



A GUIDE TO MANITOBA PROTECTED AREAS & LANDS PROTECTION

Manitoba Wildands
December 2008

Discussions about the establishment of protected lands need to be clear about the definition of ‘protection’. We will examine (1) formal (legal) tenure mechanisms that result in ‘protected areas’ and (2) other forms of land designations that result in some form of protection but that do not meet the criteria to be considered a ‘protected area’. (World Conservation Union categories of protection.)

For the purposes of this guide, we will use the Government of Manitoba’s definition of a ‘protected area’:

Protected areas are land, freshwater or marine areas, where logging, mining, hydroelectric development, oil and gas development, and other activities that significantly and adversely affect habitat are prohibited through legal means.

(Protecting Manitoba's Outstanding Landscapes: Manitoba's Protect Areas Initiative, 2008: 4)

1. KINDS OF PROTECTED AREAS

The Crown Lands Act is the piece of legislation that enables government to protect Crown lands through designation by stating that it has the power to do so. The actual tools for formal protection of lands and waters (i.e. that specify which activities are prohibited or permitted within a given land designation) are found within other provincial Acts. In most cases, legislation outlines the nature and type of designation and the regulations under the Act are the tools that formally protect specific areas of the province.

1.1 Provincial Parks

Provincial **parks can be protected areas**, however, not all provincial parks are protected areas. As well, **portions of a park can be protected**, depending on the park’s classification and/or the land use categories (LUCs) applied within the park. A park’s classification under the Provincial Parks Act determines its general purpose (see Box 1) and LUCs allow for further zoning within a park to permit or prohibit certain activities in certain areas (see Box 2). Some parks are mostly one zone (LUC).

BOX 1: **PROVINCIAL PARKS** **CLASSIFICATION & PURPOSE**

Wilderness Park – preserves representative areas of a natural region (protected)

Natural Park – preserves areas of a natural region **and** accommodates a diversity of recreational opportunities and resource uses (may have protected LUCs/zones)

Recreation Park – provides recreational opportunities (not protected)

Heritage Park – preserves an area of land containing a resource or resources of cultural or heritage value (may be protected but have permanent change to habitat)

(Source: Provincial Parks Act, Section 7(2))

All Wilderness Parks are protected under the Act and must be categorized using only certain LUCs (Wilderness, Heritage, Access) in order to ensure protection (Provincial Parks Act, Section 7(4)). All other provincial parks classifications can include LUCs that either protect the area or permit activities not allowed within protected lands. Typically, parks classified as Recreation Parks are not protected from industrial development and do not contain LUCs that would result in protected areas (see Box 1 & Box 2).

BOX 2:

LAND USE CATEGORIES (LUCs) WITHIN PROVINCIAL PARKS

Wilderness LUC (*protected*) – main purpose is to protect representative or unique natural landscapes in an undisturbed state and provide recreational opportunities that depend on a pristine environment

Backcountry LUC (*protected*) – main purpose is to protect examples of natural landscapes and provide basic facilities and trails for nature-oriented recreation in a largely undisturbed environment

Resource Management LUC – (*not protected; allows logging, roads, mining activities, etc.*) main purpose of the categorization is to permit commercial resource development or extraction in a manner that does not compromise the main purpose of the park classification

Recreational Development LUC – (*not protected*) main purpose of the categorization is to accommodate recreational development (includes town sites, commercial districts, cottage developments, roads, hotels, lodges, etc.)

Heritage LUC – (*protected status determined on a case by case basis*) main purpose of the categorization is to protect a unique or representative site containing a resource or resources of cultural or heritage value (e.g. if a building site is zoned as Heritage LUC, the area would not be considered protected because of the disturbance to the landscape)

Access LUC – (*not protected*) main purpose of the categorization is to provide a point or route of access in a provincial park or a location for a lodge and associated facilities

Winter Road Access LUC – (*not protected; allows winter roads*) main purpose is to permit the construction and operation of a winter road (other development activities or activities affecting habitat prohibited)

(Sources: Provincial Parks Act, Section 7(3); Provincial Parks Designation Regulation 37/97)

In summary, LUCs that meet the criteria for formal protected status include:

- Wilderness LUC (found in Wilderness Parks and Natural Parks)
- Backcountry LUC (found in Wilderness Parks and Natural Parks)

A GUIDE TO MANITOBA PROTECTED AREAS & LANDS PROTECTION

- Heritage LUC (found in Heritage Parks)

Provincial Parks Designation Regulation 37/97 is used to describe and designate provincial parks. The list of parks is constantly updated based on annual regulations that add to or change the listing of parks in Manitoba.

