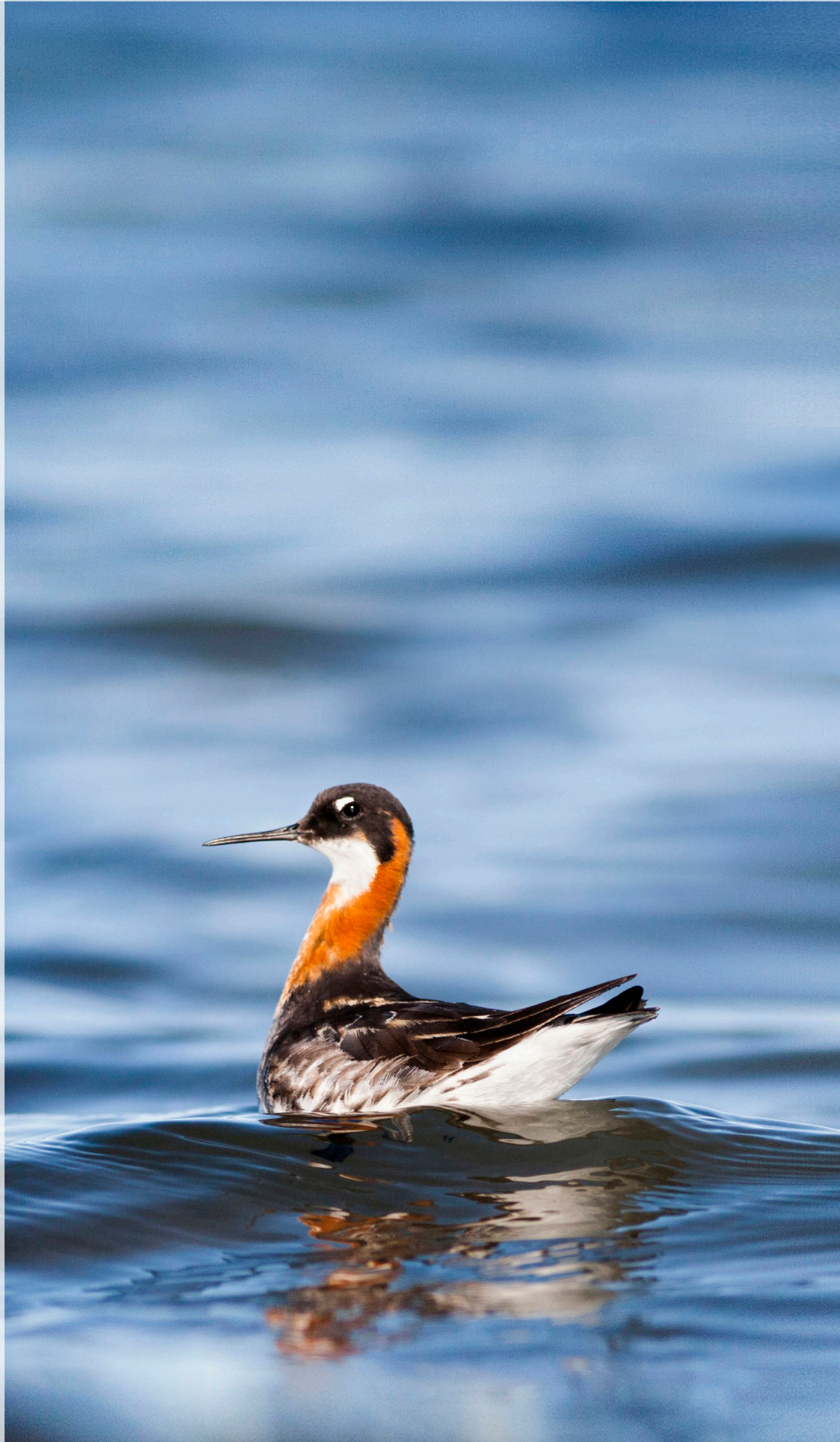


March 2019



# SAFEGUARDING OUR ECOLOGICAL IDENTITY

Why the Yukon needs laws that protect species at risk





## CONTENTS

Executive summary . . . . .	2
Key recommendations . . . . .	3
Introduction . . . . .	4
Why is protecting the Yukon's biodiversity important? . . . . .	5
Species at risk in the Yukon . . . . .	7
Current protections for species at risk . . . . .	8
The ecological importance of species at risk . . . . .	10
How the Yukon can lead . . . . .	11
CPAWS Yukon's recommendations . . . . .	14
Conclusions . . . . .	16

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## EXECUTIVE SUMMARY

Our planet is bleeding biodiversity. Mammal, bird, reptile and fish populations have declined by sixty percent in the past fifty years.<sup>1</sup> Species are vanishing 100-1000 times faster than the natural rate of extinction.<sup>2</sup> Ambitious action is needed to safeguard vulnerable species and the ecosystems they rely on. The Yukon is fortunate not to have suffered the degree of biodiversity loss that much of the planet has. Still, we cannot afford to be complacent. Current laws are inadequate to protect the Yukon's biodiversity and ecological character. Canada's *Species at Risk Act*<sup>3</sup> fully applies to only 8 percent\* of the Yukon's land base, while the *Yukon Wildlife Act*<sup>4</sup> applies to just 5 percent of the territory's species. Using existing laws to protect species at risk is like trying to hold out the rain with a fishing net.

It is time for the Yukon to enact standalone species at risk legislation. An expert-led advisory body should assess species using scientific and Indigenous knowledge. Species deemed to be vulnerable and the habitat they rely upon should be automatically protected from further harm. The Yukon should create action plans to help species at risk recover, then put these plans into motion. The components of cutting-edge species at risk legislation already exist in jurisdictions across Canada. By pulling these pieces together, the Yukon can create the most effective species at risk legislation in the country.

