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Monique Passelac-Ross

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Monique Passelac-Ross, Overview of Provincial Wildlife Laws, Canadian Wildlife Law Project
Paper#3 (Calgary: Canadian Institute of Resources Law, 2006)

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Canadian Wildlife Law Project

Paper #3

July 2006

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Printed in Canada

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Foreword

This publication is the third in a series of papers on Canadian Wildlife Law being published by the Canadian Institute of Resources Law. The research and writing of these papers has been made possible as the result of generous grant by the Alberta Law Foundation, and the Institute thanks the Foundation for its support of this work. The Foundation of course bears no responsibility for the content of the papers and the opinions of the various authors. The Canadian Wildlife Law Project was originally developed and proceeded under the direction of John Donihee, then a Research Associate with the Institute. Following Mr. Donihee's return to private practice, the supervision and general editorship of the project has been assumed by Institute Research Associate Monique Passelac-Ross. I would like to thank both these individuals and all those who have contributed to the success of the project for their efforts towards developing a greater awareness of this important area of natural resources law.

Wildlife and a concern for wildlife are fundamental aspects of the Canadian heritage, and the fur trade and the harvest of wild game were essential parts of Canadian history. The need to provide a land base and the habitat to sustain wildlife populations is a recurring theme in both national and provincial natural resources policy; in particular, there has been a growing recognition of the need to preserve habitat for endangered species. Similarly, wildlife and access to wildlife have a particular importance for aboriginal peoples, and the rights to wildlife have been central among the concerns of First Nations in Canada. Finally, internationally, Canada is party to numerous conventions whose goals are the protection and sound management of wildlife – perhaps most notably in recent years, the Convention on International Trade in Endangered Species and the Biodiversity Convention.

Despite the obvious importance of wildlife to Canadians in all these contexts, surprisingly little has been written about wildlife law, and certainly no comprehensive overview of such law exists in Canada. The purpose of this series of papers is to begin to remedy this shortfall in Canadian legal literature.

J. Owen Saunders
Executive Director
Canadian Institute of Resources Law

Calgary, Alberta
July 2006

Preface

This paper offers a comprehensive assessment of provincial wildlife laws in Canada. The term “provincial” should be read to include “territorial”. The overview of wildlife legislation in this paper encompasses all ten provinces and the three territories. The paper explains the basic scheme of the Acts and outlines the commonalities and differences from jurisdiction to jurisdiction. First, it describes the traditional wildlife management mechanisms that are typically utilized in wildlife laws in order to achieve wildlife management goals. It then focuses on the habitat protection provisions of wildlife statutes. These provisions illustrate the broadening in focus of wildlife management techniques starting in the wildlife management era (1960s and 1970s). Finally, the paper provides an overview of legislative provisions that have been enacted for the protection of species at risk, either as stand-alone legislation or as new provisions inserted in existing wildlife statutes.

I would like to thank the various individuals who contributed to this paper: Diane Volk and Janelle Brown for their research assistance, John Donihee, formerly a Research Associate with CIRL, for outlining the functional analysis on which Section 1 of the paper is based, Ian Rounthwaite of the Faculty of Law at the University of Calgary for reading and commenting on the final version of the manuscript, and Sue Parsons for her expert editing and formatting of the document.

Monique M. Passelac-Ross
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July 2006

1. Introduction

Canadian wildlife law has evolved in a similar fashion across the country. John Donihee distinguishes three general stages in this evolution: 1) the “Game Management Era”, 2) the “Wildlife Management Era”, and 3) the “Sustainable Wildlife Management Era”.¹ The first stage was largely one of hunting controls. The second stage, starting in the 1960s, was characterized by a broadening of the scope of statutes from “game” to “wildlife” management, more detailed hunting control mechanisms, and a larger assortment of management mechanisms such as habitat protection and management, and artificial replenishment of wildlife. The third and most recent stage, starting in the mid 1980s, reflects a shift in societal values that attach to wildlife and the environment. It is characterized by a stronger environmental and ecological focus for legislation, including strengthened habitat protection provisions, species at risk protection, and in some jurisdictions stronger legal protection granted to aboriginal harvesting. Thus, Nunavut’s *Wildlife Act*, which was enacted in December 2003, is strikingly different from the more traditional provincial wildlife statutes. The Act implements the provisions of the *Nunavut Land Claims Agreement* respecting wildlife, habitat and the rights of the Inuit in relation to wildlife and habitat.² It is based on a set of values and conservation principles that include: a) the maintenance of the natural balance of ecological systems, b) the protection of habitat, c) the maintenance of vital, healthy, wildlife populations capable of sustaining harvesting, and d) the restoration and revitalization of depleted populations of wildlife and their habitat. It enounces guiding principles and concepts that are specific to the Inuit and are grounded in values of respect for, and stewardship of, wildlife and its habitat.

In most cases, the statutory provisions that are seen as necessary at each new stage of evolution are grafted onto those of the earlier eras. As a result, wildlife laws have become increasingly complex over time. The wildlife management paradigm embodied in wildlife acts is characterized by the following features identified by Valerius Geist: public ownership of the wildlife, strict controls on killing of wildlife, elimination or strict management of market hunting, allocation of harvestable surpluses based on equal opportunities for all users, and interjurisdictional cooperation.³ Centralized authority for the management and control of wildlife is assigned to a Minister of the Crown and enforced by game management officials. The managers tightly control the killing and trading of wildlife by way of licensing systems. As noted earlier, the control mechanisms

¹John Donihee, *The Evolution of Wildlife Law in Canada*, Occasional Paper # 9 (Calgary: Canadian Institute of Resources Law, 2000).

²*Wildlife Act*, S.Nu. 2003, c. 26. Subsection 5(3) of the Act specifies that in the event of an inconsistency or conflict between the Agreement and the Act or a regulation made under the Act, the Agreement prevails.

³Valerius Geist, “North American Policies of Wildlife Conservation” in Valerius Geist, *Wildlife Conservation Policy* (Calgary: Detselig Enterprises Ltd., 1995) at 77-127.

used to manage wildlife have involved the use of increasingly more restrictive measures. To a large degree, these mechanisms are common to all thirteen jurisdictions across Canada.

This paper is in three sections. Section 1 outlines the traditional wildlife management mechanisms, such as licensing systems and hunting restrictions, which are typically found in wildlife acts. Section 2 focuses on the habitat protection provisions found in wildlife statutes, which have become more developed in recent years. Section 3 deals with species at risk and outlines the steps taken by provincial governments to complement federal initiatives and legislation. A list of all wildlife statutes reviewed for this paper is found in Appendix 1.

2. Traditional Wildlife Management Mechanisms

A functional analysis is used to describe the typical contents of wildlife statutes and regulations and their traditional wildlife management mechanisms. Each function is described and illustrated with examples drawn from various provincial wildlife acts. The parts include:

- administration
- property rights in wildlife
- licensing provisions
- rules for hunting
- possession, use and sale of wildlife
- prohibitions
- enforcement
- offences and penalties
- regulations.

The following review is based mostly on an analysis of statutory provisions. Most of the detailed rules concerning wildlife management and habitat protection are found in the regulations adopted under the acts. Time has not allowed a review of all pertinent regulations.

2.1. Administration

These provisions prescribe a structure for the administration of the Act. They empower the Minister responsible for the administration of the Act to exercise certain functions. Thus, section 3 of Prince Edward Island's *Wildlife Conservation Act* states:

“(1) The Minister is responsible for the protection, management and conservation of wildlife and wildlife habitat in the province.”

Most provincial wildlife statutes grant broad discretionary powers to the Minister. Ministerial discretion may lead to the uneven application of the legislation.

The Minister is enabled to appoint various persons to assist in the management and enforcement of the Act and to act on his/her behalf. These may include a Director of Fish and Wildlife,⁴ a Superintendent of Wildlife,⁵ officers,⁶ wildlife officers,⁷ wildlife guardians,⁸ protection officers and wildlife protection officers,⁹ conservation officers¹⁰ or game wardens.¹¹ These officers are often entitled, in carrying out their duties under the Act, to exercise all the powers, authorities and immunities of a peace officer as defined in the *Criminal Code* (Canada).

In some jurisdictions, the Minister is empowered to establish advisory boards or committees to obtain advice on matters respecting the provisions of the Act.¹² In the Northwest Territories and the Yukon, Wildlife Management Advisory Councils are established respectively under subsections 14(45) and 12(46) of the *Inuvialuit Final Agreement* to provide advice to the appropriate Ministers on matters relating to wildlife policy, the management, regulation and administration of wildlife, and wildlife harvesting by the Inuvialuit.¹³ In the Northwest Territories, the Council has extensive advisory powers, including the preparation and recommendation of a wildlife

⁴*E.g.* British Columbia, s. 1(1); New Brunswick, s. 6(1); Nova Scotia, s. 8(1); Prince Edward Island, s. 4; Saskatchewan, s. 4.

⁵Northwest Territories, s. 75(2).

⁶Manitoba, s. 68(2).

⁷Newfoundland, s. 8; Alberta, s. 1.1; Northwest Territories, s. 76; Saskatchewan, s. 6.

⁸Alberta, s. 2.

⁹Quebec, ss. 3 and 5.

¹⁰British Columbia, s. 1(1); New Brunswick, s. 7(1); Nova Scotia, s. 8(1); Ontario, s. 87; Prince Edward Island, s. 4; Yukon, s. 128.

¹¹New Brunswick, s. 7.

¹²*E.g.* Newfoundland, s. 6; Saskatchewan, s. 8.

