

BILL 28**Species at Risk Act**

Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

DEFINITIONS AND INTERPRETATION**Definitions**

1 The following definitions apply in this Act.

“action plan” means an action plan referred to in section 23. (*plan d’action*)

“conservation officer” means a conservation officer appointed under subsection 7(1) of the *Fish and Wildlife Act* or an *ex officio* conservation officer referred to in subsection 7(3) of that Act. (*agent de conservation*)

“COSEWIC” means the Committee on the Status of Endangered Wildlife in Canada established under the *Species at Risk Act* (Canada). (*COSEPAC*)

“COSSAR” means the Committee on the Status of Species at Risk established under section 8. (*COSEP*)

“endangered species” means a wildlife species that is facing imminent extirpation from the Province or extinction. (*espèce en voie de disparition*)

“extirpated species” means a wildlife species that no longer exists in the wild in the Province, but exists elsewhere in the wild. (*espèce disparue*)

“habitat” means an area, site or structure that provides conditions suitable for an individual of a wildlife species to carry out any of its life processes, including breeding, nesting, denning, spawning, rearing, staging, migrating, wintering, feeding or hibernating. (*habitat*)

“individual” means an individual of a wildlife species, whether living or dead and whether or not the individual is bred or reared in captivity, at any developmental stage, and includes larvae, embryos, eggs, sperm, seeds, pollen, spores and asexual propagules. (*individu*)

“IUCN” means the International Union for Conservation of Nature and Natural Resources, an international organization with headquarters at Gland, Switzerland. (*UICN*)

“judge” means a judge of the Provincial Court of New Brunswick. (*juge*)

“land registration office” means a registry office established under the *Registry Act* or a land titles office established under the *Land Titles Act*. (*bureau d’enregistrement des biens-fonds*)

“List” means the List of Species at Risk as set out in the regulations. (*Liste*)

“listed” means listed on the List, except when the context refers to the List under the *Species at Risk Act* (Canada). (*inscrire*)

“management plan” means a plan for the conservation of a species of special concern prepared or adopted by the Minister under section 20. (*plan de gestion*)

“Minister” means the Minister of Natural Resources and includes any person designated by the Minister to act on the Minister’s behalf. (*ministre*)

“protection assessment” means a protection assessment undertaken under section 25 with respect to a wildlife species listed as an extirpated species, an endangered species or a threatened species. (*évaluation de protection*)

“protection order” means a written order issued by the Minister under subsection 31(1). (*arrêté de protection*)

“public registry” means the registry established by the Minister under section 67. (*registre public*)

“recovery habitat” means habitat that is necessary for the recovery of a wildlife species, but that is not currently or regularly occupied by any individual of that wildlife species. (*habitat de rétablissement*)

“recovery strategy” means a strategy for the recovery of a wildlife species that is listed as an extirpated species, endangered species or threatened species prepared or adopted by the Minister under section 21. (*programme de rétablissement*)

“species at risk” means an extirpated species, an endangered species, a threatened species or a species of special concern. (*espèce en péril*)

“species of special concern” means a wildlife species that may become a threatened species or an endangered species because of a combination of biological characteristics and identified threats.

(espèce préoccupante)

“status report” means a document provided by the Minister under section 16. *(rapport de situation)*

“stop order” means a written order issued by a conservation officer under subsection 45(1). *(ordre de suspension)*

“survival habitat” means habitat that is currently or regularly occupied by a wildlife species. *(habitat de survie)*

“threatened species” means a wildlife species that is likely to become an endangered species if nothing is done to reverse the factors leading to its extirpation. *(espèce menacée)*

“vehicle” includes an aircraft, boat, skiff, canoe or vessel. *(véhicule)*

“wildlife species” means a wild species, subspecies, variety or geographically or genetically distinct population of animal, plant or other organism, other than a bacterium or virus, that *(espèce sauvage)*

(a) is native to the Province, or

(b) has extended its range into the Province without human intervention and has been present in the Province for at least 50 years.

“Wildlife Trust Fund” means the Wildlife Trust Fund established under New Brunswick Regulation 2002-6 under the *Fish and Wildlife Act*. *(Fonds en fiducie pour la faune)*

Purpose

2 The purposes of this Act are to prevent wildlife species from being extirpated from the Province, to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity and to conserve species of special concern to prevent them from becoming endangered or threatened.

Precautionary principle

3 In preparing or adopting a management plan, a recovery strategy or an action plan, and in undertaking a protection assessment, the Minister shall consider the principle that, if there is a threat of serious or irreversible damage to a wildlife species, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to avoid or minimize the threat.

Existing aboriginal or treaty rights

4 For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for the existing aboriginal or treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the *Constitution Act, 1982*.

Conflict

5 Subject to section 6, if there is a conflict between this Act or a regulation under this Act and the *Protected Natural Areas Act*, the *Crown Lands and Forests Act* or any other Act or any regulations made under those Acts, whether enacted before or after the commencement of this Act, this Act or the regulation made under this Act prevails.

Exception

6 In an emergency situation related to public safety or health, nothing in this Act prevents a person from acting as authorized under any other Act.

This Act binds the Crown

7 This Act binds the Crown.

ASSESSMENT OF WILDLIFE SPECIES**Committee on the Status of Species at Risk**

8 There is established a committee called the Committee on the Status of Species at Risk.

Composition of COSSAR

9(1) COSSAR shall consist of

- (a) a minimum of five voting members appointed by the Minister, and
- (b) a Chair who is an employee in the Department of Natural Resources, appointed by the Minister, who shall not have a right to vote.

9(2) A voting member shall be appointed for a term not to exceed four years.

