Legal Framework for Protected Areas: Canada

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Information concerning the legal instruments discussed in this case study is current as of December 2009

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Abstract

This case study focuses on terrestrial national parks in Canada, where the protected areas system has evolved for over a century since the creation of a national park at Banff in 1885. The role of ‘ecological integrity’ as a statutory standard following recent legislative renewal of the Canada National Parks Act is a distinctive feature of the Canadian system. While the national parks system has experienced significant recent expansion in conjunction with the resolution of northern aboriginal land claims, there are only limited indications in Canada of either co-management or community-conserved areas. The Canadian framework incorporates a wide range of reporting and accountability mechanisms which contribute importantly to public and non-government participation in the development of parks policy and administration. The national terrestrial parks system, while a keystone of Canada’s protected areas framework, does not appear to be fully integrated with other federal protected areas initiatives or with corresponding protected areas regimes operating at the provincial level, although a jointly agreed biodiversity strategy has been developed through federal-provincial-territorial consultation.
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## Acronyms and abbreviations

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1 Introduction

Canada's federal protected areas include 46 national parks and park reserves covering 36 million hectares, as well as 51 national wildlife areas encompassing roughly 500,000 hectares and approximately 11 million hectares contained in 92 migratory bird sanctuaries, including extensive wetlands. When provincial protected areas are added to this inventory, the country's terrestrial protected areas cover 98.3 million hectares, or 9.9 per cent of Canada's land mass.

From the perspective of management, federal agencies—notably Environment Canada (for wildlife reserves and federal wetlands) and the Canada Parks Agency (for national parks)—are responsible for slightly under half of the terrestrial protected areas in the country, with provincial and territorial governments responsible for an almost identical proportion. Aboriginal authorities and private owners manage 1.2 per cent and 0.4 per cent respectively. Cumulatively, these lands and anticipated additions are expected to safeguard representative elements of 39 terrestrial and 29 marine eco-regions that have been further sub-classified into 486 ecological zones across Canada.

Canada has recognized IUCN's 1994 definition of protected areas as “an area of land and/or sea especially dedicated to the protection of biological diversity and of natural and associated cultural resources and managed through legal or other effective means.” For purposes of classification and reporting, however, Canadian officials emphasize correspondence between Canadian management objectives and the longer IUCN definitions. In other words, to avoid inaccuracies that might arise from directly comparing IUCN category names with similar terminology used across Canada, the national classification process adopted a functional comparison. The first provisional attempt to categorize Canadian protected areas with reference to IUCN categories was completed in May 2006. Roughly 95 per cent of the country's protected areas fall within IUCN categories I–IV.

This paper reviews the legal and policy framework for terrestrial protected areas at the federal level in Canada, with particular reference to the Canada National Parks Act (CNPA) 2000 and the operations of the Parks Canada Agency, constituted pursuant to the Parks Canada Agency Act 1998. In the course of the paper, reference will also be made to a number of supplementary documents. The most pertinent of these are the National Parks System Planning Manual (1972), the Parks Canada Guiding Principles and Operational Policies (1994), and the Corporate Work Plan (2006). These policy documents, and the implementation and progress objectives set out in the Corporate Work Plan, guide the federal programme for protected areas from an overall perspective, while further management planning for individual parks and reserves establish more detailed and context-specific performance.

2 Government of Canada, 2006. For a map identifying Canadian protected areas by IUCN Category, see ibid., p. 4 ('Protected Areas of Canada, Provisional Map, May 2006'). Significant expansions subsequent to the Status Report include the 2009 addition of approximately 7,500 sq km to extend protection in the headwaters of the South Nahanni River. Heritage sites, while also protected, constitute a very limited proportion of protected area coverage.
4 Res. 19.4, IUCN General Assembly, Buenos Aires.
5 Government of Canada, 2006. Amendments to the IUCN definition of protected areas are not yet reflected in this documentation. This process is now subject to the recently completed Canadian IUCN Guidebook (2008).
6 The statement on Guiding Principles and Operational Policies (Parks Canada, 1994) is the successor document to previous formulations of national parks policy presented as guides to interpretation and application of the statutory mandate. The first of these was presented to parliament in 1964. In 1979, a new national parks policy statement was issued, notable for its early reference to ‘ecological integrity’ and for its acknowledgement of the role of public participation, federal-provincial consultation and the need for agreements with aboriginal communities whose interests might be affected by the creation of new parks. For discussion, see Kopas, 2007, pp. 38–40. The 1994 document remains in current use, still awaiting comprehensive revision at the time of writing, despite web-based ‘updates’.
objectives. To a considerable degree, the legal framework has emerged from practice and from policy, with the experience of individual parks administrators and the initiatives of officials eventually taking statutory form. Thus it is important to appreciate that in Canada local experience can influence the broader framework, even as that broader framework governs the management of individual parks and reserves.

The broader legislative framework for protected areas includes several other pieces of federal legislation including the Canada Wildlife Act 1985, Canadian Environmental Assessment Act 1992, Migratory Birds Convention Act 1994 and Species at Risk Act 2002. In addition, three statutes apply to the creation of marine protected areas: the Canada Wildlife Act, as well as the Oceans Act 1996 and the Canada National Marine Conservation Areas Act 2002. Heritage legislation is also noteworthy, including the Heritage Railway Stations Protection Act 1985, and the Historic Sites and Monuments Act 1985. Other statutory instruments have local or specialized relevance such as the Saguenay-St Lawrence Marine Park Act 1997 and certain provisions of the Department of Transport Act 1985. National policies relating to wetlands and biodiversity are also integral to the overall operation of Canada’s protected areas programmes.

This wide array of legal instruments, policy documents and associated institutions constitutes the overall framework for protected areas at the federal level in Canada. The federal framework exists alongside an equally complex accumulation of provincial measures. Various attempts to promote coordination fall short of establishing a fully integrated and coherent federal system of protected areas management.

This complicated legal configuration reflects the historic Canadian experience of jurisdictional division within a federal state. Both federal and provincial governments exercise constitutional authority as owners of public lands, generally referred to as Crown lands, as well as natural resources. Constitutional responsibility for the environment is shared, including responsibility for the domestic implementation of obligations arising from international environmental treaties.

In the absence of an integrated federal-provincial framework for protected areas, attempts to manage and coordinate policy across the inter-jurisdictional landscape are made through a variety of intergovernmental forums, cumulatively constituting the institutions of executive federalism. Federal-provincial issues relating to protected areas arise, for example, in connection with environmental, forestry and wildlife policies, although there are no significant indications that these issues have been singled out for sustained attention. Variable policy objectives and changing priorities have also shaped the direction of protected areas law and policy. Within this context, initiatives to enhance protected areas have flourished intermittently, even as the fate of specific sites has been vigorously contested.

Following an overview of general objectives for protected areas in Canada (section 2), this paper turns to examine protected areas governance (section 3), addressing state ownership of protected areas.

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7 Marine protected areas currently include: Basin Head (Prince Edward Island), Bowie Seamount (British Columbia), Eastport Peninsula (Newfoundland), Endeavour Hydrothermal Vents (British Columbia), Gilbert Bay (Labrador), The Gully (Nova Scotia), and Musquash Estuary (New Brunswick). Marine protected areas in Canada are more fully discussed in a separate case study in this collection.

8 Currently there are three national marine conservation areas: Fathom Five National Marine Park, Lake Superior National Marine Conservation Area, and Saguenay-St Lawrence Marine Park.

9 See Department of Transport Act 1985, ss. 7, 16 and 17; see also Parks Canada Guiding Principles and Operational Policies, ‘Parks Mandate’ section (Parks Canada, 2009b).

10 Canadian Council of Ministers of the Environment, Canadian Council of Forest Ministers, Canadian Wildlife Ministers Council, and Canadian Wildlife Directors Committee. See also Canadian Council of Ministers of the Environment, 2009; and Canadian Council of Forest Ministers, 2010.
as well as aboriginal involvement in protected areas governance and the role of privately conserved areas. System planning considerations are set out in section 4, while section 5 examines selected statutory provisions, notably the concepts of ‘unimpaired for future generations’ and ‘ecological integrity’. The concluding sections explain administrative arrangements, including public participation and intergovernmental coordination, as well as selected operational matters such as management planning, regulatory controls, the enforcement regime and financial considerations (sections 6–10). For purposes of illustration, selected examples are drawn from the range of national parks established across the country, from the creation of Canada’s first national park at Banff in 1885 to the most recent designations and additions.