The Yukon should collaborate with Indigenous peoples on species at risk policies. The territory should draft action plans in conjunction with Yukon First Nation Governments, affected transboundary nations, the Yukon Fish and Wildlife Management Board and Renewable Resource Councils. Indigenous Guardians and community-based monitoring programs could work on the front lines to study species at risk, implement action plans and enforce legislation. Taking action on species at risk legislation could open an exciting spectrum of new opportunities in conservation, research and Indigenous leadership.

\* A previous version of this report incorrectly stated that Canada's *Species at Risk Act* applies to 6 percent of the Yukon.



Image: Malkolm Boothroyd

**Barren-ground caribou: threatened.** Barren-ground caribou populations across Canada have declined by over 50 percent since the 1990s. The Porcupine caribou herd is one of Canada's last healthy herds, but faces the prospect of oil and gas development in its Arctic Refuge calving grounds.



## KEY RECOMMENDATIONS

- Indigenous knowledge should play a leading role in the assessment of species at risk and the preparation of action plans. Decision making should be done in conjunction with Indigenous peoples.
- An independent panel comprised of experts in scientific and Indigenous knowledge should conduct peer-reviewed species assessments. Species determined to be at risk should be given legal designations automatically.
- The advisory panel should be empowered to identify critical habitat of species it assesses, and provide recommendations on the protection of habitat and ecosystems.
- Threatened and endangered species should receive automatic protection from harm, including automatic protection of their habitat.
- The Yukon's species at risk legislation should mandate the completion of action plans for threatened and endangered species, within two years of a species being listed.
- Protecting species at risk should be a priority in land use planning and environmental assessment processes, as part of a proactive approach to biodiversity protection.
- The Yukon should look to Indigenous Guardians and monitoring programs to help track species at risk, implement action plans and enforce legislation.
- The Government of Yukon should provide the resources needed to make its species at risk policies effective.



Quill Creek, Kluane Wildlife Sanctuary  
photo: Malkolm Boothroyd

# INTRODUCTION

We are careening towards the world's sixth mass extinction.<sup>5</sup> Animals and plants across the globe are vanishing in the face of habitat destruction, pollution, invasive species, overharvesting and climate change. Species by species, our planet is losing the biodiversity that makes each watershed, forest and estuary unique. We must make bold efforts to protect species at risk of extinction, and conserve the ecosystems they rely on.

The north still has many healthy ecosystems and large areas of relatively undamaged wilderness. With proactive policies, the Yukon can become a model jurisdiction for the protection of species at risk and their habitats. However, the territory's current laws are inadequate. The Yukon is one of the last jurisdictions in Canada without legislation dedicated to ensuring that species at risk survive. The territory is left with a hodgepodge of laws that provide some protections to some species — but are powerless to preserve large parts of the Yukon's biodiversity.

In 1996, Yukon signed the *National Accord for Protection of Species at Risk*<sup>6</sup> and joined its fellow provinces and territories in pledging to enact species at risk legislation.<sup>7</sup> Over two decades have passed, yet legislation still does not exist. The environmental law firm Ecojustice handed the Yukon an "F" for its species at risk policies in 2012.<sup>8</sup> Little has changed since. We can leave these shortcomings in the past. Drafting the territory's first ever species at risk legislation is a rare opportunity — a chance for the Yukon to set an example that the rest of Canada can follow. Two years ago, the territory's governing party pledged to adopt species at risk legislation.<sup>9</sup> It's time to make this promise a reality.

*Disclaimer: This report is not intended to advise lawmakers on the specific phrasing or layout of species at risk legislation. Rather, we aim to provide broad recommendations on the general direction that such legislation may take.*

## Important definitions

*Biodiversity* is the variety of animal, plant, fungal and microbial life, and the communities and habitats they form that exist within any given area.

An *ecosystem* is the network of interactions between living organisms and their physical environment.

*Species at risk* are species that are vulnerable to extinction or extirpation, or species that may become vulnerable if their declines aren't reversed.

*Extinction* is when a species or subspecies is lost from the planet. *Extirpation* is when a species disappears from a certain area.

*Critical habitat* is habitat that is determined to be vital to the survival or recovery of a species at risk.



Canada warbler: *threatened*.



Gypsy cuckoo bumble bee: *endangered*.



## WHY IS PROTECTING THE YUKON'S BIODIVERSITY IMPORTANT?

Few places on earth can parallel the Yukon's wildness and ecological splendor. Yukoners walk on the same ground as wolves, caribou and bears, and fill their freezers with cranberries, salmon and moose. Tiny chickadees and redpolls thrive in the coldest of winter days. Blooming crocuses and the calls of swans herald the arrival of spring. Plants and animals are integral to the subsistence, culture and health of Indigenous people.

Ecosystems are critical to human life on earth. Life as we know it would not be possible without wetlands and forests to purify air and water, without bees to pollinate crops and without fungi and bacteria to decompose waste. But ecosystems can only withstand so much disturbance and loss before their character is altered forever. There's an adage in ecology — take one rivet out of an airplane and it will still fly. But continue removing

rivets and eventually the plane will fall from the sky. Species, and the roles and relationships they carry are the rivets that hold ecosystems together. Protecting those most at risk is critical to safeguarding ecosystem integrity.

### Species at Risk Legislation: the basics

Species at risk legislation can be a powerful way to protect species. The U.S. *Endangered Species Act*<sup>13</sup> alone is credited with preventing 227 species from becoming extinct.<sup>14</sup> Researchers who studied population trends in over 1,000 species listed under the *Endangered Species Act* determined that species that have been on the list for longer periods of time are likely to show more favourable population trends than species that have been listed for shorter lengths of time.<sup>15</sup> This means that species at risk legislation works, but it takes time. That's why the Yukon must take action and put strong legislation in place — now.



