

1998 BILL 237

Second Session, 24th Legislature, 47 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 237

ENDANGERED SPECIES AND HABITATS PROTECTION ACT

DR. PANNU

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 237

1998

ENDANGERED SPECIES AND HABITATS PROTECTION ACT

(Assented to _____, 1998)

Preamble

WHEREAS various native animal and plant species in their natural habitats are becoming extinct or threatened with extinction as the result of human encroachment on wildlife habitats and land related activities; and

WHEREAS these species and their natural habitats are of ecological, educational, aesthetic, historical, medical, recreational and scientific value to all Albertans; and

WHEREAS these species have intrinsic value beyond human use; and

WHEREAS our own survival is dependent on the conservation of natural eco-systems; and

WHEREAS the endangered and threatened species and habitats need to be designated and protected from further extinction; and

WHEREAS public education and participation are essential to the success of such a public policy;

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

Definitions

1(1) In this Act,

- (a) “activity” means an activity listed in the Schedule to the *Environmental Protection and Enhancement Act*;
- (b) “conservation easement” means a conservation easement granted under the *Environmental Protection and Enhancement Act*;

- (c) “Council” means the Endangered Species and Habitats Council established under section 4;
- (d) “critical habitat” means an area of land, water or air that contains the natural qualities or composition, on which any species depends for its life and propagation;
- (e) “Crown-controlled organization” means a Crown-controlled organization as defined in the *Financial Administration Act* and includes a department;
- (f) “department” means a department of the Government or the public service of Alberta established under the *Government Organization Act*;
- (g) “endangered species” means a species that is facing imminent extirpation or extinction and designated as such by the Council;
- (h) “extirpated species” means a species that no longer exists in the wild in Alberta but exists elsewhere in the wild;
- (i) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (j) “officer” means a wildlife officer appointed under the *Wildlife Act*;
- (k) “private land” means land that is not owned by the Crown in right of Alberta or of Canada or their agents;
- (l) “species” means a variety, race, breed, subspecies or geographically distinct population of animal, plant or other organism that is native to Alberta or has been present in Alberta for at least 50 years;
- (m) “substance” means any distinguishable kind of organic or inorganic matter, whether animate or inanimate, and includes
 - (i) any matter that is capable of being dispersed in the environment or being transformed in the environment into matter that is capable of being so dispersed or that is capable of causing such transformations in the environment,
 - (ii) any element or free radical,

- (iii) any combination of elements of a particular molecular identity that occurs in nature or as a result of a chemical reaction,
 - (iv) complex combinations of different molecules that originate in nature or are the result of chemical reactions but that could not practicably be formed simply combining individual constituents,
 - (v) any mixture that is a combination of substances and does not itself produce a substance that is different from substances that were combined,
 - (vi) any manufactured item that is formed into a specific physical shape or design during manufacture and has, for its final use, a function or functions dependent in whole or in part on its shape or design, and
 - (vii) any animate matter that is, or any complex mixtures of different molecules that are, contained in effluents, emissions or wastes that result from any work, undertaking or activity.
- (n) “threatened species” means a species that is likely to become an endangered species if nothing is done to reverse the factors leading to its extirpation or extinction and is designated as such by the Council.

Application of Act

2(1) This Act applies in respect of all species and habitats wherever occurring in Alberta, including private and Crown land.

(2) Where a provision of this Act conflicts with a provision of another Act, except the *Alberta Bill of Rights*, the *Human Rights, Citizenship and Multiculturalism Act* and the *Freedom of Information and Protection of Privacy Act*, this Act prevails.

Crown bound

3 This Act is binding on the Crown in right of Alberta.

PART I

ENDANGERED SPECIES AND HABITATS COUNCIL

Composition of Council

4(1) There is hereby established a Council to be known as the Endangered Species and Habitats Council.

(2) The Council shall be composed of at least 9 members appointed by the Lieutenant Governor in Council.

