



## COUNTRY REPORT: CANADA National Parks

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### Introduction

In 2010 Canada commemorated a milestone, the 125<sup>th</sup> anniversary of the creation of its first national park - Rocky Mountain National Park at Banff. The creation of this park and subsequently the national park system in Canada, which has been expanded to now include 42 parks and park reserves, was undoubtedly a feat to celebrate. Further, the year 2011 also signifies a landmark year - one hundred years ago, in 1911, the Dominion Parks Branch (now Parks Canada), was created. The creation of a specific parks agency was a global first and over the decades the Canadian Park Service has been continually proven a leader in protected area policy and development.<sup>1</sup> On the 25<sup>th</sup> anniversary of the parks service, M.B. Williams, a civil servant with the then Dominion Parks Branch, reflected that 'an anniversary merely affords a convenient moment to stand back and look at the design and see how it is working out'.<sup>2</sup> In this same spirit, on the anniversary of these two events in Canada's national park system's history, it seems only natural to look back and to look forward at the law and policy that has, and will continue to, guide this agency. This country report will provide an overview of some of the first work done by the Parks Service in Canada, then will look at current developments in Canadian protected areas law and policy and will finally draw some conclusions about how these priorities are made

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<sup>1</sup> C. Campbell, 'Governing a Kingdom: Parks Canada, 1911-2011' in C. Campbell (ed) *A Century of Parks Canada, 1911-2011* (2011) University of Calgary Press, 14.

<sup>2</sup> M. Williams, *Guardians of the Wild: The Story of the Canadian National Parks* (1936) Tomas Nelson & Sons, 138.

and provide insights into new ways to encourage the creation of national protected areas and to advance conservation policy in Canada.

There have been many changes made to the Parks Service over the years, including name changes and the movement of the agency within the federal departmental structure.<sup>3</sup> These administrative changes occurred alongside deeper changes in policies (for example conservation versus preservation), the way parks were created (for example in an ad-hoc fashion versus under a system plan) and new challenges facing park creation (for example public interest, automobile tourism, local citizen concerns, Aboriginal interests).<sup>4</sup>

Throughout the 100 years of its existence, the Park Service in Canada has often been on the cutting-edge of protected area law and policy. Even early on, when the national park network was just beginning to grow, Canada proposed a relatively advanced idea of national park management being guided by the dual purposes of use and protection (often referred to as the 'dual mandate' under which Parks Canada still operates). That is, national parks were, and still are, expected to both preserve natural landscapes and facilitate their use by Canadians today and in the future. This 'use' is generally considered to refer to tourism, recreation and scientific research,<sup>5</sup> but, at times, it seems to have been broadened to include mineral development and extraction, the latter of which is both more controversial and a much larger challenge for protected areas management.

Interestingly, this use versus preservation conflict did not initially exist within the same national parks, as is the case today, but rather in the policies guiding the parks service for new park creation. Early on, there was pressure to expand the park network into Ontario where the majority of Canadians were living, in order to increase visitor numbers.<sup>6</sup> At the same time there was an identified need to create parks in Saskatchewan and Alberta to protect wildlife such as moose and elk.<sup>7</sup> These two pressures lead first to the development of national parks with different identified

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<sup>3</sup> Between the creation of the first national park in 1885 and present day, Canada's parks service has had many different official titles, including the Canadian National Parks Branch, the National Parks Branch, the Parks Canada Program and the Canadian Parks Service. Today, Canada's parks service is called Parks Canada.

<sup>4</sup> K. McNamee, *National Parks of Canada* (1984) Key Porter Books Ltd, 18; and Campbell (supra note 1) 10.

<sup>5</sup> P. Wilkinson, 'Ecological Integrity, Visitor Use and Marketing of Canada's National Parks' (2003) 21(2) *Journal of Park and Recreation Administration* 63.

<sup>6</sup> Campbell (supra note 1) 5.

