



Protected Areas

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Overview

- Introduction
- Jurisdiction over Protected Areas
- Provincial Management
- Federal Management
- Which Protection Option?






What is a Protected Area?

“A protected area is a clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long term conservation of nature with associated ecosystem services and cultural values.”

(International Union for the Conservation of Nature)





Why do we create protected areas?

- Art Gallery: scenic beauty
- Zoo: watch wildlife
- Playground: recreation
- Movie theatre: escape from day to day
- Cathedral: spiritual reasons
- Factory: make money from tourism





Why do we create Protected Areas?

- Museum: preserve the landscape
- Bank: “ecological capital” of species, plants
- Hospital: help maintain healthy ecosystems
- Laboratory: for scientific research and study of nature
- Schoolroom: to educate





Protected Areas in NB

- About 3.5% of the land base (2007): National Parks, PNA's and Provincial Parks
- Previous government's stated goal was "between 6 and 8%" of land base
- By contrast, environmental community has called for doubling of MPA's, and tripling of terrestrial PA's
- UN Target is 12%, but many scientists suggest much higher is needed





Jurisdiction over Protected Areas

- Land:
 - Provincial: private lands and provincial crown lands and foreshore (down to mean low water mark): includes inter-tidal zone
 - Federal:
 - Federal Crown Lands: military bases, national parks, airports, etc.
 - “Lands Reserved for Indians”
 - Areas of “Inter-Provincial, National or International Concern”: species at risk, migratory birds, etc.





Jurisdiction over Protected Areas

- Land (cont'd)
 - Aboriginal:
 - Reserves
 - Traditional Territory: where there are credible rights or title claims, will trigger duty to consult and accommodate: Aboriginal peoples should be engaged in the process of creation of protected areas





Jurisdiction over Protected Areas

- Ocean:
 - Federal: territorial sea, contiguous zone and EEZ (anything not provincial waters out to boundary of EEZ)
 - Provincial: Provincial Waters: harbours, bays, estuaries, etc.; “between the jaws of land” and anything explicitly included in boundaries of province at time of confederation





Jurisdiction over Protected Areas

- Ocean (cont'd):
 - Aboriginal:
 - may have rights and title in seabed and foreshore
 - Again, Aboriginal peoples should be engaged in process of development of marine protected areas.
- The “Gap”: no one level of government has exclusive jurisdiction and management of protected areas





Provincial Management

- Department of Natural Resources:
 - Protected Natural Areas (*PNA Act & Regulations*)
 - Wildlife Refuges and Wildlife Management Areas (WMA's) (*Fish and Wildlife Act & Regulations*)
 - Conservation Easements (*Conservation Easements Act*)
- Department of Tourism and Parks and
Departments of Natural Resources
 - Provincial Parks (*Parks Act & Regulations*)





Protected Natural Areas

- 4 Class 1 Areas, 57 Class II Areas
 - 2.1% of NB's land base
- *Protected Natural Areas Act & Regulations*
 - Purpose: (s. 3)
 - protect the biological diversity of fauna and flora within the Province and its relationship to the environment
 - provide opportunities for public access for outdoor recreation, education activities and scientific research
 - Established by Cabinet by Regulation (s. 5)
 - Can be established on Crown lands, or private land with consent of every person with proprietary interest (s. 5)





Protected Natural Areas

- PNA Act and Regs
 - Class I Areas: no person shall enter or carry on any activity unless allowed by Act and Regs (s. 11)
 - Class II Areas:
 - Prohibited Activities (s. 12)
 - Permitted Activities (s. 6 of Regs)
 - Certain people exempt from s. 11 and s. 12 (s. 13)
 - Minister can authorize and/or permit things not allowed in s. 11 and s. 12 for some purposes (s. 14 & 15)





Protected Natural Areas

- PNA Act and Regs
 - Does not affect existing rights (s. 22)
 - Regs create Provincial Advisory Committee and Scientific Advisory Committee; Minister can create Local Advisory Committee for each PNA





Fish and Wildlife Act

- No Purpose Clause
- Province owns wildlife and fish (s. 3(1))
- Three designations:
 - Wildlife Refuge:
 - WMA:
 - Wildlife Management Zone:
- All created by Cabinet via regulation: can be on “any land” in the Province
 - Crown Lands include water
 - Land includes water (s. 1(1), Regulations)





Fish and Wildlife Act

- Offences:
 - Loaded or discharging firearm in a refuge (s. 40)
 - Hunting, trapping or snaring wildlife in refuge without permission of the Minister (s. 45)
- *Wildlife Refuges and WMA Regulation:*
 - Only conservation officer can have firearm, trapping or snaring device in refuge, unless properly secured or transported (s. 5)
 - Restrictions on when you can hunt, trap and snare in a WMA (s. 6 and 7):





Conservation Easements Act

- Voluntary agreement between private landowner that gives holder rights and privileges that relate to purpose (s. 2(1)(a))
- Can impose positive or negative obligations on parties and future landowners (s. 2(1)(b))
- Holders (s. 5)
 - federal, provincial, municipal government
 - Non-profit with certain purposes
 - Prescribes persons or bodies





