

A model Endangered Species Act for Alberta

December 17, 2024



Environmental
Law Centre

Environmental Law Centre

- Law reform and legal education since 1982
- The mission of the Environmental Law Centre is to advocate for laws that will sustain ecosystems and ensure a healthy environment and to engage citizens in the law's creation and enforcement.
- Our vision is a society where our laws secure an environment that sustains current and future generations and supports ecosystem health.

Alberta **LAW**
FOUNDATION

Trends

- Canada
 - Litigation and active civil society groups have been essential to elevating species at risk management
 - Canadian Parks and Wilderness Society, Alberta Wilderness Association
 - Ecojustice, Public Interest Law Clinic (U of C)

- Habitat challenges

How do we define success?

- Is there an ideal jurisdiction?
 - USA
 - Australia
 - Other provinces?

IUCN Red List of Threatened Species

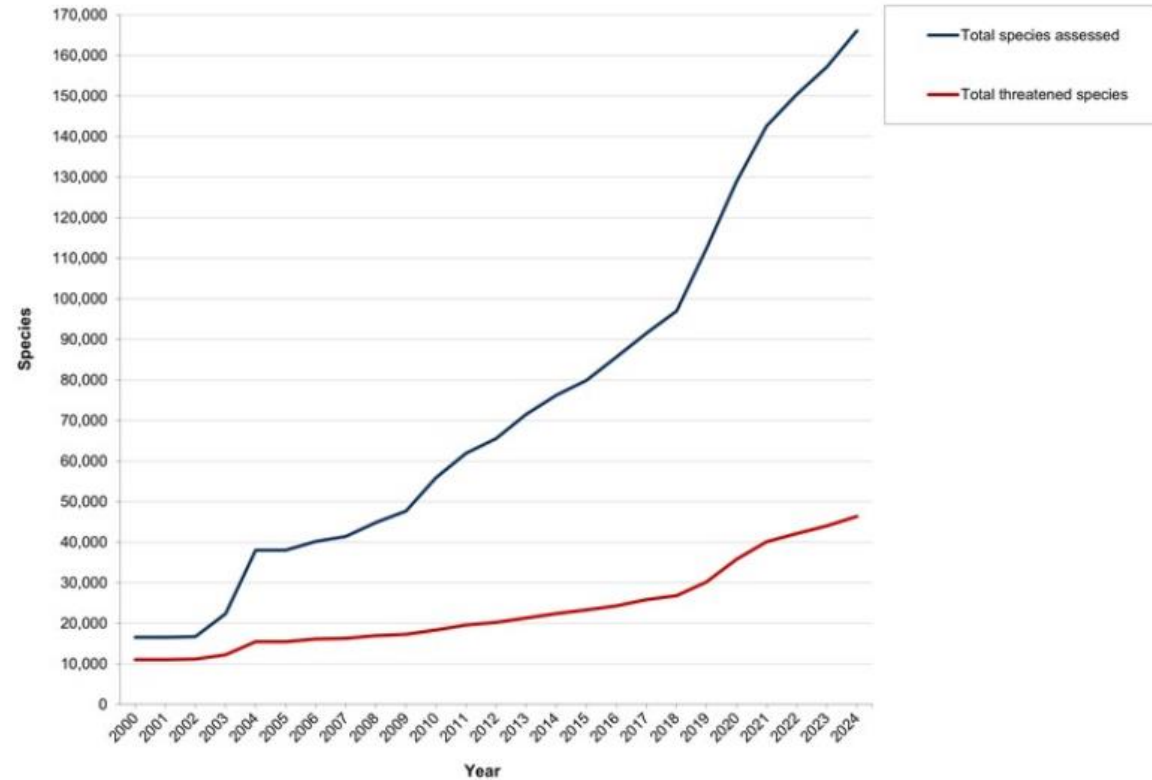
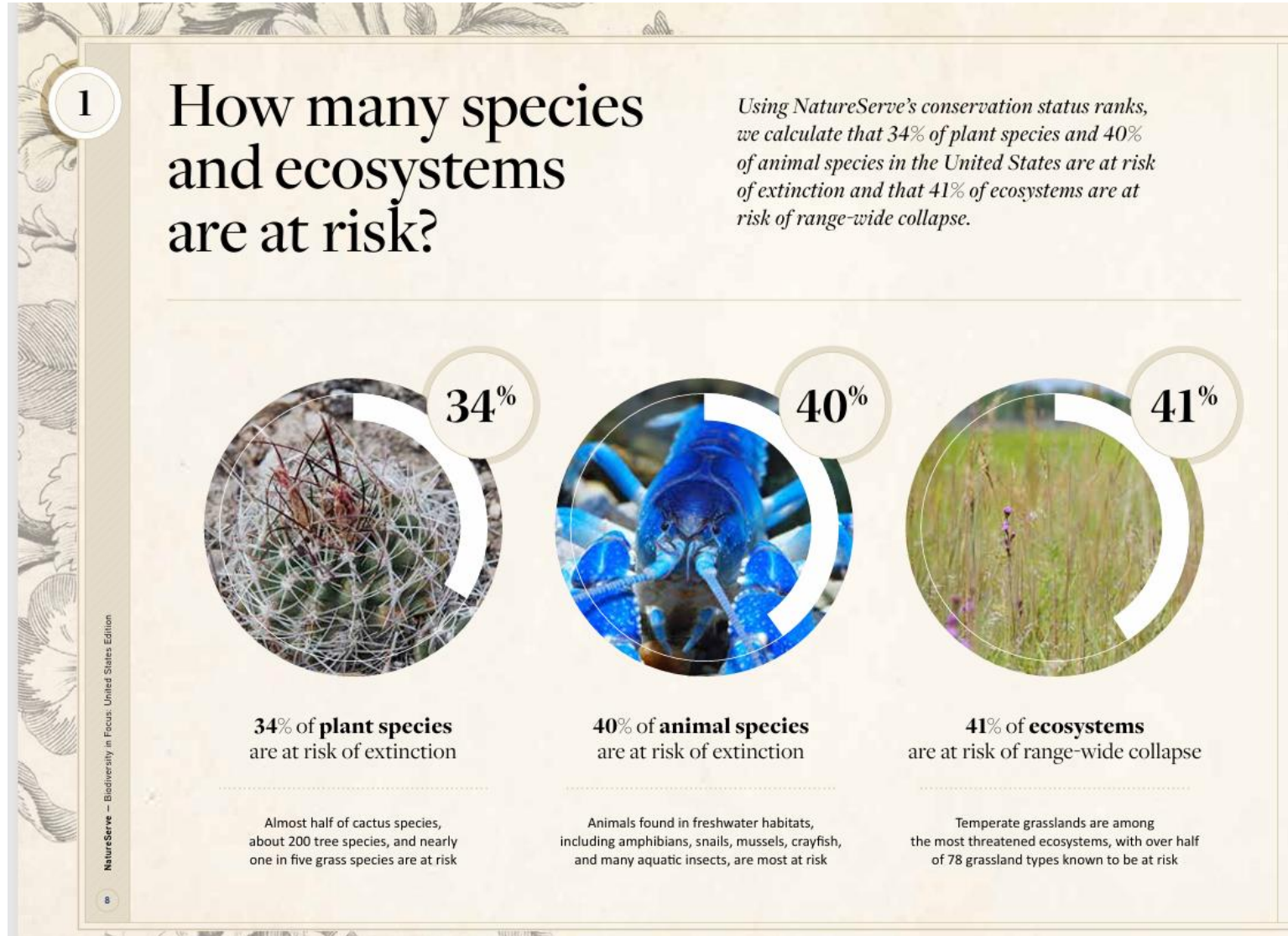


Figure 1. Increase in the number of species assessed for The IUCN Red List of Threatened Species™ (2000–2024; version 2024-2).

