

COUNTRY REPORT: CANADA

The Law and Policy Governing Canada's Wetlands - Recent Developments

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Introduction to Wetlands

Wetlands are an ecosystem with many functions, services and abilities; and the fact that large quantities of these ecosystems have been destroyed or degraded as humanity has developed and industrialised is increasingly becoming a visible problem. In Canada, 70% of wetlands have been degraded or outright destroyed,¹ largely as a consequence of human activity such as industrial development, expansion of ports and the associated dredging required, and urban and agricultural expansion.² Before turning to look at the general status and recent developments in wetland law and policy in Canada, it is important to develop a basic understanding about what wetlands are, what they do and why they are so important.

The wetland policy of the Government of Canada defines wetlands as:

'...land where the water table is at, near, or above the surface or which is saturated for a long enough period to promote such features as wet-altered soils and water tolerant vegetation. Wetlands include organic wetlands or "peatlands", and mineral wetlands or mineral soil areas which are influenced by excess water but produce little or no peat.'³

While this definition is a good beginning, it is general in nature and covers a surprisingly broad array of ecosystems. While law and policy often treat wetlands as a broad classification, and it is true that they provide many similar services, there are many types of wetlands which exhibit drastically different characteristics. It is important for academics, policy makers and the general public to be able to recognize wetlands in their natural space in order to best provide recommendations for their use or protection. Therefore, brief descriptions of the main types which exist in Canada are provided below.

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¹ Ducks Unlimited Canada, *Learn About Wetlands* (available at www.ducks.ca/learn-about-wetlands/).

² C. Rubec & A.Hanson, 'Wetland Mitigation and Compensation: Canadian Experience' (2009) 17(3) *Wetlands Ecological Management*, 3.

³ Environment Canada, *The Federal Policy on Wetland Conservation* (1991) Ottawa: Government of Canada, 9 (*Environment Canada Policy*).

The categories of wetlands found in Canada range from swamps to marshes, bogs, fens and shallow open water. Marshes, of which there can be salt water and fresh water types, are characterised as areas periodically submerged by either slow moving or standing water.⁴ A main visually defining feature of marshes is their lack of woody vegetation,⁵ which means that unlike many other wetland varieties, they are made up strictly of reeds, rushes or sedges.⁶ Swamps, on the other hand, are dominated by trees and shrubs.⁷ Water movement in swamps varies; these wetlands may flood on a seasonal basis or alternatively stay flooded for longer periods of time.⁸ Bogs and fens are found more commonly in the northern parts of Canada and are often considered to be the least productive wetland ecosystems.⁹ Bogs are peat-covered wetlands while fens have large amounts of sedge but also are known to contain trees and shrubs.¹⁰ The final category of wetland commonly found in Canada is shallow open water. Often situated at the transition between lakes and marshes, this wetland system is made up of pot holes and sloughs.¹¹ While Canada has rich and varied wetland ecosystems it is in addition important to note that wetlands exist all over the world and their importance has long been recognized by the international community.¹² In fact, they are considered to be of such importance that the *Ramsar Convention*, the international agreement aimed at wetland protection, is the only global environmental treaty which deals solely with one ecosystem.¹³

Canada has an abundance of wetlands in a variety of forms, but why are they so important? The simple answer is because they provide services to both the natural and human world. We call these ecosystem services.¹⁴ Wetlands, in their many iterations, provide services which filter water, prevent flooding, store groundwater, protect shorelines from erosion and storm surges and store carbon.¹⁵ On top of this, wetlands are a hotbed of biodiversity, they

⁴ Supra note 1.

⁵ Ibid.

⁶ Ibid.

⁷ Environment Canada, *Wetlands of Ontario-About Wetlands* (available at www.ec.gc.ca/tho-wlo).

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² *Convention on Wetlands of International Importance especially of Waterfowl Habitat*, 2 February 1971, 96 UNTS 245, Can TS 1981 No 9 (Amended by the Protocol of 3 December 1982 and the Amendments of 28 May 1987).

