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July 18, 2007

Wildlife Act Review Project
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To Whom It May Concern:

RE: *Wildlife Act* Review

This is a joint submission, in response to the Ministry of Environment's review of the *Wildlife Act*, by Sierra Legal and the Environmental Law Clinic on behalf of the David Suzuki Foundation, ForestEthics, Sierra Club of Canada - BC Chapter, Raincoast Conservation Society, the Wilderness Committee, Wildsight, the Canadian Parks and Wilderness Society - BC Chapter, and the BC Government and Service Employees' Union.

The following is divided into three parts: (1) comments on the appropriate process for defining the content of an amended *Wildlife Act*; (2) introductory comments; and (3) specific comments on the Discussion Paper¹. Recommendations are contained within each of the three parts. For ease of reference, the recommendations are also set out in an Appendix.

¹ Fish and Wildlife Branch, Ministry of Environment, "The *Wildlife Act*: Managing for Sustainability in the 21st Century – Discussion Paper" (2007)

I. This issue deserves public hearings

The *Wildlife Act* has not been subject to a major review since 1982, and the new legislation may well define wildlife policy in the province for the next quarter century. It appears that Government intends to undertake public consultation on the new *Wildlife Act* solely through an online website that allows the public to submit written comments. We consider this method of public consultation is sorely inadequate, considering the significance of the legislation.

Effective public consultation is necessary to create trust in regulatory institutions and reduce future conflict among stakeholders. Therefore, public consultation must be accountable – it must demonstrate that decision-makers are seriously weighing the public's comments, judiciously balancing those comments, and melding them into optimal law and public policy. It must also demonstrate that private or pecuniary interests are not outweighing public interests.

This is best achieved through public hearings.

Only public hearings allow citizens to hear the submission that others make. Only public hearings allow civil servants to be questioned, their immediate candid responses obtained, and appropriate responses given. Only through this manner can people clarify their points and ensure common understanding.

Furthermore, public hearings are necessary to give the broader public an opportunity to participate and to learn the position of all stakeholders; the current review excludes those with limited computer skills and lower literacy levels. The media will largely ignore an online exercise and generally, so will the public. Thus, true public participation will not be achieved.

In contrast, a properly advertised public hearing is a public event that can attract members of the general public to participate.

In the absence of public hearings, our clients ask how meaningful participation in the review process can be ensured. The Discussion Paper makes no reference to how public opinion will be incorporated into the review, provides no process for evaluating and reporting on the process of consultation, and provides no mechanism to determine degree of public satisfaction with the process.

Recommendation:

- We recommend that public hearings be held as soon as possible regarding revision of the *Wildlife Act*.

II. Introductory Comments

Our clients welcome a much needed review of our wildlife legislation. However, they are concerned that the Discussion Paper fails to fully acknowledge the necessary steps

which must be taken to address systemic flaws in British Columbia's approach to protecting our wildlife.

For example, the discussion paper fails to provide (or call for) an integrated and comprehensive approach to wildlife conservation. Instead it discusses a number of seemingly ad hoc actions. It ignores key issues - such as global warming - and states that other key issues - such as habitat protection - will be addressed at another time, in other laws.

The deficiencies in the Discussion Paper may simply reflect the Ministry of Environment's extremely limited mandate for protecting wildlife and its habitat in British Columbia, a circumstance the Discussion Paper fails to fairly and fully reflect or address. For example, in the introduction, the Discussion Paper describes the *Wildlife Act* as the "foundation for managing wildlife in British Columbia." Yet, while recognizing that habitat protection is vital to preserving the health and diversity of British Columbia's wildlife,² the Discussion Paper also acknowledges the Ministry of Environment's limited authority under existing law to protect habitat.

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Compounding this, the Discussion Paper fails to acknowledge the role of other laws, such as British Columbia's forestry law, the *Forest and Range Practices Act*³ (FRPA), as arguably the "foundation for managing wildlife in British Columbia." FRPA covers 85% of British Columbia's land base and its regulations give clear priority to timber supply over biodiversity needs⁴. This is also stated in the associated, wholly arbitrary "Identified Wildlife Management Strategy" policy which limits measures for forest dependant species to less than a 1% impact on timber supply policy while explicitly acknowledging its failure to address key species' needs such as "habitat supply, habitat connectivity, and population viability and other issues such as access management"⁵.

FRPA's prominence in species management is aptly illustrated by the circumstance of Canada's most endangered bird, the Spotted Owl. Despite numbers below 20 birds in British Columbia, the only place in Canada where they are found, logging continues in their key habitat in spite of recommendations made by the Spotted Owl Recovery team in 2003, reiterated in 2007, to ban this continued destruction of their habitat.

To compound the problem, while 85% of the land base gives priority to industry rather than wildlife, it cannot be said that species are protected on the remaining land. Contrary to public opinion, hunting is allowed in parks and recreation areas listed in Schedule B of the Park Act; this results in hunting being allowed in a substantial percentage of the area allocated to parks and protected areas in British Columbia.

² At p.37

³ *Forest and Range Practices Act*, S.B.C. 2002, c.69

⁴ See for example - *Government Actions Regulation* B.C. Reg. 17/04

⁵ "Current government policy has set a limit of 1% to the allowable impact to short-term harvest levels that may be incurred as a result of implementing measures for Identified Wildlife," Ministry of Water, Land and Air Protection, *Identified Wildlife Management Strategy Procedures for Managing Identified Wildlife*.2004.Province of British Columbia. p. 11.

Gaps and internal contradictions such as these epitomize British Columbia's flawed approach to managing for biodiversity. In British Columbia, the intersection of laws and regulatory bodies at cross purposes results in fragmentation and incrementalism in legal regulation and decision-making with regard to both species and habitat. This circumstance prevents addressing, and may actually exacerbate, cumulative effects on British Columbia's biodiversity.

In this context, it is no surprise that in *Rich Wildlife, Poor Protection*, we noted that, according to the provincial government's Conservation Data Centre, the agency tasked with monitoring species at risk in B.C., well over 1,300 species and subspecies living in the province are now thought to be at risk of disappearing⁶.

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Our clients condemn the Discussion Paper's failure to commit to a complete examination of the regulatory regime for wildlife. The Discussion Paper indicates that the Ministry of Environment will assess statutory jurisdiction over wildlife habitat at a future point, prior to any consideration as to whether and to what extent reforms to habitat legislation could be made in conjunction with changes to the Act. Our clients consider this completely inadequate. Knowledge of the statutory landscape and concurrent amendment of competing legislation is necessary in order to ensure that the new *Wildlife Act* is consistent with optimal habitat protection legislation and plays an effective role in an integrated regulatory regime. Operating on any other basis will merely perpetuate BC's highly flawed regime for addressing wildlife needs.

Recommendations:

- We recommend that amendment of the *Wildlife Act* be complemented by a concurrent, thorough review and amendment of all of British Columbia's legislation that impacts our wildlife with the intention of creating an integrated and effective "conservation first" regulatory regime.
- Failing this, we recommend the *Wildlife Act* be amended, with consequential amendments to all of British Columbia's legislation that impacts our wildlife, to provide the Ministry of Environment with a veto over land use decisions made by other Ministries and programs that conflict with the objective of "maintaining and restoring the rich diversity and abundance of native wildlife species." Such a veto must extend to development on private lands.
- Hunting should not be allowed in Parks with the exception of First Nations' traditional use.

III. Specific comments on the Discussion Paper

1) BC needs to properly protect endangered species and their habitat

⁶ Moola et al., *Rich Wildlife Poor Protection* (Vancouver: David Suzuki Foundation and Sierra Legal, 2007). See also Species and Ecosystem Explorer. <http://srmapps.gov.BC.ca/apps/eswp/>

While the majority of British Columbia's 1300-plus species at risk originate in four regions in British Columbia, the risk of extirpation and extinction is increasing across the province with no region spared⁷. As set out in numerous publications, including those by the Ministry of Environment, loss and fragmentation of habitat is the key cause of the majority of species' decline⁸. Therefore, in *Rich Wildlife, Poor Protection*, our first recommendation is to "create strong endangered species legislation that will prioritize species and their habitat."