USA

Source: [NatureServe BiodiversityInFocusReport medium.pdf](https://www.natureserve.com/press-releases/2019/05/biodiversity-in-focus-report)



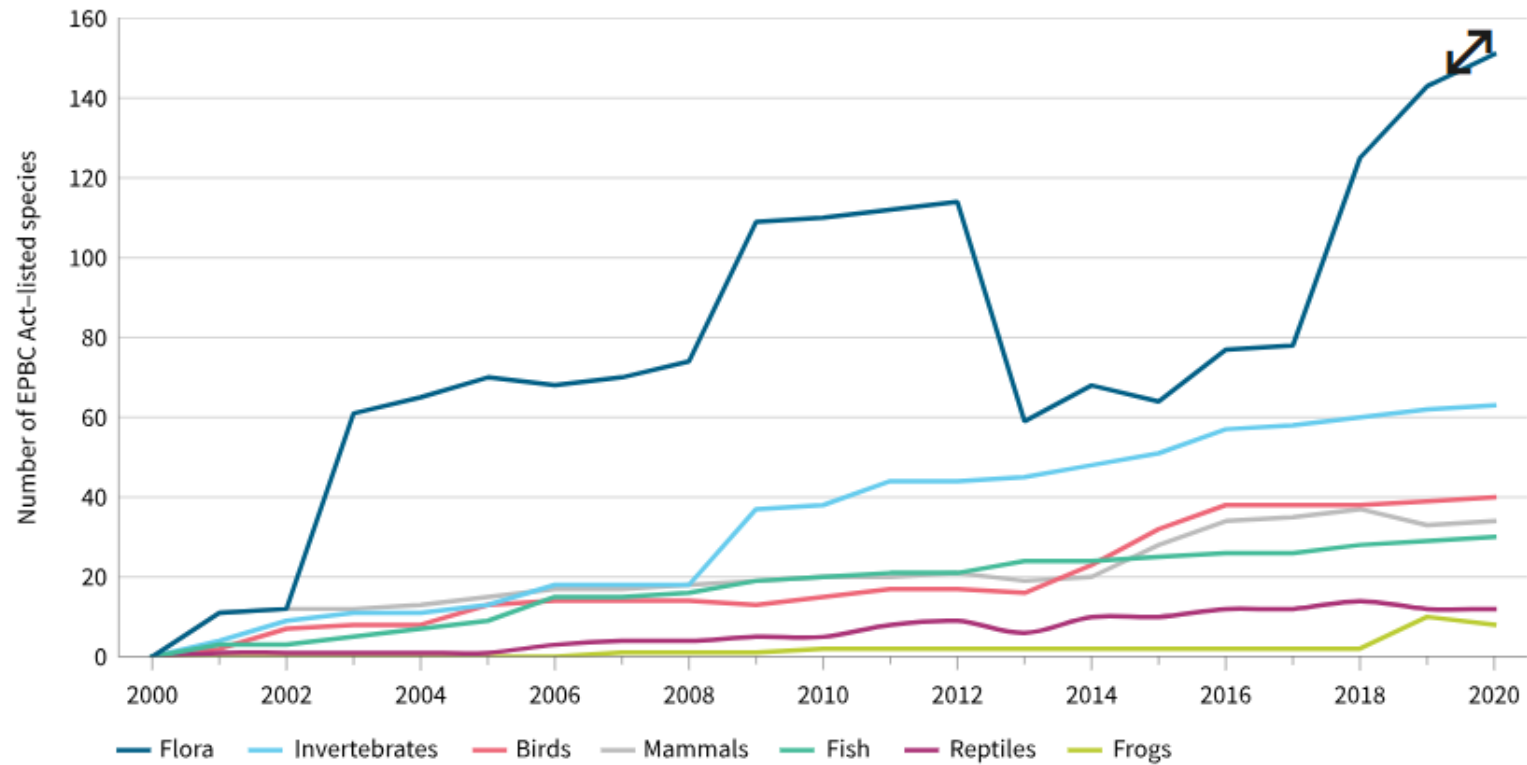
Success?

- Endangered Species Act USA (1970)
 - Credited for stopping extinction
 - Pockets of success – Kirtland's warbler, whooping crane, American alligator, Bald eagle



Australia

Source: [Graphs, maps and tables | Australia state of the environment 2021](#)