If a park or lands within a park are to meet the full criteria of a protected area, one final regulatory step is needed. A regulation is also issued under the Mines and Minerals Act to withdraw Crown mineral rights, which results in the prohibition of mining activities within the protected area. All protected areas, under various Acts, have their crown mineral rights withdrawn. This step occurs despite the fact that the Mines and Minerals Act prohibits mining activity in Parks and protected areas – where it is also prohibited by the Provincial Parks Act or its regulations (Mines and Minerals Act, Section 61(1)) – which means that mining activity is prohibited in all Wilderness Parks and within all protected LUCs. This ‘double insurance’ ensures that there is no legal confusion or argument as to whether mining activity is allowed in protected areas.

1.2 Park Reserves

A park reserve is a temporary or interim designation under the Provincial Parks Act. Park reserves are established to facilitate planning and consultation while ensuring that the lands under consideration are not otherwise allocated or used while planning and consultation take place. Park reserves are designated by the Lieutenant Governor in Council (Cabinet) for an initial period of six months, and are renewable for five-year periods (Provincial Parks Act, Sections 8(1), 8(2)).

Like parks, park reserves are classified and zoned into land use categories (LUCs) (see Box 1 & Box 2 above and Park Reserves Designation Regulation 66/99). Since the new Provincial Parks Act was proclaimed in 1997, all park reserves established in Manitoba have been nominated by First Nation communities. All of the park reserves established since 1997 are protected areas and like protected park lands, protected park reserves also have Crown mineral rights withdrawn through a regulation under the Mines and Minerals Act.

1.3 Other Protected Areas Designations

Although the Provincial Parks Act is the main legislative tool for the protection of land, other legislation being used to designate Crown lands as protected areas include:

- The Forest Act and regulations
- The Wildlife Act and regulations
- The Mines and Minerals Act and regulations
- The Ecological Reserves Act and regulations
- The National Parks Act (federal legislation)

The Forest Act allows for provincial forests (or zones within them) to become protected areas. The regulation used is consistent with all Manitoba protection standards and definitions and the language used in the regulation is also used in other acts (such as the Wildlife Act) to designate protected areas.

A GUIDE TO MANITOBA PROTECTED AREAS & LANDS PROTECTION

The **Wildlife Act** is used to designate wildlife management areas and through additional provisions in the regulation WMAs are established as protected areas.

The importance of the **Mines and Minerals Act** to the creation of protected areas has been discussed above; in order for each protected area to be truly protected, withdrawal of Crown mineral rights through a regulation under this Act occurs for any protected areas established under any Act.

All lands designated under the **Ecological Reserves Act** are protected areas and activity within ecological reserves is more restricted than in other protected area designations. Under the Ecological Reserves Act (Section 8), authorization (a permit) is required to conduct any activity within an ecological reserve. However, most ecological reserves allow non-destructive, observational uses (e.g., walking, wildlife viewing). Restrictions on activities, because they are for conservation purposes, technically may also apply to persons who are Aboriginal and treaty right-holders.

Federal government jurisdiction also extends to the establishment of protected areas; the majority of lands within **National Parks** are protected. The process to establish a National Park involves study and extensive consultation with stakeholders, Aboriginal peoples and the public. In Manitoba, and in any province, any new national parks are established on provincial Crown lands. Provincial legislation is used to initially establish a designation and withdraw Crown mineral rights (Mines and Minerals Act).

1.4 Parks & Protected Areas Establishment

The Provincial Parks Act requires the Minister to “provide an opportunity for public consultation and shall seek advice about proposed regulations” prior to issuing the regulation to establish a park reserve or a provincial park (Provincial Parks Act, Section 9(1))¹.

The methods and means for required public review processes regarding parks-related proposals are not prescribed in legislation and are a matter of policy. The Manitoba Parks Branch now uses the Internet to post information about these public reviews. There is a Parks Branch website page that lists parks-related proposals currently open for public comment, provides information and allows for web-based comments². Typically, public reviews regarding parks also include public open houses in affected communities and opportunities for verbal and written comments.

This public involvement requirement under the Parks Act includes First Nation communities. However, the *Working Group on Manitoba’s Network of Protected Areas Memorandum of Understanding* adds additional requirements that guide the communication between the government and affected First Nation communities, while

¹ However, when a development proposal within a provincial park is being assessed as a project under the Environment Act, the public involvement requirements under this Act may be allowed as a substitute to meet obligations under the Provincial Parks Act (Provincial Parks Act, Section 9(2)).

² Parks Branch – Public Consultations http://www.gov.mb.ca/conservation/parks/public_consult/index.html

clarifying the obligations and responsibilities of all parties. Certain aspects of this MOU are no longer functioning, but the provincial government has re-affirmed its commitment to the principles of the MOU.

Opportunities for public review and comment are also part of the process to develop park management plans, which are a requirement under the Provincial Parks Act (Section 11). There are no formal (legal) requirements to engage the public in the process to develop and finalize a park management plan. Public engagement in the park management planning process is therefore a policy decision and subject to the discretion of the government with respect to timing, notification, methods of public engagement, etc.