The need for specific legislation to protect habitat is well illustrated by the "Marshall Road" case⁹. In this case, currently before the B.C. Environmental Appeal Board, the Ministry of Environment relied on the *Water Act*¹⁰ to protect habitat for several species at risk threatened by development in Abbotsford. The developer argued that it was unlawful for Ministry staff to do indirectly through the *Water Act* what they are unable to do directly through (non-existent) endangered species legislation. The "Marshall Road" case illustrates British Columbia's fragmented legal regime and highlights the need for habitat protection legislation.

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Yet, the Discussion Paper relegates habitat protection to an appendix and says that British Columbia's *Wildlife Amendment Act, 2004*¹¹ will address species' needs. Simply put, our clients do not accept the *Wildlife Amendment Act, 2004* as constituting endangered species protection legislation, starting with the fact that it protects only the residence of at-risk species, not critical habitat.

Further, our clients do not recommend addressing this markedly deficient piece of legislation by amending the *Wildlife Act* to simply fill the "habitat protection gap." As discussed above, British Columbia's wildlife already suffer from a fragmented legal regime. Dividing necessary measures for our most needy species between two laws will simply compound the problem. Rather, our clients recommend that the *Wildlife Amendment Act, 2004* be repealed and replaced with modern endangered species legislation either on a stand-alone basis or incorporated within a revised *Wildlife Act* to ensure comprehensive protection.

In *Rich Wildlife, Poor Protection*, we set out a principled approach to an endangered species law¹². Distilled to its core, this requires that the law proceed on a precautionary basis of conservation first, acknowledging that healthy ecosystems are the source of all other values that we derive from our natural world and the foundation of human societies and economies. Characteristics of such a law would require:

⁷ Moola et al., *Rich Wildlife Poor Protection* (Vancouver: David Suzuki Foundation and Sierra Legal, 2007)

⁸ See also, Venter O., et al., "Threats to Endangered Species in Canada" (2006) *Bioscience* Vo. 56 No. 11

⁹ *Rajinder Mann, 0707814 BC LTD vs. Assistant Regional Water Manager, EAB File No: 2006-WAT-007, 2007-WAT-001*

¹⁰ *Water Act* R.S.B.C. 1996, c. 483

¹¹ *Wildlife Amendment Act, 2004* S.B.C. 2004, c.56

¹² Moola et al., *Rich Wildlife Poor Protection* (Vancouver: David Suzuki Foundation and Sierra Legal, 2007) at p.13.

- Enshrining principles of sustainability such as the Precautionary Principle, the Principle of Inter-generational Equity and the Polluter-pays principle¹³;
- Anticipating¹⁴ and preventing species,¹⁵ ecosystems and ecological communities from becoming at risk in a mandatory, timely, science-based manner; (As footnoted, we recommend an expanded definition of species consistent with that employed by *Species at Risk Act* S.C. 2002, c.29.);
- Protecting, recovering, restoring and rehabilitating species, ecosystems and ecological communities that are at risk across their geographic range, throughout the province and on both private and public lands^{16, 17};
- Requiring protection of sufficient habitat as the key means of preventing species, ecosystems and ecological communities from becoming at risk and protecting and recovering those that do, including ensuring connectivity of habitat;
- Recognizing and reflecting the rights, cultural values and traditional knowledge of Aboriginal peoples and incorporating local and traditional knowledge to complement scientifically collected information;
- Upon listing, effecting immediate protection of the species and sufficient habitat to halt species decline for threatened or endangered species, ecosystems and ecological communities;

¹³ Precautionary Principle: if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation; Principle of Inter-generational Equity: the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations; and, Polluter-pays Principle: the polluting party pays for the damage done to the natural environment

¹⁴ Through adequate funding for monitoring species at risk in the province including wildlife whose presence and conservation status is poorly known in B.C.

¹⁵ We recommend a definition of wildlife consistent with the *Species at Risk Act* S.C. 2002, c.29: “wildlife species” means a species, subspecies, variety or geographically or genetically distinct population of animal, plant or other organism, other than a bacterium or virus, that is wild by nature and

(a) is native to Canada; or

(b) has extended its range into Canada without human intervention and has been present in Canada for at least 50 years.

“species at risk” means an extirpated, endangered or threatened species or a species of special concern

“species of special concern” means a wildlife species that may become a threatened or an endangered species because of a combination of biological characteristics and identified threats.

“threatened species” means a wildlife species that is likely to become an endangered species if nothing is done to reverse the factors leading to its extirpation or extinction.

“endangered species” means a wildlife species that is facing imminent extirpation or extinction.

“extirpated species” means a wildlife species that no longer exists in the wild in Canada, but exists elsewhere in the wild.

¹⁶ This obligation is described in the *United Nations Convention on Biological Diversity* Canada’s ratification of which BC supported. The Convention required in-situ conservation encompassing the following elements: legislation for the protection of at risk populations (s.8(k); protection of ecosystems, natural habitats and the maintenance of viable populations in natural surroundings (s.8(d)); and, rehabilitation and restoration of degraded ecosystems and recovery of threatened species (s.8(f)).

¹⁷ Including extirpated species

- Requiring science-based listing, science-based identification of recovery habitat and recovery measures and a science-based component of recovery action planning;
- Having strong prohibitions backed by effective penalties and enforcement including enabling citizen enforcement action;
- Requiring ongoing monitoring, assessment and public reporting of administration of the Act and responsiveness to new information; and,
- Providing compensation for persons affected by application of the Act's measures, but prioritizing and funding stewardship over compensation.

Regarding the last point, in concert with strong legislation, voluntary stewardship initiatives fill a crucial niche as an effective means of protecting ecosystems and wildlife species within those ecosystems. Stewardship activities stand to protect, maintain and enhance British Columbia's biodiversity, as well as result in the far-reaching and long-term conservation of our soils, water, and species at risk.

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A *Wildlife Act* could do more to support stewards taking responsibility for the well-being of our environment and committing to protecting or restoring that well-being. Such an ethic, which incorporates wise and sustainable use, and where stewards take great pride and satisfaction in supporting species at risk, can only benefit British Columbia's richness of biodiversity. Our clients regret that the role of private land stewards was overlooked in this discussion paper and solely addressed in terms of "acquiring private land".

In the United States, conservation easements are used widely to preserve critical habitat on privately-owned lands. We recommend that through the *Wildlife Act* or companion legislation, the law should encourage and facilitate the preservation of privately-owned habitat by way of conservation easements and other land trust activities.

As also discussed above, enactment of law to incorporate these criteria must be accompanied by amendments to other Acts that conflict with the goal of anticipating and preventing species, ecosystems and ecological communities from becoming at risk and recovering those that do. This would, for example, require substantial amendment of the *Government Actions Regulations* so that, rather than placing arbitrary and ill-conceived restrictions on measures for biodiversity in order to preserve commercial timber supply, a positive obligation would be created for Government to preserve biodiversity. As well, policy such as the woefully inadequate "Identified Wildlife Management Strategy" must be abandoned.

Lastly, as set out in *Rich Wildlife, Poor Protection*, our clients do not conceive of species at risk legislation as a panacea. British Columbia's wildlife is in its current situation because of deficiencies in the province's approach to managing wildlife generally, resulting in our seeking to have endangered species legislation complemented by implementing these recommendations:

Recommendations:

- Establish and complete conservation-based land-use planning across the province and prioritize according to need, particularly in species at risk “hotspots” such as the south island region of Vancouver Island, the Lower Mainland of south-western B.C., the Rocky Mountain Trench and the Okanagan Valley.
- Complete a province-wide protected areas strategy that:
 - prioritizes protection of ecological integrity;
 - identifies and protects at risk species and their habitat;
 - protects the full range of ecosystem types;
 - maintains viable populations of native species;
 - sustains critical ecological services; and
 - is resilient in the face of global warming (discussed further below)¹⁸.

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This strategy should include a strategic plan for both Crown and Private land.