<sup>7</sup> Ibid.

purposes, and later to the incorporation of the dual mandate within each individual park.

With the release of the *National Park System Plan* in 1970, Canada again led the way in protected area policy, being the first country in the world to publish such a document which has since become a standard conservation policy tool.<sup>8</sup> For Canada, the system plan provided for park creation in a more directed way (the goal became, and still is, at least one park in each of Canada's 39 natural regions),<sup>9</sup> instead of the seemingly ad hoc way parks had been created in previous times.

The 1974 amendments to the *National Parks Act* showed how Aboriginal rights to the land could be addressed in relation to parks and conservation. This amendment included allowing for traditional hunting and fishing practices within national parks and the creation of a new type of protected area, a 'national park reserve', which is protected area land that will become a full national park in the future provided land claims in the area are settled.<sup>10</sup>

As environmental science has continued to advance, the parks service has persisted in trying to incorporate new concepts into their policy and management, one of which has been the identification of ecological integrity as the number one priority for park management. This was done initially through the 1988 amendment to the *National Parks Act* which stated that the '[m]aintenance of ecological integrity through the protection of natural resources shall be the first priority when considering park zoning and visitor use in a management plan'.<sup>11</sup> Further legal entrenchment of this concept followed in 1998 with the passage of the *Parks Canada Agency Act*<sup>12</sup> which also referred to managing for ecological integrity. The newest piece of national park legislation in Canada, the *Canada National Parks Act* again highlighted that '[m]aintenance of ecological integrity through the protection of natural resources shall be the first priority of the Minister in the consideration of park zoning and visitor use'<sup>13</sup>

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<sup>8</sup> P. Kopas, *Taking the Air: Ideas and Change in Canada's National Parks* (2007) UBC Press, 58.

<sup>9</sup> Canadian Heritage (Parks Canada), *National Park System Plan* (1997) Government of Canada, 5.

<sup>10</sup> Campbell (supra note 1) 10.

<sup>11</sup> *National Park Act*, R.S.C 1985, c. N-14, section 5(1.2).

<sup>12</sup> *Parks Canada Agency Act*, S.C. 1998, c. 31.

<sup>13</sup> *Canada National Parks Act*, S.C. 2000, c.32, section 8(2).

and further that ecological integrity indicators and objectives are to be drafted for each park within their management plan.<sup>14</sup>

### **Current Developments in Canadian Protected Areas Law & Policy**

While there have been no new comprehensive laws focused on Canada's national parks since the introduction of the new *Canada National Parks Act* in 2000, there have been significant developments including the creation of new protected area land, government announcements regarding potential sites for new marine-based protected areas and policy changes to keep pace with new challenges addressing the park system. Some of these proposals continue to illustrate the Canadian Park Service's desire to be on the leading edge of protected area developments.

One of the biggest recent national park developments was the expansion of Nahanni National Park Reserve in Canada's arctic. Expanding this national park reserve, which is located in the Northwest Territories, was heralded by the then Minister of the Environment (responsible for Parks Canada), the Honourable Jim Prentice, as 'the greatest conservation achievement in a generation'.<sup>15</sup> This expansion made Nahanni six times larger than it originally was, increasing its area of protection to 30,000 square kilometres.<sup>16</sup> The legislation was tabled on June 9 of 2009 and *An Act to Amend the Canada National Parks Act to Enlarge Nahanni National Park Reserve of Canada* received royal assent just nine days later, on June 18 of the same year. Unfortunately though, this expanded national park reserve still struggles with the same challenges that emerged early in the 20<sup>th</sup> century for James Harkin (the first commissioner of the Canadian Park Service) – the struggle between use and protection. The massive area protected by this national park reserve is interrupted by one relatively small area which remains unprotected, in large part due to current mineral and hydrocarbon development.<sup>17</sup> In reference to omitting this area from protection within park boundaries, the legislative backgrounder noted that while drastically increasing the protection of the Nahanni ecosystem, there is still a desire

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<sup>14</sup> Ibid, section 11(1).