9(3) A voting member is eligible for reappointment for a second term not to exceed four years, but after the second term has expired he or she is not eligible for appointment until at least one year has elapsed after the expiry of the second term.

Qualifications of a member of COSSAR

10(1) The Minister shall appoint as members of COSSAR persons whom the Minister considers to have expertise that is drawn from

- (a) a scientific discipline such as ecology, conservation biology, population dynamics, taxonomy, systematics or genetics, or
- (b) aboriginal traditional knowledge of the conservation of wildlife species.

10(2) The members of COSSAR may be, but are not required to be, employed by the Government of Canada or the government of a province or territory or by an agency of the Government of Canada or of the government of a province or territory.

Independence

11 The members of COSSAR shall perform their functions in an independent manner and not as representatives of their employers or of any other person or body.

Quorum

12 A quorum for a meeting of COSSAR is a two-thirds majority of voting members.

Consensus decision-making

13 COSSAR shall make decisions on the status of a wildlife species by consensus, but in the event that a consensus cannot be reached, a majority vote of the quorum of the voting members present at the meeting constitutes the decision of COSSAR.

Remuneration and reimbursement of expenses

14 The voting members of COSSAR shall not receive any remuneration, but are entitled to be reimbursed, in accordance with the *Travel Policy* of the Board of Management, for travel and other expenses incurred by them in the performance of their duties.

Functions of COSSAR

15(1) COSSAR shall perform the following functions:

- (a) assess the biological status of each wildlife species considered by the Minister to be at risk and
 - (i) classify the wildlife species as an extirpated species, an endangered species, a threatened species or a species of special concern,
 - (ii) indicate that COSSAR does not have sufficient information to classify the wildlife species, or
 - (iii) indicate that the wildlife species is not currently at risk;
- (b) develop, adopt and periodically review criteria, adapted for the Province and based on IUCN and COSEWIC criteria, for assessing the status of wildlife species and for classifying them;
- (c) provide advice to the Minister respecting the identification and prioritization of wildlife species for assessment;
- (d) review the classification of each species at risk at least once every ten years or at any time COSSAR believes the biological status of the species at risk has changed significantly;
- (e) provide advice to the Minister on any matter related to the assessment of species at risk that COSSAR considers appropriate; and
- (f) provide advice to the Minister related to the assessment of wildlife species on any matter submitted to COSSAR by the Minister.

15(2) COSSAR shall carry out its functions using the best available information on the biological status of a wildlife species, including scientific knowledge, community knowledge and aboriginal traditional knowledge.

Assessment based on status report

16(1) COSSAR shall assess the biological status of a wildlife species based on a status report of the wildlife species provided by the Minister.

16(2) COSSAR shall determine in a preliminary manner if a status report is acceptable in terms of quality and completeness before conducting an assessment under paragraph **15(1)(a)**.

16(3) If COSSAR determines that a status report is not acceptable, COSSAR shall not provide an assessment but shall report to the Minister concerning the deficiencies of the status report.

16(4) COSSAR shall deliver to the Minister without delay any assessment made by it under paragraph **15(1)(a)** and the reasons for it.

Publication of COSSAR assessment

17(1) Within 30 days after COSSAR delivers an assessment of the biological status of a wildlife species to the Minister, the Minister shall publish a copy of it, and a copy of the status report, in the public registry.

17(2) In complying with the requirement to publish under subsection (1), the Minister may withhold as confidential and omit from the public registry any information that, in the opinion of the Minister, might compromise the conservation of a wildlife species.

17(3) If subsection (2) is inconsistent with or in conflict with a provision of the *Right to Information and Protection of Privacy Act*, subsection (2) prevails.

LISTING OF WILDLIFE SPECIES

Listing of species at risk

18(1) The Minister shall, by regulation, establish a List of Species at Risk and may amend the List.

18(2) Within 120 days after COSSAR delivers to the Minister an assessment of the biological status of a wildlife species, the Minister

(a) shall amend the List according to the classification under subparagraph **15(1)(a)(i)**, if a classification is made under that subparagraph, or

(b) may refer the matter back to COSSAR for reassessment, if the Minister has received further scientific information, community knowledge or aboriginal traditional knowledge that was not provided to COSSAR as part of the original status report.

18(3) When a wildlife species is listed, the Minister shall publish in the public registry a date by which the Minister intends to publish a management plan or recovery strategy for the wildlife species.

Emergency designation

19(1) If the Minister is of the opinion that there is an imminent threat to the survival of a wildlife species, the Minister may, by regulation, make an emergency designation of that wildlife species as an endangered species.

19(2) Before making an emergency designation, the Minister may consult with

- (a) any interdepartmental committee established by the Minister that provides advice to him or her on matters relating to wildlife species or listed wildlife species, and
- (b) the departments or agencies of the Government of Canada responsible for the administration of the *Species at Risk Act* (Canada).

19(3) An emergency designation shall contain the date on which it expires.

19(4) Without delay after making an emergency designation, the Minister shall ensure that a status report on the wildlife species that has been designated is provided to COSSAR.

19(5) COSSAR shall act without delay in determining the acceptability of a status report under section 16 and in providing an assessment under paragraph 15(1)(a).

19(6) If COSSAR's assessment states that a wildlife species is at risk, the listing process under section 18 shall be followed for that wildlife species.

19(7) If COSSAR's assessment confirms that the status of the wildlife species is endangered, the Minister may extend the emergency designation by amending the expiry date, but shall not extend it beyond 120 days after the expiry date stated in the initial designation.