2 General objectives for Canadian protected areas

At the national level, the conservation objectives of Canada’s terrestrial protected areas regime are embedded in, derived from and elaborated with reference to statutory guidance and policy statements. Under the Canada Wildlife Act, lands have been set aside to protect wildlife and their habitat in the interests of conservation, research and interpretation. Migratory birds and their habitat are safeguarded through the provisions of the Migratory Birds Convention Act, while a wider network of wetlands is maintained pursuant to the Federal Policy on Wetland Conservation (1991). Overall responsibility for these arrangements rests with Environment Canada. Responsibility for national parks and heritage sites, the primary focus of this case study, rests with Parks Canada.

As stated in the CNPA, “the national parks of Canada […] shall be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations.” In addition, “[m]aintenance and restoration of ecological integrity, through the protection of natural resources and natural processes, shall be the first priority of the Minister when considering all aspects of the management of parks.” Relevant regulatory authority extends to:

(a) the preservation, control and management of parks;
(b) the protection of flora, soil, waters, fossils, natural features, air quality, […];
(c) the protection of fauna, the taking of specimens of fauna for scientific or propagation purposes, and the destruction or removal of dangerous or superabundant fauna; […]
(f) the prevention and extinguishment of fire on park lands or threatening park lands […]

Parks Canada, with reference to ecosystem restoration, states that “park management should be focused more on ecosystems than on species.” Nevertheless, it should be noted that ‘ecological integrity’ as defined in the CNPA includes explicit reference to “the composition and abundance of native species and biological communities.”

Schedule 3 of the CNPA sets out two lists of protected species. Hunting and trafficking of these species are prohibited. Although Schedule 3 may include any species of “wild mammal, amphibian, reptile, bird, fish or invertebrate”, the section seems to be geared towards hunting, as the protected species list primarily includes large migratory animals: American bison, American elk, bighorn sheep, black bear, caribou, cougar, Dall’s sheep, grizzly bear, moose, mountain goat, mule deer, polar bear,

11 Canada National Parks Act (CNPA) 2000, s. 4(1).
12 CNPA, s. 8(2).
13 CNPA, s. 16.
14 See Parks Canada, 2009a.
15 CNPA, s. 26.
16 CNPA, s. 26(6).
white-tailed deer and wolf. Salmon, the Eastern Massasauga rattlesnake and a few birds (gyrfalcon, peregrine falcon, piping plover and whooping crane) are also listed.

Federal species protection legislation may be relevant to national protected areas in relation to the development of park boundaries and the possible existence of critical habitat within established parks. The Species at Risk Act operates—awkwardly—alongside separate provincial regimes. Section 58 of the Species at Risk Act addresses the overlap with the CNPA. The purpose of this section is to ensure that all critical habitat of species at risk, identified in an action plan or recovery strategy, is protected when the critical habitat is situated on federal land, in the exclusive economic zone or on the continental shelf of Canada, or when the land serves as habitat for listed aquatic species or birds listed in the Migratory Birds Convention Act. If habitat critical to a species at risk is situated in a national park, notice must be provided in the Canada Gazette. In addition to migratory bird sanctuaries, the existence of national wildlife areas, established and administered pursuant to the Canada Wildlife Act, has been noted above. Responsibility for both migratory bird sanctuaries and national wildlife areas rests with Environment Canada rather than the Parks Canada Agency.

No specific reference to the implementation of international commitments is incorporated in the CNPA. The preamble to the Parks Canada Agency Act, however, refers to “Canada’s international obligations and agreements to protect, conserve and present” natural and cultural heritage with a view to contributing towards the protection of “global heritage and biodiversity”. International obligations and commitments also receive emphasis in policy guidance documents.

In connection with transboundary parks, it is noteworthy that several Canadian national parks are located on the United States border, including the Ivvavik National Park, Kluane National Park and Reserve, Vuntut National Park, and Waterton Lakes National Park. In the context of transboundary threats, the Canadian Environmental Assessment Act provides for a foreign government to trigger the environmental assessment process in Canada. The proposed development of an open pit coal mine on the headwaters of the Flathead River in British Columbia prompted Governor Brian Schweitzer of the US state of Montana to call for such a review on the basis of potential harm to the Glacier National Park in that state. The Glacier National Park, together with the contiguous Waterton Lakes National Park in the Canadian province of Alberta, were jointly designated as the Waterton-Glacier International Peace Park in 1934 but neighbouring mountain wilderness in British Columbia has remained unprotected. Transboundary cooperation, generally resting on consultation, cooperative initiatives and administrative agreements, has addressed issues from joint interests in conservation to border security in the aftermath of the 9/11 attacks on the United States.

Further guidance with respect to national parks objectives and operations is derived from more generally applicable statements of federal government law and policy, including the Canadian Biodiversity

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17 The legislative summary (LS 365E) for Bill C-27, which became the Act, states that the purpose for the list of species in Schedule 3, and the substantial increase in fines from the previous act, is to ensure that hunting, poaching and trafficking of certain species does not occur in national parks. See Government of Canada, 2000.
18 The dramatic six-fold expansion of Nahanni National Park in 2009 is intended, among other objectives, to safeguard grizzly bear and caribou habitat.
19 See Environment Canada, 2009.
20 Parks Canada Agency Act (PCAA) 1998, Preamble (c).
22 Canadian Environmental Assessment Act 1992, s. 47(3).
24 Tanner et al., 2007.
Strategy (1995)\textsuperscript{25} and the Federal Sustainable Development Act 2008. Parks Canada has reported on actions in support of sustainable development involving not only the establishment and management of parks but also extending to operational decisions such as sources of energy supply and increased fuel efficiency for its fleet of vehicles including trucks, cars, snowploughs and snowmobiles.\textsuperscript{26}

### 2.1 Cultural sites

Historic sites are included in the CNPA. Section 42 gives the Governor in Council (roughly equivalent to the federal cabinet) the power to set aside any site of national historical importance so that the Act applies to that site. General regulatory provisions authorize initiatives with respect to the protection of "cultural, historical and archaeological resources."\textsuperscript{27}

The Governor in Council can make regulations concerning cultural, historical and archaeological resources.\textsuperscript{28} Discharges or deposits that could damage cultural resources are prohibited.\textsuperscript{29} The authority of the Governor in Council to make rules for the harvesting of natural resources by the Haida nation and Haida cultural activities in the Gwaii Haanas National Park is also addressed.\textsuperscript{30} Although it appears a specific regulation for this purpose has not been made, the Gwaii Haanas Agreement (1993) lists a number of Haida cultural activities and sustainable, traditional renewable resource harvesting activities that are permitted in the Gwaii Haanas National Park Reserve and Haida Heritage Site.\textsuperscript{31}

At the operational level, the Parks Canada Guiding Principles comment extensively on cultural heritage matters. Section 1, under the heading ‘Ecological and Commemorative Integrity’ states: "Heritage areas are designated and managed for their intrinsic and symbolic values, and for the benefit of the public. Fostering appreciation and understanding of commemorative and ecological integrity is the foundation for public use and enjoyment."

### 3 Protected areas governance

The Canadian network of protected areas is overwhelmingly situated on public lands and administered by state agencies at the federal and provincial levels. Nevertheless, other forms of protected areas governance\textsuperscript{32} are also discussed in the following sections.

#### 3.1 Governance by government

Protected areas in Canada have been established in overwhelming proportion on publicly owned land, either historic Crown land or land acquired for parks purposes. Taking into account federal and provincial protected areas in Canada, more than 98 per cent of the protected areas system is owned and managed by the state. The community and private role in Canada is extremely limited in comparison to the government’s contribution, and even more so when marine protected areas are taken into consideration.

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\textsuperscript{25} Environment Canada, 1995.
\textsuperscript{26} Parks Canada, 2006, pp. 95–96.
\textsuperscript{27} CNPA, s.16(1)(b).
\textsuperscript{28} CNPA, s. 16(1)(b).
\textsuperscript{29} CNPA, s. 32.
\textsuperscript{30} CNPA, s. 41(2).
\textsuperscript{31} For the text of the Gwaii Haanas Agreement (1993), see Parks Canada, 2010.
\textsuperscript{32} See Dudley, 2008.
The involvement of communities, partners and other organizations in protected areas development and conservation has been actively encouraged in Canada but is largely confined to consultation on policy and planning, rather than extending to implementation and management operations. The basis for this approach is articulated in the CNPA with reference to opportunities for public participation:

Source: Department of Aboriginal Affairs and Intergovernmental Relations, 2008.

