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## Wildlife Management Beyond Wildlife Laws

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Canadian Wildlife Law Paper #7, "Wildlife Management Beyond Wildlife Laws" (Calgary: Canadian Institute of Resources Law, 2007)

<http://hdl.handle.net/1880/48584>

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Canadian Institute of Resources Law  
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# **Wildlife Management Beyond Wildlife Laws**

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***Canadian Wildlife Law Project***

**Paper #7**

**February 2007**

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Printed in Canada

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## Foreword

This publication is the seventh 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  
February 2007



## Preface

This paper discusses a number of tools and approaches from a broad legal context that may relate to protection of wildlife and habitat. It first considers to what extent environmental assessment processes – both provincial and federal – has potential to address wildlife issues. Then the paper looks at how governmental decision making and how it impacts wildlife. It considers how the “silo” approach to decision making (each department or agency concentrating on its own area of interest) can lead to the exclusion of wildlife values from resource development and related permitting processes. The paper looks at alternative models, such as integrated laws, departments, and decision making processes and considers how they might better lead to wildlife sustainability. Then the paper focuses on land management approaches, in particular, ecosystem and multi-jurisdictional management and it points out how such approaches can maintain and enhance habitat. The common thread throughout is that effective wildlife protection and management requires an integrated approach. All agencies and parties with mandates or powers the exercise of which could directly or indirectly impact wildlife or habitat must work together if these valuable resources are to be sustained and improved.

Many people contributed to this paper. Sue Parsons of CIRL assisted with putting it into final form. John Donihee, formerly with CIRL, must be recognized for spearheading the wildlife project, Mike Wenig of CIRL thanked for bringing it along, and Monique Passelac-Ross of CIRL congratulated for bringing it to fruition. My sincere gratitude to all.

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February 2007



## **1. Introduction**

This paper discusses a number of tools and approaches within the broader legal framework in Canada that may impact the protection and management of wildlife and habitat. It looks at environmental impact assessment, resource management and allocation, ecosystem management initiatives and multi-jurisdictional cooperation. A common thread in all of these approaches is the recognition that wildlife management and protection requires an integrated approach that is not confined by political borders. An integrated approach is required since wildlife laws will not alone protect wildlife and habitat. The potential effects of government and private sector proposals for activities that can adversely affect wildlife and habitat must also be recognized and addressed in government decision making. As well, government inter and intra relationships must recognize that wildlife habitat commonly transverses political borders. Effective management and protection requires cooperation among different governments, among departments and agencies within a government and with non-governmental interests and stakeholders.

## **2. Environmental Impact Assessment and Wildlife**

### **2.1. About Environmental Impact Assessment**

Laws in Canada give governments power to decide whether to allow certain business or industrial projects, here called “projects” or “activities”, to proceed when they might harm the environment. These laws usually give this power by making it an offence for persons or businesses to carry out some activities unless the proponent has first obtained a statutory authorization. “Statutory authorizations” include, among others, approvals, licenses, permits and project go-aheads from boards or other tribunals.

Government decision-makers need information in order to decide whether to issue a statutory authorization or to take some other action that will enable a project to proceed, such as granting an interest in land, or lending or giving money to the project developer (the “proponent”). This is especially so if a proposed activity could have significant environmental effects or other social costs. Environmental impact assessment (EIA) offers governments a planning tool for identifying and preventing or mitigating environmental problems that will likely result from proposed activities. Through the EIA process governments may become aware of the overall impact on the environment of development projects proposed by the public and private sectors. Armed with this awareness, governments are in a position to decide whether they should issue the required statutory authorization so that the activity may go ahead, issue the authorization with conditions, or decide not to issue the authorization at all.

Every province and territory in Canada has some kind of EIA legislation. Canada itself, in the *Canadian Environmental Assessment Act*,<sup>1</sup> requires EIAs in respect of many projects within federal jurisdiction. This part of the paper looks at how provincial and federal environmental assessment regimes address, and fail to address, wildlife protection.

## **2.2. Federal Environmental Assessment**

### ***2.2.1. The Canadian Environmental Assessment Act***

The *Canadian Environmental Assessment Act* (CEAA) sets out the circumstances that give rise to federal environmental assessment, who must oversee and carry out the assessment, the mechanics of the assessment process, and what happens after the assessment is completed. Readers who desire detailed information on these should consult the Canadian Environmental Assessment Agency (the “Agency”) website at: <http://www.ceaa.gc.ca>. This part of the paper summarizes key aspects of the process.

### ***2.2.2. When Does a Project Trigger CEAA?***

Unless a project is on the *Exclusion List Regulations*,<sup>2</sup> a regulation that lists projects or activities exempted from federal EIA requirements, the federal environmental assessment process is applied whenever:

- A *federal authority*, exercises one or more of the following duties, powers or functions in relation to a project:
  - proposes a project;
  - sells, leases, or otherwise transfers control or administration of land to enable a project to be carried out;
  - contributes money or any other form of financial assistance to the project; or
  - exercises in relation to the project a regulatory duty (such as issuing a statutory authorization) that is included in the *Law List Regulations*,<sup>3</sup> or

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<sup>1</sup>*Canadian Environmental Assessment Act*, S.C. 1992, c. 37.

<sup>2</sup>*Exclusion List Regulations*, S.O.R./94-639.

<sup>3</sup>*Law List Regulations*, S.O.R./94-636.

- if the Minister of the Environment determines that a project could have significant adverse transboundary effects and he or she calls for an environmental assessment.

“Federal authority” means a federal minister, department, or agency, or other bodies prescribed under regulation.<sup>4</sup> A “responsible authority” (RA) is the federal authority that CEAA requires to ensure that an environmental assessment is carried out.<sup>5</sup>

“Project” means any undertaking in relation to a physical work (such as a building, bridge, wharf, dam, etc.) or an undertaking that is included in a regulation called the *Inclusion List Regulations*.<sup>6</sup> The *Inclusion List Regulations* list activities that are not undertakings in relation to a physical work, yet still are considered projects for the purpose of CEAA, such as certain low flying aircraft activities.

The *Law List Regulations* set out sections of federal statutes or regulations that describe the regulatory duty that will give rise to the CEAA environmental assessment process. An example is a proponent applying for an approval to disrupt fisheries habitat under the *Fisheries Act*,<sup>7</sup> or to interfere with a navigable water under the *Navigable Waters Protection Act*.<sup>8</sup>

### 2.2.3. Categories and Types of CEAA Assessments

There are two categories of CEAA assessments: *self-directed assessments* and *independent assessments*. Self directed assessments are carried out by the government agency or official that exercises the authority that triggered the Act. This agency or official is called the “responsible authority”. A mediator or panel independent of the responsible authority conducts independent assessments.

There are four types of environmental assessments: *screenings* (including *class screenings*), *comprehensive studies*, *mediations* and *panel reviews*. About 99 percent of federal environmental assessments are screenings or comprehensive studies. Both of these are self-assessments.

A responsible authority conducts a screening. It is the most flexible type of assessment, and accommodates a range of projects, but mostly routine or small projects.

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<sup>4</sup>CEAA, *supra* note 1 at s. 2. The Act excludes some bodies from the definition.

<sup>5</sup>*Ibid.*

<sup>6</sup>*Inclusion List Regulations*, S.O.R./94-637.

<sup>7</sup>*Fisheries Act*, R.S.C. 1985, c. F-14, s. 35(1).

<sup>8</sup>*Navigable Waters Protection Act*, R.S.C. 1985, c. N-22.



