

Reports of the Commissioner of the Environment and Sustainable Development to the Parliament of Canada

## Discretionary Powers to Protect Species at Risk

### Report 3



### Independent Auditor's Report | 2023



Office of the Auditor General of Canada

Bureau du vérificateur général du Canada

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# At a Glance



## Overall message

Overall, Environment and Climate Change Canada did not have a timely and evidence-based approach to informing the use of safety net and emergency order provisions to protect terrestrial wildlife species on non-federal lands.

Environment and Climate Change Canada did not proactively use readily available information about threats to wildlife species and their habitats, declining species population trends, and the lack of protection of critical habitat on non-federal lands to inform decisions on whether to advise the Minister of Environment and Climate Change on the use of the safety net and emergency order provisions. Since the *Species at Risk Act* came fully into force almost 20 years ago, a total of 3 emergency orders and no safety net orders have been issued to address imminent threats to species on non-federal lands. These instances were triggered by pressure from sources external to the federal government. Providing timely and evidence-based advice for the use of the safety net and emergency order provisions would help protect threatened species where and when needed, supporting their recovery and aligning with federal commitments to halt and reverse nature loss by 2030 in Canada.

The *Species at Risk Act* provides the federal government with powers to protect wildlife species and their habitats on non-federal lands. This includes taking action in the absence of legislation in the provinces and territories to effectively protect threatened and endangered species and their critical habitat, which federal, provincial, and territorial ministers responsible for wildlife agreed to 27 years ago, under the 1996 national Accord for the Protection of Species at Risk. Environment and Climate Change Canada has taken important first steps by establishing conservation agreements with the provinces, the territories, and Indigenous groups to protect species such as the boreal and southern mountain caribou. The government needs to take stronger actions to protect and recover species and their habitats effectively. This includes completing and approving policies on using the safety net and emergency order provisions that Parliament has established to protect these species, working with partners to strengthen conservation agreements, and collecting and using information on conservation agreements to ensure that they contribute to recovery objectives and support decisions for protecting species and habitats.

## Key findings



- Environment and Climate Change Canada did not have a proactive approach in support of timely advice on the use of the safety net and emergency order provisions.
- Environment and Climate Change Canada did not have complete policies and guidelines for the safety net and emergency order provisions.
- Environment and Climate Change Canada took important first steps by establishing conservation agreements for boreal and southern mountain caribou.

## Key facts and figures



- According to the Committee on the Status of Endangered Wildlife in Canada, an independent panel that advises the federal government, the number of new wildlife species at risk has increased steadily over the past 25 years, by an average of about 4% each year.
- Data on species from December 2022 indicates that 84% of terrestrial species assessed or reassessed as endangered have experienced an overall lack of progress in their recovery.
- Since the *Species at Risk Act* came fully into force in 2004, the Governor in Council has issued a total of 3 emergency orders and no safety net orders to address imminent threats on non-federal lands.

See **Recommendations and Responses** at the end of this report.

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# Introduction

## Background

### Species at risk



Sustainably manage forests, combat desertification, halt and reverse land degradation, halt biodiversity loss

Source: United Nations

3.1 The *Species at Risk Act* recognizes that Canada’s natural heritage is integral to the country’s identity and history. Wildlife has value in and of itself and has cultural, spiritual, aesthetic, ecological, scientific, recreational, and medical value. Wildlife species are at the foundation of the natural systems that humans depend on for clean water, clean air, healthy soil, pollination, and food. As a result of habitat loss and degradation, invasive species, pollution, overexploitation of resources, and climate change, many species in Canada are at risk of declining—and some have disappeared entirely. The extinction of a species is irreversible and affects other related species. These losses are currently happening in Canada and around the world at dangerous and accelerated rates, with broad effects on ecosystems, communities, and future generations.

3.2 The United Nations recognizes the crisis that the world faces in biodiversity—that is, the variety of species, ecosystems, and ecological processes—and that along with pollution and climate change, it is a pressing challenge. The United Nations’ Sustainable Development Goal 15 (Life on Land) commits to halting and reversing land degradation and biodiversity loss. It calls for urgent and significant action to protect threatened species and prevent their extinction. Furthermore, as part of the December 2022 Kunming-Montreal Global Biodiversity Framework, the federal government has committed to halting and reversing biodiversity loss by 2030 in Canada. The government has also committed to achieving a full recovery for nature by 2050.

3.3 The *Species at Risk Act* came fully into force in June 2004. It is the main piece of federal legislation that deals specifically with the protection and recovery of wildlife species at risk in Canada. Its purposes are to

- prevent wildlife species from being extirpated or becoming extinct
- provide for the recovery of wildlife species that are extirpated, endangered, and threatened as a result of human activity
- prevent wildlife species of special concern from becoming endangered or threatened

(For definitions of “extirpated,” “extinct,” “endangered,” “threatened,” and “special concern,” see Exhibit 3.1)

3.4 The act is a key tool in Canada’s response to the United Nations Convention on Biological Diversity. It includes legal obligations to protect listed wildlife species and to identify recovery measures to be implemented.

3.5 In 1996, under the national Accord for the Protection of Species at Risk, federal, provincial, and territorial ministers responsible for wildlife agreed to “establish complementary legislation and programs that provide for effective protection of species at risk.” The *Species at Risk Act* supports commitments under the national accord to have complementary legislation throughout Canada to protect species at risk.

3.6 According to the **Committee on the Status of Endangered Wildlife in Canada**,<sup>1</sup> the number of wildlife species being assessed as at risk has increased over the past 25 years, by an average of about 4% each year. The number of wildlife species assessed by the committee as extirpated, endangered, threatened, or of special concern in Canada has grown from 307 in 1998 to 866 as of 2022. These numbers include aquatic and terrestrial species, such as the Maritime ringlet, a butterfly found only in northern New Brunswick and the Gaspé Peninsula in Quebec; the phantom orchid, a parasitic orchid in British Columbia that obtains its nutrients from a fungus rather than through sunlight and photosynthesis; and the Prairie population of the eastern tiger salamander, one of the largest terrestrial salamanders in North America that, in Canada, is found only in Manitoba. Biodiversity in Canada: Commitments and Trends, a backgrounder published in 2022 by the Commissioner of the Environment and Sustainable Development, provides information on the status and trends of species at risk.

3.7 Despite the national accord, the actions of the federal, provincial, and territorial governments taken together have not fully provided “effective protection of species at risk throughout Canada” through “immediate legal protection for threatened or endangered species.” As of July 2022, the Committee on the Status of Endangered Wildlife in Canada had assessed 695 terrestrial wildlife species (excluding aquatic species, but including migratory birds) in Canada. Of those 695 species, 22 were assessed as data deficient, and 100 were assessed as not at risk. The remaining 573 were assessed as at risk or extinct (Exhibit 3.1). Most were then **listed**<sup>2</sup> by the **Governor in Council**<sup>3</sup> under the *Species at Risk Act*.

1 **Committee on the Status of Endangered Wildlife in Canada**—An independent advisory panel to the Minister of Environment and Climate Change. It provides advice on species to be considered for listing under the *Species at Risk Act*. Committee members are wildlife biology experts from academia, the government, non-governmental organizations, and the private sector.

2 **Listing**—The prerequisite to protection under the *Species at Risk Act*. Unless a species is included on the act’s “legal list” (Schedule 1—List of Wildlife Species at Risk), it will not be eligible for protection under the act.

3 **Governor in Council**—The Governor General, who acts on the advice of Cabinet and, as the formal executive body, gives legal effect to those decisions of Cabinet that are to have the force of law.

**Exhibit 3.1—Number of terrestrial wildlife species assessed as at risk or extinct by the Committee on the Status of Endangered Wildlife in Canada, as of December 2022**

Species	Special concern	Threatened	Endangered	Extirpated	Extinct	Total
	May become threatened or endangered because of a combination of biological characteristics and identified threats	Likely to become endangered if nothing is done to reverse the factors leading to its extirpation or extinction	Faces imminent extirpation or extinction	No longer exists in the wild in Canada but exists elsewhere in the wild	No longer exists	
Amphibians	9	5	13	1	0	28
Arthropods	22	13	41	4	0	80
Birds	29	27	34	2	3	95
Lichens	9	9	5	0	0	23
Terrestrial mammals	14	10	18	1	2	45
Terrestrial molluscs	6	3	9	1	0	19
Mosses	5	4	11	1	1	22
Reptiles	17	13	12	5	0	47
Vascular plants	56	46	109	3	0	214
<b>All</b>	<b>167</b>	<b>130</b>	<b>252</b>	<b>18</b>	<b>6</b>	<b>573</b>

Source: Data from the Species at Risk Public Registry; definitions from the *Species at Risk Act*