¹³ Ramsar Secretariat, *The Ramsar Convention on Wetlands* (available at http://www.ramsar.org/cda/en/ramsar-home/main/ramsar/1_4000_0_).

¹⁴ For Environment Canada's description of ecosystem services see Environment Canada, *Putting a Price on Canada's Ecological Goods and Services* (2010) Ottawa: Government of Canada (available at

¹⁵ Environment Canada (supra note 7).

provide irreplaceable habitat for many species, including migratory birds and species at risk, and allow for recreational experiences such as hiking and bird watching.¹⁶ Unfortunately, over past decades many wetlands and their valuable services have been lost entirely or been extremely degraded. Clearly legal protection and public education is needed in order to help protect the remainder of these ecosystems.

The next two sections of this Country Report will describe the current state of wetlands law and policy in Canada and afterwards look at the most recent developments in some of the jurisdictions within Canada. This will focus in particular on areas of the country which are most proactive in their wetland protection as well as showing clear steps forward when providing recommendations for future wetland protection at any number of jurisdictional levels. It should be noted that in this same *IUCN eJournal* edition there is a complementary Canada Country Report written in French by Pierre Cloutier de Repentigny. While these two reports are not direct translations (Mr. Cloutier de Repentigny's piece focuses on developments in the Province of Quebec and this piece is a broader canvass of Canada as a whole) they are complimentary and both focused on the subject of wetlands law and policy in Canada.

Background on Wetland Law and Policy in Canada

In North America, the protection of wetlands through law and policy began with the United States in the early 1970s. In 1972, through Section 404 of the *Federal Water Pollution Control Act (Clean Water Act)*,¹⁷ the US Federal Government established a priority to avoid wetland destruction (although the reality is that it was too often easy to bypass this requirement by stating that it was "too difficult" to avoid impacts).¹⁸ More than 15 years later, the Government's wetland policy was strengthened to include the "no net loss" clause¹⁹ which has now become a common phrase used when dealing with wetlands and many other ecosystem protection policies.

It was around the same time that the Canadian Federal Government began to consider wetland protection policies. The first step taken was by the Department of Fisheries and Oceans who, in 1986, included wetlands in their no net loss policy regarding fish-breeding

¹⁶ Ibid.

¹⁷ *Clean Water Act*, 33 USC §1251 (1972).

¹⁸ S. Clare, N. Krogman, L. Foole & N Lemphers, 'Where is the Avoidance in the Implementation of Wetland Law and Policy' (2011) 19 *Wetlands Ecological Management*, 167.

¹⁹ Ibid; *North American Wetlands Conservation Act*, 16 USC § 4401.

locations (of which some are wetlands).²⁰ Five years later, and in part to comply with obligations flowing from ratification of the *Ramsar Convention*,²¹ the Canadian Federal Government released its first policy statement on wetlands.²² This is still the current federal policy and in it the Government states as their goal no net loss of wetland function.²³ While this policy is not regulatory in nature, at the time of its release Cabinet directed it be applied to all programs, policies and plans released and approved by the Federal Government.²⁴ In part because of this broad application to federal programs, this policy is often touted as a global example. However, it only applies on federal lands, which means it only covers approximately 29% of wetlands in Canada (those which the Federal Government is directly responsible for).²⁵ In 1996, as a follow up to the policy, and to help government agencies and policy makers apply the content of the wetland policy to their actions, an implementation guide was released. This document reiterated the “no net loss” of wetland functions and provided guidelines to achieve this – namely the “mitigation sequence”.²⁶ The mitigation sequence is a three tiered approach to wetland protection - avoidance first, minimization of damage if complete avoidance is not possible, and mitigation through actions such as protection or reestablishment of wetlands elsewhere as a last resort.²⁷ This sequence is an increasingly used directive for wetland law and policy in North America.²⁸ To date, along with the Federal Government, Alberta, New Brunswick, Prince Edward Island, Québec and Nova Scotia all have the mitigation strategy identified in their wetland protection strategies.²⁹

The next several pages will detail the state of knowledge on wetlands law and policy in the different provinces and territories across Canada. Note that three provinces (Nova Scotia, New Brunswick and Québec), which have taken action on wetlands in the recent past are described, not in this section, but below in the current developments section. To begin, we turn to the eastern part of Canada and look at the province of Newfoundland and Labrador. The main wetlands policy statement in this jurisdiction was originally produced in 1997 and

²⁰ The Department for Fisheries and Oceans – Fish Habitat Management Branch, *Policy for the Management of Fish Habitat* (1986) Ottawa: Government of Canada, section 2.2.1.