The screening report documents the environmental effects of a proposed project and sets out what could be done to eliminate or minimize these effects. Screenings vary in time, length, and depth of analysis. Some result in a short, one or two-page report but others are much longer and more detailed.

Some screenings of what are considered “routine” projects are conducted with a class screening. Examples include some projects involving dredging, culvert installations, highway maintenance, shoreline stabilization and building construction. CEAA enables a responsible authority to apply to the Agency to allow for class screening reports for a type of project. If approved by the Agency, a responsible authority may use such a report in whole or in part in respect of projects of the same type.

The *Comprehensive Study List Regulations*<sup>9</sup> set out projects that must be assessed as a comprehensive study. These mainly are large projects having the potential for significant adverse environmental effects. Examples include large oil and natural gas developments, projects in national parks, larger projects that can cause harm in migratory bird sanctuaries or wildlife areas, major electrical-generation projects, and large industrial plants. In a comprehensive study a responsible authority has more obligations than in a screening. The study must consider a wider range of factors, and must be submitted for Agency and public review. The responsible authority must consider any public comments and determine whether there is need for a follow-up program to adjudge the accuracy of the environmental assessment and the effectiveness of mitigation measures.

Mediation and panel review fall under the independent assessment category. Mediation is a process of negotiation in which an independent mediator assists parties in resolving disputes and issues involving a proposed project. The Minister of Environment appoints the mediator. Mediation may deal with all aspects of environmental assessment. It may be used in combination with a panel review.

A panel review is the most formal and likely the most comprehensive and extensive environmental assessment review. Only the Minister of Environment may order a panel review though a responsible authority may recommend a panel review before, during or following a screening or comprehensive study. In the case of a screening the responsible authority must recommend a panel review or mediation where, as a result of a screening or comprehensive study public concerns warrant further study, or, if taking into account mitigation measures, it still is uncertain whether the project will have significant environmental effects. In the case of a comprehensive study, the minister must order a panel review or mediation in such circumstances.<sup>10</sup>

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<sup>9</sup>*Comprehensive Study List Regulations*, S.O.R./94-638.

<sup>10</sup>CEAA, *supra* note 1 at ss. 20 and 23.

## 2.2.4. *Wildlife and the Canadian Environmental Assessment Act*

### 2.2.4.1. *Two Ways Wildlife are Relevant to EIA*

There are two major ways that consideration of wildlife is addressed in a federal EIA. First, where an EIA is triggered by a provision of an Act that is directly relevant to wildlife. Second, where an EIA is otherwise triggered, but the project may affect wildlife or habitat.

### 2.2.4.2. *Wildlife Triggers*

The major federal Acts relevant to wildlife protection include the *Canada Wildlife Act*,<sup>11</sup> the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*,<sup>12</sup> the *Migratory Birds Convention Act, 1994*<sup>13</sup> and the *Species at Risk Act*.<sup>14</sup> Government action or authorities under these pieces of legislation will not often trigger environmental assessment under CEAA. For example, there are no specific triggers in the *Law List Regulations* for the *Canada Wildlife Act*, *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*, or the *Species at Risk Act*. Nevertheless, the *Law List* does include a number of proposed projects authorized under wildlife laws that will trigger the CEAA EIA requirements. Here are some examples.

Under the *Migratory Birds Regulations*<sup>15</sup> the EIA provisions will be triggered if the Minister of Environment exercises authority to:

- issue any of the following permits: migratory game bird hunting permit, scientific permit, avicultural permit, migratory bird damage permit, airport-kill permit, taxidermist permit, eiderdown permit, or a special permit<sup>16</sup> (to hunt a migratory bird in a Migratory Bird Sanctuary established under the *Migratory Bird*

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<sup>11</sup>R.S.C. 1985, c. W-9.

<sup>12</sup>S.C. 1992, c. 52.

<sup>13</sup>S.C. 1994, c. 22.

<sup>14</sup>S.C. 2002, c. 29.

<sup>15</sup>*Migratory Birds Regulations*, C.R.C., c. 1035.

<sup>16</sup>*Law List Regulations*, *supra* note 3, s. 20, referring to s. 4(1) of the *Migratory Birds Regulation*.

*Sanctuary Regulations*<sup>17</sup>), or to sell or otherwise transfer the birds or the eggs, nests, carcasses or skins of migratory birds;<sup>18</sup>

- deposit or permit to be deposited oil, oil wastes or any other substance harmful to migratory birds in any waters or any area frequented by migratory birds for scientific purposes;<sup>19</sup> or
- vary or suspend the application of the *Migratory Birds Regulations* where urgent action is needed and where the Minister considers it necessary for the conservation of migratory birds.<sup>20</sup>

Under the *National Parks Wildlife Regulations*,<sup>21</sup> EIA provisions will be triggered if the Superintendent exercises authority to remove, relocate or destruct wildlife for scientific purposes or park management purposes.<sup>22</sup>

An environmental assessment also will be triggered when government authority is exercised to permit a person to introduce into Canada a species of migratory bird not indigenous to Canada.<sup>23</sup>

#### 2.2.4.3. CEAA Triggers under other Legislation

Even where CEAA is triggered under non-wildlife legislation, a proposed project's effect on wildlife should be included in the EIA. CEAA requires that the likely "environmental effects" of a proposed project be assessed. The definition of "environmental effects" includes any change in the environment, which would include changes to wildlife or wildlife habitat.

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<sup>17</sup>*Migratory Bird Sanctuary Regulations*, C.R.C., c. 1036.

<sup>18</sup>*Law List Regulations*, *supra* note 3, s. 20, referring to s. 12(1) of the *Migratory Birds Regulation*.

<sup>19</sup>*Ibid.*, referring to s. 35(2) of the *Migratory Birds Regulations* which prohibits the deposit of any of these substances unless allowed by regulation or the Minister for scientific purposes.

<sup>20</sup>*Ibid.*, referring to s. 36(1) of the *Migratory Birds Regulations*.

<sup>21</sup>S.O.R./81-401.

<sup>22</sup>*Law List Regulations*, *supra* note 3, s. 27, referring to s. 15(1)(a) of the *National Parks Wildlife Regulations*.

<sup>23</sup>*Ibid.*, referring to s. 33 of the *Migratory Birds Regulations*.

### 2.2.5. *Wildlife Concerns, Environmental Impact Assessment and Jurisdictional Issues*

The Courts have made it clear that federal assessment of environmental effects may include matters outside of federal jurisdiction. Ruling Canadian cases dictate that responsible authorities not only have the right, in some cases, they have a responsibility to go beyond matters within legislative federal jurisdiction when carrying out CEAA duties. For example, the Federal Court of Appeal states in the well-known Sunpine case:

“Under paragraph 16(1)(a), the Responsible Authority is not limited to considering environmental effects solely within the scope of a project as defined in subsection 15(1). Nor is it restricted to considering only environmental effects emanating from sources within federal jurisdiction. Indeed, the nature of a cumulative effects assessment under paragraph 16(1)(a) would appear to expressly broaden the considerations beyond the project as scoped. It is implicit in a cumulative effects assessment that both the project as scoped and sources outside that scope are to be considered.”<sup>24</sup>

The Federal Court of Appeal further stated that the responsible authority “erred in declining to exercise the discretion conferred on it in its cumulative effects analysis ... by excluding consideration of effects from other projects or activities because they were outside ... federal jurisdiction.”<sup>25</sup> Accordingly, even though wildlife matters may be technically within provincial jurisdiction, they should be included in a federal assessment of environmental effects.