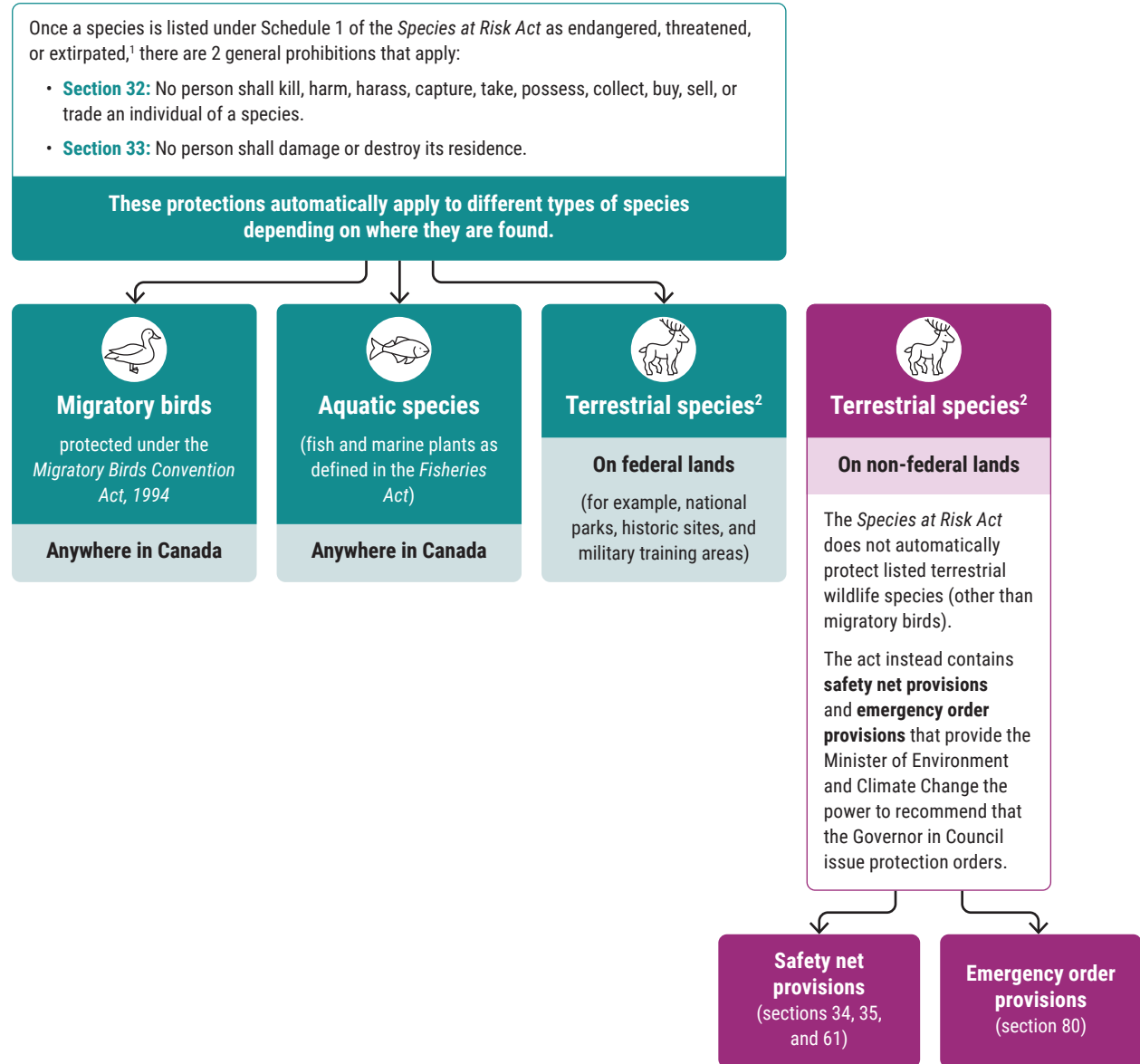
3.8 The federal government has direct responsibilities for aquatic species and migratory birds wherever they are found and for terrestrial species on **federal lands**.<sup>4</sup> Where effective protection of species at risk at the provincial and territorial levels is not in place, the federal government has the authority to intervene to protect wildlife species at risk and their habitats on non-federal lands through safety net and emergency order provisions of the *Species at Risk Act* (Exhibit 3.2). This safety net approach differs from some other federal environmental laws, such as for pollution, where the federal protections apply automatically in the absence of equivalent provincial protections.

<sup>4</sup> **Federal lands**—Lands that include, but are not limited to, Canada's oceans and waterways, national parks, military training areas, national wildlife areas, some migratory bird sanctuaries, and First Nations reserve land.

Source: Adapted from the *Species at Risk Act*



**Exhibit 3.2—Species at risk are protected through different provisions of the *Species at Risk Act* depending on where the species are found**



Notes:

1. For extirpated species, section 33 applies only if a recovery strategy has recommended the reintroduction of the species. For species of special concern, sections 32 and 33 do not apply.
2. This term refers to terrestrial species and any other species that are wild by nature and native to Canada or have extended their range into Canada without human intervention and have been present for at least 50 years. These species include birds, mammals, reptiles, amphibians, terrestrial molluscs, plants, and insects.

Source: Adapted from information from Environment and Climate Change Canada

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**Safety net and emergency order provisions for terrestrial species on non-federal lands**

3.9 Three types of safety net provisions under the *Species at Risk Act* apply to species on non-federal lands. These provisions are to be used in the following circumstances:

- Safety net provisions for a species—Under sections 34 and 35, the Minister of the Environment (the title used in the act) is required to make a recommendation to the Governor in Council for an order to protect individuals of a species or their residence if the minister is of the opinion that the laws of the province or territory do not effectively protect them.
- Safety net provisions for critical habitat (habitat necessary for the survival or recovery of a listed wildlife species)—Under section 61, the Minister of the Environment is required to make a recommendation to the Governor in Council for an order prohibiting the destruction of the critical habitat of a threatened or endangered species if the minister is of the opinion that (1) no provisions or other measures of the *Species at Risk Act* or any other act of Parliament protect the critical habitat and (2) the laws of the province or territory do not effectively protect the critical habitat. In addition, when the minister is forming an opinion on whether to recommend a federal safety net provision under section 61, the minister must consider whether there are any conservation agreements under section 11 that protect the particular portion of the critical habitat. A conservation agreement may be entered into with any government in Canada, organization, or person to benefit a species at risk or enhance its survival in the wild. Exhibit A-1 in the appendix of this report shows the process for the use of the safety net provisions for critical habitat under section 61 of the act.

3.10 These safety net provisions (sections 34, 35, and 61) do not apply to aquatic species or migratory birds. Other provisions in the act exist to protect critical habitat of aquatic species, migratory birds, and listed species on federal lands (section 58) and species on federal lands classified by provinces or territories as endangered (section 60).

3.11 Emergency order provisions (section 80) under the act provide for the protection of a listed wildlife species and are to be used to prohibit activities that may adversely affect a species or its habitat or to require the doing of things that protect them. They require the Minister of the Environment or the Minister of Fisheries and Oceans, depending on the specific species, to recommend that the Governor in Council provide protection to a listed species if the minister is of the opinion that the

species faces imminent threats to its survival or recovery. Exhibit A-2 in the appendix of this report shows how the emergency order provisions are used under section 80 of the act.

3.12 Since the *Species at Risk Act* came fully into force 19 years ago, the Governor in Council has, on recommendation of the Minister of the Environment, issued a total of 3 emergency orders (section 80)—in 2013, 2016, and 2021—aimed at addressing imminent threats on non-federal lands. These orders were all made following formal requests from stakeholders, which were backed by threats of legal action. The Governor in Council has not issued any safety net orders under sections 34, 35, or 61.

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## Roles and responsibilities

3.13 Environment and Climate Change Canada has the lead responsibility to administer the *Species at Risk Act*. It is the department responsible for the terrestrial species listed under Schedule 1 of the act except when they are found on lands administered by Parks Canada. The department's role is to

- provide **timely and evidence-based advice**<sup>5</sup> to the Minister of the Environment to support decisions and related recommendations under the act's safety net and emergency order provisions to the Governor in Council to protect listed terrestrial species at risk and their critical habitat on provincial, territorial, and private land
- work with provincial and territorial governments, Indigenous groups, and private landowners to develop protection and conservation measures (such as agreements between the federal government and these groups to protect habitat and species at risk) and to assess their effectiveness

## Focus of the audit

3.14 This audit focused on whether Environment and Climate Change Canada took a timely and evidence-based approach to informing the Minister of Environment and Climate Change's recommendations to apply the safety net (sections 34, 35, and 61) and emergency order (section 80) provisions of the *Species at Risk Act* for terrestrial wildlife species on non-federal lands.

3.15 We also examined the following:

- how the department used information on expected or achieved results of conservation agreements (under section 11) to support

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<sup>5</sup> **Timely and evidence-based advice**—Advice based on the best available information in support of the protection, recovery, or survival of a species.

timely and evidence-based advice for the minister on applying safety net or emergency order provisions on non-federal lands in accordance with the act

- whether the department had complete guidelines and policies in place and followed them in support of providing advice to the minister to inform decisions on whether to recommend to the Governor in Council the use of these provisions to protect species at risk and their habitats

3.16 This audit focused on the safety net and emergency order provisions for terrestrial species on non-federal lands. The audit did not include

- general prohibitions of the act that legally protect species and habitats following the listing of a wildlife species at risk on federal lands
- emergency order provisions for migratory birds, aquatic species, or species located on federal lands, or the provision for an emergency listing as an endangered species (section 29)

3.17 This audit is important because the world is facing a biodiversity crisis. For Canada to take action to protect terrestrial species most in need of attention, the government needs policies and systems to facilitate timely and evidence-based advice to the minister on the use of the safety net and emergency order provisions. Such policies and systems also provide transparency and predictability to stakeholders affected by decisions to apply these provisions. The government can mitigate threats and prevent the further decline of species by establishing these provisions as credible options for when there are imminent threats or when there are no measures that protect the species, the residences of its individuals, or its critical habitat.

3.18 More details about the audit objective, scope, approach, and criteria are in **About the Audit** at the end of this report.

## Findings and Recommendations

### Environment and Climate Change Canada did not have a proactive approach to ensuring timely advice on using the safety net or emergency order provisions

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#### Why this finding matters

3.19 This finding matters because proactively collecting and assessing available information and data can help ensure that the Minister of Environment and Climate Change receives timely advice

on whether a critical habitat or a species on non-federal lands requires protection. This approach can also help ensure that the minister receives timely advice on whether to recommend that the Governor in Council take action to prohibit activities that pose imminent threats to a species or its habitat.

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## Context

3.20 Under the *Species at Risk Act*, Environment and Climate Change Canada, Fisheries and Oceans Canada, and Parks Canada each have certain powers, duties, and functions. The Minister of the Environment and the Minister of Fisheries and Oceans are the competent ministers with legally assigned responsibilities under the act (Exhibit 3.3).

3.21 Exhibit 3.3 shows the number of terrestrial species at risk listed as endangered or threatened under the act in each province and territory. However, not all provinces and territories have equivalent legislation to protect species at risk. Moreover, for the provinces and territories that do have species at risk legislation, not all federally listed terrestrial species are listed under their respective legislation.