19(8) If COSSAR's assessment states that the status of the wildlife species is extirpated, threatened, of special concern or not at risk or that COSSAR does not have sufficient information to determine the status of the wildlife species, the Minister shall revoke the emergency designation without delay.

19(9) Despite subsection 28(1), the prohibitions in section 28 apply in respect of a wildlife species that is designated under this section for the duration of the emergency designation.

RECOVERY PLANNING

Management plan

20(1) The Minister shall prepare a management plan for wildlife species that are listed as species of special concern.

20(2) The Minister may adopt a management plan prepared by any person, agency or body, in whole or in part, with any modifications that the Minister considers necessary, and the adoption satisfies the requirements of subsection (1).

20(3) A management plan shall identify for the conservation of the species of special concern measures that the Minister considers appropriate.

20(4) A management plan may apply to one or more wildlife species.

20(5) To the extent possible, a management plan shall be prepared in consultation with any landowners and other persons who may be directly affected by the management plan.

20(6) The Minister shall publish a management plan in the public registry without delay after it is made or adopted.

20(7) The Minister may amend a management plan and shall incorporate the amendment into the management plan as published in the public registry without delay.

Assessment re feasibility of recovery and recovery strategy

21(1) The Minister shall ensure that an assessment is conducted as to whether the recovery of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species is feasible.

21(2) The assessment may consider technical, social and economic factors in addition to biological factors.

21(3) If the assessment concludes that recovery of the wildlife species is not feasible, the Minister shall publish the conclusion, together with an explanation, in the public registry without delay.

21(4) If the assessment concludes that recovery of the wildlife species is feasible, the Minister shall prepare a recovery strategy for that wildlife species.

21(5) The Minister may adopt a recovery strategy that is prepared by any person, agency or body, in whole or in part, with any modifications that the Minister considers necessary, and the adoption satisfies the requirements of subsection (4).

Recovery strategy

22(1) A recovery strategy constitutes advice to governments, landowners and others as to the requirements that, in the opinion of the Minister, will assist in the recovery or survival of a wildlife species and shall include

- (a) a description of the wildlife species,
- (b) a description of the biophysical and functional attributes that meet the habitat needs of the wildlife species,
- (c) a description of the threats to the survival and recovery of the wildlife species and a description of the broad strategies to be taken to address those threats,
- (d) a statement of the population and distribution objectives that will assist in the recovery or survival of the wildlife species, if it is possible to formulate those objectives, and
- (e) a general description of the research and management activities that are needed to meet the objectives in paragraph (d).

22(2) If the information to identify the biophysical and functional attributes mentioned in paragraph (1)(b) is inadequate, the recovery strategy shall identify the steps required to obtain the information.

22(3) A recovery strategy may identify areas, sites or structures considered as survival habitat or recovery habitat for the wildlife species.

22(4) To the extent possible, a recovery strategy shall be prepared in consultation with any landowners and other persons who may be directly affected by the recovery strategy.

22(5) The Minister may cease preparing a recovery strategy or abandon a recovery strategy if, in the opinion of the Minister, the recovery of a wildlife species becomes infeasible.

22(6) The Minister shall publish a recovery strategy in the public registry without delay after it is made or adopted.

22(7) The Minister may amend a recovery strategy and shall incorporate the amendment into the recovery strategy as published in the public registry without delay.

Action plans

23(1) The Minister may prepare one or more action plans in response to the recovery strategy for a wildlife species or may adopt an action plan for a wildlife species that is prepared by any person, agency or body, in whole or in part, with any modifications that the Minister considers necessary.

23(2) An action plan shall contain statements of the measures to be taken by the person or body proposing the plan to address issues identified in the recovery strategy, and proposals for the timing of those measures.

23(3) The Minister shall publish an action plan prepared or adopted by the Minister in the public registry without delay after it is made or adopted.

23(4) The Minister may amend an action plan and shall incorporate the amendment into the action plan as published in the public registry without delay.

23(5) The Minister may publish in the public registry an action plan for a wildlife species that is prepared by any other person, body or agency in response to the recovery strategy for a wildlife species.

PROTECTION

Completion date for protection assessment

24 Within 90 days after publishing a recovery strategy in the public registry, the Minister shall publish in the public registry a date by which the Minister intends to have a protection assessment under section 25 completed.

Protection assessment

25(1) The Minister shall, with respect to each wildlife species listed as an extirpated species, an endangered species or a threatened species, undertake a protection assessment to determine whether the protection measures under section 28 or 29 should be applied in respect of the wildlife species.

25(2) In undertaking a protection assessment, the Minister shall have regard to the following:

- (a) the recovery strategy for the wildlife species;
- (b) the management implications for the Province;
- (c) landownership issues;
- (d) social and economic factors; and
- (e) any other matter that the Minister considers relevant to the assessment.

25(3) When undertaking a protection assessment, the Minister may consult with

- (a) any interdepartmental committee established by the Minister that provides advice to him or her on matters relating to species at risk,
- (b) the departments or agencies of the Government of Canada responsible for the administration of the *Species at Risk Act* (Canada),
- (c) aboriginal communities, and
- (d) any other interested person, agency or body.

25(4) The Minister may undertake a protection assessment of a wildlife species before a recovery strategy is completed if the Minister is of the opinion that protection measures under section 28 or 29 may be required before the recovery strategy is completed.

25(5) If a protection assessment is undertaken before a recovery strategy is completed, the Minister shall consider any information that is available to him or her regarding the requirements for recovery of the wildlife species.

25(6) Despite any other provisions of this Act, the Minister may undertake a protection assessment of a listed wildlife species at any time if the Minister has reason to believe that circumstances have changed since the last protection assessment was done or, if no protection assessment has yet been done, that there is an imminent threat to the survival of the wildlife species.