¹³Northwest Territories *Wildlife Act*, ss. 121 and 122; Yukon's *Wildlife Act*, ss. 211 to 225, 236.

conservation and management plan for the region, the determination and recommendation of harvestable quotas, existing and proposed wildlife legislation, and measures to protect critical wildlife habitat. In the Yukon, the Act focuses on the role of the Council in establishing a total allowable harvest and subsistence quotas for certain wildlife species or population on the Yukon North Slope. In Nunavut, the *Wildlife Act* enables the Minister to appoint an advisory committee of elders to review current, traditional and historical types, methods and technologies of harvesting wildlife and advise the Minister on those it considers humane and safe, and to appoint other advisory committees on other matters.¹⁴

In addition to these advisory boards, the Northwest Territories, the Yukon, Nunavut and Quebec have implemented in their wildlife legislation the provisions of comprehensive land claims agreements in matters related to wildlife, notably with respect to the co-management boards or committees established under the agreements. The Northwest Territories' *Wildlife Act* states that the Act will be interpreted and applied in a manner consistent with the *Inuvialuit Final Agreement*, the *Gwich'in Comprehensive Land Claim Agreement* and the *Sahtu Dene Metis Comprehensive Land Claim Agreement*.¹⁵ The Yukon's *Wildlife Act* also acknowledges that it is subject to the *Inuvialuit Final Agreement*, which applies in the Yukon North Slope.¹⁶ In the event of a conflict or an inconsistency between these agreements and the Act or the regulations, the agreements prevail to the extent of the conflict or inconsistency. With respect to the Inuvialuit, the Northwest Territories' Act refers to the Inuvialuit Game Council, and the Hunters and Trappers Committees, and lists their powers and duties. With respect to the Gwich'in and the Sahtu Dene and Metis, the Act simply states that the provisions of the agreements respecting wildlife harvesting and management will apply. The Yukon's *Wildlife Act* also describes some of the functions of the Inuvialuit Game Council with respect to the allocation of total allowable harvest and refers to the bylaw making powers of the Hunters and Trappers Committees.

Similarly, Nunavut's *Wildlife Act* acknowledges that the Nunavut Wildlife Management Board established by the *Nunavut Land Claims Agreement* has extensive responsibilities for wildlife and habitat, along with the Minister.¹⁷ In addition to the functions listed by the Act, the Board may perform other functions as agreed by the Minister and the Board, and the Minister may refer any wildlife management matter to the Board. Pursuant to section 156 of the Act, a decision of the Board is subject to

¹⁴Section 160. This is in addition to the Nunavut Species at Risk Committee, which is discussed in Section 3 of this paper.

¹⁵Northwest Territories, ss. 1.2, 1.21, 1.22.

¹⁶Yukon, s. 198(2).

¹⁷Nunavut, ss. 151, 155-158.

acceptance by the Minister or Commissioner in Executive Council, with some exceptions. Quebec has also enacted special legislative provisions (*An Act respecting hunting and fishing rights in the James Bay and Northern Québec territories*¹⁸) to implement the special hunting and fishing rights guaranteed to the Crees, the Inuit and the Naskapis under the 1973 *James Bay and Northern Québec Agreement* and the *Northeastern Québec Agreement*. The Act establishes a Coordinating Committee comprised equally of Crees, Inuit and Naskapis on the one hand, and government representatives on the other.¹⁹ The Committee manages and supervises the hunting, fishing and trapping regime established by the Act and in particular may initiate, discuss, review and propose any regulation or other measure relating to the regime and may submit recommendations to the Minister or any other interested Minister concerning a wide variety of wildlife-related matters.

Some wildlife statutes enable the Minister to enter into agreements with other governments, organizations or persons, in order to carry out the provisions of the Act. For instance, Nova Scotia's *Wildlife Act* allows the Minister to enter into agreements with the federal government, a provincial government, another state, a municipal or local government, or any society, group, organization, person or individual for, *inter alia*, the joint management of wildlife or wildlife habitats, the development of joint educational or training programs, biological or ecological programs, and programs for the prevention of damage to wildlife or for the control of wildlife.²⁰ Section 18 of Prince Edward Island's *Wildlife Conservation Act* authorizes the Minister to enter into an agreement with a private landowner creating a conservation covenant or easement in respect of the land owned by the private landowner, in order to protect or restore ecosystems or wildlife habitat. Saskatchewan's *The Wildlife Act, 1998* authorizes the Minister to enter into an agreement with any person, Indian band or government for the protection, management, conservation of wildlife and their habitats, or for the establishment of certain programs.²¹ The Yukon's *Wildlife Act* has similar provisions.²² In Quebec, the *Act respecting the conservation and development of wildlife* specifically authorizes the government to enter into agreements with any Native community represented by its band council in respect of matters related to hunting and trapping, and controlled territories. Section 24.1 states:

“24.1. The Government is authorized, to better reconcile wildlife conservation and management requirements with the activities pursued by Native people for food, ritual or social purposes, or to further facilitate wildlife resource development and management by Native people, to enter into

¹⁸R.S.Q., c. D-13.1.

¹⁹*Ibid.*, Chapter XI, ss. 54 to 83.

²⁰Nova Scotia, s. 11.

²¹Saskatchewan, s. 9.

²²Yukon, s. 189.

agreements with any Native community represented by its band council in respect of any matter to which Chapter III, IV or VI applies.”

The agreements are tabled before the legislature and published in the Official Gazette, and they prevail over the provisions of the Act or the regulations, as long as the community abides by their terms. In addition, section 37 of the Act authorizes the Minister to sign a memorandum of agreement with a land owner, a municipality or a metropolitan community for purposes of wildlife management and accessibility. Section 128.6 of the Act also enables the Minister to delegate to a municipality certain of his powers with respect to the management of wildlife habitat by means of a memorandum of agreement.

In some jurisdictions, the Minister is required to prepare and submit to the provincial legislature or to Cabinet annual reports and five year reports. For instance in Manitoba, the Minister reports yearly on his administration of the Act, including a review of all wildlife allocations, while the five year report must include a review of the status of animals listed, wildlife management programs and their effectiveness, trends and forecast of demands for the use of wildlife, and an evaluation of the capability of the wildlife resource to meet anticipated demands.²³ In Prince Edward Island, the Minister must, as specified in the Act, submit a report to the Lieutenant Governor in Council including, in particular, an inventory of wildlife habitat, an assessment of the state of wildlife resources and a summary of wildlife initiatives and programs for both Crown and private lands.

2.2. Property Rights in Wildlife

Most wildlife statutes establish the Crown's ownership of all live wildlife in the province. Property in wildlife is vested in an individual only in accordance with a permit or licence issued under the Act, and only where the wildlife has been lawfully killed according to the Act and regulations. For example, section 4 of Nova Scotia's *Wildlife Act* provides:

“4(1) Subject to subsection (2), the property in all wildlife situate within the Province, while in a state of nature, is hereby declared to be vested in her Majesty in right of the Province and no person shall acquire any right or property therein otherwise than in accordance with this Act and the regulations.

4(2) A person who lawfully kills wildlife and complies with all applicable provisions of this Act and the regulations acquires the right of property in that wildlife.”

The only exception to the general rule of Crown ownership concerns live captive wildlife. Thus, section 24 of Saskatchewan's *The Wildlife Act, 1998* states:

²³Manitoba, ss. 82, 83.

“24(1) Subject to this Act and the regulations, a person has all property rights, title and interest in and to any wildlife where that person:

- (a) is in possession of the wildlife; and
- (b) has a licence authorizing possession of the wildlife.”

Section 9 of Alberta’s *Wildlife Act* enables the Minister to transfer the Crown’s property in wildlife on terms and conditions specified in the transfer instrument.

In most jurisdictions, a standard clause immunizes the Crown from liability for death, personal injury or property damage caused by wildlife. Nova Scotia’s Act states:

“4(3) Notwithstanding anything in this Act, no right of action lies and no right of compensation exists against Her Majesty in right of the Province for death, personal injury or property damage caused by wildlife, or any wildlife that escapes or is released from captivity or is abandoned within the Province.”

Saskatchewan’s *The Wildlife Act, 1998* is a notable exception, since section 10 empowers the Minister to compensate persons for property loss or damage caused by wildlife or hunters and to enter into agreements to insure or indemnify against such losses.

2.3. Licensing Provisions

The licensing system is central to the wildlife management paradigm that has shaped wildlife legislation and is one of the main tools used to implement the system of hunting controls. The licensing provisions of wildlife statutes are often extensive, and are complemented by more detailed regulatory provisions.

The legislation usually contains a general prohibition against hunting without a licence. For instance, subsection 15(1) of Manitoba’s *The Wildlife Act* provides:

“15(1) Except as may be otherwise permitted by this Act or a regulation under this Act, no person shall hunt, trap, take, kill or capture or attempt to trap, take, kill or capture a wild animal unless the person does so under the authority of a licence.”

The Minister is empowered to issue licences or permits authorizing the holder to hunt, trap or capture wildlife subject to terms and conditions prescribed therein or in the regulations. Permits authorizing the sale or purchase of animal flesh may also be issued. Further, outfitting and guiding operations are also subject to the issuance of licences or permits, as are also fur farms or game farms.

Licences and permits are normally issued for a prescribed fee. The acts usually list the general eligibility conditions for obtaining a licence or permit, including age, residency, and qualifications such as training and testing. A licence is issued for a limited period of time, and specifies the kind of wildlife and the numbers that may be killed. Further, a licence may be issued for a particular area, and for a special method of hunting,

killing, trapping or capturing wildlife. For instance, section 12 of Alberta's *Wildlife Act* provides:

“12(1) The Minister may make regulations, with respect to licences and permits,

- (a) establishing and specifying the activities authorized under them;
- (b) subdividing them into classes according to the prescribed criteria;
- (c) specifying qualifications required to obtain and hold them, including training and testing;
- (d) establishing conditions precedent to obtaining them;
- (e) providing for their distribution or allocation, including the methods of and procedures for distribution or allocation.

(2) The rights attached to a licence or permit are subject to any terms and conditions applicable to it that may be provided by this Act or as may be endorsed by the Minister on the licence or permit.”

The issuance of a licence is discretionary, and the Minister is also granted broad discretion to cancel or suspend a licence for breach of the Act or the regulations or of a term or condition of the licence, as well as to reinstate it. Cancellation or suspension of a licence may also be justified for the protection of wildlife or species at risk, or in the public interest. Further, convictions of offences under the Act usually result in prohibitions against holding licences. Any person hunting wildlife must carry the licence or permit and produce it for inspection at the request of an officer. Failure to carry or produce the licence is considered an offence. A licence is not transferable or assignable and it is an offence to hunt with a licence issued to another person.