The loss or restoration of one species in an ecosystem can have tremendous impacts. When overharvesting drove sea otters to the brink of extinction, sea urchins were freed from their primary predator. Urchin populations exploded and grazed away at the roots of bull kelp, devastating entire kelp forests. The recovery of sea otters brought the recovery of kelp ecosystems.<sup>10</sup>

The reintroduction of wolves to Yellowstone National Park reshaped the ecosystem. Wolves dented elk populations, and forced ungulates to adopt new foraging behaviours. Relieved from excessive grazing, Yellowstone's forests regrew.<sup>11</sup> Forests provided habitat for nesting songbirds and food for beavers. Beavers engineered new wetlands. Regenerating forests stabilized soils. Erosion slowed and streams and rivers grew clearer.<sup>12</sup>

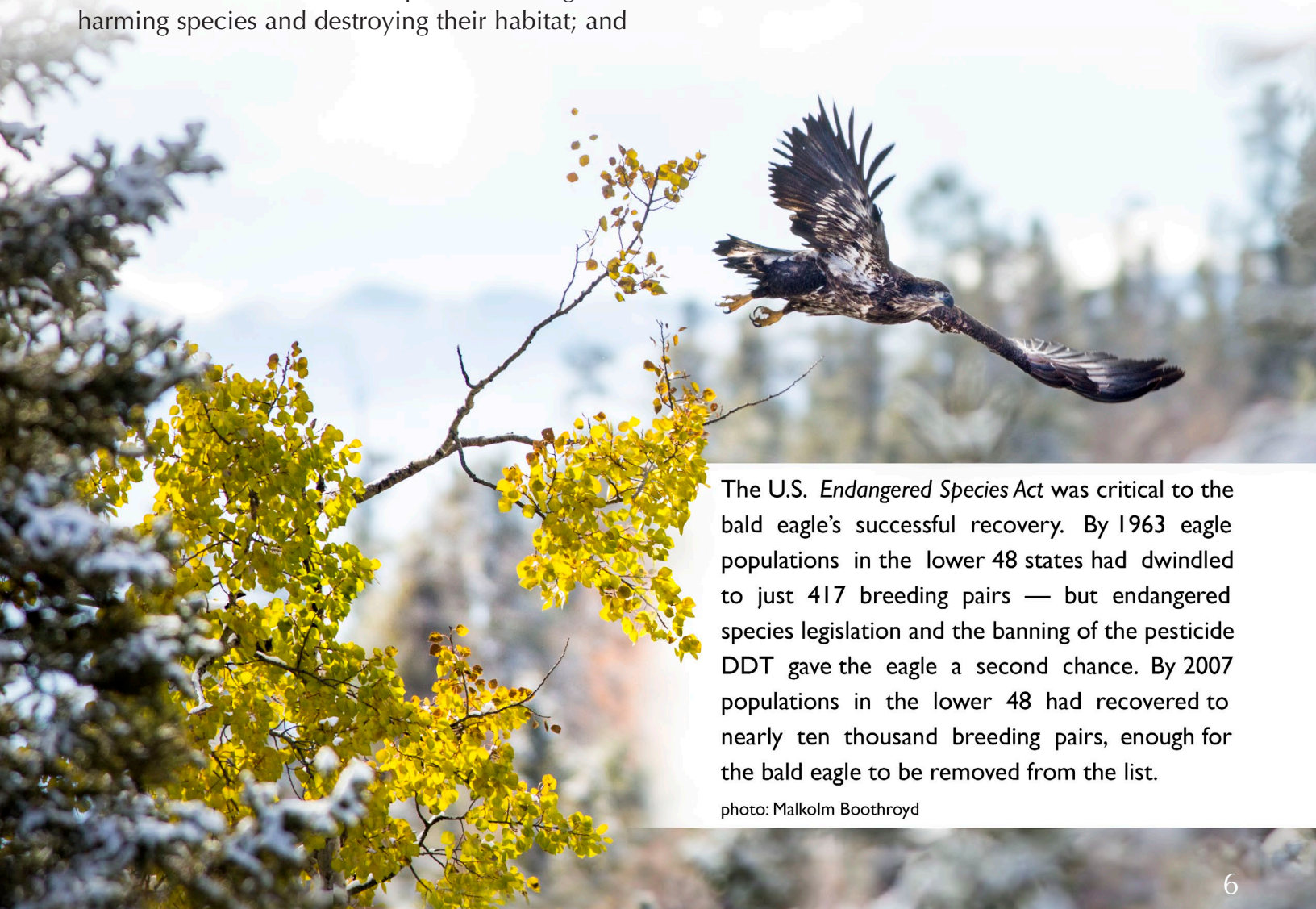
Species at risk legislation is nothing new. The U.S. Government enacted the *Endangered Species Act* in 1969. The Government of Canada created the *Species at Risk Act* in 2002. Ontario, Quebec, Manitoba, Nova Scotia, New Brunswick, Newfoundland and Labrador, and the Northwest Territories all have dedicated species at risk legislation,<sup>16</sup> while British Columbia is in the process of drafting legislation.<sup>17</sup> Endangered species legislation exists in countries as dispersed as Australia, Costa Rica, and South Africa.<sup>18</sup> The Yukon does not have to reinvent the wheel. Policymakers can look to the successes and shortfalls of existing species at risk legislation as they draft the Yukon's own legislation.

Effective species at risk legislation should contain four key principles: 1) the assessment of vulnerable species by an independent and expert-led advisory body; 2) mandatory legal designation for species determined to be at risk; 3) prohibitions against harming species and destroying their habitat; and

4) the rapid implementation of recovery strategies and action plans.<sup>19</sup> Species at risk legislation across Canada generally follows the model set out by Canada's *Species at Risk Act* (SARA).

