk in Canada*, by Jean Luc Bourdages and Christine Labelle, Oct. 24, 2000, Ottawa, Ontario, Library of Parliament, cat. no. PRB 00-19.

Canada, Library of Parliament, Parliamentary Research Branch, *Species at Risk in Canada*, Jean Luc Bourdages, May, 1996, Ottawa, Ontario, Library of Parliament, cat. no. BP-417E.

Canada, Ministers of Environment, Forests, Parks, Fisheries and Aquaculture, and Wildlife, *A Biodiversity Outcomes Framework for Canada*, by Environment Canada, 2006, Ottawa, Ontario, Environment Canada.

Canada, National Recovery Working Group, *Recovery Handbook (ROMAN), 2005-2006 Edition*, 2005, Ottawa, Ontario, Recovery of Nationally Endangered Wildlife.

Canada, Office of the Auditor General of Canada, Commissioner on Environment and Sustainable Development, *Report of the Commissioner of the Environment and Sustainable Development to the House of Commons*, 1998, Ottawa, Ontario, Minister of Public Works and Government Services Canada.

Canada, Office of the Auditor General of Canada, Commissioner on Environment and Sustainable Development, *Report of the Commissioner of the Environment and Sustainable Development to the House of Commons*, 2000, Ottawa, Ontario, Minister of Public Works and Government Services Canada.

Canada, Office of the Auditor General of Canada, Commissioner on Environment and Sustainable Development, *Report of the Commissioner of the Environment and Sustainable Development to the House of Commons*, 2005, Ottawa, Ontario, Minister of Public Works and Government Services Canada.

Canada, Office of the Auditor General of Canada, Commissioner on Environment and Sustainable Development, Dec. *Report of the Commissioner of the Environment and Sustainable Development to the House of Commons*, 2008, Ottawa, Ontario, Minister of Public Works and Government Services Canada.

Canada, Parliament, 37th, First Session, House of Commons, Standing Committee on Environment and Sustainable Development, Meeting 17, *Bill C-5, An Act Respecting the Protection of Wildlife Species at Risk in Canada*, (Evidence) May 1, 2001, Ottawa, Ontario, Queen's Printer for Canada.

Canada, Parliament, 37th, First Session, House of Commons, Standing Committee on Environment and Sustainable Development, Meeting 18, *Bill C-5, An Act Respecting the Protection of Wildlife Species at Risk in Canada*, (Evidence) May 2, 2001, Ottawa, Ontario, Queen's Printer for Canada.

Canada, Parliament, 40th, 2nd Session, House of Commons, Standing Committee on Environment and Sustainable Development, Meeting 23, *Statutory Review of the Species at Risk Act*, (Evidence) May 28, 2009, Ottawa, Ontario, Queen's Printer for Canada.

Canada, Parliament, 40th, 2nd Session, House of Commons, Standing Committee on Environment and Sustainable Development, Meeting 24, *Statutory Review of the Species at Risk Act*, (Evidence) June 2, 2009, Ottawa, Ontario, Queen's Printer for Canada.

Canada, Parliament, 40th, 2nd Session, House of Commons, Standing Committee on Environment and Sustainable Development, Meeting 25, *Statutory Review of the Species at Risk Act*, (Evidence) June 4, 2009, Ottawa, Ontario, Queen's Printer for Canada.

Canada, Parliament, 40th, 3rd Session, House of Commons, Standing Committee on Environment and Sustainable Development, Meeting 8, *Statutory Review of the Species at Risk Act*, (Evidence) Apr. 13, 2010, Ottawa, Ontario, Queen's Printer for Canada.

Canada, Parliament, 40th, 3rd Session, House of Commons, Standing Committee on Environment and Sustainable Development, Meeting 9, *Statutory Review of the Species at Risk Act*, (Evidence) Apr. 15, 2010, Ottawa, Ontario, Queen's Printer for Canada.

Canada, Parliament, 40th, 3rd Session, House of Commons, Standing Committee on Environment and Sustainable Development, Meeting 11, *Statutory Review of the Species at Risk Act*, (Evidence) Apr. 22, 2010, Ottawa, Ontario, Queen's Printer for Canada.