- Properly fund the Conservation Data Centre of B.C. to fully monitor species at risk in the province. Focused attention should be given to those wildlife groups (e.g., fungi, lichens, insects and other invertebrates), whose presence and conservation status is poorly known in B.C.
- Create and fund an independent scientific committee¹⁹ to examine the backlog of species that are known to be at risk in the province and which thus may be candidates for legal listing under new endangered species legislation.
- Repeal the *Wildlife Amendment Act, 2004* and replace it with modern endangered species legislation either on a stand-alone basis or incorporated within a revised *Wildlife Act* to ensure comprehensive protection.
- Repeal laws such as the *Forest and Range Practices Act* (and regulations such as the *Government Actions Regulations*) that are inconsistent with wildlife and habitat preservation and restoration, and enact an integrated and effective, “conservation first” regulatory regime.
- Facilitate the preservation of privately-owned habitat by way of conservation easements, foster stewardship (see below) and encourage and establish increased funding for land trust and stewardship activities.

¹⁸ Noss, R., “Maintaining the ecological integrity of landscapes and ecoregions” in D. Pimental, L. Westra, and R. Noss. (eds.), *Ecological Integrity: Integrating Environment, Conservation and Health* (Washington: D.C. Island Press, 2000)

¹⁹ Such expert panels have been legislated under the federal *Species at Risk Act* (the Committee on the Status of Endangered Wildlife in Canada; COSEWIC) and the *Endangered Species Act* in Ontario (the Committee on Species at Risk in Ontario).

2) Climate Change and Biodiversity

In spite of the February 13, 2007 Speech from the Throne calling for provincial action on climate change in British Columbia, the Discussion Paper failed to consider the potential impacts of climate change on our provinces' wildlife. Our clients consider this to be a gross oversight.

The Intergovernmental Panel on Climate Change notes that one-quarter of all living things could disappear in the face of climate change²⁰. This is credible in light of the following²¹:

- An increase of 1 C° will 'force' a shift of biomes or ecosystem zones a predicted 300m up in elevation and 150 km north. The prediction is a minimum increase of 2-5 C° in 70-100 years, translating to 600m-1500m in elevation and 300km-750km in distance.
- This projected 'ecological zone shift' is estimated to be at a rate of 40 km per decade ---the 'average' plant/animal/insect can shift habitats at a maximum of 6 km per decade²². The rate that appropriate conditions shift will therefore be so fast that many species will be unable to compensate through dispersal.
- The implications of climate warming for freshwater biodiversity are not certain, with strong variation expected among watersheds - but clearly wetland and riverine ecosystems will change. Beyond the changes in the timing and amount of the spring melt, warming is also expected to accelerate the water cycle (increasing rates at which water enters the atmosphere and rains down again). The effects of this on hydrology, fish and invertebrate populations remain to be seen. Freshwater species have few migration options as their habitat is within the stream system.

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Ultimately, climate change will reduce diversity which will in turn lead to loss of resilience of ecosystems and wide-ranging ecological disruption. Therefore, taking steps to maintain and improve the resiliency of ecosystems and the species they support is critical to helping them adapt to climate change. This includes maintaining habitat that may be necessary as climatic refuges (e.g., alpine regions) as well as zones of connectivity to facilitate northward migration and migration between elevations.

This concept is currently being applied in Australia where state and national governments have agreed to create a 2,800-kilometer climate "spine" to link the country's entire east coast from the Australian Alps in the south to the tropical north. As one commentator noted, speaking to the merits of the plan, "The effects of climate

²⁰ IPCC WGII, "Fourth Assessment Report Summary for Policymakers" (April 6th 2007)

²¹ Peart B., Patton S., Riccius, I. "Climate Change, Biodiversity And the Benefit of Healthy Ecosystems" (2007) Canadian Parks and Wilderness Society (to be released)

²² Larger mammals may be able to shift habitats at a faster rate.

change will likely be less severe in systems that have some resilience and that we haven't gone in and buggered-up"²³.

If British Columbia truly intends to manage species in the face of climate changes, these concepts are so fundamental that they must be enshrined in law. Therefore, the *Wildlife Act* and other British Columbia laws must impose a duty on decision-makers to account for the effects of climate change on species and ecosystems. The legislation must also address non-climate related impacts, such as habitat destruction, over-consumptive use (over-hunting and fishing), and invasive species.

In addition, because there is uncertainty about the implications of climate change on species and ecosystems, the *Wildlife Act* and associated policies must allow for continuous and timely evolution.

Recommendations:

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- The *Wildlife Act* must impose a duty on decision-makers to mitigate the short-term and long-term effects of climate change on species.
- The *Wildlife Act* must impose a duty on government decision-makers to exercise their powers in a manner that applies the Precautionary Principle, requiring that, the greater our uncertainty (*i.e.*, the lower our capacity to precisely define risk), the more cautious and "reversible" our management actions must be²⁴.
- The Act must require the identification and protection of habitat to ensure spatial connectivity of BC populations, harvested or not, with populations outside the province including north-south connecting populations in the United States. The law must protect sufficient habitat refuges and zones of connectivity between such habitat, including up mountainsides and north-south. Decisions about what constitutes sufficient habitat to meet this need must explicitly acknowledge the high level of uncertainty under which these decisions are being made and proceed on a precautionary basis.
- Measures inconsistent with a precautionary approach, such as enhancing consumptive use or arbitrarily doubling the number of hunters in the absence of accurate wildlife population data, must be abandoned.
- The law must contain the mandatory requirement for review on a prompt and regular basis (3 years) to ensure that it effectively accommodates our growing understanding of the implications of climate change on wildlife.

3) Hunting Management

²³ Rob Taylor, Reuters, "Australia To Build Cross-Continent Climate Corridor" (July 09, 2007)

²⁴ Peterson, G., G.A. De Leo, J.J. Hellmann, M.A. Janssen, A. Kinzig, J.R. Malcolm, K.L. O'Brien, S.E. Pope, D.S. Rothman, E. Shevliakova, and R.R.T. Tinch. 1997. Uncertainty, Climate Change, and Adaptive Management. Conservation Ecology [online] 1(2): 4. Available at: <http://www.consecol.org/vol1/iss2/art4/>

On the topic of hunting management, the Ministry of Environment’s proposed approach departs once again from a conservation first perspective and disregards the Precautionary Principle. Our clients consider that the potential impact of the proposed new hunting policies on unstable or poorly known populations runs counter to the province’s stated commitments to conserve biodiversity and protect wildlife at risk.

Proposed new hunting policies are also severely out of touch with public sentiment – at times the paper itself reads like a promotion for the sport hunting lobby. But public opinion polls show a significant majority of the BC public wants more progressive wildlife management that reflects our growing understanding of predators and their importance in the ecosystem²⁵.

In spite of this, the Discussion Paper includes a variety of proposals to increase overall hunting in BC, including:

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- increasing the number of hunters by 20,000;
- extending the license age range to include 10 year olds;
- reducing the price of species licenses;
- allowing new hunters to hunt without taking the CORE exam; and,
- enabling successful limited entry applicants to share their hunt with a partner.

These proposals suggest that wildlife conservation objectives are being subsumed to economic goals; this is not acceptable to our clients.

Recommendations:

- The government must adopt a science-based approach to wildlife management: wildlife populations known to be in decline, or for which there are insufficient demographic data to determine risk status, must be excluded from hunting, even if they are not yet listed as “at risk”.
- Measures to increase hunting, such as doubling the number of hunters, must be rejected unless sufficient data exist to confirm a sustainable harvest.

a) Increased Grizzly hunting contrary to the science

Nowhere is the failure of the province to address both wildlife needs and public sentiment in managing wildlife populations better illustrated than by the province’s management of our grizzly bear population.

In spite of public opinion against grizzly hunting and in the face of science-based recommendations, grizzly bear management in British Columbia over the past several years has not improved. An average of 340 grizzly bears are killed each year in the

²⁵ Angus Reid Poll, 1995; Strategic Communications BC Poll. 2001. Compass Poll, 2001

province, close to 90% of them shot by sport hunters²⁶.

With the notable exception of the Great Bear Agreement, the government has made little progress in implementing recommendations of its own Grizzly Bear Scientific Panel, specifically in terms of protecting grizzly bear habitat from resource extraction or human access, or establishing Grizzly Bear Management Areas (GBMA) that are closed to hunting²⁷, ²⁸.