<sup>15</sup> Government of Canada, 'Government of Canada Announces the Expanded Boundary for Nahanni National Park Reserve of Canada' (*Canada News Centre*, 9 June 2009) (available at <http://news.gc.ca/web/article-eng.do?m=/index&nid=457789>.)

<sup>16</sup> Ibid.

<sup>17</sup> S. Banks and M. Barbudo, *Bill C-38: An Act to Amend the Canada National Parks Act to Enlarge Nahanni National Park Reserve of Canada* (Parliament of Canada Legislative Summary LS-654E) 2.

to 'provide economic development opportunities for the people of the region'.<sup>18</sup> In some ways this statement shows an attempt to balance preservation with use in line with the mandate of Parks Canada although, because the area set aside for extractive uses is not actually designated park land, the situation is a bit different. Still, this battle between use and preservation is very evident in and around Nahanni National Park Reserve.

More recently, the Federal Government, along with the Provincial Government of Nova Scotia, announced their intention to table legislation to create a new national park reserve protecting Sable Island, a remote sandbar home to many wild horses and historically a location where many vessels have been shipwrecked.<sup>19</sup> Like Nahanni and many other parks in the national system, there is concern over whether mineral exploration will be allowed on or nearby the new national park reserve.<sup>20</sup> At present, the Federal and Provincial Governments have agreed that legislation will prohibit surface drilling for petrochemicals within one nautical mile of the island to be protected, but some are concerned this will not preclude horizontal drilling from a rig outside the buffer area.<sup>21</sup> It remains to be seen, as the legislation has not yet been tabled, what the end result will be. In any case, it appears that once again the dual mandate under which Parks Canada must operate will result in challenges for managers. In the case of Sable Island, though, there have also been concerns about visitor use, especially considering that up until this designation, the area received less than 250 people a year. With its new designation, visitor numbers are likely to drastically increase.<sup>22</sup>

On top of these two designations, the Government and the Park Service appear to again be targeting an area of protected area development which is in need of attention - marine protected areas. It is well acknowledged that the creation of marine protected areas lags behind the creation of land-based ones.<sup>23</sup> In fact, while land based protected areas cover approximately 12.2 percent of the global land base, only

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<sup>18</sup> Ibid.

<sup>19</sup> O. Moore, 'Sable Island Set for National Park Status' *Globe and Mail* (Toronto, 17 October 2011).

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> 'Sable Island Named National Park' *CBC* (Toronto, 17 October 2011).

<sup>23</sup> A. Gillespie, *Protected Areas and International Environmental Law* (2007) Martinus Nijhoff Publishers, 97.

5.9 percent of territorial seas and 0.5 percent of extraterrestrial seas are protected.<sup>24</sup> In Canada there are only eight national marine protected areas and four national marine conservation areas. In contrast, there are 42 nationally protected parks and park reserves.<sup>25</sup> Recently, though, the Government has taken several steps to lay the groundwork for more marine-based protected areas, particularly in the north of Canada. In June 2010, the Government announced two marine protected areas of interest<sup>26</sup> - one off the coast of Newfoundland and Labrador; and the other in the Laurentian Channel off the Pacific North Coast near Queen Charlotte Sound.<sup>27</sup> Just two and a half months later, the Government released another proposal; this time to form a network of marine protected areas in Canada's north.<sup>28</sup> In December of the same year, yet another proposal for protecting part of Canada's northern marine environment came in the form of a statement that set proposed boundaries for a marine park in Lancaster Sound (part of the Northwest Passage).<sup>29</sup> Although there seems to have been a focus on Canada's north in the recent past, there have been some proposals for new protected areas in other parts of Canada. These include, for example, three new marine areas of interest - one in Eastern Nova Scotia and two in the Gulf of St. Lawrence - released in mid-2011. Furthermore, in September 2011, the *National Framework for Canada's Network of Marine Protected Areas* was approved in principle.<sup>30</sup> It is designed to guide the management and development of nationally protected marine areas. It is important to remember that while these developments do seem promising, the majority of them are proposals and have not yet been firmly established in law. Importantly, in reference to the dual mandate that has already been extensively discussed, this means it is not clear how the use

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<sup>24</sup> UNEP and WCMC, *Biodiversity Indicators Partnership*, Indicator Factsheet 1.3.1 (2010) World Database on Protected Areas.