### 2.3. **Provincial and Territorial Environmental Assessment**

All of the provinces and territories have some kind of environmental assessment legislation.<sup>26</sup> Although particulars of environmental assessment processes differ, they are all similar in many ways to the federal process. Provincial legislation requires that proponents of certain projects obtain a provincial statutory authority before commencing construction or operation. For some proposals statutes require or give a statutory delegate the right to require an EIA to assist with making the decision and for imposing mitigation measures to lessen environmental impacts.

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<sup>24</sup>*Minister of Fisheries and Oceans v. Friends of the West Country Association* (1999), Ottawa A-550-98 (F.C.A.) at para. 34.

<sup>25</sup>*Ibid.* at para. 40.

<sup>26</sup>A useful reference for finding provincial and territorial environmental assessment legislation and policies is S. Dupuis & P. LeBlanc, *Directory of Environmental Assessment Practices in Canada* (Hull: Canadian Environmental Assessment Agency, 1995). This document was prepared for the Canadian Environmental Assessment Agency and may be accessed from the Agency’s website: <[http://www.acee.gc.ca/017/0005/biblio\\_e.htm](http://www.acee.gc.ca/017/0005/biblio_e.htm)>.

A federal EIA is most often triggered by a proponent requiring a statutory authorization under a federal statute or regulation. By contrast, most provincial and territorial EIA requirements are triggered by a proponent desiring to carry out a project under some description of an activity. For example, in Alberta, the *Environmental Protection and Enhancement Act* (EPEA)<sup>27</sup> governs most environmental assessment matters. The schedule to the Act sets out which projects may be assessed. A regulation sets out which of these projects must be assessed. Under this regulation, mainly large-scale projects such as sizeable pulp mills, oil refineries and dams, are always subject to the EIA process. The same regulation sets out which projects are exempt from assessment.<sup>28</sup> For any assessable project that falls between, any person appointed as a Director under EPEA may determine whether environmental assessment is needed. In Alberta, although no project is assessable just because of its impact on wildlife, a proposed project's impact on wildlife or habitat can be an important consideration in an EIA report.

Since "Law List type triggers" typically do not exist under provincial and territorial regimes, one does not expect to find environmental assessment triggered simply because of potential effects on wildlife. However, there are exceptions. One is the environmental assessment regime in Saskatchewan. The Saskatchewan *Environmental Assessment Act*<sup>29</sup> requires a Ministerial review including an environmental assessment of a development. The definition of "development" includes any "project, operation or activity or any alteration or expansion of any project, operation or activity which is likely to have an affect on any unique, rare or endangered feature of the environment".<sup>30</sup>

#### **2.4. Where Both Provincial or Territorial Environmental Assessment Legislation and CEAA Apply**

In rare instances a provincial law may require a provincial environmental assessment for the same project that requires a CEAA assessment.<sup>31</sup> In a number of provinces federal/provincial agreements apply so that both levels of government may meet their

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<sup>27</sup>R.S.A. 2000, c. E-12.

<sup>28</sup>*Environmental Assessment (Mandatory and Exempted Activities) Regulation*, Alta. Reg. 111/93. Section 47 of EPEA gives the Environment Minister the right to order an EIA on any proposal to carry out an exempt activity.

<sup>29</sup>*Environmental Assessment Act*, S.S. 1979-80, c. E-10.1.

<sup>30</sup>*Ibid.*, s. 2(d)(i).

<sup>31</sup>A background paper for the CEAA five-year review indicates that this happens in only about two percent of all CEAA assessments. See David Lawrence, *Multi-Jurisdictional Environmental Assessments* (Ottawa: Canadian Environmental Assessment Agency, 1999), online: <[http://www.acee.gc.ca/013/001/0002/0002/bkstd07\\_e.htm](http://www.acee.gc.ca/013/001/0002/0002/bkstd07_e.htm)>.

legislative requirements under a single, joint assessment process.<sup>32</sup> Under bilateral agreements between Canada and a province the proponent needs to prepare only one EIA that is designed to meet the requirements of both levels of government. If a hearing is required, the agreements enable a joint hearing, provided that the interests of both levels of government are accommodated. The bilateral agreements require both levels of government to use the results of the joint assessment in making decisions regarding the proposed project. However, each government retains its legislative authority to make decisions on a proposed project independent of the other government.

## 2.5. EIA Role in Decision Making – Substantive or Procedural?

Following government review of an EIA statutory delegates are called on to make a decision as to whether a project should go ahead. A critical question is what is the role of the EIA in this decision-making process? The role would be completely substantive if legislation requires the statutory delegate to reject a project if the EIA shows that potential adverse environmental harm is significant. The role is procedural if the legislation is either silent on how the delegate should proceed following review of the information in the EIA or the legislation only requires the delegate to consider the information in making a decision. Obviously, the more substantive an EIA process is, the more it will tend towards environmental protection, including protection of wildlife and habitat.

Most legislated EIA processes are mainly procedural. For example, nothing in the Alberta *Environmental Protection and Enhancement Act* even requires a statutory delegate to consider an environmental assessment when making a decision on whether or not to allow a project to go ahead, by, for example, issuing an approval. Ontario's *Environmental Assessment Act*<sup>33</sup> falls in the middle of the continuum. It states that the Minister shall consider the EIA report and all comments on it when making a decision

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<sup>32</sup>In 1998, the Canadian Council of Ministers of the Environment (with the exception of Quebec) signed the *Canada-Wide Accord on Environmental Harmonization and the Sub-agreement on Environmental Assessment*. This accord provides a framework for dealing with overlapping constitutional jurisdictional relating to environmental matters. Provinces and the federal government have entered into a number of sub-agreements under this Accord that deal with specific matters. The *Sub-Agreement on Environmental Assessment* deals with application of environmental assessment when laws require two or more governments to assess the same proposed project. It provides for shared principles, common information elements, a defined series of assessment stages, and a single assessment and public hearing process. Bilateral agreements between the federal government and individual provinces implement the sub-agreement. To date, British Columbia, Alberta, Saskatchewan and Manitoba have developed bilateral agreements with the federal government.

<sup>33</sup>R.S.O. 1990, c. E.18.

regarding a proposed project.<sup>34</sup> The federal statute, CEAA, is even more substantive. Under CEAA, if a project shows likely significant adverse effects that cannot be mitigated and the statutory delegate conducting the assessment finds that the adverse environmental effects cannot be justified in the circumstances, then the delegate cannot support the project by, for example, issuing a permit, granting an interest in land or lending money.<sup>35</sup> The process is not completely substantive in that a fair bit of discretion can go into determining whether significant adverse environmental effects are “justified in the circumstances”. For example a CEAA panel review has found that significant adverse effects, including to grizzly bear habitat, were justified by economic benefits of a proposed coal mine.<sup>36</sup>

### 3. Other Resource Management Laws and Wildlife

#### 3.1. Introduction

Canadian laws typically claim provincial government ownership of many natural resources including water, wildlife and subsurface mines and minerals. Provincial governments have interests in other natural resources by virtue of their location on lands owned by provinces, such as forestry and range resources. Governments give private interests the right to exploit publicly owned resources by way of statutory authorizations in the form of exemptions, permits, licenses or other approvals.