Map 1: Northern land claim settlement regions
The Minister shall, where applicable, provide opportunities for public participation at the national, regional and local levels, including participation by aboriginal organizations, bodies established under land claims agreements and representatives of park communities, in the development of parks policy and regulations, the establishment of parks, the formulation of management plans, land use planning and development in relation to park communities and any other matters that the Minister considers relevant.\textsuperscript{33}

Public participation and consultation programmes are regularly undertaken in connection with proposals to establish new national parks or the development and implementation of park management plans. Outreach initiatives, communications, and collaboration with partners and neighbouring communities are especially significant where smaller parks are extremely vulnerable to the impact of activities outside their boundaries. The St Lawrence Islands National Park is a particularly striking example of a situation where the objective of ecological integrity requires park managers to engage actively with residents of surrounding lands to achieve park goals.

The participation of Canadian aboriginal or First Nations communities in the expansion of national protected areas has also been of increasing importance. Aboriginal rights and rights established on the basis of negotiated treaties are protected under section 35 of the Constitution Act 1982. The CNPA contains a widely used non-derogation clause, confirming that the statute shall not be construed in a manner that would abrogate or derogate from aboriginal and treaty rights that have been constitutionally recognized and affirmed in Canada.\textsuperscript{34} It is further provided in the legislation that where an aboriginal rights claim involving an area proposed for park status has been accepted for negotiation, a national park reserve may be established.\textsuperscript{35} Traditional aboriginal resource harvesting rights are preserved within national park reserves\textsuperscript{36} while detailed negotiations are underway, leading to formal agreement on environmental impacts and community benefits such as employment opportunities and access to resources.\textsuperscript{37}

Aboriginal participation in the designation and administration of protected areas in northern Canada has become a subject of considerable interest and commentary,\textsuperscript{38} but it must be observed that experience to date is still limited and even suggestions regarding best practices are offered tentatively rather than with the certainty that they could readily be adopted in a uniform or comprehensive manner. Northern land claims settlement regions are set out in Map 1.

Developments within the Nunavut land claims settlement region, extending across Canada’s eastern Arctic, illustrate the general pattern. The Nunavut Land Claims Agreement (1993) is a comprehensive land claims agreement ratified by Inuit residents and by statute.\textsuperscript{39} The Nunavut Land Claims Agreement anticipated the establishment of three national parks within the land claim settlement area. These three parks, the Auyuittuq, Quttinirpaaq and Sirmilik national parks, were subsequently established on the Ellesmere and Baffin islands. Park management and operations are now subject to the Inuit Impact and Benefit Agreement (1999) that addresses the following issues:

- wildlife,
- Inuit use of and access to the park,
management of archaeological, religious and cultural sites,
park management and administration,
research,
park information and promotion,
visitor access and use,
Inuit career and training opportunities and benefits,
Inuit economic opportunities and benefits, and
changes to park boundaries.

The CNPA also refers to “park communities” and specifically identifies seven such communities. Park communities in the CNPA are not communities in the sense of community-conserved areas associated in many other jurisdictions with local or indigenous conservation initiatives conducted on lands over which those communities might directly exercise ownership, authority or control. Rather, five park communities are simply visitor centres where a modest range of commercial services is available while two, Banff and Jasper, are towns. Each community must prepare a community plan, to be tabled in Parliament. Section 33(2) outlines the contents of community plans. Section 35 contains a special provision for Banff, which recognizes the 12 December 1989 agreement to allow Banff “a local government body” which, along with the federal government, can make decisions for Banff.

### 3.2 Governance by private entities

Parks Canada has explicitly indicated that the public dissemination of its plans for the national parks system is intended “to encourage other public agencies and appropriate private organizations to work towards protecting areas that will not be included within the national park system.” It has in addition asserted with reference to the importance of ecosystem-based protection that it “will take the lead role in establishing integrated and collaborative management agreements and programs with adjacent land owners and land management agencies.” While the full extent to which such encouragement has actually operated is unknown, more than 200 independent land trusts across Canada have secured an extensive array of ecologically significant lands through direct acquisition, conservation easements and stewardship agreements. If the properties in question are situated within provincial boundaries and remain as privately held lands rather than being transferred to the federal government, the relevant provincial legislation will continue to apply. Some of the more prominent initiatives are discussed below.

#### 3.2.1 Nature Conservancy of Canada

Since the time of its formation in 1962, the Nature Conservancy of Canada has secured over 1,900 properties comprising just under 2 million acres (809,371 hectares) of land across Canada. Moving from an initial focus on individual properties, the Nature Conservancy has adopted a more comprehensive

40 For background, see McKim, 1970.
41 CNPA, s. 33(1).
42 CNPA, s. 9: “Powers in relation to land use planning and development in park communities may not be exercised by a local government body, except as provided in the agreement referred to in section 35.”
44 Parks Canada, 1994, p. 35.
and forward-looking approach to land acquisition and protection. Its conservation policy now carefully integrates the task of securing land with scientific analysis and stewardship arrangements.46

The Nature Conservancy works actively in partnership with landowners, environmental groups, aboriginal and local communities, scientists, and government agencies, and is supported in conservation and stewardship work by a substantial national volunteer organization. For example, arrangements between the Nature Conservancy and landowners whose Alberta ranch properties surround the Waterton Lakes National Park are credited with safeguarding some 25,000 acres of prairie grasslands from development by golf course operators, timeshare condominium projects and other destructive ventures.47 A comparable initiative in the neighbouring province of British Columbia will provide similar protection for historic ranch lands near or adjacent to provincially protected areas in the vicinity of Kamloops.48

In 2007, Prime Minister Harper and then Environment Minister Baird announced the Natural Areas Conservation Program under which the federal government committed 225 million Canadian dollars in matching funds over a number of years to the Nature Conservancy’s efforts to conserve ecologically significant lands in Canada.49 On some occasions, properties acquired by the Nature Conservancy have been transferred to the federal government for incorporation within the national parks system.

3.2.2 Ducks Unlimited and migratory bird sanctuaries

Ducks Unlimited Canada, a national, private, non-profit organization, was formed in 1938. According to its 2008 annual report, it has “secured” 1.86 million hectares of habitat and “positively influenced through policy measures available under existing government programs, policies or legislation” a further 13.45 million hectares. Conservation efforts are concentrated on “key threatened landscapes” by working with landowners through wetland rehabilitation initiatives and wetland securement. Wetland is secured by identifying priority wetlands and promoting the adoption of conservation easements through donation or purchase. As of 2008, Ducks Unlimited has completed 7,139 habitat projects.50

3.3 Governance by aboriginal communities

The Canadian Parks Council, an intergovernmental organization representing federal, provincial and territorial parks agencies, has identified numerous examples of aboriginal involvement in protected areas management.51 These government-to-government arrangements, frequently entered into between provincial or territorial governments and including aboriginal communities or organizations, fall generally within the realm of shared or collaborative protected areas governance frameworks.52

It is noteworthy, however, that significant protected areas developments in Canada have benefited from aboriginal leadership and initiative, typically in response to the prospect of mineral, forest or energy resource development on traditional lands. The 1985 designation by the Haida Nation of a Haida Heritage Site on South Moresby Island in British Columbia is an outstanding example. This action, a direct response to logging activity, stimulated federal-provincial agreement on the protection

48 Hume, 2008b.
49 For press release on the programme see Environment Canada, 2008.
50 Ducks Unlimited Canada, 2008.
51 Canadian Parks Council, 2008.
52 See, for example, ‘Inuit Involvement in Territorial Park Establishment, Planning and Management’, ibid., pp. 13–16.
of both the terrestrial and marine elements of Gwaii Haanas or the Queen Charlotte Islands, and led to extensive negotiations concerning the unresolved land claim of the Haida people. Although Canada and the Haida Nation continue to dispute ownership of the area, they came to a separate agreement in 1993 regarding protection of the lands and waters in the archipelago as a Haida Heritage Site and a national park reserve.53 The Haida continue to pursue the following cultural and resource use activities:

- travelling into and within the archipelago;
- gathering traditional Haida foods;
- gathering plants used for medicinal or ceremonial purposes;
- cutting selected trees for ceremonial or artistic purposes;
- hunting land mammals and trapping fur-bearing animals;
- fishing for freshwater and anadromous fish species;
- conducting, teaching or demonstrating ceremonies of traditional, spiritual or religious significance;
- seeking cultural and spiritual inspiration; and
- using shelter and facilities essential to the pursuit of the above activities.

Elsewhere in Canada aboriginal communities have responded to potential disruption by resource development with comparable initiatives. The most important current illustration of such leadership has emerged across the Manitoba–Ontario border where a number of First Nation communities in collaboration with provincial authorities have proposed UNESCO World Heritage designation for a region known to them as Pimachiowin Aki, ‘the land that gives life’.54 The eventual outcome in this case, as in the Gwaii Haanas example, may embody characteristics associated with community conserved areas.

Some of the Nature Conservancy of Canada properties noted previously may also fall within the category of community-conserved areas.55 For example, the Nature Conservancy has on occasion purchased property which was subsequently transferred to a First Nation community. The First Nation then registered the property as part of its ‘Indian Lands’ and maintained it on the basis of a landholding agreement providing for conservation.

