

1992 BILL 212

Fourth Session, 22nd Legislature, 41 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 212

ENDANGERED SPECIES AND ENDANGERED SPACES ACT

MR. McINNIS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 212
Mr. McInnis

BILL 212

1992

ENDANGERED SPECIES AND ENDANGERED SPACES ACT

(Assented to , 1992)

Preamble

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

WHEREAS HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta finds that

(1) various species of flora and fauna have been rendered extinct as a result of predation and economic development untempered by adequate concern over the preservation of threatened or endangered species;

(2) certain species of flora and fauna in Alberta have been so depleted in numbers that they are currently in danger of, or threatened with, extinction;

(3) these species are of ecological, educational, aesthetic, historical, medical, recreational and scientific value in Alberta and its people, and have a prima facie right to existence:

NOW THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

**PART I
INTERPRETATION**

Definitions

1 In this Act,

(a) "activity" means an activity listed in the Schedule to the *Environmental Protection and Enhancement Act*;

(b) "Committee" means the Endangered Species Advisory Committee;

(c) "Crown agency" means a board, commission, association or other body, whether incorporated or unincorporated, all the members of which, or all the members of all board of management or board of directors of which, are appointed by an Act of the Legislature or by the Lieutenant Governor in Council;

(d) "ecological reserve" means ecological reserve as defined in *The Wilderness Areas, Ecological Reserves and Natural Areas Act*;

(e) "endangered space" means an area of land, or an area beneath the surface of land, water or atmosphere whose natural or nature-like qualities or composition are in danger of extinction, damage or simplification;

(f) "endangered species" means a species that is in danger of extinction throughout all or a significant part of its range other than a species of Class Insects which is determined by the Minister to be a pest;

(g) "habitat" means, in relation to an endangered or threatened species, an area of land, water or air that contains the natural resources on which the species depends for its life and propagation;

(h) "heritage river" means a river designated under the Canadian Heritage Rivers System;

(i) "minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;

(j) "officer" means

(i) a person appointed as an officer under *The Wildlife Act*,

(ii) a peace officer appointed under an Act of the Legislature or the Parliament of Canada, or

(iii) an officer appointed under the *Customs Act (Canada)*;

(k) "species" means a variety, race, breed, individual kind or other taxonomic type of plant or animal life and includes a population of one or more species and the eggs, larvae or other forms of developmental life of the species;

(l) "threatened species" means a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range;

(m) "wildlife group" means a group of persons that is dedicated to the protection of species that exist naturally in the wild in Alberta.

Purpose

2 The purpose of this Act is to provide

(i) a means whereby threatened and endangered species may be conserved to the greatest extent practicable, and to provide for the regeneration of such species, and

(ii) to provide a means whereby the designation of protected lands in Alberta meets specific target objectives.

Conflict with other Acts

3 Where a provision of this Act conflicts with a provision of another Act of the Legislature, this Act prevails unless the other Act expressly provides that the other Act prevails.

Application

4 This Act applies to species wherever occurring in Alberta, including species occurring on private lands; and spaces on Public land unless specifically stated in the regulations.

Crown bound

5 This Act binds the Crown.

**PART II
ADMINISTRATION**

Powers and Duties
of Officer

6 (1) For the purposes of this Act, an officer has the powers and duties of an officer under *The Wildlife Act*.

(2) The protection afforded to an officer by *The Wildlife Act* or any other law extend to other persons while and to the extent that they are in the course of assisting an officer under the direction of the officer.

Ministerial
agreements

7 Subject to the approval of the Lieutenant Governor in Council, the minister may, for the protection or reintroduction of an endangered, threatened or extinct species, enter into agreements on behalf of the province and, without limiting the generality of the foregoing, may enter into an agreement with respect to

- (a) the conduct of biological investigations;
- (b) the implementation of remedial programs; and
- (c) the preparation of biological status reports on species.

Advisory
Committee

8 (1) The Lieutenant Governor in Council shall establish an advisory committee to be known as the Endangered Species and Spaces Advisory Committee.

(2) The Endangered Species and Spaces Advisory Committee shall advise the Minister as it sees fit, but, in particular shall advise on:

- (a) the conduct of biological investigations;
- (b) the implementation of remedial programs; and
- (c) the preparation of biological status reports on species, particularly those species which it believes to be endangered or threatened.

