Environmental Law Centre

FAQ

What do I do if I encounter an endangered species?

What level of government has jurisdiction over species at risk?

Both the provincial and federal government have a role in species at risk management. Primary jurisdiction falls to the province although the federal government has specific control on federal lands and over migratory birds and aquatic species. Federally, there is dedicated species at risk legislation in the *Species at Risk Act* (SARA). Alberta, however, does not have dedicated legislation, instead, species at risk are managed under the *Wildlife Act*.

The *Wildlife Act* defines species at risk as species listed under Schedule 6 of the *Regulation*.[1] If a species is on this list, the Act prohibits the wilful molestation, disturbance, or destruction of a house, nest or den of an individual species.[2] The Act also includes the ability to create recovery strategies for listed species.[3] Species protected under the SARA receive critical habitat protection through a recovery strategy and destruction of this critical habitat is prohibited.[4] Additionally, the SARA prohibits the harm or taking of an individual of a listed species or its residence.[5]

What if I think a species at risk is living on property I own or lease?

If you notice wildlife living on your property, the first thing to consider is type because depending on whether it is a bird, tree, or mammal, different laws may apply. Once you have determined the type of species, you can begin by checking the Province of Alberta's "Species at Risk Assessed in Alberta" list.[6] This is a list of all species listed under the *Wildlife Act* as either endangered or threatened or that have otherwise been flagged for further management options. If a species has been listed, certain prohibitions, specifically related to their nest or den may apply. For example, section 36(1) prohibits the wilful molestation, disturbance, or destruction of a house, nest or den.

Certain species may also attract protections under the SARA. Migratory birds and aquatic species are the primary examples and you can find out if it is listed here for migratory birds and here for aquatic species. If your species is found on either of these lists, protections for the individual species and their habitat may be in place. This document walks you through what to do if you think there is a federally protected species at risk on your property.

Requirements for migratory bird protection may also apply to building owners. In 2013 a Court in Ontario found that a building owner may be in contravention of the SARA if protected birds are killed after a bird strike at their building.[7] Although in this case the defendant was acquitted after a finding of due diligence, it demonstrates that these situations may lead to a prosecution and, if no due diligence was found, a conviction.

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Finally, if the species living on your land is not a migratory bird or an aquatic species but federal protections have been extended onto otherwise provincially regulated land, you may have other obligations. In Alberta, the greater sage grouse is subject to an emergency protection order which sets out further prohibitions.[8] For example, it prohibits the killing or moving of sagebrush plants, native grasses, or native forbs in the protected areas.
If you have further questions or concerns about a species on your property, you can contact your local Canadian Wildlife Service office as they have certain enforcement options. The contact information in Alberta is: 1-800-668-6767 or enviroinfo@ec.gc.ca.

My neighbour is cutting down trees, but I noticed a bird's nest, what should I do?

The first thing is to identify the type of bird that made or is living in the nest. All migratory birds nests are protected under the *Migratory Birds Convention Act, 1994* when they contain a live bird or viable egg.[9] In addition, if a migratory bird is listed in Schedule 1 of the *Migratory Birds Regulations, 2022*, their nests are protected all year long regardless of whether or not they contain a live bird or viable egg as these refer to birds that re-use their nests.[10] From there, it will be necessary to check if the bird also has SARA protection. A migratory bird can receive species at risk protection under the SARA and in that case a residence prohibition can protect nests that are not active but are re-used in subsequent years.[11]
The next step would be to determine if the nest had been reported through the Abandoned Nest Registry. This is a process whereby a nest that would otherwise be protected year-round can be exempt from nest prohibitions.[12] The Registry includes a process to determine whether the nest has remained unoccupied by a migratory bird for the corresponding period required – for example some bird species require a nest to be abandoned for 12, 24, or even 36 months.[13] Finally, it would be important to understand whether a permit under either the *Migratory Birds Regulations* or the SARA had been issued allowing for the destruction of these nests.[14]
If you have concerns that a nest is being illegally destroyed, you can contact your local Canadian Wildlife Service office as they have certain enforcement options. The contact information in Alberta is: 1-800-668-6767 or enviroinfo@ec.gc.ca.

How can I help protect species at risk in my region?

In Alberta, species at risk are underserved by the current *Wildlife Act* regime. Full protection would require a dedicated Endangered Species Act that would bring provincial protection up

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to the same level as that which is provided under the federal SARA. These changes require action by the provincial government. The ELC has written extensively about this issue, including a report setting out a draft Endangered Species Act for Alberta which you can find here. We continue to advocate for these changes at the provincial level.

Additional Reading

- **Habitat Law in Alberta Volume 1: State of Habitat Law**
- **Habitat Law in Alberta Volume 2: Barriers to Effective Management and Protection**
- **Habitat Law in Alberta: Volume 3: Jurisdictional Review**
- **Habitat Law in Alberta: Volume 4: Recommendations**
- **An Endangered Species Act for Alberta: A Draft Bill**
- **Threatened Jurisdiction: Species at Risk and the Constitution**

Footnotes

[1] *Wildlife Regulation,* Alta Reg 143/1997, Sched 6.
[2] *Wildlife Act,* s 36(1).
[3] *Wildlife Act,* s 6.
[4] *Species at Risk Act*, SC 2002, c 29, s 58 [SARA].
[5] SARA, ss 32 & 33.
[6] Environment and Protected Areas, "Species at Risk Assessed in Alberta" (29 Jan 2024) *Government of Alberta* online: https://open.alberta.ca/dataset/0b3421d5-c6c1-46f9-ae98-968065696054/resource/fcc339c9-62cf-4d9e-92e9-ec5e4277155f/download/epa-species-at-risk-assessed-alberta-2024-01.pdf (Note that the most recent version of this list is from January 2024).
[7] *Podolsky v Cadillac Fairview Corp.*, 2013 ONCJ 65 (CanLII).
[8] *Emergency Order for the Protection of the Greater Sage-Grouse*, SOR/2013-202.
[9] *Migratory Birds Convention Act, 1994,* SC 1994, c 22; Environment and Climate Change Canada "Frequently Asked Questions: Migratory Birds Regulations, 2022" Government of Canada online: https://www.canada.ca/en/environment-climate-change/services/migratory-bird-permits/faq-migratory-birds-regulations-2022.html [MBR FAQ].
[10] *Migratory Birds Regulations, 2022* SOR/2022-105, Sched 1.
[11] MBR FAQ.
[12] Government of Canada, "Registry for Abandoned Nests" online: https://www.permis-permits.ec.gc.ca/en/AbandonedNests.
[13] MBR FAQ.
[14] SARA, s 73 & see for example section 71 of the *Migratory Birds Regulations* which allows a permit for nest