(3) A majority of the members appointed to the Council shall be

- (a) biologists,
- (b) conservationists,
- (c) historic preservationists,
- (d) ecological sociologists, or
- (e) economists.

(4) The remaining members of the Council shall be native elders and other members of the public at large.

(5) The Lieutenant Governor in Council shall advertise for nominations when vacancies arise on the Council and shall only appoint individuals who have been nominated.

(6) The Lieutenant Governor in Council shall appoint one member of the Council as Chairperson for a term not to exceed 5 years.

(7) The Chairperson may designate a member of the Council to be acting Chairperson when the Chairperson is temporarily unable to act or is temporarily absent.

(8) Members of the Council, other than the Chairperson, shall be appointed for terms not exceeding 3 years.

(9) Members of the Council, including the Chairperson, may be reappointed for additional terms.

(10) The Lieutenant Governor in Council may prescribe expenses, allowances and remuneration for members of the Council.

Business of
Council

5(1) The Council shall meet at least 3 times a year at times and places specified by the Chairperson.

(2) A quorum of the Council shall be the Chairperson plus 50 per cent of the members.

(3) A decision of a majority of the members of the Council present and constituting a quorum shall be the decision of the Council, but if there is a tie vote, the Chairperson may cast a second vote.

(4) Where a member has a direct or indirect monetary interest of any description in any matters under this Act, the person shall not participate in the activities of the Council related to that matter.

Powers of Council

6(1) The Council shall

- (a) establish a list of endangered and threatened species based upon available scientific information;
- (b) identify habitats that are critical to the survival of an endangered or threatened species;
- (c) monitor, review and revise the list of endangered and threatened species and critical habitats as needed;
- (d) conduct any reviews, inquiries, investigations or commission any studies it deems necessary;
- (e) consult with landowners, environmentalists and other groups in developing recovery strategies, designations and recommendations respecting
 - (i) the status of endangered or threatened species,
 - (ii) the preservation and survival of the critical habitats,
 - (iii) recovery strategies, and
 - (iv) boundaries of critical habitats required to conserve, restore or reintroduce the endangered or threatened species.

(2) By January 1, 2000, the Council must conduct a review of all endangered and threatened species and all critical habitats in Alberta and every 5 years thereafter.

Designation

7 In designating an endangered or threatened species or a critical habitat, the Council shall consider the following factors:

- (a) the present or threatened destruction, modification, or curtailment of the species' habitat;
- (b) over-utilization of the species for commercial, sporting, scientific or educational purposes;
- (c) disease or predation;
- (d) the adequacy of existing regulatory mechanisms;

- (e) the extent to which approval of projects by the Government or a Crown-controlled organization has or would be likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitats necessary for the continued existence of the species;
- (f) other natural or human factors affecting its continued existence;
- (g) the use or release of substances which may affect the health of endangered and threatened species and critical habitats;
- (h) any other factors the Council considers relevant.

Annual Report **8(1)** The Council shall submit an annual report on its activities including any advice or recommendations provided to the Minister.

(2) The Minister shall table the annual report in the Legislative Assembly forthwith if it is then sitting and, if not, within 15 days of the commencement of the next sitting.

Liability **9** Neither the members of the Council nor any person employed by the Council is liable for anything done in good faith while acting in the course of their duties or employment under this Act.

Permits by Council **10(1)** Upon application, the Council may issue to a person a permit authorizing the person to collect and hold alive endangered or threatened species for scientific purposes or for purposes related to the protection or reintroduction of an endangered or threatened species.

(2) A permit under subsection (1) may be issued for a specific term or subject to such conditions the Council in its sole discretion considers necessary.

(3) The Council may, at any time, suspend, cancel or revoke a permit issued under subsection (1).

(4) Any decision or action by the Council under this section is final and shall not be reviewed by any court.

PART II

RECOVERY STRATEGIES

Recovery
strategies

11(1) The Council shall identify endangered or threatened species for which recovery strategies need to be developed and implemented.