Exploitation of one kind of natural resource can adversely affect other natural resources. Mining or mineral exploration and development can destroy forests and remove range. Forestry operations can compromise mines and mineral activities. Range developments can remove forestry use potential. Water projects can preclude other natural resource development. All of these activities can destroy wildlife and wildlife habitat. Moreover, resource departments tend to be advocates of what they govern and administrate. Hence, energy departments and agencies tend to be pro-energy and will naturally defend energy development where there are potential conflicts. The same can be said of other government departments and agencies especially those that feed substantial dollars into provincial coffers such as forestry. Government resource agencies that tend to be more protectionist, such as fish and wildlife divisions, usually wave smaller fists of money, and where money talks, their voices blend into the background.

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<sup>34</sup>*Ibid.*, s. 9(2).

<sup>35</sup>CEAA, *supra* note 1, ss. 20, 23 and 37.

<sup>36</sup>*Report of the EUB-CEAA Joint Review Panel, Cheviot Coal Project, Mountain Park Area, Cardinal River Coals Ltd. and TransAlta Utilities Corporation*, Application No. 960313, 960314 and 960677, EUB Decision 97-08, June 1997.

One of the greatest challenges facing provincial governments is coordinating and overseeing the various resource related departments and agencies. The concept of ‘sustainable development’ or ‘sustainable resource management’, adopted by all provincial governments in one form or the other, requires provinces to integrate environmental with economic considerations and to act to sustain resources for future generations. The discussion below considers a number of management tools and examples of governments carrying out this mandate, especially in relation to sustaining wildlife and wildlife resources in the face of resource development.

## 3.2. Resource Management Tools and Examples

### 3.2.1. *Environmental Impact Assessment*

Through environmental assessment processes government decision makers acquire information on how large proposed resource development projects will affect the natural, social and economic environment. Environmental assessments should look at effects on wildlife and wildlife habitat. Decision makers use this information when deciding whether the project should go ahead. The first section of this paper explores this decision-making tool in detail.

### 3.2.2. *Integrated Laws*

One way to address resource management conflicts and better protect wildlife resources is to house all resource management decision-making authority under one law. The paradigm of this approach is New Zealand’s *Resource Management Act* of 1991 (RMA).<sup>37</sup> The RMA’s objective is the sustainable management of New Zealand’s resources. The Act defines this as:

“managing the use, development, and protection of natural and physical resources in a way, or at a rate, that enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety, while:

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”<sup>38</sup>

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<sup>37</sup>*Resource Management Act 1991*, S.N.Z. 1991, O69.

<sup>38</sup>*Ibid.*, s. 5.



Any government decisions that may have environmental consequences must satisfy these provisions. Core to the Act is the requirement that maintaining the sustainability of ecosystems takes precedence over social, economic, and cultural objectives.

As a commentator on the Act puts it:

“The RMA was designed to be comprehensive, dealing with all resources, ecosystems, and the links between them, and to integrate environmental policies and actions across governmental jurisdictions and within society as a whole. The act is also intended to decentralize most resource-related decisions to the level of government closest to the problem and to the citizens who will be affected, in order to improve efficiency and accountability. In addition, the RMA recognizes the Maori people’s rights over natural resources according to the 1840 Treaty of Waitangi, as well as the importance of Maori principles of stewardship to the concept of sustainable management. The RMA requires decision-makers to ensure that Maori interests are taken into full account when making and implementing decisions.”<sup>39</sup>

No Canadian province or territory has gone nearly as far as New Zealand, although some provinces have at least integrated some aspects of legislative authority to move towards sustainability. For example, Alberta’s *Natural Resources Conservation Board Act* requires an independent board to determine whether certain proposed natural resource developments are in the public interest having regard to the social, economic and environmental effects.<sup>40</sup> The Alberta *Water Act* enables water plans that integrate water, riparian and land based resource uses (including wildlife).<sup>41</sup> Saskatchewan’s recent *Forest Resources Management Act*<sup>42</sup> goes beyond seeing the forest as a source of potential wood and woodpulp. It provides a legal framework for regulating forest resources in the broad sense, including forest industrial development’s effects on forest natural biodiversity, wildlife and habitat, ensuring that an informed public has the right to participate in deciding how to balance the need to use provincial forests for economic, social and cultural benefits while ensuring the long-term health of forest ecosystems is protected.

### 3.2.3. *Integrated Departments*

Another way to address resource management conflicts is to put the administration of different resource legislation under one ministry. For example, Saskatchewan’s Department of Environment and Resource Management administers both primary

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<sup>39</sup>*Resource Renewal Institute, Overview of NZ Resource Management Act*, online: <[http://greenplans.rrl.org/resources/greenplanningarchives/newzealand/newzealand\\_rma.html](http://greenplans.rrl.org/resources/greenplanningarchives/newzealand/newzealand_rma.html)>.

<sup>40</sup>R.S.A. 2000, c. N-3.

<sup>41</sup>R.S.A. 2000, c. W-3, s. 9.

<sup>42</sup>S.S. 1996, c. F-19.1.

resources including air, water and soil as well as natural resources including forests, fish, wildlife, lands, parks and their natural and cultural resources. The ministry's website declares that it "places a high value on integration, in both its structure and its processes. This reflects the need to consider all resources, values and stakeholders, and their interrelationships, in planning and decision-making", and that it is "committed to using an ecosystem approach to the sustainable management of the province's primary (environmental) and renewable (natural) resources."<sup>43</sup>

### **3.2.4. Integrated Decision Making**

Governments can also integrate natural resource decision making by agencies, policies or practices. For example, Alberta is reviving its earlier integrated resource management approaches with a policy titled *Alberta's Commitment to Sustainable Resource and Environmental Management*.<sup>44</sup> The policy document confirms the province's "commitment to sustainable development and describes the Alberta government's approach to sustainable resource and environmental management."<sup>45</sup> The policy requires government departments, boards and agencies, with responsibilities related to the economy, natural resources or the environment, to acknowledge, pursue and reflect the sustainable development vision in their policies, legislation, programs and day-to-day activities.

## **4. Ecosystem Management**

### **4.1. About Ecosystem Management**

Ecosystem management approaches see preservation of at least core ecosystem elements to be a driving factor in managing an area of land. Administrators of an area that is managed with an ecosystem approach will allow only such development and uses that are consistent with preserving and maintaining the overall system. The approach strives to draw boundaries of a management area on an ecosystem basis, in contrast to political or ownership lines.

Definitions of 'ecosystem management' abound. Industrial sectors may focus on manipulative resource development and extraction to mimic natural systems, such as clear cutting forest areas to replace natural periodic fires. Preservationist and protectionist

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<sup>43</sup>From Government of Saskatchewan website at: <<http://www.se.gov.sk.ca>>. Also see discussion on Ecosystem Management later in this paper.

<sup>44</sup>(Edmonton: Government of Alberta, 1999), online: <<http://www.srd.gov.ab.ca/info/Sustainable.pdf>>.

<sup>45</sup>*Ibid.* at 3.

sectors, on the other hand, may focus on managing with minimal or no interference with natural systems. This paper is neutral in regards to whether there is a correct characterization of ‘ecosystem management’. Instead it adopts a neutral characterization that the author used elsewhere to explain the concepts.<sup>46</sup> There, as here, the author employs the notion of ‘ecosystem management’ in the sense of managing for ecosystem protection. The characterization is consistent with various ecosystem management techniques.

For the purposes of this paper, an ‘ecosystem’ may be defined as the interdependent relationships of plants, animals, people and the ecological processes that link them to the physical environment. ‘Manage’ or ‘to manage’ an ecosystem includes leaving it alone to exist and dynamically evolve. ‘Ecosystem management’ means managing an ecosystem to maintain, and when necessary, to restore the system’s natural and dynamic components. Managing for ecosystem protection normally only allows land uses and development that will not adversely affect core natural systems and the biodiversity required to maintain them.