<sup>25</sup> Because the focus of this piece is on Canada's National Park Service and national park system, these numbers refer only to land and marine environments nationally protected and do not take into account provincially protected areas.

<sup>26</sup> Marine protected areas, in Canada, are created and managed by Parks Canada under the *National Marine Conservation Act*. Some, however, have also been created and managed by the Department of Fisheries and Oceans Canada through the *Oceans Act*.

<sup>27</sup> Government of Canada, 'Government of Canada Protects Canadian Oceans and Wildlife' (*Canada News Centre*, 8 June 2010) (available at: <http://news.gc.ca/web/article-eng.do?mthd=advSrch&ctr.page=1&nid=538329&ctr.kw=government%2Bof%2Bcanada%2Bprotects%2Bcanadian%2Boceans%2Band%2Bwildlife>.)

<sup>28</sup> Office of the Prime Minister, 'Backgrounder: Protect Arctic Marine Wilderness' (*Canada News Centre*, 26 August 2010) (available at <http://news.gc.ca/web/article-eng.do?mthd=advSrch&ctr.page=1&nid=556019&ctr.kw=protected%2Barea>.)

<sup>29</sup> G. Galloway, 'Ottawa sets up Arctic Marine Park' *Globe and Mail* (Toronto, 6 December 2010).

<sup>30</sup> Fisheries and Oceans Canada, 'National Framework for Canada's Network of Marine Protected Areas' (2011) (available at [www.dfo-mpo.gc.ca/oceans/publications/dmpaf-eczpm/framework-cadre2011-eng.asp](http://www.dfo-mpo.gc.ca/oceans/publications/dmpaf-eczpm/framework-cadre2011-eng.asp).)

versus preservation challenge will play out, particularly with regards to shipping and resource extraction in marine protected areas.

There have also been changes in park management over the past couple years, largely in reference to agreements with Aboriginal peoples who have established interests in national park land. One of these developments was an agreement between the Government of Canada and the Council of the Haida Nation over shared control of management, planning and operations regarding the waters which surround Gwaii Haanas National Park Reserve and Haida Heritage Site.<sup>31</sup> A more recent development is the ongoing consultation being held by Parks Canada with regards to the proposed *National Parks of Canada Wild Animal Regulations*. These regulations aim to extend and enhance protection of wild species and their dwellings within national parks<sup>32</sup> and to better regulate the use of firearms and other weapons,<sup>33</sup> all the while respecting obligations laid out under land claim agreements and other agreements between Aboriginal Communities and the Government of Canada.<sup>34</sup> Consultations on these proposed regulations, although open to the entire public, are specifically targeted at the Aboriginal Communities which are party to *The Western Arctic (Inuvialuit) Claims Settlement Act*, also known as the Inuvialuit Final Agreement.<sup>35</sup> The focus on these Aboriginal communities has to do with ensuring that there are provisions within these new regulations which adequately address the implementation of subsistence harvest quotas for these communities within three national parks that were established in Canada's arctic under the Inuvialuit Final Agreement.<sup>36</sup>

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<sup>31</sup> Parks Canada, 'Government of Canada and Council of the Haida Nation Agree to Share Management of the Waters Around Gwaii Haanas' (*Canada News Centre*, 16 January 2010) (available at <http://news.gc.ca/web/article-eng.do?mthd=advSrch&ctr.page=2&nid=506189&ctr.kw=gwaii>.)