## Canada's *Species at Risk Act* model

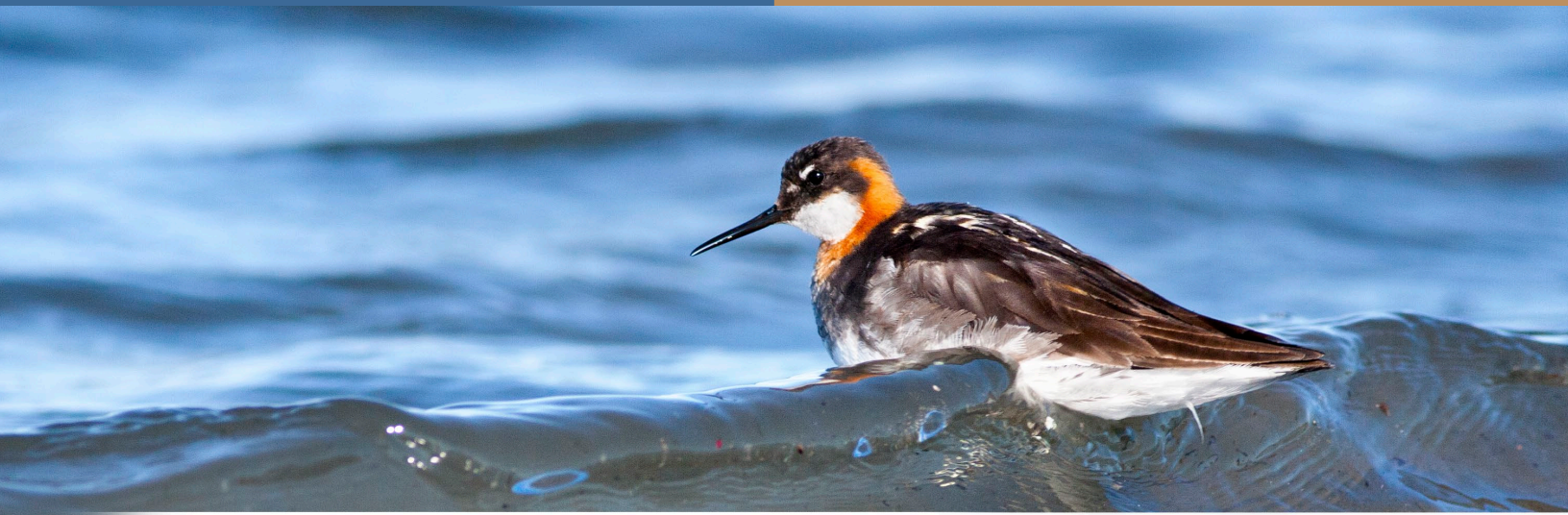
The assessment of species at risk is conducted by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC), an expert-led advisory body at arm's length from government. COSEWIC reviews ecological and Indigenous knowledge on species at risk and issues recommendations to the federal government. If the federal cabinet agrees with the recommendation, then species are added to Canada's list of species at risk, providing legal designation to listed species. Cabinet may also recommend a species be reassessed by COSEWIC as new information arises.



The U.S. *Endangered Species Act* was critical to the bald eagle's successful recovery. By 1963 eagle populations in the lower 48 states had dwindled to just 417 breeding pairs — but endangered species legislation and the banning of the pesticide DDT gave the eagle a second chance. By 2007 populations in the lower 48 had recovered to nearly ten thousand breeding pairs, enough for the bald eagle to be removed from the list.

photo: Malkolm Boothroyd





**Red-necked phalarope: *special concern*.** Phalaropes are sandpipers that swim: breeding on tundra ponds in the Arctic and wintering on the open ocean. Female phalaropes leave their mates after laying eggs, letting males incubate eggs and care for chicks. photo: Malkolm Boothroyd

Species at risk are listed under three categories: endangered for species at imminent risk of extinction or extirpation, threatened for species that are likely to become endangered without action to reverse their decline, and special concern for species that may become threatened or endangered.

Upon listing, endangered and threatened species receive automatic protections from being killed, harmed or having their residences destroyed, provided the species is on federal lands, or is an aquatic species or migratory bird.

The Government of Canada is required to complete recovery strategies within one year of an endangered species being listed, and two years of a threatened species being listed. Recovery plans must a) describe the species and its needs; b) list threats to the species' survival; c) identify the species' critical habitat and threats to that habitat; d) state recovery objectives; e) identify further information needed, and; f) provide a time frame for the completion of an action plan.<sup>20</sup>

Canada is required to issue action plans to implement a species' recovery strategy. Action plans must a) identify critical habitat;

b) list proposed measures to protect critical habitat; c) identify critical habitat that remains unprotected; d) list specific measures needed to implement the recovery strategy, and; e) evaluate the socioeconomic costs and benefits of implementing the action plan.<sup>21</sup> Under SARA, the completion of action plans is not subject to time frames.

Canada is required to issue management plans for species of special concern within three years of a species being listed. Management plans are less prescriptive than recovery strategies.

## SPECIES AT RISK IN THE YUKON

COSEWIC has assessed eleven mammal species, thirteen birds, five fishes, seven plants, five insects and one amphibian found in the Yukon as either endangered, threatened or of special concern. This list includes the boreal, barren ground and mountain caribou, Canada warbler and little brown myotis (bat). However, this is a list of species at risk at a national level — not a territorial level. Certain species may be secure across Canada, yet imperilled in the Yukon.