²¹ Canada became a Contracting Party to the *Ramsar Convention* in 1981.

²² Environment Canada (supra note 3).

²³ Ibid, 5, 7 and 8.

²⁴ Lynch-Stewart *et al*, *Federal Policy on Wetland Conservation: Implementation Guide for Federal Land Managers* (1996) Ottawa: Wildlife Conservation Branch, Canadian Wildlife Service, Environment Canada, 6.

²⁵ Rubec *et al* (supra note 2), 3. It is also important to acknowledge that the Federal Government may have an impact on other wetland protection through other mechanisms such as their participation in environmental assessments or through the creation of new national protected areas.

²⁶ Lynch-Stewart *et al* (supra note 24), 10.

²⁷ Ibid, 17 (for details on this sequence).

²⁸ Clare *et al* (supra note 18).

²⁹ Scientific and Technical Review Panel Briefing, ‘Avoiding, Mitigating and Compensating for Loss and Degradation of Wetlands in National Laws and Policies’ (April 2012) *Ramsar Convention on Wetlands Briefing Note No. 3* (available at <http://www.ramsar.org/bn/bn3.pdf>), 7.

was reissued in 2001 – it is called the *Policy Directive for Development in Wetlands*.³⁰ This policy deals with the issuance of permits under section 48 of the *Water Resources Act*³¹ and specifically prohibits certain developments (such as infilling, dredging, etc. which may have adverse effects on water quality or quantity).³² Interestingly, because municipalities in this province have control over watersheds (where many wetlands exist) through the *Urban and Rural Planning Act*³³ and because at the municipal level there is a lot of pressure for development,³⁴ the provincial government has encouraged municipalities to work with the Newfoundland and Labrador Municipal Wetland Stewardship Program which creates stewardships and conservation agreements.³⁵ In many cases these partnerships have led to protection agreements which ensure wetlands are not impacted by new development.³⁶

Prince Edward Island, the smallest Canadian province, put forth their wetland policy document entitled *A Wetland Conservation Policy for Prince Edward Island* in 2003. This policy replaced a more development-centred one which previously stated that when developing, “avoidance” of wetlands was the policy, unless the development was “in the greater public interest.”³⁷ The new policy goal is no net loss of wetlands or wetland function,³⁸ and to achieve this, Prince Edward Island has decided to adopt the mitigation framework of avoidance, minimization and compensation.³⁹

Turning to Ontario’s strategy, it is interesting that in some parts of this province there is more stringent protection of wetlands than in others. Specifically, the *Greenbelt Plan*⁴⁰ along

³⁰ Department for Environment and Conservation, *Policy for Development in Wetlands* (St. John’s: Government of Newfoundland and Labrador (2001) available at <http://www.env.gov.nl.ca/env/waterres/regulations/policies/wetlands.html>).

³¹ *Water Resources Act*, SNL 2002, c W-4.01.

³² Department for Environment and Conservation (supra note 30), section 5.1.

³³ *Urban and Rural Planning Act*, SNL 2000, c U-8.

³⁴ J. Sharpe, *Newfoundland & Labrador Eastern Habitat Joint Venture Coastal and Inland Freshwater Wetlands Stewardship and Conservation Project # 1.1.1-09/10* (March 2010) (available at <http://www.whc.org/en/downloads/final-project-reports/newfoundland-and-labrador/67-nl-coastal-and-inland-freshwater-wetlands-stewardship-and-conservation-final-project-report-0910>) 5.