(2) In determining whether a recovery strategy should be recommended to the Minister, the Council shall consider

- (a) the intensity and immediacy of the threat facing the species and its habitats,
- (b) whether the recovery strategy would provide benefits for multiple species,
- (c) the effect upon landowners and other persons of designating a species as threatened or endangered,
- (d) the public and private costs of achieving recovery, and
- (e) the need to use recovery strategies for different species under different circumstances and in different regions of Alberta.

(3) On receiving a recovery strategy recommendation from the Council, the Minister shall prepare a recovery strategy proposal and submit the proposal to the Lieutenant Governor in Council for review and approval within 12 months of receiving the Council's recommendation.

(4) Upon approval by the Lieutenant Governor in Council, the Minister shall forthwith implement the recovery strategy, and report annually to the Legislative Assembly on the progress of each strategy.

(5) Where the Minister considers it necessarily incidental to the implementation of a recovery strategy, the Minister may recommend that the appropriate Minister acquire real property by purchase, lease or expropriation under the *Expropriation Act*, at fair market value.

(6) The Minister may negotiate protective measures including renting or leasing land, purchasing conservation easements, development rights, compensating landowners and municipalities through tax exemptions or special grants.

(7) The Minister may, for the protection, conservation, recovery or reintroduction of an endangered or threatened species, or maintenance of a critical habitat, enter into agreements on behalf of the Government with the Government of Canada, other provincial governments, municipal governments or First Nations in respect of

- (a) the conduct of biological investigations,
- (b) joint studies,
- (c) the preparation of status reports on endangered or threatened species or critical habitats, or
- (d) the implementation of any recovery strategy.

Development

12(1) Where any recovery strategy has been approved to conserve, restore or reintroduce an endangered or threatened species or critical habitat, every decision by a Crown-controlled organization or municipal government must be consistent with such strategy and must be considered in any land development or planning process.

(2) A permit, approval or other authorization granted pursuant to section 11 shall prevail over any other statutory plan, land use bylaw, subdivision decision or development decision by a subdivision authority, subdivision and development appeal board or the Municipal Government Board.

PART III

PUBLIC PARTICIPATION

Designation requests

13(1) Any adult ordinarily resident in Alberta may request the Minister to have a species designated as endangered or threatened or a habitat declared as critical.

(2) An application under subsection (1) shall be accompanied by a solemn declaration stating the name and address of the applicant and containing a concise statement of the information supporting the application.

(3) Upon receipt of an application under subsection (1), the Minister shall notify the applicant of its receipt and immediately refer the matter to the Council for determination.

(4) Within 90 days after receiving the application for designation, the Minister shall report to the applicant on the progress of designation.

(5) The Council may discontinue any action on designation if it appears that the matter does not warrant further action.

(6) Where the action on designation is discontinued the Council shall report in writing the reasons for its discontinuance and the Minister shall send a copy of the report to the applicant and make public such ruling and documentation.

(7) The Minister shall make public any decision on a designation requested under subsection (1) within 20 days of the date on which the applicant was notified.

PART IV ENFORCEMENT

Reporting of
offences

14(1) Any person, with or without disclosing their personal identity, may report the commission or likely commission of an offence under this Act.

(2) Any person reporting a violation or an alleged violation of this Act in good faith shall not be subject to any civil action or adverse action by an employer.

(3) On receipt of information respecting the commission or alleged commission of an offence, the Minister shall acknowledge receipt of the information and proceed with the investigation of the alleged offence.

(4) Within 90 days after receiving information under subsection (1), the Minister shall report to the informant, if the informant has provided a name, on the progress of investigation into the alleged offence and the action, if any, proposed to be taken.

(5) The Minister may discontinue any action or investigation if it appears that the matter does not warrant further investigation.