#### 4.2. Ecosystem Management and Geographical Information Systems

Geographical information systems (GIS) are computer systems used to store, manipulate, and display, in table or map form, information about locations on the earth’s surface to assist in decision making. Because information is stored in digital form, compared to non-digital information (such as in paper maps or books) GIS may handle large amounts of data at high speed.<sup>47</sup> GIS can generate two or even three dimensional images of an area showing natural and cultural features.

Many GIS database systems consist of sets of information called *layers* where each layer represents data.<sup>48</sup> For example, one layer might contain information on land

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<sup>46</sup>See A. Kwasniak, *Reconciling Ecosystem and Political Borders: A Legal Map* (Edmonton: Environmental Law Centre, 1997) at 4 to 6.

<sup>47</sup>The literature on GIS is full of formal definitions. See for example: H.D. Parker, “What is a Geographic Information System?” in *GIS '87 – San Francisco – Second Annual International Conference, Exhibits and Workshops on Geographic Information Systems* (Berkeley: University of California, American Society for Photogrammetry and Remote Sensing, 1987) 72; J. Antenucci, *et al.*, *Geographic Information Systems, A Guide to the Technology* (New York: Van Nostrand Reinhold, 1991) 3-19 and esp. p. 7; S. Cassettari, *Introduction to Integrated Geo-information Management* (London, UK: Chapman & Hall, 1993) 1-22; P.F. Dale, “Land Information Systems” in *Geographical Information Systems, Principles and Applications*, vol. 2 (London: Longman, 1991) 85; and S. Aronoff, *Geographic Information Systems: A Management Perspective* (Ottawa: WDL Publishing, 1989) 1-29.

<sup>48</sup>“Geographic Information System” in *Microsoft Encarta 96 Encyclopaedia* (Redmond, Washington: Microsoft Corporation; New York: Funk and Wagnalls Corporation, 1993-95).

ownership, another on soil type and quality, another on elevation, another on forest data, and so on. The user of the system may call forth onto the computer screen various layers of information and manipulate them to gain more information. By making relevant comparisons, the user could determine, for example, at which elevations certain soil types predominate and how this relates to the kind of trees prominent in the area. The information could be used to help make ecosystem management based land and resource use decisions. For example, location and design of roads could be carried out in an informed manner with information as to how choices likely will affect aspects of ecosystems.

GIS is an invaluable tool in ecosystem management, including through multijurisdictional areas. For example, Elk Island National Park east of Edmonton, Alberta uses three GIS software packages: SPANS, Arcinfo, and Arcview. The geographic information used with the software includes soils, biophysical characteristics, vegetation inventory, non-ungulate mammal distribution, location survey data for ungulate locations, archaeological site locations, and some aerial photographs. Cultural information used includes townships and section boundaries.<sup>49</sup>

It is also possible to map relevant legal information onto GIS for an area in order to aid in decision making. Consider, for example, if land managers in a multijurisdictional area want to create a strip of protected area to serve as a wildlife corridor. From natural geographical information from GIS the land managers might determine the candidate routes. Using legal information, they could efficiently gather much information relevant to their deciding on one route over the others. The information could include land ownership data, government resource dispositions (grazing, forestry, oil, gas, coal, mining, etc.), and relevant government regulations, policies and guidelines.

In addition to aiding with decision making, GIS relating to an ecosystem area could be an education tool. Many GIS data and imagery sites may be accessed by computer through the Internet and some of it can be run through ordinary windows. With falling prices of computer hardware and software, in time most people will either own, or at least have access to, a computer which can access GIS Internet information. Through using GIS landowners and other land managers may see how their own holdings or areas that they manage relate to the larger ecology. Hence they may realize how what they do with the land fits into a larger picture.

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<sup>49</sup>Telephone discussion on June 27, 1996 between Darin Stepaniuk, former staff counsel with the Environmental Law Centre, Edmonton, Alberta, and Chuck Blythe, former Coordinator, Government of Canada, Elk Island Park.

### **4.3. Ecosystem Management and Wildlife and Habitat Protection Examples**

#### **4.3.1. Introduction**

Where an ecosystem includes wildlife habitat, protecting important elements of the habitat will naturally amount to protecting aspects of the ecosystem itself. If an area of land is managed for such ecosystem protection, management decisions regarding use and development must aim at preserving elements of habitat such as sources of food and water, shelter and cover, ample habitat areas, avoiding interference, and providing natural connective corridors.

There are numerous examples of such ecosystem management approaches in Canada. Here are a few.

#### **4.3.2. Parks Canada Ecosystem-Based Management**

Parks Canada's extensive ecosystem management policy is available on its website.<sup>50</sup> Key elements of the approach include:

- Managing national parks for minimal interference to natural processes;
- Allowing active management when ecosystem structure or function has been seriously altered and manipulation is the only alternative available to restore ecosystem integrity;
- Allowing manipulation of naturally occurring processes such as fire, insects and disease may take place when no reasonable alternative exists and where natural ecosystem function will not be affected; and
- Taking the lead role in establishing integrated and collaborative management agreements and programs with adjacent landowners and land management agencies.<sup>51</sup>

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<sup>50</sup>Parks Canada's website: <<http://www.pc.gc.ca/>>.

<sup>51</sup>Parks Canada's initiative regarding Elk Island National Park, a prairie/Aspen parkland area just east of Edmonton, Alberta is an example of this leadership. The Park is located in the Beaver-Hills/Cooking Lake Moraine. The Moraine area is covered by a number of political jurisdictions. *Infra* note 56. The Park has sponsored meetings to get the municipalities and other jurisdictional interests and stakeholders to jointly develop management efficiencies and to take an ecosystem approach, as appropriate, to managing the area. The author thanks Locke Girvan of Planning and Development, Strathcona County, Alberta, for this information.

Parks Canada seeks mutually satisfactory solutions to trans-boundary concerns associated with the management of shared ecosystem components, the effects of adjacent land use practices on park ecosystems, or the effects of park management practices on the use of adjacent lands.

#### **4.3.3. Canmore Corridor Project**

This GIS-based modeling project analyzes the impacts of human development on cougar and wolf movements through the Bow Valley of Canmore, Alberta. This project focuses on wildlife movement in this urbanized area. The project will bring together and synthesize existing research to develop land use decision models in order to best maintain and restore wildlife habitat connectivity around the Town of Canmore, Alberta. The project is between the Miistakis Institute and academics from the University of Calgary, Alberta.<sup>52</sup>

#### **4.3.4. Ecosystem Management Emulating Natural Disturbance**

Ecosystem Management Emulating Natural Disturbance (EMEND) is a research effort of over 45 researchers and graduate students from five Canadian and one U.S. universities.<sup>53</sup> EMEND's overall objectives are:

- “1) to determine which forest harvest and regenerative practices best maintain biotic communities, spatial patterns of forest structure, functional ecosystem integrity in comparison with mixed-wood landscapes that have originated through wildfire and other inherent natural disturbances; and
- 2) to employ economic and social analyses to evaluate these practices in terms of economically viability, sustainability and social acceptability. These objectives are to be achieved through the

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<sup>52</sup>Information from the Miistakis Institute website at: <<http://www.rockies.ca>>. The Institute is a good example of an organization dedicated to ecosystem management and utilizing GIS data. In its own words “The Miistakis Institute was launched in 1995 to build bridges ... between people, their perceptions and their information about this landscape. Our philosophy is that that information is a vital resource and that the more accessible our knowledge of the insects, fish, amphibians, birds, ungulates, carnivores, plants and processes of a region, the better equipped we are to conserve them. Ecological information is presently scattered; many have pieces of the whole which others are trying to understand.” The Institute focuses on the Rockies, from Yellowstone to the Yukon.