25(7) If the Minister acts under subsection (6), the Minister shall publish in the public registry the date by which the Minister intends to have the protection assessment completed.

Recommendation for prohibitions

26(1) Without delay after a protection assessment is completed, the Minister shall decide whether to recommend to the Lieutenant-Governor in Council that the prohibitions in section 28 be applied in respect of the listed wildlife species.

26(2) If the Minister decides not to recommend that the prohibitions in section 28 be applied, the Minister shall provide reasons for the decision and publish them in the public registry without delay.

Recommendation for habitat designation

27(1) Without delay after a protection assessment is completed, the Minister shall decide whether to recommend to the Lieutenant-Governor in Council that a survival habitat designation or a recovery habitat designation be made in respect of the listed wildlife species.

27(2) If the Minister decides not to recommend that a survival habitat designation or recovery habitat designation be made, the Minister shall provide reasons for the decision and publish them in the public registry without delay.

27(3) The Minister shall not make a recommendation for a recovery habitat designation on private lands unless the Minister is satisfied, based on information available to the Minister at the time, that the habitat on Crown Lands of a wildlife species listed as an extirpated species, an endangered species or a threatened species is not sufficient to meet the needs of the species.

Prohibitions

28(1) The prohibitions contained in subsections (2), (3) and (5) do not apply in respect of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species unless the regulations provide for their application.

28(2) No person shall kill, harm, harass or take any individual that is listed as an extirpated species, an endangered species or a threatened species.

28(3) No person shall possess, buy, sell or trade

(a) an individual that is listed as an extirpated species, an endangered species or a threatened species, or

(b) a part or a derivative of an individual that is listed as an extirpated species, an endangered species or a threatened species.

28(4) For the purposes of subsection (3), any animal, plant or thing that is represented to be an individual, or a part or derivative of an individual, of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species shall be deemed, in the absence of evidence to the contrary, to be such an individual or a part or derivative of such an individual.

28(5) No person shall attempt to do anything set out under subsection (2) or (3).

28(6) The prohibition regarding possession in subsection (3) does not apply to the Crown.

Habitat designation

29(1) If an area, site or structure is designated by regulation as survival habitat or recovery habitat, the area may be described by

- (a) a description or plan of the specific boundaries of the area, or
- (b) a description of the features of the area, site or structure.

29(2) The Minister shall ensure, if possible, that a description or plan mentioned in paragraph (1)(a) is filed in a form suitable for registering in the land registration office for the area in which land transactions affecting those lands may be filed.

Recovery habitat becoming occupied

30 If private lands have been designated as recovery habitat and the habitat has become occupied by a wildlife species that is listed as an extirpated species, an endangered species or a threatened species as a result of recovery activities, the lands shall not be designated as survival habitat without the written consent of the owner.

Protection order

31(1) The Minister may issue a protection order in writing to a person to stop engaging in or not to engage in an activity if the Minister has reasonable grounds to believe that, by engaging in the activity, the person would

- (a) kill, harm, harass or take an individual of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species in respect of which the prohibitions under section 28 do not apply,

(b) damage or destroy the habitat of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species if no area, site or structure has been designated by regulation as survival habitat or recovery habitat for that wildlife species, or

(c) kill, harm, harass or take an individual or damage or destroy survival habitat or recovery habitat of a wildlife species for which the Minister has received an assessment from COSSAR classifying the wildlife species as an extirpated species, an endangered species or a threatened species but which has not yet been listed.

31(2) The Minister may issue a protection order under subsection (1) only in the following circumstances:

- (a) the Minister has not completed a protection assessment in respect of the wildlife species; or
- (b) although a protection assessment has been completed, the Minister has reason to believe that the circumstances have changed since the protection assessment was done and, in the opinion of the Minister, there is an imminent threat to the survival of the wildlife species.

31(3) If the Minister issues a protection order, the Minister shall ensure that a protection assessment is completed or a new protection assessment is undertaken and completed without delay.

31(4) A person who has been served with a protection order shall comply with the protection order.

31(5) A person who has been served with a protection order may appeal the protection order to the Minister, but the initiation of an appeal does not abrogate the requirement to comply with the protection order.

31(6) Within 90 days after the date of service of a protection order, the Minister shall review the order and make a written determination confirming, amending or revoking the protection order, unless an appeal has been initiated under section 32.

31(7) The Minister shall serve a copy of the written determination on the person on whom the protection order was served.

Appeal from protection order

32(1) A person on whom a protection order has been served who wishes to appeal the order

- (a) shall, within 15 days after being served with the order or within such further time as the Minister allows, serve the Minister with a notice of appeal, setting out the particulars of the

order and the person's grounds for appeal, together with all relevant facts and an address for service within the Province, and

(b) may, within 30 days after being served with the order, serve the Minister with a written submission, setting out in detail the position of the appellant and annexing any supporting documents and other pertinent information.

32(2) Within 30 days after being served with a written submission or, if no written submission is served, after the last day on which a written submission could have been served, the Minister shall review the order appealed from and make a written determination of the matter, with reasons, confirming, amending or revoking the order.

32(3) Despite subsection (2), the Minister is not required to review the order appealed from or make a written determination until 60 days after the date of the service of the protection order.

32(4) The Minister shall serve a copy of the written determination on the person who served the notice of appeal and on all other persons who were notified by the Minister of the order appealed from.