In the three territories and in Quebec, the special harvesting rights of the beneficiaries of land claims settlements are acknowledged and the beneficiaries do not require the issuance of a licence. For example, section 204 of the Yukon's *Wildlife Act* states:

“204. Except as provided in section 205, an Inuvialuk is not required to obtain a permit, licence or other authorization to harvest wildlife under this Part.”

The Northwest Territories' *Wildlife Act* recognizes the Inuvialuit's preferential and exclusive rights to harvest certain species of wildlife and states that they do not need to obtain permits, licences or other authorizations, subject to laws of general application respecting public safety and conservation.²⁴ Parts III and IV further recognize and give effect to the provisions of the Gwich'in and the Sahtu Dene and Metis land claims agreements, both of which grant special harvesting rights to the Gwich'in and the Sahtu. The statute has not yet been amended to reflect the settlement of the more recent land claim and self-government agreement with the Dogrib.²⁵ Similarly, Québec's *An Act*

²⁴Northwest Territories, ss. 102 and 107.

²⁵Land Claims and Self-Government Agreement among the Tlicho and the Government of the

respecting hunting and fishing in the James Bay and New Québec territories acknowledges the extensive and exclusive rights to harvest of the Crees, Inuit and Naskapis over the Territory covered by the Act and states that these rights may be exercised without a licence, subject to some exceptions.²⁶

With the exception of Quebec, however, in the provincial context wildlife statutes seldom acknowledge the Aboriginal or treaty rights of Aboriginal peoples to harvest wildlife. Saskatchewan's *The Wildlife Act, 1998* does recognize the rights of Indians to hunt for food, in accordance with section 12 of the 1930 *Natural Resources Transfer Agreement (NRTA)*.²⁷ In Manitoba, section 94 of *The Wildlife Act* simply states that the Act is subject to paragraph 13 of the Manitoba's *NRTA*, which is equivalent to section 12 of Saskatchewan's *NRTA*. By contrast, Alberta's *Wildlife Act* does not mention section 12 of Alberta's *NRTA* nor does it acknowledge the rights of Aboriginal peoples to hunt for food. Prince Edward Island has stronger protection for Aboriginal peoples, since its *Wildlife Conservation Act* exempts them from the need to obtain licenses or permits:

“12(1) No person shall

[...]

- (b) hunt any game, game bird or migratory game bird; or
- (c) trap any fur-bearing animal, unless authorized to do so by a license or permit issued to that person under this Act.

(2) Subsection (1) does not apply to

- (a) aboriginal persons; [...]"

Quebec's general wildlife legislation does not mention the special rights of Aboriginal peoples to hunt, but section 24.2 of the Act enables the government to adapt the provisions of various parts of the Act, including those in relation to the conditions of harvesting wildlife, in order to reconcile the objectives of wildlife conservation and management “with the activities pursued by Native people for food, ritual or social purposes”.

Northwest Territories and the Government of Canada, August 25, 2003. Chapter 10 of this agreement deals with the wildlife harvesting rights of the Tlicho.

²⁶ Quebec, s. 25.

²⁷ *Natural Resources Transfer Agreement*, S.S. 1930, c. 87. Section 12 of the *NRTA* guarantees to the Indians of the province the right to hunt, trap and fish for food.

2.4. Rules for Hunting

The general rules for hunting relate to the determination of the animals or classes of animals that may be hunted; the period of the year, day or night during which wildlife may be hunted; the area, territory or place in which wildlife may be hunted; and the manner in which hunting may occur. Some of these rules are contained in wildlife statutes, however the details are found in regulations enacted pursuant to the acts. As noted earlier, the Minister retains broad discretionary powers with respect to hunting activities. For example, the Minister may permit or prohibit the hunting of a particular wildlife species in any particular hunting season, based on political rather than conservation considerations. Such has been the case in Alberta with the grizzly bear hunt, and in Ontario with the black bear hunt.

The acts and regulations prescribe the animals and classes of animals that may be hunted, as well as the bag limits or possession limits for particular species of wildlife and the seasons, days and hours during which hunting is allowed. Thus, section 23 of Alberta's *Wildlife Act* provides:

“23. The minister may by regulation establish as open seasons periods during which wildlife of the kinds and characteristics and in the numbers prescribed may be lawfully hunted in the areas, under the licences and, where applicable, in the manner prescribed.”

In addition to the time of year, regulations may prescribe the time of week and day during which hunting is allowed. There is a general prohibition against hunting at night, and hunting at night by means of lights. Further, hunting on Sunday or during a weekly day of rest may also be prohibited. There are exceptions to these rules in the case of trapping.

The provincial government also determines specific areas or zones for the hunting or trapping of particular species of wildlife within a province or territory. For instance, Quebec's Act states:

“84.1 The Minister may divide Québec into hunting areas, fishing areas or trapping areas, and delimit the areas.

85. The Minister may delimit areas on land in the domain of the State with a view to increased utilization of wildlife resources and the carrying on of recreational activities incidental thereto.”

As discussed in Section 2 of this paper, the designation of specific habitats may involve both Crown lands and private lands. When that is the case, the consent of private landowners is required and agreements may be signed with the owners. Hunting on private land is subject to various rules. In some jurisdictions, there is a general prohibition against hunting on private land except with the consent of the owner or occupant of the private land. However, this prohibition may be worded differently according to the jurisdictions. In Alberta, the prohibition relates to hunting on “occupied land”, defined as follows:

“38(1) In this section, ‘occupied land’ means

- (a) privately owned land under cultivation or enclosed by a fence of any kind and not exceeding one section in area on which the owner or occupant actually resides, and
- (b) any other privately owned land that is within one mile of the section referred to in clause (a) and that is owned or leased by the same owner or occupant

(2) No person shall hunt any wildlife or discharge any firearm on or over occupied land or enter on occupied land for the purpose of doing so, without the consent of the owner or occupant of it.”

Saskatchewan prohibits hunting on land on which “no hunting” signs are posted, except with the consent of the owner or occupant (s. 41). However, the simple fact that an owner has not erected or placed signs along the boundaries of his or her land is not to be deemed to imply consent nor a right of access for hunting. By contrast, in New Brunswick, where land is not posted in accordance with section 80 of the Act, the owner is deemed to consent to the entry of a person on the land for the purpose of hunting, trapping and snaring. A person who is in possession of a valid licence is not liable for trespass if that person enters on land that is not posted for the purpose of hunting or trapping. In Quebec, the prohibition to hunt on private land without the consent of the owner applies to lands owned by parties that have entered into an agreement with the Minister for wildlife management and accessibility, or with an association or body to facilitate the access of hunters and trappers to the private lands.

Specific rules for hunting usually apply on lands set aside as sanctuaries, reserves, parks or for specific wildlife management and conservation purposes. Some of these are reviewed below under the heading *Prohibitions*, while Section 2 of this paper provides a more detailed review of habitat protection provisions.

There are numerous rules concerning the manner of hunting, many of which are designed to ensure safety and the protection of property. These rules are often prescribed by prohibition. There may be a general prohibition to hunt in a manner that may endanger human life or property, notably livestock and crops. For instance, section 28 of British Columbia’s *Wildlife Act* provides:

“28. A person who hunts or traps without reasonable consideration for the lives, safety or property of other persons commits an offence.”

More specific prohibitions concern hunting while intoxicated or under the influence of a narcotic or a drug; hunting big game with the use of dogs, except by permit, or with the use of birds of prey; letting a dog run at large in prescribed areas; using vehicles, boats and aircraft to pursue or to kill wildlife;²⁸ carrying a loaded firearm in a vehicle or while

²⁸The prohibition against hunting from a vehicle is often lifted for people with physical handicaps.

on horseback; discharging a firearm from a road or within a certain distance from designated buildings or places.

The acts or regulations also include extensive provisions determining the types of weapons, traps, implements or means which may be used or are prohibited for hunting various species of wildlife. Further, some provinces have detailed provisions prohibiting the use of poisonous substances for hunting or for trapping. Some statutes prescribe the clothing that is required while hunting. Other requirements relate to the obligation to affix tags to the wildlife that has been killed and to report the hunting of specified species. Finally, there are rules regarding the consumption of the edible flesh and the use of the skin of an animal killed, to avoid spoilage.

2.5. Possession of and Commerce in Wildlife

Wildlife laws generally include a prohibition against possessing wildlife in contravention of the Act or the regulations or without a licence. This applies to both live and dead wildlife. For instance, sections 19, 29 and 45 of Manitoba's *The Wildlife Act* state:

“19. No person shall have in his possession any wildlife or a part of any wildlife captured, killed or taken in contravention of this Act or the regulations.

29. No person shall have in his possession a greater number of carcasses of a species or type of wild animal than is permitted by this Act or the regulations for that species or type.

45. Except as otherwise permitted under this Act or the regulations, no person shall capture alive or have possession of any live wild animal.”

A possible exception with respect to possession of live wildlife concerns fur farms or game production farms. Subsection 55(2)(b) of Alberta's Act allows the possession of wildlife:

“(b) on a farm or a game production farm if that possession is reasonably incidental to the operation of that farm, or off the farm if that possession is reasonably necessary for its operation.”

Section 33 of British Columbia's *Wildlife Act* is a good example of the rules regarding possession of wildlife:

“33(1) A person commits an offence if the person has live wildlife in his or her personal possession except as authorized under a licence or permit or as provided by regulation.

(2) A person commits an offence if the person has dead wildlife or a part of any wildlife in his or her possession except as authorized under a licence or permit or as provided by regulation.

(3) Subsections (1) and (2) do not apply to a person acting under a licence under the *Fur Farm Act* or the *Game Farm Act*.”

Although wildlife statutes may preserve the right to dispose freely of legally harvested wildlife, they usually prohibit the purchase, sale or bartering of wildlife without a licence or permit. For instance, section 30.1 of Manitoba's Act provides:

“30(1) Subject to this Act and the regulations, no person shall sell, buy, trade or barter, or attempt or offer to sell, buy, trade or barter, or keep for the purposes of sale, trade or barter, any wild animal or parts of wild animal except under the authority of a licence or permit.”

Trafficking in wildlife is also prohibited, except as authorized by permit or by legislation. For instance, section 102 of the Yukon's Act provides:

“102(1) A person shall not traffic in wildlife or possess wildlife for the purpose of trafficking, except under the authority of a licence or permit or in accordance with this Act.