The wide range of threats to grizzly bears in British Columbia include human-caused mortality, cumulative habitat degradation, habitat alienation and destruction, population displacement, the cascading effects of salmon collapse, and climate change²⁹, all of which are likely to increase in the future. Moreover, grizzly bears have life-history characteristics that make them particularly vulnerable to hunting³⁰.

The negative impact of hunting on the grizzly population is well studied. In 2000, the Scientific Panel commissioned a study modelling future grizzly bear populations under current management regimes. The study concluded that the BC grizzly bear populations had a 50% chance of declining at rates exceeding 20% over 30 years, the current harvest rates are unsustainable, and selective targeting of adult male bears by hunters at existing levels has long term and adverse effects on population structure and productivity³¹.

There is strong evidence of regional declines in subpopulations of grizzly bears. By using satellite-based DNA fingerprinting, scientists³² concluded that grizzly bear populations in south-eastern BC now occur in five peninsulas of mountainous habitat, with isolation/fragmentation having been identified in the Central Rocky Mountain Ecosystem and the Selkirk Mountains, and that legal killing of grizzlies might also adversely affect movement across the Highway 3 corridor³³. For the Selkirk Mountain population, scientists concluded that genetic isolation is “a serious threat for the long-term persistence of the southern Selkirk bears.”

In a telling admission, the BC government has predicted that these declines will continue well into the future. BC’s own data predict that by 2065 grizzly bears in British

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²⁶ Anonymous, “A future for the Grizzly: BC Grizzly Bear Conservation Strategy” (1995)

<http://wlap.gov.bc.ca/wld/grzz/grst.html>

²⁷ Such zones would fully protect grizzlies from sport hunting and habitat damage caused by industrial activities (e.g., logging and mining). These were first recommended in 1995, a recommendation reiterated by the Scientific Panel in 2003.

²⁸ Anonymous, “A future for the grizzly: British Columbia Grizzly Bear Conservation Strategy” (1995)

<http://wlapwww.gov.bc.ca/wld/grzz/grst.html>; Austin, M. and Hamilton, T., A review of grizzly bear harvest management in British Columbia (MWLAP, 2002) http://wlapwww.gov.bc.ca/wld/documents/gbear_critique1.pdf

²⁹ BC Ministry of Environment, Lands and Parks. 2000. Environmental Trends in British Columbia 2000. State of Environment Reporting

³⁰ Female grizzly bears take between 4 to 7 years to reach reproductive maturity. Moreover, the time between litters ranges from 3 to 5 years, with each litter only producing 2-3 cubs. Thus, grizzly populations are very slow growing and are easily pushed into population decline through the loss of female bears.

³¹ McLoughlin, P. 2002. Managing risks of decline for hunted populations of grizzly bears given uncertainty in population parameters. Final report, Submitted to the British Columbia Independent Scientific Panel on Grizzly Bears. University of Alberta, Edmonton, AB. 63 pp.

³² Proctor, M.F, B.N. McLellan and C. Strobeck. 2002. Population fragmentation of Grizzly Bears in Southeastern British Columbia, Canada. *Ursus* 13: 153-160

³³ If dispersal rates are density dependent

Columbia will be extinct or threatened in 38% of their former BC range³⁴.

Despite the threats facing BC's grizzly bear population, the Discussion Paper does not address their ongoing harvest, or discuss protection for currently hunted populations that are found to be in decline. Indeed, it appears that over-hunting of grizzly bears, permitted by the Wildlife Branch, will continue to be the status quo in BC³⁵.

The Discussion Paper does not commit to implementation of GBMAs, including three that were recently agreed to in negotiated land-use planning agreements on the Central³⁶ and North Coast³⁷ administrative districts, and which enjoy the support of a wide-range of stakeholders, including pro-hunting interests³⁸.

Lastly, the province's failure to properly manage for grizzly species is internationally recognized - the European Union continues to ban the importation of BC grizzly hunt trophies in an embarrassing condemnation of British Columbia's misguided policy.

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Recommendations:

- The government must immediately implement the recommendations of the Grizzly Bear Scientific Panel on habitat protection and hunting management including creating permanent GBMAs large enough to maintain biologically viable and sustainable grizzly bear populations.
- Given the possibility of the extirpation of certain sub-populations of the species, a moratorium on the grizzly bear hunt must be initiated immediately.

b) Hunting Access, Roads and Waterways: Failure to manage access

Where roads and waterways provide access, hunting accelerates wildlife population decline and prevents population recovery³⁹. The Discussion Paper proposals do not adequately address this issue.

Proposals outlawing shooting wildlife from a motor vehicle or motor boat, using a helicopter to transport hunters or game, hunting from a provincial road, and carrying

³⁴ BC Ministry of Environment, Lands and Parks, 1995(b). Conservation of Grizzly Bears in British Columbia. Background Report. 70 pp

³⁵ Environmental Investigation Agency, 1998. Trigger Happy: How Pro-Hunting Policies are Driving British Columbia's Grizzly Bears towards Extinction

³⁶ Anonymous. 2004. Central Coast Land and Resource Management Plan: final report of consensus recommendations to the provincial government and First Nations:

http://srmwww.gov.bc.ca/cr/resource_mgmt/lrmp/cenocoast/table_rec.htm

³⁷ Anonymous. 2004. North Coast Land and Resource Management Plan: final recommendations.

http://srmwww.gov.bc.ca/ske/lrmp/ncoast/final_landuse_recommend.htm

³⁸ It must be stressed that if established, these GBMAs could legally be extinguished by government after ten years, and are likely too small to maintain viable grizzly bear populations for the long-term. In addition, they are not fully protected from industrial resource extraction in grizzly habitat, including clearcut logging, mining or road building.

³⁹ Horjesi, B., B. Gilbert, and L. Craighead, 1998. British Columbia's Grizzly Bear Conservation Strategy. Western Wildlife Environments Consulting Ltd. Calgary.

loaded firearms in a vehicle, though positive, are not sufficient to address current unsporting hunting practices in BC.

Again, to consider the grizzly, the Scientific Panel called on the government to take aggressive steps to address human access into areas currently inhabited by bears to reduce hunting and non-hunting human-caused mortality of bears and to prevent the displacement of bears from critical habitat types (e.g., feeding sites such as salmon streams or berry patches). Despite this, formal access management plans have been completed for only one of the fifty-seven grizzly bear populations⁴⁰.

Recommendations:

- Future law must incorporate stronger regulations, followed by constant enforcement, to control unsporting hunting, which uses planes and other vehicles.
- The integrated approach to wildlife management, recommended earlier, must include review, prior to approval, of the impact of prospective roads and other linear corridors on wildlife.
- The new Act must initiate a ‘No Hunting’ policy in habitat used by grizzlies along roads and rivers.

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c) Limited Entry Hunting and Reporting

The Discussion Paper suggests that the Ministry considers limited entry hunting to be a precautionary conservation measure, introduced where necessary to limit the number of hunters or the number of animals that may be taken, or to limit the harvest to a certain “class” of animal. This practice, however, contains inherent flaws that can drive wildlife kills over sustainable levels.

For example, a flawed assumption behind limited entry hunting is that not all hunters will kill an animal. Thus, far more licences are issued to hunters than the number that can be sustainably killed. In order to identify over-hunting of designated areas, the permit allocation system relies on insufficient and faulty self-reporting by hunters⁴¹. Further, hunting quotas designed to cover wide areas can be inappropriately filled in a small area where animals are known to feed and gather, contributing to local extirpation. Lastly, limited entry hunting is neither sustainable nor ethical because it is designed to allow continued hunting in areas that already have depleted wildlife populations⁴².

⁴⁰ North Cascades Grizzly Bear Recovery Team. 2004. Recovery plan for grizzly bears in the North Cascades of British Columbia. <http://wlapwww.gov.bc.ca/wld/grzz/#ncgb>

⁴¹ Environmental Investigation Agency, 1998. Trigger Happy: How Pro-Hunting Policies are Driving British Columbia’s Grizzly Bears towards Extinction. Unpublished report.