### 3.4 Shared governance

On a national basis, that is, taking into account both federal and provincial initiatives in relation to the role of First Nations in the protected areas regime, a comprehensive study recently reported:

- Aboriginal peoples have been involved in discussions leading to the designation of over one quarter of the total lands within Canada’s protected areas, primarily in the northern territories through land claims or other cooperative agreements.
- Aboriginal rights and benefits are part of the protected areas policy or practice of both federal and provincial governments, including the continuation of aboriginal cultural practices, continued subsistence harvesting, employment opportunities and economic assistance.
- The protection of areas of cultural importance is enabled or practised in 12 of 16 jurisdictions; several provinces and territories (British Columbia, Manitoba, Northwest Territories, Nunavut, Ontario, Quebec and Saskatchewan) are pursuing greater opportunities to protect cultural sites through the declaration of protected areas and land use planning strategies.

53 Gwaii Haanas Agreement (see Parks Canada, 2010).
54 For details, see Pimachiowin Aki, 2008.
55 For details, see Nature Conservancy of Canada, 2009.
• Aboriginal collaboration in integrated landscape management is directly contributing to protected areas network growth and integrity.
• Over half of Canada's jurisdictions are pursuing forms of aboriginal cooperative protected areas management, with greatest shared management in the territories.\textsuperscript{56}

It is also notable that since 2000, Parks Canada in partnership with Yukon College has provided educational training opportunities in parks management and administration to about a dozen aboriginal people each year through the Aboriginal Leadership Development Program. Apart from formal regulatory and programme activity, Parks Canada reports an increasing range of partnerships with aboriginal communities, notably in connection with the incorporation of traditional ecological knowledge into protected areas management.\textsuperscript{57}

Canada also offers some examples of aboriginal lands associated or intermingled with state-owned protected areas being managed by the community for conservation purposes.

4 System planning and parks creation
4.1 National parks system planning

The idea of a national parks system, as opposed to a collection of completely free-standing national parks, derives from work on a System Plan carried out by Canadian parks officials in the 1960s. Following discussion and a period of informal use, the National Parks System Plan emerged in 1970 as “one of the pillars of national parks policy”.\textsuperscript{58} In essence, the System Plan calls for the establishment of national parks with reference to the concept of ecological representativeness, applied initially to 39 terrestrial regions and now encompassing a further 29 marine regions. The use of natural or physiographic criteria to guide the development of the national parks system is seen to contribute rationality and objectivity to the site selection process.\textsuperscript{59} Canada's ecological regions may be identified on Map 2.

Direct legislative guidance on the objectives of national parks may now be found in the preamble to the Parks Canada Agency Act, where the following matters are specifically mentioned as being in the national interest:

(a) to protect the nationally significant examples of Canada’s natural and cultural heritage in national parks, national historic sites, national marine conservation areas and related heritage areas in view of their special role in the lives of Canadians and the fabric of the nation,
(b) to present that heritage through interpretive and educational programs for public understanding, appreciation and enjoyment, both for international visitors and the Canadian public, thereby enhancing pride, encouraging stewardship and giving expression to our identity as Canadians,
(c) to carry out Canada’s international obligations and agreements to protect, conserve and present that heritage and to contribute towards the protection and presentation of the global heritage and biodiversity,
(d) to include representative examples of Canada’s land and marine natural regions in the systems of national parks and national marine conservation areas […]

More concretely, the Parks Canada Agency is assigned responsibility to “ensure that there are long-term plans in place for establishing systems of national parks, national historic sites and national marine conservation areas.”\textsuperscript{60}

\textsuperscript{56} Government of Canada, 2006, p. 32.
\textsuperscript{57} Parks Canada, 2006, p. 47. For analysis of an earlier period of conflict between the development of protected areas and aboriginal resource use, see Sandlos, 2007.
\textsuperscript{58} Kopas, 2007, p. 53.
\textsuperscript{59} Parks Canada, 1994, pp. 24–27
\textsuperscript{60} PCAA, s. 6(2).
As expressed in the National Parks System Planning Manual, the objective of ‘representativeness’ makes a range of contributions to parks planning:

- Helping to crystallize new policies and programmes by focusing attention on deficient areas of representation;
- Minimizing subjectivity in the process of new park selection;
- Making new park studies more specific, and more dependable and justifiable;
- Reducing the chance of adding undesirable elements to the national parks system; and
• Helping to clarify the role of national parks within the spectrum of parks and outdoor recreation areas in Canada.\(^{61}\)

To provide direction on the development of new national parks and national marine conservation areas, the Corporate Plan of the Parks Canada Agency reviews progress at regular intervals and outlines activities to be undertaken. At the outset of the 2006/07–2010/11 planning period, 28 of 39 natural regions were represented in the national parks system and progress was underway towards completion of the 2002 Federal Action Plan which called for the creation of 10 new national parks and five new national marine conservation areas by March 2008. Longer-term objectives for action in relation to unrepresented terrestrial regions are also described.\(^{62}\) Budget allocations for parks land acquisition and operations have been made. Within the framework of the national parks system policy that is intended to secure representative examples of Canada’s terrestrial and marine ecosystems, Parks Canada is responsible for negotiating and recommending to the Minister the establishment of new national parks and national marine conservation areas.\(^{63}\)

### 4.2 Authority to establish national parks and park reserves

The CNPA defines national parks and lands designated on an interim basis as national park reserves with reference to the Schedules: a park is defined as “a national park of Canada named and described in Schedule 1” and a park reserve is defined as “a national park reserve of Canada named and described in Schedule 2”.\(^{64}\) Each Schedule contains a list of areas so designated, along with detailed descriptions of their boundaries. As such, amendment to the Schedules is vital to the designation and security of the lands in question.

The authority to establish or enlarge a national park may be exercised by the Governor in Council, in circumstances where the federal crown owns the lands in question and the relevant province has agreed to their use in a national park.\(^{65}\) It is worth noting that land may only be removed from a national park in cases where it has been judicially determined that the federal crown lacks clear title or an unencumbered right of ownership.\(^{66}\) Similar provisions are applicable in the case of park reserves, that is, lands to be set aside for the eventual purpose of establishing a national park.\(^{67}\)

Parks Canada has set out a five-step process leading to establishment:

- Identify areas representative of a natural region or marine region;
- Select a potential national park or national marine conservation area;
- Assess the feasibility of the potential national park or national marine conservation area, including consultations;
- Negotiate new park or national marine conservation area agreements; and
- Formally establish the national park or national marine conservation area in legislation.\(^{68}\)

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61 Quoted in Kopas, 2007, p. 54.
63 PCAA, s. 6(3).
64 CNPA, s. 2(1).
65 CNPA, s. 5. On a practical level, provincial approval may be regarded as an indication that the relevant province, in exercising its own authority over the lands surrounding the national park, will be generally inclined to authorize activities that are compatible with the existence of a national park.
66 CNPA ss. 5(2) and 5(3).
67 CNPA, s. 6.
It is a precondition of the Governor in Council’s authority to establish or enlarge a park that the proposal be tabled in the House of Commons and the Senate, accompanied by a report on consultations as required by the CNPA and any relevant agreements. Unless the appropriate standing committee reports its disapproval within 30 sitting days and seeks the agreement of the House of Commons, the Governor in Council may proceed.69

The designation process is often lengthy, a consequence of elaborate negotiations undertaken in search of consensus amongst governments and user groups. For example, the Bowie Seamount, 180 km west of the Queen Charlotte Islands, became Canada’s seventh marine protected area in 2008 following a decade of discussion involving the federal Department of Fisheries and Oceans, the Haida First Nation, environmental groups and commercial fishing interests.70

Terrestrial parks can become equally contentious, as is the case with a current proposal tentatively described as the Interior Grassland National Park, a 40,000 hectare area in the Okanagan and Similkameen valleys of British Columbia. Although understood to represent a minority, the inventory of opponents is formidable:

Some native leaders are worried the park will infringe on their traditional hunting and fishing rights. Ranchers don’t want to lose cattle-grazing tenures. Hunters and guide outfitters want to be able to continue shooting sheep and whatever else they can find in the nearby hills. A helicopter company is upset the park might displace its training centre.71

In seeking to alleviate these concerns, Parks Canada has demonstrated considerable flexibility and ingenuity. Grazing tenures would be phased out over 30 years rather than revoked precipitously. Government assistance would be available to ranchers in locating alternative sites for cattle and horses. The government is prepared to purchase ranch lands where requested to do so. The helicopter operation would be permitted to continue inside the park, and native communities have received assurances that their traditional activities will not be disturbed.72