(2) A person shall not sell any thing that the person represents as wildlife unless the person has a licence or permit to sell that wildlife.

(3) Subsection (1) does not apply in the circumstances prescribed by regulations.”

Selling or bartering furs, skins or hides, and trading in furs are subject to specific provisions. Sections 41 and 42 of Manitoba's *The Wildlife Act* states:

“41(2) No person who traps, takes or kills a fur bearing animal shall

- (a) sell or barter its pelt, skin or hide; or
- (b) leave its pelt, skin or hide with a taxidermist, tanner or other processor to be mounted, dressed or tanned

without paying to the Minister of Finance the royalty prescribed in the regulations.

42(1) No person shall engage in or carry on or be concerned in the business of trading, buying or selling of the pelts, skins or hides of wildlife on which a royalty is payable under this Act, or solicit trade therein, except pursuant to a licence.”

The transportation of wildlife is also regulated. For instance, section 37 of British Columbia's Act states:

“37. A person who ships or transports in British Columbia, or engages another person to ship or transport in British Columbia, wildlife or fish or parts of them, except as provided by regulation, commits an offence.”

Most wildlife statutes prohibit the importation of live wildlife and the exportation of wildlife, except as authorized by licence or permit under the Act or the regulations. For instance, sections 63 and 64 of Nova Scotia's Act state:

“63(1) Every person commits an offence who exports or attempts to export out of the Province any live wildlife or the green hide or pelt or carcass or any part thereof except where that person is the holder of an export permit issued pursuant to this Act or the regulations.

64(1) Except as provided in this Act or the regulations, no person shall import into the Province any live wildlife or exotic wildlife or any part thereof except where the person is the holder of an import permit issued pursuant to this Act or the regulations.

(2) Nothing in this Act prevents the importing of dead wildlife into the province or the possession in the Province of wildlife taken outside of the province if the wildlife has been legally taken.”

Exceptions to the rules regarding possession, transportation and sale of wildlife often apply with respect to the beneficiaries of land claims settlements. For instance, Québec’s *An Act respecting hunting and fishing in the James Bay and New Québec territories* defines the “right to harvest” as including the right to possess and transport within the Territory the products of the harvest, and defines personal use and community use as including the gift, exchange and sale of products of the harvest among members of a single family or members of specified communities.²⁹ Under the Northwest Territories’ *Wildlife Act*, the Inuvialuit are entitled to sell, trade and barter legally harvested game between themselves and to exchange game products with other land claim beneficiaries, and they may also possess and transport game within the Western Arctic Region.³⁰ In the Yukon, the Inuvialuit are similarly entitled on the Yukon North Slope to exchange or barter wildlife products with a land claims beneficiary without permit.³¹

2.6. Prohibitions

The most important general prohibition concerns hunting without a licence or contrary to the terms and conditions of a licence, and hunting outside an open season. Some of the prohibitions that apply to the manner in which hunting is conducted have already been mentioned above. Other types of prohibitions usually found in wildlife statutes are mentioned below. These prohibitions are designed to protect wildlife species or their habitats, other hunters, or private property.

There are general prohibitions against harassing or disturbing wildlife, without permission to do so. For instance, section 38 of the Northwest Territories’ Act states:

38. (1) Subject to subsection (3), no person shall without a permit entitling him or her to do so

- (a) persistently or repeatedly chase, weary, harass or molest wildlife without intending to capture or kill it;
- (b) engage in any activity that is likely to result in a significant disturbance to a substantial number of wildlife animals;

²⁹*Supra* note 18, ss. 18 and 19.

³⁰Northwest Territories, ss. 108 to 111.

³¹Yukon, s. 202.

(c) break into, destroy or damage any den, beaver dam or lodge or muskrat push-up outside any municipality or prescribed area, unless authorized to do so by the regulations or any other law; [...]

Some statutes prohibit intentionally feeding or attempting to feed dangerous wildlife or leaving food or any other substance on any land to attract dangerous wildlife. Most wildlife acts prohibit disturbing or destroying the habitation or abode of wildlife, including the dens and nests of animals and usual place of habitation of fur-bearers. These are reviewed in more detail in Section 2 of this paper, under habitat protection provisions. Other prohibitions concern the taking of wildlife into captivity and keeping in captivity without written permission. Exceptions to that rule may be in place, notably for fur farms and game farms. Further rules prevent the hunting of wildlife in captivity, such as in game farms, and the escape or release of wildlife in captivity.

Other prohibitions are designed to protect wildlife habitat from harmful activities. For instance, section 128.6 of Quebec's Act states:

"128.6. No person may, in a wildlife habitat, carry on an activity that may alter any biological, physical or chemical component peculiar to the habitat of the animal or fish concerned."

Exceptions to this general prohibition relate to activities that are authorized by the Minister or carried on in accordance with the Act or regulations or other provincial acts. All wildlife statutes contain similar prohibitions to enter into and/or to hunt in areas specifically set aside to protect wildlife habitat. These provisions are reviewed in the following Section 2.

Some prohibitions are designed to protect hunters from harassment, interference with, or disturbance. Section 47 of Alberta's Act states:

"47(1) A person shall not interfere with the lawful hunting of wildlife by another person, or with any lawful activity preparatory to such hunting, with the intention of preventing or impeding the hunting or the continuation of the hunting."

In the case of trapping, prohibitions relate to the removal, disturbance of or interference with traps. Manitoba's Act specifies:

"39. No person shall remove, disturb, spring or in any way interfere with any trap set out lawfully by any other person for the purpose of taking fur bearing animals."

Further, it is prohibited to trap on another person's registered trapline without the permission of the registered holder of the trapline or the owner or occupier of the land. The prohibition against interference or obstruction also extends to guiding and outfitting activities.

2.7. Enforcement

The enforcement provisions of wildlife acts are quite extensive. As mentioned earlier, the wildlife officers appointed by the Minister to administer and enforce the Act have and may exercise the powers and authority of peace officers. Thus section 54 of Saskatchewan's *The Wildlife Act, 1998* states:

“54. All wildlife officers and deputy wildlife officers have the power of peace officers to enforce this Act and are entitled while performing their duties to all protection to which peace officers are entitled pursuant to the *Criminal Code*.”

The enforcement powers granted to wildlife officers and to other persons appointed by the Minister are very similar across jurisdictions. The following list, based on Part 6 – Enforcement, of Alberta's *Wildlife Act* (sections 65 to 82.1), is representative of the range of enforcement tools that enforcement officers may utilize to enforce wildlife laws:

- entry on land
- power to stop and order movement of vehicles, etc, and animals
- power to demand licence, permit, etc.
- inspection of weapons, ammunitions and projectiles
- inspection of animals
- search without warrant
- inspection of permit and other premises
- production of identification
- powers of seizure and forfeiture
- disposition of seized things or forfeited things
- destruction or disposition of diseased animals or of private animals posing a threat to or harassing wildlife
- closing of areas to the public
- reporting
- warrants to enter and seize
- powers of arrest.

The paper entitled *Enforcing Wildlife Law*, published in the series of papers on Canadian Wildlife Law, provides a detailed analysis of the enforcement provisions of wildlife legislation in Canada, including a discussion of the various enforcement authorities and the scope of their powers.³² It also discusses unconventional ways to effect or encourage enforcement of wildlife laws.

2.8. Offences and Penalties

As is the case with enforcement provisions, the offences and penalties provisions of wildlife acts are very similar across Canada. Like other laws, wildlife laws make non-compliance with the Act and the regulations an offence. Section 220 of Nunavut's Act is worded as follows:

“220(1) A person who contravenes a provision of this Act, the regulations or an order made under this Act is guilty of an offence.

(2) A person who attempts to commit an offence or is an accessory after the fact to the commission of an offence is guilty of an offence, whether or not it was possible under the circumstances to commit the offence.

(3) Every one is a party to an offence who

- (a) actually commits it;
- (b) does or omits to do anything for the purpose of aiding any person to commit it;
- (c) abets any person in committing it; or
- (d) counsels another person to commit it or be a party to it.”

The paper entitled *Enforcing Wildlife Law* discusses the nature and categories of offences and lists typical wildlife offences and penalties.³³ Offences created by provincial wildlife laws are summary conviction offences and are often continuing offences, that is they constitute separate offences for each day on which the offence is committed or continues. The penalties for non-compliance include fines and imprisonment, seizure and forfeiture and creative sentencing. The fines and penalties often differ for individuals and corporations, and subsequent offences result in increased penalties. In addition, administrative penalties are common. A conviction of an offence under wildlife laws leads in most cases to the amendment, suspension or cancellation of a licence or permit. The cancellation may be automatic on the date of conviction. Further, a conviction may result in a prohibition from applying for or obtaining a licence. Section 3 of this paper briefly reviews the penal provisions for contravention of species at risk protection laws.

³²Arlene Kwasniak, *Enforcing Wildlife Law*, Wildlife Law Paper #2 (Calgary: Canadian Institute of Resources Law, 2006).

³³*Ibid.*

2.9. Regulations

Wildlife statutes are in most cases enabling statutes that are supported by voluminous regulations that provide the detail and flexibility necessary to manage wildlife. The Acts grant extensive regulatory powers to both the Lieutenant Governor in Council and the Minister or alternatively, to the Lieutenant Governor in Council only. The list of matters that may be dealt with by regulation is quite long. They include the licensing system, the designation of areas, places or territories where hunting is allowed or prohibited, the rules relating to hunting, fishing and trapping, guide-outfitting, the rules relating to the possession, use and commerce of wildlife, the protection of wildlife and its habitat, the protection of species at risk, etc.

3. Land-Based Wildlife Management: Habitat Protection Provisions in Wildlife Statutes

The degree of protection against alteration or destruction of wildlife habitat varies among wildlife laws. The following overview examines the provisions that protect the habitation (house or abode) of wildlife as well as their habitat. Although the focus is on wildlife laws, where relevant, the review also encompasses other statutes that complement the wildlife habitat protection provisions of wildlife laws by providing other protective mechanisms. The habitat protection of species at risk is dealt with separately in Section 3 of this paper.