⁴² It takes grizzly bears between 3 to 7 years to reoccupy areas from which they have been killed or displaced by human activity. Horjesi, B., B. Gilbert, and L. Craighead. 1998. British Columbia’s Grizzly Bear Conservation Strategy: An Independent Review of Science and Policy, 1998.

Our clients believe that the province's licensing approach should be reallocated to account for non-consumptive use, consistent with changing societal values and future species needs⁴³.

Recommendations:

- Limited entry hunting must be allocated on the basis of science, using the Precautionary Principle.
- The new Act must ensure efficient, thorough and transparent measuring of wildlife kills to ensure reliable mortality statistics.

d) Provide the resources needed to properly manage wildlife

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Next to a flawed legal regime, wildlife populations and biological diversity are most threatened by chronic under-funding and marginalization of wildlife conservation-oriented enforcement programs in British Columbia.

British Columbia's fish and wildlife enforcement budget has essentially remained unchanged for 20 years. Over that time, total provincial expenditures increased 200%, by \$16.3 billion, while wildlife enforcement spending as a percent of total government spending fell to 0.00039% (1/26th of 1%) in 2001. In 2004, enforcement services received 1/29th of 1% of provincial expenditures⁴⁴. As a result, enforcement and protection staff are presently unable to ensure effective compliance with fish and wildlife regulations and effect widespread and long-lasting changes in resource user behaviour in BC. An example of this is the abandonment of fish and wildlife protection by enforcement services.

Again, the decline in Ministry capacity to monitor and protect our wildlife is no better illustrated than concerning the grizzly.

For example, the British Columbia government no longer directly collects kill data to monitor the population effects of the hunt and set annual hunt quotas. Before 2001, sport hunters had to take the carcass of their kill to a provincial government office for compulsory inspection, including a determination of sex, the extraction of a tooth for aging, and the date and location of the kill. In some cases, hair samples were collected for DNA analysis.

In 2001, however, the government privatized the compulsory inspection of grizzlies and many other wildlife species hunted in the province. This scientific information is no longer collected by trained government technicians, but by private contractors for profit, including many businesses that are closely associated with a successful grizzly hunt such as taxidermists, guide-outfitters, and gun-shops. These businesses may not have the

⁴³ Dionys deLeeuw, 1998. Limiting Hunter Entry in British Columbia Bear Management. Unpublished report.

⁴⁴ Horejsi, B.L. 2002. Losing Ground: The decline in fish and wildlife law enforcement capability in British Columbia and Alaska. Raincoast Conservation Society. Victoria, B.C.

required objectivity and independence to carry out management responsibilities essential to the sustainability of the hunt. This exacerbates the problem of the unreliability of data being collected – an unreliability that has been noted by the government’s own biologists who specifically referred to the false report of female grizzly bears as males, and to false reporting of kill locations⁴⁵.

More recently, in 2005, approximately 40% of layoffs in the Ministry of Environment were among positions whose primary responsibility is enforcement and monitoring; including work directly related to the management of the grizzly hunt⁴⁶. Because of these cutbacks, the government no longer has the staff to do management tasks that are critical to ensure the long-term viability of populations in the province.

Recommendation:

- Funding for wildlife management officials must be restored and the contracting out of wildlife management eliminated where necessary expertise and scientific rigour cannot be assured.

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e) Privatization of Oversight - Guide Outfitting

Our clients oppose the Discussion Paper’s various proposals to privatize government oversight of the Guide Outfitting industry. According to the Discussion Paper, the Ministry intends to delegate to Guide Outfitting Operators roles and responsibilities traditionally belonging to government, including:

- Training and testing;
- Setting conduct/ practices standards;
- Investigating complaints and conducting hearings;
- Providing business/performance information to the public;
- Allocation of quotas; and,
- Consultation with First nations.

This course of action is based on the flawed rationale that members of the regulated group have the training, experience, and expertise to make appropriate judgments and assess applicants. It is also based on the flawed premise that private parties can adequately protect the public interest, even in situations where there are obvious conflicts with their own private interests.

The Ministry states that it is appropriate to give commercial operators more control, as they have a vested interest in sustaining the resource. The record of accomplishment of the hunting industry, however, shows a clear inability of hunters to self-police. As noted earlier, a key reason for over-hunting in British Columbia is the current system’s

⁴⁵ <http://wlapwww.gov.bc.ca/fw/wild/hunting/ci.htm>

⁴⁶ *Ibid*

reliance on unreliable reporting by private hunters⁴⁷. Despite the Guide Outfitting industry's stake in maintaining wildlife resources, they have not addressed population declines in the province and their responsibility for doing so should not be enhanced.

Lastly, the Discussion Paper contemplates loss of a licence by a Guide Outfitter if their allocation is unused, an approach that encourages unsustainable harvest. Instead, our clients advocate a conservation first approach that properly regulates consumptive use and thus prevents unsustainable harvest. However, if Guide Outfitters could be contemplated as reasonable stewards, they should be provided the latitude, without penalty, to not hunt an allocation they deem unsustainable. Specifically, they should not be penalized for adopting ecologically sustainable practices by having their allocation revoked or transferred to the Limited Entry Hunt, nor should they be threatened with losing their guide outfitter privileges.

Recommendations:

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- Do not delegate authority for wildlife management to individuals or organizations who may have real or perceived conflicts of interests.
- Allow Guide Outfitters, without penalty, to not hunt an allocation if they deem it unsustainable.

f) Wildlife Viewing

While the Discussion Paper acknowledges the positive impacts of wildlife viewing and eco-tourism, including their potential to provide major economic benefits, the Ministry fails to support this sustainable form of managing wildlife for revenue generation.

The purported purpose of the background document, "BC's Hunting, Trapping and Wildlife Viewing Sector" was to encourage discussion of the relative financial contributions from both wildlife viewing and wildlife hunting in order to canvass informed commentary regarding development of regional plans. However, other than in its title, the report *entirely omits reference to wildlife viewing*. Given that revenue from commercial grizzly viewing generates double the revenue from commercial hunting⁴⁸, this is a material oversight. Wildlife based activities such as safaris and whale watching are the strongest growth sectors within tourism, which is itself one of the world's fastest growing industries⁴⁹.

In contrast, hunting revenue will always be limited by the licensing process and overall nature of the practice and, under the status quo, will inevitably decrease⁵⁰. In the face

⁴⁷ Horjesi, B., B. Gilbert, and L. Craighead, 1998. British Columbia's Grizzly Bear Conservation Strategy: An Independent Review of Science and Policy. <http://www.raincoast.org>

⁴⁸ 6.1 million to 3.3 million in 2003. From: Parker, Z. and Gorter, R. 2003. Crossroads: Economics Policy, and the Future of Grizzly Bears in British Columbia. Victoria, BC

⁴⁹ Honey, M. "The Business of EcoTourism", Green Money Journal, Summer 2007 issue, <http://www.GreenMoneyJournal.com>

⁵⁰ Parker, Z. and Gorter, R. 2003. Crossroads: Economics Policy, and the Future of Grizzly Bears in British Columbia. Victoria, BC

of climate change and other impacts on habitat that point to widespread population declines, hunting opportunities will decline. In this context, the precautionary approach requires prioritizing wildlife viewing.

In contrast, the Ministry affirms in the Discussion Paper its resolve to maintain the status quo, citing that where viewing conflicts with other uses of wildlife such as hunting, it is important to manage wildlife so that competing uses of finite wildlife resources are balanced. Our clients feel this position is influenced by the hunting lobby and is irresponsible.

Recommendation:

- BC must end its pro-hunting bias and must prioritize and invest in activities that are sustainable, particularly eco-tourism.

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g) Inventory: Inadequate Government Methods Used To Estimate Populations

Effective inventories and population estimates are a cornerstone of wildlife management. The Discussion Paper states that the Ministry manages wildlife by “collecting, analyzing and distributing scientific information on species and ecosystems so that standards for the use and protection of species and ecosystems represent the best available science”⁵¹. Yet, for many harvested species, there is an alarming absence of accurate population data. Without reliable province-wide population information, it is impossible for the Ministry to ensure that populations are being harvested sustainably. Until such data are available, management of all populations suspected to be unstable or in decline must proceed on a precautionary basis that prioritizes conservation over harvesting.