Zoning represents an additional mechanism to address particular land use requirements within the national parks system. Five types are recognized: special preservation zones, wilderness zones, natural environment zones, outdoor recreation zones and park services. Since 1988, the designation within national parks of wilderness zones, which are areas that exist in a natural state or are capable of returning to a natural state, is carried out by regulation.73 Fifty-seven wilderness areas have been designated in this way in the national parks of Banff, Jasper, Kootenay and Yoho.74

The pace of expansion of protected areas has increased significantly in recent years at both the federal and provincial levels, a process that is associated with interest in climate change, biodiversity protection and watersheds, as well as more traditional rationales for park lands.75 Although not considered in the present report, important commitments towards further designation of protected areas have also been made at the provincial level. Nova Scotia legislation calls for the incorporation of 12 per cent of the

69 CNPA, ss. 7 and 12.
70 Hume, 2008a.
71 Mason, 2008.
72 Ibid.
73 CNPA, s. 14. “Wilderness” is defined in s. 1 of the National Parks of Canada Wilderness Area Declaration Regulations as follows: “The regions shown on the administrative map plans […] that exist in a natural state or that are capable of returning to a natural state are declared to be wilderness areas within the national park set out in column 1 of that item.” The authority to designate wilderness areas by regulation was introduced through amendment to the National Parks Act in 1988 and was anticipated to be consistent with prior policy on zoning within national parks. See Parks Canada, 1994, pp. 30–33 (section 2.2, Zoning).
74 National Parks of Canada Wilderness Area Declaration Regulations.
75 Martin, 2007; Friesen, 2008; and Davis, 2007.
provincial land base within protected areas by 2015, while the Ontario government has undertaken to safeguard half of the northern boreal forest from development.

### 4.3 Connectivity and corridors

More recently, the challenges of enhancing the representative character of the parks system in certain parts of the country, together with recognition of the contribution of corridors and buffer zones to more effective protection, have encouraged resort to a wider variety of governance arrangements. As expressed in the National Parks Policy chapter of Parks Canada's Guiding Principles, “Cooperative arrangements for complementary use and management of lands adjacent to national parks will be pursued with government and non-government agencies at the local, provincial, territorial and federal levels in order to maintain ecosystem integrity and to foster sustainable development.” In a recent national survey, information was gathered on measures currently in use to provide for habitat connectivity between protected areas. Such measures include:

- Regulatory-based buffers or corridors (used in 5 jurisdictions);
- Policy guidance on the need for networking protected areas (4 jurisdictions);
- Non-regulatory designations (world heritage sites, model forests) (5 jurisdictions);
- Environmental assessment processes that consider the impact on protected areas (7 jurisdictions);
- Policy guidance to governments on compatible use of lands around protected areas (4 jurisdictions);
- Policy guidance to industry on compatible use of lands around protected areas (3 jurisdictions).

At the non-government level, the Nature Conservancy of Canada has used scientifically grounded conservation blueprints covering much of the country to formulate protection strategies at the broader landscape level, and to shift its emphasis towards protected areas networks, buffer zones and ecological connectivity. The government’s 2007 funding commitment to the Nature Conservancy, mentioned above, is also expected to achieve results that are consistent with broader national parks policy and objectives, contributing for example to the protection of buffer zones or the extension of ecologically significant corridors, even though the lands involved will not be transferred to the Crown and will not constitute elements of the national parks system.

### 5 Statutory performance requirements

#### 5.1 ‘Unimpaired for future generations’

The CNPA states that the national parks of Canada are “dedicated to the people of Canada for their benefit, education and enjoyment, subject to this Act and the regulations, and the parks shall be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations.” This language, largely unchanged since its introduction in the National Parks Act of 1930, establishes a general—and frequently contested—framework within which the national parks system and its management principles have evolved.

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76 Environmental Goals and Sustainable Prosperity Act 2007.
77 Draft legislation, the Far North Act, was introduced to the Ontario legislature in June 2009 to support the projected expansion of protected areas in the province. This initiative is described more fully in a companion essay on Ontario protected areas law and policy.
79 CNPA, s. 4(1).
Historically, the concepts of enjoyment, maintenance and ‘unimpaired for future generations’ were central to the debate. Understanding of each has evolved over the decades, particularly in relation to the increased acceptance of aboriginal land use activities within park boundaries, and in conjunction with the emergence of ecological integrity as a management standard.

### 5.2 Ecological integrity

Ecological integrity is central to the conservation objectives of the CNPA. As previously noted, maintenance or restoration of ecological integrity is statutorily described as “the first priority” in relation to parks management. According to section 2:

“ecological integrity” means, with respect to a park, a condition that is determined to be characteristic of its natural region and likely to persist, including abiotic components and the composition and abundance of native species and biological communities, rates of change and supporting processes.

The CNPA calls upon the Minister, within five years from the date of park establishment, to “prepare a management plan for the park containing a long-term ecological vision for the park, a set of ecological integrity objectives and indicators and provisions for resource protection and restoration, zoning, visitor use, public awareness and performance evaluation.” Subject to regulatory authorization, the superintendent of each park has the power to vary or adjust regulatory requirements for the purpose of conserving natural resources.

Further guidance concerning the pursuit of ecological protection in parks management is set out in the Parks Canada Guiding Principles and Operational Policies. Here, under the general heading of ‘Ecosystem Protection’, it is declared: “National park ecosystems will be given the highest degree of protection to ensure the perpetuation of natural environments essentially unaltered by human activity.”

The evolution of the concept of ecological integrity is of some interest, both as an illustration of the longstanding Canadian pattern of policy initiatives foreshadowing statutory developments, and as an example of legislative adaptation within the intergovernmental system. Following nearly two decades of informal and policy-based reference to ecological integrity, a Panel on Ecological Integrity was constituted in 1998. This body reported in 2000 with the following proposed definition of ecological integrity: “An ecosystem has integrity when it is deemed characteristic for its natural region, including the composition and abundance of native species and biological communities, rates of change and supporting processes.” In an attempt to convey the concept more plainly, the Panel advised that “ecosystems have integrity when they have their native components (plants, animals and other organisms) and processes (such as growth and reproduction) intact.”

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80 CNPA, s. 8(2).
81 CNPA, s. 11(1).
82 CNPA, s. 16 (3)(a).
83 Section 10 of the Guiding Principles, titled ‘Accountability’, provides an idea of how many planning documents exist within the Parks Canada system. Under the heading, ‘Policy Application’, it states:

These Principles set out the key elements of policy which apply broadly to Parks Canada’s heritage activities. Specific policies for national parks, national historic sites, historic canals, national marine conservation areas and other activities are set out in Part II, “Activity Policies,” and Part III, “Cultural Resource Management Policy.” These provide more detailed direction for the management of the various heritage places and programs of Parks Canada.

In addition to these policies, further management details may be found within strategic plans, management directives, management plans, business plans, ecosystem management plans, service plans, community plans, and regulations.

For further details, see Parks Canada, 2009b.
84 Parks Canada, 2009b (Part II – Activity Policies: National Parks, section 3.1.1).
85 Parks Canada, 2000, p. 2.
86 Ibid., p. 2.
The Panel noted that Parks Canada itself, in a 1997 State of the Parks Report, had determined that virtually all parks were experiencing significant threats and loss of ecological integrity. The range of issues affecting parks either within their boundaries or external to them included habitat loss, habitat fragmentation, loss of large carnivores, air pollution, pesticides, invasive species and overuse.\(^{87}\)

Ecological integrity was transformed from a policy objective to a statutory requirement in 2000. The implementation of measures to maintain or restore ecological integrity is ongoing. Of particular importance are the Parks Canada report of 2005 concerning the monitoring and reporting of ecological integrity in national parks,\(^{88}\) and the 2007 draft Principles and Guidelines for Ecological Restoration in Canada’s Protected Natural Areas.\(^{89}\) These measures represent continuing initiatives in response to the report of the Panel on Ecological Integrity and follow-up assessment, including a review by the Commissioner of the Environment and Sustainable Development.\(^{90}\)

Overall, formalization of the obligation to pursue ecological integrity in the management of protected areas has strengthened the role of scientific research in the decision-making process. Importantly, as explained in a companion essay on Ontario protected areas law, ecological integrity has now been adopted in that province’s legislation. The indicators of ecological integrity identified in the Parks Canada 2005 report are shown in Table 1.

