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FEDERAL ENVIRONMENTAL OFFENCES FOR WILDLIFE PROTECTION

Presented by
Erin Eacott & Alex Bernard
Counsel, PPSC, Regulatory and Economic Crime
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Key Federal Acts with Offences that Protect Wildlife

- 1) *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* – WAPPRIITA
- 2) *Migratory Birds Convention Act* – MBCA
- 3) *Species at Risk Act* – SARA
- 4) *Fisheries Act* – FA
- 5) *Canada National Parks Act* - CNPA



Offences are Strict Liability Offences

- No *mens rea* (intent) needs to be proven
- Primary defences are:
 - Due diligence
 - Officially induced error



Sentence Provisions in Acts

- Different minimum/maximum fines for individuals, large corporations (more \$5m gross revenue), and small corporations

	Individual	Corporation	Small Revenue Corporation
Summary Conviction	Min \$5,000/Max \$300,000	Min \$100,000/Max \$4,000,000	Min \$25,000/Max \$2,000,000
Indictable Conviction	Min \$15,000/Max \$1,000,000	Min \$500,000/Max \$6,000,000	Min \$75,000/Max \$4,000,000

- Minimum/maximum fine doubles for subsequent offences
- Previously: no minimum, summary max \$300k, indictable max \$1m



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- Exceptions:
 - *SARA*: for person/non-profit: summary \$50k max/indictable \$250k max
for corporation: summary \$300k max/indictable \$1m max
 - *CNPA* vary
- Where an offence involves more than one day/animal/plant, each day/animal/plant is a separate offence (for the purpose of minimum/maximum fines).
- Court can go below minimum fine where undue hardship is proven
- Fines automatically paid to the Environmental Damages Fund (except *SARA*)
- Economic valuations of use & non-use value: used to inform sentence





Creative Sentences Provisions

Court can order:

- Additional penalty for monetary benefits accrued through offence
- Revocation of lease/licence/permit
- Remediation of harm
- Publication of facts of case/sentence
- Notification to shareholders of case/sentence
- Requirement to perform audit, monitoring, training, upgrades
- Any other condition the court considers appropriate



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*Wild Animal and Plant Protection and Regulation of International and
Interprovincial Trade Act, S.C. 1992, c. 52 (WAPPRIITA)*

- *Convention Against the International Trade in Endangered Species of Wild Fauna and Flora* – Currently 183 signatories
- CITES protected species:
 - Appendix I: Threatened with extinction (e.g. tigers, cheetahs, manatees, rhinos);
 - Appendix II: Not threatened but subject to trade practices which are incompatible with their survival (e.g. bears, iguanas, certain corals); and
 - Appendix III: Species listed on request of a member state requiring the assistance of other states for protection (walrus, Florida softshell turtle)
- Harmonizes laws regarding the interprovincial movement of wildlife





WAPPRIITA Offences

- Section 6 – Import of animal taken, possessed, transported or distributed contrary to the law of a foreign state; Import or export without a permit issued under the Act
- Section 7 - Interprovincial transport without a permit; Interprovincial transport of animal taken, possessed, transported or distributed contrary to the laws of a province
- Section 8 - Possession of animal imported contrary to the Act; for the purpose of interprovincial or international transport; possession of Appendix I species for distribution



WAPPRIITA Cases - R. v. Deslisle, 2003 BCCA 196

- Deslisle is an expert in birdwing butterflies
- Charged with importing into Canada 6 specimens of Appendix I birdwing butterflies, contrary to s.6(1) and s.6(2) of WAPPRIITA
- Pays villager in Papua New Guinea \$30,000, and provides chloroform to kill butterflies, and a hollowed out book to ship them in
- Convicted on both offences, fined \$50,000



R. v. Clemett, 2016 ABPC 137

- Canadian accused harvests brown grizzly bear in Alaska, relying on the services of Alaskan guide/outfitter
- Bear is harvested with the use of bait, contrary to the laws of State of Alaska
- CITES permit for hide and skull are obtained, and hide and skull are imported into Canada for trophy purposes
- Evidence included photographs of accused and bear at the kill site, inspections of the kill location by Alaskan conservation officers, experts in biology and management of bears, and the law of Alaska



R. v. Logan, October 1, 2013, NBPC

- Former RCMP officer convicted of 7 WAPPRIITA offences
- Imported over 250 illegal narwhal tusks into the United States over a 7 year period, valued over \$1,500,000
- Transported them personally in a hidden compartment in a trailer he towed with his truck and shipped them US buyers
- \$385,000 fine and 9 months Condition Sentence, forfeiture of vehicle
- Multiagency investigation, resulting in 5 year sentence in the US for money-laundering



Migratory Birds Convention Act, S.C. 1994, c.22 - MBCA

- *Migratory Birds Treaty*, between the UK and the United States, 1916
- Protects migratory game birds, migratory non-game birds and migratory insectivorous birds from hunting, trafficking and industrial activity
- Treaty recognizes aboriginal uses of some migratory non-game birds
- MBCA provides regulations for creating federal bird sanctuaries