<sup>53</sup>Laval University, University of Alberta, University of British Columbia, University of Calgary, University of Lethbridge and University of Minnesota. Information from EMEND participant website: <<http://www.emend.rr.ualberta.ca/>>. EMEND partners include the mentioned universities, forest industry or industry products organizations, government agencies and research organizations.

large-scale harvest-silviculture experiment or approached through modelling based on the experimental results.”<sup>54</sup>

EMEND has a project pilot study site in the Upper Boreal-Cordilleran Ecoregion of Alberta. It is one of the largest projects of its kind in North America, totalling 1,000 hectares. The project uses ecosystem management techniques on experimental bases to carry out EMEND objectives.

#### ***4.3.5. Canadian Model Forest Program***

The Canadian Model Forest Program was launched by the Canadian Government through the Canadian Forest Service in 1992.<sup>55</sup> The program is designed to research and demonstrate sustainable forest management in model forest areas in Canada. Each model forest management plan seeks to maintain a diversity of forest values. Although the Canadian Government is the primary financial sponsor, each model forest has partners which provide financial and in-kind services. Partners differ from forest to forest but usually include industrial companies, parks representatives, landowners, all levels of government, Aboriginal people, academics, environmental groups, labour and youth.

There are ten model forests in Canada located in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, and Newfoundland and Labrador. Although they vary insofar as the extent to which they incorporate ecosystem management techniques, this approach does play a key role in model forest sustainability discussions and practices.

To illustrate, the Fundy Model Forest in New Brunswick contains a rich biologically diverse area that is part of the Greater Fundy Ecosystem Research Project of the University of New Brunswick.<sup>56</sup> The project has recommended management guidelines for the area for biodiversity protection. The guidelines include provisions for connective habitat, streamside buffers, maintaining mature stands and regulating patch size for biodiversity reasons and establishing a network of protected areas.

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<sup>54</sup>*Ibid.*, EMEND Project Objects.

<sup>55</sup>Unless otherwise indicated, information online: <<http://www.modelforest.net>>.

<sup>56</sup>Information online: <<http://www.unbf.ca/forestry/centers/centres.htm>>.

## 5. Multijurisdictional Cooperation and Management of Wildlife and Habitats

### 5.1. Introduction

It has become trite to say that ecosystems do not recognize jurisdictional boundaries. But trite or not, the fact remains. An ecosystem may span over provincial public land, federal public land, municipal land, Indian reserves and traditional lands and private land. It might be criss-crossed by railroads, highways and right-of-ways. As well, an ecosystem may be subject to a number of private or public interests such as mineral leases or easements, utility easements, rights of access or grazing rights, just to name a few. An underlying ecosystem will either survive or not, depending upon how the various governmental and non-governmental entities or individuals with rights over the pieces comprising it exercise those rights. This section of the paper discusses how jurisdiction over land influences wildlife habitat and describes ways that jurisdictions can cooperate to manage and maintain habitat. “Jurisdiction” is rather loosely used in this paper to cover any legal right to legislate over something, or to manage an area of land or a kind of resource. “Multijurisdictional” in respect of a wildlife or habitat refers to more than one entity having the legal right to legislate or manage some aspect of it.

### 5.2. Nature of Jurisdictional Interests

Legally speaking, the most basic power to manage wildlife and habitat lies with those possessing the right to regulate, set policy for and manage their various aspects – wildlife itself and habitat including land, water, air, plants, other biota, and the relations between them. The right to regulate, set policy for and manage these aspects often falls on several shoulders. Other papers in this Canadian Wildlife Law series set out federal and provincial legislative powers over wildlife and management rights arising from ownership and also address how Canada’s international obligations influence wildlife protection. This paper earlier discussed resource management and allocation laws and their impact on wildlife. Protection of any given wildlife and its habitat can become more difficult the greater the number of regulators, policy makers and managers.<sup>57</sup> The

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<sup>57</sup>See Kwasniak, *supra* note 45, for a discussion of protecting an ecosystem known as the Beaverhills/Cooking Lake Moraine Area in Alberta. The ecosystem encompasses five counties, contains a federal national park, a joint provincial/Aboriginal/non-governmental management area called the “Cooking Lake Blackfoot Wildlife Grazing and Recreation Area”, a number of provincial parks called “Natural Areas”, the Ministik Lake Bird Sanctuary, a provincial bird sanctuary recognized by BirdLife International as Globally Significant Important Bird Area (IBA), Beaverhill Lake, a designated RAMSAR site as well as an IBA, privately owned land and a number of private and government industrial interests.



discussion below points out some stumbling blocks to multijurisdictional management. It then describes multijurisdictional initiatives.

### 5.3. Stumbling Blocks to Multijurisdictional Management

#### 5.3.1. *Lack of Tools for Binding Multijurisdictional Decision-Making Powers*

Multijurisdictional management is joint management of an area by all governments with regulatory control, those having aboriginal interests, landowners and resource users and industrial, development and public interest stakeholders. There is no umbrella-like legislation in Canada that can gather all of these elements into one decision-making body for a multijurisdictional region. Indeed, it often is difficult for even one level of jurisdictional control – say a provincial government – to harbour together its many land and resource managers to make decisions to ecologically sustain a region. Energy development, tourism, recreation, agriculture, environment, wildlife and natural resources agencies often enough clash in their decision making. How then can different spectra of jurisdictional powers get together to manage a common interest?

There has been some movement towards multijurisdictional approaches on the legislative front. Legislation normally authorizes levels of government to make binding decisions in relation to matters within their jurisdiction. Historically, it has not often enabled a government to make governance decisions with another government in respect of areas that straddle the two or more jurisdictions. However, the last couple of decades have seen an introduction into laws of such enabling powers.

For example, in Alberta, normally a municipal bylaw will apply only within municipal boundaries. However, the Alberta *Municipal Government Act* enables a municipality to agree with any other municipality that a bylaw passed by one municipality has effect inside the boundaries of the other municipality.<sup>58</sup> As well, the Act enables intermunicipal plans that apply to the areas covered by participating municipalities.<sup>59</sup> Thus, willing Alberta municipalities can jointly regulate land use and development on an ecosystem basis to protect habitat that spans individual municipal borders. Unfortunately, municipalities, at least in Alberta, are shy in exercising this power to coordinate for example, zoning in wildlife habitat.<sup>60</sup>

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<sup>58</sup>R.S.A. 2000, c. M-26, s. 12.

<sup>59</sup>*Ibid.*, s. 631.

<sup>60</sup>After several inquiries, the author has not been made aware of any such instances of intermunicipal planning or bylaws.

As well, more recent provincial and federal statutes relevant to environmental or resource management contain enabling provisions for interjurisdictional cooperation. For example, the *Canada National Parks Act* enables the administering Minister to "... enter into agreements with federal and provincial ministers and agencies, local and aboriginal governments, bodies established under land claims agreements and other persons and organizations for carrying out the purposes of this Act."<sup>61</sup> Purposes of the Act include to maintain parks so as to leave them unimpaired for the enjoyment of future generations.<sup>62</sup> The multijurisdictional agreements provision enables the federal government to enter into agreements and plans with other levels of government and other interests to maintain habitat that extends beyond park borders.