Termination of protection order

33 If the Minister confirms or amends a protection order under subsection 31(6) or subsection 32(2), the protection order remains effective, as confirmed or amended, but expires 90 days after the date on which notice of the Minister's written determination was served under section 31 or 32, unless sooner revoked.

PERMITS

Permit to possess

34(1) Despite any prohibitions under section 28, the Minister may issue a permit to a person to kill an individual of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species, or to take or possess such an individual or any part or derivative of such an individual, if

(a) the applicant or predecessor in title legally possessed the individual, or the part or derivative of the individual, before its wildlife species was listed,

(b) the applicant is a member of a group that traditionally uses an individual, or a part or derivative of an individual, of the wildlife species for religious or ceremonial purposes, or

(c) the individual, or the part or derivative of the individual, is required for scientific research, education or species recovery.

34(2) The Minister shall not issue a permit unless, in the opinion of the Minister, there is no reasonable alternative and killing the individual or taking or possessing the individual, or the part or derivative of the individual, will not put the wildlife species at further risk.

Permit to engage in activity

35(1) Despite any prohibitions under section 28, the prohibitions in a habitat designation made under the regulations or the prohibitions in section 78, the Minister may issue a permit to a person to engage in an activity that would otherwise violate those prohibitions if the Minister is satisfied that

(a) the activity is scientific research relating to the conservation of the wildlife species and is conducted by qualified persons,

(b) the activity will benefit the wildlife species or is required to enhance its chance of survival in the wild, or

(c) the activity will not jeopardize the survival or recovery of the wildlife species and will have only an incidental impact on the wildlife species.

35(2) The Minister shall not issue a permit for an activity referred to in subsection (1) unless the Minister is satisfied that

(a) all reasonable alternatives to the activity that would reduce the impact on the wildlife species have been considered and the best solution has been adopted, and

(b) all reasonable measures will be taken to minimize the impact of the activity on the wildlife species and its habitat.

Conditions on permits

36 A permit issued under section 34 or 35 may contain one or more of the following conditions:

(a) a requirement that the holder of the permit rehabilitate habitat damaged or destroyed by the activity authorized under the permit;

- (b) a requirement that the holder of the permit enhance another area so that it may become habitat suitable for the wildlife species specified in the permit;
- (c) a requirement that the holder of the permit provide financial compensation to the Wildlife Trust Fund in an amount determined by the Minister; or
- (d) any other condition considered reasonable by the Minister.

Compliance with conditions of permit

37 A person to whom a permit is issued shall comply with the conditions of the permit.

Amendment of permit

38 The Minister may amend a permit at any time if, in the opinion of the Minister, it is necessary to ensure the survival or recovery of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species.

Term of permit

39 A permit expires on the date stated in the permit.

Revocation of permit

40 The Minister may revoke a permit if, in the opinion of the Minister, the conditions of the permit have not been met or will not be met or it is necessary to ensure the survival or recovery of a wildlife species.

Permits published

41 The Minister shall publish without delay in the public registry all permits issued under paragraph [35\(1\)\(c\)](#).

ENFORCEMENT

Powers of conservation officers

42 A conservation officer may exercise all the powers and authorities conferred on him or her by this Act in any part of the Province.

Powers as peace officers

43 A conservation officer in carrying out his or her duties under this Act and the regulations has and may exercise all the powers, authorities and immunities of a peace officer as defined in the *Criminal Code* (Canada).

Exemption from application of Act or regulations

44 For the purpose of investigations and other law enforcement activities under this Act and the regulations, the Minister may, in writing, exempt a conservation officer from the application of any provision of this Act or the regulations, subject to any terms and conditions that the Minister considers necessary.

Stop order

45(1) A conservation officer may issue a stop order, in writing, to a person to stop engaging in or not to engage in an activity if the conservation officer has reasonable grounds to believe that the person engaging in the activity or about to engage in the activity is violating or is about to violate

- (a) a prohibition under section 28,
- (b) a provision of a habitat designation made under the regulations or a prohibition under section 78, or
- (c) a condition of a permit issued under section 34 or 35.

45(2) A person who has been served with a stop order shall comply with the stop order.

45(3) Within 30 days after the date of service of a stop order, the conservation officer shall review the order and make a written determination confirming, amending or revoking the stop order.

45(4) The conservation officer shall ensure that a copy of the written determination is served on the person on whom the stop order was served.

45(5) A conservation officer may revoke a stop order if he or she is satisfied that the person will no longer engage in the activity in respect of which the stop order was issued or that it is otherwise appropriate to revoke the order.

Search without warrant

46(1) A conservation officer has the power to search without warrant any land, building, premises or place in or on which the conservation officer has reasonable grounds to believe there is anything that may provide evidence of the commission of an offence under this Act or the regulations.

46(2) A search without warrant shall not be made unless the conservation officer believes on reasonable grounds that it would be impracticable in the circumstances to obtain a search warrant.

46(3) The power to search under this section is in addition to the powers of search given under the *Provincial Offences Procedure Act*.

Search of wild land

47(1) The following definitions apply in this section.

“cultivated land” means cleared land on which any cultivated crops are growing or land prepared for crops, but does not include land on which trees, other than trees prepared and cultivated for sale as Christmas trees, are growing. (*terre en culture*)

“occupied land” means privately owned land consisting of not more than 40 hectares on or adjoining which the owner or occupant is actually residing. (*terre occupée*)

“wild land” means land that is not occupied land or cultivated land. (*terre inculte*)

47(2) A conservation officer has the power to search without warrant any wild land in or on which the conservation officer has reasonable grounds to believe there is anything that may provide evidence of the commission of an offence under this Act or the regulations.

47(3) The power to search under this section is in addition to the powers of search given under the *Provincial Offences Procedure Act*.