Grizzly bears as an example

The British Columbia government has consistently justified unsustainable levels of sport hunting on the assumption that grizzly bear populations are sufficiently robust to withstand high levels of hunt mortality. However, the methods by which the Ministry estimates the number of bears are questionable^{52, 53, 54} and none of the Ministry’s population estimates have passed the scrutiny of independent scientists to be presented

⁵¹ At pg. 8.

⁵² For example, the Ministry’s most recent population estimates do not include any variance or range and are based on inadequate methods of derivation: *“The revised Grizzly Bear population estimate for British Columbia in 2004 was 16,887 bears. A quantitative estimate of the precision of the final estimate is not possible because the expert-based approach does not estimate uncertainty”*, from: British Columbia Grizzly Bear (Ursus Arctos) Population Estimate 2004, BC Ministry of Water, Land and Air Protection.

⁵³ Former government habitat biologist Dionys deLeeuw revealed that the government calculates a theoretical potential grizzly bear surplus based on inappropriately applied habitat suitability indices. Based on this method, he believes that *“virtually all grizzly bears could be exterminated in BC by sport hunters, while government habitat suitability measurements alone would continue to calculate a theoretical potential bear abundance and continue to establish a harvestable surplus.”*, From: Trites, A. W., and H. V. Thommasen. 1992. Grizzly bear hunting patterns in the Central Coast Region of British Columbia. University of British Columbia. Vancouver BC.

⁵⁴ Leading North American grizzly bear biologist, Dr. Brian Horejsi, stated that the government’s inflated population estimates *“have absolutely no foundation in science”*. *“Anti-bear hunt campaign visits capital”*, Victoria News Weekend Edition, January 12, 2001.

in peer-reviewed publications.

In contrast to the Ministry's findings, reports by independent scientists have consistently pointed to the likelihood of over-harvest of grizzly bears in B.C.^{55, 56, 57, 58}. Independent localized studies continue to indicate damage to grizzly bear populations by continued unsustainable hunting^{59, 60}.

Taken together, the scientific literature reinforces an urgent need for wide ranging and long-term population studies. It is myopic and unprincipled for the government to maintain the grizzly bear hunt at the same time as it refuses to take adequate measures to monitor the grizzly population and to manage the harvest to proper standards.

Recommendation:

- The government must conduct and properly fund accurate inventories and population estimates, peer reviewed by independent non-government biologists, prior to allocating quotas.

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h) 'Natural' Salmon Baiting

The *Wildlife Act* as it is currently written not only undermines the ethical concept of *fair chase* during the hunt, but also allows over-exploitation of bears congregating in key habitats.

Coastal grizzly bear populations are threatened by the absence of any laws to limit hunters from accessing critical grizzly habitat on the lower stretches of streams via natural riparian features, such as streams, estuaries, channels, or inlets. The openness of these sites, regularity and intensity of use by bears feeding on spawning salmon, and easy access to hunters in boats makes killing bears relatively easy. The result is, in effect, natural baiting

In addition, a loophole in the *Wildlife Act*⁶¹ allows sport hunters to pursue and shoot grizzlies from boats. The *Act* prohibits shooting from motorized boats, but this prohibition is easily evaded by having the propeller of the outboard motor tipped out of

⁵⁵ In their 1990 study, the Committee on the Status of Endangered Wildlife reported that the allowable kill rate of the grizzly bear has been exceeded by between 85-89%. That report stated that "over hunting can and has caused grizzly bear populations to decline". From: Banci, V. 1991. The Status of the Grizzly Bear in Canada in 1990. COSEWIC, Ottawa, ON. 171 pp

⁵⁶ Trites, A. W., and H. V. Thommasen. 1992. Grizzly bear hunting patterns in the Central Coast Region of British Columbia. University of British Columbia. Vancouver BC

⁵⁷ Horjesi, B., B. Gilbert, and L. Craighead, 1998. British Columbia's Grizzly Bear Conservation Strategy. Western Wildlife Environments Consulting Ltd. Calgary.

⁵⁸ deLeeuw, Dionys. 1999. Grizzly Overkill in British Columbia Bear Management. Unpublished paper.

⁵⁹ Environmental Investigation Agency, 1998. Trigger Happy: How Pro-Hunting Policies are Driving British Columbia's Grizzly Bears towards Extinction.

⁶⁰ Horjesi, B., B. Gilbert, and L. Craighead, 1998. British Columbia's Grizzly Bear Conservation Strategy: An Independent Review of Science and Policy. <http://www.raincoast.org>

⁶¹ *Wildlife Act*, Section 27(1)

the water or the engine otherwise inoperable at the moment of shooting⁶², ⁶³. Further, bears can be shot even if they are in the water, and thus less able to escape. Although the *Wildlife Act*⁶⁴ states that no big game may be hunted while swimming, it does not restrict hunting of grizzlies feeding at waterways.

These natural baiting practices, compounded by weaknesses in the *Act*, negatively impact the grizzly bear population by displacing bears from crucial feeding sites, and forcing abandonment of salmon carcasses⁶⁵. The current level of activity facilitated by the presence of openings from land (logging and forest roads,) air (float planes and helicopters) and water (jet boats) can cause bears to permanently abandon these crucial riparian areas. The biological importance of maintaining grizzly bear access to these areas is well established⁶⁶, ⁶⁷.

Two special cases require protection:

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(i) Salmon Streams

Coastal and interior bears that depend on salmon congregate at specific, traditional sites along streams. Most of these areas are on the lower stretches of streams within easy access to hunters in boats or vehicles. Hunters in these areas often use elevated platforms or stands, further increasing their access to the bears. Because bears depend on salmon for a major portion of their diet, they may persist in using these salmon streams despite the potential risk.

These dense concentrations of salmon-feeding bears are quite different from the distribution of interior bears that do not use salmon, making the effects of human disturbance more severe.

(ii) BC Pacific Coast Near-Shore Islands

Small numbers of grizzly bears occur on some of the larger near-shore islands in the Central and North Coast of British Columbia. These populations are vulnerable; their numbers are relatively low, and they may be genetically distinct. However, grizzly bears are occasionally hunted on these islands. Special protection is therefore required for all near-shore islands including habitat protection and closure to grizzly bear sport hunting.

Recommendations:

⁶² "Eco-tour operators launch protest against bear hunting", Victoria Times Colonist, Wednesday May 11, 2005

⁶³ "Eco-tourism operator wants bear hunt stopped; Former-hunting guide surrounds ex-employer's yacht to prevent killing of Wildlife", Vancouver Sun, May 10, 2005

⁶⁴ *Wildlife Act*, Section 30

⁶⁵ Horjesi, B., B. Gilbert, and L. Craighead, 1998. British Columbia's Grizzly Bear Conservation Strategy. Western Wildlife Environments Consulting Ltd. Calgary.

⁶⁶ Doak, D.F. 1995, Source-Sink Models and the problem of habitat degradation: general models and applications to the Yellowstone grizzly. *Conservation Biology* 9:1370-1379

⁶⁷ McCrory, W.P., P. Paquet and B. Cross. In Press. Conservation analysis and design for a sanctuary for the Kermode bear (*Ursus americanus kermodei*) on the raincoast of British Columbia. Report for Valhalla Wilderness Society, New Denver, British Columbia

- Hunting where bears congregate to feed on salmon must be prohibited through the establishment of ‘No Hunting’ buffer zones in these areas.
- Hunting of grizzlies on Pacific Coast near-shore islands must be prohibited.

i) Hound Hunting

Hunting bears with dogs is an inhumane practice which does not belong among hunting methods in a 21st century model. The practice has already been outlawed in neighbouring Washington State. Our clients do not support this practice⁶⁸.

Recommendation:

- Hunting bears with dogs must not be permitted.

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j) Wildlife Advisory Boards

Our clients consider that wildlife advisory boards have the potential to be a useful medium with which to carry out review-and-comment procedures, provide meaningful public participation in the decision-making process and engage a broad range of participants⁶⁹.