### 5.3.2. *Guarding of Jurisdiction and Fund Streams*

It is no secret that governments and other jurisdictional interests vigorously guard what they believe they have jurisdiction over from perceived encroachments on sovereignty and control. Often enough the object of this shielding is maintaining funding streams, for example from higher levels of government. This happens *vis-à-vis* all jurisdictional interests, federal-provincial, provincial-provincial, municipal-federal, municipal-provincial and municipal-municipal, and aboriginal-federal. Such covetousness can get in the way of efficient and effective resource management and protection. The advent of multistakeholder bodies made up of or including interjurisdictional interests has gone some way to soften such fears.<sup>63</sup> Nevertheless, if wildlife and habitat protection that spans political borders is to succeed, jurisdictional interests must openly address these concerns.

### 5.3.3. *Non-Fit Mandates*

Jurisdictional interests are typically non-human entities such as governments, corporations, bands, non-government organizations, societies, community groups and associations, among others. These entities typically must confine their activities to their written mandates. Unless mandates include extrajurisdictional matters, they will not fit with multijurisdictional approaches.

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<sup>61</sup>S.C. 2000, c. 32, s. 10.

<sup>62</sup>*Ibid.*, s. 4.

<sup>63</sup>For example, the Canadian Council of Ministers of Environment (website: <<http://www.ccme.ca/>>) and the federal Regulatory Advisory Committee under the *Canadian Environmental Assessment Act* (information on the Canadian Environmental Assessment Agency website: <<http://www.ceaa.gc.ca/>>).

#### **5.3.4. *Hesitation in Taking Leadership Initiative***

Governmental jurisdictional bodies naturally are primarily concerned with what goes on exclusively within their jurisdiction. Accordingly, it is not often that interjurisdictional initiatives are launched by a single governmental jurisdictional interest, except for the most encompassing of such interests, the federal government. Because of this it is no surprise that many interjurisdictional wildlife management and protection fora have been initiated either by the federal government, individuals or a non-governmental institution.

#### **5.3.5. *Finding, Organizing and Funding an Appropriate Forum***

Any multijurisdictional initiative must have a home, house rules, a budget and funds to meet the budget. It is vital that the jurisdictional interests, including governments, aboriginal interests, municipalities, landowners, and stakeholders with resource and industrial interests, meet to share ideas, reach consensus, plan and carry out actions. If a landscape of interest covers a large area, it might be difficult to ascertain where the organizational element should be housed. Even more elemental, a multijurisdictional initiative must have an organizer. The organizer must be credible and not seen as overly self-interested. The participants in the initiative must decide if the organizer will ultimately operate the initiative or whether some other group or entity is more appropriate. Numerous other steps are required including agreeing on a vision, objectives, a governing body, communication and media plans and setting out methods to carry out objectives. Finally, budgeting and obtaining funds are critical elements of carrying out multijurisdictional initiatives.

### **5.4. Examples of Multijurisdictional Management Initiatives in Canada**

#### **5.4.1. *Introduction***

There are probably hundreds if not thousands of multijurisdictional management initiatives in North America that include habitat protection as an objective. Although they range in size, power and budget they all strive to overcome political borders to protect a landscape. This section provides a sampling of Canadian initiatives.

#### **5.4.2. *Biosphere Reserves***

Biosphere Reserves arose out of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Man and Biosphere Program (MAB) established in 1971.<sup>64</sup>

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<sup>64</sup>See *A Practical Guide to the MAB* (Paris: UNESCO, 1987); *Man Belongs to the Earth* (Paris: UNESCO, 1988).

“Biosphere” means the veneer of the earth’s crust, waters and atmosphere which support life.<sup>65</sup> MAB was one of the first international institutions to recognize the connections between humans and environment. MAB involves a number of programs including biosphere research, recommendations on preserving biosphere while allowing development, field activities in over 100 nations covering all ecosystem types, and environmental training.

A key objective of MAB is to set aside representative samples of all of the earth’s major ecosystems. Each site is nominated by its country to the MAB Program. UNESCO awards biosphere reserve status to qualifying areas. There are 408 biosphere reserves in 94 countries including 11 in Canada.<sup>66</sup> Management of existing Biosphere Reserves range from formal boards, active supervision and paid staff, to informal arrangements and volunteers. The degree of oversight largely depends on funding, leadership and cooperation. They involve and are administered by the levels of government that want to participate as well as local and stakeholder interests.

Biosphere Reserves are organized into the core area, the buffer zone and the transition area. The core area must be an example of minimally disturbed ecosystems with secure legal protection in the jurisdiction where it is located. The protected status must not permit activities that adversely affect the natural habitat. A single Biosphere Reserve may contain several core areas.

The buffer zone surrounds or is contiguous with the core area. Activities in the buffer zone are meant to aid protection of the core area. Such activities might include experimental research to manage vegetation to enhance high quality production while respecting natural processes and conserving biodiversity.

The outer transition area carries the Biosphere Reserve into the surrounding community. It may be used for agricultural activities, or human settlements among other uses. It is in the transition area that stakeholders, such as local communities, conservation agencies, scientists, civil associations, cultural groups and private enterprises, are meant to work together to manage and sustainably develop resources for the benefit of the community.<sup>67</sup>

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<sup>65</sup>K. Suter, “The UNESCO World Heritage Convention” (1991) 8 *Envtl. & Plan. L.J.* 1 at 13-14.

<sup>66</sup> Information online: <<http://www.unesco.org/mab/index.shtml>>.

<sup>67</sup> Information in this paragraph from the UNESCO website: <<http://www.unesco.org/mab/BRs.shtml>>.

### **5.4.3. Beverly and Qamanirjuaq Caribou Habitat Protection and Management**

The 20-year old Beverly and Qamanirjuaq Caribou Management Board (BMQCB) helps manage two caribou herds throughout their migratory routes. The routes straddle two territories (Nunavut and Northwest Territories), two provinces (Saskatchewan and Manitoba) and four different native cultures (Inuit, Metis, Dene and Cree). The major aim of the BMQCB is to safeguard the caribou herds in the interest of the aboriginal people who traditionally rely on them. The 12-member board includes government representatives from the two provinces and two territories, participants from native cultures and members of affected communities. The board meets twice a year. It operates in accordance with a management plan that provides a detailed framework for management decisions. Although the board is advisory to participating governments it has many successes to its credit, including:

- In 1999, the BQCMB completed a multi-year project that identifies areas of land and water especially important to the Beverly and Qamanirjuaq caribou.
- In 1998, the BQCMB updated its methodology for determining allowable harvest of caribou. It established categories of acceptable users in descending order of priority.
- In 1995, the BQCMB published *Fire Management Technical Report No. 1* along with the shorter summary, *Management Report No. 1*. The studies examine the ecological role of fire in the boreal forest in relation to caribou.

### **5.4.4. Algonquin to Adirondack**

This initiative, known as “A2A”, takes a landscape protection approach to the Algonquin Provincial Park in Ontario and Adirondack Park in New York State and connecting areas.<sup>68</sup> The parks are two of the oldest and largest parks in eastern North America. They harbour populations of and provide habitat for both rare and common native species. The founders of the initiative, the non-governmental non-profit society, the Canadian Parks and Wilderness Society, Ottawa Valley, came upon the idea in the early 1990s to link the two parks across the largely unaltered connective landscape. Making the A2A connection involves transcending political boundaries, including those of governments, non-government groups, agencies, municipalities, and countries. The A2A organization itself formed in the fall of 2000. Its board of directors consists of landowners, First Nations, farm groups, cottage associations, fur managers, municipal governments, the Eastern Ontario Model Forest, conservation groups, hunters and anglers and educators.