3.22 Under section 15 of the act, the Committee on the Status of Endangered Wildlife in Canada has the authority to assess and classify wildlife species that it considers to be at risk. Under section 24 of the act, the committee must review wildlife species previously designated in a category of risk at least once every 10 years or at any time if it has reason to believe the status of the species has changed significantly. Under section 25 of the act, the completed reviews of wildlife species must be submitted to the Minister of the Environment.

3.23 Under section 63 of the act, if any portion of a listed species' critical habitat remains unprotected 180 days after its recovery strategy or action plan is included in the Species at Risk Public Registry, the minister is required to report on the steps being taken to protect that habitat. The reporting is required every 180 days until the critical habitat is protected or is no longer identified as critical habitat. The first 3 reports under section 63 focused only on boreal caribou, with the first published in April 2018. Subsequent section 63 reports were expanded to include multiple terrestrial species at risk. They have been published approximately every 180 days, with the first multi-species report released in June 2019.

**Exhibit 3.3—Responsibilities for wildlife species listed under the *Species at Risk Act* across Canada and terrestrial species listed as endangered or threatened**

Federal organization	Minister responsible	Responsibilities
Fisheries and Oceans Canada	Minister of Fisheries, Oceans and the Canadian Coast Guard	Aquatic species (fish and marine plants as defined in the <i>Fisheries Act</i> ) wherever they are found in Canada (except those administered by Parks Canada)
Parks Canada	Minister of Environment and Climate Change, as the minister responsible for Parks Canada	Wildlife species on lands or in waters under Parks Canada administration (that is, national parks, national historic sites, and national marine conservation areas)
Environment and Climate Change Canada	Minister of Environment and Climate Change	<ul style="list-style-type: none"> <li>• Terrestrial species on federal lands only (except those found on lands administered by Parks Canada)</li> <li>• Migratory birds (under the <i>Migratory Birds Convention Act, 1994</i>) wherever they are found in Canada</li> </ul>

**The provinces and territories are responsible for most of the lands in Canada and for all terrestrial species found on non-federal lands (except for migratory birds under the *Migratory Birds Convention Act, 1994*)**

**In each province and territory, the number of terrestrial species listed as endangered or threatened under the *Species at Risk Act***

Alberta	53
British Columbia	135
Manitoba	44
New Brunswick	32
Newfoundland and Labrador	24
Northwest Territories	18
Nova Scotia	38
Nunavut	9
Ontario	137
Prince Edward Island	14
Quebec	60
Saskatchewan	46
Yukon	12

Source: Based on information provided by Environment and Climate Change Canada

## Lack of a proactive approach to identifying risks and using information to provide advice

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### Findings

3.24 Because Environment and Climate Change Canada is not the management authority for most of the lands and terrestrial species listed under the *Species at Risk Act*, it must rely primarily on external sources of information. Information on wildlife species, including on their statuses and the protection of their critical habitat, is available through the Species at Risk Public Registry. We found that information was also available to the department from provinces, territories, Indigenous groups, and the Committee on the Status of Endangered Wildlife in Canada. Such information could be used to inform the department's decisions on whether to advise the Minister of Environment and Climate Change on the potential use of a safety net or emergency order provision.

3.25 Although information was available to the department from these external sources, we found that the department did not maintain a system to track and analyze data to enhance its knowledge of trends and threats to listed wildlife species at risk and critical habitat on non-federal lands. The department did not have a process for assessing external reports and research to identify when it should advise the minister on the use of a safety net or emergency order provision. This impeded the department's ability to effectively use information to advise the minister on the status of species at risk and their critical habitat.


3.26 An example of external information that the department could use as part of a proactive approach is the annual report from the Committee on the Status of Endangered Wildlife in Canada on its reassessments of terrestrial species that it has conducted since 2003. Its 2021 and 2022 reports had data on 352 terrestrial species reassessments, which showed an overall lack of progress in the recovery of terrestrial species. Of the 168 terrestrial species originally assessed or reassessed as endangered, the results were mixed:

- 107 wildlife species (64%) were reassessed and remained endangered, meaning that they were still at serious risk of disappearing from the wild in Canada or becoming extinct
- 34 wildlife species (20%) were reassessed to a higher category, from threatened or of special concern to endangered
- 27 wildlife species (16%) were reassessed to a lower category, from endangered to either threatened or of special concern


3.27 We found that when the minister recommended or formed an opinion on safety net or emergency order provisions, the department did not take a proactive approach to generating advice. Rather, it developed

advice after receiving an external request or as a result of threats of legal action against the minister. Although the department took a more proactive approach in 1 recent case—encouraging Quebec to take action to protect the boreal caribou—this was not its approach for the cases of the western chorus frog and the northern spotted owl (Exhibit 3.4).

**Exhibit 3.4—Actions to protect the western chorus frog and the northern spotted owl were the result of external parties applying pressure on the federal government**

Species	History of the species' decline and outcomes of external pressure on the federal government
<p><b>Western chorus frog</b></p>  <p>Photo: Matt Jeppson/Shutterstock.com</p>	<p><b>Description.</b> The western chorus frog is a small amphibian that breeds in temporary wetlands in open habitats or discontinuous forests.</p> <p><b>Threats.</b> The species is secure in other regions in North America but faces a number of threats in southern Ontario and southwestern Quebec. These include habitat loss and degradation through urban development, intensification of agriculture, and climate change.</p> <p><b>Populations and habitats.</b> In Quebec, the Great Lakes / St. Lawrence–Canadian Shield population had declined by about 37% per decade between the 1950s and 2008.</p> <p><b>Date listed in the <i>Species at Risk Act</i>.</b> In 2010, the species was listed as threatened. In 2008, it was assessed as threatened by the Committee on the Status of Endangered Wildlife in Canada. In Quebec’s legislation, the species has been listed as vulnerable since 2001.</p> <p><b>Result of external pressure on federal government.</b> Two emergency orders were issued as a result of pressures put on the Minister of Environment and Climate Change by external parties because of threats to the species from planned construction.</p> <p><b>Emergency orders issued.</b> Two orders were issued for the western chorus frog in Quebec: 1 in La Prairie (2016) and 1 in Longueuil (2021).</p> <p><b>Outcomes.</b> The department had since found that despite the order in La Prairie, prohibited activities affecting the frog’s habitat had taken place. Meanwhile, the emergency order in Longueuil was not issued until after the start of construction and the destruction of portions of the frog’s critical habitat.</p>



Species	History of the species' decline and outcomes of external pressure on the federal government
<p><b>Northern spotted owl</b></p>  <p>Photo: Nick Bossenbroek/Shutterstock.com</p>	<p><b>Description.</b> The northern spotted owl is a medium-sized owl that lives in old-growth forests of the Pacific Northwest in North America and is the only subspecies of spotted owl found in Canada.</p> <p><b>Threats.</b> Threats include habitat loss and fragmentation from human activity and increasing competition with the barred owl.</p> <p><b>Populations and habitats.</b> Located in southwestern British Columbia, the owl's historical Canadian population was estimated to be 500 pairs. However, monitoring and research indicate that the population of this species declined by 99%—to the point that in 2022, only 1 known spotted owl was left in the wild in Canada.</p> <p><b>Date listed in the <i>Species at Risk Act</i>.</b> In 2003, the species was listed as endangered. In British Columbia, there is no stand-alone provincial legislation that specifically aims at protecting species at risk. However, the species is “red-listed” by the British Columbia Conservation Data Centre, which means it is considered to be most at risk of being lost.</p> <p><b>Result of external pressure on the federal government.</b> For more than 15 years, conservation groups tried to influence the Minister of the Environment’s opinion on whether the species was facing an imminent threat to its survival or recovery. A key consideration was the severity and imminence of the threats caused by logging activities approved by the British Columbia government. In 2020, the British Columbia government temporarily deferred logging and worked with Environment and Climate Change Canada on launching the development of a broader nature agreement to strengthen conservation province-wide.</p> <p><b>No emergency orders issued.</b> At the end of the audit period, no emergency orders had been issued by the Governor in Council.</p> <p><b>Outcomes.</b> In 2022, the British Columbia government undertook recovery work by releasing 3 spotted owls hatched and raised in a breeding facility in the province. However, given that the halt on logging is temporary, the long-term protection of the owl’s critical habitat remains uncertain.</p>

3.28 We found that Environment and Climate Change Canada's reliance on external sources to trigger the generation of advice on safety net and emergency order provisions was not well communicated to the public. This process appeared only in the department's internal draft policy on assessing imminent threats under sections 29 and 80 of the *Species at Risk Act* and was not on the department's website. If the department generated a broader awareness that the public can submit information about threats, it could help

- enhance the department's surveillance and knowledge of issues and threats
- ensure the effective use of information held by environmental organizations
- encourage the submission of information from individuals and communities about threats to site-specific critical habitat

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## Recommendation

3.29 In support of generating advice on the use of safety net and emergency order provisions under the *Species at Risk Act*, and in recognition of provincial and territorial responsibilities, along with the important role of all Canadians in preventing wildlife species from going extinct, Environment and Climate Change Canada should build on established processes to

- systematically gather information from Indigenous groups and other stakeholders external to the federal government (for example, non-governmental organizations and Canadian citizens) on existing protections for and potential threats to wildlife species and their habitats
- make information accessible to the public on how they can submit information on existing protections for wildlife species and their habitats and on potential threats to wildlife species
- develop internal guidance on how submissions from the public are incorporated into the advice on the use of safety net and emergency order provisions along with the consideration of other tools available under the act

***The department's response.*** *Agreed.*

See **Recommendations and Responses** at the end of this report for detailed responses.

## Lack of timelines for providing advice

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### Findings

3.30 We found that Environment and Climate Change Canada's draft policies on the use of the safety net provisions did not include timelines for providing advice in support of decision making. For example, there were no policy requirements to help ensure that the Minister of Environment and Climate Change was informed in a timely way or within a specific time frame after identifying that a species' critical habitat was not effectively protected. There were also no timelines for generating advice for the minister on species listed under the act that were reassessed to higher categories of risk. The draft Policy on Critical Habitat Protection on Non-Federal Lands did not include specific information on how to generate advice for the minister, such as

- the steps, with associated timelines, to follow regarding when and how the policy would be applied
- the conditions to meet to determine when advice would be generated

3.31 As a result, there was no assurance that advice would be brought proactively to the minister's attention. This situation could put species and critical habitat at further risk because of delays in considering appropriate actions.