The establishment of advisory boards is provided for in wildlife legislation in certain jurisdictions⁷⁰. These boards are in the position to provide advice on matters respecting provisions of the respective Act and on matters relating to wildlife policy, and the management, regulation and administration of wildlife⁷¹.

For example, the Yukon Fish and Wildlife Management Board (the Board)⁷², which is the primary instrument of fish and wildlife management in the Yukon, deals with conservation and management of fish, wildlife, habitat and wildlife users on a territorial-wide basis. We consider the Board’s yearly regulatory review and associated consultation to be an efficient and valued component; this function is fundamental to the Board’s existence and the source for its comments to government⁷³. The consultation process begins with the Board presenting proposed changes to the public each fall in order to obtain comments and hear concerns. Once the public consultation is complete,

⁶⁸ While we oppose the use of dogs in hunting bears, we recognize the utility of using Karelian bear dogs or other bear-herding dogs to move or aversively condition bears in cases of bear-human conflict.

⁶⁹ J.Applegate, “Beyond the Usual Suspects: The Use of Citizens Advisory Boards in Environmental Decision-making” (1998) Vol 73 Ind.L.J. 903

⁷⁰ Newfoundland *Wildlife Act*, R.S.N.L. 1990, c. W-8 at s.6; Saskatchewan *Wildlife Act*, S.S. 1998, c.W-13.12 at s.8

⁷¹ NWT *Wildlife Act*, R.S.N.W.T. 1988, c. W-4 at ss 121,122; Yukon *Wildlife Act* R.S.Y. 2002, c.229 at ss 211-225, 236

⁷² Established by chapter 16 of the *Yukon Umbrella Final Agreement*. This agreement is a framework within which each of the 14 Yukon First Nations will conclude a final claim settlement agreement. All Umbrella Final Agreement provisions are a part of each First Nation final agreement

⁷³ Yukon Fish and Wildlife Management Board, *Regulation Reviews – About the Process*, online: YKFWB <<http://www.yfwmb.yk.ca/regrev/about.htm>>

the Board reviews the information and provides recommendations to the Minister of Renewable Resources; the Minister then accepts, varies or sets aside the Board's recommendations⁷⁴.

Our clients' concern regarding the use of boards arises from their member-selection process and from failure to prioritize precaution and science-based knowledge in decision-making. Accordingly, the following recommendations arise.

Recommendations:

- Should advisory boards be authorized under the *Wildlife Act*, an independent, transparent selection process must be devised that will result in a process of selection of Board members free from government influence and bias, and containing First Nations' representation.
- Terms of reference for management boards must require that decisions be based on the best available science, considered within the context of the Precautionary Principle.

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4) Alien and Invasive Species

Our clients acknowledge the implications for the well-being of British Columbia's biodiversity posed by Invasive/Alien Species (IAS). We support the expanded definition under the *Wildlife Act* to encompass control of these species. In 2004, Sierra Legal analyzed the federal structure for addressing IAS finding it inadequate, and prepared a report⁷⁵. Summarized, the report reveals key elements that are relevant to provincial responsibility for this issue and which should be incorporated into laws for control of IAS.

Recommendations:

- Compliance with the law must be mandatory (as opposed to voluntary regimes).
- A body should be created to coordinate the various government departments involved or associated with invasive/alien species control.
- The law must require mitigation of impacts.
- The law must enable cost recovery, permit and environmental assessment mechanisms so as to place the burden of monitoring and control measures on persons responsible for IAS introduction.

⁷⁴ *Ibid*

⁷⁵ Duncan J. et al., *A Legal Strategy to Protect Canada's Ecosystems and Economy from Alien Invasive Species* (Toronto: Sierra Legal Defence Fund, March 2004). Available at <http://www.sierralegal.org>

- The law must require regular inventory and monitoring for invasive species.

5) Wildlife-Human Conflicts

The Discussion Paper's proposals to address wildlife-human conflict are at odds with the conservation-first, principled approach our clients endorse. We do not agree that "limited capacity at the provincial or community level to encourage compliance" justifies the lack of appropriate laws and enforcement to control behaviour.

Our clients would like to see stronger powers to reduce the incidence of wildlife-human conflicts. Turning this responsibility over to hunters is not an acceptable solution.

a) Private citizens handling wildlife-human conflicts:

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The Discussion Paper proposes changes to facilitate members of the public controlling "problem" wildlife, including by modifying hunting licenses to allow hunting "problem" wildlife on agricultural land, and being able to own and sell for profit the resulting carcasses. Our clients strongly disagree with these changes.

There is an inherent conflict of interest for hunters who, in controlling "problem" wildlife, gain economic reward through keeping the carcasses. While the Discussion Paper states that the bodies of such wildlife have "modest value,"⁷⁶ this ignores the lucrative animal parts/traditional medicine trade. Further, having hunting licenses grant hunters permission to kill problem wildlife creates an unregulated hunt rather than one appropriately grounded in conservation-based management.

Even where keeping carcasses is not allowed, hunting of "problem" wildlife on agricultural land without appropriate oversight could encourage erroneous reports of damage by landowners who want to hunt and/or are unwilling to undertake reasonable measures to mitigate wildlife-human conflict on their land.

Further, as illustrated by the extended training period of Bear Response Officers, specialized knowledge is required to respond to animal-human conflict situations and judge when lethal means are required. This is certainly not the province of most hunters or other private citizens.

Lastly, with well-funded stewardship programs to educate and support agricultural producers and other types of landowners, conflicts could be resolved before any "problem" wildlife are shot. As landowners become responsible stewards and understand why wildlife has congregated on a parcel of land (e.g., last remaining travel corridor, shelter from adjacent land uses (highway, cut block, etc.)) or because the landowner partakes in predator control, wildlife-human conflict can be significantly reduced.

⁷⁶ At pg. 20

Recommendations:

- First responders, such as Conservation Officer's (C.O.), should be responsible for assessing and, if necessary, killing problem wildlife. They alone have an incentive to work with the landowner to mitigate the conflict and reduce damage. Private citizens should not have this responsibility.
- Hunting of "problem" wildlife on agricultural land must not be allowed.
- Private ownership of carcasses from "problem" wildlife must not be allowed.
- The law must proactively seek to reduce wildlife-human conflict through stewardship programs/landowner education.

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b) Dangerous Wildlife Protection Orders

The *Wildlife Act* lacks appropriate tools to manage residential garbage and other household substances that act as wildlife attractants. Section 33.1, and Section 88.1, the provision for Dangerous Wildlife Protection Orders (DWPO's), are the only *Wildlife Act* provisions available to C.O.s dealing with residential attractants. DWPO's were designed for industrial and commercial applications; Section 88.1 stipulates that the property owner be given a time interval at the end of which they must have removed the attractant.

The North Shore Black Bear Network, working closely with C.O.s and Bear Response Officers to survey the effectiveness of DWPO's for residential households in urban-wilderness interface areas, found them to be ineffective. Residents may comply with the order at the time, but after a few weeks about 20% of households backslide and the C.O. has to start the legal process again. The result is that a financial fine can never be laid, and there is thus no deterrent to re-offend for either the resident visited, or for neighbours not audited by the CO's. Since non-compliance by a small proportion of households is sufficient to keep dangerous wildlife species resident in a neighbourhood, there is an immediate need for an enforcement tool suitable for residential households.

The alternative to effective attractant management is often killing animals, or translocations which the discussion paper rightly states are not successful in solving the problem and which perturb recipient ecosystems in unknown ways.

Recommendations:

- The DWPO system must be replaced by compliance measures giving COs the authority to fine on the spot any person(s) who knowingly or unknowingly attracts wildlife, and the fines must be substantial.

- Provincial educational programs that have led to greatly increased educational efforts about attractants, especially in urban-wilderness areas; should be maintained or enhanced where necessary.

Conclusion

We look forward to working with the Government of British Columbia to ensure that our clients' concerns are addressed, beginning with our commitment to participate in much needed public hearings.

Sincerely yours,



Devon Page
Staff Lawyer

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Per M. Montes and C. Sandborn
Environmental Law Clinic

Appendix - Summary of Recommendations for *Wildlife Act* Review

I. This issue deserves public hearings

Recommendation:

- We recommend that public hearings be held as soon as possible regarding revision of the *Wildlife Act*.