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<sup>68</sup>The information in this section is from the A2A initiative’s website: <<http://www.a2alink.org/>>.

A number of its individual and organizational supporters have developed principles for the A2A initiatives. They bear repeating here as they include many necessary elements for any interjurisdictional initiative. They are:

- *Take a landscape approach:* This is necessary to design land management to maintain the integrity of entire landscapes.
- *Encourage stewardship:* The A2A conservation initiative works with all public and private property owners to create a landscape that supports wildlife as well as economic, physical and spiritual well being.
- *Promote cooperation:* The initiative is open to different perspectives, traditions, and concerns and fosters learning and consensus building. It dovetails the science of conservation biology with the needs of the people.
- *Transcend borders:* This principle recognizes that maintaining ecological integrity throughout the region requires that the initiative transcend political boundaries, being those among government and non-governmental groups, agencies, municipalities and countries.
- *Be flexible:* There is no pattern or map on how to protect and maintain ecological values throughout political boundaries.
- *Think long-term:* The A2A vision will be realized in increments. Each change will be an achievement in a long-term process.

#### **5.4.5. *The Yellowstone to Yukon Conservation Initiative***

On the other side of the alphabet, this initiative, known as “Y2Y” is a joint Canadian-U.S. network of over 270 organizations, institutions, foundations, and individuals.<sup>69</sup> The participants have joined together with the objective of restoring and maintaining the natural heritage of the Yellowstone to Yukon region and its quality of life. The initiative may be traced back to the winter of 1993, when a group of scientists and conservationists met near Calgary, Alberta. The group discussed the possibility of applying the principles of conservation biology to the Rockies of Canada and the northern U.S. The group expanded over the next few years and by 1996 the initiative was officially underway with the hiring of a coordinator. The initiative’s office is in Canmore, Alberta. Through the Y2Y structure, local communities, environmental organizations, government agencies and industry collaborate to conserve and maintain the area in accordance with the initiative’s vision.

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<sup>69</sup>The information in this section is from the initiative’s website at: <<http://www.y2y.net>>.

#### **5.4.6. *Interprovincial and International Parks – Waterton-Glacier International Peace Park***

This section would not be complete without at least mentioning the Canadian parks that span either provincial or international borders. With these, it is critical to effective and efficient ecosystem management that the political jurisdictions cooperate. All of these parks involve some level of interjurisdictional formalized relations to manage on a landscape level.

One example shows how multijurisdictional management is not new. In 1931, the Rotary Clubs of Alberta, Canada and Montana, United States proposed to their respective federal governments uniting Canada's Waterton Lakes National Park and the United State's Glacier National Park.<sup>70</sup> The result was the Waterton-Glacier International Peace Park, the first such park in the world.<sup>71</sup> The joint park comprises Waterton Lakes' 526 square kilometres and Glacier's 4,051 square kilometres. The park's landscape of mountains, forests, prairie grasslands, deep canyons, lakes and rivers supports a diversity of wildlife including mountain goats, bighorn sheep, coyotes, grizzly bears, birds, and an international elk herd. Although each park is administered through its home jurisdiction, cooperative management between the two countries is reflected in agreements for wildlife and vegetation management and in search and rescue programs. As well, the parks share interpretive resources including joint hikes, programs, newsletters and exhibits.

The Waterton-Glacier international park might soon expand its interjurisdictional character by incorporating an ecologically significant provincially administered area. The British Columbia government has proposed to incorporate 40,500 hectares (100,000 acres) of land in the Flathead Valley in the southeast of the province into Waterton Lakes National Park and to legislate a Wildlife Management area on 350,000 hectares (over 925,000 acres) of public lands that connect Waterton-Glacier International Peace Park to Banff National Park. The Flathead Valley has long been recognized as a missing piece of Waterton-Glacier International Peace Park. In 1911, and again in the 1940s and '50s efforts were made to incorporate the area. In 1993, British Columbia's Commission on Resources and Environment recommended establishing a large provincial park in the Flathead Valley. This recommendation was not implemented owing to resource industry conflicts. However, the main resource industry active in the area, a logging company, appears ready to accommodate protection of a large portion of the area. In spring of 2002,

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<sup>70</sup>Unless indicated otherwise, the information in this section is from Waterton-Glacier websites: <[http://www.pc.gc.ca/pn-np/ab/waterton/index\\_e.asp](http://www.pc.gc.ca/pn-np/ab/waterton/index_e.asp)> and <<http://www.glacier.national-park.com/>>.

<sup>71</sup>Canada/U.S. International Peace Parks formed since Waterton-Glacier are: Peace Arch (Blaine, Washington–Douglas, B.C.), International Peace Garden (North Dakota–Manitoba), Campobello (N.B.–Maine) and Gold Rush International Park (Yukon–Alaska).

the British Columbia government initiated public review of a proposal to finally fill this ecosystem protection.<sup>72</sup>

#### 5.4.7. Watershed Organizations

A watershed is a land area where all of the water under it or that drains off of it goes into the same place. Watersheds are in all shapes and sizes and traverse political borders. There can be smaller watersheds within larger watersheds. All of the various living things, including wildlife, vegetation, people and domestic animals share in their mutual reliance on a healthy watershed.<sup>73</sup> Watershed organizations abound throughout Canada and continue to form at a rapid pace. The organizations may be small grass roots organizations to large umbrella organizations. Governments have supported watershed organizations. In Alberta, for example, the Agriculture, Food and Rural Development Ministry has published a guide called *Alberta Conservation Connection, Developing Successful Watershed Groups*.<sup>74</sup> The guide provides ideas for municipalities, communities and other stakeholders in developing watershed groups to address water quality, riparian habitat management and other issues relevant to local watersheds.

An example of a successful middle-sized watershed organization is the Southern Alberta Kneehill County Watershed Advisory Council. Although this multistakeholder group focuses on agricultural issues related to water quality, its mandate includes furthering general riparian health – which is essential to maintaining much wildlife habitat. The Council’s “partners” include five municipalities, agricultural service agencies, conservation organizations and the Alberta government.<sup>75</sup>

An example of a large watershed organization is the Fraser Valley Regional Watersheds Coalition (FVRWC). The FVRWC is a community-based coalition interested in watershed sustainability issues.<sup>76</sup> Its primary focus is on water and watershed issues relevant to British Columbia’s Fraser Valley. The FVRWC boasts the participation of over 100 individuals from a number of organizations.

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<sup>72</sup>Information online: <<http://www.wildcanada.net>>.

<sup>73</sup>Internet watershed information is abundant. Although seated in the United States, particularly good resources are the Center for Watershed Protection at <<http://www.cwp.org>> and the Environmental Protection Agency’s watershed information links from <<http://www.epa.gov/>>.

<sup>74</sup>Available from the Ministry’s website: <<http://www.agric.gov.ab.ca/app21/rtw/index.jsp>>. Publication last revised, June 2000.

<sup>75</sup>Alberta Agriculture, Food and Rural Development, “Kneehill County Watershed Advisory Council takes action on local watershed issues” (Winter 2002) 16 *Alberta Conservation Connection* at 1.

<sup>76</sup>This information from the group’s website: <<http://www.fvrwc.org/>>.





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