³⁵ Ibid. See further: Department of Environment and Conservation, *Wetland and Coastal Stewardship (St. John’s: Government of Newfoundland and Labrador)* (available at <http://www.env.gov.nl.ca/env/wildlife/stewardship/wetland/index.html>).

³⁶ There are many municipalities who have signed Municipal Stewardship Agreements, such as: Tornbay; Labrador City; and Springdale. For a full list see: Department of Environment and Conservation (ibid).

³⁷ Energy, Environment and Forestry, *A Wetland Conservation Policy for Prince Edward Island* (2003) Charlottetown, Government of Prince Edward Island (available at <http://www.gov.pe.ca/photos/original/2007wetlands-po.pdf>), 1.

³⁸ Ibid, 5.

³⁹ Ibid, 6.

⁴⁰ Established under *Greenbelt Act*, 2005, SO 2005, chapter 1, section 3.

with the associated *Oak Ridges Moraine Conservation Plan*⁴¹ and the *Niagara Escarpment Plan*,⁴² improve wetland protection, but this stronger protection only applies to wetlands which fall within their jurisdiction.⁴³ The *Greenbelt Act* (which provides for the creation of the *Greenbelt Plan*) encompasses the land area for which the two other plans had already been created, plus additional land area. Although the total size of these specially protected areas are relatively small, approximately 7,200km²,⁴⁴ as compared to the total province's size of over a million km²,⁴⁵ the land protected is located within heavily populated South Ontario, where a significant proportion of wetlands have already been eliminated.⁴⁶ The increased protection provided means that "further identified" wetlands in the Greenbelt, the Oak Ridges Moraine and Niagara Escarpment areas are granted the same protection as provincially significant ones outside these boundaries.⁴⁷ It is somewhat unclear what the term "further identified" means and how the process of classifying these wetlands differs from distinguishing "provincially significant" ones, but a recent report on the wetlands in the Greenbelt indicated that the "further identified" language would mean that wetlands in these specific areas should have further protection than those elsewhere in the province.⁴⁸ The definition of the protection provided both to "further identified" wetlands in the designated areas and "provincially significant" ones in the rest of the province is laid out in Ontario's 2005 *Provincial Policy Statement* which states, in section 2.1.3, that

'Development and site alteration shall not be permitted in

...

b. *significant wetlands* in Ecoregions 5E, 6E and 7E1; and

c. *significant coastal wetlands*...'

and in section 2.1.4 states that

'Development and site alteration shall not be permitted in

⁴¹ This plan is created by authority found in the *Oak Ridges Moraine Conservation Act, 2001*, SO 2001, chapter 31, section 3.

⁴² Implemented by the *Niagara Escarpment Planning and Development Act*, RSO 1990, c N.2

⁴³ Ducks Unlimited Canada, Earthroots, Ecojustice and Ontario Nature, *Protecting Greenbelt Wetlands: How Effective in Policy* (2012), (available at http://www.ontarionature.org/discover/resources/PDFs/reports/protecting_greenbelt_wetlands_report.pdf).

⁴⁴ *Ibid*, 9.

⁴⁵ Ministry of the Environment, *Land*, Government of Ontario (available at <http://www.ene.gov.on.ca/environment/en/category/land/index.htm>).

⁴⁶ See Ducks Unlimited Canada, *Southern Ontario Wetland Conversion Analysis* (2010) Barrie: Ducks Unlimited Canada (available at http://www.ducks.ca/assets/2010/10/duc_ontariowca_optimized.pdf?9d7bd4).

⁴⁷ Ducks Unlimited Canada (supra note 43), 20.