Membership of
Advisory
Committee

9(1) The Lieutenant Governor in Council shall, subject to subsection (4), appoint the members of the Endangered Species Advisory Committee.

(2) A majority of the members appointed under this section shall be professional scientists who have, in the opinion of the minister, expertise in the fields of science related to plant and animal life and ecology.

(3) Members of the Endangered Species and Spaces Advisory Committee may be paid remuneration determined by the Lieutenant Governor in Council.

10 In reporting to the Minister, the Committee shall consider the following factors with respect to a species:

(a) the present or threatened destruction, modification, or curtailment of its habitat or range;

(b) over-utilization for commercial, sporting, scientific, or educational purposes;

(c) disease or predation;

(d) the inadequacy of existing regulatory mechanisms; or

(e) other natural or manmade factors affecting its continued existence,

and similar factors with respect to spaces.

11 The Committee shall submit an annual report on its activities and the advice it has given to the Minister, who shall table it in the Legislative Assembly forthwith if it is then sitting and, if not, within 15 days of the commencement of the next sitting.

Acquisition of
property

12 (1) Where the Minister considers it necessary for the protection or reintroduction of an endangered, threatened or extinct species, or for the protection of natural ecosystems or unique natural features, the Minister may, on behalf of the Crown in right of Alberta, acquire real property by purchase, lease or expropriation.

(2) Where real property is acquired by expropriation under subsection (1), the expropriation and compensation payable to the owner of the real property are governed by *The Expropriation Act*.

**PART III
DESIGNATION OF AND ACTIVITIES
RELATED TO ENDANGERED SPECIES**

Endangered
species

13 Where the Committee advises the Minister that a species is either endangered or threatened the Minister shall:

(a) by regulation declare the species an endangered or threatened species; or

(b) if he decides not to accept the advice of the Committee, advise the Committee, in writing, of his decision and the reasons therefor.

Regulations

14 (1) The Minister may make regulations

(a) respecting the preservation and survival of the habitat of an endangered or threatened species;

(b) prohibiting or restricting the entry by any person into an area of the province specified in the regulation where an endangered or threatened species is or is likely to be located; and

(c) respecting any matter necessary or advisable to carry out the intent and purpose of this Act.

Scope of
regulations

(2) Any regulation may be made to apply generally or to particular species, or to particular periods of time or areas of Alberta.

Prohibition

15 (1) No person shall

(a) kill, injure, possess, disturb or interfere with an endangered or threatened species;

(b) destroy, disturb or interfere with the habitat of an endangered or threatened species; or

(c) damage, destroy, obstruct or remove a natural resource on which a threatened or endangered species depends for its life and propagation.

(2) Subsection (1) does not apply to a person

(a) who acts under the authority of a permit issued by the Minister under section 16;

(b) who is exempted from the application of this Act under section 17; or

(c) who acts under the authority of an approval issued under *The Environmental Protection and Enhancement Act*, if the Minister is satisfied with respect to the matters described in clauses 17(1)(a) and (b).

Permits by
Minister

16 (1) A person may apply to the Minister for, and the Minister may issue to the person, a permit authorizing the person to collect and hold alive members of endangered or threatened species for scientific purposes or for purposes related to the protection or reintroduction of an endangered, threatened or extinct species.

(2) A permit under subsection (1) may be issued for a term and subject to such conditions as the Minister considers appropriate.

(3) The Minister may suspend, cancel or revoke a permit issued under subsection (1).

Exemption of
developments

17 (1) The Minister may exempt an existing or proposed activity from the application of this Act if the Minister is satisfied that

(a) protection and preservation of the species or the habitat is assured; or

(b) an environmental impact assessment has established that the development can proceed without harmful effect upon an endangered or threatened species.

(2) *The Regulations Act* does not apply to an exemption under subsection (1).

**PART IV
DESIGNATIONS OF AND ACTIVITIES RELATED TO
ENDANGERED SPECIES**

18 Where the Committee advises the Minister that a specific endangered space or heritage river is worthy of designation and protection the Minister shall:

(a) by regulation declare the area an endangered space, heritage river or area of other protected status; or

(b) if he decides not to accept the advice of the Committee, advise the Committee, in writing, of his decision and the reasons therefor.

19 The Minister may make regulations:

(a) respecting the protection of a designated endangered space, heritage river or protected area as named under 18(a) above,

(b) prohibiting or restricting the entry by and person into an area of the province specified in the regulation, or activities within or near the designated area,

(c) respecting any matter necessary or advisable to carry out the intent and purpose of this Act.

