

EXECUTIVE SUMMARY

This is the first progress report on whether boreal caribou critical habitat is protected across Canada.

Woodland caribou, boreal population (herein referred to as “boreal caribou”) is distributed throughout boreal forests and wetlands across Canada occurring in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Newfoundland and Labrador, Yukon, and Northwest Territories.

Boreal caribou is listed as threatened in Schedule 1 of the *Species at Risk Act* (SARA).³ In October 2012, the federal Minister of Environment posted the Recovery Strategy for the Woodland Caribou (*Rangifer tarandus caribou*), Boreal population, in Canada (2012 Recovery Strategy) to the SARA public registry. Under section 63 of SARA, the Minister of Environment and Climate Change is then required to release a progress report on the steps taken to protect “any portion of the critical habitat of a listed wildlife species [that] remains unprotected” every 180 days after posting a recovery strategy, until all critical habitat is protected.

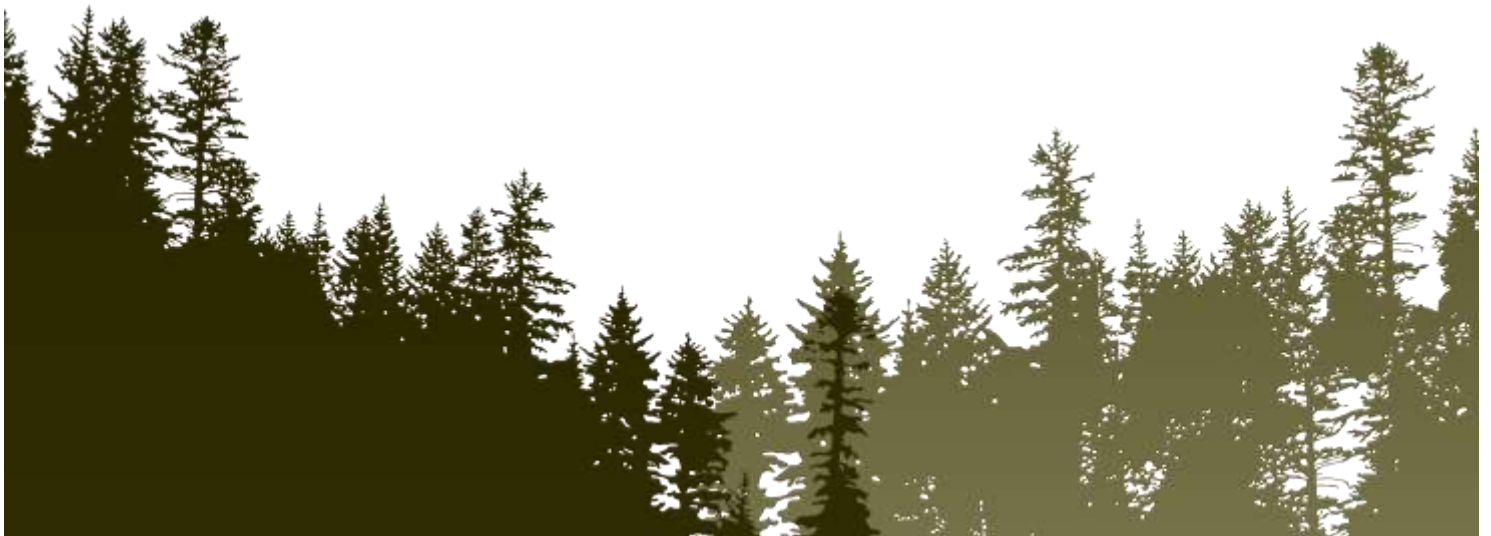
However, the Minister has never complied with this legal requirement for regular progress reports on critical habitat protection.

This report aims to assess whether boreal caribou critical habitat in Canada is protected. Specifically, legislation governing species at risk, protected areas, and natural resource management, in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Newfoundland and Labrador, Yukon, Northwest Territories, and Canada, was assessed for whether it protects boreal caribou critical habitat to a standard consistent with protection under SARA. That is, this provincial and territorial legislation was assessed for whether it provides mandatory and enforceable protection against the destruction of boreal caribou critical habitat.⁴

Overall, the main finding of this legal analysis is that boreal caribou critical habitat remains largely unprotected across the country.

In Saskatchewan and Yukon, all portions of boreal caribou critical habitat remain unprotected. Similarly, in the remaining six provinces and one territory, the vast majority of critical habitat remains unprotected except for small portions that overlap with certain parks and protected areas.

In reaching this overall finding, the following types of legislation were assessed and the following conclusions were drawn:



³ *Species at Risk Act*, SC 2002, c 29, Schedule 1.