⁴⁸ *Ibid*, 20.

a. *significant wetlands* in the Canadian Shield north of Ecoregions
5E, 6E and 7E1 ...'

both with the caveat 'unless it has been demonstrated that there will be no *negative impacts* on the natural features or their *ecological functions*'.⁴⁹ While this does not indicate a "no net loss" policy, there are some who believe the lack of that phrase means the Ontario policy is stronger because it means no development which could destroy wetlands in any way, instead of allowing development to go forward so long as it is offset by protection or restoration of a wetland elsewhere.⁵⁰

Manitoba, together with Ontario, possesses the largest portion of wetlands in Canada, and yet this province is still without a specific wetland policy statement, legislation or regulation.⁵¹ Currently, wetlands are protected under *The Manitoba Water Strategy* which includes them with lakes, rivers and other water bodies and states that they 'shall, where possible, be conserved'⁵² and that 'the protection of wetlands shall be a consideration in planning and developing drainage projects'.⁵³ Clearly such policies are not as extensive as those in some other provinces and, considering the large number of wetlands in Manitoba, it is not surprising there are calls for a more directed and comprehensive strategy. There does though seem to be movement. 2012 saw the Manitoba Water Council, at the urging of the Minister of Water Stewardship, produce a report based on information gathered at public meetings throughout the province in 2010.⁵⁴ Out of this report came information about what the public thinks and desires with regards to wetlands, including the suggestion that a wetland policy is needed.⁵⁵

Saskatchewan is behind many other provinces in Canada with regards to wetland policy – it seems their first, and to date, only wetland policy was released in 1995. This policy did not

⁴⁹ Ministry of Provincial Affairs, *Land Use Planning - Provincial Policy Statement* (2005) Toronto: Ontario Government.

⁵⁰ Ontario Nature - Federation of Ontario Naturalists for the Great Lakes Aquatic Habitat Network and Fund, *C.P.R. for Wetlands: Conserve, Protect and Restore - Breathing New Life into Our Sense of Place* (available at <http://www.ontarionature.org/discover/resources/PDFs/misc/wetlands.pdf>), 2.

⁵¹ Ducks Unlimited, in 2012, released a document entitled *Now is the time for a wetland policy in Manitoba* indicating the lack of such a policy and the importance of the government creating one in a timely manner. Ducks Unlimited Canada, *Now Is the Time for a Wetland Policy in Manitoba* (2012) (available at <http://www.ducks.ca/assets/2012/07/Now-is-the-Time-for-a-Wetland-Policy-in-Manitoba.pdf?9d7bd4>).

⁵² Manitoba Water Stewardship, *The Manitoba Water Strategy* (Document) (2003) Winnipeg: Government of Manitoba), Policy 2.1.

⁵³ *Ibid*, Policy 6.6.

⁵⁴ Manitoba Water Council, *Seeking Manitobans' Perspective on Wetlands: What We Heard* (January 2011) (available at http://gov.mb.ca/conservation/waterstewardship/questionnaires/surface_water_management/pdf/connected_docs/final_mwc_what_we_heard.pdf).

⁵⁵ *Ibid*, 14-16.

make statements about absolute prohibition of destruction or even have a no net loss policy – instead it focused on items such as developing land use guidelines for managing wetlands and also encouraging the maintenance of wetlands by private landowners.⁵⁶ There has been some discussion of this policy being revised,⁵⁷ but as of yet no official statements have been made.

While the wetland policies, laws and regulations which exist across Canada are relatively new, Alberta is the one province which acted early. In fact, they released their first two government documents relating to wetland management in 1993 – *Wetland Management in the Settled Areas of Alberta – An Interim Policy*⁵⁸ and *Beyond Prairie Potholes – A Draft Policy for Managing Alberta's Peatlands and Non-settled Area Wetlands*.⁵⁹ The former deals with wetland management in areas where the majority of the Albertan population live (known as the 'white' area) and the latter with the less settled areas of the province (the 'green' area). The goal of the strategy for the white area of the province is to 'sustain the social, economic and environmental benefits that functioning wetlands provide, now and in the future'.⁶⁰ A new policy that will replace both of these previous documents (and will address wetlands across the province together) is expected to be released shortly. Some of the key directions that are likely to be included in the new policy are known – one of which is the adoption of the standard three step mitigation decision framework, as described above.⁶¹

Although the Government of British Columbia does not have a specific wetland policy in place, it is part of the Wetland Stewardship Partnership which has produced the *Wetland Action Plan*. The province also does regulate and consider wetlands through a number of different laws (for example, the *Forest and Range Practices Act*⁶² and the *Wildlife Act*)⁶³ which directly or indirectly may protect wetlands. At the municipal level, there is protection afforded through the *Local Government Act*⁶⁴ which, together with the *Community Charter*, provides for the designation of environmentally sensitive areas (including wetlands) in

⁵⁶ Saskatchewan Government, *Saskatchewan Wetland Policy in Water Management Framework - Appendix I* (1999) Regina: Saskatchewan Government, 18.