### Table 1: Indicators for assessing ecological integrity in national parks

<table>
<thead>
<tr>
<th>Biodiversity</th>
<th>Ecosystem Functions</th>
<th>Stressors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Species richness - change in species richness - numbers and extent of exotics</td>
<td>Succession/retrogression - disturbance frequencies and size (fire, insects, flooding) - vegetation age class distributions</td>
<td>Human land use patterns - land use maps, roads densities, population densities</td>
</tr>
<tr>
<td>Population dynamics - mortality/nativity rates of indicator species - immigration/emigration of indicator species - population viability of indicator species</td>
<td>Productivity - remote or by site</td>
<td>Habitat fragmentation - patch size, inter-patch distance, forest interior</td>
</tr>
<tr>
<td>Trophic structure - faunal size class distribution - predation levels</td>
<td>Decomposition - by site</td>
<td>Pollutants - sewage, petrochemicals etc. - long-range transport of toxics</td>
</tr>
<tr>
<td></td>
<td>Nutrient retention - Ca, N</td>
<td>Climate - weather data - frequency of extreme events</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other – park-specific issues</td>
</tr>
</tbody>
</table>

*Source: Parks Canada, 2005.*

Incorporation of ecological integrity within the administrative framework of Parks Canada has not been without controversy. Commentators have observed that the standard of ecological integrity itself may be open to interpretation, with some perspectives being more or less sympathetic to the impact of human intervention within designated park lands.\(^{91}\) The manner in which the standard has been met has also been subject to judicial review proceedings in which environmental and aboriginal organizations have questioned operational and procedural decisions taken by parks officials.

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87 Ibid., pp. 5–7.
89 Parks Canada, 2007a. The principles were approved by Canadian ministers responsible for parks in September 2007.
90 OAG, 2005.
91 Fluker, 2003, pp. 139–142.
In *Canadian Parks and Wilderness Society v. Canada (Minister of Canadian Heritage)*, a judicial review challenge to a decision to approve road construction within the Wood Buffalo National Park, the trial court endorsed an exceptionally disheartening interpretation of the statutory requirement found in CNPA section 8(2) to accord first priority to ecological integrity:

... while Wood Buffalo National Park, like other National Parks, is dedicated to the people of Canada as a whole, it is not unreasonable to give special consideration to the limited number of people of Canada who are by far most directly affected by management or development decisions affecting the park. I am satisfied that it is reasonably open to the Minister and her delegates to conclude that the interests of those people overrode the first priority given to ecological integrity where impairment of such integrity can be minimized to a degree that the Minister concludes is consistent with the maintenance of the Park for the enjoyment of future generations [...]

Subsection 8(2) of the Act does not require that ecological integrity be the ‘determinative factor’ in a decision such as that under review. Rather, it simply requires that ecological integrity be the Minister’s ‘first priority’.92

The court concluded that the Minister had met the statutory standard insofar as ecological integrity had been taken into account and “given first priority notwithstanding that it was not found to be the determinative factor in all of the circumstances.”

### Administration, management planning and regulation

#### 6.1 Administration

The Minister responsible for Parks Canada (currently the Minister of the Environment) is responsible for the administration, management and control of national parks, and for that purpose exercises responsibility for and provides direction to Parks Canada.93 That organization, headed by a chief executive officer who holds the rank of deputy minister,94 carries out relevant programme development and operational work. Parks Canada’s authority encompasses national parks and national marine conservation areas as well as national historic sites and other heritage protection programmes assigned to the Minister.95

It is convenient to set out in full the responsibilities of the Parks Canada Agency as they appear in its constituting legislation:

1. The Agency is responsible for the implementation of policies of the Government of Canada that relate to national parks, national historic sites, national marine conservation areas, other protected heritage areas and heritage protection programs.

2. The Agency shall ensure that there are long-term plans in place for establishing systems of national parks, national historic sites and national marine conservation areas.

3. The Agency is responsible for negotiating, and recommending to the Minister, the establishment of new national parks, national marine conservation areas and other protected heritage areas and the acquisition of national historic sites.

4. The Agency is responsible for the administration and enforcement of the Acts listed in Part 1 of the schedule and any regulations made under those Acts and the regulations listed in Part 2 of the schedule.96

These statutory obligations are reflected in a more generalized formulation of Parks Canada’s distinctive contribution and responsibility within the broader framework of federal government operations. In that context, Parks Canada is responsible for a specifically formulated strategic outcome: to “protect and present nationally significant examples of Canada’s natural and cultural heritage, and foster public(...)

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93 CNPA, s. 8; and PCAA, s. 4.
94 PCAA, s. 12.
95 PCAA, s. 5(1).
96 PCAA, s. 6.
understanding, appreciation and enjoyment in ways that ensure the ecological and commemorative integrity of these places for present and future generations.\textsuperscript{97}

Programme activities intended to contribute to this overall outcome have been identified for the purposes of organizing performance and maintaining accountability: establishment of heritage places; conservation of heritage resources; promotion of public appreciation and understanding; enhancement of visitor experience; management of town sites and throughways; and delivery of corporate services.

The effort to conserve natural and cultural heritage encompasses systems planning, stakeholder negotiations, ministerial authorization and ultimately the establishment of national parks, national marine conservation areas, national historic sites and other heritage places. Four “planned results” are to be kept in mind while formulating strategic initiatives:

- Planned result 1: create national parks and national marine conservation areas in unrepresented regions;
- Planned result 2: complete or expand some existing national parks;
- Planned result 3: designate and commemorate places, persons and events of national historic significance, particularly in under-represented priority areas; and
- Planned result 4: designate other heritage places.\textsuperscript{98}

Programme activity intended to conserve natural heritage is also directed towards performance expectations established by legislation, particularly in relation to ecological integrity and the objective of leaving parks unimpaired for future generations to enjoy. National marine conservation areas are also to be managed and used in a sustainable manner.\textsuperscript{99} Similar performance objectives apply to the management of historic sites and other cultural resources.

Strategic initiatives and associated themes have been established in connection with the effort to conserve natural heritage.\textsuperscript{100} For example, with a view to maintaining ecological integrity and sustainability, Parks Canada expects to undertake “ecological research; active management and restoration efforts such as the re-introduction of fire to fire-dependent ecosystems; engagement with user groups, local organizations and aboriginal communities in appropriate management initiatives; and public education.”\textsuperscript{101}

It is worth noting that the variety of approaches to protected areas governance as discussed above is acknowledged in the context of Parks Canada’s programme objectives, as these are derived from the applicable legislative framework and the strategic responsibilities assigned to the agency within the overall framework of federal government operations. It is also noteworthy that the articulation of responsibilities and objectives facilitates monitoring and assessment of Parks Canada’s performance.

### 6.2 Management planning

As previously noted, the CNPA requires the preparation of management plans for each park in the system of protected areas within five years of the establishment of the park.\textsuperscript{102} Management plans are expected to contain a long-term ecological vision for the park in question, together with a set of ecological integrity objectives and indicators accompanied by provisions for resource protection.

\textsuperscript{97} Parks Canada, 2006, p. 15.
\textsuperscript{98} Parks Canada, 2006, pp. 28–40.
\textsuperscript{100} Parks Canada, 2006, pp. 41–56.
\textsuperscript{101} Parks Canada, 2006, 44–47.
\textsuperscript{102} CNPA, s. 11.
and restoration. Other matters to be addressed include visitor use, public awareness and zoning.\textsuperscript{103} In connection with zoning, it has been noted that the Governor in Council may by regulation declare as a wilderness zone any area within a park that exists in a natural state or is capable of returning to a natural state.\textsuperscript{104} Although activity likely to impair the wilderness character of a wilderness zone may not be authorized, permission may be given for activities related to public safety, access, basic user facilities, parks administration and traditional resource harvesting in certain statutorily designated parks.\textsuperscript{105} The latter range of activities by aboriginal peoples is subject to further regulation.\textsuperscript{106}

Opportunities for participation in the formulation of management plans are to be provided at the national, regional and local levels to—among others—aboriginal organizations, bodies established under land claims agreements and representatives of park communities.\textsuperscript{107}

Management plans are ultimately subject to Ministerial approval and are to be tabled in the House of Commons and the Senate.\textsuperscript{108} This procedure contributes in the Canadian parliamentary system to public awareness and ministerial accountability in relation to the operations of individual parks. Management plans must be reviewed at five-year intervals with any amendments again tabled in the House of Commons and the Senate.\textsuperscript{109}

### 6.3 Regulation

In connection with the overall national governance of protected areas, regulatory powers extending beyond general authority regarding the preservation, control and management of parks and the protection of natural and cultural resources have been conferred upon the Governor in Council. Specifically enumerated authority currently encompasses fishing, pollution, the scientific taking of specimens, the operation of public services and transportation (including air access), public safety, nuisances, firearms, public health, and disease prevention. A significant array of regulations addressing these subjects sets out guidelines for various activities, or establishes permit and approval schemes as well as prohibitions with respect to the conduct of park visitors, occupants and businesses.\textsuperscript{110}

Although the precautionary principle is explicitly mentioned in several pieces of Canadian legislation and is the subject of general policy at the federal level, no specific reference occurs in the CNPA itself. A precautionary approach might be adopted, however, in connection with regulatory and management actions intended to promote ecological integrity, conserve natural resources or prevent pollution.