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### Recommendation

3.32 Environment and Climate Change Canada, in collaboration with the provinces and territories and with input from Fisheries and Oceans Canada and Parks Canada as appropriate, should establish a transparent approach to providing advice on the protection of wildlife species and critical habitat to allow for timely and informed recommendations on the use of safety net and emergency order provisions. This approach should be predictable and include timelines for developing the advice based on the context of the situation (for example, the size of the geographic area being considered and the extent of consultations). The department should make available to the public the expected timelines for different scenarios (such as more local versus more national in scope and more complex).

***Response of each entity.*** *Agreed.*

See **Recommendations and Responses** at the end of this report for detailed responses.

## Incomplete analysis and reporting on measures to protect critical habitat

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### Findings

3.33 We found that the reports prepared by Environment and Climate Change Canada under section 63 of the *Species at Risk Act* were not framed as progress reports on the unprotected portions of critical habitat. For example, reports on measures to protect habitat (such as designations of protected areas, new regulations and policies, and controls on activities) did not include information on the portion of unprotected critical habitat of a species to which the measures would be applied. We also found that successive reports did not include information on how previously introduced measures were contributing to protecting the critical habitat. It was not clear in the reporting which of the specific areas of critical habitat remained unprotected. Having complete information is important when it comes to the department's ability to adapt responses in support of effectively protecting critical habitat. It also allows the department to inform the Minister of Environment and Climate Change when a portion of the critical habitat is no longer identified as unprotected.

3.34 Under section 61 of the *Species at Risk Act*, the Minister of the Environment must recommend to the Governor in Council that an order be made to prohibit the destruction of the critical habitat of a listed threatened or endangered species if the minister is of the opinion that the laws of a province or territory do not effectively protect the critical habitat. We found that although the department gathered information on the laws of provinces and territories, it did not provide a clear analysis of the information. For example, reports prepared under section 63 of the act included only limited analysis of whether provincial and territorial laws were effectively protecting the critical habitat of listed wildlife species located on non-federal lands. As a result, the department could not confirm whether all species were receiving effective protection at the provincial and territorial levels.

3.35 It is our opinion that having a clear process in place to support the development of reports under section 63, as well as clear analysis, is important because the laws and approaches differed across the provinces and territories. The discrepancies added to the complexity of maintaining knowledge of the protections in place. For example, 6 out of 13 of the provinces and territories did not have legislation dedicated to species at risk and their habitats. Although these jurisdictions may have wildlife laws that protect imperiled species, they did not generally protect their habitat. In jurisdictions that had stand-alone species at risk laws, there were inconsistencies in the timing and coordination of assessments with the Committee on the Status of Endangered Wildlife in Canada and discrepancies in the descriptions of risk categories and listings. In addition, provincial auditors general have reported significant issues in implementing species at risk programs and legislation in selected provinces.

3.36 We believe that, because some provinces and territories did not have legislation equivalent to the *Species at Risk Act*, the department's approach to analysis and reporting under section 63 was insufficient. Furthermore, reporting under section 63 could be accompanied by consistent analysis on

- the effectiveness of provincial and territorial laws
- the activities put in place to protect the critical habitat of species at risk on non-federal lands

Such analysis would be a source of useful input for advising the minister about priority threats or the use of a safety net provision.

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## Recommendation

3.37 Environment and Climate Change Canada should provide more complete information in progress reports under section 63 of the *Species at Risk Act* by ensuring comprehensive reporting on protection steps for species under each jurisdiction. The reports should identify

- species with critical habitat on non-federal land that are not protected
- the amount of critical habitat where no steps have been taken to protect that critical habitat

The department should also use knowledge generated through the progress reports and other habitat information to support its assessments and the responsibilities of the Minister of Environment and Climate Change with respect to the safety net provisions under section 61 of the act.

***The department's response.*** *Agreed.*

See **Recommendations and Responses** at the end of this report for detailed responses.

## The department took important first steps by establishing conservation agreements for boreal and southern mountain caribou

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### Why this finding matters

3.38 This finding matters because conservation agreements for boreal and southern mountain caribou have the potential to support

- coordinated actions by federal and provincial and territorial governments to prevent the destruction of critical habitat
- coordinated measures that contribute to recovery efforts for species at risk, such as boreal and southern mountain caribou

3.39 Such agreements also provide benefits to other species sharing the same habitat. In turn, the information gathered on the results of implementing these agreements could help inform the Minister of Environment and Climate Change on whether critical habitat is protected or whether an order should be considered to protect critical habitat of boreal or southern mountain caribou from destruction.

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## Context

3.40 The *Species at Risk Act* requires that the Minister of the Environment take into account conservation agreements under section 11 when forming an opinion on whether a species' critical habitat is protected. The draft 2016 Policy on Protecting Critical Habitat With Conservation Agreements Under Section 11 in the *Species at Risk Act* includes a policy statement on which criteria are to be applied to determine whether a particular conservation agreement protects critical habitat.

## Use of conservation agreements to strengthen provincial and territorial relations

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## Findings

3.41 We found that Environment and Climate Change Canada took important first steps by establishing conservation agreements for boreal and southern mountain caribou under section 11 of the act with provinces, territories, and Indigenous groups. These conservation agreements included general commitments to work together to seek opportunities for the protection and recovery of the species.

3.42 Since 2019, 11 conservation agreements under section 11 were signed for boreal caribou and southern mountain caribou. Conservation agreements for other species were also established with private landowners; however, they were not reviewed as part of this report. We found that the conservation agreements for boreal and southern mountain caribou generally lacked important measurable targets to protect critical habitat identified in federal recovery strategies (Exhibit 3.5).

**Exhibit 3.5—Environment and Climate Change Canada established conservation agreements for boreal and southern mountain caribou that had certain strengths, but they also had important gaps and needed improvements**

Content in conservation agreement	Strengths	Gaps	Improvements needed
<p><b>Critical habitat protection</b></p>	<p><b>All agreements satisfied many of the basic criteria</b> of the draft Policy on Protecting Critical Habitat With Conservation Agreements Under Section 11 of the <i>Species at Risk Act</i>.</p> <p>These criteria included</p> <ul style="list-style-type: none"> <li>• the identification of species and geographic areas</li> <li>• the duration of the agreement</li> <li>• the signature of the appropriate minister or federal official</li> </ul>	<p><b>No agreement met the important criteria to protect critical habitat</b> in alignment with the draft Policy on Protecting Critical Habitat With Conservation Agreements Under Section 11 of the <i>Species at Risk Act</i>.</p> <p><b>Most agreements did not include specific targets</b> for the protection of specific portions of the critical habitat for the boreal and southern mountain caribou populations.</p> <p><b>Only 2 agreements included more robust commitments</b> for protecting critical habitat by identifying thresholds and measures to decrease the overall percentages of disturbed critical habitat.</p>	<p>Ensure better commitments to concrete critical habitat protection measures and targets in agreements.</p>
<p><b>Measures of conservation outcomes</b></p>	<p>All agreements included some concrete conservation measures.</p> <p>These measures included</p> <ul style="list-style-type: none"> <li>• landscape-level planning (for example, herd planning, land-use plans, and sub-regional plans)</li> <li>• habitat management</li> <li>• mortality and population management</li> </ul>	<p>Almost all agreements did not contain measurable targets.</p> <p>Absent targets included</p> <ul style="list-style-type: none"> <li>• the incremental reduction of critical habitat disturbance levels within specific time frames</li> <li>• area-based restoration objectives</li> <li>• the identification of priority restoration areas with timelines</li> </ul>	<p>Provide better assurance that implementing the agreement’s conservation measures will demonstrate progress toward achieving the recovery strategy’s objectives and will benefit the species and its habitat.</p>

Content in conservation agreement	Strengths	Gaps	Improvements needed
<b>Range plan* development</b>	<p><b>Almost all agreements secured a commitment from provinces and territories to complete range plans.</b></p> <p>Nearly 20% of range plans were on track to meet the deadlines set in their agreements, with 3 range plans or similar landscape-level planning finalized.</p>	<p><b>No agreement included provisions on steps to be taken in case of significant delays in developing range plans:</b></p> <ul style="list-style-type: none"> <li>• Nearly 80% of range plans were either delayed or not started.</li> <li>• The conservation agreement with Ontario did not commit to range plans.</li> </ul>	<p>Include provisions on steps that would be taken in case of significant delays in developing range plans.</p>
<b>Monitoring and reporting</b>	<p><b>All agreements included provisions to take the following actions:</b></p> <ul style="list-style-type: none"> <li>• Monitor population trends and habitats.</li> <li>• Report on population trends and habitats.</li> </ul>	<p><b>No agreement included provisions to take the following actions:</b></p> <ul style="list-style-type: none"> <li>• Determine the effectiveness of protection measures in recovering the species or protecting its critical habitat.</li> <li>• Outline the steps to be taken if progress was not being achieved or was not achieving the agreements' outcomes.</li> </ul>	<p>Include criteria and a process to assess whether the conservation agreements are effective in recovering the species and protecting its critical habitat.</p> <p>Include steps that would be taken if there are delays in implementing the conservation measures, or include commitments to ensure transparency and consistency in addressing delays.</p>

\* **Range plan**—A document that demonstrates how the habitat condition within a given **range**\*\* will be managed over time and space to ensure that critical habitat for caribou is protected from destruction and therein, that each local population will either continue to be self-sustaining or become self-sustaining over time.

\*\* **Range**—The geographic area occupied by a group of individuals that are subject to similar factors affecting their demography and used to satisfy their life history processes (for example, calving, rutting, wintering) over a defined time frame.