20 The Lieutenant Governor in Council shall ensure that, no later than January 1, 1997,

(a) at least one ecological reserve as established under the Wilderness Areas, Ecological Reserves and Natural Areas Act) representing each of the 17 natural regions of Alberta has been established;

(b) each ecological reserve is of adequate size to ensure

(i) that it represents the diversity of the indigenous natural ecosystem of which it is a viable example, and

(ii) that the diversity and viability of species it supports is maintained.

21 The Government of Alberta shall enter into an agreement to join the Canadian Heritage Rivers System and appoint a representative to the Canadian Heritage Rivers System Board.

22 The Government of Alberta shall, by January 1, 1997, designate two protected areas of an area greater than 200 square kilometres under this Part.

23 The Government of Alberta shall ensure that by January 1,

1997, no less than 12% of the area of the Province is encompassed by designations under this Act, the *Provincial Parks Act*, *The Wilderness Areas, Ecological Reserves and Natural Areas Act*, and *The National Parks Act (Canada)*, as land protected in its natural state for future generations.

PART V INVESTIGATIONS AND INSPECTIONS

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| Establishment of programs by Minister | <p>24 The Minister may establish programs to promote the reporting of</p> <ul style="list-style-type: none">(a) acts or omissions that have a negative impact on any threatened or endangered species;(b) offences under this Act. |
| Application for investigation | <p>25 (1) Any 2 persons ordinarily resident in Canada who are not less than 18 years of age may apply to the Minister to have a species declared endangered, threatened or extinct.</p> <p>(2) The application shall be accompanied by a solemn declaration</p> <ul style="list-style-type: none">(a) stating the names and addresses of the applicants,(b) containing a concise statement of the information supporting the application. |
| Investigation on receipt of application | <p>26 (1) On receipt of an application under section 25, the Minister shall acknowledge receipt of the application and refer the matter to the Committee for investigation.</p> <p>(2) Within 90 days after receiving the application, the Minister shall report to the applicant on the progress of the investigation and the action, if any, proposed to be taken in respect of the alleged offence.</p> <p>(3) The Minister or the Committee may discontinue an investigation if it appears that the matter does not require further investigation.</p> <p>(4) Where an investigation is discontinued the Minister or the Committee shall,</p> |

(a) prepare a statement in writing stating the reasons for its discontinuance, and

(b) send a copy of the statement to the applicants and to any person whose conduct was investigated.

**PART VI
OFFENCES**

Offence and
Penalty

27 (1) A person who contravenes subsection 15(1) is guilty of an offence and is liable on summary conviction,

(a) where the person is an individual and the offence relates to

(i) an endangered species, to a fine of not more than \$5,000, or to imprisonment for a term not exceeding six months or both;

(ii) a threatened species, to a fine of not more than \$1,000, or to imprisonment for a term not exceeding three months or both; or

(b) where the person is a corporation, to a fine of not more than \$50,000.

(2) A person who contravenes a regulation made under this Act is guilty of an offence and is liable on summary conviction

(a) where the person is an individual, to a fine of not more than \$500, and to imprisonment for a term of not more than three months or both; and

(b) where the person is a corporation, to a fine of not more than \$5,000.

(3) Where a person is found liable for a subsequent offence,

(a) the maximum fine and maximum term of imprisonment, respectively,

(i) under subsection (1)(a)(i), are \$10,000, and one year,

(ii) under subsection (1)(a)(ii), are \$2,000, and six months,

(iii) under subsection (2), are \$1,000, and six months; and

(b) the maximum fine under clause (1)(b) is \$100,000.

Offence by
director of
corporation

(4) An officer, director or agent of a corporation who directs, authorizes, assents to, acquiesces in or participates in the commission of an offence is a party to and is guilty of the offence and is liable on conviction to the punishment set out in subsections (1), (2) and (3).

Continuing offence

28 Where a contravention of this Act or the regulations continues for more than one day, the offender is guilty of a separate offence for each day that the contravention continues.

PART VII MISCELLANEOUS

Coming into Force

29 This Act comes into force on Royal Assent.

30 Section 46 of *Environmental Protection and Enhancement Act* is amended by adding the following after subsection (o):

(p) a description of potential positive and negative impacts of the proposed activity upon other threatened or endangered species as defined in *The Endangered Species Act*.