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{103} CNPA, s. 11(1).
\item \textsuperscript{104} CNPA, s. 14(1).
\item \textsuperscript{105} CNPA, s. 14(3).
\item \textsuperscript{106} CNPA, s. 17.
\item \textsuperscript{107} CNPA, s. 12(1).
\item \textsuperscript{108} CNPA, s. 11(1).
\item \textsuperscript{109} CNPA, s. 11(2).
\item \textsuperscript{110} CNPA, s. 16(1). National Parks Building Regulations; National Parks Camping Regulations; National Parks Cemetery Regulations; National Parks General Regulations; National Parks Highway Traffic Regulations; National Parks of Canada Aircraft Access Regulations; National Parks of Canada Businesses Regulations; National Parks of Canada Cottages Regulations; National Parks of Canada Domestic Animals Regulations; National Parks of Canada Fire Protection Regulations; National Parks of Canada Fishing Regulations; National Parks of Canada Garbage Regulations; National Parks of Canada Lease and Licence of Occupation Regulations; National Parks of Canada Water and Sewer Regulations; National Parks of Canada Wilderness Area Declaration Regulations; National Parks Signs Regulations; National Parks Town, Visitor Centre and Resort Subdivision Designation Regulations; and National Parks Wildlife Regulations.
\end{enumerate}
\end{footnotesize}
Every two years, the Minister is required to table in the House of Commons and the Senate a report on the overall state of Canada’s national parks.111 This obligation, distinct from the presentation of individual park management plans and amendments, provides a broader basis for accountability for performance over time in relation to the condition and extent of the national protected areas network. Other mechanisms of accountability, such as the audit function intermittently performed by the Commissioner of the Environment and Sustainable Development, help to ensure that the management performance of Parks Canada is subject to ongoing scrutiny and review.112

### 7 Enforcement arrangements

The Minister may designate as park wardens persons appointed under the Parks Canada Agency Act, with duties to enforce the CNPA and regulations.113 Other persons already employed in law enforcement by provincial, local, municipal or aboriginal governments may also be designated by the Minister as enforcement officers with respect to specified provisions of the CNPA or regulations in relation to specified parks.114 Individuals designated as enforcement officials in relation to national parks exercise responsibilities roughly equivalent to those of police officers.

Park wardens and enforcement officers are empowered under the CNPA, and in accordance with and subject to the Criminal Code, to exercise powers of arrest. They are further authorized to undertake search and seizure activities in accordance with a warrant, or without a warrant “if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would not be practical to obtain one.”115

Several categories of offence are established within the CNPA. It is a general offence, for example, to use or occupy public lands within a national park except as permitted under the Act and regulations.116 It is also an offence to contravene the regulations, or the conditions of any permit, licence or other authorizing instrument issued pursuant to them.117 Other offences are established in relation to hunting and trafficking in park species,118 and for the failure by a person who has charge, management or control of a substance capable of degrading the natural environment to take reasonable measures to prevent such degradation.119

Penalties range from a fine not exceeding 2,000 dollars in the case of summary conviction for unauthorized use or occupation of public lands or for contravention of a permit condition, to more severe penalties. Failure to take reasonable measures to prevent degradation of the natural environment might lead, in the case of conviction on indictment of a corporation, to a fine not exceeding

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111 CNPA, s. 12(2). See also Parks Canada, 2007b.
112 OAG, 2005; and OAG, 2008.
113 CNPA, s. 18. As of Spring 2009, approximately 100 park wardens will be armed in the performance of their duties. Unarmed officials will be re-designated as resource conservation and public safety officers. This innovation reflects the outcome of a longstanding labour relations dispute concerning the safety and security of parks personnel. As stated by one health and safety officer in 2001, “Wardens who are expected to engage in law enforcement activities such as patrols, intelligence gathering, investigations of possible offences, and arrests, for resource management purposes and the maintenance of the public peace, activities in the performance of which they may find themselves at risk of grievous bodily harm or death, are not provided with the necessary personal protective equipment.” See Canada Appeals Office on Occupational Health and Safety, 2002, Appendix 2. In connection with the Canada Wildlife Act 1985 and the Migratory Birds Convention Act 1994, enforcement authority is conferred upon wildlife officers and game officers, respectively.
114 CNPA, s. 19.
115 CNPA, s. 22.
116 CNPA, s. 24(1).
117 CNPA, s. 24(3).
118 CNPA, ss. 25 and 26.
119 CNPA, s. 32.
50,000 dollars. The most severe potential penalty involves a possible fine not exceeding 250,000 dollars or exposure to imprisonment for a term not exceeding five years, or both. Such a penalty is potentially applicable upon conviction on indictment for an offence involving hunting, trafficking or possession of listed wildlife species.\textsuperscript{120} Substantially increased penalties applicable to the CNPA and other federal legislation, including the Canada Wildlife Act and the Migratory Birds Convention Act, are anticipated from environmental enforcement legislation currently before parliament.\textsuperscript{121}

It must be noted that the penalties described above are maximum penalties to be determined by the sentencing judge upon conviction of the accused. Sentencing principles in the environmental context continue to evolve but, as outlined in a leading articulation of the framework, it would be relevant for the sentencing court to consider: the nature of the environment affected by the offence; the degree of damage and the deliberateness of the offence, together with the accused’s attitude and any indication of remorse; evidence of efforts made to comply; previous criminal record; and, in the case of a corporate accused, the nature and size of the corporation and any realization of profits from the offence; as well as any other indications as to the character of the convicted corporation or individual.\textsuperscript{122}

Upon conviction of an accused, the court may, in addition to any punishment imposed and with reference to the nature and circumstances of the commission of the offence, make an order:

- directing the person to take any action that the court considers appropriate to remedy or avoid any harm to any resources of a park that resulted or may result from the commission of the offence; or
- directing the person to pay the Minister an amount of money as compensation, in whole or in part, for the cost of any remedial or preventive action taken by the Minister as a result of the commission of the offence.\textsuperscript{123}

Where a person fails to take reasonable measures to prevent degradation of the natural environment and danger to fauna, flora or cultural resources, or in the case of persons associated with the discharge or deposit of a degrading or injurious substance after being directed by a park superintendent to take such preventive measures, the Minister may direct that those measures be taken and the person is liable for “expenses reasonably incurred”.\textsuperscript{124}

### 8 Protected areas finance

Parks Canada receives funding from Parliament for both capital and operating expenditures.\textsuperscript{125} Other revenue sources authorized under the Parks Canada Agency Act include:

- sales revenues from the disposition or licensing of property;
- proceeds from leasing or licensing real property and immovables; and
- fees for services or the use of park facilities.\textsuperscript{126}

\textsuperscript{120} CNPA, s. 26(2)(b).
\textsuperscript{121} Environmental Enforcement Act, Bill C-16 (First Reading March 4, 2009).
\textsuperscript{122} R. v. United Keno Hill Mines Ltd. (1980), 10 Canadian Environmental Law Reports, 43 (Yukon Territorial Court).
\textsuperscript{123} CNPA, ss. 30(1)(b) and 30(1)(c)
\textsuperscript{124} CNPA, s. 32(3).
\textsuperscript{125} PCAA, s. 19.
\textsuperscript{126} PCAA, s. 20.
For the purpose of establishing or enlarging a national park or national marine conservation area, or for acquiring historic properties, Parliament created a New Parks and Historic Sites Account.\textsuperscript{127}

Overall funding for federal environmental research and management initiatives experienced a decline in the context of deregulatory initiatives and deficit reduction over roughly two decades, starting in the 1980s. Support for protected areas fell accordingly and, together with the relinquishing of certain responsibilities to other levels of government, attracted severe criticism.\textsuperscript{128} The situation appeared to be somewhat alleviated prior to the global financial crisis in 2008, but prospects for enhanced expenditure for environmental programmes remain uncertain.

\section{9 Intergovernmental coordination}

The challenges of formulating coherent national policies and implementing international obligations effectively within the parameters dictated by Canada’s federal-provincial division of powers arise in relation to a wide range of issues, including protected areas. Mechanisms available to promote coordination and joint efforts exist at several levels.