There are two ways in which wildlife habitat may be protected. First, the legislation establishes general protection mechanisms for the abode or residence of wildlife species, as well as their habitat. Second, the legislation enables the Lieutenant Governor in Council or the Minister to set aside or acquire lands necessary for habitat protection. The designation of protected areas may occur on both public and private lands. Once designated, the lands are subject to various use restrictions. The third part of this overview relates to the setting up of special funds to promote habitat conservation.

3.1. General Protection of the Abode and Habitat of Species

Wildlife laws often contain prohibitions against damaging or destroying the abode or residence of a species. For instance, subsection 36(1) of Alberta's *Wildlife Act* protects the house, den, nest or dam of prescribed wildlife from wilful molestation, disturbance or destruction in prescribed areas at prescribed times. According to subsection 36(2) though, no protection is afforded to the abode of animals where the *Agricultural Pests Act*,³⁴ *Water Act*³⁵ or regulation says otherwise, where a license is obtained to control

³⁴*Agricultural Pests Act*, R.S.A. 2000, c. A-8.

³⁵*Water Act*, R.S.A. 2000, c. W-3.

depredation or collection of wildlife, or where written ministerial authorization is obtained. In some provinces, the protection of the abode is specific to certain species. For instance in Manitoba, subsection 40(1)(b) of *The Wildlife Act* prohibits damaging or destroying a muskrat house or beaver dam or lodge, while paragraph (c) similarly prohibits damaging or destroying the den, nest or lair of a fur bearing animal, subject to minor restrictions in subsections (2) and (3). Further, section 49 prohibits taking, possessing, or willfully destroying the nest of a game bird or bird listed in Division 6 of Schedule A, except under license or permit. Exceptions exist that allow the destruction or removal of a wildlife abode that is causing or is likely to cause damage to property.

In addition to the actual abode or residence of wildlife species, wildlife laws usually contain general habitat protection provisions, which often take the form of prohibitions. Certain statutes define wildlife habitat broadly. For instance, British Columbia's *Wildlife Act* defines habitat as "the air, soil, water, food and cover components of the environment on which wildlife depend directly or indirectly in order to carry out their life processes". Thus defined, habitat benefits from wide-ranging protection mechanisms in the legislation. In Nova Scotia, where the definition section of the *Wildlife Act* defines wildlife habitat as "any water or land where wildlife may be found and the roads and highways thereon", an area does not require special designation to qualify as wildlife habitat. The various sections of the Act that restrict activities that may endanger habitat are actually quite broad in scope. In Nunavut, where habitat is defined as the area where a species occurs or has occurred, or upon which a species depends to carry out its life processes, subsection 65(2) of the *Wildlife Act* prohibits substantial alteration, damage or destruction of habitat where there is no legal justification. Based on the broad definition of habitat, this is a significant prohibition. Additionally, subsection 145(1) bestows upon the Government of Nunavut a right of action against anyone who wilfully or negligently engages in such an act.

In Quebec, section 128.6 of *An Act Respecting the Conservation and Development of Wildlife* provides broad protection to wildlife habitat by banning any activity that may alter a biological, physical or chemical component that is special to the habitat. However, sections 128.7 and 128.8 allow the Minister to authorize these activities, either generally or specifically, with or without conditions. In Prince Edward Island, section 3 of the *Wildlife Conservation Act* gives the Minister broad powers to protect wildlife habitat, defined to include areas that provide food, cover and water on which wildlife depends, directly or indirectly, to carry out their life processes. In particular, paragraph (3)(c) authorizes the Minister to coordinate and implement policies to protect and conserve wildlife and habitat, while paragraph (3)(h) authorizes him to create guidelines to ensure the best possible impact of land use practices on wildlife and habitat. Subsection 16(3) further authorizes the Minister to enter into agreements relating to the joint management and the preservation, maintenance and restoration of wildlife and habitat; to purchase, lease or acquire title to land for the benefit of wildlife; to assess the impact of land use and management activities on wildlife and its habitat; to prohibit alteration of wildlife

habitat; to designate areas as endangered or threatened species habitat; and to designate wetlands as being of historic or biological value and regulate their management.

3.2. Designation of Specially Protected Areas

In addition to these general habitat protection provisions, wildlife laws and other provincial laws provide for the designation of lands as specially protected areas. There is a great variety of these protected areas, and the degree of habitat protection within each category varies. The power to establish these areas is granted to either the Lieutenant Governor in Council or to the Minister or to both, and it is normally exercised by regulation. Once established, the areas are protected under various sections of the acts or regulations and activities are restricted within them. Certain provinces specifically authorize the creation of protected areas on both Crown and private land. Private lands are either acquired, expropriated, or leased or their designation as protected areas requires the consent of the land owner. In some provinces, such as in Prince Edward Island, the Minister may enter into an agreement with a private landowner creating a conservation covenant or easement.³⁶

Space does not allow a comprehensive review of the range of specially protected areas existing within each province. Two examples are used to illustrate the diversity of situations across jurisdictions: British Columbia, where both the *Wildlife Act* and other legislation play a significant role in protecting wildlife habitat in designated areas, and Alberta, where the designation process for specially protected areas is contained within the *Wildlife Act*.

3.2.1. British Columbia

In British Columbia, section 4 of the *Wildlife Act* permits the minister to designate land that is not a park or recreation area as a “wildlife management area”, although rights granted prior to the designation would not be affected. Subsection (4) prohibits the use of the resources or land contained in a wildlife management area without written permission from the regional manager. Section 5 allows the minister to further designate land within a wildlife management area as a “critical wildlife area” if habitat is required for endangered or threatened species, or as a “wildlife sanctuary”. Various regulations have been passed establishing wildlife management areas.

Protection of wildlife habitat within wildlife management areas is addressed directly by the Act. Subsection 7(1) states that it is an offence to harm wildlife or wildlife habitat

³⁶For an analysis of conservation covenants or easements, please refer to the Occasional Paper entitled *Legal and Economic Tools and other Incentives to Achieve Wildlife Management Goals* published as part of the series of papers on Canadian Wildlife Law.

by altering, destroying or damaging wildlife habitat within a wildlife management area or depositing on land or water a product or by-product within a wildlife management area, except if allowed by regulation or permit or with the written permission of the regional manager. Subsection 7(4) authorizes regional managers to make orders restricting activities in wildlife management areas, critical wildlife areas or wildlife sanctuaries, including the ability of persons to enter the area, damage or remove vegetation, disturb or harass wildlife, abandon animals or allow animals to enter. Subsection (5) explicitly states that the contravention of such an order is an offence. Pursuant to section 8, the government also holds a right of action against anyone who destroys or damages habitat in a wildlife management area or an area set apart for wildlife management. Subsection 79(2)(a) of the Act also discourages people from allowing their dogs to run at large in wildlife management areas, and officers are permitted to kill dogs at large in wildlife management areas. Further, section 26 of the Act prohibits hunting, taking, trapping, wounding or killing wildlife in a wildlife sanctuary. Authority over habitat management is also delegated to the Lieutenant Governor in Council, who is entitled to regulate the use and occupation of a wildlife management area pursuant to subsection 108(2)(b) of the *Wildlife Act*.

While the *Wildlife Act* and its regulations are the primary protective legislation for wildlife habitat in British Columbia, other legislation plays a significant role as well in protecting habitat in designated areas. For instance, pursuant to subsection 9(2) of the *Government Actions Regulation*³⁷ enabled by the *Forest and Range Practices Act*,³⁸ the minister may establish a general wildlife measure for a “wildlife habitat area” or an “ungulate winter range” if he believes it is necessary to protect or conserve the wildlife habitat area or ungulate winter range, and there is no other legislative provision for the area’s protection or conservation. Subsection 10(1) authorizes the Minister to establish wildlife habitat areas if she believes that the area is required for regionally important wildlife or species at risk habitat. If special management of the area is considered necessary because it has not been adequately dealt with in legislation, she may establish a wildlife habitat area objective. Subsection 11(1) allows the Minister to identify wildlife habitat features, such as a significant mineral lick or wallow, a nest of a bald eagle, osprey, great blue heron, or any other localized feature that the minister deems to be a wildlife habitat feature, and to make orders for the special management of these features, if the features have not already obtained such protection under other legislation. Finally, subsection 10(1) permits the Minister to establish ungulate winter range where the area contains habitat that meets the winter habitat requirements for a particular ungulate species and special management of this area is required and not covered by other legislation.

³⁷*Government Actions Regulation*, B.C. Reg. 582/2004.

³⁸*Forest and Range Practices Act*, S.B.C. 2002, c. 69.

3.2.2. Alberta

In Alberta, the habitat of certain specially protected areas receives heightened protection under the *Wildlife Act*. Subsection 103(1)(b) of the Act permits the Minister to make regulations establishing and continuing “habitat conservation areas” and “wildlife sanctuaries”, while subsection (p) allows the establishment of “migratory bird lure sites” and “wildlife control areas”. Subsections (r), (s) and (t) enable him to regulate the use, control and management of these areas, access to or exclusion of these areas, and the posting of signs that appropriately designate the areas. Pursuant to this authorization and in accordance with the definition section of the *Wildlife Regulation*,³⁹ various areas are delineated and pursuant to section 9, are either established or continued as described in Schedules to the regulation. Schedule 11 delineates one wildlife sanctuary, seven game bird sanctuaries, 48 restricted areas (lakes and rivers), twelve seasonal sanctuaries and eleven corridor wildlife sanctuaries. Schedule 12 demarcates five habitat conservation areas, 27 migratory bird lure sites, and two wildlife control areas.

Section 39 of the *Wildlife Act* prohibits hunting in a wildlife sanctuary. The Regulation clarifies this provision in subsection 99(1), stating that there is no blanket prohibition against hunting in sanctuaries that are not wildlife sanctuaries, corridor wildlife sanctuaries or game bird sanctuaries. Subsection (2), however, provides that hunting is permissible even in wildlife sanctuaries, corridor wildlife sanctuaries and game bird sanctuaries provided that it is expressly authorized by a license. Subsection (3) prohibits hunting migratory game birds or upland game birds in restricted areas, with certain exceptions. Sections 100 to 102 of the Regulation place further restrictions on hunting in protected areas. Section 100 prohibits any hunting in a migratory bird lure site. Section 101 prohibits hunting in a wildlife control area, although there is an exception in relation to those persons who hold registered fur management licenses. Section 102 prohibits hunting in a habitat conservation area except where hunting is expressly authorized by a sign posted by the minister or in a letter signed by the minister.