⁵⁷ Rubec et al (supra note 2), 8.

⁵⁸ Alberta Water Resources Commission, *Wetland Management in the Settled Area of Alberta* (1993) Edmonton, Government of Alberta (available at <http://environment.gov.ab.ca/info/library/6169.pdf>).

⁵⁹ Alberta Water Resources Commission, *Beyond Prairie Potholes: A Draft Policy for Managing Alberta's Peatlands and Non-Settled Area Wetlands* (1993) Edmonton, Government of Alberta (available at http://www.wetlandpolicy.ca/pdf/beyond_prairie_potholes_1993.pdf).

⁶⁰ Alberta Water Resources Commission (supra note 58), 1.

⁶¹ Alberta's Wetland Policy, *Alberta's New Wetland Policy* (available at <http://www.wetlandpolicy.ca/alberta-wetland-policy/wetland-policy.html>).

⁶² *Forest and Range Practices Act*, SBC 2002, chapter 69, section 150(5).

⁶³ *Wildlife Act*, RSBC 1996, chapter 488.

⁶⁴ *Local Government Act*, RSBC 1996, chapter 323.

planning documents. Furthermore, the 2008 publication of *Living Water Smart* (British Columbia's water plan) commits to protect and rehabilitate wetland and waterway function.⁶⁵

The Yukon, one of Canada's three territories, has not experienced nearly the wetland destruction as most of the rest of the country,⁶⁶ but they are still concerned about protection. Their regular 'State of the Environment' reports provide an overview of progress made in wetland protection across the jurisdiction. The most recent report indicates that there are 54 identified wetland areas in the Yukon and nine of these are protected in some way.⁶⁷ The main type of wetland protection in the Yukon is through designation of a protected area; namely national parks, habitat protection areas, national wildlife areas and special management areas.⁶⁸ While national parks and national wildlife areas are designated under federal legislation,⁶⁹ habitat protection areas are created through the Yukon *Wildlife Act*.⁷⁰

Wetland protection not only comes from the different levels of government in Canada but also from highly engaged non-governmental organizations.⁷¹ Ducks Unlimited is a well known organization which operates in Canada and works to ensure wetland protection and restoration as well as focusing on working with governments, industry and landowners to educate and promote wetland policies.⁷² The Nature Conservancy as well as many conservation authorities across the country are also actively involved in wetland conservation in Canada.

Recent Developments in Wetland Law and Policy in Canada

In the recent past, there have been several new developments in the law and policy area of wetland protection. Specifically, this section of the Country Report will look at the new wetland policies in Nova Scotia and New Brunswick along with the impact of a significant court case in Québec and the associated temporary legislation. The emphasis on the

⁶⁵ Government of British Columbia, *Living Water Smart: British Columbia's Water Plan* (available at <http://www.livingwatersmart.ca/preparation/watersheds.html>).

⁶⁶ Environment Yukon, *Yukon State of the Environment Report* (1999) Whitehorse, Yukon Government, 108.

⁶⁷ Environment Yukon, *Yukon State of the Environment Report* (2008) Whitehorse, Yukon Government, 22.

⁶⁸ *Ibid*, 24.

⁶⁹ *Canada National Parks Act*, SC 2000, chapter 32; *Wildlife Area Regulations*, CRC, chapter 1609.

⁷⁰ *Wildlife Act*, RSY 2002, chapter 229, section 181

⁷¹ L. Campbell & C. Rubec, *Interim Report: Synthesis of What You Said. Recommendations of the Conference on Canadian Wetlands Stewardship*. Report no. 03-1 (2003) Ottawa, North American Wetlands Conservation Council, 6.