Source: Adapted from the Recovery Strategy for the Woodland Caribou (*Rangifer tarandus caribou*), Boreal Population, in Canada, Environment Canada, 2012

3.43 The Recovery Strategy for the Woodland Caribou (*Rangifer tarandus caribou*), Boreal Population, in Canada called for the management of ranges of boreal caribou. (For definitions of “range” and “range plan,” see Exhibit 3.5.) According to the department’s Range Plan Guidance for Woodland Caribou, Boreal Population, the provinces and territories were strongly encouraged to prepare range plans. As disturbances to boreal caribou ranges increase, the risk increases that the population will be in decline. Many ranges are well over the recommended threshold for disturbances that would allow their



populations to be self-sustaining. The department told us that its primary goal when negotiating the conservation agreements was to secure either of the following:

- a commitment on the part of the provinces and territories to complete range plans for the species
- similar landscape-level planning documents that would outline how the provinces and territories will manage and protect critical habitat to achieve self-sustaining local populations

3.44 Despite these goals of the department, we found that nearly 80% of range plans were either experiencing delays or not started. Delays in the development of range plans by provinces and territories for boreal caribou may delay other recovery and protection actions. They may also contribute to the further deterioration of critical habitat in many ranges across the country where caribou populations are declining.

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## Recommendation

3.45 Environment and Climate Change Canada should work with its partners to strengthen conservation agreements to include milestones, measurable targets, clear accountability measures, and sufficient information to track and assess meaningful progress and results to generate conservation agreements that can be used as mechanisms to protect critical habitat.

***The department's response.*** *Agreed.*

See **Recommendations and Responses** at the end of this report for detailed responses.

## Lack of process to use information on conservation agreements on boreal and southern mountain caribou in support of generating advice

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### Findings

3.46 We found that Environment and Climate Change Canada did not have a process to use information on the results of conservation agreements on boreal and southern mountain caribou to support the advice that it provided to the minister. Conservation agreements for boreal and southern mountain caribou were meant to contribute to

- the implementation of federal recovery strategies and action plans
- the long-term recovery goal of achieving self-sustaining local populations

3.47 Most provinces and territories used annual grant and contribution reports to report on the completion of specific planning commitments or activities in conservation agreements. Some provinces and territories committed to public reporting. However, no such reports

had been published at the end of the audit period. Environment and Climate Change Canada told us that conservation measures within the conservation agreements, in particular the development of range plans, were intended to advance protection and recovery so that safety net provisions would not be required. However, on the basis of the information we found in grants and contribution reports, we could not determine whether conservation agreements were progressing adequately or even contributing to achieving the objectives of recovery strategies.

3.48 We found that the department was not using the information available on the implementation of conservation agreements to support forming evidence-based advice for the Minister of Environment and Climate Change regarding the use of provisions to protect critical habitat, including the safety net provisions under section 61 of the *Species at Risk Act*. For boreal caribou and southern mountain caribou populations, it could take decades to fully recover and achieve self-sustaining status. However, it would be prudent for the department to gather, track, and use information on conservation agreements. This information could be better used to

- contribute to recovery efforts and address gaps in the protection of critical habitat
- determine when safety net or emergency order provisions need to be engaged
- inform decisions on whether the minister should recommend to the Governor in Council an order to protect critical habitat of boreal or southern mountain caribou from destruction

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## Recommendation

3.49 Environment and Climate Change Canada should gather, consolidate, and use information on conservation agreements to ensure they contribute to the recovery objectives of the species and to support decisions for protecting species and habitats, including through the use of the safety net provisions under section 61 of the *Species at Risk Act*.

***The department's response.*** *Agreed.*

See **Recommendations and Responses** at the end of this report for detailed responses.

## The department did not have complete policies and guidelines for safety net and emergency order provisions

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### Why this finding matters

3.50 This finding matters because the absence of approved policies and guidelines under the *Species at Risk Act* can lead to a lack of clarity about the conditions for applying these powers. This can impede effective, timely action by federal, provincial, and territorial governments to protect species and their habitats.

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### Context

3.51 Environment and Climate Change Canada works with Fisheries and Oceans Canada and Parks Canada when implementing the *Species at Risk Act's* emergency order provisions for aquatic species at risk and species found in lands or waters under the administration of Parks Canada. As a result, the departments also work collaboratively when developing policies and guidelines for the emergency order provisions and for general policies related to the *Species at Risk Act* provisions.

## Incomplete suite of approved policies and guidelines on safety net and emergency order provisions

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### Findings

3.52 We found that Environment and Climate Change Canada did not have a complete suite of approved policies and guidelines in support of the safety net and emergency order provisions of the *Species at Risk Act*. The work of the department took place through collaborative efforts, such as through working groups, on applicable policies with Fisheries and Oceans Canada and Parks Canada. Ten of the 13 policies and guidelines on safety net and emergency order provisions remained in draft form (Exhibit 3.6) 19 years after the act came fully into force.

**Exhibit 3.6—Environment and Climate Change Canada did not have complete policies and guidelines related to the safety net and emergency order provisions**

Section of <i>Species at Risk Act</i>	Policies and guidelines	Status	Date of last public consultations	Date of last update	Publication
Section 11— Conservation agreements	<p>Policy on Protecting Critical Habitat With Conservation Agreements Under Section 11 of the <i>Species at Risk Act</i></p> <p>Purpose: Determine whether a section 11 agreement protects critical habitat under section 58 or 61.</p>	<b>Draft</b>	September 2016 to March 2017	September 2016 (prior to public consultations)	Species at Risk Public Registry
Section 11— Conservation agreements	<p>Environment and Climate Change Canada's General Guidelines for Using Section 11 Conservation Agreements Under the <i>Species at Risk Act</i></p> <p>Purpose: Guide the development of conservation agreements under section 11.</p>	<b>Draft</b>	No public consultation	2016	Internal
Sections 34 and 35— Prohibitions on non-federal lands	No policies or guidelines	<b>No policies or guidelines</b>	<b>No policies or guidelines</b>	<b>No policies or guidelines</b>	<b>No policies or guidelines</b>
Section 61— Critical habitat protection on non-federal lands	<p>Policy on Critical Habitat Protection on Non-Federal Lands</p> <p>Purpose: Provide steps for assessing whether the laws and measures protect critical habitat on non-federal lands.</p>	<b>Draft</b>	September 2016 to March 2017	September 2016 (prior to public consultations)	Species at Risk Public Registry

Section of <i>Species at Risk Act</i>	Policies and guidelines	Status	Date of last public consultations	Date of last update	Publication
Section 80— Emergency orders	<p>Policy on Assessing Imminent Threats Under Sections 29 and 80 of the <i>Species at Risk Act</i></p> <p>Purpose: Provide consistency across Environment and Climate Change Canada and Parks Canada in the interpretation of imminent threats.</p>	<b>Draft</b>	No public consultation	June 2021	Under development
Section 80— Emergency orders	<p>General guidelines for assessing imminent threats under sections 29 and 80:</p> <p>Imminent threat policy—triggers and intake process</p> <p>Purpose: Provide the required steps in developing an imminent threat assessment under section 80.</p>	<b>Draft</b>	No public consultation	June 2021	Internal
Section 80— Emergency orders	<p>General guidelines for assessing imminent threats under sections 29 and 80:</p> <p>Threat assessment template</p> <p>Purpose: Provide required content in a threat assessment according to section 80.</p>	<b>Draft</b>	No public consultation	October 2021	Internal

Section of <i>Species at Risk Act</i>	Policies and guidelines	Status	Date of last public consultations	Date of last update	Publication
Section 80— Emergency orders	<p>General guidelines for assessing imminent threats under sections 29 and 80:</p> <p>Imminent threat assessment process map and key steps</p> <p>Purpose: Describe the process and provide the key steps in developing an imminent threat assessment under section 80.</p>	<b>Draft</b>	No public consultation	December 2020	Internal
Section 80— Emergency orders	<p>General guidelines for assessing imminent threats under sections 29 and 80:</p> <p>Supporting documents and templates—imminent threat assessment continuum support documents and templates</p> <p>Purpose: Provide support documents and templates for developing an imminent threat assessment under section 80.</p>	<b>Draft</b>	No public consultation	March 2021	Internal
General provisions	<p>Policy on Recovery and Survival</p> <p>Purpose: Outline how the terms “recovery” and “survival” are interpreted and applied.</p>	<b>Final</b>	September 2016 to March 2017	October 2020	Species at Risk Public Registry
General provisions	<p>Guidelines on characterizing recovery and population and distribution objectives</p> <p>Purpose: Guide recovery planners in recovery efforts.</p>	<b>Final</b>	No public consultation	February 2022	Internal

Section of <i>Species at Risk Act</i>	Policies and guidelines	Status	Date of last public consultations	Date of last update	Publication
General provisions	Guidance on engagement and consultation process  Purpose: Guide engagement and consultation processes for the development of <i>Species at Risk Act</i> policies.	<b>Draft</b>	No public consultation	September 2021	Internal
General provisions	Guidance for developing and updating <i>Species at Risk Act</i> policies  Purpose: Support a coordinated and consistent process for the development, approval, and publication of <i>Species at Risk Act</i> policies.	<b>Draft</b>	No public consultation	May 2021	Internal
General provisions	<i>Species at Risk Act</i> Policy Principles  Purpose: Present the guiding principles to follow when developing <i>Species at Risk Act</i> policies.	<b>Final</b>	No public consultation	September 2016	Species at Risk Public Registry

3.53 The department had 1 draft policy on the protection of critical habitat on non-federal lands under section 61. However, we found that the department had no policies or guidelines on the safety net provisions for a species or the residence of its individuals on non-federal lands under sections 34 and 35 of the act. The department told us that it did not have a policy on these provisions because they had “never been used.” In our view, a policy on these provisions should be in place for the department to be prepared to effectively use them.

3.54 We found that the department’s 2021 draft guidance for developing and updating *Species at Risk Act* policies was unapproved and incomplete. This document was meant to explain the purpose of the species at risk policies and guidelines and summarize requirements common to all policy instruments.