In addition to prohibitions against hunting, other behaviours are restricted in these protected areas. Subsection 121(1) of the Regulation prohibits discharging or possessing a weapon in a wildlife or corridor wildlife sanctuary, unless the license specifically authorizes hunting in that sanctuary with that particular weapon, while subsection 122(1) prohibits possession of a shotgun in a game bird sanctuary, unless specifically authorized in writing by an officer, and subsection 123(1) prohibits discharging a weapon such that the projectile goes across a migratory bird lure site or wildlife control area. Section 126 applies exclusively to seasonal sanctuaries, as described in Part 4 of Schedule 11, and prohibits entering and being within a half mile of seasonal sanctuaries as listed between specified dates. Section 127 contains an even broader restriction, prohibiting entrance to a

³⁹*Wildlife Regulation*, Alta. Reg. 143/1997, s. 3.

migratory bird lure site unless expressly authorized in writing by an appointed officer. Section 128 restricts entrance to a wildlife control area unless expressly authorized in writing by an appointed officer. Finally, section 129 contains other prohibitions with respect to the use of vehicles, overnight camping and other activities in habitat conservation areas.

3.3. Habitat Conservation Funds

Several provinces have legislated to create special funds to conserve or enhance habitat and to acquire and manage land to protect habitat. In some cases, these provisions are included in wildlife acts.⁴⁰ For instance, section 111 of British Columbia's *Wildlife Act* continues the Habitat Conservation Trust Fund. Subsection (2) authorizes the minister to make payments out of the fund for various matters, including the conservation or enhancement of biological diversity, fish habitat, wildlife or wildlife habitat, the acquisition and management of land for the conservation or enhancement of a population of a species of fish or wildlife and its habitat, the furthering, stimulation and encouragement of knowledge and awareness of fish or wildlife and their habitat. Similarly in Nunavut, the Natural Resources Conservation Trust Fund is continued by the *Wildlife Act*. Pursuant to subsection 181(2) of the Act, the fund is to be used in part to promote the wise use of wildlife and habitat, conserve or enhance wildlife and habitat, and acquire and manage land for the conservation or enhancement of wildlife and habitat. In Saskatchewan, the Fish and Wildlife Development Fund is continued under the *Natural Resources Act*,⁴¹ and subsection 20(6)(b) authorizes the use of this fund to manage fish and wildlife habitat, among other things, while (6)(h) authorizes the use of the fund to assess the suitability of water and land for habitat potential.

4. Protection of Species at Risk

The term 'species at risk', as defined in the interpretation section of the federal *Species at Risk Act (SARA)*, designates species that are extirpated, endangered or threatened, or species of special concern.⁴² An 'extirpated' species is one that no longer exists in the wild in Canada, but exists elsewhere in the wild. An 'endangered' species is one that is facing imminent extirpation or extinction. A 'threatened' species is one that is likely to become endangered if nothing is done to reverse the factors leading to its extirpation or extinction. And a species 'of special concern' is one that may become a threatened or

⁴⁰The following provinces and territories establish such funds in their wildlife laws: British Columbia, New Brunswick, Nova Scotia, Nunavut, Quebec and Yukon.

⁴¹*Natural Resources Act*, S.S. 1993, c. N-3.1

⁴²*Species at Risk Act*, S.C. 2002, c. C-5, s. 2(1).

endangered species because of a combination of biological characteristics and identified threats.

The number of species at risk is increasing in Canada. As of May 2006, Canada had 516 species at risk, including 22 extirpated species, 206 endangered species, 135 threatened species, and 153 species of special concern.⁴³ The number reaches 529 if the 13 extinct species are added.

The protection of endangered species is accomplished in large part by means of habitat protection measures. According to Nature Canada, in Canada today, loss and degradation of habitat is estimated to be responsible for the endangerment of more than 75% of the species listed on our national Species at Risk list.⁴⁴

Federal and provincial governments have long cooperated on issues of conservation of species at risk. The impetus for the conservation of species at risk was the 1992 United Nations *Convention on Biological Diversity*, which was ratified by Canada in December 1992.⁴⁵ Article 8 of the Convention is concerned in part with the protection and recovery of threatened species and populations and commits governments to develop or maintain legislation and/or regulatory provisions to protect these species. In 1996, the federal, provincial and territorial ministers responsible for wildlife developed a national *Accord for the Protection of Species at Risk*. The Accord was finalized in 1999.⁴⁶ Its stated goal is to prevent species in Canada from becoming extinct as a consequence of human activity. To reach that goal, the federal, provincial and territorial ministers responsible for wildlife express their commitment to a national approach for the protection of species at risk. Specifically, they agree to coordinate activities by creating the Canadian Endangered Species Conservation Council, and to play a leadership role in developing complementary legislation, regulations, policies and programs to identify and protect threatened and endangered species and their critical habitats. In particular, legislation and programs are to provide an independent process for assessing the status of species at risk, legally designate species as threatened or endangered, legally protect the species, protect their habitat, develop recovery plans within a certain period of time and implement these plans, and monitor, assess and report regularly on the status of species at risk. Further, the

⁴³Government of Canada, Committee on the Status of Endangered Wildlife in Canada (COSEWIC) website: <<http://www.speciesatrisk.gc.ca>>.

⁴⁴Nature Canada website: <<http://www.naturecanada.ca/species/index.html>>.

⁴⁵Canadian Biodiversity Information Network, online: <<http://www.cbin.ec.gc.ca/index.cfm?lang=e>>. For a discussion of the Convention on Biological Diversity and its implementation in Canada, see Nigel Bankes, *International Wildlife Law*, Wildlife Law Paper #1 (Calgary: Canadian Institute of Resources Law, 2006), published in the Canadian Wildlife Law series.

⁴⁶Accord for the Protection of Species at Risk, September 1999, online: Environment Canada <http://www.speciesatrisk.gc.ca/recovery/accord_e.cfm>.

parties to the Accord agree to recognize the Committee on the Status of Endangered Species in Canada (COSEWIC) as a source of independent advice on the status of species at risk.

After a long and difficult process, the federal government enacted the *Species at Risk Act (SARA)* in December 2002. The Act came into full force in June 2004.⁴⁷ The purposes of *SARA* are to prevent wildlife species from becoming extirpated or extinct in Canada, to provide for the recovery of wildlife species that are endangered or threatened as a result of human activity, and to manage species of special concern to prevent them from becoming endangered or threatened. The Act establishes the COSEWIC as an independent body of experts responsible for assessing and identifying species at risk. COSEWIC reports to the Minister of the Environment and to the Canadian Endangered Species Conservation Council, and the list of species at risk is established by the Governor in Council by regulation, based on this assessment.

At the provincial/territorial level, six provinces have enacted stand-alone legislation to protect species at risk and their habitat, while others have included provisions for the protection of species at risk in their wildlife statutes. The following provinces have stand-alone species at risk legislation: Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, and Quebec.⁴⁸ In Alberta, British Columbia, the Northwest Territories, Nunavut, Prince Edward Island, Saskatchewan and the Yukon, the protection of species at risk is achieved through the insertion of specific provisions in wildlife statutes.⁴⁹ With the exception of Nunavut's *Wildlife Act*, which was enacted in 2003, the provincial legislative provisions protecting species at risk predate Canada's adoption of *SARA* in December 2002. Ontario's *Endangered Species Act* was enacted as early as 1971.

The following subsections review and compare the following features of provincial species at risk legislation: 1) definitions; 2) establishment of a Committee or Commission to facilitate the protection of species at risk; 3) designation process for species at risk; 4) species protection measures; 5) habitat protection measures; 6) penal provisions; 7) recovery plans; and 8) conformity with the Accord and *SARA*.

⁴⁷*Species at Risk Act*, S.C. 2002, c. 29.

⁴⁸Manitoba, *Endangered Species Act*, C.C.S.M., c. E111; New Brunswick, *Endangered Species Act*, S.N.B. 1996, c. E-9.101; Newfoundland, *Endangered Species Act*, S.N.L. 2001, c. E-10.1; Nova Scotia, *Endangered Species Act*, S.N.S. 1998, c. 11; Ontario, *Endangered Species Act*, R.S.O. 1990, c. E.15; Quebec, *An Act Respecting Threatened or Vulnerable Species*, R.S.Q. c. E-12.01.

⁴⁹Alberta: *Wildlife Act*, R.S.A. 2000, c. W-10; British Columbia: *Wildlife Act*, R.S.B.C. 1996, c. 488; Northwest Territories: *Wildlife Act*, R.S.N.W.T. 1988, c. W-4; Nunavut: *Wildlife Act*, S.Nu. 2003, c. 26; Prince Edward Island: *Wildlife Conservation Act*, R.S.P.E.I. 1988, c. W-4.1; Saskatchewan: *Wildlife Act*, c. W-13.12; Yukon: *Wildlife Act*, R.S.Y. 2002, c.229.

4.1. Definitions

The definitions sections vary greatly across jurisdictions. Some provide objective definitions of categories of species at risk and habitat, others simply define species at risk as those designated or listed as such, and many use a combination of both types of definitions. For instance, Nova Scotia defines an *endangered* species as one facing imminent extinction or extirpation and listed as such, a *threatened* species as one likely to become endangered if certain factors are not reversed, and listed as such, a *vulnerable* species as one of special concern due to its particular sensitivity to natural events or human activities, and listed as such. Some statutes do not define species at risk at all (e.g. Yukon, Northwest Territories).

In Alberta, *endangered* species are simply defined as those species of a kind prescribed as such by regulation.⁵⁰ Ontario's legislation does not define species categories, because the Act is formulated to deal with species that are threatened with extinction only. Others (e.g. Newfoundland and Labrador, Manitoba, Nunavut, Saskatchewan) provide objective definitions which are similar to those of SARA. Most provinces restrict the application of their legislative provisions to species that are indigenous to the province. By contrast, non-indigenous species may qualify for protection in Newfoundland and Nunavut.

