

CANADA WILDLIFE ACT REFORM

Introduction

Environment Canada manages a network of protected areas comprised of 92 Migratory Bird Sanctuaries (MBSs) and 54 National Wildlife Areas (NWAs) with a total area of over 12 million hectares.

Currently, these federal protected areas are inadequately protected by law against exploration for, and exploitation of, subsurface minerals, oil and gas. For example, a major natural gas project to exploit natural gas resources in Suffield National Wildlife Area was subject to federal panel review that identified significant adverse environmental effects; still, the federal government had authority to issue a permit for the project but ultimately decided not to do so.

Legislative Overview

The 1917 *Migratory Birds Convention Act* provides authority for the establishment of MBSs, while the 1973 *Canada Wildlife Act* provides authority to establish NWAs. The *Migratory Birds Convention Act* provides limited protection for wildlife habitat in MBSs, prohibiting disturbance of migratory birds, their eggs, and their nests. The *Canada Wildlife Act* provides strong protection of wildlife and wildlife habitat for the purposes of conservation, research, and/or interpretation. NWAs are intended to conserve essential habitats for migratory birds and other wildlife species, especially endangered wildlife and may also provide opportunities for public education and research. Hunting, fishing, and conducting agricultural, commercial, industrial, or recreational activities are prohibited except as permitted under the Act.

Proposed Legislative and Regulatory Reforms

The following legislative and regulatory reforms are proposed as alternative options, with amendment of the *Canada Wildlife Act* representing the preferred option.

- **Amend the Canada Wildlife Act to irrevocably prohibit industrial activities in NWAs.** A section listing “irrevocable prohibitions” could be added to the act. This would very clearly distinguish these from the “general prohibitions” in the regulations. The discretionary authority of the regulations (sections 3(2) and 4) would not apply to these new irrevocable prohibitions.
- **Amend the Wildlife Area Regulations to add an irrevocable prohibition of industrial activities in all NWAs.** A new section could be added listing “irrevocable prohibitions” which would not be subject to the discretionary authority of sections 3(2) or 4, and therefore could not be permitted under any conditions. In this respect these would be distinct from the “general prohibitions” currently listed in section 3(1). Existing industrial activities at CFB Suffield NWA and other sites could be grandfathered, provided monitoring and impact

avoidance measures are included in the management plans. Such measures should ensure that existing industrial activities do not interfere with the conservation of wildlife over time. For new NWAs south of 60°, Environment Canada should enter in a Memorandum of Understanding with the appropriate provincial government to ensure that provincially held subsurface resource rights are not developed within an NWA. Last Mountain Lake NWA provides a precedent for this measure

- **Limit permissible activities for new NWAs as they are scheduled.** The establishment of an NWA requires a description in Schedule 1 of the Wildlife Area Regulations and so an amendment to that regulation is required. At the time of amendment one or more new sections could be added to the regulation specifying activities that are consistent or inconsistent with the conservation of wildlife in the new NWA. There is precedent for this in the Wildlife Area Regulations, which lists specific permitting conditions for hunting in the Cap Tourmente NWA. Adding such provisions to the Regulation gives them the force of law, and thus avoids the problem of ‘fettering’ discretion because they limit that discretion by law. For new NWAs south of 60°, Environment Canada should enter in a Memorandum of Understanding with the appropriate provincial government to ensure that provincially held subsurface resource rights are not developed within an NWA. A precedent for this exists for the Last Mountain Lake NWA in Saskatchewan.