MBCA Offences -

- Primarily hunting based legislation, 2005 amendment included a pollution based offence
- Section 5.1 – deposit of a substance (or combination of substances) that are harmful to migratory birds in an area or waters frequented by migratory birds



MBCA Cases: R. v. Syncrude Canada Ltd., 2010 ABPC 229

- April 28, 2008, approximately 1600 birds landed on Aurora bitumen pond , a bitumen tailings deposit area the size of 640 football fields
- Pond opened in 2000, but oil sand industry has been aware of and using deterrent techniques since the 1970's
- Deterrent sound cannons are placed on the shores and surface of the pond
- Syncrude's written policy on the deployment of them is by March 15th
- Cannons in 2008 were not deployed at Aurora



R. v. Syncrude Canada Ltd. , cont'd.

- Convicted under s.5.1 of MBCA, and s.155 of *Environmental Protection and Enhancement Act*
- Pay the maximum fine under the MBCA of \$300,000 and EPEA of \$500,000
- Under a s.16 MBCA/s.234 “creative” Order:
 - Contribute \$1,000,000 to the U. of A. for research into industrial impacts to waterfowl
 - Pay \$1,250,000 for waterfowl habitat protection
 - Revise its waterfowl protection program within 90 days of sentencing and submit it for approval to the Province of Alberta



Species at Risk Act - SARA

- Offences are for species listed under the Act as “threatened”, “endangered” or “extirpated”
- *SARA* offences include:
 - kill, harm, harass, capture or take listed species: s.32(1)
 - collect, possess, buy, sell or trade listed species: s.32(2)
 - damage or destroy the residence of a listed species: s.33
 - destroy critical habitat of a listed aquatic or migratory bird species on federal land: s.58(1) – *no convictions yet*
- To date, critical habitat been designated for only 15 species (all fish/whales); and all but 2 were designated in 2016 & 17



SARA Case Examples – *Canaport Ltd.* and *Pak Sun Chung*

- Approximately 12 convictions under *SARA* (since enacted in 2002); only one corporate offender sentenced
- *R. v. Canaport Ltd.*, NBPC, Nov /15
 - Natural gas provider; compressor used to maintain safe pressure levels in gas storage tanks; compressor had mechanical failure so flare stack had to be used
 - 1000s migratory birds died from heat of flare stack
 - 4 of dead birds were Canada Warbler – threatened species
 - Fined: \$100 000 (\$25k/bird), of which 75% to the EDF for conservation of migratory birds & their habitat



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- *R. v. Pak Sun Chung*, ONPC, Aug. 9 /09
 - Captured 26 Blanding's turtles (threatened) & 1 Spotted turtle (endangered)
 - Taken from the waters of the Walpole Island First Nation
 - EC returned Blanding's turtles to water, survival unknown due to poor condition
 - Spotted turtle died
 - Sentence: 9 months jail, 3 years probation
- *R. v. The Lake Louise Ski Area*
 - One of largest cases to date under *SARA*; currently before the courts
 - Cut endangered whitebark pine





Fisheries Act

- FA has 2 key provisions to protect “fish”
 - “fish” includes shellfish, crustaceans, marine mammals;
and all life stages
- 1) s.35(2): offence to carry on any work, undertaking or activity that harms fish habitat
 - Parliament currently in process of amending wording
- 2) s.36(3): offence to deposit a deleterious substance into water freq'd by fish



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- Other *Fisheries Act* offences:
 - Obstructing/hindering fish passage
 - Fishing during closed season
 - Cutting/taking marine plants in coastal waters





Fisheries Act Case Example – **Obed Mountain Mine**

Facts:

- Obed Mountain Mine = coal mine run by Coal Valley Resources Inc.
- Dyke on a settling pond failed
- Released 670 million litres of water (equivalent to 268 Olympic size swimming pools) and 90 000 tonnes of sediment
- Destroyed 4-5km of fish habitat in creek, impacted habitat in additional 17km
- Plume in Athabasca River exceeded CCME Guidelines for TSS for 400km
- TSS (total suspended sediment) is harmful to fish
- No dead fish found; fish would have died in creek due to impact of release



Sentence - Obed Mountain Mine:

- under old \$300k max fine/day
- \$3.5m monetary penalty (equally split b/n s.35(1) and s.36(3) FA)
 - \$200k paid as a fine
 - \$1.65m to the EDF for fish/fish habitat conservation
 - \$500k for fish habitat restoration/protection in East Slopes Alberta
 - \$1.15m to UofA Trust Fund for research into effective fish habitat restoration
- Rehabilitation of 5km of creek
- \$615k compensation to Fisheries & Oceans Canada for retaining experts to provide rehabilitation plan
- Provincial *EPEA* charge: \$925k fine, significant adverse harm to environment



Some Issues

- Difficult to prove “deleterious substance” in FA/MBCA in remote areas where officers arrive after release and can’t obtain samples
- Wildlife trafficking offences are amenable to environmental fraud, making them difficult to detect
- Interjurisdictional Cooperation – multiple investigative agencies, triggering different mandates and different legal authorities
- Similarly, evidence may be acquired from multiple jurisdictions spanning wide geographic areas
- Prosecutions invoke wide range of unusual areas of expert evidence