⁷² Ducks Unlimited Canada, *What We Do*, online: Ducks Unlimited Canada (available at <http://www.ducks.ca/what-we-do/>).

Maritime Provinces (of which Nova Scotia and New Brunswick are part) may result from the fact that to date they have seen such heavy destruction of some of their wetlands – specifically salt marshes – and that there is increasing awareness of the protection these provide from storm surges and sea level rise.

New Brunswick's previous *Wetland Policy* of 2002 was already stronger than many of the wetland policies in the rest of the country at the time – they committed to no loss of provincially significant wetlands and no net loss to other wetlands that do not carry this classification.⁷³ Nonetheless, in early 2012, a long-term wetland management strategy was released with some even stronger statements. Specifically, the policy indicated that not only would 'no loss' of provincially significant wetlands be the Government's policy, it was stated that amendments to the *Watercourse and Wetland Alteration Regulation*⁷⁴ would be made, if necessary, to ensure such a requirement was instilled in the law.⁷⁵ This amendment does not appear to have happened yet, but the Government may still intend to proceed. Over a similar time period, there was also some controversy around the mapping of wetlands in New Brunswick. There was a new map released which showed up to 18% of the province as wetland (which had many repercussions for developers and landowners). The new map was however rejected by the New Brunswick Government and has led to much debate over how proper wetland mapping in the province should progress.⁷⁶ While the stronger statement regarding no loss of provincially significant wetlands is promising, it may well be that the increased controversy over defining specific areas as wetland is a result of the stronger regulation of them. It seems this province is in need of a solution for mapping wetlands that both protect them but also satisfy landowners and citizens.

In late 2011, Nova Scotia also released a new wetland conservation policy and in it committed to a no net loss of wetland area and function, something which was required by the province's *Environmental Goals and Sustainable Prosperity Act*.⁷⁷ This new policy goes further than what was required by the legislation and has aligned itself with the New Brunswick policy of no loss of wetlands of special significance.⁷⁸ The new policy also sets

⁷³ Scientific and Technical Review Panel Briefing (supra note 29), 7.

⁷⁴ *Watercourse and Wetland Alteration Regulation*, NB Reg 90-80.

⁷⁵ Department of Environment, *Long-Term Wetland Strategy* (2012) Fredericton, Government of New Brunswick (available at <http://www2.gnb.ca/content/dam/gnb/Departments/env/pdf/WetlandStrategy.pdf>).

⁷⁶ CBCNews "Changes to N.B. Wetlands Strategy Announced" (18 March 2011) (available at <http://www.cbc.ca/news/canada/new-brunswick/story/2011/03/18/nb-wetlands-policy.html>).

⁷⁷ *Environmental Goals and Sustainable Prosperity Act*, SNS 2007, chapter 7, section 4(1)(n).

⁷⁸ Government of Nova Scotia, *Nova Scotia Wetland Conservation Policy* (2011) Halifax, Government of Nova Scotia (available at <http://www.gov.ns.ca/nse/wetland/docs/Nova.Scotia.Wetland.Conservation.Policy.pdf>), 9.

out the mitigation sequence (as was described in an earlier section) which many others before have made standard,⁷⁹ and more generally the policy is considered to be one which is based on best practices and lessons learned from other jurisdictions in Canada and around the world.⁸⁰ The Nova Scotia policy also has a regional connection - it is aligned with the policies in both New Brunswick and Prince Edward Island.⁸¹