<sup>32</sup> *National Parks of Canada Wild Animal Regulations* (Draft for Public Consultation) 2011-06-17 SOR 15:06, section 3(1)(h).

<sup>33</sup> *Ibid.*, section 4-7.

<sup>34</sup> *Ibid.*, section 12.

<sup>35</sup> Parks Canada, *Backgrounder: Proposed National Parks of Canada Wild Animal Regulations- Implementation of Subsistence Harvest Quotas in Ivvavik National Park, Aulavik National Park, Tukturnogait National Park* (2011) Parks Canada, 1.

<sup>36</sup> *Ibid.*

## Canadian Protected Area Development in Relation to Broader Government Goals

As the motivation for this paper was the 125<sup>th</sup> anniversary of the creation of Banff National Park and the 100<sup>th</sup> anniversary of the Canadian Parks Service, it seems natural to look at the past and present as indicators for future law and policy developments that may guide Canada's national park system. It is well acknowledged that Canada's first national park, Rocky Mountain (now called Banff), was more a consequence of a desire by the Canadian Government to get people to travel west and of the Canadian Pacific Railway (CPR) company to make money on increased rail ticket sales than it was an attempt to preserve wilderness.<sup>37</sup> Resource exploitation, achieved by designating the hot springs a national park and encouraging visitors, fitted nicely within the stated policy of John Macdonald's Government which was focused on nation building and subduing and exploiting the Canadian west.<sup>38</sup>

While the roots of Canada's first national park in political and economic considerations is well known, it is less widely recognised that national parks have time and again been used to further more generalized national goals and policy. In the late 1940's when Canada's Federal Government was attempting to convince the British Colony of Newfoundland to join Confederation, a part of the package being offered was the creation of a new national park, Terra Nova, within Newfoundland boundaries.<sup>39</sup> In present day we can again see how the Canadian Government is using protected areas to further more general national goals and policies. The best example at the moment can be seen when looking at the Harper Government's emphasis on 'Canada's Northern Strategy' and the expansion of Nahanni National Park Reserve (located in the Northwest Territories) along with the proposals for several new arctic marine protected areas which were discussed above. As Prime Minister Harper has stated on multiple occasions, the Government recognises the importance of the 'use it or lose it' approach.<sup>40</sup> That is, defending Canada's arctic sovereignty requires a presence in the North, and designating protected areas, undertaking associated mapping, creating management plans, facilitating staff visits and promoting potential tourism, helps with this goal.

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<sup>37</sup> Kopas (supra note 8) 27.

<sup>38</sup> K. McNamee, *National Parks of Canada* (1994) Key Porter Books Ltd, 20.

<sup>39</sup> Kopas (supra note 8) 5.

<sup>40</sup> 'Arctic of "strategic importance" to Canada: PM' CBC News (Toronto, 19 August 2009).

The creation of national protected areas and the development of parks policy are clearly influenced by other (seemingly unrelated) government policy areas. While this may be a source of concern for supporters of environmental protection, it may also present opportunities. For instance, because broad government policy is often very well expressed to the public, those pushing for protected areas could take this knowledge and use it to press for new park creation which aligns with a targeted government policy or specific area of the country. Directing efforts at a specific area of the country is much easier to understand and perhaps organize support for, and as we have seen, protected area creation is already in full swing in a Government targeted part of Canada – the arctic. Finding a way to push for new protected areas in line with a specific government policy may be more difficult. An illustration of this would be the designation of more ‘peace parks’ (like Waterton Lakes-Glacier National Parks which straddle the Canada-USA boarder) if improving Canada-USA relations was a stated government priority.

As the 100<sup>th</sup> anniversary of Canada’s Park Service comes to a close, understanding and gleaning lessons from the law and policy developments which have occurred over the past century hopefully sets the Park Service up for continued success in designating increasingly more protected areas and another 100 years as a leader in protected area policy.