Private property

48 A conservation officer in the discharge of his or her duties under this Act or the regulations, and any person accompanied by him or her, may enter on and pass through private property without being liable for trespass.

Release of seized individual

49 A conservation officer who seizes an individual of a species at risk may, at the time of the seizure, return the individual to the wild if the conservation officer believes the individual to be alive.

Seizure of vehicle

50 A conservation officer may, in the course of conducting a lawful search in respect of an offence under this Act or the regulations,

(a) seize and remove any vehicle that the conservation officer has reasonable grounds to believe has knowingly been used as a means of transportation to assist any person in the commission of an offence under this Act or the regulations, and

(b) seize and remove any vehicle in which the conservation officer finds anything in respect of which he or she has reasonable grounds to believe an offence under this Act or the regulations has been committed.

Return of vehicle seized

51 The Minister may authorize a conservation officer to return a vehicle that has been seized to a person with a property interest in it if the vehicle is not to be retained for evidentiary purposes or is not to be the subject of an application for an order of forfeiture.

Application to return vehicle

52(1) If a vehicle has been seized by a conservation officer and has not been returned under section 51, a person with a property interest in it may, after giving the prosecutor 14 days' notice of the person's intention of doing so, apply to a judge for the return of the vehicle.

52(2) When an application under subsection (1) has been heard, the judge may order the return of the vehicle to the person who made the application.

Forfeiture of property

53(1) If a person is convicted of a violation of this Act or the regulations, any individual, or part or derivative of an individual, of a listed wildlife species that has been seized from the person under this Act or the *Provincial Offences Procedure Act* is forfeited to the Minister on the conviction of the person.

53(2) If a person is convicted of a violation of this Act or the regulations, the judge may order any other thing seized under this Act or the *Provincial Offences Procedure Act* that has not been returned under section 51 or section 52 to be forfeited to the Minister.

53(3) On the making of an order under subsection (2), the thing seized is forfeited to the Minister.

53(4) A forfeiture under this section is in addition to any other penalty that may be imposed.

Disposal of seized or forfeited property

54(1) If a conservation officer has seized any individual, or part or derivative of an individual, of a listed wildlife species, the conservation officer shall, on conviction of the person in possession of the individual, or part or derivative of the individual, deliver it to the Minister and the Minister may dispose of it in such manner and at such time as the Minister considers appropriate.

54(2) If a judge orders the forfeiture of a vehicle or any other thing, a conservation officer shall deal with it in accordance with the instructions of the Minister.

54(3) If a judge orders the forfeiture of a vehicle or any other thing, the Minister may, not sooner than 30 days after conviction, dispose of the vehicle or other thing at public auction or in such manner and at such time as the Minister considers appropriate.

Return of thing seized

55 If a conservation officer seizes anything other than a vehicle, or an individual, or part or derivative of an individual, of a listed wildlife species, the conservation officer shall return it to the owner or person in possession at the time of the seizure

(a) without delay, if the person is not charged with an offence under this Act or the regulations, or

(b) within 30 days after the final disposition of the charge,

(i) if the person has been charged with an offence under this Act or the regulations and no conviction results from that charge, or

(ii) if the person has been charged with an offence under this Act or the regulations and is convicted but the judge does not order the forfeiture of the thing seized.

Forfeiture if ownership not ascertainable

56 If any individual, or part or derivative of an individual, of a listed wildlife species or any other thing is seized under this Act or the *Provincial Offences Procedure Act* and the lawful ownership or entitlement to it cannot be ascertained within three months after the seizure, the Minister may direct

that it be disposed of in any manner the Minister considers appropriate and the thing or any proceeds of its disposition are forfeited to the Crown in right of the Province.

Abandonment

57 The owner of a seized thing may abandon it to the Crown in right of the Province.

EVIDENCE

Certificate as evidence

58 In a prosecution or proceeding under this Act in which proof is required with regard to the following, a certificate purporting to be signed by the Minister is proof, in the absence of evidence to the contrary, of the facts stated in the certificate, without proof of the appointment, authority or signature of the Minister:

- (a) the issuance, revocation, renewal or other status of a permit issued under section 34 or 35;
- (b) the issuing or serving of a stop order or protection order; or
- (c) the delivery, serving or mailing of any document by the Minister, an official of the Department of Natural Resources or a conservation officer.

Proof of status of conservation officer

59 A document in writing signed by the Minister stating that the person named in the document has been appointed as a conservation officer shall, without proof of the appointment, authority or signature of the Minister, be accepted by all courts as conclusive proof that the person in possession of the document, on proof that his or her name is the same as the person named in it, is a conservation officer.

Qualified technicians

60(1) The Minister may designate persons as qualified technicians for the purposes of this section.

60(2) Subject to subsections (3) and (4), a certificate of a qualified technician stating that the qualified technician has, in accordance with a method of analysis prescribed by regulation, analyzed or examined any fauna or flora and stating the result of the qualified technician's analysis or examination is admissible in evidence in a prosecution with respect to an offence under this Act or the

regulations and is proof, in the absence of evidence to the contrary, of the statements contained in the certificate without proof of the appointment, authority or signature of the person purporting to have signed the certificate.

60(3) The party against whom a certificate of a qualified technician is produced under subsection (2) may, with leave of the court, require the attendance of the qualified technician for purposes of cross-examination.

60(4) A certificate shall not be received in evidence under subsection (2) unless the party intending to produce it has given reasonable notice of the intention, together with a copy of the certificate, to the party against whom it is intended to be produced.