Most provincial statutes also include definitions relating to habitat. In Nunavut, habitat is broadly defined as the area in which a species naturally occurs or where it used to occur and there is the potential of reintroduction, or the area that a species depends on to carry out its life processes, either directly or indirectly. Critical habitat is defined more narrowly, as the habitat that is necessary for the survival or recovery of a designated species (s. 2). Some statutes also define the term "residence". For instance, in Newfoundland residence is defined as a specific dwelling-place habitually occupied by a member or members of a species, such as a nest or a den (s. 1).

4.2. Establishment of a Committee or Commission

Some provincial statutes establish a Committee or Commission to facilitate the protection of species at risk. For instance, subsection 6(1) of Alberta's *Wildlife Act* requires the Minister to establish and maintain the Endangered Species Conservation Committee. The Committee advises the Minister and makes recommendations about endangered species, specifically the preparation and adoption of recovery plans, endangered species designation, conservation matters relating to endangered species and biodiversity, and other matters that the Minister requests pertaining to endangered species. Pursuant to subsection 6(2), the Endangered Species Conservation Committee must appoint and

⁵⁰ Alberta, *Wildlife Act*, R.S.A. 2000, c. W-10, s. 1(1)(i).

maintain an independent scientific subcommittee to study and assess endangered species and to recommend organisms that should be classified as endangered species. Interestingly in Newfoundland, the Species Status Advisory Committee (SSAC) is to base its research not only on science, but also on local and traditional knowledge about a species (s. 6(2)). Manitoba, Nova Scotia and Nunavut also have committees established by legislation, while other provincial statutes permit the Minister to discretionarily establish such committees and others still are silent on that issue.

Most provinces have established such groups, even when their legislation does not require their creation. For instance, British Columbia has established a Conservation Data Centre which ranks species in terms of the degree to which they are at risk. Regardless of their status, these committees tend to be purely advisory and simply provide recommendations in regards to the designation and protection of species at risk to the Minister. Nevertheless, in Nova Scotia and Nunavut, the recommendations of expert groups with respect to the designation of species at risk hold more authority, as discussed in the following section.

4.3. Designation Process for Species at Risk

In some provinces, the designation of species as endangered, threatened, extirpated or extinct is entrusted to the Lieutenant Governor (British Columbia, Manitoba, New Brunswick, Ontario, Prince Edward Island, Quebec, Saskatchewan), often after the Minister has established a list of such species, while in others, it is the Minister in charge of wildlife who has authority to list species at risk (Newfoundland, Nova Scotia, Nunavut, Yukon). In Alberta, the list of endangered species is established jointly by the Lieutenant Governor and the Minister.⁵¹ The Northwest Territories does not have an established framework for identifying species at risk. The Yukon does not have a comprehensive framework to classify species at risk. However, subsection 192(1) of the *Wildlife Act* authorizes the Minister to make regulations that delineate a wildlife species as specially protected, as well as any restrictions, prohibitions and measures relating to the species to ensure its protection or survival.

Nova Scotia and Nunavut devolve to their specialized committee or group the most authority away from the Minister in designating species at risk. Section 12 of Nova Scotia's *Endangered Species Act* deems the list that the Species-at-risk Working Group provides to the Minister to be the list of the species at risk for the purposes of the Act. Section 12 is subject only to section 11, which permits the Minister to add additional species that the Group has not added on a precautionary basis. However the Minister's precautionary designation is valid for only one year, and the species will fall off the list at that time if the Group fails to affirm it.

⁵¹*Wildlife Regulation*, A.R. 143/97, s. 1(b).

Section 129 of Nunavut's *Wildlife Act* requires that the Nunavut Species at Risk Committee make a report at least annually to the Nunavut Wildlife Management Board (NWMB), established under the *Nunavut Land Claims Agreement Act*.⁵² This report must contain, among other things, the Committee's recommendations for species designation. In addition, section 130 of the *Wildlife Act* provides that COSEWIC, any Hunters and Trappers Organization, any Regional Wildlife Organization,⁵³ or anyone else can request that the Board designate a species as being at risk. Subsection 131(1) authorizes the NWMB, upon reviewing all of the information it has received, to decide which animals to designate. Subsection (2) then requires the Minister to list these animals designated by the NWMB. This is consistent with subsection 152(1)(i), which authorizes the Board to approve the designation of species status. Subsection 156(1) however, complicates the issue of authority, as it suggests that any NWMB decision is merely conditional, as it is subject to the Minister or Commissioner's acceptance, rejection, variation or disallowance. Nevertheless, provided that a decision of the NWMB is either accepted by the minister or is not disallowed in accordance with section 5.3.11 of the Agreement, or is accepted by the Commissioner, the Minister must proceed forthwith in implementing the NWMB's decision. There remains, however, some ambiguity as to where the authority for designation lies.

Newfoundland's process of designation of species at risk is the most detailed and the one that is most in line with the federal regime. Section 7 of the *Endangered Species Act* permits the Minister to designate in the regulations a species as vulnerable, threatened, endangered, extirpated or extinct on receipt of a recommendation from COSEWIC or SSAC. If the Minister decides not to designate the species as recommended, she must provide reasons to the public within 90 days for his decision to designate the species in a different category or not to designate it at all. This provision makes it more difficult for COSEWIC and SSAC's recommendations to be ignored. Subsection 9(1) of the *Endangered Species Act* also allows the Minister to make an emergency designation when he believes it is necessary to do so to prevent further harm to a species facing imminent extirpation or extinction, or to its habitat. Subsection (3) requires that SSAC review any emergency designation made by the Minister and provide its recommendation. Another interesting feature of the Act is the ability of the Minister to remove a designated species on the approval of the Lieutenant Governor and on the recommendation of SSAC or COSEWIC (s. 10). Given that there is no other authority for the removal of a species from the list, it would appear that the approval of either SSAC or COSEWIC is necessary for the Minister to do so, although this is not entirely clear

⁵²*Nunavut Land Claims Agreement Act*, C.S.C. 1993, c. 29, s. 5.2.1: the Nunavut Wildlife Management Board consists of at least nine members, appointed by various government departments and organizations.

⁵³These organizations are non-profit groups established by the *Nunavut Land Claims Agreement Act*.

because there is no language in the provision to suggest that this is the only way a species may be removed.

The species that have been listed as extinct, extirpated, endangered, threatened or vulnerable are most often identified in regulations (British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan, Yukon) or alternatively in schedules to the relevant statutes (Alberta). The decision to designate/list a species at risk is of course critical, as it triggers the implementation of the legislative provisions intended to protect and recover the species. As noted above, the Ministers have wide discretionary powers with respect to the listing of species, and the listing process has been criticized for allowing decisions to be made based on non-scientific as well as scientific considerations.

4.4. Species Protection Measures

Provincial statutes contain broad prohibitions in regards to the hunting, taking, injuring or killing of species that are endangered or threatened. Several statutes also specifically prohibit possession, disturbance, harassment or interference with an endangered or threatened species (Manitoba, New Brunswick, Newfoundland). In most cases, the prohibition extends to any attempt to do any of the foregoing acts. In addition, the selling, buying, trading, bartering, exporting and trafficking in species at risk or their parts are often prohibited. For example, subsection 7(4)(a) of Prince Edward Island's *Wildlife Conservation Act* disallows killing, injuring, possessing, disturbing, taking, or interfering with an endangered or threatened species, or attempting to do the same, while subsection (b) prohibits possessing for sale, offering for sale, selling, buying, trading or bartering any endangered or threatened species at any stage of development, or its parts.

The statutes often establish various defences or exceptions to these prohibitions, notably to protect human life or health and property, for the benefit of the species at risk or for educational purposes. For instance, section 52 of Saskatchewan's *Wildlife Act* permits a director to authorize removing, capturing, killing or destroying a wild species at risk in order to protect human health or prevent property loss. Section 4 of New Brunswick's *Endangered Species Act* enables the Minister to authorize a conservation officer to kill or relocate an endangered or regionally endangered species, to issue a permit for the collection or possession of an endangered or regionally endangered species or its parts for bona fide scientific purposes related to the species recovery, bona fide educational purposes, or bona fide religious or ceremonial purposes, or to issue a permit allowing the possession of an endangered or legally endangered species that was obtained prior to the species designation as endangered or regionally endangered. Section 20 of Nunavut's *Wildlife Act* provides for permits to be issued to allow persons to engage in an activity relating to an endangered or threatened species that would otherwise be prohibited under the Act, when the activity is related to conservation, is believed to benefit the species, or is in the interests of public health and safety or national security.

Such permits may be authorized by the NWMB in a recovery policy or management plan that it has accepted, or where the NWMB has given specific authority after a demonstration that the project presented is the best of the reasonable alternatives, the impact will be minimized, and the activity will not jeopardize the survival or recovery of the species.

4.5. Habitat Protection Measures

Section 3 of this paper reviews the general habitat protection provisions that are found in wildlife statutes. Some of these provisions, such as the establishment of wildlife sanctuaries or wildlife management areas, may well protect the habitat of species at risk, but they are not designed for this purpose only. The following discussion focuses on the habitat protection provisions that are designed to specifically protect endangered or threatened species.

There are two ways in which the habitat of species at risk is protected. First, the legislation establishes prohibitions against destroying, disturbing or interfering with the habitat of the protected species, as well as with their abode or residence. For instance, subsection 3(d) of New Brunswick's *Endangered Species Act* prohibits the wilful or knowing destruction, disturbance or interference with a nest, nest shelter or den of an endangered or regionally endangered species of fauna; subsection (f) prohibits any of these actions against critical habitat of endangered or regionally endangered species, and subsections (e) and (g) prohibit an attempt to commit the foregoing acts. In Manitoba, subsection 1(c) of the *Endangered Species Act* appears to broaden this even further by prohibiting the damage, destruction, obstruction or removal of a natural resource upon which an endangered, threatened or reintroduced extirpated species depends. Nunavut's prohibitions with respect to critical habitat areas, which are established to protect species designated as endangered or threatened, are quite extensive. Section 66 of the *Wildlife Act* prohibits engaging in various activities on critical habitat areas, including adding to any structure, exploration for minerals or petroleum, removing or killing endangered or threatened species, introducing new wildlife species, disposing or accumulating garbage, altering the critical habitat, releasing anything harmful to the habitat or wildlife, interfering with the domicile of an endangered or threatened species, using a motor vehicle or motorized equipment, and landing a plane.