3.55 The department told us that the complexity of the act, along with the need to work with provinces and territories while encouraging action and respecting their roles, contributed to challenges in reaching

a consensus that it felt was necessary for finalizing the policies. Using the safety net or emergency order provisions could have important implications for economic development, natural resource activities, jobs, and communities that depend on these jobs and resources. In our view, the department needs to play a leadership role by working with its stakeholders to finalize the policies and guidance that remain to be completed.

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## Recommendation

3.56 Environment and Climate Change Canada, in collaboration with Fisheries and Oceans Canada and Parks Canada as appropriate, should complete its guidance for developing and updating *Species at Risk Act* policies. The guidance document should include elements such as a consistent approach for policy development and a process for the regular review of policies.

**Response of each entity.** *Agreed.*

See **Recommendations and Responses** at the end of this report for detailed responses.

## Gaps in policies and guidelines on safety net and emergency order provisions

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### Findings

3.57 We found that the draft and final policies and guidelines on safety net and emergency order provisions did not align consistently with the following *Species at Risk Act* Policy Principles approved by Environment and Climate Change Canada:

- To provide transparency: Of the 13 policies and guidelines, only 4 were published (2 final and 2 drafts) in the *Species at Risk* Public Registry, which is maintained by the department. No consistent approach was taken in order to share information with the public.
- To take a **precautionary approach**<sup>6</sup>: References to this principle in the draft policies were inconsistent. Two key policies—the draft Policy on Critical Habitat Protection on Non-Federal Lands and the draft Policy on Protecting Critical Habitat With Conservation Agreements Under Section 11 of the *Species at Risk Act*—did not refer to abiding by the precautionary principle.
- To embrace adaptability: The department had not completed reviewing and measuring policy performance to determine whether policies were achieving their intended environmental outcomes.

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<sup>6</sup> **Precautionary approach**—The approach of not postponing taking cost-effective measures to prevent the reduction or loss of a species that is threatened by serious or irreversible damage even if full scientific certainty is lacking.

Source: Adapted from *Species at Risk Act* Policy Principles, Government of Canada, 2016



3.58 Furthermore, the department's draft guidance for developing and updating *Species at Risk Act* policies proposed that each policy be reviewed 2 years after first release and then every 5 years after that. However, we found that

- draft and final policies did not include requirements for them to be reviewed and updated
- there were no guidelines or processes on how this would be consistently done

There was therefore a risk that the department's policies on the use of safety net and emergency order provisions would not be reviewed regularly to ensure that they were achieving their intended outcomes. The perpetual draft state of the policies created a situation where the performance of the policies was not being measured.

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## Recommendation

3.59 Environment and Climate Change Canada, in collaboration with Fisheries and Oceans Canada and Parks Canada as appropriate, should renew and complete its relevant policies on the use of the provisions of the *Species at Risk Act* for sections 11, 61, and 80 and should develop policies on the use of the provisions of the act for sections 34 and 35. In doing so, Environment and Climate Change Canada should address areas such as gaps and inconsistencies in its policies and actively engage Indigenous groups and other stakeholders external to the federal government (for example, other levels of government, non-governmental organizations, and Canadian citizens) and take their input into consideration.

**Response of each entity.** *Agreed.*

See **Recommendations and Responses** at the end of this report for detailed responses.

## Conclusion

3.60 We concluded that Environment and Climate Change Canada did not have a timely and evidence-based approach to informing the Minister of Environment and Climate Change on the safety net and emergency order provisions to protect terrestrial species at risk and their habitats on non-federal lands. The department had information and knowledge of threats to wildlife species and their habitats, declining species population trends, and the lack of protection of critical habitat on non-federal lands. Despite this, the department did not proactively use this information to generate advice to the minister on the use of the safety net and emergency order provisions to protect wildlife species at risk and their critical habitat when circumstances required. A proactive

approach is important for ensuring that the minister has the necessary information to make a timely decision on whether to recommend to the Governor in Council to protect critical habitat and address the risk of threats to wildlife species at risk. More broadly, such an approach would support federal commitments related to species at risk, such as working to halt and reverse nature loss by 2030 in Canada.

3.61 Nineteen years after the *Species at Risk Act* came fully into force, the department still did not have complete and approved policies on the use of the safety net and emergency order provisions. However, the department did follow the policies that were in place. In addition, the department took important first steps toward developing initial conservation agreements with the provinces and territories and Indigenous groups.

3.62 The results of the reassessment done by the Committee on the Status of Endangered Wildlife in Canada indicate that, although some progress had been made under the act, along with the various legislation in the provinces and territories, the federal government needs to take stronger actions to effectively protect and recover wildlife species at risk and their habitat, including using the safety net and emergency order provisions that Parliament has established for this purpose.

## About the Audit

This independent assurance report was prepared by the Office of the Auditor General of Canada on the use of selected provisions contained in the *Species at Risk Act*. Our responsibility was to provide objective information, advice, and assurance to assist Parliament in its scrutiny of the government's management of resources and programs and to conclude on whether Environment and Climate Change Canada complied in all significant respects with the applicable criteria.

All work in this audit was performed to a reasonable level of assurance in accordance with the Canadian Standard on Assurance Engagements (CSAE) 3001—Direct Engagements, set out by the Chartered Professional Accountants of Canada (CPA Canada) in the CPA Canada Handbook—Assurance.

The Office of the Auditor General of Canada applies the Canadian Standard on Quality Management 1—Quality Management for Firms That Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements. This standard requires our office to design, implement, and operate a system of quality management, including policies or procedures regarding compliance with ethical requirements, professional standards, and applicable legal and regulatory requirements.

In conducting the audit work, we complied with the independence and other ethical requirements of the relevant rules of professional conduct applicable to the practice of public accounting in Canada, which are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.

In accordance with our regular audit process, we obtained the following from entity management:

- confirmation of management's responsibility for the subject under audit
- acknowledgement of the suitability of the criteria used in the audit
- confirmation that all known information that has been requested, or that could affect the findings or audit conclusion, has been provided
- confirmation that the audit report is factually accurate

### Audit objective

The objective of this audit was to determine whether Environment and Climate Change Canada took a timely and evidence-based approach to advising the Minister of Environment and Climate Change to recommend applying the safety net and emergency order provisions of the *Species at Risk Act*.

## Scope and approach

To support the minister's decisions on whether to recommend the application of selected provisions contained in the *Species at Risk Act*, we examined the following:

- whether Environment and Climate Change Canada had and followed clear and complete guidance and policies on the safety net and emergency order provisions
- how the department used available information on trends in species populations, the state of their critical habitat, and related threats to inform timely advice to the minister
- whether the department analyzed and used information on the effectiveness of provincial or territorial laws and on provisions or other measures of the *Species at Risk Act* or any other act of Parliament to inform timely advice to the minister
- whether the department used information on the expected or achieved results of alternative protection and conservation measures (for example, conservation or partnership agreements between parties such as the federal government, provincial and territorial governments, and Indigenous groups) to inform timely advice to the minister

The audit focused on terrestrial species that were on non-federal lands. We examined supporting documentation and conducted interviews with officials from Environment and Climate Change Canada, Fisheries and Oceans Canada, and Parks Canada. We also undertook interviews with non-governmental organizations.

Once the Governor in Council receives a recommendation from the minister regarding a safety net or emergency order provision, additional factors—such as socio-economic considerations—are incorporated into the decision-making process. It is at this step in the process that **gender-based analysis plus**<sup>7</sup> is completed, with the analysis included as part of the package considered by the Governor in Council. This audit did not review how the Governor in Council formed decisions, and therefore, it did not include an assessment of gender-based analysis plus.

The matters examined in this audit relate to the United Nations' Sustainable Development Goal 15 (Life on Land) and 2 associated targets:

- target 15.1: "By 2020, ensure the conservation, restoration and sustainable use of terrestrial and inland freshwater ecosystems and their services, in particular forests, wetlands, mountains and drylands, in line with obligations under international agreements."
- target 15.5: "Take urgent and significant action to reduce the degradation of natural habitats, halt the loss of biodiversity and, by 2020, protect and prevent the extinction of threatened species."

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<sup>7</sup> **Gender-based analysis plus**—An analytical process that provides a rigorous method for the assessment of systemic inequalities and a means to assess how diverse groups of women, men, and gender-diverse people may experience policies, programs, and initiatives. The "plus" acknowledges that gender-based analysis goes beyond biological (sex) and socio-cultural (gender) differences and considers many other identity factors, such as race, ethnicity, religion, age, and mental or physical ability.

Source: Adapted from Women and Gender Equality Canada

## Criteria

We used the following criteria to conclude against our audit objective:

Criteria	Sources
<p>Environment and Climate Change Canada has and follows clear and complete guidance and policies to support the decisions of the Minister of Environment and Climate Change on whether to recommend the application of selected provisions contained in the <i>Species at Risk Act</i>.</p>	<ul style="list-style-type: none"> <li>• Overarching Policy Framework—Draft, Environment and Climate Change Canada, 2009</li> <li>• <i>Species at Risk Act</i> Policy Principles, Government of Canada, 2016</li> <li>• <i>Federal Sustainable Development Act</i></li> <li>• Policy on Regulatory Development, Treasury Board, 2018</li> <li>• Cabinet Directive on Regulation, Treasury Board, 2018</li> <li>• Framework for the Management of Risk, Treasury Board, 2010</li> </ul>
<p>Environment and Climate Change Canada uses information on trends in species populations, the state of their critical habitat, and related threats to support the decisions of the Minister of Environment and Climate Change on whether to recommend the application of selected provisions contained in the <i>Species at Risk Act</i>.</p>	<ul style="list-style-type: none"> <li>• Policy on Regulatory Development, Treasury Board, 2018</li> <li>• Cabinet Directive on Regulation, Treasury Board, 2018</li> <li>• Minister of Environment and Climate Change Mandate Letter, 16 December 2021</li> <li>• <i>Species at Risk Act</i></li> </ul>
<p>Environment and Climate Change Canada analyzes and uses information on the effectiveness of provincial or territorial laws and on provisions or other measures of the <i>Species at Risk Act</i> or any other act of Parliament to support the decisions of the Minister of Environment and Climate Change on whether to recommend the application of selected provisions contained in the <i>Species at Risk Act</i>.</p>	<ul style="list-style-type: none"> <li>• Policy on Regulatory Development, Treasury Board, 2018</li> <li>• Cabinet Directive on Regulation, Treasury Board, 2018</li> <li>• 2021–22 Departmental Plan, Environment and Climate Change Canada</li> <li>• <i>Species at Risk Act</i></li> </ul>
<p>Environment and Climate Change Canada uses information on the expected or achieved results of alternative protection and conservation measures to support the decisions of the Minister of Environment and Climate Change on whether to recommend the application of selected provisions contained in the <i>Species at Risk Act</i>.</p>	<ul style="list-style-type: none"> <li>• Policy on Results, Treasury Board, 2016</li> <li>• <i>Species at Risk Act</i></li> </ul>

### **Period covered by the audit**

The audit covered the period from 1 January 2020 to 31 March 2022. This is the period to which the audit conclusion applies. However, to gain a more complete understanding of the subject matter of the audit, we also examined certain matters that preceded the start date of this period.