⁴ For a summary of the report’s methods, see the Appendix.

First, for each jurisdiction, it was assessed whether boreal caribou critical habitat is currently protected under species at risk legislation. Five of the nine provincial and territorial jurisdictions analyzed have species at risk legislation in place. However, these five jurisdictions have not protected boreal caribou critical habitat under their species at risk legislation:

- Manitoba, Ontario, and Québec have legislative schemes that do not provide mandatory and enforceable protection against critical habitat destruction, and furthermore, these jurisdictions have not protected any boreal caribou critical habitat under their legislation;
- Newfoundland and Labrador's species at risk legislation has the capacity to protect boreal caribou critical habitat, but critical habitat remains unprotected because no habitat orders have been made under this legislation; and,
- Similarly, Northwest Territories' species at risk legislation has the capacity to protect boreal caribou critical habitat, but no boreal caribou critical habitat has been designated by regulation.

British Columbia, Alberta, Saskatchewan, and Yukon do not have any standalone species at risk legislation. Therefore, for these four jurisdictions (and also, exceptionally, for Manitoba), it was assessed whether boreal caribou critical habitat is currently protected under general wildlife legislation. It was found that none of these five jurisdictions' general wildlife laws protect boreal caribou critical habitat. Moreover, of these five jurisdictions' wildlife laws, only two jurisdictions' wildlife laws have the capacity to protect critical habitat: Yukon's *Wildlife Act* and Manitoba's *Wildlife Act*.

Second, for each jurisdiction, it was assessed whether boreal caribou critical habitat is currently protected under parks and protected areas legislation. It was concluded that eight of the nine provincial and territorial jurisdictions have parks or protected areas legislation that has the capacity to protect critical habitat. However, in these eight jurisdictions, parks and protected areas protect – at best – only small portions of boreal caribou critical habitat:

- British Columbia, Alberta, Manitoba, Ontario, and Québec have parks and protected area legislation that is protective, but parks and protected areas created under the legislation overlap only minimally with boreal caribou critical habitat;
- Newfoundland and Labrador has parks legislation with the capacity to be protective, but no parks currently overlap with boreal caribou critical habitat, and other types of protected areas overlap only minimally with boreal caribou critical habitat;
- Yukon and Northwest Territories have parks and protected area legislation with the capacity to be protective, but no protected areas currently overlap with boreal caribou critical habitat.

Parks legislation in Saskatchewan does not have the capacity to protect boreal caribou critical habitat.

Third, in a few instances, it appeared that some jurisdictions have sought to assert that certain legislation, such as forestry or land use planning laws, may protect critical habitat. Therefore, the potential of those schemes to protect boreal caribou critical habitat was assessed. It was concluded that these legislative schemes do not protect boreal caribou critical habitat:

- British Columbia has previously pointed to the wildlife habitat areas and ungulate winter ranges established under the *Forest and Range Practices Act* and the *Oil and Gas Activities Act* as serving to protect boreal caribou critical habitat. However, these two statutes and the areas created thereunder do not protect boreal caribou critical habitat because the protections they offer are not mandatory but merely discretionary, and do not protect against the full suite of activities likely to destroy critical habitat.
- Alberta has pointed to regional planning as one tool to take action on boreal caribou. Under the *Alberta Land Stewardship Act*, regional plans with enforceable conservation directives and supported by a regulatory framework for effective implementation may protect critical habitat. There are currently no regional plans with enforceable conservation directives that overlap with boreal caribou critical habitat, and no regulatory framework for implementation.

- Ontario's Ministry of Natural Resources and Forestry relies in part on the *Crown Forest Sustainability Act, 1994* to take action on boreal caribou. The *Crown Forest Sustainability Act, 1994* does not protect boreal caribou critical habitat because it does not provide mandatory and enforceable protection against destruction.

Finally, it was assessed whether Canada's laws protect boreal caribou critical habitat. SARA implementation efforts were generally not analyzed, as Canada has not protected any boreal caribou critical habitat under section 61 protection orders or section 11 agreements. However, SARA implementation efforts were analyzed in relation to four national parks. Only two, Wood Buffalo National Park and Prince Albert National Park, protect boreal caribou critical habitat from destruction. It was concluded that Canada's national parks legislation does not itself protect boreal caribou critical habitat, with the exception of any wilderness areas that overlap with boreal caribou critical habitat. The *Canada Wildlife Act* has the capacity to protect boreal caribou critical habitat, through Canada's creation of national wildlife areas. However, no national wildlife areas currently overlap with boreal caribou critical habitat. Overall, boreal caribou critical habitat on some federal lands remains unprotected by federal legislation.