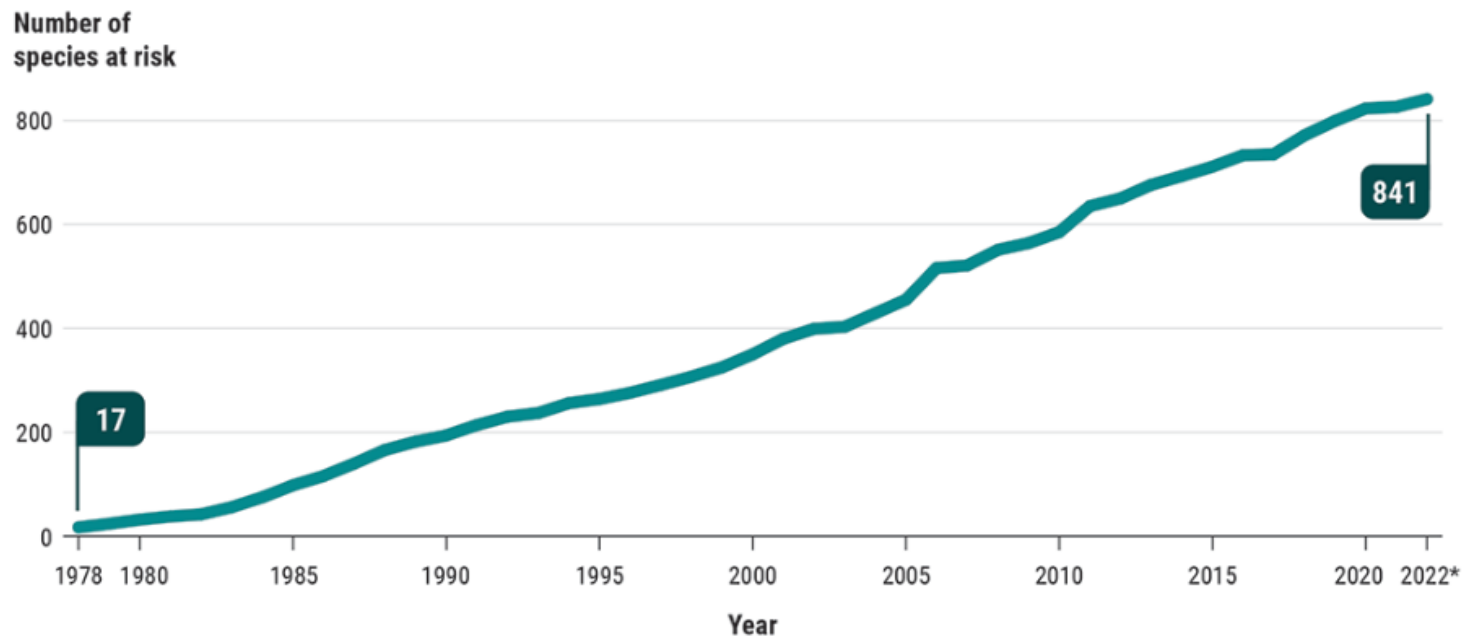
EPBC Act = *Environment Protection and Biodiversity Conservation Act 1999*

Note: Plotted values are differences from the number of species listed in 2000.

Canada

Commissioner of the Environment and Sustainable Development: Biodiversity in Canada Commitments and Trends
[Biodiversity in Canada: Commitments and Trends](#)

Exhibit 6—Number of species at risk assessed as extirpated, endangered, threatened, and special concern by the Committee on the Status of Endangered Wildlife in Canada, 1978 to 2022



* To July 2022

Source: Committee on the Status of Endangered Wildlife in Canada

Ontario

- [Value-for-Money Audit: Protecting and Recovering Species at Risk](#)

Figure 1: Number of Species at Risk in Ontario, Approvals, Offences and Species at Risk Stewardship Program Budget under the *Endangered Species Act, 2007, 2008–2020*

Sources of data: Ministry of the Environment, Conservation and Parks and Ministry of Northern Development, Mines, Natural Resources and Forestry

Activity ¹	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	% Difference (2009-2020)
Species at Risk in Ontario regulated under the Act ²	184	200	207	207	212	215	224	226	231	237	243	243	243	22
Approvals to Impact ³	1	13	197	29	40	38	143	380	771	803	987	972	827	6,262
Approvals for Protection and Recovery ⁴	0	68	106	139	101	100	97	117	166	106	129	101	108	59
Offences under the Act ⁵	9	8	11	15	50	12	0	28	27	36	3	2	0	(100)
Species at Risk Stewardship Program Budget (\$ million) ⁶	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	4.5	4.5	4.5	4.5	(10)