(6) Where the investigation is discontinued the Minister shall report in writing to the informant, if the informant has provided a name, stating the reasons for its discontinuance and make public such ruling and documentation.

Proceedings
against
Minister

15 A person who has requested the Minister to investigate an alleged violation under this Act may bring an action in the Court of Queen's Bench to compel the Minister to take an action if the Minister has decided not to conduct an investigation or has not acted on the Council designation of an endangered or threatened species or critical habitat.

Application to
the Court of
Queen's
Bench

16(1) Where on application by originating notice to the Court of Queen's Bench, it appears to the Court that a person has done, is doing or is about to do anything that constitutes or is directed toward a contravention of this Act or the regulations, the Court may order any person named in the application

- (a) to refrain from doing that thing, or
- (b) to do anything that in the opinion of the Court may prevent the contravention of this Act or the regulations.

(2) In an order under this section the Court may include provisions

- (a) for the prevention, reduction or elimination of the likely risk or harm to a threatened or endangered species or critical habitat, and
- (b) to assist in the recovery of the threatened or endangered species or the critical habitat involved.

(3) As part of its order under this section, the Court may order that the defendant pay costs or damages to any person or the Crown.

(4) An action under this section may be settled or discontinued only with the approval of the Court on terms it considers appropriate.

Proceedings

17(1) An action under section 15 or 16 may be brought within 2 years of the occurrence of the alleged offence, violation or act or omission by the Minister.

(2) In order to provide fair and equitable defence of public interest, the Court may allow any person to intervene in an action under section 15 or 16.

Application of
Wildlife Act

18 Sections 64 to 85 of the *Wildlife Act* apply, with all necessary modifications, with respect to

- (a) the powers of officers,
- (b) enforcement of this Act, and
- (c) evidence in proceedings under this Act.

PART V
REGULATIONS

- Regulations **19(1)** Where the Council recommends to the Minister that a species is endangered or threatened or that a habitat is critical, the Minister shall by regulation
- (a) declare the designated species and habitats endangered or threatened,
 - (b) regulate land use activity,
 - (c) restrict entry into critical habitats, or
 - (d) take other necessary action to carry out the intent and purpose of the Act.
- (2)** Any regulation may apply generally or to specific species, or to specific periods of time or areas of Alberta.

PART VI
OFFENCES AND PENALTIES

- Offences **20(1)** No person shall
- (a) kill, injure, possess, disturb or interfere with an endangered or threatened species;
 - (b) destroy, disturb or damage a critical habitat of an endangered or threatened species;
 - (c) sell, buy, barter, solicit, traffic or trade in an endangered species or offer to do so.
- (2)** Subsection (1) does not apply to a person who acts under the authority of a permit issued by the Council under section 10.
- (3)** A prosecution under this section shall not be brought more than 2 years after the alleged offence took place.

- Penalties **21(1)** A person who contravenes section 20(1) or a regulation made under section 19 is guilty of an offence and is liable

- (a) where the person is an individual, to a fine of not more than \$50 000 or to imprisonment for a term not exceeding 1 year or both, or
- (b) where the person is a corporation, to a fine of not more than \$500 000.

(2) Where a person is found guilty of a second or subsequent offence

- (a) where the person is an individual to fine of not more than \$100 000 and imprisonment of 2 years, or both, or
- (b) where the person is a corporation to a fine of \$1 000 000.

Continuing offences

22 Every person who is guilty of an offence under this Act is liable on conviction for each day or part of a day on which the offence occurs or continues.

Liability of directors and officers

23 Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted for or convicted of the offence.

PART VII

TRANSITIONAL

Application to decisions of Endangered Species Conservation Committee

24(1) Any action taken by the Endangered Species Conservation Committee under section 9.1 of the *Wildlife Act* continues after the coming into force of subsection (2) as if it was a recommendation or recovery strategy made under this Act.

(2) Section 9.1 of the *Wildlife Act* is repealed one year after the date this Act receives Royal Assent.