II. Introductory Comments

Recommendations:

- We recommend that amendment of the *Wildlife Act* be complemented by a concurrent, thorough review and amendment of all of British Columbia's legislation that impacts our wildlife with the intention of creating an integrated and effective "conservation first" regulatory regime.
- Failing this, we recommend the *Wildlife Act* be amended, with consequential amendments to all of British Columbia's legislation that impacts our wildlife, to provide the Ministry of Environment with a veto over land use decisions made by other Ministries and programs that conflict with the objective of "maintaining and restoring the rich diversity and abundance of native wildlife species." Such a veto must extend to development on private lands.
- Hunting should not be allowed in Parks with the exception of First Nations' traditional use.

III. Specific comments on the Discussion Paper

1) BC needs to properly protect endangered species and their habitat

Recommendations:

- Establish and complete conservation-based land-use planning across the province and prioritize according to need, particularly in species at risk "hotspots" such as the south island region of Vancouver Island, the Lower Mainland of south-western B.C., the Rocky Mountain Trench and the Okanagan Valley.
- Complete a province-wide protected areas strategy that:
 - prioritizes protection of ecological integrity;
 - identifies and protects at risk species and their habitat;
 - protects the full range of ecosystem types;
 - maintains viable populations of native species;
 - sustains critical ecological services; and

- is resilient in the face of global warming (discussed further below).⁷⁷

This strategy should include a strategic plan for both Crown and Private land.

- Properly fund the Conservation Data Centre of B.C. to fully monitor species at risk in the province. Focused attention should be given to those wildlife groups (e.g., fungi, lichens, insects and other invertebrates), whose presence and conservation status is poorly known in B.C.
- Create and fund an independent scientific committee⁷⁸ to examine the backlog of species that are known to be at risk in the province and which thus may be candidates for legal listing under new endangered species legislation.
- Repeal the *Wildlife Amendment Act, 2004* and replace it with modern endangered species legislation either on a stand-alone basis or incorporated within a revised *Wildlife Act* to ensure comprehensive protection.
- Repeal laws such as the *Forest and Range Practices Act* (and regulations such as the *Government Actions Regulations*) that are inconsistent with wildlife and habitat preservation and restoration, and enact an integrated and effective “conservation first” regulatory regime.
- Facilitate the preservation of privately-owned habitat by way of conservation easements, foster stewardship (see below) and encourage and establish increased funding for land trust and stewardship activities.

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2) Climate Change and Biodiversity

Recommendations:

- The *Wildlife Act* must impose a duty on decision-makers to mitigate the short-term and long-term effects of climate change on species.
- The *Wildlife Act* must impose a duty on government decision-makers to exercise their powers in a manner that applies the Precautionary Principle, requiring that, the greater our uncertainty (i.e., the lower our capacity to precisely define risk), the more cautious and "reversible" our management actions must be.⁷⁹
- The Act must require the identification and protection of habitat to ensure spatial connectivity of BC populations, harvested or not, with populations outside the province including north-south connecting populations in the United States. The law must protect sufficient habitat refuges and zones of connectivity between

(Washington: D.C. Island Press, 2000)

such habitat, including up mountainsides and north-south. Decisions about what constitutes sufficient habitat to meet this need must explicitly acknowledge the high level of uncertainty under which these decisions are being made and proceed on a precautionary basis.

- Measures inconsistent with a precautionary approach, such as enhancing consumptive use or arbitrarily doubling the number of hunters in the absence of accurate wildlife population data, must be abandoned.
- The law must contain the mandatory requirement for review on a prompt and regular basis (3 years) to ensure that it effectively accommodates our growing understanding of the implications of climate change on wildlife.

3) **Hunting Management**

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Recommendations:

- The government must adopt a science-based approach to wildlife management: wildlife populations known to be in decline, or for which there are insufficient demographic data to determine risk status, must be excluded from hunting, even if they are not yet listed as “at risk”.
- Measures to increase hunting, such as doubling the number of hunters, must be rejected unless sufficient data exist to confirm a sustainable harvest.

a) Increased Grizzly hunting contrary to the science

Recommendations:

- The government must immediately implement the recommendations of the Grizzly Bear Scientific Panel on habitat protection and hunting management including creating permanent GBMAs large enough to maintain biologically viable and sustainable grizzly bear populations.
- Given the possibility of the extirpation of certain sub-populations of the species, a moratorium on the grizzly bear hunt must be initiated immediately.

b) Hunting Access, Roads and Waterways: Failure to manage access

Recommendations:

- Future law must incorporate stronger regulations, followed by constant enforcement, to control unsporting hunting, which uses planes and other vehicles.

- The integrated approach to wildlife management, recommended earlier, must include review, prior to approval, of the impact of prospective roads and other linear corridors on wildlife.
- The new Act must initiate a 'No Hunting' policy in habitat used by grizzlies along roads and rivers.

c) Limited Entry Hunting and Reporting

Recommendations:

- Limited entry hunting must be allocated on the basis of science, using the Precautionary Principle.
- The new Act must ensure efficient, thorough and transparent measuring of wildlife kills to ensure reliable mortality statistics.

d) Provide the resources needed to properly manage wildlife

Recommendation:

- Funding for wildlife management officials must be restored and the contracting out of wildlife management eliminated where necessary expertise and scientific rigour cannot be assured.

e) Privatization of Oversight - Guide Outfitting

Recommendations:

- Do not delegate authority for wildlife management to individuals or organizations who may have real or perceived conflicts of interests.
- Allow Guide Outfitters, without penalty, to not hunt an allocation if they deem it unsustainable.

f) Wildlife Viewing

Recommendation:

- BC must end its pro-hunting bias and must prioritize and invest in activities that are sustainable, particularly eco-tourism.

g) Inventory: Inadequate Government Methods Used To Estimate Populations

Recommendation:

- The government must conduct and properly fund accurate inventories and population estimates, peer reviewed by independent non-government biologists, prior to allocating quotas.

h) 'Natural' Salmon Baiting

Recommendations:

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- Hunting where bears congregate to feed on salmon must be prohibited through the establishment of 'No Hunting' buffer zones in these areas.
- Hunting of grizzlies on Pacific Coast near-shore islands must be prohibited.

i) Hound Hunting

Recommendation:

- Hunting bears with dogs must not be permitted.

j) Wildlife Advisory Boards

Recommendations:

- Should advisory boards be authorized under the *Wildlife Act*, an independent, transparent selection process must be devised that will result in a process of selection of Board members free from government influence and bias and contain First Nations' representation.
- Terms of reference for management boards must require that decisions be based on the best available science, considered within the context of the Precautionary Principle.

4) Alien and Invasive Species

Recommendations:

- Compliance with the law must be mandatory (as opposed to voluntary regimes).

- A body should be created to coordinate the various government departments involved or associated with invasive/alien species control.
- The law must require mitigation of impacts.
- The law must enable cost recovery, permit and environmental assessment mechanisms so as to place the burden of monitoring and control measures on persons responsible for IAS introduction.
- The law must require regular inventory and monitoring for invasive species.

5) Wildlife-Human Conflicts

a) Private citizens handling wildlife-human conflicts:

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Recommendations:

- First responders, such as Conservation Officer's (C.O.), should be responsible for assessing and, if necessary, killing problem wildlife. They alone have an incentive to work with the landowner to mitigate the conflict and reduce damage. Private citizens should not have this responsibility.
- Hunting of "problem" wildlife on agricultural land must not be allowed.
- Private ownership of carcasses from "problem" wildlife must not be allowed.
- The law must proactively seek to reduce wildlife-human conflict through stewardship programs/landowner education.

b) Dangerous Wildlife Protection Orders

Recommendations:

- The DWPO system must be replaced by compliance measures giving COs the authority to fine on the spot any person(s) who knowingly or unknowingly attract wildlife, and the fines must be substantial.
- Provincial educational programs that have led to greatly increased educational efforts about attractants, especially in urban-wilderness areas; should be maintained or enhanced where necessary.