Written authorization

61(1) A document in writing signed by the Minister authorizing a person to act as the Minister's designate for the purposes of this Act or the regulations, or to do anything else under this Act or the regulations, shall, without proof of the appointment, authority or signature of the Minister, be accepted by all courts as conclusive proof of the authority stated in it.

61(2) The person in possession of a written authorization referred to in subsection (1) shall, on proof that his or her name is the same as the person named in it, be deemed to be the person named in the authorization.

61(3) A written authorization issued by the Minister is effective until revoked by the Minister.

OFFENCES AND PENALTIES

Offences

62 A person who violates or fails to comply with any of the following provisions commits an offence punishable under Part 2 of the *Provincial Offences Procedure Act* as a category J offence:

- (a) subsection 28(2);
- (b) paragraph 28(3)(a);
- (c) paragraph 28(3)(b);
- (d) subsection 28(5);

- (e) subsection 31(4);
- (f) section 37;
- (g) subsection 45(2);
- (h) paragraph 78(1)(a); and
- (i) paragraph 78(1)(b).

Failure to comply with regulations

63(1) A person who violates or fails to comply with a provision of the regulations commits an offence that is, subject to subsection (2), punishable under Part 2 of the *Provincial Offences Procedure Act* as a category B offence.

63(2) A person who violates or fails to comply with a provision of the regulations in respect of which a category has been prescribed under paragraph 76(2)(g) commits an offence of the category prescribed by regulation.

Continuing offences

64 If an offence under this Act or the regulations continues for more than one day,

- (a) the minimum fine that may be imposed is the minimum fine set by the *Provincial Offences Procedure Act* multiplied by the number of days during which the offence continues, and
- (b) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* multiplied by the number of days during which the offence continues.

Defence

65 A person shall not be convicted of an offence under a provision listed in section 62 or under the regulations if the person establishes that

- (a) the person exercised all due diligence to prevent the commission of the offence, or
- (b) the person honestly and reasonably believed in the existence of facts that, if true, would render the person's conduct innocent.

Limitation period

66 A prosecution of an offence under this Act or the regulations shall be commenced within three years after the date on which the offence was, or is alleged to have been, committed.

GENERAL

Public registry

67 The Minister shall establish a public registry to which members of the public will have access.

Withholding information on a listed wildlife species

68(1) The Minister may withhold as confidential any information that, in the Minister's opinion, could compromise the conservation of a listed wildlife species.

68(2) If subsection (1) is inconsistent with or in conflict with a provision of the *Right to Information and Protection of Privacy Act*, subsection (1) prevails.

Authorization by Minister - designated persons

69(1) The Minister may designate in writing persons to carry out activities associated with

- (a) the assessment and monitoring of species at risk or the habitat of species at risk, or
- (b) with respect to wildlife species considered by the Minister to be at risk, the assessment and monitoring of the wildlife species and the habitat or potential habitat for those wildlife species.

69(2) Persons designated under subsection (1) may enter on or pass through private property without being liable for trespass.

Authorization by Minister - conservation officer

70 The Minister may authorize a conservation officer to kill or to remove and relocate an individual of a species at risk.

Payment into Wildlife Trust Fund

71(1) The Minister of Finance shall deposit into the Wildlife Trust Fund

- (a) any revenue from fines collected in respect of offences under this Act or the regulations, and
- (b) any financial compensation provided by a holder of a permit under paragraph 36(c).

71(2) The money deposited into the Wildlife Trust Fund under subsection (1) shall exclude any surcharge payable under the *Victims Services Act* and any administrative fee referred to in subsection 46(1.1) of the *Provincial Offences Procedure Act*.

No injurious affection

72(1) Land or water shall be deemed not to be injuriously affected by reason only that

(a) all or any portion of it is designated or is adjacent to land or water that is designated as survival habitat or recovery habitat, or

(b) any requirements have been imposed under this Act or the regulations in relation to all or any portion of it or to land or water adjacent to all or any portion of it.

72(2) No compensation shall be paid to the owner of land or to any person having any interest in land or water by reason only that it or any portion of it is, or is adjacent to, land or water that is designated as survival habitat or recovery habitat or in relation to which a requirement under this Act or the regulations is imposed.

72(3) If a conflict exists between this section and any other provision of this Act, this section prevails.

Service of documents

73(1) Any notice or other document that is to be served on the Minister shall be validly served if it is delivered personally or sent by registered mail to the Deputy Minister of the Department of Natural Resources.

73(2) Any notice or other document that is to be served on any other person shall be validly served if it is served by personal service or sent by registered mail to the person's latest known address.

73(3) Service by registered mail shall be deemed to be effective five days after the date the notice or other document is deposited in the mail.

Agreements

74 The Minister may enter into agreements for the purpose of

(a) collecting data or information for the assessment of wildlife species,

(b) protecting survival habitat or recovery habitat, or

- (c) preparing and implementing management plans, recovery strategies or action plans.

Administration of Act

75 The Minister is responsible for the administration of this Act and may designate one or more persons to act on the Minister's behalf.

Regulations

76(1) The Lieutenant-Governor in Council may, on the recommendation of the Minister, make regulations

- (a) providing that the prohibitions under section 28 apply in respect of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species;
- (b) subject to section 30, designating areas, sites or structures as survival habitat or recovery habitat and prohibiting activities within the areas or that may directly affect the sites or structures.