In Québec, wetlands are protected by section 22(2) of the *Environment Quality Act (EQA)*⁸² which forces citizens to obtain a certificate of authorization from the Minister of Sustainable Development, Environment and Parks before proceeding with any project that might affect a wetland. In 2006, the Minister adopted a directive to circumscribe its discretionary power regarding wetland. The directive adopts the no net loss principle and the mitigation sequence described above. However, the Superior Court of Québec declared the directive null and void as it was an encroachment on property rights not authorized by legislation.⁸³ This forced the Government to enact Bill 71, *An Act respecting compensation measures for the carrying out of projects affecting wetlands or bodies of water* during the spring of 2012.⁸⁴ The *Act* specifically permits the Minister to require in emitting a certificate under section 22(2) of the *EQA* “compensation measures designed, in particular, to restore, create, protect or ecologically enhance a wetland, a body of water or a piece of land near a wetland or a body of water” which cannot be indemnified.⁸⁵ The *Act* is complimented with a ministerial guide on procedures to obtain a certificate of authorization for projects affecting wetlands.⁸⁶ Interestingly, this *Act* is of a temporary nature as its section 5 provides that the *Act* will become ineffective on 24 April 2015 or at the date of coming in force of an “Act providing for rules on the preservation and sustainable management of wetlands”. The Province has thus a three-year deadline within which to adopt comprehensive legislation on wetlands.⁸⁷

⁷⁹ *Ibid*, 12.

⁸⁰ Wetland Stewardship Partnership, *A Wetland Action Plan for British Columbia* (March 2010) (available at http://bcwetlands.ca/wp-content/uploads/BCWetlandActionPlan_WSP_2010.pdf), 54.

⁸¹ *Ibid*.

⁸² *Environment Quality Act*, RSQ, chapter Q-2.

⁸³ *Atocas de l'érable inc. c Québec (Procureur général)* (Ministère du Développement durable, de l'Environnement et des Parcs), 2012 QCCS 912.

⁸⁴ *An Act respecting compensation measures for the carrying out of projects affecting wetlands or bodies of water*, SQ 2012, chapter 14.

⁸⁵ *Ibid*, section 2.

⁸⁶ Ministry of Sustainable Development, Environment and Parks, *Les milieux humides et l'autorisation environnementale* (2012) Québec City: Government of Québec.

⁸⁷ For more information on Québec see : P. Cloutier de Repentigny, “Rapport national du Canada – Développement législatif récent au Québec concernant les milieux humides” (2013) *IUCNAEL eJournal*.

Future Possibilities & Continuing Challenges

Wetland protection in Canada has come a long way in the thirty years or so since this country became a signatory to the *Ramsar Convention*,⁸⁸ but it seems that there is much still remaining to be done. First of all, there are still a two provinces - Saskatchewan and Manitoba - which do not have significant wetland policy statements, very few who have their wetland protection commitments (i.e. no net loss) engrained in a legally binding way, and the Federal Government has not released updates to their policy in more than 20 years. That being said, there are certain provinces – namely Nova Scotia, New Brunswick and Québec – which are moving forward in their protection plans for these critical ecosystems. Perhaps part of the challenge to protecting wetlands has to do with a lack of education of the general public and therefore, as many provinces state in their policy plans, education is key in order to best protect these incredibly valuable parts of our natural heritage. This need for education provides an excellent opportunity for the Academy to become involved.⁸⁹ Much research has been done on the science of wetlands and it is clear to those in the academic world why wetlands are important, but this knowledge and understanding perhaps needs to be better transmitted beyond the borders of academics and into the government and policy arena and further still to general society.

Finally, increased coordination amongst the different levels of government is something which should be pursued. While “no net loss”/ “no loss” and the mitigation sequence are increasingly gaining traction amongst the different jurisdictions, there are still stumbling blocks with regards to integration of different policies.⁹⁰ Because wetland protection is not only a national and provincial challenge, but also a municipal one – due to the strong role local governments play with regards to land use planning – consistency in goals and streamlining processes and requirements may make it easier for landowners and governments alike to abide by goals and regulations designed for wetland protection. The Maritime Provinces have begun to move in this direction through policies which have clear connections and consistency and they should be seen as leaders in the efforts for coordination.

⁸⁸ Supra note 12.

⁸⁹ See P. Cloutier de Repentigny, “Rapport national du Canada – Développement législatif récent au Québec concernant les milieux humides” for an additional discussion on the topic of the role of the Academy in wetlands education.

⁹⁰ See, for example, supra note 80, 1.