1. 2009 was the first full year that the Act was in force. The Ministry of Northern Development, Mines, Natural Resources and Forestry was responsible for enforcing the Act from 2008 to 2018. The Ministry of the Environment, Conservation and Parks has been responsible for enforcing the Act since 2019.
2. Species on the Species at Risk in Ontario List are classified as Endangered, Threatened, Special Concern or Extirpated.
3. Approvals to impact species at risk include agreements, permits and conditional exemptions.
4. Approvals for protection and recovery of species at risk include permits and conditional exemptions.
5. Offences include charges laid (including withdrawn and dismissed).
6. The budgeted amounts have not been adjusted for inflation. After inflation, the 2009 budgeted amount of \$5.0 million would be \$6.0 million if adjusted to 2020.

Nova Scotia ESA

- Department not fully managing conservation and recovery of species at risk
- Department is not carrying out planning and completing species recovery activities satisfactorily
- Eight of 14 plans for species at risk were not done; some plans were more than seven years late
- Four plans due for review are one to four years late. This means actions taken may not be the most effective
 - Auditor General 2016
 - https://oag-ns.ca/sites/default/files/publications/Chapter%203_0.pdf

Nova Scotia Continued

- Bancroft v. Nova Scotia (Lands and Forests)
 - 2020 NSSC 175 (CanLII), <<https://canlii.ca/t/j7xwm>>
- 4 grounds of challenging the implementation Endangered Species Act
- determine in all cases that failures to abide by time lines and identify core habitat as “unreasonable”

Species in Alberta

COSEWIC

- 35 endangered
- 35 threatened
- 45 special concern

SARA Schedule 1

- 28 Endangered
- 31 threatened
- 35 special concern

Wildlife Regulation (Schedule 6)

- 24 endangered
- 9 threatened

What we are working with currently in Alberta?

Wildlife Act

- SAR provisions in harvest legislation
- Elevated fines for “hunting” and impacting residences of listed endangered species

Public Lands Act

- Dispositions
- Master Schedule of conditions
- Prohibitions

Alberta Land Stewardship Act

- Allows for various tools that can be used for habitat protection
- Can impact existing statutory consents

Why is change needed?

Wildlife Act

- Vertebrate focus (prohibitions are narrowly focused)
- Regulation making power to expand it but never used

Public Lands Act

- No habitat protection provisions
- Master schedule system is not transparent
accountability is elusive
- Focus is on active sites not on restoration of habitat and recovery of species abundance

Alberta Land Stewardship Act

- Practically not being implemented
- Attempts at biodiversity management framework and landscape planning stalled

Litigation looms around discretionary actions

- ANC Timber Ltd v Alberta (Minister of Agriculture and Forestry), 2019 ABQB 710 (CanLII), <https://canlii.ca/t/j2d11>
 - ANC sues government for \$250,000,000 stemming from Ministerial Guideline
 - Injunction application (unsuccessful)

The Minister is the steward of AB's timber resources. In this role, the Minister exercises discretion, prioritization, and balancing of many interests. It is not for this court to decide if the Minister is "governing well"

The habitat conundrum

- Critical habitat
 - What is critical varies through time and space?
 - Additional of biophysical aspects of defining critical habitat undermines the relevance of the provincial
- Private land
 - Property rights issues are front and centre
- Permitting impacts
 - If SAR legislation is implemented at all it is often undermined by liberal permitting

The Habitat challenge



Photo Credit: Wayne
Lynch/SRD from Alberta's
Woodland Caribou Recovery
Plan 20042005-2013/2014

Federal Recovery Strategy

Area within range that provides overall condition that will allow ongoing recruitment and retirement cycle of habitat, which maintains a perpetual state of a minimum of 65% of the area as undisturbed habitat; AND biophysical attributes required by boreal caribou to carry out life processes

65% results in 60% self sustaining
Roll the dice.

- The habitat within a range should exist in an appropriate spatial configuration such that boreal caribou can move throughout the range and access required habitat when needed. The key to this identification is achieving and maintaining an overall, **ongoing range condition that allows for the dynamic habitat supply system**, with the biophysical attributes upon which boreal caribou depend, to operate. It is this dynamic habitat supply system within the range boundaries, containing the biophysical attributes, that is the habitat condition necessary for the recovery of boreal caribou
- Environment Canada. 2012. Recovery Strategy for the Woodland Caribou (*Rangifer tarandus caribou*), Boreal population, in Canada. Species at Risk Act Recovery Strategy Series. Environment Canada, Ottawa. xi + 138pp.