A prominent feature of executive federalism in Canada today is the practice of establishing federal-provincial-territorial councils of ministers to share responsibility for particular policy fields. Ministers engaged in wildlife management or forests, for example, or their senior officials, meet regularly to exchange views and on occasion to pursue selected issues on a collaborative basis. In November 1992, the Canadian Council of Ministers of the Environment agreed to a ‘Statement of Commitment to Complete Canada’s Network of Protected Areas’. This document anticipated national/federal and provincial/territorial measures to pursue the objective of a representative system of protected areas. The Canadian Biodiversity Strategy is the product of similar deliberations.

For its part, at the operational level Parks Canada is engaged in a wide range of consultative and collaborative arrangements, notably with provincial and aboriginal governments. These processes are anticipated by legislation and have been developed over time through practice and policy. In carrying out its responsibilities, Parks Canada is authorized to “enter into contracts, agreements, memoranda of understanding or other arrangements” with other governments or government agencies, or with any person or organization.\textsuperscript{129} In the case of relationships with provincial governments, memoranda of understanding (MOUs) govern parks planning and development procedures. Such arrangements are currently applicable in the context of efforts to establish a new national park in the Manitoba Lowlands region.\textsuperscript{130}

Under this MOU, Canada and Manitoba agreed to negotiate a national park establishment agreement by May 2005. The stated purpose of the proposed park is specifically “to protect a representative natural area of Canadian significance in the Manitoba Lowlands and encourage public understanding, appreciation and enjoyment of the area.” The location of the park should be representative of the Manitoba Lowlands natural region, and should maintain the ecological and cultural integrity of the lands protected. The MOU also requires public consultations including consultations with affected aboriginal and local communities. It acknowledges respect for existing aboriginal and treaty rights in the planning, management and operation of the park, as well as the need to establish mechanisms to ensure the involvement of affected aboriginal peoples and local communities in the negotiation of a park establishment agreement. In terms

\begin{itemize}
\item \textsuperscript{127} PCAA, s. 22. For details on the source and use of funds in the New Parks and Historic Sites Account, see Parks Canada, 2006, p. 93.
\item \textsuperscript{128} Slocombe, 2008.
\item \textsuperscript{129} PCAA, s. 8(a).
\item \textsuperscript{130} Parks Canada, 2006, p. 31.
\end{itemize}
of funding, the federal government has agreed to provide 30 million dollars over 10 years and 2 million dollars annually thereafter (subject to Parliamentary approval). Finally, the MOU lists a number of issues that the park establishment agreement will address including final boundaries for the national park; the process for transfer of park lands to Canada for the purpose of establishing and operating a national park under the CNPA; management of lands between the date of the agreement and the date they are formally protected under Schedule 1 of the CNPA; federal investment in the establishment, development and operation of the park; the continuation of traditional activities by aboriginal peoples within the boundary of the park; resource harvesting by local residents; access to Lake Winnipeg for the purpose of commercial fishing; the establishment of a park advisory board; the development of a management plan as required under the CNPA; and mechanisms to foster collaboration between Canada and Manitoba related to land use activities on the lands and waters adjacent to the national park.

Another coordination mechanism, not yet widely in use, takes the form of science advisory committees where, on a regional basis, specialists from other governments, representatives of aboriginal communities and academics might contribute to the design and assessment of Parks Canada monitoring and restoration plans.131

10 Public participation

In Canada, forms and avenues of public participation would ordinarily be subject to generally applicable laws and procedures governing procedural “fairness” in the context of administrative decision making, or obligations to consult with reference to matters affecting or potentially affecting aboriginal rights, or in connection with notice and comment procedures applied to regulation making. A range of more specific requirements applies in the context of the national parks programme.

The Minister is required to “provide opportunities for public participation at the national, regional and local levels” in connection with “the development of parks policy and regulations, the establishment of parks, the formulation of management plans, [and] land use planning and development in relation to park communities.” Such opportunities would include participation by aboriginal organizations, bodies established under land claims agreements and representatives of park communities.

In connection with proposals for new parks or a change in park boundaries, the legislation requires that “the proposed amendment shall be tabled in each House of Parliament, together with a report on the proposed park or park reserve that includes information on consultations undertaken and any agreements reached with respect to its establishment.”

The significance of public involvement is underlined in policy documents. Section 8 of the Guiding Principles addresses this issue, opening with the assertion that public involvement is “a cornerstone of policy, planning and management practices to help ensure sound decision-making, build public understanding, and provide opportunities for Canadians to contribute their knowledge, expertise and suggestions.” In addition, the Operational Policies of National Parks states that Parks Canada will

134 These are set out in the Federal Regulatory Policy and include the preparation of Regulatory Impact Assessment Statements.
135 CNPA, s. 12(1).
136 CNPA, s. 7(1).
137 Parks Canada, 2009b, part I, section 8 (Public involvement).
“inform and involve a broad spectrum of the Canadian public in the preparation, review and amendment of park management plans”. Changes to park zoning are regarded as major amendments to park management plans, and “may only be made following an environmental assessment, public notice and public participation in the decision”. Further opportunities for public participation in matters affecting parks development and management are provided for in environmental assessment legislation.

In the Canadian context it is important to recognize that public participation in relation to the development and management of protected areas involves much more than responsive reaction to official overtures. Rather, on the basis of in-house expertise and citizen engagement, non-governmental organizations are actively involved on an ongoing basis in monitoring operations, advocating and negotiating on behalf of new parks, and articulating broad visions for the future of the Canadian protected areas network. Indeed, one commentator has recently argued that “civil society’s engagement or lack of it has been and will likely continue to be the determining factor in the success of protected areas in Canada.”

At least once every two years, the Minister is required to convene a round table to seek advice on Parks Canada’s performance of its responsibilities as set out in section 6 of the Parks Canada Agency Act. The composition of the round table is simply described as “persons interested in matters for which the Agency is responsible.” Where written recommendations result from the deliberations of the round table, the Minister is required to respond within 180 days.

11 Conclusion

In addition to the commitment and professional expertise of Parks Canada personnel, the ongoing progress of the agency in relation to protected areas development and administration is facilitated by the wider legal framework. Various traditions and mechanisms including ministerial responsibility, public reporting, occasional performance audits and judicial review, alongside formal and informal procedures for public participation, promote accountability and anchor Canada’s protected areas activities in the democratic and legal traditions of the country. At the same time, however, the decentralized allocation of constitutional responsibility within the Canadian federation often requires extensive intergovernmental consultation and agreement in relation to major initiatives, particularly those involving property and natural resources.

Whether protected areas benefit from Canada’s complex constitutional arrangements is much debated. On the one hand, protected areas advocates may often have two levels of jurisdiction to which to appeal for the designation of a particular potential park. On the other, the challenges of promoting inter-jurisdictional coordination and consistency are formidable.

At the federal level, the immediate legal framework for national protected areas is the CNPA. This legislation now establishes performance standards and expectations for the parks system and for the

138 Parks Canada, 2009b, part II, section 2.1.5 (Management plans).
139 Parks Canada, 2009b, part II, section 2.2.2 (Zoning).
140 Examples include the Canadian Boreal Initiative, the Canadian Parks and Wilderness Society, Ducks Unlimited, and the World Wildlife Fund Canada. For further details, see Canadian Boreal Initiative (undated); Canadian Parks and Wilderness Society (undated); Ducks Unlimited Canada, 1996–2010; and World Wildlife Fund Canada, 2008.
141 Locke, 2008.
142 PCAA, s. 8.1(1).
143 See, for example, Parks Canada, 2008, which is a list of past and current initiatives as well current and future goals under the headings ‘Heritage Places Establishment’, ‘Heritage Resources Conservation’, ‘Public Appreciation and Understanding’, ‘Visitor Experience’, ‘Townsite and Thoroughway Infrastructure’, and ‘International’.
management of individual protected areas. Over roughly 125 years, the Canadian federal framework for protected areas has evolved with general success in both operational and organizational terms in response to a changing social environment. Innovative practices have given rise to more clearly articulated policies and these in turn have achieved legislative expression. There are now indications that valuable experimental initiatives from the federal context—notably the significance of ecological integrity—may be adopted in other jurisdictions. The system faces new challenges, with climate change mitigation and adaptation most prominent on the list. There are strong indications, however, that those responsible for protected areas in Canada are preparing, within the context of overall national policy, to address these challenges.\textsuperscript{144}

\textsuperscript{144} See, for example, Jones, et al., 2003.
References


Canada


Legal instruments

Most legal instruments discussed in this case study are available online. Readers may view the full text on the ECOLEX web site (www.ecolex.org) using the hyperlinks below, or at the URL provided.

Federal Acts


Canada National Parks Act 2000, SC 2000, c. 32 LEX-FAOC054040

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**Regulations under the Canada National Parks Act**

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National Parks Town, Visitor Centre and Resort Subdivision Designation Regulations, SOR/91-8

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