There are exceptions to these prohibitions. For instance, section 19 of Newfoundland's *Endangered Species Act* allows the Minister to grant a permit that essentially prevents the application of sections 16 and 28 of the Act, which respectively prohibit the disturbance or destruction of an endangered, threatened or reintroduced extirpated species and protect their habitat. The Minister may grant a permit where the proposed activity is incidental to an activity that is economically beneficial to the Province, the recovery or survival of the species will not be prevented, and there is no reasonable alternative. Similar to the species protection provided by this Act, the habitat

protection initially seems broad but is eroded by the discretionary power of the Minister to issue permits to prevent the Act's application. In Manitoba, the prohibitions do not apply when a permit has been obtained for scientific purposes or for the protection or reintroduction of species at risk, when the Minister exempts an existing or proposed development from application of the Act or when a license is obtained under the *Environment Act*, provided in both cases that the Minister is satisfied that the species or habitat is protected and the impact on the endangered or threatened species or habitat will be minimized by appropriate measures.

The second, more proactive way in which legislation achieves habitat protection is by allowing the acquisition or setting aside of land necessary for species protection. Thus, subsection 7(1) of Manitoba's *Endangered Species Act* allows the Minister to acquire land necessary for the protection or reintroduction of endangered, threatened or extirpated species. The land can be acquired by purchase, lease or expropriation. In Newfoundland, section 28 of the *Endangered Species Act* enables the Minister to set aside by order an area of land to be protected as recovery habitat or as critical habitat. Further, section 29 permits the Minister to enter into a conservation management agreement with a private landowner, while section 30 permits the expropriation of land within areas set aside as recovery of critical habitat. Section 16 of Nova Scotia's *Endangered Species Act* permits the Minister to establish core habitats, either on public or private land (with certain stipulations). Under subsection (5), the Minister may then make regulations controlling the use of the areas so designated. In Prince Edward Island, subsections 8(b) and 8(c) of the *Wildlife Conservation Act* authorize respectively the Minister to acquire land to protect endangered and threatened species, and to enter into agreements with landowners and conservation groups that facilitate the protection and recovery of endangered and threatened species. Subsection 16(3) also authorizes the Minister to enter into agreements relating to the joint management of wildlife and its habitat, purchase or lease land for the benefit of wildlife, assess the impact of land use and management activities on wildlife and its habitat, prohibit alteration of wildlife habitat, designate areas as habitat for endangered or threatened species, and designate wetlands as being of historic or biological value and regulate their management. Once the lands have been acquired or set aside, the activities that are permitted and prohibited in such lands are specified. Finally, section 18 of the Act enables the Minister to enter into agreements with private landowners to protect the habitat of rare, endangered or threatened species by means of conservation covenants or easements.

4.6. Penal Provisions

The penalties for offences to the above-mentioned prohibitions include fines and/or imprisonment, as well as alternative remedies. There is a wide discrepancy in the amount of fines and terms of imprisonment imposed across jurisdictions. The fines range from a maximum of \$500,000 for a first time offender (Nova Scotia and Nunavut) and two years imprisonment (Ontario), to a maximum of \$1,000 (Manitoba for threatened species,

Northwest Territories) and three months imprisonment (Newfoundland). These maximum penalties double for a subsequent conviction. Minimum fines and terms of imprisonment may or may not be specified in the statutes. Corporations are liable to higher fines, reaching up to \$1,000,000 in Nova Scotia and Nunavut. Many statutes provide that when an offence is in relation to more than one animal, the fine is calculated as though each animal is a separate offence. Further, contravention of the Act or the regulations on multiple days constitutes a separate offence on each day that the violation continues.

In addition to these fines and terms of imprisonment, there are provisions for alternative remedies, including the suspension or cancellation of licenses for conviction of violation of the Act or regulations. For instance in Saskatchewan, section 19 of the *Wildlife Act* provides an automatic suspension of the license that relates to the offence upon conviction for violating the Act or its regulations, unless the Act or regulations specifically state otherwise and the defendant has not been convicted twice within 18 months for the same offence. Subsection 17(2) also authorizes the Minister to amend, suspend, cancel or prohibit application for a license for contravention, among other things, of federal or provincial legislation relating to the hunting or protection of wildlife or wild species at risk, or if it is necessary to protect wildlife or wild species at risk. Finally, subsection 76(1)(d) prohibits a person who has been convicted of violating the Act or the regulations from applying for or obtaining a license relating to the offence for which he was convicted for one year from the conviction date. Section 97 of Alberta's *Wildlife Act* allows the court to make alternative orders, including that the harm against an endangered animal or its habitat be remedied (s. 97(b)), or that money be paid to promote the conservation and protection of endangered species or their habitats (s. 97(f)).

4.7. Recovery Plans

Some provinces have enacted legislative provisions concerning the preparation and implementation of recovery plans for designated species. For instance, subsection 6(3) of Alberta's *Wildlife Act* specifies the matters that may be included in an endangered species recovery plan – population goals, identification of critical habitat and strategies that may aid in population recovery. Subsection (4) states that after the Minister makes a recovery plan, the plan must be reviewed by the Endangered Species Conservation Committee and undergo a process of public review. However, there are no legislative provisions for the implementation of a recovery plan.

Newfoundland's *Endangered Species Act* contains stronger provisions with respect to recovery plans. Section 13 of the Act mandates the release of a management plan to the public within three years of a species being designated as vulnerable. Similarly, a recovery plan must be provided to the public within three years of a species being designated as extirpated (s. 15(2)), within two years of a species being designated as threatened (s. 14(2)), and within one year of a species being designated as endangered (s. 14(2)). Section 24 requires that a management plan highlight measures for species

conservation, while section 23 requires that a recovery plan identify measures for species conservation, critical and recovery habitat, and a schedule for implementation. Where a species is identified as extirpated, threatened or endangered, a recovery team is assigned under either subsections 14(1) or 15(1). According to section 22, the recovery team is not only responsible for developing the aforementioned recovery plans, but also for advising on the implementation of the recovery plan and any other duties assigned by the Minister in the regulations. Finally, there is an element of public notice relating to habitat in both recovery and management plans, as section 25 requires that where critical or recovery habitat is identified in either plan, the Minister must inform the public how it will be protected. Nunavut has similar legislative provisions with respect to the preparation, implementation and periodic review of recovery plans.

Nova Scotia's *Endangered Species Act* also requires the Minister to appoint a recovery team and create a recovery plan within one year of listing an endangered species and within two years of listing a threatened species (s. 15(1)). Further, it enumerates what must be included in a recovery plan. Subsection (2) requires the preparation of a management plan within three years of designating a species as vulnerable. Unlike other provincial statutes though, once a recovery plan has been prepared under this Act, it cannot be ignored. Pursuant to subsection (11), both recovery and management plans must be reviewed every five years to determine progress of the species and evaluate the need to alter the plan. Subsection (12) requires the Minister to ensure the implementation of the portions of the recovery or the management plan which are provincial responsibilities and which, in the Minister's discretion, are considered feasible.

4.8. Conformity of the Legislation with SARA

The above review of provincial legislative provisions for the protection of species at risk reveals their strengths and weaknesses. In some respects, selected provincial legislative provisions are more advanced than the provisions of *SARA*. Based on the statutory provisions discussed above, it appears that the strongest legislation is found in Newfoundland and Labrador, Nova Scotia and Nunavut. The enactment of stand-alone species at risk does not necessarily guarantee better legislative protection. Thus, the species at risk provisions in Nunavut's *Wildlife Act* are among the strongest at the provincial level, while Ontario's older *Endangered Species Act* is incomplete in many respects. The most recent legislative enactments tend to reflect a more comprehensive approach to species at risk protection.

Of note is the fact that the "safety net" provisions of *SARA* allow the federal Minister of the Environment to recommend to Cabinet that regulations to protect the critical habitat of listed species should be enacted and applied to provincial or private land, where the Minister is of the opinion that provincial laws and policies are inadequate.

Appendix 1: List of Reviewed Provincial and Territorial Wildlife Statutes

Alberta	<i>Wildlife Act</i> , R.S.A. 2000, c. W-10
British Columbia	<i>Wildlife Act</i> , R.S.B.C. 1996, c. 488
Manitoba	<i>Endangered Species Act</i> , C.C.S.M. c. E111 <i>Wildlife Act</i> , C.C.S.M. c. W130
New Brunswick	<i>Fish and Wildlife Act</i> , S.N.B. 1980, c. F-14.1 <i>Endangered Species Act</i> , S.N.B. 1996, c. E-9.101
Newfoundland	<i>Endangered Species Act</i> , S.N.L. 2001, c. E-10.1 <i>Wild Life Act</i> , R.S.N.L. 1990, c. W-8
Northwest Territories	<i>Wildlife Act</i> , R.S.N.W.T. 1988, c. W-4
Nova Scotia	<i>Endangered Species Act</i> , S.N.S. 1998, c. 11 <i>Wildlife Act</i> , R.S.N.S. 1989, c. 504
Nunavut:	<i>Wildlife Act</i> , S.Nu. 2003, c. 26
Ontario	<i>Endangered Species Act</i> , R.S.O. 1990, c. E.15 <i>Fish and Wildlife Conservation Act</i> , 1997, S.O. 1997, c. 41
Prince Edward Island	<i>Wildlife Conservation Act</i> , R.S.P.E.I. 1988, c. W-4.1
Quebec	<i>An Act Respecting Threatened or Vulnerable Species</i> , R.S.Q., c. E-12.01 <i>An Act Respecting the Conservation and Development of Wildlife</i> , R.S.Q., c. C-61.1. <i>An Act respecting hunting and fishing rights in the James Bay and Northern Québec territories</i> , R.S.Q., c. D-13.1
Saskatchewan	<i>The Wildlife Act</i> , 1998, S.S. 1998, c. W-13.12
Yukon	<i>Wildlife Act</i> , R.S.Y. 2002, c. 229

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