## CURRENT PROTECTIONS FOR SPECIES AT RISK

SARA and the Yukon's *Wildlife Act* provide only limited protections for the territory's biodiversity. SARA governs the assessment and listing of species at risk, the implementation of recovery plans and the protection of critical habitat. SARA provides little protection to many species at risk in Canada, as it fully applies to only migratory birds, aquatic organisms and species found on federal lands. A former Canadian senator criticized SARA as only protecting species found in "post offices, airports and military bases."<sup>22</sup> SARA was intended to fill gaps for species on federal lands and provide a safety net for species on other lands — not provide comprehensive protections for species everywhere in Canada. For species at risk to be adequately protected across Canada, provinces and territories must take the lead with legislation of their own.

SARA provides protection for some species in some parts of the Yukon, but is completely absent in other areas. Only a small fraction of land in the Yukon is federal: Vuntut National Park, Ivvavik National Park, Kluane National Park and Reserve, and Nisutlin River Delta National Wildlife Area.<sup>23</sup> Together these areas comprise less than eight percent of the territory's land mass.\* SARA's prohibitions against killing, capturing, harming or harassing endangered and threatened species do not apply to species on non-federal lands, unless the species is a migratory bird or aquatic.<sup>24</sup> Even though migratory birds fall under federal jurisdiction, SARA does not provide protection for the critical habitat of migratory birds outside federal land. Canada's discretionary power to protect bird habitat outside federal lands is limited to nests, the only habitat where the Migratory Birds Convention Act applies.<sup>25</sup>

\* The territorial government administers most Yukon land. First Nations control Settlement Lands, while municipalities and private landowners hold the rest.<sup>26</sup>

The Government of Canada may exercise an emergency order under SARA and take over jurisdiction for the protection of a vulnerable species outside of federal lands. This can occur should the Federal Minister of the Environment believe that a provincial or territorial government is providing inadequate protections for a species at risk. An emergency order has been exercised twice, when the federal government intervened on behalf of the Western chorus frog in Quebec<sup>27</sup> and the greater sage grouse in Alberta and Saskatchewan.<sup>28</sup>



Yukon draba: *special concern*.



## The Yukon Wildlife Act

The lack of protection for species at risk in the Yukon partly stems from inconsistent interpretations of what “wildlife” means. Under SARA, a wildlife species is any living organism, other than bacteria, viruses and exotic species. However, the Yukon *Wildlife Act* defines “wildlife” as only vertebrate animals, excluding fish. The *Yukon Act*,<sup>29</sup> a federal law, gives the Yukon the power to legislate the conservation of wildlife and their habitat. Yet the Yukon Department of Environment is bound by the *Wildlife Act*’s definition of wildlife. These definitional discrepancies create a situation where the Yukon is responsible for an all-encompassing definition of wildlife under federal law, but the Department of Environment is mandated to follow a narrow definition of wildlife under territorial law. In practical terms this means the Yukon engages in management of mammal, fish, and some bird populations, but no department has a direct responsibility for the protection of vulnerable plants or invertebrates — integral pieces of northern ecosystems and biodiversity.\*

\* Under the *Forest Resources Act* “forest resources” includes all flora. The Department of Energy Mines and Resources manages the harvest of forest resources, but is not actively involved in the conservation of species at risk.

Of the over 6,000 species known to exist in the Yukon, only 300 fall within the *Wildlife Act*’s narrow definition of wildlife.\*\* The protections offered by the act are insufficient to protect species at risk, even for the species that the act covers. The *Wildlife Act* contains none of the provisions that make dedicated species at risk legislation effective: identification of vulnerable species, prohibitions on harming species, protection of critical habitat, and implementation of recovery strategies or action plans.

The *Wildlife Act* contains no automatic protections for species at risk. The act’s blanket prohibitions on hunting and trapping animals are limited to four species of “specially protected wildlife:” the Cougar, Peregrine Falcon, Gyrfalcon and Trumpeter Swan. The act does not offer targeted protections for the critical habitat of species at risk and does not provide measures for the recovery of species at risk. This is not a fault of the *Wildlife Act*. The act was designed to regulate activities related to hunting, trapping, and outfitting — not protect species at risk. Standalone species at risk legislation is the only comprehensive way to protect endangered species in the Yukon.

\*\* Of the 6,195 species identified in the Yukon to date, only 299 fall under the *Wildlife Act*’s definition of wildlife: 4 amphibians, 59 mammals and 216 birds.



Trumpeter swans, one of four specially protected species under the Yukon’s *Wildlife Act*.



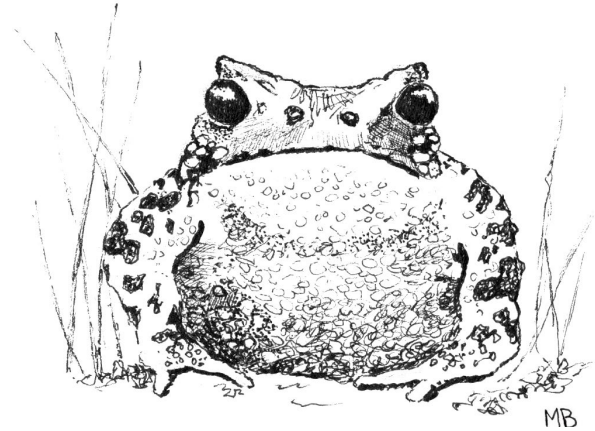
## THE ECOLOGICAL IMPORTANCE OF SPECIES AT RISK

Many species that are rare or geographically restricted in the Yukon are at the periphery of their range. For instance, ten of the Yukon's nineteen warbler species are found almost exclusively in the southernmost 100 kilometers of the territory.<sup>30</sup> Such peripheral species are likely to be more widespread in neighbouring jurisdictions. The same phenomenon is true across Canada, where approximately three quarters of species at risk in Canada are at the northern periphery of their range.<sup>31</sup>