Conservation Easements Act

- Can be for stated period or perpetuity (s. 2(2))
- “Runs with land”: must be registered (s. 6)





Parks Act

- Purpose:
 - dedicated to the people of the Province and others who may use them for their healthful enjoyment and education, and shall be maintained for the benefit of future generations
- Created by Cabinet, administered by Department of Tourism and Parks
- 16 Parks, 0.7% of land base





Parks Act

- Prohibited Activities:
 - private mining and quarrying (s. 15)
 - causing damage to a park, e.g. cut/remove flora without permission of Minister (s.3 of Regs)
 - hunting and trapping of wildlife (s.14, Regs)
 - Loaded or discharging firearm in a park; no unloaded firearm unless properly secured (s. 16)
 - Private cutting and removal of timber in all but 3 parks (s. 17)
 - removal of sand or gravel (s.18, Regs)





Federal Management

- Ocean
 - DFO: Marine Protected Areas (*Oceans Act*)
 - Environment Canada:
 - Parks Canada: National Marine Conservation Areas and Marine Parks
 - Canadian Wildlife Service: Marine Wildlife Areas (*Canada Wildlife Act*)
- Land
 - Parks Canada: Canada National Parks Act
 - Canadian Wildlife Service
 - National Wildlife Areas (*Canada Wildlife Act*)
 - Migratory Bird Sanctuaries: (*Migratory Bird Convention Act*)





Marine Protected Areas

- Oceans Act: Minister (DFO) will lead development of a national system of MPAs (s. 35)
- Protected for:
 - Conservation of “fishery resources”
 - Protection of endangered/threatened species, habitats, areas of high biodiversity or biological productivity
 - Regulations can include zoning and prohibitions
- Musquash Estuary MPA
 - Zone 1, 2A, 2B and 3:





Marine Wildlife Areas

- Canada Wildlife Act: administered by CWS
- Cabinet can establish marine areas in Canada's internal waters, territorial sea or EEZ (s. 4.1)
- Act not detailed; regulations can be
- No MWA's as yet: sites under consideration





National Marine Conservation Areas

- NMCA Act: Administered by Parks Canada
- Purpose: protecting/conserving representative marine areas for benefit, education and enjoyment of people (s. 4(1))
- Zoning (s. 4(4))
- Prohibitions:
 - Exploration/exploitation of hydrocarbons, minerals, etc.
 - Cannot dispose of substance except with permit
- Can make regulations





National Parks

- Canada National Parks Act and Regulations
- 2 in NB: only 0.6% of land base
- Parks are “dedicated to the people of Canada for their benefit, education and enjoyment”
- Ecological integrity is the “first priority”
 - does not mean it is the sole priority or determinative
(*CPAWS v. Canada (Minister of Heritage)*)
- Zoning, with varying degrees of restrictions
- general restrictions, but broad permitting authority
- Generally land-based, but some coastal





National Wildlife Areas

- *Canadian Wildlife Act and Wildlife Area Regs*
- 5 in NB: mainly coastal areas: varying sizes
- Purpose: conserve essential and unique habitats while managing human activity
- Prohibitions (regulations) include:
 - Hunting and fishing
 - destroy or remove a plant, or animal, nest, egg, soil etc.
 - Agricultural, commercial or industrial activity
 - Recreational activities and operating a conveyance
- Minister can allow prohibited activities





Migratory Bird Sanctuaries

- Under Migratory Birds Convention (with US) and Act and Regulations
- Can be on land or Ocean: often coastal
- 3 in NB, all in coastal areas
- Cannot carry on activity harmful to migratory birds or eggs, nests or habitat of migratory birds, except under authority of a permit (s. 8)
- permit is issued by Minister if federal land, province if provincial





Species At Risk

- *SARA*: does not create protected areas in and of itself, but enhances protection
- Cannot do the following to listed species:
 - destruction of critical habitat
 - killing, harming, harassing, capturing or taking
 - damaging or destroying the residence or critical habitat
- Applies on federal lands; Minister can extend to other lands if not adequately protected by province
- Protects aquatic species and migratory birds even on non-federal lands





Enforcement Options

- Most of the Acts have offence provisions:
 - may be able to trigger investigation/prosecution by contacting department responsible
 - Private prosecution?
- Public Trust Doctrine?
- Judicial review
- Petition to Commissioner on Environment and Sustainable Development





Which Protection Option?

- Some Considerations:
 - Level of government: jurisdiction
 - Who owns the land? Public or private?
 - Government department:
 - Political will to create, manage and enforce
 - History/reputation in area
 - What are we trying to protect/prevent?
 - What protection does that designation provide?
 - What are the Competing or Traditional uses?
 - Wishes of local community





Which Protection Option?

- Will often involve more than one level of government
- May require or desire multiple or overlapping tools
- Designation can be a lengthy process: can be helpful to work with groups with experience in this area





Conclusion

- Any questions?