### **Date of the report**

We obtained sufficient and appropriate audit evidence on which to base our conclusion on 20 January 2023, in Ottawa, Canada.

### **Audit team**

This audit was completed by a multidisciplinary team from across the Office of the Auditor General of Canada led by Jim McKenzie, Principal. The principal has overall responsibility for audit quality, including conducting the audit in accordance with professional standards, applicable legal and regulatory requirements, and the office's policies and system of quality management.

## Recommendations and Responses

In the following table, the paragraph number preceding the recommendation indicates the location of the recommendation in the report.

Recommendation	Response
<p><b>3.29</b> In support of generating advice on the use of safety net and emergency order provisions under the <i>Species at Risk Act</i>, and in recognition of provincial and territorial responsibilities, along with the important role of all Canadians in preventing wildlife species from going extinct, Environment and Climate Change Canada should build on established processes to</p> <ul style="list-style-type: none"> <li>• systematically gather information from Indigenous groups and other stakeholders external to the federal government (for example, non-governmental organizations and Canadian citizens) on existing protections for and potential threats to wildlife species and their habitats</li> <li>• make information accessible to the public on how they can submit information on existing protections for wildlife species and their habitats and on potential threats to wildlife species</li> <li>• develop internal guidance on how submissions from the public are incorporated into the advice on the use of safety net and emergency order provisions along with the consideration of other tools available under the act</li> </ul>	<p><b>Environment and Climate Change Canada's response.</b> Agreed. Environment and Climate Change Canada recognizes provincial/territorial authority on provincial/territorial lands. Environment and Climate Change Canada commits to establishing a process that first identifies the contribution of provincial/territorial measures to inform the application of the safety net and emergency order provisions.</p> <p>Environment and Climate Change Canada notes the value in accessing information on protections and potential threats in order to support the minister's discretionary authorities of the safety net and emergency provisions.</p> <p>Environment and Climate Change Canada will continue to regularly solicit information, and will gather additional information, from provincial and territorial governments, stakeholders and partners, in order to complement information on existing protections and potential threats to wildlife species to provide advice for the minister on the use of discretionary provisions under the <i>Species at Risk Act</i>.</p> <p>The department will work to develop accessible guidance on the information needs to provide advice to the minister on the use of the <i>Species at Risk Act's</i> emergency order provisions.</p> <p>Implementation date: November 2024</p>

Recommendation	Response
<p><b>3.32</b> Environment and Climate Change Canada, in collaboration with the provinces and territories and with input from Fisheries and Oceans Canada and Parks Canada as appropriate, should establish a transparent approach to providing advice on the protection of wildlife species and critical habitat to allow for timely and informed recommendations on the use of safety net and emergency order provisions. This approach should be predictable and include timelines for developing the advice based on the context of the situation (for example, the size of the geographic area being considered and the extent of consultations). The department should make available to the public the expected timelines for different scenarios (such as more local versus more national in scope and more complex).</p>	<p><b>Environment and Climate Change Canada's response.</b> Agreed. Environment and Climate Change Canada recognizes the importance of conservation measures and contributions by partners and accessing the best-available information. Environment and Climate Change Canada, with input from Fisheries and Oceans Canada and Parks Canada as appropriate, will establish an approach to support timely, transparent and informed decisions related to the use of the <i>Species at Risk Act's</i> emergency order or safety net provisions to protect wildlife species on non-federal lands.</p> <p>Implementation date: November 2024</p> <p><b>Fisheries and Oceans Canada's response.</b> Agreed. Recognizing that this recommendation focused on provisions under section 61 of the <i>Species at Risk Act</i> which are specific to terrestrial species and for which the Minister of Fisheries and Oceans is not a competent minister, Fisheries and Oceans Canada will collaborate with Environment and Climate Change Canada as they establish an approach to support timely and informed decisions related to the use of the act's emergency order or safety net provisions to protect wildlife species on non-federal lands, as appropriate.</p> <p><b>Parks Canada's response.</b> Agreed. Parks Canada, as appropriate, will provide input to Environment and Climate Change Canada, on a transparent approach for providing advice on the protection of wildlife species and critical habitat to allow for timely and informed recommendations on the use of safety net and emergency order provisions.</p>
<p><b>3.37</b> Environment and Climate Change Canada should provide more complete information in progress reports under section 63 of the <i>Species at Risk Act</i> by ensuring comprehensive reporting on protection steps for species under each jurisdiction. The reports should identify</p> <ul style="list-style-type: none"> <li>• species with critical habitat on non-federal land that are not protected</li> <li>• the amount of critical habitat where no steps have been taken to protect that critical habitat</li> </ul> <p>The department should also use knowledge generated through the progress reports and other habitat information to support its assessments and the responsibilities of the Minister of Environment and Climate Change with respect to the safety net provisions under section 61 of the act.</p>	<p><b>Environment and Climate Change Canada's response.</b> Agreed. Environment and Climate Change Canada will continue to improve the information reported on steps taken by provinces and territories to protect critical habitat, including determining how to identify the species, and amount of their critical habitat, where there have been no steps taken toward the protection of its critical habitat.</p> <p>Environment and Climate Change Canada will examine and refine approaches to information gathering and sharing with provinces and territories about critical habitat and threats, and its subsequent analysis, in order to support advice and ministerial decision-making.</p> <p>Implementation date: March 2025</p>