2. OTHER TENURE AND MANAGEMENT REGIMES RELATED TO PROTECTION OF LAND

There are various provincial, federal and international tools that, while not providing the legal protection of a protected area, lead to policy decisions and/or joint or cooperative management of certain areas. In each instance, the result is some form of partial protection for lands and waters or a provincial regulation under a Manitoba Act provides the protected status. A few examples are discussed below.

2.1 Heritage Rivers and World Heritage Sites

Provincial waterways may be federally listed as **Heritage Rivers** as part of the Canadian Heritage Rivers System (CHRS)³. Listing as a Heritage River carries no legal authority; according to the Canadian Heritage Rivers System (CHRS) website, “[a]ll protective actions on Canadian Heritage Rivers depend on existing laws and regulations, and respect the rights of Aboriginal peoples, communities, private landowners, and other stakeholders”⁴. What this means is that Heritage Rivers are not protected areas but the provincial government could protect these rivers through a regulation under one of the several acts discussed above.

Rivers that have outstanding natural, cultural and/or recreational values, a high level of public support, and demonstrated and sufficient measures in place to ensure that those values will be maintained are considered for inclusion in the CHRS.

A management plan, or heritage strategy, that ensures the river will be managed to conserve its outstanding natural, cultural and/or recreational values is a requirement under the CHRS. The plan must be based on public consultation and consensus.

World Heritage Sites (WHS) are places of natural and/or cultural significance that are considered to be of "outstanding universal value". WHS are an international listing by UNESCO (United Nations Educational, Scientific and Cultural Organization). Although status as a WHS is recognized internationally, UNESCO does not legally designate WHS. State governments are required to put designations in place. In Canada, federal or provincial protection designations of nominated areas are a requirement of the WHS

³ Canadian Heritage Rivers System (CHRS) http://www.chrs.ca/Main_e.htm

⁴ Canadian Heritage Rivers System (CHRS) – About Us http://www.chrs.ca/About_e.htm

nomination and evaluation process, which a lengthy and involved process that can take several years.

2.2 International Biological Program

The International Biological Program (IBP) was established to undertake a worldwide effort to better understand the ecological relationships of our natural world⁵. IBP sites were established around the globe in the 1970s, including in Manitoba. IBPs were not and are not formal protected areas; rather they were defined areas that represented a certain collection of ecological communities within which ecological studies occurred.

The IBP brought together scientists from nearly every biological discipline from biochemical physiology to anthropology to atmospheric science to systems analysts – in order to be able to unravel the “complex interrelations among organisms and between them and their environments”⁶ and to handle and interpret the huge amount of data being collected.

There are 20 IBP sites in Manitoba, the largest is the region east of Lake Winnipeg.

2.3 Other Tools and Types of Lands Protection

Manitoba’s Environment Act contains a provision allowing the Minister discretionary power to declare areas of the province as sensitive or critical and prescribe standards or controls on environmental matters within these areas (Environment Act, Section 43).

Various provisions under the Park Activities Regulation, amendment 141/1996 (Provincial Parks Act) prohibit or restrict activities, and apply to parks lands whether they are protected or not. These prohibitions and restrictions afford some measure of protection in provincial parks lands that may otherwise not be formally protected:

- Section 13 prohibits activities that result in changes to the surface water drainage of provincial park lands unless a permit is held
- Section 14 prohibits pollution or contamination of waters within provincial parks
- Section 18 prohibits application of pesticides in provincial parks except application of certain pesticides by land owners or occupiers if applied personally and not via airplane or helicopter
- Section 19 allows fires only in designated areas unless a burning permit under the Wildfires Act is held, prohibits burning permits areas covered by peat moss or ice or during periods when wildfires prohibited
- Section 20 allows for open fires on ground that is snow covered at any time, except during wildfire season under The Wildfires Act and allows for gathering and use of fallen or dead trees for immediate use in a campfire.

⁵ *Symposium on the International Biological Program – The Biological Basis of Productivity and Human Welfare, Plenary Session, National Research Council, March 13, 1967* (Proceedings of the National Academy of Sciences (US) Volume 60 Number I May 15, 1968)

<http://www.pnas.org/content/60/1/1.full.pdf+html>

⁶ *Conservation, the Federal Government, and the International Biological Program* (Proceedings of the National Academy of Sciences (US) Volume 60 Number I May 15, 1968)

<http://www.pnas.org/content/60/1/42.full.pdf+html>

A GUIDE TO MANITOBA PROTECTED AREAS & LANDS PROTECTION

- Section 31(1) prohibits vehicles in provincial parks unless a permit is held
- Section 35 prohibits camping in provincial parks unless a permit is held
- Section 36-38 restricts camping to designated areas

Under Manitoba's Provincial Parks Act, the Minister has discretionary power to open or close parks and roads, restrict travel in provincial parks, or close any road or trail in a provincial park (unless it is controlled by the Minister of Transportation and Government Services (Section 27(1))).