Canada, Parliament, 40th, 3rd Session, House of Commons, Standing Committee on Environment and Sustainable Development, Meeting 12, *Statutory Review of the Species at Risk Act*, (Evidence) Apr. 27, 2010, Ottawa, Ontario, Queen's Printer for Canada.

Canada, *Speech from the Throne*, October 12, 1999, Ottawa, Ontario, Queen's Printer for Canada.

Canada, *Species at Risk Act*, In Statutes of Canada, 2002, Chapter 29, Ottawa, Ontario, Queen's Printer for Canada.

Canada, Supreme Court of Canada, 2004, *Haida Nation v. British Columbia (Minister of Forests)*, SCC 73.

Canada, Supreme Court of Canada, 2004, *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, SCC 74.

Canada, *The Constitution Act*, Being Schedule B to the *Canada Act*, 1982, In Statutes of the United Kingdom, 1982, Chapter 11, London, U. K., Queen's Printer.

Canada, Treasury Board of Canada, *Assessing, Selecting, and Implementing Instruments for Government Action*, 2007, Ottawa, Ontario, Treasury Board of Canada Secretariat.

Canada, Voluntary Sector Roundtable, Panel on Accountability and Governance in the Voluntary Sector, *Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector*, (Report) Chaired by Ed Broadbent, Feb. 1999, Ottawa, Ontario, Voluntary Sector Roundtable.

Canada, Voluntary Sector Task Force, *An Accord Between the Government of Canada and the Voluntary Sector*, Dec. 2001, Ottawa, Ontario, Voluntary Sector Affairs Division, Social Development Canada.

Committee on the Status of Endangered Wildlife in Canada, *Assessment Process and Criteria*, Aug. 2010, Ottawa, Ontario, Environment Canada.

Committee on the Status of Endangered Wildlife in Canada, *Terms of Reference of the Aboriginal Traditional Knowledge Subcommittee*, Feb. 2004, Ottawa, Ontario, Environment Canada.

David Suzuki Foundation, EcoJustice, Environmental Defence, and Nature Canada, *Canada's Species at Risk Act: Implementation at a Snail's Pace*, Apr. 2009, Vancouver, British Columbia, David Suzuki Foundation.

Dutka, Samantha, Roger Hunka, and Joshua McNeely, *ESSIM: Eastern Scotian Shelf Integrated Management Plan: A case study of a successful IMCAM plan (ESSIM Plan) lacking leadership for implementation*, Nov. 26, 2010, Truro Heights, Nova Scotia, Maritime Aboriginal Peoples Council - Maritime Aboriginal Aquatic Resources Secretariate.

Emery, Alan and Leslie Pattern, *Guidelines for Environmental Assessments and Traditional Knowledge: A Report from the Centre for Traditional Knowledge to the World Council of Indigenous Peoples*, Mar. 1997, Ottawa, Ontario, Centre for Traditional Knowledge.

Federal Court of Canada, 2009, *Alberta Wilderness Association vs. Minister of Environment*, FCC 710.

Glowka, Lyle, Françoise Burhenne-Guilmin, and Hugh Synge, with Jeffrey A. McNeely and Lothar Gündling, *A Guide to the Convention on Biological Diversity*, 1994, Gland, Switzerland, International Union for the Conservation of Nature, Environmental Policy and Law Paper No. 30.

International Union for the Conservation of Nature, United Nations Environment Programme, and World Wildlife Fund, *Caring for the Earth: A Strategy for Sustainable Living*, 1991, Gland, Switzerland, International Union for the Conservation of Nature.

International Union for the Conservation of Nature, with United Nations Environment Programme and World Wildlife Fund, *World Conservation Strategy: Living Resource Conservation for Sustainable Development*, 1980, Gland, Switzerland, International Union for the Conservation of Nature.

Kroeber, A. L., *Cultural and Natural Areas of Native North America*, 1953, Berkeley, California, University of California Press.

Mooers, A. Ø, L. R. Prugh, M. Festa-Bianchet, and J. A. Hutchings, *Biases in Legal Listing under Canadian Endangered Species Legislation*, 2007, In *Conservation Biology*, v. 21, n. 3, p. 572-575, Society for Conservation Biology, Wiley-Blackwell, Hoboken, New Jersey.

Native Communications Society of Nova Scotia, *The Mi'kmaq Treaty Handbook*, 1987, Truro, Nova Scotia, Native Council of Nova Scotia.