Geographic marginalization does not mean that peripheral populations are of marginal importance for conservation. Peripheral populations can be critical to the survival of imperiled species. For instance, the reintroduction of sea otters, California bighorn sheep and Columbian sharp-tailed grouse all relied on the healthy populations found at the margins of their ranges.<sup>32</sup> Protecting peripheral populations is critical for the conservation of declining species, maintaining the abilities of species to adapt to climate change and keeping evolutionary pathways open.<sup>33</sup>

Declining species tend to disappear at the core of their geographical ranges first, and at the periphery of their range last — owing to human-driven disturbances which may be less intensive at the periphery of species' ranges.<sup>34</sup> A study of 31 endangered mammals found that 23 persisted solely on the periphery of their historical range.<sup>35</sup> A study of 245 declining species representing numerous taxa found that 37 percent of studied species occurred only on the periphery of their historical range, while just 2 percent existed exclusively in the core of their historical range.<sup>36</sup> Protecting peripheral-range populations is urgent in the face of climate change. Warming climates

may drive environmental conditions beyond the limits of organisms' physiological tolerance: forcing populations to either adapt to changing conditions, shift their ranges poleward to more suitable climates, or perish.<sup>37,38</sup> Climate-induced range shifts are well documented over prehistoric times,<sup>39</sup> as well as over the past century.<sup>40</sup>



Western toad: *special concern*.

This phenomenon is playing out in Western toad populations — the Yukon's only toad species. Western toads have been extirpated or are declining throughout much of their range in southern BC and the United States, partly due to the spread of the chytrid fungus. Western toads are a peripheral range species in the Yukon, occurring only in the southeast. Maintaining healthy populations in the north may be critical to the species' long-term vitality.

Little brown myotis (bat) populations also face the threat of pathogens, in the form of the rapidly spreading White Nose Syndrome. Bats exposed to the fungal infection can experience 90-100 percent mortality rates.<sup>41</sup> White Nose Syndrome is endemic to Europe, but was recently introduced to North America. The syndrome has spread across Eastern North America, as far west as Manitoba. A separate outbreak has been discovered in Washington State.<sup>42</sup> Northern populations of little brown myotis are the furthest removed from the outbreak, meaning that the Yukon may be a critical refuge for the species' survival.



Peripheral populations are on the front lines of climate change-driven range migrations. These populations have likely evolved adaptations to variable and marginal habitats,<sup>43,44</sup> and therefore may be better suited to adapting to climate-induced changes and colonizing new environments.<sup>45,46</sup> For example, beetles with longer wings and butterflies with stronger flight muscles have been recorded at the northern edges of their species' ranges — both adaptations that enhance the abilities of these populations to disperse and colonize.<sup>47</sup> These types of adaptations are critical to a population's ability to shift its range to keep pace with changing climates.

The Yukon could be an increasingly important foothold for some species, especially as climate change triggers ecosystem-wide changes to their southerly ranges. Climate change-driven temperature increases are believed to have caused the extirpation of pikas from previously occupied habitats in the Sierra Nevadas.<sup>48</sup> Parts of the Yukon's boreal forest, especially those in mountainous regions or closer to the ocean, are projected to become important "climate refugia" for certain bird species.<sup>49</sup> Climate change is projected to push populations of songbirds such as Cape May, blackpoll and bay-breasted warblers farther northwards within the boreal forest.<sup>50</sup>

The Yukon should prioritize the conservation of peripheral populations and species at risk due to

climate change. As part of its species at risk strategy, the Government of Yukon should provide a framework for assessing range contraction and climate change-driven range migration in species of concern. Proactive steps are needed to help protect northern populations of species at risk of collapse in the south.

## HOW THE YUKON CAN LEAD

The successes and failures of species at risk legislation across Canada can provide valuable lessons to the Yukon. Some policies are forward thinking. The endangered species acts of Ontario and Manitoba automatically make the disturbance and destruction of the habitat of an endangered or threatened species illegal.<sup>51,52</sup> Ontario's *Endangered Species Act* leaves the process of evaluating and listing of species at risk entirely to an arm's length advisory panel.<sup>53</sup> Under Nova Scotia's *Endangered Species Act*, the process of assessing and listing species is also done at arm's length, with a mandate to base decisions on both scientific information and Indigenous knowledge.<sup>54</sup> Nova Scotia's legislation also empowers the advisory group to make recommendations on the contents and implementation of recovery strategies, and the protection of the habitat of species at risk.<sup>55</sup> The Yukon should follow these leads as it drafts species at risk legislation of its own.



Collared pika: special concern.

photo: Malcolm Boothroyd



The Yukon must also be wary not to replicate the weaknesses in the species at risk policies of its fellow provinces and territories. Legislation in Manitoba, Quebec, and Prince Edward Island does not require governments to conduct recovery planning for species at risk. The listing of species at risk in Manitoba, Quebec and Newfoundland and Labrador is discretionary, while legislation in New Brunswick and Prince Edward Island doesn't even make assessing species at risk an obligation.<sup>56</sup> Ontario's species at risk policies were relatively strong<sup>57</sup>, until wide-ranging exemptions were instituted in 2013, releasing industries such as forestry and mineral exploration from its *Endangered Species Act*.<sup>58</sup>

SARA contains strong provisions, such as timelines for the completion of recovery strategies and progress reports, and the inclusion of Indigenous knowledge in decision making. However, a failure to adhere to timelines and a lack of political support from previous governments has led to systematic backlogs. In practice, recovery strategies have taken an average of six years to complete, while action plans are largely absent.<sup>59</sup> These delays have forced environmental groups to take the federal government to court numerous times over its species at risk practices.