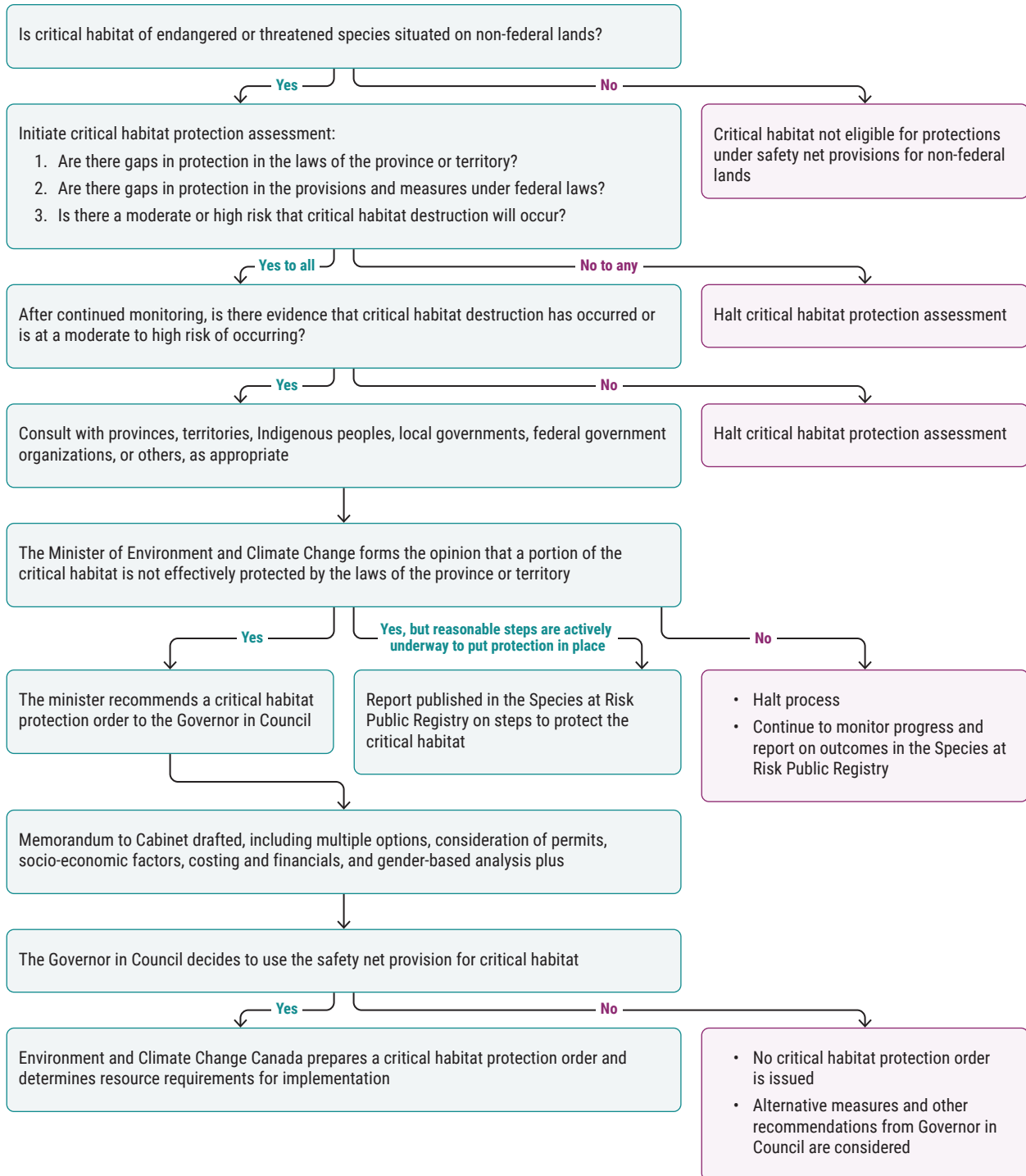


Recommendation	Response
<p><b>3.45</b> Environment and Climate Change Canada should work with its partners to strengthen conservation agreements to include milestones, measurable targets, clear accountability measures, and sufficient information to track and assess meaningful progress and results to generate conservation agreements that can be used as mechanisms to protect critical habitat.</p>	<p><b>Environment and Climate Change Canada's response.</b> Agreed. Environment and Climate Change Canada will work toward strengthening forthcoming and renewed conservation agreements for boreal and southern mountain caribou.</p> <p>This will be informed through the development and implementation of a Conservation Agreement Assessment Framework and associated tool to assess conservation agreement implementation and identify areas for improvement.</p> <p>Implementation date: November 2023</p>
<p><b>3.49</b> Environment and Climate Change Canada should gather, consolidate, and use information on conservation agreements to ensure they contribute to the recovery objectives of the species and to support decisions for protecting species and habitats, including through the use of the safety net provisions under section 61 of the <i>Species at Risk Act</i>.</p>	<p><b>Environment and Climate Change Canada's response.</b> Agreed. Environment and Climate Change Canada will work toward supporting decisions on protecting boreal and southern mountain caribou and their habitat by providing an internal annual report on the implementation of conservation agreements to the minister. Environment and Climate Change Canada will use the section 61 policy, once drafted, to inform these annual reports.</p> <p>To support the internal annual report, Environment and Climate Change Canada will assess incoming provincial and territorial range plans or other landscape-level planning, committed to under conservation agreements, against the requirements of the recovery strategies and/or Range Plan Guidance. These plans are intended to be a mechanism for jurisdictions to outline how critical habitat will be managed and protected.</p> <p>Implementation date: October 2023</p>
<p><b>3.56</b> Environment and Climate Change Canada, in collaboration with Fisheries and Oceans Canada and Parks Canada as appropriate, should complete its guidance for developing and updating <i>Species at Risk Act</i> policies. The guidance document should include elements such as a consistent approach for policy development and a process for the regular review of policies.</p>	<p><b>Environment and Climate Change Canada's response.</b> Agreed. Environment and Climate Change Canada recognizes the importance of having coherent, up-to-date policies and associated guidance to ensure consistency and transparency in the interpretation and administration of the <i>Species at Risk Act</i>, and to support the development of advice to the minister that is timely and based on the best-available information.</p> <p>Environment and Climate Change Canada, in collaboration with Parks Canada and Fisheries and Oceans Canada, as appropriate, will finalize an internal guidance document for developing and updating <i>Species at Risk Act</i> policies to ensure a consistent approach to policy development.</p> <p>Implementation date: September 2023</p> <p><b>Fisheries and Oceans Canada's response.</b> Agreed. Fisheries and Oceans Canada will work with Environment and Climate Change Canada and Parks Canada in the completion of applicable guidance to align, to the extent possible, the implementation of relevant provisions of the <i>Species at Risk Act</i>.</p>

Recommendation	Response
<p><b>3.59</b> Environment and Climate Change Canada, in collaboration with Fisheries and Oceans Canada and Parks Canada as appropriate, should renew and complete its relevant policies on the use of the provisions of the <i>Species at Risk Act</i> for sections 11, 61, and 80 and should develop policies on the use of the provisions of the act for sections 34 and 35. In doing so, Environment and Climate Change Canada should address areas such as gaps and inconsistencies in its policies and actively engage Indigenous groups and other stakeholders external to the federal government (for example, other levels of government, non-governmental organizations, and Canadian citizens) and take their input into consideration.</p>	<p><b>Parks Canada’s response.</b> Agreed. Parks Canada, as appropriate, will provide input to Environment and Climate Change Canada, as it completes guidance for developing and updating <i>Species at Risk Act</i> policies.</p> <p><b>Environment and Climate Change Canada’s response.</b> Agreed. Environment and Climate Change Canada recognizes that the protection and conservation of species at risk in Canada is a collaborative effort between jurisdictions, partners and stakeholders, particularly given provinces and territories have primary responsibility for terrestrial species at risk on non-federal land.</p> <p>Environment and Climate Change Canada will update or develop its policies to support the exercise of the minister’s discretionary authorities outlined in this audit (sections 11, 34, 35, 61, and 80).</p> <p>Environment and Climate Change Canada will also engage partners and stakeholders to gather their input and to ensure that their perspectives are considered in the finalization of the policies.</p> <p>Implementation date: January 2025</p> <p><b>Fisheries and Oceans Canada’s response.</b> Agreed. Fisheries and Oceans Canada will collaborate with Environment and Climate Change Canada in the renewal, completion, and development of policies on the use of provisions for relevant sections of the <i>Species at Risk Act</i>, notably those applicable to Fisheries and Oceans Canada, and in the engagement with Indigenous peoples and stakeholders to inform this exercise, as appropriate.</p> <p><b>Parks Canada’s response.</b> Agreed. Parks Canada, as appropriate, will provide input to Environment and Climate Change Canada, including advice and potential considerations for renewal and completion of relevant policies on the use of provisions of the <i>Species at Risk Act</i> for applicable sections noted. Parks Canada will also consider the input of Indigenous groups and stakeholders external to the federal government in its provision of input to Environment and Climate Change Canada.</p>

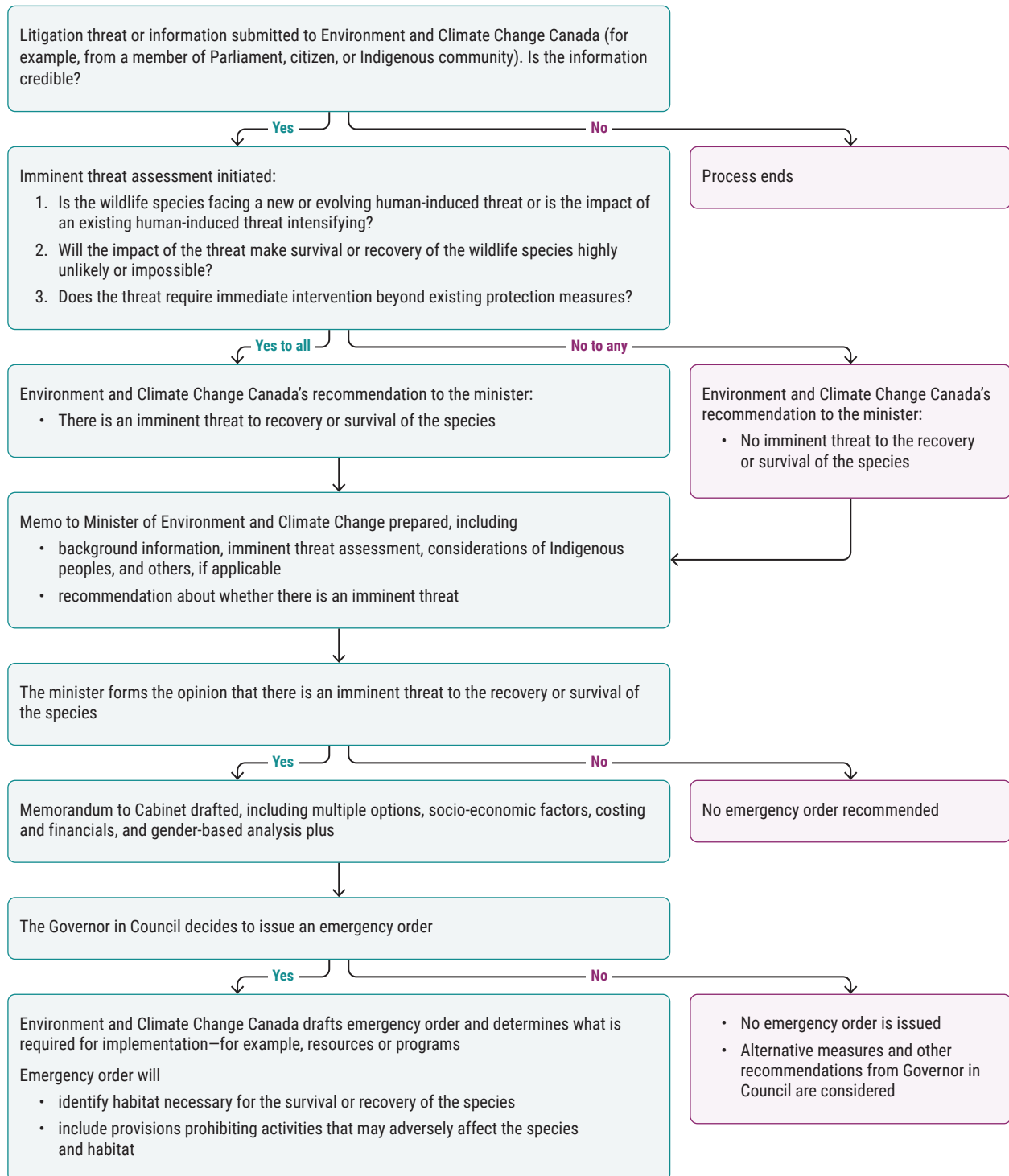
# Appendix—Processes for Using Provisions

**Exhibit A-1—Environment and Climate Change Canada’s process for using the safety net provisions for critical habitat protection on non-federal lands under section 61 of the *Species at Risk Act***



Source: Based on the draft Policy on Critical Habitat Protection on Non-Federal Lands, Environment and Climate Change Canada, 2016

**Exhibit A-2—Environment and Climate Change Canada’s process for using emergency order provisions under section 80 of the *Species at Risk Act***



Source: Based on the draft Policy on Assessing Imminent Threats Under Sections 29 and 80 of the *Species at Risk Act*, Environment and Climate Change Canada