Patterson, E. Palmer II, *The Canadian Indian: A History Since 1500*, 1972, Don Mills, Ontario, Collier-Macmillan Canada, Ltd.

Plotkin, Rachel and Dr. S. Scott Wallace, *Left Off the List: A Profile of Marine and Northern Species Denied Listing Under Canada's Species at Risk Act*, 2007, Vancouver, British Columbia, David Suzuki Foundation.

Pobihushchy, S. I., *A Perspective on the Indian Nations in Canada*, July 16, 1984, Fredericton, New Brunswick, Department of Political Science, University of New Brunswick.

Roberts, Callum, *The Unnatural History of the Sea*, 2007, Washington, D.C., Island Press.

Stratos Inc., *Formative Evaluation of Federal Species at Risk Programs*, July 2006, Ottawa, Ontario, Stratos Inc.

Tarbell, Harold, *National Species at Risk Workshop for Aboriginal People – Aboriginal Peoples' Perspective on the Implementation of SARA, Feb. 10-12, 2009, Draft Workshop Report*, Feb. 20, 2009, (unpublished) National Aboriginal Council on Species at Risk.

United Nations, *Convention on Biological Diversity*, 1992, Rio de Janeiro, Brazil, United Nations Treaty, Chapter XXVII, Part 8.

United Nations, *Convention on the Law of the Sea*, 1982, Montego Bay, Jamaica, United Nations Treaty, Chapter XXI, Part 6.

United Nations, *Decolonization – The Task Ahead: Profiles of 18 Trust and Non-Self-Governing Territories*, 1991, New York, New York, United Nations Department of Public Information.

United Nations, Environment Programme, Convention on Biological Diversity, Ad-Hoc Open-Ended Working Group on Access and Benefit Sharing, Ninth Meeting, *Concerns Related to CBD Process, Revised Draft Protocol and Indigenous Peoples' Human Rights*, Joint Statement of Indigenous Peoples and Like-Minded Organizations, Submitted by the Grand Council of the Crees (Eeyou Istchee), Sep. 22, 2010, Montreal, Quebec, Secretariat of the Convention on Biological Diversity, UNEP/CBD/WG-ABS/9/INF/21.

United Nations, Environment Programme, Convention on Biological Diversity, Conference of the Parties, 10th Conference, *Protocol for the Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization*, Oct. 29, 2010, Nagoya, Japan, Secretariat of the Convention on Biological Diversity, UNEP/CBD/COP/DEC/X/1.

United Nations, Environment Programme, Convention on Biological Diversity, Conference of the Parties, 10th Conference, *The Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets*, Oct. 29, 2010, Nagoya, Japan, Secretariat of the Convention on Biological Diversity, UNEP/CBD/COP/DEC/X/2.

United Nations, Environment Programme, Convention on Biological Diversity, Secretariat of the Convention on Biological Diversity, *Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity (CBD Guidelines)*, 2004, Montreal, Quebec, Secretariat of the Convention on Biological Diversity.

United Nations, Environment Programme, Convention on Biological Diversity, Secretariat of the Convention on Biological Diversity, *Global Biodiversity Outlook 3*, 2010, Montreal, Quebec, Secretariat of the Convention on Biological Diversity.

United Nations, General Assembly, 15th Session, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, Dec. 14, 1960, New York, New York, United Nations, Resolution 1514, A/RES/15/14.

United Nations, General Assembly, 61st Session, *Declaration on the Rights of Indigenous Peoples*, Sep. 12, 2007, New York, New York, United Nations, Resolution 61295, A/RES/61/295.

United Nations, General Conference of the International Labour Organization, Session 40, *International Labour Organization Convention on Indigenous and Tribal Populations (Number 107)*, 1957, Geneva, Switzerland, International Labour Office.

United Nations, General Conference of the International Labour Organization, Session 76, *International Labour Organization Indigenous and Tribal Peoples Convention (Number 169)*, 1989, Geneva, Switzerland, International Labour Office.

United Nations, International Labour Organization, *Indigenous and Tribal Peoples and the ILO*, 1994, Geneva, Switzerland, International Labour Office.

Wilson, Edward O., *The Future of Life*, 2002, New York, New York, Alfred A. Knopf.



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