The Yukon could streamline this phase of its species at risk framework by merging recovery strategies and action plans into a single process. While harmonized plans could require additional effort to prepare, they could ultimately cut down

on the amount of paperwork surrounding each species, and provide actionable strategies sooner. As with all aspects of its species at risk framework, the Yukon must provide the resources and political will needed to make action planning work.

## Prescriptive legislation and enforceable timelines

Binding timelines are critical to species at risk legislation working as intended. Delays and inaction may stem from a lack of timeframes or ambiguity in language. For example, a previous federal government interpreted s. 27 of SARA in a way that allowed the Minister not to pass COSEWIC recommendations along to Cabinet — resulting in no decisions being made on any of the 82 species recommended for listing during its mandate.<sup>60</sup> This loophole was shut in 2017 with the passage of Bill C-363.<sup>61</sup> Delays in the listing phase of species recovery could be avoided were the Yukon to adopt an automatic listing mechanism. Here, any species determined to be at risk by the expert-led advisory body would be immediately given legal designation as a species at risk, without needing approval from cabinet.

The Yukon should create strong and enforceable legislation by attaching timelines to every phase in its species at risk framework. For instance, the Yukon could help ensure the implementation of recovery measures by requiring action plans to be completed within two years of a threatened or endangered species being listed.

### Polar bear: *special concern*.

photo: Malcolm Boothroyd





## Respecting Indigenous and traditional knowledge

Indigenous peoples carry a wealth of ecological knowledge, accumulated and passed on throughout generations.<sup>62</sup> Indigenous knowledge and practices can play a key part in protecting biodiversity and threatened species.<sup>63,64</sup> The close relationships many families and communities carry with the land makes Indigenous knowledge holders keenly aware of ecological changes. Indigenous communities often know of troubling trends well before they are detected through Western scientific methods.<sup>65</sup> The Yukon's species at risk legislation should provide holders of Indigenous knowledge with meaningful opportunities to engage in species assessments, action planning and decision making.

Elsewhere in Canada, Indigenous knowledge is being harmonized into species at risk policies. The COSEWIC Aboriginal Traditional Knowledge Subcommittee leads work at a national level to bring Indigenous knowledge into species at risk assessments.<sup>66</sup> The subcommittee has established an eight-step protocol for gathering and integrating Indigenous knowledge, including guidelines on community and participant approvals, ethics reviews, interviews, follow-ups, and integrating knowledge into species reviews.<sup>67</sup> Meanwhile, the NWT's *Species at Risk Act* mandates that appointments to its Species at Risk Committee ensure the committee holds expertise on Indigenous, community and scientific knowledge.<sup>68</sup> The Yukon should look to practices around Indigenous knowledge that exist in other jurisdictions.

## Indigenous Guardians and community-based monitoring

Indigenous Guardians and community-based monitoring programs work on the ground to protect the cultural and ecological integrity of Indigenous lands, while empowering new generations of leaders.<sup>69</sup> Such initiatives place responsibility for monitoring and managing Indigenous territories in the hands of the people who know the land the best. Such programs can be especially important in remote or difficult-to-access lands, where agencies may struggle to adequately enforce environmental laws or conduct ecological monitoring. Indigenous Guardians and monitoring initiatives are found across Canada: from the Coastal Guardian Watchmen Network that monitors ecosystems and enforces environmental laws on the northern and central coastlines of British Columbia<sup>70</sup> — to guardians who track species at risk, wildlife, hunting, trapping, fisheries and forestry on Miawpukek territories in Newfoundland.<sup>71</sup> Similar programs exist in the north as well, such as on Taku River Tlingit<sup>72</sup> and Kaska Dena<sup>73</sup> territory.

Indigenous Guardians and monitoring programs offer exciting opportunities for the Yukon. Guardians could lead efforts to protect species at risk in the Yukon: from gathering knowledge and monitoring species, to implementing recovery strategies and enforcing legislation. Miawpukek Guardians are authorized by the Government of Newfoundland and Labrador to enforce the province's fisheries and wildlife legislation.<sup>74</sup> The Yukon could offer similar powers to Indigenous Guardians and monitoring programs already in existence or those to form in the territory.