76(2) The Lieutenant-Governor in Council may make regulations

- (a) respecting the procedures of COSSAR;
- (b) respecting the form of the public registry and access to the public registry;
- (c) requiring records and reports to be made and kept and prescribing the content of the records and reports;
- (d) respecting appeals from protection orders;
- (e) prescribing methods of analysis for the purpose of subsection 60(2);
- (f) prescribing fees for any permit or fees payable on the filing of a notice of appeal of a protection order under paragraph 32(1)(a);
- (g) prescribing, in relation to offences under the regulations, categories of offences for the purposes of Part 2 of the *Provincial Offences Procedure Act*;
- (h) prescribing forms and providing for their use;
- (i) generally for the better administration of this Act.

TRANSITIONAL PROVISIONS

Endangered species under the *Endangered Species Act*

77(1) *The wildlife species set out in Schedule A, being the endangered species, other than the Eastern Cougar (*Felis concolor couguar*), set out in New Brunswick Regulation 96-26 under the Endangered Species Act as it existed immediately before the commencement of this section, shall be listed by the Minister under section 18 as endangered species without an initial assessment by COSSAR.*

77(2) *On the commencement of this section, the regulations shall provide that the prohibitions under section 28 apply in respect of the wildlife species listed under subsection (1).*

77(3) *This section expires once the wildlife species set out in Schedule A have been listed and the regulations provide that the prohibitions under section 28 apply in respect of the wildlife species.*

Habitat protection for species under the *Endangered Species Act*

78(1) *No person shall*

- (a) wilfully or knowingly destroy, disturb or interfere with the nest, nest shelter or den of an individual of a wildlife species set out in Schedule A, or*
- (b) wilfully or knowingly attempt to destroy, disturb or interfere with the survival habitat or recovery habitat of an individual of a wildlife species set out in Schedule A.*

78(2) *On the recommendation of the Minister, the Lieutenant-Governor in Council may, by regulation, amend Schedule A by deleting a wildlife species from the Schedule.*

Wildlife species assessed by COSEWIC

79(1) *A wildlife species that has been assessed nationally by COSEWIC as an extirpated species, an endangered species, a threatened species or a species of special concern immediately before the commencement of this section shall be listed by the Minister under section 18 as an extirpated species, an endangered species, a threatened species or a species of special concern, respectively, without an assessment by COSSAR.*

79(2) *Despite subsection (1), the Atlantic Walrus (*Odobenus rosmarus rosmarus*) shall be listed as an extirpated species.*

79(3) *If there is a conflict in the classification of a wildlife species under section 77 and that provided under this section, the classification under section 77 prevails.*

79(4) *This section expires when the wildlife species referred to in subsections (1) and (2) are listed.*

CONSEQUENTIAL AMENDMENTS

Fish and Wildlife Act

80(1) *Section 17 of the Fish and Wildlife Act, chapter F-14.1 of the Acts of New Brunswick, 1980, is amended by striking out “Endangered Species Act” and substituting “Species at Risk Act”.*

80(2) *Section 95 of the Act is amended in the definition “major offence” by repealing paragraph (f) and substituting the following:*

- (f) under section 28 of the Species at Risk Act or under the regulations made under paragraph 76 (1)(b) of that Act;*

Protected Natural Areas Act

81(1) *Section 1 of the Protected Natural Areas Act, chapter P-19.01, Acts of New Brunswick, 2003, is amended*

- (a) by repealing the definition “endangered species”;*
- (b) by repealing the definition “regionally endangered species”;*
- (c) by adding the following definitions in alphabetical order:*

“endangered species” means endangered species as defined in the Species at Risk Act; (espèce en voie de disparition)

“threatened species” means a threatened species as defined in the Species at Risk Act; (espèce menacée)

81(2) *Paragraph 15(1)(c) of the Act is amended by striking out “an endangered species or regionally endangered species” and substituting “an endangered species or a threatened species”.*

Provincial Offences Procedure Act

82 Paragraph 137(c) of the Provincial Offences Procedure Act, chapter P-22.1 of the Acts of New Brunswick, 1987, is amended

- (a) **in subparagraph (ii.1) by striking out “and” at the end of the subparagraph;**
- (b) **in subparagraph (iii) of the English version by adding “and” at the end of the subparagraph;**
- (c) **by adding after subparagraph (iii) the following:**
 - (iv) sections 46 and 47 of the *Species at Risk Act*,

REPEAL AND COMMENCEMENT

Repeal of *Endangered Species Act* and regulations

83(1) *The Endangered Species Act, chapter E-9.101 of the Acts of New Brunswick, 1996, is repealed.*

83(2) *New Brunswick Regulation 96-26 under the Endangered Species Act is repealed.*

Commencement

84 *This Act or any provision of it comes into force on a day or days to be fixed by proclamation.*

SCHEDULE A

MAMMALS

Lynx, Canada (*Lynx canadensis*)

BIRDS

Duck, Harlequin (*Histrionicus histrionicus*)

Eagle, Bald (*Haliaeetus leucocephalus*)

Falcon anatum subspecies, Peregrine (*Falco peregrinus anatum*)

Plover, Piping (*Charadrius melodus*)

REPTILES

Turtle, Leatherback (*Dermochelys coriacea*)

ARTHROPODS

Ringlet, Maritime (*Coenonympha tullia nipisiquit*)

VASCULAR PLANTS

Aster, Anticosti (*Symphyotrichum anticostense*)

Aster, Bathurst (*Symphyotrichum subulatum*) Bathurst population

Aster, Gulf of St. Lawrence (*Symphyotrichum laurentianum*)

Lousewort, Furbish's (*Pedicularis furbishiae*)

Pinedrops (*Pterospora andromedea*)

Pipewort, Parker's (*Eriocaulon parkeri*)

Quillwort, Prototype (*Isoetes prototypus*)

Twayblade, Southern (*Listera australis*)