Westslope cutthroat trout

- ID critical habitat in federal Recovery Strategy
- If the **features** as described in Table 2 **are present and capable of supporting the associated functions, the feature is considered critical** habitat for the species, even though some of the associated attributes might be outside of the range indicated in the table.
 - ID's riffles, pools, backwaters, lakes, food availability and riparian habitat as all potential habitat related functions and attributes (depth, velocity, temperature, quality, invertebrates, groundwater flux etc)
- Critical Habitat of the Westslope Cutthroat Trout (*Oncorhynchus clarkii lewisi*) Alberta Population Order

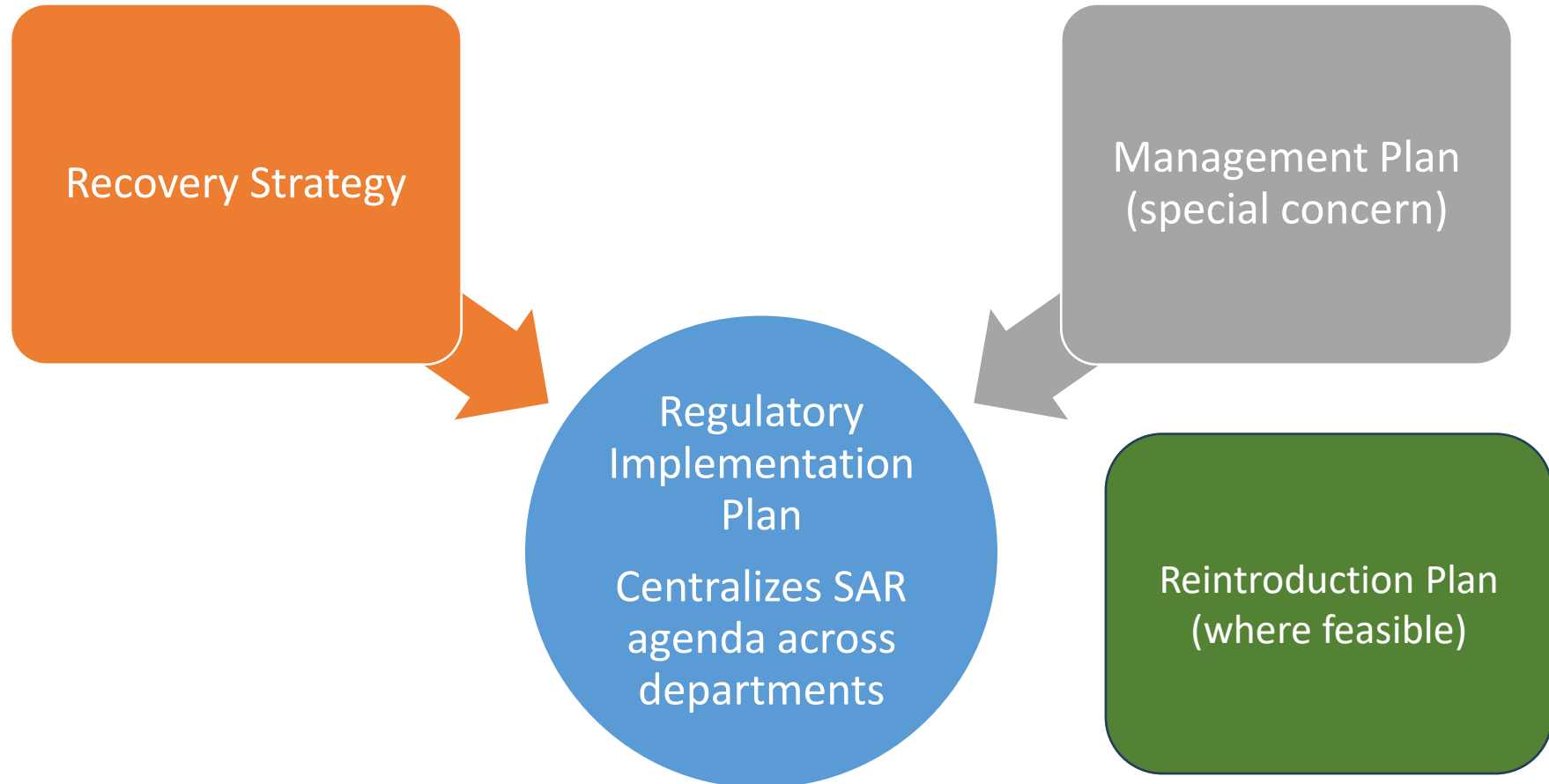
The challenge of critical habitat

- Categorizing a “range” as critical runs head long into vested resource use rights
- Cataloguing biophysical features such that enforcement of SARA is feasible is currently not practical

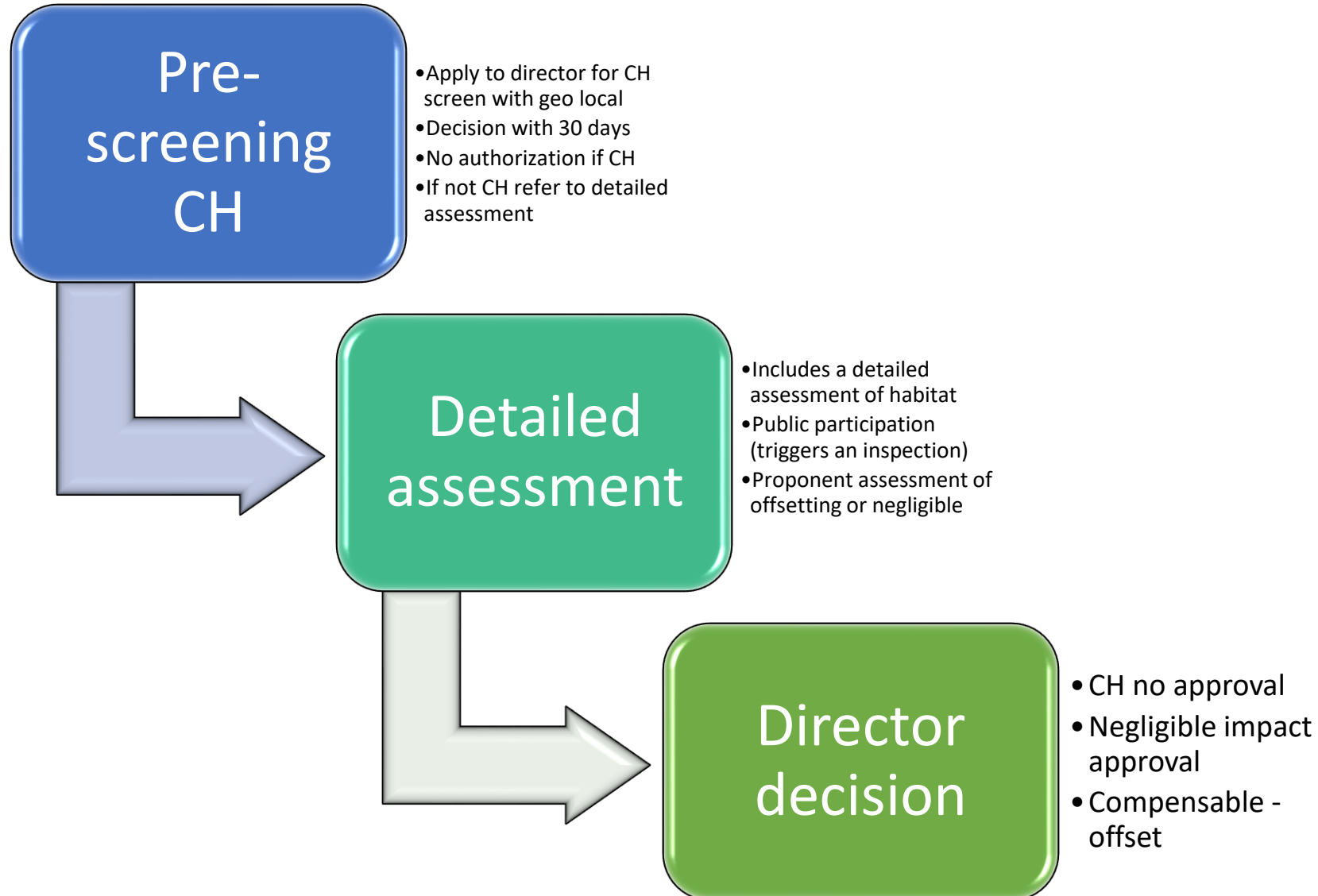
ELC's proposed approach

- Planning
- Habitat (assessments and procedures)
- Permitting and opportunities for offsets (Outside of critical habitat)
- Public participation
- Enforcement
- Money