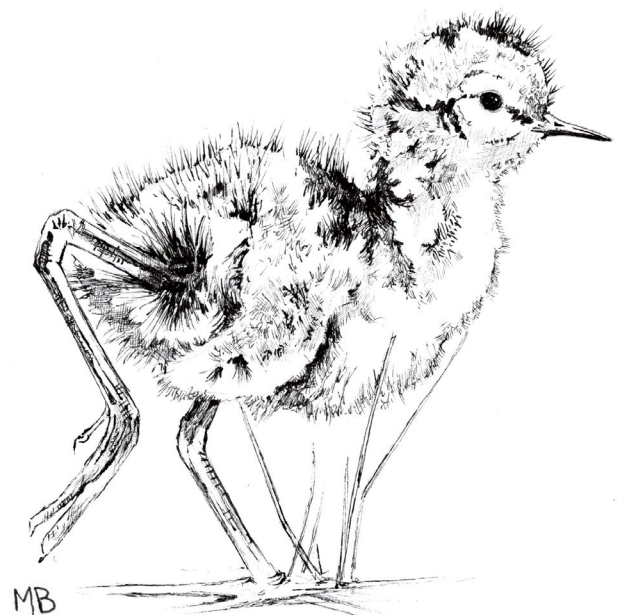
# CPAWS YUKON'S RECOMMENDATIONS

## Purpose of legislation

- Species at risk legislation should recognize the importance of conserving biodiversity, the importance of following the precautionary principle, and importance of respecting Indigenous peoples and their knowledge.
- Legislation should provide a legal framework for assessing species at risk of extinction, protecting the habitat of these species, and restoring species at risk and their environments.
- Species at risk legislation should provide a leading role for Indigenous knowledge in the assessment of species at risk and the creation of recovery strategies. Decision making should be done in conjunction with Yukon First Nations governments, affected transboundary First Nations, the YFWMB and RRCs.
- Legislation should provide clear and transparent decision-making processes.
- The Yukon should make species at risk protections a priority in land use planning and environmental assessment processes, as part of a proactive approach to biodiversity protection.
- Legislation should emphasize the need for action in the recovery of species at risk, and recognize the importance of proactive measures to prevent species from becoming vulnerable in the first place.
- Legislation should define 'critical habitat' as habitat essential to the survival and recovery of species at risk.
- Legislation should accommodate Indigenous harvesting and gathering practices.

## Listing of species and the work of the advisory panel

- The Yukon's species at risk legislation should require the territory to assess species that may be at risk.
- An advisory body should be formed to evaluate the available knowledge and make determinations on the status of assessed species. Members should be experts in scientific knowledge and/or Indigenous knowledge holders.
- The advisory body should operate at arm's length from the Government of Yukon, though not to the exclusion of government employees being appointed as members. Similar to COSEWIC, members of the Yukon's species at risk advisory body should conduct their work based on their own qualifications, not the priorities of their employer. As with COSEWIC, internal discussions should remain confidential.
- Species determined by the advisory body to be at risk should be automatically listed.



Red-necked phalarope chick.



- In addition, species determined by COSEWIC to be at risk should be automatically added to the Yukon's list of species at risk. Harmonizing with the COSEWIC assessments would cut down on the amount of work the Yukon would have to do from scratch. Exemptions could be made in cases such as the barren ground caribou: many herds across Canada have drastically declined, yet the Porcupine herd in the Yukon remains healthy.

- The advisory panel should be empowered to identify critical habitat of species it assesses, and provide recommendations on the protection of critical habitats and ecosystems.

- The advisory panel should be empowered to identify gaps in knowledge relevant to species at risk and recommend further studies to address such gaps. The Yukon should further invest in ecological monitoring to address such uncertainties.

- The advisory panel should analyze which peripheral-range species are experiencing or may experience substantial declines at the core of their range. The panel should recommend proactive conservation measures that the Yukon can take to protect the northern boundaries of their ranges.

## Protection and recovery measures for species at risk

- Threatened and endangered species should receive automatic protection from harm, including automatic protection of their habitat (similar to protections provided by s 10 of the Ontario Endangered Species Act and s 10 of Manitoba's Endangered Species and Ecosystems Act).

- Each stage of the Yukon's species at risk framework should be bound by enforceable timelines.

- The Yukon should streamline transition to the action phase of species recovery by harmonizing recovery strategies and action plans. Harmonized action strategies should be required to contain contents similar to what is prescribed under s 41 and s 49 of SARA, including the provisions for the identification and protection of critical habitat.

- The Yukon's species at risk legislation should mandate the completion of action plans for threatened and endangered species within two years of a species being listed.

- Legislation should mandate the completion of management plans for species of special concern within three years of a species being listed. Contents of a management plan should be similar to what is required under SARA.

- Legislation should be prescriptive to the contents of recovery strategies, action plans, and should require the protection of critical habitat. Prescriptive legislation would provide greater certainty for policy makers, parties and the public, and ensure greater continuity of species at risk policies between governments.



Northern myotis: *endangered*.

- Legislation should allow for ecosystem-based or multi-species recovery strategies, when single ecosystems support multiple species at risk, or when multiple species face common threats<sup>75</sup>.
- Legislation should empower grassroots stewardship of vulnerable species and ecosystems.
- The Yukon should be required to release semiannual updates on the protection status for critical habitat identified in each action plan: beginning six months after an action plan is published, and continuing as long as portions of critical habitat remain unprotected.
- The Government of Yukon should follow the precautionary principle when issuing permits that exempt persons or activities from species at risk legislation. Similar to s 73 (3) of SARA and s 7 (2) of the U.S. *Endangered Species Act*, the Yukon should include a clause ensuring that approved activities do not jeopardize species at risk.
- The Yukon should look to Indigenous Guardians and community monitoring programs to help study species at risk, implement recovery strategies and enforce legislation.
- The Government of Yukon should provide the resources needed to make its species at risk legislation effective. This should include a modest budget for species inventory prior to a species being assessed.
- The Government of Yukon should guarantee additional funding and staffing for species at risk to coincide with the first several years of legislation coming into force. Increased funding would help to clear the backlog of assessments and reports that would need to be written early on in the process.

## CONCLUSIONS

Northern Canada is fortunate not to have suffered the degree of ecological destruction and biodiversity loss that much of the world has experienced. Still, the species and ecosystems that make the north unique are at risk — as climate change, habitat loss and disturbance, pollution and invasive species trigger far-reaching ecological transformations. The Yukon's current laws are inadequate to safeguard the territory's vulnerable species. It's time to implement our own cutting-edge species at risk legislation as part of a comprehensive strategy to protect the territory's biodiversity.

The Yukon can learn from the successes and failures of species at risk legislation in fellow jurisdictions as it crafts legislation and policies of its own. The components of cutting-edge species at risk legislation already exist: respect for Indigenous knowledge by the Northwest Territories and Nova Scotia, evidence-based and independent listing mechanisms in Nova Scotia and Ontario, mandatory habitat protections in Ontario and Manitoba, and comprehensive recovery strategies in SARA. The Yukon can create the most effective species at risk laws in Canada by pulling all these pieces together. Let's get to work.

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Transverse lady beetle: *special concern*.




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