Planning – Model ESA



Critical habitat and habitat approach



CH and habitat off ramps for existing tenures

- Enables proponent driven amendments
- Enables augmentation of statutory consents with or without conservation agreements
- Enables suspension and termination with compensation
 - Nature of compensation assessment is challenging and would be dealt with in regulation
 - Must consider the duration of the statutory consent
 - Does not apply to statutory consents that must be renewed within the next 5 years

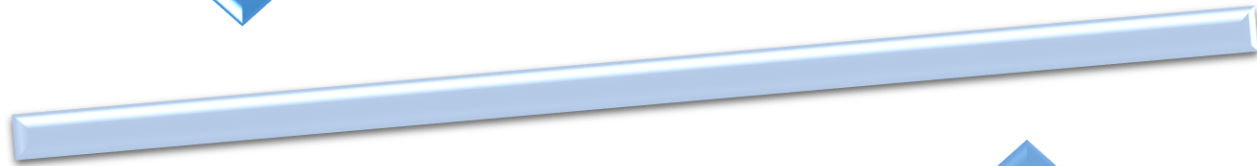
Public participation

- Investigation trigger with response times for investigation and report
- Community impact assessments and reports (aimed at private land impacts)
- Participate through recovery strategy comments
- Participation in detailed habitat assessment – triggering site visit and reporting

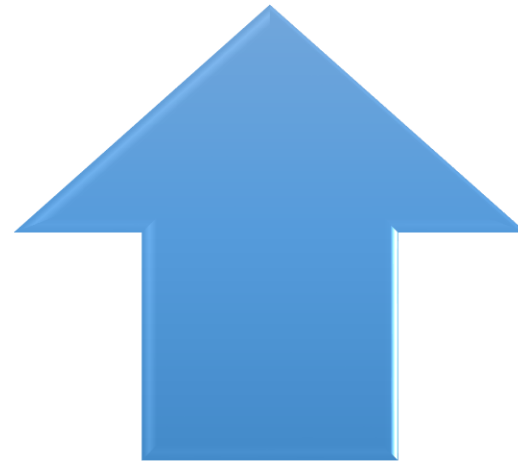
Permitting



The Response
Narrow permitting
More use of
agreements
Active prohibitions on
rights vesting



The problem
Permitting regime
undermines objectives
–bureaucratic slippage



Threatened ecosystem communities

- Provides for identification and listing of threatened ecosystem communities
- Provides for regulations to manage ecosystems (largely deferred management and conservation to regulation)
- Potential application
 - Native grasslands (mixed grass, rough fescue)
 - Wildlife Conservation Society (WCS) Canada. 2023. Globally threatened ecosystems (version 2.0), in SHAPE of Nature. <https://shapeofnature.ca/>
 - Central Rocky Mountain Mesic-Moist Mixed Conifer Forest
 - Great Plains Cottonwood - Green Ash Floodplain Forest
 - Central Rocky Mountain Lowland & Foothill Riparian Forest

Show the SAR the \$\$

- Creation of conservation fund
- Amend Financial Administration Act with minimum for fund (suggested \$200 m)
- Budgeting - Committee to determine costs in administration of their duties and include in report to Minister
- Fund is available to support administration of the Act and compensation for existing vested rights.

Enforcement tools

- Habitat protection orders
 - Emergency orders
 - Enforcement orders
 - Interim orders
-
- Broader regulatory structure with broader enforcement tools

Questions?

Website: www.elc.ab.ca

Available under publications

[Endangered-Species-Act .pdf](#)

We appreciate your support. As a registered charity we rely on donations to continue our work.

An Endangered Species Act for Alberta:

A Draft Bill for Species at Risk Protection in the Province

by Rebecca Kauffman
and Jason Unger

